

**FOR OF ALL SAD WORDS OF TONGUE OR PEN, THE
SADDEST ARE “IT MIGHT HAVE BEEN”¹**

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Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity. By Lawrence Lessig.² Penguin Press, 2004. 348 pages, \$24.95

Copyright law, more than any other body of law, has evolved over the past two decades in a manner that profoundly affects America's culture. Two actions, taken eleven years apart, have combined to lock up the elements of creative expression. On March 1, 1989, the U.S. joined the Berne Convention for the Protection of Literary and Artistic Works after over a century of resistance.³ In order for the U.S. to join the Berne Convention, several modifications to U.S. law were required.⁴ The most sweeping was the elimination of copyright formalities, compliance with which was required for an author to obtain a copyright on his or her work.⁵ One such example was the notice requirement, such as placing a circle “c” (©) and the year on the work in order to inform others that the author claims a copyright in the work.⁶ As a

1. JOHN GREENLEAF WHITTIER, MAUD MULLER (1867).

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3. Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988) (codified in scattered sections of title 17, U.S. Code). The Berne Convention was signed at Berne, Switzerland, on September 9, 1886. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, 25 U.S.T. 1341 (entered into force July 10, 1971) [hereinafter Berne].

4. Many of the changes occurred prior to, and in anticipation of, joining Berne.

5. Formalities are technical administrative rules that must be satisfied to receive copyright protection. See *U.S. Adherence to the Berne Convention: Hearings Before the Subcomm. on the Judiciary*, 99th Cong., 1st & 2d Sess. 454 (1985-86) (referring to the WIPO Glossary of the Terms of the Law of Copyright and Neighboring Rights).

6. Publication of a work without satisfying the notice requirements

result of this change, all copyrightable works, regardless of the author's intent, are now protected under copyright law.

The second modification to copyright law came in 1998 when Congress, with the enactment of the Sonny Bono Copyright Extension Act ("CTEA"), extended the term of existing and future copyrights by twenty years in order to match Europe's copyright term.⁷ Works that were on the precipice of release into the public domain, an intellectual soup from which anyone could draw for use in their creative endeavors, were granted an additional twenty years of copyright protection.⁸ Although only two percent of the works whose copyrights were about to expire were commercially viable, the extension applied to every work that was under copyright at that time.⁹ An effect of this extension is that the other ninety-eight percent of the works whose copyrights were extended, the vast majority of which remain out of print, are out of reach of libraries and entrepreneurs who could give them a new life.¹⁰

constitutes an abandonment of a copyright and dedication to the public. 17 U.S.C.A. § 19 (1909). Another example of a formality was the requirement that a copy of the work be sent to the Library of Congress, although this was not a condition of copyright. 17 U.S.C. § 407 (1909). Currently, registering with the Copyright Office is required only to file an infringement suit. 17 U.S.C. § 411(a) (2004).

7. Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, § 102, 112 Stat. 2827, 2827-28 (1998) (codified in scattered sections of 17 U.S.C.) [hereinafter CTEA]. The CTEA made U.S. copyright terms the same duration as European Union terms, which are twenty years longer than Berne requires. "The term of protection granted by this Convention shall be the life of the author and fifty years after his death." Berne, *supra* note 3, art. 7, para. 1.

8. Section 302 was amended "by striking 'fifty' each place it appears and inserting '70'." CTEA, *supra* note 7, § 102. *Free Culture* points out that "in the twenty years after the Sonny Bono Act, while one million patents will pass into the public domain, zero copyrights will pass into the public domain by virtue of the expiration of a copyright term." LAWRENCE LESSIG, *FREE CULTURE: HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY* 134-35 (2004) [hereinafter *FREE CULTURE*].

9. *FREE CULTURE*, *supra* note 8, at 221. Using historic figures, the Congressional Research Service estimated 2.34 percent of renewed works continue to earn a commercial royalty. See Brief of Petitioners at 7, *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (No. 01-618), *reh'g denied*, 538 U.S. 916 (2003), available at <http://cyber.law.harvard.edu/openlaw/eldredvashcroft/supct/opening-brief.pdf>, or at 2002 WL 1041928.

10. The extension is literally a death sentence for many of the works: "Thousands of old movies sit on shelves deteriorating because the companies that hold the copyrights make no efforts to restore them or make them available, while their copyright status prevents others from preserving such works. By the time many of these works are finally available to enter the public

A third event transpired in the past two decades—although not a result of copyright law—that had a profound effect on culture. Even though the abolishment of formalities and the extension of copyright terms restricted what entered the public domain, what was already there became immensely accessible with the advent of the Internet. With unprecedented ease, almost everyone in the U.S. can access many of the works in the public domain and adapt them, expand upon them, and then share them with others with the same ease. As the Internet creates a new level of access to culture, copyright law threatens to starve the public domain so that what is accessible is very slim. In an economy with an anorexic public domain, creativity that draws from prior works can be afforded only by established and powerful businesses. The discord between ease of access and legal inaccessibility is the impetus for *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (“*Free Culture*”), an impassioned book on how media companies have manipulated technology and the law in direct response to the Internet; a response that “has massively increased the effective regulation of creativity in America.”¹¹

Free Culture opens with the invention of the airplane, a technology where the sky was, literally, the limit. It brought previously unimagined access to faraway reaches and to new people. The story quickly centers on the Causbys, North Carolina farmers, who, along with the rest of the country, believed that their property rights extended upwards, as far up as they cared to claim.¹² In 1945, the Causbys brought an action for trespass when military aircraft so distressed their chickens that they fatally flew into walls.¹³

domain, prints and negatives will have physically disintegrated. These endangered works include not only film ‘classics,’ but also industrial films, forgotten examples of silent cinema, footage from uncompleted projects (such as Orson Welles’ *Don Quixote*), and kinescopes of programs from the ‘golden age’ of television.”

Brief of Amici Curiae American Association of Law Libraries et al. at 61-62, *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (No. 01-618), *reh’g denied*, 538 U.S. 916 (2003), *available at* 2001 WL 34092059.

11. *FREE CULTURE*, *supra* note 8, at 10.

12. *Id.* at 2.

13. *United States v. Causby*, 328 U.S. 256, 258 (1946). The airplanes flew approximately sixty-seven feet above their home on the landing approach, with as many as six to ten chickens dying in one day and as many as 150 chickens dying altogether. *Id.* at 258-59.

The Supreme Court declared the doctrine of common law ownership of land extending upwards forever to be dead.¹⁴ Private claims to the airspace would transfer the air highways, to which only the public has a right, into private ownership.¹⁵ Lessig uses this story to highlight what he calls the “special genius of a common law system:” The law adjusts, sometimes overnight, to new technologies.¹⁶ Of course, the story also represents an anecdote to the current conflict between creative content owners (the property owners, like the Causbys) and the public highway that is the Internet.

The first two sections of *Free Culture* focus on the essence of the book, how culture is being tied up by private ownership. The premise of *Free Culture* is that extremism against “piracy” and the push to protect intellectual property as strongly as if it were real property produce a fundamental change in how our culture is made and shared. To illustrate the American tradition of using existing works to create further works, Lessig describes the emergence of one of the biggest creators of derivative works, the Walt Disney Company. This is one of *Free Culture*’s best qualities, the illustration of how copyright and culture have been intertwined since the beginning of American media. Lessig describes the method of taking from the public domain and building upon it as “Walt Disney creativity.”¹⁷ Disney has issued at least seventeen films that are adapted from public domain works.¹⁸ Walt Disney creativity, Lessig tells us, is exactly the type of creativity for which the public domain exists; to inspire and allow the public to create further works. However, this type of creativity is now on indefinite hold due to copyright extensions, of which there have been eleven in the past forty years.¹⁹ During Walt Disney’s lifetime, and until 1978, the average copyright term was at most thirty-two years.²⁰ Today, all copyright terms last the life of the author plus an additional seventy years.²¹ Lessig writes that the public domain of

14. *Id.* at 260-61. “It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe.... But that doctrine has no place in the modern world.” *Id.*

15. *Id.* at 261.

16. *FREE CULTURE*, *supra* note 8, at 3.

17. *Id.* at 24.

18. For instance, *Snow White*, *Pinocchio*, *Peter Pan*, and *Robin Hood*.

19. *FREE CULTURE*, *supra* note 8, at 134.

20. *Id.* at 24.

21. 17 U.S.C. § 302(a) (1976).

today consists of essentially the same works that Walt Disney was able to access.²²

Walt Disney creativity is not limited to cartoons, however. *Free Culture* goes on to illustrate other types of borrowing and copying, such as the advent of photography (which borrowed an image from the subject),²³ media labs in schools,²⁴ weblogs on the Internet (“blogs”),²⁵ and open source software.²⁶ All of these adaptations involve “tinkering” with existing works, whether music, art, or even algorithms. Increasingly, the Internet is becoming the playground of developing minds, minds that will expand through the adaptation of existing works. Lessig states: “We’re building a technology that takes the magic of Kodak, mixes moving images and sound, and adds a space for commentary and an opportunity to spread that creativity everywhere. But we’re building the law to close down that technology.”²⁷

Free Culture is full of details that often are not brought to the public’s attention when news breaks. One example in the book details an information technology freshman’s run-in with a Goliath of the content-owning industry, the Recording Industry Association of America (“RIAA”). The student, Jesse Jordan, made improvements to his university’s intranet search engine, primarily by compensating for a Microsoft bug that could cause a user’s

22. Although *Free Culture* states that “the public domain is presumptive only for content from before the Great Depression,” copyrights have expired since then. FREE CULTURE, *supra* note 8, at 25. Works before 1962 may have expired for failure to renew copyright because Congress only extended terms for existing copyrights beginning in 1962. Pub. L. No. 87-668, 76 Stat. 555 (1962).

23. FREE CULTURE, *supra* note 8, at 31.

24. *Id.* at 35. Just Think is a mobile project that enables children to make films with high-tech digital equipment as a way to understand and critique the filmed culture that bombards them. The project promotes media literacy as a key means of countering media stereotyping and targets under-resourced, low-income areas. For more information, see <http://www.justthink.org> (last visited April 15, 2004).

25. *Id.* at 40-41. Lessig states that blog “entries are relatively short; they point directly to words used by others, criticizing with or adding to them. They are arguably the most important form of unchoreographed public discourse that we have.” *Id.* at 41.

26. *Id.* at 45-46. Open source software is a program in which the source code is available free of charge to the general public for use and modification from its original design. Open source code is usually created collaboratively, whereby programmers share changes within their community. An example is Apache, the most popular Internet server software currently in use. See <http://httpd.apache.org>.

27. FREE CULTURE, *supra* note 8, at 47.

computer to crash.²⁸ Fairly quickly, the index of his system contained more than a million files, including pictures, text, movie clips, and music.²⁹ Of course, the music files—which comprised about 25 percent of the listed content on the directory—caught the attention of the RIAA.³⁰ Unfortunately for Jesse, copyright law provides for liability even when the defendant did not violate any copyright statutes.³¹ Case law has created a judicial doctrine of copyright contributory liability, which requires only knowledge of infringing activity, and inducing, causing, or materially contributing to infringing conducts of others.³² Undoubtedly, Jesse knew that someone, somewhere on campus had used the engine to look for and transfer a music file that was under copyright.³³ Knowledge of that transfer, combined with his having created the engine (his material contribution) created a presumption of contributory liability, regardless of his legitimate purpose in creating the engine. To compound his misfortune, copyright law provides for statutory damages between \$750 and \$30,000 per violation, as well as attorneys' fees to the copyright holder.³⁴ Lessig compellingly tells this story from Jesse's point of view. Although lawyers may want more detailed legal analysis, *Free Culture* is accessible to all audiences precisely because Lessig is able to simplify copyright's sometimes dense rules. *Free Culture* illustrates what attorneys too often overlook: a layperson's point of view when

28. *Id.* at 49.

29. *Id.* at 49-50.

30. *Id.* at 50.

31. Assuming that Jesse did not transfer copyrighted material himself, he did not violate the copyright statute because contributory infringement is a judicial doctrine. "Although the liability provision of the 1976 Act provides simply that '[a]nyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the copyright,' 17 U.S.C. § 501(a), the House and Senate Reports demonstrate that Congress intended to retain judicial doctrines of contributory infringement." *Sony Corp. of Am. v. Universal City Studios, Inc.*, 104 S. Ct. 774, 812 (1984) (citing S. REP. NO. 57 (1975); H.R. REP. NO. 61 (1976)).

32. *Gershwin Publ'g Corp. v. Columbia Artists Mgmt., Inc.*, 443 F.2d 1159, 1162 (2d Cir. 1971).

33. Transferring a file necessarily entails copying the file. *See MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir. 1993) (loading copyrighted software into RAM creates a copy of that software in violation of the Copyright Act).

34. 17 U.S.C. §§ 504(c)(1), 505 (2004). Although "[i]n a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200." *Id.* § 504(c)(2).

faced with a lawsuit such as this. Jesse could either defend himself at a cost of at least \$250,000 or settle for the amount that the RIAA offered, Jesse's life's savings of \$12,000.³⁵ Lessig is disgusted: "Our law is an awful system for defending rights. It is an embarrassment to our tradition. And the consequence of our law as it is, is that those with the power can use the law to quash any rights they oppose."³⁶

One of *Free Culture's* best attributes is Lessig's ability to illustrate the difference between what is technically legal and what is practical. One chapter details a documentary filmmaker's burden when grappling with the difference between the two.³⁷ While filming a documentary on stagehands, a few seconds of the television show *The Simpsons* was shown in the background of the stagehands' room while they were playing checkers.³⁸ Although both Matt Groening (*The Simpsons's* creator) and Gracie Films (the show's production company) told the filmmaker to go ahead and use the shot, the purported copyright holder, Fox, demanded a \$10,000 licensing fee.³⁹ As Lessig rightly points out, lawyers hear this story and automatically reply that this use was a fair use and no licensing fee needed to be paid.⁴⁰ However, the book illustrates the reality of relying upon fair use. Fair use is an expensive justification for copying because it is an affirmative defense, where the burden of proof lies on the defendant.⁴¹ With this example, *Free Culture* articulates the reality of film production: film insurance carriers dislike releasing works if there are portions with rights that have not been cleared.⁴² Can we blame them? Relying on a fair use

35. FREE CULTURE, *supra* note 8, at 51-52. Notice that Jesse may have to pay the RIAA's attorney's fees if he loses, but would be unable to receive his attorney's fees if he won. All he would receive from the litigation is his cleared name. See 17 U.S.C. § 504(c)(1) (2004).

36. FREE CULTURE, *supra* note 8, at 200.

37. *Id.* at 95.

38. *Id.* at 95.

39. *Id.* at 96. This licensing fee was their discounted, educational rate to boot. *Id.*

40. *Id.* at 97.

41. "[F]air use . . . is not an infringement of copyright." 17 U.S.C. § 107 (2004). The burden of proof is on the copier because fair use is an affirmative defense. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 590 (1994).

42. FREE CULTURE, *supra* note 8, at 98. "Television distribution and broadcast agreements require that an insurance policy be in place to protect all of the parties in the production/distribution chain, in the event of reasonable mistakes, errors and omissions during production that result in copyright infringements or the unauthorized use of protected materials (Errors and Omissions insurance)."

defense in copyright litigation can be very expensive, and carries with it the possibility that the defense will be unsuccessful, leading to statutory damages.⁴³

Free Culture goes on to note that all the changes in content control would not matter except for the recent trend of media concentration.⁴⁴ Because only a handful of companies get to decide what content to provide, the opportunity for discussion of topics that the non-majority cares to discuss can be curtailed. *Free Culture* states:

Given (1) the power of technology to supplement the law's control, and (2) the power of concentrated markets to weaken the opportunity for dissent, if strictly enforcing the massively expanded "property" rights granted by copyright fundamentally changes the freedom within this culture to cultivate and build upon our past, then we have to ask whether this property should be redefined.⁴⁵

This is a profound and grand statement, that "property should be redefined." However, this is where *Free Culture* comes up short. Just as the reader is realizing that, yes, property *should* be redefined, she is left with no further suggestion of *how*. Even in the Afterward, where a few recommendations are made, there is no mention of a new copyright paradigm.

Instead of ignoring the other side of the political spectrum, for public domain advocates tend to be leftward leaning, *Free Culture* demonstrates how even conservatives should be concerned with the current trend. One chapter refers to content-collection sites on the Web, such as those that offer plot summaries from forgotten television shows or collect cartoons from the 1980s.⁴⁶ The copyright owners are no longer interested in offering *He-Man* cartoons or *Thundercats* plot lines, yet there is a huge interest in re-discovering these works among Generation Xers. As the book tells us,

as the law is currently crafted, this work is presumptively illegal, . . . [which] will increasingly chill creativity, as the examples of extreme penalties for vague infringements

Copyright Clearing House, Inc., *Multimedia 1997: Protecting Your Client's Legal and Business Interests: A Guide to Clearing Music in Audio/Visual Multimedia Products*, 467 PLI/Pat 783, 787 (1997).

43. See discussion *supra* note 41.

44. FREE CULTURE, *supra* note 8, at 162.

45. *Id.* at 169.

46. *Id.* at 183.

continue to proliferate. It is impossible to get a clear sense of what's allowed and what's not, and at the same time, the penalties for crossing the line are astonishingly harsh.⁴⁷

As shown in previous chapters, the consequences of legal uncertainty could influence website creators into not taking the risk of posting the content. The uncertain legality of their actions makes it unreasonable for most businesses to rely on fair use and the public domain, limiting use to only those sites that can afford to pay for rights or defend a lawsuit if one arises. As the book points out, the stories about silenced artists may fall on deaf ears of corporate-oriented, conservative policy makers. However, even they should sit up and take notice when the business market is being regulated by this ambiguous legal and technical system. As an illustration, this section tells how attorneys and venture capitalist firms are not immune from the murky copyright system. After MP3.com, a website that relied on fair use to distribute CD holders' own music to them over the Internet, was sued and shut down, one of the plaintiffs in the suit, Vivendi, purchased MP3.com and filed a malpractice suit against their legal advisors. The suit alleged that it was malpractice to advise that MP3.com had a good-faith claim that the service they offered would be legal under copyright law.⁴⁸ This suit sent exactly the message that the content industry wanted to send: do not even dare advise that fair use is an option. Even venture capitalists are subject to attacks if they invest in enterprises that rely on fair use.⁴⁹

Unfortunately, this chapter then flows back into discussion of how the fuzzy boundaries of fair use and the public domain will affect creativity, when further analysis on the effect on the business world is needed. Lessig mentions that a free market and free culture depend upon vibrant competition, but he doesn't elaborate on the impact to the free market system. *Free Culture* makes an effort to appeal to conservative and economic-minded people, but it could do more.

The most compelling section, and probably the most interesting to attorneys, gets to the reason why *Free Culture* was written: to explain Lessig's trek to the Supreme Court and his fight

47. *Id.* at 185.

48. *Id.* at 190. The case was settled for an unspecified amount. *Id.*

49. *Id.* at 191 (describing such a lawsuit brought by two record companies against venture capital firm Hummer Winblad).

to win the *Eldred v. Ashcroft*⁵⁰ case.⁵¹ This is the strongest portion of the book because it is the most passionate, heartfelt, and insightful. The chapter opens with Eric Eldred, a retired computer programmer who wanted to create an online library of public domain novels with links to pictures and explanatory text to make the stories come alive.⁵² One of the novels he wanted to include was just about to enter the public domain.⁵³ However, at just that time, Congress extended, for the eleventh time in forty years, the term of all copyrights for an additional twenty years. “Eldred would not be free to add any works more recent than 1923 to his collection until 2019.”⁵⁴ Lessig, as a constitutional scholar, became involved in Eldred’s battle due to the source of Congress’ power to extend the copyright term, the Progress Clause.⁵⁵ Where most clauses give Congress the power to do something, the Progress Clause dictates the goal of the power and how it is to be used: “to *promote progress* by securing exclusive rights for *limited times*.”⁵⁶ In all other provisions, the Constitution is silent on the means by which Congress must exercise its authority.⁵⁷ If Congress has the power to extend existing terms, Lessig reasoned, then the requirement that the terms be “limited” will have no effect, and Congress is violating the means by which it must exercise its authority under the Progress Clause.⁵⁸

In January of 1999, Lessig and his team filed a lawsuit on Eldred’s behalf in Washington, D.C. federal district court, asking the court to declare the CTEA unconstitutional.⁵⁹ When they made it to the Supreme Court, however, the CTEA was held constitutional, and a section of the book discusses why Lessig thinks the Court did so. He begins the story with his heart on his sleeve,

50. 537 U.S. 186 (2003).

51. FREE CULTURE, *supra* note 8, at 213.

52. *Id.*

53. Robert Frost’s *New Hampshire*.

54. FREE CULTURE, *supra* note 8, at 214. However, this is an overstatement since there have been works that fell into the public domain prior to 1961. *See* discussion *supra* note 22.

55. U.S. CONST. art. I, § 8, cl. 8.

56. *Id.* (emphasis added).

57. Edward C. Walterscheid, *Defining the Patent and Copyright Term: Term Limits and the Intellectual Property Clause*, 7 J. INTELL. PROP. L. 315, 316 (2000) (“It appears that this was deliberate and that other attempts to grant specific as opposed to general powers to Congress were rejected by the delegates.”).

58. FREE CULTURE, *supra* note 8, at 215-16.

59. *Id.* at 228.

writing “[i]t is over a year later as I write these words. It is still astonishingly hard.”⁶⁰

After the Court’s decision, Lessig turned to an argument of politics. He wrote a newspaper article in which he proposed a fix to the problems of orphaned works and the anorexic public domain.⁶¹ Under his plan, fifty years after publication, a copyright owner would be required to register the work and pay a minimal fee. If the fee was not paid the work would pass into the public domain. A registration system, as well as the notice requirement, was how works passed into the public domain before the 1976 Act. Although those requirements were draconian, requiring only a minimal fee and registration fifty years after creation is far from burdensome. Lessig points out that if a work is not worth registering to get an extended term, then it is not worthwhile for the government to defend a monopoly on that work at the public’s expense.⁶² A simple, possibly web-based, system could move up to 98 percent of once-commercial work into the public domain within fifty years.⁶³ However, the reason that the U.S. does not currently have a registration requirement is because of an international treaty, Berne. A bill proposing such a system, called the Public Domain Enhancement Act, was introduced in Congress by Rep. Lofgren.⁶⁴ Lessig writes that this bill “solved any problem with international law. It imposed the simplest requirement upon copyright owners possible.”⁶⁵ However, it is not the bill’s proposed simple requirements that render it compliant with Berne because Berne mandates that there be absolutely no formalities.⁶⁶ The bill accords with Berne because it does not impose formalities on works created outside the United States. Berne allows a country to

60. *Id.* at 229.

61. Lawrence Lessig, *Protecting Mickey Mouse at Art’s Expense*, N.Y. TIMES, Jan. 18, 2003, at A17. Orphaned works are works where the copyright owners cannot be ascertained, but that are still under copyright. Using orphaned works, or even restoring them if they are deteriorating, is a violation of copyright law. *See, e.g., Kahle v. Ashcroft Submission Site*, at <http://notabug.com/kahle>. The *Kahle v. Ashcroft Submission Site* solicits examples of orphaned works to support the plaintiff’s case in a lawsuit pending before the Northern District of California.

62. FREE CULTURE, *supra* note 8, at 252.

63. *Id.* at 253. Many endorsed the idea, including Steve Forbes. *Id.* at 249.

64. H.R. 2601, 108th Cong. (2003).

65. FREE CULTURE, *supra* note 8, at 253.

66. Berne requires member states to ensure that the enjoyment and exercise of copyright rights “shall not be subject to any formality.” Berne, *supra* note 3, art. 5(2).

impose formalities on its own citizens, but not on citizens of other Berne member countries.⁶⁷ Although this bill appears unfeasible from a political standpoint, *Free Culture* is more concerned with making the reader recognize the idea that our current system is harmful to our culture than with supplying specific answers compliant with international law.

The last chapter, “Fire Lots of Lawyers,” is a misnomer, for Lessig does not advocate for a reduction in the number of lawyers but instead encourages lawyers to “consider it their duty to change the way the law works—or better, to change the law so that it works.”⁶⁸ To be realistic, a chapter titled “Fire Lots of Lawyers” is probably more popular with the intended audience than “Lawyers Rethink Your Duty.” However, further suggestions to the legal community could potentially affect a more significant change in the current copyright regime; but the book gives short shrift to this topic.

Free Culture is a passionate appeal to the public to wake up and recognize the collective harm to culture resulting from the various legal and technological locks on creative work. Luckily, Lessig’s passion does not lead to overly dramatic and legally complex scenarios for the end of the world. Instead, it is written for the layperson and filled with humorous anecdotes. From the story of RCA’s efforts to crush FM radio, to jazz-dancing robotic dogs, Japanese comics, and the Marx Brothers,⁶⁹ Lessig conveys how content creators are mired in an overly controlling business and legal system. Through simple explanations of copyright law’s sometimes opaque doctrines, Lessig articulates why our culture is at risk of being plundered and why our public domain is starving. Although too limited on the topic of how the complicated and multi-layered problem of big media’s influence can be fixed, *Free Culture* is an engaging and entertaining book that illustrates the tragic fact that the content industry is far more concerned with control and profits than creativity, expression, or constitutional rights.

67. *Id.* art. 5(1). “Berne does not forbid its members to impose formalities on works first published on its own territory.” S. REP. NO. 100-352, at 18 (1988).

68. *FREE CULTURE*, *supra* note 8, at 305.

69. When the Warner Brothers threatened to sue the Marx brothers over a parody of *Casablanca*, the Marx Brothers told them to watch out because the Marx brothers “were brothers long before you were!” *Id.* at 147-48.