

Book Review: The Digital Rights Movement: The Role of Technology in Subverting Digital Copyright

by blog admin

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*The movement against restrictive digital copyright protection arose largely in response to the excesses of the Digital Millennium Copyright Act (DMCA) of 1998. In this book, **Hector Postigo** shows that what began as an assertion of consumer rights to digital content has become something broader: a movement concerned not just with consumers and gadgets but with cultural ownership. Increasingly stringent laws and technological measures are more than inconveniences; they lock up access to our “cultural commons.” **Carlos A. Arrébola** finds this book gives a very detailed and objective history of the on-going debate around digital copyright.*



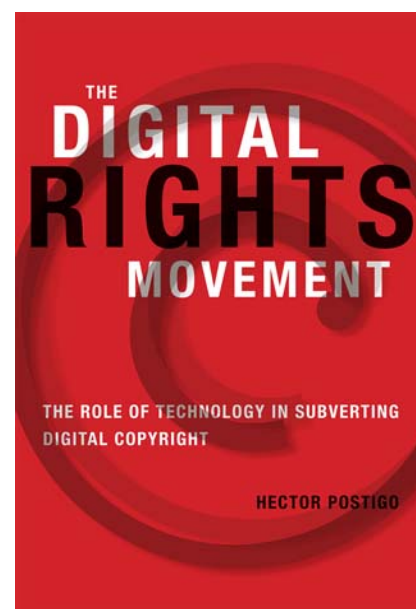
The Digital Rights Movement: The Role of Technology in Subverting Digital Copyright. Hector Postigo. MIT Press. September 2012.

Find this book

Just last month we heard the sad news of the death of the computer programmer and political activist Aaron Swartz at the age of 26, who was found hanged in his apartment. Swartz advocated for a world of free culture on the Internet. One of his most renowned actions was the alleged downloading of more than 4 million academic papers from the JSTOR database. This ultimately led to an intensive prosecution by the US authorities. His death has boosted a pre-existing debate about the current state of the US approach to copyright in a digital era.

[Hector Postigo](#)'s book *The Digital Rights Movement* revises the formation of the debate around copyright, and shows how it is ultimately a struggle between the giants of technology and internet users. Unlike other markets, internet users take on a participatory role. This participatory movement, which Postigo coins as the *digital rights movement*, emerges for two reasons: first, as a form of legal and political protest, and, second, as a way of consumption. This only shows that copyright laws and companies cannot, on their own, control how users behave. Technological realities are always ahead of legal realities. This explains why copyright law must form a compromise between the consumer and the owner of the content, allowing the owner to remain the proprietor of the work and maintaining “fair use” for the consumer (or “fair dealing” as it is referred to in the UK).

In the first part of the book, the author presents the different stages that led to the adoption of the [Digital Millennium Copyright Act \(DMCA\) in 1998](#), which is partly responsible for the discontent felt over the issue of digital copyright. He depicts this process as one where consumers' preferences were highly ignored and where record and technology companies captured the attention of the legislator. Although not covered by this book, the negotiations of the Anti-Counterfeiting Trade Agreement (ACTA) show how the disregard for consumers is constantly present in the negotiation stages of digital copyright legislation. As a result, very strict views are adopted. In the DMCA, this stringent view is illustrated by the anti-circumvention provisions embodied in Title I that criminalise the use of technologies that help users extend their privileges over a certain work. These make a distinction between “access to” and “copy of” a work, in which the former is negotiable at the time of the sale. Thus, the work owner can choose only to sell access to the work instead







of actually purchasing the work. The purchase of the work would allow the user a “fair use” of it.

Let’s imagine, as Postigo does in chapter 3, a book both in its paper and its electronic versions. When one buys a printed book, fair use and first sale privileges are assumed. The owners of the copyright have to trust that the consumer will not exceed those privileges, simply because they cannot control it. So, the book can be lent to someone else, used for educational purposes, resold, etc. On its electronic version (take Kindle for instance) the user is not buying the books as such, but access to them, as it is clear from Amazon’s conditions of use and sale. Subsequently, all those privileges are curtailed. A practical and controversial example is the one of inheritance. Printed books can be inherited, but not Kindle libraries. Bearing this in mind, the rise of a digital rights movement comes as no surprise.

In the second part, the writer gives particular examples of how the *hacktivism* is done by different organizations and individuals, thus bringing up some central points. In chapter 5, the author examines the case of the Decrypt Content Scramble System (DeCSS) for DVDs, a software developed by a group of hackers and made available through the Internet. The intense legal battle over this case leaves an interesting First Amendment discussion: can computer code be covered by freedom of speech? If so, a circumventing software, such as DeCSS, would be lawful even if it helps accessing and manipulating restricted content of a DVD.

The answer to that question is even hazier if the code is pure text, described in song or printed in T-shirts, as it was the case with DeCSS. This discussion on fundamental rights is not unique to the US. In the EU, the restriction of civil liberties has also been heavily criticized as a potential problem arising from the ratification of the ACTA. Organisations such as European Digital Rights pointed out possible incompatibilities with the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

The *hacktivism* around iTunes, presented in chapter 7, is another example that very neatly illustrates the formation of the so-called digital rights movement. This chapter conveys two ideas. First, technology firms impose abusive terms and conditions to consumers via the so-called “click-through agreements”. It is a take-it-or-leave-it deal, in which many consumers agree without actually realising what rights they acquire when they “buy a song”. Second, as more people become aware of the curtailments that this poses in their daily lives, the movement takes a social dimension. The phenomenon of civil disobedience grows and is seen more naturally, as more circumventing programs to override the stipulations of the End-User Licence Agreement of iTunes are developed. The reader should not be deterred by this as the author is not trying to persuade the reader to actively join a movement of civil disobedience.

Hector Postigo writes with finesse. Although his position on the debate seems well-defined, he manages to condense in less than 200 pages a very detailed and objective history of the on-going debate, touching upon all its key aspects. One can see how he hints the benefits of an open Internet and a world in which more Creative Commons ought to be used (such as the one used by [LSE Book Reviews](#)). He does not agitate the reader, and thus it makes the book worthy for both supporters and non-supporters of the the movement he outlines.

Although this book deals with the law and technology, it is neither addressed to lawyers nor to computer scientists. It belongs to a differentiated line of research that is media activism. Thus, any person with a minimum interest and understanding of the debate will find it interesting. I believe that it is written for the general public to raise awareness, and would make anyone start reflecting on what we want ‘fair’ copyright to be.

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