

EXECUTIVE SUMMARY

There has been an explosion in the popularity of downloading and transmitting high-value digital content, triggered by the growth of the Internet and the evolution of peer-to-peer systems. At the same time, there is a substantial disconnect between public attitudes toward copyright and the letter of the law, and growing concern among copyright-holders over the erosion of their rights. The National Academy of Sciences has identified the phenomenon at the center of these developments and labeled it the "digital dilemma": The same technologies that allow the creation and manipulation of digital content (as well as its perfect reproduction and nearly free distribution) can also be used to prevent access to digital content.

The result is a major policy debate between those who seek to protect their rights in digital content and those concerned about the public access to content that has traditionally been guaranteed under copyright law. In this emerging digital world, what, if anything, should be done to ensure that authors, artists, songwriters, and musicians have adequate incentives to create content? And what, if anything, should be done to protect the public's access rights, developed in the physical world, in order to encourage innovation and dissemination and to enhance the public domain?

This report from the Digital Connections Council (DCC) of the Committee for Economic Development presents a different view of this "digital dilemma." Because of CED's mission to foster economic growth, the DCC has focused on the economic impact of copyright protection in the digital age and the potential economic effects of proposals for change. The report briefly explores the history of copyright law, revealing that legal protection of the rights of creators has always been explicitly balanced against protection of ongoing innovation. The DCC brings the perspective of the *second* innovator -- the creator of new social value based on existing copyrighted works -- to bear, noting that every creator owes a debt to what has come before. For this reason, our intellectual property systems are based on providing incentives to both create new material and to make such material open to the public for use for subsequent creation. The report then discusses current proposals for legislative and regulatory change, focusing on

requests by the content distribution industries for technical copy protection mandates. Such mandates would have substantial effects on the information technology and consumer electronics industries in this country, on innovation, and on the economic growth that stems from the freedom to innovate.

These proposals were evaluated against the following questions:

1. How will these proposals affect innovation?
2. How will these proposals affect the growth of our high-tech economy?
3. What impact will these proposals have on the broad range of information thought of as the public domain?

The DCC found that while digitization of content is obviously changing the world's economic landscape, there have been other dramatic technological breakthroughs in the recent past that have profoundly changed relationships among producers of content, their distributors, and content users. Introduction of the phonograph, radio, television, and videocassette recorders have all led to fundamental changes in content markets. But throughout these prior changes in the world of physical distribution, copyright law maintained its basic bargain: Society should provide incentives to creators and prevent wholesale appropriation of their work, while at the same time ensuring both that subsequent creators can build upon a creator's work and that the public as a whole can have access to the creation. The DCC believes that this basic bargain should continue to inform copyright law in the digital world in order to stimulate innovation and enhance economic growth. Without this bargain in place, under-protection of works may inhibit initial creation, while over-protection may inhibit "follow-on" innovation by the millions who come after the initial creator.

Drawing on relevant economic and legal evidence, the Digital Connections Council of the Committee for Economic Development is making the following recommendations:

1. Because quick legislative or regulatory solutions for the problem of digital copyright protection pose risks to innovation and economic growth and are likely to have unintended consequences in a period of rapid technological change, we should move slowly. Our first

concern should be to "do no harm." We should dedicate the next two years to attempting to build consensus about the appropriate role in the digital age for traditional legal safety valves that balance the exclusive rights of creators in copyright regimes with users' rights. The DCC looks forward to facilitating this national and international dialogue.

2. The development and testing of new business models for the distribution of creative content should be given the highest priority by the content industries. We should not turn to law or regulation to protect any particular business model.

3. Existing solutions to the issue of unauthorized uses, such as enforcement and education, should continue to be explored.

4. We recognize the need for digital rights management (DRM) systems that will allow creators to be rewarded for their efforts. We are skeptical about government-mandated DRM, and we recommend that manufacturers not be required to build in mandated copy protection technologies. But DRM systems provide a useful "speed bump" for consumers by inhibiting unauthorized uses of materials. During this period of consensus building about "safety valves" in intellectual property law, we encourage continued experimentation in private DRM systems. In particular, the capacity of such systems to accommodate users' rights traditionally allowed under intellectual property law needs to be further explored so that the appropriate copyright balance can be maintained. If government-mandated systems are proposed, they should be evaluated on the basis of their capability to maintain such a balance and their convenience for consumers. Consumers should play a substantial role in evaluating and approving mandated technological protection systems.

5. Market-based economic tools that provide incentives for copyright-holders to facilitate follow-on innovation should be considered --- including measures to provide earlier dedication of copyrighted materials to the public domain.