

Introduction

The law will never make men free; it is men who have got to make the law free.

—Henry David Thoreau¹

If somebody doesn't create something, however small it may be, he gets sick. An awful lot of people feel that they're treading water – that if they vanished in smoke, it wouldn't mean anything at all in this world. And that's a despairing and destructive feeling. It'll kill you.

—Arthur Miller²

Hollywood paints notoriously evil portraits of corporations. Stop and think about the last film you saw where the heroic corporation battled the Nazis, cared for dying children, or defeated the sinister “environmental” nonprofits advancing the interests of big polluters. Film executives depict Wall Street bankers as wolves, oil executives as gleefully ripping up the earth, pharmaceutical executives as blithely partying on yachts within sight of the disease-stricken poor, and the military industrial complex as, well, waging war for profit. If Dante were alive today, rest assured Hollywood would have lobbied him to retrofit hell with more circles to cover multinationals' range of sins.

Film producers are adroit at demonizing other industries while deflecting attention from their own zealous efforts to increase profits at all costs. Their films function as Potemkin villages veiling the corporate power behind them. Hollywood shines the cameras on itself sporadically to poke fun at its own social norms yet never on its lobbyists and their search for the fountain of

¹ Henry David Thoreau, *Slavery in Massachusetts* (1854) (delivered at an anti-slavery rally after the conviction of Anthony Burns as a fugitive slave).

² Arthur Miller, *What I've Learned*, *ESQUIRE*, July 2003, at 110 (interviewed by John H. Richardson).

perpetual copyright. Hollywood and other major content providers (Big Copyright) lobby Congress for ever-more copyright protection, not for the good of the public or out of concern for individual artists but for the goal of holding onto their version of the Holy Grail – the Star Wars and Snow Whites in their portfolio of holdings, the beloved assets that continue to bring in vast amounts of money decades after their creation.³

The rewards that excessive protection provides to Big Copyright are so great that Hollywood has flooded the market with hyped consumption choices, turning the vast majority of citizens into overconsumers. Americans consume ten hours and two minutes a day of entertainment and media on average, not including social media.⁴ This is more than 32.9 years of the average individual's life.⁵

Such shocking overconsumption does unsurprising harm. Excessive consumption is linked to numerous ills of the body and mind – from increased risk of heart disease to reduced ability to concentrate for extended periods of time. Studies have also shown how it negatively affects our sense of happiness and fulfillment. Overconsuming entertainment unravels the threads that hold society together – family, friends, and community. Americans spend “more time playing games than volunteering” or “going to social events.”⁶ I will add to this list of harms by arguing that overconsumption, precipitated by extreme copyright, makes it less likely that we will go out and create on our own. Overconsumption of entertainment crowds out life.

³ For a thoughtful analysis of how copyright has lost its focus on the public good and developed into a private right instead and the need to return to its original conception, see Shubha Ghosh, *Deprivatizing Copyright*, 54 CASE W. RES. L. REV. 387 (2003). A clever alternative to the term Big Copyright is “industrial-strength copyright owners” used by Jane C. Ginsburg, *The Exclusive Right to Their Writings: Copyright and Control in the Digital Age*, 54 ME. L. REV. 195, 202 (2002). A variant of the term likely first appeared in a different context halfway around the world. See Andrew Christie, *Industrial Strength Copyright*, 51 NEW ZEALAND ENGINEERING 10 (1996). Big Copyright does not include all of corporate America. Numerous multinationals, such as consumer electronics firms, have at times come into conflict with Big Copyright in regard to copyright policy.

⁴ Adding social media, which often includes corporate entertainment, brings the daily average to eleven hours and eighteen minutes. I use Nielsen's Total Audience Report data and then subtract Mediakix's statistics on social media. *The Nielsen Total Audience Report*, NIELSEN TOTAL AUDIENCE SERIES 13 (Q1 2017) (average time spent per adult eighteen and older per day) and *How Much Time Is Spent on Social Media? Infographic*, MEDIKIX, <http://mediakix.com/2016/12/how-much-time-is-spent-on-social-media-lifetime/#gs.F=eCWz2M>.

⁵ Life expectancy in the United States is 78.8 years. CENTERS FOR DISEASE CONTROL & PREVENTION, 65 NATIONAL VITAL STATISTICS REPORTS No. 4, 1 (2016), www.cdc.gov/nchs/data/nvsr/nvsr65/nvsr65_04.pdf.

⁶ Christopher Ingraham, *It's Not Just Young Men – Everyone's Playing a Lot More Video Games*, WASH. POST: WONK BLOG (July 11, 2017), www.washingtonpost.com/news/wonk/wp/2017/07/11/its-not-just-young-men-everyones-playing-a-lot-more-video-games/.

Just as Thoreau states earlier, “The law will never make men free; it is men who have got to make the law free” – consuming art will never make individuals free; it is individuals who have to make themselves free through creating. We must attempt to improve copyright law, to counter the lobbying efforts of Big Copyright, so we can reduce our dependence on entertainment and become more actively engaged in civil society and culture – i.e., become more free and more creative. By discouraging the vast majority from creating, our current copyright regime, in the words of Arthur Miller, leads people to get sick. Every individual needs to create something on his or her own. The actual object or idea is secondary in importance: The process of creation is critical – it allows us to revel in new experiences and ideas. Significantly reducing copyright would loosen Big Copyright’s grip on artistic production, moderate our overconsumption of corporate works, and pave the way for more of us to begin to create art for ourselves.

The history of copyright is a narrative about the heroic tension between maximizing individuals’ incentives to produce copyrightable material versus maximizing the public’s ability to access that very material – either for consumption purposes or to use it to create new material.⁷ While this premise was a positive force 200 years ago, it is fundamentally flawed today. At the time, it would have likely been preposterous to imagine the majority of citizens overconsuming poetry, novels, and maps, while the value of supporting their creation was obvious. We should still care about creation today but in a radically different sense – to enrich the lives of everyone in society, not as passive consumers but as creators. Copyright in its current form has become an impediment to creation for most individuals, not a call to the pen or paintbrush. Instead of prompting us to generate ideas about how to structure our society, economy, and politics, or inspiring us to pursue beauty or philosophical insight, excessive copyright has, practically speaking, provided only Big Copyright and a small, talented minority, largely in Los Angeles and New York City, with realistic incentives to create art.⁸ These incentives are large enough that rich societies have been flooded with commercial art, while this flood of art encourages the vast majority of individuals to consume art, not create it.⁹

⁷ For an insightful analysis of how we might enrich copyright law through a better understanding of conflicting theoretical claims, see James Grimmelmann, *The Ethical Visions of Copyright Law*, 77 *FORDHAM L. REV.* 2005 (2009). For an equally thoughtful, original perspective, see Yochai Benkler, *Coase’s Penguin, or, Linux and the Nature of the Firm*, 112 *YALE L.J.* 369 (2002).

⁸ My analysis here is solely concerned with significantly weakening copyright law governing artistic works, not with other areas of intellectual property law. Furthermore, I do not address copyright on software.

⁹ Extreme copyright has given multinational entertainment corporations massive incentives to capture our attention and sell it to other firms.

I agree with scholars who have argued that we should encourage more creators in order to increase the diversity of ideas in the marketplace, given that corporate entertainment, most of what we consume, will not get us new ideas – just look at how Hollywood single-mindedly churns out countless superhero sequels. Yet I also believe that we should be concerned with maximizing the number of individuals who create because creation is a key constituent of a life well lived.¹⁰ The activity of creating is a goal in and of itself – apart from the merits or range of the artwork created or its impact on others. My theory squarely focuses on who creates, while previous scholars have stressed who creates only insofar as it factors into the diversity of ideas available to art consumers and appreciators. My position is that copyright reform should aim to encourage creativity among the general public.

Copyright maximalists might ask: Since greater copyright protection in theory means greater incentives for everyone to create, why doesn't the excessive copyright regime spur all would-be artists to go out and seek their fortune? In theory, Hollywood's relentless lobbying of Congress for ever-greater protection could benefit all current and potential creators, not just corporate entertainment companies. However, this line of thinking assumes a meaningless formal equality, as mocked by Jacques Anatole François Thibault: "The majestic equality of the law, which forbids the rich as well as the poor to sleep under bridges, to beg in streets, and to steal bread."¹¹ Given the nature of how we create, the excessive protection offered by our copyright regime, in practice, provides significant incentives to corporate media while discouraging lone artists.

Excessive copyright has been vigorously, and rightly, critiqued on the grounds that borrowing is essential to creativity – all new artwork builds on prior art. If I myself may borrow the most popular example used to illustrate the phenomenon, Shakespeare liberally drew on other artists' works. Igor Stravinsky proclaimed: "Lesser artists borrow; great artists steal."¹² Yet Big Copyright has lobbied Congress to so warp copyright law that such borrowing is legally perilous for individual creators. Only Hollywood can afford to pay the

¹⁰ Some argue that Hollywood largely no longer creates original art; its corporate bureaucracy simply refines a scientific process that gets us to maximally consume. Peter Bart, a former Paramount and MGM film executive, says that the greatest concern of Hollywood being "a purely corporate town resides in the creative process. It really hasn't been demonstrated, at any level, by any major corporation, that it can nurture what is euphemistically called 'creativity.'" *The Monster That Ate Hollywood*, PBS: FRONTLINE (last visited June 6, 2017), www.pbs.org/wgbh/pages/frontline/shows/hollywood/interviews/bart.html (interview with Peter Bart).

¹¹ ANATOLE FRANCE (JACQUES ANATOLE FRANÇOIS THIBAUT), *LE LYS ROUGE* (1894) ch. 7.

¹² LESLIE LAMPORT, *L^AT_EX: A DOCUMENT PREPARATION SYSTEM 7 n.2* (1986) (quoting Igor Stravinsky).

requisite licensing fees to make use of protected works with certainty, while the fair use doctrine is so complicated and context specific that many artists are nervous to rely on it.¹³ As Lawrence Lessig once quipped, “Fair use in America simply means the right to hire a lawyer to defend your right to create . . . The legal system may be tolerable for the very rich. For everyone else, it is an embarrassment to a tradition that prides itself on the rule of law.”¹⁴ Extreme copyright has, in effect, allowed Big Copyright to monopolize creativity at the expense not only of aspiring professional artists but also of any citizens who might create during their spare time. Hollywood’s addiction to more legal protections has facilitated our entertainment addiction.

BEHAVIORAL ADDICTION

The nature of what Hollywood has thrust upon us is, in the eyes of many psychologists and neuroscientists, behaviorally addicting. While technology is value neutral, Marshall McLuhan’s vision that the medium can be as significant as the message holds an insight into the nature of our overconsumption of entertainment. Neuroscience shows that art forms that rely on screens – TV, film, videogames, etc. – enable the use of techniques such as the orienting response that hook viewers. This is revealing, given that on average individuals consume far more screen-based art than any other kind. Furthermore, art forms that rely on screens are associated with a vast host of physical and psychological problems.

Extreme copyright leads to overconsumption because it motivates Hollywood to squeeze nonaddictive media out of the market with its all-you-can-eat buffet of entertainment that is purposefully engineered to keep us from turning away. This incentive is reinforced by the fact that excessive copyright also encourages entertainment companies to use neuroscience hook techniques in their works or risk losing market share to competitors who do not have any compunction at the prospect of exploiting consumers’ neuroscience to push their products. It is a race to addiction.

¹³ For an insightful call to level the playing field for individual artists versus corporate entertainment entities, see Sean A. Pager, *Making Copyright Work for Creative Upstarts*, 22 *GEO. MASON. L. REV.* 1021 (2015).

¹⁴ LAWRENCE LESSIG, *FREE CULTURE: HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY* 145 (2004). He continues: “And as lawyers love to forget, our system for defending rights such as fair use is astonishingly bad – in practically every context, but especially here. It costs too much, it delivers too slowly, and what it delivers often has little connection to the justice underlying the claim.” *Id.* Yet also see generally Michael J. Madison, *Some Optimism about Fair Use and Copyright Law*, 57 *J. COPYRIGHT SOC’Y U.S.A.* 351 (2010).

This is not to dispute that some individuals turn to onscreen entertainment because they are depressed, lonely, stressed, or tired – i.e., the causation is likely, in part, a two-way street. Yet it is telling that those who use corporate media for relaxation or solace don't choose any of a multitude of other activities instead, such as walking along the beach, meeting a friend, consuming noncorporate art, creating, or volunteering. Consumers are enticed by profit-hungry multinationals willing to legally bribe politicians, inculcate kids, and deploy neuroscience to maximally grab our attention. Such addiction to consumption then crowds out the prospects of individuals creating on their own, reducing the competition that copyright holders might face from future creators and producers of new art.

This total reversal of the aim of copyright law as compared to its actual effects was not inevitable but happened through a combination of extreme copyright, technological advancements, and the rise of the corporatization of entertainment. The most addictive forms of onscreen entertainment are also the art forms that have been most enabled by the rise of the Internet and related technologies like advances in digital video. Other art forms have largely not been empowered to the same extent. For example, we do not need the Internet or smartphones to write poems. Further, the Internet has not spawned a poetry renaissance, nor is poetry associated with significant negative externalities. The same can be said of painting, sculpture, photography, novels, short stories, and much music. While the advent of reduced production and distribution costs ushered in by the Internet created the possibility that millions of users would be motivated to create, many more have been coaxed into simply consuming more, while some are drawn into using their creative energy in free promotion of corporate media. Through extreme copyright laws, corporate interests have largely captured the distribution revolution of the Internet. For many, the Internet is a place to read the news, mostly written by corporate actors; watch entertainment, largely produced by corporations; buy stuff, primarily corporate products on large corporate websites; and interact with our social circles, on platforms that are mediated by corporations.

COPYRIGHT AND CREATION

Reforming copyright is not necessarily the most effective way to inspire more citizens to create. However, the law of copyright exists, and the current regime has led to the overproduction of corporate art that squelches individual creativity. Thus, we have an obligation to determine how the law is causing harm and to attempt to redress the situation. Our excessively restrictive

copyright regime has already been criticized on numerous fronts for having abandoned any sense of balance between providing incentives to produce and allowing others access to the creations.¹⁵ Existing criticisms include limiting citizens' ability to shape political and cultural values and terms, restricting free speech, closing off the commons, creating countless copyright orphan works, and not leading to any real income for most artists but creating an embarrassment of riches for the most famous entertainers.

I agree with these insightful critiques, but I want to draw attention to the negative effects of overconsumption that copyright fosters in the general public. We can find a more appropriate balance between protecting corporate creators and providing individual artists and consumers access to copyrighted works by dramatically weakening copyright protection.¹⁶ For example, we could reduce the length of copyright from the life of the author plus seventy years after her death or corporate copyright's ninety-five years of protection to as low as a year or two, such that commercial entertainment factories would substantially reduce the flow of new corporate work into the marketplace from a flood to a trickle.¹⁷ No one can state precisely the term that is needed *ex ante*; we need to experiment. Yet if one thinks \$200 million blockbusters would be created absent copyright, which I do not, then one must believe copyright is superfluous – if copyright has no bearing on the level of cultural production, the very point of copyright ceases to exist. Further, given most of the public's overconsumption is of entertainment that heavily relies on copyright, such as TV, it is highly unlikely that a drop-off in new blockbuster content would drive people to consume poetry or YouTube cat videos in the same excessive quantities day in and day out. More likely, they would devote their free time to other activities.

Consuming entertainment and art is vital, but too much is harmful. To be clear: I don't think the classical fine arts, such as painting and sculpture, are superior to art forms that can span the world through perfect digital reproduction. I simply demonstrate that – unlike the classical fine arts – film, TV, and video games can support techniques that keep us consuming. I am also not

¹⁵ For a framework that critiques the harms of excessive copyright protection through the lens of strengthening the commons and nonmarket peer production, see YOCHAI BENKLER, *THE WEALTH OF NETWORKS* (2006).

¹⁶ William W. Fisher III calls for free copying of artistic material but suggests the government should distribute tax money to artists in proportion to how often the artists' creations are consumed by the public. See WILLIAM W. FISHER III, *PROMISES TO KEEP: TECHNOLOGY, LAW AND THE FUTURE OF ENTERTAINMENT* (2004).

¹⁷ Corporations can claim the shorter of ninety-five years from publication or 120 years from creation. 17 U.S.C. § 101 (2000).

arguing that certain substantive artistic content, certain messages or themes within art, should be elevated above others.¹⁸

Furthermore, I do not claim that creating is more important than consuming or any other important activities, from spending time with friends or family to sleeping. Yet I firmly believe we need to stress the value of creation more now because of how little of it we do and how much we overconsume. After all, copyright is a legal regime that seeks to influence creative pursuits. I argue that we should use the law to encourage certain activities (creativity) and discourage others (overconsumption), but we should not forget that we are already influencing behaviors through the existing copyright law. All I am suggesting is that we rewrite copyright so it empowers individuals instead of corporations.

THE WATER WE SWIM IN

Just as Big Pharma became villains in the eyes of much of the world – ironically thanks in part to the efforts of Hollywood, which pursues the same intellectual property strategies – so might Big Copyright suffer for refusing to dramatically reduce the excessive copyright regime to alleviate the plethora of harms it generates.¹⁹ It took decades for the harms that Big Pharma, Big Oil, and Wall Street perpetuate to be widely recognized by the public, in substantial part because they all employed armies of public relations firms, advertised in news outlets, and silenced politicians through contributing to their campaigns.²⁰ The copyright fight is more challenging because Hollywood is its own Madison Avenue. Hollywood is in our homes more than half our waking hours. It inculcates our kids not for thirty seconds at a time but for their entire childhood. As if this weren't enough indoctrination, entertainment giants also hire the same public relations and lobbyist firms as the other multinationals, advertise with the same news outlets, and contribute to the same politicians.

This overconsumption problem helps to highlight another reason copyright reform is so difficult. One major potential source of resistance to it, the general public, is spending more time, on average, consuming entertainment than

¹⁸ For an insightful examination of the need to consider aesthetics in copyright jurisprudence, see Alfred C. Yen, *Copyright Opinions and Aesthetic Theory*, 71 S. CAL L. REV. 247 (1998).

¹⁹ Frank Vinluan, *Big Pharma Should Hate These Hollywood Blockbuster Movies*, MEDCITY NEWS (Dec. 26, 2011, 6:13 AM), <http://medcitynews.com/2011/12/the-top-10-movies-that-big-pharma-loves-to-hate/>.

²⁰ For an alternative take on Big Oil, see John Hofmeister, *Why We Hate the Oil Companies*, STRATEGY+BUSINESS (May 3, 2010), www.strategy-business.com/article/10207?gko=doe17.

sleeping or working. Excessive copyright protection immobilizes this possible source of resistance. Besides a group of academics and a few technology companies, there is no great source of opposition to Hollywood's influence over Congress. Others who might resist, such as the Supreme Court, benefit from the excessive protection – e.g., with million-dollar book advances – while the fourth estate, meant to be a pillar of democracy, is largely owned by corporate entertainment multinationals.

I do not view Big Copyright executives as evil. Yet we cannot deny Hollywood has an enormous vested interest in the debate, and we can justly assert that its position is diametrically opposed to that of the public.²¹ While Hollywood executives and powerbrokers could, on their own, in an instant, reduce the harms they perpetuate, capitalism does not ensure enlightened corporate leadership. A few firms may make extraordinary one-off gestures acknowledging the problem of overconsumption – e.g., a British broadcaster, ITV, once purposefully blackened out its TV programs for one hour to spur consumers to take a break from TV and go exercise. In general, however, Big Copyright and multinationals will not deviate from maximizing profits unless they see a dollar in helping society or can spin the stunt to garner positive publicity.²² Notwithstanding Kant's aspirational golden rule, history has shown that the public cannot realistically assume corporations will do anything but fixate on their bottom line. Further, they will frequently lobby to alter the laws to their own benefit, disregarding the harm doing so might cause – an observation that both liberal and conservative scholars have made.²³ Such rent-seeking activity is the nature of political systems.²⁴ It is our job to counter its sociopathic nature. We must fight for laws that force multinationals, and Hollywood in particular, to take into account human flourishing and health – not simply profit.

Environmental advocates were initially dismissed. Yet they persisted, and at some point it became common sense that we should demand clean air and water. The history of the environmental movement shows that the battle does not end. A 2016 investigation revealed that “excessive and harmful levels of lead” were found in more than 10 percent of tap water samples taken by the

²¹ I would like to thank Peter Jaszi for elucidating this point.

²² AP, *UK Broadcaster Shuts Down for Hour, Asks Viewers to Exercise*, U.S. NEWS & WORLD REPORT (Aug. 27, 2016, 6:46 AM), www.usnews.com/news/entertainment/articles/2016-08-27/uk-broadcaster-shuts-down-for-hour-asks-viewers-to-exercise.

²³ E.g., see generally MILTON FRIEDMAN & ROSE FRIEDMAN, *FREE TO CHOOSE: A PERSONAL STATEMENT* (1990).

²⁴ See generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (rev. ed., Harvard University Press 1971) (1965).

Environmental Protection Agency from 2012 to 2015 – in almost 2,000 water systems in the United States, across all fifty states.²⁵ Nevertheless, the struggle is not a Sisyphean life sentence but rather an opportunity to engage in life and find collective meaning by doing good – i.e., to do more than simply consume the wares of Hollywood and suffer the negative consequences.

We need to clear away the fog that obscures the true intentions of Hollywood moguls. It serves the interests of Big Copyright to stifle the rich diversity of human interaction and divert us from pursuits that bring us meaning. Their financial motive is colonizing our motives. They will use any lever, be it political clout or the latest technology, to become our reality. They offer slick, entertaining fictions that celebrate human ingenuity while instilling mass preoccupation and dependence. Smartphones are already human prosthetics; imagine the potential profits to be made with virtual reality headsets, wearable sensors, and implanted chips.²⁶ While many consumers may be ecstatic about such developments and entrepreneurs such as Elon Musk find their march inevitable, the public must not assume that corporations are seriously considering the negative side effects of such a future of entertainment.

To be fair, multinationals do some good – e.g., lifesaving drugs. Yet often such benefits are inextricably mixed with significant harms – e.g., providing oil to heat our homes while sowing corruption and environmental destruction abroad. Hollywood is no exception. Its polished entertainment entertains. This is both praise and an indictment. Hollywood designs its products to be spellbinding, addictive, and ubiquitous. It doesn't just create; it pushes its creations like drug cartels do. It enlists the government's help to maximize profits, domestically and abroad, by consistently demanding that copyright laws be bent ever further in its favor.

INNOVATIVE POLICY PROPOSALS

Roughly a decade ago, Lawrence Lessig, famous for popularizing the long-held idea that excessive copyright protection inhibits creativity and innovation among existing artists, announced that he was leaving the field because copyright reform was impossible without addressing how Congress is captured by

²⁵ Alison Young & Mark Nichols, *Beyond Flint: Excessive Lead Levels Found in Almost 2,000 Water Systems across All 50 States*, USA TODAY (Mar. 11, 2016), www.usatoday.com/story/news/2016/03/11/nearly-2000-water-systems-fail-lead-tests/81220466/.

²⁶ E.g., see generally Christopher Mims, *In 10 Years, Your iPhone Won't Be a Phone Anymore*, WALL STREET J. (June 25, 2017, 9:00 AM), www.wsj.com/articles/in-10-years-your-iphone-wont-be-a-phone-anymore-1498395600.

Hollywood. We need new ideas on how to minimize corporate lobbying, reduce the power of money in elections, get politicians to internalize their decisions, compel deliberative democracy within government, demand informed governance, and ensure integrity. Yet we cannot give up on reducing the negative effects of excessive copyright through more targeted means, even if we are only striking at branches and not the root.²⁷

Reform proposals that simply suggest altering part of copyright law, while important, are dead on arrival unless they squarely address the reality that Hollywood spends vast sums on lobbying while proponents of copyright reform are not even in the ring when it comes to campaign contributions. Meaningful reform of copyright without systemic reform of Congress will not come from one magic bullet. We need to try numerous novel proposals simultaneously to see what works and to build momentum so we can begin balancing out the influence that Hollywood lobbyists have with Congress.²⁸ At best, each new idea will modestly help, and collectively a dozen or two may only make a dent in the problems related to an extreme copyright system because we are forced to treat the symptoms instead of the disease. We cannot put all of our hopes in the systemic reform of Congress, for such a dream is as distant as copyright reform.

This book presents novel ways to alter copyright. Big Copyright must either have a compelling reason to acquiesce to copyright reform through carrots or sticks, or else reform solutions must be immune to Hollywood's influence – i.e., proposals that Big Copyright might not care for but cannot block. Hence, the chapters in the second half of this book arrange original proposals around these three strategies: effectively opposing Hollywood through pressure, bypassing or ignoring Hollywood through implementing solutions that do not require any legislative change, and actively cooperating with Big Copyright. Even if the reader is unconvinced by my theoretical justification of copyright reform as an attempt to maximize the number of

²⁷ For an excellent examination of how copyright law's structure appears to be largely unaffected by scholars' efforts, unlike in prior cases within antitrust, privacy, and trademark law, see Timothy K. Armstrong, *Dueling Monologues on the Public Domain: What Digital Copyright Can Learn from Antitrust*, 1 UNIVERSITY OF CINCINNATI INTELLECTUAL PROPERTY & COMPUTER L. J. 1 (2016). The tree reference is to Thoreau's comment that "[t]here are a thousand hacking at the branches of evil to one who is striking at the root." HENRY DAVID THOREAU, 1 WALDEN 120 (Houghton Mifflin 1897) (1854).

²⁸ The work of Bruce Ackerman has been particularly helpful in getting me to appreciate the need to design unorthodox yet practical policy proposals. For example, see *generally* BRUCE ACKERMAN & JAMES FISHKIN, *DELIBERATION DAY* (2004); BRUCE ACKERMAN & IAN AYRES, *VOTING WITH DOLLARS* (2002); and BRUCE ACKERMAN & ANNE ALSTOTT, *THE STAKEHOLDER SOCIETY* (1999).

artists, the reform ideas provide examples of how we might take culture back from Big Copyright, and while some reform ideas may prove more appealing and feasible than others, collectively they aim to inspire other policy suggestions.

While some of my ideas may seem radical, they are far less extreme than examples of pressure applied or incentives offered that have been used to good effect in the past. For example, if drivers are caught speeding in Finland, they are charged a percentage of their annual income. The point is to make such an infraction be felt equally across income earners. One wealthy individual was charged \$103,000 for one speeding ticket – going 45 mph in a 30 mph zone.²⁹ Predictably, this caused outrage among some of the rich, which “might be a sign that something fair is at work” because research has shown that wealthier individuals “drive more recklessly than those who make less money.”³⁰ Even Steve Jobs not infrequently used to park in handicapped spots, not fearing the fine.³¹

Furthermore, other countries and cities have, at times, easily eclipsed us in their willingness to experiment with novel reforms. While he was mayor of Bogotá, Dr. Antanas Mockus hired mimes to enforce traffic laws.³² “The mimes didn’t carry guns, nor could they issue tickets.”³³ Rather, they “attached themselves to jaywalkers, striding behind them and mocking their every move,” such that soon “the fraction of pedestrians obeying traffic signals reportedly jumped from 26 percent to 75 percent.”³⁴ Mockus reduced traffic deaths from 1,300 to 600 a year in part by painting “stars on the spots where pedestrians (1,500 of them) had been killed in traffic accidents.”³⁵

Finally, some of my copyright ideas are already commonly, and largely uncontroversially, implemented in other areas. For example, unions, poison pills, and investment funds have been part of the capitalist landscape for generations.

²⁹ Joe Pinsker, *Finland, Home of the \$103,000 Speeding Ticket: Most of Scandinavia Determines Fines Based on Income. Could Such a System Work in the U.S.?*, ATLANTIC (Mar. 12, 2015), www.theatlantic.com/business/archive/2015/03/finland-home-of-the-103000-speeding-ticket/387484/.

³⁰ *Id.* (citing Paul K. Piff et al., *Higher Social Class Predicts Increased Unethical Behavior*, 109 PROC. NAT’L ACAD. SCI. U.S.A. 4086 (2012), www.pnas.org/content/109/11/4086.full).

³¹ *Id.*

³² RAYMOND FISMAN & EDWARD MIGUEL, *ECONOMIC GANGSTERS: CORRUPTION, VIOLENCE, AND THE POVERTY OF NATIONS* 76 (2008).

³³ *Id.* at 77. ³⁴ *Id.*

³⁵ Mara Cristina Caballero, *Academic Turns City into a Social Experiment: Mayor Mockus of Bogotá and His Spectacularly Applied Theory*, HARV. GAZETTE (Mar. 11, 2004), <http://news.harvard.edu/gazette/story/2004/03/academic-turns-city-into-a-social-experiment/>.

Theory has been helpful to frame the harm that extreme copyright causes; now we need to practically effect change. We need to squarely address the fact that Hollywood took a modest financial incentive and turned it into a massive subsidy to itself. In formulating reform proposals, we need to acknowledge that Hollywood has vast financial resources to keep the golden egg it got Congress to lay for it. We need to (a) work against, (b) work around, and (c) work with Hollywood.

ARTISTS SHUNNING ENTERTAINMENT CONSUMPTION

If the arguments for the need to limit overconsumption and suggestions on how to do so don't convince you, ask yourself whether they have already convinced elite artists and tech entrepreneurs. Though celebrity artists endorse commercial products, they arguably define themselves less by consumption than the average American does. Perhaps they see the value in creation because of their selected career paths. There are countless examples of CEOs and stars limiting their kids' use of technology or access to entertainment despite (or maybe because of) the fact that they have made their fortunes in those fields. When asked in 2010 if his kids enjoy using the iPad, Steve Jobs famously mused, "They haven't used it. We limit how much technology our kids use at home."³⁶ Evan Williams, cofounder of Twitter, revealed "that in lieu of iPads, their two young boys have hundreds of books (yes, physical ones)."³⁷ This trend is mirrored by some in Hollywood who make hundreds of millions from TV, film, and music. William H. Macy remarked that "television itself is too powerful. That image is too overwhelming for a little kid."³⁸ Madonna forbids her kids from watching TV because she considers it "trash" and fears its addictive effects.³⁹ Helen Hunt has kept the identity of Nemo hidden from her child, while Mayim Bialik wrote a "whole blog of reasons" why she does not let her kids watch TV.⁴⁰ Other parents such as Steven Spielberg, Hugh Jackman, Megan Fox, Tom Cruise, and Gwyneth Paltrow

³⁶ Amy Fleming, *Screen Time v. Play Time: What Tech Leaders Won't Let Their Own Kids Do*, GUARDIAN (May 23, 2015, 2:30 AM), www.theguardian.com/technology/2015/may/23/screen-time-v-play-time-what-tech-leaders-wont-let-their-own-kids-do.

³⁷ Nick Bilton, *Steve Jobs Was a Low-Tech Parent*, N.Y. TIMES (Sept. 10, 2014), www.nytimes.com/2014/09/11/fashion/steve-jobs-apple-was-a-low-tech-parent.html?mcubz=0&r=0.

³⁸ Keith, *7 Celebrities Whose Children Watch Little or No TV*, LITTLE LIGHT STUDIOS (Sept. 19, 2014), www.littlelightstudios.tv/7-celebrities-whose-children-watch-little-tv/?doing_wp_cron=1497623670.0452430248260498046875.

³⁹ *Id.* and *Interview: Madonna Reviews Life on Larry King Live*, CNN (Jan. 19, 1999, 6:00 PM), www.cnn.com/SHOWBIZ/Music/990119/madonna.lkl/.

⁴⁰ Keith, *supra* note 44.

limit access.⁴¹ Rachel McAdams, Keira Knightley, Angelina Jolie, Susan Sarandon, Jessica Paré, Regina Spektor, Chloe Sevigny, Cynthia Nixon, Carly Rae Jepsen, Alan Cumming, and Jesse Eisenberg claim to not even own TVs.⁴²

As Adam Alter perfectly observes, “It seemed as if the people producing tech products were following the cardinal rule of drug dealing: never get high on your own supply. This is unsettling. Why are the world’s greatest public technocrats also its greatest technophobes?”⁴³ The same can be said of artists and entertainers. As he suggests, “Can you imagine the outcry if religious leaders refused to let their children practice religion?”⁴⁴

WILL SOCIAL MEDIA KILL BIG COPYRIGHT?

Recently concern about media overconsumption has been eclipsed by anxiety about the effects of social media on society, even though currently we spend far less time on social media as compared to corporate entertainment.⁴⁵ The Internet has tended to thwart and reinforce copyright at the same time, just as social media is highly dependent on creative borrowing, such that it tends to reinforce media consumption through promotion, allusion, and mimicry. Nonetheless, if social media continues to take up more and more of our time, it might lead to the death of copyright in the long term. If we continue to fuel our behavioral addiction to social media, we have to give up something given that there is no time left in a day due to current overconsumption. While current statistics show we are increasing our consumption of both traditional entertainment and social media, at some point something has to be relinquished – be it relationships, work, or sleep. If the hook techniques of social media are more addictive than those of film and television, we might eventually renounce Hollywood

⁴¹ *Id.* and Stephen M. Silverman, *Tom Cruise’s Children Are TV Deficient*, PEOPLE (Sept. 26, 2002, 11:25 AM), <http://people.com/celebrity/tom-cruises-children-are-tv-deficient/>.

⁴² Casey Chan, *A List of Celebrities Who Don’t Own a TV*, GIZMODO (June 8, 2012, 7:20 PM), <http://gizmodo.com/5917028/a-list-of-celebrities-who-dont-own-a-tv>.

⁴³ ADAM ALTER, IRRESISTIBLE: THE RISE OF ADDICTIVE TECHNOLOGY AND THE BUSINESS OF KEEPING US HOOKED 2 (2017).

⁴⁴ *Id.*

⁴⁵ See generally James Grimmelmann, *The Law and Ethics of Experiments on Social Media Users*, 13 COLORADO TECH. L.J. 219 (2015); Amy Morin, *Science Explains How Facebook Makes You Sad and Why You Keep Using It Anyway*, PSYCHOLOGY TODAY (March 7, 2016), www.psychologytoday.com/blog/what-mentally-strong-people-dont-do/201603/science-explains-how-facebook-makes-you-sad, and Romeo Vitelli, *Exploring Facebook Depression*, PSYCHOLOGY TODAY (May 25, 2015), www.psychologytoday.com/blog/media-spotlight/201505/exploring-facebook-depression.

for Silicon Valley. If we do so, the real politik value of copyright dies, along with Hollywood, because copyright primarily benefits corporations. While excessive copyright could still be on the books, it would be a law looking for an audience.

Such a future death of Hollywood would not be an occasion to celebrate. If this world materialized, we would be no better off because we would still be overconsuming – just new stuff that profits from us in new ways. Even if we use social media to curate our personal brand or express thoughts, we would still not be creating art in the sustained and authentic fashion that makes creation so vital to human happiness. This development might even be harder to slay. Thus, conceivably, if we are unsuccessful in dramatically reducing copyright protection, social media could still kill Hollywood, by spurring an epidemic of chatter, not a creative renaissance.