

## *'A Profound Loss as a Culture'*

Debating Copyright in the Digital Age

**O**n March 3, 2005, Stanford Law School professor Lawrence Lessig lectured on the digital copyright debate at the Library of Congress, as part of the Library's series on "The Digital Future." An excerpt from Professor Lessig's lecture appears below, followed by an excerpt from the response of Steven J. Metalitz, senior vice president of the International Intellectual Property Alliance.

**Mr. Lessig:** Both sides in this extremism are wrong... The extreme intellectual property side is wrong, the anarchy side is wrong. And what we need to do is to find a way to move this debate beyond this extremism because the consequences of us failing to do so are too great for this culture. So what are we going to do?

I think we need to find a way to sue for peace in this debate. We need a way to find peace—a way to allow the intellectual property system to be used to support this extraordinary creativity without threatening the underlying values which the intellectual property system rightfully serves.

Anybody who reflects on the history of copyright recognizes that changing technologies invite changing regulation, and that's what ought to be hap-

pening now. And that change would invite more growth, innovation, and a different kind of democracy in ways that none of us can now even recognize...

It's a tragedy that affects both the Democrats and the Republicans. This is a nonpartisan blindness. Both sides are oblivious to what we as a culture will lose unless we recognize how to transform this structure of regulation now. They're both blind... We will face a profound loss as a culture unless we find a way to get [both sides] to recognize the potential in growth, and innovation, and democracy that would come if we would get them to see something more than what these lobbyists would have them understand this debate is about. This debate will define our future.

**Mr. Metalitz:** The idea that our law should change for every technology is an attractive one. It's also a recipe for instability as technological change accelerates, and the rules we set for digital works in the early twenty-first century may become irrelevant or harmful when we talk about works of quantum computing a few decades down the road...

One of the strengths of our current copyright law has been its flexibility,

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its ability to adapt to changing technologies. The 1909 copyright act actually worked quite well for a number of decades, even as new forms of entertainment, new forms of expression such as recorded music, radio, movies, and so on and so forth came into being. It gradually outlived its usefulness, and in 1976 [Congress passed] ... a new act that again is based on some flexible concepts. That's why, for example, we have protection now, not for a physical

object—not for a book, or for a CD, or for a reel of film—but we have protection for the work that is embodied in those physical objects. And therefore, when the work is put into new forms—when the film is digitized, when the LP is digitized, when the book goes online—we still have protection; we're not bound by technology. The history of our copyright law is a history of flexibility, and I think it's continuing to act in that way today.