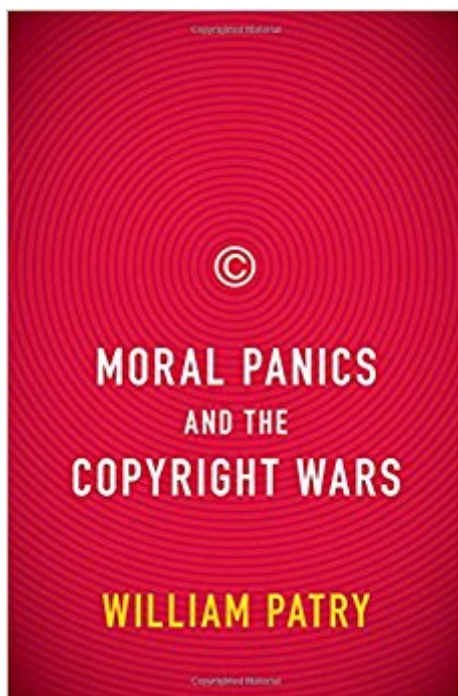


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# Moral Panics And The Copyright Wars



## Synopsis

Metaphors, moral panics, folk devils, Jack Valenti, Joseph Schumpeter, John Maynard Keynes, predictable irrationality, and free market fundamentalism are a few of the topics covered in this lively, unflinching examination of the Copyright Wars: the pitched battles over new technology, business models, and most of all, consumers. In *Moral Panics and the Copyright Wars*, William Patry lays bare how we got to where we are: a bloated, punitive legal regime that has strayed far from its modest, but important roots. Patry demonstrates how copyright is a utilitarian government program--not a property or moral right. As a government program, copyright must be regulated and held accountable to ensure it is serving its public purpose. Just as Wall Street must serve Main Street, neither can copyright be left to a Reaganite "magic of the market." The way we have come to talk about copyright--metaphoric language demonizing everyone involved--has led to bad business and bad policy decisions. Unless we recognize that the debates over copyright are debates over business models, we will never be able to make the correct business and policy decisions. A centrist and believer in appropriately balanced copyright laws, Patry concludes that calls for strong copyright laws, just like calls for weak copyright laws, miss the point entirely: the only laws we need are effective laws, laws that further the purpose of encouraging the creation of new works and learning. Our current regime, unfortunately, creates too many bad incentives, leading to bad conduct. Just as President Obama has called for re-tooling and re-imagining the auto industry, Patry calls for a remaking of our copyright laws so that they may once again be respected.

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## Customer Reviews

"A thought-provoking and highly readable book by one of America's top copyright scholars. Anyone interested in modern copyright debates needs to read it." -Eugene Volokh, Gary T. Schwartz Professor of Law, UCLA School of Law "Patry's insight into copyright law itself has long been established, but with this book he takes us deep into how the debate surrounding copyright law has been twisted and distorted. This is a must-read for anyone looking to understand the real issues in the copyright debate, both from the business-model and policy perspectives." -Mike Masnick, Founder and CEO, Floor64 "Patry makes real policy prescriptions and emphasizes hard economic data, combined with his characteristic morality, innovation, and learning. This is an important book." -Carl Malamud, Founder, Public.Resource.Org "Patry's argument for reforming copyright law to promote modern day innovation is both engaging and meticulously supported by history and facts - an essential read for copyright practitioners and policymakers alike." -R. David Donoghue, Partner, Holland & Knight "A bold and brilliant analysis of key cultural, business, economic, philosophical, and legal issues. Do we need 'creative destruction'? A must for the copyright community and its onlookers." -Howard Knopf, Counsel, Macera & Jarzyna, LLP "Few people are as qualified to write a book about the copyright wars as William Patry...And Patry has written a very fine book indeed. Reading Moral Panics is like watching a master brick layer gracefully and effortlessly build a solid wall: no wasted motion, no sweat, no missteps. Patry knows this subject better than anyone and can really explain it. This is the part of the debate that usually has me frothing at the chops, but Patry remains admirably calm as he carries this off, explaining in terms that anyone can understand the terrible violence that this kind of monopoly control does to our discourse, the arts, and competition and innovation." -<http://www.boingboing.net/2009/09/14/patrys-moral-panics.html> "The short version is 'it's great.' - Mike Masnic-TechDirt's "The tone is, as Patry hoped, civil and the two copyright lawyers' thoughts are well worth reading for anyone with an interest in the state of copyright law." -Robert J. Ambrogi Legal Blog Watch "William Patry has recently written a fascinating book entitled Moral Panics and the Copyright Wars which should be illuminating reading for every photographer interested in copyright in the digital age. In summary, Moral Panics and the Copyright Wars gives a good introduction to understanding the background and context of energetic discussions of copyright in this age. We all as photographers, along with all participants in the digital copyright wars would do well to heed the advice of the author, tone down the rhetoric, and work towards innovative solutions." -David Sanger's Blog-White House Correspondent for the New York Times

William Patry is Senior Copyright Counsel at Google Inc. He previously served as copyright counsel

to the U.S. House of Representatives, Committee on the Judiciary, a Policy Planning Advisor to the Register of Copyrights, a law professor, and in the private practice of law. He is the most prolific scholar of copyright in history, including being the author of an eight-volume treatise and a separate treatise on the fair use doctrine.

Thanks for the comments. The last (second) review noted that I don't offer a prescription out of the current situation. That was deliberate: I wanted this book to be about how we talk about copyright and the influence that plays in our thinking. Had I wrote a prescriptive book, that's all people would have focused on, I feared. But, since in the book I frequently advocate giving consumers what they want rather than what businesses want to give to them, I am heeding my own advice. I am writing a sequel, which is entirely prescriptive, called "How to Fix Copyright." It will be published by Oxford University Press too and will come out I imagine at the beginning of 2011. so please read and judge Moral Panics for what it set out to do. P.S. I had to rate the book to post these remarks, and was not being presumptuous. I obviously would have preferred to post without rating myself.

As I study "intellectual" "property" "rights" with a view to writing something sometime, I am obliged to read the best works on the topic. I keep coming across references to a work by one William Patry, a copyright lawyer. Now note that designation, not "intellectual" "property" "rights" lawyer, or patent lawyer (although he is one), merely "copyright lawyer." In fact, he bills himself (and no doubt his clients) as the "most prolific scholar of copyright in history." He also defines himself as a centrist on the topic of copyrights. In his book he is given to such citations as "the greatest speech ever given on copyrights". Which, of course, the most prolific scholar would be in a position to assess the greatest speech, wouldn't he? Well, talk about an opportunity to get in some serious lawyer-bashing. This guy is leaves himself wide open. And since he is pro-copyright, he is necessarily to me an implacable enemy. I should make clear, as a content-creator, I am against all copyrights, patents, trademarks, etc. It is the only rational position for a creative person to take. Now, having said that, the book is probably the best thing written on copyrights, ever. He is probably the most prolific scholar of copyright in history. The thing is a stunning tour de force. It's a mere 200 pages of content, and I am only through page 84, but I must pause and report. Only at page 84 and he has destroyed all arguments for "intellectual" "property" "rights". And I mean he catalogs each one that is used today, traces the history of the argument, and destroys them. All of them. He examines the pro-IPR data regarding the losses incurred by industry. This is a particularly delightful section, demonstrating the entire oeuvre is bogus, and forensically it could not rise to the level of

social interest. There is nothing to support the claims of losses by anyone in any industry. Now, I have said the same thing many times, from a practical level, but Patry hits it from a forensics angle. All taxpayer money directed at enforcement of "intellectual" "property" "rights" is now clearly a waste. Nonetheless, the full federal power of policing of "intellectual" "property" "rights" is brought down upon 12 year old girls. Edgar Bronfman, when not leveraging the holocaust to shake down Swiss bankers, and Jack Valenti are the villains in this piece. But the gallery of pro-IPR rogues is vast. I suppose if Diane Von Furstenberg had made her greedy demands before the book was printed she too would have been included. And Patry is no idiot savant who solely mastered copyrights, he ranges outside his field with breathtaking perspicacity. Like a Chomsky-grade linguist, Patry takes on metaphors used in the copyright wars to defend "intellectual" "property" "rights". He asks us to pause and reflect on in what way is a 12 year old girl who downloads music like a pirate? Pirates vs. downloader. Does this matter? Well, very much. As you see, a 12 year old girl who downloaded a song feels the weight of the law, like a pirate, if we call her one. If Federal Prosecutor can call Aaron Swartz a pirate, the Federal Prosecutor can hound Swartz literally to death. And did. China is so taken by the pirate argument its new laws in fact make provision for the death penalty of copyright violators. So far Patry has destroyed any basis for "intellectual" "property" "rights" and destroyed any argument for damage done by violation thereof, and exposed the moral bankruptcy of anyone advocating "intellectual" "property" "rights." Not much left. Not bad for 84 pages. Not to mention if his book has any effect, he'll no doubt save lives. Yet he has asserted a few times there is a warrant for copyrights, and I will read through to see what this warrant is. He is not anti-copyright, he is anti "intellectual" "property" "rights."

Mr. Patry has written a very useful book, albeit a dense one. He recites the litany of cases in which content holders have declared the end of the world should a given technology be permitted, only to find themselves its eventual beneficiaries. Excerpts from the centuries-long history of the debates over copyright debunk the favored position of content owners that their rights are natural and not subject to constraints in favor of the public. He makes the connection between excessive copyright and suppression of innovation in the course of reciting the story of the various technologies attacked by content owners --from the player piano through digital audio tape to Napster. As noted in previous reviews and Mr. Patry's remarks in this space, the book is not prescriptive, although it does provide a key thought that is anathema to our business culture but not necessarily so to the public good: to wit, that companies should give customers what they want and then figure out how to make money doing it. Potential readers should note that the book is often pedantic and repetitive, and may

focus on issues of terminology and philosophy of argument that are likely of more interest to attorneys than other folks. It is nevertheless a very valuable read for anyone concerned about redressing the balance of copyright so as to further the progress of science and the useful arts, rather than criminalizing our children.

I've read other policy explorations by copyright experts -- Copyrights and Copy Wrongs, Copyright's Paradox, Copyright's Highway, The Future of Ideas, and Digital Copyright -- and Patry's book is distinguishable on a few levels. Most importantly, it's better written. Patry's use of language and metaphors (he discusses the distinction between metaphor and simile) is a few steps ahead of his colleagues and makes his thesis more palatable and an enjoyable read. As for Patry's brain, that also may be a few steps ahead of his colleagues. Not only is he able to accurately report on the shipwreck of copyright law (and to prescribe a reasonable approach for towing and repairing it) but he presents this approach in a simple, persuasive style. Finally, Patry's 'big picture' overview -- as painful as it may be for many of us copyright owners -- is the perspective of someone with practical, and not merely academic experience. I'm not sure if the appeal of this book extends beyond copyright nerds, but it should.

Patry makes a solid case that the defenders of copyright are actually the defenders of outmoded business models and ostriches who refuse to take their heads out of the sand. His leftward slant is apparent in his allusions and three--three!--quotations of President Obama's line in his inaugural address about "our better angels," as if this were a deeply meaningful line from The Prelude. Still, Patry takes what could be a deathly dull topic and invests it with intelligence and a wonderful lack of legalese. Glad I read it.

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