

No One Speaks For Me

The Legislative Disconnect Of The Meshed Society

By Simon Phipps

What is the "meshed society"? It is people, joined together by the Internet, able to interact -- to collaborate, to create, to transact and to relate directly with each other -- without the need for another person to mediate. As we discover more and more ways to disintermediate our interactions, society is transformed: from a series of hubs with privileged interconnections intermediating supply to consumers, into a constantly shifting "adhocracy".

In the adhocracy, individuals play the roles of user, repurposer, maker, buyer and collaborator in a constantly changing spectrum of combinations. But the law, gathered as it has around the hub-and-spoke worldview of the industrial society, treats many of these roles as privileged, because they have historically been reserved only for commercial entities. Thus, individuals run afoul of rules intended to regulate the owners of hubs. Worse, the penalties associated are disproportionate with the acts they address, because they are designed as disincentives for industrial gaming -- not the human-scale actions of the meshed society.

This is toxic for innovation. Facing the changes of the meshed Internet society by merely tweaking the rules of the industrial society will fail; instead, we need to fully refactor those rules to account for the new topology of society.

As I have watched several bills be presented to various legislative assemblies I have been struck by the absence of any voice within the legislative process itself that speaks for my needs as an individual citizen in the meshed society of the 21st century. The Regulation of Investigatory Powers Act (RIPA), the Digital Economy Act (DEA), the Anti-Counterfeiting Trade agreement (ACTA), the Communications Data Bill (CDB), the Trans-Pacific Partnership Agreement (TPP) -- all have appeared apparently from nowhere replete with terms that poison the Internet collaboration of creator-consumer citizens who are unable to fully participate in the lawmaking process.

While the needs of the entertainment industries, of technology corporations, even of newspaper magnates seem well understood -- along with most other corporate concerns -- the outlook and needs of the individual writer, maker, technology entrepreneur and citizen-journalist seem entirely absent from the discussion. Even the voices of "civil society" frequently seem to speak only for the consumer and never for the individual creator-consumer. The government has civil servants, police and military intelligence all speaking in favour of draconian restrictive and secretive legislation, and is consulting the "Internet industry".

But who speaks for me? Shouldn't the politicians be representing me? Should citizens really have to pay for specialists to prevent the government infringing their rights and damaging their futures? Innovation depends on this ever-shifting interaction between citizens in their Internet roles, so a legislative world where their voice is absent could turn into a rolling disaster for society. To understand how the individual creator-consumer has ended up voiceless, it helps to understand the industrial roots of the existing process.

The Industrial Society

The industrial revolution accelerated an effect that was already in progress: concentrating the production into just a few hands with the rise of the factory; concentrating distribution into fewer hands through the rise of canals and then railways; and, concentrating control of communications into the hands of government-created monopolies of state. The social origins of many entrepreneurs, combined with the pollution created by factories, forced their location away from traditionally high-status cities and in many cases out of existing cities altogether, so that all destinations became equivalent and local supply was no longer the norm. The rise of empires gave these industrial producers access to political power that previously would have only been associated with social status. Exercising this political power led to legal protections of these industrial producers' and distributors' new-found rights.

As a consequence, by the end of the Victorian era, the industrial world was firmly set on a model of hubs and spokes: The hubs were sources of production that could control supply and creation of wealth, while the spokes -- channels of distribution and communication -- were control points but also allowed the influence of the hubs to be extended to a great distance. This topology was effective in growing the well-being of society at large and generating immense wealth for those owning the control points, thus protecting them both in culture, and in law.

That law included an evolution of earlier ideas that a temporary monopoly was a way to encourage innovators to share their innovations with society at large, to stimulate the advance of the "standing on the shoulders of giants" effect. While the ideas of copyright and patents had their roots in earlier generations, the hub-and-spoke topology of the industrial era was especially well

suiting to protection using these "intellectual monopolies", providing clear rights and tough sanctions to govern the robust competition between the new barons of commerce. Both copyrights and patents were understood as a temporary monopoly for the creator of goods to permit successful commerce while also forcing those benefiting from them to share their creative works and know-how freely with society at large, adding new richness to what's now called "the public commons".

The balance between commercial success and the growth of the commons was crucial. Too much emphasis on the former would allow a few individuals to become immensely rich while protected from fair competition; too much emphasis on the latter would lead to producers keeping secrets and crippling progress for society as a whole. Over time, with notable legal cases as exemplars, the rules around copyrights and patents evolved to where they were very well-suited to the industrial society. Naturally the balance was constantly tested -- entrepreneurs are constantly looking for clever ways to exploit both loopholes and innovations to make money -- but it's fair to say that by the middle of the 20th century the hub-and-spoke topology was stable and effective, even in the shadow of two world wars.

The industrial revolution created an economy dependent on high-investment mass production, funded by aggregated high-worth investment, monetised via high-volume distribution channels and marketed through one-way mass communication channels. Each step of that economic flow depended on the person controlling the mechanism. Thus, industrial society became a sequence of control points that each new venture aimed back to its hub so that the various spokes fed each success. As a result, arbitration on control points in production, supply and communications evolved into a complex art-form.

As abuses and disasters exposed weaknesses in the system, law was created to regulate them for the public benefit. The system's vectors in law revolved around a group of concepts involving the regulation of monopoly on those control points. While some of the concepts existed before, industrial society repurposed or invented copyright, trademarks, patents and trade secrets to become the projections of the control points. All are very different in what they regulate and how they do it, but for the oligarchy inheriting (or aspiring to inherit) the industrial riches of the 19th and 20th centuries in the 21st century, all are part of the same palette of control that determines who can profit in the marketplace.

It was reasonable on many issues in the passing industrial society for policy makers to consult business leaders who would be affected by their decisions. In those cases, Parliament could often be expected to balance personal needs on behalf of the citizens who elected them. There were also a few issues solely about the interaction of individuals - although increasingly, interested groups with business funding would participate.

Commercial issues are the domain of commercial organisations and thus appropriate for commercial input. As a result, most industries gradually develop a sector for influencing legislation. Indeed, the computer technology industry offered an opportunity to see just such a lobbying activity evolve over the last 30 years. It's expensive, time-consuming and it can easily cause blowback to the public image of corporations pressing to have their proprietary interests preferred by the law. As a result, the natural trajectory of policy engagement moves from direct comment to direct committee engagement to authored position statements to paying for industry consortia to take those actions until, eventually, even those consortia try to hide from public gaze by paying independent experts to provide input to the legislative

process on their behalf. In mature lobbying situations, the funding source paying for political results is often so tenuous that it takes focussed and expert research to follow the money back to the sources.

None of this is a mystery in the corridors of power. Politicians respond to this evolution of influence by creating processes that assume its existence and go on to channel it. On new, personal topics, some direct citizen input is expected and perhaps even sought, yet organised pressure groups still come to dominate. But for almost all topics today, the process of influence has evolved to a stage where fully-crafted and cloaked input is assumed to be the norm. Civil servants follow detailed rules to sift and summarise it, and politicians assume a role akin to a judge arbitrating impartially between experts, but do so with an eye to their party's opinion. In this fully evolved state, the citizens' views are irrelevant. Career experts feeding career civil servants provide the data, and career politicians make all the decisions.

As a consequence, all are seen not as the privileged, temporary monopolies they are, given with the consent of society in exchange for enhancement of the common good. Since these 'intellectual monopolies' are all the keys to control points in a supply system designed along the hub-spoke model of the industrial society, and since each key unlocks potential exclusive monetisation, proponents for their beneficiaries refer to these wildly differing privileges as 'property', and collectively as 'intellectual property'. Anyone referring to them in this way is framing the discussion, since we are culturally trained to understand 'property' in particular ways: persistent rather than transient, inalienable rather than collectively granted, tangible rather than ephemeral. This in turn has undesirable side effects, as these cultural instincts bias our thinking ahead of understanding the issues.

The Meshed Society

While society has always hosted individual artisans or groups of artisans, the "creator-consumer" is a new twist on the old, pre-industrial norm. It refers to individuals who at various times create new things and improve existing things ("make"), and collaborate with others to "make" or consume what others "make". No single mode from that trio is preferred, and any given encounter may involve all three. Further, not every engagement involves a monetary transaction. Some might, and most consumption of the work of others will, but there's no given; each instance stands by its own dynamic and rules. While these dynamics have existed before on a local scale in villages all over the world, the Internet creates a "global village" that adds a new, scalable dynamic. As we discover more and more ways to eliminate the mediators and control points in our interactions, society is transformed. It was a series of hubs with privileged interconnections intermediating supply to consumers; it is becoming a constantly shifting mesh of ad-hoc direct interactions -- an "adhocracy", as Alvin Toffler described it.

The ubiquity of the world-wide web changes the rules. In its meshed topology, every participant is a peer and there is no scope for natural control points. In the adhocracy, individuals play the roles of user, repurposer, maker, buyer and collaborator in a constantly changing spectrum of combinations. But the law, gathered as it has around the hub-and-spoke worldview of the industrial society, treats many of these roles as privileged, because they have historically been reserved only for commercial entities. The meshed society finds ways to route around, or circumvent, attempts to introduce artificial control points, and any attempt to introduce them is treated collectively as damage. Hence,

'circumvention' is a crucial marker as well. In the meshed society built on the internet, 'circumvention' describes normal, healthy operation. To prohibit it is to cling to the past.

Take for example copyright extension and the unremitting pressure from content-dependent industries to extend copyright further and further. Seen as a temporary exception to the societal norm that cultural artefacts are universal, copyright seems reasonable to allow an author a limited time to recoup investment in the work. Extending copyright within this frame elicits questions of "why is that needed" and "how does society benefit from that extended isolation of the work from its true status as part of collective culture". But view copyright as property and the frame changes. We see copyright as the ownership of a work by its author, and assume it should be inalienable and persistent as a result.

Extension then becomes the reasonable recognition of the property rights of the author, and collective culture is seen as abandonment. This frame elicits questions of "why not" and "why shouldn't authors be rewarded for their work". Seen as property, copyright violations -- and even resisting the extension of term -- is seen as "theft", a word that's almost impossible to reconcile with the concept of a temporarily granted and ephemeral exclusivity on a work which is in no way eroded by multiple use. In fact, "theft", "steal", "stolen" and the like are all the genetic markers in this context of an apologist for a robber-baron.

Consider these symptoms:

- Penalties for copyright infringement are massively punitive, out of all proportion to any harm, because the law assumes an industrial creator is involved.
- Software patents are pursued rather than prevented, on the assumption that patent infringers must be industrial competitors rather than creative peers.

- There's no balance to content takedown powers of copyright-holders, because the only role of an individual is assumed to be "consumer" so no appeal is considered necessary.
- Discussion of Internet-related legislation places it in the same category as one-way mass media like television, radio and newspapers.
- Legislatures -- and the organisations that feed them -- seeks input on timescales and with methods that assume a location in the capital and an abundance of available daily time.
- Politicians regard e-mails from ordinary citizens in the same light as spam and want to restrict or ignore mass input.

Together they tell a story of the paradigm of the industrial society being abused to stifle the emergence of the meshed society.

Why No One Speaks For Me

These symptoms are linked to the same root cause. All this evolutionary change has yet to be reflected in the legislative process in any country. The Web may be a quarter of a century old, but there's been almost no progress refactoring the legislative process itself, let alone the law, to fit the new, meshed society. Instead, processes continue to assume the control-point-based industrial society is the norm and that the representatives of those control points are the appropriate source of input to deliberations.

But in the meshed society, control points are damage. So the process is now skewed to allow the source of society's problems to have the dominant voice in their solution, rather than the people who are building the citizen-creator-consumer future. Those pioneers easily run afoul of the rules intended to regulate the old world, and the penalties associated are disproportionate with the

acts they address: They are designed as disincentives for industrial gaming, not the human-scale actions of the meshed society.

All these things mean that facing the changes of the meshed Internet society by tweaking the rules of the industrial society will inevitably fail; instead, we need to fully refactor those rules to account for the new topology of society, as well as build mechanisms for devising legislation that consider and empower the pioneers of the meshed society. Refactoring means understanding the new dynamics, discovering the modalities of the ways they will be gamed and inventing fair regulation to prevent those games.

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