Chapter 13
Digital Rights Management and Corporate Hegemony: Avenues for Reform

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ABSTRACT
To the extent that data constitutes creative work in a tangible form, it represents intellectual property and implicates copyright. Understanding data mining, thus, invokes an appreciation of the principle and law of copyright. With the advent of digital rights management (DRM), the discourse of the U.S. law of copyright has shifted from fair use to circumventions of copyright-protecting software by hackers. In light of the ever-rising market power of transnational media corporations, this essay engages the political philosophy of Antonio Gramsci to address a normative question of who ought to control protected content and to what extent. It identifies six inflection points for any effort to divest copyright law of the disproportionate influence of corporate lobbying. Underlying the discussion is a presumption that reform of the law of copyright through dialogue among key stakeholders – creative individuals, technology innovators, legislators, policy makers, international mediators, data miners and other scholars, and transnational corporations – would help preempt any Gramsci-prescribed socialist reaction to the exclusive copyright regime enabled by DRM.

INTRODUCTION
The money power has grown so great that the issue of all issues is whether the corporations shall rule this country or the country shall again rule the corporations.
– Joseph Pulitzer, editorial titled “The Great Issue,” St. Louis Post and Dispatch, 10 January 1879

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Few studies have examined data mining in a context of the principle of copyright and antecedent United States law. This essay does so by illuminating pitfalls on the path of intellectual property protections in general and copyright in particular. It discusses astute practices for digital content pioneers and simultaneously begins a re-conceptualization of the principle of copyright.

As content and its creation have steadily migrated online, data mining has lived up to its
early prediction of making “a key contribution
to e-business” (Melab, 2001, p. 309). When
defined as “a process of inductively analyzing data
to assess known relationships as well as to find
interesting patterns and unknown relationships”
(Murray, 2009, p. 160), data mining helps identify
business problems in the content industries, gain
knowledge of industry issues, predict consump-
tion behavior, and spotlight best and innovative
practices. In all of those applications, it uses
analytics and techniques that, in turn, enable
fresh insights into large datasets. Data mining
typically engages both computational and human
resources to extract knowledge from voluminous
data (Schime & Murray, 2007). It thus enables
decision-making in an environment of optimum
awareness. Regardless of industry, it can help
optimize production efficiencies.

In the information society, which is defined by
progressively increasing proportions of product
cost going into content creation and out of content
distribution, and into message and out of medium
(Boyle, 1997), data mining offers a method to
check costs of innovation as well as enable new
forms of content that were uneconomical in the
past.

The essay explores primary evidence of the
law of copyright to identify policy opportunities
to diverge from the status quo, with a view to
divesting the law of a disproportionate influence
of transnational corporations. Along the way, it
offers suggestions to the World Intellectual Prop-
erty Organization, located in Geneva, to restore a
balance between various stakeholders of the law
of copyright.

LEGAL ASPECTS OF DATA MINING

Law, a building block of modern society, is de-
defined in codes of conduct that are established and
enforced (via threat of sanctions) by duly consti-
tuted authority in society as a whole, as opposed
to ethics, which involves culture-specific conduct
prescriptions that in themselves are unenforce-
able by courts.

Data mining invokes copyright more than any
other area of law except perhaps privacy. Reflec-
tions from a legal analysis of primary texts of the
U.S. law of copyright, including Article I of the
U.S. constitution, Title 17 of the U.S. Code, the
Digital Millennium Copyright Act (DMCA) of
1998, and more briefly, The Audio Home Record-
ing Act (AHRA) of 1992, can enable a critique of
the legal legitimacy of “digital rights management”
in light of the well-known influence of corporate
lobbying on copyright law. The writer’s objective
is to identify any inflection points from which the
discourse on copyright reform may take off in
directions that would produce meaningful reform.
Such reform, while including various stakehold-
ers, would restore congruity and balance among
exclusive copyright, practices of technological
innovation, and fair use.

Evolving Priorities in Copyright Law

To the extent that it constitutes creative work
in a tangible form, data represents intellectual
property and, therefore, automatically implicates
copyright law in order for its author to be able to
exclusively reproduce, alter or distribute it for
money. Understanding data mining, thus, invokes
an appreciation of the principle and law of copy-
right, both of which guarantee creative endeavors
a monetary incentive “by securing for limited
times to authors and inventors the exclusive right
to their respective writings and discoveries” (U.S.
Constitution, Article I, 8:8).

Copyright, in principle and law, is equally
central to defining the information society. From
initially benefiting a clique of printers friendly to
Queen Mary I in the middle of the 16th century,
the law of copyright steadily transformed over the
centuries (Bowker & Solberg, 2009). By close of
the 19th century, it had come to protect commercial
interest of authors across international borders,2
and by the end of the 20th, it veritably turned into a