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50 Ways to Improve Your Life in 2009

SPECIAL REPORT

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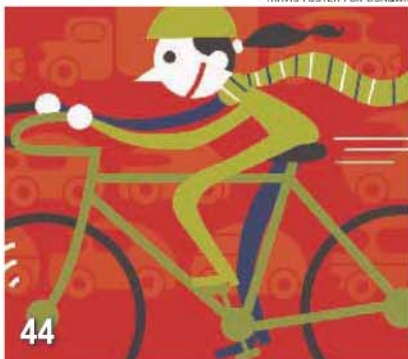
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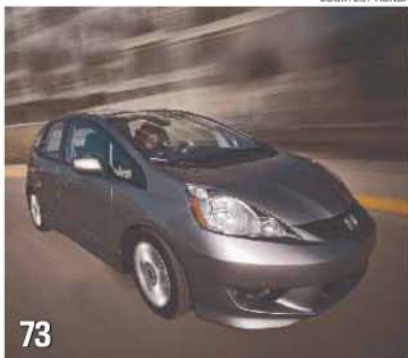
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Printed in the U.S.A. **EDITORIAL OFFICES** (202) 955-2000. 1050 Thomas Jefferson Street NW, Washington DC 20007-3837. **ADVERTISING AND CORPORATE OFFICES** (212) 716-6800. 450 W. 33rd Street, 11th Floor, New York NY 10001. **SUBSCRIPTION DEPARTMENT** (386) 447-6326. PO Box 420235, Palm Coast FL 32142-0235. www.usnews.com/accountstatus. **REPRINTS** Contact our reprints team at (877) 419-5725. E-mail: usnews@wrightsreprints.com.



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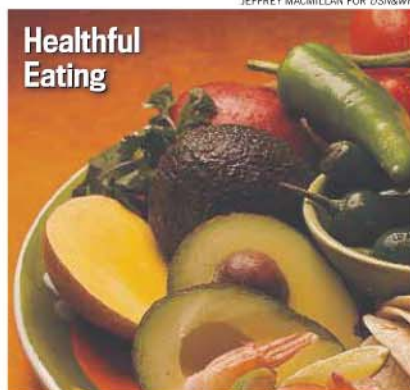
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Don't Make Kids Online Crooks

By Lawrence Lessig

Con Seventy-five years ago, Prohibition ended. Just 13 years after launching an extraordinary experiment in social reform, the nation recognized that the battle against “intoxicating liquors” had failed. Organized crime had exploded. Civil rights had been weakened. And an enormous number of ordinary Americans had become “criminals” as they found ways to evade, and profit from the evasion of, this hopeless law.

We’re about a decade into our own hopeless war of prohibition, this one against “peer-to-peer piracy.” The copyright industry has used every legal means within its reach (and some that may not be so legal) to stop Internet “pirates” from “sharing” copyrighted content without permission. These “copyright wars”—what the late Jack Valenti, former head of the Motion Picture Association of America, called his own “terrorist war” in which apparently the “terrorists” are our kids—have consumed an ever growing amount of legal resources. The Recording Industry Association of America alone has sued tens of thousands of individuals. These suits allege millions of dollars in damages. And schools across the nation have adopted strict policies to block activity that the Supreme Court in 2005 declared presumptively illegal.

I do not support peer-to-peer “piracy.” In my books *Free Culture* and *Remix*, I condemn explicitly and repeatedly such uses as wrong. And in the hundreds of talks I have given on this

subject, I plead with kids not to use technologies in ways that give others a justification for wrecking the Internet.

But though I believe kids should not use the Internet to violate others’ rights, I oppose these failed copyright wars: We have not reduced the amount of peer-to-peer file sharing. To the contrary, it has only increased. Nor have artists earned additional revenues from

Congress should consider the scores of other ideas for compensating artists.



Lawrence Lessig, a law professor at Stanford Law School, is a leading figure in the United States and internationally in cyberlaw.

this battle—settlements don’t go to the artists but to the lawyers.

Instead, the single certain consequence from this battle has been one our government is strangely oblivious to: its rendering a generation criminal. A concerted campaign by rights holders, politicians, school administrators, and increasingly parents has convinced kids that their behavior violates the law.

But that law breaking continues. We call our kids crooks; after a while, they believe it. And like black marketeers in Soviet Russia, they live life getting comfortable with the idea that what seems “obvious” and “reasonable” to them is a crime. They get used to being criminal.

This fact is deeply corrosive. As with Prohibition, it is profoundly corrupting. And over time, it will only weaken our kids’ respect for the law.

Old lessons. It is time we recall what the nation learned 75 years ago: The remedy to a failed war is not to wage an ever more violent war; it is to sue for peace. Rather than continuing to sue to stop what no lawyer could ever stop, Congress needs to consider the scores of proposals that have been advanced by some of the best scholars in the nation to legalize this sharing while enabling other ways to compensate artists.

These include a voluntary collective license, allowing individuals to file share for a low, fixed rate; a more expansive “noncommercial use levy” that would be imposed on commercial entities benefiting from peer-to-peer file sharing, to help compensate artists; or most expansive of all, that copyright give up regulating the distribution of copies and instead compensate artists based upon the estimated frequency by which their works are consumed. These and a host of other ideas all raise different advantages and disadvantages—but are better than criminalizing a generation.

The failure of Prohibition taught social reformers something important about regulatory humility: Too often liberals and conservatives alike simply assume that a law will achieve what the law seeks to achieve. Too rarely do they work out just how. Humility teaches us to rein in the law where it is doing no good, if only to protect it where it does good or where it is necessary.

Copyright law’s extremism is not necessary. We can achieve the objectives of copyright law—compensating artists—without criminalizing a generation. We need to start doing that, now. ●

What do you think? Should online file sharing be strongly prosecuted? Or should the “copyright wars” be brought to a close? Give us your views at www.usnews.com/copyright. Or send them to viewpoint@usnews.com or to Viewpoint, *U.S. News & World Report*, 1050 Thomas Jefferson Street NW, Washington DC 20007. Selected responses will be posted online.