

FREEDOM OF EXPRESSION

Resistance and Repression in the
Age of Intellectual Property

KEMBLE McLEOD

Foreword by Lawrence Lessig

With a New Epilogue by the Author



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AN IDEAL LAWYER-CITIZEN

Lawrence Lessig

The puzzling thing about most Americans is that they take the law so seriously. I don't mean they obey the law, nor do I mean that they shouldn't obey the law. I mean instead that they approach the law with unquestioned reverence. They treat its commands as truths. They register disagreement as problems in themselves, rather than as something the law has missed. Not everyone, of course. But normal sorts are like this. We feel as much entitlement to question the law as we do to question our doctor's diagnosis of strep throat in our child.

The funny thing about this attitude is that lawyers don't share it. Lawyers spend their life working with the law. Most hold a deep respect for the law. But we don't take it seriously—at least in the sense that we don't treat it unquestioningly. For the best lawyers, at least, the law is an argument, an assertion about what ought to be so. And every lawyer worth his or her salt takes that assertion as an invitation to consider whether, in fact, things ought to be different.

That's not to say that things can simply be made different. There is authority that can't be changed. There are rules that will always restrict. But a good lawyer always asks why; always demands a justification; and while she must yield at some point, she doesn't yield the view about what's right.

Kembrew McLeod is an ideal lawyer-citizen. He is not a lawyer, but he brings to an increasingly important (and insane) body of law precisely the skepticism the very best lawyer would. In this insightful, beautifully written, and fantastically entertaining text, Professor McLeod unwraps the complex set of restrictions on freedom that intellectual property law increasingly embodies. With insight and powerful humor, he reveals just how weak the justifications for these restrictions are.

This debate needs more Kembrew McLeods. The presumptive authority that stands behind the extremism of intellectual property law needs more than lawyers to expose its absurdity. Balance will be found only when non-lawyers demand that lawyers justify these restrictions in terms that make sense to everyone.

This book is a lesson in how that demand should be developed. Everyone who cares about this debate should understand this lesson. Even lawyers keen to defend the status quo should understand these stories to see just how crazy the status quo seems.

For the status quo *is* crazy. Twenty-first-century technology has exploded the creative capacity of our culture. Twentieth-century law irrationally restricts it. The solution is neither to abolish the law nor to abolish the capacity that digital technologies have given us. The solution is, instead, understanding—and recognizing that any understanding must justify itself to more than Hollywood lawyers. In particular, it must justify itself to the increasing number of skeptics that this book is rightly creating.