

Consumers as Producers: Some Implications of the Personal Mainframe

Professor Peter P. Swire
The Ohio State University
Center for American Progress
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Before We Begin

- Julie Cohen – narratives for discussing DRM
- Natali Helberger – rationales for consumer protection, apply to DRM
- Jane Winn – federalism & Europe now like US during consumer revolution of the 1960s & 1970s, a source of consumer protections

Overview

- How the Internet changes “consumer protection”
- The idea of “consumers as producers”
 - When individuals own information-age factories
 - Should C-as-P have to comply with consumer laws?
 - Should C-as-P gain protections even when in commerce?
- (Admiring) critique of Benkler and “social production”
- Market & consumer protection narrative for DRM

How the Internet Changes Consumer Protection

- This was my research project
 - Initial paper last summer for Center for American Progress
 - Available at www.americanprogress.org
 - Idea that “consumers” are becoming “producers”
 - That became my project

Consumers as Producers

- Your laptop is a “personal mainframe”
 - Processing power of a mainframe from about 10 years ago
 - Mflop/s
 - MIPS
 - You own an “information-age factory”
 - Audio, video, text, photos, software, etc.
 - Consumer as owner of the means of production (sounds pretty “economic”)

Consumers as Producers

➤ Opposites converge

- Economics: consumers vs. producers
- Consumer protection law: consumers vs. merchants/sellers/producers
 - Once “in commerce” then are a producer
- Politics: consumers (Dems) vs. small business (Rs.)
 - Possibility of realignment
 - What policies will help information age production *and* consumption?

When Consumers Become Producers

- Legacy in US of 1960s & 1970s laws
- Rationales for consumer “protection” (overlaps with Helberger)
- So, reasons to protect consumers from those dastardly producers

Should C-as-P Have to Comply?

- Consumer privacy legislation
 - Should have threshold (cut lawns)
- Advertising substantiation
 - No threshold, one-to-one fraud
- CAN-SPAM
 - No current threshold, worth considering
- Political blogs as “campaign contribution”
 - FEC got it right, large exemption furthers goals of regulatory regime
- In sum, examine the harm, and whether the harm is created by consumers-as-producers

When Producers are Still Consumers

- Web 2.0 as consumer-produced content
- Costs of a factory down, so supply curve shifts out, more production by C-as-P
- Individuals not suddenly sophisticated, so maybe should have contract protections
- Individuals supplying labor, so convergence of employment law & consumer protection

C-as-P and Computing: Critique of Benkler

- The Wealth of Networks and *Social Production*
- Decline in costs increases “the relative efficiency of nonmarket production” (p. 56)
- It is “social, rather than proprietary and market relations” that create all the big effects – freedom, equity, etc. (p.92)
- My critique, each with several points:
 - Shift to nonmarket is not proven, likely overstated
 - Pragmatic reasons to also deploy alternative narrative: market-based approach of consumers-as-producers

Nonmarket?

- Social and hobbyist evolves to market
 - Early adopters often passionate hobbyists, not their day job
 - Niche grows, division of labor, sustains with paid professionals
- Examples
 - Open source (role of IBM)
 - From Jon Postel to ICANN
 - Web 2.0 content – target of ads and PR campaigns
 - The Internet itself – from non-commercial (1993) to commercial (today)
- Benkler description may mistake “nonmarket” start-up phase of Web 2.0 for long-run “market” relations

Pragmatics of (Non)Market

- Benkler – exciting vision of nonmarket, with transformation
 - *If* agree, then aids political mobilization
- Swire – market at least as an alternative narrative
 - If are not convinced by Benkler, can still generate desired policy & legal outcomes

Pragmatics of (Non)Market

- What audiences matter:
 - Academy – lots of law and economics
 - Policymakers – believe in centrality of markets
 - Businesses – pretty darn market-focused
- Narrative of markets is useful supplement, to persuade for desired legal and policy outcomes

DRM and This Narrative

- What does C-as-P mean for DRM?
- Consumers own information-age factories
- DRM disables function of these factories
 - Limits on access to & manipulation of information
 - Can't copy, can't create new output
- “Crippling the productivity of factories” is a powerful narrative
 - Reducing the functionality of millions of factories is highly risky to economic growth
 - Basis for legal scrutiny of DRM limits on information factories

But, a Counter-Narrative

- Just now: caution about powerful DRM because it cripples factories & output
- Counter-narrative:
 - RIAA – individuals own factories now
 - Piracy concerns justify measures against individuals (because they are producers)
- On DRM, “consumers as producers” produces vivid narratives in both directions
- Consumer protection law, Cmmr. Rosch, as one part of the solution

Conclusion

- Personal mainframes & factories
- Consumers as producers
 - Explore what follows from convergence of opposites
- Legal implications for consumer law
- Develop a useful narrative for how talk about Web 2.0, DRM, and the future of computing
- Thank you

Contact Information

- Phone: (240) 994-4142
- Email: peter@peterswire.net
- Web: www.peterswire.net