

BOOK REVIEW

WIRED SHUT: COPYRIGHT AND THE SHAPE OF DIGITAL CULTURE

By Tarleton Gillespie

Cambridge, Massachusetts and London, England: The MIT Press, 2007, 395 pages
(including index), £19.95. ISBN-13: 978-0-262-07282-3

Gillespie is a heavyweight contender whose analysis deserves close scrutiny. Engaging to the laymen and with a command of detail deserving the attentions of scholars, *Wired Shut* moves the author up to rival even Lessig as our champion copyfighter. This review will offer a quick run through of his method and key arguments, before offering brief criticism and context.

Copyright laws facilitate markets in free expression, ostensibly for the benefit of artists, their agents and the public. Tools that process creative works impose further layers of cultural regulation. Their designers, to an extent, determine our capacity to use and reshape creative works. *Wired Shut* argues that the music and film industries control these regulatory processes with a combination of economic muscle and storytelling. The resulting framework promises a bleak future: trusted systems, favoured by incumbent entertainment firms, discourage user-led innovation in favour of a pay-per-view and drip-fed digital culture.

The central premise of this book is that the study of copyright and technical protection measures (TPMs), without proper regard to their broader social context, misrepresents the true operation of the mechanisms that regulates culture. Appreciation of the broader socio-political arrangements developed to control intellectual creations is the key to really understanding digital copyright. In this manner, Gillespie's thorough, nuanced and convincing inquiry considers legal, philosophical, social, cultural, political and economic questions. *Wired Shut* tackles this inquiry in three giant steps. The early chapters introduce a practical and conceptual terrain to be explored in great detail; the central chapters present three case studies of schemes of techno-legal protection; the closing chapters then assess the likely implications of these systems for culture in the digital age.

After an introductory guide to the premise that proper analysis of copyright and TPMs requires a broad intellectual framework, rather than just legal and technical perspectives, chapter two details the mechanism of copyright, its history and its underlying objectives. The essay then continues with a retrospective of the music industry's attempts to control unauthorised music sharing, focussed particularly on the rise of the mp3 file format and the explosive success of Napster. Chapter three discusses recent thinking in the fields of communications, science and technology studies. The simple yet profound example of a speed bump is explored to illustrate how and why technology is deployed to shape social activities. By viewing

technology as a political artefact – design choices result from political concerns as much as cost-efficiency and anything else – Gillespie explains that man-made objects are designed and implemented to further the aims of social systems. Chapter four then analyses the construction of the cultural myth that justifies the constraints imposed by trusted systems, generating its own myth to depict the entertainment industry's infamous spin tactics. Jack Valenti, chief orator for the US film industry for the final decades of the 20th century, wove a rhetorical tapestry of sin and redemption that positioned infringers (pirates!) as villains engaged in an eternal duel with the heroic rights holders who served the noble cause of artistry. This highly condensed summary should give a flavour for the book's subject matter although hardly serves Gillespie's engaging prose.

The kernel of *Wired Shut* is a series of case studies, exposing the methodology the entertainment industries are by now close to perfecting for control of networked culture. TPMs are reinforced by pan-industry and cross-sector "regimes of alignment," in combination with a particular cultural mythology. Gillespie critiques the technical architectures of the three systems and their surrounding social arrangements. There is an eerie insinuation that the entertainment industry's dominance of creative expression will extend for generations to come. This should impress a sense of urgency on those motivated to oppose the resulting cultural settlement.

The Secure Digital Music Initiative (SDMI) ended a conspicuous failure with the collapse, before participants could agree and develop a viable technical standard, of a coalition of leading entertainment and consumer electronics firms. Their failure is explained largely by consumers' preference for the pre-existing mp3 standard. Another key failing for SDMI was the initial specification, which encouraged competing systems to service the digital music market, rather than tying consumers into a single format. Also, device manufacturers were not legally obliged to honour the SDMI standard. In short, the companies had more to gain by stepping away from the project than working together for its success. Subsequent, more successful systems learned from these failings.

The CSS system, developed to prevent unauthorised playback or copying of films embodied on DVDs, achieved greater success for its industrial backers, which include the major Hollywood film studios. CSS uses encryption rather than watermarking to protect the content. When the system was famously cracked its developers successfully relied on the Digital Millennium Copyright Act to restrain distribution of both personal and commercial circumvention tools. This created an economic imperative for manufacturers, who could not exploit the market for home viewing of Hollywood films without contracting to accept the studio's terms and conditions. The case study also emphasises that the shift to a techno-legal scheme of regulation froze out the public interest (i.e. fair use / dealing) aspects of copyright by encouraging access rather than copy controls.

The Broadcast Flag, a more recent iteration of a trusted system, was developed to accompany digital broadcasts and indicate whether the content owner permits redistribution. Although its backers succeeded in achieving the necessary regime of alignment and producing the technical standard itself, the Flag is on hold due to a successful court challenge of the Federal Communications Commission's power to oversee the standard. *Wired Shut* argues that the real force of this and other trusted systems is distributed across the various mechanisms (legal, technical, institutional,

cultural), so that no single function appears to have dramatic consequences. Their distributed structure discourages effective regulation. The chapter ends by noting that all these functions are in place and the last line of defence for users and culture is the state, which does not always operate in the public interest.

The book's two final chapters explore the robustness requirements and wider implications of the trusted system's approach to cultural regulation. Robustness requires devices designers, in addition to controlling users' interaction with a protected work, to make products resistant to hacking and tampering. One (side) effect is to bar potential reverse engineers from learning how they work and producing competing products. Yet tamper-proof designs cannot distinguish creative intervention from a profit-motivated circumvention so must block both regardless of legitimacy. By seeing culture as commodity and locking out the user, trusted systems encourage passive audiences and challenge the rich history of user-development, which in the long term reduces the cultural and economic value of these machines. Such designs, mandated by film studios and record companies, determine our choices and (re)uses. They control our interaction with each other and in turn shape the future of culture. Sold as technological progress that will provide consumer satisfaction, the trusted system should be seen instead as restrictive intervention associated with a particular pecuniary view of creativity. Gillespie recognises that the Creative Commons and free culture movements offer at least a naïve opposition to this view of culture. He also warns against conspiracy theories: these systems are an expression of the commodification of culture rather than a deliberate attempt to constrain free expression.

One broad criticism that could be levelled at *Wired Shut* is the author fails to produce hard evidence that trusted systems impose real constraints on digital culture. Creative expression happens despite and even because of legal, technical and other social barriers: counter-cultures around the globe remain as strong and vital as ever. This objection is simplistic and unhelpful from both a legal and social standpoint. The regulatory conditions for creativity should be optimised because free expression is in itself a public benefit. That said, it is difficult to argue from the premise that free expression has democratic and personal primacy to conclude that enterprise should be restricted from pursuing its particular vision of digital culture.

The real value of *Wired Shut* is its multi-disciplinary and plain English case against the trusted system, an argument that the consumer market now seems ready to listen to. DRM is very much on the back-foot and since this work's publication the major record labels have released their catalogue in less restrictive formats. However, if more user-friendly and competitive examples of the trusted system come to market, this book will be important to help discourage their uptake and encourage alternatives.

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