



Beyond the Book®



**Interview with William Patry
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PATRY: The title of the book was actually different at the beginning. It was *Metaphors, Moral Panics, and Folk Devils in the Copyright Wars*, which I thought was more descriptive because it got the whole cast of characters in there. You sort of wonder, who are folk devils and what are moral panics and what do metaphors have to do with all of these things? And what it has to do with all of these things is that if you believe that language is more than pretty words, that language can influence the way that we think, for good or ill, then you pay attention to the ways in which language is used and the purposes for which particular language is being employed and so the book attempts to marry two things. It attempts to marry the sociological concept of moral panics and folk devils.

These are perceived existential threats to the society, posed by folk devils. These are the people who are doing things that make society uncomfortable, whether it's witches in the Salem Witch Trials or Elvis in rock and roll or comic books. There have been many comic book scares and there were Congressional investigations and I believe before there was a Motion Picture Code, there was a Comic Book Code. So there has always been in society, The Other, right? With a capital T and a capital O. Someone who is an outsider, someone who is not like us, and someone who is not like us in dangerous ways we perceive and because they're not like us in dangerous ways, society has to act in ways that will protect itself from The Other. And what's happened in debates over copyright is that this concept of moral panics have been employed and coupled with metaphoric language. So the classic example of this was in the early 1980s with the advent of the VCR, especially the Sony Betamax and that was a Japanese invention, so you also had xenophobia tied into all of this, and you had the Motion Picture Association concerned that the advent of VCRs was going to limit the amount of income they received.

Now if you think back historically to what was going on, at the time VCRs were introduced, which was in the late 70s, there were no video rental stores. There were no video rentals at all. So it wasn't conceivable that you could use a VCR to displace video rental sales. There were no sales of over the air programs. You could not use your VCR, have a playback function only, and use it for anything other than home videos that you created, right? There was no conceivable market harm in terms of displacement of sales because there was no market. The market that the studios were concerned about was the broadcast over-the-air free market.



They were concerned about the impact on people taping free over-the-air broadcast. Why?

Because the concern, which was a legitimate one, is that people would tape shows and fast forward through commercials, thereby reducing the size of the audience and reducing the size of the audience they believed would lead to a reduction in the amount of money that advertisers would pay broadcasters and therefore broadcasters would push that back and would pay the studios less money to license their works. That was the actual concern. There's a wonderful book written by James Lardner about this called *Fast Forward* and it's about Sony, the studios, and the VCR wars. That was the initial sort of moral panic that came out. Now you could have phrased that concern in a number of ways. You could have phrased it, I think, in a more fact based way that I did, which I believe I attempted to make neutral.

I attempted to explain what the problem was and explain how the studios had certain concerns about it without tilting one way or the other about who should prevail or how one should prevail, but that's not how the debate was essentially argued. Jack Valenti employed sort of a metaphor of which he was a master. There had been a man called Charlie Ferris who was a lobbyist who represented the Consumer Electronics Association, which by the way was a U.S. association and its members were Japanese manufacturers. Mr. Ferris had been at a symposium in which he offered the opinion that the VCR was going to be a great friend of the American film studios. That prediction turned out to be wildly true, right? And I think it's the case and it's undisputed that VCRs turned out to be phenomenally economically critical for the motion picture industry.

They ended up making far more money off of video rental sales than they did off of theatrical. So his prediction turned out to be true. Jack Valenti, however, took exception to that and he took exception in testimony before Congress in which in responding to Mr. Ferris' prediction, he said that the VCR was to the American film industry and to the American public, what the Boston Strangler was to the woman home alone. Now that's a particular way of phrasing the issue in a way that creates an existential fear and so the book is an attempt to deal with how language is used to mask what really are business problems.

Q: It's fascinating topic and I was thinking that in the case of both the Salem Witch Trials and Elvis Presley, there was an encounter of Old World and New World, right? So literally in the case of the Salem Witch Trials, perhaps figuratively in the case of Elvis Presley, where he embodied sort of the transformation of the music scene from being separated between black music and race music as it was known and the white music establishment and he brought black music into the mainstream,



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Old World/New World, if you will. Are we at that point in the copyright wars, and that's your term in your title there, where there's an Old World and a New World and yet down the road is one world that is an improved world, if you will? I mean we benefited from Elvis in a way we hopefully benefited from the transformation of this content too. What direction are we moving in?

A: So the term copyright wars is a common one and I didn't coin it. There are many people who use it on either side of the debates. For example, Edgar Bronfman Jr., who is the CEO of Warner Music, in a speech in Singapore said that the copyright owners had gone to war with consumers and as a result, they believe they lost that war. So it's a common term and I think what is meant by that is a more widespread debate about issues rather than any particular case. You could complain about what a particular company is doing and that wouldn't be a war, but if it's a more sociological thing, if it's a more societal thing, that's what a war means. Now I think wars change things. Before a war, there's the world as it is, status quo, and then there's status quo ante. We're moving into a status quo ante, aren't we? With regard to copyright.

A: Yes. So the question would be what does it mean to have a copyright war in this context and what's the end of it, right? And I think what has occurred at a very quickening pace is that this is a conflict between new technologies and existing business models. In the past, we had the leisure to play these things out, right? So player panels, which as an issue that was discussed in this symposium and broadcast technology and cable technology. Those were issues that were very contentious issues of which there were deep passions and many harsh things said and lots of money spent on lobbyists and lawyers for them, but they've played out over a long period of time. If you look back at the history of the 1976 Copyright Act revision process, the cable issue was an incredibly important one, but it played out in the courts and before Congress over a period of probably 15, maybe even 20 years, if you take into account all of the lawsuits that took place.

The same passions, the same sort of issues are there. How does copyright deal with technologies that change, the existing business models that change, the existing distribution schemes. How do copyright owners get paid and how does the public get access, right? What I think has happened in the internet world is that the timeline for that has been dramatically shortened and is getting shortened all the time. So if we think even about how we ourselves access things on the internet. If you go back, say to ten or 15 years ago, how long were you willing to wait until a page loaded? How long were you willing to wait until an email was sent? A long time under existing sort of feelings of what fast is and what slow is, right? Now things really have to be quick and search engines like Chrome, for example, that's a Google product, prides itself, and I think rightly so, on loading really quickly.



And that's what we value. That's a good thing. The bad thing, the difficult thing is that when you're talking about this technology disrupting existing business models, you don't have the leisure that you had in the past to deal with it. You have to deal with it not quite in real time, but really fast, and that causes people, justifiably, a lot of, as we would say in Yiddish, serus (sp?). A lot pain.

Q: Well, I was going to say, the disruption is prolonged because of that accelerated change. Is it not?

A: It is, and let's say you sit around and try to figure out the best thing responsibly, it may have changed. If it takes you a year or a year and a half to do that, things might have changed rather substantially after that. It's a very, very difficult position for everyone to be in.

Q: And an exciting one though.

A: Absolutely. Absolutely. So change is both exhilarating and scary, but one thing is that we don't have a choice. It's there.

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