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CHAPTER 6

Legality and ethics

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On the Internet, a single individual can have several different identities, various e-mail accounts, different nicknames and even different profiles. Taken to the extreme, they can even create a new identity in Second Life and be and have everything they ever wanted.

In this continuously changing world, the law always lags a few steps behind and although the issue of identity was already raised during the dot-com boom of the 1990s, Web 2.0 involves a series of unresolved legal and ethical questions.

Despite the fact that the social web is supposed to be all about sharing knowledge and ideas (some futurist videos are even predicting the complete disappearance of copyright), in 2004, the publisher that had coined the term, O'Reilly Media, registered "Web 2.0" as a brand. On the face of it, it was a massive contradiction and one which also arises when legal questions are posed on Web 2.0.

Given that the social web encourages cooperation, re-use of contents and free access to information for developing collective intelligence, **what happens to royalties and intellectual property rights?**

The success of the participative web lies largely in the existence of active users who have contributed contents. If they obtain nothing for their participation and do not own the rights to their work, who can guarantee that they will continue working as content creators, and won't prefer to operate through some other channel?

Without intellectual property, Web 2.0 runs the danger of users ceasing to contribute contents. This would stem the flow of knowledge and the Web 2.0 philosophy itself: "If it isn't shared, it's lost". To prevent this happening, a formula needs to be found to allow knowledge to be shared without de-incentivising people who are willing to do it.

Will intellectual property slow the advance of the Internet? Public opinion at large and that of the FTF experts is divided. Nearly 53% of the experts felt that intellectual property would not slow the advance of the Internet, for the following reasons:

- Rapid development of ideas thanks to the Web 2.0 philosophy will lead to the emergence of better ideas in a very short period of time (two to three years), thus reducing the relevance of patents.

- The Spanish Intellectual Property Act is now obsolete and needs to be updated to cater for the Internet.

- Although most communities suffer reiterated copyright violations by owners ([YouTube](#), [Facebook](#), [MySpace](#), etc.), solutions are expected to be found soon, given that some are owners of intellectual property and are therefore committed to finding a solution

The remainder of the experts consider that intellectual property will be an obstacle, citing the following reasons:

- Difficulty in sharing contents.

- As Web 2.0 matures, active users will demand payment or hold back the copyright to the contents, and the service providers will have to give in.

- The Intellectual Property Act will have to evolve with the Internet as it has done to date: until it does so, it will restrict the development of Web 2.0.

- While a lack of control or copyright over content would remove incentives to participate, an excess would choke innovation.

- In the short or medium term, conflicts over intellectual property will inhibit the development of certain aspects of the Internet. Nonetheless, the most affected parties are beginning to realise that it is in their own interest to have a more open attitude, though this change in mentality may take some time.

- Many industries and businesses are based around capitalising on ownership. Internet and digital contents allow almost free access to contents with distribution models that are free of geographical frontiers, necessitating new principles, practices and regulations.

- Legislation will always be one step behind real practice on the web.

- Companies have yet to learn to build a viable business model in a world where intellectual property is open, and will put up strong resistance to change, hindering the development of a more open environment.

- When society and government are aware of the value of their individual contributions, they will seek to reward them, with the result that content ownership will be negotiated and the law respected.

Perhaps the best way of encouraging participation without getting in the way of

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innovation is to adopt an intermediary stance. The FTF experts were therefore asked who should have the rights of authorship. The following are some of their answers:

- The rights will belong to a combination of contributors, service providers and the public domain, depending on the application.
- Nobody will own exclusive rights. All contributors will share non-exclusive rights; for example, a person who contributes to an article in the Wikipedia will have shared rights on that article.
- Rights will be established depending on the context (e.g. Wikipedia: nobody; Flickr: the photographer).
- In the long term, a model similar to the Creative Commons licence should serve the interests of the community. Without something along these lines, there is a danger of an intellectual property war breaking out that will shackle innovation and benefit no one except the lawyers.
- If the owners of the contents and the application are not the same, the former will have to choose: free access to everyone, access limited to certain communities, payment for consumption, etc.

As we can see, this is difficult issue to solve and one that will affect other sectors. Another hot potato is the question of the peer-to-peer (P2P) networks, used essentially to share and download music from the Net.

In Spain, the Federation of Consumers in Action (Federación de Consumidores en Acción, FACUA) has made it clear that both the use of P2P networks and the copying of discs and films will continue to be legal provided that it is not carried out “for a profit and in prejudice to third parties”. Indeed, a [precedent](#) has already been established: a judge acquitted a defendant who had been accused of downloading and sharing music on the Internet, on the grounds that the practice is not criminal provided there is no intention to make a profit and moreover it is protected under the right to private copying.

This right to private copying exists in Spain, but not in the English-speaking world, so the case highlights not only the intrinsic problem of copyright and intellectual property, but also the need—given **the global nature of the Internet—for international regulation.**

Juan Freire, professor at the University of La Coruña and well-known blogger, has posted an interesting [article](#) on his blog on the controversy over whether Creative Commons (CC) licences (see Appendix 1) are necessary in Spain or

whether they might be counterproductive. There are two main arguments against Creative Commons:

1. CC licences are not needed in Spain because the usage rights CC seeks to include are already granted, in one form or another under Spanish legislation (e.g. private copying).
2. The use of CC licences might have an undesired effect, restricting freedoms that already exist in Spain but for which Creative Commons is fighting in the United States.

There are two basic reasons why licences might be useful in Spain in the fight for a free culture:

1. The problem of intellectual property and free culture is eminently political, social and economic in nature. The laws should only be the reflection of the decisions of the citizens and should be adapted to them.
2. Culture and, in general, knowledge have been globalised. We need global game rules and the CC licences represent the international initiative with the greatest chance of success in defending a free culture against the lobbies who would prefer to extend author's rights and copyright to indefinitely restrict all rights of usage.

As we have already said, a war is being waged over the technology (P2P networks), and the CCs have now begun the battle on the legal front.

Looking further into the issue of intellectual property, Bernard Goleen, CEO of Navica (a company specialising in Open Source solutions), writing in CIO Today on [ODF and Web 2.0](#) argues that, since free licences have irreversibly eroded the proprietary software market, the aim now is to keep a hold on clients by controlling their data.

One thing the social networks do have is an enormous amount of socio-demographic information which has yet to be tapped, but which is certainly very valuable.

It therefore seems likely that the next great battle will not be over licences—a war that has already been won—or author's rights—a battle that is close to completion—but over regulation of the ownership of data obtained from customers. The problem with this front is that we are still not entirely aware that it is a front.

Furthermore, given that the Internet favours user anonymity, now that the Web

is based on people participation, the issue arises of **content control**. How can an anonymous user with a nickname be made responsible for the contents? Should it be the application that monitors the contents? Nonetheless, if the owner of the application does not own the copyright to those contents, he or she must not change them. If it is taken to the extreme, content control stops the flow of information and innovation.

So who should monitor content and behaviour in Web 2.0? The answers of the FTF experts were as follows:

- Basic moderation tasks should be included in the application and users should also act as moderators. Nonetheless, in some cases an external figure will be required to take charge of the task.
- The only scalable solution is self-government. There will be many conflicts in which national governments seek to impose their jurisdiction over online communities but in the long term, these measures will fail.
- The fact that the user collaborates does not mean that they should have control. Contribution is voluntary and, therefore, the consequences of ownership and control should be proportional and should be adapted, taking into account that this is a community.
- The borderline between content ownership and content control is blurred. Control flows from "nobody" to "everyone" and so does ownership.
- There is no one-size-fits-all solution to all situations. For example, children's rights must be protected, as must government security and breaches of privacy, and acts of fraud must be monitored.
- There should be a move towards control by users.
- Depending on the nature of the activity, top-down control can be exercised by governments or moderators. The important thing is to clearly identify from the very beginning who is responsible for controlling contents.
- Taking Wikipedia as an empirical example, we may deduce that allowing a pure peer model is not a success—some form of control is needed from time to time. In the case of the Wikipedia, a number of editors are appointed who in the event of a dispute take the final decision on the way the articles should be written. It is not always practical to do away with all hierarchy. The type of structure will depend on the service.

- The Internet, by its nature, is global. Certain international institutions define a series of “best practices”, rules and regulations, which are enforced by national governments and international bodies (e.g. denying people or companies that break the rules access to the Internet).
- Depending on the content and nature of the application, in some cases the user can self-regulate or use feedback to meet this goal. The use of moderators should not be ruled out, who can help establish the rules, categorise contents and moderate conversations.

Summing up, in certain cases there are legal lacunas for certain situations which can arise in the Internet because of its anonymous and global nature, and in other cases the law lags far behind the real situation, slowing development and innovation. **Overall solutions are required that will not slow the advance of the Internet or the incentive to participate.**

The value has shifted from the applications to the data they contain, and the future legal battle will therefore be over regulation of the ownership of databases and privacy, and non fraudulent use of such data.