

Part III, Chapter 10

Copyright in 2028: A Letter from the Future*

Dear Reader,

Hello from 2028! The future has been going great. I really enjoy it, and I think you'll like it here, too.

Things have improved a lot since 2008. We've generally grown more healthy, wealthy, free, and (I daresay) happy. There remain rough spots, of course: Climate regulation, zombie flu, the *still*-unfinished meteorite prevention belt . . . and the future didn't work out too well for everyone. Some wonderful people didn't make it, sad to say, while others remain in suspension. As they say in aircar ads, "your mileage may vary." All in all, though, the future remains very bright.

I remember back when I lived in 2008. I looked forward to the future, and foresaw pretty good stuff. That prediction turned out ok, but I have to admit that I missed a lot of details! Who would have guessed the 2015 Constitutional Convention? That one really caught me by surprise.

Back in your day, I used to think and write a lot about copyright policy. I fondly recall long hours at my "beach office"—a rugged old picnic table nestled in a grove of laurel sumac, high on a bluff above one of my favorite surf breaks. Looking back, I guess I had some pretty nutty ideas. None of the legislation I proposed in my book, *INTELLECTUAL PRIVILEGE: COPYRIGHT, COMMON LAW, AND THE COMMON GOOD*, made it into law, for instance. (I can't say *that* surprised me, though.)

Copyright of a sort still exists, but it doesn't seem to matter as much as it used to. I still read about lawsuits getting filed, once and a while, but they almost always settle. Thanks to a decision from your era—*eBay v. MercExchange*—courts hardly ever issue copyright injunctions, anymore. In that case, the U.S. Supreme Court held that the same equitable standards generally applicable in civil cases apply likewise to patent infringement claims. Courts thereafter stopped enjoining patent infringement as a matter of course. Thanks to a logical extension of *eBay*, that same rule has long also applied to copyright infringement claims.

Pirates still face injunctions and stiff fines for fraudulently selling unauthorized copies as the real thing. The rest of us, though, largely ignore copyright. We have lots of access to expressive works, and we use them pretty much as we like. Granted, we sometimes buy early access to fresh works. A new book or song doesn't cost much, though. It has to compete, after all, with the vast amount of authorship each of can tap just by jacking into the Hive.

These days, our good old common law rights, joined with new technologies, "promote the general Welfare" and "the progress of Science and useful Arts" (to quote version 1.0 of the U.S. Constitution). Property and tort law protect authors' voices, pens,

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and presses during the creation and distribution of expressive works. "Smart contracts" (something that Nick Szabo predicted in the 1990s), allows authors and publishers to exercise some control over what happens to publicly-distributed works.

Common law does not protect works of authorship perfectly, but it protects them well enough. New releases get decoded pretty quickly, and eventually fall out of privity and into the public domain. Most authors and publishers (in many cases, thanks to plummeting costs, the same party) thus release their works in as many open formats as they can. Recompense comes in the form of gifts and friends.

That might not sound like a very lucrative scheme, to you, but we have plenty (some say too many) of super-stars who earn (and usually waste) huge sums of money entertaining the masses. They owe some of their success to their ridiculous hair, granted, but even I like Spectacle's latest hit song. Though they made a fair penny selling encrypted copies of it, they will make much, much more touring. I hear that they sold over 78,000 front row tickets to their google-res show in 3rd Life. With over 10 billion *very* wired people on Earth, and over 6 billion more in near space, it doesn't take a very big market share for an author to make very big profits.

But listen to me running on and on, like a doddering old fool! I'm sorry if I've bored you. It's been a while since I thought about copyright policy, and I've enjoyed reminiscing. I really should get back to my current project, though: Double-checking the latest ranking of governing services that A.U. NEWS & WORLDS REPORT publishes annually. (It puzzles me that the New Victorians didn't score higher. Just between you and me, I think that MosCorp might have under-reported its cross-jurisdiction restitution settlements.)

All in all, I think you will really like 2028. Of course, we have hard-working folks like you to thank for creating the wonderful world we now live in. Thank you *very* much for safeguarding the common law. The collective wisdom of its time-tested rules continues to serve us well. By defending *your* rights to person, property, and promise, you protected ours, too. Keep up the good work!

Looking forward to seeing you in the future,

Tom W. Bell