

their own performance. Seligman also blames 'consumerism', since shopping rarely produces lasting pleasures, but can lock people into indebtedness and working excessive hours.

While there are social and cultural explanations for increasing ill-being, Easterbrook believes that personal solutions are possible. Drawing on the relatively new sub-discipline of 'positive psychology', a balance to psychology's traditional emphasis on disorders, he argues that (for some people at least) happiness requires effort. People can slip into unhappiness 'simply because it is the path of least resistance'.

As part of this happiness effort, the misery-prone need to be more forgiving and grateful. Easterbrook reports findings in positive psychology that these attributes make people healthier, happier, and more successful. (This chapter is called 'Selfish Reasons to Become a Better Person'). He also thinks that increased 'spiritual awareness' would be good for us, and certainly better than the nihilism and existential despair he finds in aspects of Western culture.

In his last two chapters Easterbrook heads off into public policy. I found these to be the least satisfactory of the book. Particularly for US domestic policy, Easterbrook's pet issues seemed to prevail over anything that would improve how Americans feel. There are many pages on corrupt and/or ridiculously overpaid CEOs. I take his point, as most readers will, but I doubt added probity and more modest CEO pay packets will add much to general well-being. And haven't we just been told to be more forgiving?

Unlike lower CEO salaries, better health and less poverty in the non-Western world, the main suggestion of his chapter on global issues, would directly improve happiness. Here, too, though

Easterbrook meanders into a topic-of-the-day, relations between Islam and the West.

Easterbrook is a journalist, and in *The Progress Paradox* he for the most part does a good job of reporting trends in American life and summarising the academic psychological literature. There is enough there to make it a generally interesting read, but there are too many weak links for it to offer a convincing argument.

Reviewed by Andrew Norton

Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity

By Lawrence Lessig

New York, Penguin Books, 2004, 240pp, US\$24.95, ISBN 159 42000 68

Intellectual property laws—in particular patent and copyright—aim to strike a balance between providing incentives for efficient investment in innovation and for disseminating the material flowing from such investment. Lawrence Lessig, the author of *Free Culture*, is part of a growing school of US academics who argue that IP laws have swung too far in the direction of producer interests. Such a school still doesn't exist in Australia—but more on this later.

The economic arguments about the problems associated with excessive IP protection are well known, and Lessig covers these briefly. He focuses principally on copyright, and argues that current levels of protection reduce

competition, ultimately raising the prices that consumers pay for IP products in circumstances where it is not only doubtful that there will be significant off-setting benefits from increased innovation, but where the opposite may in fact occur. In this regard Lessig is particularly critical of Congress granting *existing* copyright products successive increases to term, making the familiar but valid argument that there can be no dynamic benefits flowing from such changes.

Lessig argues IP rights may impose costs on society in four broad ways. First, he focuses on increased copyright term—for most products, now available for 70 years after the author's death, arguing this directly increases the market power of copyright holders. Second,

he makes the less familiar but convincing claim that the lack of certainty associated with the current copyright system, in particular users' lack of knowledge about whether a particular work is subject to copyright and who its owner is, increases the transaction costs of using works, and may consequently impede future improved generations of innovation based on such work.

Third, he argues the penalties associated with copyright misuse are excessive, in particular compared with penalties associated with more heinous wrongs; this he argues not only imposes disproportionate penalties on wrongdoers in circumstances where they could not necessarily have averted the harm but perhaps more seriously deters people wishing to build on and improve such works. Finally Lessig argues that the current legal system enables putative copyright



owners with deep pockets to launch specious legal actions which reinforce all of the above effects.

Lessig is a lawyer rather than an economist, and hence much of his book focuses on what can be loosely termed the non-economic costs of the current system, the greatest of which he believes is the potential for current arrangements to lead to a concentration of creative goods in the hands of a small number of established (and perhaps unadventurous) players. Lessig argues this is a real challenge to a free society. He makes a distinction between commercial and other uses of creative goods, and argues that the latter are being unjustifiably strangled by the current system.

Lessig recounts his legal challenge in the US Supreme Court to Congress's decision to increase copyright term, which was rejected by the Court. Lessig blames this result partly on a misjudgment on his part in not addressing the social costs flowing from the current system, but he also appears to be critical of the Supreme Court. Not that judges or even lawyers are viewed by Lessig as the principal wrongdoers; this role is reserved for the politicians who he argues are captive to established producer interests.

While many of Lessig's arguments are powerful there are a number of questionable points in this book. First, he fails to explain why increased copyright *term* is necessarily one of the most serious problems. It seems reasonable to accept that if large numbers of people each hold copyright in differentiated but broadly substitutable products (such as crime novels by different authors), then one person's ownership right would not necessarily create competition concerns. Term is likely to be more problematic in the case

of patents, in relation to which there is usually much less substitutability, but this issue is not examined in as much depth.

A related question is why Lessig is so concerned about increased term when he accepts that the commercial life of many products is short relative to term. Further some of the problems he highlights in regard to specious legal claims—while deleterious—appear to be not so much the fault of the IP system, but rather caused by general features of the US legal system, which for example does not require unsuccessful litigants to pay the other side's legal costs.

Another issue that is not fully explored is that of penalties. Under the theory of optimal deterrence, the law should respond to the increasing ease with which IP rights may be infringed these days by increasing penalties, thereby raising the expected cost of engaging in piracy. However, high sanctions may not always be necessary as greater scope for technological protection measures exist.

More seriously, Lessig fails to address adequately the fact that despite increasing levels of IP protection there is a proliferation of innovation at the present time, which may imply the current system is not stifling activity to the point he implies, or that 'technological opportunity' (i.e. the well of ideas that are capable of being exploited at reasonable cost) has expanded even more. Such issues are hard to resolve, but do deserve more discussion.

Lessig's argument that the current system prevents people building on current valuable pieces of work to create better versions of the product is one of the best points in the book. The economic literature suggests that bargaining between parties often breaks down,

so potentially efficient bargains will not be made. It is also true that the current system probably enables the same owners to own subsequent generations of the same product, which serves to concentrate some IP.

In the final chapter of Lessig's book he puts forth a mixed bag of law reform proposals, some of which may be sensible but others of which appear less so. One such idea for example is to create a central repository of copyright so that doubts about ownership can be attenuated. It is hard to see how such a system would do that unless it also involved some testing of the right (as in patents)—the costs of which would be enormous.

Lessig's book is the third that he has written questioning the increasing levels of IP protection. The broad messages are particularly pertinent in Australia—a country where IP is still viewed as an arcane field. What is particularly worrying in Australia is the fact that negotiators appear willing to sign us up to increasingly higher levels of protection, most recently in the US-Australia Free Trade Agreement, which limit our ability to set levels of IP protection in our national interest. The book's approachable tone and its many entertaining anecdotes will hopefully heighten public attention in this important sector.

Reviewed by Teresa Fels