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October 12, 2002

Making My Own Music

By Kevin Kelly

PACIFICA, Calif.— Every night before I go to bed I take one of my music CD's and insert it into my computer. While I sleep my computer translates the music into a compressed digital format onto my computer's hard drive. Over the course of the past year I have been steadily building my own personal jukebox from the 300 CD's I own. I can now listen to only my favorite songs on an album, rearrange songs into my preferred order, or move them to a portable player. Besides my own virtual personal radio station, I also have an index and catalog of the music I have bought.

I am not the only one digitizing music. Without breaking any law, I could just as easily have gone on the Web to download the songs I had bought in the same digital format, thanks to the prior work of many other music lovers. So far music listeners around the world have digitized more than 850,000 albums and 10 million songs of all musical genres. Fans have already converted almost all music ever recorded.

This point is essential to the case that was heard Wednesday in the Supreme Court. In *Eldred v. Ashcroft*, copyright holders argued that it is vital to extend the life of copyright -- even though it has already been extended 11 times in the last four decades. A 1998 law extended the protection of copyright for an additional 20 years: material is now protected for 70 years after the creator's death or for 95 years if the copyright is held by a corporation. Only after the copyright has lapsed does it enter the public domain, meaning that anyone can use the work for whatever purpose -- creative, academic, even commercial.

Owners of an about-to-expire copyright have several favorite arguments for extending it. One is that it spurs creativity by making original works more valuable. But an extension actually restricts creativity by narrowing the shared universe of works artists can build upon. Another is that they need an extension as an incentive to convert old material into new media. As Jack Valenti, the chairman of the Motion Picture Association of America, has pointed out, digitizing films is expensive. "Who is going to digitize these public domain movies?" he asks.

I have an answer: movie buffs. Not only have fans moved almost all of music into the digital era, they have been busy moving hundreds of millions of documents onto the Web and are producing millions of pages of daily reporting and news in Weblogs. And without the help of paralyzed publishers, avid readers have already converted nearly 20,000 books in the public domain.

The passion of fans is unstoppable -- and technology will make it only more so. Listeners, readers and watchers now have the means to do chores that companies themselves used to have to do. Yet instead of seeing this new force as a positive development, corporate copyright holders view it as something that must be quashed. While reformatting an old film is more trouble than slipping a CD into a personal computer, as bandwidth and storage continue to drop in price, more movie fans will have the means to convert old films. Given the benefits of digitized films, there is little question that film buffs, powered only by passion, would rush to convert the 500 to 1,000 films that fall out of copyright each year -- if the copyright period is not extended.

All that is keeping fans from this work is the steady erosion of the public domain by corporate copyright holders. Copyright extension serves only to keep everyone -- fans and corporations -- away from old masterpieces. If the Supreme Court upholds the current law, some old works of uncertain ownership, which would normally be allowed to come into the public domain, will now be locked up for another couple of decades. For some films on old stock, this could be their death.

Under the current copyright regime, short-term profit outweighs long-term value. As copyright protection lurches toward perpetuity, America's cultural heritage -- in whatever media -- is increasingly becoming the property of corporate copyright holders. But it belongs to all of us. Technology has given fans the means to enhance and protect this common heritage. The law should give them the right.