
Working Within the Legal Infrastructure

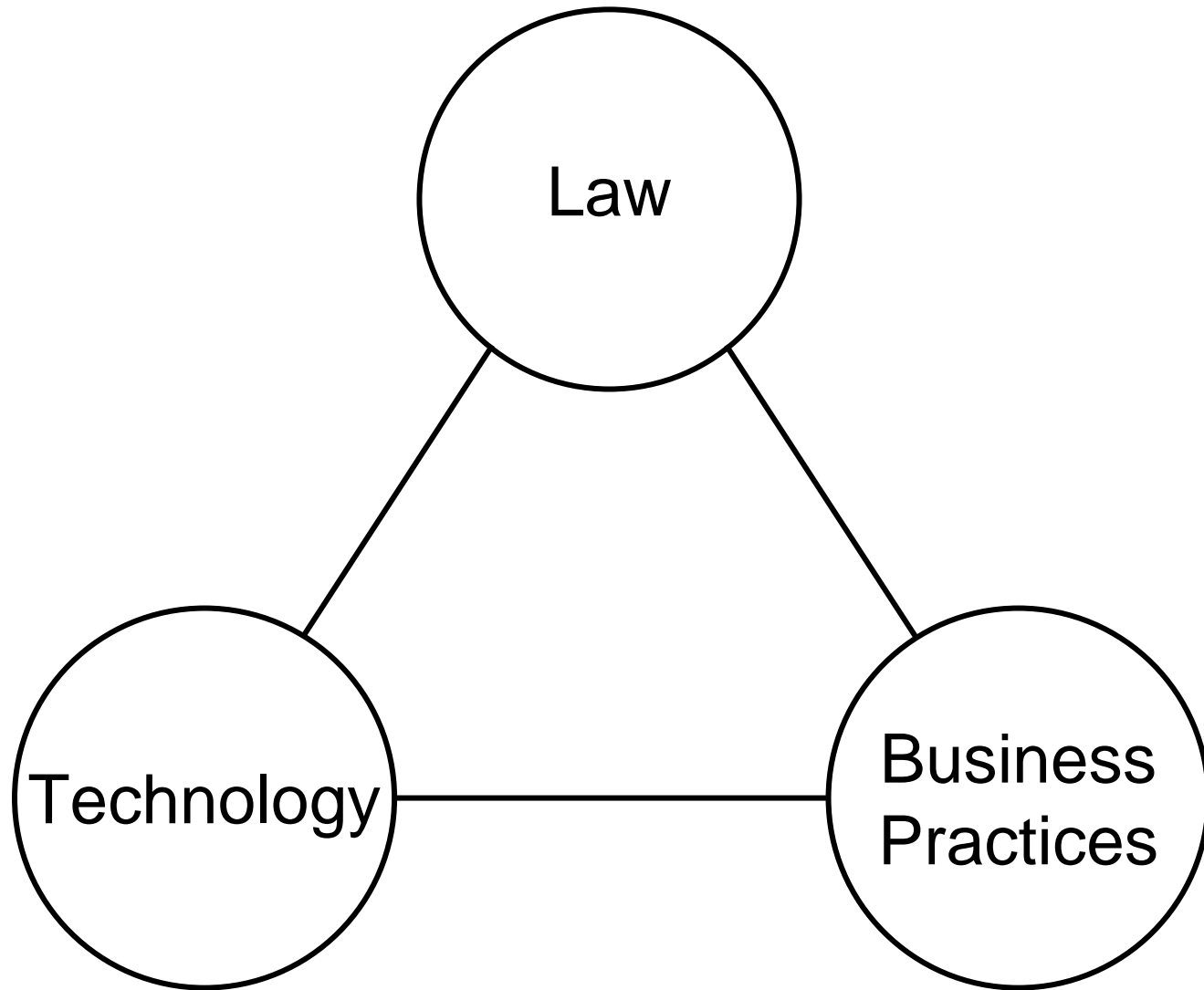
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Protection Overview



Law

Technology

Business
Practices

Protection—Copyright

- Protects “original works of authorship”
 - Exclusive rights
 - Reproduce, distribute, create derivative works, publicly perform, publicly display
 - Strict liability tort
 - Exceptions to exclusive rights
 - Limited duration
 - Statutory exceptions
 - Fair use
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Protection—Copyright

- The online challenge: near-zero marginal reproduction/distribution costs
 - Consequences
 - Decentralized infringement
 - Aggregators and “Long Tailers”
 - Cross-subsidizers
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Protection—Contracts

- Contracts allow customized supra-copyright protection
 - Contracts “easy” to form online
 - But...
 - Imperfect remedies
 - No privity with after-acquirers
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Technological Protection

- Distribute content protected by Digital Rights Management (DRM)
 - Prohibition on circumventing DRM (17 USC 1201)
 - Prohibition on distributing circumvention technology (17 USC 1201)
 - Protection for “copyright management information” (17 USC 1202)
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Technological Protection

- Deliver data from central servers
 - Users never get 100% of content
 - Servers are easier to defend technologically
 - Servers may be legally defensible (“Protect content by protecting servers”)
 - Legal doctrines
 - Common law trespass to chattels
 - Computer Fraud & Abuse Act (18 USC 1030)
 - State computer crime laws
 - Preconditions
 - Restrict access
 - Notify specific users of unauthorized access
 - Technologically block unauthorized access
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Business Practices

- **Exclusion-based business models will fail**
 - Build infringement-resistant models
 - Metadata
 - Embedded ads/product placements
 - Sponsorship ID laws
 - Use content as marketing
 - “Content isn’t vehicle to deliver ads, it *is* the ad”
 - Build fan bases and then merchandize them
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