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
Protection—Copyright

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

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