

Preserving Our Right to Own

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Introduction

What if stores could no longer sell you products to own? What if you could only rent, subscribe, lease, or otherwise contract with corporations for restricted access to their products? It sounds unnatural, unreasonable, unfair, and unenforceable, and it would certainly give birth to a huge black market of off-the-record, untethered goods. Yet for a new and rapidly expanding category of products – downloadable digital products – we are dangerously close to the practical elimination of the right of individuals to own what they buy.

No, there is no grand conspiracy to enslave the planet. Intelligent, reasonable people have led us to this point with the best of intentions and with a deeply-held faith in personal liberty and free markets. We simply have neglected to synthesize the conditions that enable individual ownership of digital products such as movies, music, books, games, and so forth.

The purpose of this paper is to raise awareness of the problem and the solution, We can neither fix a problem nor embrace a solution that we don't understand. We are reluctant to fix a problem if we don't recognize how it affects us. Therefore, we need to educate ourselves. What does it mean to own copyrighted digital products? Why it is good for consumers, copyright holders, and businesses? How it can be enabled?

Today's Imitation of Ownership

Digital products and content services that are available across the Internet involve license agreements. These are legal contracts that we see so frequently, and that are so long and difficult to read, that we almost always just click on the "I Agree" button. We seldom have any real idea of what we have agreed to. The terms of those agreements almost always are in conflict with what we consider to be the rights of someone who has bought something and owns it. That's fine when it is clear that we are paying for a *service* – everyone knows you can't own a service. The problem is with "permanent downloads" and other attempts to approximate product ownership.

Consumer Notion of Ownership

Here is a practical definition of the consumer notion of ownership: *If I own it, then it's nobody else's business what I do with it.* That isn't very precise, so let's expand on what it means:

A kid owns a bicycle. He can use it for whatever purpose he chooses, from transportation, to acrobatics, to blocking the driveway – that's unfettered **use**. He can let anyone else use it – that's **inclusion**. He can refuse to let anyone else use it – that's **exclusion**. He can add a headlamp, remove the fenders, or grow rust all over it – that's **customization**. He can give it to his younger sibling or sell it to a neighbor – that's ownership **transfer**. If he leaves it in front of the house all

night or if he lets a friend of a friend borrow it, he risks losing it – that's **responsibility**. And although he may have to wait until he is grown, as an adult he can do all of these things without interference – with **autonomy** – and without being monitored – with **privacy**.

Consumer Notion of Copyright

The consumer notion of copyright is that the right to publish – to reproduce and distribute to the public (to strangers) – is reserved for copyright holders. Consumers don't think of copyright as having anything to do with private behavior, and they reserve the right to draw the line between public and private for themselves. Copyright is defined by laws, not by consumers' notions, but winning public support for copyright depends upon adhering as closely as possible to their notions about what makes copyright fair. Infringing upon private behavior is counterproductive to public respect for copyright.

Why Ownership Matters

It may never have occurred to you that you don't own the movies, music, books, and games that you have "bought" and downloaded, or you may never have downloaded a buy-to-own digital product because, so far, you have always found content services that meet your needs. Yet, the option of digital ownership (or its absence) affects you too. You need to know about it, so let us explore why digital ownership matters.

Freedom for Consumers

Services are great. They save us money. They free us of the responsibilities of ownership. In an open market we can shop for a service that precisely suits our desires. But what happens when no service suits us? The answer is that we buy – we buy to own. We pay extra for the freedoms and privacy that come with personal property ownership, and we accept the responsibilities and risks associated with caring for our own property.

There is nothing wrong with art served to you by corporations, but there is something wrong if art can't exist unless a corporation serves it to you.

Freedom for Artists

You are a starving artist, trying to make a living by selling your artistic or intellectual creations. A great way to get ahead is to establish a relationship with a corporation that can aid you with publicity, distribution, and even with the creative process itself. But what if you can't get their attention, if your style of art has no proven market? What if you have neither the means nor the desire to build and maintain your own online servers, and can't afford to hire others who will pay you to serve up your content for you? What if you could survive with just a few thousand adoring fans of your art that you found on your own? It should be possible and practical for you to sell your own digital recordings of your art – self-contained, stand-alone products that don't need ongoing services for them to work. Yours should be products that your patrons treasure because they retain their artistic value, sentimental value, and monetary value. You want to profitably sell digital products with the same dependability as you would sell physical ones.

Kindness and Generosity

You want to give a movie, a song, a book, or a game to someone special. If you give the physical product, then that gift clearly represents a giver's loss and a receiver's gain. Such giving is naturally endowed with greater emotional significance than just sending someone a trivially-copiable digital file. Giving of digital objects, if it represents giver loss and receiver gain, serves as social capital, as a true carrier of kindness, generosity, gratitude, and respect.

Validating Services

You are a legitimate, well-intended business, trying to provide content delivery services to customers, yet you are being bombarded with negative press and customer criticism. You are attacked for using digital rights management (DRM) security software that does nothing more than enforce the same terms of service that your customers knowingly agreed to. You aren't trying to sell content, and people are free to use or reject your service, yet you are subject to accusations of greed and of denying basic consumer rights.

The problem isn't with your service or with DRM, but with the absence of the standard alternative to services: buying to own. What is needed is not the imitations of buy-to-own available today – services that provide “permanent downloads” – but real buy-to-own products that include both the freedoms and the responsibilities of ownership.

Enabling New Businesses

You are a graphic artist. You paint or sketch. You want to illustrate books, but how can you get started? What if you could create a set of illustrations for a particular book and sell the set as a stand-alone product, used to enhance a separately purchased eBook product. Or perhaps you are a music video creator that would like to sell videos to accompany legitimately purchased music downloads. Art like yours might require a special arrangement with each service provider or copyright holder, but they would be simpler to create for untethered, consumer-owned eBooks or songs.

You are a media player developer. You have great ideas about new features that would mix and mash video and audio from customer content libraries. If the content is not owned by the consumer, then the jungle of legal and contractual barriers can be insurmountable. If consumers own their content, then empowering them to enjoy it in novel ways is a wide-open field for unleashing your creativity.

You are a content protection technology company. Wouldn't it be great if suppliers weren't the only ones seeking stronger security? What if customers shopped for media players with strong security to protect their purchased property from malicious viruses or other forms of theft and vandalism?

Obstacles to Ownership

What is so hard about letting people own the digital products that they buy?

Plain Files are Often Inadequate

Plain, unprotected files are the only form of digital content currently available that is unrestricted enough to satisfy the consumer notion of personal ownership. Unfortunately, copying and

transmission of plain files is so easy and unconstrained that their use evaporates the very notion of a singular product that could retain any sort of monetary value. Distribution of plain files makes sense for wide distribution for free, without expectation of remuneration. Plain files also make sense for content that is meant to be republished, say, under a Creative Commons license. But the makers of premium content must face the truth that, once released to the public, plain files are inherently as free as air, regardless of what the law may say.

Ownership and Restrictions Don't Mix

The only alternative to the plain file is currently the DRM-protected file. Such files are encrypted, and media players are built to carefully guard the secrecy of the decryption keys and only apply them if certain usage restrictions are enforced. Those DRM restrictions are antithetical to the very notion of personal ownership. The same restrictions intended to preserve profitability also harm profitability by displeasing buy-to-own customers. Meanwhile, presenting services as buy-to-sort-of-own products confuses consumers and leads them to unfairly categorize all DRM services together as an abridgment of their rights.

The Third Option

Having only plain files and DRM files for quasi-ownership has led us to a conflict between the defenders of copyright and the defenders of consumer rights. What is needed is a third option – a form for the distribution of downloaded digital products that is consistent with the consumer notion of personal ownership, the consumer notion of copyright, and the real needs of content creators to maintain their profitability when they offer content for sale.

How to Enable Digital Product Ownership

The IEEE P1817 Working Group consists of volunteer technologists, attorneys, consumer advocates, and business people who are creating a Standard for Consumer-ownable Digital Personal Property. The group often abbreviates digital personal property as **DPP**. The job of the Working Group is to complete a detailed technical specification for DPP. Their work is easily understood by describing what it will be like for consumers to own, use and share DPP in the real world.

The Give & Take Media Player

DPP avoids restrictions on consumer behavior. Instead, it employs the same underlying security technologies as other content protection systems, but applies them to the protection of product item singularity and value. DPP security does nothing to restrict how the product is used. DPP defends both the freedoms and the responsibilities of consumer ownership. DPP leaves all control, all judgments, and all decisions in the hands of individual consumers. The following explains how a DPP Ownership Media Player works. Note the appearance of the essential rights and responsibilities of personal ownership.

Every DPP media player includes:

- A PLAY button, of course. This is the baseline right of an owner to **use** his property.
- A GIVE button, enabling the player to give a copy of a content item to any other DPP media player. This is **inclusion**.

- A TAKE button, empowering every sharing player to rescind sharing – to make the content neither playable nor takable by any other sharing player. This is **exclusion**. To share with someone is to trust that person with the power to TAKE.
- Any other buttons that player makers can think of, enabling features and functions that even the original artists never imagined. This both expands **use** and adds **customization**.
- A GIVE, followed by a TAKE. This enables gifting and resale, which are ownership **transfer**.
- *No tether* to the supply chain that originally sold the product. This protects user **autonomy** and **privacy**, while freeing the seller of the need to provide security or other support services after the sale.
- *No tether* to an institutional ownership registry. As with the vast majority of tangible personal property, DPP is *untitled* property, whose ownership is governed by the behavior or those who access it, by their individual judgments, and by their collective agreement as to who is the owner. The untethered mobility of DPP gives rise to the **responsibilities** of personal ownership, without which a Big Brother would be necessary.

The DPP ownership media player is the Give & Take player.

Humanizing Ownership

DPP unquestionably depends upon the principle that each product item in the field corresponds to a single purchase from an original content retailer. At first blush this might seem inconsistent with the power of users to employ the GIVE button and send playable copies to anyone. Yet the power to make, transmit, and use copies is at the core of consumers' expectations of an ownable digital product; it is why consumers love digital (just as suppliers love that digital is near-free manufacturing and distribution). The TAKE button binds any collection of related DPP files into a unique, singular product item. Owners must trust sharers with the power to take, and this preserves the role of personal judgments and relationships in the breadth of our sharing. Whereas the GIVE button frees us from physical constraints over the speed and concurrency of our sharing, the TAKE button assures that we still only share privately – within the same circle of those we trust.

The importance of TAKE cannot be overstated; it humanizes the problem and the solution.

Singular Certificates

Every device or software application that depends upon security technology is certain to be attacked, either for fun or for profit. In this respect, DPP Give & Take players are no different; however, Give & Take players have an advantage; it is in the interest of consumers if their players securely protect their monetary investments in what they personally bought and own.

The singularness of each product item must be unquestioned. One solution is to adopt an approach that consumers already accept and trust. We trust retail banks to protect our electronic money, our autonomy, and our privacy, while also protecting the sacred singularness of each bill and coin deposited into our bank accounts. Similarly, consumers can establish DPP safe deposit accounts with trusted online institutions (perhaps even with those same retail banks) where certified records reside – not records of product ownership per se, but of product singularness and authenticity. These records move from one private safe deposit account to another whenever a TAKE button is pressed. In case two or more people press their TAKE buttons for the same content item at near the same time, the player that contacts the source safe deposit box first is the winner. Meanwhile, safe deposit hosts communicate with each other to insure that no duplicate record can exist, and that all such DPP item records represent authentically minted and sold products.

Legal Issues

Ownership Under Existing Law

You might reasonably ask how our goals can be achieved, regardless of technology or collective will, until laws are enacted that define, recognize, and protect consumer ownership of digital goods. Fortunately, we don't have to wait for jurisdictions around the globe to bless digital ownability. All we need to do to is define a boilerplate license agreement that passes the duck test for ownership – that preserves the attributes of unfettered use, inclusion, exclusion, customization, transfer, and responsibility with autonomy and privacy. If the license agreement enables those attributes, then... well, if it looks, waddles, and quacks like the ownership duck, then it is an ownership duck. Suppliers will sell DPP content under the ownership license because consumers demand it, because their sales and service businesses thrive with it, and because it is the right thing to do.

Public versus Private Fair Use

The DPP ecosystem does not solve all issues of digital content copyright. Unlike the line between public and private, which can be resolved by empowering consumers to draw their own line, judgments about the fair use rights of would-be content republishers ultimately must be resolved through convention, negotiation, licensing, and litigation. Yet DPP still helps clarify and enlighten by separating public fair use from private fair use; the vast majority of consumers have little real interest in sharing with strangers, and mixing private sharing with public sharing only confuses consumers into fearing that defense of copyright means the erosion of their personal rights.

A Little Give & Take

It is time to end the war between the defenders of copyright and the defenders of consumer rights. Let us separate issues of personal, private behavior from the struggles against counterfeiting and the debates about public fair use. Let us work toward a new standard of advertising that draws a clear line between licensed services and ownable products; every honest business would benefit from such clarity, and the only obstacle preventing that clarity is that truly ownable digital products don't yet exist. In other words, let us create consumer-ownable, supplier-profitable DPP.

The *Standard for Consumer-ownable Digital Personal Property* is a work in progress by the IEEE P1817 Working Group; thus, this paper represents the vision of the Chair about what DPP may become. The Working Group is authorized by the IEEE to complete a detailed technical specification for DPP. Other tasks must be completed for DPP to become available to the public. Stakeholders must come together to form a governing body for conformance to the requirements of DPP. Media player makers must create the means for DPP to be enjoyed. Content providers must become convinced that the health of their businesses and public respect for copyright are enhanced by DPP. And most importantly, individuals and organizations must make their voices heard and take a stand on the rights of individuals to own things, even when those things take a non-physical, digital form.

All we need is a little GIVE & TAKE.