2. Copyrights in a Digital Age

The advent of the digital age, as with any new technology, has upset balances that were previously maintained. How the balance might evolve is the premise behind this paper. The paper will be divided into three sections: the first, dealing with the issues that face copyright laws with the current digital technology; the second, addressing the claim made in the *Economist* article (Jan 25, 2003); and third, discussion of the various proposals discussed in the article and whether significant changes need to be made to the existing law.

a) Copyrights and Digital Technology

As with other Intellectual Property Protections, copyrights were created to ensure an incentive for authors to create and disseminate material while providing public access to their work. However, unlike other protections, copyrights need only prove originality, authorship and being ‘fixed’ in some form of expression (registration not being a requirement). In 1980, copyright protection was extended to computer programs, with the option that they could also be patented. Copyright laws in the US have evolved since 1790 when copyrights were initially granted for 14 years, with the provision for renewing it for another 14 years. Through 11 extensions of the copyright term this has recently, with the passing of the Sonny Bono Copyright Term Extension Act in 1998, been stretched to 70 years beyond the author’s life. Commercial works were extended to a term of 95 years (nicknamed the Mickey Mouse Preservation Act). In response to the era of digital technology, the rights of the content industries were further strengthened by the
passage of the controversial Digital Millennium Copyright Act (DMCA) in 1998. This has made it a crime to not only copy material, but also to use or manufacture technology that would access copyright protected material, without permission. Digital technology has revolutionized the transmission of data. This has provided a means for easy copying of materials that is virtually cost free and most importantly, identical to the original work. The significance of this is that the perfect copying of materials that previously was only possible with expensive equipment (and thus was limited to larger organizations) is now available to practically anyone with a computer. When faced with the relative ease, considerable selection, high quality and free content available to download from the Internet, there are few (usually on ethical grounds) who would not take advantage of the technology available.

b) Response to claim

The article in the *Economist* (2003) states: “In retrospect, the copyright balancing act has survived only because of the imperfections of earlier copying methods”. I wholeheartedly agree with this claim. Technology has grown in leaps and bounds since the 18th century when the copyright laws were first envisioned. What is amazing is that the law has survived with few modifications in its definition, through the years. As long as the technology did not permit easy access to perfect copies, the content industry felt safe. However, this has now changed and caused the content industry to believe that they are losing control of the situation, which has resulted in their heavy-handed approach e.g. the complete shut down of Napster, a model that could be considered as serving the public interest.
c) Discussion of possible solutions

The ways in which the various proposals outlined in the *Economist* article address current weaknesses in copyright law are discussed below:

- **Encryption technology** - This is the ability to incorporate anti-copying code into the software or by the use of ‘watermarks’ in the software that identify legal users of copyrighted material. This ensures that digital copies of protected content cannot be made (or at least not that easily) without the consent of the copyright owners. Many firms are already utilizing this technology.

- **Taxing Internet access** - This would track the downloading of digital material through Internet Service Providers (ISPs) and would be used to estimate compensation to copyright holders. Taxation would provide the creators with the means to be compensated for digital copies made by the public and would address the issue of lost revenue from sales. This has recently been introduced in Germany. It will be of interest to see how the concept works there.

- **Limited, five-year renewable copyrights** - This would make the term less than the 14 year term of the first Copyright Act thus decreasing the period of enforcement required by the courts. An extension to this proposal is the “use it or lose it” provision which requires dissemination of the copyrighted material to the public and reinforces the rights of the public to easy access.

- **Strengthening copyright protection** - Creators would have the exclusive right of commercial exploitation of their content, which would make it easier for enforcement of copyrights. This would mean that the ‘fair use’ clause would be removed and copying under any circumstances would be illegal.
The proposals outlined above do address some of the problems envisioned by the content industry. How much of this is necessary and how much of this is an exaggeration of the problem is not totally clear. Only time will tell. The content industry would like for the situation to remain unchanged though that is unrealistic given the degree to which technology has evolved. I believe it is possible to regain the fine balance between the rights of the creators and their audience. However, the content industry needs to assess the market and change its strategy. At this time the content industry seems to be focusing their energies on how to shut down digital copying in every possible way. In addition to software encryption, they are negotiating with the computer industry to install hardware/software, known as Digital Rights Management (DRM), into computers that would not permit digital copying. Furthermore legislators have recently proposed a Peer-to-Peer (P2P) Piracy Prevention Act. This would not only utilize built-in copy protection techniques but would also allow copyright holders to use hacking techniques to attack file-swapping P2P networks where copyright infringement allegedly takes place. Another tactic that is being employed is the insertion of dummy files into regular files being swapped on P2P networks thus frustrating customers downloading data files (a new business for start-up companies!).

I believe that some changes in the copyright laws will be necessary to address the ‘problems’ that digital technology has created. However these do not need to be major since the basic premise of the law still exists: there needs to be protection for the authorship of creative works. On the other hand, the rights of the public need to be considered and a heavy-handed approach should not be tolerated. Decreasing the copyright terms seems the most realistic approach but that would create uproar in the
content industry and would require political backing to actually work. In the meantime, just as the advent of videos and VCRs did not bring the predicted end to the movie industry, I think one needs to adopt a ‘wait and see’ approach because the situation will most likely correct itself anyway. Conversations between Kazaa and Verizon have begun that could change the way files are shared on the internet and improvements in the technology of Broadband Internet pipes could improve distribution of online video which could be a new market for the movie industry. It will certainly be interesting to see if and how copyright protection evolves with time.

Overall, this is a good answer. Among its strengths is that it is well-organized. The introduction provides a clear road map of where the author is going. Dividing the answer into sections addressing each part of the question makes the answer easy to follow.

The one improvement that would help this response is more analysis of the proposals. The author provides some general analysis in the concluding paragraphs. It would help, however, to also provide some specific analysis for each of the proposals – which are more or less likely to be successful, and why? For example, the author ends by stating that decreasing copyright terms seems to be the most realistic approach. Why is this favored over the other solutions? What drawbacks do the others have? Answering these questions would help convince the reader that the author’s conclusions are correct.