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Lucasfilm's Phantom Menace

By Lawrence Lessig
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In May, [Lucasfilm](#) announced plans to enable fans of the "Star Wars" series to "remix" "Star Wars" video clips with their own creative work. Using an innovative Internet platform called Eyespot, these (re)creators can select video clips or other content and then add images or upload new content, whether images, video or music.

Eyespot is one of many new technologies inviting "users" to do more than use the creativity they are consuming. Likewise, Lucasfilm is one of many companies recognizing that the more "users" use their creativity, the thicker the bonds are between consumers and the work consumed. (Put differently, the more money Lucasfilm can make.) Turning consumers into creators is the latest fad among companies scrambling for new profits in the digital age. How better to revive a 30-year-old series than by enlisting armies of kids to make the content interesting again? These traditionally protective commercial entities are creating "hybrids" -- leveraging free labor to make their commercial properties more valuable.

Among companies enabling this remix creativity, Eyespot is one of the more enlightened. Remixers using Eyespot's technology typically own what they produce. Eyespot allows them to share their work on or off its platform. No one's getting paid (yet) for the creativity that Eyespot enables. (Other companies, such as Revver, are experimenting with ways to get creators paid.) And Eyespot at least explicitly grants to creators the

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right to their own creativity.

A dark force, however, has influenced Lucasfilm's adoption of Eyespot's technology. A careful reading of Lucasfilm's terms of use show that in exchange for the right to remix Lucasfilm's creativity, the remixer has to give up all rights to what he produces. In particular, the remixer grants to Lucasfilm the "exclusive right" to the remix -- including any commercial rights -- for free. To any content the remixer uploads to the site, he grants to Lucasfilm a perpetual non-exclusive right, again including commercial rights and again for free.

Upload a remix and [George Lucas](#), and only Lucas, is free to include it on his Web site or in his next movie, with no compensation to the creator. You are not even permitted to post it on [YouTube](#). Upload a particularly good image as part of your remix, and Lucas is free to use it commercially with no compensation to the creator. The remixer is allowed to work, but the product of his work is not his. Put in terms appropriately (for [Hollywood](#)) over the top: The remixer becomes the sharecropper of the digital age.

Lucas is of course free, subject to "fair use," to do whatever he wants with his creative work. The law of copyright grants him an exclusive right to "derivatives"; a remix is plainly a derivative. And it's true that no one is forcing anyone to make a remix for free.

Yet as anyone watching this industry knows, there is a deep divide between those who believe that obsessive control is the hybrid's path to profit and those who believe that freer access will build stronger, more profitable ties. Predictably, on the Vader-side of control is often a gaggle of lawyers who continue to act as though nothing interesting has changed in copyright law since the time of [John Philip Sousa](#). These lawyers counsel their clients that control is always better. They ridicule efforts to strike a different balance with the army of creators being called into the service of

their clients. It is for the privilege of getting to remix a 30-year-old series that these new creators are told they must waive any rights of their own. They should be happy with whatever they get (especially as most of them are probably "pirates" anyway).

Lawyers never face an opening weekend. Like law professors, their advice lives largely protected from the market. They justify what they do in terms of "right and wrong," while everyone else has to justify their work in terms of profit. They move slowly, and deliberately. If you listen carefully, sometimes you can even hear them breathe.

A decade from now, this Vaderesque advice will look as silly as the advice lawyers gave the recording industry a decade ago. New entrants, not as obsessed with total control, will generate radically more successful remix markets. The people who spend hundreds of hours creating this new work will flock to places and companies where their integrity as creators is respected. As every revolution in democratizing technologies since the beginning of time has demonstrated, victory goes to those who embrace with respect the new creators.


Hybrids are an important future of Internet growth. Businesses will have to think carefully about which terms will excite the masses to work for them for free. Competition will help define these terms. But if one more lawyer protected from the market may be permitted a prediction, I suggest sharecropping will not survive long as a successful strategy for the remixer.

Feel the force, counselors.

The writer is a professor at [Stanford Law School](#).

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