

## Interview with Steven Hetcher, Professor of Law, Vanderbilt University

**Steven A. Hetcher** (B.A. Wisconsin 1983; M.A. University of Chicago (Public Policy) 1989; Ph.D. Illinois 1991 (Philosophy); J.D. Yale 1993) joined the Vanderbilt Law School faculty in 1998 after practicing at Arnold & Porter. He teaches Torts, the Law of Cyberspace, Regulation of the Internet, Copyright, and a seminar on social norms. His research interests focus upon the role of social norms and the law, and challenges the economic account of custom and tort law and the norms-based theories of first-generation law and economics. His scholarship also includes the Internet, Intellectual Property and Privacy. He is the author of *Norms in a Wired World* (Cambridge U. Press, 2002). In the spring of 2004, Hetcher participated in the first Curb Center conference, "Federal Regulation and the Cultural Landscape."

Hetcher's forthcoming book *The Grey Domain* applies his social norms theories to the public domain and issues such as file-sharing. In response to Stanford law professor Lawrence Lessig's book *Free Culture: How big media uses technology and the law to lock down culture and control creativity* (Penguin Group, 2004), Hetcher asserts that Lessig's argument for a 'free culture' is an impractical ideal. In an interview with Hetcher, he discussed his current research on social norms and the future of file-sharing.

*Discuss your research on social norms and file-sharing.*

I am exploring the file-sharing debate and the role of norm entrepreneurs, a group of people who seek to alter some particular set of social norms. There are two parts of norms - one is the statement and the other is the actual practice, and in this debate we need to look at the actual practice to really understand the norm. In the case of online piracy, the two battling factions are "anti-piracy norm entrepreneurs," who equivocate file-sharing with theft, and the "file-sharing norm entrepreneurs," who believe peer-to-peer networks need to thrive.

In the context of file-sharing it is particularly fascinating because traditional norm literature says that if you want to change a social organization, such as people downloading music, you change the law and people then respond. In this case we are finding that approach does not work and that social norms are percolating up from the bottom and constraining what law can do. The traditional way of looking at political organizations is from the top-down. We create a set of laws and that causes people to move in certain directions. Social norms approach says that instead we have to look at bottom-up causal forces. The resulting political order in our case, cultural policy, is an influence of both top-down and bottom-up social influences.

*How did file-sharing become a social norm?*

The laws have to track where the culture is at. With piracy, the law is out of step with people's moral intuitions about ownership. People feel that because they buy a CD they own it and should have control over its use, whether that is burning a mix CD for their car or sharing songs with friends. The public is confused because they also have the technological capabilities to download music or copy a movie on their VCR.

People in the music industry intuitively view file sharing as theft, but it is a complicated issue because demonstrating the harm and wrongfulness of the act of downloading is difficult to do. Downloading music is technically simple and the harm is not clear. If a person downloads an extra song, who is it that gets hurt? People generally do not grasp that intellectual property is not the sale of a good, but the licensing of a certain form of use. We live in a world where copyright owners exert more control after the sale, and this goes against powerful norms of what ownership and privacy are.

There are a number of rationales that people give for why they share files, but I think the primary reason is *extraordinary access*. The convenience of downloading gives people access to a world of culture. Digitization, broadband, and peer-to-peer networks have caused a radical shift in the way the world works. Suddenly people have access to millions of files and a wealth of information.

*Can the social norm be changed?*

It is fascinating to see a major industry trying to change the morality of its customers. I have noticed that the Recording Industry Association of America lawsuits are having some success because it has raised piracy as a moral issue. The lawsuits have not stopped people from doing it, but I think the goal of the music industry is to at least tone-down file-sharing, make people see the harm in their actions, and sensitize them to the issue. There are not many examples of norm entrepreneurship on such a large scale, but one is a group like Mothers Against Drunk Driving, which has been quite effective in changing people's social norms toward drunk driving. Piracy is a case where millions of people are doing something illegal, but it is difficult to track them down and make them understand that what they are doing is wrong.

*What is the future of file-sharing?*

File-sharing is not going away. It is only going to get bigger as more homes get broadband and become comfortable with file-sharing. I think iTunes, the Apple website that allows people to download songs for ninety-nine cents each, is a good example of where the music industry will go. The industry had to be dragged to this point, but now major music companies are making their music available digitally and people can legally download a song for a small fee. From a public policy point of view, this is an attractive story because piracy actually drove the music industry to meet people half way.

### **Potential Pull Quotes for Hetcher Interview**

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