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## GOP Smart on Copyright for 24 Hours



By Marty Kaplan

They threw Derek Khanna under the bus.

On Friday afternoon, the Republican Study Committee — the House caucus that promulgates right-wing orthodoxy — posted on its website a startling policy brief about copyright law.

Written by RSC staffer Derek Khanna, a 24-year-old Georgetown Law student, the report laid out “three myths about copyright law and where to start to fix it.” What was surprising was how unorthodox it was. It challenged the current corruption of the Constitution’s protection of copyright. It laid out how today’s copyright law amounts to corporate welfare that “violates nearly every tenet of *laissez faire* capitalism.” It advocated a much-needed re-balancing between incentives for private profit, which have hypertrophied, and the promotion of public goods like innovation and creativity, which have withered.

It was candid, thoughtful and measured. It was a breath of fresh air. And 24 hours later, it had vanished from the RSC site.

In a memo retracting the report, the RSC’s executive director, Paul S. Teller, claimed that the policy brief “was published without adequate review” — as though no one above Derek Khanna in the ideological food chain had signed off on it. Talk about lame. It’s the equivalent of saying that the RSC website is kinda like Craigslist; you never know what goofball stuff might turn up there.

But in the 24 hours before the fatwa, something amazing happened. On social news sites like Reddit and techdirt, a vibrant conversation about copyright had been triggered by Khanna’s paper. People were astonished that the RSC had published something so sensible and refreshing. “I’m a lifelong Dem,” said one poster on Twitter, reflecting a widely shared sentiment, “but completely agree w/ most of what you say.”

What caused the RSC’s reversal? Online chatter attributed it to frantic Saturday lobbying by the Motion Picture Association of America and the Recording Industry Association of America, two heavyweight trade groups whose arguments and financial muscle have proven persuasive to congressional Democrats and Republicans alike.

Because of industry advocacy, copyright protection has been extended again and again. The Federal Copyright Act of 1790 set 14 years (renewable for another 14 years, if the copyright holder was still alive) as the time limit appropriate “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (Article I, Section 8, Clause 8). But today, that limit has been stretched to the life of the author plus 70 years, and for corporate authors it’s 120 years after creation.

These “limits” amount to a government-guaranteed monopoly. They effectively eliminate the public domain. As enforced, they prevent fair use — the creative remixing that culture has always depended on. They “stifle innovation,” Khanna writes, leading to “‘rent-seeking’... that sucks economic productivity and potential from the overall economy.” They are framed not in terms of

*“what is in the public good or what will promote the most productivity and innovation, but rather what the content creators ‘deserve’ or are ‘entitled to’ by virtue of their creation.... Today’s legal regime of copyright law is seen by many as a form of corporate welfare that hurts innovation and hurts the consumer. It is a system that picks winners and losers, and the losers are new industries that could generate new wealth and added value.”*

It is delicious to watch a young conservative apply conservative principles to demolish oligopolistic claptrap, even if those industries finance the campaigns of the members of Congress who pay his salary. It is sad to watch his bosses — who never tire of railing against political correctness - place fealty to corporate elites above the spirit of intellectual inquiry.

Yes, piracy hurts artists, innovators and workers whose livelihoods depend on the protection of intellectual property. No one except blockheads or crooks is insisting that “content wants to be free.” But fighting piracy is not the same thing as depriving the public of a creative commons. Pegging copyright infringement to statutory damages, rather than requiring a litigant to prove actual damages, makes no sense; “in a world where everyone copies stuff at home all the time,” writes Khanna, “the idea that your iPod could make you liable for a billion dollars in damages is excessive.” No wonder they pulled the plug on his brief.

For a 24-hour window, conservatives seemed to be smartening up on IP. “In an age when the RIAA sues grannies and innocent parents of torrenting children to intimidate file-sharers, and tech companies waste billions on patent trolling,” a writer on The American Conservative’s website put it, “perhaps it might be time for the GOP to consider a more authentically *laissez faire* approach.” Uh-oh. By Sunday, the copyright reform group Post-Acta was tweeting that the “Best way to publicize the decadence of © law is to erase @dkhanna11’s report from the internet. Well done!”

Well done is right. I just can’t help imagining how our creative commons might flourish if at least the Democrats in Congress were untainted by that decadence.

*This is my column from The Jewish Journal of Greater Los Angeles. You can read more of my columns here, and email me there if you’d like.*

UPDATE: This post was corrected; it previously stated that Mr. Khanna is a Georgetown Law graduate.

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