

## CHAPTER TWELVE

# The Copyfighters Take Mordor

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### **THERE'S A LIMIT TO HOW MUCH OF THIS WE CAN PULL OFF. TRY TO FIND A RESTAURANT THAT 10**

friends can agree on, or a wedding plan that everyone will sign off on, and you run up against some hard limits of collective action. By the time you hit the scale of a midsize company or a large family, it becomes apparent that an ever-larger slice of your “doing-stuff hours” must be devoted to “figuring out how to do stuff.”

This is the transaction cost: the cost of getting stuff done, the overhead of getting everyone to agree on a restaurant, a course of action, or the truth. The cost of doing stuff that requires large groups of people and lots of labor is high enough that there's lots of stuff we don't even contemplate doing (“This weekend, my buddies and I are planning on whipping up a skyscraper!”).

Transaction costs go by many names, like *overheads*, and *red tape*—but at the end of the day, the correct term for them is *bulls\_\_t*. As in, “There's no way I'm going to try to get the whole office to agree to that—do you know how much bulls\_\_t I'd have to wade through to get that done?”

As a society, we can only do stuff that produces more value than bulls\_\_t. The bigger the project, the more of the cost will be just bulls\_\_t.

But the Internet clobbers overheads.

WIPO is the United Nations' World Intellectual Property Organization. WIPO epitomizes the danger the Internet faces: a room full of diplomats meeting in Geneva in closed session, aggressively lobbied by the representatives of huge copyright and patent industries—and funded primarily by patent applications around the world, which means that these lobbyists represent the people who paid for the building they're meeting in. This is the veritable birthplace of bulls\_\_t.

Practically every rotten Internet regulation and law can be traced back to something that started at WIPO. WIPO has the same relationship to bad Internet rules that Mordor has to evil—a bottomless wellspring of dangerous foolishness backed by the power of one of the most powerful institutions ever created, the United Nations itself.

But in 2006, a multiyear, multimillion-dollar project to create a deadly new WIPO treaty collapsed under the onslaught of a tiny handful of activists who used the Internet to shatter the negotiations and replace them with a treaty that protected the public's rights to access and share human knowledge.

The Broadcast Treaty was an attempt to create a new layer of bulls\_\_t for video: a copyright-like rule governing the use of broadcast material. The idea was to create a new right over broadcast content, separate from copyright, which would belong to a broadcaster.

Say that you recorded a clip of the local city council debating school funding last night and you caught your own councilor lying about her campaign promises—you've still got her brochure stuck to the fridge with a magnet, and right there she promises that she will not approve school funding cuts, period. Feeling betrayed, you decide to make a little YouTube video using the recording, interspersed with you talking about how that promise got you to vote for her.

Copyright law says that you have the right to do this. Taking a short clip for the purposes of political commentary, parody, analysis, teaching, and other protected uses falls under the banner of "fair use" (or "fair dealing" outside the United States).

But if the Broadcast Treaty became law, copyright would be irrelevant, because in addition to the copyright on the work, there'd be a "broadcast right" that the broadcaster would control. The fair use rules for broadcast rights would be different from the copyright rules, and that means that you'd need permission from the broadcaster where you never needed it before.

So the Broadcast Treaty would overrule the exceptions to copyright, but it went much further than that. The broadcast right would also apply to material that *can't* be copyrighted. Only creative works get a copyright; factual material does not. Many countries don't allow for copyrights on government works (if your taxes are paying to produce it, why should you need permission to use it?). All of these works would also suddenly become the property of the corporation that broadcast them.

But most importantly from the Internet's perspective was that the broadcast right would also override cases where creators had chosen to allow their works to be shared. The Internet is full of stuff that was made to be shared, copied, and remixed. A project called Creative Commons provides free licenses for sharing works, and in a remarkably short time (since 2003), more than *160 million works* have been released under these licenses, published by creators who want the public to be able to "rip, mix, and burn" the stuff they made with a minimum of bulls\_\_t. Wikipedia's millions of words are governed by a similar license, the GNU Documentation License, that also allows for free sharing of the free encyclopedia.

But under the Broadcast Treaty, a corporation that broadcast (or "webcast") a Creative Commons licensed video would be able to prohibit you, the audience, from copying, mixing, or sharing the video, *even though the artist who made the video said it was OK*.

WIPO is a huge, slow-moving juggernaut of an organization. Its meetings are attended by representatives of governments, many of them from poor countries that can't afford to send hundreds of experts on every subject to live in Geneva and participate in all the different UN agencies' treaty negotiations. Most of the delegates at WIPO are not experts on copyright, creativity, or economics; if they're from a poor nation, chances are that they're experts on agriculture or health, the kind of thing that a sub-Saharan country needs immediate action on.

So these government delegations rely on "technical experts" from so-called "nongovernmental organizations." Most of the world thinks of NGOs as being groups like the Red Cross or Amnesty International, but at the UN, the term refers to any body that isn't a government. At WIPO, most of the NGOs are motion picture associations, broadcaster associations, pharmaceutical company associations, recording industry associations, publisher associations—the very people who stand to benefit from treaties that give more rights to companies that hold copyrights and patents.

This is the impartial, expert advice that WIPO relies on to make its treaties, so it's no wonder that every WIPO treaty has taken rights away from the public and handed them to companies.

But in 2003, all that changed. That was when UN observer credentials were granted to small coalitions of tech-savvy "public interest" NGOs, like the Consumer Project on Technology (which initiated the antitrust action against Microsoft), the Electronic Frontier Foundation (which spent a decade winning legal battles over privacy and freedom online), and Public Knowledge, a DC-based organization that did a lot of lobbying at the FCC over freeing the airwaves.

The Broadcast Treaty negotiations had been underway for years at that point. A draft treaty had been widely circulated and the big nations—the United States, the European Union, and Japan—were all agitating for a speedy conclusion. Pretty much everyone in the room thought that the treaty was a good idea—and what's more, the committee in charge of the treaty had been threatened with being shut down unless it could get a treaty

out the door soon. Everyone was rooting for the Broadcast Treaty to pass and for things to move on.

The public interest groups had almost no money (sending delegations all the way to Switzerland was extraordinarily expensive for these little nonprofits) and were untrained in the diplomatic style of negotiation. The first few hours of the meeting—seen on a big screen in a side room, as the public interest groups weren't given seats in the main room—were nearly impenetrably dull. Delegate after delegate rose to his feet and said things like:

Mr. Chairman, as I rise to take the floor for the first time in this session of the Standing Committee on Copyright and Related Rights, let me say how glad I am to have your hand on the tiller, steering us toward a speedy conclusion of this matter. My country's ministers have met recently on this matter and we wish to say that we are generally in accord with the current circulating draft, particularly in reference to proposals O, R, and W. However, we are concerned that the inclusion of webcasting at this time may stand in the way of the speedy conclusion we are all hoping for and would like to hear from our learned friends about the possibility of moving the webcasting provisions to a separate appendix or addendum that would be optional and normative, but not binding...

For hours.

The longer the activists sat there, the grimmer it looked. There wasn't even Internet access at the meetings—it seems like any meeting about reforming the Internet that doesn't provide Internet access is really about destroying the Internet. Then they had an idea. Wendy Seltzer from the Electronic Frontier Foundation created a wireless network with her laptop and fired up a piece of shareware called SubEthaEdit, a program that lets multiple people edit the same document over a network.

Minutes later, all the activists in the room were logged into Wendy's computer, writing down everything that was said. One transcriber would type, another would correct typos, a third would add editorial notes about what it all really meant. Classic high-tech debulldification: rather than passing around notes and marking them up and consolidating them, everyone just worked together, all at once.

At the dinner break, a few activists snuck up to the mezzanine where the public terminals were, and unplugged one from its Ethernet cable and plugged it into a laptop and uploaded the day's notes to the Internet. The activists blogged it—billing it as the first look inside a UN copyright treaty negotiation.

By the next morning, the meeting notes had been Slashdotted—posted to the enormously popular geek news site, Slashdot.com—and had gone from there to thousands of other postings. Millions of people read about the obscure machinations of a closed-door group in Geneva. The national delegations began to get phone calls from their capitals, either berating them for selling out their national interest, or congratulating them for taking a brave stand that was enormously unpopular at the meeting itself. One delegate recounted, "My capital called to say that a very important tech industry leader had called the ministry to tell them that he'd heard that our country was being very good here at the UN, having read about it on something called 'slash-dot'."

Thereafter, the activists used twice-daily blog posts to recount the goings-on at WIPO. These posts included editorial commentary and “human-readable” translations of the stilted, bureaucratic language that prevails at WIPO. They made fun of the technologically improbable predictions made by the delegates, and lionized the delegates who stood up for freedom.

The activists couldn’t afford to take the national delegations out for fancy dinners or woo them at cocktail parties. Instead, they wrote daily position papers rebutting the other side’s points, and then used bloggers around the world to translate them into several languages overnight so that they could be distributed the next morning before the meetings resumed. The UN administration suspended free photocopying for NGOs, a service they’d performed for the likes of the Motion Picture Association and the Pharmaceutical Research and Manufacturers of America for decades. Now that activists were using the press to hold the UN to a standard of public accountability, it was off-limits.

Before long, a mysterious person or persons began to actually *steal* the activists’ printed handouts off the literature table, vanishing great piles of papers that later turned up in the toilets and behind potted plants. The Secretariat ignored requests to ask one of the many guards in the lobby to keep an eye on the table—or to review the CCTV footage to see who was systematically sabotaging the dissemination of “expert opinion” at WIPO.

The rights-holder groups and the WIPO executive went ballistic. One representative of a rights-holder group threatened to sue for copyright violation because the activists had written down his testimony and published it without his permission. The Secretariat accused the activists of “violating the UN’s hospitality” and threatened a ban on the dissemination of all printed material by NGOs.

But the blog posts kept going out. The activists also used ad hoc wireless networks to vet each other’s prepared statements before they were delivered, becoming superhuman with the help of a network, each comrade helping the rest to hone their talking points so that the groups were able to act as a coordinated whole.

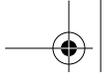
Activist groups all over the world heard about the goings-on at WIPO through the blog posts, and more and more turned up to each meeting. One day, the rights-holder representative who’d threatened a lawsuit over copyright violations approached me with a printed sheet.

“What’s this?” I asked.

“It’s what I’m going to say this afternoon. I just wanted to be sure that your record got my remarks down accurately.”

Not long after, the delegates of a national government approached me. “You know, we’ve just been transferred into this branch of the diplomatic service—a departmental reshuffle. We tried to read the official accounts but, well, you know...”

Indeed I did. The official reports from WIPO come out months after the meeting, are written in impenetrable bureaucratese, and are only published once every person “quoted” in



them has had the chance to edit their remarks to remove anything they'd rather not have on record. Reading official WIPO transcripts makes memorizing the phone book seem exciting and glamorous by comparison.

“So we tried to read the official transcripts, but we just ended up reading the reports the activists published. They're much clearer, you know—easier to follow.”

From pariah to official biographer in just a few short years! The activists had fought WIPO's attempts to clobber the Net by using the Net—harnessing the low cost of collaboration and collective action to apply intelligent and unstoppable force. The other side *could* have used the Net to fight back, but they didn't; WIPO and the dinosaurs who back them have all the wrong intuitions about how the Net worked, and their efforts at grassroots Net-organizing are about as convincing as your old, white boss's attempts to rap at the company's boozy Christmas karaoke party.

Just how unstoppable was the force of Net-coordinated activists? The Broadcast Treaty was shelved by WIPO. In its place, WIPO elected to pursue a new treaty, one written by a broad group of activists, technologists, librarians, and geeks of all stripes, called the Access to Knowledge Treaty. Unlike all the other WIPO treaties, which spell out what the public *isn't* allowed to do with copyrighted works, A2K sets out the minimum set of information rights that every country has to give to its citizens, rights like the right to lend, to share, to make copies in special formats for disabled people, and to archive copies in libraries and national archives.

