



# If Google's only taking a COPY of your personality, why worry?

## Privacy, property and permissions

By Andrew Orlowski

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**Mailbag** My tale about how digital privacy needs to be protected by strong property rights caused heated discussion here and over the web - I'll summarise the best points here. The idea that you ultimately own your data is pretty fundamental to creating effective privacy legislation. If you're the sovereign "owner" of your data, then everyone from the spooks to Facebook must come to you and seek your permission - and justify using it. But if you don't "own" anything, then you have nothing to assert. If you don't "own" your data, then you *are* the product.

But the idea of attaching ownership to digital things is bitterly fought. Google fights every attempt with the response that it "**breaks the internet**". This fight against ownership and permissions is actually the bedrock of Utopian belief – that nobody can own, or deny, or exclude, or assert rights on digital things. And people who don't take this nuttily dogmatic position are still fatalistic: they shrug, and conclude we shouldn't try. This had led to the quite surreal spectacle of libertarians fighting furiously against property rights, and the rule of law.

But this is beginning to change.

As Mark Bide told us: "Privacy and copyright are two things nobody cares about unless it's their own privacy, and their own copyright."

And the principle for which those crazy copyright industries have been fighting – not always wisely or persuasively – is more important than you might think. A world where we can't assert ownership is one without any markets, and without any privacy – which is not a world many people want to live in.

I'll start with the strangest comment left on the story. Now, even for a wearied hack who has written about this for almost 20 years, you get one that takes the breath away. So make sure you're sitting down for **this one**, from 'steeplejack':

**Just understand that Internet means Stadium**

**The internet is a public place in full view of everyone.**

**A person on stage in a stadium wouldn't have 'privacy' and a document in view there wouldn't be private or restricted.**

**Google are the only ones who seem to understand this.**

**Things like newspaper Paywalls are a sort of corruption which tries to fight against the fundamental nature of the thing.**

**All data can now be made public – by someone else – with or without our consent. And THAT's what the RIAA doesn't like.**

Wow.

**Property rights would kill this beautiful creature: let her run free**

AJ Stiles wrote:

**The idea that we own every piece of data about ourselves, if taken to its logical conclusion, means that criminals effectively have a right not to be caught, if they refuse to sanction the use of data they own by the police to catch them.**

Euro-sceptics might argue that thanks the European Convention on Human Rights, we're almost there already. But really this is a classic *reductio ad absurdum*: nobody has suggested an individual right of ownership excludes criminal law investigations. It should tightly proscribe what the state can do, however.

OK, so most people don't think privacy must be surrendered as soon as we go online, or that "permission-free" digital objects are some expression of nature. Or that ownership trumps everything else. What about "human rights"?

One long-standing reader and *Reg* friend mailed me:

**Privacy is a RIGHT. A Human Right that was considered so important that it got its very own article (#12) in the 30 that were produced and adopted. This means you do not have to argue why you want it; it is yours by law. If I recall correctly, this principle has been adopted into EU law as directive #8, but you may need to check this.**

**Now, for reasons of fighting crime you may want to give a small, controlled group of people (typically officials) the ability to invade that privacy. Important here is that this is a PRIVILEGE, granted for a specific purpose, and to be used in a very narrow, defined set of circumstances. This is where things are presently coming off the rails: we have officials who are attempting to define this as a right for officialdom, which it positively is not.**

**I find that the moment I explain privacy and law enforcement in terms of rights and privileges, people "get it" much easier. I personally have no problem with law enforcement having such privileges, as long as I can transparently check that they use them as sparsely as intended. Without transparency there should be no**

**privileges, although I find delayed disclosure acceptable as you otherwise can affect ongoing investigations.**

But this doesn't really get us anywhere. We can invent whatever 'ooman rights we like, all day long, but they need an underlying principle. The principles missing are that data is an extension of the individual, who is the sovereign owner. We have to establish this first, otherwise the principles are established on the hoof by judges, and we're even deeper into a mess. Fortunately copyright already recognises this; thanks to the French, international law is based in the idea that the creative work is an expression of the individual, who doesn't need to register it, and who gets a say in how it is used. (The US doesn't recognise this part, it should be noted.)

Graham Dawson is a long-time thoughtful reader who didn't address the issue, but made what I thought was an interesting post. Graham says with copyright we should "enforce the laws that exist rather than creating new ones", that "there's no need for the increasingly repressive and unworkable new copyright laws", and we should "stop making new laws and enforce that which already exists."

All of which I agree with, 100 per cent. I'm dubious about extending copyright into areas where it doesn't exist (such as collections of facts), and very ambivalent (to put it mildly) about copyright term extensions. But Graham is mistaken about something. Whether or not you agree with the technicalities of SOPA and the UK Digital Economy Act, they weren't extensions of copyright, but rather about making enforcement catch up with the technology – making it effective again. Still, the post got 43 thumbs up, so we can all agree on something.

### **Imagine no possessions**

Adam Thierer is former Cato Institute scholar and the current president of The Progress & Freedom Foundation, so you might expect him to be, if nothing else, soundly libertarian on this. Upholding property rights is one of the few things libertarians think government should do. Except when it's on the internets, when this fairly practical and rational *weltanschauung* turns into John Lennon's *Imagine*. ("Imagine there's no possessions...") So, in a post on the TechLibertation blog we find Thierer fighting the idea of property rights on the interwebs.

This blog only seems to be up part of the time (perhaps it's hosted on a laptop) and it has been inaccessible most of this week, making a response a bit of a challenge. But I'll do so over there, not here. Here's [Thierer's post](#).

Finally, if we're in any doubt that privacy advocates and creators are on the same page, there's a terrific response from Chris Castle at the Music Tech Policy blog.

Castle asks the rhetorical question: "If Google Just Takes A Copy of Your Personality, What Are You Complaining About?"

He continues: "Stealing copyright and stealing your personality are in many ways the same kind of theft, and the theft of copyright prepared the 'useful idiots', the Dedicated Followers of Lessig to be in the vanguard of the next Big Theft.

"But there is one difference between the theft of copyright and the theft of personality. There's nobody to sue Google when they steal your personality."

And if you need proof, we'd gone to press before I remembered this gem from a few years ago. I have a writer friend with a library of books written by mad people – and I will confess that for years, I've collected nutty things people say on the internet (where they too seem to have lost the plot) just to see if there's a pattern – and what this might be.

The original is sadly no longer available, but it was **an article** I'd found in a Michigan student newspaper.

"The idea that information can be owned is quite terrifying," wrote the author. "How can one possibly lay claim to information?"

Then, he begins to let his imagination run free.

"Today, the government defends companies that claim to own music. Tomorrow, it may defend people who claim to have invented new feelings and emotions... Such abstract claims of ownership may seem ridiculous, but the government has already stretched copyright laws past any definable form by criminalising file-sharing over the internet."

There are saner ways of dealing with this. ®