The economist Albert Hirschmann. She proposes that the discussion of motherhood should focus less on those who have exited and more on those who raise their voices in an effort to transform ideas and institutions. Here are such voices; if you listen closely, you can hear them above the din.

ANN CRITTENDEN is the author of The Price of Motherhood.

**BOOKS**

**Freedom's New Fight**

**FREE CULTURE: HOW BIG MEDIA USES TECHNOLOGY AND THE LAW TO LOCK DOWN CULTURE AND CONTROL CREATIVITY** BY LAWRENCE LESSIG

THE PENGUIN PRESS • 345 PAGES • $34.95

**BY JEDEDIAH PURDY**

In the mid-1990s, Alex Alben pioneered a new Hollywood genre: a DVD retrospective on an actor's career, structured around contemporary interviews with the actor but including clips from each film in his career. Alben's first subject was Clint Eastwood, who had made more than 50 films as an actor or director. In the end, the DVD was a success, but there was a hitch. In assembling the clips, Alben needed to get permission from every actor and stunt double, the copyright holder of every snippet of soundtrack, and the owners of the screenplays, and negotiate fees with each one. Getting permission took a year's work by a team of four professionals.

Alben's experience expresses the paradox at the heart of Lawrence Lessig's splendid and troubling new book, *Free Culture*. New technology makes possible all kinds of unprecedented projects, from new archives to new types of political commentary. But law gets in the way: Under current intellectual-property law, almost everything in the culture has an owner. If you want to use copyrighted work, you need to find the owners and get their permission. If you can't afford to hire a team of four people for a year, you'll likely have to abandon your project.

The cost of getting permission ruins the promise of what Lessig calls "free culture"—culture that anyone can have access to, whether to archive it, share it, criticize it, or (try to) transform it. The opposite, "permission culture," is culture that a handful of companies own, which they control to discourage criticism, innovation that might threaten their markets, or independent projects that just don't interest them. Free culture promotes cultural and political freedom; permission culture blunts both.

Until the last 15 or 20 years, our tradition has been a free-culture one: Creators own their work, for a limited time and for limited purposes, but others are free to borrow from it for their own creations, and everything ends up after a limited period in the public domain. Lessig argues that now permission culture is winning, and that creativity and, ultimately, democracy may lose as a result.

Digital technology makes it cheap and easy to copy sound and images, mix them together in new ways, and then fix the remixed version on a computer or CD. The Internet makes access to songs, speeches, films, and just about everything else much simpler than it ever has been. The result may be as pedestrian (but sweet) as a collection of your favorite love songs from high school kiddie party tapes or as pointed as a collage of
video and sound clips tracking key moments from September 11 through the first year of the U.S. occupation of Iraq. Or archivists might use cheap copying and storage technology to "rebuild the Library of Alexandria"—to create for the first time in history a complete, publicly accessible database of every book, poem, pamphlet, magazine, television program, or film ever released.

The traditional justification of copyright protection, enshrined in the Constitution, is to ensure that creators have incentive to write (and record, and film) by giving them sole ownership of their work for a limited number of years. Lessig is all for this traditional function: Authors, composers, and producers deserve to have their creations protected from piracy—in the extreme instance, from being copied in full and resold by someone who had no part in creating them. Lessig argues for two exceptions, both with strong roots in copyright tradition. First, certain "borrowings" from the works of others, a stanza from a poem or a clip from a film, when put in the context of your own essay or collage, are not piracy but rather part of a new creative work, which should be protected itself, not suppressed in the name of the first creator's rights. A legal doctrine called "fair use" traditionally protects such borrowing, but enforcing it involves lawyers and legal costs, so it brings little comfort to most innovators.

As Lessig points out, when other new technologies have changed the practical meaning of copyright, the law has struck a new balance to ensure that permission doesn't become too expensive or intrusive. Although radio stations pay royalties to composers and other copyright owners, they don't have to pay recording artists when broadcasting their performances, so radio is cheaper and more plentiful than it would be if the law required such payments. You can record television programs and movies on your vcr, a practice that media companies tried to stop as a violation of their copyrights until the Supreme Court ruled that it was legitimate.

Courts and Congress, however, have followed a stringent interpretation of copyright protection in responding to the new digital technologies. For instance, the music companies that shut down Napster, the file-sharing service, have succeeded in preventing its use for perfectly legal exchanges of free music, unless its owners guarantee that it can never be used for a copyright violation—a nearly impossible standard, which if applied consistently would require banning vcrs, tape recorders, and Xerox machines.

Lessig's second exception to copyright protection is also secured in legal and cultural tradition. According to Lessig, just as Shakespeare, Mark Twain, Beethoven, and Stephen Foster have become the common property of the whole culture, so everything that copyright protects today should go into the public domain after a fixed period. In 1790, American copyrights lasted 14 years, and the author could extend them another 14 years at the end of the first term, for a total of 28 years. By the early 1900s, the period of protection had doubled, to 28 years with an optional 28-year extension.

Media lobbying has changed that system profoundly. In the last three decades, Congress has vastly extended the term of protection and done away with the requirement that the copyright holder renew the copyright at a point along the way. (Because many copyrightised items have no economic value after a few years, the renewal requirement hastes their path to the public domain.) These recent laws have been retroactive—they apply to works produced years earlier. Now, a creation owned by a corporation is protected for 95 years, so something written in 1924 is not scheduled to enter the public domain until 2019. And if recent history is any indication, Congress will extend the copyright term again before 2019 rolls around.

The media companies' aim is to protect the small number of copyrighted works—Disney cartoons and characters, Gone with the Wind—that still produce big money. Automatic copyright extensions, however, sweep in everything cre-

In other times, reform has meant unionism, regulation, and antitrust law. In an age of information technology, control of the culture is a critical battleground.

JEDIDIAH PURDY is a Prospect senior correspondent and a fellow at Harvard Law School's Berkman Center for Internet and Society.