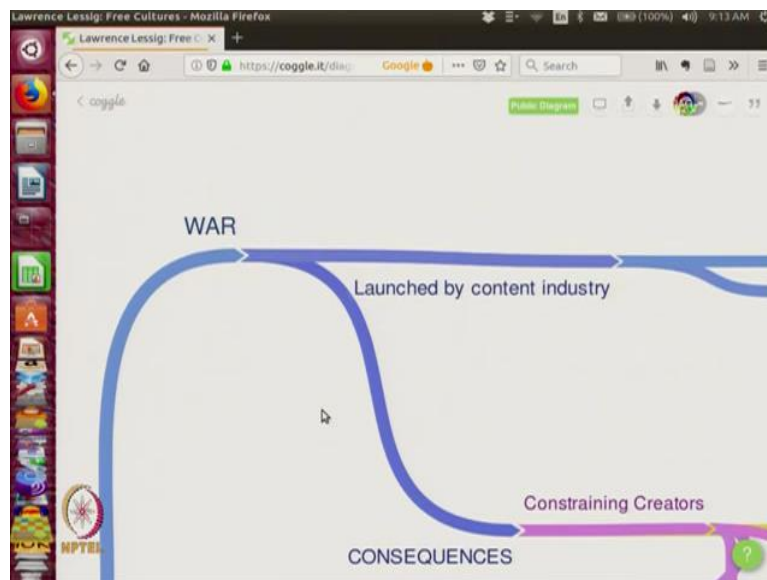


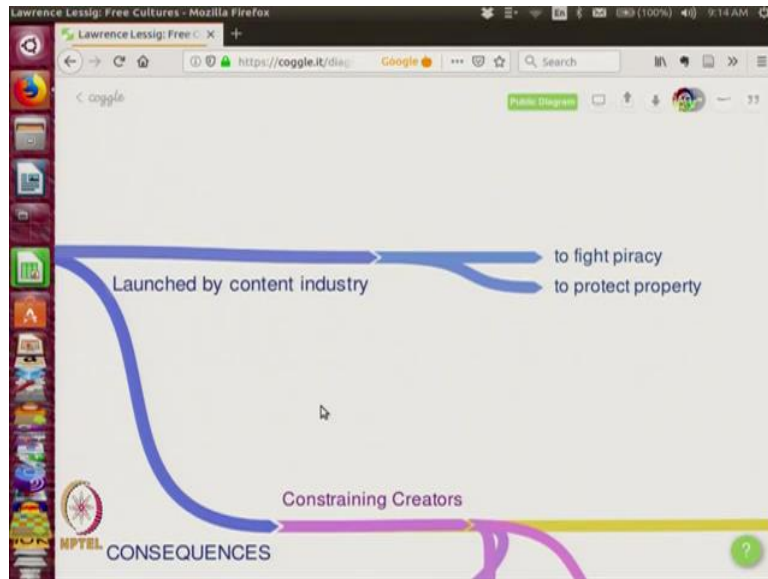
**Text, Textuality and Digital Media**  
**Professor Arjun Ghosh**  
**Department of Humanities and Social Sciences**  
**Indian Institute of Technology Delhi**  
**Lecture No 26**  
**Lawrence Lessig: Free Cultures**

Through Lawrence Lessig today, we will take a closer look at the governance of copyright and its implications on creativity and innovation. As we have seen that as technology changes, technologies or communication and writing changes, it also brings about corresponding changes in the way creativity operates. In the way genres developed, in the way writers' imagination work and reference the world. And copyright being a specific legal form of mechanical reproduction has its implications on creativity.

Now, as I have been trying to argue that copyright is a legal expression of the mechanical reproduction of art, however, with the coming of the digital reproduction, various publication houses big publication interest seek to keep copyright in place for the sake of maintaining intellectual property, the sanctity of intellectual property. And what we are going to do over a few lectures is to actually examine these specific claims on the basis of which the edifice of copyright is made to rest.

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So let us begin, so what Lawrence Lessig now, interestingly Lawrence Lessig's book which we are referencing here *Free Cultures* is freely available it is published on the Creative Commons License and you can access the book online and read it whenever you want. And that is one great part one of the difficulties of a course like this is that the reading material has to be organised by the student and in this particular case with Lawrence Lessig's reading it is freely available.

So he says that there is, what he argues is that there is a WAR that is the kind of the emotional pitch that he places. And what is this war? This is the war which has been launched by the content industry. Content as we can see, the flipside of the technology that if there is a particular technology for that particular platform, for that particular machine to sell, you need content.

So, if there is a video game player there has to be enough video games for people to keep buying it or if people are going to buy high-definition television sets there needs to be enough contents for people to be able to incentivise to buy it. So therefore, and if then companies can build certain kind of synergy between the two, between hardware and software then they can sort of kind of capture the market, if I can incentivize the buying of hardware through a content.

So in order to access certain content you need a certain hardware. But once you have the hardware you can only access one kind of content, content from one particular provider. That particular synergy can help create monopolies in a particular.

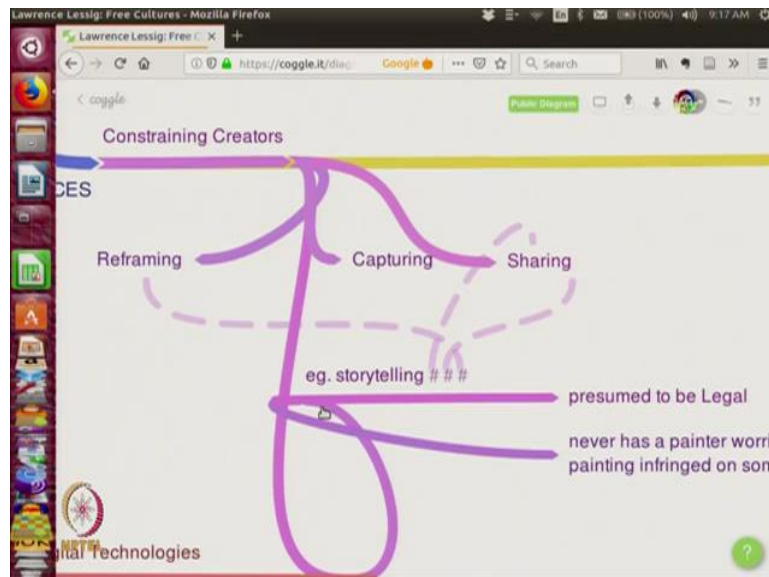
And we have already seen how within the digital media specific platforms create genres, genres do not begin with what we have historically thought of content writers or authors, poets, but it also begins with the software designers.

And I acknowledge that the software designing is part of the creativity, one needs a certain kind of collaboration between the writer and the software designer, between the artist and the software designer to be able to create necessary platforms for innovative content. However, one needs to understand that a lot of this is directed by the needs of profit by the needs of the corporate house which is investing in that particular kind of content.

And therefore, the content industry who were the constituents of the content industry? Primarily big producers of films, film producers, television studios primarily or it could be audio labels, game providers, game designers, and distributors. So they are the ones who have launched this war according to Lessig. And their purported motive in the war is to fight piracy and to protect property.

And when they say property that actually means intellectual property. Property means that specifically referring to private property, that a certain thing is owned by a specific person or a specific corporation.

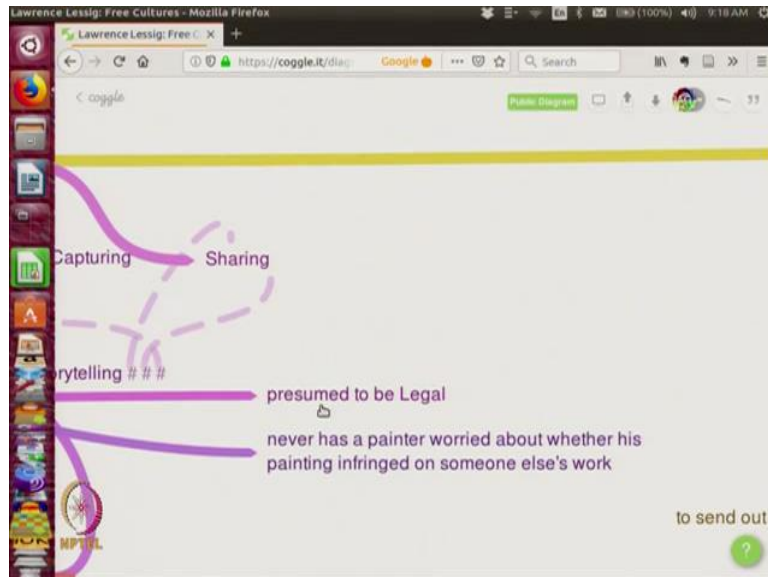
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Now what are the consequences of this war according to Lawrence Lessig? He says that this kind of a war, kind of intellectual property launched by the content industry constrained creators because what it constrains is that it prevents writers from reframing stories, capturing stories and sharing stories and therefore so if you take an idea from somewhere and reframe it

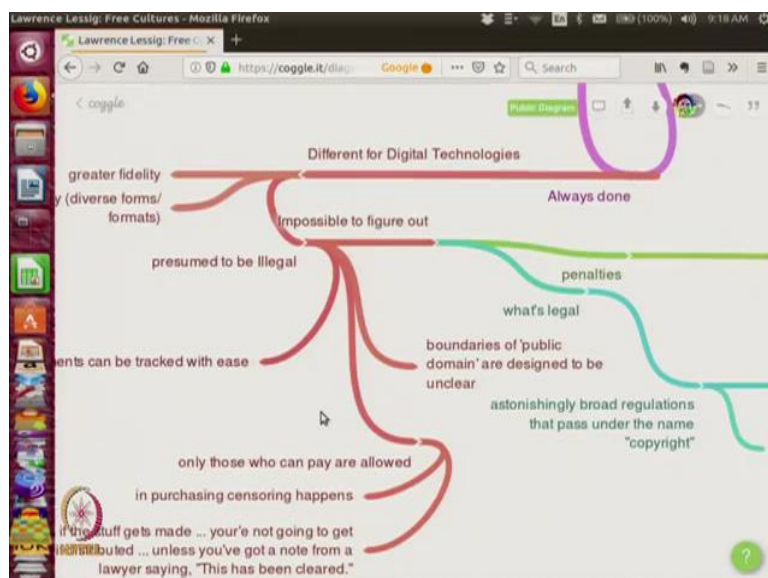
and you take a joke from somebody and add a little layer to it to make it funnier or make it more relevant to a particular occasion that is fine, but if you are doing it in any machine readable format, in any particular act of reproduction whether digital or mechanical that becomes illegal and you cannot do that.

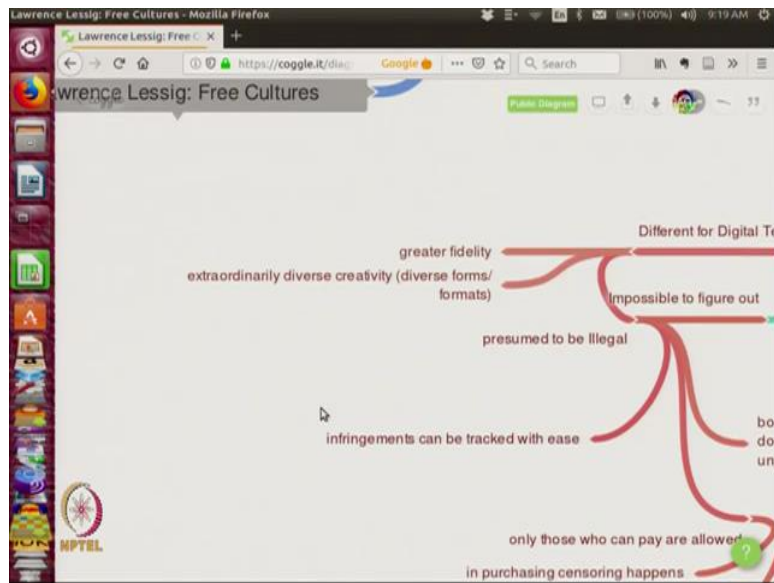
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So he gives an example that story telling is presumed to be legal, but never has a painter worried about whether his work of painting infringe on someone else's work. People get inspired by other people's works and produce a certain kind of painting but you cannot do that in the digital universe these will be referenced and if anybody does it they are likely to face a legal suit depending upon whose work is being violated so to say.

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So what we can see is that, he says that this has always happened this time of sharing, this kind of reframing of work has always been the case of creativity, but however, the way digital technologies are framed the law is framed for digital technologies are very different.

He says that because with the digital technologies operate slightly differently because he talks about greater fidelity, there are 2 important things, one is that with the digital technologies tractability is a lot more. One can have a sense of what is happening across the network and it could be a vast network geographically diverse sort of network.

And one can very easily run certain program to be able to gather the necessary information, look at matches. For example, if you take a search engine you can find that search engines can very easily match even images and more sophisticated programs will be able to actually track video files, audio files and look at similarities across a network, much more difficult to actually track this kind of piracy, this kind of similarity in the physical world.

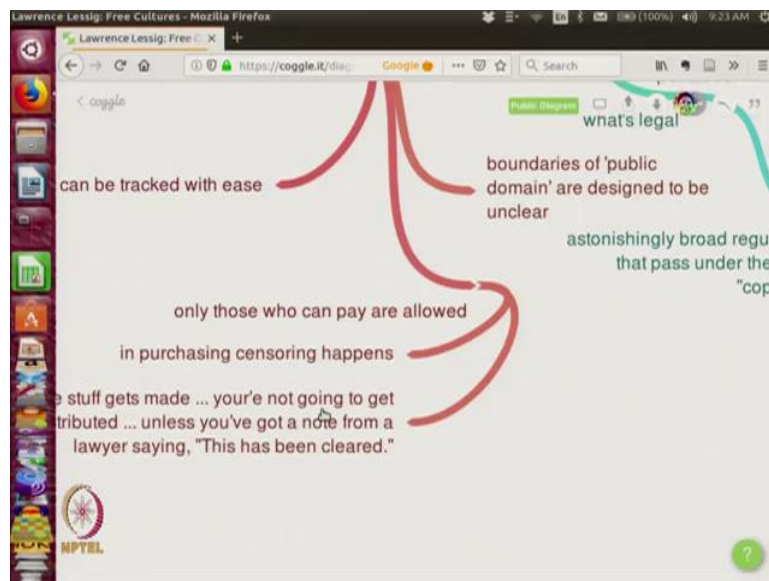
So he says that because there is this greater degree of fidelity it is easier to actually match, the other point also is the fact that in the digital content every copy has a far greater resonance, far greater is almost exactly the same as any other copy, in fact there is no distinction between what one can call an original and a copy because both remain exactly the same.

And so if we can remind ourselves of Walter Benjamin's discussion where he talks of authenticity, the fact that in mechanical reproduction every subsequent addition of a particular work there is a deterioration of content. If you take a photocopy machine and you keep photocopying from one generation to another, one particular copy to another, progressively it gets lesser and lesser clearer. The copy bears lesser and lesser resemblance to

the original in fact very often you can actually say which one is the original and which one is the copy without much difficulty.

But as technology grows, we find that distinction becomes lesser and lesser and copies become much more have greater sort of fidelity to the original. So as technology grows and that comes to another point in digital medium that there remains no longer any distinction between any particular generation of copy. Every copy is exactly equal. So that is one of the argument that is used that in order to prevent sharing through copying.

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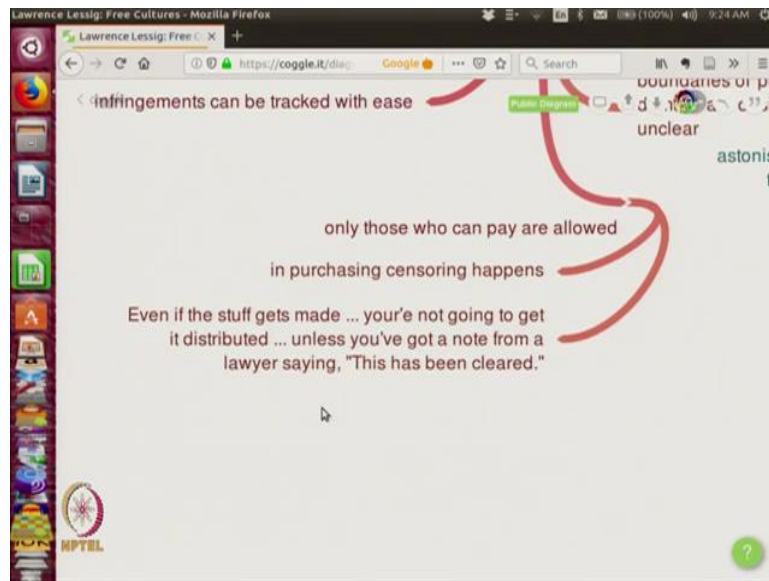


The other point of course is that within the digital universe you cannot actually enjoy anything, you cannot read anything without actually making a copy of it. So there are extraordinarily diverse formats here and normally it is that infringements can be tracked with ease he says and what Lessig really gets at, is that the law remains very unclear and he talks about a certain legal environment that pervades in today's world and is primarily referring to the US legal environment but I would not say that that actually is very much different from within India, it actually depends on good a lawyer a particular party has to be able to push through a particular decision because the legal process does not only depend on the letter of the law, but the interpretation of the law and the interpretation of the law is sought from multifarious case studies.

And a better lawyer would have a larger team and would of course be more diligent to be able to look through case studies which support their client's case. So therefore, only those who are able to pay for better lawyers can actually exercise this particular right.



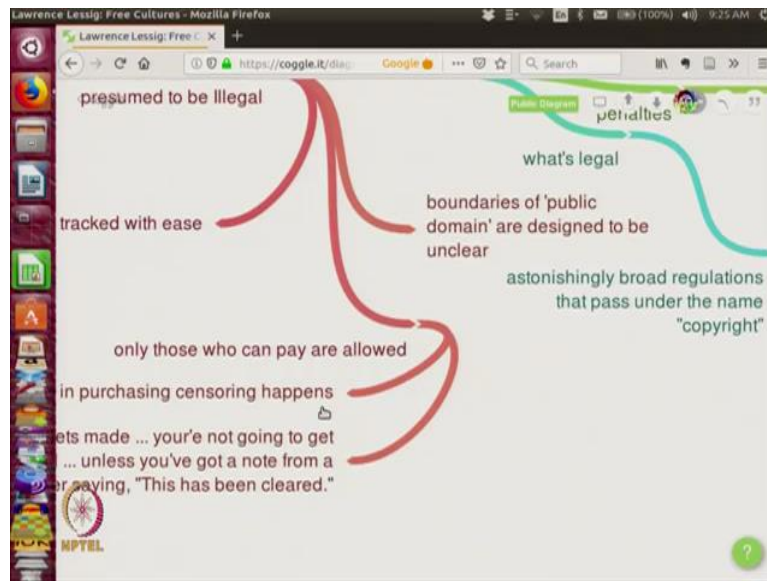
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So now what happens is that if someone wants to use something one has to make sure that there is a certain permission process and that permission process often is not a straightforward permission, it is permission which is paid for. And very interestingly if you are inspired by a particular artist's work, if someone- artist B- is inspired by artist A, it is not enough that artist B talks to artist A and artist A says fine go-ahead, use it, I am very happy that you are creating your work based on my work. It does not happen because artist A no longer owns her work; she has already sold the rights to a publishing house to a content provider.

And so therefore, artist B has to talk to the publisher of artist A and very often these corporate houses will ask for money and which the artist B may not be able to afford or it becomes prohibitive and therefore, it becomes very difficult.

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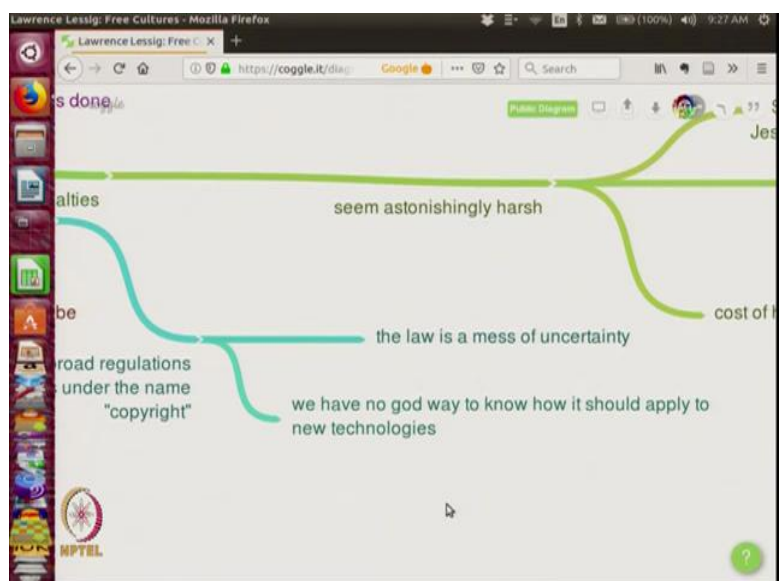
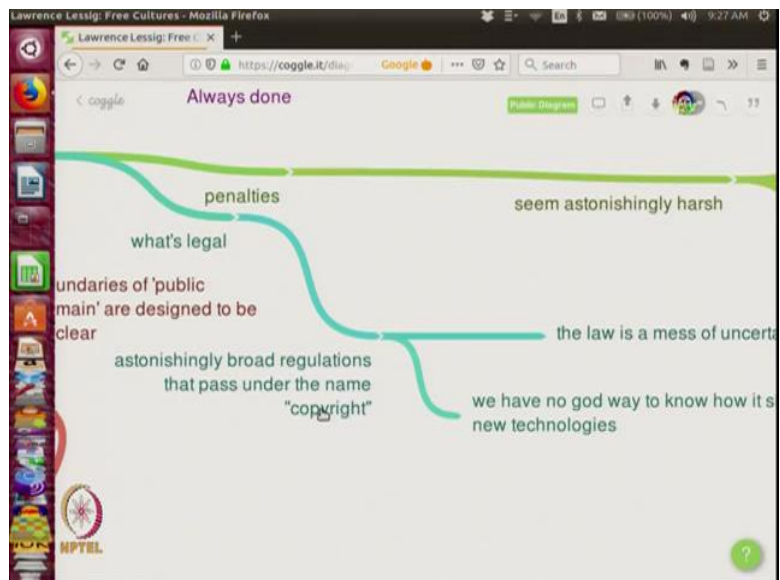
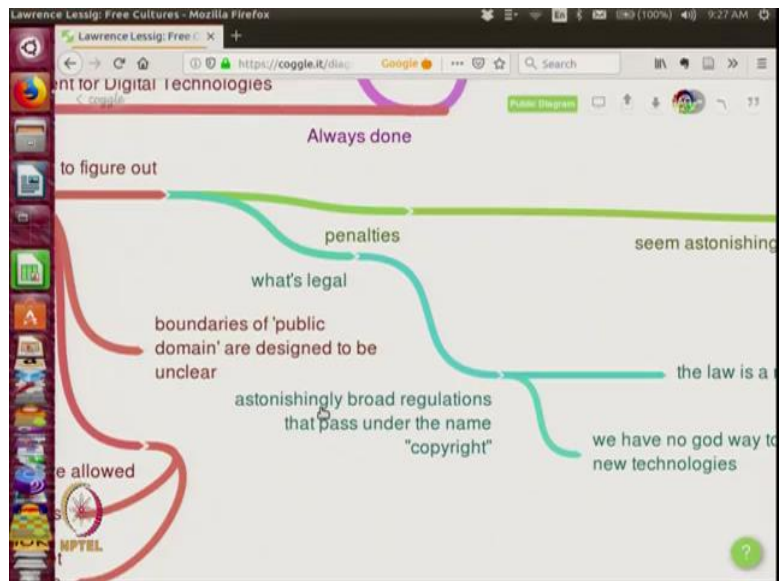


However, if a (corporate) there have been many cases, many instances and we know that in our country as well that- for example, songs are simply lifted from folk tunes and used in movies because the songs are probably owned by the community and the community is not empowered enough does not have the legal wherewithal to be able to contest this kind of action by any particular recording label or film studio. Or very simply, a particular artist may not have the kind of monetary backing to be able to take on a might of a large publishing house.

Or very simply if someone raises a voice a certain amount of payment can be made but that is only if somebody raises a voice. As a matter of fact, it does not happen. So what Lessig is really talking about is a very lopsided legal structure which is heavily weighted towards those who are able to get better lawyers.



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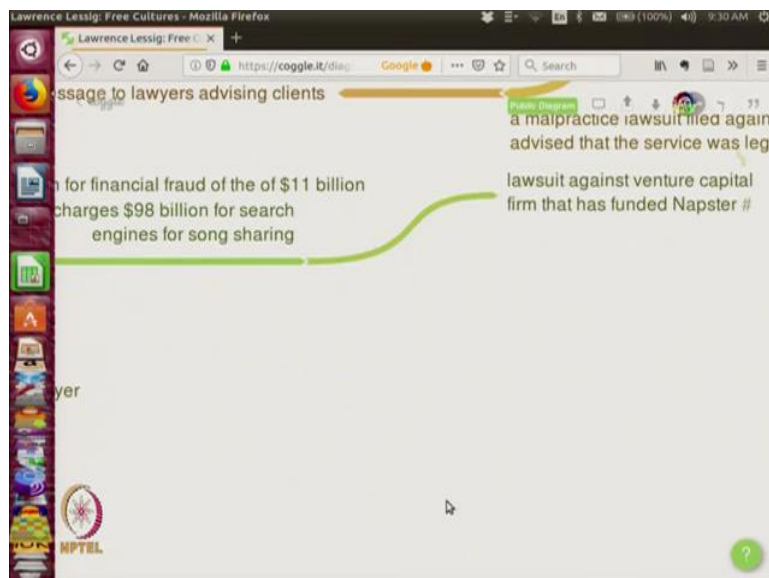
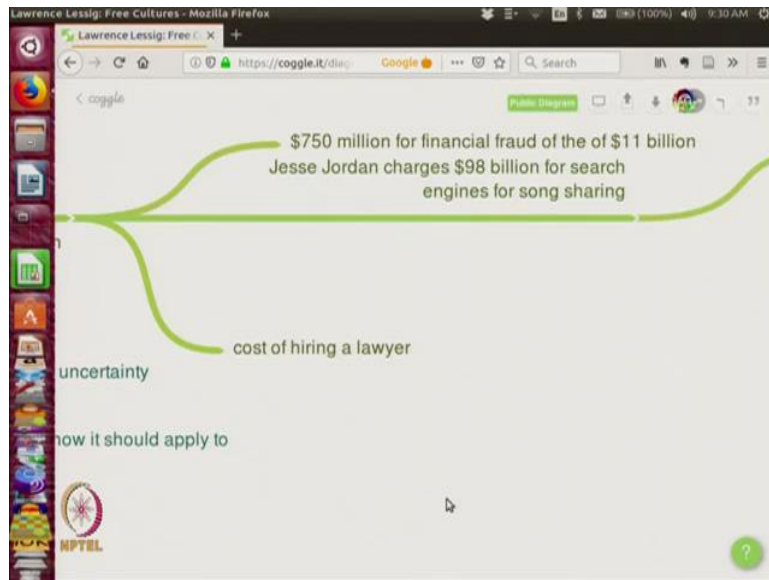
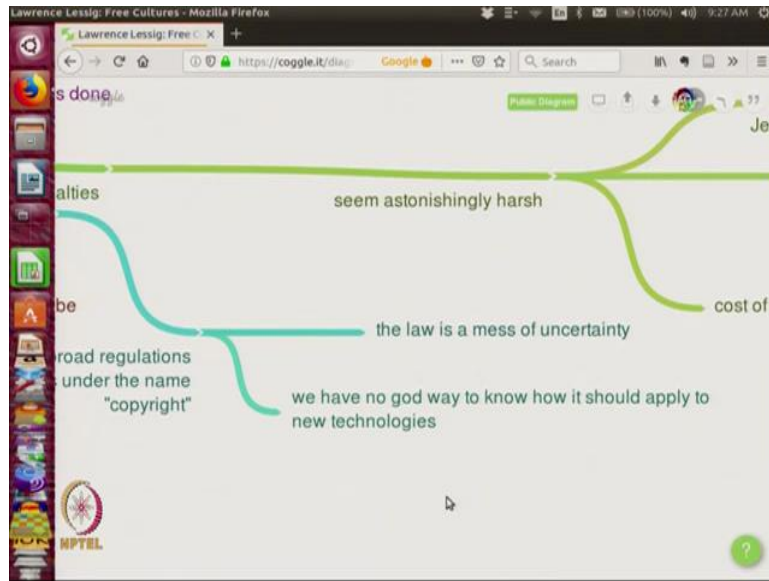


And these boundaries remain very unclear, as to what is legal. And one does not know and he says that there are astonishingly broad regulations that pass under the name of copyright. There is a great uncertainty in law so one really does not know and another important aspect is that there are constantly newer technologies which are coming about and how the law should actually apply to specific new technologies one really does not know.

And he discusses a couple of cases, where the law is very contradictory. For example, he looks at the development of photography and when personal photography starts developing, what happens initially in the days of photography, people would take family portraits and other special occasions which are obviously commissioned works but later on when the camera becomes extremely mobile and portable, people take it around and take pictures of various public places in a touristy sort of way. The question emerges- does the person have a right to- does the owner of the camera have a right to shoot any particular image anywhere? Or does permission have to be taken and the courts rule that it is perfectly fine.

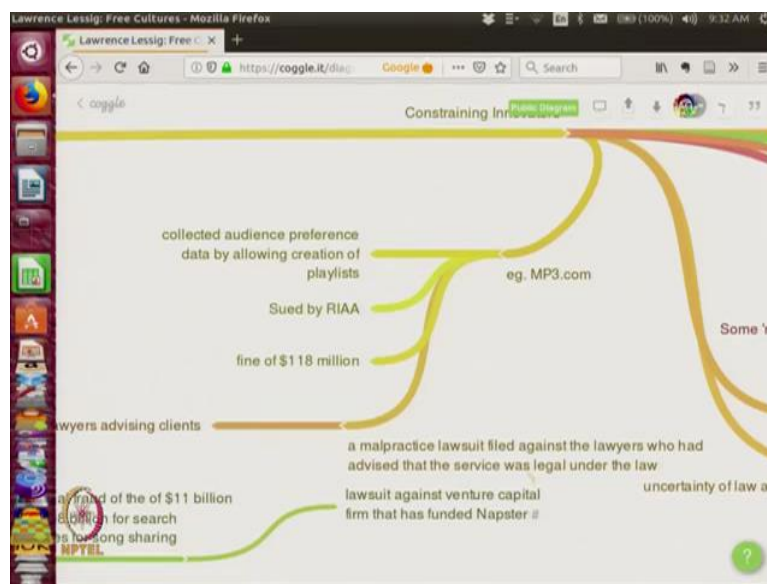
But which is however not carried on to the case as he will discuss. In the case of Internet radio, the similar law does not pass on. It is looked upon as a violation to take on specific content and circulate them on Internet radio is looked upon as a violation of intellectual property. Please go through this book when you can, he looks these kind of contradictory legal case studies, where decisions have been contradictory vis-à-vis different kinds of technology or different kinds of situations.

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And what he also suggests is that and he looks at these specific cases is that in cases of where there is violation where it is found, the punishment, the penalties that supposed violators have to pay seem to be astonishingly harsh. So Lessig discusses one specific case, he actually discusses many cases, but we are going to look at a very specific case of particular case where Jessy Jordan was charged with 98 billion dollars for creating of search engine for song sharing. So what had happened is that and that gave rise to this file sharing mechanism of Napster.

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So what happened there in that specific case so the situation was that there was a particular university where students were sharing MP3 files among themselves and they would be doing it physically but what one enterprising student did was to create a certain search engine which allowed people to figure out who has which particular songs on their machines across the university network.

And that made file exchange a whole lot easier, something that was happening much more efficient and something what was happening across the university anyway physically. For those of you who are, who grew up in the 1980's would remember that people would actually take each other's audiocassettes and record specific songs and make compilations. In fact there would be particular shops who would actually create these specially recorded cassettes on order.

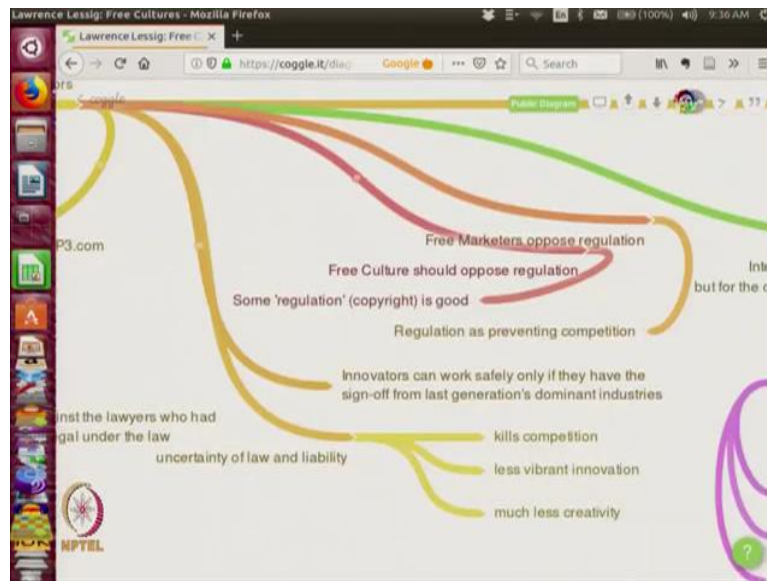
And that worked out much cheaper because you got exactly the songs that you wanted, so something more efficient than that in the form of MP3 was created. What you need to understand is that the creator of the search engine never actually put any song on their own computer, it was just a search engine which let people see who had which file across the network. And here the recording artist's association hauled up and issued a fine on the creator of the search engine for copyright violation.

Whereas actually if you think of it, there was no specific copyright because this person had not stolen any file at all, but what usually happens is that this is a strategy that is undertaken by recording labels or large content providers to actually create a very large exemplary amount of penalty to charge a very large exemplary amount of penalty so as to create a kind of an example before anybody else who might violate. Because though these kind of violations are trackable, these violations are ample therefore it is very difficult to actually take action on every single case of violation. Because the technology is available to everybody. All of us can be pirates on the Internet.

And because the technology is so easily, today the copying technology so much easier. You know if you look at the 17th century, for example, in order to pirate a book one had to actually have a physical setup of a printing press which was capital intensive, which was very expensive and one cannot run away overnight with the printing machine. The printing machine is there as an evidence. The paper, the ink and the printed sheets will all be there. And it is very difficult for this person to escape. Whereas, today's day and age almost, in fact in the case of a photocopy machine also, that also requires a certain amount of money. Every household could have a photocopy machine.

But today everybody has a mobile phone we can easily scan any particular book or whatever that we want and so the ease of technology makes copying much more easy and as copying becomes easier, so therefore laws and the penalties increase in size, increase in severity because in order to simply dissuade people from using the technology that is very accessible at all.

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So in this he argues that this works against creativity and a certain kind of regulation what sought to be put in place to prevent competition. There are people within the free market, the advocates of free-market oppose regulation and it creates a particular situation where innovators are only safe. If you seek permission from the person who has been the last generator of that particular content.

And so very interestingly if there is a Shakespeare play, you can keep borrowing from it but, however, if there is a film which has been produced on a Shakespeare play and you want to use a snip of it for any particular creative act- let us say for this course- one cannot do that without permission.

Now, the person who has created the film, produced the film did not seek permission from Shakespeare or his heirs so that is freely available, but however, if one uses the film to access Shakespeare, then that becomes a violation. So he says therefore it is only safe innovators find it safe that they get a sign of they get a permission from the last generations dominant industries. That is, these large electronic media companies.

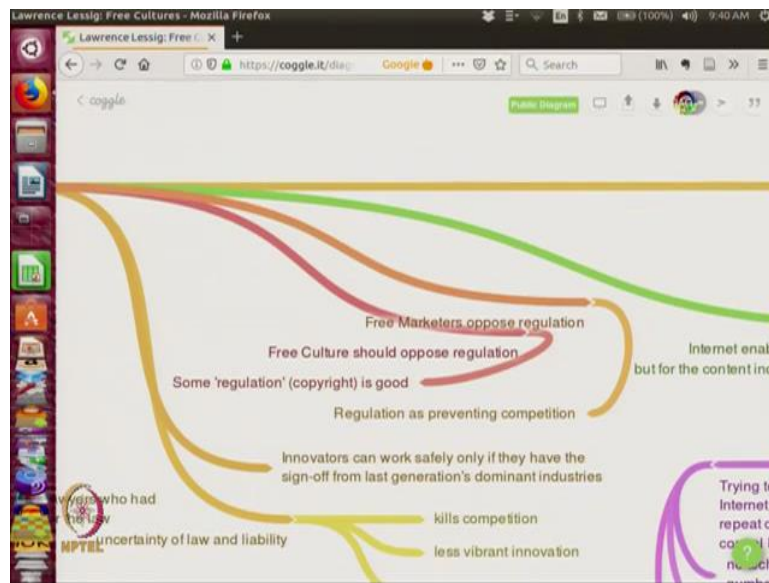
He says that the uncertainty that is there, that uncertainty that he discusses, in the law becomes a liability because it creates kills competition, artists are unsure whether they will get permission not, whether a particular usage is legal or not. Do remember that one of the features of copyright law is that one should be able to use certain snippets of work which is for fair use especially for educational purposes. In fact, some of you may remember the famous case of the Delhi School of Economics photocopy shop, where this particular shop



was charged with the violation by several large publishing houses for creating course material, photocopying course material.

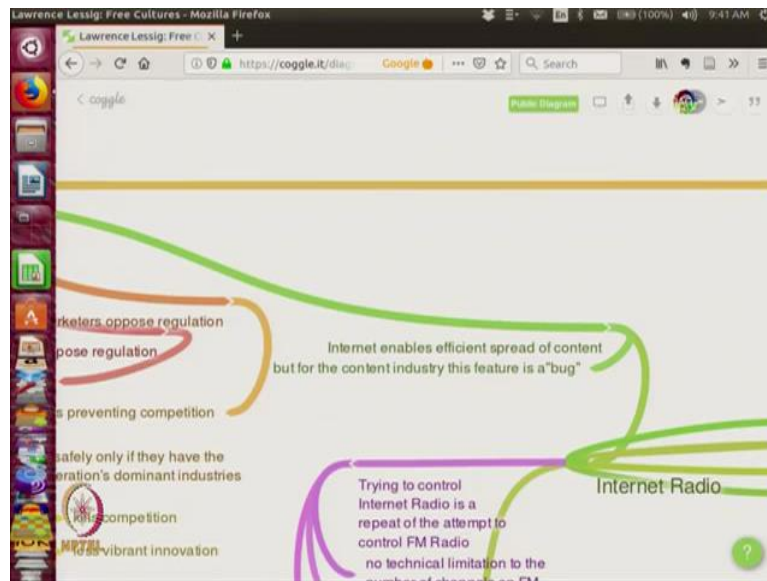
But the courts in India have adjudged that for educational purpose, specific amounts of copies can be made and course packs can be created and that is perfectly legal. Now, if we were to create a course pack for this particular course which is an online course for example, now one does not know how that will be interpreted because there is a change in technology so to be on the safe side one does not share anything because one does not want to get into the kind of legal quagmire. And therefore, it makes it less vibrant and it kills creativity.

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And what is interesting is that Lawrence Lessig also suggests is that if as we have already seen that this kind of atmosphere of an intellectual property is a creation of a capitalists print production system, the argument is that capitalism thrives on competition. That it is competition that will push prices down and make supplies available to the larger population. However, what we are seeing in the case of the way copyright is being administered is that publishers are seeking to create monopolies and actually kill competition and it harms creativity so this is what Lawrence Lessig argues.

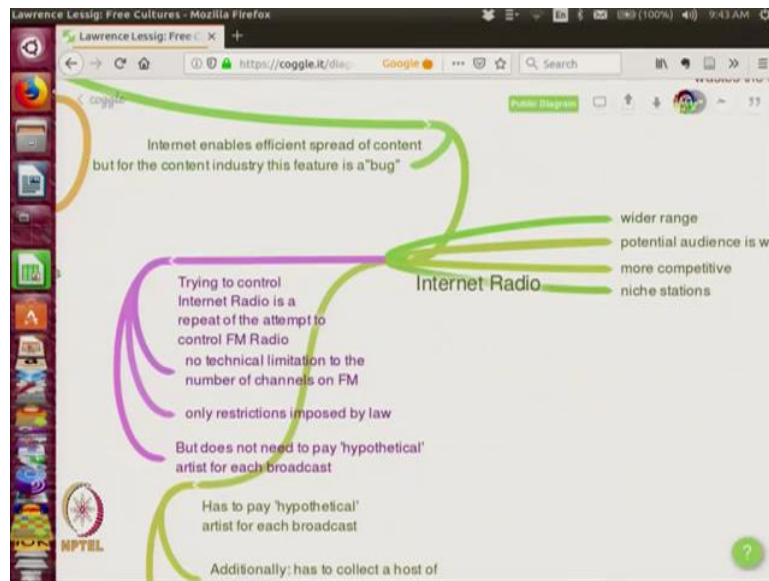
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These kind of case studies which he undertakes have always been there even before the Internet with electronic media. However, with the coming of the Internet, the range of copying and the efficiency of copying increases exponentially. You would remember that one of the ways in which movies would be pirated would be someone sitting in the first show or the first day of a particular release with a camera and actually recording off the screen and that was the way the piracy would happen but that kind of piracy would only happen, would require a geographic proximity within which the piracy actually spreads.

Because whoever records that particular film then distributes it within a particular geography as well as the film must be released in the geography in the place where the pirated copy is being produced. But in the case of the Internet one can be sitting in any corner of the globe with the proper Internet connection and one can engage in in this act of piracy. Though it is trackable, with the amount of violations it becomes more and more difficult to do that. When the incidences are very large, it requires a lot of inputs, a lot of surveillance inputs to be able to actually figure out who is violating. The exact cases of violations have to be figured out.

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Now he discusses a few other examples. He discusses the example of Internet radio which I had referred to earlier in this lecture. Now internet radio is a very important innovation, there are these Internet-based radio channels where one can listen to various kinds of music. Now, what are the advantages of Internet radio over conventional AM or FM radio?

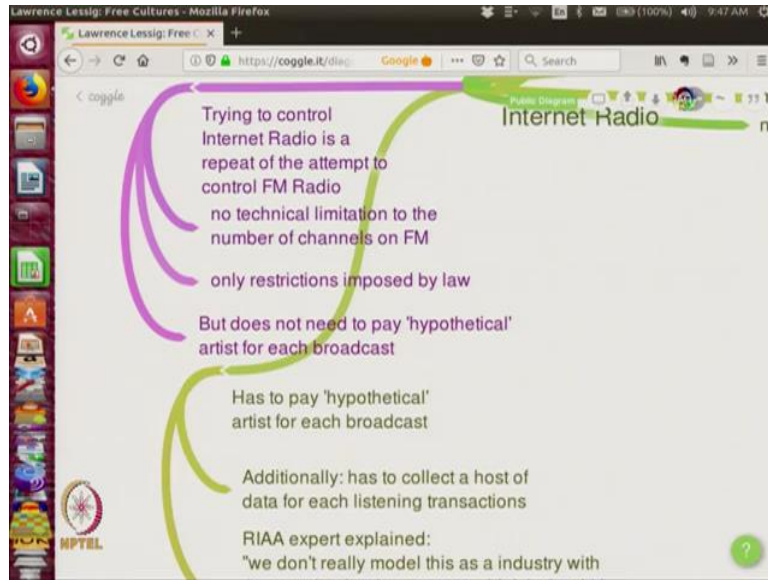
So it has a wider range, I mean there is no restriction of band wave because remember within either AM or FM radio there is a certain bandwidth with which one can play. So specific bandwidths have to be auctioned off. Whereas in the case of Internet radio, there can be any number of radio stations and that bandwidth is not a problem. The potential audience is a whole world and it is more competitive certainly and most importantly, there can be niche stations.

So in the case of FM studio for example if there is a particular genre of music which some people like, but it is not very popular, then it is a dilemma for FM recording station as to whether or not to actually allot any particular time to that particular genre. Whereas FM radio transmits within a certain geography. However, AM radio would transmit also to a certain geography depending upon the particular frequency that is used. Certainly with shortwave there is a fall in quality. So therefore, the good quality high definition audio would have very restricted geography if transmitted across the FM.

But with Internet radio, that ranges the entire world. So within a limited geography, the FM will find only a very few number of people who would be interested in a particular genre of less popularity. But the Internet radio would be able to find a far greater number of people

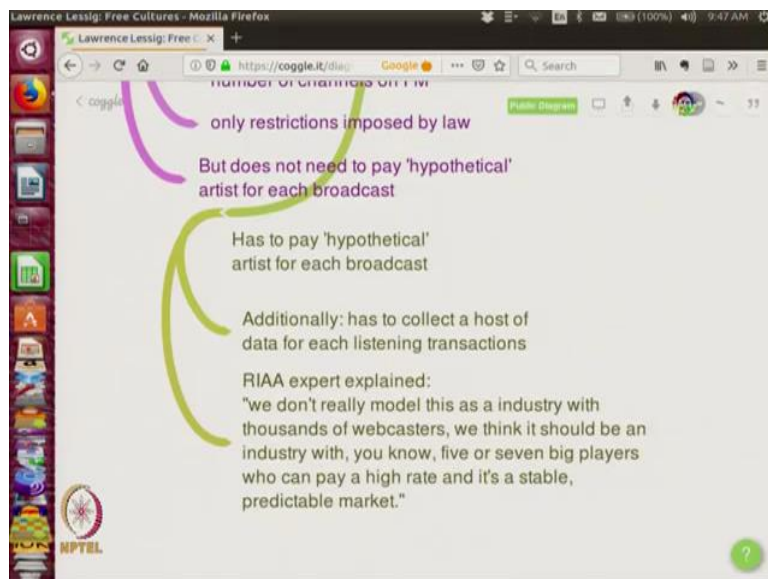
across the globe and therefore, it would become more viable and if it is in the case of paid customers, paid listeners, they would be able to pull it off monetarily.

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Now, what happens is there was an attempt to control Internet radio, similar kind of attempt was made to control the FM when it came about. So therefore, one would think that this is open and shut case, if transmitting songs on FM radio are not looked upon as violation of copyright, then transmitting songs or material on Internet radio should also not be looked upon as violations of copyright.

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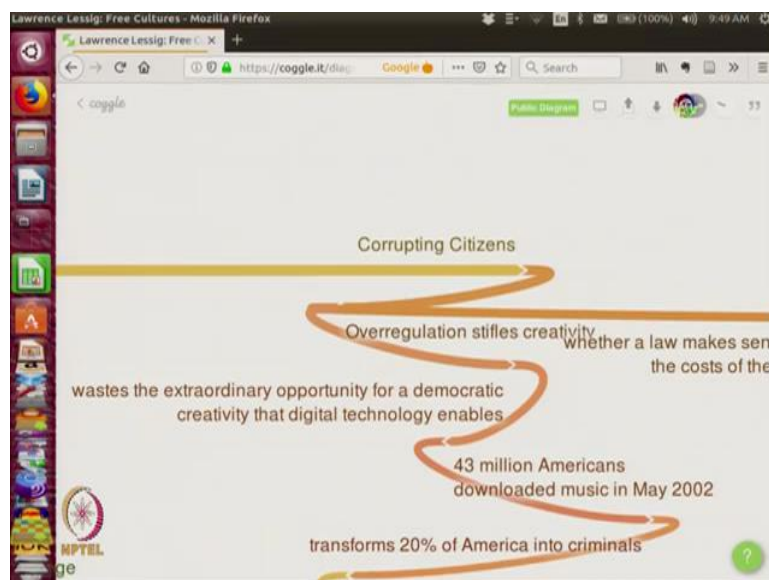


But the RIA raised an objection to this and the legal clause that was put was that any Internet radio transmitter broadcaster has to pay a certain amount to the artist for each broadcast. Now in FM it is not thought of, it as a general license for the song. Whereas here on the Internet it was sought that you had to pay for each single broadcast. Additionally, the host broadcaster had to, was required to collect a host of song, a host of data for each listening transaction, to each person who is listening to it. You have to collect a lot of data on that particular person. Makes it all the more cumbersome. It actually violates privacy clauses.

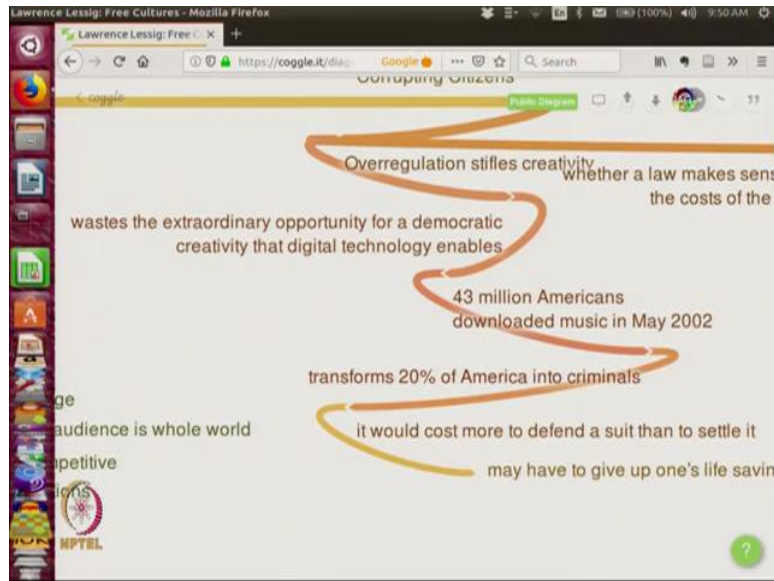
So the judge was curious and the judge asked the RIA as to why are you asking for these kind of regulations to be put into place. Their explanation was we do not really model this industry with thousands of web casters, we think that it should be an industry with 5 or 6, 7 big players who can pay a high rate and it is a stable predictable market, so there goes any argument about competition.

And the fact is that here is a technology which can make a niche market possible, a global market possible, but specific content providers, the content industry is trying to frame the scope of the technology. The technology can be far more democratic, far more liberal but it is being framed in a very restrictive sort of way, where there are only few big players, stable predictable market which means that is trying to do away with any kind of competition.

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So what Lessig argues is that it does not matter as to what the law says, the law can be interpreted by paying very powerful lawyers. And if you have powerful lawyers within your workforce, then you can carry off the kind of decision that can be weighed. This may not be true, this is not to criticise the courts and say that courts do not make proper judgements at all, but Lessig's argument is based on his study of a numerous number of cases specifically on the issue of intellectual property.

And what he argues is that this kind of over regulation, this desire for, this move towards and a kind of overregulation stifles creativity and it wastes opportunity for a kind of democratic creativity, democratisation of creativity that digital technology enables. Today a lot more people can be creative because the creative technologies are really available with a whole lot more number of people. Today You tubers I mean people run their own studios, creative artists can create their own studios, so you really do not need very hi-fi recording equipment.

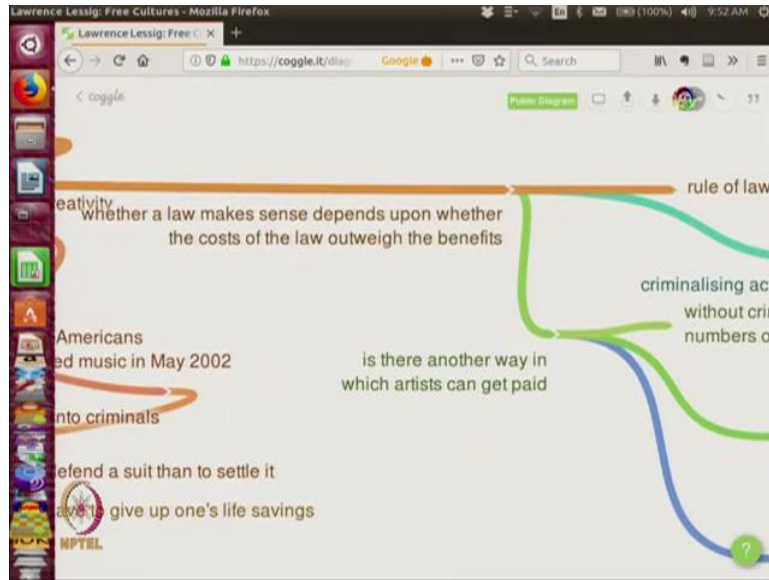
I mean if one thinks of 20, 25 years ago, recording this kind of a lecture would have cost a huge deal more, today it costs- other than the cost of personnel- the equipment costs have become a whole lot cheaper. And slightly less sophisticated kind of recording would cost you even lesser. People can use a single mobile phone to actually edit video as well so roughly a good amount good quality videos that can be produced. For recording songs, one does not need much. I mean, the number of podcasts have grown tremendously.

So there is this extraordinarily extra ordinary opportunity for creativity which could be there, but it is their kind of copyright laws which are there which are actually seeking to stifle. And he says that it criminalises people and he looks at examples of America, he says that in 2002,



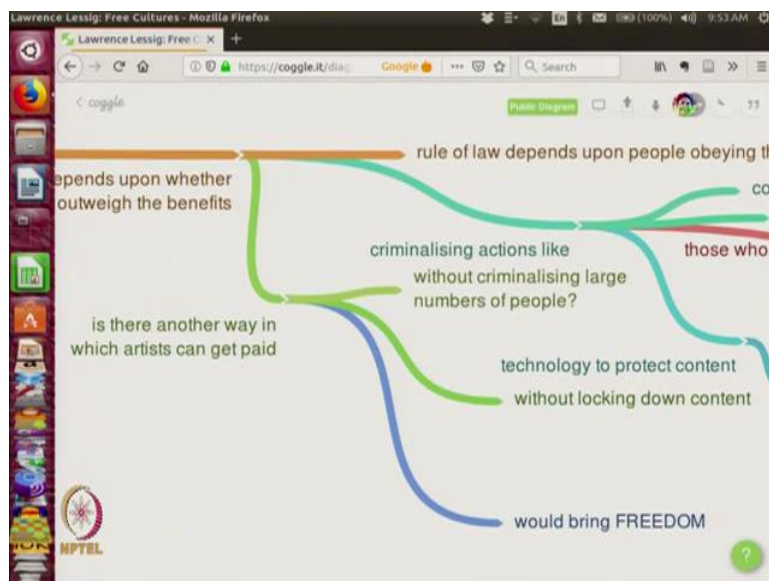
43 million Americans downloaded music. So that means 20 percent of Americans are actually criminals in the eyes of the law.

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So it is similar to the argument been made by Stallman that if there are open licenses, the open licenses would mean that one does not have to do illegal acts. One does not have to use pirated software, pirated either word processing software or photo editing software or various other kinds of software of daily use simply because one needs to use a particular platform and that is copyrighted. That is protected by intellectual property laws. So open content licenses can actually not make/force people to engage in illegal acts.

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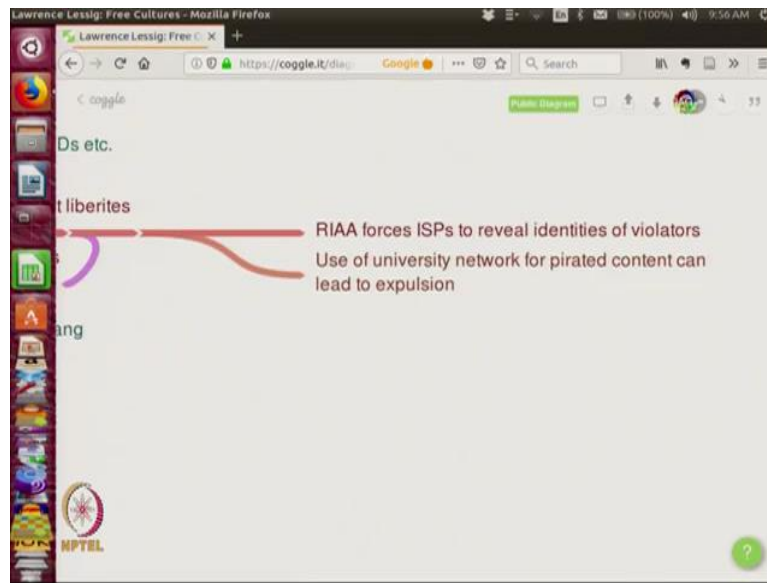
What he argues is that there is really no need to actually criminalise larger numbers of people and one of the arguments that is made is can artists be paid without locking down content because that would bring a greater degree of freedom. One of the principle arguments that is made by the votaries of strong copyright intellectual property laws within the content domain is that this is in order to actually pay for the artist or encourage the artist too. And that has historically been the logic of copyright.

But this may not be the only way, this kind of very strong corporate laws need not be the only way in which artists can be paid. It was not that artists did not get paid for their work or did not survive with their work before the coming of copyright. With the first copyright act really comes about in the early 18th century, people have been creating before that and they have survived. So within the digital domain, is there a way in which the artists can be paid for their work without locking down content.

And so that is the question that he asks and he says that the various kinds of regular daily actions of people like compiling playlists of one's CDs. So if somebody takes a CD and just puts a song on the hard drive and it lies there on the network, then that would be looked upon as a violation. So for example, in a particular case, he suggests that if a student has been gifted a CD by somebody and the student takes that CD to the University computer and just puts it in and the University computer then is able to access that CD and the student actually is listening to the songs, but because it appears on the network it becomes a violation.

And then these large content providers have protocols with institutions and the University would be forced to reveal the identity of this particular student and the student will get sued by the industry. And the law is such that people who seem to violate copyright law have very limited liberties.

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And the RIAA or the organisations like that force the ISPs to reveal the identities of violators. And this is extremely dangerous for a turn; for the kind of sharing that one can locate with one can identify with friendship or normal human behaviour of sharing good content, good ideas with others and because much of the content remains in the digital format, that kind of sharing immediately becomes criminalised and possibly illegal. So what he is suggesting and this kind of copyright regime actually, A) works against tradition traditions of creativity, 2) it also works against the specific need for energising or encouraging creativity.

Creativity has always historically operated through sharing and it is human action, normal human tendency to share with fellow human beings. There is no need to, he says, that it is unfortunate that sharing is being criminalised.