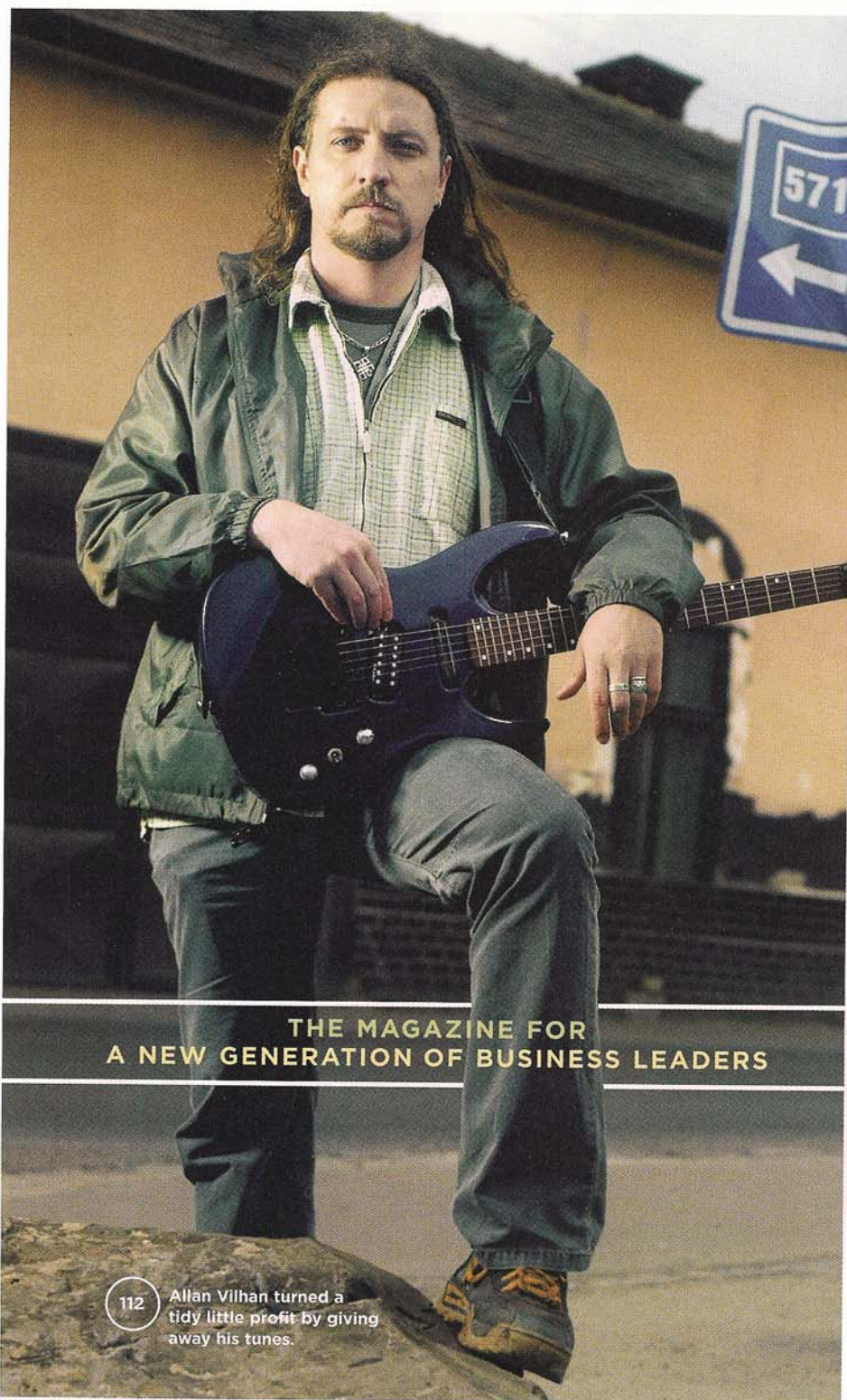


BUSINESS 2.0[®]

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THE MAGAZINE FOR
A NEW GENERATION OF BUSINESS LEADERS

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GIVING IT AWAY

(FOR FUN AND PROFIT)

Creative Commons encourages artists to share and distribute their work for free. And that could be the key to a new multibillion-dollar industry.  **ANDY RASKIN**

Allan Vilhan is a musician who has yet to hit it big in the United States. In part, that's because Vilhan—who records under the name Cargo Cult—lives in Filakovo, a small town in Slovakia's Cerova Vrchovina highlands. By day, he runs his family's restaurant. In his spare time, he mixes beats. Vilhan calls his music "trip rock"—it's a kind of spooky, danceable electronica—but his business model is even more intriguing. A year ago, after completing his first full-length album, he put MP3s of all the songs online and encouraged fans to listen for free. Nevertheless, to date he's recorded a profit of more than \$1,000. "About what I expected," he says.

Vilhan is making money because he hosts his songs at Magnatune.com, an Internet music distributor that replaces standard "all rights reserved" copyright language with "some rights reserved" licenses drafted by a Silicon Valley-based nonprofit organization called Creative Commons. Magnatune and its artists make MP3s available for free to play or download. But they still demand payment when the music is used for commercial purposes, such as inclusion in advertisements or in films released to theaters.

In Vilhan's case, a programmer in Alabama downloaded the free versions of two tracks and later paid \$450 to license them for use as background music in a videogame; a San Francisco design firm paid \$370 to use one of Vilhan's songs in a client's Flash presentation. Magnatune also



encourages listeners to voluntarily pay for downloads of Vilhan's music, which brought in \$1,487 more. Since Magnatune splits net receipts from licensing and downloads equally with its artists, Vilhan ended up with a tidy little sum. "Creative Commons is like a marketing tool," says Magnatune founder John Buckman, who has grossed \$180,000 for 126 musicians since May 2003. "Free distribution generates exposure, and that builds commercial demand, which is where the real money is."

If you have yet to notice a piece of work licensed under Creative Commons—its logo looks like a regular copyright mark, but with two Cs enclosed in the circle instead of one—chances are you will soon. Co-founded by Stanford University law professor Lawrence Lessig, Creative Commons has been making its boilerplate licenses available, free of charge, since December 2002. The licenses rely on icons to indicate what uses are permissible; click on the license, and the specific terms are spelled out in plain English. Already, artists worldwide have used Creative Commons to relinquish some or all rights to 1.5 million pieces of music, video, text, and digital art.

But what's really interesting is that as more and more artists use Creative Commons to tell the world that it's OK to copy, distribute, and build on their work, the first glimpses emerge of an economy based on the free exchange of digital content. The "sharing economy" is built on a supply-and-demand equation wholly alien to traditional media companies—the record labels, Hollywood studios, and publishing houses that support strict copyright enforcement. It's powered instead by the Allan Vilhans of the world, digital artists who promote sharing as a means to obtain everything from 15 minutes of Internet fame to licensing deals, job offers, and mainstream publishing contracts. For these artists, rampant Internet file swapping isn't a threat, but a blessing: the cheapest way to move from unknown to known.

The sharing economy is already worth billions of dollars, but its direct beneficiaries aren't mainstream entertainment companies. Instead, they're the likes of Apple, Adobe, and EarthLink—firms that sell the hardware, software, and bandwidth required to produce and distribute, say, a Howard Dean howl remix. But for the sharing economy to expand its scope and realize its full potential, it needs a signpost: a branded icon participants can use to tell each other, "Download my work. Modify it. Send it to a friend. Please." Creative Commons aims to play that role.

How much money will unfettered sharing generate? At a minimum, figure that tens of millions of PC owners worldwide, inspired by Creative Com-

mons to make and share content, will spend several hundred dollars more than they otherwise would have on specialized digital tools and services. Then add in license fees and other revenue generated indirectly by unencumbered sharing. Suddenly, you're talking about an ad hoc industry that could one day rival mainstream entertainment—in theory, at least.

AT A CAFE NEAR HIS SAN FRANCISCO HOME, Lessig explains the economic logic that underpins Creative Commons. He draws a timeline on a napkin, labeling one point "1888." "That's when the first Kodak camera was introduced," he says. "And around this time, a legal question arises: Do I need your permission to capture your image? The courts say no, I can pirate your image in most cases." Lessig then draws a line that spikes upward, representing the boom in photo equipment and processing sales that resulted from the liberalization of image content. "Imagine if the decision went the other way, so that I had to get permission every time I took someone's picture," he says. "The growth of the photography industry would have been very different." And much less lucrative.

Lessig, 42, has spent the better part of the last decade battling legal decisions that "went the other way" in the digital age. A specialist in policy development for cyberspace, his career has taken him from the Supreme Court (where he clerked for Justice Antonin Scalia), to the University of Chicago, to a tenured position at Harvard Law School, and finally to Stanford, where he founded the law school's Center for Internet and Society. He made headlines in 1997 when he briefly served as a special master in the Microsoft antitrust case. (Microsoft launched a successful appeal to have him removed.)

In the 2002 Supreme Court case of *Eldred v. Ashcroft*, Lessig challenged Congress's 1998 decision to extend copyright protection to 70 years after an author's death. In that case, nicknamed the "Mickey Mouse trial" because it coincided with the Disney character's impending transition to the public domain, Lessig argued that most creativity—including Disney movies like *Snow White*, which was adapted from a Grimm fable—builds on previous work, and that the extension hurt society by limiting the amount of raw material available for creative reinvention. He lost.

The defeat triggered a change in tactics. Unable to reform copyright law, Lessig focused instead on facilitating contractual arrangements between sharers that could be implemented directly in HTML. That's the primary tool artists use to attach Creative Commons licenses to their work. Thanks to the Copyright Act of

A Spotter's Guide to Shared Content



The "SOME RIGHTS RESERVED" logo is the first sign that a work is licensed using Creative Commons. Artists then mix and match from a menu of choices to specify conditions for sharing.



ATTRIBUTION: Any reuse, such as inclusion of a song in a movie, must credit the original artist.



NONCOMMERCIAL USE: Revenue-producing uses, such as advertising or corporate presentations, require negotiation with the artist.



NO DERIVATIVES: The work may be shared but not modified, adapted, or changed in any way.



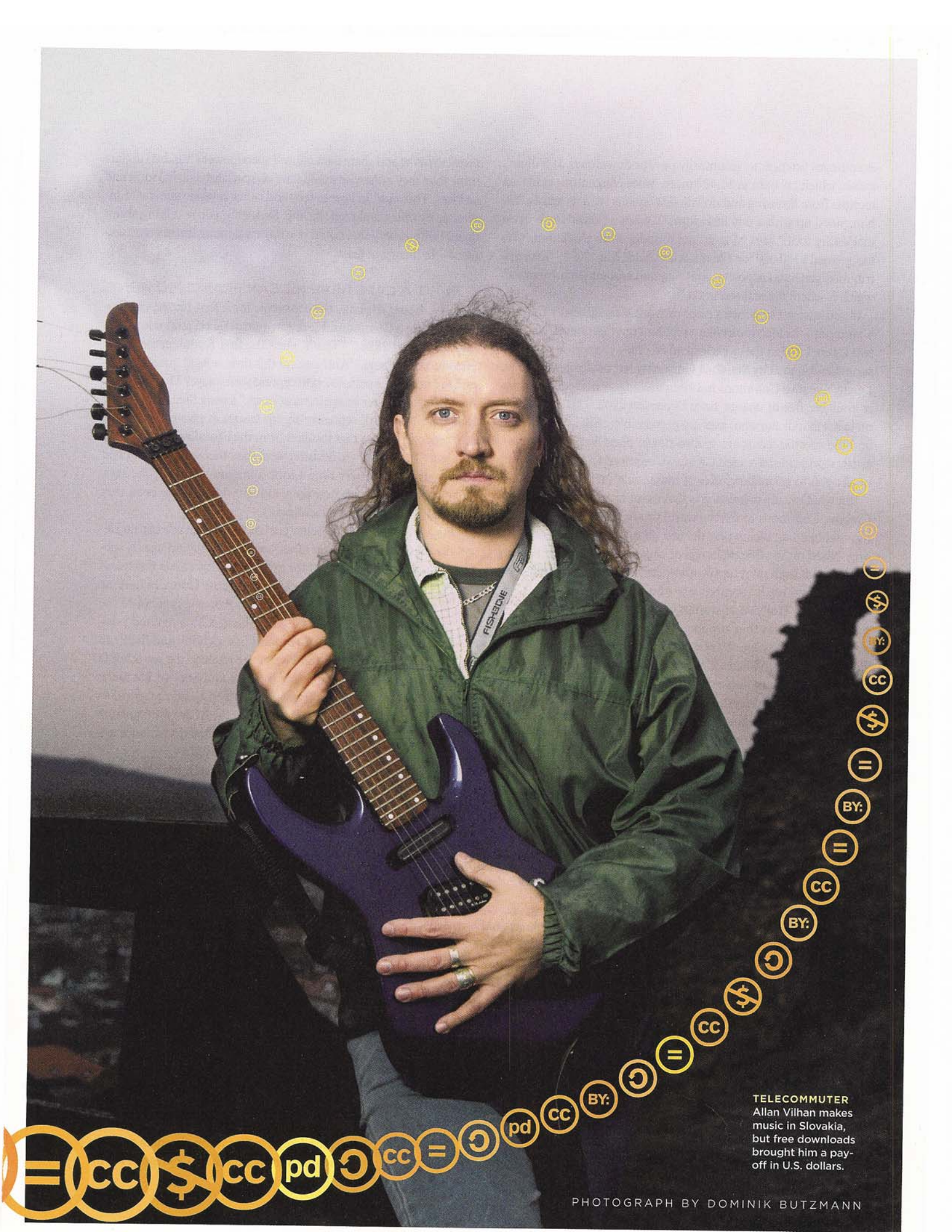
SHARE ALIKE: It's OK to share the work, but only under the same licensing terms established by the original artist.



SAMPLING: Others may sample, "mash up," or creatively transform the work, but it can't be used in advertising.



PUBLIC DOMAIN: No rights reserved. Artists relinquish all rights to a work, making it public property.



TELECOMMUTER
Allan Vilhan makes music in Slovakia, but free downloads brought him a payoff in U.S. dollars.

PHOTOGRAPH BY DOMINIK BUTZMANN

1976, as soon as an original work is “fixed”—i.e., takes tangible form—it’s automatically protected by copyright. Absent language to the contrary, distributing, copying, or performing that work without permission then becomes illegal. But with Creative Commons, an artist can place a link next to the work—or even embed a license in, say, an MP3 or PDF file—to explicitly grant the permission in advance.

To see how this works in practice, consider the experience of science fiction writer (and *Business 2.0* contributor) Cory Doctorow. In January 2003, Tor Books published his hardcover novella, *Down and Out in the Magic Kingdom*. Simultaneously, Doctorow released the book as a free download on his website, hoping the electronic version would generate buzz and spur bookstore sales. “I didn’t do this because I’m a big-hearted slob,” he says. “I did it because I saw an opportunity to make more money.”

With no formal legal training, Doctorow wanted to tell online readers that he intended to protect his work in a new way. So he linked the online version of his novella to a Creative Commons license. From a menu on the Creative Commons site (see “A Spotter’s Guide to Shared Content,” page 114), Doctorow chose a license called Attribution-NoDerivs-Noncommercial, meaning that people can distribute his book for free, so long as they credit him as its author; they’re not allowed to use it as the basis for derivative works; and to retain his upside potential, such as a movie deal, he requires payment for commercial uses.

In the 15 months that the book has been available online, Doctorow has recorded more than 300,000 downloads from his site. It’s impossible to measure the effect that had on book sales, but the initial print run of 8,500 copies sold out, and the title is now out in paperback. Doctorow estimates that the speaking fees he received from people who hired him based on the buzz surrounding the giveaway version exceed the advance he received from his publisher. Meanwhile, after the commercial success of his first book established his credentials as a marketable writer, Doctorow received a much bigger advance for his third and fourth books.

Of course, for many who use Creative Commons to license their works, profit is merely an afterthought. “It gets your name out there,” says Adam Conover, a Bard College senior who attached one of the licens-

es to *Dead Puppies*, a short film he produced with classmates. Some do it simply to protest the recording industry’s hard-line copyright policy. Whatever the reason, every artist who embraces Creative Commons helps to build its brand. It’s a classic case of network effects: As more of the licenses appear on the Web, the collective value of the Creative Commons body of work increases, which



How a Sharing Economy Might Work

As more and more digital artists use Creative Commons, a market for shareable entertainment is taking shape. That’s good news for artists and consumers, but the big winners are likely to be companies that sell digital tools and services.

1 Sharon records “Sharin’ da Love” using her guitar, her PC, and a few beats she downloaded from the Internet.



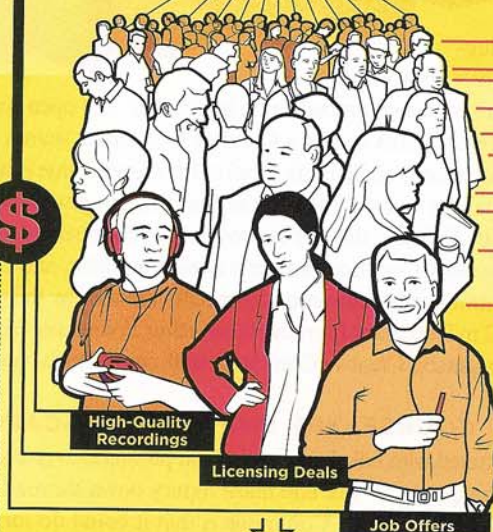
2 Sharon uploads “Sharin’” and attaches a Creative Commons license that allows free downloads and non-commercial use.



3 Thousands of people download an MP3 of the song. Some send it to their friends, and Sharon’s reputation starts to grow.



4 Audiophiles buy higher-quality MP3s. An ad agency licenses the song for a commercial. A producer hires her to write a new song.



5 A record label, noting the buzz, releases a “Sharin’” remix under full copyright, earning revenue for both the label and Sharon.



Possible Record Contracts

6 Free content expands the audience for digital music, boosting demand for computers, software, and Internet services.



creates greater incentives for other artists to use the licenses. "Say that someday there are 100 million objects out there that mark themselves with this kind of freedom," Lessig says. "People will begin to build on this in ways we can't even imagine."

To see how that vision can take shape, visit a website called MacBand.com. In January, Apple released a new music-production program called GarageBand. A few weeks later, a group of college students launched MacBand, a site where people can upload and share their compositions. Hal Bergman, one of MacBand's co-creators, wanted to encourage users to allow others to build on their projects. "A lot of people won't upload or download music on sites where everything's copyrighted," he says.

When composers upload songs on MacBand, they're presented with the option of choosing a Creative Commons license. The result is that nearly every song on MacBand functions as raw material for new songs. The sharing not only spurs activity on MacBand, but also builds demand for Apple software and hardware.

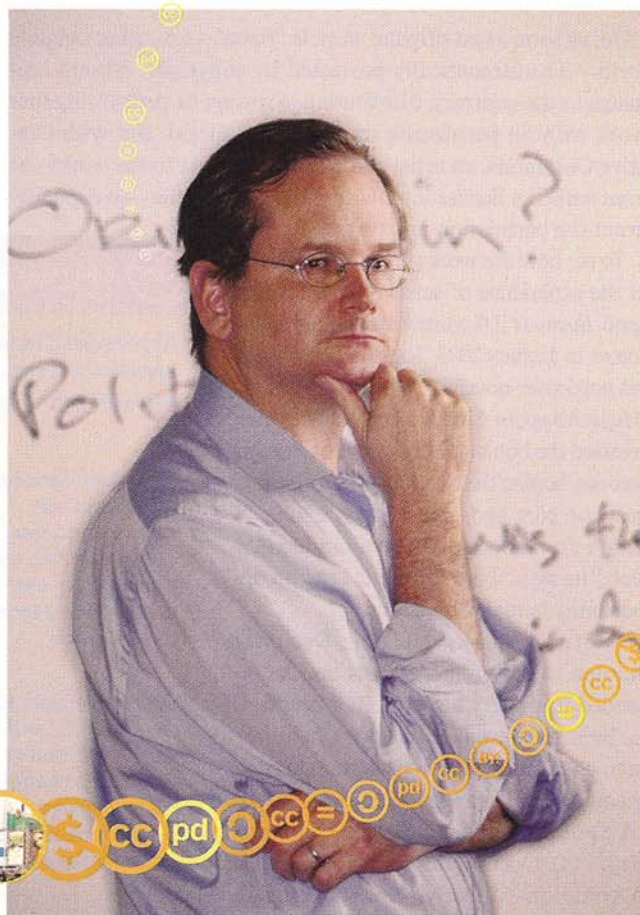
Lessig wants to integrate Creative Commons into the tools used to create digital art. The licenses now come in "machine-readable" form, which means that smart CD players can display a song's license as it plays. There



is also a plug-in for Adobe's Photoshop that recognizes licenses embedded in image files. The open-source Mozilla project plans to put a Creative Commons search tool alongside one for Google in its Firefox 1.0 browser, due out this summer, making it easy to search the Web for, say, photos of the Empire State Building that are cleared for noncommercial use. A Japanese Creative Commons license is already available, and Lessig hopes to introduce 24 more country-specific versions by the year's end. A \$1.2 million grant from the MacArthur Foundation should help the six-person Creative Commons staff complete the project.

O F COURSE, THE DIGITAL LANDSCAPE IS littered with failed companies that promised to give something away for free and make money down the road. The real potential of Creative Commons is that it could do for content what the open-source movement did for software—that is, create a parallel sharing universe that even mainstream companies can tap profitably. (There was a day when the idea of IBM embracing Linux sounded pretty outrageous too.) As Creative Commons assistant director Neeru Paharia recently asked, "Can you charge more for a Madonna CD that includes the right to make a noncommercial remix?" And if independent artists used this material to make commercially viable remixes, "couldn't this be a great new revenue stream for Madonna?"

According to Steve Fabrizio, formerly the Recording Industry Association of America's chief litigator and now a partner at the law firm Jenner & Block, it's far-fetched, but not impossible, to envision a top label embracing Creative Commons. "If Creative Commons



FREE THINKER Since Stanford professor Lawrence Lessig launched Creative Commons, thousands of artists have used the licenses to create shared projects—like the websites, films, and photos shown here.

builds enough brand awareness and respect for what it means, I see no reason why record companies that want to pre-authorize limited use of a work wouldn't think it was a great idea."

Lessig is doing his part to make the copyright establishment grapple with his views. In March, Penguin Press, part of the second-largest publishing house in the United States, released his third book, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. You can buy the hardcover, but, for a limited time, Penguin has also authorized Amazon to offer a free, downloadable, Creative Commons-licensed PDF version of the text. "We could look like visionaries, or we could look like chuckleheads," says Penguin's Scott Moyers, who edited the book. "But I'm confident that we'll see greater book sales."

Inevitably, as more and more digital content is produced by so-called amateurs, sharing will increase no matter how Lessig's book—or Creative Commons—fares. As Allan Vilhan puts it, "I make music, and I want people to hear it." Yet if Creative Commons is successful, sharing will become even more pervasive. And a lot more money will be made along the way. ♦

Andy Raskin (araskin@business2.com) is a senior editor at *Business 2.0*.

FROM LEFT: COURTESY OF MACBAND; DAVID F. GALLAGHER; ADAM CONOVER (2); COURTESY OF MAGNATUNE; OPENPHOTO.NET (2); KEN MACGRAY; ROBERT HOUSER (LESSIG)