

**Submission  
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**COPYSQUARE AND KONOMARK – NEW WAYS TO BE  
FRIENDLY WITH YOUR INTELLECTUAL PROPERTY**

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***Biographical note:***

*Eric E. Johnson is an assistant professor of law at the University of North Dakota School of Law. Professor Johnson received his J.D., cum laude, from Harvard Law School in 2000, where he was a member of the Board of Student Advisers and an instructor in legal reasoning and argument. He received his B.A. with highest honors and special honors from the Plan II program at the University of Texas at Austin in 1994.*

*After law school, Professor Johnson was an associate in the litigation and intellectual-property litigation practices at Irell & Manella in Los Angeles, where his clients included Paramount, MTV, CBS, Touchstone, Immersion Corporation, and the bankruptcy estate of eToys.com. At Irell, Johnson's matters included claims of patent infringement in the video-game industry, copyright infringement of a television series, breach of a motion-picture director's contract, and breach of a profit-participation clause in a television executive-producer's contract. Professor Johnson later became in-house counsel to Fox Cable Networks in Los Angeles, drafting and negotiating deals for Fox Sports Net ("FSN") and Fox College Sports.*

*Outside of his legal career, Professor Johnson was a consultant to an early-stage internet start-up, a top-40 radio disc jockey, and a stand-up comic. In 2005, he was awarded a patent on a headrest he invented for patients suffering from Parkinson's Disease.*

*At UND, Professor Johnson's courses include Torts, Intellectual Property, and Media & Entertainment Law. His primary scholarship interests are intellectual property and entertainment law. Before joining the UND faculty, Johnson taught as an adjunct professor at Whittier Law School and Pepperdine University School of Law, teaching Patent Law, Trademarks, and Entertainment Law.*

*Professor Johnson is the author of two blogs: [Backbencher.org](http://Backbencher.org) and [Pixelization.org](http://Pixelization.org).*

## EXTENDED ABSTRACT

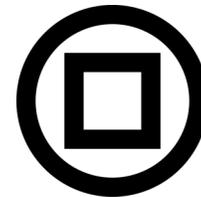
This presentation concerns two experimental proposals that encourage sharing of copyrighted works on the internet. “Copysquare” is a new license scheme designed to foster the creation and sharing of media workparts, such as stock footage, thematic music, still images, and sound effects. “Konomark” is a way for content creators to signal to strangers their willingness to share their copyrighted works at no charge, thereby encouraging sharing even in the absence of an irrevocable license.

Copysquare is the subject of a forthcoming article, “Rethinking Sharing Licenses in the Entertainment Media,” which will be published in the fall of 2008 in the *Cardozo Arts & Entertainment Law Journal*.

Konomark is described more fully on the project website at [konomark.org](http://konomark.org).

## COPYSQUARE

Thanks to recent leaps in computer technology and electronics, ordinary individuals now have the means to record and edit sound and video into high-quality productions. And thanks to broadband internet access and on-demand media publishing, those same people also have the means to distribute their productions to huge audiences.



A missing element, however, leaves the full potential of this revolution unrealized. Citizen producers need raw materials – music, sound effects, stock photography, b-roll footage, and other “sweeteners” that are, in large part, responsible for the production-quality gap between the professional gleam of Hollywood productions and the unrefined look of the inspired efforts of home-based creators.

Imagine that a few friends get together to make a movie. They write a brilliant script and get access to a couple of appropriately furnished apartments and an empty restaurant as shooting locations. With nothing more, the film they are able to make will look and sound “stagey” – like a stage play captured on film. Why? It will have no sound other than the actors’ voices, and it will express a severely restricted physical geography.

Now, imagine the same film made with a rich library of media workparts. Establishing shots show glimpses of the busy city where the drama is set. Exterior views of apartment buildings transition one scene to the next. Soundtrack music sets the tone, creates suspense, and marks turning points in the plot. Background sound effects immerse the audience in the din of a restaurant, the birdsong-filled sunshine of a park, and the muted cacophony of horns and sirens heard inside an apartment at night. And Foley sound effects communicate the unspoken actions of actors – the soft thwock of a refrigerator opening, the tinkling of ice tossed in a glass, the metallic grate of a chain-lock slid over a door.

There is something special about the potential for sharing media workparts: Workparts are cheap as a target of opportunity, but expensive as a target of intention. In other words, it is easy and cheap to record and produce media workparts that will be useful to someone, but it is generally difficult and expensive to record and produce the specific workparts needed for a particular application. For instance, for someone living in Hawaii, capturing footage of a rainbow arching over lush greenery might be as simple as pulling over to the side of the road. For the New Yorker who needs it, however, going out to get such a shot could cost thousands.

Copysquare’s aim is to encourage the creation and sharing of these media workparts. Copysquare uses three basic license provisions to achieve this: (1) a

requirement of notification, (2) a right to reject, and (3) “favored nations” treatment. The copysquare license says, in short, “You can use my creative work – film footage, picture, sound effect, etc. – in your creative work, but you must notify me that you are doing so (the notification provision), give me a chance to opt out (the right to reject), and you need not pay me or credit me, but if you pay or provide credit to others for the same kind of contribution, you must pay me and credit me on an equal basis (the favored-nations provision).”

Copysquare follows in the tradition of and borrows much of its values from the free-software and Creative Commons movements. As with these projects, copysquare leverages copyright law and standardized licenses to construct a voluntary sharing regime that discourages “capture” of shared works by those not adhering to the sharing ethos.

But unlike the free-software and Creative Commons regimes, copysquare does not reject the economic premise of its big-money industrial counterpart, nor does it make licensed content and old-guard content legally incompatible. A filmmaker sharing content under a copysquare license simultaneously makes the content available to no-budget desktop-based creators for free and available to established Hollywood studios for the highest prices they pay. Moreover, filmmakers who use copysquare-licensed content are not bound, as they would be under prior sharing regimes, to surrender proprietary control over their works. In fact, they are intentionally set free to enforce their full copyrights in order to reap profits and preserve the artistic integrity of their works.

For many nano creators, the licensing scheme of Creative Commons will likely not well serve the purpose of fostering the development of a store of media workparts. Why? First, the Creative Commons regime does not take account of the difference between workparts and finished productions with regard to what kind of sharing

arrangements artists are likely to be comfortable with. In particular, though artists may be happy to freely share workparts, they may not wish to share finished productions in the same way. Second, nano creators, for the most part, are not hostile to Big Hollywood, and insofar as the Creative Commons regime is incompatible with established industry business models, it may be less attractive to creators. Third, the Creative Commons regime has limited potential to build connections among creators that serve as the basis for networking and collaborative friendships.

A hypothetical will illustrate. Jack is a recent film-school graduate with an expensive video camera that he takes on a trip to Boston. While there, he takes several minutes of “b-roll” – building exteriors, skyline sweeps, shots of jammed traffic, and the like. Jack would be happy to let someone like him – a no-budget aspiring director – use his footage for free. But if a major network television show wanted to use it, Jack would like to be paid. Jack considers a Creative Commons license, but finds it less than ideal. If he uses a “NonCommercial” license, he’s satisfied he will not wind up giving it away to free to “big time” producers, but at the same time he would be cutting out filmmakers, like him, who aspire to commercialize their films. A “ShareAlike” license also does not fit the bill. While the copyleft provision would keep well-funded producers from taking unfair advantage of Jack’s generosity, it would also require any filmmaker using Jack’s footage to make the entire resulting film subject to the same sharing terms. Jack understands that someone having made a finished film will be reluctant to surrender their realized artistic vision to the world for instant re-editing and adulteration. Moreover, if Jack’s footage is useful to someone, Jack would like to know, both for the satisfaction of knowing as well as being able to add to his film resume. Moreover, he would establish a connection with another filmmaker. Yet if Jack chooses a Creative Commons license, he

commits his work to the ether, and he may never learn of the uses to which it is being put. What's more, his work could be used for pornography, political advertising, proselytizing, or other uses Jack finds objectionable.

The copysquare scheme offers to remedy these problems. Jack is protected against unfair advantage taking. He will get paid if, and as well as, others get paid. He will learn when his footage is used. He will establish connections with other filmmakers. And he will get the chance to reject uses unacceptable to him.

## **KONOMARK**

The konomark endeavor consists of creating a standard signal - a symbol, name, and some accompanying guidelines - for helping people communicate their willingness to share copyrighted works to strangers for free.



The hypothesis of the konomark experiment is that if there were an easily used and recognized way of signaling to the public an easy-going willingness to share copyrighted works, then more works would in fact be shared and reused. Two assumptions underlie this hypothesis: (1) There is a significant amount of content, uploaded to the internet, that people would be willing to share for free under most circumstances, even if they are not willing to commit to an irrevocable Creative Commons license. (2) Potential users of content created by others are unlikely to ask for permission from strangers unless they are invited.

The konomark itself is a symbol – a circle with a pineapple in it – that lets visitors to websites know the authors are generally willing to share their copyrighted content, such as photos, educational materials, music, etc., for free. The Hawaiian word “kono”

means to invite, prompt, or ask in, and the pineapple has long been a symbol of hospitality. Thus, the konomark is thus an invitation to e-mail and ask for permission.

As with copysquare, and unlike current Creative Commons licenses, konomark offers the prospect of fostering friendship and community by encouraging communication between persons of common interests. And like all schemes designed to encourage the sharing and reuse of creative content, it seeks to increase the world's cultural wealth.