

fication. Even during the patent's lifetime, and certainly after it has expired, the patent offers detailed state-of-the-art information on the invention. Patents are supposed to be a major source, not just of technical information, but also of competitive intelligence about the technology, and about the individuals and organisations active in that technology. There is a strong argument that the vast numbers of poorly drafted, or too widely drafted, patents being published in the US are polluting that invaluable source of information. The authors mention nothing about this deleterious side effect of a poorly enforced patent system. But perhaps most surprising of all, they fail to address the most obvious solution to the large number of poor patents emanating from the US – that US patent examiners spend more time checking the prior art and rejecting or amending dubious patents. Yes, this will cost money as more patent examiners would be needed, but in my view, that would still be a genuine saving over the economic costs of uncertainty and confusion, as well as the deterrent effects on further research, caused by a profusion of dubious patents.

The book has a few minor errors. For example, it states that chemical patents typically protect a single chemical, or a new use for a single chemical, when most cover thousands or sometimes millions of closely related chemicals. The book also states that a patent issued in 1890 was Edwardian when, of course, it was Victorian. There is also occasional repetition of paragraphs between chapters.

Overall, then, this book provides useful and interesting background to the rationale for having a patent system, and provides a lot of evidence of poor patenting practice in the US. However, it fails to consider one key side effect (that of pollution of information) or an obvious solution (better patent examining). As will be clear from the book's title, the authors argue that the best way to address some of the flagrant abuses of the US patent system is not through changing the law (and in any case, the scope for change is somewhat restricted because of the country's international commitments), but by means of the US courts. The US courts should be a back up for addressing the US patent crisis, not the first port of call.

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Curation nation: how to win in a world where consumers are creators, by Steven Rosenbaum, New York, McGraw-Hill, 2011, 284 pp., UK£19.99 (hardback), ISBN 978-0-07-176233-5

The traditional image of a curator is compellingly challenged in Steven Rosenbaum's *Curation Nation*. Today, Rosenbaum argues that we are all potentially curators, not of museum artefacts, but of digital content on the internet – the constantly expanding plethora of internet information presents an opportunity for innovation. By imposing their own selective criteria on this mass of information, professionals and amateurs alike can collate, select, aggregate and, in effect, curate the available content on any particular subject. The grateful public will

reward these efforts, Rosenbaum assures us, by regularly logging onto their preferred curated content websites. Eventually, business opportunities, such as advertising and sponsorship, will follow. This, in essence, is Rosenbaum's vision of a 'linked economy'.

Rosenbaum is so enthusiastic about the potential of curation and aggregation that he devotes an entire chapter of the book to practical and detailed advice about 'how to dive in and be a curator' (p.83) from selecting a platform for the site, to building keyword search terms, to organising RSS feeds, and incorporating a Twitter alert search. He argues that anyone with a computer and confidence in their own judgment can become a content entrepreneur. Although Rosenbaum warns that not all curators will become successful, in the sense of actually making a living from their efforts, such is the author's enthusiasm for content aggregation and curation, that the reader is left with the impression that such failure would be relatively rare.

Businesses are warned that they need to be alert to, and respond appropriately to, consumer power in the form of consumer-curated websites focusing on their brand. In effect, Rosenbaum asserts, the Web has changed the balance of power between business and consumer:

The world has changed, in that its customers are no longer passive victims of the corporate agenda. We are stakeholders. We not only wish to have a say in how things are done, we not only demand a say in how things are done, we have the power to get our way. (p.58)

Rosenbaum provides many examples of successful content curation, beginning with the analogue publications, *Readers Digest* and *Time*. Both were founded on the premise that the average person did not have either the time or the inclination to read and evaluate the volume of available content. The modest beginnings of each of these publications and their subsequent expansion into multi-million international enterprises provide persuasive models for any would-be entrepreneur. Rosenbaum describes these two analogue publications, now considered stalwarts of conventional society, as the forerunners of contemporary digital publications, such as the *Huffington Post*, *Mediaite* and *Newser*. Furthermore, to those who criticise these digital publications as anti-democratic in that 'a new class of elitists are becoming the powerful filters' (p.124), Rosenbaum responds with the alarming suggestion that the alternative to the human curator is the machine. Platforms such as *Demand Media* and Yahoo's *Associated Content* are, effectively, curated by an algorithm (p.132). There is no doubt that the author is well qualified to write on this subject; Rosenbaum is the founder and Chief Executive Officer of the Web's largest video curation platform, *Magnify.net*, and has built a career as a contributor to various digital content curation posts and as a blogger (p.285).

Rosenbaum makes only passing and somewhat muddled reference to the legal problems that could well arise in connection with curating and aggregating activities. Copyright law potentially presents the most significant obstacle to curation and aggregation, since all online materials are protected by copyright for the lifetime of the creator, and, in most countries, for a further 70 years. Hence, in this regard, the title of the book is somewhat prophetic – for, because of more restrictive copyright laws in other countries, it is likely that only the citizens of one nation, the United

States, will be able to participate in the linked economy. Indeed, even in the United States, the situation is uncertain.

United States copyright law has a broad fair use provision that permits certain uses of copyright works without first obtaining the consent of the copyright owner (Copyright Act 1962 (US) §107). Nevertheless, there are limits on such use. In particular, when assessing whether a particular use is fair, the courts are required to examine whether the purpose of the use is commercial or non-commercial, whether it is transformative or duplicative, factual or creative, as well as the proportion of the original work that has been used for unauthorised purposes. In particular, the United States courts consider whether the use will cause excessive economic harm to the copyright owner. The 1961 *Report of the Register of Copyrights* (reviewed and affirmed in 2009) cites examples of activities that United States courts have regarded as fair use. They include

quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report . . . incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported. (p. 24)

Rosenbaum implies that curation and aggregation activities might fall within the umbrella of fair use, although he admits 'the legal issues are murky' (p.115). Indeed, even Rosenbaum's optimism falters when considering the curation of online video material and he warns that the unauthorised use of video material is unlikely to be deemed fair use (p.90). Fair use aside, the main legal tool Rosenbaum recommends for online curators is the 'safe harbour protection' provided by §512(c) of the Digital Millennium Copyright Act (DMCA). The DMCA's safe harbour protection applies to a service provider, which could be a website or blog that allows others to upload material to its site. The provision operates from the premise that a website owner has inadvertently permitted the unauthorised uploading of unauthorised copyright materials and that no liability will attach to the website owner provided that the offending material is removed at the request of the copyright owner. In *Viacom Int'l Inc. v. YouTube Inc.*, (2010 U.S. Dist. LEXIS 62829 (S.D.N.Y. 2010)), Judge Stanton in the New York District Court ruled that YouTube was protected under the DMCA against penalties for copyright infringement because it responded promptly to copyright holders to remove protected content when notified. YouTube was the service provider and Web host for its customers who were able to post videos on its site. Viacom contended (successfully) that such posts frequently included copyright-protected clips. This ruling, Rosenbaum argues, exemplifies the encouraging approach taken by the law to 'sharing, Web-wide distribution and, by extension, aggregation and curation' (p.117).

Such an argument is tenuous. The *Viacom* decision (currently under appeal) has been heavily criticised, notably by the Progress and Freedom Foundation, as being contrary to established rules of statutory interpretation and thereby wrongly authorising large-scale calculated copyright infringement for commercial purposes (see Sydnor, 2010). There is serious concern amongst artists and the creative industries that 'the [*Viacom*] decision is about who has control over content – and the power is clearly shifting away from those who create it' (San Francisco Chronicle, 2010). Furthermore, the DMCA (and similar legislation overseas) provides a safe harbour

only for the service provider. The individual responsible for uploading the infringing material is not protected and is potentially liable for monetary penalties for infringement of copyright.

Whether or not fair use and the DMCA do provide a satisfactory defence for online curators who are based in the United States, the copyright issues for would-be online curators based in other nations are likely to be formidable. In the copyright laws of other countries, the equivalent provision to fair use is called 'fair dealing' and is a much more prescriptive provision than fair use. In addition, although the United States has very limited moral rights protections for the creators of copyright works, the international copyright treaties require their member states to provide the authors of copyright literary, dramatic, musical and artistic works with moral rights protections. Hence, moral rights protections for authors are commonly provided in other jurisdictions and there has been at least one instance recently where an author's moral right of integrity was found to be infringed by the activities of an online aggregator (see *Copiepresse SCL v. Google Inc.*, 2007).

Such legal niceties aside, the author's exuberant language and enthusiasm makes *Curation Nation* an intriguing and illuminating read. It is a useful guidebook for the amateur digital curator, provided she is aware of the potential legal issues and, ideally, seeks permission from the creators of the source content before 'diving into' (p.83) aggregation and curation. Rosenbaum's style is informal and he displays a rather irritating fondness for trite metaphors and aphorisms, but nevertheless there is much that is thought provoking in his work. In his own words, written for those readers who might be tempted to go straight to the conclusion section of the book: 'Life is about the journey. The conclusions, interesting as they are, are only half the point' (p.245).

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