



**The Science Files**  
Scientific discoveries, medical advances,  
and our changing environment.  
[Sign up for the newsletter >>](#)

**Los Angeles Times** | [Science](#)

## Los Angeles Times | News

---

You are here: [LAT Home](#) > [Articles](#) > [2001](#) > [December](#) > [06](#) > [News](#)

# Control Versus Freedom on the Web

By Zachary Karabell  
December 06, 2001

A few years ago, Lawrence Lessig wrote a book called "Code." In it, Lessig, then a professor at Harvard Law School, examined how the software code of the Internet determines what the Internet actually is.

That may seem like a simple statement, but Lessig's point was that, unlike the physical world, the Internet is first and foremost an invention that can be reinvented and altered, based on human will. What the Internet is, therefore, is what we collectively want it to be.

Now a professor at Stanford, Lessig has moved to the Silicon Valley and the home of code, and has written what amounts to a sequel to the earlier book. Lessig is not just a law professor. He is engaged in shaping the issues that he writes about, and he has served as advisory counsel for many of the recent landmark cases over the laws of cyberspace, including helping the government's antitrust suit against **Microsoft**.

Lessig is what might be called a soft libertarian. He celebrates the early ethos of the Internet as an open community, but he also recognizes the need for some government regulation as well as for some corporate proprietary control.

Lessig strongly believes that innovation is essential to economic growth and to the type of society most Americans claim they want to live in. The challenge that now faces us, he says, is "not whether the market or the state" should control the resources of the Internet, but whether "that resource should be controlled or free." And it is not a binary choice. Rather, in each instance, the answer should be determined on the basis of what is most likely to encourage innovation.

Lessig is a clear writer who is able to convey complicated concepts in simple prose. The book, however, is rich with examples and subtleties about everything from the design of the Web to patent law to intellectual property issues.

For instance, Lessig uses the case of the online music service Napster to illuminate one of his key points about copyright law, and the question of free resources versus controlled ones.

He traces copyright law before the 1990s to show that, in principle, what Napster did should have been allowed. Instead, aggressive music industry lawyers used their corporate muscle to claim a right of control against the desire of millions for a free resource. The result was that a potential resource—namely, recorded music—was removed from the commons.

The overall argument hinges on the idea that you don't know the value of certain things until they're gone. Innovation occurs in unpredictable ways, but the best anyone arguing for free resources can do is show that in the past, free resources have led to innovations that all of us now recognize as vital.

One cannot demonstrate that the removal of any specific set of free resources will stifle innovation in the future. The court injunction against Napster curtailed Napster, but no one knows what future innovation it may have curtailed.

Lessig claims, reasonably enough, that the lost potential is disturbing enough. "The architecture of the original Internet minimized the opportunity for control, and that environment of minimal control encourages innovation." That much can be demonstrated by history.

It's also easy to show that large corporations, such as AT&T in its monopolistic days, try to exert control and are often the enemies of innovation. Innovation means change and a new set of winners and losers in which the old order usually suffers.

Lessig concludes with a level set of policy suggestions about how the law could be shaped to balance the desire of corporations to profit with the vital need for free resources and unpredictable innovation. Some of these seem feasible, such as new laws governing copyrights and patents. Others would require a level of government oversight that is unlikely to find support in the current political climate.

While this is on the whole a sensible and, at times, superb book, it does have an odd myopia. Lessig is convinced that as things stand, the free is giving way to the controlled, and the consequences will be negative. But his lessons about history show that the same dynamic has occurred before, and that innovation occurred anyway.

Corporations such as AT&T strove for control, and that spurred others to find ways around that control. The urge to circumvent control, the thrill of rebellion against control, is itself a fuel for innovation.

Lessig fears that without a legal balance between freedom and control, control will triumph and innovation will suffer.

But a reading of history can come to a rather different conclusion: that the threat of control is the greatest spur to innovation, and that without something to fight against, people might not strive for change at all.

