

# COMPLIANCE WITH INTELLECTUAL PROPERTY LAWS: A PSYCHOLOGICAL PERSPECTIVE

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## I. INTRODUCTION

As a psychologist, I focus my research on the views and actions of people within American society. My goal in this paper is to provide a social science perspective on some of the issues concerning intellectual property that have been raised at this conference.

Much of the discussion at this conference has been about what the law governing intellectual property ought to be. My focus will be on one aspect of this larger issue—what type of law is likely to be obeyed by citizens. To address that question, I will consider the issue of why people obey or disobey laws. My goal is to explore intellectual property law from the consumer's point of view by focusing on empirical research based on personal interviews.

One problem recognized in the discussion at this conference involves the difficulty of gaining public compliance with copyright and intellectual property laws. As speakers have noted, anecdotal evidence suggests that noncompliance with laws governing the copying of books, journals, tapes, Compact Disks [CDs], and videocassettes is widespread, both within the United States and throughout the world.

A small body of research supports this anecdotal evidence. For example, in the case of software piracy, Taylor and Shim found that a substantial proportion of both business executives and business faculty members reported the illegal copying of computer software.<sup>1</sup> Similarly, Solomon and O'Brien estimated that over one half of college students use

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1. G. Stephen Taylor & J.P. Shim, *A Comparative Examination of Attitudes Toward Software Piracy Among Business Professionals and Executives*, 46 *HUM. REL.* 419, 430 (1993).

illegal software.<sup>2</sup> These studies support estimates that between fifty and ninety percent of all computer software used is unauthorized.<sup>3</sup> According to a recent study of consumers, other thefts of intellectual property, such as taping a record album or a movie, were also widely regarded as acceptable practices.<sup>4</sup>

The difficulties noted concerning gaining compliance with intellectual property law are typical of the problems involved in a wide variety of areas including child support payments, income tax payments, drug laws, and people running red lights. Whether the issue is acceptance of specific judicial decisions or general obedience toward the law, compliance cannot be taken for granted.

Why do people obey or disobey laws? We frequently think that the law gains its influence over people through their concern about the threat of being caught and punished for wrongdoing. This rational choice or deterrence perspective implies that the appropriate response to noncompliance problems is to increase the likelihood of being caught and punished for wrongdoing, i.e., to affect the perceived certainty or severity of punishment.

This underlying approach to public policy is evident in the recent war on drugs, which has attempted to decrease drug use by increasing police presence and heightening penalties for drug use. In the area of intellectual property, the deterrence approach appears in the warning of possible fines and imprisonment that appears on home video cassettes, CDs, and tapes. Warning of possible severe penalties for illegal copying seeks to lessen the incidence of illegal behavior.

## II. THE INEFFECTIVENESS OF THREATS AS A METHOD OF INDUCING COMPLIANCE WITH LAWS

First, such warnings and threats are, according to research findings, largely ineffective in changing law-related behavior. Studies suggest that an individual's assessments of the law's ability to catch and punish rule breakers, i.e., the certainty of

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2. Susan L. Solomon & James A. O'Brien, *The Effect of Demographic Factors on Attitudes Toward Software Piracy*, in *ETHICAL ISSUES IN INFORMATION SYSTEMS* 168, 172 (Roy Dejoie et al. eds., 1981).

3. Taylor & Shim, *supra* note 1, at 421.

4. Scott J. Vitell & Donald L. Davis, *Ethical Beliefs of MIS Professionals: The Frequency and Opportunity for Unethical Behavior*, 9 *J. BUS. ETHICS* 63, 63 (1990).

punishment, have, at best, a minor influence on lawbreaking behavior. This finding emerges from several recent studies of law-related behavior.

Across fourteen studies utilizing lagged tests from panel studies, Raymond Paternoster found an average correlation of -.21 between perceived certainty of punishment and drug use, and an average correlation of -.17 between perceived severity of punishment and drug use.<sup>5</sup> Paternoster believed that these small effects were actually overestimates likely due to confounds with other factors and concluded that "perceived certainty plays virtually no role in explaining deviant/criminal conduct."<sup>6</sup> Other similar studies suggest that, rather than being unimportant, certainty plays a clear but minor role in determining law-related behavior.<sup>7</sup> Perceived severity, in contrast, appears to play little role.<sup>8</sup>

I also utilized a panel format design to explore law-related behavior among a sample of adults in a 1990 study. My results found that judgments about the certainty of punishment play little role in influencing six everyday law-related behaviors such as shoplifting.<sup>9</sup>

The conclusion that deterrence concerns have a clear, but minor, influence on law-related behavior is reinforced by the results of a review of research on the antecedents of drug-related behavior.<sup>10</sup> That review concludes that variance in the certainty and severity of punishment accounts for approximately five percent of the variance in drug-related behavior.<sup>11</sup> In other words, since most of how people react to laws is not linked to risk judgments, deterrence strategies based upon

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5. Raymond Paternoster, *The Deterrent Effect of Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues*, 4 JUST. Q. 173, 173 (1987).

6. *Id.* at 191.

7. See Daniel S. Nagin & Raymond Paternoster, *The Preventive Effects of the Perceived Risk of Arrest: Testing and Expanded Conception of Deterrence*, 29 CRIMINOLOGY 561, 580-81 (1991); Raymond Paternoster, *Decisions to Participate in and Desist from Four Types of Common Delinquency: Deterrence and the Rational Choice Perspective*, 23 LAW & SOC'Y REV. 7, 37 (1989).

8. Raymond Paternoster & Leeann Iovanni, *The Deterrent Effect of Perceived Severity: A Reexamination*, 64 SOC. FORCES 751, 769 (1986).

9. See generally Tom R. Tyler, *WHY PEOPLE OBEY THE LAW* (1990).

10. Robert J. MacCoun, *Drugs and the Law: A Psychological Analysis of Drug Prohibition*, 113 PSYCHOL. BULL. 497, 501 (1993).

11. *Id.*

changing such judgments will have, at best, a minor influence upon law-related behavior.

While these studies are consistent in their conclusion that concerns about the likelihood of being caught and punished have a minimal influence on law-related behavior, it is important to remember that this research has primarily focused upon issues of criminal behavior, rather than the violation of civil laws. We do not know whether changing the context from criminal to civil law will change the nature of the social dynamics underlying compliance. Therefore, research on the factors shaping public willingness to comply with intellectual property laws is crucial.

### III. WHY IS THE THREAT OF SANCTIONS INEFFECTIVE?

Why are risk judgments so strikingly unconnected to crime-related behavior? One reason is that the judgment of risk has to be reasonably high to engage people and influence their behavior. For example, studies of deterrence suggest that estimates of the probability of being caught and punished only have an effect above a certain threshold level of risk.<sup>12</sup> In typical crime-related situations, however, objective risks are often quite low. For example, the objective risk of being caught, convicted, and imprisoned for rape is twelve percent, for robbery, four percent, and for assault, burglary, larceny, and motor vehicle theft, one percent.<sup>13</sup> Of course the psychological estimates of risk are the key to behavioral decisions—and research suggests that they are frequently lower than actual risks.<sup>14</sup> A similar type of risk estimate analysis has recently been applied to the deterrence of drunk driving.<sup>15</sup> The problem is not that raising probabilities to the level at which they have a psychological impact is impossible, but that it is prohibitive, both in economic terms and in terms of the willingness of citizens to accept intrusions into their personal lives.

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12. See H. Laurence Ross, *DETERRING THE DRINKING DRIVER: LEGAL POLICY AND SOCIAL CONTROL* 105 (1982).

13. Paul H. Robinson & John M. Darley, *The Utility of Desert* 6 (Oct. 11, 1995) (unpublished manuscript on file with the *New York University Journal of International Law and Politics*).

14. *Id.* at 5.

15. Ross, *supra* note 12.

Interestingly, H. Laurence Ross found that even the intensive efforts of Scandinavian authorities to create high objective risks of arrest for drunk driving via the use of random road blocks and other similar expensive and intrusive law enforcement measures are insufficient to create and sustain an objective risk of arrest high enough to deter drunk driving.<sup>16</sup> He suggests that the initial publicity flowing from a new law increasing penalties for lawbreaking may lead to exaggerated judgments of the likelihood of being caught and punished, and thus to temporary decreases in lawbreaking behavior.<sup>17</sup> However, such decreases are only sustainable for a few months, because experience soon teaches drivers that the objective risks of capture are less than they initially imagined.<sup>18</sup>

A second problem is structural. People have greater opportunities to break rules in certain situations. For example, people who are self-employed have greater opportunities to cheat on their taxes than people whose income is primarily in the form of wages. Unfortunately, intellectual property is an area in which the opportunities for cheating are widespread. Little actual risk accrues to people who free ride on the efforts of others by copying articles, CDs, or tapes. Hence, the structural opportunities for free riding are high in this area, making effective deterrence difficult.

In other words, there may be settings in which deterrence is an effective strategy. For example, in cases of homicide, the police catch, convict, and imprison forty-five percent of offenders<sup>19</sup>—a risk high enough to produce a deterrence effect. Presumably this high rate of clearance reflects the large number of resources that society is willing to devote to resolving murders. Similarly, people whose income is primarily wages have little opportunity to cheat on their taxes. Deterrence is thus more likely to work in these settings. However, the everyday enforcement of rules in democratic societies does not offer the same possibilities. This is especially true in the case of intellectual property law, where the resources devoted to enforcement are moderate and the opportunities for cheating high.

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16. Ross, *supra* note 12, at 70.

17. Ross, *supra* note 12, at 90.

18. Ross, *supra* note 12, at 84.

19. Robinson & Darley, *supra* note 13, at 5.

Overall, these findings suggest that seeking to control public behavior by threatening punishment is insufficient to gain widespread public compliance with the law. Unfortunately, authorities in the area of intellectual property use this strategy widely. Whether it involves warnings on video cassettes or threats to sue university copy stores, the predominant strategy is to create a legal entitlement and then seek to enforce that entitlement with a threat. The result is widespread noncompliance with the law.

For an effective strategy to deal with public compliance, we need to have a situation in which citizens voluntarily obey the law. The effectiveness of intellectual property law is therefore heavily dependent on gaining *voluntary* cooperation with the law. As a result, it is necessary to influence what people want to do in situations in which there is little or no threat of immediate punishment for wrongdoing.

#### IV. CREATING A SUPPORTIVE LEGAL CULTURE

Gaining voluntary cooperation with the law involves creating a culture that promotes compliance. Research suggests two factors that are important to gaining voluntary compliance: morality and legitimacy. Morality is concerned with an individual's personal feelings about what is right or wrong. Legitimacy involves one's feeling that one ought to obey the law. Both of these factors promote voluntary compliance.

In my above-mentioned study, I compared sanction threats directly to the influence of morality and legitimacy in a panel study of citizens.<sup>20</sup> I found that morality was the primary factor shaping law-related behavior.<sup>21</sup> A second important factor concerned views about the legitimacy of the law.<sup>22</sup> Threats of sanctions had no independent influence on law-related behavior.<sup>23</sup>

Paternoster examined the antecedents of everyday law-related behavior among a teenage sample.<sup>24</sup> He compared the influence of sanction threats to that of moral beliefs and other factors. While sanction threats influenced behavior, he found

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20. TYLER, *supra* note 9.

21. TYLER, *supra* note 9, at 178.

22. TYLER, *supra* note 9, at 178.

23. TYLER, *supra* note 9, at 178.

24. Paternoster, *supra* note 7.

that moral beliefs dwarfed the impact of such threats.<sup>25</sup> Across all four behaviors studied, moral beliefs were more central to behavioral decisions than judgments of the perceived certainty or severity of punishment.<sup>26</sup>

Grasmick and Green made a similar comparison using a sample of adults in an urban area.<sup>27</sup> They found that moral judgments are equal in importance to judgments of risk when predicting past law violations, but that moral judgments dominate judgments about the likelihood of committing future crimes.<sup>28</sup> Interestingly, their study also pointed to peer disapproval as an important element in law-related behavior.<sup>29</sup> A further study extended this analysis to tax cheating, theft, and drunk driving.<sup>30</sup> That study found that moral concerns are consistently as important, or even more important, than legal sanctions in explaining future intentions concerning crime.<sup>31</sup> Again, this study found that embarrassment in front of one's peers plays an important role in crime-related behavior.<sup>32</sup>

All of these studies suggest the importance of morality and legitimacy as factors shaping law-related behavior. In each of the studies I have outlined, these factors independently influence law-related behavior. Furthermore, they typically dominate one's behavior and have a greater effect than assessments of the likelihood of being caught and punished for wrongdoing. In other words, the way people behave is primarily a reflection of their views about: (1) what is right and wrong and (2) their obligations to the law and to legal authorities.

The studies I have outlined focus on the area of criminal justice. However, research on intellectual property law violations yields similar conclusions. Eining and Christensen stud-

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25. Paternoster, *supra* note 7, at 38.

26. Paternoster, *supra* note 7, at 38.

27. Harold G. Grasmick & Donald E. Green, *Legal Punishment, Social Disapproval and Internalization as Inhibitors of Illegal Behavior*, 71 J. CRIM. L. & CRIMINOLOGY 325, 329-31 (1980).

28. *Id.* at 331-33.

29. *Id.* at 330.

30. Harold G. Grasmick & Robert J. Bursik, *Conscience, Significant Others, and Rational Choice: Extending the Deterrence Model*, 24 LAW & SOC'Y REV., 837, 837 (1990).

31. *Id.*

32. *Id.*

ied the antecedents of illegal software use among business students.<sup>33</sup> They found that judgments about the likely consequences of illegal use influenced the frequency of use (beta = .19).<sup>34</sup> However, a more important factor was their attitudes about the morality of illegal use (beta = .36).<sup>35</sup>

### A. *Morality*

First, consider morality—feelings about what is right or wrong. In my own research on lawbreaking, I found that morality was the most important factor shaping law-related behavior. In other words, people did not simply act in pursuit of gains. Rather, their own personal sense of right and wrong influenced their behavior.

Widespread research on law-related behavior, as well as by studies in related areas such as negotiation and interpersonal relations, supports the proposition that fairness judgments influence behavior.<sup>36</sup> Most people give little or no consideration to the possible gains and losses associated with illegal behavior. Instead, they simply engage in the behavior that they think is morally right. Given the low probabilities of punishment associated with many types of criminal behavior, it is crucial to the success of laws that most Americans regard lawbreaking as generally immoral. Of course, such feelings differ widely depending upon the type of law involved. People do not uniformly regard lawbreaking as morally wrong—their attitude differs for varying types of illegal behavior.

In the case of intellectual property law, these findings imply that one crucial problem is the lack of a public feeling that breaking intellectual property laws is wrong. In the absence of such a conception, there is little reason for people to follow intellectual property laws.

Recognizing the important role of moral values in stimulating law abiding behavior leads to two strategies for increas-

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33. M.M. Eining & A.L. Christensen, *A Psychosocial Model of Software Piracy: The Development and Test of a Model*, in *ETHICAL ISSUES IN INFORMATION SYSTEMS* (Roy Dejoie et al. eds., 1990).

34. *Id.* at 167.

35. *Id.*

36. See TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* (1997); Tom R. Tyler & Heather J. Smith, *Social Justice and Social Movements*, in *Handbook of Social Psychology* (D. Gilbert et al., eds., 4th ed. 1997).



ing public compliance with intellectual property laws. The first involves trying to understand public feelings about what is fair. This effort flows from the recognition that the public is most likely to engage in illegal behavior when the formal law diverges from public views about what is fair.<sup>37</sup> In other words, the law can have an important symbolic function if it accords with public views about what is fair, but it loses that power as the formal law diverges from public morality.

There is considerable evidence that there is widespread value consensus within American society about what is right and wrong.<sup>38</sup> For example, studies of public views of crime indicate general agreement about what behaviors are and are not criminal, as well as uniformity regarding the severity of different types of crimes.<sup>39</sup> An understanding of these public feelings would allow legal authorities to tap into such sentiments in seeking compliance with the law.

Affirmative action policy is one example of an effort to utilize an understanding of public feelings in designing legal policies. Studies suggest that the public is generally opposed to affirmative action policies. However, these studies also indicate that support varies widely depending upon the manner in which the policy is implemented. For example, David Kravitz and Judith Platania presented students with affirmative action plans that varied in their characteristics.<sup>40</sup> They found that support for such policies varied dramatically depending upon how the policies were implemented.<sup>41</sup> Hence, although the public strongly opposed certain affirmative action policies, it was much more supportive of very similar policies that were differently framed.<sup>42</sup>

I would like to emphasize that the findings of a willingness to support affirmative action policies worded in particular ways were true for white males, as well as minority and female

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37. See P.H. ROBINSON & J.M. DARLEY, *JUSTICE, LIABILITY AND BLAME: COMMUNITY VIEWS AND THE CRIMINAL LAW* (1995).

38. TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* 103-32 (1997).

39. *Id.*

40. David A. Kravitz & Judith Platania, *Attitudes and Beliefs About Affirmative Action: Effects of Target and of Respondent Sex and Ethnicity*, 78 J. APPLIED PSYCHOL. 928 (1993).

41. *Id.* at 934-36.

42. *Id.*

respondents. In other words, the people who have the least to gain from supporting any form of affirmative action were still responsive to variations in the form of the policy, and willing to support some forms of such policies. In a 1990 study I participated in with James Lea and Heather Smith, we interviewed a sample of citizens and demonstrated that variations in support were linked to judgments about the fairness of the policy, rather than to differences in the degree to which the policies were viewed as helping or hurting the person interviewed.<sup>43</sup> In other words, people made judgments in ways that reflected their moral views about what was fair or unfair, rather than their immediate individual or group interests.

A promising area for research in intellectual property law is the area of "fair use." The public seems to be operating on an implicit standard of fair use, believing that some types of behavior are acceptable and others are not. For example, the public appears to feel that they should only have to pay for something once. This standard clashes in some important ways with the formal law about copyrights. What is needed is an exploration of public views about the meaning of fair use in areas involving computer software, CDs, videocassettes, and publications.<sup>44</sup>

A second important implication of the importance of morality to law abiding behavior is that we need to create and maintain a moral climate that supports formal laws. The public needs to be socialized into an acceptance of moral codes that support formal legal rules. The creation of such a moral climate supports the law. For example, while there have been widespread complaints about the behavior of Americans in areas as varied as traffic laws and tax paying, in fact Americans have traditionally been law abiding. Studies of citizen behavior suggest that Americans both feel strongly obligated to obey the law and generally do so in their everyday lives.<sup>45</sup> Hence, American law has traditionally benefited from American legal culture. Of course, the failure of laws against drinking shows that this has not been universally true. In general, however,

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43. See James A. Lea et al., *Predicting Support for Compensatory Public Policies: Who, Why and How* 26-27 (1990) (unpublished manuscript on file with the *New York University Journal of International Law and Politics*).

44. See Jessica Litman, *Copyright as Myth*, 53 U. PITT. L. REV. 235 (1991).

45. See TYLER, *supra* note 9, at 178.

Americans are socialized into a culture that supports law abiding behavior. The key issue is how such a culture can be created in the area of intellectual property law.

Part of the allure of deterrence strategies is their seeming simplicity: by threatening people with heightened probabilities of punishment, behavior can be altered. As has already been noted, such deterrence strategies in fact are difficult to implement effectively. Hence, they only seem simple in the abstract. Strategies based upon moral education, however, are clearly not simple or short term. They require the creation of an appropriate moral climate through socialization. While clearly more difficult and long term in character, such strategies have the benefit of strongly affecting public behavior toward the law.

How might moral development strategies be implemented? Eining and Christensen argue for educational programs involving the discussion of ethical dilemmas.<sup>46</sup> Research suggests that such discussions can promote moral development and lead to attitudinal changes that last over time.<sup>47</sup> In other words, we need to create an awareness of and commitment to the moral principles that underlie formal laws. In particular, the public's awareness of the reasons underlying intellectual property rules needs to be developed more effectively, so that a basis for a positive moral climate can be created.

### B. *Legitimacy*

A second force that induces compliance is the feeling of obligation to obey the law, namely legitimacy. One advantage legitimacy has over morality is that when the law is viewed as legitimate people feel that they "ought to obey" all laws, not just those that are consistent with their own moral principles. Hence, legitimacy is a more widespread, "blanket" endorsement of law's value than morality. If authorities are legitimate, people are generally willing to accept the rules they create, whatever those rules might be.<sup>48</sup>

The importance of legitimacy to compliance suggests that one reason Americans obey the law is their general respect for

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46. See Eining & Christensen, *supra* note 33, at 70.

47. See James R. Rest & Stephen J. Thoma, *Relation of Moral Judgment Development to Formal Education*, 21 DEV. PSYCHOL. 709, 712 (1985).

48. See TYLER, *supra* note 9, at 40-68.

the law. According to surveys, feelings of respect for the law have traditionally been quite high among Americans, and such feelings are related to compliance with the law.<sup>49</sup> Hence, in contrast to other societies, respect for legality has been high in the United States. This respect is one factor that encourages compliance. A legitimacy-based strategy for increasing compliance with intellectual property law would draw upon general respect for the law, highlighting the illegal nature of many public actions in this area.

The difficulty with a legitimacy-based strategy is that public respect for the law and legal authorities has been steadily declining over the past fifty years.<sup>50</sup> As a consequence, there is less of a "reserve of good will" upon which authorities can draw when seeking to gain compliance with the law. At this time, dissatisfaction with the law and legal system is widespread and the public generally holds lawyers and judges in low regard. Studies of the courts indicate that large proportions of the American public possess a low level of confidence in their legal authorities. For example, during the period 1972 to 1987, only thirty to forty percent of Americans expressed "a great deal of confidence" in the United States Supreme Court as an institution of government.<sup>51</sup> Furthermore, the public evinces a dissatisfaction with local courts and laws.<sup>52</sup> For example, national surveys suggest that between 1970 and 1980 approximately eighty percent of adult Americans indicated that the courts were "too lenient" on criminals.<sup>53</sup> Similarly, the courts were faulted for letting too many guilty people go free, for having too many legal "technicalities," and for giving defendants too many rights and too much respect.<sup>54</sup> While these

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49. See TYLER, *supra* note 9, at 19-68.

50. See SEYMOUR M. LIPSET & WILLIAM SCHNEIDER, *THE CONFIDENCE GAP: BUSINESS, LABOR, AND GOVERNMENT IN THE PUBLIC MIND* 1-3 (1983).

51. JAMES A. DAVIS, *GENERAL SOCIAL SURVEY 1972-1991: CUMULATIVE CODEBOOK* (1991).

52. Austin Sarat, *Studying American Legal Culture: An Assessment of Survey Evidence*, 11 *LAW & SOC'Y REV.* 427, 428-29 (1977).

53. See Tom R. Tyler, *Public Dissatisfaction with the Legal System: Americans Judge the Courts* 6 (June 21, 1996) (unpublished manuscript on file with the *New York University Journal of International Law and Politics*).

54. See E. Silver et al., *Demythologizing Inaccurate Perceptions of the Insanity Defense*, 18 *LAW & SOC'Y REV.* 63 (1994); Tom R. Tyler & Robert Boeckmann, *Three Strikes and You Are Out, But Why? The Psychology of Public Support for Punishing Rule Breakers*, 31 *LAW & SOC'Y REV.* 237-65 (1997); Tom R. Tyler &

grievances are directed at issues of criminal law, there is no evidence that the public distinguishes laws governing the handling of criminals from civil laws such as those regarding intellectual property.

The lack of public confidence in the legitimacy of legal authorities is creating a number of problems for the legal system, such as those involving securing the acceptance of legal decisions and laws. In addition, there is an increasing public acceptance of citizens who take the law into their own hands, as reflected in lessened verdicts by juries.<sup>55</sup> The public has also supported initiatives that restrict legal authority, such as the recent "three strikes" initiative in California.<sup>56</sup> In all of these ways, people are less willing to defer to the law and to legal authorities.

Within society and the legal community there have been increasing calls for the rebuilding of social capital, i.e., the faith of citizens in the government and in each other.<sup>57</sup> Such appeals for the recreation of civic virtue resonate well with the suggestion that increased legitimacy would aid those seeking to heighten compliance with laws.

The key to a strategy for rebuilding legitimacy lies in the findings of research concerning the antecedents of legitimacy. Those antecedents lie in people's judgments about the *procedures* through which legal authorities make rules. In other words, people defer to rules primarily because of their judgments about how those rules are made, rather than their evaluations of their content. Judgments about the fairness of decision-making authorities have been found to be more central to a rule's legitimacy, and to people's willingness to accept it, than are judgments of decision favorability. In other words, people are willing to defer to laws and legal authorities on procedural justice grounds.<sup>58</sup>

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Renee Weber, *Support for the Death Penalty: Instrumental Response to Crime or Symbolic Attitude?* 17 LAW & SOC'Y REV. 21 (1982); C.D. Uchida & T.S. Bynum, *Search Warrants, Motions to Suppress, and "Lost Causes": The Effects of the Exclusionary Rule in Seven Jurisdictions*, 81 J. CRIM. L. & CRIMINOLOGY 1034 (1991).

55. See Robinson & Darley, *supra* note 37.

56. See Tyler & Boeckmann, *supra* note 54.

57. ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 185 (1993).

58. See E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 65-66 (1988); Tom R. Tyler & E. Allan Lind, *A Relational*

These procedural justice findings have been widely replicated in studies of the legal system. These include studies of trial procedures,<sup>59</sup> as well as more general studies of the decisions of legal and political authorities.<sup>60</sup>

In addition, procedural justice findings have interesting implications for efforts to draw upon legitimacy to create support for the law. The primary implication is that such efforts should be based upon an understanding of which procedures for creating and implementing laws citizens regard as fair. Consider a simple example. One of the primary elements of a fair procedure is participation. People are more likely to regard as fair, and to accept, decisions in which they participated. In the arena of law, this suggests the importance of involving citizens in the development and implementation of intellectual property laws. If people feel that they have participated in the creation of legal rules, those rules are more likely to be viewed as legitimate, and therefore obeyed.

A second crucial issue in public reactions to legal procedures concerns judgments about the trustworthiness of legal authorities. If people feel that the authorities making legal rules are "trying to be fair" to them, they are much more willing to accept those rules. In fact, research suggests that trust in the motives of authorities is the central factor underlying

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*Model of Authority in Groups*, 25 *ADVANCES EXPERIMENTAL SOC. PSYCHOL.* (1992).

59. See R.J. MACCOUN ET AL., *ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW JERSEY AUTOMOBILE ARBITRATION PROGRAM* (1988); Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 *LAW & SOC'Y REV.* 483 (1988); E. Allan Lind et al., *Individual and Corporate Dispute Resolution: Using Procedural Fairness as a Decision Heuristic*, 38 *ADMIN. SCI. Q.* 224 (1993); Tom R. Tyler et al., *Maintaining Allegiance Toward Political Authorities: The Role of Prior Attitudes and the Use of Fair Procedures*, 33 *AM. J. POL. SCI.* 629 (1989); Tom R. Tyler, *The Role of Perceived Injustice in Defendants' Evaluations of Their Courtroom Experience*, 18 *LAW & SOC'Y REV.* 51 (1984).

60. See Tom R. Tyler, *Governing Amid Diversity: The Effect of Fair Decision-making Procedures on the Legitimacy of Government*, 28 *LAW & SOC'Y REV.* 701 (1994); Tom R. Tyler et al., *The Influence of Perceived Injustice on the Endorsement of Political Leaders*, 15 *J. APPLIED SOC. PSYCHOL.* 700 (1985); Tom R. Tyler, *Legitimizing Unpopular Public Policies: Does Procedure Matter?*, 14 *ZEITSCHRIFT FÜR RICHTS-SOCIOLOGIE* 47 (1993); Tom R. Tyler & Gregory Mitchell, *Legitimacy and the Empowerment of Discretionary Legal Authority: The United States Supreme Court and Abortion Rights*, 43 *DUKE L.J.* 703 (1994).

the willingness to obey legal rules.<sup>61</sup> Interestingly, this is equally true of situations in which people have personal experiences with authorities, i.e., local judges, and of reactions to laws passed by Congress, and decisions made by the Supreme Court. For example, when citizens are reacting to laws passed by Congress the primary reason they obey those laws is that they think that Congress is concerned about them and trying to do what is right for all citizens. Citizens are also affected by judgments that Congress is neutral and treats all citizens equally.

The importance of trustworthiness suggests that an important goal in citizen involvement with legal authorities is to reestablish the social connection between citizens and legal authorities that underlies feelings of trust in the motives of leaders.<sup>62</sup> If citizens trust that their leaders are trying to do what is best for them, they defer voluntarily to legal rules. In the area of intellectual property law, this means that people need to believe that the rules established serve reasonable social purposes and are not simply efforts to create profits for special interest groups, such as large corporations. Again, the key to developing an effective strategy in this area is to understand better how the public currently views copyright laws. Are such laws regarded as illegitimate efforts by corporations to enrich themselves at public expense? If so, what is the range of those public feelings? Do people view stealing software, copying videocassettes, and stealing pencils from work within the same general framework of alienation from institutions? Or do they differentiate among various forms of illegal action? Such knowledge is necessary to understand the nature and extent of current feelings that legal authority is illegitimate and need not be obeyed.

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61. Tom R. Tyler & P. Degoey, *Trust in Organizational Authorities: The Influence of Motive Attributions on Willingness to Accept Decisions*, in *TRUST IN ORGANIZATIONS: FRONTIERS OF THEORY AND RESEARCH* (Roderick M. Kramer & Tom R. Tyler eds., 1996).

62. See Tom R. Tyler et al., *Understanding Why the Justice of Group Procedures Matters: A Test of the Psychological Dynamics of the Group-Value Model*, 70 *J. PERSONALITY & SOC. PSYCHOL.* 913, 927 (1996).

## V. CONCLUSION

The key point of this paper is that reliance upon threats of punishment to enforce intellectual property laws is a strategy that is likely to be ineffective. Research in other areas of law suggests that such threats have, at best, a minor influence on law-related behavior. Instead, legal authorities need to focus on creating the values that underlie voluntary compliance with the law.

The argument I have outlined suggests the need to focus on social values when trying to understand why there is widespread noncompliance with intellectual property laws and when designing strategies to gain increasing compliance with such laws. Two such values are the beliefs that following a law is the morally right thing to do, and that laws and legal authorities are legitimate and ought to be obeyed.

In the case of morality, people are strongly affected by their judgments about the morality of breaking various types of laws. Hence, we need to create a moral climate that clearly associates various forms of intellectual property law with public morality. Either by framing law in terms of existing morality or by working to change morality, the formal law needs to be brought into line with public feelings. To do this, we need a better understanding of public morality in the area of intellectual property. We need to know what the public views as fair and unfair regarding software use and the copying of printed material, CDs, and video cassettes.

In the case of legitimacy, intellectual property laws, like all laws, benefit from a general climate of respect for the legal system. Unfortunately, respect for law has been declining among Americans. Hence, an effort to revitalize and relegitimize legal authorities is vital. How can law relegitimize itself? The key research finding is that people view laws and legal authorities as legitimate if they believe the laws are enacted and implemented following fair procedures. Hence, any effort to revitalize law must focus upon public perceptions about the processes through which laws are created and enforced. It is encouraging that research suggests that experiences with legal authorities that involve fair procedures can enhance feelings of legitimacy and obligation.<sup>63</sup> In other words, law can relegi-

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63. TYLER, *supra* note 9.



timize itself, and it can do so through the use of legal procedures that the public views as fair. We therefore need to explore the meaning of fair procedures in the legal arena.<sup>64</sup>

It is interesting that one of the major themes of the conference upon which this volume is based is that other societies should pay increasing attention to American rules governing a market culture of intellectual property. While calling for other societies to be more market oriented, however, American society itself is seeking to renew its political and social institutions, which have been weakened by the extreme individualism and market-orientation of American society. This renewal has focused, in part, on the recreation of moral values and the legitimacy of social institutions and authorities. In its efforts to recreate American society, America itself can draw examples from societies such as Japan and France, which have more effectively maintained their "social capital." Hence, the exchange between the United States and other societies is clearly a two way street.

If we want to build the moral values and legitimate authorities necessary for an effective civic culture, we need to focus on our own society and its cultural values. Some of those values are reflected in the general decline in the willingness to behave based upon internalized obligations such as morality and legitimacy. Others are more directly linked to issues of intellectual property law. In both cases, however, the key to effective laws is the creation of an underlying public culture whose values support the voluntary compliance with legal rules.

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64. See LIND & TYLER, *supra* note 58; Tyler & Lind, *supra* note 58.

