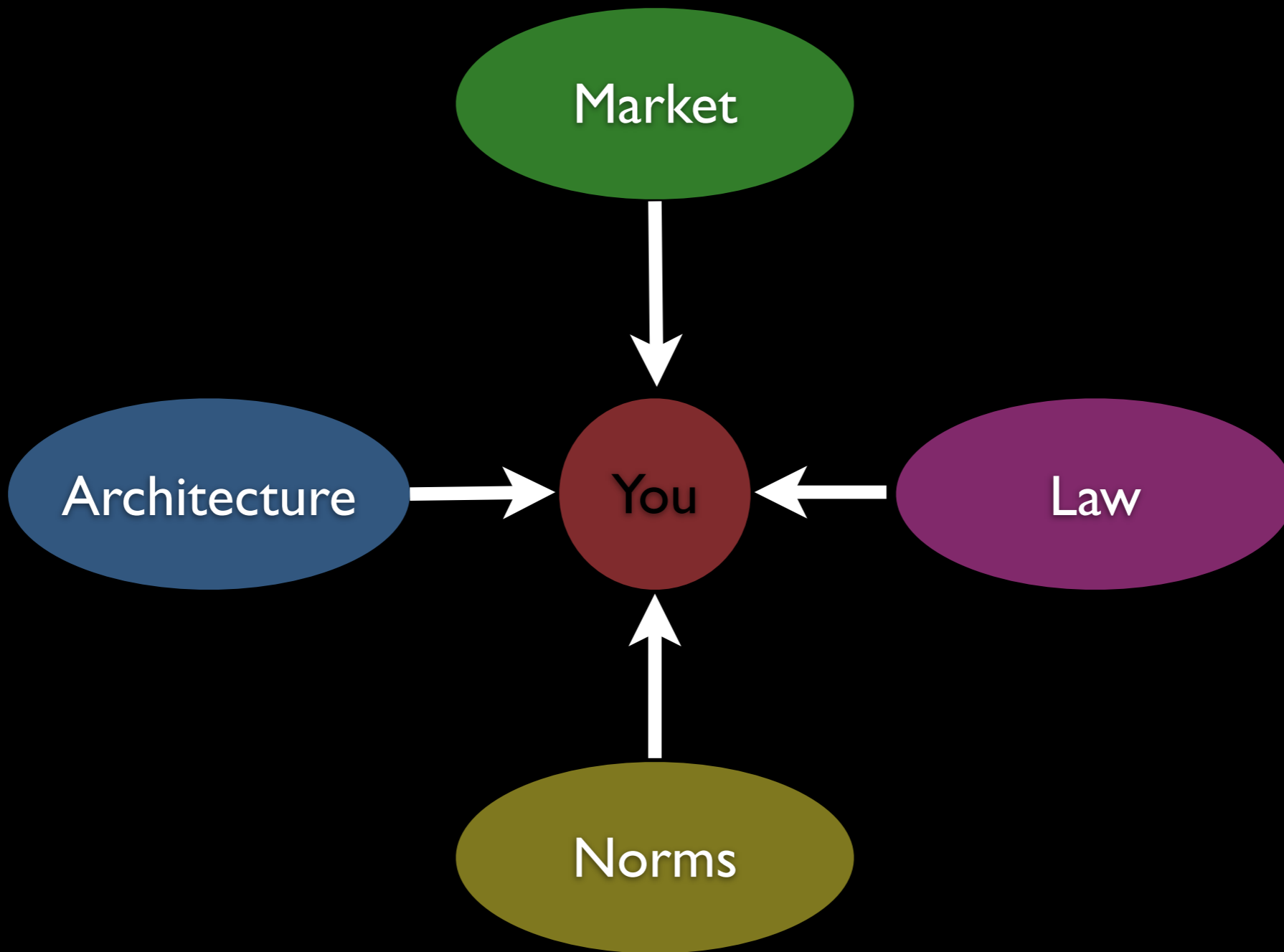


Notes on the Copyright Wars

University of Houston
Digital Transactions
Professor Chichester
September 16, 2009

Internet Battlefields

- Network Infrastructure
 - Net Neutrality
- Endpoints
 - Generative v. Appliance
- Legal
 - Copyright v. Unit of Consumption



Clients Community	Natural Law	Positivists	Normative Jurisprudence
Natural Law		RIAA / MPAA	
Positivists		Microsoft	Dual Licensers
Normative Jurisprudence			Open Source

The Copyright Wars

Origins of Copyright (Mythical and Positive)

The Utilitarian/ Consequentialist Story

- Adding to the term causes more works to be created
 - But dead people don't write more. They are decomposing, not composing
- Competition and IP Rights
 - IP is a monopoly right -- antithetical to competition

The Labor Origin Story

- “Reap what you have sown”
- “Don’t reap what you haven’t sown”
- Recognition of labor needed for creation
 - Rejected by courts!
 - The input of time is irrelevant.

Natural Rights and Geniuses

- Role of legislature is merely to confirm preexisting right
- Conveniently ignores the fact that the exclusive rights exercised by the author takes away from the liberty interests of others
- Supreme Court rejected this theory in *Wheaton v. Peters*, 33 U.S. 591 (1834).

Positivist Theory

U.S. Constitution

Art. I, Sec. 8, Clause 8

To promote the Progress of
Science and useful Arts, by
securing for limited Times to
Authors and Inventors the
exclusive Right to their respective
Writings and Discoveries;

It is an Economic Right

Metaphors

- The Birth Metaphor
 - No author is an island. Orphan works?
- The Agrarian Metaphor
 - Rejected in *Feist Pub. v. Rural Tele.*
- Thieves, Pirates and Parasites
 - Intended to create negative connotations

Causes of the War

- It's the economy, stupid!
- Copyright owners have historically resisted innovation
- The Internet is only the latest in many technological innovations affecting copyright owners
- They always sue before adapting

Property v. Intellectual Property

Property as Social Relationships

How to Affect Rights

- Modification of the term
- Changes to the list of exclusive rights
- Compulsory licensing
- Reduction in scope