

## Old Words, New Tricks

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Back in the mid-1950's, the XYZ network signed a contract agreeing to make a payment to a contractor for every television broadcast of certain programs, some of which are still in reruns. Forty years later, the contractor's assignees sued the network, claiming that those fees were due for transmissions of the programs over cable. The lawyers for XYZ asked for my help in determining whether the word *broadcast* as the word was understood in the 1950's would have covered cable transmissions as well.

In one sense this is just an instance of the utterly familiar problem of legal interpretation: how should we interpret old words in new contexts? But the difficulties have gotten more vexed with the rapid technological changes that modern times have brought with them. It's bad enough to have to keep reinterpreting the names of our everyday contrivances, like *skate* and *oven* -- we also have to be on the alert for changes in the activities and processes that are associated with them. Would a clause in a 1970 contract that provided for "notification by mail" permit the use of electronic mail for that purpose? Or, more important still, is the "copy" that a computer makes of a file on our hard disk the same sort of thing as the "copy" that we make when we send the file to the printer? If so, the legal implications are dramatic, so much so that a recent white paper from an intellectual property study group organized by the National Academy of Sciences suggested that perhaps the notion of a copy was no longer an appropriate foundation for copyright law in the digital age.

It's always a difficult problem: how do we determine whether someone's use of a word should properly apply to technologies that were either nonexistent or marginal at the time? Sometimes a little digging will reveal that the new technology in question was in fact anticipated long before it was widely used, and in that case we may be able to find citations for the word that show how people understood its range. It turns out, for example, that cable transmission was sporadically used in the early days of television, and that people in general were careful not to describe it as "broadcasting" (a 1949

biography of television pioneer Philo T. Farnsworth contained a chapter called "Television Broadcasting and Transmission over Phone Wires").

But often these questions leave us in the sort of counterfactual waters that only legal scholars and philosophers are comfortable swimming around in. Would people have considered that snowboards were skis if there had been any of them schussing around the slopes in 1950? Questions like that bring to mind the time George Bernard Shaw was asked a question that began, "If you had been born an Englishman, would you. . ." Shaw cut his questioner off: "That's like asking, 'If you had a sister, would she like olives?'"

One obvious recourse is to consult a dictionary to see how the word in question was defined at the time of the relevant use. Dictionary definitions of *broadcast* from the 1950's, for example, often mentioned the use of radio waves or "wireless telephony" and sometimes indicated that the transmission was "sent far and wide" or that it was intended for the benefit of an "unlimited number of receiving stations" or "an indefinite number of instruments in various directions." Those definitions suggest that the word wouldn't have applied to cable transmission.

But dictionary definitions often have to be taken with a modicum of caution, since lexicographers are not always careful about distinguishing the essential properties of a category from the contingent properties that merely happen to be possessed by most of its extant members. Back in 1926, the OED defined the noun *watch* as "a small timepiece with a spring-driven movement." If you applied that definition scrupulously, you would have to say that the small electric timepieces that began to appear in the 1950's were not watches in the strict sense of the term, even though people had no qualms about calling them "electric watches."

Often, in fact, we have to rely on retrospective evidence to figure out what a word meant at a given moment: when a competing technology appeared years later, were speakers willing to call it by the same name they used for the old one? That is by far the most common way for a language to accommodate technological change, even when it's fairly sweeping. We still talk about "dialing a number," even if it's really a matter of punching it in. And some of us still describe the large white objects in our kitchens as "iceboxes," even if it makes our twelve-year-old daughter look at us strangely.

As an adaptive strategy, this makes sense over the short run -- it's less work to extend an old name than to introduce a wholly new one. But it doesn't get us entirely off the hook; now we have to come up with a description of the old technology that distinguishes it from the new. Terms like these are sometimes called retronyms, and you could sketch a good chunk of the social and technological history of the last seventy-five years just by compiling a list of them -- *silent movie, manual transmission, propeller airplane, day baseball, natural turf, acoustic guitar, conventional oven, surface mail, brick-and-mortar retailer* and (God save us all) *paper book*.

Sometimes, though, we're reluctant to teach an old word new tricks. We persist in making a distinction between home movies and home videos, which suggests that the use of film as a medium is important to us (but then why are we willing to talk about "digital photos"?). We talk about "electronic mail," but we don't refer to the messages we receive as "letters," perhaps in nostalgic tribute to the epistolary age. And after cable became an important means of transmission of TV programs, people still generally maintained a distinction between "broadcast" and "cable." True, you sometimes see references to "cable broadcasts" of shows, but that's a loose usage, and it's significant that it hasn't given rise to any retronym like "air broadcast." (By analogy, the fact that people talk loosely about "record companies" and "record labels" doesn't mean that *record* has now become a generic term that encompasses CD's and audio cassettes.)

The court accepted our arguments in *XYZ v. Doakes*. In retrospect, of course, the dispute could have been avoided if the original contract had been more specific, but that was a more innocent age. The clauses in modern contracts that detail the possible technologies covered by the agreement are often as imaginative (and as improbable) as a Tom Swift novel. Still, there are no floor plans we can make now that will ensure that we'll be able to recognize the room when technology has finished rearranging the furniture.