

The abolition of copyrights: better for artists, third world countries and the public domain

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We would wish that artists would get a fair remuneration for their work. Usually we think that copyrights are one of the most important sources of their income, notwithstanding the fact that we know better. Meanwhile we start to realise that copyright is becoming one of the most important commercial products of the twenty first century. This phenomenon makes it unlikely that the system of copyright - or has it been called more rightly on the European continent: authors rights - any longer protects the interests of the majority of musicians, composers, actors, dancers, writers, designers, visual artists or filmmakers. The public domain is loosing anyway with the ongoing privatisation of the creative and intellectual commons.

This fact urges us to try to find other ways to insure that artists can make a living from their work. We should make sure, that their creations and performances again get the respect they deserve.

the twenty-first century's most valuable commodity

The information and cultural conglomerates embrace the whole earth with waves and cables. However, it does not make so much sense to possess oligopolistically nearly all the information pipelines of the world when you don't own as much "content" as possible to deliver by those new technologies. Copyright is the legal form of the ownership of this "content". Content is king at this present moment of history. Content holds value, because many thousands of hours of music and miles of images and texts are needed to fill those pipelines. The best way to acquire rights on huge quantities of entertainment and other artistic materials is by merging. The synergy is the rationale for media conglomerates' snatching up as much copyrighted material as they can. 'Today's mergers aren't just about grabbing more of the market share by buying yet another record label or movie studio or book imprint. They're also about acquiring the rights to music, movies and books. It's an investment in intellectual capital, i.e. creative expression, the twenty-first century's most valuable commodity.'¹

What we see, thus, is a ratrace of mergers in the cultural field, like the one of AOL and Time Warner, resulting in the abhorrent development that in the near future only a handful of cultural conglomerates will have the intellectual property rights on nearly all artistic creations of the past and the present, like Bill Gates and his company Corbis are owning worldwide the rights on 65 million images, from which 2.1 million available online.²

Who owns intellectual property rights on artistic materials likes to see them used, exhibited, performed, registered and distributed as much as possible, on all the available channels and in entertainment-related vehicles like computer games, gadgets, video jukeboxes and interactive media of all kind. What happens is that we are pushed more or less in a closed circle which is difficult to escape. Most of the artistic creations from past and present are becoming the property of a limited number of cultural conglomerates which try to confront us, in one way or another, any moment of the day, with the cultural contents they own. TRIPs, the intellectual property treaty of the World Trade Organisation (WTO), makes it possible that this intellectual land grab of buying copyrights can take place all over the world, without restrictions or borders.

The once sympathetic concept of authors rights is turning into a means of control of the intellectual and creative commons by a very limited number of cultural industries. This is not just an abuse that easily can be repaired. The Canadian anthropologist and copyright scholar Rosemary Coombe observes, that 'in consumer cultures, most pictures, texts, motifs, labels, logos, trade names, designs, tunes, and even some colours and scents are governed, if not controlled, by regimes of intellectual property.'³

only a few stars

The consequence of this monopolistic control is terrifying. The few left over huge cultural industries pump only the artistic fare and the entertainment through their channels, from which they own the rights. The property of copyrights gives them the opportunity to promote only a few "stars", to invest heavily in them, and to earn additional amounts of money from the gadgets which refer to the star. Because the investments and the risks are high and the cultural industries like to earn their investments manifold back, the marketing in the direction of every citizen of the world is aggressive, by which other cultural options will be pushed away from

¹ Janine Jacquet, *Cornering Creativity*, The Nation, 17 March 1997.

² C. Alberdingk Thijm, *Websurfen? Trek je creditcard*, Het Parool, 7 March 2000.

³ Rosemary J. Coombe, *The Cultural Life of Intellectual Properties. Authorship, Appropriation, and the Law*, Durham and London 1998 (Duke University Press): 6. See as well Naomi Klein, *No Logo*, London 2000 (Flamingo).

many people's mental map. The concentration on only a few "stars" has as a logical consequence that worldwide less attention can develop for a diversity of artistic expressions, which we desperately need in a democratic perspective.

What we see as well is a complete juridification surrounding every creation. The big cultural conglomerates buy rights all over the place, enclose them with extremely detailed property regulations, and let defend their interests by highly specialised lawyers. The effect is that every artist, who has created or performed something, must take care that his or her work will not be taken away by a cultural industry. So, the next minute after the creation or performance the artist must take care that her or his work will demonstrably get the status of a work under the regime of the authors rights. Just the average artist becomes obliged, more than ever, to hire lawyers to defend her or his case, which they obviously cannot afford on such a specialised level as the industries can do.

piracy/ mp3, napster, freenet

There are several other reasons which make clear that the system of authors rights cannot last any longer. We must think, for instance, of the piracy which takes place on an industrial scale and the piracy which "democratises" the use of music and other artistic materials at home. By the property of copyrights the cultural industries make their fortune. Piracy, which' turnover actually surpasses at least two hundred billion dollars yearly, is spoiling this capital accumulation.⁴ However, there is no reason to imagine that the "struggle" against this mass scale piracy can be won⁵, even not by the invention of very sophisticated safety measures against copying and by the introduction of police brigades against piracy, which, by the way, will cost, for instance, Third World countries more than they can afford. With a light sense of humour Richard Barnet and John Cavanagh observe, that 'stars now count on being seen and heard somewhere around the world many times a day. But the bigger the hit, the more likely it is that its creators and owners will have to share the profits with pirates. While intellectuals and politicians in poor countries denounced the "cultural imperialism" of the global media giants, underground entrepreneurs did something about it.⁶

The invention of MP3, Napster, Freenet and even more sophisticated home copying systems in the digital field makes it possible to download in a few minutes enormous quantities of music, images, films or software from the enormous virtual stock of "commonly available" data to which people from all over the world contribute. This is a phenomenon which the record industry, and especially the RIAA, the Recording Industry Association of America, obviously does not like. Even before American judges started to oppress this free exchange of artistic materials, Yves Eudes commented in the French journal *Le Monde*, that 'without any doubt, we will witness the emergence of a powerful system of references and sharing of digital products of different kinds, which develops behind the scenes of the Web, uncontrolled. Even when the original site of Napster would be forced to close soon, the spirit is out of the bottle.'⁷

Also another aspect of the continuing digitalization makes it less likely that the copyright system can be maintained. The computer and the Web provide artists with the unique possibility to sample their works using materials from all corners of artistic landscapes from past and present. Obviously the observation can be made that there should come critiques who are competent to judge what is worthwhile and what is bloody nonsense in those new fields of artistic activity.

The other observation is that those artists are not doing anything else than Bach, Shakespeare and thousands of other artists in all different cultures did before them. In all cultures it always was quite normal to use ideas and segments of works of predecessors. Only the system of copyright hampered this selfevident process of ongoing creation. They freeze the ongoing creation and pretend that there is culturally an end station, i.e. a specific artistic work which has been made on a specific moment of history, which, second, should not be changed anymore. The infringement on this static situation is what we call plagiarism. Artists who are sampling do not feel that they practise something wrongly by doing this. What we experience now is, that the concept of plagiarism is disappearing out of the consciousness of many artists, even more quickly than it appeared some centuries ago in the western culture.

Philip Kennicott, an Australian scholar, thinks that with Napster, there was the possibility of short-circuiting the entire commercial process of music making. 'Americans make the mistake of equating a particular kind of popular culture - the big-splash stuff promoted by corporate America - with "American" culture, as if blockbuster movies and million-selling albums present a whole and coherent account of creative life in America. It's tempting to believe that widely shared entertainment products are the cultural

⁴ Christian de Brie, *Etats, mafias et transnationales comme larons en foire*, *Le Monde Diplomatique*, avril 2000.

⁵ The Guardian, 13 June 2001 mentions, that 'sales of pirate CDs in the UK have soared by a third over the last year, with the black market now estimated to be worth £20m.'

⁶ Richard Barnet and Richard J. and John Cavanagh, *Global Dreams. Imperial Corporations and the New World Order*, New York 1994 (Simon & Schuster): 142.

⁷ Yves Eudes, *Un nouveau système de distribution sauvage de produits numériques*, *Le Monde*, 18 avril 2000.

glue that holds people together. But that kind of popular culture is very different from what was once known as folk culture. The difference is simple: Corporate America owns popular culture. Nobody owns folk culture. Napster threatened to erase the distinction.⁸

doubtful originality

So far the *practice* of artistic digitalization, which is more and more in conflict with the existing system of authors rights. On the phenomenon of plagiarism the philosopher Jacques Souillou has an interesting *theoretical* comment: 'The reason why it is difficult to administer the proof of plagiat in the field of art and literature is that it is not only sufficient to show that B has been inspired by A, without possibly quoting his or her sources. The proof has to be delivered as well that A has not been inspired by someone. Plagiat assumes actually, that the trace back to A exhausts itself in A, because if one would proof that A himself has been inspired by someone else and would have committed plagiarism from an "X" situated in a chronologically anterior position, the complaint of A fall to pieces.'⁹

His analysis reminds that the system of authors rights gives the exclusive rights on knowledge and creativity to authors of different ilk. The reality, however, is, that they appropriate artistic materials which exist already for long times and which actually belong to our common good. For instance, there is no poem created without former poems. In our present culture we are inclined to forget that the author or performer has used many sources - language, images, tonality, rhythms, colours, movements, meanings, humour, and so on - which belong to our common cultural and intellectual domain. Therefore there is no justification to claim *originality* and as a result give an artist *monopolistic right* on his or her work. "Originality" is thus a misleading and romantic concept.

James Boyle claims that, for a set of complicated reasons, 'we are driven to confer rights in information on those who come closest to the image of the romantic author, those whose contributions to information production are most easily seen as original and transformative.' He argues that this image of the romantic author 'is a bad thing for reasons of both efficiency and justice; it leads us to have *too many* intellectual property rights, to confer them on the *wrong people*, and dramatically to undervalue the interests of both the *sources of* and the *audiences for* the information we commodify. If I am right,' he continues, 'this unconscious use of the author paradigm has wide-ranging negative effects, with costs in areas ranging from biodiversity and the production of new drugs to the shape of the international economy and the structure of the computer industry.'¹⁰

The notion of authorship is a relatively young concept which came up with individualism in the western culture; in many other cultures it was and still is an unknown concept. James Boyle: 'As authors ceased to think of themselves as either craftsmen, gentlemen, or amanuenses for the Divine spirit, a recognisably different, more romantic vision of authorship began to emerge. In this vision the author was not the journeyman who learned a craft and then hoped to be well paid for it. The romantic author was defined not by the mastery of a prior set of rules, but instead by the transformation of genre, the revision of form. Originality became the watchword of artistry and the warrant for property rights.' James Boyle establishes, that 'it is the *originality* of the author, the novelty which he or she adds to the raw materials provided by culture and the common pool, which "justifies" the property right.'¹¹

Roland Barthes already explained in *The Death of the Author*, that 'in ethnographic societies the responsibility for a narrative is never assumed by a person, but by a mediator, shaman or relator whose "performance" - the mastery of the narrative code - may possibly be admired but never his "genius". The author is a modern figure, a product of our society insofar as, emerging from the Middle Ages with English empiricism, French rationalism and the personal faith of the Reformation, it discovered the prestige of the individual, or, as it is more nobly put, the "human person".'¹² Historically nothing less is true than the idea that it is selfevident to give exclusive rights of exploitation to someone who has created a work of art. It refreshes our cultural perspective as well to listen to the communication scholar Roland Bettig who reminds us that traditionally 'Asian authors and artists have viewed the copying of their works as an honour.'¹³

⁸ Philip Kennicott, *Napster Gives Musicians a Chance to Be Heard*, International Herald Tribune, 1 August 2000.

⁹ Jacques Souillou, *L'auteur, mode d'emploi*, Paris 1999 (L'Harmattan): 17.

¹⁰ James Boyle, *Shamans, Software, and Spleens. Law and the Construction of the Information Society*. Cambridge MA and London 1996 (Harvard University Press): X,XI.

¹¹ Boyle o.c.: 54,5.

¹² In: Newton 1988, K.M., *Twentieth-Century Literary Theory. A reader*, London (Macmillan): 155. Originally: Roland Barthes, *La mort de l'auteur*, Manteia, no. 5, 4e trimestre 1968. Published as well in: Roland Barthes, *Oeuvres complètes*, Tome II, 1966-1973, Paris 1994 (Editions du Seuil): 491-495.

¹³ Ronald V. Bettig, *Copyrighting Culture. The Political Economy of Intellectual Property*, Boulder 1996 (Westview Press): 213-9.

The copying was a necessity as well. Jean-Pierre Babylon calls the copying one of the grounding instruments of our civilisation. Only hereby many values have been transmitted, which otherwise would have been lost. This has caused that the cultural heritage of former generations could serve as sources of inspiration for those cultural workers of the next generations who are appearing freshly at the start.¹⁴

In the line of these observations it is interesting to lend an ear to Dutch painter Rob Scholte who is convinced that all what has been created is from everybody. 'This does not mean that all hereby has turned gratuitous. That would be an error of reasoning. People still experience something for the first time, authenticity continues to exist, and certain images keep their power of expression. As a postmodernist, however, I fight the idea of originality, of intellectual property, of copyright.'¹⁵ What he brings up is the phenomenon of *ownership* connected to the *assumed originality*. There is reason enough to accept, that the system of copyrights is based on a romantic concept of the author as if someone creates out of nothing and is completely original. At the same time the copyright system makes it nearly impossible for artists to create in the digital domain while using lots of sources. This frustrates the development of a completely new artistic field and pushes artists in the illegality.

Rosemary Coombe wonders how much, for instance, a star's celebrity image and its value is due to the individual's own efforts and investments. 'Celebrity images must be made, and, like other cultural products, their creation occurs in social contexts and draws upon other sources, institutions, and technologies. Star images are authored by studios, the mass media, public relations agencies, fan clubs, gossip columnists, photographers, hairdressers, body-building coaches, athletic trainers, teachers, screenwriters, ghostwriters, directors, lawyers, and doctors.'¹⁶ Let's furthermore not forget the role of the public in the creative process, about which Marilyn Monroe said herself, 'if I am a star - the people made me a star, no studio, no person, but the people did.'¹⁷

Do we need to have a system of intellectual property rights to promote the continuing creation of works of art and science? Not really. We know that in history and in many cultures marvellous creations have been made without the existence of anything like an authors right system. Nevertheless, they continued and continue to create.

More and more economist emphasize that research indicates again and again, that the expansion of authors rights in general favours investors over creators and performers. It is also no exception that only 10% of the members of a collecting society receive 90% of the revenues, and 90% goes to 10% of the artists! Economist Martin Kretschmer concludes, that 'the rethoric of author's rights has been largely carried by third parties: publishers and record companies, i.e. investors in creativity (rather than creators) who also turn out to be the chief beneficiaries of extended protection.'¹⁸

a western concept

Copyright does not benefit Third World countries either, and the individual appropriation of creations and inventions is a concept strange to many cultures. Artists and inventors are paid for their work, obviously dependent from their fame and from other circumstances, and they may be respected highly for what they have made. But, it is not in the mind of people from many cultures, that an individual may exploit a creation or invention monopolistically, for many decades. After all, the artist, or inventor, proceeds with the work of predecessors. A good example how in many cultures from past and present has been dealt with artistic creativity is the Algerian *raï* music, but this case is true also for most traditional and popular music cultures such as calypso, samba, rap, and so on. On the *raï* Bouziane Daoudi and Hadj Miliani emphasize 'that the same theme may know as many variations as there are performers.' The base is shared knowledge which refers less to a repertoire of existing "texts" but more to a whole of social signs (*el mérioula, el mehna, el minoun, e z'har, etc.*).'

It is difficult to recognize the true author - in the western sense of copyrights. The *raï* has no author. Until some years ago, with the entrance in the western market system, the singers "borrowed" songs or refrains from each other. The public added spontaneously words to a song. In the practice of the singers, the chebs and the chabete, theft, pillage, plagiarism of texts does not exist. It is a form of music which depends from the circumstances, from period, place, or public.' Bouziane Daoudi and Hadj Miliani describe the *raï* as 'a continuum of a strongly perturbed social imagination.'¹⁹

Also in Japan the idea that there should be paid copyrights does not belong to the common culture. Under pressure of the U.S.

¹⁴ Jean-Pierre Babylon, *La culture par la copie*, Le Monde, 27 octobre 1999.

¹⁵ Interview with Rob Scholte in *De Groene Amsterdammer*, 18 December 1996.

¹⁶ Rosemary Coombe, o.c.: 94-97.

¹⁷ Rosemary Coombe, o.c.: 94,5.

¹⁸ Martin Kretschmer, *Intellectual Property in Music. A Historical Analysis of Rethoric and Institutional Practices*, Paper, City University Business School, London 1999: 2.

¹⁹ Bouziane Daoudi et Hadj Miliani, *L'aventure du raï. Musique et société*, Paris 1996 (Éditions du Seuil): 126-9.

Japan had to change its copyright law in 1996. The International Herald Tribune reported at the time, that 'current Japanese copyright law does not protect foreign recordings made before 1971, meaning that Western record companies, by their estimates, are losing millions of dollars a year in royalties from copying of tunes that are still highly popular.' The headline of the article on this matter in the International Herald Tribune was: 'U.S. Takes Music-Piracy Charge Against Japan to WTO.'²⁰ A cultural difference, a different opinion about how long rights should hold, has been interpreted as "piracy."

Tôru Mitsui explains, that the basic conception of copyright has become familiar in Japan mainly through newspaper coverage of copyright issues concerning records, tapes and computer programmes. 'But still the Japanese people do not take well to copyright, or more properly, to the idea of the individual right. Generally speaking, to claim one's right is regarded as dishonourable or undignified, especially when the right involves money.'²¹

Even when in many non-Western cultures copyrights are applied, it soon becomes clear that the ideology sustaining the system is not fit for the complexity of the processes of creation. In the western world there exists a sharp division between, for instance in the case of music, the composer and the performer. Not so in African music, which is usually associated with specific dances, according to John Collins. Thus, 'in the African case royalty-accruing components should, in the name of creative equity, be divided into four: the lyrics, the melody, the rhythm and the dance-step - with the melody further divided into the various contrapuntal or cross melodies and the polyrhythm into its multiple subrhythms.' However, this is not all, 'in African performing arts the audiences often have a creative role too, as they chant, clap and perform dance-dialogues with the musicians.' It is clear, that the individual allocation of copyrights cannot work. After all, 'how does one measure the degree (and value) of "originality" in a continually reworked piece of music?'²²

Does this mean, Rosemary Coombe wonders, that artists and authors of, for instance, First Nations ancestry do not wish to have their works valued on the market, or that they would eschew royalties for works produced as commodities for an exchange value on the market? Obviously not, but what she likes to suggest is, that 'in the debate surrounding cultural appropriation, Native peoples assert that there are other value systems than those of the market in which their images, themes, practices, and stories figure and that these modes of appreciation and valuation are embedded in specific histories and relationships that should be accorded respect.'²³

Noam Chomsky will not be far from the truth when he accounts, 'that American companies stand to gain \$61 billion a year from the Third World if U.S. protectionist demands are satisfied at GATT (as they are in NAFTA), at a cost to the South that will dwarf the current huge flow of debt service from South to North.'²⁴ A part from this amount of money concerns copyrights on cultural "products". However, which part, that is difficult to calculate because commercial statistics differ enormously between countries. One may assume, that the amount of money poor countries must pay for copyrights is growing, partly because the Southern and Eastern countries feel pressure from the West to fight piracy, which costs them their scarce energy of police forces.²⁵ For the other part transnational cultural conglomerates penetrate more effectively in those countries with their entertainment and other cultural products, which has a consequence that those countries must transfer the scarce hard currency they have to the Western, and meanwhile as well Japanese, cultural industries.

dialogic practice

We arrive now at a point where it makes sense to look whether another system can be developed which is more advantageous for the diversity of artistic creation. Before suggesting such a system there should grow a clear idea of what we like to reach. Rosemary Coombe describes the contradiction which should be solved, when she makes the analysis, that 'culture is not embedded in abstract concepts that we internalize, but in the materiality of signs and texts over which we struggle and the imprint of those struggles in consciousness. This ongoing negotiation and struggle over meaning is the essence of dialogic practice. Many interpretations of intellectual property laws quash dialogue by affirming the power of corporate actors to monologically control meaning by appealing to an abstract concept of property. Laws of intellectual property privilege mono-logic forms against dialogic practice and create significant power differentials between social actors engaged in hegemonic struggle.'²⁶

²⁰ International Herald Tribune, 10/11 February 1996.

²¹ Tôru Mitsui, *Copyright and Music in Japan*, in Simon Frith (ed.), *Music and Copyright*, Edinburgh (Edinburgh U.P.) 1993: 141,2.

²² Collins 1993, John, *The Problem of Oral Copyright - Ghana*, in Frith o.c.: 149,150.

²³ Coombe o.c.: 381.

²⁴ Noam Chomsky, *Notes on Nafta*, in Dawkins 1993, Kristin, *Nafta. The New Rules of Corporate Conquest*, Westfield, New Jersey: Open Magazine, Pamphlet Series: 1-6.

²⁵ See: Herman Cohen Jehoram, Petra Keuchenius, Lisa M. Brownlee (ed.), *Trade-Related Aspects of Copyright*, Deventer 1996 (Kluwer): 44.

²⁶ Coombe, o.c.: 86.

The central concept, thus, is *dialogic practice*. This should have a chance, again, in the cultural expressions which are produced and used in our societies. The second important purpose, which should be reached, is that *many* artists, in the rich and the poor countries alike, will get a decent income again from their creative work.

Upholding the current authors right system, is, for the many reasons I discussed, not a feasible and not a desirable option. It is not realistic to think that by an improvement of the present system the power of the cultural conglomerates, which finds its base in the possession of as much intellectual property rights as possible, can be broken.

Remarkable is that in the present system the straight relation between the individual artist and the right, as was originally meant to be the basic philosophy of the concept of authors rights, does not exist anymore in quite a lot of situations. Many artists can get their work only distributed and promoted when they hand over most, if not all of the rights to a producer or other kind of rightholder. Common practice as well is the approach of the obliged licensing; if you pay, there follows automatically the right to use the work. In many cases a collective system of levies exists, as happens, for instance, with blank tapes and with levies on the use of copier machines. The allocation of the remunerations often takes place according to a system of sampling.

Why shouldn't we put a next step and abolish the whole system of authors and copyrights and replace it by an approach which provides a better payment to artists in Western and Third World countries alike, which gives due respect to their work and which brings the public domain back again in the middle of our attention?

a substantial remuneration for artists

At a first glance the claim may appear to be a contradiction, that the average artist, in the Western and Third World countries alike, will get a better position without the system of authors rights. However, there is enough reason to take this as a serious option. Where will this bring us? Probably the most radical aspect of this proposal is, that the attention will fade away, which cultural industries now organise for their super-stars. How does this work? It makes no sense for them any longer to invest heavily in stars and super-events, if they cannot exploit them exclusively (which is after all the basic principle of authors rights). Even piracy on an industrial scale is not interesting anymore, because the next pirate can do the same as the first pirate, which makes the investment in piracy not attractive anymore!

This has far reaching consequences. For the average artist the normal situation will come back: not disturbed by the market domination of "stars" they can find again many markets and different publics for their work, in their own surrounding and on a global scale by the Internet. Thousands and again thousands of artists can make a fair income by their performances and by the sale of their work. The result of the activities of so many artists will as well contribute to the rise of meaningful cultural diversity. After all, there are in the situation, where authors rights do not exist any longer, no monopolistic cultural industries which determine, single mindedly, the common taste by the promotion of their stars.

With the abolishment of authors rights enterprises and other users of artistic materials will be freed from the payment of authors rights levies and from the bureaucratic paperwork, which is unavoidably connected to it. Collecting societies have no reason of existence anymore, which means substantial savings. This does not mean that there should not be paid for the use of artistic work. Of course there should be a substantial remuneration for artists. After all, enterprises and other commercial users of artistic creations and performances apply music, images, designs, texts, parts of films, dance movements, paintings, multimedia performances, etcetera in order to radiate a desired ambiance and consequently enlarge their profits.

Therefore there should be levied a tax of a certain percentage of the profits of those enterprises which use or sell, in one way or another, artistic materials. One may reasonably guess that this are nearly all enterprises. The collected money of this tax will be put in a special fund, which' procedures have been regulated by law. Three kinds of receivers can be distinguished: groups of artists and cultural initiatives, individual artists, and artists in Third World countries.

By proposing such a tax on the use of artistic materials, there is no direct connection anymore between the actual use - measured in quantities, minutes, and other kinds of measurements - of the work of a certain artists at one side, and the remuneration which he or she receives at the other side. This is reasonable. After all, there are many predecessors and many sources which have contributed to the creation and production of a certain work of art, including the cultural richness which the public domain provides for free!

respect

Another issue connected to copyrights are the *moral rights* which have nowadays still a stronger base in the European authors rights system than in the Anglo-Saxon copyright approach. Moral rights protect the integrity of a work of art and science against infringement. However, if we recognise that the copyrights concept is full of romanticism, and if we are aware that the moral rights

aspect freezes works of art in quite unnatural ways, then a logical conclusion is getting rid of moral rights as well, as they have been defined in our legal contexts.

Of course, we can admire the work of a certain artist enormously, as Roland Barthes has indicated, and we can agree that we should deal with a certain work of art more than very carefully. This observation does not lead necessarily to the conclusion, that the artist, or a "rightholder" may be the absolute ruler on "his" or "her" creation or performance or interpretation, and this for decades. In our western society we have created the bizarre situation that we automatically end up at the court when we think the ownership of an artistic creation, the copyright, has been violated. But, if we conclude that the concept of absolute ownership is not applicable, then the judge is the wrong address if..., if what? If there is no ownership in the absolute sense, then there is nothing to be violated and to be brought before the court.

Nevertheless, in our western culture we have brought the judicial authorities in the position that they should play the role of cultural arbiters: the judge as the guardian of "originality"; the judge as the person who says that digital sampling without permission is liable to penalty; the judge who seems to know that cultural adaptations, or the "dialogic practice" to quote Rosemary Coombe again, are the wrong way of doing; the judge who can evaluate the continuation of the cultural life only in terms of a delict; the judge who freezes the ongoing cultural creation for decades and decades.

There is no escape, we should get accustomed to the fact that we, the people, we, the bearers of the public domain, should discuss in cultural terms again the value of the ongoing artistic creativity. There is no reason to pass the cultural judgments, which we should make ourselves, to the judicial authorities. Central in our cultural debates should be the question whether the use of (parts of) works of other artists happens with *respect* and with an abundance of new creativity. Or, should we conclude that the use is slovenly or boring or even objectionable lazy? Does it make our culture a poorer or a richer resort of human existence? What happens is that an artist who borrows too easily from a predecessor or contemporary, will be stigmatised as a minor god.

Let us imagine, however, an artist who copies the work of another artist and just pretends that it is his or hers, and brings it out under his or her name. Let us imagine the case in which there is no adaptation, no cultural comment on another work of art, no parody, no trace of a single creativity by the copying artist. What to think of such a situation? Obviously, this is not a difficult question. This is outright stealing and should be brought under the criminal law. One can imagine a new article in the criminal law, which says that he or she, who copies deliberately the work of another artist, in word, text, image, music or any other tool of artistic expression, without the intent to adapt, to enrich or to parody it, while maintaining all the external characteristics of the original work, will be punished with

It might be clear that the analysis, which I have proposed, on the abolishment of authors rights is a first start. There is a lot of intellectual work to do in order to refine and to ameliorate the basic philosophy and the practical consequences of the proposal, certainly concerning the distinguished fields of the arts. It may not wonder that I guess that there is a role to play for arts schools. After all, their students are confronted specifically with the huge dilemma's the system of copyright is posing to us all. Why not collaborate with people from many disciplines - scholars in the fields of law, rethorics, semiotics, sociology, history, economy, public administration, cybernetics, etcetera - in order to challenge the future of the artistic and cultural creation, production, distribution, promotion and reception.

The purpose should be to come to a new system, in which artists and their intermediaries have full confidence, which provides many cultural workers in the Western and Third World countries alike with better remunerations, which gives full chance to the public debate on the value of artistic creations and performances, which has great concern for the maintenance of public cultural domain, which takes care that there are enough sources available for future artistic creations, and which breaks the monopolistic role cultural conglomerates are playing by using the present system of authors right.

note on the author

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