

Copyright at the Cost of Culture

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Introduction

'Under monopoly all mass culture is identical, and the lines of its artificial framework begin to show through' [Adorno 2002]

In 'Dialectic of Enlightenment' Adorno argues that the cultural industry has standardized and commoditized all creative practices which has led to a loss of individuality and of critical thinking. However it seems that recently the roles of cultural producers and consumers is rapidly being altered. The 'contrast between the few production centers and the large number of widely dispersed consumption points' [Adorno 2002] has changed completely through digital technology and the internet, indeed the writer Gilmour comments that the 'lines will blur between producers and consumers, changing the role of both in ways we're only beginning to grasp now.' [2004: 13]

In his book 'We the Media' Gilmour argues that 'Big Media' or the established content industry is losing its monopoly on producing culture to an 'enormous and growing cadre of content creators' [2004: 162] empowered by a communications network that is a 'medium for everyone's voice, not just the few who can afford to buy multimillion-dollar printing presses, launch satellites, or win the government's permission to squat on the public's airwaves.' [2004: 13] This will obviously have huge implications on the established cultural industry, however Gilmour argues that

'The media of the late 20th century was largely the province of big corporations. All else being equal, it might be headed toward extinction. But all is not equal in the halls of power and influence. If today's Big Media is a dinosaur, it won't die off quietly. It will, with the government's help, try to control new media rather than see its business models eroded by it.' [2004: 172]

The aim then of this essay is to examine the actions and consequences of the established cultural industries reaction to mass culture being freed from its monopoly.

Rip, Mix, Burn Culture and the Fight for Control of Intellectual Property

The term 'Rip, Mix, Burn' originally used by Apple computers has now been used to describe an ideology that people can take the culture around them (Rip), control or manipulate it in the way that seems fitting (Mix) and publish and share it with the world around them (Burn). Indeed, this new found creativity has meant for a new type of cultural consumer, one that not only consumes but also produces, the

'prosumer'. The model for distributing and sharing culture has also changed from the one-to-many model of newspapers, television and radio to a far more democratic many-to-many model provided by the internet, this has the potential to radically change the way in which culture is produced.

'Digital technologies, tied to the Internet, could produce a vastly more competitive and vibrant market for building and cultivating culture; that market could include a much wider and more diverse range of creators; those creators could produce and distribute a much more vibrant range of creativity; and depending upon a few important factors, those creators could earn more on average from this system than creators do today.' [Lessig 2004: 9]

As mentioned before though this new model for distributing and sharing culture has been highly contested by industries which have been made from the old, analogue model of distribution. It has been argued that this freedom to copy and share will destroy the entire industry, referring to people who partake in it as 'terrorists' [Valenti 2002], 'pirates' [Glickman 2004] or even 'modern-day communists' [Gates 2005]. The method in which the industry has tried to claw back some of this control is by arguing that this creativity is illegally breaching laws of copyright which is damaging to the artist and therefore damaging to the industry. This is because when someone is using the internet everything they see is essentially a copy of something else, not only that but thanks to digital technology it is a perfect copy. This then puts every action in to the realm of copyright jurisdiction. To try and claim back some of this control, the industry has made several different responses. The first, as Shapiro puts it, is to:

'fight fire with fire – using one technology to negate what another technology makes possible.' [1999: 81]

This has been done through several methods, for example digital watermarks, clickwrap contracts and trusted systems. A well known example has been the attempts to encrypt and protect films through the DVD medium. In 1995 after seeing the effects of digital technology on the music industry, the film industry decided to encrypt its DVD medium using a technology called CSS (content scrambling system), they would then keep this encryption secret to prevent people from ripping the content, and so could maintain control. They would also build the decryption technology into every DVD player to allow it to read the medium. The problem with this strategy though, was that by trying to keep the combination secret but also building it into every DVD player, eventually someone will break the combination. Within a few years this was done by a Norwegian teenager called Jon Lech Johansen.

The next attempt for control then, was that if they couldn't make encryptions that were technologically unbreakable they would make it illegal to try and break encryptions. This came in 1998 in the form of the Digital Millennium Copyrights Act (DMCA) which was piece of law, designed to protect the code, which protects the copyright. However a dangerous issue arises here as the DMCA can not only support the copyright law, it can also extend it, as it is specifically designed to outlaw technologies or attempts that break copyright protection, not break copyright.

The final way in which the content industry has tried to take control is to make ripping itself illegal through changing and altering the very laws of copyright, one of the main ways this is done is through pushing for longer and longer terms of copyright. Although the main objective behind copyright laws was to give an incentive for people to create by giving them legal control, there is another objective which was just as important and that is that after a limited period of time, (by which the piece of work had usually expired any commercial value) the work must be given into the public domain for others to be able to create from, thereby nurturing a constant environment for cultural production. However this period of copyright which started out at 14 years (if it was renewed) has been extended numerous times (including eleven times in the last forty years) and now stands at 95 years (with no renewal needed) today. Combine this with the very grey area of what constitutes fair use and extremely tough penalties issued for minor offences and it is clear that the environment for cultural production is very different today than it was before.

The Justification Behind the Action

It is claimed that these measures are all necessary as they will protect the creators and people working within the industry and without them the whole thing will collapse due to loss of revenue. In a statement against file sharing Jack Valenti, recently retired head of the Motion Picture Association commented that 'We have to stem the tide of film theft online before it is too late, before it puts to peril the creative energy of the industry.' [2004: 1] However McLeod notes these justifications have been used before,

'The rise of the Internet has served as a wonderfully effective boogeyman used by intellectual property owners to legitimate the same one-dimensional arguments they've been asserting for years. Those claims go something like this: Anyone who does *anything* to *any* of their properties is a "pirate"' [2005: 4]

Indeed in 1976 Sony introduced the Betamax which in a similar way gave the consumer control by allowing them to tape the programs they want, to watch when they want and to skip the commercials. In a similar way the industry was outraged because they thought they would lose revenue, and so took Sony to court saying that recording is copying, copying is illegal therefore they are providing a tool for infringement. In a congressional testimony the same Jack Valenti commented that:

'The VCR is to the American film producer and the American public as the Boston strangler is to the woman home alone' [1982]

However the judge decided that the Betamax was not breaking the law as it had both legal and illegal uses. The interesting point though is that in 2000, film industry statistics showed that nearly half its revenue came from the sale or rental of videos, showing that the initial MPA concerns and predictions were not only exaggerated but they were wrong in that the VCR actually contributed substantially to their

profits. It is arguable then that, if the industry is willing to adapt there is still a way to allow copying and sharing of culture while at the same time rewarding the creators. Kusek and Leonhard describe this new business model, for music particularly as being like water 'with "music faucets" turned on, anywhere and anytime, and with large-scale users paying more to use more. Bottled water – i.e., new types of music products – will have a whole new life ahead of them, but this will no longer be the only way to get your music.' [2005: 12]

Copyright as a Restriction of Creativity

'They're stealing from our common heritage in order to protect a few valuable works. And they're thwarting innovation.' [Gilmour 2004: 214]

As well arguing that the approach of the cultural industry towards others sharing and using their work is wrong and unjustified, Gilmour and many others have argued that by trying to keep hold of their intellectual property the industry is actually damaging the environment for creativity by restricting what is allowed to be built upon, abandoning the idea of fair use in favour of a permission culture.

A famous example that best illustrates this is in the beginnings of the Walt Disney creation, Mickey Mouse. In 1928 Walt Disney released the short film 'Steamboat Willy' which featured for the first time the character Mickey Mouse. However previously in 1928 was a film called 'Steamboat Bill Junior' by Buster Keaton, and Steamboat Willy was literally a parody of a film that had been released a few months before. So from Steamboat Bill Junior came Steamboat Willy, from Steamboat Willy came Mickey Mouse and from Mickey Mouse came Disney Incorporated. This creativity carried on into Disney's feature films with them taking fairy tales from people like the brothers Grimm, changing them to make them accessible to a family audience then releasing them into cinemas worldwide. So they would take, change and release or rather rip, mix and burn!

However when someone uses the same form of Walt Disney creativity today, they are told that it is illegal unless they seek permission first and are prepared to pay high fees for the privilege or can afford to pay expensive lawyers fees to use something that should have entered the public domain years ago. This is because while the terms of copyright grow, the works in the public domain becomes fewer. At the same time the scope of what comes under copyright is also growing, meaning that no-one can do to Disney Inc. what Walt Disney did to the brothers Grimm.

'The opportunity to create and transform becomes weakened in a world in which creation requires permission and creativity must check with a lawyer.'

[Lessig 2004: 173]

So the result of restricting and controlling creations will ultimately mean a decline in creativity. Although Valenti argues that: 'Piracy means fewer people buying DVDs, less revenue, and fewer movies being made. Especially hurt will be creative ventures outside the mainstream that involve greater financial risk' [2003] the reality is that diversity will be more hurt through pushing for longer copyright terms. As it will mean that creators are more likely to need a bigger budget to clear or pay for copyrighted material, meaning that they will need financial backing from one of the few giant media conglomerates. However the problem with being part of a large media company is that what gets made is what gets approved, what gets approved is what sells, and what sells is mainstream. Which ultimately means a loss of diversity. This point about the established cultural industry was stated by Adorno when he mentions

'the agreement – or at least the determination – of all executive authorities not to produce or sanction anything that in any way differs from their own rules, their own ideas about consumers, or above all themselves.' [2002]

Conclusion

The answer then to the 'Rip, Mix, Burn' culture that digital technology has created seems not to do what the established content industry is currently doing, as it will eventually destroy creativity and diversity in the cultural industry. Nor for that matter is it to enter into a cultural anarchy where artists don't get paid and it is impossible to make a living from producing music, films, art or software. No the answer is to strike a balance somewhere in-between, and if this cannot be done through the law (and it has been tried several times) then it must be done through people voluntarily giving up certain rights on their work. There have been several schemes which are underway to do this, however one of the biggest movements is the Creative Commons which encourages people to register work and in registering, choosing which rights to give up. So it maybe that the creator will say anyone can use their work as long as they don't alter it, alternatively they might say that anyone can alter the work as long as they give them credit. The important thing is that rather than saying 'All Rights Reserved' the work says 'Some Rights Reserved'. Because although the public domain can build culture it is also something that needs to be built.

Bibliography

Books

Adorno, Theodor and Horkheimer, Max [2002] *Dialectic of Enlightenment* Stanford: Stanford University Press

Gillmor, Dan [2004] *We the Media: Grassroots Journalism by the People for the People* Sebastopol: O'Reilly

Lessig, Lawrence [2004] *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* New York: The Penguin Press

Shapiro, Andrew [2000] *The Control Revolution: How the Internet Is Putting Individuals in Charge and Changing the World We Know* New York: Public Affairs

McLeod, Kembrew [2005] *Freedom of Expression: Overzealous Copyright Bozos and Other Enemies of Creativity* New York: Doubleday Books

Kusek, David and Leonhard, Gerd [2005] *The Future of Music: Manifesto for the Digital Music Revolution* Boston: Berklee Press

Articles

Harmon, Amy [2002] *Black Hawk Download: Pirated Videos Thrive Online* New York Times (17 January)
<http://www.nytimes.com/2002/01/17/technology/circuits/17VIDE.html>

Taylor, Rich [2004] *MPAA Studios take actions against Major P2P Server Operators to stem Global Movie Piracy* MPAA Press Release (14 December)
http://www.mpa.org/currentreleases/2004_12_14_wwdep2pactions.pdf

Kanellos, Michael [2005] *Gates Taking a Seat in your Den* News.com (5 January)
http://news.com.com/Gates+taking+a+seat+in+your+den/2008-1041_3-5514121.html

Valenti, Jack [2004] *MPAA Launches new phase of Aggressive Education Campaign against Movie Piracy* MPAA Press Release (15 June)
http://www.mpa.org/jack/2004/2004_06_15a.pdf

Valenti, Jack [2003] *Thoughts on the Digital Future of Movies, the Threat of Piracy, the Hope of Redemption* MPAA Press Release (30 September)
http://www.mpa.org/jack/2003/2003_09_30b.htm