

The Black and White (and Grey) of Copyright

by Lawrence Liang (IN)

In a broad historical and cultural view, copyright is a recent and by no means universal concept. Copyright laws originated in Western society in the Eighteenth century. During the Renaissance, printers throughout Europe would reprint popular books without obtaining permissions or paying royalties and copyright was created as a way to regulate the printing industry. With the emergence of the concept of artistic genius, copyright became enmeshed with the general cultural understanding of authorship. Later, with globalized capitalism, control over copyrighted works became centered in the hands of media corporations instead of authors and artists. Even as the internet and digital media rendered distinctions between original and copies largely obsolete, changes in the law tried to artificially maintain them. As a result, copyright laws over time have been transformed from their original purpose of regulating the publishing industry to instead regulating its customers, artists and audiences.

Traditionally, copyright was of little relevance to cultural and artistic practice except in the realm of commercial print publishing.

Some examples:

- ◆ Authorship, originality and copyright are of no or little relevance in virtually all traditional forms of popular culture all over the world. Most folk songs and folktales, for example, are collective anonymous creations in the public domain. Variations, modifications and translations are traditionally encouraged as part of their tradition.
- ◆ The Walt Disney Corporation founded much of its wealth on folk tales, such as "Snow White" and "Sinbad", by taking them out of the public domain and turning them into proprietary, copyrighted films and merchandise products. Today, the company is one of the strongest backers and political lobby sponsors for drastic copyright restrictions on digital media.
- ◆ The same is true for many works considered part of the high-cultural canon, crafted by unidentified, often collective authors: Homer's epics for example, or the "Tales of 1001 Nights" which were spread by storytellers and of which no authoritative, "original" written version ever existed. Modern philology believes them to be derived from Persian sources which in return were translated from Indian works.
- ◆ In the Middle Ages and Renaissance, original authorship was even rather more disregarded than encouraged. In the foreword to "Don Quixote", Cervantes falsely claims that his novel was based on an Arabic source. Literary works typically render themselves canonical by not inventing new stories, but rewriting existing ones, such as the many adaptations of "Faustus" from Christopher Marlowe to Johann Wolfgang von Goethe, Fernando Pessoa, Alfred Jarry, Thomas Mann and Michel Butor.
- ◆ Until the 20th century and the rise of the recording industry, copyright played no major role for music and musical composition. Musical themes were freely adapted and copied from one composer to another. Bach's "Concerto in D Major BWV 972" for example is simply a re-orchestration of the ninth movement of Vivaldi's "L'Estro Armonica". Even as late as in the 19th century, Beethoven didn't have to buy a license for writing the "Diabelli Variations", 83 variations on a waltz written by the Austrian Anton Diabelli. And finally the entire genre of Blues music is, as a matter of fact, a variation of only one song, the twelve bar harmonic scheme.
- ◆ Copyright was a non-issue in the visual arts, too, until recently. Renaissance and baroque paintings were to a large degree collective workshop productions, and recycled conventionalized, emblematic pictorial motifs. Rubens and Rembrandt were the most prominent practitioners of the workshop method, with author attributions of their work remaining unclear until today. In 1921, Kurt Schwitters called his own brand of Dada "Merz", derived from the logo of the German bank "Commerzbank" which he had used in a collage painting. Today's artists who do the equivalent in the Internet risk being sued for copyright and trademark infringement.
- ◆ Ever since personal computers and the Internet closed most of the technical gaps that prevented media consumers from becoming media producers and receiver technology from functioning as sender technology (to cite the media critiques of Bertolt Brecht and Hans Magnus Enzensberger from 1930's and 1970's), copyright has emerged as a deterrent against creativity rather than an incentive for it.
- ◆ The case of the graphic artist Kieron Dwyer shows what might have happened to Kurt Schwitters if he had appropriated the bank logo nowadays. A year after Dwyer made comic books, t-shirts, and stickers with his version of the Starbucks logo, the company sued him. When the case was finally settled, Dwyer was allowed to continue displaying his logo, but only in extremely limited circumstances. No more comic books, t-shirts or stickers: he may post the image on the web, but not on his own website, nor may he link from his website to any other site that shows the parody. (Sources: <http://www.illegal-art.org>)
- ◆ Alice Randall, a black American author, wrote a parody of "Gone With the Wind" from the perspective of Scarlett O'Hara's Mullato half sister. The estate of "Gone With the Wind" author Margaret Mitchell claimed that this was an infringement of copyright and obtained an injunction against the publication of the book. Fortunately in this case the court of appeal then overturned the injunction.
- ◆ In December 2003, a young artist DJ Danger Mouse remixed an album called the "Grey Album" from the "White Album" of the Beatles and hip hop artist Jay Z's "Black Album". Only 3000 copies of the "Grey Album" were released and would probably have disappeared into obscurity, were it not for the fact that two months later DJ Danger Mouse received a cease and desist letter ordering him to stop any further distribution of the album since it violated the copyright of the Beatles White Album, owned by EMI.

This unofficial ban on the album was seen as an unfair violation of creative expression by a number of people, and a campaign called Grey Tuesday, sponsored by www.downhillbattle.org was launched to ensure that the album would still be available for people to download via P2P networks. Over 170 web sites offered to host the "Grey Album", many of which later received cease and desist letters from EMI. To date, the "Grey Album" has been downloaded by over 1.25 million users and continues in making DJ Danger Mouse the top "selling" artists of the past year beating other contenders such as Norah Jones.

What then are our options in the face of this onslaught of copyright law? We could of course reject the legitimacy of these laws which impinge on freedom of speech and expression, but there is the danger of having to defend yourself in a highly expensive law suit.

This would still be a defensive move that relies on existing provision of copyright law, which makes our choices rather restricted. There is, however, another movement which is growing in popularity which recognizes the need for a pro-active approach towards building a public domain of materials which can be used in the future without necessarily having to obtain prior permission from the copyright owner or having to pay hefty royalties. It seeks to counteract the unrestricted growth of copyright. This movement is sometimes popularly called the copyleft movement. Its historical roots lie in free software (such as Linux and GNU), but more recently, it attempts to broaden its scope and apply the principles of free distribution, usage and collaborative development, to all kinds of media. In addition, there is also an artistic tradition of non- and anti-copyright:

◆ The French late romantic poet Lautréamont wrote in a famous passage of his 1870 book "Poésies": Plagiarism is necessary, progress implies it. It closely grasps an author's sentence, uses his expressions, deletes a false idea, replaces it with a right one.

Today, this reads like a precise description of how, for example, free software development works.

◆ Inspired by Lautréamont and a study about gift economies by the French anthropologist Marcel Mauss, the Situationist International, a group of left-wing artists, cultural theorists and political activists that existed from 1958 to 1970, put all its publications under anti-copyright terms that permitted anyone to copy, translate and rewrite them even without authorization.

◆ In the late 1980s and early 1990s, musicians and groups like Jon Oswald, Negativland and the Tape-beatles advocated "Plunderphonics", non-copyrighted music that mainly consisted of experimental audio collages of pop music and broadcast sound material.

◆ In 1999, the novel "Q" appeared under the name of Luther Blissett, known previously as the collective moniker of an Italian media prankster project. This allegorical account of Italian subculture in the form of a historical thriller set in 16th century Italy, "Q" became a national no.1 best-seller and subsequently appeared in French, German and English translations. Obviously, the sales didn't suffer at all from the fact that the imprint of the book permitted anyone to freely copy it for non-commercial purposes. What's more, the book was not released by an underground publisher, but by the well-established publishing houses Einaudi in Italy, Editions du Seuil in France and Piper in Germany, amongst others who apparently didn't mind giving up traditional copyright-granted distribution models for a promising publication.

This introductory guide is meant for media designers, artists, musicians, producers of content, academics, researchers, etc. who are likewise interested in having their works widely circulated without too many restrictions. The model that it seeks to look at is the idea of the "Open Content License". However, making your work available without placing restrictions does not mean that you abandon your copyright to the work. This guide will provide a set of options to assert some rights to your work. It will also introduce the new positive rights to share, distribute and change being developing under copyleft.

Lawrence Liang is a researcher with the Alternative Law Forum, Bangalore. His key areas of interest are law, technology and culture, the politics of copyright and he has been working closely with Sarai, New Delhi on a joint research project Intellectual Property and the Knowledge/Culture Commons.

--

Source: <http://world-information.org/wio/readme/992003309>