

Artists and Copyright in Cyberspace

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Abstract

The art of sampling – borrowing, copying from and being inspired by the work of others – is being contested in courts the world over. This paper is an informal overview to appropriation and how it enhances, rather than degrades cultural practice.

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Introduction

This paper is a brief introduction to artists' activities on the Internet, in particular the Web, and their general view to copyright within the context of net-connected media. It includes a profile of Web sites exploring the possibilities Cyberspace holds for artists, and including the copyright approaches adopted by them.

This paper, it should be noted, is largely a product of the sampling culture that prevails within Cyberspace – much of it is *borrowed*. (Note, since this paper was written in August 1996, it no longer represents the breadth of contemporary online arts practice.)

Cyberspace is not a term I would generally use, but for the sake of this paper I shall refer to Cyberspace as *that space created by inter-connected computers, telephony and people in which exploration, collaboration, communication and social experimentation takes place... and this thing that is eating up my life*.

Origins

I'm no expert on Copyright, but I'm happy to create art that is accessible in Cyberspace. I'm more than happy to collaborate with artists via this medium to explore the even greater potential for developing new, or even rekindling traditional, forms of communication.

Cyberspace, to put it simply, has created, for those privileged to be net-connected [used lower-case before], a revolution in communication - with the emphasis on commune. Communities formed in Cyberspace would not grow nor even exist were it not for the tools and communal spirit.

In much of our society we find fewer and fewer opportunities to meet and communicate with our own species. Melbourne City's Victoria Market is about the closest we get to the Agora of ancient Greece and the public squares of modern day Rio and Prague! Cyberspace has changed all of that. For me, the Internet is more like Bourke Street Mall than it is an Information Super Highway. One is less likely to be run over. But with the current debate on intellectual property and the rapid and inevitable commercialisation of Cyberspace it is the running down that I'm concerned about.

Ownership and culture

In my experience as an artist Cyberspace has become a vital platform with which to further our ruminations on the world. It's a collaborative medium; one that supports a great many new arts practices and forms for exhibiting our work than we have ever known. In some ways it has returned *ownership* of the art-work back to the artist who determines the extent to which they wish to practice, distribute and promote it. The artist can control the distribution of their work. But, in Cyberspace anyone can and will access your work, download and use it as if it were their own. They will sample and resample your ideas; your images; your sounds. Are they creating new works of art or reshaping yours? Should artists be concerned about their intellectual property, about Copyright, its emergent laws and the much touted Cyberspace Bill of Rights¹?

These questions are not merely of theoretical interest. They are affecting artists in their daily practice, and involve fundamental questions about the nature of the cultural experiences that inform their work. As demonstrated in the following quotes, artists appreciate the problem, but

¹ Yelland, P 17 August 1996, People Vs State, Computers and High Technology, *The Australian*, pg38.

struggle to accommodate a culture that both demands respect for highly complex legal rights and personal interests, while making invisible and even undermining personal contributions to it.

US based sound collage band, Negativland, write in their essay, *Fair Use*²:

As Duchamp pointed out many decades ago, the act of selection can be a form of inspiration as original and significant as any other. Throughout our various mass mediums, we now find many artists who work by "selecting" existing cultural material to collage with, to create with, and to comment with. In general, this continues to be a direction that both "serious" and "popular" arts like. But is it theft? Do artists, for profit or not, have the right to freely "sample" from an already "created" electronic environment that surrounds them for use in their own work?

Crosley Bendix³, cultural reviewer and director of *stylistic premonitions* for the Universal Media Netweb, suggests:

"The need for various arts of appropriation should be obvious. Artists have always seen the entire world around them as both inspiration to act and as raw material to mould and remould. For most of this century, artists, like everyone else, have been subject to a growing media environment. Today, we are surrounded with canned ideas, images, and sounds. My television set told me that seventy to eighty percent of the population now gets most of their information about the world from their television set! Large increments of our daily perceptions are not supplied by the physical reality around us but by the media that saturates it. Both the content and the programming techniques of electronic media have inspired the current art trends of appropriation, but it's nothing new."

Negativland goes on to add:

Our cultural evolution is no longer allowed to unfold in the way that pre-copyright culture always did. True folk music, for example, is no longer possible. The original folk process of incorporating previous melodies and lyrics into constantly evolving songs is impossible when melodies and lyrics are privately owned. We now exist in a society so choked and inhibited by cultural property and copyright protections that the very idea of mass culture is now primarily propelled by economic gain and the rewards of ownership. To be sure, when these laws came about there were bootlegging abuses to be dealt with, but the self-serving laws that resulted have criminalized the whole idea of making one thing out of another.

Bendix suggests:

"A revamping of copyright laws envisions a more free-wheeling and referentially unconstricted art world. This, of course, would be a lawyer's nightmare of lost work and layoffs. But for the culture at large, it would be a vast improvement. For instance: if you are making a movie and want to use a section of a song in the soundtrack, you wouldn't need to clear it and you wouldn't need to pay the artist. You would be free to put that fragment in your work whether it appears to be a favourable context to the publisher or the artist or not. However, if you wanted to use the entire song in your movie-a complete self-contained creation by another-or put out a soundtrack album with the complete song on it, then you would need to clear it with the artist and pay royalties. The difference between referencing a fragment of a publicly available cultural artefact, and presenting that artefact as a complete and self-contained performance should be the defining guideline for artist profit."

² Negativland (n.d.), *Fair Use*, [online] <http://www.negativland.com/fairuse.html> [Accessed July 2000].

³ Bendix, C (n.d.) [online] <http://www.negativland.com/crosley.htm> [Accessed June 2000].

"In such a world, when an artist releases his or her work for public consumption, they would not only receive the benefit of public sales; they would also give up what now amounts to undeserved control over all forms of public use of that material. If they want to operate in the "public domain," those would be the consequences."

"To say that artists and their companies and their companies' lawyers would suffer some kind of devastating economic hardship by the loss of all this second-hand, uninitiated income from outside sources is no longer tolerable when our very process of cultural evolution is now so straight jacketed by opportunistic claims of ownership that it amounts to censorship. Art is not defined as a business. Let me repeat that: Art is not defined as a business. The reuse of culture should be encouraged, not inhibited and litigated."

"Today, our entrenched copyright, publishing, and cultural property laws stand as a monument to private greed. They need to be brought, kicking and screaming, into our real world of modern capturing technology and find a comfortable accord with the artist's healthy and inevitable impulse to incorporate public influences."

Brief Art Web circa 1996

Let's take a quick look at how artists are functioning as *law abiding* citizens in Cyberspace. Although the sites here originate in the US, many contributors to them are Australian. We have yet to fully mature our approaches to copyright within the context of the Web. For the time being perhaps we prefer to enjoy the exhilaration of chaos that is the Internet!

The following information provides an introduction to the project and their copyright, or appropriation, guidelines.

SITO

SITO have been doing collaborative art online since 1993. Originally called *OTIS*, they changed their name when an elevator company of the same name threatened to sue them.

SITO describes itself as an *art collective*, a coop that's open 24hrs a day.

At the time of writing, use of images from the *SITO* Web site, for publications or software, required the user to seek permission from the artist. *SITO* encouraged people be courteous and consider sending the artist a copy of the finished publication as a kind of compensation for use of their material.

[online] <http://www.sito.org> [Accessed July 2000].

Art on the Net

Art on the Net is a collective of artists sharing their works on the Web. Artists create and maintain *studios* and *rooms* in an extensive virtual gallery.

Art on the Net supports works from poets, musicians, painters, sculptors, digital artists, performance artists, and animators.

On Copyright, *Art on the Net* suggests to freely distribute any and all *Art on the Net* files if you follow a few simple rules:

- Obtain the artists' permission to use their image or written work.
- Keep the file in its original state (filename and format).

- Do not alter the image unless permission is explicitly given to the contrary (some artists allow proportional resizing).
- Include the Artist's information with the image.

Incidentally, Art on the Net *borrowed* their copyright requirements from SITO!

[online] <http://www.art.net> [Accessed July 2000].

Brain Opera

The Brain Opera, was created by composer Tod Machover in collaboration with a team of over fifty artists and scientists at the MIT Media Lab. *The Brain Opera* is an interactive musical event which debuted at the Lincoln Center Festival in New York City on July 23 1996.

The Brain Opera is a three-part work which is structured to incorporate the musical contributions of both on-line and live audiences. At the time of writing no copyright protection was available for contributing artists.

[online] <http://brainop.media.mit.edu> [Accessed July 2000].

Art Crimes

Art Crimes is a gallery of graffiti art from around the world that began as a Masters Project⁴ in May 1994. It's a collaborative, ongoing, volunteer project, and anyone can contribute.

Art Crimes' goals are to provide cultural information and resources and to help preserve and document the constantly disappearing art of graffiti.

On Copyright, *Art Crimes* stipulates that all photographs are copyrighted by the photographers, although individual graffiti artists retain rights to their own work.⁵

"Photos belong to the photographers, although artists have ultimate rights over their own art, of course. The photographers are protecting their particular photographs, not claiming any ownership over the art itself.

"The photos are copyrighted to protect the artists, who cannot easily copyright the walls. Since the photographers have made the art portable, it is their responsibility to control their images of it, to prevent its abuse by commercial interests.

"No images on Art Crimes can be used for anything (except your personal enjoyment) without permission. These images are not for sale, but the artists may wish to sell some original art. Many graffiti artists do murals and other kinds of art to support themselves. If anyone makes money from graffiti, it should be the artists, not someone else."

[online] [http:// www.graffiti.org](http://www.graffiti.org) [Accessed July 2000].

⁴ Farrell, S 1994-95, Information Design and Technology, School of Literature, Communication and Culture, Georgia Tech.

⁵ Farrell, S (n.d.) Copyrights, *Art Crimes*, [online] <http://www.graffiti.org/index/story.html> [Accessed July 2000].

Outtake

Cyberspace presents us all with new challenges. Perhaps the most difficult of all, much like parting with or grieving for a loved one, will be in the letting go... Are we to be missionaries or visionaries in the virtual worlds of Cyberspace?

Useful Resources

Arts Law Centre of Australia

[online] <http://artslaw.com.au> [Accessed July 2000].

Australian Performing Rights Association

[online] <http://www.apra.com.au> [Accessed July 2000].

Copyright Law in Australia

[online] <http://www.law.gov.au/publications/copyrighaus99.htm> [Accessed July 2000].

Electronic Frontiers Australia

[online] <http://www.efa.org.au> [Accessed July 2000].