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## Copyleft versus Copyright

Are copyright laws a hindrance to cultural development in a digital world?

Interview by Annette Schindler with Wolfgang Hockenjos, copyleft.cc and Roberta Weiss-Mariani, Managing Director of visarte, member of the board of directors of Pro Litteris and Suisseculture

*The new media enable copying with no loss of quality. As unspectacular as that may sound, it has repercussions on cultural production and our everyday procedures in that connection. Traditional artworks take the form not only of new creations, but resort as well to references, borrowings, and extensions. During the 80s and 90s, music trends developed based on the possibilities afforded by the sampling technique, where fragments of other pieces of music are mixed together into new musical pieces. Strictly speaking, this technique, exercised without the explicit consent of the original composer, is a copyright infringement. Every music CD contains digital data that can easily be transferred to any computer and, from there, on to the Internet and its distribution channels. Copyright control here runs into certain limits, and the gap between the law in force and the artistic and everyday uses of culture has widened with the advent of digital technology and its multiple possibilities.*

*[plug.in] is the producer of a project entitled copyleft.cc, that seeks to promote alternatives to copyrights: alternatives that take specific conditions of the new media and the changed requirements of artists and users into consideration. In this debate, the practical and politically significant means of ensuring and expanding artist rights, as defended by Roberta Weiss-Mariani on behalf of visarte and Pro Litteris, confront ideas born of copyleft.cc's utopic project.*

AS: Copyleft.cc came into being in autumn 01. Its founders seek to challenge current copyright protection terms and their possible tightening. What exactly are your problems with the copyright?

WH: In a nutshell, our research for copyleft.cc revealed that copyrights could well represent a major obstacle to the interdisciplinary and free development of intellectual property in the future. The rights currently linked to cultural production – that is, our usual cultural economy together with the art market – are not only in contradiction with the new digital possibilities in the field of culture, but even stand in the way of their development. The blanket establishment of an operative online micro payment and control system might even make such an expensive affair

of obtaining information and education in a digital information world that it would become a privilege reserved exclusively to the better-off.

AS: visarte represents the interests of the visual artists in Switzerland. What do you, Roberta, consider to be the weak points in copyright application today? And what dangers do you see lurking behind the efforts to revise that law?

RW: The copyright statute (URG) currently in effect is based on the major revision carried out in 1992. Generally speaking, it is an altogether modern law that adequately covers the interests of the creators of cultural works. Unfortunately, it fails to provide visual artists with the highly important right to resale royalties, to which the artists in almost all the other European countries are entitled. Another source of friction comes from the fact that, in 1992, the auction house lobby was able to negotiate an exemption from paying compensation for their catalogs. Fees for reprography represent another somewhat cumbersome administrative task and might well be partially replaced by an equipment fee as effected in Germany.

The revision of the Swiss copyright statute should in some respects align it with international agreements in the digital field. Suddenly, however, a "producer/publisher article" cropped up in the draft bill drawn up by the Swiss Federal Institute of Intellectual Property. In stipulating that the rights be assigned to the producer/publisher rather than the originator, such an article would overturn today's copyright guidelines. Not only in Switzerland, but in practically all European countries, the basic principle is that the right to a work, unless expressly surrendered, remains with its originator. The idea for a "producer/publisher article" comes from Anglo-American law in the matter, where the author of an original work holds a very weak position. It would be disastrous as well for the development of new possibilities for art production. Granting various rights to the producers/publishers on an a priori basis would leave artists with little say on the future of their works. The representatives of various cultural associations therefore intend to use all the means at their disposal to fight the introduction of such a "producer/publisher article."



AS: The art collection of the Basel Kunstkredit is a concrete example of how the copyright statute is applied. The collection was prepared so that all the works ever acquired with taxpayer money could be set on display on the Internet for viewing by those very taxpayers and the general public. Then, however, it turned out that the royalty fees – a sum claimed by Pro Litteris for the reproduction of each copyrighted work – had not been budgeted. The treasury simply could not come up with the amount due, and so the collection had to be taken off the Internet. What are your comments on this incident?

WH: I doubt that it was at all in the interest of the artists involved to have their display on the web be shut down because of unpaid compensation. In my opinion, it was a great idea to offer the Basel artists such a platform. Platforms are a top priority with artists nowadays, in order to make a name for themselves, for it is through their renown that they can hope to live from their art. So it is a shame that they were deprived of a platform because of the Pro Litteris claims on their behalf, coming for many artists to a mere pittance anyway.

RW: This example shows that it is mostly the weakest group, the artists, that gets overlooked when project budgets are drawn up. Every expenditure is covered – wages for the computer specialists, managers, webdesigners, software and hosting costs. In this case, for instance, couldn't it have been the computer operator who got too expensive? A truly professional and objective budget plan foresees all expenses from the start, and includes potential cuts. Regrettably, in many cases those in charge of cultural projects – like the Basel Kunstkredit in your example – still put the pressure on artists by blaming a project's failure on royalty payment claims. All too obviously, artists have much to gain by obtaining an Internet platform. This makes it all the harder for them or their exploitation corporation [trans. note: those dealing with rights linked to a work's commercialization] to bear the brunt of blame for unsuccessful projects. So I feel that the way the Basel Kunstkredit handled the matter was not only unfair but irresponsible. After all, compensation due to authors is based on our law – a law that, mind you, represents the will of the taxpayers. Payment thereof should be duly respected as an automatically included budget entry. In this manner, both the public and the artists would enjoy unhindered and free access to collections and platforms.

AS: What is your outlook on the economy? What would you criticize about present-day economic policy for the visual arts, and what sort of a cultural economy do you envision for the future?

RW: One thing is sure, despite the lack of an overall view of culture in commercial terms, artistic production represents a major commercial factor in Switzerland. Many sectors benefit from the work of both living and deceased artists, and numerous cities and communes have discovered that culture is important to their ranking. Indeed, both public and private concerns have much to gain from the tourist appeal of art. Yet those who contribute in such large measure to the development of this branch of industry, the artists themselves, do not get a fair share of the benefits. Our goal is, on the one hand, to increase public awareness of the value of artistic production to our society and, on the other, to create possibilities for artists to participate equitably in the revenues generated by the art industry. We believe that this could enable the development of a comprehensive self-financing policy. Several models are already on their way to being set up: Germany is currently considering a bill for a fee-paying public domain ("domaine public payant"). The idea here is to collect royalties on works by living and deceased artists, and for the proceeds to go to a joint account to be used for promoting art and providing social security for artists. Time has clearly proven that, especially in the visual arts, artworks tend to appreciate after an artist's death, and it is above all their resale that fills the till.

WH: Sadly, the game rules applying to the cultural economy of today have hardly ever enabled an artist to make a steady living from his or her work. As we all know, most artists, musicians and filmmakers rely upon stop-gap jobs and state or private grants. It is altogether legitimate to challenge this system and seek to develop and test new models. The success of a free operating system such as Linux proves that the release of intellectual property could be a most interesting model for the future.

I too believe that ways must be found to provide the cultural industry with a basis for the greatest possible self-financing, but not at the expense of the small not-for-profit organizations and organizers who provide platforms for unknown artists and young talents. In my opinion, a direct culture tax levied on firms who benefit from the cultural industry would be a better means of financing culture than expanding the existing copyright statute.



AS: How does copyleft.cc operate? What strategies is the group currently pursuing to stimulate debate as to who should have access to which cultural goods?

WH: The fact that we are not engaged in "realpolitik" gives us an advantage: the models we develop can be radically different, provocative or utopian. For instance, we organize club-evenings where the music and videos that are presented are released to allow others to put them to different uses. It is our way of showing that even artistically, much can be gained by joining forces on the copyright issues instead of each of us mulling them over in our own corner.

Right now we are in the process of preparing an event for Expo 02 to show up the enormous gap between our everyday actions of reprography and the rights in force today. We want to make people aware of the ridiculous situation that has everyone in fact incurring liability daily for copyright infringement.

AS: What measures are at visarte's disposal to defend artists' copyright interests?

RW: visarte is represented in the Suisseculture and Pro Litteris committees and work groups. It also enjoys close ties with various European associations and international committees, such as CIAGP. It goes without saying that it takes a great deal of convincing, especially with respect to political committees and, in the long run, all sectors of the population, in order to make it clear that the cultural interests at stake concern not just a small group but the population as a whole. This necessitates a certain amount of statistical corroboration as well.

AS: Could both of you outline the concrete steps you feel are necessary at the present time?

WH: Putting through the highly widened scope of the American copyright law and pursuing the adaptation of this development at the European Union level would be to pull the rug out from under the so-recently developed democratic information society. Therefore, any responsible policy will have to focus mainly on providing every individual with access to information, in order to stave off any further widening of the gap between the information haves and have-nots. Thus, in the future we will be needing narrower, less restrictive copyrights as a guarantee of free access to learning and information for coming generations as well.

I see the following measures as the first steps in this direction:

- The term of protection under today's copyright statute is too long and should therefore be shortened.
- The far-reaching controls exercised over intellectual property spin-offs should be dropped, since they represent a hindrance to cultural development.
- Outdated software should be released for free copying as soon as it is no longer on the market.

All this serves to speed up development, simplify collaboration, and ensure that the less well-off would also belong to the future information society.

RW: The measures that I feel are now necessary – as already outlined – have to do with revising the copyright statute, something that all of the cultural organizations will be targeting jointly. Along with this, however, it is important that we consolidate and gain acceptance for already existing rights: artists should not be obliged to engage in constant petty quarreling with producers, customers and galleries on behalf of their rights. In the future, we will certainly also renew our attempts to put through the fee-paying public domain concept. Contrary to the aims of copyleft.cc, we would seek to lengthen the copyright protection period. If, as copyleft would have it, copyrights are allowed to lapse after a short term, just when a work becomes famous and brings in greater proceeds, it is the authors who, in turn, are given short shrift. For it is at this point that the business-minded users who are bound to show up will be free to use the public domain works for their own purposes and to ruthlessly maximize their potential for profit. Therefore, the rights should remain with the artists during their lifetime (and with the artist community thereafter), and, by the same token, it is they who should supervise them.

Another necessary measure concerns improving the social status and social security benefits for artists. Until such time as their interests can be financed by, for instance, a fee-paying public domain, we must increase our efforts to obtain whatever is obtainable under today's law. And, for the moment, it is also important to continue current efforts to work out the new federal statute contained in the revised Federal Constitution in force since 1 January 2000. The creators of cultural works should attentively and diligently join in on the job of concretizing the new version of the Federal Constitution and, in particular, the



articles concerning culture. The major decisions emerging from this debate will forge the framework in which the work and status of the players on the cultural scene will be defined. And the better such a framework is planned, including the question of promoting art, the greater in turn will be acceptance of the rights of originators and artists in general.

AS: What sort of synergy could there be between copyleft.cc and visarte? Are there any measures that could be taken jointly?

RW: To me, a joint strategy would entail, on the one hand, lobbying in favor of putting the new federal statute into effect. Another aspect would be promoting the introduction of a resale royalty right – something that would not affect the free exchange sought by copyleft, since it concerns the increase in value involved in the sale of works. More urgent still is the need to put up a joint front against proponents of the producer/publisher article. Here again, I feel this would not run counter to the principles of copyleft, since only so long as artists themselves are in charge of their rights will it be possible for agreements between artist groups to be drawn up in the form of copyleft licences. I could even conceive of turning over the supervision of such licences to an exploitation corporation such as Pro Litteris. After all, the licences proposed by copyleft comply with the copyright statute, since it is the artists themselves who decide for whom and at what price they want to put their works into circulation free of charge. Nonetheless, artists who conclude such “business agreements” must be aware that they will have to find other sources of income – a stop-gap job, or patron. As a professional association, we of course try to find ways of enabling artists to hold on to their autonomy by making a living from their art. I feel certain that this is possible on a long-term basis if the suggested revisions come through and new sources of income are established. As long as the representatives of copyleft cannot come up with a convincing alternative to incomes based on copyright royalties or the sort of fee-paying public domain model outlined above, it would be irresponsible to challenge the rights it has taken us so long to achieve. And certainly it is not the artists who render information more expensive. It would be worth exploring whether or not professional associations such as ours can lend support to what I consider the very important aims pursued by copyleft, namely: freeing access to information and breaking the monopolistic attitude of certain software producers. All of this involves wider problems,

and goes far beyond the copyright issue. It has to do with the current trend for privatization, deregulation and profit-enhancement, taken to such unreasonable extremes in the United States. And this is something the cultural associations have been fighting against for years.

WH: Certainly nothing can be said against the introduction of a resale royalty right, as long as such a provision explicitly targets only the increase in value in connection with the sale of a work. copyleft.cc also shares visarte’s viewpoint on the producer article. Above all, however, we concur with them on the importance of improving the position of those who create original cultural works, and of laying down the foundations for a self-financing culture industry. At the same time, we favor very different pathways: we are attracted to unblazed trails, to utopian ideas and, on the cultural level – in the role of court jester, so to speak – we seek to spur the culture industry in new ways. This in contrast to visarte and Pro Litteris, whose mission obliges them to assert the rights of the originators of works and to practice “realpolitik”.

We never claimed that the cultural players were to blame for the increased cost of information. Undeniably, nonetheless, today’s deregulation and excessive profit enhancement is based on the current application of patents and copyrights. This is due to the fact that the leading industries dependent upon copyright laws have the tools to control information or even, out of sheer greed, to render it exorbitantly expensive.

Unfortunately, the rights achieved to date cannot spare cultural protagonists the need for stop-gap jobs or wealthy patrons. Improvement of the situation on a broader basis can only be obtained if culture taxes and new, more direct kinds of distribution – increasingly distanced from purely profit-focused labels, galleries, publishers and producers – oblige those who directly benefit from the cultural industry to return part of their profits to the cultural production sector.

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