

Here follows some notes sprung from participation of the Berlin-based project "The Oil of the 21st Century" ([www.oil21.org](http://www.oil21.org)). During 2007 it has delved into this rather hallucinatory thing known as intellectual property, with the explicit aim to "provide fewer answers and more questions".

One of several fields of investigation which were specified at the beginning regarded how the copyright industries attempts to outlaw the universal computer in the name of **Digital Rights Management (DRM)**. However, when we met in Amsterdam in February 2007, the level of failure for the DRM campaign was rapidly becoming clear. Soon thereafter, Apple and EMI started to sell music files without DRM restrictions. That should certainly not be likened to the collapse of a fortress, as the copyright industries are now pushing for a whole set of other kinds of restrictions on technological and infra-structural levels. But at any rate, it served as a symbolic acknowledgement of a lost combat.

DRM was a failed attempt to implement social relations technologically, in a very inflexible, black-and-white way: Either you can make a copy, or you can't. What's left when the copyright industries one after one are giving up that approach, are a whole set of more subtle ways of enforcing copyright on a technological level: as standards and protocols, as traffic shaping and graphical user interfaces, as the bundling of bugs with features. Rather than saying a straight yes or no, these methods operate as an *universal modulation* (to use a term employed by Deleuze in his discussion of the "societies of control").

Consequently, the theme for a panel at the Berlin event was expanded to include not only DRM but the concept of "rights management" as a far-reaching paradigm of control. "General Rights Management", which indeed sounds extremely wide, could describe a whole set of mechanisms involved in the practical enforcement of copyright, but in their consequences stretching far beyond the question of the entertainment industries. My contribution to this will be to mention a few kinds of "management" and how they may relate to each other.

**Mental Rights Management (MRM)** is the precondition for DRM, we said. I think the term came up about three years ago, in order to describe how copyright's logic, when applied to the internet, has to simulate an artificial distinction between "streaming" and "downloading" media. In reality it is the same data transfer taking place, the only essential difference being whether the software on the receiving end is configured to save the information as a file or to directly play it as audio/visual output. But from the standpoint of copyright, any acknowledgement of that fact will be regarded as unacceptable.

The priority of upholding this distinction is underlined, for example, by the record industry's IFPI who in their *Digital Music Report 2007* defines "digital stream ripping" as one of the most dangerous developments. What scares them is the possibility to "automatically identify and separate individual tracks" while ripping. Their fight to prevent this is thus focused on controlling the spread of *uncopyrighted metadata*, not really on the digitalised music in itself – just as in the case of the recent attacks against bittorrent trackers. Most likely we will in a near future see intensified conflict about the access to all kinds of metadata archives which could be used for automatized identification of sounds and images around us.

A law proposal in the US Congress called the Perform Act and directly ordered from the record industry, would force any service streaming audio over the internet to implement restrictions against accessing metadata like track names. This compulsory DRM would in itself be extremely weak – any restriction of access to short text strings which are anyway shown on the computer screen is ridiculously easy to circumvent – it would in practise only mean a ban against distributing software which automates such access. However, the act would still allow the recording of digital audio streams, as long as the associated metadata is not saved as well.

Preconditions for *use*, for making music meaningful, is outlawed. Getting music for free is legal. This might sound paradoxical, but says a lot about the contemporary function of copyright.

One senator who is in favour of the Perform Act explains that the problem is that “the line between passive listening performances and reproduction and distribution has been blurred” with digital technology. He explains the rationale behind the law as forcing digital “radio-like services” to be more like “radio”. That’s just one of innumerable examples of how extensions to copyright law today often aim to forcefully uphold technological metaphors.

Copyright’s extension onto new media technologies can be read as long chains of metaphorical references, which all lead back to book-printing – the onmedium which copyright law was originally intended to regulate.

Thus one could say that MRM has been the precondition for any kind of copyright all the time. It’s been about trying to present questions like “what is a copy”, “what is an artwork” and “who is an author” as if they were mere trivialities. Because when that faith is lost, copyright is impossible to conceive at all.

Copyright thus requires a continuous reparation work, to reassure trust in the relative stability of its fundamental concepts. Erasing any ambiguity, denying every grey zone, reifying fluid social relations so that they appear like solid *things*... These processes are operating on two areas. Semiologically speaking, one is metaphorical and the other metonymic. The first regards the definition of *networks*, the other the definition of *artworks*.

**MRM/metaphoric mode: Defining the network.** Here is one very short history of copyright, roughly periodized as three layers of design: Between 1800 and 1950, roughly speaking, copying and use was two physically separated functions. Printing presses were relatively few, and was not needed in order to read the books or perform the scores which were printed. After the world wars, enforcement became more complicated as the means of reproduction entered the private homes. New machines, like the tape recorder, integrated both copying and use in one device. But still, these were two separate functions: You could listen to a tape without producing a new copy of it.

Not so with the digital. To use digital information *always* means to copy it.

From hard drive to RAM memory, from handheld to desktop, from www to cache, from peer to peer. Regardless if the physical distance of the copy is measured in nanometers or miles, regardless if the result is erased within a second or on the other hand labelled and archived, it’s technically the same process.

Copying takes place everywhere and all the time. To claim that copyright holders should hold a veto over every single duplication would be absurd, and no one as seriously proposed that. In order to be enforceable, copyright legislation must differentiate: On the one and copies which aren’t really to be seen as copying but merely as *use*, and which are in practice left unregulated. On the other hand copies which trespass the limits of the private realm and can be legally defined as not only private use, but public *distribution*.

In this distinction, copyright cannot rely on concepts like “node” and “peer”. Instead computer networks are re-conceptualised as an interconnection of individuals, or of strictly distinct *private* networks. Over the chaotic myriad of nodes, a grid is put marking out delimited zones within which copying may still take place legally. According to copyright law’s inherent concept a private sphere, this means that clusters of digital devices are allowed to communicate freely as long as they can be attributed to either one individual, or to a family (however defined), or maybe to a close circle of friends (whatever that means for someone with 400 “friends” on Facebook).

How to metaphorically simulate old media in new media has been a key concern in the expansion of copyright during the last hundred years. New uses must be shaped so that they can be compared to established uses. The choice to extend copyright legislation over a new medium always implies the confirming the addition of a new link in a long chain of metaphors, which can be traced all the way back to the printing press. As a side-effect, this continuous multiplication of metaphors has meant that copyright as a whole is undermined. However, many metaphors find they way all the way into everyday language.

Talking about “streaming media” suggests that the stream is intrinsically fluid, in contrast to the “download” as a permanent transportation of things. Both terms imply a unidirectional movement downwards, which makes asymmetrical internet connections seem almost as natural as the force of gravitation. Another water-related metaphor, which in contrast provides an image of horizontal movement, is of course “torrent”. Metaphors underlying the official copyright discourse are commonly challenged by alternative ones, as when bittorrent indexers like The Pirate Bay and Oink has compared their own functionality with Google’s.

Most fundamental is however the need to, through copious myriads of nodes, draw a undisputable line between *private use* and *public distribution*. Not only in the computer networks, but also in social networks. There the reification of concepts is facilitated by very material architecture and its associated property relations. Physical space in a city is often already predesigned as either “private” or “public”. Yet numerous interesting greyzones do exist, including educational institutions, religious congregations and really most of what as known as “civil society”.

Pirate Cinema initiatives, like those in Berlin, Copenhagen and Stockholm, are working with exactly this greyzone, i would say. In regulating uses of film, copyright draws it’s private/public border somewhere between home video and pirate cinema.

Certain collective activities involving standardized uses of cultural artefacts are fully accepted, defined as “private” and this practically left outside the realm of copyright. Others are considered “public” and consequently kept tightly regulated. Any activity acting in the greyzone – be it a netradio station or a member’s club – will, if it starts growing, face pressure to choose between two alternatives: To be driven underground, closer to the private sphere, or to commercialize and assimilate as the lowest node in an economic pyramid.

If one would go to the extreme of restricting the definition of the private sphere, sale of movies would be converted into sale of one-person screening licenses. Then the movie industry could demand license fees for letting family members join the watching. But no one, not even the MPAA, wants to extend copyright’s reach that far. It’s obvious that copyright is in need of an outside in order to operate. Or rather that one of it’s main operation is exactly to intervene in the social by constantly reproducing delineations of the “private use”.

In a court case some weeks ago the head of litigation for Sony BMG stated: “When an individual makes a copy of a song for himself, I suppose we can say he stole a song.” That was an obvious tactical mistake and an example of counter-productive MRM, as it was completely out of touch with established habits.

This is exactly the point where which DRM failed. Social relations cannot just be implemented in technology. Rather, individuals as well as machines are continually redefined by virtue of their relations within networks which are at the same time social and technological.

The fear of a totalitarian DRM supremacy, waiting just around the corner, ready to be implemented, proved to be rather exaggerated. What’s worse, a one-sided concern for the dangers of DRM has often, in the contemporary history of copyright criticism, has tended to be used as a pretext for

**Collective Rights Management (CRM)** – the imaginary “solution”, which really does nothing but to move the operations from technology to bureaucracy, or from the metaphoric problem of the network to the metonymic question of “the authors”, which we’ll soon return to.

Rather than singling out DRM for its condemnations, copyright criticism should aim to understand the interplay between different logics of rights management.

One could even say that proper DRM is, at the moment, not much of an obstacle in itself. The attack against the universal computer rather begins with **meta-DRM (mDRM)**: All the laws and regulations making it illegal or unsafe to develop and distribute technologies for circumvention. The proposed PERFORM Act, mentioned above, is exemplary. Meta-DRM doesn’t manage the possibility to copy individual works, but generalizes rights management over entire protocols and technological standards. Just like DRM, it never really works, but calls for an endless series of new regulations, to prevent the disintegration of the awkward construction of metaphors upon metaphors.

Thus, meta-DRM tends towards **Political Rights Management (PRM)**. While MRM is about subjectivation (even if the term wrongly may suggest a kind of mind control), PRM is about repression. At its extreme, it ends up in plain censorship, against any critical opinion as well as any circumventionist knowledge. But of course there are plenty of softer variations on the theme, many of them well-known motives in the theatre of opinion which keep staging the boring debate “for” or “against” file-sharing.

One of the most fascinating motives is the idea of “the other side”, which supposedly should have the right to speak. This might sound as pure spiritism, trying to communicate with the dead. However, in Stockholm as well as in Berlin, cultural events connected to the Oil21 project has been met with reactions from copyright industry lobby groups, who have put pressure against supporting state bodies for accepting discussions about copyright where “the other side” – copyright industries meaning themselves – are not present. (At the same time, IFPI and other dominant groups on “the other side” are nowadays systematically boycotting debates with Piratbyrå – our initiative which, way back in 2003, started as “the other side” in relation to then prevailing anti-piracy bureau, turning their project of exorcism on its head...)

**MRM/metonymic mode: Defining the artwork.** What can be copyrighted? *Literary and artistic works*, which according to the Berne Convention “shall include every production in the literary, scientific and artistic domain”. That’s pretty vague. Let’s turn the question around.

What can *not* be copyrighted? A style, a plot, a “look”, a smell, a rhythm, a concept – these may all be the result of great creative efforts, but still have so fuzzy borders that they aren’t possible for one person to monopolize. Instead they are conceived as universals, treated like memes, free to use for anyone. You also can’t claim copyright on words or chords, colours or facts – these are also, in themselves, free. But if you take a sufficient number of them and combine, in a way that expresses your own personal *soul*, you will pass the “threshold of originality” into the realm of copyrightable artworks.

This threshold is also known as the line between *idea* and *expression*. Ideas are universal and cannot be copyrighted, only expressions can. This distinction, absolutely fundamental for the concept of copyright, was worked out in the late 18th century by philosophers like Fichte and Kant. For them it was much easier than today, as copyright still only covered books.

Copyright’s definition of the “work” has since been extended metonymically, step by step. It rapidly incorporated other printable matter such as drawings and musical scores. Later on, photography and film was added to the list of copyrightable artworks. The Rome Convention (1961) elevated the recorded musical sounds (as something distinct from the composition of the music) to the status of works, adding a new layer of copyright to all recorded music. Since the early 1980s, even computer

software is copyrightable. With the inclusion of algorithms under a category which was once purely aesthetic, Fichte's philosophical distinction between idea and expression has clearly become terribly abstracted. Yet, no one wants to make "everything" copyrightable. Also here it's rather about a *universal modulation*, where different norms are applied to different modes of expression. For example, a recorded sequence of spoken words are usually *not* seen as a proper "work" and is thus free to rework and reproduce – anything else would render mainstream journalism impossible – while exactly the same words printed as text is automatically copyrighted. Completely different norms for quotation applies to different kinds of text, sound and images.

The "author-function" is not formed spontaneously through the simple attribution of a discourse to an individual. It results from a complex operation whose purpose is to construct the rational entity we call an author, as well as the imaginary unity known as "the authors" (the ones who should supposedly be "compensated" in Collective Rights Management schemes).

The attempts to naturalize the notion of the "work", to make the line between idea and expression look straight and undisputable, are undermined by practices like sampling and appropriation, remix and ready-made. Select a pre-existing "expression" (like a photography or a drum beat) and *treat it like an idea*, as a part of our common reality which can be used as elements in new creation processes (just like the colour green, the C minor chord, or a historical fact can be used).

One's output becomes another's input, things which are taken for granted cease being just things, expressions and ideas do not want to be monogamous but thrive in semiotic chains, and the grey zones in between is always all that matters.

Explore the possibilities of meaning in that which already exists, rather than adding redundant information: **Excess Management!**

Networks and artworks are notoriously unstable concepts. Copyright operates as an universal modulator of lines dividing private and public, use and distribution, ideas and expressions, authors and non-authors – its own inside and its own outside. Therefore it's a mistake to only understand copyright in terms of "commodification", as if a single force called Capital were simply trying to subdue more and more of human existence using bare repressive force.

Copyright is implemented rather than imposed. Implementation is always the result of a complex calibration work. It does not really try to totalize. But it has a general function: To impose a logic of *scarcity*.

We live in an age of cultural abundance, with access to so much more than we can possibly consume. For the first time in history, we can more or less listen to any recorded music wherever, whenever and while doing whatever. If capacity of portable storage devices is increasing much faster than internet bandwidth is – which seems to be the case – then it gets more and more absurd to only discuss for or against file-sharing networks. Within 15 years or so, we will have reached the point when every cheap pocket-size storage devices will be able to hold *all recorded music ever released* – ready for direct copying to another person's device. It makes sense to imagine it as a singularity scenario.

The files have already been downloaded. File-sharing networks must be thought of more in terms of their archiving and indexing function, than as just a distribution technology. What's crucial are their potential to create meaning from the total abundance of cultural artefacts. More precise: to let provisional groups engage in a common selection, indexing, interconnection, contextualization and actualization.

Such groups seems to thrive best when they do not need to be designed as either "private" or "public", as some the most crucial operations happen in the greyzone. From there, use almost seamlessly slides into *production*, and back again. This should not be misunderstood as a vision of total

“openness”, rather, different social and technological network should ideally evolve their own particular combinations of openness and closedness.

How to use the unleashed forces of archiving for more than the stockpiling of dead objects? Today that’s a key concern for what was just termed “Excess Management”. While all kinds of rights management remains within a scarcity-based economics, excess management is about handling the universal need to waste abundant resources, to give out without any calculable return. You can’t run away from it. The question is only if this act of pure consumption is layed out in a more or less glorious way, or if it is strictly denied, which can only mean that it is postponed, in the extreme case to the point of war as the catastrophic form of consumption.

Georges Bataille, in a brilliant 1933 text called “The notion of expenditure” – maybe the foundation of excess management theory – listed a whole set of alternative ways in which societies let the surplus be spended. Unnecessary body movements as well as unproductive idling. Pyramids and perversions. Rituals and performing arts.

Since the last turn of the century and the breakthrough of file-sharing networks, spending on live music experiences has gone up drastically, while sales of recorded music has gone down, in a fascinating symmetry. Only ten years ago, live music was widely conceived as merely a way to market recordings, while today that strange equation seems to have been turned on it’s head, or rather back on its feet, as music traditionally have been thought of as an activity rather than as objects. The popular 20th century theory that liveness would slowly fade away in the age of technical reproduction, quickly became anachronistic through a qualitative leap in digital reproduction.

This can’t be well explained without considering some kind of will to waste, with a fundamental connection to music. Bataille defines consumption, in it’s purest form, as having no end beyond itself. As such, consumption is at the core of what we (perhaps wrongly) call “cultural production”. It’s meaning is inseparable from the magnificent expenditure of time and resources.

Bataille, in his study of the *general economy*, distinguished between two methods of thought and action: the servile one “of fear and the anxious search for a solution” against the sovereign method “of freedom of mind, which issues from the global resources of life, a freedom for which, instantly, *everything is rich*”. Clearly, the general economy is not about denying scarcity or anxiety or servility – these are all undeniable realities within the horizons of any restricted economy – but to identify points, in the small and in the great, where these concerns must be left behind:

“To solve political problems becomes difficult for those who allow anxiety alone to pose them. It is necessary for anxiety to pose them. But their solution demands at a certain point the removal of this anxiety.”

Rasmus Fleischer (rasmus@piratbyran.org)  
Berlin/Stockholm/Umeå, oct-nov 2007  
Please circulate comments, copies, clips

oil21.org  
theartgalleryofknoxville.com