

CIVIL RIGHTS IN THE CREATIVE AGE

by EXGAE for the Ministerial Forum for Creative Europe, Czech Presidency Of the European Union - 27/03/09

Over the last few years we have witnessed several attacks on civil rights and freedoms in the name of artists and in the name of the concept of "intellectual property".

People are usually surprised when I say this, but lets go back and look at the facts.

I will speak here as a citizen but even more as an artist, a curator or a cultural practitioner in general, because extremely devastating cultural policies are being implemented in our name, in order to protect our "intellectual property", they tell us, and against our will.

Often to "protect" us we hear the use of the word "piracy".

Just yesterday the French minister of culture, Ms Albanel used it here.

The word is used to purposefully mix up two different phenomena, in order to protect cultural industry interests. I personally doubt that these are the interests of the artists, creativity and society, but I'll come back to this later on.

The two phenomena they are mixing up are, on one hand, the idea of the private exchange of information and knowledge and, on the other, every body's right to get paid for their work. Of course nobody should do business with other people's creative works without paying the author fairly (and I'm not referring to the precarious jobs, like scriptwriting, offered by the cultural industry....)

The spread of this intentional mix up can be devastating.

This is not a frivolous problem. We have gotten used to digital tools and the Internet as we know it now, but this doesn't mean that this marvellous space of horizontal creativity is safe from being privatised for ever one day. And the modifications that are in process, in the name of art and creativity, can bring consequences that are devastating to our everyday life.

This is not science fiction.

For example the so called "telecommunication package" will be voted this coming Monday in the European community. This legislation could leave open the possibility for an agreement between your internet provider and the private royalties management agencies to monitor your traffic content, and without needing the permission of a judge. If they don't like it, your internet access can be completely cut off. The governments of France, Spain, Italy and England inbetween others are trying to implement this same agreement in their countries at this very moment, with strong opposition from civil society, but the support of the industry.

This is not science fiction: one month ago we very narrowly avoided the success of a European vote to extend copyright from 50 to 95 years after the death of the artist. And it's not over, the vote will come up again.

As you can see , this is not science fiction. This is reality.

The main problem is that there is more than simply economic issues at stake. We are also playing for the very idea of what culture is and for the right to access to information (which has taken us a couple of centuries to gain).

The cultural industry, often via the voice of royalties management companies and governments, has redefined this concept for their private benefit and their own financial interest.

So, often, when we hear the word “culture”, they are in fact referring to the “entertainment industry”.

And when they talk about “pirates” they are referring to each and every one of us.

I am myself a great “pirate” and there are many other pirates in this room, using pirated pictures for their powerpoint presentations as we have seen in this 2 days.

The anachronistic concept of intellectual piracy is an excuse.

The social phenomenon of P2P, the file sharing system on the Internet, can't be written off in such a simplistic way.

We are talking here about the 70% of all Internet users, that is an absolute majority of the European population.

It is simplistic and dishonest to try and divide the population into those who copy and those who buy, because we all do both things.

It's like saying that those who cook without buying recipe books are gastronomic pirates.

The fact that I use the Internet to compile music and that this turns me into a music lover, ends up feeding my desire to go to concerts and buy my favourite CDs. Only the record industry's greedy delirium could possibly think that people have to buy the thousands of records accessible now in the digital era on the net, when they want to hear them.

It's simply not true that if we share we will stop appreciating artists and originals.

Have people stopped buying The Bible just because it is in the public domain?

Will people stop going to the cinema to see a new Spielberg movie? Will Spielberg no longer be a millionaire? I don't think so. Maybe he will be a bit less of a millionaire, but Does the entire European population really have to care about the fluctuations of Spielberg's millions?

Culture is bound to keep producing community, emotions and wealth, as well as investments, as it always has and always will.

In the digital age, more and more people dedicate themselves to developing their natural creativity based on what they learn directly from others through the net. And others can see their work and they can become well known and make a living from this, also through the net. People won't stop appreciating those who create. Just the opposite, those who create become more familiar and closer to us. We all become creators.

We are losing appreciation, but not for the artists – for the middlemen.

Until recently, the culture industry was the main middleman between artists and audiences. This middleman is now the Internet.

We are now in the period with the highest levels of production and consumption of culture in history.

I can carry an mp3 player in my pocket with thousands of songs from all corners of the world. Does this mean I am being detrimental to the diffusion of culture?

The business opportunities that emerge from the greatest level of cultural consumption in history are immense. But there are new game rules that involve active users who access information directly, without turning to the slow, expensive system of middlemen.

In this new world of consumer-producers in which everybody can easily access culture and its means of transmission and production, the culture industry as we know it is coming to an end. It has to restructure itself.

It is up to the companies themselves to restructure the industry in an innovative way, by investing in the new possibilities rather than trying to hold them back, without hindering fair competition, without hindering the real creation of new jobs - new kinds of jobs linked to access and not to exploitation. .

And governments shouldn't paralyse the progress of society in general, destroying its new creative ecosystem just when it is flourishing like never before.

And in a time of crisis, this is a problem of governance.

It is absurd to protect the culture industry as if the Internet and the digital had never been invented.

Cultural production has to adapt to the new form of democracy, and not the other way around.

Copying and its benefits are behind all of this.

Why is copying demonised when it is the basis of all learning?

We continuously absorb knowledge by imitating, copying and sampling. Knowledge comes about through imitation and copying. There is no other way to do it.

Any kind of cultural creativity or new knowledge is based on received information, which means that no new creation is completely original, or even possible, without the existence of a collectively built heritage.

Digital information and sharing is the memory of our time.

Attacking digital copying is teaching our children that sharing is bad, it is like banning people from sharing with their memories, what they have learned; not allowing people to repeat what they've heard or watched, stopping people from lending books to friends or humming a song.

Basically, it means banning communication in the communication age. How Strange!

There is no way the information society can coexist with the policy that is being proposed and enforced based on the cultural industry's perspective. In fact, if they succeed, the information society will disappear and be replaced by an "entertainment industry society". This crisis is no time for such a joke.

If we look back in Spanish and European history, we have a flagrant example of a private institution that, allied with governments, managed to impose its point of view on society at a time when a new technological transformation – the printing press – allowed a much wider access to knowledge. It was called the Inquisition, and it managed to impose its own interests for centuries through book burning, by banning science and condemning thousands of people to death. It's targets were not called pirates, they were called heretics, but it's the same thing. It also managed to hold Western cultural and technological progress back for a couple of centuries.

Something identical is happening in the digital age.

Today, there is also a minority who oppose the new printing press, unfairly holding back the increasing free circulation of knowledge.

Although they prefer us to have a different impression, the Internet is actually full of creators. Only a tiny percentage of them have any connection to the culture industry.

Those who want to apply the so called Sarkozy/Bruni model (which Ms Albanel, was defending the other day in the French parliament, saying that access to the Internet is not a fundamental right) those who criminalise filesharing on the net totally overlook the thousands of artists who allow their work to be shared by using free licences. They also ignore the privacy of all Internet users and the democratic benefits of breaking the control of information.

This is very important for us in Spain since free Internet allowed us to prevent a coup d'état on the 13th of March, 2003.

If P2P networks are criminalised, we all lose: we lose freedom, we lose democracy, we lose privacy, we lose wealth and freedom of expression.

The biggest sharing tool ever created by human beings, the library of Babel that humanity has long dreamed of, could end up becoming the largest form of social control ever created.

Restricting P2P networks won't defend the rights of a few misunderstood millionaire artists and the helpless entertainment industry. It will limit, fragment and hold back the tool that has changed the way we understand the world, culture, progress, and even business.

For 4 years, people all around Europe and the United States were asking their governments to control the price of housing and to stop supporting the unlimited greed of the housing and mortgage industry. Governments were asked to protect the right to housing, not only in itself, but also as a tool for a more balanced economy. The governments didn't listen to their citizens. This led to this immense catastrophe we are experiencing now, this absolutely foreseeable crisis.

Now once again, in terms of access to knowledge, we ask governments to work for the people and not for private interests.

Therefore, as citizens, we clearly DEMAND governments and the European community:

10 necessary and urgent measures to protect the knowledge society for the good of everybody

1. That any restrictions placed on filesharing (P2P) networks be considered to be an act comparable to the Inquisition and an attack on the fundamental human right to access to knowledge, guaranteed in constitutions and in international treaties all over the world. We in Europe must defend that no restrictions be imposed on fundamental freedoms and rights without a prior judicial ruling.

2. That royalty management associations become what they really are: private organisations that ONLY AND EXCLUSIVELY manage the “accounts” of their members, who are just a specific section of artists. That public bodies reinvest general royalties profits in infrastructures for the benefit of citizens, such as arts education or the digitalisation of teaching.

3. That artists, if they so wish, be paid mainly for their creations and not for the exploitation they generate.

4. The abolition of all "digital levies" that indiscriminately sanction all citizens in the name of "payment for creation" and all attempts to penalize a behaviour that is not criminal.

5. That artworks become part of the Public Domain within periods that are of benefit to creativity and society. To allow more than one generation to live from somebody's work is a way of encouraging parasitism and creative stagnancy, and deactivating reinvestment. We ask that works become public domain within a reasonable period of time, according to the kind of work, with a maximum of 30 years.

6. That there be no requirement to seek an author's permission for the reproduction, transformation or diffusion of artistic, scientific or technical works that have already been presented publicly, when the purpose is educational, teaching or scientific research in the public sphere, as long as the author's name is included and all moral rights respected.

7. Likewise, when the copyright for any kind of work is held by government institutions, such work should immediately become part of the public domain for any purpose whatsoever. Barak Obama is already heading in this direction.

8. That the “right to quote” be defended in all cases as a vehicle for the democratic development of the information society.

9. The elimination of the concept of “redundant profit” from anything relating to cultural production.

10. The elimination of the mandatory nature of payment for public communication and payment for private copy.

Do we really want to follow in the footsteps of Pakistan, China, France and Sudan?

Do we want to live in countries in which governments are afraid of the creativity of their citizens?

Will we allow Mickey Mouse to condition the future of knowledge and culture?

Not in my name.

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