

Creative Work in the Cultural Industries Final Paper | Trevor Clendenin

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There exists an ongoing debate within the Cultural Industries surrounding the issues of copyright, the digitization of content, and how they either contribute to or hinder a creator's ability to produce works that are meaningful to society and also provide a way make a substantive living for the artist. In a capitalist economy, the consumption of goods and consistent growth of profits are a prerequisite to the survival of the system, and the cultural industries are not exempt from this condition. Cultural goods are unique in that they are largely the product of human imagination, and therefore, are not subject to the same kinds of scrutiny as manufactured goods. Copyright law has sought to protect the creators of texts and encourage the continued production of creative works by establishing an artificial scarcity of ideas. Innovation is the basis of business success, went the thinking, and innovation is dependent on creativity.¹ It also works by prohibiting the unauthorized reproduction of the manufactured byproducts of creativity such as the printed page and recorded media. The move away from physically manufactured goods like books, newspapers, DVDs, and CDs in the cultural industries and toward digitized content on the Internet poses a serious threat to the established media conglomerates who have invested heavily in their significant content catalogues. In order to develop a

¹ David Hesmondhalgh, *The Cultural Industries*, 2nd Ed. (London: SAGE Publications Ltd, 2007), 142.

meaningful argument for one side or the other, I reached out to renowned lyricist and digital rights pioneer, John Perry Barlow. As a songwriter for the Grateful Dead, one of the world's most successful recording and touring musical acts, and one of the founders of the Electronic Frontier Foundation, he is uniquely qualified to contribute to the discussion about the effectiveness of copyright and how the Internet is changing the way that we look at ideas as cultural goods. Though copyright law may have been appropriate and effective in the early days of the printing press, by protecting the authors and printers of real books from the threats of unauthorized reproduction, its application the virtual realm of Cyberspace is serving another purpose. Copyright, intended to foster creativity, has become an almost insane restriction on it in many cases.² As legacy content continues its migration to the digital realms and new content is created entirely within the electronic space, the ability to share, copy, remix, and repurpose ideas threatens corporate control and the establishment view of the ownership of creative works as commodities. It is time to consider that copyright law and the position of the WTO are not equipped to handle the realities of the digital age, and may actually be hindering economic progress as opposed to protecting it.

How and why did the building blocks of culture such as music, art, and poetry become viewed in such a way as to become bought and sold like clothing or furnishings? Cultural commodities tend to act like public goods, in that the act of consuming them does not diminish their value. Copyright law

² David Hesmondhalgh, *The Cultural Industries*, 2nd Ed. (London: SAGE Publications Ltd, 2007), 152.

responds by limiting the right to copy, thus making cultural goods scarcer than they might otherwise be. Intellectual property is the main means by which culture becomes commodified.³ In the past, it was relatively easy to see books and records as industrial goods, but as content becomes digitized, the classification becomes less clear. John Barlow finds these linguistic connections especially problematic. “I’m having a difficult time with the word ‘industry’ related to expression. I can see it with the film industry because it is industrial in the way in which it organizes resources, but a lot of the rest of it isn’t industrial any longer,” he says. “It was as long as you had to make products - physical products in an industrial way. Whether they were CDs or books or whatever - but now it’s post-industrial and it’s misleading to think of it as an industry . . . thinking about that or thinking about the creative or cultural industries as industries - thinking about their product as something people consume - or thinking about their expression as content - I think is all conceptually misleading and tends to take people in the wrong direction when it comes to the economics.” These sentiments were also outlined in John’s work, “The Economy of Ideas” published in Wired magazine in 2001. Artificial scarcity as the primary driver of value for cultural goods in the marketplace is a tenuous position for corporations to rely on, for if that scarcity cannot be defended the value proposition is lost. It is so important, in fact, that the World Trade Organization includes intellectual property rights as one of its cornerstone values as outlined in the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The fact that there is an agreement

³ David Hesmondhalgh, *The Cultural Industries*, 2nd Ed. (London: SAGE Publications Ltd, 2007), 150.

specifically devoted to intellectual property is in itself a sign of the importance governments and big business place on the role of intellectual property in the modern global economic system.⁴ However, this appears to be a losing battle, economically, and can be proven simply by the way in which the free market behaves. According to Barlow, “they have certainly won all of the battles legally - but economically they haven’t won the battles - I mean in terms of the ways in which expression is being actually reproduced and monetized. It’s certainly much more like the model that I’ve been suggesting than it is the one that they’ve supposedly imposed on the rest of the planet. I mean, you take an iPhone or an iPod or iPad and you look at the music on it, and you ask how much of that stuff has actually been purchased, and it’s really not a lot. And yet, they’re helping more people making money from music now than ever have been.” The fact that there has been explosive growth in creativity and that artists are able to make money off of their creations in the digital space might further suggest that the WTO’s assertions about the efficacy of copyright law are invalid. It is one of the three main areas of modern intellectual property . . . mainstream economists and policymakers describe its function as providing an incentive for authors to create.⁵ Barlow disagrees that artificial scarcity produced in this way incentivizes artists to create, and offers an explanation for why the change in cultural productivity has occurred over the last 20 years. “What’s changed is it became possible to actually quit your day job if you could sell a very small number of units of your music, because

⁴ David Hesmondhalgh, *The Cultural Industries, 2nd Ed.* (London: SAGE Publications Ltd, 2007), 150.

⁵ David Hesmondhalgh, *The Cultural Industries, 2nd Ed.* (London: SAGE Publications Ltd, 2007), 149.

you didn't have to hand most of it over to the record company. And, moreover, a lot of people have recognized that recorded music is actually marketing material for performed music . . . which is where most of the money was made by musicians all along. It was a very rare performing artist that made any significant amount of money from their recordings." If this is the case, then the incentive for artists to engage with a major record company would be very low. By enforcing strict controls over the use of content, and keeping the large share of profits in exchange for promotion, publishing, and distribution, artists are forced into a position where their economic interests are best served by building a business out of live performances. The Internet becomes a way to share their material cheaply and easily as a way to attract new listeners to their live events. The Internet lowers entry barriers because distribution costs are lower - there is no need to print and distribute hard copies, as in print media, and there are no licensing and transmission charges, as for broadcasting.⁶ The Grateful Dead were well-known for allowing their audiences to tape live performances and to share liberally among their fans as long as the recordings were not to be used for commercial purposes. This model is largely attributed to their world-wide success spanning over 40 years. Digitization of content has continued to erode the influence of the major music industry as they have become more focused on being copyright protectors and aggregators of cultural content as opposed to being the defenders of creativity. Barlow states, "It's a real pity that institutions like Apple and Spotify didn't just take the opportunity to go out and create the musician

⁶ David Hesmondhalgh, *The Cultural Industries, 2nd Ed.* (London: SAGE Publications Ltd, 2007), 248.

business instead of propping up the music industry. It's claiming the right to own that stuff as though it were real estate and to parcel it out to the consumer as a noun rather than as a verb. I think that's a doomed model. The only reason that they're alive at all is because they had such a ridiculous amount of momentum and they've managed to do all of these incredibly punitive things to penalize the real distribution of their material - or what they fancy as their material. I can't imagine why a young musician would sign a deal with a record company at this point. Back in 1993, when I wrote the *Economy of Ideas*, I said I can imagine some short-term solutions to the problem faced by the record industry. One of which would be encrypting material so it was difficult for the consumer to gain immediate access to it. That they could then use it as a way to regulate towards scarcity during that initial bump. You could put a speed bump in the distribution, when in the beginning where you've got an awful lot of popular music that's got the shelf life of produce - like a Britney Spears album - you've got to get that two weeks or you've lost it. You know, Justin Bieber and Britney Spears are not actually typical of what happens with most music which, in fact, is much more of a long tail event." He offers examples of artists who are resisting the old corporate model and are having success on their own. "There are bands like Radiohead that have gone to the new media model and who are not distributing through the industry anymore. They're distributing by putting their albums out where anyone can download them for free and at the same time download them for money - and they're making money." It is completely antithetical to the idea of copyright to risk a considerable investment and release a product into the

digital space only to rely on the integrity of the audience in order to recoup the expenses involved in getting bringing a creative product to market. However, Barlow feels that trust and integrity are the bedrock to the success of the new economy. “My experience in practice is that if you lay down a moral challenge to your audience - if they really care about you - they’re actually going to accept that moral challenge and honor your trust. When we decided that we were just going to give our stuff away, we also said that we didn’t want anybody selling it. And I think that it has been extremely rare that there has been anybody out there selling Grateful Dead tapes - I haven’t ever seen a case of it.”

If the free sharing of ideas and content is going to be the model for success in the new economy, then the last bastion of control over digitized content becomes control of the Internet itself. The Internet is a physical thing that is owned, powered, and operated by governments and corporations. Given these circumstances, how is access to the Web and the free exchange of ideas going to be guaranteed in the future if regulating access to the exchange of ideas is the only course of action left to those who remain fixed on protecting their proprietary intellectual property assets? Barlow feels, “It’s an ongoing contest. I place a lot of my faith in competition, and even though I see there is a lot of monopolistic behavior, and I’m continuously concerned about the ability of a company like Apple to regulate access or the ability of a company like Comcast to shut off access, I still have considerable faith in the idea that eventually everybody is going to realize the same thing about bit transport that I realized a long time ago about creative material. Which is, that

in this kind of an economy, it's a bad idea to regulate towards scarcity because you can increase demand with abundance. I mean, the more that you give people, the more they will want. It's like Intel, for example. They are developing some functional competition with A.R.M. and in the mobile space, but generally speaking it doesn't have any competition. But they work like crazy, constantly, to increase their processor speed (to stay on the Moore's Law parabola) and they do that because the faster the processor, the more you can sell of them. And the same thing is true of bandwidth. The more bandwidth you can provide the customer, the more bandwidth they will want."

The economy of the new digital age will continue to grow built on the principles of trust, authenticity, openness, sharing, and "free." Though Utopian in its vernacular, we have seen the evidence of the success of this economic model in practice. The Internet is dialogic, interactive, and allows, in principle, much greater audience participation in the production of media artifacts (blogging and podcasting as examples).⁷ Fresh artists release albums directly to the web, software developers live off the donations of their user base, and open-source programmers are changing the very landscape of the information age. How long will it be before the Microsoft and Apple empires are toppled by open sourced, integrated supply chain optimized, crowd funded super computers and operating systems printed on a 3D device in your home? In the digital space, value is based on the size of your community, and the strength of any community is gauged on the honesty of its interaction and continued collaboration of its membership. In a society where it is transparent

⁷ David Hesmondhalgh, *The Cultural Industries*, 2nd Ed. (London: SAGE Publications Ltd, 2007), 248.

that no single idea stands alone and how true value comes from the effective execution and organization of ideas, rather than the hoarding thereof, the concept of copyright is sure to erode. The Internet came in to the world surrounded by claims for its decentralizing, democratizing effects, but it also came in to the world during a time of intense marketization of culture.⁸ Already, the cultural value of copyright and the legal position of strength of those who seek to defend it are precarious at best. In China, it is nearly impossible to protect a patent, and registering for protection is likely to speed up the process of having an idea stolen by providing the details of an idea in the application itself. Young consumers, in the age of viral marketing, are too savvy and sophisticated to wait for release dates or purchase hard copies of data. Hackers will invariably find a way to crack the most secure encryption technology at each new iteration. Given the nature of this new economy of ideas, the behemoths of corporate greed will be required to evolve or become extinct. Perhaps the “record company” will finally see the light and become the “artist company.”

Transcript of Interview with John Perry Barlow on Saturday, December 22, 2012

Trevor (T)

We are talking about people who have been involved in the cultural industries - text creators, music, arts, advertising, video, new media, and the web . . .

Barlow (B)

I'm having a difficult time with the word industry related to expression. I can see it with the film industry because it is industrial in the way in which it organizes resources, but a lot of the rest of it isn't industrial any longer. It was as long as you had to make products - physical products in an industrial way. Whether they were CDs or books or whatever - but now it's post-industrial and

⁸ David Hesmondhalgh, *The Cultural Industries*, 2nd Ed. (London: SAGE Publications Ltd, 2007), 244.

it's misleading to think of it as an industry - sorry to start right off with being dogmatic. The stuff that I think you're well-advised to try to do with language as you enter into this. Thinking about that or thinking about the creative or cultural industries as industries - thinking about their product as something people consume - or thinking about their expression as content - I think is all conceptually misleading and tends to take people in the wrong direction when it comes to the economics.

T

And that's what you've been saying for 20 years.

B

Yes, it's true more than ever.

T

So let's jump right into it. It's been more than 20 years since you wrote your Declaration of the Independence of Cyberspace, and the WTO and copyright law have made this artificial scarcity out of cultural goods, and the digitization of culture has been happening rapidly - especially on the web.

B

They actually have tried to, and they have certainly won all of the battles legally - but economically they haven't won the battles - I mean in terms of the ways in which expression is being actually reproduced and monetized. It's certainly much more like the model that I've been suggesting than it is the one that they've supposedly imposed on the rest of the planet. I mean, you take an iPhone or an iPod or iPad and you look at the music on it, and you ask how much of that stuff has actually been purchased, and it's really not a lot. And yet, they're helping more people making money from music now than ever have been.

T

Why has that happened? What's really changed in these last 20 years?

B

What's changed is it became possible to actually quit your day job if you could sell a very small number of units of your music, because you didn't have to hand most of it over to the record company. And, moreover, a lot of people have recognized that recorded music is actually marketing material for performed music . . . which is where most of the money was made by musicians all along. It was a very rare performing artist that made any significant amount of money from their recordings.

T

It seems to me that there have been very few musicians that have had very successful touring careers. There are a few that stand out, obviously, and the model that, for example, the Grateful Dead set (by allowing people to tape

and to share openly and freely) helped to build their business success. But has digitization begun to erode the power of the big music industry at all?

B

Yes, I think they are functionally dead - excepting so far as Apple and Spotify have preserved them by doing these deals that gave them a new lease on life. It's a real pity that both of those institutions didn't just take the opportunity to go out and create the musician business instead of propping up the music industry.

T

The big music and entertainment conglomerates have become now focused on being copyright protectors and aggregators of cultural content as opposed to being defenders of creativity?

B

That's exactly it - it's claiming the right to own that stuff as though it were real estate and to parcel it out to the consumer as a noun rather than as a verb. I think that's a doomed model. The only reason that they're alive at all is because they had such a ridiculous amount of momentum and they've managed to do all of these incredibly punitive things to penalize the real distribution of their material - or what they fancy as their material. I can't imagine why a young musician would sign a deal with a record company at this point. Back in 1993, when I wrote the Economy of Ideas, I said I can imagine some short-term solutions to the problem faced by the record industry. One of which would be encrypting material so it was difficult for the consumer to gain immediate access to it. That they could then use it as a way to regulate towards scarcity during that initial bump. You could put a speed bump in the distribution, when in the beginning where you've got an awful lot of popular music that's got the shelf life of produce - like a Britney Spears album - you've got to get that two weeks or you've lost it. You know, Justin Bieber and Britney Spears are not actually typical of what happens with most music which, in fact, is much more of a long tail event.

T

Britney was a Mouseketeer and really was a manufactured artist. Justin Bieber is one example of an artist who was able to leverage new media and get ahead. He was basically just a kid putting his videos up on YouTube and Twitter and then was embraced by the industry.

B

There are bands like Radiohead that have gone to the new media model and who are not distributing through the industry anymore. They're distributing by putting their albums out where anyone can download them for free and at the same time download them for money - and they're making money.

T

There's a lot of trust involved there.

B

My experience in practice is that if you lay down a moral challenge to your audience - if they really care about you - they're actually going to accept that moral challenge and honor your trust. When we decided that we were just going to give our stuff away, we also said that we didn't want anybody selling it. And I think that it has been extremely rare that there has been anybody out there selling Grateful Dead tapes - I haven't ever seen a case of it.

T

That brings to mind the culture of the remix and of cover bands making a living out of paying tribute to their musical heroes. There are entertainers out there remixing content, repackaging it, and repurposing it for their own personal gain. You've discussed in your writing how, by limiting access to that freedom, we do a disservice to our ability to educate - that basically there aren't any original thoughts. Is the ability to build on other people's ideas an essential part of cultural growth and evolution?

B

I don't know how you could be a musician without standing on the shoulders of everybody who had been a musician before. I mean, imagine what it would be like to try to write a song if you had never heard one. And in the United States, imagine what it would be like to write a song if you didn't know what the Blues were. Like Willie Nelson once said, "There ain't but two songs in America, the Star Spangled Banner and the Blues." The same kind of condition applies with regard to Samba in Brazil, so I think it's completely fallacious to think of any material as being completely original. Whether the remix is happening in the head of the musician or happening on the dashboard, it doesn't really matter.

T

You wrote in the Declaration of the Independence of Cyberspace, "Your legal concepts of property, expression, identity, movement, and context do not apply to us. They are all based on matter, and there is no matter here." However, the internet is a physical thing - owned, powered, and operated by governments and corporations. How do we truly protect freedom of access?

B

It's an ongoing contest. I place a lot of my faith in competition, and even though I see there is a lot of monopolistic behavior, and I'm continuously concerned about the ability of a company like Apple to regulate access or the ability of a company like Comcast to shut off access, I still have considerable faith in the idea that eventually everybody is going to realize the same thing about bit transport that I realized a long time ago about creative material. Which is, that in this kind of an economy, it's a bad idea to regulate towards scarcity because you can increase demand with abundance. I mean, the more that you give people, the more they will want. It's like Intel, for example. They are developing some functional competition with A.R.M. and in the mobile

space, but generally speaking it doesn't have any competition. But they work like crazy, constantly, to increase their processor speed (to stay on the Moore's Law parabola) and they do that because the faster the processor, the more you can sell of them. And the same thing is true of bandwidth. The more bandwidth you can provide the customer, the more bandwidth they will want. I'm talking to people at AT&T who are trying to deregulate AT&T, to get it out of being required to provide any regulative function under traditional telephony, to make AT&T an abundance provider and not a scarcity regulator.

T

You and the early new media pioneers, who coined the term "Cyberspace," claimed that digitization would be a democratizing, decentralizing force in society. To what extent has the Internet fulfilled its early promise?

B

As I'm fond of saying these days, I've lived long enough to see all of my dreams come true, and with them all of my nightmares. I was predicting back in the early nineties that the Internet would be the most penetrating surveillance tool ever devised - and that's also true. It's important for us to recognize that any really powerful technology has a range of consequences that run the full gamut, from the most optimistic to the most dire. I was Utopian in a lot of my pronouncements in the early days, not because I really believed that entirely - though, I believed half of it - but because I felt like I could, to some extent, put English on the ball. It's like Alan Kay said, "the best way to predict the future is to invent it." And I've always felt also it's true that the best way to invent the future is to predict it. So, I will take some small credit for the fact that the Internet goes on with the default setting assuming its liberty, assuming that it actually does deal with censorship as though it were a malfunction, and it heals itself from that wound every time that it happens. This is only half true, but I think it's more than half believed to be true - and that's the important thing.

T

What can you say are the most interesting or salient parts of your work with the Electronic Frontier Foundation or the Berkman Center for Internet and Society at Harvard where you've been able to affect change or engage in this thought space?

B

There are a bunch of different things, but the most important stuff has all had to do with copyright, and patent, and trying to keep the traditional old players from using intellectual property law to stop the future or to continue to hold the power in its old hands. There's a process that's going on where the possession of power has been fundamentally renegotiated on every level, and those that have had it - those who've had economic force - are trying really hard to maintain their franchise. And I'd be disappointed if they weren't having some success - I feel completely confident that in the long run they won't.

T

What do you find as the common thread between being a Republican Wyoming cattle rancher, Grateful Dead lyricist, and leader of electronic freedom? How do you connect those conceptual dots?

B

In all those cases, I was looking to help connection. I was a rancher because I felt traditional family farming economics were fundamental to the kind of community I felt was dying in the world, and wanted to help preserve it as long as I could. I became a songwriter originally just because my best friend needed a songwriter, but I was motivated for a lot of that by wanting to create some of the connective tissue for the community of the Deadheads. I've always felt that the Internet was about connecting humanity into some kind of unified ecology of mind, and there is a continuity with all of these things. I've been fortunate in that I've been given a lot of opportunities to pursue my mysterious career, and they didn't necessarily look like they had anything in common besides me - but they did, as far as I was concerned. In a funny way, I feel like I've always had the same career, regardless of what I was doing - and that's about connection. To the extent that I can connect without having an equal and opposite separating effect - which was difficult to do - that's what I've been up to.