

# Artists in Cyberspace

Arts Law Week Seminars - The Law in Cyberspace

Author: Andrew Garton

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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 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.

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 and social experimentation takes place... and this thing that is eating up my life.*

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

Cyberspace, to put it simply, has created, for those privileged to be Net-connected, a revolution in "communication" - with the emphasis on "commune". What we have here are communities formed in Cyberspace that would not exist nor grow were it not for the tools and willingness to do so.

In much of our society we find less and less opportunities for us to meet and communicate with our own species. Victoria Markets is about the closest we get to the Agora's 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 commercialization of Cyberspace it is the running down that I'm concerned about.

For artists like me, Cyberspace has become a vital platform with which to further our ruminations on the world. Its 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 and promote it. 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 Rights<sup>1</sup>?

From "Fair Use"<sup>2</sup>, an essay by the US based sound collage band, Negativland<sup>3</sup>, who advocate not so much for copyright, but for copyfree intellectual property:

"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 Bendix<sup>4</sup>, 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 mold and remold. 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."

Negativeland 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 favorable 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 artifact, and presenting that artifact as a complete and self-contained performance should be the defining guideline for artist profit.

"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."

Lets 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 more the exhilaration of chaos that is the Metaverse of the Internet!

### **SITO - Artchives and Collaborative Rituals**

<http://sunsite.unc.edu/otis/otis.html>

SITO, is a place for image-makers and image-lovers to exchange ideas, collaborate and, in a loose sense of the word, meet. SITO is collection of images and information accessible mainly via the Internet that is open for public perusal and participation. The quickest analogy drawn is that SITO is like an "art collective". Not only because it's a place to see art, but also because of it's social reverbs. People do meet "on SITO". Ideas are exchanged. Conversations are had via electronic-mail. Influential works do "hang" on/in SITO. People have been inspired. This "coop" is open 24hrs a day and serves an ever increasing "community".

If you want to use images found on SITO, in things like publications or software, you'll have to check to see if permission has been granted by the artist. When you do use permitted work, it's always courteous to let the artist know about it, perhaps even send them a free copy or some such compensation for their files.

### **Art on the Net**

<http://www.art.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!

### **Brain Opera**

<http://brainop.media.mit.edu/>

Composer Tod Machover believes that anyone can make music. The Brain Opera, created in collaboration with a team of over fifty artists and scientists at the MIT Media Lab, seeks to demonstrate this in a wholly new and original way, drawing audiences into the mysteries of how sensory perception, musical structure, language, and emotion interplay. The Brain Opera is an interactive musical event which debuted at the Lincoln Center Festival in New York City from July 23 to August 3, 1996.

The Brain Opera is a three-part work which is structured to incorporate the musical contributions of both on-line and live audiences.

This site relies on much of the content to be provided by artists and other contributors the world over. Curiously, at the time of writing no copyright protection is available for contributing artists.

### **Art Crimes**

[http://www.gatech.edu/desoto/graf/Index.Art\\_Crimes.html](http://www.gatech.edu/desoto/graf/Index.Art_Crimes.html)

Art Crimes, a gallery of graffiti art from cities around the world.

Art Crimes is a collaborative, ongoing, volunteer project, and anyone can contribute.

In many places, painting graffiti is illegal. Art Crimes do not advocate breaking the law, they believe that art belongs in public spaces and that more legal walls should be made available for this fascinating art form.

Art Crime's goals are to provide cultural information and resources and to help preserve and document the constantly disappearing art.

On Copyright, Art Crimes stipulates that all photographs are copyrighted by the photographers.

"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."

### **Electronic Frontier Foundation**

<http://www.eff.org/>

The Electronic Frontier Foundation is a non-profit civil liberties organization working in the public interest to protect privacy, free expression, and access to public resources and information online, as well as to promote responsibility in new media.

William S. Strong, from Kotin, Crabtree, and Strong, Attorneys at Law, makes an excellent contribution to the debate on intellectual property in his paper, "Copyright in the New World of Electronic Publishing".

"On-line publishing is a very different kettle of fish. It does not necessarily deprive the publisher of the opportunity to create a visual identity in the mind of the reader, but to avoid being a faceless address on the Internet the publisher is going to have to resort to new stratagems for helping to create or preserve its identity. Likewise, marketing strategies will have to be thoroughly revamped in light of the loss of familiar opportunities and the gain of new opportunities for reaching one's potential audience.

"One exciting thing about on-line publishing is that for the first time it creates the opportunity for the publisher, the reader, and the author or editor to be in a constant dialog. This dialog will not come about automatically. The publisher is going to have to create the incentives and opportunities for it to happen. But consider the opportunities for learning about one's customer base, for getting feedback from readers, and for improving one's product without having to wait years for one's inventory of the first printing to be sold out."

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?

<sup>1</sup> Yelland, Philippa - People Vs State, Computers and High Technology, The Australian, 17/09/96, pg. 38.

<sup>2</sup> Negativland - Fair Use, <http://sunsite.unc.edu/id/negativland/fairuse.htm>

<sup>3</sup> Negativland - <http://sunsite.unc.edu/id/negativland/>

<sup>4</sup> Crosley Bendix - <http://sunsite.unc.edu/id/negativland/crosley.htm>