Copyright and digitization

This essay is going to look at the notion of authorship (and I use the term in the broadest possible sense to include anyone who creates a work in any medium) from an historical perspective. It will look at how the concept of the author has changed due to the development of digital technology and the legal problems that have arisen due to this change. It will also look at the history of copyright in relation to authorship and authority and explore how, since the advent of digitalization, copyright has become largely irrelevant to the end user. It will also look at the growing problem of piracy and illegal reproduction of digital works and put this in an historical context.

Prior to the invention of the printing press in 1450's, the concept of authorship was relatively unimportant. Scribes would laboriously hand write texts that contained knowledge that was largely out of the reach of the average person. Authorship was a fluid concept. In the oral tradition, poet-speakers and storytellers changed stories as they learned them and stories were endlessly adapted. "The author was created when the hand-written manuscript moved out of the scriptorium and into printing houses. The authors began to assert an individual ownership over their work and authorship began to be thought of as a possession caught up in the system of property values. This led to the first method of royalty payments and later the copyright law that was introduced by Queen Anne in 1709" Bellamy (1998, p.27).

With the print revolution, books became accessible to more and more people. "What had once freely circulated without the need of an author gave way to an author's biography: an authoritarian distance emerged between transcendent author and the public. The author was celebrated as an expert in a particular field and their work received as 'original' and 'authoritative'. Bellamy (1998, p. 27). With this new - found status, authors, became owners of valuable commodities, that is, original and more importantly, saleable ideas.

Today the author is entitled to royalties from the sale or use of their work, and it is illegal to reproduce a work without the permission of the author. To this end, authors and creators have become a product of a capitalist world. "The "Author" is a product of our culture, a convention; a reflection of a capitalist society concerned with ownership and the prestige of the individual." (Barthes, online http://www.columbia.edu) When a work has a monetary price on it, some people will be able to afford to pay the price for a work, but there will be also many who can't afford the price. This sets up a system of "haves" and "have nots". This is, unfortunately, one of the greatest failings of the capitalist system. The "have nots" come to a point where they want what the "haves" have. Sometimes this desire has caused revolution, other times war, and today, it is the greatest cause of piracy, plagiarism, counterfeiting, forging and uncontrollable copying of materials owned by the 'haves'. Historically, people have been copying, forging, plagiarising, and counterfeiting for many hundreds of years. This is not a new phenomenon. For example, "The counterfeiting of

money is one of the oldest crimes in history. At some periods in early history, it was considered treasonous and was punishable by death." (Online, 2002 http://www.secretservice.gov)

Computer technology, digitalization, and particularly the Internet, have brought about complex legal concerns regarding authorship. "Theorists such as Roland Barthes and Michel Foucault began to suggest that the author was a constructed figure, not a foundational given. Copyright historians such as Mark Rose began to suggest that the construction of the author changes in response to economic phenomena. And then came the Internet, where authorship suddenly exploded: no more autonomy, no necessary originality, no necessary individuation. Collaboration. Appropriation. The collapse of the linear narrative and the linear argument. Ungendered, unregulated authorship, indeterminate and out of control." (Online, 2001 http://wrt-howard.syr.edu/Syllabi/CCR720F01.html) The Internet has developed as a largely anarchic system, the new cowboy frontier where anything goes. Anyone can post a website, anyone can become an author and anyone can copy vast amounts of information, (music, film, software, images, text) available in cyberspace. Howkins (2002, p.190) describes the change in authorship from forms that flourished before 1900 as "primarily single works; works that evolved during the 20th century were a mix of both; and works that grow from, or depend on, digital code have a tendancy to multiple authorship." This trend to multiple authorship can be seen happening particularly in the movie and software industries where collaborative work isn't owned by any one individual, but is owned by a corporation. Multiple authorship today is more like the fluid authorship of pre-printing, pre-copyright days, where no individual has complete ownership of a work.

In order to protect the works of the author, most countries have developed copyright laws. Copyright law comes under the larger umbrella of Intellectual Property Law, which also encompasses Patent and Trademark Laws. Copyright law is designed to protect the intellectual property of authors. In Australia, authorship is protected by The Copyright Act of 1968. Copyright protection generally lasts for the lifetime of the creator/s plus fifty years after their death. Copyright is designed to protect the author from someone copying and using their work without permission. Australia is party to several international treaties dealing with copyright protection. So if an Australian creator has his/her work infringed in Japan for example, the copyright owner will be able to take action under Japanese law. (Online, 2002 http://www.copyright.org.au/PDF/InfoSheets/G030.pdf)The original Copyright Act of 1968 has been amended to include electronic works. The Copyright Amendment (Digital Agenda) Act 2000 was passed by Parliament on 17 August 2000 and came into operation on 4 March 2001. The object of this act is to amend the Copyright Act 1968 so as to take into account the rapid development of new technologies. (Online, 2000,

http://www.law.gov.au/agd/seclaw/Copyright%20Amendment%20Act%202000.htm)

There are steep penalties for infringing copyright laws. "A person who is guilty of an offence may be fined up to $60,500 or imprisoned for up to five years, or both; a corporation may be fined up to five times that amount. A person who advertises for the supply of infringing copies of computer programs may be fined up to $1,650 or imprisoned for up to six months, a corporation may be fined up to $16, 500. (Online, 2001, http://www.copyright.org.au/PDF/InfoSheets/G063.pdf)

Today, copyright can be bought or sold just like any other commodity. More often than not, a large corporation will end up owning copyright of an individuals work. Corporations employ lawyers and lobbyists who work hard to maintain these rights for as long as possible. They also work to extend their copyright rights. The world of copyright is big business. There is much to gain and there is also much to lose.

Current electronic technology makes it extremely easy to copy original work. This is particularly evident on the Internet, particularly peer-to- peer (P2P) networking. P2P is a type of networking in which a group of computers communicate directly with each other, rather than through a central server. This model makes file sharing extremely easy. Originally P2P was developed as a way for academics and researchers to freely share files over the Internet without taking up valuable server space. However, P2P has caught on as a popular way to share files over the Internet and P2P search software opens a veritable world of potential copyright infringement. There is basically nothing on the P2P network, that can't be downloaded, legal or illegal. The technical ease of copying electronic material has led to a boom in illegal piracy. Piracy of software "cost U.S. software makers $2.6 billion in 2000, $11.8 billion worldwide." (Online, 2002, http://siliconvalley.internet.com/news/article.php/1013121) Another figure estimates "Piracy in 56 countries of US music, films, books and other intellectual content cost US firms some $9.2 billion in 2002" (Online, 2002, http://www.dailytimes.com.pk/default.asp?page=story_16-2-2003_pg5_16)

Technology has developed at such an incredibly fast rate that law makers have been slow to catch up. This lag has been particularly evident with the case of file sharing over the Internet. The precedent case of Napster Inc., the P2P music file sharing company, came to international prominence when the Recording Industry Association of America (RIAA) took Napster to court "accusing them of violating federal and state laws through contributory and vicarious copyright infringement." (Online, http://www.firstmonday.org/issues/issue7_8/bowrey/b3) This was a case of "technology versus the law". That is, Napster, giving its subscribers access to technology they needed to appropriate any music they wanted from the Internet

versus lawmakers and those with financial and investment stakes who are still in the process of deciding what the rules are.

This case focussed on the question of who is actually liable for copyright infringement? Is it the P2P networking company, the end-user or perhaps even the ISP providing the consumer with Internet access? Is it the company who produced the CD burner, or the end-user? The general consensus seems to be that it is ultimately the end-user who is responsible for their actions. Xerox for example, is not liable for the actions of people who copy books, etc. on its machines, just as Sony isn't liable for videos being copied on their machines. And herein lies the heart of the problem – it is virtually impossible to police individual end-users.

The individual end-users seem to believe that copyright rules don't apply to them. This is partly because the laws are so complex and they are so hard to enforce on an individual level. Amy Litman (Online, 1997 http://www.msen.com/~litman/no.htm) suggests that copyright laws for the individual are hard to understand and are in danger of becoming obsolete. "If the vast majority of them (individual users) do not comply with the copyright law, then the copyright law is in danger of becoming irrelevant….people don't obey laws that they don't believe in. It isn't necessarily that they behave lawlessly, or that they'll steal whatever they can steal if they think they can get away with it. Most people try to comply, at least substantially, with what they believe the law to say." Woodmansee (1994, p. 27) also suggests that "modern conceptions of authorship form the basis for modern copyright law, but that the fact that these notions themselves are potentially so fleeting means that copyright law itself may not be able to stand up to the new definitions of authorship".

Billions of dollars is lost to pirated and copied works. Indeed there is a thriving black market of pirated software, music, movies etc., particularly in poorer Asian countries The problem is also endemic in affluent western countries, particularly illegal downloading of copyrighted material from the Internet. Today, people aren't executed for illegal copying. The steep fines and penalties for illegal copying clearly aren't enough to deter people and the fact that it is virtually impossible to police, has made getting away with illegal copying easy, particularly for individual users. The fact that lawmakers have been so slow in catching up with the technological change that has made copying so easy, has also contributed to the problem.

Recently however, four college students in the USA were taken to court by the RIAA and agreed to pay the recording industry's trade association $12,000 to $17,000 each over the course of the next three years for "directly infringing copyrights by providing dozens of songs from popular artists to other students to

copy." (Harmon, 2003, p.22) In Sydney, three University students have recently faced court accused of operating a website where free music files and video clips could be downloaded. (Online, 2003 http://www.abc.net.au/news/newsitems/s853359.htm)

Just as the print revolution changed the face of authorship into a valuable commodity, the digital revolution is causing the notion of authorship and ownership to evolve yet again. Is there a solution to the "technology vs law" problem? There are more questions than solutions at the moment. "All this legal action has formed the backdrop to vigorous debate over how to solve the digital piracy problem: should copyright owners be allowed to lock up digital content through technological means? Would they succeed, even if they tried? Should they be allowed to hack the computers of alleged infringers, in an attempt to fight back? Should there be a levy on hardware, to pay for the costs of piracy? Or should the entertainment industry simply be forced to come up with business solutions to the problem of piracy?" (Waldmeir, 2003, Lexis Nexis Database)

Clearly, there will have to be radical legal changes in order to embrace the new technologies to their fullest potential. Perhaps law makers can look to history in helping to find a solution to the problem. Previously, and in a similar case to Napster, in the late 1970's, Sony was taken to court by the movie industry because the new videorecording technology could potentially be used to pirate movies. The movie industry wanted VCR's taken off the market. The film industry was wrong about the VCR -- which has since proved to be the foundation for billions of dollars in tape rentals and sales -- revenue going back into the film industry. (Online, 2000, http://zdnet.com.com/2100-11-523817.html?legacy=zdnn) Howkins (2002, p.194) predicts that "the proportion of ideas and products that are sheltered as intellectual property will probably decline, partly because of the increase in collaborative work and partly because at the lower cost levels the effort involved in maintaining protection may not justify the revenues."

The challenge for corporate industries and law makers now is to find a way to integrate new technology (and all the issues of copying etc. that go with this) into feasible, workable laws that suit both industry, the author/s and the end- user; a huge task, no doubt, it will be interesting to see the results develop in the coming years.

See http://www.ieee-security.org/Cipher/BookReviews/2001/Litman.July2001.html (review of litmans book)

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See http://www.milkbar.com.au/image/ma.pdf

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