

### **Imagining a world without copyright**

Copyright once was a means to guarantee artists of a decent income. Apart from the question as to whether it actually functioned as such – most of them never made a penny from and still don't owe a penny to the system – we have to admit that copyright serves an altogether different purpose in the contemporary world. It now is the tool of conglomerates in the music, publishing, imaging, and movie industries to control their markets. They decide whether the materials they have laid their hands on may be used by others. And if they allow it, under what conditions and for what price. European and American legislation extends them that privilege to a widow – when she is no less than seventy years old – after the passing away of the original author! The consequences? The privatization of an ever-increasing share of our cultural expressions, because this is precisely what copyright does. What else? Our democratic right to freedom of cultural and artistic exchange is slowly but surely being taken away from us.

Yet, a fascinating development is taking place before our very eyes. Millions of people exchanging music and movies over the Internet refuse to accept any longer that a mega-sized company can actually *own*, for example, millions of melodies. So, digitalization is gnawing away at the very fundamentals of the copyright system. But there are other concerns as well. As stated, most artists derive no financial benefits from the copyright system, a system which, in fact has wreaked havoc on them. It is also unacceptable that we have to consume cultural creations the way they were dished out to us, and that we may change neither title nor titbit. We thus have every reason to ponder about a viable *alternative* to copyright.

What might, in our vision, such an alternative conceptualization of copyright look like? To arrive at that alternative, we first have to acknowledge that artists are entrepreneurs. They take the initiative to craft a given work and offer it on a market. Others can also take that initiative, for example a producer or a patron, whom in turn employs artists. All of these artistic initiators have one thing in common: they take entrepreneurial risks.

What copyrights do is precisely to limit those risks. The cultural entrepreneur receives the right to erect a protective barrier around his or her work, notably a monopoly to exploit the work for a seemingly endless period of time. That protection also covers anything that resembles the work in one way or the other! That is bizarre! We must keep in mind of course that every artistic work – regardless of whether it concerns a soap opera, a composition by Luciano Berio, or a movie starring Arnold Schwarzenegger – derives the better part of its substance from the work of others – from the public domain. Originality is a relative conception! In no other culture around the globe, except for the contemporary Western one, could or can a person ever call himself the owner of a melody, an image, a

word! It is therefore an exaggeration to gratuitously allow such work such a far-reaching protection, ownership title, and risk-exclusion - because this is exactly what copyright offers.

One might ask whether such a protective layer is really necessary for the evolving process of artistic creation. Our proposal, which entails three steps, will demonstrate that this is not the case. What then, do we think, can replace copyright? In the first place, a work will have to give it a try on the market on its own, without the luxurious protection offered by copyrights. After all, the first to market has a time and attention advantage. What is interesting about this approach is that this proposal strikes a fatal blow to a few cultural monopolists that, aided by copyright, use their stars, blockbusters, and bestsellers to monopolize the market and siphon off attention from every other artistic work produced by artists. That is problematic in our society in which we have a great need for that pluriformity of artistic expression.

How do we envision this fatal blow working? If the protective layer that copyright has to offer no longer exists, we can freely exploit all existing artistic expressions and adapt them according to our own insights. This creates a most unpleasant situation for cultural monopolists, as it deprives them of the incentive to continue with their outrageous investments in movies, books, t-shirts, and any other merchandize associated with a single cultural product. After all, why would they continue making these investments if they can no longer control the products stemming from them and exploit them unhindered?

The domination of the cultural market is then taken from their hands. The effect of our proposal is that the cultural market will be cleansed of cultural monopolists, and that the cultural and economic competition between many artists will once again be allowed to have its course. This offers new perspectives for many artists. They are no longer driven from the public eye and many of them will then, for the very first time, be able to make a good living from their work. After all, they will then no longer have to challenge – and bow down to – the market dominance of cultural giants, because that will vanish! The market will be normalized.

It may of course happen that a certain artistic expression demands sizeable initial investments. This is the second situation for which we must find a solution. Think about movies or novels. We propose that the risk bearers – the artist, the producer, or the patron – will receive a one-year *usufruct* for works of this kind: that is the right to use the fruits of the works derived from the public domain. After all, as was the case with our first example, the artistic work will belong to the public domain immediately after its conception. But in the second situation we describe here there is the difference that the risk taker, who has made a considerable investment, will have one year to exploit the work financially. This will allow the entrepreneur to recoup his or her investments. It will then still be anyone's personal decision whether or not to make extremely high investments, by making a movie, for example, but no one will be granted usufruct of that work for over a year. When that period expires, anyone can do with the work as he or she pleases.

The third situation for which we must conceive of a solution is when a certain artistic creation is not likely to flourish in a competitive market, not even with a one-year usufruct. It may be the case that the public still has to develop a taste for it, but that we still find that, from the perspective of cultural diversity, such a work must be allowed to exist. For this situation it is necessary to install a generous range of subsidies and other stimulating measures, because as a community we should be willing to carry the burden of offering all kinds of artistic expressions a fair chance.

Cultural monopolists desperately want us to believe that, without copyright, we will not have artistic creations and, therefore, no entertainment either. That is nonsense. We will have more, and more diverse ones. A world without copyright is easy to image. The *level playing field* of cultural production, that is a market accessible for everyone, will once again be restored. A world without copyright offers the guarantee of a good income to many artists, the protection of the public domain of knowledge and creativity, and to us as members of the public that to which we are entitled: a surprisingly rich and varied menu of artistic alternatives.

JOOST SMIERS is the author of *Arts Under Pressure. Promoting Cultural Diversity in the Age of Globalization*, and professor of political science of the arts in the Research Group Art & Economics at the Utrecht School of the Arts. MARIEKE VAN SCHIJNDEL is policy adviser and publicist, and works in the cultural field. This article reflects her personal opinions only.