

A QUESTION OF STEALING?

Curatorial text by Emma Stanisic

This text is my curatorial contribution to Emilio Varavella's piece *The Italian Job No. 2 Archiving Game*, a project dealing with the practice of stealing in the artworld. In response to this, I decided to produce my text with copied-paste parts of texts, stolen from various digital sources which I found appropriate for a wide investigation of the theme:

- Carol Ann Duffy. *Stealing from Selling Manhattan*, Anvil Press Poetry, 1987.
- National Stolen Art File. "*National Stolen Art File Search*", http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft/national-stolen-art-file, Dec. 13, 2014.
- Eben Moglen. "*The dotCommunist Manifesto*", Jan. 2003, http://emoglen.law.columbia.edu/my_pubs/dcm.html, Dec. 13, 2014.
- Rasmus Fleischer. "*The Future of Copyright*", June 9, 2008, <http://www.cato-unbound.org/2008/06/09/rasmus-fleischer/future-copyright>, Dec. 13, 2014.
- Timothy B. Lee. "*Copyright and Innovation*", June 30, 2008, <http://www.cato-unbound.org/contributors/timothy-b-lee>, Dec. 13, 2014.
- Wikipedia. "*Deep Web*", http://en.m.wikipedia.org/wiki/Deep_Web, Dec. 13, 2014.
- Gilles Deleuze. "*Negotiations 1972-1990*", Columbia University Press, 1995.

The most unusual thing I ever stole? A snowman. Part of the thrill was knowing that children would cry in the morning. Life's tough. We steal. Crime against copyright is one of the most expanding criminal activities since the birth of the web. [The National Stolen Art File \(NSAF\)](#) is a database of stolen art and cultural property. Stolen objects are submitted for entry to the NSAF by law enforcement agencies in the U.S. and abroad. A physical item has actually been removed yet we can find this object and copy it all across the web. This material object that is supposedly lost can be re-born and displayed and visited again and again and again.

Where are the advocates of freedom in the new digital society who have not been decried as pirates, anarchists, communists? Have we not seen that many of those hurling the epithets were merely thieves in power, whose talk of "intellectual property" was nothing more than an attempt to retain unjustifiable privileges in a society irrevocably changing? Throughout the world the movement for free information announces the arrival of a new social structure, born of the transformation of bourgeois industrial society by the digital technology of its own invention. Music, for example, throughout previous human history was an acutely perishable non-commodity, a social process, occurring in a place and at a time, consumed where it was made, by people who were indistinctly differentiated as consumers and as makers. After the adoption of recording, music was a non-perishable commodity that could be moved long distances and was necessarily alienated from those who made it. Music became, as an article of consumption, an opportunity for its new "owners" to direct additional consumption, to create wants on the part of the new mass consuming class, and to drive its demand in directions profitable to ownership. So too with the entirely new medium of the moving picture, which within decades reoriented the nature of human cognition, capturing a substantial fraction of every worker's day for the reception of messages ordering additional consumption. Tens of thousands of such advertisements passed before the eyes of each child every year, reducing to a new form of

serfdom the children liberated from tending a productive machine: they were now compulsorily enlisted in tending the machinery of consumption.

How relevant is it to declare oneself to be “for” or “against” copyright? Neither the stabilization nor the abolition of the copyright system seems within reach, copyright law is mutating into something qualitatively different than what it has been in previous centuries. A very condensed version of copyright history could look like this: texts (1800), works (1900), tools (2000). Roughly around 1900, however, copyright law was drastically extended to cover *works*, independent of any specific medium. This differentiation was undermined by the emergence of the Internet, and since about the year 2000 copyright law has been pushed in a new direction, regulating access to tools in a way much more arbitrary than anyone in the pre-digital age could have imagined. Consider radio broadcasting and record shops, which once were inherently different. Their online counterparts are known respectively as “streaming” and “downloading,” but the distinction is ultimately artificial, since the same data transfer takes place in each. The only essential difference lies in how the software is configured at the receiving end. Swedish company Chilibrec provides a rapidly growing free online service assisting users in ripping digital audio streams. After choosing among hundreds of radio stations, you will soon have access to thousands of MP3 files in an online depository, neatly sorted and correctly tagged, available for download. The interface and functionality could be easily confused with a peer-to-peer application like Limewire. You connect, you get MP3s for free, and no one pays a penny to any rights holder. But it is fully legal, as all Chilibrec does is automate a process that anyone could do manually. People with some programming skills, however, won’t need to do much more than combining a few readily available and otherwise perfectly legal code libraries to compile their own streamripping tool, one that would circumvent the PERFORM Act. For regulations like these to be effective, it is necessary also to censor the sharing of skills that potentially can be useful for coding illegal software. This domino effect captures the essence of copyright maximalism: Every broken regulation brings a cry for at least one new regulation even more sweepingly worded than the last.

Another important consideration is that the digital is larger than the online. According to one recent study 95 percent of British youth engage in file sharing via burned CDs, instant messaging clients, mobile phones, USB sticks, e-mail, and portable hard drives.

Such practices constitute the “darknet,” a term popularized by four Microsoft-affiliated researchers in a brilliant 2002 paper. Their thesis is simply that people who have information and want to exchange it with each other will do just that, forming spontaneous networks which may be large or small, online or offline. By being interconnected they can always keep the most popular material available. Attempts to curb open file-sharing infrastructure may only drive activity towards smaller and darker networks. One early darknet has been termed the “sneakernet”: walking by foot to your friend carrying video cassettes or floppy discs. Nor is the sneakernet purely a technology of the past. The sneakernet will come back if needed. “I believe this is a ‘wild card’ that most people in the music industry are not seeing at all,” writes Swedish filesharing researcher Daniel Johansson. “When music fans can say, ‘I have all the music from 1950-2010, do you want a copy?’ — what kind of business models will be viable in such a reality?” Meanwhile, darknets will proliferate and demand for new anonymization techniques will remain high as a general side-effect of the hunt for small-scale copyright infringers. The most eager to take advantage of that situation will of course be the real criminals, including terrorists, while the legitimate Internet may grow fragmented and lose its open, freewheeling character. [Deep Web also called the Deepnet, Invisible Web, or Hidden Web is World Wide Web content that is not part of the Surface Web, which is indexed by standard search engines. It should not be confused with the dark Internet, the computers that can no longer be reached via the Internet, or](#)

with a Darknet distributed filesharing network, which could be classified as a smaller part of the Deep Web.

A copyright policy that gives content creators veto power over technological innovation may marginally deter file sharing but it will also dramatically affect the pace of innovation in digital media devices. Our current computers and networks are designed from the ground up to facilitate copying without regard to what is being copied. Putting the file sharing genie back in the bottle would required dramatic changes to the Internet and our computers — changes that would make them dramatically less useful for other purposes. Hollywood and the labels have had more or less free rein inside the beltway over the last decade, getting most of what they've asked for from Congress. And they haven't been shy about sending their lawyers after individual music and movie fans caught using peer-to-peer networks. Businesses that adopted the copyright industry's old formula of selling "content without context" are meeting harder times. "Intellectual property is the oil of the 21st century," was once the motto of Mark Getty, the businessman who used his family's oil fortune to invest in one of the world's largest copyright portfolios, controlling more than 60 million images." Getty Images saw its stock price fall steadily since its peak in 2004, before the company earlier this year was sold out to private equity. The failure of Getty Images can't be blamed on piracy, but rather has to do with the spread of digital cameras. Editors increasingly tend to prefer on-the-spot pictures, regardless of image quality. Sitting on a large database of archived pictures becomes less relevant when newspapers want photography to produce a feeling of real-time presence — an uncopyable quality.

Copyright enforcement weakens general law enforcement. All this may of course involve taking particular positions to make some particular point. But it's not enough these days to "take a position," however concretely. The real dispute, once again, is not between proponents and opponents of copyright as a whole. It is between believers and non-believers. Believers in copyright keep dreaming about building a digital simulation of a 20th-century copyright economy, based on scarcity and with distinct limits between broadcasting and unit sales, his vision of copyright utopia is triggering an escalation of technology regulations running out of control and ruining civil liberties. Accepting a laissez-faire attitude regarding software development and communication infrastructure can prevent such an escalation. Unauthorized sharing of files will prevail in darknets, online and offline. Creative practices, with some exceptions, thrive in economies where digital abundance is connected to scarce qualities in space and time. The more urgent question regards what price we will have to pay for upholding the phantasm of universal copyright.

The most common thing I ever stole was copy-pasted. The border between stealing and creating has never been thinner or has always been imaginary and upheld in the name of order.

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