



COPY RIGHT OR COPYRIGHT?
— *Music and creativity in the digital age* —

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The Grey Tuesday

Tuesday february the 24th 2004 was a grey tuesday. The weather was nice, but “Grey Tuesday” was the day when bloggers and music lovers all over the world exchanged The Grey Album – a remix Album created by *Brian Burton* aka *DJ Danger Mouse*. The album was solely produced by mixing beats and bites From *The Beatles’ White Album* with an acapella version of *Jay-Z’s The Black Album*. He printed his remix in 3000 copies for promotional purposes, and then all hell broke lose. The record company behind Beatles, EMI Records, forced DJ Danger Mouse to withdraw and destroy his promos because he had not asked permission to use the content of *The White Album* in his own piece of art.

EMI’s action to stop the record from being distributed had the opposite effect. The Grey Album was soon to be found on KaZaA and other peer2peer (p2p) networks¹. And the organization, Downhill Battle, saw the banning of The Grey Album as an opportunity to put their policy on the agenda. Downhill Battle describe themselves as “a music activism project that’s working to bring positive change to the music industry”². They initiated the Grey Tuesday happening, where they urged people to upload the Grey Album to their own websites for free download. The Downhill Battle organization describe their initiative as a fight for the right to be creative in the digital age:

The action is an act of civil disobedience against a copyright regime that routinely suppresses musical innovation.

And they state that They Grey Album is a piece of art in its own right. Co-founder of Downhill Battle, Nicholas Reville says in a press release:

*It’s clear that this work devalues neither of the originals. There is no legitimate artistic or economic reason to ban this record. This is just arbitrary exertion of control*³.

In the opinion of Downhill Battle the discussion and future of music is dominated by the major record labels and the Recording Industry Association of America (RIAA). Downhill Battle are working to introduce a public voice to the debate. And they see the Grey Tuesday happening as a success. Within 24 hours, the happening lasted, the album was downloaded more than 100.000 times and more than 1.000.000 songs were downloaded. In music business language; The Grey Album went gold in just 24 hours.

The music industry tried to retaliate by threatening with lawsuits against everybody who made The Grey Album available on the net. And they were thorough, maybe too thorough. A Danish Weblogger, Keld Bach, who wrote about Grey Tuesday on his blog got a letter from Antipiratgruppen (APG). APG stated that he had violated copyright laws by up-and downloading the Grey Album, and by linking to a web–page

¹A communications environment that allows all computers in the network to act as servers and clients simultaneously, and share files with all other users on the network.

²<http://www.downhillbattle.org/introduction/index.html>

³http://www.downhillbattle.org/pressreleases/greytuesday_21904.html

where the album was available for download. But all he had done was to link to a web page that linked to a web page with a downloadable version of The Grey Album. Afterwards APG withdrew their threat towards Keld Bach⁴.

This case sums up different aspects of digitalization of music and art. First of all the digitalization gives musicians the opportunity to use already digitized music as their sound sources. The record companies are not the only ones who have the means of producing and distributing music. In fact, everybody with internet access can distribute music via p2p networks. Secondly, it shows that the record companies do whatever they can to maintain the status as it was before the music got digitized.

Analogue Reproduction

In the first half of the twentieth century theorists studied the importance and consequence of the mechanical reproduction of art. The point of departure of individual theorists depends on how they view the possibilities of individuals to free themselves from the constraints of economical and technological forces. On the one hand many theorists see the effect of mass media and the culture industry as having a disseminating effect, subordinating the individual, while on the other hand seeing media and the culture industry as having liberating potential.

An optimistic and democratic interpretation of the media can be found in the works of one of the first theorists who considered the changing role in cultural production as a potential for making the consumer an active participant in public affairs. In his essay *The Work of Art in the Age of Mechanical Reproduction* from 1936 Walter Benjamin considers the changing role of the work of art following its new status as a commodity of mass production. According to Benjamin mechanical reproduction emancipates the work of art from its dependence on the ritual and its attachment to the domain of tradition. While traditionally bound to religion and with its status as a cult symbol, mechanical reproduction strips art of what he terms the "aura" of the work since the reproduced object cannot, by definition, reproduce authenticity (Poster, 1995, p. 13-14).

For Benjamin the potential of the new media finds its most clear form in film where the traditional relationship between the work and the audience is radically transformed. While the traditional theatre, with its "here and now" or "aura" of the performance, demands contemplation on behalf of the audience and forces the spectator to reflect upon the work in its totality, film, through the aid of the technical equipment used for its production, enables the individual a critical stance, as the point of identification shifts from the performer to that of the technology. According to Benjamin this enables the audience to become authors and this reversible relationship undermines the hierarchical and fixed positions of author and receiver promoted by the reception of traditional works of art (Walter, 1994, p. 18-21, p. 24-25).

The underlying element in film, which promotes this new type of sensory perception is according to him, similar to what Dadaism achieved through its collage techniques in its attempt to overcome the art and life dichotomy. Through the use of such techniques, which make possible the coupling of two "realities" on a single plane, art becomes productive in the transformation of everyday life (Nichols, 1996, p. 124;

⁴http://multigraphic.dk/lounge/weblog/weblog.php?id=C0_33_1

Huyssen, 1986, p. 9). Although Benjamin focuses on the mechanical reproduction of film, one can assume that the same thing can be said of sound and music production. With the mechanical reproduction of first the gramophone record, and later the tape recorder music is not only experienced in concert halls but enters into new unforeseen contexts both inside and outside of the home. In contrast to a live performance the gramophone makes it possible to play the same piece of music at any given time and each time it sounds exactly the same. This reproducibility has paved the way for a remixing culture which, due to the inherent potential of new digital computer technologies, has been taken to new heights, and of which DJ Danger Mouse is a good example.

Digital Reproduction

The field of new media today is relatively unexplored and immature. It is a medium in the becoming and, as often is the case when a new medium emerges, one of its most interesting aspects is the way in which artists make use of the new potentials of the medium. Artists tend to offer alternatives to a more traditional view of the things surrounding us, they experiment with different material and often their artworks enrich “normal” perception, increase understanding of the medium itself and show signs of its potentials. Looking back on the Grey Tuesday happening and the Grey Album, one can see it as an (un?)conscious act to redefine “the unique piece of music” and music distribution.

According to the Russian painter, programmer and theorist Lev Manovich, the principles of new media can be divided into five distinctive trends that characterize certain abilities that “computer culture” as imposed upon itself, and various other mediums. Here we will sketch out three of these principles to underline the possibilities with which the new media artist, like DJ Danger Mouse, is presented, namely what Manovich calls the principle of Numerical Representation, Modularity and Variability.

By Numerical representation, he means that all new media objects are composed of digital code, i.e. they can be subject to algorithmic manipulation and their functionality can be explained mathematically, or to put it more simply: “[M]edia becomes programmable” (Manovich, 2001, p. 27).

The Modularity principle consists of the fact that the media elements are collections of discrete samples, which can be put into many different contexts to create different things, but still keep their detailed identities. The importance of this principle lies in the new medium’s ability to store each element independently so all intervention, manipulation, cutting and pasting, changing and reshaping becomes a relatively simple process. Basically, all DJ Danger Mouse did was some heavy cutting and pasting in some digital sound files.

And as the principle of Variability highlights, each media object is not “finally” created but is also subject to many changes and endless manipulations and can therefore exist in many different versions (Manovich, 2001, p. 31). The principle of Variability therefore emphasizes the user’s role in creating his “own” version of the object at hand and the type of interactivity that makes him interfere with the creation and use of a given object. The new media object highlights a certain “freedom” of the internet and the open source uniqueness of the medium, i.e. it is theoretically possible to boycott

well known power structures within Western society by producing and distributing material for instance through p2p.

Copyright and creativity

What DJ Danger Mouse did with the vocals of Jay-Z and the tunes of The Beatles is not much different from what Walt Disney did with Buster Keatons character Steamboat Bill Jr.. As Lawrence Lessig points out in an online presentation⁵, Walt Disney was inspired by Buster Keatons representation of a character, and created a new character which was his unique artistic expression. It was known as Steamboat Willy, and later as Mickey Mouse. When Walt Disney did it in 1928 it was called creativity, when DJ Danger Mouse expresses the same ability to combine existing pieces of art with his own creativity to create his own unique blend, it is called stealing. Why is that? It seems to be the constant conditioning of the law and the public, that creative borrowing, as seen in the fine arts for centuries, is no longer proper, as it is considered non-creative.

The music industry has taken various measures to hamper the incentives for mass distributing digital content via p2p networks. They all have a one thing in common, they incriminate the consumer from the outset, assuming that consumers will attempt to copy the product and break the law. The copy protection schemes adopted by the industry has had various side effects ranging from killing the CD drive on computers, to rendering the CD unplayable in older CD players. Lately, Sony has introduced a Super Audio CD. It has an exceptional sound quality that goes way beyond what the human ear can perceive. Furthermore Sony has full control over the means of production, hence this the Super Audio CD cannot be copied on any consumer-end CD-writers.

Both Microsoft and Apple has embedded copy protection mechanisms in the music files used in the dominant players on the two platforms, Windows Media Player and iTunes.

But often, the copy protection prove to be easy to circumvent, like the DVD copy protection circumvented through software by the Norwegian teenager Jon Lech Johansen, or the CD copy protection from Cactus Data Shield and KeyAudio, which could be circumvented by the use of very low-tech electrical tape⁶.

Another way to think of copyrights and copy protection is to rethink the concept of copyright. The nonprofit corporation, Creative Commons (CC) is an example of an organization that tries to take some steps down that road. The purpose of CC is to expand the range of creative work available for others to build upon and share. As such, it can be seen as an attempt to redefine the public domain, in an age where it is constantly diminishing, largely due to excessively restrictive copyright laws. CC issues various licenses which in effect liberates the work, and makes it free to use for anybody who is interested. Counter to the subtitle of the regular Copyright notice, works released under a CC license carries the tag "Some Rights Reserved" – stating that the work is available to use for making derivative work, distribution, and copying,

⁵The Walter H. Lecture in public and international affairs, february 20th, 2003. <http://realserver.princeton.edu:8080/ramgen/lectures/20030220lessigVN300K.rm>

⁶http://www.theregister.co.uk/2002/05/14/marker_pens_sticky_tape_crack/

with a few limitations⁷. CC tries to bridge the two opposed views on copyright, where one sees copyright as total control of all works of any kind. The other view is that of anarchy, where creators are free to do what they want with their work, but are also left for everybody else to prey on, and use for personal gain.

But what are copyright supposed to be good for anyway? Copyright can be seen as an attempt to make it worthwhile to be productive and original, where you release your work to maximise the intellectual resources available to all. If you make an original piece of work, copyrighting it and selling it for a profit is one way to provide incentives to keep being innovative and creative. The copyright as we know it has certain grants associated with it. There is the grant of fair use, which is used in this paper every time we quote an article or book. Then there is the grant of first sale, meaning that you have the right to sell a piece of work over and over again, say records sold at second hand stores. Last, copyrights are given for a limited timeframe, and when this timeframe is exceeded, the work moves into the public domain, freely available to everybody.

Copyrights in the music industry has been easily upheld through the years, as the industry has enjoyed a media monopoly. Until the arrival of the CD, only record companies could print records and make music cassettes without loss in quality, but that has all changed. Now practically everybody can rip, mix, and burn a CD with their own music or their favorite artist, and easily distribute it digitally.

For the exam we imagine the following topics would be interesting to discuss:

- The future of copyright and artistic expression.
- Possibilities of collaborative authorship using this new media.
- How does the digital media change our perception of authenticity?
- How could alternative license models affect cultural production (Creative Commons, GNU General Public License, etc.)?

⁷<http://creativecommons.org>

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