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Composers' Rights in a Digital World

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Abstract — This paper looks into how music composers' rights to their work are dependent on the nature of a work as well as its origin and underlying philosophy. Some differences and overlaps between French *Droit d'auteur*, Anglo-Saxon *Copyright* and the *Copyleft* movement will be explored. I will briefly touch on examples from my own compositional practice.

I. DIFFERENT SITUATIONS, DIFFERENT RIGHTS

In recent years, the collusion of music and digital technology has become one of the major battlefields in a long and complicated conflict involving the notion of ownership to ideas. Particular cases have received much attention, such as:

1) *The "Joyce Hatto affair"*

This is arguably the deepest-cutting fraud that music history has known. A recording engineer, William Barrington-Coupe copies and remasters recordings of a number of pianists. He then releases them on his own label as independent interpretations by Joyce Hatto, his wife. Barrington uses techniques such as digital time stretching and filtering in order to disguise and "improve" the original. The hoax goes on for years before being unravelled in February 2007, as described in (1).

2) *Peer-to-peer file sharing*

The numbers of Internet users explodes in the 1990s, and with it, much illegal copying of music. The band Metallica, assisted by the RIAA, sued the peer-to-peer file-sharing site Napster in 1999. See, for example, (2) for an account. Napster eventually settled indemnity claims out of court with Metallica and other commercial artists. The site had to shut down in 2001, but while in operation, it can be credited with providing crucial exposure to bands which otherwise may not have been able to 'make it' through the usual chain. Napster also spurred the development of a number of technologies underlying Kazaa, Skype and even iTunes.

Typically, composers have to deal with rights issues when dealing with text or sampling. Here are two examples from my own praxis:

3) *Transforming Mao Zedong: a case of fair use*

In 2006, I analysed recordings of speeches by Mao Zedong, transcribed their rhythm and melody, and extracted harmony from the vowels. The transcriptions were then used in the composition of several pieces. In *TreeTorika*, the result was far estranged from the original (although obvious once pointed out). The work is described in (3). In regards to rights, the doctrine of 'transformative use', explained below, certainly applies. In *ConstipOrat* for loudspeakers, Mao's voice appears in a number of different fashions. Sometimes it is "raw", straight from the recording; often it is treated with various

techniques and rendered with different level of recognisability. In this case, the outcome of a hypothetical legal action is not as clear; however, it is likely "fair use" would apply. Current interpretation of property rights lends weight to the economic loss or gain by the parties, while moral rights looks at any harm that may have been incurred onto the infringed party.

4) *Olof Palme: property and moral rights obtained*

Employing Olof Palme as an "absent narrator" presented a different situation. In 2007, while continuing the analysis of politicians' speeches, I wanted to set a music composition around Olof Palme's "statement against the bombings of Hanoi" from 1972. The voice should not be distorted. By contrast, I wanted Palme's message to come through clearly. It was necessary for me to obtain both a license to use the recording, from the archives of the Swedish Labour Movement, and the moral rights in the form of a blessing from the family of Olof Palme. I then composed the music and recently had the first performance, in Ho Chi Minh City; more about the project in (4).

Having glanced at these examples of rights' issues with music, I will discuss laws in different jurisdictions. In most of what follows, 'composers' are equated with 'authors'.

II. RIGHTS LAWS AND THEIR PHILOSOPHIES

The idea of a "moral right" of an author can be linked to the attribution of a work to a specific individual. In this way, such rights existed in antiquity, with the attribution of the *Iliad* to Homer. The rights of an author only covered the actual production or performance; plagiarism was considered a dishonourable act. The notion of authors' rights was not systematic. For example, the whole repertoire of Gregorian chant is anonymous. The invention of printing created a novel and substantial economic object, the book, as well as new professions such as 'editor' and 'librarian'.

The book revolution created the situation where a book's readers might be entirely unknown to the author, urging questions as to the author's rights to her creation. In the early 1700s, Scottish courts first rule about copyright, answering calls from the fast-growing publishing industry. Copyrights were initially accorded for eternity but were soon reduced to 14 years from publication. The French Revolution formalised the idea that discoveries, though intangible, are also the property of their author. As mentioned in (5), a court ruling in 1845 introduces the notion of intellectual property in the United States.

A. *Le Droit d'auteur: the author at centre stage*

The current French law covering authors' rights, *le Droit d'auteur*, dates from 1957 and has come to define much of the état culturel, as (6) points out. The first paragraph says:

L'auteur d'une oeuvre de l'esprit jouit sur cette oeuvre, du seul fait de sa création, d'un droit de propriété incorporelle exclusif et opposable à tous.

The author, by having created a work, is the sole owner of its rights. These rights are moral as well as concerning property. The law is applicable to all forms of intellectual production, e.g. film, music, text and software. The main features of *droits moraux* are the respect for the author's name (i.e. right to attribution) and the respect for the integrity of the work (i.e. it cannot be split). It is explicit that the licensing of a work does not lessen the author's moral rights. The main features of *les droits patrimoniaux*, are the ownership of rights to reproduction and public presentation. As (7) points out, the author retains rights to stop or modify all exploitations by licensed parties.

As an example, a record collector only owns the plastic, not the music. This is why copying *music* or transposing it from e.g. a CD to another medium is illegal. Likewise, presenting music in public without permission, let us say in a shopping mall, consists an infringement.

B. *Åndsverksloven: a law for works of the soul*

The laws in Scandinavia are largely identical to the French law. In Norway, the practice of paying for the use of protected music dates back to 1917. The law governing *Åndsverk* (literally, "works of the soul") from 1930 established a firm fundament. Discussions about the principles for commissioning music from composers had been going on since the 1920s, and were settled by 1960. See (8) for an account of the history. An interesting detail in the law text is the paragraph explicitly stating that the author does not have the right to rid herself of moral rights. Thus, the law works in two ways: both to protect the author from non-permitted usage of her work and to underline her responsibility in relation to the work. In this way, laws governing freedom of expression and intellectual rights are intimately connected.

C. *Copyright: focusing on the work*

The Anglo-Saxon copyright protection concerns the specific work and does not consider moral attributes in the way European laws do. While 'origin' is recognised, the owner of rights to a work is not necessarily identical with the person who authored it. Property rights can be freely traded and claimed by the current owner. The purpose of copyright is to provide incentives for an author's financial remuneration, while assuring the broad availability of an extensive creative production. A layman introduction can be found in (9). As with much Anglo-Saxon common law practice, copyright implementation works through prejudice, that is, court decisions depend on the reinterpretation of earlier rulings. It is good business for lawyers but is often costly and time-consuming. With exception for moral rights, the Bern Convention (1886, amended several times up to the 1970s), renders the *droit d'auteur* and copyright and largely congruent. The Convention is handled by World Intellectual Property Organization (WIPO), which currently has 184 member states.

1) *Fair use*

As I mentioned earlier, making music out of the Mao recordings is 'fair use', a doctrine under Anglo-Saxon copyright law. In (10), Lawrence Lessig describes it as a grey zone between what is unregulated (free) and what is regulated (propriety), as seen in Figure 1.

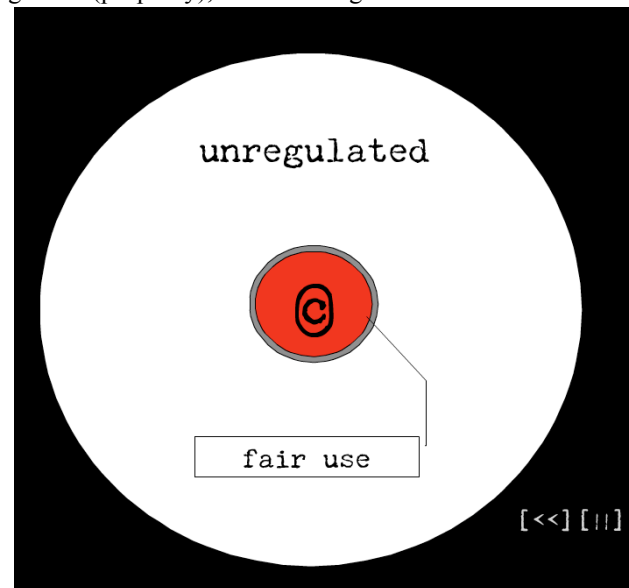


Figure 1. The thin grey area of "fair use".

2) *Public Domain and copyright*

Under current laws in the US and EU, copyright is accorded a work for a period of 70 years after the death of the author. When copyright elapses, the work enters the public domain. Corporate copyright can be longer, and patents shorter, in duration. The appropriate length is a contentious issue. As we have seen, at the time of the French Revolution, the copyright lifespan was fourteen years. At the beginning of the 20th century it was 56 years, and during the 1960s and 70s, it was extended, almost every year. This played into the hands of big media business and earned the Sonny Bono Act from 1998 the nickname "Mickey Mouse Protection Act". The extension of copyright to 70 years – and its retroactive application – has meant that the creations of Walt Disney will not go into the public domain for many decades still. In (10), Lessig points out that, in stark contrast to Disney's intellectual debt to earlier authors, today's situation is effectively a case of "no one can do to Disney, Inc. what Walt Disney did to the Brothers Grimm". For this reason (and more), many people urge for a reduction of the duration and scope of copyright. The situation in the Internet age is now more like in Figure 2.

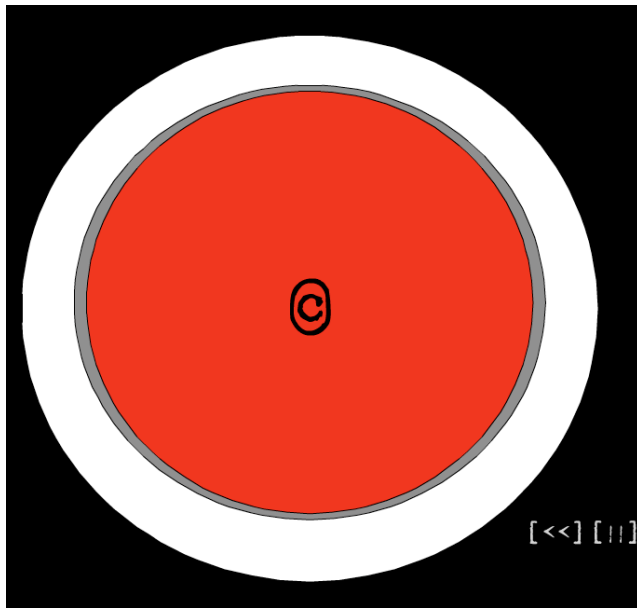


Figure 2. With the World Wide Web, the amount covered by *copyright* has vastly increased, according to Lessig (2002).

D. Copyleft: flexibility for digital communities

The copyleft movement started out in the 1980s as a reaction to increased corporate dominance in rights' rulings as well as a general worry that the basis for creativity itself was being eroded. (11) Proponents avoid talking of intellectual creations in terms of property, and argue for a clearer separation of the legal frameworks for copyright, patents, trademarks and trade secrets. Richard Stallman introduced the term Copyleft in 1983, describing

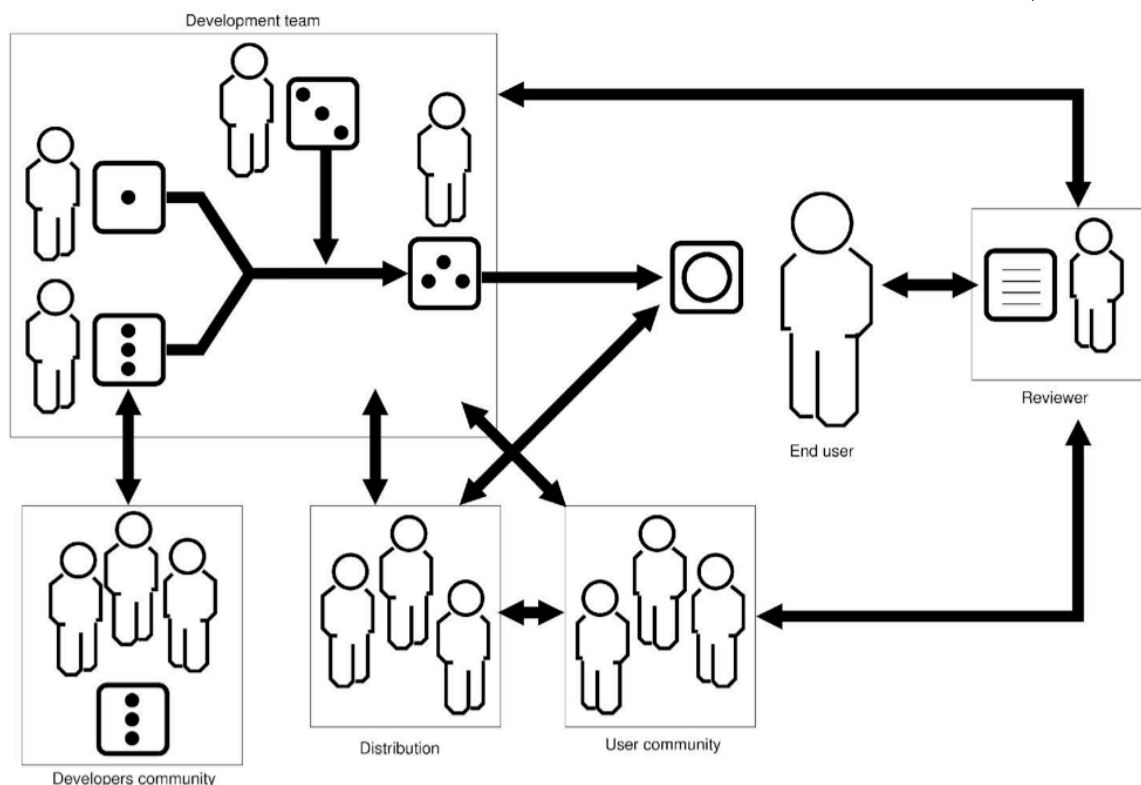
it as a "mirror image" of copyright. The word is a double pun, both referring to politics and to the idea that rights are something "the author has left" for the user to enjoy.

Initially designed for software developers, the GPL or General Public Licenses scheme provides authors with a spectrum of possibilities, with different degree of openness and control. Their intellectual production is indeed copyrighted, but instead of using those rights to restrict users, the copyleft authors use them to ensure that every licensee enjoys four basic freedoms: to use the software for any purpose; to share the software with or without charging a fee; to change the software; and to share the changes made. (12) Put simply, while copyright protects creators and treats users as consumers, copyleft sees users as people who may also be or become authors. It is worth remembering that when speaking of free software, the word "free" refers to freedom, not price. (13) Stallman says:

"I think it is ok for authors (please let's not call them "creators", they are not gods) to ask for money for copies of their works (please let's not devalue these works by calling them "content") in order to gain income (the term "compensation" falsely implies it is a matter of making up for some kind of damages)."

1) Alternative forms of remuneration

Discussing remuneration, Peter Hanappe argues in (14) that financial returns is only one kind of feedback, and that music creative communities involve other forms of transfers as well, such as human capital and social capital. These are emerging forms of gains for the authors that also provide incentive for creativity. There are no fixed forms to handle these transfers. Nevertheless, numerous examples from Linux to ArtLibre (15) show clearly that authors are indeed willing to engage. Figure 3 by Hanappe illustrates the transfers in such an ecosystem.



2) *Composing experimental art music*

The scene for experimental music is small. Actors in this community are much concerned by the rights issues. Notions of “content” and “art” as commodities in a digital world are difficult to define. Many artists look towards the scientific communities for ideas of how to adapt. In what way do new technologies affect how we, as composers, musicians, reviewers and users, employ tools, collect materials and receive feedback?

Firstly, when it comes to the tools of creation, using computers in music is a tradition as old as the computer itself. There is a plethora of free and/or open source software (FOSS), e.g. Audacity, CDP, Lilypond, SuperCollider, DSP02 and Mammot. The last two are freeware offered by the Norwegian institution NoTAM (16), an institution that has gained international acclaim for its research and pedagogical work in music.

Secondly, the sharing of material, in the form of recorded or synthesised soundfiles under GPL, is an expanding phenomenon. The Freesound project (17) is a database to which thousands of artists contribute, and from which anyone can freely download material for creative, pedagogic or scientific use.

Thirdly, on the level of composition, it is noteworthy that art music communities are adapting to artistic possibilities as well as legal challenges and remuneration schemes that the world wide web presents. Entirely novel conceptions of what constitutes an artwork are emerging. One topic often discussed is whether a scientific peer-review process can be applied to the arts. It is clear that a Popperian model cannot immediately be applied to the delicate and highly informal structures that govern the evaluation of art music. Nevertheless, as works involving collaborative creativity and interactive author/user feedback systems mature, such models are likely to inspire musicians and policy-makers increasingly in the future.

E. Acknowledgments

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