COPYRIGHTS: A CHOICE OF NO CHOICE FOR ARTISTS AND THIRD WORLD COUNTRIES; THE PUBLIC DOMAIN IS LOOSING ANYWAY

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introduction

The artist too should have a chance to make a living from his or her work. Therefore we should have a strong enforcement of the collection of copyrights or authors rights (the European concept)[2]. This sounds reasonable.

2. In this text the differences between copyrights and authors rights are not so relevant that they should be discussed extensively.

However, one may wonder whether the philosophy of the intellectual property system, which should provide artists an income, works out as reasonable as it looks like. Moreover, one must consider seriously the question whether the existing system of copyright or authors rights does still work and can work any longer. This article will deal with four questions which all together show that there is arising a problem for artists, for cultural life in third world countries, and for the public domain which deserves the unhindered access to the cultural heritage of the past and the present.

First, there is the phenomenon of large scale piracy which undermines the proper working of the system. One may doubt whether even fierce hunting on pirates ever may be successful in a world in which uncontrolled trade and deregulation are the norm. Isn't this world an eldorado for people who try to evade the scarce laws which are left over?

Second, artists and cultural enterprises in poor and so called less developed countries will nearly not get benefits from authors rights, not now and unlikely even in the future, and that is the case for a variety of reasons which will be discussed later in this article.

Third, it is not sure that artists will continue to be the main benefitors of the system of intellectual property rights which orig inally was meant to give them a fair remuneration for their creations. It will happen more and more everywhere in the world that artists will get some money for their work as may be hoped, but they have to sell their rights to more or less big corporations or other kind of holders of copyrights.

Fourth, the seemingly absolute character of the concept of intellectual property rights should be discussed just at the moment in which we see that corporations are taking rights on all which may give them a profit. However, who is so original that he or she may claim to have created or invented something out of nothing? And who is so arrogant to think that there is only a private interest to be protected in the resort of intellectual and creative activities of human beings and that the public interest, the common good may be neglected?

Intellectual property rights are big business at the turn of the century. Where there are winners at the commercial front there must be loosers as well. Who are they? To name a few, we must think of third world countries, artists, and the public interest. While private property interests are so dominant it will be a hell of a work to ask attention for other legitimate interests concerning the domain of the human intellectual and creative activities.

In the organized world of copyrights piracy seems the only big problem to solve. Maybe it can't be solved at all and maybe it is a minor problem compared to the question whether the creative and intellectual forthbringing in the world can be assured if intellectual and creative activities continue to be seen as objects for profit only.

1. piracy

Who tries to follow the debates on intellectual rights must get the impression that there is only one real issue which is spoiling the atmosphere of a booming and socially and culturally useful business. This is piracy. Therefore James Boyle observes: 'Piracy of intellectual property products has become one of the central concerns in negotiations on world trade, a concern where both the figures for projected losses and the rethoric of condemnation are surprising to the neophyte' (1996: 121).

The projected losses are considerable indeed. The International Federation of Phonogram and Videogram Producers (IFPI) estimates that 25 per cent of the music phonograms sold throughout the world are pirate copies (Burnett, 1996: 88,9). The Recording Industry Association of America claims that in Thailand alone 1992 trade losses were estimated at $24 million. Its estimate for worldwide losses in 1994 was $2.245 billion (Boyle, 1996: 121). Piracy costs the recording industry in Europe an estimated $3billion per year. The side effect is that this would cost the authorities in Europe up to $750 million each year in lost VAT alone, and about 30.000 jobs, according to M.Edwards, Head of Operations of IFPI, the International Federation of Phonographic Industry[3]. Hervé-Simon Jewell, president of the African Association against Piracy emphasizes 'the need to stamp out piracy in Africa, which was significantly on the increase again, bringing to some $600 million a year the sums misappropriated from artists' earnings from copyright and neighbouring rights.'[4]

Where there is piracy there must be pirates. In China there are - or there were, who knows? - quite a few of them. Greg Mastel calls in the International Herald Tribune China's Theft of Intellectual Property No Mickey Mouse Issue. 'For example, some 30 Chinese factories daily turn out thousands of illegal compact disks that find their way to markets as far away as Canada.'[5] This issue troubles more the relation between the U.S.A. and China than any infringement on human rights. Singapore is also famous for piracy activities (Bender, 1994: 485). In Bulgaria some twenty five million CD's are supposed to be produced every year.[6] And with the cassette Kenya got its own flourishing pirate industry (Malm, 1992: 87), which seems to have found now, after control in Kenya has improved, a save haven in Tanzania from where the whole region is provided with pirated cassettes. Those are not the only and not the last countries where the multiplication of audio, visual and literary creations has become an industry.

With the introduction of the DVD pirates will get a still bigger competitive advantage to legal producers and distributors in the audio- and image-markets. Piracy becomes more than ever a profitable calculated risk. More can be stored on a DVD which costs the pirate nothing while the legal entrepreneur has additional expenses for producing more software. There is also no quality difference between the legal and the pirated copies. One of the reasons why mass scale piracy is nearly unavoidable is the increase in excess production capacity of cd's and so on. 'There is currently more than the double manufacturing capacity available world-wide than is needed for legitimate production.' The cost of new and second-hand machinery is falling. 'For example the new ODME miniliner costs $500.000 and has the capacity to produce five million cd's a year.'[7] Actually the major right holders are causing this excess capacity themselves. They operate on very tensed and nervous markets which "obliges" them to have instantly sufficient production capacity.[8] Isn't this dog eats tail?

Anyway, for Bonnie Richardson, spokeswoman for the Motion Picture Association of America (MPAA) the situation is clear. 'All we are talking about piracy is theft. One of the fundamental roles of all states is to protect their citizens against theft.' Despite the proclaimed neoliberalism a strong state seems to be needed in this field the more digitalization will bring copying on the easiest level one ever could imagine.¨ [9] 'Will protection of intellectual property be adequately cared for in government regulations as the new information infrastructure evolves, or will piracy on the Internet become just a massive problem? That is a very important issue for MPAA, and for the copyright industries, book, music publishers, recording

3. Symposium on the Struggle Against Piracy, organized by the Stichting Auteursrechtsmanifestaties, 11 December 1997, Amsterdam

4. Final Report on the Pan-African Colloquium on the Living and Working Conditions of the Artists, Brazzaville, 20-23 July 1994: 14,5

5. International Herald Tribune 19 February 1996

6.Le Monde, 30 Octobre 1997

7. Symposium on the Struggle Against Piracy, organized by the Stichting Auteursrechtsmanifestaties, 11 December 1997, Amsterdam.

8. M.Edwards, Head of Operations of IFPI, the International Federation of Phonographic Industry, at the Symposium on the Struggle Against Piracy, organized by the Stichting Auteursrechtsmanifestaties, 11 December 1997, Amsterdam

9. John Gray claims: 'The truth is that free markets are creatures of state power . . . In the absence of a strong state dedicated to a liberal economic programme, markets will inevitably be...

...encumbered by a myriad of constraints and regulations. These will arise spontaneously, in response to specific social problems, not as elements in any grand design. . . . Encumbered markets are the norm in every society, whereas free markets are a product of artifice, design and political coercion. Laissez-faire must be centrally planned; regulated markets just happen. The free market is not, as New Right thinkers have imagined or claimed, a gift of social evolution. It is an end-product of social engineering and unyielding political will.' (Gray, 1998: 17)

industry, computer data basis; all of us care about the protection of what we put over the new system.'[10]

Later in this article we will see that new methods of reproduction and distribution are being brought under existing copyright laws. There is growing a significant expansion of the fields which are covered by intellectual property rights. For now we will concentrate on the fight against piracy which finds its organizational focus point in the U.S.A. Their first task was to get the European countries on their side, mainly the countries from the European Union. This was not that difficult because European film and television production industries share the same interests as American corporations have. 'Furthermore, the fusion of European and U.S. finance capital within the media sector puts European and U.S. filmed entertainment companies directly into alliance, giving West European media capitalists a clear stake in an effective international intellectual property regime as well as in "legitimate" home-video markets' (Bettig, 1996: 213-219).

In order to be successful a concentrated effort has been launched, according to Ronald Bettig: 'a combination of active pursuit of copyright protection by copyright owners, stricter laws and penalties against piracy, and more effective enforcement of these laws' (1996: 213-219). There are three levels: information, monitoring, and sanctions.

Bonnie Richardson is very pleased with the initiative of the United States Information Agency. 'The USIA has a number of programmes that are helpful in getting out the message about the protection, the need for protection of intellectual property. They sponsor the dialogues with countries that are looking at reviewing their intellectual property laws, giving the MPAA the chance to participate in the dialogue and get our views known.' For instance in Russia where crime is epidemic. 'The United States is trying to assist Russia. We as an industry have participated in a seminar to help educate Russian prosecutors and law enforcement officials on how to identify pirated product.'[11]

10. Interview with Bonnie Richardson, MPAA, 2 December 1994

11. Interview with Bonnie Richardson, MPAA, 2 December 1994

The next stage is to know whether, where and by whom piracy takes place. 'U.S. embassies are now routinely used to monitor the infringement of U.S. trademarks - whether it is Marlboro in Algeria or Mickey Mouse in China' (Boyle, 1996: 122). Inside the United States the FBI is active in this field as Bruce Sterling suggests in his novel The Hacker Crackdown. He describes that someone illicitly had copied a small piece of Apple's proprietary software. 'Apple called the FBI. The Bureau takes an interest in high-profile intellectual-property theft cases, industrial espionage, and theft of trade secrets. These were likely the right people to call . . .' (1992: 233). Outside the U.S.A. different kinds of spies are working. 'Richard O'Neill, a former Green Beret who received a Silver Star and six Bronze Stars in the Vietnam War, now hunts video pirates in Korea on behalf of the Motion Picture Export Association of America.' The Korean government, eager to increase its exports to the United States permits this private American police operation (posing as a market survey) on its territory. 'O'Neill has extended its operation to Thailand.'(Barnet, 1994: 142,3)

The purpose is of course that piracy will be stopped. A whole range of means must serve this purpose. The soft approach is the one used by several multinationals like Walt Disney, Paramount and Time Warner. Special software has been developed for them by which they search on the Internet. If an infringement has been discovered then they send a request to remove the copied material from the Net. Mostly this seems to be effective. If not, the infringer will be sued. The main interest is to fight large-scale infringements. Minor cases will continue to occur always is their reasoning (Westenbrink, 1996: 88).

There exist also tougher approaches to fight piracy. Countries may expect trade sanctions. James Boyle: 'The "Super 301 Regulations" of the United States Trade Act of 1988 establish a "watch list" and a "priority watch list" for nations whose lack of intellectual property safeguards represents a significant trade barrier to U.S. business (1996: 122).' To avoid such trade sanctions countries must organize the repression internally. Richard Barnet and John Cavanagh give the example of Singapore, a small republic of malls and assembly plants, which is totally dependent

on exports. 'Its authoritarian government has gone out of its way to cooperate with music giants by encating a draconian copyright law that provides for five-year jail sentences and $50.000 fines for possession of pirated tapes with intent to sell. Teenagers can earn up to $150 by acting as informants for the police (1994: 142).'

A comparable situation of severe sanctions has been described by Krister Malm and Roger Wallis concerning Trinidad. 'Throughout the 1980s, music piracy was rife in Trinidad. The audio cassette market, even for calypso music, was dominated by street-corner pirates. Such cassettes often provided entertainment in taxis as well as in so-called maxitaxis (minibuses) that constitute the better part of the Trinidad public transport system. Thus they also functioned as a form of promotion of the music and artists featured/pirated. In 1986, lobbying by the Copyright Organization of Trinidad and Tobago (COTT, formed in 1985) led the government introducing fairly severe legal sanctions for cassette piracy. These include prison sentences of up to six months for the first offence and up to two years for any subsequent offence. As a result, the most obvious forms of street-corner music piracy of calypso music have been wiped out. Cassette piracy has been limited to foreign music. Exceptions occur in the carnival season when local calypso and soca hits are likely to appear on "top hit" sampler tapes featuring "diverse artists" (1992: 67,8).' It is interesting to note that the sanctions seem to work better for local music than for foreign products.

Besides the track of information, monitoring, and sanctions there are other ways to try to prevent piracy. Ronald Bettig mentions one of them. 'The filmed entertainment industry has also resorted to market strategies to capture Middle Eastern home-video markets for "legitimate" distributors. These efforts include offering a video product with a superior visual image to that of pirated products, supplying a dubbed audio track on the prerecorded videocassette or Arabic subtitling, and releasing prerecorded videocassettes closer to the date of initial release in the United States. The same combination of government pressure and market-based strategies are being used throughout Asia to combat piracy (1996: 213-219).'

Atsen Ahua, director of Synergies African Ventures told me[12] about a market approach to prevent piracy which comes forth from local music producers in Ghana and Nigeria as well. 'They have organized a network of middlemen and retailers by which thousands of cassettes find their way rather quickly to buyers all over the country. This makes it more difficult for pirates to break in this market structure. In cases they nevertheless have done so they got the chance to operate within the framework of the network. The market is big enough to give them also a place under the sun. If they refuse to collaborate some violence may be necessary to bring them back to order because maffia tendencies should be suppressed immediately. We tell them: "If you copy Rambo, do it, not our products, but come in business with us. Otherwise you kill us."' According to Atsen Ahua in a country like Kenya it is more difficult to introduce such a system because such an entrepreneurial attitude is lacking there, 'people are more attuned to be employed. Now this is beginning to be changed.' The system in Ghana has another protection against piracy as well. On the cassettes a numbered revenue band has been glued like on cigarette packs. This seems to limit piracy (Bender, 1994: 486).

12. Interview with Atsen Ahua, April 1998

However, piracy will continue to happen as long as it will be easy to copy. That is more and more the case. With digital technologies the thousand's copy is as good as the first one. This issue becomes even more important in the future with the further development of laser disks and other new communication technologies as well. Interesting is the observation by Richard Barnet and John Cavanagh: 'Stars now count on being seen and heard somewhere around the world many times a day. But the bigger the hit, the more likely it is that its creators and owners will have to share the profits with pirates. While intellectuals and politicians in poor countries denounced the "cultural imperialism" of the global media giants, underground entrepreneurs did something about it (1994: 142).' Dave Laing makes the probably unexpected claim that, 'piracy's most important effect is not the damage it does to the income of transnational companies and their recording artists, but the way in which it encourages the spread of international music and discourages the full development of national recordings in many countries (Quoted in: Burnett, 1996: 88,9).'

It is unlikely that the war against big maffia syndicates, which make fortunes with piracy, may be won. It looks like the war on drugs. Nowadays precise control by the state is out of fashion; globalisation has as a consequence that transport and production follow their own rules; it is not that difficult to find save heavens for black money; corruption is becoming common practice in a deregulated world: those are excellent ingredients for lucrative activities in the fields of piracy and drugs, and both circuits mix, together with illegal trade in weapons.

Undeniably a sharp contradiction exists between the producers of soft ware and hard ware. For hard ware producers it is interesting to sell machines which can copy easily. And this is exactly what film, music, and book producers hate. The risk that their soft ware will be copied manyfold the next day and even with a good quality makes them hesitate to put their stuff, for example, on pay-per-view.

Bonnie Richardson, spokeswoman of the MPAA: 'One of the things we domestically are looking at and we are talking about internationally is the need to look at technological safeguards to be build into the next generation VCRs or laser disks, the hard ware, as well as having governments their legal systems make it a crime to defeat those kinds of technological safeguards. We as an industry are working with our government on in the next years to make sure that our own legal system recognises the importance of protecting technological safeguards and we are working with manufacturers of the hard ware to get some agreement there on what kind of technological safeguards will be made.'[13]

13.Interview with Bonnie Richardson, spokeswoman of the MPAA, 2 December 1994

What we thus see, again and again, is that strong advocates of the free market ask at the same time for strong state regulations. What we may see too are internal contradictions inside huge corporations which produce soft ware and hard ware as well. Those divisions actually are in competition with each other while having different interests. This is one of the weak points of the synergies arguments and practices of the big mergers in the field of communication enterprises in the recent past, as described by Richard Barnet and John Cavanagh: 'All sorts of new wrinkles in hardware development could eventually render the compromise between the producers of sound equipment and the producers of music obsolete. Electronics-hardware companies have picked up three of the six record majors and several of the most successful independent record labels. This means that future fights over entertainment technology will increasingly take place inside megacorporations rather then between them (1994: 145).'

All those piracy and hunt on piracy questions have become more acute because of changes in trade and technology which have started the last twenty years. Intellectual content has become more important, and trade has reflected this change. Moreover, technology has become the driving engine of economic activity. At the core of technology are proprietary rights - copyrights, patents, trade secrets and trademarks.

In this context the ownership of intellectual rights have become one of the corner stones of international business. This has put pressure on governments to bring intellectual property protection and trade policy in the same framework, in an international framework. This has resulted in TRIPs, the WTO[14] agreement on Trade Related Intellectual Property Rights. Emery Simon describes the broad range TRIPs covers. 'The TRIPs text provides for the establishment of standards for protecting a full range of intellectual property rights and the enforcement of those standards both internally and at the border. . . . TRIPs also provides for subjecting these standards and enforcement obligations to effective multilateral dispute settlement. This is a key change and a major step forward over a world where countries could not rely on intellectual property conventions to resolve disputes, and their only recourse was bilateral action.'

14. World Trade Organization.

He does not obscure what kind of interests are most served. 'Through trade tools, creative individuals and industries have acquired new means for advancing their business interests. . . . Integration into trade has also succeeded in establishing the precedent that the law governing these creative industries had to reflect commercial (trade) realities (Simon, 1994).'

He is also aware that not everybody may be content with this state of affairs. 'But the internalization of creative products has elicited fear and trembling from domestic competitors less able to produce and sell products with international appeal. These fears have been translated into increased pressure to reserve a share of domestic markets for local industries. Under the cloak of preserving national cultural identity - a legitimate goal -countries have been enacting disguised trade restrictions - an illegitimate goal (Simon, 1994).'

It may be clear that he is referring to the French cultural exemption which has as a purpose to protect cultural life in France itself, and which is under the given circumstances rather successful. This quota policy partly has been followed by the European Union. Earlier I indicated that there is a shared interest of the United States and the European Union in the field of intellectual rights. However, Krister Malm and Roger Wallis put this in perspective. 'A growing number of European nations had also begun to consider music quotas as a means of defending local content against the flood of Anglo-American hit music emanating from the media conglomerates. A US response to this came from the American copyright organizations representing composers and publishers (and thus, indirectly, even the media conglomerates). They warned that protective national measures in Europe that were seen to discriminate against US music could result in American cancelling their traditional reciprocal relationships with their European national counterparts. There was even a threat of starting to negotiate directly with radio stations, which could result in US music being much cheaper than, say, Swedish or French. Such a scenario was also being aggravated by the increase in satellite radio and TV channels (channels which do not respect national frontiers) and the emergence of bigger and bigger media conglomerates which also live a global existence, floating up above sovereign national states (1992: 2).'

In the context of NAFTA Canada tried to build in a cultural exemption as well. This does not seem to work. Leaving technical details beside, the NAFTA provisions do not hinder that the Canadian market has been flooded by American products. Moreover, a substantial increase in the payments from the Canadian cultural sector to American producers takes place, estimated $100 million, money which was supposed to go to Canadian creators according to the 1988 Canadian Copyright Act (Mosco, 1993: 199, 200).

Canada and the European Union belong to the richest and most powerful parts of the world. In the next part of this article we wonder what the position is of poorer and less powerful nations and regions in the world concerning the intellectual rights in the audiovisual and literary fields. After this we must consider if it is right that the interests of creators and performers of works of visual art, film, music, dance and literature systematically have been put on the same line as the interests of producers and other commercial interest groups, as if they are the same which is obviously and mostly not the case. At the end we may discuss whether trade and business interests should be so dominant concerning our cultural heritage and future creations. Is there any legitimation to use the word theft so easily speaking on human creations which actually belong for a substantial part to the common good and which are necessary for future creations?

2. less developed countries

The TRIPs agreement and the other worldwide free trade and investment agreements mark a clear historical demarcation in the global control of information and impose, according to John Frow, a definition of intellectual property rights directly disadvantageous to Third World countries (Frow, 1996: 89).

Cees Hamelink adds this to his remark: 'The GATT rules have been fixed to suit the most powerful trading parties. In the issue area of intellectual property protection the conventional type of multilateral cooperation was unsatisfactory to most players. Developing countries and IPR industries wanted a different arrangement. This evolved under the auspices of the GATT and was incorporated into the Uruguay Trade Round accord. The new trade-based practice that now emerges is likely to mainly benefit the corporate IPR traders (1994: 266).'

Noam Chomsky reminds on intellectual property rights 'that American companies stand to gain $61 billion a year from the Third World if U.S. protectionist demands are satisfied at GATT (as they are in NAFTA), at a cost to the South that will dwarf the current huge flow of debt service from South to North (Chomsky, 1993: 3).' A substantial part from what the South should pay to the North for using intellectual rights concerns rights on cultural "products", as the arts have been called in the business world.

There are three fields which should be distinguished. First, there are the economic consequences. Second, the question should be raised which contributions to culture should be rewarded. Third, the western concept of intellectual rights is a foreign notion in many parts of the world.

The economic consequences for Third World countries of the new worldwide regime for intellectual property rights on culture must be considered from two perspectives. First, transnational cultural industries try to find as much outlets as possible for the cultural products from which they are the rightholders. Mostly this will be music, films, soaps etcetera made in the western world. In order to reach this purpose they will push away works of art which have a local origin. Krister Malm and Roger Wallis experienced this on Trinidad. 'The view generally expressed by musicians and others in our 1987-8 interviews was that the share of local music in the media was as low as 15-20 per cent except during the carnival season (1992: 78).'

One of the reasons why this could occur was the simple fact that satellites destined for the United States do not distinguish between the territory of the U.S. and the Caribbean islands! By this technical spillover local entrepreneurs could tap into domestic US satellites; after a while US copyright owners found this could be a source of extra revenue. Krister Malm and Roger Wallis heard from many Caribbean policymakers and media operators that they did view this development with considerable apprehension and anxiety. The question rose: 'How to protect one's own intellectual property without having to pay out too much scarce foreign exchange for cultural products coming from outside into the country?'

The comparison was made with mango trees. "If you plant a mango tree in your garden by the fence and some of the branches hang over into my garden, then the mangoes on those are mine." Compared to satellites: "If anyone puts signals into our airspace, then it's our property - we didn't ask for them" (Malm 1992: 57,199,200). This argument turned out not to be an effective one because of the threat with trade sanctions by the U.S.; the United States offered also trade advantages in the framework of the Caribbean Basin Initiative for countries who make their policies conform to the intellectual property regimes and other regulations as desired by the big neighbour (Putten, 1995).

Probably the percentage of 15 to 20 per cent local music will now, ten years after the research by Krister Malm and Roger Wallis, still be lower. It is clear that much more research should be done in order to get more grip on the take-over of cultural life in the non-western countries by the big cultural industries, supposed this takes place on such a scale that one may speak of take-over. Surely there will

be big differences between countries and for the different forms of art like music, film, television entertainment, dance, theatre, visual arts and literature. Brasil for example has its own flourishing industry of telenovela's. There one of the problems is the monopolistic situation of TV Globo (Amaral, 1994; Burton, 1986; Kucinski, 1994; Mattelart, 1987; Mazziotti, 1996; Schneier-Madanes, 1995; Vink, 1988). For multinational cultural industries the African countries are nearly not interesting, for the time being (Bender, 1994: 485).

The second economic consequence for Third World countries will be the fact that the transnational industries need thousands of hours of music, films, and theatrical entertainment and miles of images and texts. With the liberalization of the telecommunication situation all over the world there are coming more and more outlets which must be filled with "content". This means that cultural industries will try to buy everywhere in the world rights on music, images, and so on. Also on this issue not enough knowledge is available. Where do those developments find their peaks? In what proportions? How are those processes taking place? What are the consequences for artistic life locally?

As a second point concerning the intellectual rights in the cultural field the question should be raised which contributions to culture should be rewarded. James Boyle describes a contradiction which usually does not get enough attention. 'The author concept stands as a gate through which one must pass in order to acquire intellectual property rights. At the moment, this is a gate that tends disproportionately to favor the developed countries' contributions to world science and culture. Curare, batik, myths, and the dance "lambada" flow out of developing countries, unprotected by intellectual property rights, while Prozac, Levis, Grisham, and the movie Lambada! flow in - protected by a suite of intellectual property laws, which in turn are backed by the threat of trade sanctions (1996: 124-8).'

Transformation of ideas and raw materials and the exploitation of markets are rewarded with intellectual rights; but raw materials and also music and images as raw materials reach to the zero level concerning intellectual rights. Jutta Ströter-Bender gives an example in the field of design. 'For western designers the whole universe of decorations and images of artists from the Third World constitute an inexhaustible reservoir by which they serve themselves shameless and for sure without adequate payment to the source of their "inspiration" (1995: 45).' It is obvious that more research should be done to get a clearer picture of the harm being done to cultures of Third World countries.

Later in this article we will deal with the discussion on the granting of collective rights to works which have not been created by individual authors which drags on already a couple of decades. How complicated and at the same time how frightening this issue may turn out to be shows the example presented by the Indian theatre director Rustom Bharucha. 'One of the unfortunate developments of cultural tourism has been the influx of fabricated rituals within the cultures of those rituals. It is bad enough of a ritual from India, for example, is travestied in the West, but it is worse when this ritual loses its significance in India itself. The practitioners of many traditional dances and rituals in India no longer perform for the gods; they perform for tourists, research scholars and "experts". In payment for their performance, the actors no longer receive prasad or the blessings of gods - they get money and, at times, nothing at all. After all, there is no "copyright" on traditional performance. So many of them have been videotaped without any acknowledgement or payment to the performers involved (1993: 37).'

This brings us to the third issue concerning the position of Third World countries regarding intellectual rights, and specifically rights on music, theatre, audiovisual creations, texts, images, and so on. The western concept of intellectual rights is a foreign notion in many parts of the world. This is the reality. Roland Barthes explained this already in The Death of the Author: '. . . in ethnographic societies the responsibility for a narrative is never assumed by a person, but by a mediator, shaman or relator whose "performance" - the mastery of the narrative code - may possibly be admired but never his "genius". The author is a modern figure, a product of our society insofar as, emerging from the Middle Ages with English empiricism,

French rationalism and the personal faith of the Reformation, it discovered the prestige of the individual, of, as it is more nobly put, the "human person" (Newton 1988: 155).'

This modern reality produces nowadays, however, a confusing set of contradictions. Ronald Bettig reminds that traditionally 'Asian authors and artists have viewed the copying of their works as an honor (1996: 213-219).' The western concept of individual authors rights or copyrights undermines extremely valuable cultural patterns. How this works out and which kinds of resistance are being developed should be studied more in detail concerning the different regions in the world and the varied settings of the cultural life of societies.

Japan had to change its copyright legislation because it did not give long enough profit to western rightholders. 'Current Japanese copyright law does not protect foreign recordings made before 1971, meaning that Western record companies, by their estimates, are losing millions of dollars a year in royalties from copying of tunes that are still highly popular.' The headline of the article on this matter in the International Herald Tribune was: 'U.S. Takes Music-Piracy Charge Against Japan to WTO.'[15] A cultural difference, a different opinion about how long rights should hold, has been interpreted as "piracy." One may wonder why Japan did conform at the end to the American demands. Specially interesting is what the arguments for and against have been in Japan itself.

15.International Herald Tribune, 10/11 February 1996

One may doubt whether legislation against piracy may work in countries in which individual intellectual rights are a foreign notion; this is the observation of Richard Barnet and John Cavanagh. 'But such laws work only as well as local culture permits. In many parts of the world the tradition is that music belongs to the community, and edict to treat a song as a piece of property is greeted by ordinary people with puzzlement and anger (1994: 142).'

Krister Malm and Roger Wallis refer to their government spokesman in Jamaica who could see no simple means of redressing the problem. "There are many difficulties. What is a folk song? What is the correct arrangement, and who owns it? It's difficult to put the WIPO[16] of the United Nations. Tunis Model Law into practice."' And they conclude: 'Any functioning music copyright legislation for works which are protected by the terms of, say, the Berne or the Universal copyright conventions, presupposes the existence of functioning registers of works and copyright holders. This is a major problem in any country with a large amount of musical creative activity where copyright is not institutionalized (1992: 59).' And, one may wonder, should it be?

16. World Intellectual Property Organization

Later on in this article we will be confronted extensively with this question in general terms. But for now it is important to see how vivid cultural practices may get frozen when copyright will get more important than the stream of ongoing creativity, which is actually a universal human phenomenon. A good example - which is true also for most traditional and popular music cultures such as calypso, samba, rap, and so on - is the Algerian Raï music. Bouziane Daoudi and Hadj Miliani emphasize 'that the same theme may know as many variations as there are performers.' The base is shared knowledge which refers less to a repertoire of existing "texts" but more to a whole of social signs (el mérioula, el mehna, el minoun, e z'har, etc.).'

It is difficult to recognize the true author - in the western sense of authors rights. The raï has no author. Until last years, which brought the entrance in the western market system, the singers "borrowed" songs or refrains from each other. The public added spontaneously words to a song. In the practice of the singers, the chebs and the chabete, theft, pillage, plagiarism of texts does not exist. It is a form of music which depends from the circumstances, from period, place, or public.' Bouziane Daoudi and Hadj Miliani describe the raï as 'a continuum of a strongly perturbated social imagination (1996: 126-129).'

The western copyright conception is starting to destroy this continuum by eliminating those social and cultural processes in many societies. The songs will be frozen and will be the property of rightholders who are mainly or only interested

in profits, not in any form of local social and cultural life. This is a pity because the raï music and comparable forms of music in non-western societies are - or should we say, were - essential components of the social and cultural life. Who is taking this away will make a given society a poorer resort of human life. To mention this does not refer to any romantic vision about natural states of well being of primitive societies. There exist no primitive societies in the world, and certainly no societies which are on the sunny side only. Any society is full of conflicts and contradictions which may be reflected in the arts in other ways than may happen in the normal daily life. It is a loss for any society when this cannot happen anymore or not sufficiently.

The real distinction is between societies where the arts play a vital role in social and cultural life and those societies where the arts are more or less coming from outside the daily huzzle and buzzle and are presented as products to consume. On this subject - the transition from situations where the development of the arts essentially belonged to the social and cultural life to situations where intellectual property rights are the driving force behind cultural production and distribution - more research should be done.

Should we thus forget about concepts like intellectual property rigths and piracy? At this moment this question seems to be less easy to answer than usually will be done in the western world. At a conference on the cultural industries in the Eastern European countries in transition, Moscow, June 1993, the Finnish researcher Vesa Kurkela presented a paper Piracy as innovation in post-communist popular music. The cultural meaning of unauthorized copying revised. He started his presentation with the common idea we, in the western world, all have in mind concerning intellectual property rights. 'As everybody may know, unauthorized copying is a bad thing in all music business. It can be claimed with good reason that piracy also prevents the development of the local record industry. It is no wonder that there are various activities carried out by multinational music industry and national copyright organizations to fight against it. . . . There are, however, at least two different forms of unauthorized copying and, accordingly, two different meanings of the term piracy. The first is the most common - it refers to business making of which the multi-nationals are mostly afraid: unauthorized copying and distribution of global megahits to wide audiences. The second meaning however has been often forgotten. With the aid of cheap analogue cassette technology many local music makers especially in poor countries can produce and circulate their own music and even give birth to new interesting popular genres.'

During the communist period musical innovation could take place by unauthorized copying and continues to happen this way. Moreover, it 'is important to note the very function of unauthorized copies here: the cassettes are not primarily produced for making money. The main purpose is promotion. With the aid of pirates local dance bands and artists can get more fame among local audiences and, accordingly, more gigs and other public appearances.' (Kurkela, 1993)

Two questions which will be raised later in this article find already partially an answer in the observation by Vesa Kurkela. First, by unauthorized copying musicians become known, are getting performances and thus may earn their money. Otherwise only one or two famous artists would get richer and only the copyrighted music would be spread, which has been produced by strong cultural industries. The basic condition is of course that there is enough demand for life music. Second, the argument goes many times that copyright is necessary to stimulate artists (and other inventors) to create. However, the contrary may happen, so called unauthorized copying may produce a vivid cultural climate in which innovation is a selfevident result. One may even imagine that such an open cultural climate may enhance a greater freedom of communication.

It is interesting to note that western advocates for strong copyright laws and practices always present the argument that it is in the self interest of non western countries to fight piracy. Bonnie Richardson, spokeswoman of the Motion Picture Association of America: 'It is not just an issue of other countries having to protect American intellectual property, it is also fundamentally of interest to local

17. Interview with Bonnie Richardson, MPAA, 2 December 1994

legitimate video-stores, local legitimate cinemas, local producers of songs and films. There is a community of local interests too that are hurt badly by piracy.' [17] The observations by Vesa Kurkela and Krister Malm and Roger Wallis may make clear that it is more complicated than that.

Moreover, the pressure on poorer countries to fight piracy, anyway this may be defined, brings them in the situation that they have to spend many resources for the enforcement of intellectual property rights instead of the enforcement of other laws which are perhaps more important for the development of their economic, social and cultural life (Cohen Jehoram, 1996: 44).

It may not amaze that it was not selfevident for Third World countries that the intellectual commons of their societies would be brought under an international treaty by which they would be hindered to develop their own policies in this sensitive field. Friedl Weiss gives this overview of the struggle between North and South: 'Although there is considerable antecedent and multilateral treaty practice on industrial and intellectual property rights (IIPRs), the subject matter, as is well known, became a matter for multilateral negotiations in the Uruguay Round only upon the insistence of industrially advanced countries (IACs), especially the United States. Developing countries (DCs) were at first extremely reluctant to enter into such negotiations as there were scarcely any common ground between them and IACs, in economic philosophy, objectives or regulatory tradition. Leading DCs, for instance, considered it inappropriate to establish within the framework of the GATT any new rules and disciplines pertaining to standards and principles concerning the availability, scope and use of intellectual property rights.'

What happened? 'Consequently, they emphatically rejected any idea of integrating the TRIPS Agreement into the GATT itself which, they claimed, played only a peripheral role in this area precisely because substantive issues of IPRs are not germane to international trade. On the other hand, DCs were content with the integration of substantive standards of the major IPR treaties into the TRIPS Agreement. In the end the deadlock in IPR negotiations was overcome through a combination of allowing DCs and LDCs more transitional time for achieving higher standards of IPR protection and of concessions in other areas, notably textiles and apparel trade (Cohen Jehoram, 1996: 8,9).'

More research is important in order to know what the precise considerations were, and still are, of Third World countries concerning the intellectual rights in the cultural fields. In The Challenge to the South, a report written under the chairmanship of the former president of Tanzania, Julius Nyerere, bitter words have been spoken about TRIPs. 'The objective clearly is to install a system that would oblige developing countries to restructure their national laws so as to accomodate the needs and interests of the North. This initiative seeks to expand the scope of the system governing intellectual property rights, extend the lifetime of the granted privileges, widen the geographical area where these privileges can be exercised, and ease restrictions on the use of granted rights (1990: 254,5).'

Our Creative Diversity, the Report of Unesco's and United Nations' World Commission on Culture and Development suggests that a better balance should be found. 'The GATT accord, trough its Trade Related Intellectual Property (TRIPs) agreement, has caused a subtle reorientation of copyright away from the author towards a trade-oriented perspective. One challenge will be to maintain the balance between interests of countries exporting copyright and those of countries that import it, especially in the developing world. Defending the legitimate interests of the latter, while difficult, should be pursued through the establishment of adequate protection.' (Pérez de Cuéllar, 1996: 244)

According to the Commission not only the intellectual rights of Third World countries should get a more adequate protection, also the position of the real authors - creators or performers - deserves more attention. This will be the subject of the next part of this article. After all, the trade-oriented perspective of TRIPs is changing their position.

3. the artists

At the Pan-African Colloquium on the Living and Working Conditions of the Artists, Brazzaville, 20-23 July 1994, the Congolese writer Jean-Baptiste Tati-Loutard 'deplored the practice of authors publishing their works at their own expense, which was ruinously costly for young writers, and the very frequent failure of African publishing houses to pay copyright (Pan-African Colloquium, 1994: 14).' One may guess that this is the situation in most Third World countries and for all the fields of the arts. Obviously there will be differences here and there. In general, artists in the non-western parts of the world may be happy if they can make a living from their work. The impression exists that this is most of the time not from copyrights or author rights. The conflicting arguments concerning unauthorized use of works of art have been discussed above.

More research is needed in order to get a clearer picture of the situation for artists concerning their rights. It is to be feared that collecting societies of the money to be paid for copyrights do not exist in most non-western countries or function only marginally. The question is also who controls them, if they exist at all. It seems to be unlikely that in the near future an adequately functioning structure of collecting societies will come into being. If this seems to be the reality, one may wonder whether ideas are developed about structurally safeguarded remuneration systems for artists which may work better.

For many artists in the western countries too copyrights or authors rights have only a symbolic meaning. Their turnover is modest. The overhead of collecting societies - even at the lowest level inevitable - takes away parts of the revenues for artists. Add this to the fact that users of copyrighted materials are getting more and more irritated about the amounts of money which should be paid and the many different kinds of rights for which they must pay, and we see a complicated picture. One may wonder whether the existing system does not demotivate restaurants to let perform live music; and it is not seldom that older, copyright free works have a better chance to reach a public than new work which is more expensive.

Is it true that the cynical conclusion must be that copyrights and authors rights are pushing away contemporary artists? It is not sure whether stronger enforcements of the copyright and authors right systems may help. The price of the payment to the artists - by an intellectual right or on another way - will be more and more decisive for the chance artists may have to make a reasonable living. All those factors which may happen and are happening already for artists are demanding a precise analysis.

This is the more necessary because also artists who are doing economically better are not sure any more of getting proper payments by copyrights or authors rights. Janine Jacquet reports in The Nation: 'The rise in value of creative expression should be good news for writers, and it is - as long as they control the rights on their own work. But this is less and less the case. . . . Book contracts have gotten "greedier and greedier", says Kay Murray, assistant director of the Authors Guild. Some writers are worried that the exploitative practices of periodicals will be adopted by publishers, especially since so many are now corporate cousins of newspapers and magazines. . . . Because everyone is convinced that the future somehow involves the digitization of information, publishers now want electronic rights. But CD-ROMs and the Internet have so far yielded little and cost plenty, so publishers don't want to pay much - or anything - for those rights. What they want, says Dan Carlinsky, vice-president of contracts of the American Society of Journalists and Authors, is "raw materials for free." . . .

Even if writers manage to negotiate fair, even lucrative, contracts for their work, they will probably be signing over more rights than ever before, and someday maybe even all rights. This means that publishing houses - now dominated by the media conglomerates - will have ever more control over how a writer's words and ideas will be used.'[18]

18. Janine Jacquet, Cornering Creativity, The Nation, 17 March 1997

All together, those are directions, Shalini Venturelli claims, which 'de-emphasize the rights of creative labor, from their economic rights to their moral as well as constitutional-political rights (1997: 68,9).' Most of what should be said about the position of the artists in the field of intellectual rights can be understood only in this broader context, which will be the theme of the fourth theme of this article.

4. the common cultural good and the future of the arts

James Boyle claims that, for a set of complicated reasons, 'we are driven to confer rights in information on those who come closest to the image of the romantic author, those whose contributions to information production are most easily seen as original and transformative.' He argues that this image of the romantic author 'is a bad thing for reasons of both efficiency and justice; it leads us to have too many intellectual property rights, to confer them on the wrong people, and dramatically to undervalue the interests of both the sources of and the audiences for the information we commodify. If I am right,' he continues, 'this unconscious use of the author paradigm has wide-ranging negative effects, with costs in areas ranging from biodiversity and the production of new drugs to the shape of the international economy and the structure of the computer industry (1996: X, XI).'

In this part of this article on intellectual rights related to the arts the quite remarkable statements by James Boyle are the issues which should be dealt with indeed. Let's start with the romantic concept of the author, the genius who creates a completely original work out of nothing and which has lead us in a "culture of originals"[19]. First we must mark that this notion of authorship is a relatively young concept which came up with individualism in the western culture; in many other cultures it was and still is an unknown concept. James Boyle: 'As authors ceased to think of themselves as either craftsmen, gentlemen, or amanuenses for the Divine spirit, a recognisably different, more romantic vision of authorship began to emerge. . . . in this vision the author was not the journeyman who learned a craft and then hoped to be well paid for it. The romantic author was defined not by the mastery of a prior set of rules, but instead by the transformation of genre, the revision of form. Originality became the watchword of artistry and the warrant for property rights. . . . It is the originality of the author, the novelty which he or she adds to the raw materials provided by culture and the common pool, which "justifies" the property right . . . (1996: 54,5).'

19. Lury, 1993: 27 quotes Rosalind Krauss.

One may wonder, however, whether this originality should not be seen in a broader perspective. On the idea that a genius creates a work out of nothing but his or her creativity, Krister Malm comments: 'This is of course not the case (1998: 24).' Here we are confronted with a contradiction. We are aware that someone creates a work of art, which we may appreciate very much, and which may look new to us now, from our contemporary perspective. However, in our present culture we are inclined to forget that the author or performer has used many sources - language, images, tonality, rhythms, colours, movements, meanings, humour, and so on - which belong to our common domain, the intellectual commons.

There is no poem without former poems. This makes it understandable that there exists not really a justification to claim such an absolute right, more or less a monopoly, on an expression as we allow authors in our present societies. Dutch painter Rob Scholte claims that 'copyright does not exists in postmodernism, on the contrary there exists the right to reproduce all. All is from everybody. This does not mean that all hereby has turned gratuitous. That would be an error of reasoning. People still make something for the first time, the authenticity continues to exist, and certain images keep their power of expression. As a postmodernist, however, I fight the idea of originality, of intellectual property, of copyright. Copyright is the notion of god that's what it's all about nowadays. I am in favour of the free right to portray all.'[20]

20. Interview with Rob Scholte, De Groene Amsterdammer, 18 December 1996

There is always a cultural debt, mostly a considerable debt; this should be valued. 'How should we understand "value" in the information society?', James Boyle wonders. 'Whose contributions will our system recognize and reward, whose will it ignore, or genuinely fail to see? . . . How does one break the grip of a rethoric of entitlement that systematically obscures and undervalues the contributions of one part of the population and magnifies those of another part of the population? (1996: 177).'

This has far reaching consequences, James Boyle argues. 'An author-focused regime that makes the contributions of sources "invisible" is unlikely to reward those contributions . . . Sources may become a "commons" whose exploitation is justified or obscured by an author theory . . .' Partly the problem is the denial of creations of the past which have contributed to the artistic creations and performances in our present time. But the problem reaches also to the future. 'In developed nations too, the blindness of an author-centered regime to the importance of the public domain can also lead to overly expansive intellectual property rights that deny future creators - novelists, scientists, programmers - the raw material they need to make new products. The tendency to undervalue the public domain is a worldwide phenomenon (1996: 130).'

Interesting is the contradiction James Boyle signals: 'if one truly worships Great Artists or Inventors, one is under an obligation to concede that the current system can make their lives a lot more difficult. The tendency of the current system to undervalue the importance of the public domain can deprive the truly creative among us of the raw material necessary to create their next transformative artifacts (1996: 165).'

This is exactly what might hinder the television screening of a work by the Belgian artist Johan Grimonprez, which has been shown already on the Documenta 1997. The title of his tape is Dial History, and that is what it really is. He crisscrosses through history and completely different aspects of society; 80% of the film consists of archive materials. As a work of art the use of those materials was not really important for rightholders, for the time being. For television, however, it is impossible without asking permission and paying lots of money.[21]

21.De Volkskrant, 4 February 1998

The strict system of copyrights raises a problem for new creations. James Boyle warns that intellectual property rights may become 'so expensive that they make it much harder for future independent creators actually to create (1996: XIII).' It is even worse, Ronald Bettig notifies. 'With few exceptions, copyright is based on an owner's ability to have exclusive control over the use of his or her product. This exclusive control is what protects the exchange value of the copyrighted work in the intellectual property marketplace (1996: 151).' Bringing intellectual properties - monopolistic rights - in a free trade context - GATT/WTO - is turning the world upside down (Amin, 1997: 29).

The reason why this all could happen is that an appropriation has taken place. Cultural value became property value, as Michel Foucault notes, summarized by Celia Lury. 'In the secularised ritual of Romanticism, the uniqueness of the cultural work itself was more and more displaced by the empirical uniqueness of the creator or his (and once again the use of the masculine pronoun is not accidental here) creative achievements. . . . it was through the author-function that cultural value became a thing, a product and a possession caught in a circuit of property values. What was at stake in this circuit was the limitation of reproduction; it was through the constitution of cultural works as intellectual property, and the allocation of limited rights in reproduction, that the potential instability inherent in reproduction made possible by modern technologies of culture was contained (1993: 23).'

In a way this may be understandable, without forgetting that the author concept has romantic traits, but at the present moment we are entering a completely new stage, according to Ronald Bettig. There is underway an expansionary logic of capital which infiltrates the vast ranges of human labor and activity, including intellectual and artistic creativity. 'Thus when it comes to the domains of information and culture, the logic of capital drives an unending appropriation of whatever tangible forms of intellectual and artistic creativity people may come up with, as long as this creativity can be embodied in a tangible form, claimed as intellectual property, and brought to the marketplace (1996: 34).'

The examples are manifold. In 1997 a Zürich based company, called Techno Tanz Veranstaltungsverwertung Zürich GbR, claimed that she has the authors right on techno dance. She urged a Berlin disco that copyrights should be paid. In the Netherlands PTT Telecom got the copyright on the specific colour green which some telephone companies happened to use. Also in Holland ABN/Amro Bank

makes publicity with saying that they are The Bank. They got the exclusive right on the combination of the words The and Bank. Just normal forms of movement of the human body, words, colours are ripped off from the public domain and become the exclusive property of private interests. However, if there should be any payment, let them pay the public domain because they are using elements of the common cultural heritage!

The extension of rights concerns also the new digital communication tools, roads, environments, and infrastructures, as if it is selfevident. No shadow of doubt was amidst the G7 Conference held in Brussels on 25 and 26 February 1995 which 'confirmed the need for high standards of legal and technical protection for the creative content which will be disseminated via these infrastructures (Commission of the European Communities, 1995: 13).' This was endorsed by the Commission of the European Communities which stated in its 1995 Green Paper on Copyright and Related Rights: 'Those seeking to operate in the new environment must not find themselves hemmed in by legal constraints arising from a fragmented market (Ibid.: 29).'

Information, culture become commodities which may be exploited. In this philosophy the concentration of knowledge in the hands of a few is nothing absurd. Moreover, this is exactly what western states make possible, or even promote, by legislation and the application of copyright laws, including the hunt on piracy and unauthorized use. T. Koopmans, a former judge at the European Court, reminds the idyllic scenes depicted in the handbooks from the hard working and gifted artist who sees his efforts rewarded with exclusive exploitation rights. 'Those rights have turned into "business" (1983: 454).'

In this business the stakes are high, Janine Jaquet reports in The Nation. 'The trouble is, no one really knows which technologies will be worth having in the Information Age: Maybe it will be cable, maybe satellite TV, maybe the Internet, maybe none of these. Those companies that invested in the wrong "hardware" will be the losers. But those that invested in what will be delivered by the new technology - the winning sort of "content" or "software" - will emerge with a valuable commodity.

"Content," says Derek Baine, an analysist at Paul Kagan Associates, "holds its value." If content is king, synergy is still the power behind the throne, the rationale for media conglomerates' snatching up as much copyrighted material as they can. Today's mergers aren't just about grabbing more of the market share by buying yet another record label or movie studio or book imprint. They're also about acquiring the rights to music, movies and books. It's an investment in intellectual capital, i.e. creative expression, the twenty-first century's most valuable commodity.'[22]

22. Janine Jaquet, Cornering Creativity, The Nation, March 17, 1997

Viacom makes money on its "content". The German Leo Kirch owns at least 15.000 films and 55.000 hours serials, shows, concerts, operas, documentaries, and so on (Renner 1994: 159,160). One of the United States' largest exports is entertainment "software" - films, television, recordings, and computer software. Ideas and their expressions are big, big business, and even U.S. foreign policy is influenced by considerations of intellectual property, according to Anthony Seeger. 'One result of these changes is that knowledge of all kinds is increasingly coming to be dealt with in market terms. Many forms of knowledge and wisdom have become "intellectual property." . . . Copyrights on music and dance increasingly determine who gets wealthy and who does not in the performing arts.'[23]

23. Anthony Seeger, Ethnomusicologists, archives, professional organizations, and the shifting ethics of intellectual property, in Music, Media, Multi-culture: Musikaliska akademien, Stockholm 1998. See as well: Malm, 1992: 32, 184,5, 235,6.

Without being nostalgic, he is being right to show that there is a remarkable difference. 'If, at one time, members of communities performed for one another in a face-to-face way, today, in most parts of the world, these performances are mediated by, and to a very large extent shaped by, legal considerations. What an audience today hears, and what it may not hear, is partially determined by copyright and money. For example, some radio stations may favor recordings by long-dead composers over those by living ones for whose music they would be obliged to pay royalties; some festivals or clubs may insist that performers not play songs "owned" by one or another collection company; and some educational software developers may decide to use only music whose copyright has expired.'[24] And

24. Ibid.

who owns the catalogues of music, images, texts, and performances will put pressure on all different channels and other outlets that his "products" will be used.

One of the consequences of this private appropriation of knowledge and works of art may be that much information, once purchased, is then removed from the public view - or more likely never permitted to be seen - precisely because it is privately owned (Webster, 1995: 93). The unhampered use of cultural creations does not seem to be in the interest of intellectual right owners of those forms of communication. They decide what will be on the market. All what may distract attention from what they are pushing at a certain moment will be withheld. A market "overcrowded" with an enormous diversity of artistic creations is considered not to be favourable for profit making. Intellectual rights make it possible to steer the availability - and the non-availability - of artistic creations on the market. More research should be done how and in how far this works, and what kind of contradictions are rising.

Copyrights being big business, the United States started to look at multilateral solutions for trade disputes on intellectual property protection, in any case what they consider as "trade" disputes. Herman Cohen Jehoram suggests that the WIPO framework would have been the most obvious context. 'However, this has been dominated by the developing countries. Thus it became GATT.' (1993: 67) In this context TRIPs, the Agreement on Trade-Related Intellectual Properties, has been prepared. Samir Amin wonders about TRIPs whether it may bring the developing countries 'back to the mercantilistic monopoly practices of 300 years ago? Even the language used to discuss the topic is not neutral. We no longer speak of knowledge as the common property of humanity, but rather of "piracy" . . . (1997: 29).'

Third World countries will not be the benefitors of the global set-up of intellectual rights, it may bring problems also to small and medium sized arts initiatives in the western world, according to Ronald Bettig. 'For such companies, copyright does little to increase their output or guarantee them income (reward) as theory would hold. Strict copyright laws, effective means of enforcement, and more efficient marketing systems may increase both investor confidence in intellectual property markets and incentive to invest therein. But with the prevailing high barriers to market entry, copyright laws and related mechanisms do nothing to enhance independent producers' access to distribution networks or the public's access to a diversity of informational and cultural products. On the contrary, to the extent that copyright permits the accumulation of filmed entertainment rights by a few companies, it enhances market concentration and inhibits access to and use of informational and cultural goods (1996: 103).'

After all, who owns the rights likes to see his "property" exhibited, performed, registered and distributed as much as possible. This leads unavoidably to an oligopolistic domination of the cultural market, by which variety of artistic expressions and diversity of cultural communication will be pushed away. Obviously, one may contradict that oligopolistic owners will produce and distribute varieties of artistic expressions, otherwise they never could explore all the segmented markets the world over. However, they select; they decide which variety will be offered, and which one not; and which cultural ambiances will be created, and which ones never may come into existence. Real variety can exist only, when the majority of artistic cultural expressions will come forth from a variety of independent initiatives, institutes, and individuals.

For all national states TRIPs has enormous consequences. This was the estimation of Chakravarthi Raghavan already in 1990, before the negotations on this treaty came to an end. He got right, not only in the technical fields he describes but also in the cultural domains. 'The entire TRIPs negotiations are intended to internationalise what so far has been in the domestic domain, namely establishment of the norms and criteria for industrial (intellectual) property protection, broaden the scope of protection, extend the lifetime of protection (and thus monopoly rights of the TNC holding the patent), reduce or eliminate the capacity of the Nation-State to regulate or attack such monopolies, block technical development, and enhance the enforcement of rights of TNCs, nationally and internationally (1990: 96).'

Obviously, with the huge flows of information crossing the world by the digital information networks, control will be less and less possible. But the interests are high and the cultural industries do all they can to strengthen the copyright regimes. Celia Lury sums up: 'Temporary solution to these problems of copyright under these new conditions of cultural reproduction include: the spread of compulsory licensing schemes, of unified collection agencies sharing earnings in a pool, of governing tribunals, of special taxes on hardware, and the production of immediate information, such as news and financial information, before copying can infringe on the rights of its owners. At the same time, commercial organisations are pressing for further revisions to the traditional terms of ownership of rights in intellectual property in ways which will contain the free flow of ideas (1993: 166,7).'

One of the principal arguments to defend such a system of extensive intellectual property rights is the supposed innovation it will bring to us. Emery Simon said it clearly at the Alai Conference in Geneva, June 1994: 'So we have come a long way indeed. On balance, I believe this integrated system will provide a boost to both creative and inventive individuals.'[25] The European Commission expressed the same belief in the 1996 Follow-up to the Green Paper on Copyright and Related Rights in the Information Society: 'In line with the "Bangemann report" on "Europe and the Information Society", the Commission's action plan identified intellectual property protection as a key issue given the critical role creative content and innovation will play for the development of the Information Society.'[26] At the American side as well the incentive argument is familiar: creators and inventors should get incentives, otherwise we will not see anymore innovations and inventions (Boyle, 1996: 44).

25. Emery Simon, The Integration of Intellectual Property and Trade Policy, Alai Conference, Geneva, 27-28 June 1994

26. Follow-up to the Green Paper on Copyright and Related Rights in the Information Society, Commission of the European Communities 1996: 5

However, it is not sure whether this innovation argument will wash, James Boyle remarks. 'To say that copyright promotes the production and circulation of ideas is to state a conclusion and not an argument. At the very least we might wonder if, in our particular copyright regime, the gains outweigh the losses (1996: 18,9).' Ronald Bettig explains why some doubt is justified. 'The underlying assumption here is that human beings require economic reward to be intellectually or artistic creative. The philosophy of intellectual property reifies economic rationalism as a natural human trait. Yet from our historical analysis we see that throughout most of human history there existed no concept of intellectual property rights. Nevertheless, humans still produced technological and cultural artifacts (1996: 25).' Therefore he thinks that it 'is questionable whether individuals pursue careers in artistic and intellectual activities on the basis of economic motivations when unemployment in these sectors runs so high. It is more plausible to assume that economic incentive appeals to the capitalists who invest in these activities and who would not invest if the potential for a profitable return on investment did not exist (1996: 171).'

Chakravarthi Raghavan argues that patents, trademarks and other intellectual (industrial) property rights are not even natural human rights. 'When European countries began creating patent rights, at the dawn of the industrial revolution, there were conflicts whether the "monopoly" to exploit the invention granted to the inventor is natural right or an exception to the natural right of citizens to the invention. . . . Patents and other intellectual or industrial property are thus statutory rights - benefits created by law by the State. Even to call them "rights" is a misnomer. They are really "privileges" granted by the State by statute - a form of government subsidy not unlike tax credits, export incentives etc (1990: 115,6).' Originally industrial development came because countries copied from each other, and now the western world says to the developing world you may not copy.

Will artistic creations and inventions, necessary for public life, be underproduced if intellectual property rights would not exist? Based on past experience and from what we know from other cultures we may believe that human beings always will continue to create and invent. What we may know for sure is that the selection of what will get the chance to be created or will be used and distributed will be different in a system where intellectual property rights may not exist or may be less rigid.

Isn't hubris of the capitalist owners of intellectual property rights that they think that their selection capacity is the best for all humankind? That does not sound democratic. It may be even worse, James Boyle puts forward. 'There are strong reasons to believe that the system of incentives set up under the current author-centered vision of intellectual property will actually impede innovation and scientific progress, diminish the availability of our cultural heritage, inhibit artistic innovation, and restrict public debate and free speech (1996: 124-8).'

The western world and the poorer countries might be better off with inventions, which are rooted more in the needs of local people and are based on century old experiences. Patents on human genes and other aspects of human life are even immoral, but nevertheless booming business and protected by intellectual property regimes. As Jeremy Rifkin sums up: 'Multinational corporations are already scouting continents, hoping to locate microbes, plants, animals and humans with rare genetic traits that might have future market potential. After locating the desired traits, biotech companies are modifying them and seeking patent protection for their new "inventions."[27]

27. Jeremy Rifkin, The Biotech Century. Human Life as Intellectual Property, in The Nation, April 13, 1998

For some people the field of the arts may not be such a serious matter as the patenting of human life, because the arts are considered just as entertainment or as something which plays a role only in the fringe of individual and social life. This is a misunderstanding.

Artistic expressions in the fields of music, words, images, body movements are essential to the development of our sensitivity, our experiences of pleasure and sadness, what we feel and think about existential questions, whether we can bear human life or not. Artistic creation, the spread of the arts and cultural life - the individual and common experience of the arts - should thus develop in freedom, related to the huzzzle and buzzle of a given society. This is not possible anymore when a limited number of rightholders control what will be made available, under what conditions, and which artistic values may not be used at all. Such controlled regimes may hinder artistic developments instead of promoting artistic creation.

Artists make a mistake when they think they should make themselves dependent from the present rigid intellectual property rights system for their living, which does not offer them economically a fair deal, but hinders also the blossoming of the arts and cultural life. As James Boyle says on the author-centered regime: 'It does not even serve the goals it is supposed to. An author-centered-regime can actually slow down scientific progress, diminish the opportunities for creativity, and curtail the availability of new products (1996: 119).' Why this is so? Copyright and author rights 'can be used to deny biographers the ability to quote from or to paraphrase; to silence the parody; to control the packaging, context, and presentation of information (1996: 18,9).'

One may contradict this assertion by referring to the fair use exception in copyright regulations and authors right systems. The purpose of "fair use" law was to make sure, that future creators have available to them an adequate supply of raw materials for making works of art, and that society as a whole may benefit from what has been created. Therefore James Boyle concludes: 'From this perspective, too many "incentives" could convert the public domain into a fallow landscape of private plots (1996: 38).'

Precisely this concept of public domain is a residual one, according to John Frow: 'rather than being itself a set of specific rights, the public domain is that space, that possibility of access, which is left over after all other rights have been defined and distributed. It has had a shadowy legal presence through common-law principles such as fair use, through administrative measures such as freedom-of-information regulations or through statutory protection of free speech, but its lack of positive doctrinal elaboration leaves it vulnerable to erosion. It is a concept which is in many ways in crisis (1996: 102,3).'

There is reason for alarm indeed, according to Gary Schwartz, who reports that at one American campus after another, university lawyers are issuing directives about the legal status of the slides used in history classes, discouraging and perhaps prohibiting slide librarians from allowing certain slides to be made or used. They do this in order to prevent that the university will be sued. 'The test they apply is that of copyright. The lawyers want the librarians to be able to show proof, before releasing a slide for use, that no provisions of copyright law are being violated. In the case of a slide made from a reproduction in the New York Times, for example, of Andy Warhol's silkscreen portrait of Queen Beatrix, they would ideally like to see signed and sealed indemnifications covering the rights of the Warhol estate, the museum that owns the particular impression illustrated, the printer who made it, the photographer who photographed it, the Times and the Dutch royal family before allowing the librarians to make the image available. Needless to say, even the most obedient and conscientious librarians are unable to produce such documents, so that the daily reality of art-history education, with thousands of slides in constant use, has become a cause for potential criminal charges against librarians and teachers.'

Amazement all over the place. 'These legal directives are late in coming. For a hundred years, art historians have been making photographic slides from any and all sources, of any objects that they wish to show to their classes. Until recently, no one dreamed of objecting to this. It seems as natural as the right of a teacher of literature or history to read aloud a passage from a book. To my mind it indeed is.' But Gary Schwartz is not amused that he must observe that this has changed. 'As publishers and museums and the entertainment industry invest heavily in easily reproducible content for the Internet, they are seeking stronger copyright protection for what is known as their intellectual property. The rethoric they employ in lobbying for their cause goes far. In the January 26th, 1998 issue of an American congressional magazine, the copyright lobby placed a full-page ad showing a schoolgirl writing on a blackboard the big word STEAL, under a headline that reads: "Teaching your kids to steal?" The crime of which the kids are apparently guilty is copying a web page containing the "intellectual property of creative Americans."'

There is indeed an enormous pressure, according to Gary Schwartz, which is 'already making itself felt in the quality and nature of art-history teaching. In some universities, where the slide librarian and campus lawyer are giving to erring on the side of caution, a work such as Warhol's Queen Beatrix would not projected in the classroom at all. Neither would an image of the Sistine ceiling after the last cleaning, to which a Japanese television company owns the right. There are no clear limits demarking the permissible from the prohibited in this field. The operative borderline now is the individual's sense of the absurd.'[28]

28. See: Gary Schwartz, 7 March 1998: Gary.D.Schwartz@let.ruu.nl

It becomes clear that concepts like common good, the intellectual and creative commons, public domain and public sphere are worldwide in the defense, or worse they become wiped off from the living memory. The privatisation of knowledge and creations as supported by TRIPs is, according to Vandana Shiva, 'a mechanism for the privatisation of the intellectual commons, and a de-intellectualisation of civil society, so that the mind becomes a corporate monopoly.' She continues to say: 'Profits and capital accumulation are recognised as the only ends to which creativity is put. The social good is no longer recognised (Shiva, 1995: 10,1; Shiva, 1997).'

Shalini Venturelli directs the attention on the human rights consequences of the new international intellectual property laws. They will 'turn the information superhighway into a toll road with the structure of knowledge defined exclusively by economic criteria and proprietary power. This radical privatization of the public domain is unparalleled in history, in effect reversing the direction of modernity from the gradual expansion of information participation among social groups over time, to gradual concentration. Not only will public access rights and fair use rights be cut back, individuals will be denied the right to use information for associational purposes in order to organize and participate in society at large.' Gone will be 'information diversity and pluralism (Venturelli, 1997: 69; Hamelink, 1994: 284,5).' James Boyle stresses the need to be aware 'that many of the "human rights" and

even more of the "international development" issues of the twenty-first century will be intellectual property issues (1996: 171).'

This makes it important to know more about philosophies which exist in non-western cultures and societies on knowledge as a common good versus the private appropriation. Hamid Mowlana claims, for instance, that throughout 'Islamic history, especially in the early centuries, information was not a commodity but a moral and ethical imperative.' And therefore, the crucial question 'for the Islamic societies is whether the emerging global information communication community is a moral and ethical community or just another stage in the unfolding pictures of the transformation in which the West is the center and the Islamic world the periphery (1993: 396).'

This question brings us to the old issue of collective rights. In Our Creative Diversity, the Report of the World Commission on Culture and Development, published in 1996, the very notion has been mentioned, not for the first time in the discussions on intellectual property rights, 'that traditional cultural groups possess intellectual property rights as groups. This leads to the radical idea that there can be an intermediary sphere of intellectual property rights between individual rights and the (national or international) public domain.' This raises the difficulty what is to be protected. 'The simple notion provided by an imagined primeval cultural source is obviously inadequate here: the Navajo rug, for instance, contains influences which can be traced, though Mexico and Spain, to North Africa.'

Krister Malm describes that in 1996, the same year as Our Creative Diversity had been published, the question of international copyright protection of folklore again was put on the agenda by a number of Third World governments, this time in the context of the preparations for the World Trade Organization meeting that took place in Geneva in January 1997. 'The move to get the issue onto the agenda of the WTO meeting failed,' he reports. 'Again the failure was due to resistance from powerful industrialized countries and the culture industries to any introduction of "collective" or "cultural property" rights into the present system of intellectual and industrial property rights.' By the support of many countries the decision had been made that a meeting organized jointly by Unesco and WIPO in Phuket, Thailand in April 1997 should take place.

There was a great consensus among the participants, namely from the third world countries, that an international legal instrument ought to be worked out and how this in principle should be effected. This did not make the American and British delegates content at all, one could predict because in their countries the biggest international entertainment industries may be found. Krister Malm reports that tension rose 'when the U.S. delegate said that since most of the folklore that was commercially exploited was U.S. folklore and third world countries would have to pay a lot of money to the U.S. if an international convention should come about. The Indian lawyer Mr. Purim answered that that was already the case with existing conventions and by the way all U.S. folklore except the Amerindian one was imported to the U.S. from Europe, Africa and other countries. Thus the money should go to the original owners of that folklore.' In April 1998 Krister Malm noticed that nothing thus far has come out of the Phuket meeting and his expectations that collective rights will be taken as a serious issue by the western countries in the next future are not very high (1998: 26-29).

conclusions

What started modestly as a remuneration for artists and other creators and inventors turns out to be one of the biggest sources of commercial value in the 21st century.[29] Copyrights, authors rights, and other forms of intellectual property rights are expanding enormously. It is time to reconsider the whole concept of intellectual rights and to bring it back to more normal proportions; or, to abolish it?

29. Actually, at the beginning the authors right system had three pillars: the exploitation right; the moral right; and the idea that it would promote cultural developement.

Even if it is nearly impossible to imagine what may be the consequences, this last option should also be under debate. Only then it might be possible to discover anew what kind of safeguards are needed for the construction of new knowledge and creativity and for the persons who are fabricating this, the persons we call artists and inventors.

The individualistic approach of creations and new knowledge is based on a romantic author concept. The reality, however, is that creations and new knowledge come into existence only by the use of the already existing cultural heritage from past and present. The reality is also, that future discoveries and works of art need a broad public domain to draw ideas, insights, inspiration from. The threatened fair use exception must be turned around and must get a positive doctrinal elaboration in any case. The reconsideration of the romantic author concept should have as a consequence that all different kinds of copyrights, provided that they should exist at all, must be limited considerably.

We must be aware that the private appropriation of culture and science takes place under neoliberal, capitalist, and oligopolistic conditions. It enlarges the gap between haves and have-nots in the world, and this happens in fields which are decisive for social, cultural and economic development in the 21st century: knowledge and creativity. There should added to this that the arts are decisive for the development of the own cultural identity which is a human right as well. Democracy can develop only if debate and exchange of ideas, sentiments and feelings is possible on all levels of human expression. This is exactly what the arts are doing, whether it is in the form of entertainment, as the tonal, verbal, dramatic or visual package of the new media, or expressed by and in the more traditional art forms.

What to do with copyrights, authors rights, patents, and industrial rights? As said, the reconstruction of the whole concept will be an unavoidable challenge, a start from scratch is needed. For the present moment this is a task too difficult for a single person; it should be a communal effort. There should be explored which is the best way artistic creators and performers can make a living. Should the concept of moral rights be such an absolute right as proclaimed, let alone that it is not easily applicable anymore in digital environments? Probably society would be better of when people would be encouraged to develop further on existing ideas, forms, tonalities, and so on. What is against a good imitation? Consequently too, the whole concept of plagiarism will be seen from a different perspective, while audiences may not appreciate a work when the artist does not add something to what has been created before.

The claim that all should be original is not a realistic one, and culturally not productive. After all the borrowing from the same architectural style in Paris at the end of last century made this enormous urban surface much more interesting than all (post)modernistic architectural creations in the whole world together where the pretention of originality hinders architects to lean on an existing style as was usual in history. The idea that an architect can get the copyright on the design of a building is an absurd one. Nobody is so original that this claim may be justified and it sits in the way of future architectural developments.

Will there be less inventions and creations when intellectual rights would be more modest or would not exist at all, and the remuneration would take place in other ways? Probably there will come into being other creations and the development of other kinds of knowledge. Seriously there should be studied what may be the advantages and disadvantages of this. In any case at the positive side

may be mentioned, that the monopolistic control on what may be created, invented, distributed, and used should be abolished.

Any change must take into consideration, that the non-western countries will get their fair share in creative and scientific developments which is not the case now. Plurality of expressions, as a democratic and human right, should be the guiding line in reforming the system of intellectual property rights; that is the contrary of the present tendency. Only when diversity of artistic creation and distribution will get priority, and will not be hindered by market dominance caused by monopolistic copyrights, many artists all over the world may make a reasonable living from their work. That is not difficult to understand: they will not be pushed away by the cultural events produced by a handful of cultural industries who are penetrating nowadays all screens and other outlets all over the world. So the need for artists to have strictly circumscribed copyrights - as a defence against exploitation - will be less urgent.

A way out of the nearly complete exploitation of human creativity and knowledge is needed. Obviously the arguments deserve more research, more clarification, more discussion, more input from other thinkers. The debate cannot take place without discussing the neoliberalistic practices, the global deregulation, and the free trade agreements like TRIPs.

In the field of the arts and culture there is an additional problem which should be taken in mind. A considerable number of people starts to understand that freedom in the economic field should be balanced by protection. John Frow quotes Garrett Hardin saying: "Freedom in a commons brings ruin to all." (Frow, 1996: 99,100) That is the case as well concerning the environment. It goes slowly, but also Shell, for example, did get the message that an enterprise too has a public responsibility. The oppisition against the dumping of the Brant Spar in the ocean started with organized movements, to name one: Greenpeace, supported by many people all over the world who influenced Shell.

But who should educate the cultural industries and the monopolistic rightholders that they should break up in favour of diversity, democracy and the human right of freedom of expression and communication? Where is the organized movement in the cultural field comparable to Greenpeace? At the end people can see that a forest is dead or can understand that the hole in the ozon layer is threatening life on earth.

It is much more difficult to explain that the entertainment which people like very much - one may wonder why -, may be a problem concerning the content but perhaps still more concerning the fact that it is in the hands of only a few monopolistic companies who control amusement all over the world, and who start to get grip on all other artistic expressions.

This could have been the end of this article. However, this would have been unsatisfying because a major problem would have stayed undiscussed. The fact is that artists and third world countries find themselves in the dilemma of a choice of no choice. Let's start with the non-western countries. As we have seen, TRIPs will give them not much advantage. The contrary may be the case. At the other side, not participating in the global system of exploitation of intellectual property rights means that they may expect heavy trade and other sanctions. They are not in the position to formulate other ways of dealing with knowledge and creativity. They must obey and at the same time they will nearly for sure lose enormous amounts of money, considerable parts of their cultural heritage, and the ability the build up their own knowledge infrastructures. Much more research should be done how this dilemma has been and still is discussed in the non-western countries concerning the arts, being culture and specifically the arts the purpose of our search.

The sanction artists may feel is from an other character when they don't participate in the present oligopolistic intellectual property system. They will meet full scale exploitation and misuse of their work, and will be completely unable to

make a living from their creativity and their performances. But at the end the concentration of right holders and the digitalisation will bring them in a rather dependent position, in which even rather famous artists will not be sure that they will get a fair share, not to speak about just the normal artists, despite the optimistic sounds which come from Unesco and from the collecting societies. It is not sure whether a coalition with the few big right holders in the world is in their interest. However, not to travel along with them may be killing as well. Also in this field much more research is needed.

Indeed, artists and third world countries find themselves in a dilemma of a choice of no choice. For the maintenance of the public domain and the common good, however, TRIPs and the global exploitation attitude concerning creativity and knowledge one may claim: the privatization of culture and science is a loss for any society.

so, what to do?

So, what to do? What to do when we share the conviction that knowledge and creativity should not be the private property of some individual rightholders, and certainly not on the huge scale which we may expect in the near future?

Let us try to permit ourselves the intellectual courage and flexibility of mind that we could think of getting rid of the intellectual property system as it has been constructed in the Western world during the last couple of centuries. How would another situation, based on different premises, look like? Exactly what we are missing now could happen: The results of our cultural and scientific developments of past and present would come back again in the public domain, where it should be. When it would belong again to the common good, the creations of the past and the present may be used for the development of the contemporary artistic and scientific life. And this will provide the building blocks for the future of culture and science, on the condition that nothing of the mind and the spirit of human beings has been privatised.

Let us try to make this more concrete for the world of the artistic cultures, the subject of this article. The basic principles which I try to develop for this field obviously can be transferred to the field of patents and other intellectual properties, but obviously this is not within the reach of this article (Shiva 1995, 1997).

The field of the artistic cultures, for which I will try to formulate another approach than the copyright system offers, is a broad one. How should it be defined? The arts are specific forms of communication. Always, in every society we find artistic ways to express and communicate that are distinguished from the daily forms of communication, or those used in journalism, health care, business, or education. The arts, thus defined as a neutral concept, constitute a specific category in every culture, in every society.

Specific to the arts are the aesthetic aspects that feed our observation and appreciation. Their content and the meaning of artistic communication is more focused, dense, or slow than is usual in other forms of communication. And the arts reach the public by passing specific tracks that colour the meaning of the artistic work by the ambiance they offer: prestigious places for exhibitions or venues for concerts, television screens, or the magic circle on a square created by a clown.

The arts are specific forms of communication; among them we may find rock concerts and cantatas by J.S. Bach, plays by Becket, Mondrian paintings and comics, porno shows, all sorts of films and soap operas, and the artistic aspects of Internet. But using a neutral concept to define the arts does not mean that artistic expression is either judged, or supported on a neutral basis. Using a neutral concept does not mean that the character of the daily artistic fare does not matter. Living surrounded by impressive, exciting or moving works of art leaves nobody untouched. The consumption of large quantities of artistic entertainment effect individuals minds and sentiments. Therefore, what will be proposed as an alternative for the current copyright or authors right system will include also all what comes from the cultural industries.

Just, recently, from several corners in the world people have started to think about an alternative for the present system of intellectual property rights. For example, artists may bypass copyrightholders and other intermediaries by selling their work on the Internet, or by offering it there for free. This may make their work widely known and create a market for their real works of art or for their life performances. Some of them do already so.

This is a viable alternative for the oligopolistic marketplace as long as the new communication media have still enough space for a public domain in which such kind of small transactions can take place. Then a rich diversity of artistic creations and performances may be distributed to interested audiences worldwide, which are probably relatively small but all over the world together big enough to give many artists a living. The more the virtual domain becomes commercial however,

the more the big cultural industries will forge a focused attention span for only a small number of their artists on the Internet. This may lead to the same situation as we deplore at this moment: Only a limited number of artists will be pushed while the artistic diversity has a hard time to get a relevant distribution.

This example of a complicated contradiction which may arise, and many others of such an ilk, have as a consequence that it will not yet be possible to present already a completely elaborated system how to deal on a more social and humane way with the concept of property concerning works of music, drama, theatre, opera, dance, literary texts, visual arts, design and other kind of images, and films and videos, and all the mixed forms.

Nevertheless, it may be possible to develop some premises, and for the present moment more should not be done. It took more than a century to refine the intellectual property system we have now; it would be too demanding to expect, that it is possible to construct a radical different system in detail in a couple of months!

Until now in the field of intellectual properties the distinction has been made between the right to use or to exploit a work, and at the other side, the moral right of the creator or the rightholder. This moral right includes the maintenance of the integrity of the work. It is essential to deal with both separately.

Wen the assumption is that it is crucial that works of art will be part of the public domain, this would have as a consequence that the use of the work within the public domain would be free of charge. How to define the field of the public domain? One should think of a broad field in which the cultural life, education, and communication takes place. The condition would be that with those works no big profits will be made, nor by the direct neither by the indirect use. This means that small enterprises which have modest turnovers and which make profits, which are just enough to pay the salaries of some people, will be included in the field of the public domain. In other words, the use of artistic works from past or present will be free of charge for all those who work in this broadly defined field of the public domain and who sustain thereby the further development of the common good.

Enterprises, which make profits by the use of artistic works on a substantial level, should be taxed for this use. The whole system of all the different copyrights or authors or neighbouring rights, etcetera, will be abolished, because the private appropriation of the intellectual and creative commons will be ended. Instead of this, substantially profit making enterprises, which are using artistic works in one way or another (for sure, this will be all big and medium-sized enterprises), will be taxed for this use, at the same way the other taxes they are paying. The tax will be a percentage of their annual turnover (Nayer 1991). In the Manifesto of the Free Software Foundation Richard Stalllman thinks in a comparable direction for the funding of the further development of software, a Software Tax, once the copyrights on software will be abolished. 'Suppose everyone who buys a computer has to pay x percent of the price as a software tax (Stallman 1993).' The collected money should go to the further development of software.

Also in the field of culture and the arts the collected money should be put in a special fund. For whom this money be destined? Three kind of receivers may be distinguished. One part of the money may be destined for the further development of the artistic life of the concerned society. This will be, together with subsidies and other financial means, an important source for the financement of artistic initiatives, institutions, festivals and the likes in the fields of film, video, visual arts, design, music, dance, theatre, literature, photography, etcetera.

The condition should be that those initiatives, institutes, festivals, and so on, are important for the flourishing of the artistic and cultural life of the society. In the case substantial profits will be made the contribution will go back to the fund which may use this money for other initiatives, institutes, festivals, and so on. Obviously the money should go to all different artistic purposes as they present themselves in the given society, and not only to those who are considered to have

traditionally a "high" cultural background. The basic idea should be a democratic one. This means that all different voices, images, and imaginations should have the chance to present themselves and to be financially supported in case profit making does not (yet) belong to the possibilities.

The second part of the collected money will go to individual artists in all the different fields of the arts. It will give them the possibility to receive a salary for the period of the creation or production of a work art; let say for half a year, a year, or maybe two years. This part of the money makes the development of artistic works possible outside the institutional framework of cultural initiatives, institutes, festivals, and so on. Also here the basic principle is that there should be taken care for the development of a broad range of artistic works in all the cultural fields. When it turns out that an artist is doing well on the market and makes substantial profits, then the money should go back to the fund, by which other artists may get funded.

The third part of the money should be destined for the artistic life in non-western countries. The reasons why should not be difficult to understand. It may be clear that most of the profits by the use of artistic materials will be made in Western countries, but many of the sources of those artistic creations have a non-Western origin. This should be recognized. Another reason is that those countries are suffering now from enormous braindrains. It is important that artists may have the chance to stay at home, can make a living in their own surrounding, and may contribute to the artistic live of their societies without being dependent always from Western producers, agents, and otherwise.

What to do in the future with the moral rights which have still at the present moment a stronger base in the Western authors rights system than in the Anglo-Saxon copyright approach? If we recognize that the authors rights concept is a romantic one, and if we are aware that the moral rights aspect freezes works of art on quite unnatural ways, then we can afford to get rid from the importance of moral rights as well.

It would be a cultural enrichment if an artist would add something to the work of a predecessor, and so on, as is the use in most non-Western cultures, at least until recently. However, let the discussion take place in the framework of the civil society, in the realm of the public domain, whether adding something to a former work of art is an enrichment indeed, or a terrible misuse. Is it not strange that we have refrained from having such crucial debates in our Western societies?

This is the more strange because we have transferred the competence in questions of cultural development to the court. The judge has got a conservative role: what is, should stay the same, seems to be the adage. And who "owns" a cultural expression, may continue to own it for decades. The cultural task of judges is to punish infringements: cultural creativity considered as an infringement.

Of course, it may happen that someone does not at all add something to a former work of art, but is just copying it while pretending that it is his. In a vibrant civil society in which creativity will get the respect it deserves, such a form of plagiarism makes from such an artist a lesser god when it has been discovered; and it will be discovered because many people in such a society will be involved in what is going around in the field of the artistic creation. And when it will not be discovered, so what is the loss?

In any case, it seems to be more and more clear that the concept of copyright is on its return. Esther Dyson believes that content providers will be paid for ancillary services or products, not for their works. 'Maybe Steven King will post his books on the Internet - and start charging for readings. University professors publish works basically for free, and make money by teaching and by giving their institutions respectability with their names. Already some software companies are distributing software for free and charging for support (Mann 1998; Dyson 1998).' And for the artists, arts initiatives, and cultural projects in non-Western, who will not be able on this way to earn their living, the tax money for the commercial use of artistic works may be a great support.

It may be obvious that by formulating those rudimentary basic principlestart has been made for how to deal in the future with human artistic creativity. We must get used to the idea that a world without our present copyright and authors rights systems can exist very well. Without this property system the chance may be there, that is not worthwhile any more to commodify cultural expressions. The culturally more interesting artists may get again a reasonable compensation for their work.

Nevertheless all those advantages (and more of them, for example for the artistic life in the Non-western countries), it may take a while before we have made space in our individual and collective psyche for getting aware that science and culture should not be private property any longer, but should come back in the realm of the public domain. If this process will result in a shared consciousness of many people, new basic principles about the common good concerning culture and science can be worked out in more detailed sets of regulations. Only then the consequences of the new approach can be imagined profoundly on a new, open way.

Is it waste of time to try to change the seemingly unchangeable? Intellectual property rights are seen as one of the most profit making products of the 21st century. Can this complete privatization of the common good nevertheless be changed radically? I felt empowered by the observation the British writer John Berger made a couple of years ago. He said: 'Nobody foresaw the speed with which the Soviet-system disintegrated and collapsed. It surprised everybody. Now everybody is assured from the global triumph of the so-called free economics and the new so-called economic liberalism. And perhaps it will fall as unexpectedly.' Interview with John Berger on Dutch television, 27 March 1996.

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