STRUCTURE STRIKES BACK:
A PIECE OF INDUSTRIAL ACTIVISM IN THE INFORMATION AGE

An examination of the question of power
through analysing the Digital Britain Report's vision
of the future of the cultural industries
and its implications for the development of the Internet

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This dissertation is submitted in partial fulfillment
of the requirements for the
MA in GLOBAL MEDIA & POST-NATIONAL COMMUNICATION
of the School of Oriental and African Studies (University of London)
15th September 2009
Word Count: 10,237

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TABLE OF CONTENTS

ABSTRACT

This dissertation considers the question of power in society by looking at the relation between a potential "multitude" of users/creators of the Internet and its content through their immanent labour, and the government, legislating to control the uses of the internet and support the established capitalist economy in a time of economic crisis. Looking at the Digital Britain Report for the creative industries as an exercise in power from the government in an attempt to limit the uses of emerging and popular technologies, and promote the expansion of the market into the Web, this dissertation questions the government's vision of the future of the creative industries and the implications of an intensive commercialisation of the Internet.

ACKNOWLEDGEMENTS

I would like to thank Matti Pohjonen for his unfailing dedication, support and enthusiasm throughout the duration of this course, and without whose advice I could not have completed this assignment. John Cloke for lending himself to be interviewed so easily and, formally and informally, in so many occasions. Tom Nicholls and Sheyma Bualy for being always there for me and my boyfriend, friends and flatmates for putting up with my madness during the process.

INTRODUCTION

> 'Societies change through conflict and are managed by politics. Since the Internet is becoming an essential medium of communication and organisation in all realms of activity, it is obvious that social movements and the political process use, and will increasingly use, the Internet as well, making it a privileged tool for acting, informing, recruiting, organising, dominating and counter-dominating.' (Castells 2001:137)

Since its inception in the late 60s, the Internet has weaved its way into the everyday lives of increasing numbers of people across the world modifying social relations, working practices, modes of production, and power relations. The networked structure of the Internet favours working methods of collaboration and sharing, whilst technically, all actions carried out on the Net involve digital copying. The combined work of large numbers of people following different areas of interest, collaborating, adding, copying, transforming and sharing information on the Internet is arguably accelerating the pace of history as well as annihilating geographical distances. Held & McGrew use the term "time-space compression" to refer 'to the way in which instantaneous electronic communication erodes the constraints of distance and time on social organisation and interaction' (Held & McGrew 2002:3) For Terranova these changes constitute a 'creative destruction, that is, a productive movement that releases (rather than simply inhibits) social potentials for transformation.' (Terranova 2004:2-3)

Born out of an 'intersection of big science, military research, and libertarian culture […] it inspired a communications architecture based on the three principles on which the Internet still operates today: a decentralised network structure; distributed computing power throughout the nodes of the network; and redundancy of functions in the network to minimise the risk of disconnection. These features embodied the key answer to military needs for survivability of the system: flexibility, absence of a command centre, and maximum autonomy of each node. ' (Castells 2001:17) It is due to these principles that it also embodies great potentialities for development through cooperation and distributed power systems as well as being a powerful site of resistance. It is also the reason why, over time, various actors have tried, and continue to try, to appropriate this infrastructure for their own purposes.

An abundance of informational output and an acceleration of informational dynamics in our network culture privileges 'processes over structure and nonlinear processes over linear ones' (Terranova 2004:1) requiring new approaches to cultural production, distribution and receipt. Enabled by the structure of the Internet, and using existing technologies such as Peer-to-Peer[1] (P2P), filesharing networks have emerged globally that enable the sharing of digital content. Undiscerning between copyrighted and uncopyrighted material, copyrighted content such as music, films, computer programmes, games etc. is also shared. In doing so, those using these networks are operating outside the formal capitalist economy and implementing transgressive/alternative hegemonic formations.

The creative industries have realised that digital copying interferes with the old model of business based on material property. However, they still want to fulfil their aims as businesses of maximising profit out of their products. The potentiality of "immanent labour" and the "gift economy" to result in "spontaneous communism" as Hardt & Negri (2000:294) propose or even "anarcho-communism" as suggested by Barbrook (2007), that the Internet contains represents a real threat to existing capitalist modes of production and value creation, and thus, the creative industries in their current form.

For corporations it is therefore imperative to subordinate transgressive movements under neo-liberal business rhetoric and supportive legislation to make the corporate economy more profitable. They, however, depend on governments to create the necessary legislative framework and rely on lobbying to influence governments. With this in mind, and in the midst of a well-publicised financial crisis worldwide, on the 3rd of December 2008, Lord Mandelson, Secretary of State for Business, Innovation & Skills in the UK, called for "Industrial Activism" 'to revitalize Britain after the recession'. (Stratton 2008, 03/12/)

Governments, on their part, favour the control of the Internet as a way of regaining some of the national sovereignty lost for them on the Net. Traditionally, according to Foucault, governments have relied on what he termed "bio-power", or 'the increasing ordering in all realms under the guise of improving the welfare of the individual and

[1] "Peer to peer is the relational dynamic at work in distributed networks. Peer to peer is there not restricted to technology or P2P filesharing as such, but covers every social process with a peer to peer dynamic, whether these peers are humans or computers.' (P2P Foundation found in http://p2pfoundation.net/P2P accessed on 14/09/2009)

the population […] whose only end is the increase of power and order itself.' (Dreyfus & Rabinow, 1983:xxvi)

At a time of supposed economic crisis/uncertainty, the UK government is choosing to respond to industry demands to enforce "industrial activism" on the one hand and come down hard on transgressors on the other. Towards this end, the Digital Britain Report was delivered on the 16th of June 2009, containing 'the Government's strategic vision for ensuring that the UK is at the leading edge of the global digital economy. It is an example of industrial activism in a crucial growth sector.' (Department for Culture, Media and Sport 2009, 16/06/09) The implications of this report as embodied in the aims and proposals contained within it are many as it contains an explicit and forceful stance to expand the commercialisation of the Internet as well as enforcing techniques of surveillance and control to limit certain uses. In doing so, many of the envisaged potentialities of our information society risk being lost to an insatiable appetite for economic gain.

METHODOLOGY

> 'another way to go further towards a new economy of power relations […] It consists of taking the forms of resistance against different forms of power as a starting point.' (Foucault 1983: 211)

To determine the current state of power relations in regards to cultural production in the UK, this dissertation will first consider reasons behind the Internet constituting a successful tool of resistance to established structures over the years. The medium of the Internet will be explored providing some historical background on its origins, milestones in its development, actors involved in its creation and the culture within which it evolved. Following, a closer look at networks as organisational forms increasingly dominant in all areas of society will be provided.

Theories around the question of labour and value in the information society as well as the influence of gift economy in the digital economy of the Net, will then be explored before moving on to discuss problem areas in the concepts of intellectual property, copyright, the commons and technologies of control in the context of the Internet and considering what kind of information society paths are being laid down for us to follow.

Finally, this dissertation will analyse chapter 4 of the Digital Britain Report: 'Creative Industries in the Digital World' as a way to examine some of the emergent politics in the arena of cultural production, distribution and consumption. Looking at various aspects of the report, this dissertation aims to gain a perspective into the UK government's vision and proposals for the future of the creative industries and their understanding of the place of the Internet in society.

With that, conclusions will be drawn as to the meaning and implications of the proposals contained within the report for the future of the cultural industries and the Internet as a whole within a framework of power.

CHAPTER 1
A BRIEF HISTORY OF THE INTERNET

According to Castells, '… the Internet was purposely designed as a technology of free communication' (2001:5). Originally intended to 'optimise the use of expensive computer resources by on-line timesharing between computer centres' (2001:18), the technical characteristics of the Internet frame the many potentialities for its uses in human development. As Castells points out, the Internet is a malleable technology 'susceptible of being deeply modified by its social practice, and leading to a whole range of potential social outcomes' (2001:5)

The original Internet, ARPANET[2], was envisioned, designed and managed by a group of scientists who, Castells argues, dreamt of changing the world through computer communication. (2001:19) The team who designed ARPANET was made up mainly of students who, feeling insecure about what they were doing, created a format with "request for comment" (RFC) memos to communicate their work in progress. This open format 'provided the style, and the name, for informal technical communication in the Internet world up to our day. The openness of this format was – and continues to be – essential for the development of the Internet's infrastructure protocols.' (Castells 2001:24-25) Although not rebels, they shared ideas of their time 'of independent thinking, and of sharing and cooperation with their peers, all values that characterised the campus culture of the 1960s. […] This student culture took up computer networking as a tool of free communication, and in the case of its most political manifestations (Nelson, Jennings, Stallman), as a tool of liberation, which, together with the PC[3], would provide people with the power of information to free themselves both from governments and corporations. ' (Castells 2001:24-25)

Following on the same principles of collaboration, sharing and free communication, UNIX[4] was developed and released to universities as "open source"[5] in 1974. (Castells 2001:13) Being flexible and adaptable, as well as open to alteration, modification and distribution have been central to its development and widespread applications over

[2] A computer network set up by the Advanced Research Projects Agency (ARPA) in September 1969. (Castells 2001:13)
[3] Personal Computer
[4] An operating system developed at Bell laboratories. (Castells 2001:13)
[5] 'A model of software development in which the underlying code of a programme […] is by definition made freely available to the general public for modification, alteration, and endless redistribution.' (Leonard in Terranova 2004:92)

the last forty years. Ward reminds us on the fortieth anniversary of its inception:

> 'Most of the net runs on Unix-based servers and the Unix philosophy heavily influenced the open source software movements and the creation of the Linux desktop OS[6]. Windows runs the communication stack created for Unix. Apple's OS X is broadly based on Unix and it is possible to dig into that software and find text remarkably similar to that first written by Dennis Ritchie in 1971.' (Ward 2009)

In 1984 ATT[7] decided to claim proprietary rights to UNIX and Richard Stallman[8] reacted by launching the Free Software Foundation, which proposed to substitute copyright for "copyleft"[9] in an attempt to preserve the original spirit of sharing and collaborating against the creation of knowledge enclosures protected by copyright law. Stallman went on to create the GNU[10] operating system licensed to be used as long as it was improved and distributed, and in 1991 Linus Torvalds, a 22-year-old student at the University of Helsinki, developed Linux and released it on the Net asking users for improvements. 'The result of this initiative was the development of a robust Linux operating system, constantly upgraded by the work of thousands of hackers and millions of users, to the point that Linux is now widely considered one of the most advanced operating systems in the world, particularly for Internet-based computing.' (Castells 2001:14) This same ideology still drives the "open source movement"[11]. Castells is of the opinion that 'the fast diffusion of computer communication protocols would not have happened without the open, free distribution of software and the cooperative use of resources that became the code of conduct of the early hackers.' (2001:24)

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[6] Operating System
[7] Provider of infrastructure for telephone and Internet communications
[8] 'Programmer at MIT's Artificial Intelligence Laboratory.' (Castells 2001:14) 'Software developer and software freedom activist' (Stallman found in http://stallman.org/#serious accessed 13/09/2009)
[9] 'By "copyleft" it is understood that anyone using software that had been made freely available should, in return, distribute over the Net the improved code.' (Castells 2001:14)
[10] The GNU Project was launched in 1984 to develop a complete Unix-like operating system which is free software: the GNU system. (GNU found in http://www.gnu.org/ accessed 25/08/2009)
[11] 'The open-source movement is a variation of the old tradition of shareware and freeware software, which substantially contributed to the technical development of the Internet. Freeware software is freely distributed and does not even request a payment from its users. Shareware software is distributed freely, but incurs a "moral" obligation for the user to forward a small sum to the producer in order to sustain the shareware movement as an alternative economic model to the copyrighted software of giants such as Microsoft.' (Terranova 2004:92)

At this point the Internet was still mostly the domain of scientists and academics. Two key inventions can be seen as responsible for popularising the use of the Internet, taking it out of the limited realm of technological "experts" and into mainstream, daily use. One was a 'software that made it possible to retrieve and contribute information from and to any computer connected via the Internet: HTTP, HTML, and URI (later called URL).' (Castells 2001:15), and the other was a browser/editor programme created in 1990 by Tim Berners-Lee, and released into the Net in 1991 called the World Wide Web (www). (Castells 2001:15) Various service providers then set up commercial gateways and 'the Internet grew rapidly as a global network of computer networks. ' (Castells 2001:12) However, for the majority of people, business and society 'the Internet was born in 1995.' (Castells 2001:16-17)

The World Wide Web facilitated the popularisation of the use of the Internet and with that came about a pivotal change in the influence the Internet was to have in society. 'Created as a medium for freedom, in the first years of its worldwide existence the Internet seemed to foreshadow a new age of liberty.' (Castells 2001:168) Based on principles of sharing and the use of networks, people started creating their own content and sharing their findings. An explosion of information and uses started (and continue to) shape the Internet.

Institutionally, an important factor towards the maintenance of openness in the Internet was the fact that, having been developed in the United States, it fell under the constitutional protection of free speech. (Castells 2001:169) However, with the Internet becoming a global phenomenon came questions of the legitimacy of it being under the control of the US government, especially from European governments. The NSF[12] planned its privatisation and in 1992 the Internet Society[13] was born to oversee the IAB[14] and IETF[15]. (Castells 2001:30) In 1998, one month before his death, Jon Postel[16] offered the US government his design for a private institution to oversee the

[12] "National Science Foundation" (Castells 2001:12)
[13] 'A nonprofit organisation founded in 1992 to provide leadership in Internet related standards, education, and policy. […] It is dedicated to ensuring the open development, evolution and use of the Internet for the benefit of people throughout the world.' (ISOC found in http://www.isoc.org/isoc/ accessed 25/08/2009)
[14] "Internet Architecture Board". They oversee Internet addressing, traffic, network management and services identifiers and filtering amongst others. They work in conjunction with the IETF. (IAB found in http://www.iab.org/about/description.html accessed 25/08/2009)
[15] "Internet Engineering Task Force". 'The mission of the IETF is make the Internet work better by producing high quality, relevant technical documents that influence the way people design, use, and manage the Internet.' (IETF found in http://www.ietf.org/ accessed 25/08/2009)
[16] 'One of the original designers of the Internet' (Castells 2001:31)

Internet: ICANN[17], embodying 'the spirit of openness of the Internet community: decentralisation, consensus building, and autonomy that characterised the *ad hoc* governance of the Internet over thirty years, while adding a global orientation to its membership.' (Castells 2001:31)

> 'From these diverse contributions emerged an Internet whose most distinctive feature was its openness, both in its technical architecture and in its social/institutional organisation.' (Castells 2001:26)

[17] Internet Corporation for Assigned Names and Numbers

CHAPTER 2
A NEW STRUCTURE FOR SOCIETY IN THE INFORMATION AGE: THE NETWORK

Castells sees the Internet as more than a technology. Rather, he sees it as 'the material infrastructure of a given organisational form: the network (as the factory was).' (2001:140) Networks are not only inherent to the structure of the Internet but also to the "information age". Drawing parallels with the way new energy generation and distribution technologies made possible the factory and large corporations as the organisational basis of the industrial society, Castells claims the Internet forms the foundation of the organisational form of our Information age, what he calls the "network". (2001:1)

Originally the preserve of private life, with the spread of computer-based information and the Internet as communication technology, networks have evolved to incorporate coordination of tasks and manage complexity. This has resulted in an 'unprecedented combination of flexibility and task performance, of coordinated decision-making and decentralised execution, of individualised expression and global, horizontal communication, which provide a superior organisational form for human action.' (Castells 2001:2) Characterised by flexibility and adaptability, networks are also the organisational tools of choice in fast-changing environments. In Castell's view, networks have proliferated in all areas of the economy and society 'outcompeting and outperforming vertically organised corporations and centralised bureaucracies.' (2001:1)

Others, like De Landa and Negri, have put forward similar ontological models of society. Based on an original concept by Deleuze, De Landa developed his "Neo-Assemblage Theory", where 'unlike organic totalities, the parts of an assemblage do not form a seamless whole' (2006:4). Emphasis being in the relation between parts rather than the parts itself. On his part, and drawing on Spinoza's concept of "Multitudo", a plurality that exists as such, in collective action, in acting on communal affairs without merging into one, Negri coined the term "Multitude" to refer to a 'form of social and political existence for the many, seen as being many'. (Virno 2004:21) and constituting a subjective configuration of our potentialities. (Lotringer in Virno 2004:7)

Not limited to particular enclosures, Terranova points at 'a tendency of informational flows to spill over from whatever network they are circulating in and hence to escape the narrowness of the

channel and to open up to a larger milieu.' (2004:2) She uses the term "outernet" to refer to 'the network of social, cultural and economic relationships which criss-crosses and exceeds the Internet – surrounds and connects the latter to larger flows of labour, culture and power.' (Terranova 2004:75) The open architecture of the Internet, together with the ease of use, low cost and open and available software, resulted in users becoming producers and shapers of the network. (Castells 2001:27) Thus, 'a new social form, the network society, is being constituted around the planet. […] As with previous instances of structural change, this transformation offers as many opportunities as it raises challenges. Its future outcome is largely undetermined, and it is subjected to the contradictory dynamics between our dark side and our sources of hope.' (Castells 2001:275)

CHAPTER 3
THE QUESTION OF LABOUR IN THE INFORMATION SOCIETY

In the intersection between the information industry and the post-modern cultural economy, the digital economy, according to Terranova, poses a challenge to the question of labour, both theoretically and practically. (2004:75-76) With the Internet having established itself as a pivotal tool of organisation for businesses as well as society at large, Negri and other Italian Autonomists coined the term the "social factory" (or "society-factory") to describe how 'work processes have shifted from the factory to society, thereby setting in motion a truly complex machine.' (Negri in Terranova 2004:74). The result is an economy largely reliant on types of labour other than traditional wage labour. Castells explains how users become key producers of technology 'by adapting it to their uses and values, and ultimately transforming the technology itself' (2001:28). Furthermore, he adds: 'in the present stage of global diffusion of the Internet, it makes no sense to differentiate between the producers/users[18] and the consumers/users[19] of the Internet.' (Castells 2001:36)

To thrive nowadays, most media as well as the Internet, rely on great amounts of what Terranova calls "free labour". Contextualised within the West, she explains how the end of the factory produced 'generations of workers who have been repeatedly addressed as active consumers of meaningful commodities' resulting in a 'moment where this knowledgeable consumption of culture is translated into excess productive activities that are pleasurably embraced and at the same time often shamelessly exploited.' (Terranova 2004:78) What she terms "free labour". In the media industry, traditional understandings of employment apply less and less to an economy so reliant on 'free affective and cultural labour'. (Terranova 2004:88) At the same time, traditional understandings of passive consumers are becoming outdated as more and more people become familiar with the ease of producing and distributing on the Internet, blurring the producer/consumer divide. According to Terranova, both old and new media have relied on their public as productive subjects, a phenomenon that took new dimensions in the last decade since the widespread of reality TV formats. The difference between them, however, lies in 'the mode of production and in the ways in which

[18] 'Those whose practice of the Internet feeds directly back into the technological system.' (Castells 2001:36)
[19] 'Those recipients of applications and systems who do not interact directly with the development of the Internet, although their uses certainly have an aggregate effect on the evolution of the system.' (Castells 2001:36)

power/knowledge works in the two types.' (Terranova 2004:88-89) The problem lies in that 'the acknowledgement of the collective aspect of labour implies a rejection of the equivalence between labour and employment.' (Terranova 2004:88) Hardt and Negri defend that immaterial labor defines the existence of the multitude. (Hardt & Negri 2001:240)

Free labour constitutes a fundamental moment in value creation within the economy, further than the limits of the digital economy of the Internet. Terranova argues that free labour forms such an important part of the digital economy due to conditions based on an 'experimental compromise between the historically rooted cultural and affective desire for creative production […] and the current capitalist emphasis on knowledge as the main source of added value.' (2004:77) In our late capitalist society, the production of value 'is increasingly involving the capture of productive elements and social wealth that are outside the direct productive process…' (Negri in Terranova 2004:75).

According to Lotringer, in our post-Fordist economy 'abstract intelligence and immaterial signs have become the major productive force' causing deep changes in structures and ideas. (Lotringer in Virno 2004:7) Lazzarato, very much influenced by Marxist thought[20], uses the term "immaterial labour" to refer to two aspects of labour. One deals with the "informational content" of the commodity and how this is produced and the other refers to the production of the "cultural content" of the commodity. He argues that immaterial labour 'involves a series of activities that are not normally recognised as "work" – in other words, the kinds of activities involved in defining and fixing cultural and artistic standards, fashions, tastes, consumer norms, and, more strategically, public opinion." (Lazaratto in Terranova 2004:82)

Thus, in a knowledge economy based around computer networks, human intelligence becomes a creator of value. (Terranova 2004:85) In the digital economy, continuous creation and innovation forms the basis of market value. (Terranova 2004:90) 'Capitalists buy the *capacity* for producing as such […] and not simply one or more specific services. After the sale has occurred, capitalists can use as

[20] Marx offered a silmilar distinction within two types of intellectual labour. One is the 'immaterial or mental activity which "results in commodities which exist separately from the producer […] books, paintings and all products of art as distinct from the artistic achievement of the practicing artist" (in Appendix o Capital, Vol. I, "Results of the Immediate Process of Production": 1048).' (Marx cited in Virno 2004:53) The other is made up of 'all those activities in which the "product is not separable from the act of producing" (ibid. 1048) – those activities, that is, which find in themselves their own fulfilment without being objectivised into an end product which might surpass them.' (Marx cited in Virno 2004:53)

they please the commodity which has been acquired.' (Virno 2004:82) If we are to see knowledge labour as inherently collective, 'capital's problem is how to extract as much value as possible (in the autonomist's jargon, to "valorise")[21] out of this abundant, and yet slightly untractable terrain.' (Terranova 2004:88) It can be considered problematic if knowledge (seen as inherently collective in a post-modern cultural economy) is selectively compensated by established corporations through commodification[22], in spite of it being made possible by 'a form of collective cultural labour' (Terranova 2004:83-84)

P2P networks actively propose a change in both labour processes (promoting collaborative, shared, and open labour) and production drives. In a conference in Manchester this year, Stefan Merten[23] described what he called "Selbslentfaltung", a term that merges ideas of work with enjoyment, as a way to describe reasons for people to work unremunerated within a traditional wage system. Some of the advantages mentioned were the lack of vertical hierarchies, substituted by horizontal cooperation and collaboration and the absence of market determinants in the process. The result, in his view, is a mode of production where the imperative becomes the quality of the finished product ("your baby") instead profit-making drives. (Merten 2009, 27/03/09) P2P workers are not discouraged to work by the lack of financial remuneration. Instead, their imperatives are based on aspects of a techno-meritocratic culture rewarded by prestige, pride and peer appreciation. (Castells 2001:39-40)

THE GIFT ECONOMY OF THE WEB

In the late 50s 'Workerists[24] pressed for the reduction of labour time and the transformation of production through the application of technical knowledge and socialised intelligence.' (Lotringer in Virno 2004:7) Along similar lines, Barbrook criticises 'the vision of politicians and corporate leaders who linked the future of capitalism to the informational commodity involved a basic misunderstanding.' Instead, he suggests the application of an existing 'predominance of relationships of collaboration across distance and exchange without

[21] In the jargon of the Digital Britain Report to "monetise"
[22] 'The reimposition of a regime of property' (Terranova 2004:77)
[23] 'Stefan Merten founded Project Oekonux in 1999. […] He works in the software business.' (found in http://www.oekonux-conference.org/program/speakers/2.en.html accesses 15/03/2009)
[24] *Operaistas* in the original Italian

money' on the Internet as a 'viable and alternative political and economic model.' (Terranova 2004:76)

> '… the Internet, an obscure technology without much application beyond the secluded worlds of computer scientists, hackers, and countercultural communities, became the lever for the transition to a new form of society – the network society – and with it to a new economy.' (Castells 2001:2)

Richard Barbrook defines the digital economy as characterised by the combined emergence of computer networks as new technologies and the digital artisan as the new type of worker. He defined it as a mixed economy, including a public element coming from the government's funding of the research that led to ARPANET, and academic support that influenced the culture of the Internet; a market-driven element which arrived later and tries to introduce commodification as a way of appropriating the digital economy; and a "gift economy", which he defines as 'the true expression of the cutting edge of capitalist production which prepares its eventual overcoming into a future "anarcho communism").' (Terranova 2004:76) He draws on tribal exchange paradigms:

> 'For example, tribes in Polynesia organised themselves around the potlatch: the circulation of gifts. Within these societies, this gift economy bound people together into tribes and encouraged cooperation between different tribes. […] According to the Situationists[25], the tribal gift economy demonstrated that individuals could successfully live together without needing either the state or the market.' (Barbrook 2007, 11/08/09)

And defines the "gift economy" as an economy based on "collective intelligence", where knowledge workers have open organisational structures in order to generate knowledge through collaboration. (Terranova 2004:78) Levy defines "collective intelligence" as a 'form of universally distributed intelligence, constantly enhanced, coordinated in real time, and resulting in the effective mobilisation of skills… The basis and goal of collective intelligence is the mutual recognition and enrichment of individuals

[25] Situationism is 'the theory that behaviour is chiefly response to immediate situations.' (Dictionary.com found in http://dictionary.reference.com/browse/situationist accessed 26/08/2009)

rather than the cult of fetishised or hypostatised communities.' (Levy in Terranova 2004:85)

P2P networks operate under this economic model, as described by Terranova:

> '… they give and receive information without thought of payment. In the absence of states or markets to mediate social bonds, network communities are instead formed through the mutual obligations created by gifts of time and ideas.' (Terranova 2004:77)

Barbrook's high-tech gift economy went beyond do-it-yourself cultures and free market ideas, to a situation where 'money-commodity and gift relations are not just in conflict with each other, but also co-exist in symbiosis.' (Terranova 2004:77) In a mixed digital economy, participants can use market and government resources to pursue an economy of free exchange. However, the market economy continues to threaten to privatise common enclaves through commodification. In Barbrook's view, the Internet is inherently anarcho-communist and thus poses a threat to capitalists. (Terranova 2004:77) However, if we are to see the gift economy as part of a larger informational economy, it becomes 'an important force within the reproduction of the labour force in late capitalism as a whole.' (Terranova 2004:77)

Various theories include the idea of gift giving, for Mauss a 'phenomenon of social structure, involving economical, juridical, moral, religious, mythological and aesthetical properties.' (Mauss cited in Giesler 2006:23) Sherry speaks of the "gift exchange paradigm", whereby gift giving forms 'a continuous cycle of reciprocities' conceptualising the gift exchange process as 'a dialectical chain of gift and token gift transactions.' (Giesler 2006:23) Filesharing imposes a challenge, however, as gift giving and exchange paradigms assume a social relationship between donor and recipient. (Giesler 2006:25) Thus the notion of "cybernetic gift giving" comes into play in cybernetic gift economies like those enabled by The Pirate Bay[26] and others which attract millions of users worldwide to download free films, music, software, etc… Cybernetic gift giving through filesharing networks is a concept widely explored by Giesler. He defines it as 'a postmodern consumption practice born between the dramatic

[26] 'The Pirate Bay claims to have 20 million registered users, making it one of the world's biggest peer-to-peer file-sharing networks' (BBC MUSIC 06/08/09 found in http://www.bbc.co.uk/6music/news/20090806_piratebay.shtml accessed 06/08/09)

technological networking of society (Castells 1996) and consumer's emancipatory desire to share information beyond the conventional market sphere.' (Giesler 2006:22)

CHAPTER 4
INTELLECTUAL PROPERTY, COPYRIGHT, THE COMMONS & TECHNOLOGIES OF CONTROL?

The question of how money and rewards relate to the acquisition of knowledge has been debated from the Greek foundation of philosophy. Then it was argued between the Sophists and Socrates, should we have a free or commodified education? (Hrachovec 2009, 22/03/09) We are now living a time when culture is increasingly owned and its uses controlled. (Lessig 2004:12) Intellectual property is moving from being an instrument subservient to creativity, to be the object to protect itself. (Lessig 2004:19) The debate over intellectual property is not about the right to the fruit's of one's labour or the incentive to innovate, create or improve, but rather, about preserving the status quo.

From a semantic point of view, "intellectual property" presents a problem as it encourages thinking about privileges to products of our imagination and creativity as an absolute right. People, thus, treat them as property, creating fixed business structures around them which they try to perpetuate and forget to give back to the commons. (Phipps 2009, 23/04/09) Arguably, the issue of property itself is questionable. The general line of argument of needing property as incentive to invest effort to improve is flawed because whilst it can do that in certain cases, it is at the expense of excluding others from that property, be that land or a piece of music. It is a system of exclusion, not inclusion. (Volokh cited in Boldrin & Levine 2008, 21/04/09) When it comes to ideas, products of the mind, some argue for a "if value, then right" theory of creative property—if there is value, then someone must have a right to that value.' (Lessig 2004:18) Boldrin & Levine, using the example of the law of gravity as an abstract idea, point out the fact that ideas in the abstract have no value if not implemented. (Boldrin & Levine 2008, 21/04/09)

Manandhar (2007, 20/04/09) identifies a number of areas of negative influence of intellectual property law in markets and societies: firstly, they create monopolies. Levine agrees, describing the most significant feature of intellectual property law as an agreement not to sell copies of an idea in competition with the person who sold you the idea. Outside the area of intellectual property, this is a violation of the anti-trust law and anti-competitive. No court would enforce such a contract. (Boldrin & Levine 2008, 21/04/09) Furthermore, he argues, intellectual property law is about my right to control your copy of your idea, something that doesn't happen with any other type of property.

Once you pay for it, you do what you want with it. It's yours. (Boldrin & Levine 2008, 21/04/09) Secondly, they create unfair competition. It is not an uncommon business practice for companies to take out patents or buy someone else's as a way to stop them using the idea. Arguably the case of the EV1 Electric Car, produced from 1996 to 1999 by GM according to Chris Paine's documentary 'Who Killed the Electric Car?'. Thirdly, governments privatise publicly funded information such as statistics, laws and reports. In Britain, the government even copyrights legislation and in the US they sell this information to private corporations, instead of providing it freely to the public. (i.e. those who fund it through taxes). Fourthly, patents extend also to nature. Not only was land privatised in the past, as was the case in the USA, but now genetic sequences can be patented too, as long as some artificial means are involved in isolating them. Fifthly, it is a way for rich countries to further exploit poor ones by limiting their use of ideas due to their lack of funds. Sixthly, they make the rich richer. (Manandhar 2007, 20/04/09) Theoretically, intellectual property is supposed to be an incentive for creativity, however, independent creators are often ignored or exploited. Governments or corporations who buy the idea from the inventor mostly hold copyrights.

COPYRIGHT LAW

From a legal perspective, intellectual property covers copyright, patents, trademarks, industrial design rights and trade secrets, with copyright law being the most controversial nowadays. Arguably, they are government granted monopolies. Phipps explains the nature of copyright as 'temporary privileges granted to creative people to encourage them to make their work openly available to society. The "social contract" behind them is "we'll grant you a temporary monopoly on your work so you can profit from it; in return you'll turn it over to the commons at the end of a reasonable period so our know-how and culture can grow."' (Phipps 2009, 23/04/09) One problem arises when the law controls, not just the creativity of commercial agents, but also that of everyone. Not only a particular commercial implementation of an idea, but any use, involving 'insanely complex and vague rules and with the threat of obscenely severe penalties.' (Lessig 2004:19)

The British Parliament adopted the first copyright law in 1710. It was named the Statute of Anne and it stated that all published works would get a copyright term of fourteen years renewable once if the author was alive, with works already published by 1710 getting a single term of twenty-one years. (Lessig 2004:86) It was aimed at

book publishers, forbidding others from reprinting a book. The "copy-right" was a right to use a particular machine to replicate a particular work, not affecting the uses made of a work. (Lessig 2004:87) Some copyrighted their creations, some didn't. Most didn't bother renewing. This meant that for fourteeen or twenty-eight years, authors or copyright holders of a creative work had an "exclusive right" to control some uses of the work. At the end of a copyright term, the work passed into the public domain. Some, like Disney, used and built upon many of this works back in the 1920s to become the innovators of today. It was allowed, free and easy. (Lessig 2004:24) Furthermore, there was a requirement that works be deposited with the government before a copyright could be secured (Lessig 2004:137), thus guaranteeing a copy of every creation ending up in the public domain.

Over the years, there has been a tendency to increase the duration and scope of copyright. Indeed, this April, the European Union voted to approve a new extension to copyright terms for performers and record producers from 50 to 70 years (Europa 2009, 23/04/09). Nowadays in the UK, as described by Cloke, solicitor in the Intellectual Property and Technology Group, "copyright" is 'a collection (we often say "bundle") of rights which the law gives to creators (usually called "authors", even if they are an artist, musician etc) in relation to their "works". Works includes literary works (including books, scripts), musical works, artistic works but also things like films (a separate copyright exists in the film, as well as in the script) and sound recordings (as well as the "underlying" musical work, the composition).' 'The "bundle of rights" consist of the exclusive right for the author to do (or authorise others to do) certain things - copy, perform in public, communicate to the public etc.' 'The exclusive right means that the author is able to prevent other people who have not been authorised from doing those specific things (e.g. copy). The rights are automatically given to the creator when they create the work […]. (Cloke 2009)

The Green Paper, which focuses on exceptions to copyright, supposedly with the aim of disseminating knowledge and promoting innovation and creativity, lays out some exceptions to copyright for the benefit of libraries and archives, teaching and research, people with a disability and user-created content. (Green Paper 2008:6, 27/12/08) These, however, are very specific, difficult to apply and vary from country to country. The Gower's Review[27] recommended that an

[27] 'The 2006 Gowers Review of Intellectual Property 19 was a fundamental review of how the system was working in the digital age. Gowers's frame of reference took the existing international copyright framework at EU and world level as the backdrop, and concentrated on

exception be made for "creative, transformative or derivative works" as it is currently not part of the Directive. 'The objective of allowing such an exception would be to favour innovative uses of works and to stimulate the production of added value. (Green Paper 2008:19, 27/12/08)

THE PUBLIC DOMAIN

The public domain was born after 1774, with the advent of the first expiring of the legal control over creative works. Some of the greatest works in English history, like those of Shakespeare, became free of legal restraint by a small group of publishers. (Lessig 2004:93) This did not last, however two centuries later, having arrived at a time in late capitalism, where intellectual property and the expression of the "general intellect" became profit-making instruments. Copyright terms grew, so that only one copyright term came into existence (the maximum) and from 1992 the requirement for renewal was eliminated for works created before 1978. What this means is that there is no automatic way to assure that works pass into the public domain, be they exploited or not. (Lessig 2004:135)
However legally, Cloke argues, people can choose to put their works into the public domain by either not enforcing their copyright or by publishing their works under a Creative Commons[28] licence, which can be tailored to allow certain uses. (Cloke 2009) The first of these suggestions carries its own problems, as there is no security of non-enforcement until the work has been used, and indeed, the copyright holder can always change his or her mind.

ALTERNATIVES TO "ALL RIGHTS RESERVED" COPYRIGHT

Although, problematically, current copyright automatically applies to any cultural work produced, some options have emerged out of the "copyleft" movement that offer an alternative to "all rights reserved" copyright in an attempt to support the creation of a richer public domain. Lawrence Lessig set up the Creative Commons licenses to

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what could be done within the UK. […] The Gowers Review concluded that while the system was broadly fit for purpose, there were areas for improvement. Since then the Government has been working on implementing the Gowers recommendations (with more than half now completed).' (Digital Britain Report 2009:114)

[28] Creative Commons is a non-profit corporation dedicated to making it easier for people to share and build upon the work of others, consistent with the rules of copyright. They provide free licenses and other legal tools to mark creative work with the freedom the creator wants it to carry, so others can share, remix, use commercially, or any combination thereof.

offer flexible alternatives to protect the commercial exploitation of your creation, whilst freeing it to be altered, modified and used for non-commercial purposes. These licences provide a standard form 'so that those who want to allow people to use if for non-profit making purposes are able to do so, whilst still being able to make money if a commercial user wants to make money using it.' (Cloke 2009) Cloke stresses, however, that 'copyright owners have always been able to make available content for free or put certain restrictions on it' (2009) only that before Creative Commons licenses, it was difficult to both know about this and actually implementing it.

INTELLECTUAL PROPERTY IN THE NET

> 'The story of the creation and development of the Internet […] lends support to the view that cooperation and freedom of information may be more conducive to innovation than competition and proprietary rights.' (Castells 2001:9)

The pioneers of the Net tried to facilitate the distribution of scientific research by creating an architecture that presupposes the multiple copying of documents is easily cached within the network. 'Technically, every act within cyberspace involves copying material from one computer to another. Once the first copy of a piece of information is placed on the Net, the cost of making each extra copy is almost zero.' (Barbrook 2007, 11/08/09) The inventor of the World Wide Web already pointed out the problematics of incorporating concepts of intellectual property into a system that bases its efficiency and reliability on making copies. As he put it: 'The concept of 'copyright' as expressed in terms of copies made makes little sense."' (Berners-Lee cited in Barbrook 2007, 11/08/09)

Advances in digital reproduction have always been feared in the entertainment industries for making "piracy"[29] easier. The design of the Net, however, welcomes technologies that make information easier to obtain and manipulate. According to Barbrook 'the design of the Net therefore assumes that intellectual property is technically and socially obsolete.' (2007, 11/08/09) Furthermore, 'on the Net, enforcing copyright payments represents the imposition of scarcity on a technical system designed to maximise the dissemination of information.' (2007, 11/08/09) He points out ways in which the interests of the culture industries working under a traditional mode of production clash with

[29] 'The unauthorized reproduction or use of a copyrighted book, recording, television program, patented invention, trademarked product, etc.' (Dictionary.com found in http://dictionary.reference.com/browse/piracy accessed 25/08/2009)

the potentialities for new modes of production, distribution and consumption offered by the Internet and based on collaboration.

> 'The protection of intellectual property stops all users having access to every source of knowledge. Commercial secrecy prevents people from helping each other to solve common problems. The inflexibility of information commodities inhibits the efficient manipulation of digital data. In contrast, the technical and social structure of the Net has been developed to encourage open cooperation among its participants. […] Lacking copyright protection, information can be freely adapted to suit the users' needs.' (Barbrook 2007, 11/08/09)

TECHNOLOGIES OF CONTROL

Built as open systems, networks interpret censorship as a technical failure, making it difficult to control. (Castells 2001:169) Moreover, the processes of surveillance and punishment on a large scale are burdensome and carry their own problems. However, The combined interests of businesses and governments have fuelled the rise of various technologies of control. Some involve using digital code such as DMR technologies to inhibit certain uses, others involve "alternative compensation systems", a way of imposing a fee on Internet connections or actual hardware involved in the potential for copying and sharing content such as CDs, DVDs, computers etc, as is the case in Spain, with the idea of channelling money to copyright holders.

Castells inks the transformation of liberty and privacy of the Internet to its commercialisation. He identifies a need of businesses to 'secure and identify communication on the Internet to make money out of it' (2001:170-171), which, in turn, leads to a need to protect copyrights and create software architectures to control computer communication. Historically, governments around the world have supported these technologies eagerly as it helps them claim back part of the power lost in the global environment of the Internet. (Castells 2001:170-171) Ironically, he says, it is the free enterprise, one of the 'key institutions in the defence of liberty', (2001:181) that has become the core of this surveillance system. Furthermore, without them, 'governments would not have the know-how, and, more fundamentally, the possibility of intervening on the Internet: it all depends on the capacity to act on Internet Service Providers (ISPs) and specific networks everywhere.' (Castells 2001:181)

Meanwhile, technologies of freedom carried out by hackers and crackers all over the world have kept a lid down on attempts to control and have 'revealed the powerlessness of traditional forms of policing, rooted in the powers of the state within its national boundaries.' (Castells 2001:177) As Doctorow points out, each take down by the entertainment industries forces filesharing services into harder to police structures and creates new martyrs who influence users ideologically into disliking these companies, 'turning them into people who actively dislike these companies and wish them ill (as opposed to opportunists who supplemented their legal acquisition of copyrighted materials with infringing downloads).' (2009, 17/04/09)

WHAT KIND OF INFORMATION SOCIETY?

Peter Drahos and John Braithwaite relate argue that we are currently making a choice as to what kind of information society we will delineate: free or feudal, the trend being toward the feudal. (Lessig 2004:267) Schiller called the neo-liberal shift in information industries "Digital Capitalism" pointing at the effect of the spread of a market logic in the information society backed up by political intervention in the creation of enclosures. (Schiller 1999 cited in Pickard 2006:6, 25/04/09) Nordenstreng agrees:

> 'Information and communication are much more than commodities or consumer goods, a concept promoted by the West. They are essential needs for person-in-community and communities-of-persons. […] (Nordenstreng, 1984, p. 35)' (Pickard 2006:8, 25/04/09)

CHAPTER 5
DIGITAL BRITAIN REPORT'S PROPOSALS FOR THE CREATIVE INDUSTRIES IN THE DIGITAL ECONOMY

Amidst the most publicized case against "pirates"[30] and with the background of global economic stability, on the 6th of June 2009, headed by Rt Hon Lord Mandelson[31], Rt Hon Ben Bradshaw MP[32], and Lord Carter CBE[33] under the leadership of the Prime Minister Gordon Brown, The Digital Britain Report (DBR) was delivered.

In can transpire throughout that it is the result of collaboration between government and industry, justified in the belief for a need to act on industry 'to revitalize Britain after the recession', (Lord Mandelson cited in Stratton 2008, 03/12/). And in the low-carbon and post-carbon technologies in particular, as seen to be the propellers of the "next industrial revolution". (Lord Mandelson cited in Stratton 2008, 03/12/)

Against this background,

> 'The report contains actions and recommendations […] to promote and protect talent and innovation in our creative industries, […] and it introduces policies to maximize the social and economic benefits from digital technologies.' (Department for Culture, Media and Sport 2009, 16/06/09)

Chapter 4: 'Creative Industries in the Digital World' states its ambition as being: 'to make the UK one of the world's main creative capitals' (DBR 2009:105)

The chapter starts with an (apologetic) post from a blog (a reminder of the importance of free labour in creating content) describing the unpredictability of revolutionary processes.

The first section deals with reinstating 'an explicit recognition of the economic importance of our creative industries' (DBR 2009:105) and expresses 'a commitment to the creative industries grounded in

[30] "The Pirate Bay" is taken to court on the 31st of January 2008 (BBC 31/01/2008 found in http://news.bbc.co.uk/1/hi/technology/7219802.stm accessed 10/04/09) and condemned to a year imprisonment and a fine on the 3rd of March (BBC 03/03/2009 found in http://news.bbc.co.uk/1/hi/technology/7921933.stm accessed 10/04/09)
[31] Secretary of State for Business, Innovation & Skills
[32] Secretary of State for Culture, Media & Sport
[33] Minister for Communications, Technology, and Broadcasting

the belief that they can be scaled and industrialised' (DBR 2009:105) It presents the creative industries as 'a significant source of employment and national wealth creation, as well as almost uniquely delivering cultural and social benefits', contributing 6.4% of GVA and growing 'by an average of 4% over the past decade compared to 3% for the economy as a whole.' (DBR 2009:106) It assures that 'this work to incorporate the creative industries into mainstream economic thinking has been studied and copied worldwide, and the Budget signaled a new phase of Industrial Activism' (DBR 2009:106)

The second section deals with the protection of 'due reward for creativity in the digital world.' (DBR 2009:109) Anticipating the increase in 'streamed, downloaded or searched-for content' (DBR 2009:109) enabled by its Universal Service Commitment[34], and drawing on examples of popular consumer-led television formats like X-Factor and Britain's Got Talent, it claims: 'some have the talent to create content; many others do not' (DBR 2009:109) and addresses the need to create 'workable mechanisms to ensure that content-creators are rewarded for their talent and endeavour' (DBR 2009:109). It looks at global investment confidence as the key to achieve this.

Within that frame, it acknowledges that 'a significant proportion of consumers are choosing to access digital content unlawfully, principally via unlawful peer-to-peer file sharing' (DBR 2009:109) and that the 'creative industries have indicated they suffer considerable losses[35] from unlawful peer-to-peer file-sharing'. (DBR 2009:109-109) According to the report: 'this is unacceptable.' (DBR 2009:110) Therefore, 'the Government considers online piracy to be […] effectively a civil form of theft. This is not something that we can condone, or to which we can fail to respond.' Their aim is to reduce illegal filesharing by 70-80% (DBR 2009:110)

Although acknowledging the fact that consumers "choose" to use P2P filesharing, the report chooses to take a stand against that behavioural pattern in order to perpetuate the current economic hegemony, moving in to support the creation of knowledge enclosures. Arguably, for fear of loosing control as, if left unlegislated, the Internet

[34] Broadband Universal Service Commitment: making changes to ensure that the UK has a first class digital infrastructure, in particular in relation to the Government's stated ambition for universally available broadband in the UK (DBR 2009:226)

[35] 'The BPI claim P2P file-sharing costs the UK music industry £180m pa (2008) while IPSOS gives a loss in the UK for TV and films of £152m (2007). Figures are not available for the losses from unlawful filesharing in other content industries such as publishing, business software or computer games but we do know that all are suffering significant losses.' (DBR 2009:109-110)

could become "ruled" by Barbrook's "anarcho-communism" or Negri's "spontaneous communism".

In defense of the legal steps to be taken against unlawful downloaders, the report says: 'this is not just about taking action against consumers. Most consumers, except the minority of the anarchic or those who believe in 'freedom to' without its counterbalancing 'freedom from', who believe in unsupported rights without countervailing duties, would prefer to behave lawfully if they can do so practically and with a sense of equity. […] Where there are easy, affordable and lawful routes consumers will take them.' (DBR 2009:110) An explicit desire to enforce control and order within the medium of the Internet is assumed in branding filesharers as anarchic. At the same time, persuading the general public of the legitimacy of their views, the term is equated to egotistic notions, badly viewed in society and diametrically opposed to sharing. Attempts at influencing public opinion in their favour with this debate being very highly publisised.

Thirdly, it aims to meet 'the interests of creators, aggregators, distributors and consumers' (DBR 2009:110) by creating 'workable and effective online download markets of scale.' (DBR 2009:110) Two main steps are proposed: 'persuasion and information for the lawfully inclined consumer and parent on how to access this content and straightforward advice on dos and don'ts, […] - and (my addition) - effective sanction against the small minority who believe that others should pay for their pleasure.' (DBR 2009:110) With commercially-led solutions being the government's preferred approach, the creative industries are required to provide information and 'attractive content packages'. (DBR 2009:110) In exchange, the government 'will legislate to provide an underpinning for these market models and to create an enforcement climate that will focus consumers on legal sources of content.' (DBR 2009:110)

Additionally, a number of legislative measures have been delineated. These are the most controversial with the government 'consulting on a proposal to legislate to give Ofcom a duty to take steps aimed at reducing copyright infringement.' (DBR 2009:111) To achieve that, 'Ofcom will require ISPs […] to notify account holders when informed in an agreed format that their account appears to have been used to infringe copyright and an obligation to maintain and make available (on the basis of a court order) data to enable the minority of serious repeat infringers to be identified. This will allow targeted court action against those responsible for the most damaging

breaches of copyright.' (DBR 2009:111)

> 'The Government believes that the notification process outlined here should have the effect of significantly reducing file sharing; but if it does not go far enough then further action will need to be taken.' (DBR 2009:111)

In the event of infringement volume not reducing to the set levels after a year, Ofcom will be given the power by Statutory Instrument, to decide on other conditions to impose on ISPs. These include blocking sites, protocols and ports, limiting bandwidth or capping data volume, shaping bandwidth to limit the speed of access to certain services and filtiering of content. (DBR 2009:113)

The report goes on to address other rights' issues. In terms of the modernization of "fair uses" to fit the digital world, the government acknowledges that 'further work remains to be done', but claims to be constrained by EU copyright framework. However, it concedes exemptions exist in distance learning and the preservation of archive material and will 'consult on those matters'. (DBR 2009:113) Driven by industry pressures, there is no mention of work being done towards the Gowers Review recommendation of creating an exemption for "creative, transformative, or derivative works" or the Green Paper's exceptions for libraries, archives, teaching and research, people with disabilities and user-created content or any strategy to secure the passing of works into the public domain.

In spite of the long-questioned inadequacy of existing copyright law to fit its originally intended purpose of promoting creativity and innovation along with safeguarding the receipt of economic reward to creators, the report opts for a postponement to reform, under claims that 'since the Gowers Review there have been changes in business models and business practice […] which show that where the system is failing to serve the needs of users, innovative business models will develop to fill the gap.' (DBR 2009:114)

The report estimates that around 40% of the British Library archive and around 1 million hours of BBC programmes are "orphan works[36]" and the numbers continue increasing. ' This represents an enormous cultural heritage to which the public cannot get access.' (DBR 2009:115) Furthermore, 'not only are creators losing a source of

[36] 'Orphan works are works that remain in copyright where, even after a diligent search, the owner cannot be identified or found. Anyone who uses orphan works on a commercial scale currently risks not only civil but also criminal liability.' (DBR 2009:115)

income, but important cultural assets remain under lock and key because of the legal difficulties associated with using these works.' (DBR 2009:116)

> 'In order to pave the way for a more effective framework to deal with orphan works, the Government proposes to introduce legislation to enable commercial schemes for dealing with orphan works to be set up on a regulated basis.' (DBR 2009:116)

Finally, it sets 'matched penalties for online and physical copyright infringement'. (DBR 2009:117) ' by amending section 107 of the Copyright, Designs and Patents Act 1988 (CDPA), backed up by custodial sentences.' (DBR 2009:117)

Considering the role of funding mechanisms based on rights, under industry's suggestions, the government considered implementing charges for reuse and micropayments for on demand content. (DBR 2009:118) Reuse charges have been declined for the time being as a possible solution to funding local digital content based on the fact that in the UK 'broadcasters already benefit from substantial public intervention of a kind not available in a range of other EU States […] While the Government recognizes that a reuse system has the potential to generate significant incremental revenues for UK content, it is not persuaded that in the current economic climate it would be right to add to the retail cost of recording devices. Government will keep this issue under review and will invite Ofcom[37] to assess the cost/benefit and framework required for the introduction of "re-use" fees for private copying and format shifting.' (DBR 2009:119-120) Conversely, micropayments are seen as a valid way of converting creativity into value by finding 'new payment methods suitable to an era of multiple small on-demand purchases rather than single, larger purchases of the physical version of the audio-visual product.' (DBR 2009:120)

Analysys Mason was commissioned by the DCMS[38] to assess the drivers of and barriers to creative ambition in Digital Media in the UK.' This was done through interviews with industry players and stakeholders. (DBR 2009:122) Their findings 'highlighted the difficulties in trialing new business models involving the use of IP[39]

[37] 'Ofcom is the regulator for the UK communications industries' (OFCOM found in http://www.ofcom.org.uk/about/sdrp/ accessed on 14/09/09)
[38] Department for Culture, Media and Sport
[39] Intellectual Property

(DBR 2009:124)

Agreeing with Castells, the report acknowledges the 'potential of collaborative and user-centred business models made possible by digital technology' (DBR 2009:124). So in a bid to help industry find new business models 'to monetise digital content' (DBR 2009:124) without risking loses, the government has set up experimental "digital test beds". In the fast-changing environment of the Internet this move will likely be outdated before being reaching the implementation stage. The test beds will also explore 'new models of identity management, security and privacy […] to help reinforce consumer confidence and trust in their privacy and security' (DBR 2009:125)

CRITICAL ANALYSIS

> 'The Internet is indeed a technology of freedom – but it can free the powerful to oppress the uninformed, it may lead to the exclusion of the devalued by the conquerors of value.' (Castells 2001:275)

The use of the word "revolution" in the report, is repeatedly contextualised in commerce, appearing by the words: content, digital, creative, ways news is sourced, what is being bought, searched for, seen, listened to… It is also linked to the nation. Anderson reflects on how, 'since World War II every successful revolution has defined itself in national terms' (1983:2). By framing the report within the nation, the report appeals to all within it as an "imagined community", described by Anderson as conceived in 'deep, horizontal comradeship' (Anderson 1983:6) Indeed, having equated unlawful downloading with theft, it clarifies that action will only be taking against 'the minority of the anarchic' (DBR 2009:110), that is, anti-establishment, rather than those who 'would prefer to behave lawfully.' (DBR 2009:110)

The report also dwells in the use of the word "industry" and its stated belief in being able to 'scale and industrialise' creative production. It carries a feel of longing for the "good-old-days" of Britain leading the world economy with the Industrial Revolution. A generational gap can be sensed between those creating the legislative frameworks and the users/producers of the constantly changing environment of the Internet.

It disregards the importance of the collective aspect of labour, assuming old media patterns of power/knowledge and aiming to

incorporate them into new media. There is no strategy of support to P2P, Open Source, Freeware and Shareware movements to reward the creativity of those already working and developing content they make readily available for all (including businesses) to use and adapt, adding richness to the public domain and society at large. Production/creation drives are explained only within economical terms. However, people, artists perhaps more than anyone, are driven by needs very much separate from profit making. It is businesses (industry) that are motivated by the accumulation of profit and economic rewards. Similarly, there is no consideration of the possible benefits of the gift economy as part of the wider economy.

The report, drawing extensibly from business speak and ideology, presupposes the superiority of capitalism over other economic formations, something Deleuze disagrees with:

> 'Those who keep invoking the bloody failure of socialism don't seem to consider as a failure the present state of the global capitalist market, with the bloody inequalities it involves, the populations pushed off the market, etc. It's been a long time since the American 'revolution' has failed, even before the Soviet's did.' (Deleuze cited by Lotringer in Virno 2004:18)

This report is the result of collaboration between the government and businesses in an attempt to, respectively, control and commercialise the Internet through extensive commodification. The interests of industry and government go hand in hand and the law is being used, not to pursue 'justice, the good, or natural law' (Dreyfus & Rabinow, 1983:137) but as 'the means for the increase of the state's power' (Dreyfus & Rabinow, 1983:139) through the management of human needs.

More than ten years ago, Castells placed the technological revolution in a period of global restructuring of capitalism and saw the society emerging from such a process as capitalist and informational. (1996:13) He argued then that some people in certain positions of the production process would decide 'the sharing and uses of the product in relationship to consumption and investment.' (1996:15)

Adorno and Horkheimer already criticised the worst part of the influence of capitalism and mass production on art and creativity. Now, individuals are being provided with the tools to easily become producers, not just receivers of art and entertainment, and to choose

ways in which to select, consume and interact with cultural products. The way in which the Internet is structured itself facilitates the decentralisation of production, promoting what Dicken argues 'learning by "doing", by "using", by observing from, and sharing with, others' A learning and developing process dependent upon the accumulation and development of relevant knowledge.' (2004:116) Furthermore, the media and creative industries are increasingly using consumers and user-generated content.

The report, although acknowledging the existence of user-created content, deems it as inferior to that created by industry and clearly states its support for artists and creations legitimized by industry as such, and for industry itself. Confusedly, it uses the terms "innovation" and "creative ambition" in relation to the development of business models towards maximizing profit from culture. Disguised as defending creativity and due rewards for artists, the report actually defends the rights of rights holders, who as Cloke points out, are generally big corporations. 'Authors can and often do transfer ownership of their copyright. […] This is so the company can exploit the copyright and enforce it'. (2009) Enforcing copyright appears to be a profitable business. The way the Internet has influenced modes of production for independent artist differs mainly in that it has enabled them to fund, promote and distribute their own creations without the need for corporations to mediate, thus making them redundant in some cases and limiting the range of their expansion in general.

Althought the report aims to aid industry in discovering new business models for the "monetization" of creativity, it does not account for the possibility of development without copyright. Ronaldo Lemos offers the example of the Nigerian film industry as one which has thrived to the point of being the biggest in the world, without copyright law (Lemos in Paine, 2007)

Just as the inception of the Internet relied partly on public support and funding, its further development as an organizational tool for society requires the same. The government in this report, however, concerns itself with exploiting the opportunities for "monetisation" of creative content in digital formats and the penalisation of transgressors. With this report the UK Government is attempting to fit technology to existing structures, rather than taking on the challenge to legislate and promote the release of the potentialities offered by the multitude combined with the technologies of the web and the benefits of network organisation. A very conservative legislation for a left-wing government. On their side, conceded, perhaps the current climate of

economic downturn is not the most favourable to taking risks and bidding for a better, if unknown future.

Foucault saw 'disciplinary control and the creation of docile bodies is unquestionably connected to the rise of capitalism.' (Dreyfus & Rabinow, 1983:135) In line with his vision of "emphasis on the body as the place in which the most minute and local social practices are linked up with the large scale organisation of power' (Dreyfus & Rabinow, 1983:xxvi), not only surveillance and control mechanisms are being planned, but also actual threats to the body are used in the report in the proposed matching of penalties for digital piracy with physical theft.

A look at Foucault's description of the campaign to eradicate masturbation during the 18th and 19th centuries can shed light on the similarities between the power techniques used then, in the context of sexuality, and now in the war against piracy:

> 'elaborate surveillance, techniques of control, innumerable traps, endless moralising, demands for ceaseless vigilance, continual incitement to guilt, […] were all mobilised in a campaign obviously doomed to failure from the start – if its goal was, in fact, the eradication […] However, if that campaign is read as the production of power […] it succeeded admirably:' (Dreyfus & Rabinow, 1983:172)

CONCLUSIONS

Foucault pointed at the 'increasing intervention of the state in the life of the individual' (Dreyfus & Rabinow, 1983:138) since the Enlightment. Releasing this report, the British government in 2009 attempts to, in Foucault's terms, "govern" the Internet, a traditionally a technology of freedom, holding hopes for a better future, by structuring 'the possible field of action of others.' (1983: 221) Others being those who do not conform with the established order or that promoted by the government.

In doing that, it is also influencing the creation of information enclosures and an extensive attempt at commercialising the Internet, which, in Virno's words, can mean 'the world-workshop is transformed into a world-spectacle' (2004:89) Furthermore, the spectacle to watch will be that favoured by the creative industries, with non-mainstream, non-Western, experimental, and other types of content measured by values other than those set by a market-driven environment, being unsupported.

Undoubtedly, utilising the organisational advantages offered by networks, and the resistance of the medium of the Internet to being controlled, new technologies will be found and used to perpetuate the culture of sharing and gift-giving, resisting forceful moves by governments to undermine it. Already in blogs there is talk of using streaming, a technology already in place and being used to view audio-visual content on demand, to share digital content online and that is just on the surface.

With the Internet posing limitations to the extent of its control, the relationship between both sides in this war against piracy could be defined as agonism: 'a relationship which is at the same time reciprocal incitation and struggle; less of a face-to-face confrontation which paralyses both sides than a permanent provocation.' (Foucault 1983: 222) Somehow, between the agency exercised by Internet-based communities in an attempt to influence change, and existing structures exercising their power, there is a relation of power in which both are driven to continually develop in spite, and to spite each other.

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APPENDIX 1

INTERVIEW WITH JOHN CLOKE
SOLICITOR IN THE INTELLECTUAL PROPERTY AND TECHNOLOGY GROUP
AT LAW FIRM DLA PIPER, LONDON.
CARRIED OUT BY E-MAIL ON 27TH OF AUGUST 2009

Q - What is copyright?

A - The definition would vary from country to country as each system is slightly different. However, there are international treaties (Berne, Rome and EU directives) which provide for some harmonisation.

Essentially, "copyright" is a collection (we often say "bundle") of rights which the law gives to creators (usually called "authors", even if they are an artist, musician etc) in relation to their "works". Works includes literary works (including book, scripts), musical works, artistic works but also things like films (a separate copyright exists in the film, as well as in the script) and sound recordings (as well as the "underlying" musical work, the composition). Also protected are broadcasts in most countries. That's not a complete list.

The "bundle of rights" consists of the exclusive right for the author to do (or authorise others to do) certain things - copy, perform in public, communicate to the public etc. Again not a full list. The exclusive right means that the author is able to prevent other people who have not been authorised from doing those specific things (e.g. copy).

The rights are automatically given to the creator when they create the work, although in some countries (notably the US) there are some registration requirements. Authors can and often do transfer ownership of their copyright. For example, the human producer of a film is treated under the law as the creator of the film - in practice he or she will usually assign their copyright to the production company, studio etc. This is so the company can exploit the copyright and enforce it etc.

Q - What is the purpose of copyright?

A - Two types of answer to this question.

1. Why did it originally come into being?

This is from Wikipedia:

The concept of copyright originates with the Statute of Anne (1710) in Britain. It established the author of a work as the owner of the right to copy that work and the concept of a fixed term for that copyright. It was created as an act "for the encouragement of learning", as it had been noted at the time that publishers were reprinting the works of authors without their consent "to their very great detriment, and too often to the Ruin of them and their Families". As such, copyright was first created with the intention that authors might have some control over the printing of their work and to receive some financial recompense, so that this would encourage them to write more books and thus to aid the flow of ideas and learning. As the act itself says: "for the encouragement of learned men to compose and write useful books"

2. What is the philosophical justification for it now?

I studied this at university - the jurisprudence (legal philosophy) of copyright. This is much more interesting. There are various competing theories. I can't remember them all now but I can give you the name of my professor if you'd like to contact him - he might be up for it.

One (I think maybe "Hegelian") says that the reason for giving an author exclusive rights in a "creation of the mind" is that he has invested time and effort in creating it and it would be unjust to allow that effort to be commandeered by freeriders. Just like if someone builds a house themselves, they are entitled to own it. This kind of relies on the notion that "property" itself is justifiable, which is open to a lot of debate - especially if you are a Marxist.

A second is related, but emphasises the type of investment. Rather than say it is simply about time and effort, the justification is that an artistic creation is invested with the personality of the artist - in effect it becomes part of who he is. Thus, it is more about personal dominion - people should not be able to mess with the artist's personality.

Then there are economic arguments - not just about "money" - more about how do we incentivise the creation of works! This goes something like this:

art is good
the more art the better
how do we encourage people to make more art?

we allow them the means to devote more time to making art
how do we allow them this?
we allow them to make a living out of art
how do we do this?

- Clearly, some artists can make money from displaying their art (live musicians, painters). Some artists (painters and sculptors) can make money by virtue of selling "original" paintings - which have attached value.

-But that is not enough. Copyright is needed:

(i) Not all artists can make money in this way.

e.g. a scriptwriter needs copyright to ensure he isn't ripped off by the film producer. Without copyright, the producer would (or could) read the script and copy it without paying him. or do something very similar. The scriptwriter would get nothing. if that could happen, a lot of people would not write scripts, or at least fewer would be written.

(ii) Copyright prevents free loaders

The local painter with a small gallery in their home town, selling paintings and prints, will price their works to give them a reasonable and not extravagant living (usually). it is completely unfair if someone is able to open up a shop next door, buy one print, copy them all and sell them at half the price. The painter would go out of business and would be forced to get another job and probably paint a lot less.

(iii) copyright supports the wider creative industries

It costs money to make records, films and books. Filming, recording, editing etc. You need to pay the people who do this as well as the writers and producers. The people who produce the content need to pay these people, and it does this by selling records, films and books at a certain price. Yes, the copies can cost very little to make in themselves, but you're not really paying for the price of the DVD, CD or paper. Without copyright the ability of producers to recoup their cost is reduced, meaning they will generally make less material, and will make more material which is guaranteed to make a profit. More Steven Spielberg, less Woody Allen.

Of course, arty people are going to make art whether they get paid for it or not. The point is that they will probably make more and possibly better art with the protection of copyright behind them.

And even if artists claim not to care about copyright that isn't an argument against it in itself. They may not appreciate what exactly it does for them. If you work in the creative industries - the fact that the thing you contribute to (an advert, film, song) cannot be freely copied means your work has value, means you will get paid.

Q - How does it go about achieving this?

A - In terms of the property and personal dominion arguments above, copyright grants the creator "exclusive rights". They make the decision on what can be done with their work. They can keep it to themselves or they can sell it at the price that the market is prepared to pay. They can stipulate how it is to be used, where, when and for what purpose.

In terms of the economic "encouraging creation" argument above - I think I explained that already.

Q - What alternatives are there to copyright?

Q - How are they different?

A - **1) Free for all - no funding**

No protections at all. Everyone can copy and perform everything. People only create for the love of creating and not to make money.

You know I think that wouldn't work! A lot of pissed off people who've had ideas stolen, e.g. the song that gets sung better by someone else. You would still be able to make money out of live music, you see. More importantly (in my view) I think less art would be made - especially expensive art like film and records.

2) Free for all with government funding

This is the usual alternative mentioned. The government pays those in the creative industries to make art (including music, films etc). Their pay is funded out of general taxation.

This has all sorts of problems.

Who decides who gets paid what - you would have the government (or a panel of experts) deciding who is worthy of what money. Copyright on the other hand allows the market to decide - massively popular artists get paid a lot, more niche artists can still make a nice living - but it is all decided by the people.

Who decides what types of art get made - the government would have to allocate funds between opera, rap music, sculpture and graffiti. Would you trust them? Copyright does not have this problem.

Artists would be afraid to criticise the government. Copyright does not have this problem.

Q - What about the public domain? Are there any laws to protect it and encourage its growth?

A - The public domain can mean a couple of things. One - works out of copyright. After a certain period of time, works run out of copyright - this varies from work to work (google "term of copyright"). After that, anyone can copy the original work for free as much as they like. These works are in the public domain.

Alternatively, people can choose to put their works into the public domain. They can either (i) choose not to enforce their copyright or (ii) publish their work with a "creative commons" type licence which allows free use, either completely or in certain circumstances. e.g. you could release a song and say that anyone can copy it but it can't be used on a film soundtrack.

Q - Are schools and universities exempt from copyright limitations since they are in education and not profit making?

A - Pretty detailed area this. There are various exemptions. If you look at the EU copyright directive there are a list of exemptions which countries are allowed to have (not all countries have the same ones). Many of these are educational. See also the EU green paper on "copyright in the knowledge economy".

Q- How much do you think the recent decision of Digital Britain to step down on filesharers was influenced by business' lobbying?

A - Digital Britain contains several initiatives to stamp out piracy - including the re-introduced proposal for the "graduated response" (i.e. cutting off persistent file sharers).

I think it's important to understand that the government believes, irrespective of business lobbying, that piracy needs to be combated. It sees Britain as a world leader in the creative industries, an industry that can help get Britain out of recession and create jobs. It believes that strong intellectual property laws are vital in order to support the industry and the people working in it.

Many consumers would feel the same way if they fully understood how the system works - but many of them see a CD costing £15 when they can buy a blank CD for 10p and copy for free, and think they're being ripped off. Clearly, it isn't that simple. That's a problem of education, I suppose, but government is better able to look at the big picture than the general public (that's why they're elected!).

So against that, I think that the general anti-piracy thrust was not particularly influenced by big business. However it's likely that the recent addition of the graduated solution is sure to have been lobbied for by businesses and this will have influenced that particular decision.

Q - What are the implications of this decision for everyone involved?

A - Depends if it's successful.

Consumer:

If the initiative is successful, digital piracy will be reduced. People would go back to they way it was before - paying for all the music and films they consume. It is only because of the internet that suddenly music etc. has become "free" - it's not a god-given right.

If it's not successful, then the fear is that the consumer will lose out as the creative industries shrink due to lack of money.

Business:

One theory is that they will invest more money in distributing content better online, make more legal services available, since they will be able to recoup their investment. They will get an immense boost from

the pirates starting to pay for content which will mean bigger profits for them and more investment in new "art".

If not successful, the risk is that the industry will shrink, people lose jobs, and businesses switch to content they know they can make big money out of (blockbuster films, reality TV etc).

Q - What about the claim that the imposition of such surveillance methods goes against our rights of privacy and free speech? Are we all being criminalised and put under surveillance? Could this be a convenient move for the government to regain more control over individuals as well as make friends with bigwigs?

A - Depends what they look like. We don't really complain about cameras in a record shop, and in many ways this is the same. It is quite like the CCTV debate actually. The arguments aren't that different. People will always say that if you've got nothing to hide, don't worry. But there will always be privacy concerns - the key is to make sure the rules are clear and that information is not held for unwarranted purposes. You can never be completely safe - but so much information is held about us these days I don't see this as a major problem. You can always not go on the Internet or use a library instead.

Less worried about the free speech argument. The right to free speech is curtailed in a lot of ways - if you get sent to prison, for example. A judge cutting off someone's Internet access temporarily is much less of a problem, plus the person can go to an internet cafe or a library. It is a proportionate response.

Q - How do you link the emergence of Pirate Parties all around the world to the current court case against the Pirate Bay and indeed the Delivering Digital Britain report?

A - When people feel strongly enough about something the government is doing, they will lobby. This is just an effective way of getting their message across.

Q - What do you think of the Pirate Party's proposals towards copyright, patents and surveillance?

A - Need to check, but I think they're generally naive. They risk destroying the industry that creates the content they so love to copy.

Q - What realistic technical options are there to stop downloading of media other than cutting people off the Net?

A - Not an expert on that - most of the current options need to be policed by humans and so are time consuming and expensive.

Q - If people are going to be cut off the Net, doesn't that go against the government's plan to universalise fast connections throughout the country?

A - Totally disagree.

They will only be cut-off if they "steal" music and films, so no I don't think it's contradictory. Fast connections are needed to access legal content too.

It's like saying "If people are going to be put in prison for drunk driving, doesn't that go against the government's plan for a new road?".

Q - How do you propose free education, culture, innovation and development can be promoted without criminalising a vast percentage of the population?

A - Disagree with this question - it's based on a erroneous proposition.

People are downloading music and films for personal entertainment when historically they would have paid for it. They are not generally doing it for "education, culture, innovation or development." The only people being criminalised are the people who are avoiding paying for content they would have had to pay for 15 years ago. In any event, the law made them criminals for doing this long before the Internet came along.

Free education etc. is not materially affected by the crackdown. In fact, just look at how much the internet has improved this stuff - Wikipedia, shared knowledge, people offering music for free - all of these things are absolutely flourishing.

Q - Aren't learning and culture created by copying and sharing?

A - Yes - sharing of "ideas" but not necessarily copying of "copyright works".

An often-quoted statement is that copyright does not protect "ideas", only particular expressions of ideas. Copyright does not therefore hinder the sharing of ideas.

Reading something and being inspired by it to create something else is not generally copying.

The law has always drawn a line between "inspiration" and "free-riding". It's not a particularly precise line, admittedly, but generally, if you profit from the work of another, then that's where the law will step in.

Q - Are corporations attempting to create any kind of change in their business models to adapt to the new environment enabled by communication technologies by using the possibilities offered by digital formats to their advantage in making profit, rather than complaining and pointing fingers because the have been surpassed by development around them?

A - Yes there are lots of legal services. However they find it difficult to compete with illegal services "you can't compete with free". No matter how attractive they make them, fundamentally, why pay when you don't have to?

The point is that they would love to be able to make more money out of digital formats, but piracy stops them. They are then understandably less inclined to invest money in developing new models as they won't get their money back.