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IMAGINE THERE IS NO COPYRIGHT AND NO CULTURAL CONGLOMORATES TOO / AN ESSAY

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4

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& MARIEKE VAN
SCHIJNDEL

IMAGINE THERE IS NO COPYRIGHT AND NO CULTURAL CONGLOMORATES TOO / AN ESSAY

Theory on Demand #4

Imagine there is no copyright and no cultural conglomerates too...
Better for artists, diversity and the economy

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INTRODUCTION

Copyright gives authors exclusive control of the use of a growing number of forms of artistic expression. Often, it is not the authors who own those rights, but gigantic cultural enterprises. They manage not only the production, but also the distribution and marketing of a large proportion of films, music, theatre, literature, soap operas, visual arts and design. That gives them far-reaching powers in deciding what we see, hear or read, in which setting and, above all, what we don't see, hear or read.

Naturally, things could get to the stage where digitalisation will rearrange this highly controlled and over-financed landscape. We can't be so sure of that, however. The amount of money invested in the entertainment industries is phenomenal. They operate worldwide. Culture is the ultimate excellent money-maker. There is no reason to suppose, at the moment, that the cultural giants of this world will easily give up their market domination, either in the old material domain or in the digital world.

We are now therefore looking for the alarm bell, so we can ring it. When a limited number of conglomerates control our common area of cultural communication to a substantial degree, then that undermines democracy. The freedom to communicate for everyone and everyone's right to participate in his or her society's cultural life, as promised in the Universal Declaration of Human Rights, can become diluted to the unique right of a few heads of companies and investors and the ideological and economic agendas to which they work.

We are not convinced that this is the sole option for the future. It is possible to create a level playing field. Copyright, in our view, presents an obstacle. At the same time, we have noticed that the bestsellers, blockbusters and stars of the big cultural enterprises are having a disadvantageous effect. They dominate the market to such an extent that there is little room for the works of the many, many other artists. They are pushed to the margin, where it is difficult for the public to discover their existence.

In the first chapter we analyse all the drawbacks to copyright that make it illogical to put any further faith in it. Naturally, we are not the only ones who are aware that it has become a problematic instrument. We therefore devote the second chapter to trends that are attempting to put copyright back on the right track. Although we are impressed by the arguments and efforts of movements attempting to find alternatives, we feel that a more radical, more fundamental approach will help us further in the 21st century. We set this out in chapter 3. We are endeavouring to create a level playing field for the many, many cultural entrepreneurs, including artists. According to our analysis, there is no longer any place on that playing field for either copyright or enterprises that dominate those cultural markets to any degree.

The expectation is:
- Without the investment protection of copyright it will no longer be profitable to make lavish investments in blockbusters, bestsellers and stars. They will therefore no longer be able to domi-

nate the markets
- The market conditions for lavishing money on production, distribution or marketing will no longer exist. Competition law and property regulations are outstanding tools for levelling the markets.
- And our past and present heritage of cultural expression, our public domain of artistic creativity and knowledge will no longer be privatised.

The market will then be so open that many, many artists, undisturbed by the 'greats' of the cultural world - not being so great any more – will be able to communicate with audiences and therefore sell more easily. At the same time, those audiences will no longer be inundated with marketing and will be able to follow their own taste, making cultural choices in greater freedom. In chapter 4, we will attempt to throw light on how our proposals could work out, based on brief case studies.

We are aware that we are proposing serious interventions in the market. Sometimes, the very thought of it makes us nervous. We want to divide the money flows in major segments of our national and global economies - which is what the cultural sectors are, after all - into far smaller portions of ownership. That will involve a capital restructuring of a formidable and almost unprecedented scope. The consequence of our proposals is that cultural and medial industries, in which turnovers run into the billions, will be turned upside down. We have hardly any predecessors who aimed so consistently at constructing totally new market conditions for the cultural field, or at least at laying the theoretical foundation for that construction. It is a comfort to us that Franklin D. Roosevelt was also unaware of what he was starting when he effected the New Deal, without wanting to compare ourselves with him in any way whatsoever. And yet he did it, it proved possible to fundamentally reform economic conditions.

This gives us the daring and guts to offer our analysis and proposals for discussion and further elaboration. It was a pleasant surprise to read (New York Times, 6 June 2008) what Paul Krugman, winner of the Nobel Prize for Economics 2008, said: 'Bit by bit, everything that can be digitized will be digitized, making intellectual property ever easier to copy and ever harder to sell for more than a nominal price. And we'll have to find business and economic models that take this reality into account.' Devising and proposing such new business and economic models is precisely what we are doing in this book.

You can see from the summary of what each chapter deals with that this is not a book on the history of copyright or how it functions now. There are many excellent publications, to which we feel indebted, that can be consulted on these topics (such as Bently 2004, Dreier 2006, Goldstein 2001, Nimmer 1988 and 1994, Ricketson 2006 and Sherman 1994). For an introduction to the basic principles and the controversies surrounding copyright, see, for example, http://www.wikipedia.org/wiki/copyright.

We have not aimed our work at useless categories such as cultural pessimism or optimism. Our driving force is down-to-earth realism; if copyright and the current market conditions cannot be justified, then we feel duty bound to ask ourselves what we are going to do about it. Distinguishing between the so-called high and low arts and between elite, mass and popular culture is not something that appeals to us, either. A film is a film, a book a book, a concert a concert and so forth. The heart of the matter is therefore what are the conditions for the production, distribu-

tion, marketing and reception of all this - good, bad or ugly - and, consequentially, what kind of influence do these works have on us individually and collectively? Clearly, there is a great deal of dispute: which artist is to be elevated to stardom, by whom, why and in whose interest? And who will fail to make it, or be clapped in irons for what he or she has created? Our aim in this study is to highlight the fact that real diversity and, consequently, plurality in forms of artistic expression can have a raison d'être – and that the economic conditions can be created to facilitate them.

We use the word copyright to cover two concepts, in fact. The right to copy is, in principle, something different from a right established to defend the interests of artists – or authors, as they are collectively referred to in, for example, the French term, droit d'auteur. In international law and practice, however, the two concepts have become merged in the one English-language term, copyright. Any remaining nuances and differences between the two concepts are irrelevant to our book, as what we are ultimately proposing is the abolishment of copyright. When we speak of 'work' in the following chapters, then that refers to all types of music, films, visual arts, design, books, theatre and dance.

The neoliberal transformations of the past few decades, as described by Naomi Klein in The Shock Doctrine (2007), for example, have also had implications for cultural communication. We are becoming less and less entitled to structure and organise cultural markets in such a way that diversity of cultural forms of expression can play a meaningful role in the awareness of many, many people. This is a problem of the first order.
Cultural expressions are core elements in forming our personal and social identity. Such extremely sensitive aspects of our life should not be controlled by a small number of owners. That control is exactly what is being exercised on the content of our cultural communication by means of the possession of millions of copyrights.

Thousands and thousands of artists work in this charged zone – the field of artistic creations and performances – producing a vast quantity and diversity of forms of artistic expression, day in, day out. This is the good news, which we should not forget. The sad reality, nevertheless, is that, due to market domination by the major cultural enterprises and their products, the existing invisible cultural diversity is almost being wiped from the public arena and the common awareness.

The public domain, in which cultural expressions can be contradicted, has to be re-established. This requires more than an extensive criticism of the cultural status quo. What we are therefore proposing in this book is a strategy of change. We feel it is feasible to forge cultural markets in such a way that the ownership of the production resources and distribution passes into the hands of many, many individuals. In that case, no one, is our reasoning, will be able to control the content or use of forms of cultural expression to any major degree through the ownership of exclusive, monopolistic property rights. By creating feasible cultural markets for an abundance of artistic expressions, we are giving the power of disposal of our cultural life back to ourselves, as private individuals. Cultural markets have to be imbedded in the wider arena of our social, political and cultural relationships.

Due to the financial crisis that set in in 2008, the idea is again up for debate that markets could and should be regulated in such a way that not only financial forces benefit, but that many other

interests are also considered. Helpful here is that the legal toolkit already contains the tool of competition, or anti-trust, policy, which can ensure that there are no dominant market parties. We will come back to this tool in the third chapter.

The main topic of this book, however, is copyright. Why? It is surrounded by a great deal of emotion and is charged with the assumption that copyright is the expression of our civilisation: we take good care of our artists and guarantee them respect for their work. Just why copyright fails to meet those expectations will therefore take some explaining. That the market can be organised otherwise by implementing competition or anti-trust law requires less explanation and the tools are already in place. The only thing is that it will be a hell of a job to achieve that fundamental restructuring of cultural markets. On the other hand, copyright is already on the slippery slope.

One might wonder why we conducted this research, swimming against the tide of neoliberalism. Our first reason is cultural, social and political. The public domain of artistic creativity and knowledge has to be saved and many artists, their producers and their patrons have to be able to communicate with many varying audiences to enable them to sell their work with a certain amount of ease.

The second reason why we do not feel that we are placing ourselves outside reality with our analysis and proposals is history. History teaches us that power structures and market constellations change constantly. Why should that not happen to the subject we are concerned with in this study? The third reason for our analysis is that we derive a certain optimism from what the financial and economic crisis that broke out in 2008 may bring about. It was the year in which the failure of neoliberalism became horribly visible. If there was one thing that became evident then it was that markets – even cultural markets – require total reorganisation, with a far wider range of social, ecological, cultural and socio and macro-economic interests in mind.

Our final motive is simple: it has to be done. It is our academic duty that drives us. Clearly, the old paradigm of copyright is eroding. Our academic challenge is therefore to find a mechanism to replace copyright and the associated domination of cultural markets. Which system is then better equipped to serve the interests of large numbers of artists and of our public domain of creativity and knowledge? Such a tremendous task invites colleagues from all over the world to assist in finding the best way to allow us to progress further in the 21st century. There is a lot to be done, including elaborating on the models we propose in chapter four. Hopefully, such research can be conducted with slightly more ample resources than we had available to us. After all, what we are talking about is entirely restructuring the cultural market segments in our society into which billions of dollars or euros are poured worldwide.

We have been privileged that a number of our (academic) friends and colleagues were prepared to share their critical comments and, sometimes, scepticism with us and nevertheless encourage us to continue. We would like to mention Kiki Amsberg, Maarten Asscher, Steven Brakman, Jan Brinkhof, Jaap van Beusekom, Eelco Ferwerda, Paul de Grauwe, Pursey Heugens, Dragan Klaic, Rick van der Ploeg, Helle Posdam, Kees Ryninks, Ruth Towse, David Vaver, Annelys De Vet, Frans Westra, Nachoem Wijnberg, the members of the research group CopySouth, led by Alan Story and participants in the AHRC Copyright Research Network at Birkbeck School of Law, London

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A big thank you to all those who helped us keep our research on track. After all, what we are doing is a bit of a calculated leap in the dark. The way the markets develop is unpredictable, even if the intervention we are proposing is implemented. With so much uncertainty, it's no wonder that some of those who commented on our analyses did not agree with them. We are therefore extra grateful that they gave us their sincere support and critical commentary.
A special word of thanks to Giep Hagoort, a colleague of Joost Smiers' for roughly a quarter of a century in the Art & Economics Research Group at Utrecht School of the Arts. His driving passion has always been to teach entrepreneurs to operate at the interface between art and economics. It is therefore no coincidence that the concept of cultural enterprise plays such an important role in our book. Clearly, these cultural entrepreneurs, whether artists, producers or patrons, have to be given the opportunity to operate in a market that offers a level playing field for everyone. Achieving just that is the objective of this study.

CHAPTER ONE
A NUMBER OF ARGUMENTS AGAINST COPYRIGHT

Intellectual property

In 1982, Jack Valenti, the then chairman of the Motion Picture Association of America, declared that 'creative property owners must be accorded the same rights and protection resident in all other property owners in the nation' (Lessig 2004: 117). Until then, the general opinion was that intellectual property was a more limited right, which could not be compared with others. He added to his statement the demand that copyright should give someone the exclusive ownership of, say, a film or a melody, in perpetuity... minus one day.

In perpetuity minus one day? Was he joking? Well, maybe a bit, but his statement was certainly provocative, particularly for that time. These days, hardly anyone thinks twice about the fact that the owner of music, image material, films or texts has an extensive power of disposal, bordering on the infinite, over his or her or her property. A lot has changed in a quarter of a century. We have evidently become accustomed to the privatisation of the knowledge and creativity that is actually our joint property. In this chapter, we present a number of arguments as to why that accustomisation is no good thing.

Some arguments are rooted in the basic principles of copyright itself. The essential aspect is therefore that it is a right of ownership. There is nothing wrong with a right of ownership in itself, as long as it is imbedded in and limited by interests of a social, socio-economic, macroeconomic, ecological and cultural nature. The impact of these interests should be at least as strong on people's attitudes to goods or values as on private gain. From a cultural perspective, one might wonder whether it is appropriate or necessary to drape an individual ownership around what artists create. An exclusive, monopolistic right to use that work is then created by definition. This privatises an essential part of our communication. That is harmful to democracy.

Would it be going too far to describe copyright as a form of censorship? Well, not really. First of all, let's bear in mind that every artistic work builds to no mean extent on what others have created in the distant or less distant past. Artists draw from a well-nigh endless public domain. So isn't it rather strange that should we grant an ownership title for the entire work due to the addition, no matter how much we might admire it? The ensuing right has far-reaching consequences. After all, no one except the owner is allowed to use or change the work at his or her own discretion. A not inconsiderable proportion of the material with which we, as people, can communicate with one another is therefore under lock and key. Most of the time, there's no problem with drawing inspiration from an existing work. The problems start when something in the new work – even if it is only something small – is, or could be, reminiscent of the previous work.

Why is this a problem of the first order? Artistic creations are the expression of many different emotions, such as pleasure and sorrow. We live surrounded by music, films, all kinds of image material and theatrical representations. What one person finds exciting will be decried by another. The artistic cultural territory in our society is therefore not a neutral zone. It is often the subject

of dispute and controversy concerning what is beautiful and what ugly, what can and may be expressed succinctly and what puts us in a festive mood or confuses us. Questions with an underlying significance are: who should decide which artistic material reaches us in abundance and which only in dribs and drabs? In which setting? How will it be financed? With which interests in mind? Such questions are vitally important, as the answer is crucial to the artistic environment in which we develop our identities. Being such strong forms of expression, what we see, hear and read leaves traces in our consciousness.

And it is this sensitive area - which is so influential in our lives and the way we live together - that is copyrighted. As we said, this is a property right. The owner of an artistic expression is the only one who can decide how the work can and may function. It may not be altered by anyone other than the owner. It may not, in other words, be contradicted or disagreed within the work itself. Neither may we place it in contexts we consider more appropriate. There is no question of dialogue. We are more or less gagged. Communication becomes terribly one-way and dominated by a single party, namely the owner. He/she is the only one who can and may lend his or her artistic material significance through concrete attempts at improvement. Other artists and we, as citizens, are not allowed to lay a finger on it afterwards. We are only permitted to consume - both figuratively and literally - and hold our own opinions on the work. This is not enough for a democratic society.

Rosemary Coombe therefore stresses that 'what is quintessentially human is the capacity to make meaning, challenge meaning, and transform meaning.' This brings her to a fundamental observation. 'If this is true, then we strip ourselves of our humanity through overzealous application and continuous expansion of intellectual property protections. Dialogue involves reciprocity in communication: the ability to respond to a sign with signs. What meaning does dialogue have when we are bombarded with messages to which we cannot respond, signs and images whose significations cannot be challenged and connotations we cannot contest?' (1998: 84, 5).

We don't think that Rosemary Coombe, insofar as we are familiar with her work, would go so far as to say that property rights to artistic material constitute a form of censorship. Evidently, we feel far more strongly that many of our forms of expression are privatised in an exclusive monopoly.

We are not entirely wide of the mark with the idea of censorship, though. Copyright originates from the privileges Queen Mary of England bestowed on the Stationers' Guild in 1557. The members had a tremendous interest in acquiring a monopoly on printing books and excluding any possible competitors in the provinces and over the border in Scotland. This can be compared with the ownership monopoly we mentioned earlier. Queen Mary also had a vested interest; it prevented the spread of heretical ideas or ideas that might challenge her legitimacy. Mary's agreement with the Stationers united these two interests (Drahos 2002: 30).

Originality and aura of the star

Copyright incorporates a formal element that explicitly excludes the non-owner from changing or adapting the creation in any way. These are the moral rights artists derive from their work. The guiding principle behind this is the idea that they produce something entirely unique, original and

authentic. It is not then only reasonable that they should be able to demand that they are the only ones to guide the work in its further life, that only they can decide how it is performed, whether it can be changed and in what setting it may prosper? Shouldn't the integrity of the work be protected? These are legitimate issues, as the essence is the degree of respect we give something created by someone else.

The question that immediately springs to mind is whether it is necessary for the creator to have the exclusive, monopolistic ownership of his or her or her work in order to gain respect. In most cultures, ownership has never been a condition for appreciating a work. In many cases, it is even seen as a great compliment to have one's work copied or imitated. So there must be a reason why originality and exclusivity have become so interrelated in Western culture over the past few centuries. It could have something to do with the development of the idea of the individual, which was a big change in the way people saw themselves. That individual felt more detached from social contexts than before. What that individual produced was therefore his or her or her very own performance, particularly if that work was the highest expression of human ability. Art and artists therefore assumed almost mythical proportions.

In that light, it is understandable that the idea of moral rights evolved. But is it justified? We don't think so. We have already mentioned how harmful the inviolability of artistic works is for democratic communication. Moreover, the reality is that each work should be seen in a progressive development of what many artists and their audiences create, perform and respond to, which also contributes to the work. Giving an individual artist exclusive control of his or her work is therefore going a bit far.

In the 1930s, the German cultural philosopher, Walter Benjamin, thought the aura surrounding artistic work would diminish with the increase in reproduction techniques. Nothing could be further from the truth. On the contrary, that aura and the assumption of genius, uniqueness and authenticity increased thousand-fold. Those cultural conglomerates that produce, reproduce and distribute on a large scale, in particular, desperately need to elevate the aura surrounding the artists they have under contract and their work to great heights for their marketing. Their objective is actually to control the work itself and the entire environment in which it is read, heard and seen. Moral rights are the obvious means. This makes the stars they produce inviolable.

There are therefore two reasons why we are unhappy with the moral rights accorded for a work. First of all, artistic work actually evolves in a continuous, progressive line. This makes the claim of absolute property right contestable. If we then also establish that the instrument is being used by cultural conglomerates to enable them to exercise full contentual control of how a work functions in a society, then it becomes extremely difficult to embrace the principle of moral rights.

We do understand that some artists may not like us tampering with moral rights. They may not like the fact that we feel they cannot be justified and that they can even become counterproductive in the hands of cultural industries. After all, they maintain a system of stars, blockbuster films and bestseller books. At the same time, those stars whose image is protected by moral rights are partly to blame for the fact that many artists are pushed out of the limelight, due to the star culture. It's a shame, to say the least, and can lead to great uncertainty.

If we decide that moral rights - in add to exploitation rights, which we discuss further on in this book – are unjustifiable, then we are still left with numerous unanswered questions. The most fundamental is whether artists should have to stand by and watch their work being adapted or changed without having any say in it. In fact, there is no choice. That will be an extreme culture shock for some people, of course. Although it will not be felt as such in most cultures where copyright and therefore also moral rights have never taken root. Incidentally, we have no reason to suppose that throngs of people will be grabbing hold of artistic works and treating them inappropriately. And then there is the public debate on what adaptations are acceptable and which damage the integrity of the work.

It is not unthinkable that an artist might see his or her or her work pop up in a context that only evokes revulsion: that can never have been the intention. The work is being used for an objective that he/she passionately rejects or loathes, for example. Copyright offered solace for such awful situations. No permission had been requested, so it was easy for the court to conclude that the copyright had been infringed. But what can you do now that, in our opinion, copyright is no longer viable? There are a number of instruments in the legal toolkit that we feel are even more appropriate for meeting the artist's legitimate demand not to be dragged through the dirt. Here, we are referring to defamation of character and, in particular, wrongful and unlawful acts.

An artist who considers that the way work has been treated is wrongful can consult the courts. They have to be convinced. There is no automatism involved any longer, we admit, but that does have its advantages. Law is dispensed to measure and jurisprudence will certainly develop around such nasty situations. The other advantage, naturally, is that all artistic work remains freely available for changing, adapting and placing in diverse contexts. For remixing, in other words. That is a major achievement, which, due to the abolition of moral rights, will remain unaffected.

Nevertheless, we are still weighing up the issue, particularly in respect of a situation where there is no question of a wrongful and unlawful act, but where the artist considers it essential for his or her work to be brought to life the way he/she intended. If moral rights are abolished, then no-one really has to take any notice. But why not show respect for that work and its creator. That is a major value in social intercourse between people. Why not observe it? It's quite possible. An artist who makes sweeping adaptations to the work of another, giving it his or her own interpretation, is entitled to do so, but should then state that the adaptation is a new work based on the work of the original author or composer, for example. This makes it clear that the initial creator had a different presentation of the work in mind. It is also culturally crucial to know this, so we can trace the genealogy of the work, as it were. What footsteps has it left in the sand of our culture?

We would like to prevent any misunderstandings; naturally we are totally against work being stolen. X must not be able to stick his or her name on a film, book or piece of music that was clearly created by Y. That is pure theft, fraud, misrepresentation; however you would like to put it. Once this comes out – and that will happen sooner or later – the fraud will be called to answer to the courts and, where appropriate, fined. You don't need a copyright system for that.

With most types of works of art, particular if they are digitalised, the change does not erase the traces of the original work. You can still see, hear or read them. Things are different with paint-

ings. If you paint over the picture, for example, or slash at it with a knife, then it will never be the same again. A good restorer might be able to save something, but it's uncertain. If someone nevertheless feels that the painting should look different from the way it does now, then he/she only has one option: to paint it again the way it should look. Culturally, that can be interesting, while the work that caused offence in the first place is still visible. Debate as to the difference between one and the other can then begin. After all, isn't that one of the major values of a democratic society?

Really an incentive?

One of the arguments often used to defend the copyright system is that it generates income for artists. Without copyright, we would never have all those exciting films or the music and novels we are so fond of. There would no longer be any incentive for creating those works. The industry, in particular, likes to use this argument. But artists and many of their organisations also have the notion that they would end up in dire straits if the source that guarantees their income were to disappear.

But is that actually so? There is sufficient reason to assume that the link between income and copyright is largely irrelevant for many artists. We do have to admit that a small group of star artists and the industry itself do very well out of it. For the majority, it is insignificant as a source of income (see, for example, Boyle 1996: xiii; Drahos 2002: 15; Kretschmer 1999; Vaidhyanathan 2003: 5). Economic research has shown that, of rights-related income, roughly ten percent goes to ninety percent of the artists and, vice versa, ninety percent goes to ten percent. Martin Kretschmer and Friedemann Kawohl have 'indications that such winner-takes-all markets are prevalent in most cultural industries' (2004: 44). Michael Perelman, in his research, states that 'virtually all of the proceeds that the corporate sector passes on to the creative workers goes to a tiny fraction of them'(2002:37). Even the official British Gowers report on intellectual property rights in the cultural sectors is forced to concede that 'on average creators receive a very low percentage of royalties from recordings' (2006: 51).

The report is not convinced that the incentive argument holds water. There are a large number of bands creating music without any hope of receiving anything like an income from royalties. That is even the case in England, even though, along with the US, that is where the majority of income collected from rights in other countries ends up. In most of the world, little is retained domestically in the way of royalties, so they constitute no significant source of income for artists living and working there. For Ruth Towse, talking of the music sector, the conclusion is inevitable, that 'copyright generates more rhetoric than money for the majority of composers and performers in the music industry' (2004: 64). Superstars receive astronomical royalties, the rest a pittance (2004: 14, 5).

There is a broader perspective in which the poor payment in the cultural sector should be viewed. That is the general flexibilisation of labour taking place in our society. Creative work has always been terribly dependent on strings of short-term, insecure contracts. The uncertainty, insecurity, high physical risk, dicey working conditions and lack of pension and maternity provisions associated with the flexibilisation are being felt even harder in the cultural sectors than in other

industries (Rossiter 2006: 27). Income from copyright is scarce for most artists. Nevertheless, in all cultures they produce an unceasing flow of artistic creations and, whenever they can, they perform. That is essential, too; if you aren't seen you don't exist. Above all, for most of them, the urge to create artistic work is so great that they evidently put up with uncertain conditions.

If copyright has little relevance for most artists, then it would be more logical to assume that the industry cherishes the instrument because it provides an investment protection. So the terms get longer and the protection range wider. Areas of subjective perception, such as sound, taste and smell, for example, are even being incorporated into the scope of copyright (Bollier 2005: 218).

When, in 2003, the US Supreme Court upheld extension of the copyright term to the author's life plus seventy years, the headlines in the New York Times read, 'Soon, copyright forever'. The article expresses its concern that, in effect, 'the Supreme Court's decision makes it likely that we are seeing the beginning of the end of public domain and the birth of copyright perpetuity'. This was followed by a cry from the heart: 'Public domain has been a grand experiment, one that should not be allowed to die' (International Herald Tribune, hereinafter referred to as IHT, 17 January 2003).

Ruth Towse shows us what is developing, based on an example. In 2006 Michael Jackson sold the Beatles' catalogue to Sony for an estimated $1 billion. 'This is a demonstration of this point. One need not be an economist to see that the value of these assets would be increased if copyright becomes stronger and lasts longer' (2006: 11). The sums involved are not low. A report written for the International Intellectual Property Alliance (IIPA), for example, assumes that the total value of the copyright industries in the year 2005 represented $1.38 trillion. This would account for 11.12% of the total US national product and provide work for 11,325,700 people (Siwek 2007: 2). Even if these amounts don't accurately reflect the facts – the IIPA stands to gain by considerably exaggerating the importance of copyright – the figures are still impressive.

The music and film industries are rather vocal when it comes to the call for copyright protection. We should not forget, however, that a number of parties have been appearing in the area of image material that are strongly dominating the market. In addition to Microsoft, Bill Gates also owns a company called Corbis, which is buying up visual material all over the world, digitalising it and marketing it. By 2004, this amounted to 80 million works. Getty Images also specialises in similar activities, using the photograph exchange network, iStockphoto (Howe 2008: 7). In actual fact, a considerable proportion of the visual material in the world is coming into the hands of two extremely big enterprises.

In the next chapter, we will see that the industry has to go to quite some trouble to maintain the copyright system. There is therefore a current tendency to abandon this area of law and seek refuge in two other approaches. The first is to propose customers regulations for use based on contract law, to which they have to agree. The second approach, which already is on the rise, is to allow listening to music and using other artistic work to take place without too many obstacles, but then to surround it with advertising, which actually generates the income source for the cultural industry.

TRIPS: trade related aspects of intellectual property rights

In the past, one of the problems facing the owners of copyrights and intellectual property rights in general was that it was always so difficult to enforce their rights in other countries, while, due to increased economic globalisation, they had a lot to gain there. Other countries could not be forced to introduce copyright law and certainly not to implement or apply it. So what did they do? In the 1980s and early 1990s, the idea emerged amongst cultural conglomerates to negotiate a treaty in which countries could be obliged to comply. In this respect, they were thinking along the same lines as, for example, the pharmaceutical and agricultural industries where patents were concerned and other intellectual property rights. This resulted in a treaty within the newly-founded World Trade Organzation, the WTO, referred to as TRIPS, the treaty on Trade Related Aspects of International Property Rights (Deere 2009).

Within that treaty, countries undertook to mutually agree the level of protection they wished to offer the owners of intellectual property rights. This was incorporated into their national legislation. Nothing new so far. But let's imagine that a country leaves its national legislation as it was and fails to either introduce or apply a copyright system. The new thing about TRIPS – and the WTO in general for all other trade agreements – is that such a country can be punished.

Now, how does this work? A country lodges a complaint to a court, a TRIPS panel, concerning the lax behaviour of another country, due to which companies from the first country are or could be missing out on considerable sums from intellectual property rights. Let's assume that the complaining country wins. It is then allocated a right. The right is to punish that lax country by, for example, vastly increasing import or export taxes on certain products. The unprecedented power of TRIPS and of the WTO is that the product the winning country chooses need not be related in any way to the concrete trade war that started it all. They can choose a product - or series or products - that will substantially disadvantage the punished country.

The process set in motion by TRIPS means that not only has the application of intellectual property rights become enforceable for the first time in history, but it has also resulted in another transformation. In the past, the author and the useful knowledge and creativity he/she developed for the company was, in theory, the reason for maintaining the copyright system. At least, that's more the way it was seen in Europe than in the US. With the introduction of TRIPS, the author has been shifted into the background. Knowledge, technology and creativity have become values with trade as their foremost raison d'être, with the whole world as their potential market and with conglomerates at the helm, serving all corners of the earth and exploiting them by applying intellectual property rights.

It could be said that TRIPS is therefore a resounding success, as any doubt as to the propriety of the intellectual property rights system has disappeared over the mental horizon of many people. There is nothing reassuring about this for the vast majority of poor to extremely poor countries, however. Most rights, not only copyrights but also patents and trademarks, are the property of enterprises in rich countries. Many of those rights extend far into the future. Moreover, governments – and therefore also those of poor countries – are obliged to help those private enterprises in the rich part of the world in any way possible to enforce their rights (Deere 2009: 67).

How on earth, you might wonder, can poor countries ever develop if the raw materials needed, such as knowledge, are not freely available, but have to be bought, if at all possible? Naturally, it would be cynical to say that, in the 19th century, countries in the North, or the West, whichever way you like to look at it, were able to make unbridled use of whatever knowledge there was in their vicinity, unrestricted by intellectual property rights.

Peter Drahos therefore believes that the price for the endless extension of rights is too high. In his view, TRIPS can't be isolated from other urgent issues on the global agenda, such as 'widening income inequalities such as those between developed and developing countries, excessive profits, the power and influence of big business on government, the loss of national sovereignty, globalization, moral issues about the use and direction of biotechnology, food security, biodiversity (the last three all linked to patenting of plants, seeds and genes), sustainable development, the self-determination of indigenous people, access to health services and the rights of citizens to cultural goods' (2002: 16).

Battle against piracy or higher priorities

The attempts to make copyright enforceable in every corner of the world are being thwarted in countries where, until recently, this instrument was hardly known, not only due to unwillingness or impotence on the part of governments (Deere 2009). A perhaps even more major spoke in the wheel is piracy. This is committed on a grand, industrial scale or with entirely different intentions by someone at home who is frankly and freely exchanging music, for example, with someone else on the other side of the planet. How should we judge this?

One of the implications of the globalisation over the past few decades is that it has generated us a great deal of trade that transgresses the bounds of legality. This includes music and film piracy. There is also the traffic in women, children and human organs, illegal arms trading, black money, corruption and tax paradises, illegal workers, drugs and therefore also piracy of intellectual property. The philosophy of the neoliberal reforms of the 1980s and 1990s was aimed at creating open economies with as few obstacles as possible for trade and transport. The regulating, controlling weight of the state had to be reduced as far as possible.

We should therefore not be surprised that black markets and illegal trading have flourished in their wake. The IMF, for example, estimates that between 700 and 1,750 billion dubious euros are circulating between banks, tax paradises and the financial markets (Le Monde, 23 May 2006). Anyone surprised by the outbreak of the worldwide financial crisis in 2008 had not been paying attention beforehand. Part of the undeclared money flitting around the world is intended for terrorist purposes (Napoleoni 2004).

The big question is whether this large-scale evasion of the law can be stopped, including in the area of music and film piracy. Moíses Naím states quite plainly that we don't have the resources. We have to prioritise the deployment of our tracing mechanisms and our legal and penal systems. He formulates two principles as a guideline. First of all, the economic value of illegal trading has to be drastically reduced. 'Drive out the value from an economic activity, and its prevalence will diminish accordingly'. The second principle is to reduce the social harm (2005: 252).

When establishing the criteria for prioritising then, clearly, the illegal traffic in women, children and human organs has to be fought. These activities erode the civilisation of a society. If the state no longer has the monopoly on the use of violence and no longer controls the money flows, then at some point you no longer have a society. Moíses Naím lets there be no misunderstanding where it comes to drugs. The war there is lost and why should it be more of a problem than the overuse of other stimulants? The state should bow 'to economic reality and go into the drug business itself. It is a bold move, not recommended for anyone seeking cordial relations with the world's great powers. But if you feel you have nothing to lose, why not?' (o.c.: 84). Neither is he optimistic that the fight against piracy can be won, on either an industrial or an individual scale. Not because of lack of motivation on the part of the intellection property owners, but because the illegal traders, forgers and exchangers of artistic material at an individual level are many times more motivated. Evidently then, the fight against piracy will have to be given up at the same time as the instrument of intellectual property rights.

His conclusion is therefore that the fight against trafficking in women, children and human organs, against illegal arms trading and black money has a higher priority – and is already difficult enough – than rushing around tracking down trade in drugs and illegal copying. The decriminalisation and legalisation of drugs and the free exchange of artistic material should therefore be discussable options. That considerably reduces the value for traders and the harm to society (o.c.: 252). We would like to add, perhaps superfluously, that when it comes to artistic material and knowledge, intellectual property rights detract from rather than contribute to the income of many artists and the retention of the public domain of knowledge and creativity.

Creative industries, revival of copyright?

At one point, under Tony Blair in the United Kingdom, intellectual property rights became strongly interlinked with creativity, as if one could not exist without the other. This could be seen as an attempt at reviving copyright, which had lost respect in many strata of society, if it had ever meant much to them at all. With the advent of digitalisation, there was no stopping it: music and, later, also films were exchanged like nobody's business. What the British government at the time must have thought is: let's make it clear that there will be major economic benefits in the future if the culture in a country, region or city is turned into a substantial industry. To realise that benefit, however, intellectual property rights had to be strictly applied. This would, in any event, be an incentive for local authorities to implement a strict application policy where copyrights were concerned.

In 1998 and 2001, a special Task Force from the UK Department for Culture, Media and Sport (DCMS) presented mapping documents, which stated that it should be a major objective of cultural policy to raise the "creative" potential of cultural activities, so that they generate more commercial value. Creative Industries was then introduced as a generic name and, according to the definition, encompasses 'those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property' (in Rossiter 2006: 103, 4). In the wake of this initiative, concepts such as Creative Economies, Creative Cities and Creative Class came into fashion.

Should we applaud these developments? Not necessarily. The incentive for undertaking activities of a creative nature that generate income from intellectual property is wealth. It's worth taking a closer look at the definition in its individual parts.

We consider the word creative an unfortunate choice. That can be said of all human activities and therefore serves no purpose as a distinguishing concept. What's worse is that the value of the artistic creation for a society – as we have already mentioned – disappears from the picture and has been lost in definition. A key word in the definition is 'industries', so we are only talking about Hollywood, the four major music conglomerates and a few big publishing houses. All other creative activities, or cultural activities as we prefer to refer to them, are produced and distributed by medium-sized and generally even small companies. An objective – industrialisation – is being set that is impossible to achievable.

The definition stresses that creative activities have their origin in individual creativity, skill and talent. We already mentioned above that the individual aspect represents a romantic, rather than realistic view. Artistic creation and knowledge development are supported by collective processes. We do understand why the individual aspect is mentioned in the definition, though. The advocates of Creative Industries are keen to demonstrate the need for the further expansion of copyright and intellectual property rights. After all, these are individually-oriented rights. We already pointed out above that copyright makes a surprising meagre contribution to most artists' wealth accumulation. The definition suggests otherwise; the Promised Land of the Creative Industries, Cities, Economies and Classes will be reached if intellectual property is harvested on a large scale through those creative activities.

Ruth Towse advises taking a look at the website of any ministry of culture or region or city, 'and you will see that the world has suddenly discovered the economic power of creativity!' It is unclear what is meant by creativity and how it can be promoted by government policy. 'One of the most prevalent policies is strengthening copyright law (authors' rights) in the belief that this acts as an incentive to creative people to produce new works of art, music, literature, etc. However, the power of copyright law to reward artists and other creators seems to be limited'. On the other hand, Ruth Towse stresses that the system is extraordinarily generous to cultural conglomerates (2006: 1).

A number of reasons

There are too many objections to copyright to maintain the system. Some are of a fundamental character; others have silted up the system over the past few decades. Amongst these, is the myth the creative industries use to convince us that the strict application of intellectual property rights generates wealth. Piracy - but the scale on which it is carried out, in particular - is a more recent argument. Forced introduction and sanctions for failure to comply are a new phenomenon under TRIPS. In principle, copyright and authors' rights – to do justice to the various origins of the systems – have always been closely related to the importance of securing investments, naturally. In recent decades, the system has tended more and more in the direction of investment protection and then we are talking about extremely large investments that enjoy an ever-longer protection term and scope. The price is that the public domain of artistic creativity and knowledge

is being increasingly privatised, eroded.
In many branches of art (perhaps superfluously we should mention that this also includes entertainment and design, in our view) copyright has never fulfilled the expectation of providing many artists with a reasonable income. This is not due to copyright alone; it also has to do with the market conditions. In recent years, the difference in income between the big stars and the average artist has become striking, more than ever before.

It might be possible to rectify these shortcomings to some extent in order to get things back on track. But we can't be sure. Many of the defects are inherent to the way economic globalisation, as practised under neoliberalisation, has taken root in our society. There is little point in operating unilaterally if the imbalance of economic power is not tackled, for instance.

This brings us to the more fundamental objections to copyright: ownership, its censoring effect and moral rights. Naturally, varying criteria can be applied here. There are many who have a real problem with the fact that artistic expression is in the possession of private persons who own the exclusive, monopolistic rights of use. The assumption is then that this relative 'evil' has to be put up with for a limited – but then really limited – period, for the 'good' of artists and the parties releasing their works being able to capitalise on their creations and performances. In the next chapter, we will see how the line of reason develops further and which solutions are suggested.

We, on the other hand, are unhappy with the very idea that human expressions, in artistic form, should be monopolised or privatised. We also feel this legal walling in is entirely unnecessary for guaranteeing artists' incomes and the investments; in chapters 3 and 4 we present proposals aimed at an entirely different economic structuring of cultural markets. The option of a limited legal protection term does not appeal to us, either. Once a work has appeared or been played, then we should have the right to change it, in other words to respond, to remix, and not only so many years after the event that the copyright has expired. The democratic debate, including on the cutting edge of artistic forms of expression, should take place here and now and not once it has lost it relevance. There is therefore no place for moral rights in our view of the situation. We replace it with, for example, wrongful and unlawful acts for those cases where artists feel they have good grounds for complaining that their work features in contexts they abhor.

It's a strange feeling to have already arrived at a watershed at this juncture in our book. For us, the reasons for abandoning copyright are legion. We can, however, imagine that a lot of people will be unwilling to relinquish this instrument just like that, but do, nevertheless, regard it critically. Can't it be repaired? That is an understandable question, which we will deal with in the next chapter.

CHAPTER TWO
UNSATISFACTORY ALTERNATIVES AND WORSE

Immense and undesirable

Now that copyright has assumed such immense and undesirable proportions, it's no wonder that its credibility and legitimacy are at issue. Alternatives are therefore being sought, which we will discuss in this chapter. We have analysed several approaches that will change copyright. The first is proposed by scholars and some activists who would like to see a return to the old days. Their argument is that copyright, in principle, is not such a bad idea, but that it has got completely out of hand. Let's get it back into normal proportions, is the adage. The second concerns the wishes of non-Western societies to see their traditional knowledge and folklore protected from sneak thieves in the West. Their aim is to add a collective variant to the individual character of intellectual property rights.

The third approach focuses on various types of tax that could replace or simplify the copyright system. How can the deductions be collected more efficiently and how can the proceeds be distributed more equally? Criticism is also increasing of the way copyright organisations function and of the fact that they are rather bureaucratic and so much money goes on expensive overheads.

A fourth alternative approach to the current copyright fans out in two totally different, even contrary directions. What they have in common is that they are both aimed at introducing regulations based on contract law, so the current copyright system becomes less important or is even abolished altogether. The potential user of an artistic work is proposed a contract stipulating how the work can and cannot be used. The introduction of the digital rights management system will help enforce compliance; at least that is the intention.

But what are the differences in direction? The first is expressed in Creative Commons. Supporters want to make artistic work optimally available to the public. To achieve that, a range of licences has been developed that are attached to a work, as it were, while private ownership of the work is still maintained through copyright. Whichever way you look at it, they are contracts. The second direction has been hatched by the cultural conglomerates. They overload their public with restricting conditions, founded on a strict system of contracts and licences.

Obviously, ideas concerning copyright have shifted in various different directions, partly due to the influence of digitalisation. The big cultural enterprises would like nothing better than to be able to regulate, manage and control the use of artistic material down to the very last detail. Other parties, such as scholars who are critical of copyright and advocates of Creative Commons, want exactly the opposite. They would like to mitigate the copyright system and promote the idea of public interest again playing a significant role.

These are the alternatives that have been formulated and put into practice. And then there are the millions of other people who carry on as if copyright doesn't exist anyway, downloading and uploading to their hearts' content. To the great annoyance of the industry, which, apart from penalties, devotes a great deal of attention to making people copyright-minded. Does it help,

though? Not really. There appears to be no education or propaganda able to cope with it (Litman 2001: 112, 5).

Back to the old days

Critical views of copyright often tend to conclude that it has become too extensive. The protection period is too long and it allows the owner to benefit too much. Another complaint is that citizens' rights of fair use have been eroded. In theory critics can agree with some, or many, of the arguments we presented in the previous chapter,

But this doesn't stop them believing that the system can be reduced to normal proportions again and that it is still relevant to the digital world. It may be so that copying and distributing work costs hardly anything there, but it still has to be created and produced, it has to be improved by an editor or director and it has to be advertised to the outside world. This incurs costs, which at least have to be recouped in one way or another. Shouldn't we be worried that, without copyright, unscrupulous publishers or producers will stealing works without the author or, for example, the original publisher being able to do anything about it? Doesn't the system provide a certain protection and stability for justifying investments? (Vaidyanathan 2002: 92).

How do these critics imagine that copyright can be put back on track? Various proposals have been put forward. First of all, fundamentally reducing the protection term. Twenty years has been suggested, for example (Boyle 1996: 172), or five, but extendable to a maximum of 75 years (Brown 2003: 238), or 14 years, extendable one time (The Economist, 30 June 2005). These numbers are based on calculations, but also naturally on estimations of how long the real author should be able to benefit from his or her work to achieve a reasonable income; the same applies to the producer, for recouping his costs. These estimations seem to vary quite considerably.

There is also a plea for giving the fair use principle the place it deserves again. Fair use is the American terminology. In Europe, this is covered by the statutory exceptions and restrictions that represent the interest society has in retaining knowledge and creativity as part of its fibre. This is in fact the knowledge and creativity that has accumulated in the course of time thanks to the efforts expended in that specific society. Under the fair use exception it was, for example, possible to use fragments of a work, or sometimes even the entire work for educational and scientific purposes. The objective of this principle is to allow knowledge and creativity to develop further without being fully privatised. That is the balance copyright was initially intended to achieve: there are creators and producers who have a legitimate interest in their works generating a profit, but society must also have sufficient access to the work.

A point that has appeared on the agenda in recent years is that quite a lot of work has been 'orphaned'. What does that mean? An awful lot of books, music, images and films are still copyrighted. They have not yet become public domain. At the same time, however, there are many cases where there is no owner exploiting the work commercially, or the owner does not even know that he/she owns work that is copyrighted. Now that the protection term of copyright has become so long, there are hundreds of thousands of works that have been withdrawn from the public domain and no one is allowed to use them for any purpose whatsoever without risking

heavy punishment. Most of the time, no one any longer has any appreciable interest in commercially exploiting those works or maintaining the integrity of the artistic creation. Such works are referred to as orphans. A not inconsiderable portion of our cultural heritage has been condemned to hibernation, in other words.

That is a problem, to say the least. Can anything be done about it? In January 2006, the US Copyright Office published a report that investigated the scope of the problem and described possible solutions. The system the report supports is that of limited liability. This means that the users of work that is presumably an orphan are still infringing copyright, but if they have conducted a 'reasonable search' then they can't be sued if the owner appears. The owner is then entitled to receive remuneration from the user of that work.

But what, you might wonder, is a reasonable search? It turns out to be a risky adventure that progresses in a number of steps, as far as can be ascertained. First of all, it has to be established whether a work is still under copyright. This is far from simple as there can be various terms of application and, in many cases, the end of the term depends on the time of the author's death. It is often difficult, if not impossible, to trace authors or other copyright holders. When a work is no longer commercially available it is far from easy to get hold of biographical information. Even if you succeed in finding information on the author, publisher or distributer, it's not then sufficient for identifying the copyright holders. The author may have transferred his or her rights to a third party. What's more, copyright owned by a company can simply become forgotten over time. The reasonable search can become even more complicated if a company has ever become bankrupt or been taken over. What has happened to the copyrights then? (Gowers 2006: 69-71)

In Sweden, in January 2006, a new political party, the Piratpartiet or Pirate Party was set up by citizens who evidently felt uncomfortable with the current development in copyright. They didn't win any seats in parliament, but the party still gained a few tens of thousands of votes in the elections. Contrary to what the name suggests, the party is not in favour of abolishing the patenting or copyright systems, but states 'that copyrights need to be restored to their origins. To share copies, or otherwise spread or use works for non-profit uses, must never be illegal since such fair use benefits all of society'. (IHT, 5 June 2006)

The Piratpartiet suddenly gained a lot of attention and an influx of members when, in June 2006, just before the elections, the Swedish police took Pirate Bay, an extremely popular Swedish music exchange site, off the air. This caused quite a fuss. The Swedish television news programme, Rapport, put the cat among the pigeons by claiming that the raid on Pirate Bay was the result of direct pressure from the US on the Swedish authorities when the Swedish public prosecutor had already concluded that the case against Pirate Bay was too weak to justify a raid. The Swedish government immediately denied the accusation (o.c.). Meanwhile, in 2009, a Swedish court has condemned the owners of Pirate Bay.

One important point that critics raise is that countries no longer have the freedom to organise copyright as they see fit. They are more or less forced to implement the basic standards, as agreed in TRIPS, the WTO treaty on trade-related aspects of international intellectual property rights (Deere 2009). Peter Drahos describes the problem as follows: 'Today's developed states

had considerable design freedom over intellectual property rules'. The WTO trade regime has taken the 'design freedom over intellectual property rules' away from nation states. (2005: 27)

This freedom of design is highly important, as countries are at different stages of development. They should have the room to gain access to sources of knowledge they desperately need for their development. A long time ago, countries had that room. Now, however, the rich countries are turning away from those practices and asking developing countries to comply with conditions that make it difficult, if not impossible, for them to develop. Western countries were able to evolve economically and technologically in the 19th century by, for example, using knowledge that was freely available. At this juncture, poor countries have to manage without such freely available knowledge. That knowledge has now been walled in, inaccessible to them because they can't afford to buy access, always assuming that they would be given permission to use and buy that knowledge in the first place.

This is why Peter Drahos proposes the development of a global framework treaty on access to knowledge, which should take the human rights framework as its point of departure 'because like the intellectual property regime it is globalized. The human rights framework is also the closest thing that the international community has to a common resource of values that might be used to guide issues of access to and property in knowledge... The draft treaty would contain the principle that governments have a duty under human rights law to regulate property in ways that promote the primary rights and values of their citizens'. (o.c.: 16). To state the matter in more general terms, 'a treaty on access to knowledge offers developing countries the chance to establish a nodal governance that is epistemically open and relevant to their needs as opposed to the current form of governance that is epistemically closed and irrelevant or harmful to their needs'. (o.c.: 23). In his proposal, Peter Drahos talks primarily of access to knowledge, but his ideas on such a framework treaty are, naturally, also relevant to cultural expressions.

Clearly, we consider the attempt to give copyright a human perspective inestimably valuable and indispensible in the far too thinly sown field of critical opinions. It is important to make no secret of the potential power of the system, but to permeate the public debate with the need to take a critical view of the present state of affairs, which is unjustifiable: after all, this is about artists, it is about the public domain.

Nevertheless, we are afraid that these critical arguments fail to address the main issue and the situation in which we find ourselves now, at the beginning of the 21st century. Although the duration of the ownership title is limited in various proposals, we are still left with ownership of artistic expression. In the previous chapter, we stressed that this is an unacceptable position for social communication or the critical debate. In the next chapter, we will show that such an exclusive, monopolistic situation is not necessary at all from an economic point of view.

A bit, or quite a lot, less copyright has to be enforced, too. It is difficult to tell how that can be achieved without criminalisation. Moreover, shouldn't the priorities of police deployment and suchlike be aimed more at issues that are really harmful to our society and its continued existence? In many ways, digitalisation has shaken up the playing field. It's hard to imagine there is still any room for such a protective right as copyright. Providing a reasonable income for artists is not

exactly copyright's strongest asset. So that's no reason to grant the system a long life.

But, stress many of the scholars, copyright is still cited as an essential point in various human rights declarations and treaties. It is more than an occasional instrument that can be brushed aside just like that. We are talking about a high moral value. This is, indeed, food for thought. The only question is whether the concept of copyright is actually mentioned in these documents. The answer is plain: no. The 1948 Universal Declaration of Human Rights states in the article that should prove that copyright is a human right – article 27.2: 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'. There is not a word in this article about copyright and no reason to interpret it in that way. An author's moral rights can be perfectly well served by, for example, respectfully adapting or even changing the work. It would take some imagination to interpret this text as a prohibitory article.

We also saw in the first chapter that the copyright system that has existed in the West for more than a century and a half does little or nothing to serve the material interests of most artists and there is ample reason to wonder whether it does anything, either, for those countries that are not rich.

It would be going a bit far to claim that Article 27.2 lends extra legitimacy to the existence of copyright. Furthermore, it is not obvious to assume that this article refers explicitly to copyright. Human rights declarations and treaties are there for setting out the basic principles and not for instrumentalising them.

Finally, there are those scholars who would like to use copyright exclusively for securing the financial interests of artists. They suggest that artists should be prohibited from transferring their rights to third parties and should retain their rights – and the related incomes – for themselves, making them less dependent on large cultural enterprises. The question is whether the copyright system can be restricted in such a way. The only possible answer is no, it can't. The system does not lend itself for that. After all, it is an intellectual property right. Property, by definition, is transferrable. Any plea for making the transfer of rights impossible is therefore also a plea for ending the system of intellectual property rights. This then leads us to another register of law, but certainly no longer copyright. That clashes with the wishes of many of those critics of copyright to upgrade this system and promote its better aspects.

Collective ownership

The reality is that many works of art are produced collectively; copyright – being individually oriented – is unable to deal properly with this situation. Is it not time to provide an appropriate solution so that the system can handle such situations? Some contemporary artists join forces and organise their activities together, for example. A second example, and quantitatively the greater, is all those artists in many modern non-Western cultures for whom the individual appropriation of creations and discoveries is a (culturally) foreign concept. And then, thirdly, there are those cultures where tradition still plays a dominant role. These traditions provide a substantial level of guidance for the development of creativity and knowledge.

What these artists and cultures have in common is that the individual appropriation of work is rare or non-existent. Copyright as we know it is therefore out of place in these contexts. Should an alternative be devised?

There's not much to say about the growing number of contemporary artists who work collectively, especially when it comes to digital media. Generally, it is impossible, certainly for outsiders, to tell who contributed what to a specific work. In the immediate environment of the group of artists in question it is no secret as to who has had the decisive influence in creating a work. This enhances his or her reputation. A growing group of such artists pays no real attention to copyright and is not striving to achieve a collective variant, either. They initiate projects, either on commission or to sell in the market. Once it has been sold, they start on another project. They derive their income from the concrete work they produce. In the fourth chapter we will go into more detail on new ways of doing business that are developing in the cultural sectors.

Nevertheless, you can imagine that these artists who work collectively would not be too keen on someone else pretending to be the owner of their work and copyrighting it. For situations such as these, they seek ways of preventing such forms of appropriation. On the other hand, they permit their work to be used for non-commercial purposes, for example. Creative Commons could provide a solution here, as long as the copyright system still exists. The basic principle is that the copyright of the work is not denied (after all, this right is covered by definition when a work is created). It is then made possible for others to make more or less free use of the work, under certain conditions. This is done by attaching, in effect, licences developed by Creative Commons.

Even though they are not really interested in copyright ownership, the very fact that the system exists means that is what they end up with anyway, or at least a critical variation of it. As private appropriation unmistakably exists, it can't be denied. The best thing is to play the game, but then according to your own rules.

Copyright faces a totally different challenge, however, in modern non-Western countries, which are generally poor to extremely poor. In the context of our analysis, it is important to bear in mind that the phenomenon of individual appropriation of artistic expressions is unknown in most cultures or plays a subordinate role. Like a bolt from the blue, they are confronted with two realities. On one hand, it is possible for artists to serve larger markets as a result of the modernisation of society and the associated technology. Producers, record companies and other intermediaries offer their services and sometimes also influence the content of the work. This practice brings copyright into the picture.

On the other hand, these countries have no choice. Their membership of the WTO results in the incorporation of the requirements of the Treaty on Trade-Related Aspects of Intellectual Property Rights (TRIPS) into their legislation (Deere 2009). The transition from no copyright to a fully-fledged system entails enormous changes. Artistic material that used to belong to the community and was available for everyone to use – perhaps guided and restricted to some extent by community law – can suddenly be claimed by an individual artist as his or her individual property that many no longer be used or adapted just like that by 'others'. What we then see happening is the idea and the reality of collective expressions, available to everyone in the community, evaporating into thin air.

In the case of patents, it is easier to demonstrate that local knowledge, for example, is being expropriated and falling into private hands, generally to the detriment of the local population. It is harder to show that local cultures are being fundamentally changed by the private appropriation of forms of artistic expression. The apparent logic of copyright is drummed into every man, woman and child with such an overwhelming force that makes it difficult to respond coherently. This raises the odd question of why these countries should introduce a system inappropriate to the 21st century anyway. Is there any point?

We should bear in mind that, in the early 1990s, developing countries resisted the introduction of a treaty on trade-related aspects of intellectual property rights. One of their arguments was that it is strange to have intellectual property rights incorporated into the WTO, which is, after all, intended as a free trade treaty, while intellectual property rights establish monopolistic positions in relation to knowledge and creativity. This is a contradiction in terms. These countries also objected to the uniform character of TRIPS and the compulsory high level of protection. The monopoly on the ownership of knowledge and ideas, in the hands of companies from rich countries, would be reinforced by this treaty. The technological gap between North and South would only be greatened. TRIPS would make the transfer of capital from developing countries to economically developed countries easier. (Deere 2009: 1)

Peter Drahos stresses that colonialism leaves its traces in the extension of the copyright system intended to protect the interests of copyright exporters. Every successive revision of the copyright system has brought a higher set of standards. When countries cast off their colonial status, they were confronted with a system that, as he puts it, 'was run by an Old World club of former or diminished colonial powers to suit their economic interests'. (2005: 9). With TRIPS, the WTO treaty of trade related aspects of intellectual property rights, this process has been accelerated.

The third situation in which copyright is at odds with collective agreements can be found in societies where tradition, local knowledge and folklore are still a living aspect of the culture. Where there is no distinction, for example, between knowledge and spirituality and where all facets of life, nature and the earth are part of one circle. These cultures are generally amongst the poorest segments of the population in their respective societies. These peoples are immersed in a situation in which traditional knowledge and traditions sacred to them and essential to their identity are being stolen from them, generally by Western enterprises surrounded by intellectual property rights. We have to face the reality that these societies are not only united by the bond with their ancestors but also often seriously divided by internal power struggles over land, natural resources, knowledge, social control and cultural representation, in many cases caused by earlier forms of colonialism, political oppression and modernisation processes.

Whichever way you look at it, over the past few decades the way those cultures have been treated and how they have suffered from exploitation and pure theft has become increasingly clear. A major milestone was the 1992 Convention on Biological Diversity, which recognised the value of tradition knowledge concerning the protection of species, ecosystems and landscapes. To protect these values, the idea grew that a special regime of intellectual property rights should be developed, a system more appropriate for protecting the collective ownership of knowledge and creativity. If intellectual property rights protect individuals and companies, then why not transform

the system and adapt it to situations where no individual owner can be identified?

That was, and still is, no simple task. In the mid-1990s, this issue was put on the agenda of the WIPO, the World Intellectual Property Organization, which set up an Intergovernmental Committee for Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. After lengthy negotiations, in 2005 a draft text was tabled of political objectives and core principles concerning the Protection of Traditional Cultural Expressions / Expressions of Folklore. The ideas it formulated perished due to objections from the United States and Canada.

Political objection is not the only thing that foiled this project, however. Reaching agreement as to what a treaty on the protection of intellection property rights should include is quite complicated. To be honest, it is well-nigh impossible to turn a treaty with the express intention of regulating individual appropriation into something that protects collective rights. Copyright demands an identifiable, individual source of creation; it demands a fixed form and the rights are of a limited duration. In cultures where all aspects of life are interconnected it is impossible to identify such elements.

Moreover, members of those societies reject the very idea, as their traditions and cultures are rooted in entirely different principles. There are aspects in cultures that should remain secret, or that should not be segmented, let alone sold. There is also the question of who the spokesperson should be for such a society and who would defend the interests of the society where it comes to collective rights. Who decides what correct use is and what exceeds that limit? This is asking for conflicts.

The – in principle – limited duration of copyright makes forging a collective individual property right a precarious task. These societies claim that their knowledge, traditions and folklore have existed for centuries. If that is so, then those values and material objects would already have been public domain for a long time. It goes without saying that those societies are not envisaging that spectre when demanding a system of collective intellectual property rights. Knowledge, traditions and folklore belong to them until the end of time. What is done and thought in those societies is part of the good stewardship of knowledge, cultural expressions and culture that go hand in hand with the land and with nature. Customary law decides who may use the various types of knowledge and artistic creativity, when and in which specific places and which obligations ensure from the use of knowledge and artistic creativity.

What's more, one of the basic principles of intellectual property rights is that ownership can be transferred. Societies where traditional knowledge and folklore play an important role would be appalled at the idea of their valuable traditions being marketed. That would be intolerable. For all these reasons, the attempt within WIPO to transform the system of intellectual property rights into a construction for collective ownership was doomed to failure.

Ideas have been put forward to grant these societies' traditional knowledge and cultural heritage the status of "common human heritage" or "global public goods". We do not deny that elements of shared knowledge exist in these societies, but those common activities are based on reciprocity. As long as the current system of copyright exists, these indigenous, local communities will not

exactly be happy about offering their cultural heritage and traditional knowledge to the world as a gift. In the past, a lot of the appropriation and use of their traditional knowledge by others was not prompted by reciprocity.

In the previous chapter, we suggested wrongful and unlawful acts and legal liability as a replacement for moral rights. We recommended those instruments as a means to prevent artistic creations being used in contexts that are entirely contrary to the values an author or performing artist cherishes, values essential to his or her integrity. Invoking a wrongful and unlawful act can also function for communities where traditions and folklore still play an important role. At the same time, this can provide national and international jurisprudence, tailored to specific situations where local populations consider the appropriation of their values wrongful. One requirement is then that funds and expertise are gathered to make it possible and realistic for people from such societies to have access to the courts.

Collective collection and fiscalisation

An entirely different critical view of copyright focuses on how the proceeds of copyright are collected and distributed. This topic causes quite some irritation. Users of artistic material are bothered by various organisations, all collecting for different types of rights, and in the digital domain these rights are becoming more difficult to collect by the day. Not everyone is happy with the distribution of the collected monies, either. When estimations are made as to the number of times a certain work is played or watched – and such methods of sampling are often almost unavoidable – then the ratings are generally exponentially more favourable for the frequently heard and seen artists than for those receiving less attention. The obvious question is, therefore, couldn't it be easier and fairer?

Furthermore, copyright organisations make themselves rather unpopular, as board members and managers slightly too frequently receive extremely high salaries and remunerations, as a French report in 2005 brought to light, for example (Le Monde, 9 July 2005). On the plus side, however, various European copyright organisations do put part of the monies they collect into cultural funds that sometimes play a major role as co-financiers of national cultural life. This practice is based on the philosophy that copyright should find a balance between the private rights of copyright holders and the progressive development of cultural life in a specific society.

It is not certain whether these funds will be able to survive the neoliberal storm of the WTO, which, in principle, prohibits the citizens – and perhaps any foreign residents – of a particular country having sole access to (semi-)public funds. This is based on the principle of National Treatment, which assumes that citizens of other countries should, in principle, have the same rights and privileges as citizens of a specific country. National Treatment is therefore a threat, not only to all subsidies, but also to the existence of the copyright organisations' cultural funds. National (semi-) public action and support for the benefit of the production, distribution and promotion of cultural expressions can therefore no longer be maintained if these systems have to open their doors to all the citizens of the entire world!
With the introduction of digitalisation and peer-to-peer exchange of artistic material, copyright organisations - and with them the cultural conglomerates - are being confronted with a challenge

they have so far been unable to adequately meet. Their initial primitive reaction was, and still is, that the millions of 'illegal' users of artistic material have to be penalised. Good luck to them! This has proved more difficult than they hoped and even heavy fines have no prohibitive effect on the general practice of 'illegal' downloading. A few days before Christmas 2005, a sudden burst of realism gave a number of senators in France the idea to initiate a system simplifying the collection system for downloading. They suggested introducing a general licence for which everyone would pay a few euros for unlimited downloading of music or films. They had good grounds for assuming that this would substantially reduce illegal downloading. After all, who is not prepared to pay that inconsiderable amount? This would bring an end to the criminalisation of innocent citizens and give the copyright system the chance to survive the digital cyclone.

Despite the fact that this proposal was accepted in the French senate, late in the night of 21 December 2005, the stars (the real ones) did not look kindly on this courageous initiative. Most copyright organisations in France - and there are quite a few: one for each levy - were furious and rejected the proposal, supported by the cultural conglomerates, led by Vivendi, which originated in France. They were afraid that this would put copyright holders in an unfavourable position. They therefore insisted that the French state should continue criminalising illegal users, which – as we saw in the first chapter – is an enormous burden on the criminal investigation mechanism. In fact, they had the most important politicians on their side: Both candidates for the French presidency in spring 2007 had sworn a solemn oath to fight piracy.

Back to March 2006: In a second round of voting, the French parliament rejected the proposal for a general licence and replaced it with a penalty of € 38 for each illegal download and an extra € 150 for illegal distribution. This can add up to enormous amounts. This substantial correction failed to satisfy the big cultural enterprises and copyright organisations in the least, however. They argued that the fines were too low, making it difficult to trace illegal downloads. They were convinced that the fines would not discourage illegal downloading.

In July 2006, the dream of a more normal attitude to downloading hit the rocks when the French Constitutional Court declared the limited punishments for exchanging artistic material to be unlawful. This wiped the attempt by the French minister of culture, Renaud Donnedieu de Fabre, who was endeavouring to find a solution to the massive-scale exchange of music and video files, from the table. The court invoked the property rights as worded in the French Human Rights Declaration of 1789. The interpretation is that ownership is a virtually absolute right that applies as much to a piece of music as to a house. The judges of the French Constitutional Court appear to still be living in 1789 and one might wonder if they were even paying proper attention then. After all, at some point in history the relationship between people mutually in relation to an object or certain value or form of expression - after all, this is the essence of ownership – was the outcome of social controversy in that respect (Nuss 2006: 217, 223-7; Rose 1993: 8). It is a mystery as to why there have been no massive demonstrations in France against the Constitutional Court's ahistorical interpretation of the concept of ownership.

In any event, by rejecting the proposal of relatively limited fines, the court has lumped ordinary people exchanging music together with professional forgers (IHT, 29/30 July 2006). We feel France missed the chance of setting an example here. Only people who come from another

planet can deny that the current system of copyrights and the various types of collection is irritating, at best. This takes a country such as France – although this applies to no lesser degree to many other countries – back to square one: criminalising illegal users, which has proved a hell of a job and makes record companies, for example, unpopular with their customers.

If there are so many snags to criminalisation, then we have to look for other solutions. The question is then: is there a point at which the 'lawbreakers' get themselves caught and can be severely dealt with. The answer is yes, there is, and that is the provider. The idea then is that a body has to establish, on behalf of the state, that someone has broken the law by downloading or uploading music or films without paying. The provider is then charged with the task of cutting them off for a while from their service, from the Internet in other words. At least that is the tenor of the bill submitted to the French Senate and National Assembly in early 2009.

This is fairly drastic, you might say, so drastic in fact that is it unacceptable for a number of reasons. The user's privacy is seriously invaded. What's more, it is not sure that the computer on which an offence has been established is actually used by the person officially registered as its owner, for example. It looks very much as if this search for a system of levies that is easy to implement and can count on broad social acceptance turns out not to be very promising. To be more precise, French parliament has rejected the implementation of such a system in the spring of 2009. Nevertheless, the British government announced in August 2009 that it will give it a try. However, England as well may find the European parliament on its way that said that it is a human right to be connected with internet. Only a court may decide that someone may be punished by becoming disconnected. Try to imagine how the work of the courts will be disrupted if they should deal with hundreds of thousand "illegal" file sharers!

A simplification of the copyright system could also be found in imposing a one-time levy (other than the general licence discussed above, which was not realised in France), some kind of tax on music, films, books and visual material. That is the idea and the hope. The point here is also to find a suitable moment for imposing the levy in one go. The advantage is that all the different kinds of levy than become superfluous, which solves the pointless struggle between the big record companies and copyright organisations on one side and peer-to-peer exchangers on the other, once and for all (Fisher 2004: 199-258).

Nevertheless, such an across the board approach doesn't look as if it can offer the hoped-for solace. It is applied in some parts of the world by means of a surcharge on blank cassettes, for example. But there are still plenty of unanswered questions. On what kind of equipment should the tax be levied? By whom? Why should people who are not planning to download pay, for instance? How much is going to be collected to pay how many artists and copyright holders which amounts for their artistic performances? How will it be gauged who is going to receive how much money in respect of which volume of consumer consumption? Is that the artist, or the producer, or an enterprise that owns the copyright? Which body is going to distribute the money and how reliable is it?

With so many questions and the surrounding power struggle concerning their interpretation, the ship of such a one-time tax levy looks as if it will founder before it's even got out to sea. Another

option for fiscalisation could be to tax companies that use artistic material for achieving their corporate objectives – and that means practically all of them – a small percentage of their turnover. The monies rolling in are then put into a fund from which artists are paid for future projects (Smiers 2003: 214, 5). Even this set-up, which has the charm of simplicity, has disadvantages, of course. Why shouldn't private individuals pay for their entertainment consumption? Even more difficult to accept is that the relationship between the performance an artist delivers and his or her income disappears completely.

All in all, fiscalisation conceals a number of problems. It's difficult to reach agreement on which taxes should be levied, how much should be collected and to whom it should be paid. The relationship between a concrete artistic performance and a payment is unclear, to say the least. It is impossible to conclude otherwise than that where fiscalisation based on copyright and the distribution of monies is concerned the right answer still has to - and may never - be found.

Sewing up versus creative commons

As we said, there is one more approach that could threaten the future of the copyright system. That is to set out the relationship between the copyright holder and the user in a contract. Creative Commons does just that. The ownership of copyright on a work is acknowledged, but then a licence is added, stipulating the degree to which someone may use it more or less freely.

Alternatively, the same mechanism can be used, while attaching at lot of restricting conditions to use. This is the approach the cultural industries tend towards. To enforce the contract effectively, or at least that is the hope, use is restricted by means of digital rights management, DRM, which is why it is also referred to as digital restrictions management. (IHT, 15 January 2007). In fact, the industry is abandoning copyright, which actually had the intention of creating a balance between the legitimate interests of artists and their producers on one side and, on the other, the interests society has in the knowledge and artistic creativity developed in its midst. The contract makes no allowances for this: it's take it or leave it.

There is now little question of DRM being the resounding success that was dreamed of, however. The systems that have been tested were quickly cracked, or destroyed DVD players, for example. This does nothing to improve the popularity of the cultural conglomerates, which have already made themselves unpopular as guard dogs in the entertainment sector. At the same time, like Tyler Cowen, we might ask ourselves whether 'the entire war against file-sharing may be a red herring. New technologies use software to scan satellite radio stations and identify the desired songs. The software then makes a copy of the music for the listener, in completely legal fashion. Simply by turning on the software an individual can, over the course of a few months, obtain any well-known song he wants' (2006: 105).

Restricting the distribution of music, films, books or image material meets with another problem. The producer or owner of the rights and the distributor form a cartel, as it were, which no other market party can penetrate. To put it another way, the systems are not interoperable. The schoolbook example of where this is at loggerheads with competition law is Apple's iPod, on which you can only play music downloaded using Apple's iTunes software. There have been attempts to take

action against this in various European countries, but without any appreciable success.

Now the industry is having more and more difficulty collecting payment in the digital domain for the use of their intellectual property – perhaps with the exception of Apple, for the time being – advertising alongside clips on MySpace, YouTube and many other comparable sites is on the increase. You can imagine that the record companies and the likes of MySpace- and YouTube have never stopped arguing about the distribution of the advertising revenue.

The question is then, naturally, how many advertisements users are prepared to put up with. Is there a saturation point? And how many advertisements and advertisers are there in the market, to finance all those hundreds of sites and make them profitable? It's impossible to tell the effect the economic crisis that hit the world in 2008 will have on companies advertising requirements and budgets.

If the economies really end up in a recession, then how much will be available for advertising? Perhaps more initially, but later? This can then have far-reaching implications for sites set up to make their profit through paid advertising. Will a lot of them then close their digital doors? It is not unthinkable, either, that shrinking advertising budgets will be shifted increasingly from the old media, such as newspapers, radio and television, and used to tempt digital site users to buy products and services. What has already become clear is that, with the flight to advertising as a source of finance, the field of copyright is being deserted.

Ideologically, Creative Commons is structured in a totally different way from what the cultural industry is striving to achieve. What is the objective? The basic idea is that A's work should be available for use by B, without obstacles ensuing from copyright. B cannot, on the other hand, appropriate A's work. Why not? Creative Commons entails A granting a public licence for the use of his or her work: go on, do what you like with the work, as long as you don't incorporate the work into private property. The work is therefore the subject of a form of 'empty' copyright. This 'empty' copyright is the most extreme licensing option an author has under Creative Commons. Generally, however, the author chooses to 'reserve some rights'. Strictly speaking, this is a form based on contract law.

The appealing aspect of Creative Commons-like constructions is that it becomes possible to find your way out of copyright jungle to some extent. The system is without doubt beneficial for museums and archives that want to share their vast stocks of cultural heritage with the public, but wish to avoid others sneakily appropriating this heritage and claiming copyright on it, at all costs. As long as the system of copyright still exists, Creative Commons seems to be a useful solution, which can serve as an example. It does involve some snags, however.

First of all, Creative Commons gives no indication of how a vast diversity of artists across the entire world, their producers and the parties who release their work can earn a reasonable income. This is also one of the objections we have to Yochai Benkler's book, published in 2006, The Wealth of Networks. How Social Production Transforms Markets and Freedom. In his book, Yochai Benkler eliminates the market, replacing it with networks, non-market production, large-scale collaborative projects and peer production of information, knowledge and culture. (2006:

1-5). Geert Lovink suggests that Yochai Benkler should change the name of his The Wealth of Networks to The Poverty of Networks 'as there is, at least thus far, hardly any wealth (measured in hard currencies) floating around within Internet-based networks that is accessible for the individual members' (2008: 240). Lawrence Lessig can't be accused of worrying much about artists' incomes in his book Remix, published in 2008, which is incidentally a remix of his earlier work. If fact, we have to conclude that neither he, nor Yochai Benkler or Creative Commons has developed an economic model for how artists can earn an income. This question desperately needs answering. It must be said that also Chris Anderson in his Free. The Future of Radical Price (2009) does not bother much about how many artists are going to earn a decent income.

A second objection to Creative Commons-like approaches is that they do not fundamentally question the copyright system. Whichever way you look at it, Creative Commons licences give the author ownership and a form of control of the work. The name Creative Commons is therefore inaccurate, as the system does not create commons, but ownership, which is then, to put it rather irreverently, made free with.

A third and fairly essential objection to Creative Commons is that it is a coalition of the willing. Cultural conglomerates, which exercise ownership of large proportions of our past and present cultural heritage, will not participate. This downgrades and limits the appealing idea of Creative Commons.

Finally, it has to be said that Creative Commons does not provide an adequate answer to the objections to copyright we outlined in the previous chapter. For Creative Commons and its primary advocate, Lawrence Lessig, ownership of artistic material is a sacred cow that may not be meddled with.

What can be concluded from the discussion in this chapter? Attempts at adapting copyright to the demands of the 21st century have proved not to provide an adequate answer to the fundamental and practical problems we formulated in chapter one. Rather a pity, perhaps. Still, that's not the way we see it. After all, there is a better way of providing many, many artists and their intermediaries with a reasonable income and, at the same time, ensuring that our public domain of artistic creativity and knowledge is not privatised. That is the market. On one condition: that the market is in no way dominated by any force. This means no place for copyright, but also none for market-dominant cultural companies.

CHAPTER THREE
A LEVEL CULTURAL PLAYING FIELD

From a legal to an economic perspective

At this point in our argument the attention shifts from a legal to an economic field. After all, we are leaving copyright behind us and attempting to discover whether a market can be structured where this form of protection is unnecessary.

The first question that then springs to mind is what we want to achieve in that cultural market. In view of what we discussed in the previous chapters, the most obvious answers are:
- Far more artists should be able to earn a reasonable income from their work than are able to at present.
- There should be numerous owners of the production, distribution and promotion resources. After all, the power of disposal should be distributed more widely.
- There should be an extensive, freely available public domain of knowledge and artistic creativity.
- And audiences should not be swamped with the marketing of a small number of top stars. They should be freely exposed to a wide variety of cultural expressions, from which they can make their own choices.

How do we think we can achieve all this? Our starting point, which may surprise, is the cultural entrepreneur. That can be the artist himself, or someone who represents him, or a producer, publisher or commissioning party. The major characteristic of an entrepreneur is that he or she takes a risk, in our case with activities in the broad cultural terrain, which presents its own specific opportunities and threats. There has been a lot of philosophising about entrepreneurship, taking risks and the attitude an entrepreneur should adopt: He or she should think and act pro-actively, should in other words be capable of being one step ahead of the competition, should feel threats and opportunities approaching and should be acutely aware of what is happening, in both the direct environment and the wider environment. The economic and financial crisis that broke out in 2008 has made it clear that a lot of people claiming to be entrepreneurs do not possess that pro-active attitude of looking far ahead and all around.

A factor seldom mentioned in the context of entrepreneurship is the conditions that allow risks to be taken by many people. How should such a market be constructed, how should the balance of power be organised and what kind of regulations should set the limits of and offer opportunities for the scope of entrepreneurship? That is what this chapter is about.

We are setting ourselves a difficult task, therefore. What we want to achieve is a market that fulfils a specific condition. There should be no dominant force that can turn the market to its own advantage. That, it seems to us, is a basic condition for realising the objectives we formulated above. Just to remind you: no concentrated ownership, but highly diversified ownership; a fair chance for many, many artists; an unobstructed choice for audiences from an extremely broad range and retention of a wide public domain of artistic creativity and knowledge that does not get privatised.

In the present cultural markets there are two forms of undesirable dominance. First of all, copyright. We have already dealt extensively with that. It gives the owner control of the use of a work, with all the consequences that entails. What we have discussed to a far lesser degree so far is the other form of market control. That is that a limited number of conglomerates worldwide have a strong grip on production, distribution, promotion and creating the conditions for reception of films, music, books, design, visual arts, shows and musicals. That can vary slightly from branch to branch, but on the other hand there are quite a few forms of vertical and horizontal integration that penetrate as far as the digital domain.
Naturally, we should not think that the cultural field is dominated solely by extremely large enterprises. There is also a considerable mid segment. Even medium-sized cultural companies have difficulty keeping their heads above water, however. Later in this chapter, you will see that cultural enterprises of this scale will come out better in our scenario. They no longer have to compete with the merciless marketing blaze of the mega enterprises in contrast with which everything else pales into insignificance.

The two forms of market domination go hand in hand. There is no point in owning large quantities of copyrights, for example, unless you are able to peddle the work on which the copyright rests. It's all very well having large-scale production facilities, but if others can use what you produce as they see fit the next day without paying you for the privilege – and you have no protection in the form of copyright – then you might as well go ahead and close down your production facilities tomorrow.

The exciting challenge is to find out whether, by eliminating both forms of market domination, a more normal market is created, or, to use the term applied in economic literature, a level playing field. What do we mean by that? It is a situation in which no single party is able to control or influence the market or the market behaviour of others to any substantial degree. We feel, in this context, that it is crucial for a lot of cultural entrepreneurs – artists, their representatives, producers, publishers and the like – to actually be able to trade.

Are they not able to at the moment, then? There is no explicit answer; it's yes and no. Yes, because there are thousands and thousands of artists producing work and therefore trading. The no has to do with the fact that they are often pushed out of the public eye by the omnipresence of the major cultural conglomerates. They don't have a fair chance to trade. It is made extremely difficult, to say the least, to bear the risk inherent in entrepreneurship. In fact, the cultural market situation can be outlined as follows. The access door to the market and therefore to audiences and the opportunity to earn money is open only a crack for the vast majority of cultural entrepreneurs, but wide open for a few, increasingly merged, cultural giants.

They also own the copyright of many, many products that they market. This gives them an even greater hold on the market, as they are the only ones that can determine whether, how and which setting an awful lot of work is used. They basically decide which cultural products are available in the market and therefore which kinds of content are considered acceptable and appealing and the atmosphere in which they are enjoyed, consumed or used. Their works may not be changed or undermined, either, or even contradicted in the content itself.

The many cultural entrepreneurs, even the medium-sized ones, for which the door is only open by a crack, enter a market – if they succeed – where a few giants determine the atmosphere and appeal of what they themselves have on offer, which is often accompanied by the deployment of big stars. In this doubly dicey position – in other words where a few majors not only dominate the market but also determine the atmosphere of the cultural playing field - it is not impossible, but it is very difficult for a lot of smaller and medium-sized entrepreneurs to acquire any kind of profitable position in which they can survive.

Competition or anti trust law, too

To achieve a more normal market, a level playing field, we see no way other than to undertake two courses of action at the same time. We scrap copyright and we ensure that no market domination of any kind exists with regard to production, distribution and marketing. So what are the beneficial effects?

Abolishing copyright means it is no longer attractive for entrepreneurs to invest lavishly in blockbuster films, bestseller books or stars. After all, there is no longer any protection to make those works exclusive. Anyone can, in principle, change or exploit them the next day. We discuss whether that is what will happen further on. So why make such exorbitant investments any longer? Naturally, we don't forbid it. Anyone who wants to can go ahead, but the investment protection copyright offered – that privilege – is no longer available.

Does that mean, for example, that there will be no more epic films made? Probably not, or who knows? Perhaps in an animated form. Is that a loss? Maybe, maybe not. It's not the first time in history that certain genres have disappeared due to changing production circumstances and others appeared and became incredibly popular. It's not unthinkable that people will get used to it very quickly. Moreover, there is no reason to offer investment protection to large-scale productions supported by excessive marketing that, in fact, pushes the real existing cultural diversity to the outermost fringes of the market.

The second course of action we propose undertaking is to normalise the market conditions themselves. Perhaps that is even more drastic than abolishing copyright, which has become increasingly imaginable over the past few years. As we said, there should be no party that controls prices, quality, range, employment conditions, market access for other parties, or anything else, in any market. Neither should there be any parties that can act as they please without regard for any other social interests. In other words, there should be lots of players in the markets and society should impose the conditions for their functioning as an obligation.

What applies to the economy in general certainly has to apply to the sector where our human communication with artistic media is concerned. In earlier chapters, we already talked about the power of cultural expression. What we see, hear and read contributes extensively to the forming of our identities, in the plural. We can't stress enough that there should therefore be many, many enterprises in the cultural field that, instead of being pushed away from public attention by excessively strong forces, are able to offer their cultural wares from totally different angles. That is point is nonnegotiable, at least in our view.

Looking around, you will soon see that our economies fail to meet the conditions we have formulated here, namely that there should be a level playing field. Under pressure from neoliberalism, companies have been allowed to grow bigger and bigger, including in the cultural sectors. We quite understand that it will take drastic action to reverse this, in the economy in general and therefore also in the film, music, book, design, multimedia and video sectors, whether carried by the new media or not. But we have no choice. We would like to consider which strategy to follow at the end of this chapter.

If we abandon our hesitation to reflect on such drastic action, what image do we then see appear? There are then no longer any dominant conglomerates where the production, distribution, promotion and creation of the conditions for reception of artistic work are concerned. The scale is then reduced considerably, from middle-sized to small. How can this landslide be brought about? Most countries have the toolkit of competition law, which itself is intended to realise a level playing field in every market, including the cultural market in other words.

It has to be said that the tool of competition, or anti trust policy functions in a rather ramshackle fashion these days. This can quite possibly be blamed on neoliberalism, the philosophy of which was actually refraining from intervening in markets, as they will automatically tend to the optimal good. We might be forgiven for having our doubts about that now. Was that free market beneficial for financiers? Even where they are concerned, there was a rude awakening in 2008.

It is therefore time to update competition, or has it been called in the Anglo-Saxon world anti trust law. So far it has been sporadically applied to judge whether companies that merged would swallow up the entire market. It was also occasionally used to tackle scandalous misuse of a market position. In the European Union, competition law has been used slightly more actively in these areas in recent years, but it is still fighting a losing battle.

What should be happening is a far more fundamental investigation of anything that hints of an excessively strong position in the cultural markets. That investigation should, perhaps, be the major aspect of cultural policy. The debate should then break loose over what kind of market position is harmful to the objectives we formulated above, namely that numerous cultural entrepreneurs should be able to operate unimpeded by strong market parties and that it should be possible for a great diversity of artistic creations to reach various audiences without their being distracted by omnipresent marketing. The third step is then deciding which measures have to be taken to substantially reduce the scale and market position. Encouraging is that the instrument of competition or anti trust policy already exists; it just has to be revived.

Easier said than done. After all, what we can then expect and would have to bring about is a financial and economic landslide. Not that we should be afraid of that, but slicing big cultural conglomerates into little pieces, along with their ownerships, is a socially risky operation, which should be undertaken with the greatest caution. In the introduction we mentioned that the very idea of doing so makes us slightly nervous.

Imagine that bundles of capital, capital goods, market positions and production and distribution facilities were to be divided into lots of pieces. After all, this is what we have in mind for

the cultural and media sectors in our societies. With what caution and consideration does that then have to be done to avoid bringing a worse economic crisis down on our heads than the one we have already been experiencing in 2008 and 2009. If we don't dare to do so, pleading that "the cultural giants are too big to allow them to be decimated" then we leave the market conditions as they are. As far as we are concerned, that position is unjustifiable. It is undesirable from not only a democratic perspective but also the point of view of fair access to the cultural market for many, many cultural entrepreneurs. We are, indeed, confronted with a diabolical dilemma. We understand all too well that many of those writing about copyright prefer not to discuss the consequential organisation of the cultural markets. Neoliberalism having settled in our consciousness, we have forgotten how to think productively about how to organise markets differently and we certainly don't have a manual telling us how to do so. Nevertheless, we do suggest thinking about it.

To the surprise of many this is even more necessary concerning the digital and at the same time networked world where it tends to be winner-take-all, as Chris Anderson explains. 'In traditional markets, if there are three competitors, the number one company would get 60 percent share, number two will get 30 percent, and number three will get 5 percent. But in markets dominated by network effects, if can be closer to 95 percent, 5 percent, and 0 percent. Network effects tend to concentrate power – the "rich get richer" effect.' (2009: 132,3) It is amazing that this phenomenon does not ring an alarm bell for Chris Anderson in his Free. The Future of a Radical Price. The whole notion that, cultural, enterprises should not dominate markets in any way is absent from his analysis.

Where the application of competition or anti trust law is concerned, we suggest introducing various ownership regulations. The objective of such regulations is to prevent an owner having over-dominant control of production, distribution, promotion and reception of cultural creations, events and performances. To cut such an enterprise in many smaller slices. Another one of the tools we find in the designated toolkit is the prohibition of what is termed as cross ownership. This applies to companies operating in several different areas of the arts, media and related entertainment, at every stage from production to reception, making the influence they have exponentially greater in respect of scope and intensity. Things become even more worrying when it turns out that companies from outside the cultural sectors have a hand in the media in question. They have to be pretty determined if they don't want to exercise any influence on the style of programming in their own favour.

It is incomprehensible that arms manufacturers such as General Electrics in the US and Lagardère in France have ever been allowed to have considerable ownership in the cultural and media sectors. Anyone dealing in arms has quite clear interests and will want the atmosphere created in the media concerning their activities to be favourable towards them. It's trusting the cat to keep the cream when such arms manufacturers – although that actually applies to other companies – own cultural and news media that create the content and atmospheres and therefore opinions. It is unbecoming of the European Union that its media regulations are evidently so insignificant that, for instance, Silvio Berlusconi is able be an oligopolist in the area of culture and media and, at the same time, have been prime minister of Italy several times.

Must-carry obligations also apply, in the United States based on the essential facility doctrine, in the case of a company with a dominant position in distribution. This entails also having to distribute third parties' programmes without any contentual interference. Ownership regulations are useful, too, if there is a threat of media crucial to a country falling into foreign hands. Is there anything wrong with that? Quite a lot. It can be impoverishing for the democracy of a society if the owner of media is based a long way away and, except for financial economic connections, has no significant relationship with the relevant country. This is, of course, a question of weighing up the pros and cons as, naturally, there is no guarantee of an owner close to hand actually caring about his or her own society.

Prohibiting excessively heavy marketing for cultural products is another option in the package of measures for normalising the market. It is undeniable that marketing budgets to the amount of, for example, more than half the production budget for a Hollywood film load the competition. No one can compete with such promotional force.

Many cultural entrepreneurs

Suppose we succeed in realising a normal cultural playing field. Can we then achieve the objectives we formulated at the beginning of this chapter? We think so. There are no longer any obstacles to many cultural entrepreneurs taking the plunge and the risk. Enterprise always entails risk - that's something you have to accept - and it is what artists and their entrepreneurs in all cultures have always dared. In the new market situation we are imagining, many can therefore face taking risks with more confidence. Those entrepreneurs will therefore evolve in every corner of the cultural universe, serving audiences with a varied range of artistic creations and performances. What used to be niche markets can become places where larger audiences than ever deemed possible will gather.

If the cultural conglomerates' profusion of marketing is no longer being dumped onto the populace en masse, then – potential – audiences are more than likely to develop interests in various different trends. Why not? Man is essentially a curious creature and has its individual requirements as to how to be entertained or accompanied in moments of grief, for example. If those requirements are no longer being drowned out from outside, then more room is created for far more individual choice.

On the other hand, Man is also something of a herding animal. People will therefore in all probability cluster more around one particular artist than around others. To give you a foretaste of what we write further on in this chapter: that artist then becomes a well seller. The artist can never take the supreme step up to best seller, however, as the market conditions are simply not there any more. Slightly further on, we therefore discuss how beneficial this is for the fortunes of many, many artists in the cultural market.

Our actions to normalise the market for the public domain of artistic creativity and knowledge are extraordinarily beneficial. After all, artistic material and knowledge can no longer by privatised, so remain the property of all of us. There is not a single company left under the sun able to monopolise their production, processing and distribution, either.

So far in our book we have devoted more attention to copyright and less to the competition law for reversing market-dominant positions. On the other hand we have suggested that abolishing copyright could prove easier than undoing those market-dominant positions. That might indicate a contradiction in terms. Well, not really.

Competition law is an existing tool. Ideally, it is there for creating level playing fields. Evidently, existing cultural markets fail to comply will this criterion in any way. Of course companies that have grown to exorbitant extents will resist being decimated. Society has it concerns, too. How should it be done? Won't a great deal of invested capital then go up in smoke? As companies have been allowed to grow on an unprecedented scale, we are now saddled with the problem of how that can be reversed without breaking too many eggs for the economy. Are they now too big to tackle? Do we have to resign ourselves to that fatality, or can we devise any strategies that will permit us, as society, to regain control of the market? As we said, we will come back to this. We should admit at this point, though, that we naturally don't have a final solution ready. We promise to make an attempt.

As far as competition or anti trust law is concerned, the toolkit is available and there need be no great misunderstanding about its purposes. But it still takes some doing to imagine how the law could be enforced. Let's try and imagine slicing Rupert Murdoch's companies into little pieces and putting them into entirely different ownerships. We then quickly come up against problems we would rather give a wide birth, such as do we have to pay all the expropriation costs down to the last penny? Or, not?

On the other hand, if we keep sticking out heads in the sand when it comes to such complex issues, then our cultural markets will remain as they are, unacceptably dominated by a few market parties. Incidentally, if we slice the cultural giants into lots of pieces, not so much value will be lost. The individual parts, which are then middle-sized companies with individual ownership, still represent values. If you add them up then the loss, if there is any, will be highly relative. We could also place a question mark after that last sentence, however. After all, reorganising cultural markets and the resulting consequences required far more research than we can offer here, including statistical material.

A lot of money is at stake in the copyright issue, which the owners will be at pains to remind us if we want to abolish it. As we have seen here, though, they themselves are already tending towards contract law, product sponsoring and generating profits by means of advertising, while retreating from copyright. There is more to it than that, however. The tool of copyright has existed for several centuries and has gained such a self-evident status that the whole issue requires extensive consideration. It also has quite emotional connotations as the supposed means for making working and living easier for artists. Moreover, copyright has ended up in a situation in which it could develop in many different directions. The many aspects that therefore require consideration explain the slightly greater attention this book devotes to copyright.

No chance for sneak thieves

We have now reached the interest part of our research. Could a real, functioning market con-

ceivably be created under our conditions in which sneak thieves will be unable to seize their opportunity before taking to their heels? In other words, can numerous artists, their representatives, intermediaries, commissioning parties or producers earn a good living in that market? Are the risks of enterprise acceptable? Do they also have reason to believe that their work will be treated with the appropriate respect?

Let's start with the question as to whether it is likely that the work will be used by others without payment. Is there any reason to assume that another cultural entrepreneur will pop up and exploit it immediately after release? In principle, that would, indeed be possible without copyright. Nevertheless, there are several reasons why this is unlikely. First of all, there is the first mover effect. The original publisher or producer is the first in the market, which gives him an advantage. Naturally, with digitalisation, that first mover effect can diminish to a few minutes (Towse 2003: 19). That is not such a problem in itself. Most artistic work is not famous enough for free riders to fall on them like hawks. Moreover, an increasingly important factor is that artists and their entrepreneurs add a specific value to their work that no one else can imitate. Building up a reputation may not be half the work, but it is a significant factor. We mustn't forget here that there are no longer any dominant parties in the market. There are no longer any big companies that could think they could easily 'steal' a recently published and well-received work because, for example, they control the distribution and promotion channels. There aren't any more.

As, in the absence of copyright, there can now be no question of theft, however, let's call it free rider behaviour. In fact, there are twenty, thirty, forty, any amount of other companies that could come up with the same idea. With this reality in mind, it becomes less likely, even very unlikely, that another company will put the money and effort into remarketing a work that has already been released. Should we be concerned that someone other than the original initiator and risk bearer merrily walks off with a work that in fact belongs to the public domain? It won't come to that. Investments go hopelessly up in smoke when numerous parties are willing to take a free-rider-style gamble. In that case, the first creator almost certainly remains the only one to continue exploiting the work.

We'd just like to remind you that the two courses of action we proposed earlier have to be taken simultaneously. Abolishing copyright should not be an isolated action. It has to be accompanied by the application of competition or anti trust law and the regulation of the market in favour of diversity of cultural ownership and content. Only then will we have a market structure that discourages free rider behaviour.

It can happen that a specific work does really well. In that case, another entrepreneur could include it in his repertoire, make 'white' copies or promote it in his own circuit. Is that a problem? First of all, he or she will not be the only one able to do so. Moreover, if the first entrepreneur has gauged the market well and remains alert, then he will have a good head's start on anybody else. The first entrepreneur himself can also offer the work in, for example, a cheaper version, which doesn't encourage competition. Nevertheless, successful works will certainly be exploited by others. There are two possible responses. The first is: that's not such a problem, as the work has obviously already generated a lot of money for the author and the first producer or publisher. A white copy or new presentation then only serves to enhance the author's fame,

which he or she can capitalise on in many different ways.
The second response strikes a totally different chord. You can't be sure that the free rider will not be made to feel thoroughly ashamed. It will harm his or her reputation. How, for example? The original author – who is famous, after all, otherwise his or her work would not be 'stolen'- can make it clear in interviews and other public appearances that something improper has happened: someone is parading his or her work without paying for it. Would that have any effect? We can already hear people in the Western world and perhaps also in other countries bursting into laughter. We have to admit that we have our reserves here, too. One of the characters in the novel Shame (1983: 28) by Salman Rushdie says: 'shame is like everything else; live with it for long enough and it becomes part of the furniture'.

Nevertheless, it's a good idea to analyse the tool of shaming for a moment, because it's not as ridiculous as all that. In Japan and other parts of South-East Asia, it works, naturally in specific circumstances, which we don't need to go into in detail here. In any event, it exists there and functions with a corrective effect on market (mis)behaviour in certain respects. Our current Western society has not such mechanism. All relationships are made extremely legal; consequentially we are always hiring expensive lawyers to sort things out for us at court.

Just imagine, suggests Francis Fukuyama, how much all those fees cost in economic terms. That is a high price, a kind of taxation on all our economic activities, seeing that distrust is the prevailing norm, which is not a nice condition for doing business (1995: 27, 8). We pay that extreme price because we have no other mechanism available for guiding market behaviour along slightly more respectable lines than going to court. So let's have another good think. We no longer have the legal help and stay of copyright and there are no longer any dominant market parties. Shouldn't we then automatically be looking for another mechanism to keep the market functioning? It is not unthinkable that we then end up with mechanisms such as shaming and reputation damage and start to value them. Is this assumption really plucked out of thin air?

We already briefly mentioned above that, if the market is structured as we propose, the phenomenon of best sellers will be a thing of the past. That is culturally beneficial, as real room is created in the mental construction of many, many world citizens for a far greater diversity and variety of forms of artistic expression. The economic consequence is that a tremendous amount of cultural entrepreneurs can operate profitably in the market without being pushed out of the limelight by the big stars. At the same time, we established that some artists often succeed in attracting more audience attention than others. This will not make them best sellers, as there are no longer any mechanisms for boosting them to worldwide fame. They become well sellers. That is nice and economically positive for them, themselves, and for their producers, publishers and other intermediaries.

Another appealing effect is that the income gap between artists gains more normal proportions. Before, the difference between stars and the rank and file was astronomical. In our scenario, the well sellers may earn more than many other artists, but the differences are more socially acceptable. At the same time, another change is taking place, which is perhaps even more drastic. As a normal market has been created, a lot of artists and their intermediaries are earning better than ever before. In the past, it was generally a hard life, hovering around break even point and

often ending up below it rather than above. Now, a substantially greater number will sell quite a bit better. This will allow them to scramble up above break even point. They might not become well sellers, but they don't have to.

There is then already a significant improvement because their activities become profitable. That is a giant step forward for the income of the artist him or herself and, at the same time, an enormous improvement for the risk-bearing entrepreneur (who may also be the artist): the business is no longer in a permanent state of insecurity or trying to make ends meet, the investment becomes more profitable and capital is built up for further activities. It also becomes easier to take a risk on artists who deserve a chance - who should be published, should be able to perform and so forth - but have not yet had a break.

Cultural diversity

Despite the real improvement of the position in the market for many, many cultural entrepreneurs and initiators, some of them may, nevertheless, fail to make it in the market. Part of that is the normal burden of the entrepreneurial risk that, as we said, is now better covered by other activities or artists that are flourishing. On the other hand, however, these could be artistic initiatives that would probably never be profitable, but are nevertheless necessary to achieve a diverse palette of artistic products in a society.

Here, we are talking about the work of artists at the beginning of their career, or artists who are following avenues as yet unknown to the public at large and need some time to reach maturity. Some kinds of festival can be highly important for the range of cultural diversity and variety, but there is no chance of them ever being profitable. Translating works is expensive and the cost may be just too high to allow a work to be published or staged in another language. Opera and ballet are classic examples of artistic performances that generally fail to recoup their costs at the box office. A lot of theatre involving more than a couple of actors also falls into that category.

Nevertheless, they can be form of artistic expression that we would not want to do without as a society. We need them for cultural diversity. We also know that a lot of work needs time to develop – training, gaining experience, the confrontation with audiences and their responses, the blossoming of budding creations – that is only loss-making for normal production budgets, almost by definition. As a society, we set great store by laying the foundations now for something we would like to enjoy later on. Those situations require governmental support – funding, facilities and so forth – at a national, regional and local level.

We quite understand that for poor countries that can cost an arm and a leg, which they can little afford in view of their other needs. Nevertheless, it is worth considering the fact that a diverse cultural life is essential for the development of your own society. If financial resources are too scarce to contribute – for the moment – then certain facilities could possibly be made available, however basic they may be. One advantage these days, for example, is that a lot of technical equipment for sound and image recording, reproduction and presentation is becoming relatively cheap and is of a reasonable to good quality. For poor countries, that can still be too expensive.

For such situations, it is a good idea to budget for such facilities in development projects.

Strategic considerations

This, our analysis, is fine on paper. If you imagine that what we propose is a course we might wish to take, then you will soon wonder how we are going to do that. Are we not setting ourselves too formidable a task, which is doomed to failure? It is, indeed, all very well on paper, but now let's see about putting it into practice.

Nevertheless, we suggest briefly resisting the understandable urge to get on and see with our own eyes whether it will work or not, even if only in theory. First, we have to start realising that, not only are control through copyright and market domination undesirable options, but these phenomena are also at odds with the way the economy, technology and social communication are now developing. It demands a lot of debate and reflection to get to that point. We quite understand that there may be some hesitation. Better the devil you know than the devil you don't know. But that would be too simple. Societies evolve; couldn't the tools already available be adapted? Is that not a more obvious solution? Sometimes.

But there have been turbulent moments in history when fundamental changes have taken place in a short space of time. The fall of the Berlin wall is indelibly imprinted in our memory as an example. Looking at copyright, it is clearly falling apart at the seams. It could very quickly disappear. We're not saying that it will happen, but it's not unlikely, either. The market domination of the cultural conglomerates appears to be made of sterner stuff. We're not entirely convinced of that, but we do admit that it will probably be harder to dislodge than copyright.

So why do we think that the cultural giants are not destined to live ever? Before the economic crisis broke out in 2008, it was already becoming clear that they were having to make increasingly extravagant productions to stay ahead of the competition. How long can that keeping up with the Joneses go on without the financial foundations collapsing? A lot of old stars were also being revived, which shows that they are having difficulties reconciling their entire method of doing business with the way young talent presents itself and wishes to be – and is - appreciated. The industries have had to concede a lot of territory to the new giants, such as MySpace and YouTube - not forgetting the hundreds of other exchange networks - and, for example, Apple's iTunes music store. The big question is, naturally, whether the expression 'easy come, easy go' applies to these 'networks'. Network visitors can emigrate en masse to other networks in the blink of an eye. Or not to networks at all, but entirely different constructions.

The world of the big companies that produce, distribute and show cultural products is anything but stable. What's more, with the Obama administration now in power in the US, it is not unthinkable that the reins of anti trust law may be tightened slightly more – or far more? – than under their predecessors, who left them slack. Strict intervention in market-dominant companies such as Amazon.com, MySpace, YouTube and iTunes is certainly an option worth considering.

What is going to happen is uncertain, but major movements have been growing in recent years in the US, including Free Press, which are eager to give anti trust or competition law a

more prominent position in the media sector. Economically, but also politically therefore, the long-term secure position of the big production and distribution companies has started shifting. It should be added that the new technologies are bringing the production of sound and image within reach for many. This phenomenon is one of the basic reasons why MySpace and YouTube have been able to acquire dominant positions. It is not unthinkable that, with further technological developments, this type of key function will no longer be necessary for mutual communication.

What we give here are only a few indications of why it is not beyond the bounds of reason to imagine a world where copyright and market domination are no longer self-evident. It would be wise to be prepared for this situation. Anyone wishing to protect the interests of numerous artists, the presence of numerous cultural enterprises in the market and the existence of the public domain of knowledge and artistic creativity should prepare himself for a hard battle to secure those interests. The first thing to be done is to develop models for the way cultural markets should be structured. In this chapter we have endeavoured to contribute to that process. We hope this will prompt a great deal of debate and further research and that it might lead to improving the model presented and the assumptions it incorporates.

One question we are not yet ready to deal with is how to get what we are proposing onto political agendas. The opportunities for doing so vary greatly from country to country. We do not have the opportunity to devote extensive attention to the issue here, but it is a point requiring consideration for the further development of strategies and even solutions. India can't be compared with the Netherlands, nor Mali with Singapore or Iran with Brazil, to mention just a few countries.

What is clear is that our proposals touch upon WTO and TRIPS. The disappearance of copyright will pull the rug out from under TRIPS' feet. In our concluding chapter, we briefly indicate that the abolition of other intellectual property rights, such as patents, need not remain taboo, either. Then TRIPS, or WIPO, the World Intellectual Property Organization, would no longer serve any purpose. These seem to be totally alien options. In reality, however, in various non-Western countries TRIPS is seen as a candidate for a good shake-up, particularly where patents are concerned (Deere 2009: 119). If the construction is subjected to critical analysis from various angles, then how much of it will continue to hold water?

We are already seeing that happen to the WTO, which is built on the express political assumption that markets should be continually liberalised and become increasingly open, in other words. The concept of 'protecting' what is vulnerable, diverse and of importance for individual action and possession in a society, is nowhere to be found. Tools such as National Treatment are a thorn in the side here. This regards the world as one big market where everyone can trade to his heart's content, on equal terms. That clashes with the reality that, first of all, such equality does not exist and, secondly, that it can be preferable for countries to have certain opportunities for stimulating their own development. The application of competition law can also have a place here governing the cultural and media sector, implemented individually, to suit a country's own needs.

The surprising aspect of the economic and financial crisis of 2008 is that, for the first time in decades, the idea of markets being organised in such a way that not only the interests of shareholders and investors are served has become a topic of discussion. A high price has been paid for the idea that they knew what they were doing and would automatically tend to the common good. We have to forget the neoliberal notion that markets regulate themselves; it simply isn't true.

Every market, wherever it is in the world, is organised in one way or another with certain interests more in mind than others. Once this realisation dawns, it will be a weight off our shoulders. We can then start constructively considering how we can organise markets – including cultural markets, therefore – to enable them to serve a wider spectrum of interests. There are exciting times ahead, not without threats naturally, but with opportunities for the objectives we formulated above.

CHAPTER FOUR
THE UNIMAGINABLE?

Mini case studies

Is what we are proposing just pie in the sky, or does it give some direction for at least productively considering the issue? Are numerous artists as entrepreneurs, together with their producers and publishers, actually going to earn a better living than they do now? Can we expect a flourishing cultural landscape without concentrated ownership? Will audiences be choosing from a wider range of forms of artistic expression? These are the kinds of topic we deal with in this chapter.

We do so based on mini case studies from most branches of the arts. They are not detailed, economically or statistically substantiated models. First of all, we were lacking the resources. Second, such detailing at this point would be highly premature. After all, to develop such models, you first have to establish clarity concerning the way the markets and market behaviour could assume new forms in the various cultural disciplines. This is what we will be discussing here. What can we almost certainly expect? When, for example, are the moments at which money is earned? Chris Anderson regrets in his Free (2009: 4) that economists nearly not take new cultural market relations on their research agenda.

Our analysis contributes to the reflection, probing and seeking entailed, no more no less. Based on our current experience and knowledge of the market, we, as people at the beginning of the 21st century, almost instinctively see threats emerging: How can works really be exploited profitably if there is no longer any copyright? But perhaps we are forgetting that another condition would also have to be fulfilled: no dominant forces in the market. It is from this point of view that we project all our mini case studies.

That's not easy, as we are all more familiar with the current situation than the unknown future we present and respond accordingly. What follows is therefore a request to contribute to the debate. The last thing we would want to do is claim that we have discovered satisfactory answers to all imaginable situations. Plans for future reorganisations of society generally end up in a fiasco. We are not going to commit that error! Let's take a close look at a pressing issue, as an example. It is not difficult to digitally post work created in the old material domain on the Internet. So, doesn't that negate the basis for the outcome of our case studies?

Naturally, we have no final answer to that, but we do have an idea worth considering. This comes from the example of author Cory Doctorow. Fans can download his novels from his website free of charge. He doesn't see this as piracy. All the same, he still sells a lot of books through the mainstream media, via Amazon and elsewhere, probably because of that. He is not bothered by readers in developing countries even selling his work for a profit. What is the idea behind his experiment, because that is what he still calls it? It's necessary to become visible, to gain exposure, in new ways. That is a major problem in a society flooded with information. How can you win yourself a place in people's consciousness? By giving away the content of your work and building up a bond – even a real conversation – with a loyal readership, that is the basis. After that, people

stop stealing from you; they would rather have the real book and so contribute to your income (Tapscott 2008: 35). To switch examples now to music, fans then go to the concert and that is one of the ways musicians and their producers as entrepreneurs earn their money.

A counterargument here could be, 'That's all very well, but Cory Doctorow is famous, he can afford such a stunt'. Quite true, that may make it easier – although it's a lot of work – but even in his situation a risk is taken that proves to turn out well. Let's continue with a tentative response. In the situation we are imagining there is no such world-famous star as Cory Doctorow. The playing field has become considerably more level than is the case now. For many, many writers (in this case) there is therefore a real possibility of attempting to build up such a bond via the Internet. Not everyone will succeed; that's just life and business. Those who do have the same prospects as Cory Doctorow. The real books will be sold.

Don Tapscott and Anthony D. Williams advise bearing two realities in mind. First of all, that file sharing accounts for roughly half of Internet traffic. This rubs our noses in the fact that the Net Generation no longer accepts old definitions of copyright unquestioningly. They see hacking and remixing as their birthright 'and they won't let outmoded intellectual property laws stand in their way' (2008: 52). A growing number of artists is also understanding that you don't need to control the market to offer your customer superior value. 'Free content is a reality that is here to stay. So artists will have to provide customers with a product that is better than "free"' (2008: 282). Moreover, reality is that young people have more time than money which is the right condition for hunting on free. However, older people have more money than time. Thus, they prefer to buy and at the same time avoid risks because free products come without warranties, which is the cost of having no guaranteed fix when things go wrong. (Anderson 2009: 185, 219)

Digitalisation would not be digitalisation if snags could be ruled out, even where books are concerned. So far, it has been assumed that a digital reading device would be extremely unpleasant. This would give paper books an enormous advantage over all that digital nonsense, particularly where reading comfort is concerned. That illusion has been shattered. According to the findings of economist Paul Krugman, the experience of reading with Amazon's e-book reader Kindle is virtually comparable with reading a traditional book (New York Times, 6 June 2008). You don't have to be a crystal ball reader to realise that digital reading devices will constitute heavy competition for the old-fashioned book in the not-too-distant future.

How will things proceed if there is no longer any copyright? A number of options immediately spring to mind, but they will certainly not be the only ones. The first is that the text is imbedded in a whole load of advertising. The second is that customers pay as they should, as in the situation with Cory Doctorow. The author has built up a bond with his or her readers and they pay for the work. One or two will not do so. The third option mainly concerns scientific writings, which are freely available. The scientist generally did not earn anything from his or her writing in the first place and it can now enjoy far better distribution than would ever have been dreamed of. The university or foundation will have to pay the costs of peer review, editing and suchlike, but it's worth it.

We were highly tempted, naturally, to provide plenty of examples of how artists could keep their

heads above water, or better, without copyright. If you were expecting that, then we will have to disappoint you, with the odd exception, such as Radiohead. That is too good to miss. See below. Why don't we explain our theory with practical situations that clarify what we mean? If only we had them. Strictly speaking, there are no examples to quote that are being realised under the conditions we deem essential. We could pretend there was no copyright and act accordingly, but it still plays a role in the background. Apart from which, the cultural market has not yet been cleared of dominant players. On the contrary.

So we did consider coming up with fictitious examples. But that takes a lot of arithmetic, calculation of economic models and imagining how organisations and the organising is, or could be, structured differently. We already indicated above that that was a bridge too far for our study, not only because of our limited facilities, but also because we first have to better understand how markets, at least in theory, will become totally different in character from the way they are now.

We draw our mini case studies from various branches of the arts: the book sector, music, films and then the visual arts and various design disciplines, digitalised or otherwise. We group them more or less along the lines of production, distribution and reception. We have included a line space between the individual cases to make it clear that each is a new situation.

What will strike you is that theatre and dance are not included as a separate category. There is a reason for this. In that category, copyright involves the writer, the composer and, possibly, the designer. The problems and their solutions are therefore better placed in the relevant categories such as books, music and, where appropriate, design. As there is no longer any copyright, everyone is free, for example, to stage a performance as it has been given before, or give it a certain twist. If copyright had still existed, this could have resulted in an angry letter from a lawyer on behalf of a director who feels his or her work has been appropriated. Incidentally it would not go amiss to provide the original director with a remuneration or at least inform him or her, but that is more a question of common courtesy. What if a playwright insists on a work being performed as he or she indicates? Well, why not respect that wish? Anyone who still wants to do otherwise should announce that the performance is based on the specific writer's script or play.

Books

The writer writes. In the new situation, too, he or she attempts to find a publisher. If successful, the two parties conclude a contract, in which, amongst other things, a royalty percentage is agreed. The publisher then sets to work, preparing the book for publication and marketing.

At that point, the publisher has a competitive advantage. He or she is the first to market this specific book. This gives a substantial period of time to balance out the costs and proceeds. In the new world without copyright or dominant market forces, however, the book belongs to the public domain from the moment of publication. That is simply one of the consequences of the new rules. In principle, therefore, anyone has the opportunity to publish the book, too.

Do we have to be afraid of that actually happening? We don't think so. In the previous chapter we already considered whether it was likely that a second publisher would run off with it. It seemed

highly unlikely, as the market, too, has gained another dimension. Not only could a second publisher take a gamble, but twenty, thirty, forty others could also try. Knowing this, having an understanding of the new market conditions, makes it not particularly inviting to publish the work of an initial publisher and an original author without paying or requesting permission.

Let's consider an imaginary case where another publisher nevertheless dares to take the plunge. There are a number of possible reactions.

The first is that the original publisher then immediately markets a 'fighter' or 'killer' edition. Under cost price, if needs be. This can push the free rider out of the market and shows the market that 'this is what you can expect if you try poaching on my territory'. In markets where an extremely dominant party rules the roost, this kind of resistance is hardly an option for the small or even middle-sized players. But in our normalised market, this is a far more feasible option. Admittedly, it can be an organisational and financial test of strength, but you don't have to compete with a company with deep pockets, a wide reach and organisational clout. There no longer are any such companies.

Then, a lot depends on whether the first publisher has made an accurate estimation of the possible sales and, for example, printed extra copies in time. If that is the case, then there is not so much room left in the market for someone else's 'killer' edition.

Markets have many corners outside the general playing field, the niches. A second publisher may be operating in such a niche market and know it inside out, while the first never shows his face there. It could then be tempting to publish the first publisher's book there and conveniently forget that it would be courteous market behaviour to remunerate the writer and the first publisher. This is not a problem in itself, as the first publisher was not planning to operate there in the first place. No income is therefore being lost. Nevertheless, we all know there is something wrong with this. In this case, the method of shaming and reputation damage can be deployed. In the previous chapter, we already devoted attention to this, including its weaknesses and the possible hope for the future.

We also mentioned that the chance of best sellers being produced any longer is negligible. All the same, some books sell better than others and can therefore rise to the level of well sellers. That is nice for the writers and publishers in question, but they cannot, nevertheless, dominate the market. Such a book can fall into the hands of a free rider, who then produces a cheap edition. It's not likely that this will happen with the majority of books, which, as we said in chapter 3, will do quite a bit better on average, as they are insufficiently famous for free riders to be able to flood the market. It may happen with the occasional well seller, though.

We should mention here that this doesn't have to be such a problem. First of all, we have to bear in mind that such a free rider has the daring, but not the scale to justify such major activities. That reduces the risk to modest proportions. Furthermore, it's not the greatest problem in the world for the author or the original publisher. The book has already done very well, so a respectable profit has been made. Incidentally, the original publisher can go on marketing the book, benefiting from the renewed interest the free rider has created. Moreover, this action makes the author – and the

publisher - even better known and, as we said, that fame can be capitalised on.
In the introduction to this chapter, we already looked at how digitalisation - of reading devices, too – can be beneficial for authors, as long as they have built up a relationship with their readership.

Where digital distribution is concerned, there is one giant, Amazon.com, and a number of second-rank providers. It is essential to use the tool of competition law to establish whether any over-dominant positions have emerged. You might wonder what could be wrong with such an innocent activity as selling books, in this case digitally. But it is not all that innocent in the digital domain. Buyers are referred to other books that might interest them and books are given ratings. Just as there should be many bookshops to prevent books being sold from one point of view only, so should that diversity be guaranteed for selling books in the digital domain.

In France, a network of independent bookshops is starting up a system of digital distribution. This is, in any event, a sign that they don't only see themselves as losers in the digital era. A further step could be having facilities for printing on demand at hand. This has countless advantages.

A bookshop can, by definition, only have a limited number of books on the shelves and there is also the question of how long you can keep them in stock (it costs money and occupies space that could be used for new books)? With printing on demand, all imaginable books are available in the blink of an eye. Booksellers no longer have to take great stacks of books from publishers to be certain of not losing a sale if a particular book takes off. The other unsold books – and there are many, many of them – therefore go back to the publisher, where they are put into the shredder. Ecologically, this not inconsiderable overproduction of books is pure madness.

Printing on demand, which can be done close to the customer, can also turn the local bookshop into a service centre for local residents wanting to publish their own books. Family histories, poems, novels. There is an awful lot of writing going on. The advantage of printing on demand is that exactly the required number can be printed. Bookshops do, then, have to ensure that they offer their customers something extra in comparison with companies operating on the Internet and offering the same services.

Let's go back to the writer. In the digital era, he or she doesn't necessarily have to approach a publisher to have his or her work released. It's still an option – if there are good reasons – but it's not absolutely necessary. The editing and design of the book can be done by the author him or herself. Or can be presented via a website, either solely in digital form or as an announcement that it is available in print, or both. With print-on-demand the number of copies printed need not exceed the demand. The author can also update the book periodically. Clearly, the book world, too, is evolving as a result of digitalisation. A lot can be learned from the change that has already been underway in the music industry for some years now.

Music

Concerts and other kinds of performances are already excellent ways for musicians to generate income. This provides added value. A bond is created with the people on stage who conjure up something beautiful or fascinating from their instruments or voice, whether it be pop music or the

many other imaginable genres.
It's hardly worth asking whether musicians still need record companies. The answer is no. With the latest technologies, they can record the way they want it to sound. They don't need a marketing manager from a major or one of its labels. Distribution and sales can take place after concerts or via the Internet. Costs for intermediaries are considerably reduced. A band or ensemble can consider it useful to find their own manager, who relieves them of some of this work. That is an investment worth the money.

SellaBand has developed a business model for raising investment funds for initial costs, based on the relationship a band builds up with people who believe in them, the 'believers'. They can buy shares in such a band for $10 and upwards. For groups who manage to scrape together $50,000 in this way, SellaBand supports production, carries out promotion and suchlike. They are taking over the role the industry used to play (Howe 2008: 256-8). The involvement fans show with such a band is referred to as crowdsourcing. Jeff Howe sees this phenomenon as 'the uncoordinated actions of thousands of people, who were doing things that people like to do, especially in the companionship of other people'. It is throwing off the yoke of being solely a consumer. People want to be involved in production processes that have significance for them (2008: 13, 4). This does not alter the fact that it is compensated with a financial reward, but that is not the principal part of the pleasure. The believers in the SellaBand projects also benefit from the income such a group generates.

We mentioned above that we would talk about Radiohead. In 2007, the group posted its new album In Rainbows on the Internet. Fans had to decide whether they wanted to pay for it and, if so, how much. The album was downloaded more than a million times and somewhere between 40% and 60% of the users chose to pay the band, on average € 5 (Le Monde, 19 December 2007). A conservative estimate brings the total amount Radiohead received to 2 million euros. This is a sign that fans want the band to continue creating.

Here, too, this can be laughed off by saying this is a famous group. And so it is; hence the amount. In our future, however, it is unlikely that there will still be any such groups with such fame, as it will no longer be possible or permitted to deploy the marketing resources this requires. Even when smaller amounts of money are involved, a group has to work hard for it. Ultimately, it boils down to building up a bond with potential fans, who then remain loyal and, as we have seen with Radiohead, are willing to stick their hands in their pockets. The amounts fans actually pay are not that high. They can be lower than buying a CD from a major, as incredible savings are made on overheads and marketing, in particular.

In our scenario – although this is certainly a moot point – broadcasting companies can use musicians' work free of charge. Why? First of all, we have to remember that they no longer have the same scale as now. They can no longer be part of a big conglomerate. That reduces the chance of hearing the same repertoire everywhere. What's more, in order to obtain a broadcasting licence, they are obliged to make their programming diversified, in the genre in which they specialise. At least, that's the way we imagine it. If, as society, we make numerous facilities available to enable broadcasting companies to operate anyway, then, in return, we can demand that they play and show what is evolving in the way of artistic creativity in society, in the broadest sense. As a result, far more artists can be seen and heard than are now. This is important for their reputation, which

then attracts audiences to their concerts.
Broadcasting companies can choose to contribute in various ways to the development of a varied cultural climate in the place where they broadcast. They can support festivals, master classes and many other events, making an infrastructural contribution to creating a stimulating musical climate, for example. They don't have to, but their total absence will be noted by the public. Their participation will also generate programmes for them related to the musical and other cultural life in the community in which they broadcast.

So far, we have mainly spotlighted performing musicians. Before they play a note, however, something has to be composed, unless they improvise. How are composers going to be viewed under our conditions? There are two possibilities, we feel. The first is that the composer receives a commission from some ensemble or other to write a work. The second that springs to mind is that someone composes on his or her own initiative and then looks for an individual musician, band or orchestra that wants to play it and pay for it. In both situations, the composer receives a lump sum, which has to be heavily negotiated. That sum has to be higher than it would be now.

It could be provided for in the contract, that the composer shares in the success of the performance and sees that translated into royalties. This situation is comparable with the contract between publisher and writer. The risk and profit and shared. What it therefore boils down to is that good earnings are made from concerts. Success can be reflected in more, better-paid composition commissions.

In principle, anyone can pinch a tune. In this respect, too, one might wonder if this is likely to happen and that the perpetrator categorically refuses to pay for the re-use. Processes such as shaming and reputation damage can lead this along respectable lines to some extent, but naturally it gives no guarantee of absolute certainty. We can also assume that only a limited number of works will be covered by others. Most compositions are not striking enough to engender the fear that others will play them, too. That says nothing about the quality of a composition, incidentally. If, despite all this, others include a work in their repertoire without paying for it, then the creator in any event becomes more famous and, here again, it elevates his or her position in the market, with all the beneficial financial implications that entails.

Many companies use music to achieve their corporate objectives. That will become incredibly cheap for them once there is no more copyright. But it's not as simple as that. The company in question wishes to distinguish itself in a specific way from others through, for example, a tune. Then there is no point in using other people's music. Vice versa, there will be no fear of melodies written the company by composers being used by other firms.

It will be quite common for an orchestra or ensemble, for example, not to have sufficient funds to pay a composer properly. In the previous chapter we already pleaded for governments to come to the aid with decent subsidies in such cases. After all, for the quality of progressing artistic developments it is important to keep having new, fresh compositions. As a spin-off, the work and efforts of contemporary composers, in all genres of music, also has a tremendously stimulating effect on a society's total music life.

Films

In some countries, generally European, a diversity of films can still be made thanks to subsidies and other facilities, such as festivals, which are supported by governments. Unfortunately, most of these only reach a limited, primarily domestic, audience. European films don't travel any more, you could say. Seldom does such a film cross the border.

In many parts of the world, markets are dominated by Hollywood product. This is partly due to vertical integration in the line from production to reception. That can be in a literal sense – several companies are under the same ownership – or it can come about in each case through great thick delivery and purchasing contracts and participation in investments. Another important factor, naturally, is the excessive marketing the world is bombarded with, which we already mentioned earlier.

What spectacular development would occur if our proposals were to become reality? We already indicated that it is unlikely any more blockbuster films will be made. Without the protective shield of copyright, without control of the market and without the possibility of splashing out on marketing, there will be little motivation for investors to put their money into such projects.

With the blockbuster system, the success rate is low: one in ten films makes a profit, but then a really good profit. Without blockbusters, we believe that rate would rise to four in ten. The occasional best selling film will make way for several well sellers. With the substantial reduction in the risk attached to making a film, the extreme concentration of production facilities is no longer necessary. The major studios can and will be replaced (due to cultural antitrust legislation) by more modest production facilities, the medium-sized or smaller companies. Economically, of course, that is a formidable transition – although perhaps less drastic than it seems, as the heyday of the major Hollywood studios appears to be over.

In practice, two types of film will then be made. Films costing a couple of million euros or dollars, or perhaps a little more, and films with a more modest budget of somewhere between twenty and seventy thousand dollars or euros. How can these two film types recoup their costs?

We have to be honest and admit that producers of films costing a couple of million dollars or euros will not recoup their investments straight away. It could be possible under the new market conditions – after all, these are not extraordinarily high amounts for a market in which no market-dominant party is operating – but we are not assuming as much for the time being. Nevertheless, hundreds of millions of people live in the European market, for example, and just as many potential viewers. All it needs is for distribution to be better organised over this continent than it is now. The European Commission could play a supportive role here. To be more precise, on the grounds of the Treaty of Amsterdam, that is an explicit task for the government, the Commission and the European Union. Don't forget the important fact that there are no longer any blockbusters in the market. There is therefore more room, and curiosity, for many different films. This makes it more probable that they will also be able to recoup their costs more easily.

With books and music we saw that there are various moments at which artists and producers can realistically earn back their investments plus a reasonable profit, without much risk. Nowadays,

for films in the mid segment there is too great a risk of them simply being copied, leaving no earning moments for the creator or producer. We have to admit that finding a solution for this situation was the most difficult part of our study and we would be glad to exchange our findings for any better ones.

If a film can, indeed, be copied so easily when it also needs a certain time to recoup its costs, then we can only come to one conclusion. During that period, the film should have a protective lead time, a time during which it can gain a head's start on other parties in the market. In other words, a brief period in which cinemaographical product can be exploited exclusively in the market, more or less undisturbed by others.

Why should that be necessary? If the film can't be exploited undisturbed for a while, then the scenario can develop where no one any longer dares take the risk of producing films. Cinemas and televisions stations would then be without any supply. Consequentially, there are a couple of parties who have an interest in the market being regulated to a certain degree to ensure a continuous flow of productions.

One can imagine that these parties make a mutual arrangement. This could be under private or public law. Whichever is opted for depends on what is most common for such arrangements in the country in question. The arrangement could entail parties agreeing that payment is made for the use of the film. It is an exclusive arrangement between parties, which excludes third parties. The arrangement might be for a term of six months, after which the film will be freely available. The term could also vary according to film type.

The arrangement is agreed to on the basis of a clearly defined objective: ensuring sufficient supply in the category of slightly more elaborate films. This covers a general social interest, namely the availability of a wide variety of films in this category. The public is a directly interested party; it wants to be able to have a regular choice from a new range.

We are sure you can imagine that we hummed and ha-ed for a long time over whether what we are now proposing would be labelled as copyright. Our ultimate conclusion was no. There are a couple of striking differences. The first is that there is no owner who may forbid the film being changed. That is quite fundamental. In our scenario, the material finally used in the film can be rearranged as much as anyone likes. Anyone is free to remix. Within the copyright world, taking such liberties would be considered sacrilege. We are more in favour of encouraging adaptation. The newly arranged film can, in turn, be registered for the arrangement between producers on one hand and cinemas and television stations on the other.

This is the first major difference from what copyright is, in essence. The second, in our approach, is that everyone is free to show the film in any situation. Under copyright the owner had a large degree of control over the conditions under which a film is shown. With us, that prohibition right does not exist.

Anyone who disagrees with us could say that this is still creating an exclusive situation, even if it is only brief. So isn't that like copyright? In our view, no, but a heavy debate on the topic can do no

harm. We must not forget to allow for the fact that we have not only abolished copyright but also turned the market into a level playing field. That is at least as drastic an intervention.

It is hardly imaginable that there is any way of preventing films circulating in the digital domain. As we said earlier, the real fans will respect the producer and probably pay for films, while others will simply take advantage.
The technical execution of the arrangement under private or public law that we are proposing need not be complicated. The essence is a clearing house. Films are divided into categories according to how much they cost and which cinemas and TV channels they are suitable for. Calculating what has to be paid and effecting payment is then relatively simple.

Naturally, a great deal of thought still has to go into how such arrangements can function internationally. Imagine a cross-collateralisation system, for instance. Films can be expected to travel between countries far more than they do now. After all, there are no longer any cinematographic products being launched simultaneously all over the world with a plethora or marketing. This could provide the opportunity for receptiveness to other film cultures.

It is quite probable that both production and showing will be entirely digitalised. This gives cinemas the freedom to programme more thematically. They no longer have to wait for copies to become available. Producers also no longer have to count the pennies before deciding how many copies they should make. That number can now be infinite. Neither is there any need to worry about one producer being vertically integrated into hundreds, if not thousands, of cinemas and, due to digitalisation, being able to market an unexpected blockbuster even more easily than is the case now. In our model, as we said, there is no such vertical integration.

We briefly indicated above that, particularly in Europe, quite a lot of films costing a few million euros can only be made thanks to contributions from subsidies. If our proposals turn out well – which is what we expect – then many films will be profitable under the new market conditions. They will no longer require any subsidy. That does not alter the fact that governments should remain alert. There will always be certain genres that will never be profitable, even in a market that is a level playing field. If we consider the existence of diversity indispensible, then it ought to still be possible to make them, with the support of subsidies.

We quite realise that there is far less financial room in poor countries to grant such support. It perhaps already takes a lot to support a festival with facilities, for example. This alone expresses the fact that society is actively involved in developing the film climate in its midst. Incidentally, normalising the market - for films, too – creates better conditions for domestic filmmakers.

We mentioned above that, once the blockbusters disappear, two categories of film will be made. We have discussed the favourable chances for the films that cost a few millions of euros or dollars. Additionally, there is already a rapid rise in films costing a few tens of thousands of euros or dollars. Film equipment is becoming cheaper by the day, while the quality improves increasingly. One example out of the many is the film Love Conquers All, by the Malaysian director Tan Chui Mui, which won her first prize at the International Film Festival Rotterdam 2007 and cost around € 20,000. This is no exception. In Nigeria, a few thousand films are made each year with similar budgets.

Of course, we are talking about a different kind of film from what we are used to from the medium. Although we ought to put that 'we' into perspective. There are millions of people worldwide for whom this is film. They are not familiar with narrative structures other than those that develop within those genres. The environment in which they are shown and the way they are appreciated or rejected is also changing. Clearly, the risk profile for the producer is assuming different dimensions. Actors and technical crew can be paid a flat fee for their contribution. Alternatively, they can become co-risk-bearers. Their income then depends on the success of the film. It is to be hoped that they then have a reliable picture of how the film is doing.

Various economic models are developing for such films. In Nigeria, it is generally a producer who works on a lot of films every year, either at the same time or successively. A film is shot and edited within a couple of weeks. The producer has a network of sales people throughout the country, who sell tens of thousand – and sometimes even hundreds of thousands – of videos in a few days' time. This gives the producer lead time, a head's start on any possible free riders.

In our philosophy, such a vertically more or less integrated network hits at excessive market domination. Here, however, it is questionable as to whether this is the case. There are quite a lot of different providers, with their own networks, who are prepared to shoot it out if necessary. What's more, after a couple of weeks such a film has long passed its sell-by date. The market is then saturated with loads of new films, which were already even announced in the previous ones. That way, they become episodes in a greater (unplanned incidentally) dramatic epic. The films often respond to the issues of the day and, in turn, contribute to them!

The financing of such cheaply made films can also be raised through crowdfunding (Howe 2008: 254). Fans, or in SellaBand terms believers, contribute to raising the necessary money. To achieve this, a director has to build up a reputation. That way, a film can be sold through networks, like in Nigeria. If these networks don't yet exist, however, then building them up is a formidable task, although there are more and more festivals and similar events that could serve as suitable points of sale. There is more chance of selling on the Internet, in the hope that fans pay because they feel involved with the director. Another model is that where the maker hopes to break through on YouTube, MySpace and comparable sites. In that case, there are high earnings to be made as they share in the proceeds of the surrounding advertising.

Visual arts, photography and design

In general, people are inclined to think that power concentrations in the cultural sectors are found primarily in the fields of audiovisual media, film, music and books. It should not be forgotten that clustered decisive power is also a common phenomenon in the visual arts and in the worlds of design and photography. The auction houses of Christie's and Sotheby's and the big design agencies that operate worldwide are prime examples. Then there are the networks of prominent galleries and their connections with museums and institutional buyers and collectors.

The question requiring serious consideration is whether there are any forms of market domination that make the playing field uneven. A prerequisite is that the visual sectors have to be more transparent. Which horizontal and vertical connections – formal connections, or informal connections

defined each time by contract – can then be observed? Should anything be done about them? We quite understand that this field is difficult to keep control of, partly due to the opaque, invisible patterns of trading employed (Stallabrass 2004: 2, 3).

Nevertheless, a public interest is at issue in preventing market access from becoming clogged by the operations of dominant forces: there must be a fair chance for a variety of works and styles originating from many different businesses. There should also be no reason for such extreme price differences for work. It would not go amiss socially and culturally if the amazingly large differences in income in the sector were largely ironed out. Of course, we have to keep things within proportion. In-depth research into market positions and market behaviour in the various partial markets in the individual visual sectors is therefore, as we said, a prerequisite.

Initially, this aspect of regulating the market for visual art and design – by applying aspects of competition law and property regulations – demands a far greater role than the issue of copyright. After all, a visual art or design work is sold – or not – in the market. If the market is a level playing field, then supply and demand can be evenly matched and more 'normal' prices – in other words not too exorbitant and not too paltry – can be achieved.

Only once transactions have taken place does copyright come into play in the current situation. We will discuss various moments and see whether this instrument is actually necessary. The first that comes to mind is droit de suite, or resale royalties. This applies in some countries to ensure that the original artist shares in the added value a work of his or hers generates on resale. The idea behind it is that artists often sell for low prices when they are still unknown and get nothing when their work is sold on after they have become more famous.

There are various objections to this system. The first is that some countries refuse to introduce it. This makes them more attractive for traders than those countries where it does function. In those countries where droit de suite does exist, art trading is consequentially slower. For many artists this is not a favourable development. The place where their work is most likely to be sold is not the place where the big money is.

On the other hand, an artist whose work fetches a lot on resale is quite probably so famous by then that he or she can make a good living. High prices for earlier works contribute to their reputation and probably lead to better sales now. We are not going to give furniture makers or architects an extra payment if their work fetches good sums on resale, are we? Naturally, we are quite aware that there is often a difference between their starting position and that of many artists. Droit de suite is therefore an idea that is not championed without grounds or reason. Nevertheless, we feel that a tradition has to develop. This would have to entail it being considered courteous to still involve the artist in the event of a bizarrely great difference in price between the initial sale and later resale. The new purchaser - and the vendor - should feel an informal social obligation – on pain of shaming and reputation damage – to ensure that a proportion of the new purchase price goes to that artist.

Incidentally, the philosophy and system of droit de suite developed at a time when works of art were changing hands for extravagant sums while the artist was still alive. Above, we established

that those crazy amounts will be a thing of the past once the market is normalised as we are suggesting. Moreover, in the autumn of 2008, prices dropped drastically in a matter of weeks, as a result of the outbreak of the economic crisis.

Apart from that, the moral rights of copyright play a significant role in the visual sectors. Is it a problem if they no longer exist? In this respect, we base our scenario heavily on what the cultural economist Bruno Frey concluded (Frey 2004). First of all, in the past - and still in many cultures - imitating or copying work was a fully accepted practice. Artists learned from it and it showed that the duplication of the original met a demand. People paid and still pay for it. Imitations bring the image of the original within the reach of many people, the many who would not otherwise be able to afford such works.

The artist benefits, as it promotes his or her name. This enables new works to be sold at higher prices. It is not difficult to imagine that, the better the work is imitated and the more it is connected with his or her name, the higher this profit will be. Another reason why copying is a good thing is that it contributes to the forming of artistic ability. This is an excellent method for artists to learn their profession. What's more, copying and adapting keeps the discipline alive and creative. Building on the work of predecessors provides room for experimentation and new creativity. If this if forbidden by law, then every artist is condemned to create something completely new, which is, of course, impossible and leads to innovation for the sake of innovation. More often than not, from an artistic point of view, this is impoverishing. It is an illusion to think that there can be so much innovation. We have already seen that the prohibition of sampling, based on copyright, has resulted in a lot of music being less interesting.

Naturally, good imitations cause a lot of confusion. Have you bought the original or a forgery? In many cultures this is a completely ridiculous question. You like the work or you don't. That's it. In Western eyes, the answer to this obviously pressing question is that we need to be more vigilant. If you thought you had the original and it turns out to be a copy, then is it suddenly less beautiful? An additional advantage to the possible confusion is that it can contribute to a considerable drop in the exorbitant prices in the art markets. After all, you never know if you are buying the original. It would therefore be a great blessing for mankind if someone were able to accurately copy one of Vincent van Gogh's sunflower paintings. Then we wouldn't have just one, but several. You can't have too many of such a wonderful work.

In our view, however, it is unfair to suggest by imitation that a certain artist has produced a certain work when that is not the case. An example. An artist paints a picture reminiscent of the work of Paul Klee, who has never produced such a picture. In this situation, it should be mentioned that the picture is based on work by Paul Klee, but that such a work was never actually painted by him. Anyone violating such a basic rule is, in our opinion, committing a wrongful and unlawful act. We are curious as to whether a court would think the same.

Another situation that should be discussed is the actual damage of existing work by a visual artist. A concrete example will clarify what we mean. On 19 July 2007 artist Rindy Sam kissed an entirely white painting by Cy Twombly. The kiss was given in the Collection Lambert in Avignon. It was no coincidence that Rindy was wearing bright red lipstick, which drastically changed the white painting. Her initial explanation for what she did was that it was an act of love: the painting was crying out to be finished (Le Monde, 28 July 2007). No matter how creative and inspiring

that act might seem, it does not alter the fact that the painting is seriously damaged and may well be impossible to ever restore completely. If someone changes a text or melody, for example, that doesn't destroy the original work. That is different from a one-off work like a painting. We therefore feel that if someone wants to criticise an unfinished work because, for example, he or she thinks it would be better with the impression of red lips on it, there is no alternative to repainting the picture, but then with the lipstick. One should then mention that the work is based on, for example, this or that painting by Cy Twombly.

What should we accept from reproductions of visual work in the form of postcards or in a larger format? In principle, once copyright has been abolished, there is no obstacle. We have to again remember that the entrepreneur doing this is no longer – and cannot be - a strong market party and is surrounded by plenty of others who could also make and sell those reproductions. It is important to develop the philosophy that payment to the artist for a certain length of time is part of good trading practice and that circumvention would be punished with reputation damage. Again, in current practice, such a situation is hardly imaginable. Who knows how this could change in people's opinions and in their practice if the legal enforcement tools were no longer available?

Is what we have said up to now relevant for logos or product packaging, for example? We think so. Why are such instruments deployed? To distinguish the commercial activities of one company from those of another. Now there is no longer any copyright. In principle, anyone could use a concrete logo. That doesn't seem very handy, as then you don't distinguish yourself. What's more, twenty or thirty other companies could use another company's logo. That limits the risk of a company imitating another firm's logo. Nevertheless, we don't rule out this happening a hundred percent.

Is there any reason to regret this? We have an inkling that it would not be such a bad thing if this risk existed. These days, we allow our judgement of products to rely heavily on the manufacturer's logo. Is that actually wise? A little more individual thinking could make us more critical of what the real nature of the product in question is, how it is made and how it gets to us. Reducing our logo dependence quite considerably would benefit our individual opinion-forming, based on closer inspection.

With the mini case studies in this chapter we have attempted to form a picture of how markets function in a world without copyright or market domination by anyone. Naturally, this exercise is highly pretentious, but we are at least as unpretentious in respect of what we have achieved. It is an initiation with a double objective. Firstly, to see whether we are able to detach ourselves from the current status quo. Is that a real prospect? Secondly, the interpretations we give for the mini case studies can serve as as many working hypotheses for further research.

CHAPTER FIVE
CONCLUSION

Growing doubts

Of course, it's not as if, one day, you see the light and think that we should be done with copyright and that over-dominant positions in cultural markets shouldn't be tolerated. Our ideas on the subject have come from a long incubation process This runs partly parallel with the doubts many others have as to whether copyright can actually survive in the 21st century. There is a difference. We have voiced the question of what would happen if this tool no longer existed. We soon discovered that there is no point in thinking about or acting on this unless the market conditions are also tackled. This may be a more daring element of our study than our proposal to scrap copyright.

The economic and financial crisis sweeping through the world since the autumn of 2008 could have the advantage of making more room for getting issues concerning new regulation of markets on the agenda again. This is not an automatic process. It requires political courage, but first of all, an awful lot of intellectual work. Our imaginative powers need to be fed with possibilities that appeared non-existent. We need analysis to understand why the conditions for the production, distribution, promotion and reception of all kinds of arts have to be rechanneled and how that could possibly be done. What we brought up in the previous chapters is just a modest contribution to that analysis. We would like nothing better than our arguments and solutions being subjected to serious discussion and forming the foundation for plenty for further research.

This will be fascinating because it concerns nothing less than inventing completely new market relations and behaviour. The moment one may earn money may be completely different from what we were used to until the end of the twentieth century. Indeed, sometimes some products and artistic presentations may be free. However, concerning people who take the free alley, Chris Anderson claims in his Free that 'Free is not quite as simple – or as destructive – as it sounds. Just because products are free doesn't mean that someone, somewhere, isn't making lots of money, or that lots of people aren't making a little money each.' (2009: 127) He ads to his observation that one has to think creatively how to convert reputation and attention into cash. 'Every person and every project will require a different answer to that challenge, and sometimes it won't work at all.' (209: 233)

Comparable with other intellectual property rights?

During our work, we wondered whether what we were planning for copyright might also be significant to other intellectual property rights. And if we didn't pose that question ourselves, then there were others who were curious to know whether we could answer that question. Okay, then. Naturally, we have not been able to explore the terrain of patents, trademarks and plant variety rights as far.

We therefore present our provisional views based on a few examples, as we do, indeed, have strong indications that other intellectual property rights are also more of an obstacle than an aid for fair, efficient social development.

The prime example, naturally, is free and open software. Quite a lot of people all over the world earn a good, or even very good income from designing applications tailored to the customer requirements. The software is continually improved in collective processes. This is extremely useful for society and beneficial to individuals.

Another appealing example is the way the fashion industry hardly takes any notice of copyright any longer. The fight against fakes is a hopeless task. It is more important to gain a competitive advantage by being the first in the market, the first mover. What this industry does watch out for, however, is trade marks being used by others. In our opinion, this form of protection would also be superfluous, just as we explained in the previous chapter that a property claim on logos is superfluous. Customers then no longer have the trademark of a fashion line, for example, as a guideline for buying. True. On the other hand, they develop more of an eye for the intrinsic qualities of what they have bought. Then the following types of question become relevant: How is it made? Under what conditions? What kind of burden or relief does it bring about for the environment and how did it get to us?

The patent is one of the other intellectual property rights we feel is getting to the end of its useful life. Like copyright, it has been bandied blithely about An awful lot of knowledge that has been acquired largely thanks to our mutual social efforts is privatised. After all, what is discovered originates from knowledge development processes that we have all, figuratively and literally, invested in. Big firms and investment companies collect patents in vast blocks and minuscule particles of knowledge. Anyone infringing them can expect angry letters from lawyers and heavy fines. Plus high legal fees in their wake. Legal proceedings from both sides and hiring security systems is a major burden on society.

It gets even stranger when you realise that more and more patents are being granted or sold for registering knowledge that has long been established, or for tiny changes to existing products in which there is no trace of innovation to be seen. It's not difficult to observe that the system is getting terribly out of hand.

For poor countries, the prevailing system of patents is even less beneficent. Much of the knowledge they need to develop is in the hands of patent owners based in the industrialised parts of the world. Cynically, less than a couple of centuries ago, all knowledge that existed was freely available, which allowed Western countries to develop. Now, virtually all the knowledge poor to extremely poor countries desperately need is surrounded by patents. This makes the task of developing extremely difficult, if not impossible. And that's not mentioning the knowledge that has been purloined from those countries by companies from the industrialised countries who then patent it themselves, a topic we already discussed earlier in this book.

Another aspect that gives patenting a bad name is that that intellectual property rights can also be established in living things, such as our DNA, our genes, our blood, our seeds, our food. Is that not obscene? Anything living is part of the essence of our existence and we need it to continue living. Can't these fundaments of our existence be spared, not privatised, so they belong to all of us? What has gone wrong that commercialisation can take hold even in this terrain without evoking mass protest? Why have we started thinking that ownership is an unlimited category?

For most middle-sized and small businesses, the patenting system is not of much use. To quality for a patent, a company has to publicly announce the 'secret' at the core of that is to be patented and therefore expose it to (potential) competitors. Obtaining a patent is a costly, complex affair, as are legal proceedings against companies that infringe that patent. What's more, most innovations have a limited lifespan. All in all, this provides no motivation for smaller and medium-sized companies to invest heavily in obtaining patents. Carlos Correa therefore concludes that big companies are technically and financially the best equipped for obtaining intellectual property rights by fair means or foul, both in the domestic market and abroad. They account for the vast majority of patent applied for and granted. The system is therefore most profitable for them (2004: 223, 4).

The reasons are mounting up as to why patents, too, should be less self-evident than is often assumed. If, for example, we take a look at the pharmaceutical industry, then clearly the doubt only grows. The argument that these companies often put forward is that they need the patents to protect the high investments this make in research for developing new medicines and to cover the costs of those that fail. That sounds plausible.

Nevertheless, it's worth turning this argument around. It immediately becomes clear that we, as citizens, also finance this research. So it's our money that goes into it. After all, when we go to the chemist's we pay a sum consisting of three elements. A small part is for the actual manufacture of the medicine. The second part of the price is a considerable amount for marketing. Research has show that this amount is twice what is intended for research and development, which is the third element of the price paid at the chemist's. The industry can claim that it needs patents to justify investment. It is then disagreeable to then realise that a substantial part of what we pay at the chemist's is for their marketing (Gagnon 2008: 32).

But there's something else strange going on here. It is our money that we pay to the pharmaceutical industry, but we have no say in which medicines they develop for which sicknesses. Moreover, the process is inefficient. A lot of knowledge is acquired, of which only a fraction is used. The rest is locked up in the patents. Often with the express intention of not using it, for example because a best-selling medicine first has to be milked dry. A large proportion of the investments we, as citizens, make in pharmaceutical research is therefore not used usefully and is not available in society.

If we add us so many paradoxes, then the urge is great to ask oneself whether medicine development for our healthcare is in good hands with major pharmaceutical industries. Is there no alternative imaginable that could bring the decisive power closer to the people? We think so. How could that be organised? Let's imagine that we only pay actual manufacturing cost for medicines at the chemist's. That is just a fraction of what we now hand over. We then deposit the rest of the money (that we would otherwise pay at the chemist's) in public funds.

How these are managed can differ from country to country. We feel it is important that they don't become government services. The independence and social interest in developing a variety of medicines must be guaranteed. Naturally, one of the basic conditions is that the country in question is reasonably free of corruption. Otherwise, there can be no functioning society, in any event.

How can research be carried out financed from these funds? We imagine that sicknesses for which new medicines are required are analysed. Laboratories – university or commercial – can then apply to conduct the research. The size of these laboratories can be as great as necessary for the various types of research. In that case, market-dominant pharmaceutical industries no longer have a raison d'être. They can be reduced to more modest scales through competition law.

The prioritisation of sicknesses and the selection of laboratories can be made by independent experts from the medical world and representatives from society. It is probably best is two or three laboratories are commissioned to conduct research for one illness from different approaches to prevent one body or research failing to achieve any results. During the research, the laboratories exchange information. All knowledge gained during this work is freely available to everyone in society. After all, we have all paid for it jointly. What we are proposing is therefore not only fairer but also many times more efficient than the current system. All the knowledge on sickness and how to cure them can now be put to optimal use. Also for sicknesses coming in poorer countries into which, until now, far too little research is conducted. Moreover, the price for medicines in those parts of the world can be reduced considerably. Evidently, this requires international coordination, in which the World Health Organisation (WHO) can play a crucial role.

Naturally, we are not pretending that what we propose has no snags. A great deal of though still needs to go into it. Hopefully, what we are suggesting is challenging enough for us to no longer swallow the assumption hook, line and sinker that our healthcare is in the only thinkable and good hands with the pharmaceutical industries.

There is another reason for calling a halt to the patenting system and the high prices we all pay for medicines as individuals. It may sound strange, but that is the large-scale illegal faking of medicines. The temptation is great. After all, the profits are high and the risk low. There are plenty of countries where manufacturers making illegal medicines go unnoticed or generate nice earnings of the side for politicians, civil servants and police officers. We don't need to add that this illegal production has extremely harmful aspects for healthcare. At best the medicines, often bought via the Internet or other suspect channels, have no effect whatsoever. Often they are just plain dangerous, either due to their composition or because they are not prescribed by a doctor. Medicines can be fatal if they are taken without knowing the facts. This illegal trade will already be worth an estimated 75 billion dollars by 2010 (Pugatch 2007: 98, 9).

There are two possible reactions to this massive threat to public health. The first is to eradicate the entire evil business. We are probably not the only ones who consider this an impossible task. The other possibility is the eradicate the value from the illegality. If our proposal were to become reality and patents no longer existed, then medicine would be sold at the chemist's for no more than it cost to manufacture. That eliminates the fun for the fakers. There is no longer any legal value to be gained. It has disappeared. Producing under cost price is not an appealing proposition. The surprising conclusion could then be that abolishing the patenting system is also a blessing for public health.

Many, many artists

From films, music, books, theatre, dance, visual arts and design, in this concluding chapter we have suddenly arrived at the medical sectors in our society. That is not entirely amazing. After all, if one intellectual property right is unjustifiable – as we analysed for copyright – then logically being able to own other intellectual performances and cover them with patents, for example, also has problematic aspects. Moreover, why should market domination only occur in the cultural sectors? This is a phenomenon that has arisen in all branches of trade and industry over the past few decades. There are therefore many other domains where intellectual property rights also apply. There, too, market domination has certain adverse aspects.

The main topic of this book, however, was our concern that many, many artist and their intermediaries can trade and earn a good living, that there are no market-dominant forces to push them to the fringes of the playing field and out of the public eye and ear, that audiences can choose unhindered from a large variety of artistic expression according to their own taste, and that our public domain of knowledge and artistic creativity is not privatised but remains our common property.

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THE DAY AFTER

If we recognise that copyright is unfeasible, and unjustifiable, what should our response be? Immediately comes to mind that copyright provides an investment protection to blockbusters, best sellers and stars, and that it distorts cultural markets and pushes a wide variety of cultural expressions out of sight. At the same time, cultural conglomerates controlling copyright dominate cultural markets by owning the means of production, distribution, marketing and reception of cultural expressions. From the perspective of democracy and fair competition this type of market control is not to be tolerated.

Thus, let us imagine what abolishing copyright would accomplish, while not hesitate cutting cultural conglomerates into many pieces. The result is a level playing field in which many, and many more artists can make a decent living. And, even more importantly: a restoration of our public domain of creativity and knowledge.

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