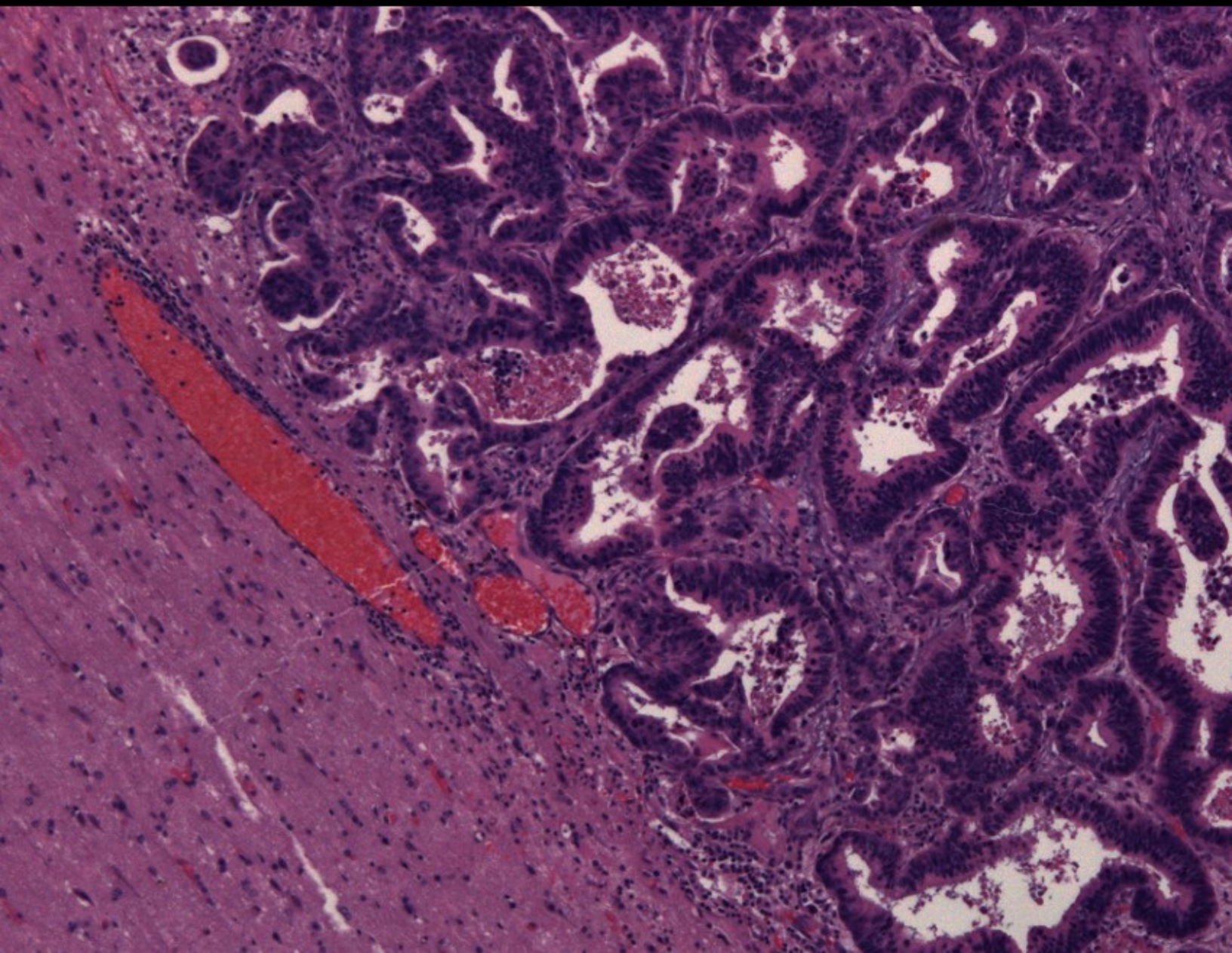


CHRISTOPHER STEWART

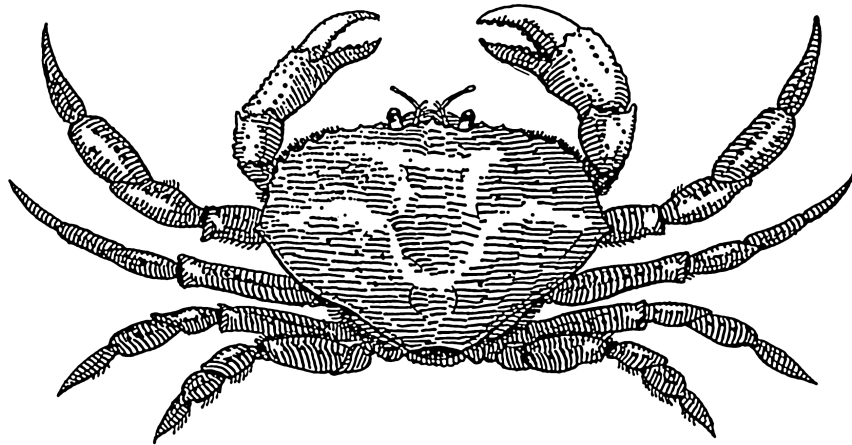
TAKERS ECONOMY

AN INQUIRY INTO ILLEGAL FILE SHARING



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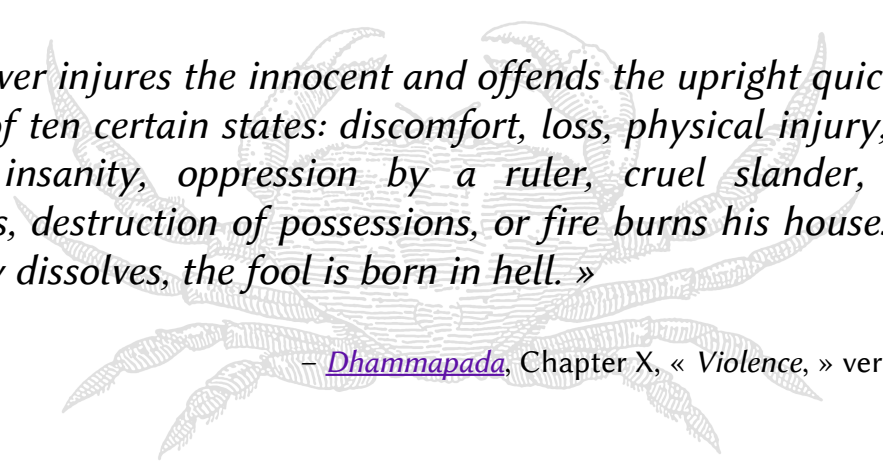
AN INQUIRY INTO ILLEGAL FILE SHARING



AN ESSAY BY

CHRISTOPHER STEWART

ORIGINAL ELECTRONIC EDITION – AUGUST 2012



« Whoever injures the innocent and offends the upright quickly goes to one of ten certain states: discomfort, loss, physical injury, serious illness, insanity, oppression by a ruler, cruel slander, loss of relations, destruction of possessions, or fire burns his houses. When his body dissolves, the fool is born in hell. »

– [*Dhammapada*](#), Chapter X, « Violence, » verses 9 to 12.

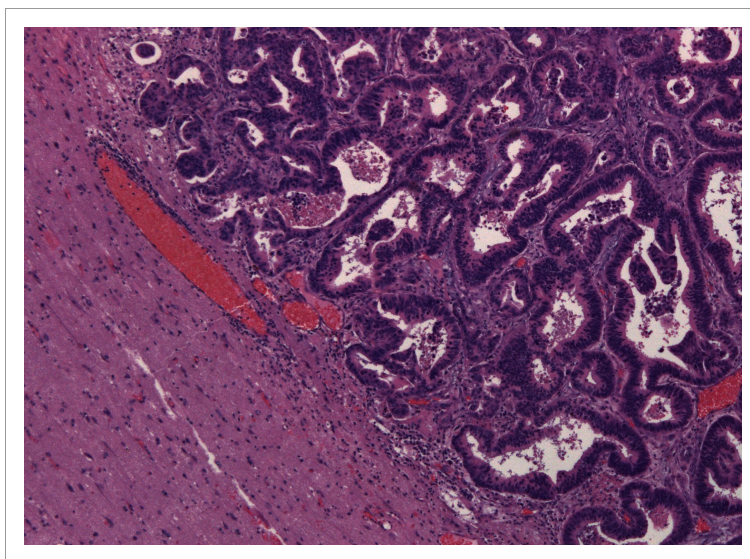
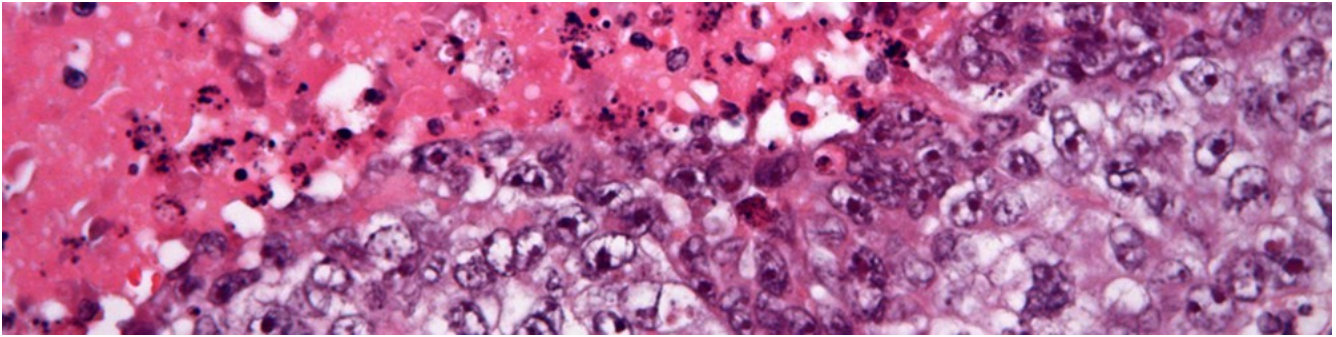


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1. Introduction

☰ Work on the Decayed

My first day of work on this essay was mostly invested in gathering and sorting ideas expressed in several conversations in which I took part over the course of the recent weeks. I also addressed the presentation of the whole, and decided on the various visual elements.

In one of those virtual discussions, I have compared illegal file sharing to cancer. As I recalled the exchange, the disease seemed like an apt metaphor to inform the design of the book. I quickly found pictures of cancer cells, and the crab stood out as the obvious emblem, but it was selecting a bullet for the sections within the chapters that required the most time. Eventually, I noticed that one of the fonts installed on my laptop includes the hexagrams of the I Ching. When I read the eighteenth, named « *Correcting* » in the list on Wikipedia, my right leg had one of its subtle spasms that told me the figure was what I was looking for. A few hours later, as I was getting ready to compose the present introduction, I discovered the following explanation of the image of the hexagram, also called « *Work on the Decayed* » :

« The wind blows low on the mountain: The image of decay. Thus the superior man stirs up the people And strengthens their spirit. »

« When the wind blows low on the mountain, it is thrown back and spoils the vegetation. This contains a challenge to improvement. It is the same with debasing attitudes and fashions; they corrupt human society. His methods likewise must be derived from the two trigrams, but in such a way that their effects unfold in orderly sequence. The superior man must first remove stagnation by stirring up public opinion, as the wind stirs everything, and must strengthen and tranquillize the character of the people, as the mountain gives tranquillity and nourishment to all that grows in its vicinity. »

[source : [Ask the Oracle](#), [Work on the Decayed](#)]

Motivations

Most if not all the aforementioned conversations stemmed from my reactions to videos or music files that I believe were posted illegally in various social networks. Another thread started when I enquired about albums shared via a mailing list to which a friend added me without telling me what it was about. Arguably, my responses weren't directed to the proper recipients, or authorities, but in any case the ensuing exchanges provided me with relevant material for the present undertaking.

In my opinion, one of the major problems of sharing music on the internet is that there is often very little way of establishing that the artists, or more accurately the rightsholders, have approved the contents for distribution in this fashion. In many instances, they haven't, and thus propagating those creations on the net infringes their rights. When the files have been released directly by the artists, for example through their own websites or their official channels, then there is no doubt, but that is not the case when just anybody uploads music to the internet.

Manifestly, there are individuals who do this wittingly in the hopes of profiting from the operation, but not all those who take part in such activities share their bad intentions. In fact, in my experience, it seems that a significant proportion of people who engage in such activities on the web don't do it out of ill will, quite the contrary. Nevertheless, enjoying and spreading media files that have been uploaded by unverifiable sources likely contributes to a culture which doesn't do much good for most artists, nor for music in general.

There are evidently materialistic preoccupations associated with these circumstances. However, I imagine that those concerns have been debated at length already. Although I will brush on the subject, this is not the primary aim of the present effort. Rather, my interest is in the more fundamental questions of what this state of affairs means in terms of individual and societal development, how such non-consensual acts hurt those who commit them, how those actions make it more difficult, and in some cases nearly impossible, for certain of the people involved to fulfil their mission in the world, and therefore, how the collectivity suffers the consequences of those violations. In other words, the view that I intend to propose is that those infringements harm the entire artistic ecosystem, and as a result everyone ultimately loses through them.

This is an issue that has been bothering me for quite a while, and my reactions had in fact been silenced for too long. A few years ago, I was amongst a group of people who had a golden opportunity to implement a new way of sharing contents over the internet, one which facilitated the due remuneration of creators, and moreover offered incentives for file sharers, pirates included, to play by the rules. But, to make a long story short, we weren't successful in our attempt. I have no idea how the other individuals who participated in the project live with this failure today, yet personally, when I see people sharing files illegally, or when I look

at the state of the music industry, or when I consider how certain independent artists must work impossible schedules in order for their creations to receive the attention they deserve, I feel partly responsible. For various reasons, which essentially amount to selfishness, I never tried to explain my position on the matter of illegal file sharing back then. However, I should have, as I eventually realized. Hence, another motivation behind the publication of this essay is to express thoughts that should have been voiced much earlier. I have faith that others will also benefit from this undertaking.

☰ Mission

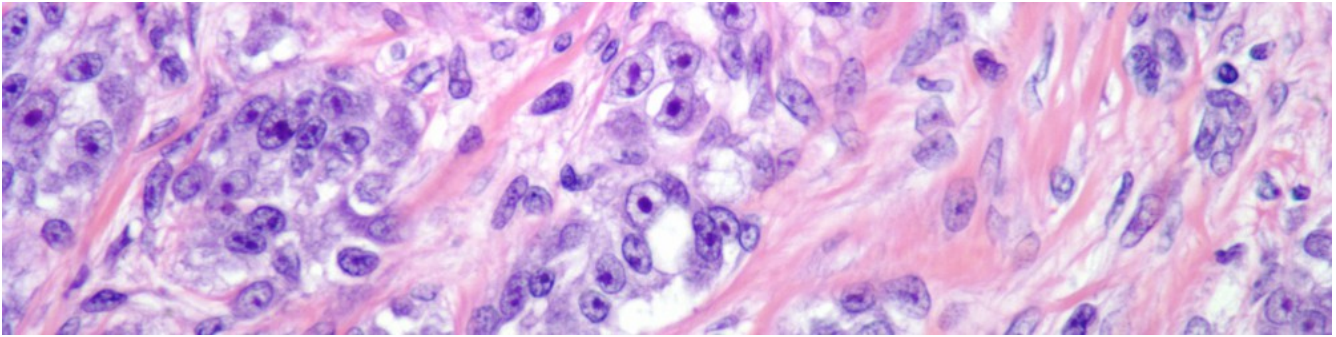
« What has been spoiled through man's fault can be made good again through man's work. »

[source : [Ask the Oracle](#), [Work on the Decayed](#)]

In writing and releasing this book, my hope is to work on the decayed, and contribute to reform what has been spoiled because of my carelessness. I trust that the endeavour will have positive effects on the larger world.

In the following chapters, I will share my perspective on the actual damage caused by illegal file sharing. In this aim, I will present my perception of the nature, value, and function of art, and examine the inherent interconnectedness of all things. In addition, I will suggest alternative directions towards what seem like more favourable futures for the collectivity.

But first, I will propose a succinct overview of the situation as it now stands, including a look at certain of the technological tools currently available, copyright law and some of the misconceptions that surround it, and arguments commonly employed in attempts to justify infringement.



2. The State of Play

≡ But Everybody Else Does It !

Nowadays, sharing music in social networks has apparently become customary. There are quantities of groups and channels dedicated to such activities and wherein the question of whether or not the contents have been approved for that kind of distribution doesn't seem to bother the participants. The group members or channel owners simply post the materials regardless of the rights or the will of the creators, and objections are practically nonexistent.

Evidently, not all violations are committed wittingly, and the matter of education must definitely be taken into account in the equation. Still, there is also the issue of the currently available services and technologies, and what they provide, or don't provide, to help improve this state of affairs.

≡ But Nothing Prevents Me from Doing it !

There is obviously tremendous worth in what those platforms and tools make possible. Not that long ago, capturing an event in real-time using a cameraphone, and publishing it so that people located halfway across the world are able to experience it merely a few minutes later, would only have been plausible in the context of a science-fiction story. Nevertheless, this has become commonplace, and media of this sort are in fact used in news coverage more and more frequently.

Likewise, from the perspective of the content creator, there is also inestimable value in having the means of distributing one's work, in a matter of instants, to an audience that is potentially unlimited. Moreover, being able to mark uploads as private or unlisted, or having the option of allowing or disallowing embedding of the materials, and thus having a degree of control on how and where they can be experienced, increases this value.

Yet, that same simplicity which facilitates the propagation of content also comes with its negative effects. On one video sharing website whose popularity renders its identification superfluous, the sole hurdle that might discourage anybody from uploading illegal contents is a message warning them that they must own the copyright, or have the necessary rights for any medium they publish. Consequently, certain people seem to assume that any content successfully uploaded to the website is legal. Generally speaking, similar services that host

media files operate on that same principle, which supposes that users are honest, and either familiar with the ins and outs of rights and copyrights, or willing to educate themselves prior to uploading. The problem with that policy is that, manifestly, many users of those websites don't know, and apparently don't care, whether contents are lawful or not. As a result, there are quantities of material uploaded illegally to such platforms.

When looking at a media sharing page, for instance a video, there is usually very little information helping one determine if the upload has been approved by the rightsholders or not. The details of the channel through which the content has been published might provide a clue, and hence give a way to the viewer who doesn't want to participate in a questionable culture to identify legit files. If one can establish that the media is being shared via an official channel, whether it is operated by the creators themselves or their management, for example by a record label, then they can avoid dubious materials. Still, nothing really prevents anyone from creating a channel that seems to be the official channel of someone else, and therefore, this validation method is not necessarily always straightforward.

Furthermore, there are services that enable users to share contents published on those media file hosts in additional ways. For instance, one such website allows its users to create playlists using music uploaded elsewhere on the net, including the audio tracks of the videos hosted on that most popular sharing platform. The music can then be shared via embeddable players on social networks or on one's own site. This service doesn't ascertain that the music has originally been uploaded legally or not. Arguably, considering the aforementioned policy, nothing really forces them to, as they can make the same consequent assumption that if files have been uploaded over there, then they must be legit. Although some of the titles in those playlists do not infringe any rights, as many artists offer free contents, there's no way to tell by looking at the players whether the music is being shared lawfully or not.

Another unfortunate aspect of the present state of affairs is that the responsibility of identifying and reporting violations is incumbent solely on the rightsholders. For example, on that same prominent video sharing website, if a viewer were to come across uploads of The Beatles on a channel operated by an obscure individual who obviously doesn't own the rights to the contents, the available tools wouldn't allow them to report the offender, nor to flag the media as inappropriate. Only the proper rightsholders, or people with a right in law to act on their behalf, can initiate an infringement procedure, and they have to do so in written form, following well-defined guidelines, contrasting with the simplicity of the uploading process.

Admittedly, creators have some instruments at their disposal. For instance, that video sharing website to which I keep referring offers an automated content identification program that they claim is able to recognize « *user-uploaded videos comprised entirely or partially* » of reference material provided by the rightful owners. However, this program is « *designed for exclusive rights holders whose content is frequently uploaded.* » I have no idea of its actual use and efficiency, but clearly it isn't available to everyone, and doesn't preclude all infractions.

Although they remain opposed to the practice, many artists seem to have given up on fighting the illegal sharing of their creations. And understandably so, as the task of stopping viral distribution of their media, that can be akin to trying to dam Niagara Falls with mouse clicks and keystrokes, can become a too great demand on their time, which is already scarce as it is.

Therefore, evidently, there are still deficiencies to be addressed. Still, just as distinctly, while waiting for the next technological god to be mechanically brought onto the file sharing stage to implement the ideal resolution to this predicament, deciding to break the law is not a viable way forward.

☰ But Why Do We Need Copyright Laws Anyhow ?

One of the outstanding observations emerging from my recent discussions is that the necessity that motivates copyright law is frequently ignored, or not well understood.

In the United States Constitution, the clause quoted below is known as the « *Copyright Clause*. » Interestingly enough, it is also known as the « *Progress Clause*. » It empowers the Congress :

« To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. »

[source : [Copyright Clause of the United States Constitution entry in Wikipedia](#)]

Copyright protects the creators from eventual exploitation or misuse of their work by third parties, which in turn furthers progress itself.

If anybody could consume, use, adapt, share, or resell creations as they see fit, then, for many creators, undertaking to bring their creations into the world wouldn't be viable. Those who have access to more means could simply duplicate new works as they are published and distribute them in widescale operations before the rightful authors could do so. Then, who would ever want to contribute to common progress, but the most self-abnegating, altruistic individuals, or those for whom doing otherwise wouldn't be an option ?

Thus, copyright also protects the music lover, the bibliophile, the amateur of visual art, and anyone who thrives on innovation, because it ensures there are people who are willing to dare bring their creations into the world, for the benefit of all.

☰ But I'm Giving It away, and It's for the Common Good !

One of the conversations I referred to above had developed around a self-improvement video which used for its soundtrack a song by a well-known Icelandic female musician.

Clearly, the same laws apply not only to sharing already existing media files, but also when creating new material, regardless of the nobility of the intentions of the creators, and no matter how tempting it might be to use the contents of someone else.

Using already well-publicized materials from recognized artists presumably enhances the final product by making it more appealing. Nevertheless, unless the well-known artists, or more accurately, the proper rightsholders, give their approval, then such use is not legal, and perhaps more importantly, not consensual. Moreover, recourse to those methods raises the question of the quality and the tenor of the message the creator is attempting to convey.

It's not as if creators are short of options. For example, there are several services from which users can download royalty-free music to use in their projects. Other sites function as intermediaries between musicians who are willing to license their compositions, and content creators who need songs or instrumentals. And there are countless independent musicians who struggle on a daily basis to promote their work, and who would be more than happy to allow their music to be featured in such creations, in exchange for the exposure, if only they were asked for the permission in the first place.

≡ But It's in the Public Domain !

A seemingly common misconception related to this question is the idea that whatever is published on the internet without an explicit copyright notice is not copyrighted. Since the adoption of the Berne Convention, in the 165 signatory countries out of 207 sovereign states, creations are copyrighted *de facto*, without need for registration nor mention :

« Under the Convention, copyrights for creative works are automatically in force upon their creation without being asserted or declared. An author need not "register" or "apply for" a copyright in countries adhering to the Convention. As soon as a work is "fixed", that is, written or recorded on some physical medium, its author is automatically entitled to all copyrights in the work and to any derivative works, unless and until the author explicitly disclaims them or until the copyright expires. Foreign authors are given the same rights and privileges to copyrighted material as domestic authors in any country that signed the Convention. »

[source : [Berne Convention for the Protection of Literary and Artistic Works entry in Wikipedia](#)]

Therefore, when people assume that content published without copyright notice can be used freely, or is in the public domain, they are mistaken. If an assumption should be made, it should be instead that all content is copyrighted, unless specifically stated otherwise.

☰ But It's My Music, so I Can Do What I Want with It !

Another misconception I have encountered is the idea that, once someone has bought copyrighted material, they own it, and thus they can use it as they wish, including uploading it onto the internet and sharing it with whomever they like.

But this is not the case. For instance, when purchasing music, buyers receive a copy of the content on a support, be it a CD or a DVD or a digital file, and a license for personal use, which allows backup copies, yet does not permit sharing those copies. Whether wittingly or not, buyers enter into this contract by virtue of purchasing copyrighted material.

☰ But I'm Helping the Artists !

Some argue that by sharing contents, they help the creators by promoting their work, which in turn is assumed to accrue their revenues.

This is debatable, and possibly true in some cases, but it remains an assumption. More importantly, as long as the authors haven't asked specifically for that kind of publicity, then the activity is non-consensual, and likely goes against their wishes. As long as the materials haven't been approved for distribution in that fashion, sharing them is illegal, regardless of the nobility of the intentions of the sharers. Such actions possibly hurt the artists much more than they help them, although this might depend on what they consider is best for their art. Nonetheless, establishing this obviously requires asking them for their stance on the matter.

A literature review composed by an Austrian researcher in 2010 found 22 independent studies on the effects of music file sharing. 14 of them concluded that illegal downloads have a « *negative or even highly negative impact* » on recorded music sales. 3 of the studies found no significant impact while the remaining 5 found a positive impact. On the whole, it would therefore appear that the promotion argument doesn't stand.

A study conducted in 2006-2007 found that « *music downloads have a positive effect on music purchases among Canadian downloaders but that there is no effect taken over the entire population aged 15 and over.* » A revaluation of the same data by another academic reached an opposite conclusion, claiming that 3 out of 4 P2P downloaders responded that they would have bought music via paid sites, or CDs, or both, if P2P were not available, and only 1 out of 4 would not have purchased it, which suggests that the availability of P2P networks causes a 75% reduction in the demand of music downloaders.

A joint 2010 study undertaken on behalf of the Canadian Motion Picture Distributors Association and conducted over a 12-month period in 2009-2010 found that 12,600 full time equivalent jobs were forgone across the entire economy due to movie piracy. It also reported that a little less than half of the direct consumer spending losses to the movie industry were the result of digital piracy.

A recent study concluded that well-known artists could benefit from a small increase in sales when albums were leaked early online. However, that impact is not seen for newer or less known artists. This contradicts the argument that file sharing allows less visible artists to have their work discovered by a wider audience, lessening the advantages of having access to greater promotional means. In other words, it would seem that file sharing does not level the playing field, as proposed by its advocates.

But I Wouldn't Have Found that Band Otherwise !

This is essentially the previous argument, seen from a different perspective.

Being offered the opportunity to experience the work of creators one has never heard of before is potentially beneficial for all parties involved. It gives the recipient the possibility to reach a position from where they can support and enjoy the endeavours of the artists in question. But that benefit doesn't justify sharing illegal content. It's not as if there aren't any other options.

Many artists invest in elaborate websites, official channels, and various other forms of online presence, through which some of their creations are made available freely, specifically for such purposes. Sharing links to those sources, or contents coming from them and hence approved by the rightsholders, accomplishes that same objective, presumably as efficiently, but with the significant difference that the activities are consensual.

The bottom line is that finding new artists, and helping artists getting discovered, can be achieved via legal means, while at the same time participating in a culture that promotes a satisfaction of one's needs and wants that is respectful of the needs and wants of others, rather than indifferent to them.

But Those Recordings Aren't Available Anymore !

In determining if sharing is legal or not, the age of the materials might be a criterion, as the associated copyright might have expired. Nonetheless, their commercial availability is not a factor.

If the material isn't available, one alternative would be to contact the creators or their management and ask them to re-release the contents in present-day formats. If it is possible to do so, and if there are enough requests, the operation might be viable and thus profitable for all parties concerned. And if not, then perhaps the rightsholders will consent to make the material available freely as a gesture of gratitude towards their supporters. However, as long as such permission is not granted, then sharing the otherwise unavailable material is illegal.

But It's Only for Fun, Not for Money !

Some people seem to think that providing a link to a store or an official website along

with the content they share illegally, or suggesting to buy the official releases of the artists, or citing the « *Fair Use* » article of the Copyright Law, or claiming that they only share the files for entertainment or educational purposes, or stating that they don't make money from the activity, somehow exempts them from complying with the law.

As explained above, while trying to help the creators is commendable, there are legal and consensual means of doing so.

To qualify as fair, the use must, amongst other criteria, advance either the progress of the arts, or knowledge in general, through the addition of new elements.

If, while practising an activity, absence of monetary profit equated absence of any form of profit, then no one would practice this activity, unless perhaps if they were obliged to. In other words, entertainment purposes are not devoid of profit, and therefore, in a consensual and mutually beneficial relationship, the entertained should either seek to duly reward the entertainer for the entertainment they have made possible, or refrain to entertain themselves at their expense.

Lastly, the educational fair use guidelines typically apply to academic contexts, such as schools and libraries, where there is actual education taking place. Furthermore, not all uses in those circumstances are considered fair. Thus, the argument cannot be invoked to justify sharing files on a social network, apart maybe in exceptional situations.

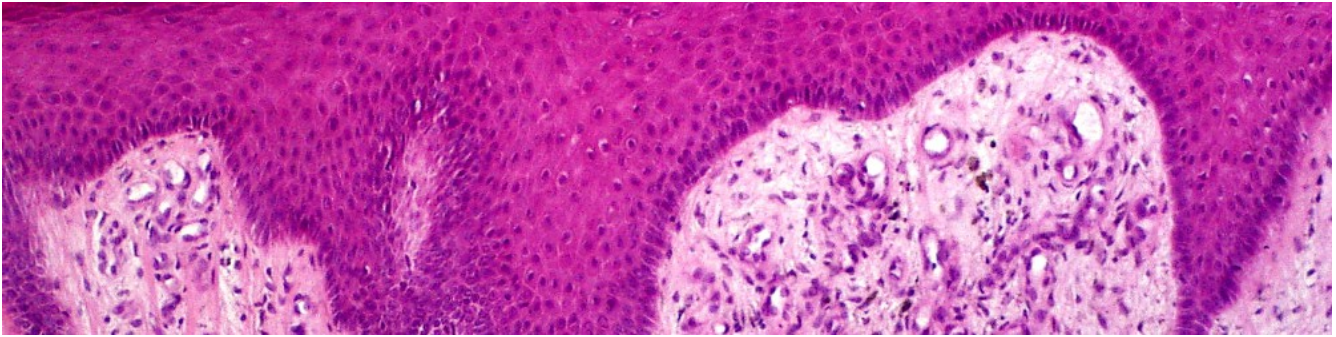
☰ But It's Only Art !

In my experience, the matter of the nature, value, and function of artistic endeavours and their fruits appears to be widely ignored, or at least misconstrued.

Personally, this is something I would have liked to be taught about in school, and not have to understand for myself. If the meaning of creative undertakings and their yield would have been imparted to me at an earlier age, I would definitely have followed a very different trajectory, presumably a more fortunate one, as I would have started exploring music much sooner.

Nevertheless, this question I will attempt to briefly delineate in the following chapter.





3. Ars Divina

☰ Everyday Miracles

« In the creative act, the Creation continues. »

[source : [Robert Fripp](#), *Aphorisms*]

Creative acts are at the heart of many ostensibly ordinary activities.

In order to respond appropriately to specific situations as they arise, often, one simply applies an already known template. However, at other times, new forms must be developed. Cooking a meal might require the creation of a recipe. Expressions might have to be invented to meet the needs of particular interactions. Behaviours might have to be adopted to satisfy the sensibilities of certain persons. The emergence of new circumstances might call for the establishment of new policies. New combinations might have to be conceived to solve never before encountered difficulties using what is at hand. And ultimately, each day is new, and each moment is unique, even when routine in appearance.

From a more encompassing perspective, existence itself can be understood as a creative process whereby, through actions and decisions, or lack thereof, physical structures are built, relationships are deepened, objectives are achieved, and various outcomes are shaped.

Hence, all human beings can be thought of as creators, although perhaps to different degrees.

Yet, not all creations are works of art. Or, stated more accurately, not all creations are considered works of art. For instance, generally speaking, tools, furniture, appliances, means of transportation, or computer programs, are not regarded as works of art. This suggests that works of art have qualities that set them apart from other creations.

Thus, before exploring the value and the function of art, it seems necessary to examine its nature.

☰ The Fruits of Light and Delight

« Both art and spirituality have a goal, and that goal is supreme joy, supreme delight. We can say that art is a tree of evolution. We climb up

this tree in order to pluck the fruits of light and delight, and we climb down this tree in order to distribute the fruits of light and delight. »

[source : [Sri Chinmoy](#)]

In my understanding, art is a process comprising four components, namely, the artist, the audience, the medium, and intelligence.

Through this process, the artist will first, fix the shape of the medium, and second, use the medium to enable the audience to connect to the intelligence. Depending on the nature of the medium, the art will be called music, literature, poetry, ballet, sculpture, or any of the other art forms, or combinations thereof.

I believe it is important to emphasize that achieving the creation of the medium does not mean that the process is consummated. Presenting the medium to the audience is also required. If a tree falls in a forest, and there's no one around to hear it, whether it makes a sound or not doesn't matter much to those who aren't around, unless perhaps if they happen to be studying philosophy. But if presented with a medium that conveys the experience of the sound of a tree falling in a forest, then those people will possibly awaken to the reality of trees falling in forests. In other words, in my view, communication between the intelligence and the audience is a mandatory element of the artistic process.

Presumably, every creation conveys some form of intelligence, generally by allowing or facilitating experiences. Hence, the nature of the intelligence that the process of art attempts to make experienceable would be its distinctive characteristic. I propose that, whereas other creations typically address temporal aspects of existence, artistic creations concern essential aspects of existence. That is to say, art brings to mind intelligence about what it means to be human.

☰ The Eternal Self

« The entire nexus of what art is trying to do is to provide a mirror for the eternal self. »

[source : [Alex Grey](#)]

Works of art not only convey experiences, but they also arouse states of mind within those experiences. They can be specific psychological states that the creator has experienced previously and wants to share, or the frame of mind the artist is in during the presentation, like it can be the case for an improvised musical performance for instance.

The more a person enjoys those states of mind, or identify with them, the more they will appreciate the works of art that have evoked them. The more those psychological states are revealing of who one is, or of what they are going through, the more valuable the works of art that engender them will be considered.

Conceivably, all creations have an artistic dimension, and its measure is the degree to which the states of mind they call forth inform one about their condition as a human being. Therefore, any creation that mainly addresses temporal aspects of existence is generally not regarded as a work of art.

From an individual perspective, one person might consider a particular object to be a work of art because of what it brings to their mind, yet at the same time, another person, in whom that object doesn't produce a comparable effect, might not share that assessment.

However, from a more global, societal perspective, great works of art are possibly those which call forth states of mind that transcend temporal aspects of existence, not just in a few individuals, but in great numbers of them. The more the essences that those creations evoke are universal and eternal, and the more the works will be praised, across cultures and epochs.

Thus, works of art that call forth beauty serve as reminders that beauty, its perception, and its appreciation, are essential aspects of being human. Likewise, they assert that beyond its temporal aspects, the self is eternally beautiful.

Ultimately, perhaps the most eloquent expression of the nature of art is that art is the expression of human nature.

Laden with Fairest Fruit

The artistic process bestows its benefits not only via the reception of the medium, but also via its transmission.

Hence, artists benefit from the original reception of the intelligence they undertake to convey, and also from the presentation of their creations to the audience. Similarly, audience members benefit when they receive the medium, and then in turn can become intermediaries through which the intelligence reaches a more people, albeit, at first in a different form, until they experience it for themselves.

My opinion is that those benefits are recognized intuitively, whether their nature can be put into words or not. They do not only provide the impetus to experience the associated artistic media, and then to share them, but they even compel certain individuals to contrive justifications for circumventing their responsibilities towards the law, so as to obtain them.

The mere fact that people would devise such justifications for experiencing or sharing artistic media unlawfully is a telling illustration of the worth of those creations. Clearly, art is not just art.

In the following sections, in an attempt to better define the value of art, I will suggest examples of intelligences to which it provides a connection. After all, if the nature of these intelligences distinguishes art from other creative processes, then it ensues that it must also

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