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RW Culture Versus RO Culture

“Read/Write” (“RW”) culture: individuals “read” their culture by reading books or listening to music; they also add to the culture they read by creating and re-creating the culture around them.

“Read/Only” (“RO”) culture is a culture less practiced in performance, or amateur creativity, and more comfortable (think: couch) with simple consumption.

History of culture in the twentieth century:

- Never before in the history of human culture had the production of culture been as professionalized.
- Never before had its production become as concentrated.
- Never before had the “vocal cords” of ordinary citizens been as effectively displaced by the phonograph

But as radio technology improved, the phonograph faced competition from more virtual technologies— what we call “broadcasts.”

Radio, however, soon faced its own competition from a new form of broadcast—television. The cycle then continued. The twentieth century was thus a time of a happy competition among RO technologies. Each cycle produced a better technology. The record faced competition from tapes and CDs; the radio, from television and VCRs; VCRs, from DVDs and the Internet.

By the turn of the twenty- fi rst century, this competition had produced extraordinary access to a wide range of culture. Never before had so much been available to so many. It also produced an enormously valuable industry for the American economy.

RO culture had thus brought jobs to millions. It had built superstars who spoke powerfully to millions. And it had come to define what most of us understood culture, or at least “popular culture,” to be.

There’s a part of culture that we simply consume. We listen to music. We watch a movie. We read a book. With each, we’re not expected to do much more than simply consume.* We might hum along with the music. We might reenact a dance from a movie. Or we might quote a passage from the book in a letter to a friend. But in the main, this kind of culture is experienced through the act of consumption. There’s a beginning, a middle, and an end to that consumption. Once we’ve finished it, we put the work away.

For most of the twentieth century, technologies were analog.
They all therefore shared certain limitations: first, any (consumer generated) copy was inferior to the original; and second, the technologies to enable a consumer to copy an RO token were extremely rare.

RO tokens were to be played, not manipulated. And while they might legally be shared, every lending meant at least a temporary loss for the lender. If you borrowed my LPs, I didn't have them. If you used my record player to play Bach, I couldn't listen to Mozart.

These are the inherent— we could say "natural"— limitations of analog technology. From the consumer's perspective, they were bugs. No consumer ever bought a record player because he couldn't copy the records.

But from the perspective of the content industry, these limitations in analog technology were not bugs. They were features. They were aspects of the technology that made the content industry possible. For this nature limited the opportunity for consumers to compete with producers (by "sharing"). And its imperfections drove demand for each new generation of technology. Record companies thus sold bits of culture, embedded in vinyl records, then in eight- track tapes, then in cassette tapes, and then in CDs

With each new format, there was a wave of new demand (often for the very same work). The same with film. Film companies distributed films to theaters, and then films to videocassettes, and then films to DVDs. The business model of both these distributors of RO culture depended upon controlling the distribution of copies of culture. The nature of analog tokens of RO culture supported this business model by making it very difficult to do much differently.

The law supported this business model. The law, for example, forbade a consumer from making ten thousand copies of his favorite LP to share with his friends.1 But it wasn't really the law that mattered most in stopping this form of "piracy." It was the economics of making a copy in the world of analog technology. At least among consumers, it was this nature of the LP that really limited the consumer's ability to be anything other than "a consumer."

Digital technology changed this "nature." With the introduction of digital tokens of RO culture and, more important, with the widespread availability of technologies that could manipulate digital tokens of RO culture, digital technology removed the constraints that had bound culture to particular analog tokens of RO culture.

The "natural" constraints of the analog world were abolished by the birth of digital technology. What before was both impossible and illegal is now just illegal.

And thus were born the copyright wars. In September 1995, the content industry, working with the U.S. Department of Commerce, began to map a strategy for protecting a business model from digital technologies. In 1997 and 1998, that strategy was implemented in a series of new

laws designed to extend the life of copyrighted work, strengthen the criminal penalties for copyright infringement, and punish the use of technologies that tried to circumvent digital locks placed on digital content. This legislation was soon complemented by aggressive litigation. First the lawyers targeted commercial entities like MP3.com and Napster. Then they targeted ordinary citizens, charging them with downloading music or enabling others to do the same.

The labels blamed “piracy” for an estimated $5 billion loss in 2002 alone.

The technologies of the Internet were originally coded in a way that enabled free, and perfect, copies, that nature could be changed by a different code, with different permissions built in.

The iTunes Music Store was the proof. Launched in 2003, more than 1 billion songs were downloaded within three years, 2.5 billion within four. And while iTunes music was digital, iTunes tokens of digital culture contained a technology to limit their (re)distribution. Code (called FairPlay, a kind of Digital Rights Management, or DRM technology) was used to remake the code of digital tokens of RO culture. This remade code was enough to get a reluctant content industry to play along.

The success of iTunes (and more important, of the iPod conveniently tied to it) came from the fact that “some control” could be less than “perfect control.” You couldn’t easily spread iTunes content to everyone on the Web— though if you hunted around a bit on the Net, you’d find all the code you could want to liberate iTunes. DRM was just a speed bump: it slowed illegal use just enough to get the labels to buy in.

One of my closest (if most complicated) friends at college was an English major. He was also a brilliant writer. Ben’s writing had a certain style. Were it music, we’d call it sampling. Were it painting, it would be called collage. Were it digital, we’d call it remix.

Every paragraph was constructed through quotes. And he was rewarded for it. Indeed, in the circles for which he was writing, the talent and care that his style evinced were a measure of his understanding. He succeeded not simply by stringing quotes together. He succeeded because the salience of the quotes, in context, made a point that his words alone would not. And his selection demonstrated knowledge beyond the message of the text.

Ben’s style is rewarded not just in English seminars. It is the essence of good writing in the law. A great brief seems to say nothing on its own. Everything is drawn from cases that went before, presented as if the argument now presented is in fact nothing new. Here again, the words of others are used to make a point the others didn’t directly make. Old cases are remixed. The remix is meant to do something new. (Appropriately enough, Ben is now a lawyer.)

In both instances, of course, citation is required. But the cite is always sufficient payment.

Writing, in the traditional sense of words placed on paper, is the ultimate form of democratic creativity, where, again, "democratic" doesn't mean people vote, but instead means that everyone within a society has access to the means to write. The freedom to quote, and to build upon, the words of others is taken for granted by everyone who writes.

Not so for other types of remixing. Norms governing quoting are very different.

Though I've not yet found anyone who can quite express why, any qualified Hollywood lawyer would tell you there's a fundamental difference between quoting Hemingway and quoting Sam Wood's version of Hemingway (*For Whom the Bell Tolls* is a 1943 American epic war film produced and directed by Sam Wood). The same with music: in an opinion by perhaps one of the twentieth century's worst federal judges, Judge Kevin Thomas Duffy, the court issued "stern" sanctions against rap artists who had sampled another musical recording.

Whether justified or not, the norms governing these forms of expression are far more restrictive than the norms governing text. They admit none of the freedoms that any writer takes for granted when writing a college essay, or even an essay for the New Yorker.
Why?

A complete answer to that question is beyond me, and therefore us, here. But we can make a start. There are obvious differences in these forms of expression. The most salient for our purposes is the democratic difference, historically, in these kinds of "writing."

While writing with text is the stuff that everyone is taught to do, film-making and record making were, for most of the twentieth century, the stuff that professionals did. That meant it was easier to imagine a regime that required permission to quote with film and music. Such a regime was at least feasible, even if inefficient.

But what happens when writing with film (or music, or images, or every other form of "professional speech" from the twentieth century) becomes as democratic as writing with text? What happens when technology "democratiz[es] the technique and the attitude and the method [of creating] in a way that we haven't known before. . . . [I]n terms of collage, [what happens when] anybody can now be an artist"?

What norms (and then law) will govern this kind of creativity? Should the norms we all take for granted from writing be applied to video? And music? Or should the norms from film be applied to text? Put differently: Should the "ask permission" norms be extended from film and music to text? Or should the norms of "quote freely, with attribution" spread from text to music and film?

At this point, some will resist the way I've carved up the choices. They will insist that the distinction is not between text on the one hand and film/music/images on the other. Instead, the distinction is between commercial or public presentations of text/film/music/ images on the one hand, and private or noncommercial use of text/ film/music/images on the other. No one expects my friend Ben to ask the Hemingway estate for permission to quote in a college essay, because no one is publishing (yet, at least) Ben's college essays.

And in the same way, no one would expect Disney, for example, to have any problem with a father taking a clip from Superman and including it in a home movie, or with kids at a kindergarten painting Mickey Mouse on a wall. Yet however sensible that distinction might seem, it is in fact not how the rules are being enforced just now.

Nor do I believe the freedom to quote should reach universally only in the noncommercial sphere. In my view, it should reach much broader than that. But before I can hope to make that normative argument stick, we should think more carefully about why this right to quote— or as I will call it, to remix— is a critical expression of creative freedom that in a broad range of contexts, no free society should restrict.

Remix is an essential act of RW creativity. It is the expression of a freedom to take "the songs of the day or the old songs" and create with them. But in both contexts, the critical point to recognize is that the RW creativity does not compete with or weaken the market for the creative work that gets remixed. These markets are complementary, not competitive.

That fact alone, of course, does not show that both markets shouldn't be regulated (that is, governed by rules of copyright). But there are important reasons why we should limit the regulation of copyright in the contexts in which RW creativity is likely to flourish most. These reasons reflect more than the profit of one, albeit important, industry; instead, they reflect upon a capacity for a generation to speak.