

# Toywars : Conceptual Art Meets Conceptual Business

## McKenzie Wark

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Bit 1I first came across etoy in Linz, Austria in 1995. They turned up at Ars Electronica with their shaved heads, in their matching orange bomber jackets. They were not invited. The next year they would not have to crash the party. In 1996 they were awarded Ars Electronica's prestigious Golden Nica for web art, and were on their way to fame and bitterness - the just rewards for their art of self-regard. As founding member Agent.ZAI says: "All of us were extremely greedy - for excitement, for drugs, for success." (Wishart & Boschler: 16)

Bit 2The etoy story starts on the fringes of the squatters' movement in Zurich. Disenchanted with the hard left rhetorics that permeate the movement in the 1980s, a small group look for another way of existing within a commodified world, without the fantasy of an 'outside' from which to critique it. What Antonio Negri and friends call the 'real subsumption' of life under the rule of commodification is something etoy grasps intuitively.

Bit 3The group would draw on a number of sources: David Bowie, the Sex Pistols, the Manchester rave scene, European Amiga art, rumors of the historic avant gardes from Dada to Fluxus. They came together in 1994, at a meeting in the Swiss resort town of Weggis on Lake Lucerne. While the staging of the founding meeting looks like a rerun of the origins of the Situationist International, the wording of the invitation might suggest the founding of a pop music boy band: "fun, money and the new world?"

Bit 4One of the - many - stories about the origins of the name Dada has it being chosen at random from a bilingual dictionary. The name etoy, in an update on that procedure, was spat out by a computer program designed to make four letter words at random. Ironically, both Dada and etoy, so casually chosen, would inspire furious struggles over the ownership of these chancey 4-bit words.

Bit 5The group decided to make money by servicing the growing rave scene. Being based in Vienna and Zurich, the group needed a way to communicate, and chose to use the internet. This was a far from obvious thing to do in 1994. Connections were slow and unreliable. Sometimes it was easier to tape a hard drive full of clubland graphics to the underside of a seat on the express train from Zurich to Vienna and simply email instructions to meet the train and retrieve it.

Bit 6The web was a primitive instrument in 1995 when etoy built its first website. They launched it with a party called etoy.FASTLANE, an optimistic title when the web was anything but. Coco, a transsexual model and tabloid sensation, sang a Japanese song while suspended in the air. She brought media interest, and was anointed etoy's lifestyle angel. As Wishart and Boschler write, "it was as if the Seven Dwarfs had discovered their Snow White." (Wishart & Boschler: 33)

Bit 7The launch didn't lead to much in the way of a music deal or television exposure.

The old media were not so keen to validate the etoy dream of lifting themselves into fame and fortune by their bootstraps. And so etoy decided to be stars of the new media. The slogan was suitably revised: "etoy: the pop star is the pilot is the coder is the designer is the architect is the manager is the system is etoy." (Wishart & Boschler: 34)

Bit 8The etoy boys were more than net.artists, they were artists of the brand. The brand was achieving a new prominence in the mid-90s. (Klein: 35) This was a time when capitalism was hollowing itself out in the overdeveloped world, shedding parts of its manufacturing base. Control of the circuits of commodification would rest less on the ownership of the means of production and more on maintaining a monopoly on the flows of information.

Bit 9The leading edge of the ruling class was becoming self-consciously vectoral. It controlled the flow of information about what to produce - the details of design, the underlying patents. It controlled the flows of information about what is produced - the brands and logos, the slogans and images. The capitalist class is supplanted by a vectoral class, controlling the commodity circuit through the vectors of information. (Wark) The genius of etoy was to grasp the aesthetic dimension of this new stage of commodification.

Bit 10The etoy boys styled themselves not so much as a parody of corporate branding and management groupthink, but as logical extension of it. They adopted matching uniforms and called themselves agents. In the dada-punk-hiphop tradition, they launched themselves on the world as brand new, self-created, self-named subjects: Agents Zai, Brainhard, Gramazio, Kubli, Esposto, Udatny and Goldstein.

Bit 11The etoy.com website was registered in 1995 with Network Solutions for a \$100 fee. The homepage for this etoy.TANKSYSTEM was designed like a flow chart. As Gramazio says: "We wanted to create an environment with surreal content, to build a parallel world and put the content of this world into tanks." (Wishart & Boschler: 51) One tank was a cybermotel, with Coco the first guest. Another tank showed you your IP number, with a big-brother eye looking on. A supermarket tank offered sunglasses and laughing gas for sale, but which may or may not be delivered. The underground tank included hardcore photos of a sensationalist kind. A picture of the Federal Building in Oklamoma City after the bombing was captioned in deadpan post-situ style "such work needs a lot of training." (Wishart & Boschler: 52)

Bit 12The etoy agents were by now thoroughly invested in the etoy brand and the constellation of images they had built around it, on their website. Their slogan became "etoy: leaving reality behind." (Wishart & Boschler: 53) They were not the first artists fascinated by commodification. It was Warhol who said "good art is good business."(Warhol ) But etoy reversed the equation: good business is good art. And good business, in this vectoral age, is in its most desirable form an essentially conceptual matter of creating a brand at the center of a constellation of signifiers.

Bit 13Late in 1995, etoy held another group meeting, at the Zurich youth center Dynamo. The problem was that while they had build a hardcore website, nobody was visiting it. Agents Gooldstein and Udatny thought that there might be a way of using the new search engines to steer visitors to the site. Zai and Brainhard helped secure a place at the Vienna Academy of Applied Arts where Udatny could use the computer lab to implement this idea.

Bit 14Udatny's first step was to create a program that would go out and gather email addresses from the web. These addresses would form the lists for the early examples of art-spam that etoy would perpetrate. Udatny's second idea was a bit more interesting. He worked out how to get the etoy.TANKSYSTEM page listed in search engines. Most search engines ranked pages by the frequency of the search term in the pages it had indexed, so etoy.TANKSYSTEM would contain pages of selected keywords.

Bit 15Porn sites were also discovering this method of creating free publicity. The difference was that etoy chose a very carefully curated list of 350 search terms, including: art, bondage, cyberspace, Doom, Elvis, Fidel, genx, heroin, internet, jungle and Kant. Users of search engines who searched for these terms would find dummy pages listed prominently in their search results that directed them, unsuspectingly, to etoy.com.

Bit 16They called this project Digital Hijack. To give the project a slightly political aura, the pages the user was directed to contained an appeal for the release of convicted hacker Kevin Mitnick. This was the project that won them a Golden Nica statuette at Ars Electronica in 1996, which Gramazio allegedly lost the same night playing roulette. It would also, briefly, require that they explain themselves to the police.

Bit 17Digital Hijack also led to the first splits in the group, under the intense pressure of organizing it on a notionally collective basis, but with the zealous Agent Zai acting as de facto leader. When Udatny was expelled, Zai and Brainhard even repossessed his Toshiba laptop, bought with etoy funds. As Udatny recalls, "It was the lowest point in my life ever. There was nothing left; I could not rely on etoy any more. I did not even have clothes, apart from the etoy uniform." (Wishart & Boschler: 104) Here the etoy story repeats a common theme from the history of the avant gardes as forms of collective subjectivity.

Bit 18After Digital Hijack, etoy went into a bit of a slump. It's something of a problem for a group so dependent on recognition from the other of the media, that without a buzz around them, etoy would tend to collapse in on itself like a fading supernova.

Bit 19Zai spend the early part of 1997 working up a series of management documents, in which he appeared as the group's managing director. Zai employed the current management theory rhetoric of employee 'empowerment' while centralizing control. Like any other corporate-Trotskyite, his line was that "We have to get used to reworking the company structure constantly." (Wishart & Boschler: 132)

Bit 20The plan was for each member of etoy to register the etoy trademark in a different territory, linking identity to information via ownership. As Zai wrote "If another company uses our name in a grand way, I'll probably shoot myself. And that would not be cool." (Wishart & Boschler: 132) As it turned out, another company was interested - the company that would become eToys.com. Zai received an email offering "a reasonable sum" for the etoy.com domain name. Zai was not amused. "Damned Americans, they think they can take our hunting grounds for a handful of glass pearls....". (Wishart & Boschler: 133)

Bit 21On an invitation from Suzy Meszoly of C3, the etoy boys traveled to Budapest to work on "protected by etoy", a work exploring internet security. They spent most of their time - and C3's grant money - producing a glossy corporate brochure. The folder sported a blurb from Bjork: "etoy: immature priests from another world" - which was of

course completely fabricated.

Bit 22When Artothek, the official art collection of the Austrian Chancellor, approached etoy wanting to buy work, the group had to confront the problem of how to actually turn their brand into a product. The idea was always that the brand was the product, but this doesn't quite resolve the question of how to produce the kind of unique artifacts that the art world requires. Certainly the old Conceptual Art strategy of selling 'documentation' would not do.

Bit 23The solution was as brilliant as it was simple - to sell etoy shares. The 'works' would be 'share certificates' - unique objects, whose only value, on the face of it, would be that they referred back to the value of the brand. The inspiration, according to Wishart & Boschler, was David Bowie, 'the man who sold the world', who had announced the first rock and roll bond on the London financial markets, backed by future earnings of his back catalogue and publishing rights. Gramazio would end up presenting Chancellor Viktor Klima with the first 'shares' at a press conference. "It was a great start for the project", he said, "A real hack." (Wishart & Boschler: 142) For this vectoral age, etoy would create the perfect vectoral art.

Bit 24Zai and Brainhard took off next for Pasadena, where they got the idea of reverse-engineering the online etoy.TANKSYSTEM by building an actual tank in an orange shipping container, which would become etoy.TANK 17. This premiered at the San Francisco gallery Blasthaus in June 1998. Instant stars in the small world of San Francisco art, the group began once again to disintegrate. Brainhard and Esposito resigned.

Bit 25Back in Europe in late 1998, Zai was preparing to graduate from the Vienna Academy of Applied Arts. His final project would recapitulate the life and death of etoy. It would exist from here on only as an online archive, a digital mausoleum. As Kubli says "there was no possibility to earn our living with etoy." (Wishart & Boschler: 192) Zai emailed eToys.com and asked them if they would like to place a banner ad on etoy.com, to redirect any errant web traffic.

Bit 26Lawyers for eToys.com offered etoy \$30,000 for the etoy.com domain name, which the remaining members of etoy - Zai, Gramazio, Kubli - refused. The offer went up to \$100,000, which they also refused. Through their lawyer Peter Wild they demanded \$750,000.

Bit 27In September 1999, while etoy were making a business presentation as their contribution to Ars Electronica, eToys.com lodged a complaint against etoy in the Los Angeles Superior Court. The company hired Bruce Wessel, of the heavyweight LA law firm Irell & Manella, who specialized in trademark, copyright and other intellectual property litigation.

Bit 28The complaint Wessel drafted alleged that etoy had infringed and diluted the eToys trademark, were practicing unfair competition and had committed "intentional interference with prospective economic damage." (Wishart & Boschler: 199) Wessel demanded an injunction that would oblige etoy to cease using its trademark and take down its etoy.com website. The complaint also sought to prevent etoy from selling shares, and demanded punitive damages.

Bit 29Displaying the aggressive lawyering for which he was so handsomely paid, Wessel invoked the California Unfair Competition Act, which was meant to protect citizens

from fraudulent business scams. Meant as a piece of consumer protection legislation, its sweeping scope made it available for inventive suits such as Wessel's against etoy. Wessel was able to use pretty much everything from the archive etoy built against it. As Wishart and Bochsler write, "The court papers were like a delicately curated catalogue of its practices." (Wishart & Boschler: 199) And indeed, legal documents in copyright and trademark cases may be the most perfect literature of the vectoral age.

Bit 30The Unfair Competition claim was probably aimed at getting the suit heard in a Californian rather than a Federal court in which intellectual property issues were less frequently litigated. The central aim of the eToys suit was the trademark infringement, but on that head their claims were not all that strong.

Bit 31According to the 1946 Lanham Act, similar trademarks do not infringe upon each other if there they are for different kinds of business or in different geographical areas. The Act also says that the right to own a trademark depends on its use. So while etoy had not registered their trademark and eToys had, etoy were actually up and running before eToys, and could base their trademark claim on this fact.

Bit 32The eToys case rested on a somewhat selective reading of the facts. Wessel claimed that etoy was not using its trademark in the US when eToys was registered in 1997. Wessel did not dispute the fact that etoy existed in Europe prior to that time. He asserted that owning the etoy.com domain name was not sufficient to establish a right to the trademark.

Bit 33If the intention of the suit was to bully etoy into giving in, it had quite the opposite effect. It pissed them off. "They felt again like the teenage punks they had once been", as Wishart & Bochsler put it. Their art imploded in on itself for lack of attention, but called upon by another, it flourished. Wessel and eToys.com unintentionally triggered a dialectic that worked in quite the opposite way to what they intended.

Bit 34The more pressure they put on etoy, the more valued - and valuable - they felt etoy to be. Conceptual business, like conceptual art, is about nothing but the management of signs within the constraints of given institutional forms of market. That this conflict was about nothing made it a conflict about everything. It was a perfectly vectoral struggle.

Bit 35Zai and Gramazio flew to the US to fire up enthusiasm for their cause. They asked Wolfgang Staehle of The Thing to register the domain toywar.com, as a space for anti-eToys activities at some remove from etoy.com, and as a safe haven should eToys prevail with their injunction in having etoy.com taken down.

Bit 36The etoy defense was handled by Marcia Ballard in New York and Robert Freimuth in Los Angeles. In their defense, they argued that etoy had existed since 1994, had registered its globally accessible domain in 1995, and won an international art prize in 1996. To counter a claim by eToys that they had a prior trademark claim because they had bought a trademark from another company that went back to 1990, Ballard and Freimuth argued that this particular trademark only applied to the importation of toys from the previous owner's New York base and thus had no relevance. They capped their argument by charging that eToys had not shown that its customers were really confused by the existence of etoy.

Bit 37With Christmas looming, eToys wanted a quick settlement, so they offered Zurich-

based etoy lawyer Peter Wild \$160,000 in shares and cash for the etoy domain. Kubli was prepared to negotiate, but Zai and Gramazio wanted to gamble - and raise the stakes. As Zai recalls: "We did not want to be just the victims; that would have been cheap. We wanted to be giants too." (Wishart & Boschler: 207) They refused the offer.

Bit 38The case was heard in November 1999 before Judge Rafeedie in the Federal Court. Freimuth, for etoy, argued that federal Court was the right place for what was essentially a trademark matter. Robert Kleiger, for eToys, countered that it should stay where it was because of the claims under the California Unfair Competition act. Judge Rafeedie took little time in agreeing with the eToys lawyer. Wessel's strategy paid off and eToys won the first skirmish.

Bit 39The first round of a quite different kind of conflict opened when etoy sent out their first 'toywar' mass mailing, drawing the attention of the net.art, activism and theory crowd to these events. This drew a report from Felix Stalder in Telepolis: "Fences are going up everywhere, molding what once seemed infinite space into an overcrowded and tightly controlled strip mall." (Stalder ) The positive feedback from the net only emboldened etoy.

Bit 40For the Los Angeles court, lawyers for etoy filed papers arguing that the sale of 'shares' in etoy was not really a stock offering. "The etoy.com website is not about commerce per se, it is about artist and social protest", they argued. (Wishart & Boschler: 209) They were obliged, in other words, to assert a difference that the art itself had intended to blur in order to escape eToy's claims under the Unfair Competition Act.

Bit 41Moreover, etoy argued that there was no evidence of a victim. Nobody was claiming to have been fooled by etoy into buying something under false pretences. Ironically enough, art would turn out in hindsight to be a more straightforward transaction here, involving less simulation or dissimulation, than investing in a dot.com. Perhaps we have reached the age when art makes more, not less, claim than business to the rhetorical figure of 'reality'.

Bit 42Having defended what appeared to be the vulnerable point under the Unfair Competition law, etoy went on the attack. It was the failure of eToys to do a proper search for other trademarks that created the problem in the first place. Meanwhile, in Federal Court, lawyers for etoy launched a counter-suit that reversed the claims against them made by eToys on the trademark question.

Bit 43While the suits and counter suits flew, eToys.com upped their offer to settle to a package of cash and shares worth \$400,000. This rather puzzled the etoy lawyers. Those choosing to sue don't usually try at the same time to settle. Lawyer Peter Wild advised his clients to take the money, but the parallel tactics of eToys.com only encouraged them to dig in their heels. "We felt that this was a tremendous final project for etoy", says Gramazio.

Bit 44As Zai says, "eToys was our ideal enemy - we were its worst enemy." (Wishart & Boschler: 210) Zai reported the offer to the net in another mass mail. Most people advised them to take the money, including Doug Rushkoff and Heath Bunting. Paul Garrin counseled fighting on. The etoy agents offered to settle for \$750,000.

Bit 45The case came to court in late November 1999 before Judge Shook. The Judge accepted the plausibility of the eToys version of the facts on the trademark issue, which

included the purchase of a registered trademark from another company that went back to 1990. He issued an injunction on their behalf, and added in his statement that he was worried about "the great danger of children being exposed to profane and hardcore pornographic issues on the computer." (Wishart & Boschler: 222) The injunction was all eToys needed to get Network Solutions to shut down the etoy.com domain.

Bit 46Zai sent out a press release in early December, which percolated through Slashdot, rhizome, nettime (Staehle) and many other networks, and catalyzed the net community into action. A debate of sorts started on investor websites such as fool.com. The eToys stock price started to slide, and etoy 'warriors' felt free to take the credit for it. The story made the New York Times on 9th December, Washington Post on the 10th, Wired News on the 11th.

Bit 47Network Solutions finally removed the etoy.com domain on the 10th December. Zai responded with a press release: "this is robbery of digital territory, American imperialism, corporate destruction and bulldozing in the way of the 19th century." (Wishart & Boschler: 237)

Bit 48RTMark set up a campaign fund for toywar, managed by Survival Research Laboratories' Mark Pauline. The RTMark press release promised a "new internet 'game' designed to destroy eToys.com." (Wishart & Boschler: 239) The RTMark press release grabbed the attention of the Associated Press newswire.

Bit 49The eToys.com share price actually rose on December 13th. Goldman Sachs' e-commerce analyst Anthony Noto argued that the previous declines in the Etoys share price made it a good buy. Goldman Sachs was the lead underwriter of the eToys IPO. Noto's writings may have been nothing more than the usual 'IPOetry' of the time, but the crash of the internet bubble was some months away yet.

Bit 50The RTMark campaign was called 'The Twelve Days of Christmas'. It used the Floodnet technique that Ricardo Dominguez used in support of the Zapatistas. As Dominguez said, "this hysterical power-play perfectly demonstrates the intensions of the new net elite; to turn the World Wide Web into their own private home-shopping network." (Wishart & Boschler: 242)

Bit 51The Floodnet attack may have slowed the eToys.com server down a bit, but it was robust and didn't crash. Ironically, it ran on open source software. Dominguez claims that the 'Twelve Days' campaign, which relied on individuals manually launching Floodnet from their own computers, was not designed to destroy the eToys site, but to make a protest felt. "We had a single-bullet script that could have taken down eToys - a tactical nuke, if you will. But we felt this script did not represent the presence of a global group of people gathered to bear witness to a wrong." (Wishart & Boschler: 245)

Bit 52While the eToys engineers did what they could to keep the site going, eToys also approached universities and businesses whose systems were being used to host Floodnet attacks. The Thing, which hosted Dominguez's eToys Floodnet site was taken offline by The Thing's ISP, Verio. After taking down the Floodnet scripts, The Thing was back up, restoring service to the 200 odd websites that The Thing hosted besides the offending Floodnet site.

Bit 53About 200 people gathered on December 20th at a demonstration against eToys outside the Museum of Modern Art. Among the crowd were Santas bearing signs that said 'Coal for eToys'. The rally, inside the Museum, was led by the Reverend Billy of the

Church of Stop Shopping: "We are drowning in a sea of identical details", he said. (Wishart & Boschler: 249-250)

Bit 54Meanwhile etoy worked on the Toywar Platform, an online agitpop theater spectacle, in which participants could act as soldiers in the toywar. This would take some time to complete - ironically the dispute threatened to end before this last etoy artwork was ready, giving etoy further incentives to keep the dispute alive.

Bit 55The etoy agents had a new lawyer, Chris Truax, who was attracted to the case by the publicity it was generating. Through Truax, etoy offered to sell the etoy domain and trademark for \$3.7 million. This may sound like an insane sum, but to put it in perspective, the business.com site changed hands for \$7.5 million around this time.

Bit 56On December 29th, Wessel signaled that eToys was prepared to compromise. The problem was, the Toywar Platform was not quite ready, so etoy did what it could to drag out the negotiations. The site went live just before the scheduled court hearings, January 10th 2000. "TOYWAR.com is a place where all servers and all involved people melt and build a living system. In our eyes it is the best way to express and document what's going on at the moment: people start to about new ways to fight for their ideas, their lifestyle, contemporary culture and power relations." (Wishart & Boschler: 263)

Bit 57Meanwhile, in a California courtroom, Truax demanded that Network Solutions restore the etoy domain, that eToys pay the etoy legal expenses, and that the case be dropped without prejudice. No settlement was reached. Negotiations dragged on for another two weeks, with the etoy agents' attention somewhat divided between two horizons - art and law.

Bit 58The dispute was settled on 25th January. Both parties dismissed their complaints without prejudice. The eToys company would pay the etoy artists \$40,000 for legal costs, and contact Network Solutions to reinstate the etoy domain. "It was a pleasure doing business with one of the biggest e-commerce giants in the world" ran the etoy press release. (Wishart & Boschler: 265)

Bit 59That would make a charming end to the story. But what goes around comes around. Brainhard, still pissed off with Zai after leaving the group in San Francisco, filed for the etoy trademark in Austria. After that the internal etoy wranglings just gets boring.

Bit 60But it was fun while it lasted. What etoy grasped intuitively was the nexus between the internet as a cultural space and the transformation of the commodity economy in a yet-more abstract direction - its becoming-vectoral. They zeroed in on the heart of the new era of conceptual business - the brand. As Wittgenstein says of language, what gives words meaning is other words, so too for brands. What gives brands meaning is other brands.

Bit 61There is a syntax for brands as there is for words. What etoy discovered is how to insert a new brand into that syntax. The place of eToys as a brand depended on their business competition with other brands - with Toys 'R' Us, for example. For etoy, the syntax they discovered for relating their brand to another one was a legal opposition.

Bit 62What made etoy interesting was their lack of moral posturing. Their abandonment of leftist rhetorics opened them up to exploring the territory where media and business meet, but it also made them vulnerable to being consumed by the very dialectic that



created the possibility of staging etoy in the first place. By abandoning obsolete political strategies, they discovered a media tactic, which collapsed for want of a new strategy, for the new vectoral terrain on which we find ourselves.

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