

OPEN SOURCE: Cinema in the Public Domain



February 24, 2004. Also known as Grey Tuesday. Over 100,000 copies of DJ Danger Mouse's *Grey Album* are downloaded from hundreds of sites across the Internet. An estimated million copies of this celebrated remix of the Beatles' *White Album* with Jay-Z's *Black Album* are traded over peer-to-peer networks within 24 hours. A symbolic gesture perhaps, but the electronic civil disobedience of Grey Tuesday eloquently speaks to both consumer frustrations with increasingly restrictive copyright laws and the growing power of peer networks to subvert the enforcement of those laws.

Clearly the battle lines have been drawn for the culture wars of the 21st century. At stake is the continued existence of a meaningful sphere of free culture called the public domain. The battle promises to be epic, bringing cherished American ideals of originality, creativity and the ability to profit from one's labor into seeming conflict with equally powerful desires for freedom of speech and expression. And what happens when the movie industry finally has its own Grey Tuesday? In spite of its demonstrated ineffectiveness, the MPAA appears determined to follow the music industry's shock-and-awe strategy of indiscriminate prosecutions. All of which means more lawsuits, more bitterness, and ultimately, more effective tactics of resistance.

Sometime in the near future, the bigger questions will have to be asked – about what kind of world we want to live in and how large a specter of corporate control we will allow to haunt our participation in the media culture that surrounds us. Can we seriously expect that today's PC- and iPod-equipped generations will remain content to be treated as passive consumers of prepackaged media products, obediently forking over 99 cents for every song, every book chapter or every 10 minutes spent staring at a Hollywood blockbuster?

What if we were to imagine a world where ideas, images and sounds flowed freely over networks, across screens and through the air, enriching, dazzling, and sparking more and better forms of communication, expression and experience? Cultural production is not a zero sum game, except as it is being played by the entertainment industries. In an economy of ideas not based on outmoded notions of scarcity, there are plenty of creative concepts – and profits – to go around. What will it take to turn the tide of digital rights management to create a reasonable balance between public and corporate interests?

For many who are engaged in these questions, the answer is already being modeled by the open source programming communities responsible for some of the most powerful, efficient and widely used software products ever developed – with names like GNU,

Words:
Steve Anderson

Linux and Apache. What if the public domain in images, sound and music were expanded to embrace new technologies and new models of creativity? What kinds of unimagined cultural products and practices might emerge from an open source cinema movement conceived as a partnership – rather than an adversarial relationship – between consumers and media industries?

Such a visionary change would require action on multiple fronts, including legislative reform, advances in technology and a cultural shift toward a more realistic relationship between copyright and the values it purports to defend. Brewster Kahle, founder of the Internet Archive, one of the most generous privately financed public works projects in history, believes the problem derives from misunderstanding the nature of "intellectual property" as something to be hoarded rather than shared. "I think people *want* to share and they will to the extent that they possibly can," says Kahle. "99 percent of all Web sites have no revenue model, but people keep putting their work on the Net." Kahle recently filed a lawsuit against the government, attempting to preserve some of the more fragile margins of the public domain. "It's a long road," says the plaintiff of *Kahle vs. Ashcroft*, "but the pendulum is slowing down. We haven't stopped the pendulum, but we're starting to see some sanity return, in part because of the dynamics of the technology."

Chief among the many powerful technologies poised to tip the balance in favor of consumers are rapidly proliferating peer-to-peer file sharing protocols such as BitTorrent. According to Mark Pesce, co-inventor of VRML and Lecturer in Interactive Media at the Australian Film Television and Radio School, BitTorrent solves the problem of one-to-many distribution by moving to many-to-many distribution. "BitTorrent allows network peers to share their media with each other. So as a piece of media grows in popularity, it becomes easier to download it over the network. This is a virtuous cycle, which makes it even more effective than broadcasting, because it's not limited by distance, only by bandwidth. As broadband becomes ever more pervasive, BitTorrent-type technologies will become ever more potent."

Perhaps the most important driving force behind copyright reform is the rapidly changing attitude of consumers, who feel their rights being eroded by increasingly restrictive copyright law. According to Rick Prelinger, founder of the Prelinger Archive and director of the all-public-domain compilation film, *Panorama Ephemera*, a key factor is the generational shift toward younger, more tech-savvy consumers who have grown up as part of a remix culture. "Younger people are not as interested in collecting physical objects," says Prelinger. "For them, distinctions between reader and writer and viewer have broken down. And the suits in the entertainment industry have no idea how to deal with it. We're entering an era of ubiquitous media that the industries haven't yet figured out how to handle. The one thing that should be obvious is that it's not going to work if you have to pay a quarter for everything you see or hear."

Creative production on an "open source" model is already being put into practice in numerous arenas. Echoing the remix aesthetics of DJ culture, film and video makers created an avalanche of political remixes in advance of the 2004 presidential election, re-editing fragments of political speeches to alter their meaning. The best of these, like Lenka Clayton's *Qaeda, Quality, Question, Quickly, Quiet*, which isolates all 3,814 words from George W. Bush's State of the Union speech and rearranges them into alphabetical order, make their point with almost mathematical precision. And numerous short films from the 2004 RESFEST Bushwhacked! program, such as Jen Simmons and Sarah Chistman's *Bush for Peace*, likewise remix Presidential proclamations to suggest what an enlightened future politics might look like.



OPEN RELATIONSHIPS: RICK PRELINGER'S "OPEN SOURCE" COMPILATION FILM *PANORAMA EPHEMERA* (2004). OPPOSITE PAGE: (TOP ROW) STILLS FROM *DUCK AND COVER*, COURTESY RICK PRELINGER'S ARCHIVE; AND FROM THOM ANDERSEN'S *LOS ANGELES PLAYS ITSELF* (BOTTOM ROW).

If politics are the motivator of many of these efforts, history is what is at stake in others. "History is built out of history," says Kahle, whose Internet Archive sponsored an open source cinema contest called *Why History Matters*. "Here we are at center of the information age and we're changing laws to take away access to historical materials. Students no longer have access to the best we have to offer. The 20th century has been taken away from this generation. It makes no sense." Indeed, filmmakers with the courage to depend on the protection of "fair use" are few and far between. Thom Andersen's compilation documentary *Los Angeles Plays Itself* mines commercial cinema for films made in or about Los Angeles in order to construct a counter-history of the city's efforts at self-representation. Like his previous film, *Red Hollywood*, which used clips from Hollywood films to retell the history of the blacklist era, Andersen's work implicitly argues that the ability to represent the past should not be left in the hands of corporate conglomerates who control access to media images.

A number of organizations and online projects have also been launched in an effort to model alternatives to the current copyright system, including the Open Video Project, Open Source Cinema, Common Content and many others. Brett Gaylor, creator of a documentary about music and the Internet called *The Basement Tapes*, sees particular benefit for documentarians willing to share resources. He is currently assembling a pool of materials via the Web site Open Source Cinema that other filmmakers may freely draw upon, following the example set by Robert Greenwald, who released original footage from his documentary *Outfoxed* into the public domain. "Documentary is particularly well served by an open source logic," says Gaylor, "Nothing but good can come from a plurality of voices and perspectives. That's what the Internet does best."

While the media industries decide how best to respond to the shifting cultural terrain of copyright, some believe it is only a matter of time before their penchant for ham-fisted legal intimidation backfires. According to Pesce, "The upside of such nasty copyright

practices is that it has encouraged the creation of the Creative Commons licenses, which define a "middle path" between public domain usage and strictly enforced copyright. We'll be seeing a lot more of that in the years to come, and eventually consumers will accept nothing less than reasonable rights in return for their dollars." Kahle sounds a similarly moderate note. "All we are saying is that in this country it shouldn't cost you to give things away. In every other form of charitable giving, you get tax benefits or deductions – except on the Net. If you put a video online and it gets really popular, you could lose your house."

The entertainment industries should take assurance in the many examples suggesting that this model serves both the public good and the interests of economic viability, defying the old economy logic of scarcity. "Open source thinking allows us to see that the world and the culture is better off with parallel spheres of public and private culture," Prelinger explains. "We're actually making more money since we started giving materials away."

SOURCE IT: OPEN CINEMA RESOURCES ONLINE

Creative Commons → creativecommons.org
 Electronic Frontiers Foundation → www.eff.org
 The Internet Archive → www.archive.org
 The Prelinger Archive → www.prelinger.com
 Open Source Cinema → www.opensourcecinema.com
 The Open Video Project → www.open-video.org
 Common Content → www.commoncontent.org
 Torrentocracy → www.torrentocracy.com
 Outfoxed → www.outfoxed.org
 Free Culture → www.free-culture.org