TWO RELATIONSHIPS TO A CULTURAL PUBLIC DOMAIN

NEGATIVLAND*

INTRODUCTION

It's been well over ten years since Negativland was sued by Island Records for supposed copyright infringement, trademark infringement, defamation of character and consumer fraud contained in our 1991 *U2* single. In the big wide world of the ownership of ideas, a lot has changed since then—the advent of the Internet and its worldwide empowerment of individuals through personalized interconnection, the effects of economic globalization and how it bypasses both the ideologies of local governments and the rule of their national laws, and the Digital Millennium Copyright Act with which intellectual property owners are attempting to survive as all these rugs are being pulled out from under them. There is a contemporary realization that, on one hand, the fate of all content is now in the hands of its receiving audience more than ever before, and, on the other hand, that worldwide commerce is scrambling to forge all kinds of new laws and regulations to maintain their traditional control over the fate of "their" content.

Over the last decade, Negativland has continued to be associated with these issues, sometimes because we volunteer ideas on these subjects, sometimes because we continue to make art that ends up evoking them. Other than the two lawsuits against us in the wake of the *U2* single, we've never been sued again. There have been other scares, skirmishes, and threats against us over the years, at various times from the Recording Industry Association of America, PepsiCo, Beck, Geffen Records, Philip Glass, Fat Boy Slim, the CD pressing plants we work with, and even attorneys for ax murderer David Brom. But, surprisingly, we've actually been left alone throughout the 1990s and into the 2000s as we continued to release work that appropriates from privately owned mass media, often times in much more glaring ways than anything we were ever sued over. Perhaps it's because we've been flying under the radar as "alternative" music, or perhaps that highly publicized suit, which we publicly defended as "anti-art" because we couldn't afford to defend it in court as fair use, caused others to think twice before suing us again. Or perhaps, at least these days, it's

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* The experimental music and art collective known as Negativland has been recording music/audio/collage works since 1980, producing a weekly 3-hour radio show ("Over The Edge") since 1981, hosting a World Wide Web site (http://www.negativland.com.) since 1995, and performing live on occasional tours throughout America and Europe. They are the authors of FAIR USE: THE STORY OF THE LETTER U AND THE NUMERAL 2 (1995).

because, in the wake of Napster, DSL, cable modems, file sharing, and mp3s, the music industry now has much bigger things to worry about than a bunch of underground audio artists chopping up and re-using bits of their privately owned intellectual property.

Whatever the reasons, Negativland has remained appropriatively unrepentant, and we continue to work in the same ways we always have. And, in the wake of those lawsuits, we expanded our own self-run record label, Seeland Records, to help out other artists who also "infringe" in order to collage, most notably in the compilation *Deconstructing Beck*, and in our re-release of John Oswald's historic *Plunderphonics* project, both of which, unlike most of our own work, are constructed entirely by cutting up and transforming other people's music.

We've continued to work this way because we like the sound of it. We like the results. We get inspired by what we find out there, it's simply *fun* to do, and we sense we are not alone in these perceptions. In continuing to pursue collage and found-sound as elements in our music, we have set our work out as public examples of how appropriation from our media surroundings is neither culturally harmful nor dangerous to anyone else's business. Instead, it hopefully does represent some interesting art perspectives, as well as cultural commentary and criticism which are well worth having around whether or not our work happens to be "authorized" by our subjects and sources. We consider it to be a matter of free speech.

At this late date in the proliferation of collage, we no longer see this "appropriation" approach as particularly daring, edgy or trangressive, as it once truly was. The "aesthetic" of collage (though not always the actual thing itself) has by now become a very mainstream style in music, television, and movies. We see it in mass media everywhere we look. We see it in the many web-based CD stores that now have a *Plunderphonics* category, in the frequent appropriation-based film and music festivals around the world, and in the way our own phrase "culture jamming" has been appropriated, commodified and marketed (via *Adbusters* magazine), and has entered into routine anti-corporate and anti-advertising activist lingo. We see it in the way collage and its ramifications has become a common subject in courses in film schools, law schools, art schools, and music schools. Even though it's all *still* tacitly illegal, this way of working is now nothing unusual. Observing this now generally culture-wide acceptance of collage's appropriation methodologies, one would think that sympathetic laws of allowance would also emerge to encourage the practice and assure that it is able to proceed legally. But that has not yet happened. What's wrong with this picture?

PART ONE:

FREE EXCHANGE IN THE DIGITAL DOMAIN

TWO POSITIONS

Any argument over what should or should not be considered a public domain for cultural works stems from one of two positions:

Position One: Everything created by humans is "work" that is done to gain income and which cannot continue to be done without that income. Therefore, all pieces of cultural "work" need to be compensated, usually on a per-unit basis, if we expect such work to continue. And, therefore, becoming a "user" of such work without compensating the creators for their work is a theft of the creators' rightful and necessary compensation. This position—the ethical and economic standard within our usual practice of cultural creation—stems directly from our evolution through a pre-digital, hard-copy-based world in which the supply of anything made was necessarily physical and so also supply-limited in nature. The physical supply of anything made was controlled by the maker of that thing and the units or copies of it were doled out exclusively by the maker. That condition quite naturally evoked and supported the above ethic in a material world that provided virtually no other options.

Position Two: Digital technologies of reproduction have dragged the above ethic into a virtual new world of production realities in which there is still the creation of individual "works," but once a digital copy of that work is released, it's up for grabs. Those on the receiving end of it are capable of making their own indistinguishable copies *ad infinitum* and distributing them *ad infinitum* as well. And they can do this at little cost as individuals at home using consumer technology available to anyone. In other words, we have begun to allow those on the receiving end of cultural output to put themselves in charge of the reproduction and distribution of that work if they so wish. As music makers, for instance, we are no longer in charge of our own music once it actually leaves our hands in digitized forms. We cannot control the further duplication and distribution of our music by those who receive it. This unexpected and perplexing reality has begun to encourage a different ethic and economic standard for digitized cultural work, one that those who have always ruled in Position One are oblivious to. Of course this new ethic is really nothing new at all, emerging as it does from a very old ethic, an ethic that every effort of private capitalism over the last century has sought to deflect, delay, and smother: The concept of public domain.

THE DEATH OF FOLK ART AND THE BIRTH OF THE INTERNET

It is primarily computers and the Internet that have prompted the creation of Position Two, and out of them comes a renewed interest in the free and open exchange of cultural works. This new digitally-driven ethic of free exchange emerged so easily because the *ideal* of an unhindered, wide-open, and free cul-

tural exchange has always held a deep philosophical appeal for the receiving end of culture, and the receivers have now suddenly been given an effective technological tool to actually make this happen. The lack of any need to pay for anything in this new domain does nothing to limit its popular appeal. But deep within these unfamiliar realizations about how reality is now working remains the conundrum of how to pay for cultural production. This is the one nagging residue of practicality from Position One which Position Two does not yet have a good answer for. But interestingly enough for our human brains, on the Internet we don't appear to have a viable choice! All digitized media, particularly on the Internet, has actually turned the world of traditional copyright controls upside down, putting the general public in a distribution driver's seat that simply did not exist before. In doing so, digitally reproduced media has opened up the public's imagination to what *they* would like to do with whatever forms of culture come their way. The audience can now bypass the creator's control over sales and distribution. Once again in the history of human technology, new technology has thrown us and our society's prior "values" for a loop.

In much earlier times, prior to the corporately driven modern era of hands-off, privately owned and copyrighted cultural material, the natural human approach to our own culture was to participate in it by not only absorbing it as an individual, but also by remaking it—adding to it, removing from it, recombining it with other elements, reshaping it to our own tastes—and then redistributing the adjusted results ourselves. Virtually the whole history of human culture consisted of altering, reusing, and copying from the universal public domain in various re-imagined ways . . . until copyright came along.

SUE ME, SUE YOU

Copyright has made true folk music, for instance, illegal and impossible. It is extinct as a process. What's left are professional "singer/songwriters," each one "original," each one intending to remain legal by being lyrically and melodically distinguished from all the others, and all having little to do with any kind of true, evolving "folk" process at all. Any kind of modern folk music (as opposed to that which has already reached the legally defined "public domain") became impossible once it could be sued it out of existence. Along with this general direction in the modern parameters of creativity came complete twists in human perception itself, such as the very concept of copying (which is how this species actually got to where we are) becoming a term of disrepute, something to be avoided, an UNcreative act! So now all music, which is always chock full of copying regardless of any laws, continues under self-delusional standards of "originality" based on carefully delineated degrees of copycat provability.

Acknowledging the strengths and realities of human nature (monkey see, monkey do) has now become a disrespected practice in our commercialized culture. Nothing is allowed to incrementally evolve through various individuals.

Each individual must make a legally defined leap from another's (phony) "originality" to his or her own (phony) "originality." We wonder if the whole history of human culture would agree with the copyright lawyers and content owners who think this is a good thing for the evolution of human culture.

As for the Net, digital distribution does not remove the right to sue for copying or "unauthorized" reuses of existing work, but it does remove a great deal of practicality in actually enforcing such legal mandates. These are "crimes" committed by countless individual citizens inside countless homes, and tracking any of this criminal multiplicity is so difficult it just becomes expensively pointless. Now, we are discovering just how difficult it is for copyright's relatively short-lived repression of the public's urge for a cultural public domain to continue, as if nothing has happened. The success of Napster (over twenty-five million file-sharing users) showed that the public's desire to engage in cultural reprocessing and trading for their own purposes had not become extinct. It seems the general public will always take control of revising the destiny of cultural products which enter their sphere of possession if given the opportunity. With digital technology, they suddenly can, and so they do. But this new opportunity has also evoked a newly awakened awareness of the economics of modern culture and the encompassing of the electronic arts by commercial interests which have thus come to characterize our popular culture as a whole. These commercial interests have actually come to rule what is "important" and what is not in cultural material. Among other things, when private cultural income threatens to go out the window, some very different sorts of standards for popular "worth" may start to emerge.

SCREAMS OF INDIGNATION

The music industry, in which virtually all mainstream music is at the moment owned and controlled by five transnational corporate entities, screams that free digital exchange will kill music if left to its own home reproduction devices.[1] Well, it could possibly kill *their* kind of expense-laden music, but their self-absorbed assumption that they *are* all the music that counts is one of the reasons it is so appealing to subvert their economic grip on music by reproducing it and passing it on for free. But such an emotion, regardless of how justifiable it may be if focused, is actually vague at best and merely a general feeling about what *all* music is actually "worth" in a commercially compromised creative culture. This newly empowered free-exchange attitude does not necessarily distinguish between musical examples. So this "subversion" of profit extends equally to the small independent varieties of music, too, and thus we have a

1. It should be pointed out here that the small drop in CD sales seen over the last few years might also be attributed to the following: an economy in recession, CDs being criminally overpriced, DVDs selling for way cheaper than CDs, DVDs, web surfing and video games taking up much more of people's free time and entertainment dollars, and the widespread shift in the mainstream music biz away from releasing good albums and focusing instead only on hit singles.

potential support problem for all music, whether it's made in a corporate music factory at great expense or for very little in a home studio.

One thing that may shake out of this situation is that if payment for any and all music significantly diminishes, all the other-than-profit-motivated home studios will hang on and keep producing music a lot longer than the big, extravagant, corporate music factories will ever care to. As economies of scale come into play, the consolidation of the major record labels into fewer and fewer hands creates a gigantic economic infrastructure they simply may not be able to sustain. If their worst case downloading disaster scenario comes true, they may slowly implode under their own size and weight, breaking up into smaller companies with lower overheads.

Of course music will not disappear under these conditions any more than it did throughout most of human history, when no one was being paid to make it. Music may, though, change in nature. The notion that one could run a business or have a career based on selling thousands of round pieces of plastic is a relatively new one in human history and not written in stone. The thousands of tunes now churned out yearly by the labels as formula bids for mass popularity may become less and less worth doing because such a shotgun approach, dependent on the few-in-a-thousand that "hit" to pay for it all, is too expensive when free copies of those few hits can proliferate so easily. And whatever is done online may not provide much of a living if it never escapes an Internet format. To suggest that all this will automatically be bad for *music itself*, however, is not that easy to assume. We have become so accustomed to equating something's quality and value with the income it earns, we hardly know what to think about that something when it can't rely on this particular self-justifying link. Negativland, for example, has never made even a decent living off of music, yet we continue to make music. And we're probably not the only ones. Perhaps music at a "survival" level of self-support will not necessarily be any worse than most of the professional factory music we're getting now, supported as it is by more careless waste than you care to know about.

THE OTHER HALF OF THE GLASS

The Internet, however, finally opens up self-production as a significant alternative to the notorious corporate label intimidation that has ruled modern pop music production. For a musician, it potentially provides, at very low cost, what has always been missing before—self-distribution that can actually get beyond one's own neighborhood. A single master is now all that's needed to be a potential worldwide distributor. When manufacturing multiple hard goods is no longer the only way to distribute music, literally anyone can play. The Net's unique ability to encourage the self-control and self-ownership of one's own musical career by utterly bypassing the former only game in town—corporate labels' usurpation of control and ownership rights—is not to be dismissed just because the resulting living may be smaller. (And keep in mind that of the three billion web pages online as of this writing, only about thirty percent of

them are for commercial or corporate interests. The rest are simply just *there* to share information, art, and ideas.)

This may be the main future of music on the Internet, as yet still filled with corporate hand wringing over economic collapse. The Net's motto for the future may well be "Get Small or Get Off." Optimistically, and perhaps naively, we hope that the Net will end up being characterized as a people's medium, primarily designed by and for individuals rather than yet another comfortable bed for the mass culture of corporate marketing, which has so far successfully taken over all other available mass media. Such a medium as the Net, geared to the interconnection of individuals, could also inevitably become divorced from copyright constraints, which will go on ruling the material world. The Net could become a simultaneously operating alternative, in which everything that remains is functionally in the public domain and open to anyone's reuse. This is not to assume that there will be no ways for creators to garner individual incomes in a digitized public domain, but those ways will probably be unusual in the history of making livings, perhaps including voluntary payment, and are mostly yet to be invented.

For the time being, there are still persistent and expensive efforts on the part of corporate producers of cultural content to somehow maintain the Position One economic standard for digitized media (per-unit payment) within the new Position Two functioning reality (free exchange by default). With dollar signs sparkling in their eyes, the music factories dream of charging for those millions of "unauthorized" downloads which are now happening, when, of course, any charges for them will instantly dry them up to an unknown degree. Practically none of these efforts at placing a toll on what everyone knows is an infinite and virtually expense-free supply in the digital domain has ever worked very well, and none of them has worked at all for long. And there is not much hope that they ever will, because no matter how many very smart encrypters and digital security specialists the private producers employ, the world is always much bigger. There will always be someone else out there who is just as clever and who is, by nature, opposed to a privately controlled culture of limited supply on the Net. Perhaps there will *never* be a way to make much money off of digital content on the Net. Locks are an anachronism there. All private exclusivity codes will be cracked by the vast and alternatively motivated population at large, given enough time. Why are they doing this? The Position Two ethic. How will we pay for cultural production? Nobody knows. Can business pound a square peg into a round hole? Probably not.

THE CONSUMER AS CRIMINAL

Meanwhile, all this has landed us in an era in which the traditional business of culture is in the impossible position of seeing its customer base as criminally dangerous to its business. This paranoia stems from the essence of capitalist logic—charging is good, free is bad. And not just bad—impossible! But in the realm of the Net, cultural materials—text, images, and audio—are all constantly

moved around by an online audience operating under the assumption that free is good and charging is bad. Online users express this notion there because, for the first time in their lives, they actually can. And they see how the Net can apparently go on and on this way, that the essence of western civilization is perhaps not so threatened by it, that perhaps it even adds something worthwhile to it, and most significantly, that not one off-line business concern, individual or company, has yet gone out of business because of *anything* that's happening with online file-sharing. [2]

The Internet was never designed as a commercially structured medium for selling digital data. It was designed as a medium for a free, open, and decentralized exchange of information. This tenacious foundation of technology and software is proving extremely difficult to convert into various forms of toll taking. Only cultural content as apparently irresistible and indispensable as pornography has succeeded in making non-physical content pay there. There are few, if any, other economic success stories on the Net which are not offering off-line material goods as the lure.

So far, all forms of paid advertising (a major way that cultural content supports itself), have proved themselves to be largely ineffectual on the Net. Few people click through those banners. It's just a whole different kind of place, suggesting a different attitude among its users and allowing them to change their usual media expectations upon entering. It's a worldwide place that somehow suggests personal direction and individualized participation more than any other medium that has ever been available to us. No matter how flawed and imperfect, what we seek on the Net seems to be something more individually specific to us as individuals. The medium itself seems to prefer unmodulated individual expression and priorities. Homogenized, generic, conglomerized corporate intrusions into this arena automatically appear anachronistic, disruptive, and annoying. It's not so easy to just turn it into television. Logos, branding, and selling itself—all the things we now accept as characterizing our corporate culture in other media and the off-line material world—do not yet get the same free and willing pass inside Net culture. There still appears be some kind of choice there, an inherent flexibility to make of it what we will, a choice which no longer strikes us as possible in the commercially locked up brick and mortar world.

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2. A report issued in May, 2002 by Jupiter Research confirmed their earlier research demonstrating that Napster had had a positive effect on sales of CDs:

> According to the Jupiter Consumer Survey, experienced file sharers were 75 percent more likely that the average online music fan to say that they increased their music spending levels during exposure to music on the Web. Meanwhile, users with CD-writable drives were 16 percent more likely than average to report increases, and broadband users were two percent more likely than average to report increases. Consumers with all three technologies were the most likely of all to say that they increased their purchasing—95 percent more likely than the average online music fan.

Jupiter Research, File Sharing: To Preserve Music Market Value, Look Beyond Easy Scapegoats (2002).

It is often surprising how oblivious corporate commerce is to how self-damning their own unconsidered nature appears to be when it reaches the Net. They are looking at the Net as a new and lucrative nut to be cracked, but they are doing this in the same old ways they tackled every other new medium that ever appeared. They either ignore the basic design of Net technology, which is so persistently opposed to that form and function, or they are hard at work with their well-greased representatives in Congress to legally change the basic design of the software and the hardware into something they can work with. Failure after failure has not made much of a dent in their assumptions that the Net, too, can and will be turned into another medium for commercial placement and selling products. The RIAA's attack on Napster (and by default, their attack on the twenty-five million music fans who used Napster) was an alienating public relations disaster for the music industry, a disaster that industry still seems to fail to grasp. They are still looking at the Internet as the biggest mall of all. The vast majority of users, however, hardly seem interested in more malls at all. This may be because, for the majority of users, the Internet still represents a very new expression of public domain ethics and possible procedures, a place where cost and content are not necessarily bound together. This is a way of thinking that has been denied to us in all other forms of mass media, all of which succumbed to commercial domination and sponsored purposes long ago.

ART OVER PROFIT?

Life is often a series of overlapping contradictions fighting for survival and predominance. Music on the Net has just become a new example of this evolutionary principle in action. Music might evolve (or devolve, if you prefer) into a dual life, one being its present status as private property, copyrighted and supply-controlled in the material world, and the other being a non-proprietary "vapor service" as long as it remains digitized within the confines of the Internet. From the "art over profit" perspective that is ours, this perfectly possible legal distinction would act as a form of protection against private capitalism's compulsion to change the Internet experience as we know it to suit its own marketing purposes.

Many assume that such a dual distribution of cultural material—all copyrighted in the material world and all subject to free fair use on the Net—is not a plausible option. They assume this would be a form of "competition" the material world could not economically sustain, that no one is going to pay for something here that they can get free over there. But actually, if experience is a somewhat more reliable teacher than theory, we might notice that this is exactly what is happening right now. One can download practically any music for free somewhere on the Net, yet CD sales, for year after year while this has been possible, continue to remain pretty much the same. There are many factors at work in this paradox which may actually be more than a temporary pause while download quality catches up to CD quality. The Net approaches being a functioning public domain for whatever enters it. It is accessible worldwide. The

amount of material found there is inestimable, as is the total population of users who access it. The numbers involved in both amounts of content and amount of access distinguish the Internet as an unprecedented participatory phenomenon with which we have no previous "marketing" familiarity.

The key to the continuing CD sales paradox may be found in the unprecedented scale of the Net. Most music buyers will very likely always find a certain preference for hassle-free, glitch-free (in other words, computer-free), audio perfection, along with the relevant packaging which CDs or their hard copy successor will always provide. But everyone's CD budget is forever limited to what is most important to them. They purchase music they are *sure* they like, sure they want to add to a physically permanent collection. Computer-housed music, on the other hand, has all the aura and charm of disposable music. It's a way to sample unknown things with no obligation to buy, a way to try out or collect a whole lot of stuff one would never ordinarily buy in any case, and a place where a great deal of unknown music is easily checked out and deleted without losing any investment at all. Every free download whim definitely does *not* represent a "lost" sale, and in fact, the literally unconsumable plethora of available free music on the Net can and does create sales.

Free digitized music still appears to be excellent advertising and the mainstream music industry has shot itself in the foot with its aggressive moves to stop it. Even if some of the saleable variety of music is supplanted by free downloads, those downloads also produce enough sales for "permanent" music which is first discovered through all this disposable digital sampling, that it balances out to keep CD sales no significantly less than they were before the Internet came along. The amount of free music downloading going on (perhaps now in the billions) really scares the mainstream recording industry, but they seem to forget the scale of practicality involved. They only need to sell a tiny fraction of the amount of music that is downloaded to become sinfully rich anyway. So far, this digital public domain for all music exists in tandem with record stores selling the same stuff, and, surprisingly, the relationship may not be any more destructive than it is helpful to sales. When it comes to the Net, simple patience, rather than a rush to reconstitute it, is in order, as there is still much to learn about its many unpredictable effects on the outside world.

But such a dualistic reality appears unthinkable to commercial interests who remain deep in the habit of assuming that exclusive and protected ownership is the only guarantee of private profit. The Net has been no significant part of that habit yet, but business interests seem incapable of noticing the Net's more innovative suggestion that this assumption may not, in fact, be true at all, especially in terms of how this new medium increasingly interacts with and informs the whole world of copyrighted experiences that the entertainment industries already *do* profit from.

PARADOXES OF PRACTICALITY

What may be even more difficult for commerce to swallow is the ultimate realization that any alternative to the whole Internet remaining a public domain by default is bound to fail anyway. All it takes to subvert copyright constraints online is for one individual to purchase access to a work on or off the Net, and from that point on the work is potentially up for grabs on the Net for nothing. The basic functionality of this medium was beautifully designed to promote and facilitate copying and spreading, and, unless its basic nature is significantly altered (efforts are underway as we write), it will always be prone to do this well. As paranoia grows among the corporate owners of culture and content, the Net becomes all the more curiously fascinating to its largely commercially unaffiliated users precisely because it just sits there—a profound enigma in the midst of a society so otherwise firmly entrenched in capitalist formulas for success. How can this commercially unworkable anomaly be accommodated? The psychic and societal shifts these paradoxes of practicality may eventually produce among us reaches far beyond the arts. They question the value of intellectual property ownership itself, which has suddenly been turned into a revitalized question for so many since the Internet appeared.

All other previous mass media have been one way in nature and designed for passive spectatorship and sponge-like absorption. Mass media value their audiences primarily as target consumers representing demographic statistics with which they can sell advertising. Their listening/viewing audience is actually called a "market" in their own terminology. The Internet, however, still appears to be an actual medium *for* the masses—a medium for active, individual exchange and interchange, without a center of control or executive offices making decisions about its future, and where personal contribution rather than anonymous absorption is what is suggested by the technology. The difference consists of who and what is really in charge, and who and what it's really for.

WHO ARE WE, WHO ARE YOU?

A view of the world as a freely reusable public domain has long been the traditional view of artists involved in creating art responses to the world they live in. Now the Internet has reawakened this possible view of the world to the average user and the general public at large. The general public's concerns revolve not so much around the need for fair use to include fragmentary reuse and appropriation in the creation of new art works, but in the current corporate attempts to curb "personal copying" fair use allowances within the Internet. Users want to copy what they download, create copies in other formats, and transmit personal copies freely. Corporate IP owners see all this as a threat to their proprietary income and are hard at work to create all sorts of barriers to this kind of traditional fair use: If you don't pay for your copy online, it's not yours. If you do pay for your copy online, it may be "yours," but it may destroy itself in 30 days if you don't continue paying, and it sometimes can't be copied at all, even for your own reuse in another format. Such attempts at post-distri-

bution control by content owners have had all kinds of technological problems—there seem to be ways around all anti-copy schemes so far—and these kinds of new attempts at content control are unique to Internet culture, where content owners think this new technology will actually allow such intricate post-distribution controls for the first time. But they are barking up the wrong little tree in a very large forest of quite opposite interests and abilities.

Our overall approach to these general "problems" of copying and transferring whole works freely is that it probably doesn't make much economic difference, as indeed, it has not to date. When we see convincing evidence that off-line business is being destroyed by online activity, we will reconsider. Until then, we see no need to assume that the Net, as it is now, is actually dangerous to existing off-line economic concerns, nor do we assume that corporate commerce has some indisputable right to get in there, colonize it, redirect it, become an online economic concern by any means necessary, and generally rule the roost as they have already done in TV, radio, and movies. Especially if it means changing the Net's technological architecture to do so. The fact is, *anyone* with a computer can get onto the Internet and operate there because it's rather inexpensive to do so, unlike all our other mass media in which the expense requirements to play enforce sponsorship and prohibit popular participation entirely. We are all ready for a medium for the masses that is, in this one isolated instance, not completely dominated in purpose and content by corporate commercial interests. The really interesting thing is that it is actually possible for the Net to be that and to endure. We wonder if others ever contemplate what a single worldwide medium for the masses, one of corporate non-accommodation rather than corporate subjugation, would be or become? We wonder if anyone else is interested in finding out? Optimistically, it might still be up to us, the unaffiliated users, but probably not for long. If corporate interests have their way and locks on copies are developed and file sharing is made preventable, we will all soon be customers only. And it probably won't be the same kind of decentralized Net anymore, either.

Because the Internet is new to us at the moment, seeming to thrust many new abilities at us for which we have no precedent in the history of popular reuse, it is currently the biggest and most widely perceived symbol for the popular desire to spread and exchange all culture as if it existed in a public domain. But the human urge towards a public domain is nothing new. Long before, and still continuing outside the Internet, this philosophical ideal concerning our cultural environment has been evident in the evolution of modern art. And that can form a historical basis from which to consider the desirability of all of today's forms of free cultural reuse in general.

PART TWO:

STICKY FINGERED HISTORY

GRIST FOR THE MILL

Beginning with the Industrial Revolution and extending all the way through the entire twentieth century up to this point in late high-capitalism, there has been an intertwined relationship between the co-option of our mental and physical environment by private commercial interests on one hand, and, on the other, a simultaneous awareness in the evolution of art content of this ever growing unilateral encroachment on everyone's personal and public spaces.

This awareness was not always displayed by art that was trying to point this out in particular, but much art has taken it into account, nevertheless. Some art is concerned with the social consequences of what is happening around it, other art is not, but all art tends to be affected by whatever it is seeing, no matter how unconsciously assimilated or openly displayed these perceptions may be in the work. There is a certain perceptual stance most artists have always taken in relation to their work and their environment—a perception that sees everything out there as grist for their mill. Whether they are painting a tree in a landscape or sampling someone else's music, for artists, it's just what's out there, and it's all equally usable if it "works" to make the art they want to make. It matters not who "owns" the music they sample any more than it matters who "owns" the tree they paint. Ownership has never had anything to do with creativity.

This ancient, universal artist's view of art's potential subject matter proceeded just fine for quite a while. For centuries, there were no lawsuits against landscape painters by landowners, and neither did they demand a cut of the painting's price (presently, however, Disneyland claims copyright on any photos you take inside their imagineered landscapes). Throughout the twentieth century, the world was surprised by many unforeseen new technologies which, as usual, began to produce new forms of thinking and new forms of creative activity. For instance, one technology—the ability to capture and reproduce sound electrically—began to allow those involved in creating music to think differently about what music might consist of. Electrical transcription meant that music no longer needed to be performed live to be heard. Music as an artifact frozen in time and space was almost immediately seen by composers as having recombinable possibilities. Prerecorded sounds and music began appearing in *musique concrete* performances by the second decade of the last century. At the same time that electrical invention was spreading, so were the brand-new techniques of visual collage (recombining disparate elements or imagery into a single new composition, also the founding attitude of surrealism in general).

Collage first appeared in a brand-new reproduction technology of the late-1800s called photography (another form of freezing light/time into material form which makes it capable of post-creation manipulation), parts of which could be cut up and recombined to make joke or "impossible" photo imagery.

Lots of fun. This cut-and-paste visual technique quickly spread to painting, with foreign objects beginning to be used. Lawsuits against early photography were unknown. There were also no lawsuits against the early painters who embraced collage around the turn of the twentieth century. They began to attach found material from the world around them to their canvases, sometimes including commercially produced products like candy wrappers or fragments of advertising. Still no offense taken. Musical collage, for the most part, remained in the realm of classical music up until mid-century. However, all through the endless, live-performance-only centuries of music creation, many composers had routinely included pre-existing music "quotes" within new work, which might range from familiar folk melodies to fragments borrowed from their classical predecessors or contemporary colleagues. When recorded music came along, it was no great leap for some composers to add that into their compositional concepts. Music was proceeding exactly as it always had and as it wanted to then, with hardly a hassle from those early commercial copyright laws starting to congeal over in the shadows.

In the fine art realms of creation, there was a clear appreciation that copying and appropriation was not only a tradition in art, but also seemed to be growing in relevance as the modern perceptual world around the artists of the last century fragmented into the many reproduction possibilities that electric imagery and sound began to shower civilization with. We'll skip World War I and Dada's found objects (though their effect on creating an artistic view of the world as both absurdly surreal and entirely available to become art via appropriation was profound), but hot on those heels came Surrealism's concept of *detournment*, which consisted of cleverly changing the nature of existing material to make it say or show things it never originally intended to say or show, often in the form of ironic juxtaposition and derailment of meaning. The earliest form of culture jamming. But still no lawsuits, still all relatively uncontested as long as it was fine art.

In the middle of the twentieth century, the "crassness" of Pop Art emerged in rude response to the U.S. culture's already commercially saturated consciousness, particularly the unavoidable barrage of advertising iconography filling society's public view with its insistent "taste." With Pop Art, we see the beginning of lawsuits based on the "infringement" of the private copyrights of commercial subjects which became the unwilling content of new works. Even then, such artistically constricting absurdities against art's freedom of expression were still generally seen as just that, and while the *New York Times* sued Robert Rauschenberg for an unauthorized silk-screen of one of their news photos, Campbell's Soup saw Andy Warhol's paintings of their cans as great free advertising. Which it was!

JUMPING MUSIC

About this same time in the late 1950's, collage and the use of "found" subject matter jumped over to pop music, having been apparent in classical music

for some time already. This happened most notably in the form of Buchanan and Goodman's "novelty" edits consisting of fragments of then-current rock & roll hits with connecting narration which became "completed" by clips of familiar song lyrics. This was the beginning of mass-appeal collage music in the pop realm, and they were immediately threatened legally by the owners of the music they reused. It was also the beginning of music owners deciding to take this artistic appropriation business as some kind of serious economic threat and increasingly criminalizing it as commercial "theft."

But collage and the artistic attitude behind it continued to grow and spread and eventually infiltrate all forms of creativity during the last century. In fact, collage is now often considered the single most influential and, indeed, the single most defining aesthetic for the entire twentieth century. And it shows no signs of diminishing in the twenty-first. Turn on the news, it's solid collage. Watch a commercial or a music video, it's solid collage. Go see a live baseball game, with its mix of the game itself and improvisationally dropped in found audio and video clips from popular culture used to wind up the audience—that is collage as well. Every computer user in the world knows and understands the term "cut and paste." But amazingly, as this cut-and-paste "style" began to spread far and wide beyond the realm of fine art (even becoming part of people's technologically assisted attitude towards sifting through an increasingly complex world of reproduced stimuli, information, and influences in daily life), then this process in art started to get sued.

By the time collage cropped up in popular music, that kind of music was no less technically an art form than any other, but you'd never know it by its owners and operators. By the mid-twentieth century, music of the popular variety had been thoroughly harnessed by marketers of recordings as a mass commodity. Whatever artistic qualities of popular music may have been touted in the PR of those producing it, behind the scenes it was definitely a commodity game. Profit and loss, not artistic integrity, was determining success or failure. Popular recorded music became all about money, where it remains focused to this day. Thus art, which is not defined as a business, became a business in the form of popular music. And music, which is not defined as a competition, became a competition in the hands of record labels.

This anti-art trend never materialized in painting or other fine arts as it certainly has in music (although it still occasionally happens in other arts too), because the scope of intellectual activity in the fine arts world is much smarter about art and what makes it tick and sees that it's not a competition but an all-inclusive accumulation. They better understand that all art is steeped in "theft," and that art has always proceeded by copying from whatever appeals to it, including other art. Add to that the fact that fine art generally ends up as a singular, unique object (the "original" is all there is), while music ends up as endlessly mass-produced objects which can be sold again and again over time. Music, once something which could only be heard live and in person, became a repeating object—a mass marketable product regardless of how much art it

might happen to contain, and forever in competition with all other such music "products."

Add to this the fact that pop music marketing was not run by the likes of artistically enlightened museum or gallery directors, but by dollar-hungry entertainment moguls, their accountants, and their lawyers, many of whom, by mid-century, were already engaged in illegally cornering distribution with payoffs and thug tactics, co-opting airplay with payola, concocting rip-off artist contracts, cooking the books for embezzlement, and actually being leaned on or infiltrated by organized crime (as documented in Fredric Dannen's book *Hit Men*, among others). So you have the *industry* of pop music becoming, amid all the art within it, a crass and opportunistic nest of thieves and scoundrels in which any artistic priorities, if understood in the first place, were quickly readjusted or cast aside in favor of the bottom line on a regular basis. In pop music, with the aid of modern copyright law, any kind of perceived copying became just another way to collect money and crush possible competition, even though no other art form in human history is more thoroughly based on copying the precedents of others than music is.

IN CREPT COLLAGE

Into this peculiar, highly competitive, proprietary obsessed "art" of popular music, eventually crept the well-respected, classically founded motivations and techniques of collage. Who knew? Cutting and editing analog tape of musical and non-musical material into new recordings was occurring throughout the 1960s and 1970s, but it was in the 1980s that all hell broke loose. The music electronics industry began marketing various digital sampling devices and computer controlled music sequencing software intended to allow musicians to easily play back the sounds of "public domain" flutes and cellos and saxophones. What the inventors of samplers never guessed would occur was that this new device also easily allowed musicians to capture and then play back bits of *any* pre-recorded music or found sound and add it to their own music. Collage, in the form of sampling others' work to make new work, began to be routinely suppressed. Pop samplers, initially emerging in rap and hip-hop, began freely plucking the grooves they wanted from the grooves of other popular music, and soon found themselves in court. By the late 1980s, lawsuits and threats of lawsuits proliferated as this particular capturing technology spread far and wide throughout music of all kinds. Musical collage and its use of "unauthorized" sound became a criminal activity. Collage music became criminal music and the natural evolution of hip-hop was stopped dead in its tracks. Copyright law became the art police.

Presently, we have a somewhat more settled situation in which sample clearance fees, rather than lawsuits, rule the economies of collage in music. But music owners continue to make great efforts to stamp out unauthorized collage in music, even going so far as to intimidate and threaten, via the RIAA, any CD pressing plants that manufacture any sort of unauthorized found-sound music.

The RIAA acknowledges the existence and idea of fair use only in its literature's footnotes, and hopes it doesn't spread.

As artistically stupid as all of this is on the face of it (trying to control what art wants to do whether it happens to be a "product" or not), it has become possible because we have established inflexible copyright mandates across all the arts which allow any and all creations to be "protected" as private, untouchable property, unavailable for any purpose other than their original purpose, including any reuse in new art by others. For artists, copyright means that other art is emphatically not allowed to be seen as part of their landscape, not as part of their usable environment, not as something that influences their creative minds. Art has become completely unavailable to any succeeding artist's use without payment and permission. One can buy it and absorb it as a consumer, but one can't do anything further with it. This withdrawal of all copyrighted art from any further creative recycling goes directly against the above stated universal and historical artists' prerogative to see the entire world around them as grist for their mill. If they see other art products as part of the public environment they materially draw from, copyright tells them they cannot.

HOW IT BEGAN AND WHAT IT BECAME

When copyright was originally instituted, it certainly began to put boundaries on the public domain, which at the time extended everywhere, but there were some valid reasons to do so. A total free-for-all public domain inevitably results in the counterfeiting and re-sale of all kinds of entire existing works. Once rampant, this form of covert income siphoning *is* theft, and it has been severely limited by being made prosecutable under copyright law, as it should be in the material world of hard goods where every copy is an expense to support. A creator should be able to reap whatever rewards accrue from what they do, and getting paid for a manufacturing investment is essential. Counterfeiting others' work for sale in the material world removes this ability, and counterfeiting hard goods in their entirety for unauthorized resale is an unarguable misuse of the concept of public domain. Good law so far, and if this was the only form of reuse that copyright law prohibited, we would have no complaint against it (trading or offering another's work for free remains another story, however, since freely exchanging work in one medium that is for sale in another medium has not yet been shown to harm anyone).

Unfortunately, copyright now goes against so much that has appeared within its reach since it was conceived that the very thing it originally proclaimed to protect—the encouragement and promotion of the useful arts and sciences—is often its target for hindering and prohibiting. Collage is now well entrenched in our array of creative possibilities, universally acclaimed and valued in the arts for over a century, yet copyright, devised to protect and encourage just such creative originality, is routinely invoked to stop it from happening. Copyright law, as presently interpreted and enforced with regard to collage, is

being used by cultural property owners as anti-art law, and can economically devastate its perpetrators so as to keep them from ever trying it again.

Something has happened in human creativity which copyright law never foresaw and was never written to accommodate—the fragmentary reuse of others' art to make new art. The opportunistic minds behind pop music, in particular, were able to use copyright law to act like this proven creative form (fragmentary and transformational appropriation within new works) was no different than counterfeiting entire works. Copyright law did not distinguish such a difference and neither did they. Sampling source owners called these collaged uses piracy and sued to crush the practice because:

(1) They did not and do not understand how modern art is working.
(2) They claimed such reuses were in economic competition with their source works.
(3) They were not getting paid for the reuse.

After a while, it somehow wore into their brains that modern musicians were not going to let go of collage as a technique and that sampling was only spreading more profusely into all varieties of new music. So the best way to handle it from a business perspective was to ignore reasons (1) and (2) and concentrate on (3)—getting paid for it. That's where we stand today and here's what's still wrong with it.

Just because a recognized art form like music becomes manifested as a commercial mass commodity, it is still an *art form*, which necessarily depends on free expression. Free expression demands free access to the elements of its expression, even when those elements happen to be owned by someone else. *Especially* when they are owned by someone else. This is the free pass all art has always been given to speak its mind, and commercial interests of any kind do not negate this creative imperative. If we want this kind of art to occur at all, it goes with the territory. We don't expect a writer to get permission and make a payment in order to use any particular words. We don't require payment and permission for a painter to represent the billboard that is sitting in the middle of their landscape view. Yet we are doing exactly this in the case of music collage (even as we continue *not* to do it in other, less commercially oriented collage arts). The simple fact that an art form happens to be *worth* more in its potential income generation does not negate the principles of free expression that form its creative foundation and reason for being. Pre-existing private properties, even pre-existing art, can and do form the "alphabet" that any form of modern collage might use. The current copyright restrictions on using this alphabet constitute a prior restraint that amounts to both inhibiting the process and censorship of the creative practice itself. This should not be happening, whether or not the practice happens to be housed in a commercial product.

MORE ATTITUDE

Collage, recontextualizing familiar and recognizable elements from our common experience as it does, is often a statement involved with social aware-

ness or social commentary. It is often expressing forms of satire, direct reference, and criticism. It is not always polite. As such, it often represents a potent form of creative free speech requiring just as much protection as any other form of free speech. The entire range of practice called collage must be considered in this way in order to protect this potential in all its forms and possibilities. It's no good to trivialize these concerns by noting how hip-hop musicians simply use a sample of another's music just because they like the riff. It is truly irrelevant! Allowing source owners to have control over that practice through payment and permission requirements also prevents another collagist from using a clip of music or some damning dialog in a critical or unflattering context which the clip's owner doesn't happen to appreciate and thus refuses to allow. This potentially stifles commentaries and criticisms of many sorts within new art. Fair use may be available to parody for this reason (as defined in the Supreme Court's 2 Live Crew case), but it is *not* available at all to satire, which can be equally unflattering to source owners, and thus, not permitted. And, by the way, do you know which is which?

"Fair use" claims for cases of sampling/collage in our courts are now a morass of tortured and irrelevant nitpicking guided by a technologically outdated law, which is wholly inappropriate to acknowledge or accommodate the practice. The creative process has lost all benefit of the doubt, and commerce decides what can and cannot be art on whims of selective prosecution. These being the rather insane laws of modern art we are stuck with, we are proud to sanely make criminal music for all to hear and judge for themselves.

PAY TO PLAY

The dangers to collage from payment and permission requirements also include the aspect of affordability. Once collage had made its presence sufficiently felt in modern music and was obviously not going away because of litigation, the music industry settled down to pursue charging everyone to do it. They all set up brand-new suites in their office buildings devoted to this intercorporate trade in music samples, and usage fees were set at what competing music corporations could pay. Purchasing a single sample can run anywhere from hundreds to many thousands of dollars, depending on what the owner arbitrarily thinks the potential sales traffic will bear. If these commercial rules of legitimacy are followed, collage becomes confined to realms in which there is a wealthy label supporting the musician's desires and a mutually lucrative trade among relatively rich and already successful music purveyors. Any independent, grass roots efforts at collage are left out of this expensive loop of sampling "legitimacy."

From our personal experience as collage music-makers who have no affiliation with the major labels, we in Negativland can assure you that we simply could not be making the style of collage music we do at all if we agreed to pay for every clip and sample we use. The cumulative price of working in the particularly densely sampled way that we do is totally prohibitive to grass roots,

independent, barely surviving practitioners like us. Just one of our CDs may use a hundred or more different samples and fragments recorded off of radio, movies, TV, or records. The haphazard nature of found sound collecting from mass media often does not happen to include the owner's name and address, so we sometimes have a very practical difficulty in even knowing who actually owns the bits we recorded, perhaps recorded years before we actually get around to using them. If we do know or can find out these hundreds of separate owners, we certainly don't appreciate their simply ignoring usage requests from the likes of us (we have heard from many other independents who try that no response is a usual response). If they ever *do* get back to you, the whole process can take years. Thus, they have already successfully abrogated any release schedule you may be financially counting on, which becomes crucial when you are releasing only one record at a time as a small, independent label. And then, of course, even if we could afford to pay for all these multiple samples from all these multiple owners, and all that could be worked out on schedule, these usages must also hang on their multiple permissions granted. This is where source owners can prevent this kind of work from appearing at all if they don't happen to like the content or attitude of it. This is the final and ultimate dead end wall that copyright forces collage up against, especially in cases like ours where we are often not being flattering or ideologically supportive to the sources in our work.

Which brings us to fair use.

A DISTINCT LACK OF UNDERSTANDING

Copyright law's allowance for fair use is already established within present copyright law, requiring neither payment nor permission for making limited copies of a work for personal use, or for the partial reuse of another's work in the context of news, comment, criticism, parody, and a few other education-related things. It is the only legal acknowledgment we have that copyright controls can, indeed, equal censorship of free speech and free expression if permitted total and unrestricted reign over all possible reuses. The problem with fair use as it stands is in its interpretation with regard to *art reuses* when that art is immersed (if not sinking) in a sea of competing commercial interests, as modern music is.

Fair use, as a legal concept, occurred in the original mandate for the creation of U.S. copyright law, and preceded the modern technologies that produced and encouraged the unexpected technique of collage. The aging guidelines for determining fair use do not yet accommodate, or even acknowledge, the modern tendency to actually create new work out of old. This leap of understanding has yet to appear in any of our commercially biased lawmaking as a culture, a culture already drenched in the practice of legal and illegal collage from top to bottom. Commerce goes on seeing collage, now a century old, only as an opportunistic target from which to acquire some unearned and unexpected income via copyright mandated clearance fees. As artists, we see

the indistinguishing overreach of copyright's control over almost all creative reuse to be a selective prohibition on modern art's evolution.

From an artistic point of view, it is delusional to try to paint all these new forms of fragmentary reuse and sampling as economically motivated "theft" or "piracy." These terms must be reserved for the unauthorized taking of whole works and reselling them for one's own profit. Artists who routinely appropriate, on the other hand, are not attempting to profit from the marketability of their sources at all. They are using elements, fragments, or pieces of someone else's created artifact in the creation of a new one for *artistic reasons*. Collage's reused musical elements may remain identifiable, or they may be transformed to varying degrees as they are incorporated into the new work, where they may join many other fragments, all in a new context and forming a new "whole." This becomes a new "original," neither reminiscent of nor competitive with any of the "originals" it may draw from. Direct referencing does not equal copying.

DEFINING ART AND BUSINESS

Because art is not defined as a business, yet some art like music must compete for economic survival in the marketplace, we think certain legal priorities in the *idea* of copyright should be revised to uphold certain artistic imperatives in commercial contexts. Specifically, we propose a revision of the fair use guidelines to apply to a great deal more artistic activities than they now do. This revision would throw the benefit of the doubt to reuses within collage contexts, and place the burden of proof for showing economically motivated infringement on the owner/litigator. It would no longer be what is legally known as an "affirmative defense." Ideally, when a copyright owner wished to contend an unauthorized reuse of their property, they would have to show essentially that the usage does not result in anything new beyond the original work appropriated. In other words, that the usage does nothing more than counterfeit their property, adding nothing created by the appropriator to it. If the new work, however, is judged to significantly fragment, transform, rearrange, or recompose the appropriated material within a new work, then it should be automatically seen as a valid fair use—an original attempt at new creative work, whether or not the result is successful or pleasing to the original source creators or owners. There would be a general right of free reuse in the creation of new works.

This level of free reuse in the creation of new work would cause no great or destructive economic hardship to source owners because, first, none of them are making much of a living by just sitting back and collecting fees for rare or occasional reuses of their work in collages anyway, and if they say they are, then perhaps they should be encouraged to do something new once in a while themselves! Such an expansion of fair use would let all possible music collage works through the copyright gate but still prohibit wholesale counterfeiting. Unlikely? So is the present commercial suppression of collage through payment and permission requirements!

The usual fair use interpretation that assumes only non-profit works need apply is the worst of all its myriad misperceptions. Again, just as the original supporting reasoning for copyright law stated in the first place: Are we out to support, dare we say even *encourage* new arts of collage in this world or aren't we? If we want collage to flourish without economic bias or ideological censorship, especially at the grass roots level, it must be able to support itself in the very same way all its sources do—by selling *itself*. Otherwise, it withers in poverty, not to mention lawsuits.

A DIFFERENT VALUE

All claims that collage is simply out to resell its sources are patently absurd. Anyone familiar with actual examples of collage understands that any internal snippets of familiarity present within it in no way duplicate or compete with the appeal of those original sources in their entirety. It is this fragmentary selecting and combining which creates an entirely *new* effect which is at least partially dependent on recognizing that familiar thing as part of the expression, but that reference is existing in a new context, a new whole that is more than the sum of its parts. This is a new effect that is thereafter original to the collage alone. But if there is no practical economic theft involved, if a collage and its sources are not possibly in direct economic competition with each other, exactly what *is* the fundamental objection to fragmentary free appropriation in the creation of new work?

Please consider the ungenerous and uncreative logic we are overlaying our copyrighted culture with. In this age of reproduction, so typified by recorded music everywhere and battles for the consumer consciousness of our population through the mass saturation of our environment with logos, brands, messages, ideas, and imagery, artists—not to mention others—will naturally continue to be interested in sampling material from this modern environment of both reproduced art and psychological influence-mongering. Appropriating from all these publicly available influences that we swim in as a society is desirable precisely because of how these elements express and symbolize something potently recognizable about the society from which we spring. The private owners/public spreaders of such art, artifacts, icons, messages, and ideas are enormously concerned that their "message" reaches everyone, yet they are seldom happy to see their properties in unauthorized contexts which may be antithetical to the way they wish to spin them. But their knee-jerk use of copyright restrictions to prevent any kind of public "spin" which they don't approve of on their property now amounts to the corporate censorship of such direct referencing within our culture.

The present role of the courts in this ongoing censorship, bound as they are by the law as it is written, is not helpful. Though many of us object, few of us can actually make our case for the rights of art before a judge. Unlike the basic thrust of all the rest of United States law, copyright law actually assumes that all "unauthorized" uses are illegal until proven innocent. Since any contested

reuse always requires a legal "affirmative" defense, such a legal expense, even when fair use *does* apply, remains beyond the financial grasp of most accused "infringers." This financial intimidation, especially on the part of large corporate source owners, results in the vast majority of unauthorized art appropriators caving in and settling out of court, their work being consigned to oblivion, and the corporate "owner" having it all their own way, including their legal expenses paid under a claim of "damages" from collage.

So, a question to consider is this: Should those who might be borrowed from have an absolute right to prevent all such free reuses of their properties, even when the reuse is obviously part of a new and unique work? Do we want to actually put all forms of unauthorized reuse under the heading of "theft," implicating a socially valuable art form such as collage with criminal intent—a form which may be making controversial social or cultural points and cannot operate true to its vision when, regardless of whether or not it can afford the price of authorization, *prior permission is required?*

FAIR USE FOR COLLAGE

We would like to see copyright law acknowledge the logical and inalienable right of artists, not publishers or manufacturers, to determine what new art will consist of. The current corporate control over our cultural output has an ominous feel to it because it has given culture over to fewer and fewer corporate committees of taste-molders and marketers who are driven only by image-making and an overriding need to maintain an ever-rising bottom line for their shareholders. Is the admittedly pivotal role which society places on commerce really so unassailably useful when it reaches to inhibit and channel the very direction of an art form like collage, allowing it to evolve this way, but not that way? Is the role of federal law to serve the demands of private income, or to promote the public good through free cultural expression? Both?

Then the crux of the collage debate we hope to raise is this: *Why can't we do both?* Why can't we maintain for artists all reasonable forms of fair and just compensation that directly result from the work they themselves produce, while at the same time not inhibiting, preventing, or criminalizing other perfectly healthy and valuable forms of music/art, such as collage, which arise naturally out of new, enabling technology and increase our total wealth of creativity as a culture? We believe the promotion of artistic freedom should, for the first time, find a balanced representation with the purely commercial and proprietary obsessions which now dominate the purposes of our copyright laws. The minor and isolated conflicts based on commercial interference that this may entail do not measure up to the conflict with public interest which doing nothing about it maintains.

TWO RELATIONSHIPS TO A CULTURAL PUBLIC DOMAIN

In the isolated medium of the Internet, and in the suggestion of fair use for collage, we are being guided by new technologies to reacquaint ourselves with

cultural urges toward a rejuvenated public domain, right here in the twenty-first century. And since we are actually *forced* to accommodate these two persistent references to the boundaries of public domain in our midst (the Internet and collage), we may begin to seriously consider what value, or lack thereof, a larger public domain might actually entail in practice. Not having a choice gives us the opportunity of finding unnoticed values that an easy and habitual dismissal never considers. The billions in private income reserved for private interests under copyright controls, or the withholding and denying of all reuses of culture in lieu of payment and permission, may not be the best rules in sight for mass enlightenment. And if an improvement in mass enlightenment is our goal, the "value" of totally privatized intellectual property may not actually outweigh the cultural value of enlarging *all* our brains in a more intellectually unconstricted environment, not to mention the enlargement of our enthusiasm for, and participation in, our own culture which will result from a broadened concept of public domain.

For years, copyright has been a nagging restraint on all forms of popular reuse concepts. We now welcome a brand new medium, the Internet, to the debate. It is an interesting new player because it significantly widens the formerly narrow and specialized artistic desire to recycle found material to the whole general public's desire to recycle anything for any reason. The Internet tends to give every user who enters it an artist's perspective on the contents there—the suggestion to copy, to edit, to cut and paste, to appropriate, to reform, to redistribute. The degree to which *the public's* ability to follow their own sense of free expression in this new, wide-open, digital no man's land might surprise us and is yet to be determined. In the broadest sense, it remains a struggle between the rights of commerce and the rights of personal creativity. The degree to which these mutually opposed interests find a reasonable balance of productive co-existence in this new domain will say much about what it is we value most as a culture.

Both the status of music on the Internet and the status of collage in music are primary signposts of how the ever latent urge to receive, perceive, use, and reuse the world around us as a *public* domain remains a vital issue for living in the twenty-first century. For most of human history, cultural creation was always intended to be a shared phenomenon, an activity attached to spiritual sustenance and spiritual confirmation between the maker and their community. Only recent human history has found it advisable to withhold virtually all such creative activity until it can be paid for. That old selflessness that infuses the human urge to communicate through art may no longer be so practical in a world in which making art has become more and more expensive, and so much of the potential subject matter for art's ancient habit of free appropriation has been legally declared off-limits. But suddenly, the Internet offers an isolated "look and feel" that rekindles the rather ancient and generous purpose behind all cultural experience—a glimpse of no fences, possibly existing for the sake of mutual connectedness, community relevance, and "free" enlightenment. Possibly, like art, existing for its own sake and no other.