

## Dr Gabriel Egan

Dr Gabriel Egan discusses the widening gap between the attitudes of commercial rightsholders and consumers of creative content. He argues that a solution needs to be found to legitimise the re-use of copyright material by creative artists.

One does not have to be a Marxist to recognize that, as part of our intellectual superstructure, laws arise from the practical realities of how things get made. When the only way to copy texts and pictures was by hand, there were no Intellectual Property (IP) laws. Printing presses made copying cheap and fast, and IP laws emerged to regulate them. Digital copying is faster still and perfect, and existing laws are no longer able to protect the intellectual labour of creators while facilitating the studying of their works and their re-use in fresh artistic creation. A generation is growing up disdainful of copyright law because of its irrelevance to modern needs.

Trailers in cinemas warning that copying a film is theft, akin to purse-snatching, strike most spectators as manifestly untrue. Stealing deprives someone of the use of their property, while copying something only adds to the number of copies in existence. The supposed loss to a rights holder is notional and dependent upon the untestable hypothesis that a consumer prevented from copying something will buy it instead.

Two responses to the inadequacy of current laws are evident: i) holders overstate their rights, ignoring valid exemptions, and seek to enforce them by technical means, digital locks, and ii) users ignore creators' rights and bypass the digital locks. This divergence makes it impossible to strike a balance between the interests of producers and those consumers of writing, sound recordings, stills and motion pictures. However, to think simply in terms of producers versus consumers is to mistake the nature of cultural production. Modern IP laws would have stifled at birth almost all of Shakespeare's works because they 'stole' from Raphael Holinshed's and Edward Hall's prose histories of England, Thomas North's translation of Plutarch, Arthur Brooke's poem *Romeus and Juliet*, and many others.

Today's creators sample and mash-up disparate sound and video streams to form new works distributed over the Internet directly from producer to consumer. The criminalisation of these creative acts prevents debate about what is at stake when one artist draws upon another's work. The widening gap between the official position on copyright and the general indifference to it shown by students, researchers, and creative artists leaves these groups dangerously exposed with nothing but intuition to guide them. Disconnecting from the Internet those who violate copyright laws would only further marginalise the most creatively productive groups in society, those upon whom cultural development depends.

Speaking personally about the formal study of creative works, I find current laws of copyright positively disabling. I am one of the co-editors of the journal *Theatre Notebook*, which has a 60-year back-file of published research on the practice of British theatre. There are no technical barriers to re-publishing this material online for the benefit of students of theatre at all levels across the world, but because many of the articles contain pictures whose rights holders cannot be discovered, our lawyers advise that we distribute back-issues only in paper form. This leaves the material undiscoverable and unavailable to the majority of readers who would benefit from it. Similar restrictions inhibit the teaching of theatre history. Materials have to be chosen not for their intrinsic pedagogical value, but for the ease with which one may secure the right to put digital copies of them on the university's Virtual Learning Environment (VLE).

My best students routinely submit digital assignments that cannot be shown to other students as models of excellence because they contain pictures for which the reproduction rights have not been secured. Attempts to secure the rights necessary for the limited reproduction of images within academic communities are almost always fruitless. We need legally-codified exceptions to copyright restrictions for the purposes of research and pedagogy, and carefully-constructed and realistic boundaries on the re-use of restricted material by creative artists.