Chapter 80

Copying, Branding, and the Ethical Implications of Rights in Immaterial Cultural Goods

Ute M. Röschenthaler
Goethe University, Germany

ABSTRACT

Laws and regulations are important instruments for governing the relationships between people. In recent years, however, scholars have noted a growing judicialization, which concerns particularly immaterial cultural goods that are turned into intellectual and cultural properties. This chapter explores the implications of these regulations for the different actors involved, their moral responsibility and economic practices in the domains of branding and copying with examples of immaterial cultural goods from different African countries and from Austria. It argues that legal regulations that govern the use of immaterial cultural goods form part of the capitalist system. These regulations may be good for some and a hindrance for others. Piracy might damage the investments of an entrepreneur or artist in a brand or art work but might also help to secure the livelihood of other people and enhance the renown of products. Hence, it is important to analyze the perspectives and interests of individuals that are related to these economically important and ethically relevant activities.

INTRODUCTION

The evolution of media technology in the past decades has provided social actors with hitherto unknown opportunities to connect globally and exchange information, experiences and images, as well as to disseminate media contents and create software-based designs and products. The digital facilities of reproducing landscapes, architecture, people, objects, design patterns, or machines, have immensely increased the precision and speed with which images and information can be appropriated, processed, and commercialized. Marcus Boon called this "the infinite proliferation of copies in contemporary culture" (2011: 24). Digital media helps not only to create products and market them faster, but also to reach audiences across vast distances and diverse cultural identities. It also enlarges the opportunities for a countless number of individuals to access and appropriate goods, images, and information.

The opportunities that the widespread access to digital media offers have been praised as a form of democratization of immaterial cultural goods that makes these accessible for common use. But these opportunities also raise questions about the legitimacy of these uses, particularly when commercial interests are involved. Should everybody be allowed to glean immaterial goods as if from a playground or supermarket as it pleases them? Are images unclaimed goods that belong to everybody in the same way? Do they fall under intellectual property law or do they need protection in the name of humankind? What are the ethical or legal implications when, for example, investors measure and copy an entire village for commercial purposes? Under what conditions should a company be allowed pharmaceutical prospecting of plants on the land of indigenous communities and/or be able to use their local knowledge?

This chapter explores some of these questions and the challenges that legal institutions face when called to regulate issues of appropriation that have come up in growing numbers with the proliferation of digital media. I will argue that the digital media that have spurred, intensified, and accelerated these appropriations, play different roles depending on the purpose for which social actors use them. I will also show that legal and ethical evaluations also depend on who appropriated which good from whom and that these regulations are beneficial for some but not for others. Often divergent interests are at stake working to protect valuable goods for different reasons, among them the immaterial goods of local people, of private individuals or of companies who have invested in developing a product or a brand for commercialization. Some of these issues are regulated by law; others solely depend on ethical considerations. In some cases ethical and legal considerations merge but often they also contradict each other and narratives of justification are played out to convince the public to accept explanations as being in the interest of progress and development.

In order to illustrate these findings, I will compare and discuss four scenarios in which immaterial cultural goods are appropriated: first, the transformation of "traditional" art forms into media products by individual young artists; this example is based on extensive field research on cult associations and their artistic performances in south-west Cameroon between 1987 and 2008 (Röschenthaler 2011) and related scholarly literature on Mali and Algeria; second, the protection of local knowledge from commercial companies in Southern Africa; this example is taken from Jean and John Comaroff's work *Ethnicity Inc.* (2009); third, the copying of brand-names by small-scale pirates in Yaounde, based on field research on trade networks and entrepreneurship in Cameroon's capital between 2008 and 2014; and fourth, the virtual transfer of an entire village, the Austrian village of Hallstatt in 2011, by Chinese property investors, which has been widely discussed in newspaper articles online.

The chapter begins with a discussion of scholarly work on digital media and the conceptual and ethical premises of copying and appropriation. I will then elaborate the four examples to discuss legitimate and illegitimate ways of appropriation by different social actors, and end with a comparison of the critical issues that the examples unfolded and an examination of the ethical implications of copying. This approach demonstrates the importance of taking into account the perspectives and interests of the different actors involved and brings out the complexity that the study of digital media, the copying of immaterial cultural goods and property entails.

DIGITAL MEDIA, ETHICS, AND INTELLECTUAL PROPERTY RIGHTS

The rise of digital media from the 1980s onward, corresponding intellectual property rights and ethical questions concerning the appropriation, processing, and multiplication of immaterial goods including

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