

Downloading Repercussions

Kempton Mooney

Copyright © 2001 Kempton Mooney

I first encountered the internet in high school. I found I could copy texts and images and save them to disk, and what was more, I did not have to pay for them. Surely, this was stealing. I was taking from someone else without asking or paying. However, those pieces were placed on the internet for public access with the knowledge that they could be copied, even if they had been posted without much thought. Soon, I was accumulating files without much thought. What captivated me then was the amount and ease of images and texts made available to me. What interests me now is examining what I have been doing: what are the consequences of copying digital images, texts, and files from the internet? This text seeks to examine the economic, social, and psychological aspects of downloading electronic files, and for brevity's sake, it will focus on the United States in particular, as birthplace of the internet.

The wonders of reproduced images made available to the public are not new. As Walter Benjamin has mentioned, humans have always been able to reproduce a work of art.¹ What is new about the digital reproduction is that each copy is as good as the next; there is no generation loss. What is new about the internet is the ease of distribution. Bob Stein is right when he calls it remarkable in its ability to transmit information almost simultaneously to mass numbers.² In essence, to post one image on the world wide web is to distribute the image to

¹ Benjamin, Walter, "The Work of Art in the Age of Mechanical Reproduction," *Illuminations*, New York: Schocken Books, 1968, 218.

² Stein, Bob, "'We Could Be Better Ancestors Than This': Ethics and First Principles for the Art of the Digital Age," *The Digital Dialectic*, edited by Peter Lunenfeld, Cambridge, MA: The MIT Press, 2000, 201.

possibly thousands. However, this distribution has another peculiarity, as there is no physical object which is being distributed.

For example, a painting is on display in an exhibition. This painting has a certain value as people wish to see it. In being interesting to observe, it has a certain use, and the people who observe it give the work its value by using it, and maintaining that the work is useful. The painting is also reproduced in an exhibition catalog, available for a small fee. Though the image in the catalog does not contain the same value, as the original, it too has value in that some people wish to be able to continually view the image of the painting at their leisure, and this gives the catalog its use value. However, a digital image of the painting is also placed on the internet on the exhibition's website. This image allows the same basic conveniences as the exhibition catalog, but is free of cost, and the owner does not have to worry about the decay of the reproduction, although the media it is represented in may age.³ Where at one time one had to buy the painting in order to have its image readily available, one now can buy the painting, the catalog, or download the image.

This is not to suggest that the images are equal, but that they offer the consumer three ways of obtaining the image in three distinct mediums, each having different attributes. The three are in fact very different objects, and this is why the price of the painting is not reduced significantly by being in competition with the freely distributed internet image. In fact, it would seem the opposite is

true as it provides the image with greater exposure. The internet provides the image with a larger audience; it is available for potential consumers all over the world to view.⁴ The larger the audience that is exposed to an image through a media like the internet, the more well known it becomes and the more people will desire the image, potentially raising the value of the original. This is one incentive for an entity to place reproductions of a work on the internet; it increases the demand for the work, therefor increasing the work's value. Value can even be indexed by looking at the number of hits a web page has received, as this is one (of many) indicator of the page's popularity. This popularity can become a documentation that indexes the work's value, as if the owner wishes to sell the work, he could conceivably point to the statistics of the image's internet visitors and tell potential buyers that the work is gaining or losing value according to a rise or fall in hits. The web image can also increase its value by actually creating revenue by its owner charging others to have a hyperlink on the image's web page. The *Playboy* magazine website in 1995 charged \$30,000 per quarter for a hyperlink on their page, claiming that marketers should be willing to foot the bill because of the 800,000 hits a day the site received.⁵ However, this increases the value of the original only so long as the owner of the original

³ Wolf, Mark, *Abstracting Reality: Art, Communication, and Cognition in the Digital Age*, New York: University Press of America, Inc., 2000, 58.

⁴ *Ibid.* 67.

⁵ *Advertising and the World Wide Web*, edited by David Schumann and Esther Thorson, London: Lawrence Erlbaum Associates, Publishers, 1999,14.

retains the digital reproduction rights and is one who collects revenue from a site depicting it.

It is here that an interesting twist occurs. A visitor to the digitally reproduced image's web site could copy the image from the site and save this image to disk. This saves him the trouble of continually accessing the image's web site. In fact, when an image or text appears on a web site visitor's screen, a copy from the content's server has been made and that copy is what is sent over the internet.⁶ All information that one accesses on the internet is a copy, and so the visitor could be said to be making copies simply by browsing the internet. But these copies are not meant to be retained, and in order for them to be retained, the visitor must save the copy, allowing him the convenience of utilizing the file off-line. The result in our scenario is less hits to the image's web site and a loss of value according to the number of hits tabulated despite the image reaching an equal amount of people an equal number of times. Instead of stealing the actual work, the internet downloader takes a small bit of the original's reported value. There is another perspective on this situation: the price of copying the image and saving it is paid by the visitor's accessing the image's page and raising its hit count. The labor of the web visitor is paid for in the form of a copy of the digital image, and the value of this labor or this copy can be established by computing the value of a hit on the site. Though there is not a monetary exchange, there is an exchange nonetheless of labor for a commodity.

The exchange of labor for the digital image rests on the assumption that the visitor desires a copy of the digital file. Why does the visitor desire the file? Why, when I first was introduced to the internet, did I copy all those texts, jpegs, mpegs, aiffs, etc.? Part of the answer is that the copying was already being performed, as access to any information on a computer involves making a copy; computer programs are run by copying them from disk to memory, web pages are accessed by a copy sent from a server to a local computer, and internal to the computer files are continually being copied from short term memory to long term memory and vice versa.⁷ As of 2000, the Computer Science and Telecommunications Board from the National Research Council was still trying to decide which of these are copies in the legal sense of the word, and therefore fall under copyright law. The important idea here is that we are forced to rethink our notion of what it means to reproduce something, as one may not necessarily be aware of the copies one makes when operating a computer. As the labor of retrieving the file has already been performed, and due to the little labor required in saving the file to disk, it almost seems a waste not to save a file one appreciates.

There is also the human desire to know one has a copy in one's possession. In a sense, the desire is the same one that fueled the owner of the original to purchase it. There are several reasons for this desire to own, whether

⁶ National Research Council, 2000, *The Digital Dilemma*, Washington, DC: National Academy Press, 6.

⁷ Ibid. 7.

it be to own an original or a copy. In his "Marketplace Music," Dan Weymouth discusses the use of the phrase "my music" in recent advertising.⁸ The person who uses the phrase in the advertisements did not create the music, but instead possesses it. He suggests that popular music offers the public a general template to which the listener can apply his own associations and stories, making the music feel as if it is his and expresses his life.⁹ This encourages the listener to want to obtain a copy of the song as it has become a story of his life. "Art" music does not express generalities, but is the specific expression of the artist; it is a signifier for the artist's specific feeling or experience.¹⁰ When one listens to the music, one may experience a sudden empathy with the artist, a knowledge that someone feels a certain way as well. This also causes the listener to want to obtain a copy of such a piece, because even though it speaks specifically of the artist's life, it expresses something similar to what the listener has experienced and offers a feeling of connection. I believe that these same motives cause consumers to desire digital music files, as well as text and picture files.

The possessing of both of these types of items helps the owner construct his identity. As James Clifford expresses, in our society, the ideal self is owner, "the individual surrounded by property and goods."¹¹ By gathering things

⁸ Weymouth, Dan, "Marketpalce Music," *Journal Seamus*, v. xiii, n. 2, Fall, 1998, 5.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Clifford, James, "On Colecting Art and Culture," *The Visual Culture Reader*, edited by Nick Mirzoeff, London: Routledge, 1999, 96.

around one, one makes the world one's own. Identity is a kind of wealth.¹²

Online image galleries, such as Bill Gates's Corbis.com, are aware of this, using phrases such as "Pictures are an expression of your style. We've created a place to help you find yours!"¹³ Clifford makes the distinction that the collector should be tasteful, become an expert of the objects that help constitute his personality.

This seems to be contradicted by certain characteristics of acquiring digital files.

Russell Belk defines collecting as actively, selectively, and passionately acquiring and possessing things removed from ordinary use and perceived as part of a set.¹⁴ According to these criteria, the gathering of digital files seems to be the

opposite of collecting. I do not want to delve too far into the complex puzzle of

why collectors collect, but I would like here to examine a few pieces of the

puzzle. One part of collecting is gaining a sense of mastery and success over the

challenges of acquiring an item.¹⁵ There is the thrill of the hunt, memories of

which become associated with the objects.¹⁶ And there is also the object itself,

which is often anthropomorphized by collectors, who may talk to their

possessions and enjoy handling and observing them, perhaps with a slight

fetishism.¹⁷ For the collector the object contains history, not simply a history from

its association with the collector, but a history of changing over time, of being

¹² Ibid. 96.

¹³ <http://shopping.corbis.com> as of 3/9/01.

¹⁴ Belk, Russell, *Collecting in a Consumer Society*, New York: Routledge, 1995, 67.

¹⁵ Belk 87.

¹⁶ Belk 92.

¹⁷ Belk 74.

damaged and repaired, a pedigree that the object stands for and gives the object its authenticity and aura.

The digital file, whether it be an image or a text, lacks the ability to be actively and passionately consumed in the traditional ways collectors consume due to its absence of permanent physical form and its constant reproducibility. As the gathering of digital files from the internet is performed from the comfort of one's terminal, there are no great pilgrimages to distant places, like those of wine collectors visiting vineyards, or book collectors attending auctions as Benjamin describes in his essay "Unpacking My Library."¹⁸ One might retrieve data from a foreign server, but the memories of this type of hunting seem less powerful as the object is less actively sought. And as the file has no readily perceivable physical form to be handled and fetishized, its attachment to the gatherer is even less strong. As Geoffrey Batchen has described photography, the digital file can never represent itself; it is always presenting something else, and this, with its lack of physicality, makes the appreciation of the object separate from use of the object difficult.¹⁹ This is magnified by the fact that in downloading a file, one is receiving a new copy, with no history or pedigree. Issues of connoisseurship are diminished, and as the reproduction has little history, it contains little aura in itself, with the aura it has lessening that of the original of which it is a reproduction. But I do believe that these downloaded files are objects with auras. Operating with Benjamin's definition of the aura as a

“unique phenomenon of distance however close it may be,” the file, due in part to its intangibility, always appears at a distance, inside the computer screen, though the screen itself can easily be within reach.²⁰ But this aura is decreased by the constant copying of the file. These characteristics impair the possessor’s attachment to the object, facilitating the discarding of files and making the objects an ideal commodity in a society whose economy is supported by the consumption of disposable goods.

The gathering of reproductions is nothing new. Photograph collections, book collections, record collections, and catalogs of paintings have been around probably as long as the reproduction art, which, as Benjamin reminds us, is a long time. But while the reproduction and the accumulation are not new, the ease of electronic file distribution that the internet facilitates is. Mp3s, clip art and jpegs, and video clips fill computers of all sorts across the globe. Examples range from the thousands of Napster users collecting mp3s to Bill Gates’s gallery of high-quality digital images he projects on walls from his company Corbis.com. This allows him the convenience of choosing from Corbis’s 65 million images, and when he is tired of one image, he can replace it with another projection.²¹

With the minimal attachment of the gatherer and the ease of distribution, the ease of copying a digital file without having time to think twice, there is the

¹⁸ Benjamin library 65.

¹⁹ Batchen, Geoffrey, *Burning With Desire*, Cambridge, MA: The MIT Press, 1997, 5.

²⁰ Benjamin “The Work of Art in the Age of Mechanical Reproduction,” 243.

possibility that the collections that these copies compose are less refined or, to use Belk's term, selective. And if the gatherer is not very discerning in his gathering, than this says something about the gatherer, for when a collector is discussing his collection, "on closer scrutiny he proves to be speaking only about himself."²² Though the digital gatherer may not have as equal an attachment as the collector to his booty, and therefor his booty may not be as strong a description of the gatherer, the choices that the gatherer makes are a reflection of personality and communicate his interests. Where, in Clifford's model, the collector was an expert on the items in his collection, it is possible that the gatherer of digital reproductions may know little about the items he has accrued, as little knowledge was required to obtain them.²³ He can be a less educated consumer. Stein describes the internet as rapidly becoming another method of transmission for the dominant culture's ideas and as disseminating a mainstream monoculture coming from Hollywood, New York, and a few other centers.²⁴ He believes the internet will not be the cacophony of diverse cultures predicted, but will offer a flattened world culture.²⁵ It is my belief that though Stein may exaggerate, his recognition of the generic qualities contained in much of that disseminated by the internet is correct, and this phenomenon, accompanied with the ease of gathering bits of this culture through uneducated downloading, have

²¹ The Corporation Corbis, owned by Bill Gates, is a database of 65 million images, with 2.1 online, which the company sells to individuals or company's as digital images or as prints.
<http://www.corbis.com/corporate/>

²² Benjamin, Walter, "Unpacking My Library," *Illuminations*, New York: Schocken Books, 1968, 59.

²³ *Advertising* 25.

resulted in the proliferation of generic collections that are the cultural property expressing and defining their owners.

The preceding may seem pessimistic and suggest that accumulations of generic cultural items would form and express generic identities or express the identities of the gatherers in poor and fragmented ways. But one need only remember Andy Warhol's collections of household objects to see that one can utilize generic items to express and define a complex personality. This is also a lesson taught to us by other artists who use appropriation as a means of expression. One such artist is Louise Lawler, who focuses on the situation in which works are presented by photographing works in collections and performing curatorial tasks. According to Lawler, "art is created through a collective process."²⁶ There are similarities between Lawler's photographing a work in a collection and someone copying and digital image from an on-line collection of images; however, Lawler's photographic reproductions are rarely straight reproductions of a work. They include content such as the environment in which the work is hung or documents accompanying the work; the image of the work is not the sole image in the reproduction. The image of the work has been modified in some way by Lawler to convey her message. The image has also been carefully selected by Lawler, and her selectivity and handling of the

²⁴ Stein 202.

²⁵ Ibid. 201.

²⁶ *Art at the End of the Millenium*, edited by Burkhard Riemschneider and Uta Grosenick, New York: Taschen, 1999, 302.

image maximizes her ability to use the image as a tool of expression, in ways unavailable to the casual digital gatherer.

It is the modification of the image, incidentally, that is one of the most frequently cited action prohibited in the terms and conditions statements on the websites I have visited. For example, the website of the Metropolitan Museum of Art in New York states that the images on its website may be copied by a person, a school or a museum as long as the image remains unaltered and all copyright information remains with the image.²⁷ It may sound as if the Met, or any other website, is granting permission of use, but it is the copyright laws in the United States that authorize these uses under the not-for-profit and fair use exemptions. (However, problems arise due to the international nature of the internet and the differences in copyright laws between nations, especially between those who have signed the Berne Convention and those who have not.) The not-for-profit exemption allows the use of copyrighted work in non-commercial circumstances, such as to perform an educational, religious, charitable or governmental function.²⁸ The fair use exemption “authorizes the use of copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship, or research.”²⁹ (Incidentally, it is these exemptions that allow me to quote other texts in this text.) In determining if the use of material is covered by fair use, a court considers four factors: the purpose of the use, the nature of the copyrighted

²⁷ <http://www.metmuseum.org/copyright.htm> as of 3/7/01.

²⁸ Erickson, Hearn and Halloran, *Musician's Guide to Copyright*, New York: Charles Scribner's Sons, 1983, 14.

work itself, the amount of the copyrighted work used, and the effect of the use on the commercial value of the copyrighted work.³⁰ The central question is the effect of the use on potential sales, i.e., will consumers be able to use the derivative instead of the original. One can also, under copyright law, make a parody of copyrighted work without attaining permission, so long as the mood or nature of the work itself is significantly different than that of the original. However, all other derivative works fall under “the exclusive province of the owner of the original work.”³¹

So often one is allowed to download a work from the internet to use personally, to criticize it, write about it, even parody it, but not alter, distort, or manipulate it and call the work one’s own.³² While the internet enables information to be distributed easily to mass numbers and the optimistic would say that it allows the masses participation in the productive process through personal web pages and the like, there are characteristics of it that seem opposed to mediation. Much of the information of the internet is decidedly one-way. As Jean Baudrillard describes mass media of 1985, it in many ways forbids a response and:

²⁹ Ibid. 13.

³⁰ Ibid.

³¹ Templeton, Brad, “10 Big Myths about Copyright Explained,” <http://www.templetons.com/brad/copymyths.html>, as of 3/7/01.

³² However, as the Computer Science and Telecommunication Board of the National Research Council has found, there is no yet any across the board standard. For more information see the council’s report: National Research Council, 2000, *The Digital Dilemma*, Washington, DC: National Acadademy Press.

renders impossible any process of exchange (except in the shape of a simulation of a response, which is itself integrated into the process of emission, and this changes nothing in the unilaterality of communication). That is their true abstraction. And it is in this abstraction that is founded the system of social control and power.³³

As with any media, much of the vocabulary of the internet has been shaped by those with the means to develop large portions of it. More than ever, users of the media are encouraged to browse the regions the cultural industry has produced, and to emulate them, cutting and pasting images and text, furthering the reach of the producers and their influence. To manipulate files of the producers would be a critique, a subversion, a response that would break the producer's monopoly and "restore on the basis of an antagonistic reciprocity the circuit of symbolic exchange."³⁴ And yet this seems to be what the digital reproduction encourages most. One can download an image and, as it is not manifested in any physical form, manipulate it and personalize the image with any number of computer applications. The process enables the collector of the generic, mainstream items to shape them into something that is more expressive on a personal level. But it is this personalization that is prohibited (unless one buys the right from the gallery

³³ Baudrillard, Jean, "The Masses: The Implosion of the Social in the Media," *Selected Writings*, Stanford: Stanford University Press, 1988, 208.

³⁴ Baudrillard, "The Masses," 208.

for this exact purpose), for after being distorted, the image no longer acts as an advertisement for the owner of the original, and therefore it does not extend the owner's power, and may in fact lessen it.³⁵ The owner of the original allows for circulation of the image, at least in part, so its value will increase with increased awareness of the object. Copyright information must accompany the image so viewers know where to seek the original. Distortion of the image has the effect of false advertising and does the owner little good. But this process is only one way for the collector of the reproduction to make the reproduction his own. He can also project his memories and feelings into the reproduction, as described with the example of popular music, or he can identify with something specific in the reproduction, as in the example of art music. It is this kind of personalization that Benjamin discusses in his essay "Unpacking My Library," when he says, "Once you have approached the mountains of cases in order to mine the books from them and bring them to the light of day-or, rather, of night-what memories crowd in upon you!"³⁶

All who gather files for a digital library have their own reasons for the items they have in their assemblage. One may wish to use a file as part of one's own creation, or one may associate memories with a song contained in a file, or one may identify with the clearly expressed sentiments of an artist. These gatherers create a demand for objects that the owners of the original supply for

³⁵ Though one could make the case that even a subversive critique of the object brings more attention to it, and with this attention, the critique gives the object more strength.

³⁶ Benjamin, "Unpacking," 66.

their own reasons, whether they be to increase the value of their pieces or for educational purposes. The reproduction serves the owner so long as it retains the form of the original and contains information that marks it as property of the owner. However, under the current state, it appears impossible to police the treatment of such reproductions, which has caused problems, for example in the music industry, of artists sampling other artists and collectors distributing their own reproductions to other collectors. Given that for the owner of the original to maintain his purchase on what happens to the reproduction a great change in how technology is used to distribute will have to occur, it will be interesting to see how distribution over the internet, and through other digital means, changes as those in control learn more about the consequences of sending files out over the internet.

In the above examination of the effects of copying files, I have tried not to limit myself to images, though this is my general academic area, as copying, not only of images, but of files in general, and even of the internet itself, seems to be an integral part of the internet's growth. The architecture of the internet itself, the code with which it is built, has spread largely by the users examining the code of one page and using parts of this structure to build something else. The result has been an organic growth of the language, and while some may try to hold on to their designs, code appropriation is generally accepted, especially if the code has been changed to fit someone else's needs, for it is this sharing that has allowed the language to grow. This makes an interesting comparison to the

content the code delivers. Both may be acceptably copied, furthering their influence, but where with files one is rarely encouraged to manipulate the object, with programming code one may be encouraged to manipulate the code more, making the structure more distinct from the original, for without this, the variety one observes in web pages, no matter whether one believes there to be great variety or not, would perhaps not exist at all.