

NATXO RODRÍGUEZ

Copyright and the Brave Digital Future of the Museums

Not so long ago, before we all knew the impact that new technologies were going to have on museums, there was a lot of speculation about a promising new future. As we analyse in this text, however, copyright has curbed that promise, promoting a culture of “scarcity” rather than fostering a culture of affluence.

I sometimes feel like a criminal when I try to take a photo inside a museum. It doesn't matter whether I'm trying to photograph one of the works on exhibition or the building itself. Sometimes I surprise even myself by inexplicably searching for reasons why I shouldn't feel embarrassed every time the shutter clicks. And though it's easy enough for me to find pretexts – my work in education being the most common one– it doesn't free me of a certain clandestine feeling, which irritates me and makes me feel uncomfortable the moment I get outside the museum. As Juan Antonio Ramírezⁱ said in his article *Fotos*, a simple amateur interest should be enough of an excuse for taking photos in a museum. This is particularly true when the museums in question are publicly-owned or at least largely financed by public funds. I can understand that there are certain technical limitations on using flash and I can accept other restrictions that are intended to protect the well-being of the exhibits. But as the official rules of many museums state, “It is forbidden to take photographs or use video cameras in the museum”. An exception, of course, is made for press photographers, provided they have the necessary authorisation.

I believe that this ban on taking photographs in museums—which might in itself seem merely anecdotal—is indicative of a certain inertia within the very structures of art, and highlights the fact that they have not been properly brought up to date. This is all the more striking when many of those centres and resources have been created recently. Jon Ippolito gave us something of a foretaste of this in 1998ⁱⁱ, when he spoke about the museum/future binomial by asking the question “The Museum of the Future: A Contradiction in Terms?”ⁱⁱⁱ. He was referring—though not perhaps with the same intent as this article—to the difficult challenges museums face with the emergence of what he defines as “variable media”^{iv}. At the other end of the spectrum from Ippolito, we have

Michael S. Shapiro, secretary and general counsel of the International Institute of Intellectual Property, writing in *Museums and the Digital Future*^v, who paints a completely different picture: “The digital future is bright for museums”, he says. In this study, as well as offering a number of model contracts for managing and using work created using new resources, Shapiro rhetorically highlights the four main challenges which, in his words, museums will have to face in the digital future:

- *How will museums obtain the financial resources to digitize their rich cultural resources and make them available to the public?*
- *How will museums respond to the significant legal and business risks of doing business on the Internet?*
- *How will museums limit the risk of the unauthorized reproduction, alteration, and distribution of their digital assets in cyberspace?*
- *How should museums safeguard their symbols, goodwill and reputation against the actions of electronic pirates, all too eager to appropriate them for their own commercial gain?*

We could draw a number of conclusions from Shapiro’s map of the virtual threats that the digital future holds for museums, but I would like to examine just two. On the one hand, he faithfully depicts the intentions of a model of museum which is, sadly, all too true-to-life—a museum which remains loyal to a set of nineteenth-century curating concepts, which had their heyday in the twentieth century, but now seem paradoxically outdated. It is a model which is impervious to the precariousness of artistic production, which continues to base its conceptual architecture on the individual and individualistic artist, the unique original work, the deification of the author and the authorship or objectuality of the work of art. It is a vertical system which shelters and protects one possible framework for art in a desperate attempt at continuing self-legitimation.

And at the same time, it also takes on the worst neo-liberal tics of the cultural industries. These structures for producing and disseminating contents which, besieged by new digital formats, inexpensive and immediate mass distribution media such as the Internet and burgeoning ideas about a free and open culture favouring the public domain, have

been propped up with arguments based on terms like *risk*, *business*, *limits*, *pirates* and *misappropriation*.

And so, the museum, in its effort to brighten its “digital future” and save its own “contradictions”, clings to the magic formula of intellectual property and copyright. And it is here, precisely, that it really gets complicated to talk about the future and the museum. The fact that you can’t take a photograph of a work of art inside the museum space shows up its own contradictions—not in some vaguely distant future, but right here, in the digital present. To state it in as few words as there are justifications, one cannot photograph works of art because they are protected by copyright. Thus, *copyright is infringed by making a copy of all or a substantial part of a copyright work, without the consent of the copyright owner. It would therefore be an infringement of copyright to take a photograph of a copyright protected work of art, or a photograph of a photograph*^{vi}. At the same time, legislation and copyright protect the rights of the author and restrict the rights of the user without requiring the author to do anything to make this happen. Moreover, all rights are reserved automatically and absolutely... the author’s rights, of course. The user, the spectator, the audience, however, have no rights, except to make copies for their private use (would the right to take a photograph of a sculpture I like be included in this, I wonder?), for quoting, for news work and for some other less common cases established in the Intellectual Property Act^{vii}. Copyright and intellectual property, then, appear to infallibly protect the museums of the future from any digital threat. In the aforementioned report, Shapiro argues categorically about *the importance of intellectual property as a tool for economic, social and cultural development*.

However, the situation looks very different when viewed from the other side. The inrush of the digital into cultural production and distribution is bringing about some fundamental changes in the traditional paradigms of the culture industries. The unstoppable advance of free and open software has shaken the very foundations of big business, first in the creation and distribution of software, and then, in the music and film industries. They have all raised the banner of author’s rights to attack, respectively, free and open software, “Napsters”, “Kazaas” and other P2P systems^{viii}. But *copyright is not a natural right, but an artificial government-imposed monopoly that limits the users’ natural right to copy*^{ix}. On the contrary, the restrictive administration of

intellectual property only serves to forestall the inevitable, given that *the physics of the piracy of the intangible are different from the physics of the piracy of the tangible*^x, as Lawrence Lessig would say. In this battle now being waged for free software, which seeks to tip the scales between restrictive intellectual property and the public domain in favour of the latter, the world of art stands entirely apart. Of all cultural areas, art is by a long way the one which has seen least penetration of these ideas on free culture, the public domain or commons and free licences. And in the meantime, copyright and intellectual property, duly fitted out by the hegemonic cultural industries, are assumed with complete conviction and applied without contestation. Indeed, for the moment any attempt to argue in favour of the public domain receives not the slightest echo.

The position is all the more serious when we consider that in Spain, for example, the main source of support for contemporary art is the public purse. Museums, art fairs, grants, educational institutions, etc. are essentially financed with everyone's money, and yet that does not mean that they freely and openly form part of the common good. In other words, if a museum has bought a painting with public funds to be hung in a public building, maintained and run with public money, why can I not photograph that painting for my own personal use? Who are they trying to protect with these restrictions, by denying me, as a public user, any rights? The author? As Ramírez said in his article: *What does [the artist] care if lots of spectators take photographs of his work?*^{xi}. Clearly what is being protected is not the author of the work, but an entire complex system for art, and an associated social and political structure, founded on obsolete concepts without which it will lose much of its *raison d'être*, and it is precisely that which is in question. In its name and in the name of some bright future constant contradictions are being committed: photographic negatives are destroyed or shielded, master copies of videos are sequestered to restrict their natural reproductibility, online projects are castrated so that they can be packaged, hypertextuality is price-tagged^{xii} or quite simply, you are forbidden to photograph your favourite painting. They are deliberately fomenting that culture of "scarcity", which has brought such rich pickings for the culture industries, but which is driving us towards a culture of *permission* and—with funding and protection from the public sphere—away from a free culture.

NATXO RODRÍGUEZ is a lecturer at the University of the Basque Country. He is a member of the Fundación Rodríguez. He lives in Vitoria.

NOTES AND REFERENCES

ⁱ *In other words, the amateurs, teachers and critics of contemporary art are treated like human excrement because they try to take some poor visual record of what they see* RAMÍREZ, J.A. *Photos*. Exit Express, # 4, 2004.

ⁱⁱ Jon Ippolito has been the Media Arts curator at the Guggenheim Museum New York since 1991.

ⁱⁱⁱ IPPOLITO, J. *Artbyte* (New York) 1, no. 2 (June-July 1998), pp. 18-19. <http://three.org/ippolito>. A version in Spanish is available at http://aleph-arts.org/pens/museo_futuro.html.

^{iv} For a definition of Variable Media, see <http://variablemedia.net>

^v SHAPIRO, M.. *Museums and the Digital Future*. A Study conducted for the WIPO. World Intellectual Property Organization.

http://www.wipo.int/aboutip/en/studies/pdf/iipi_digital_museum.pdf

^{vi} MACPHERSON, L. *Photographers' rights in the UK*.

<http://www.sirimo.co.uk/media/UKPhotographersRights.pdf>

^{vii} Spanish Intellectual Property Act [Ley de propiedad intelectual]. Chapter II, Limitations.

^{viii} Peer-to-peer networks. Spanish definition given in WIKIPEDIA.

<http://es.wikipedia.org/wiki/P2P>

^{ix} STALLMAN, R. *Free Software, Free Society*. Pub. GNU Press. Boston. 2004.

^x LESSIG, L. *Free Culture* Pub. Penguin USA 2004.

^{xi} RAMÍREZ, J.A. "Fotos". Exit Express, # 4, 2004.

^{xii} The rates of the VEGAP, the society of authors which collectively manages the intellectual property rights of visual creators in Spain, are available at <http://www.vegap.es/Tarifas.pdf>.