

RESPONSE

Why does the train stop halfway? The destiny should be cultural democracy

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The music industry should not be so stupid. It should realise that in the new digital world there is enough for everyone. There are business opportunities beyond packaged music. It is not necessary for the music industry to attack its customers. A softer approach to intellectual property rights will not harm its interests. In any case, it should avoid making enemies. This is a part of the story Birgitte Andersen tells us. From this perspective, one can understand why she opens her Proposition paper by saying 'New technology has the power to revitalize the cultural industries and the service economy, and to create more value for its business and its consumers'. One might almost get the impression that she is trying to help the giants of the cultural industries by suggesting that their salvation lies in their development of new business models.

At the same time, she is quite critical about these same cultural giants. She mentions, for instance, that the music industry majors control about 75% of the global music market. The top 10% of composers and songwriters earn over 80% of total earnings. If one reads her paper carefully, it is clear that this clear lack of balance is not acceptable for her. So, we are confronted with a contradiction. It seems that Andersen operates as a consultant for the cultural industries, while regretting at the same time that they have such dominant market positions and promote only a few artists as stars. However, she has a solution for this contradiction: 'To move from the old economy into the digital economy it is important that content producers and service providers speak and collaborate'. Really?

To speak about what? That the firms that dominate the cultural industries – in the old analogue as well as in the digital world – give up their all-embracing positions on cultural markets? That they cease the marketing efforts that, thus far, falsify competition? That they soften their insistence on the maintenance of *their* intellectual *property* rights? Should they apologise to the world's citizens?: sorry citizens, we plundered

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your cultural expressions, we promoted only stars. We will improve. We will decimate our enterprises and promote many artists. Do not expect only blockbusters, best sellers and stars from us. Our shareholders will be happy with substantially less.

To be sure, this will not be the outcome of the discussions Andersen proposes. Therefore, it seems that her train stops halfway. The contradiction continues to exist, in her analysis, between the wish that we would have a more equal balance in cultural fields while at the same time retaining firms that dominate the market, allowed to keep copyright to defend their investments. The challenge, now, is how to move the train forward, in the direction of its destiny? What is it that we want to achieve in cultural markets?

- Far more artists should be able to make a reasonable living from their work than can at present.
- There should be numerous owners of the resources required for production, distribution and promotion. After all, the power of disposal should be distributed more widely.
- There should be an extensive, freely-available public domain of knowledge and artistic creativity.
- Audiences should not be swamped by the marketing of a few top stars. Audiences should be exposed to a wide variety of cultural expressions, from which they can make their own choices.

How do I think we can achieve all this? The starting point, which may surprise, is the cultural entrepreneur. This can be the artist himself, or someone who represents him, or a producer, publisher or commissioning party. The major characteristic of an entrepreneur is that he or she takes a risk, in our case with activities in the broad cultural terrain, which presents its own specific opportunities and threats. There has been a lot of philosophising about entrepreneurship, taking risks and the attitude an entrepreneur should adopt. He or she should think and act, should be capable of being one step ahead of the competition, should feel threats and opportunities approaching and should be acutely aware of what is happening, in both the direct environment and the wider environment. The economic and financial crisis that broke in 2008 has made clear that many people claiming to be entrepreneurs do not possess that pro-active attitude of looking far ahead and all around.

A factor seldom mentioned in the context of entrepreneurship is the conditions that allow risks to be taken. How should such a market be constructed, how should the balance of power be organised, and what kind of regulations should set the limits of, and offer opportunities for, the scope of entrepreneurship? This is what my analysis is about.

We are setting ourselves a difficult task. What we want to achieve is a market that fulfils a specific condition. There should be no dominant force that can turn the market to its own advantage. That, it seems to me, is a basic condition for realising the objectives I formulated above. Just to remind you, these are: highly diversified ownership; a fair chance for many, many artists; an unobstructed choice for audiences from an extremely broad range; and retention of a wide range of artistic creativity and knowledge in the public domain.

In the present cultural markets, there are two forms of undesirable dominance. First of all, there is copyright. Copyright gives the owner exclusive control of the use of a work, with all the consequences this entails. Abolishing copyright would mean

that it would no longer be attractive for entrepreneurs to invest lavishly in blockbuster films, bestseller books or stars. After all, there would be no protection to make those works exclusive. Anyone could, in principle, change or exploit them immediately.

There are too many objections to copyright to maintain the system. Some are fundamental; others have silted up the system over the past few decades. Amongst these is the myth propagated by the creative industries that the strict application of intellectual property rights generates wealth. Piracy – but the scale on which it is carried out, in particular – is a more recent argument. Forced introduction and sanctions for failure to comply are a new phenomenon under TRIPS. In principle, copyright and authors' rights – to do justice to the various origins of the systems – have always been closely related to the importance of securing investments. In recent decades, the system has increasingly favoured investment protection, extremely large investments that enjoy an ever-longer protection term and scope. The price is the privatisation of artistic creativity and knowledge, and the erosion of what is left of these in the public domain.

In many branches of art (perhaps superfluously we should mention that this also includes entertainment and design, in my view), copyright has never fulfilled the expectation of providing many artists with a reasonable income. This is not the fault of copyright alone; it also has to do with market conditions. In recent years, the difference in income between the big stars and the average artist has become more striking than ever before.

More fundamental objections to copyright revolve around ownership, copyright's censoring effect and moral rights. Artistic expression is placed in the hands of the private persons who own the exclusive, monopolistic rights of use. There is reason to be unhappy with the very idea that human expressions, in artistic form, should be monopolised or privatised. Once a work has appeared or been played, we should have the right to change it; in other words, to respond, to remix immediately, not just when the copyright has expired. The democratic debate, including debate about cutting edge artistic expression, should take place here and now and not once it has lost relevance. There is therefore no place for moral rights in my view of the situation. I would replace moral rights with the right for artists to object when their work features in contexts they abhor.

This legal walling of copyright is entirely unnecessary for guaranteeing artists' incomes and the investments if we structure cultural markets completely differently. Whether copyright can be maintained has been the focus of attention in recent years. Little attention has been given to the other form of market control. A few conglomerates worldwide have a tight grip on the production, distribution and promotion of films, music, books, designs, visual art, shows and musicals. On the other hand, there are rather more forms of vertical and horizontal integration possible in the digital world. We should not think that the cultural field is dominated entirely by extremely large enterprises. There is also a considerable mid-segment, but even medium-sized cultural companies have difficulty keeping their heads above water. Cultural enterprises of this scale would fare better in my scenario. They would no longer have to compete with the merciless marketing blaze of the mega enterprises.

The exciting challenge is to find out whether, by eliminating both forms of market domination – copyright and dominant market positions – a more normal market is created, or, to use the term applied in the business literature, a level playing field. What do we mean by that? It is a situation in which no single party is able to control

or influence the market or the market behaviour of others to any substantial degree. It is crucial that lots of cultural entrepreneurs – artists, their representatives, producers, publishers and the like – be able to trade.

Are they not able to trade at the moment, then? There is no clear answer. Yes, in that thousands and thousands of artists are producing work and therefore trading; but no in that they are often pushed out of the public eye by the omnipresence of the major cultural conglomerates. They hardly have a fair chance to trade. It becomes extremely difficult, to say the least, to bear the risk inherent in entrepreneurship. In fact, the cultural market situation can be outlined as follows: the access door to the market, and therefore to audiences and the opportunity to earn money, is open only a crack for the vast majority of cultural entrepreneurs, but the door is wide open for a few, increasingly merged, cultural giants.

These giants own the copyright of the many, many products they market. This gives them an even greater hold on the market, as they are the only ones that can determine whether, how and in which setting much work is used. They basically decide which cultural products are available in the market and therefore how these products are consumed. Their works may not be changed or undermined in any way to suit the market better.

The many cultural entrepreneurs, even the medium-sized ones, for whom the door is open only a crack, enter a market – if they enter at all – in which a few giants determine the atmosphere and appeal of what they offer. When a few majors not only dominate the market but also determine the atmosphere of the cultural playing field, it is very difficult for small and medium-sized entrepreneurs to survive.

Are we any nearer to a level playing field? Neoliberal policy has allowed companies to grow bigger and bigger. The cultural sectors have not been spared. Drastic action will be required to reverse this, both in the economy in general and in the film, music, book, design, multimedia and video sectors. But we have no choice. The train should move forward. The task now is to calculate how such radical change would affect artists and entrepreneurs, their enterprises, their business models, and our public domain of knowledge and creativity.