

Vito Campanelli:

## Remix Ethics

### Abstract:

Occupying the increasingly thin line that separates legitimate appropriation from plagiarism, remix practice raises significant ethical issues. The issue is rendered more complicated by the fact that this line frequently shifts, both in academic debates and in legal. If in large Western nations remix practice is widely considered legitimate, it is still considered necessary to add something personal to one's sources, and if at all possible to enrich those sources in some way. This is usually considered sufficient to avoid misappropriating someone else's intellectual work. In the last few years, various legal actions in the EU and the USA have revealed a significant gap between this apparently moderate position, and the position of legislators. The purpose of this paper is to take a look at some of the most controversial positions on the issue of 'remix ethics', attending more closely to aesthetic implications than to political consequences<sup>42</sup>.

### Agenda

The Inadequacy of the Legislator .....	26
Common Sense that Violates IP Law.....	27
Towards a 'Free Culture' .....	27
A Relativist Ethics.....	28
The Recognition of Peers .....	28
Informal Behavioural Codes .....	28
Aesthetic Fallout .....	28
Forced to be 'Underground'.....	29
In the Shadow of the Law.....	30
Intrinsic Ethicity of Online Communities.....	30

### Author:

Prof. Dr. Vito Campanelli:

- Department of American, Cultural and Linguistic Studies, University of Naples 'L'Orientale', Largo San Giovanni Maggiore, 30, 80134 Naples, Italy
- ☎ + 39 - 333 70 81 109 , ✉ info@vitocampanelli.it, 🌐 www.vitocampanelli.it
- Relevant publications:
  - Web Aesthetics: How Digital Media Affect Culture and Society, Rotterdam/Amsterdam, NAI Publishers/Institute of Network Cultures, 2010 (978-90-5662-770-6)
  - Internet Landscapes (2003-2007), Naples, Edizioni MAO, 2009 (ISBN 978-88-95869-00-1)
  - L'arte della Rete, l'arte in Rete. Il Neen, la rivoluzione estetica di Miltos Manetas, Rome, Aracne editrice, 2005 (ISBN 88-548-0028-7)

#### Essays and Articles

- 'Hacking, la sfida intellettuale della software culture', in: *D'Ars*, n° 206, June 2011, (ISSN: 0011-6726), pp. 37/39
- 'Flowing Together', in: Mieke Gerritzen, Geert Lovink and Minke Kampman (eds), *I Read Where I Am*, Amsterdam: Valiz, 2011 (ISBN: 978-90-78088-55-4), pp. 60-62

<sup>42</sup> The paper is a reworked text from my recent book: Web Aesthetics (2010).

- 'The DivX Experience', in: Geert Lovink and Rachel Somers Miles (eds), *Video Vortex Reader II: Moving Images Beyond YouTube*, Institute of Network Cultures, Amsterdam, 2011 (ISBN 978-90-78146-12-4), pp. 51/60
- 'Continuità nella discontinuità', introduction to: Cyop&Kaf, *Fuoco!*, Naples, Edizioni MAO, 2010 (ISBN 978-88-95869-09-4)
- 'Journeying Through Sound: A Survey of Digital Music Art', in: *Anglistica Journal*, n° 13, vol. 2 (ISSN 2035-8504)
- 'Realism and estrangement in Canecapovolto research', in the anthological series entitled: *Il Futuro è Obsoleto [1992-2002]*, Paternò (CT), Malastrada.film, 2009 (ISBN 978-88-904353-0-0), pp. 36/43
- 'Firenze by Google', published in the volume entitled: *Struttura / Studi e visioni sul mare digitale*, Florence, Polistampa Edizioni, 2007 (ISBN 978-88-596-0177-7), pp. 70/73
- 'Una navigazione digitale del Mediterraneo. L'esperienza di Ermenetka', published in the volume entitled: *Navigare il Mediterraneo. Riflessi e riflessioni*, Naples, Università degli Studi di Napoli "L'Orientale", 2007, pp. 98/105
- 'L'anima del flusso di dati in passaggio', published in the volume entitled: *0006\_limiteazero*, Milan, Hublab Edizioni, 2006 (ISBN 88-6080-000-5), pp. 21/29

#### Translations

- Translation into Italian of the book: Miltos Manetas (ed.), *Neen. New Art Movement*, Milan, Edizioni Charta, 2006 (ISBN 88-8158-601-0)

One of the most controversial issues about remix culture concerns the question of whether it is appropriate to establish a remix ethics. To put the question another way: Is it appropriate to conceive of a limit, beyond which remix becomes less legitimate? The question is intrinsically connected to the principle of authorship, as is evident in the increasing crisis of the concept of the author during the last several years. The concept of 'author' is as abstract as that of 'border'; in fact, the collaborative modalities implicit within digital tools, and the uptake (predominantly since the 1960s) of collective creative practices, have led us to a point in history in which the figure of the author as a kind of lonesome genius, and the figure of the collective authorial subject, coexist. In particular, the net.art deriving from the 'digital revolution' has closed the circle between the alternative collective movements of the late twentieth century, leaving the task of completing the work of art to users, through interaction. Creators of net.art are unrelated to the Romantic concept of the artist, as those who activate a context that requires the cooperation of others in order to come to fruition. Masking, identity games and plagiarism are practices that net.art has inherited from avant-gardes. When such techniques join forces with digital technologies, they invert the concept of authorship that continues to legitimize the contemporary art world. In net.art, the 'author' makes room for a new subject: the network. In fact, it is only in the network that the sense, the aesthetics and the intentions of the *net artistic* work can be recovered. As Tatiana Bazzichelli writes:

*"To network means to create relationship networks, to share experiences and ideas. It also means to create contexts in which people can feel free to communicate and to create artistically in a 'horizontal' manner. It means creating the aforementioned in a way that the sender and the receiver, the artist and the public, are fused/confused; they lose their original meaning. The art of networking is based on the figure of the artist as a creator of sharing platforms and of contexts for connecting and exchanging. This figure spreads through those who accept the invitation and in turn create networking occasions. For this reason, it no longer makes sense to speak of an artist, since the active subject becomes the network operator or the networker"<sup>1</sup>.*

<sup>1</sup> Bazzichelli, Tatiana: Networking. 27

As remix practice does not only concern art but is implicit in any expressive form, it is necessary to widen our reflections to include other fields of human action, and to focus on the sizable gap between the commonsense conception of remix ethics and the practice of copyright.

## The Inadequacy of the Legislator

A major reason for the inadequacy of present legislation is the fact that copyright was instantiated in an age in which digital media did not exist<sup>2</sup>. After all, before the birth of digital media and the Internet, it was (almost) only commercial publishers that could actually publish a work, and the publisher acted as guarantor (or alternatively legitimated plagiarism because they knew they could rely on an army of lawyers).

Today, new technologies have effectively reduced the costs of publication (at least of 'amateur' publications) giving life to such phenomena as desktop publishing, along with the entire blogosphere. In light of this profoundly altered situation, the inadequacy of copyright law is immediately evident. Yet, backgrounding digital media for the moment, there are many cases in which simple common sense violates copyright<sup>3</sup>.

<sup>2</sup> The English Copyright Act of 1709 is the first legislative measure to establish the relationships between publishers and authors. This was imitated by France in 1793, and then by other states, while it was not until 1886 that the Berne Convention established the principle of international reciprocity of rights. Most interestingly, perhaps, is the fact that authors received no fees from publishers until the eighteenth century. Copyright is not the result of authors' commercial interest, however. The interest behind copyright is due to publishers' economic concerns. Similarly, today the vast majority of intellectual property laws are aimed at protecting the economic interests of publishers, record labels, multinational software companies, etcetera. The livelihood of authors and the defence of their creativity are, in essence, always the arguments used to justify the existence of exclusive rights of which – paradox of paradoxes – the authors benefit only in small part.

<sup>3</sup> In Lessig's reconstruction, analogue technologies were marked by 'natural' limitations that somehow limited consumers' opportunities to compete with producers. Digital technologies have eliminated these constraints, rendering any cultural content completely manipulable. When the content industry became aware of this, it was terrified, 'and thus were born the copyright wars'.

Lessig, Lawrence: Remix. 38-39

### Common Sense that Violates IP Law

This is the case in scientific disciplines, in which progress is consequent upon the work of the entire past, present and future scientific community. Any scientist (or group of scientists) who makes a significant discovery will have taken advantage of all the research—whether successful or failed—undertaken by their predecessors. As Lazzarato writes: "Invention is always encounter, hybridization, a cooperation between many imitation flows . . . even when it develops in an individual brain."<sup>4</sup> If every scientist was forced to pay licensing fees to every scientist who has worked on a related subject, scientific research would immediately cease. And yet we may be seeing precisely this process taking place. Several years ago, the South African government, in view of a population literally destroyed by HIV<sup>5</sup>, decided to infringe upon the patent applied by pharmaceutical companies to drugs used to treat and contain the disease<sup>6</sup>.

Pharmaceutical corporations reacted furiously, assuming that they owned the active ingredients copied by South African researchers who, apart from invoking a terrible state of necessity, also argued that it was not possible to claim exclusive rights over elements that are in nature and are therefore not invented, but discovered.

Similar perplexities arise in regard to patents of genuine products of human intellect: software. Traditionally, patentable processes applied only to material transformations, while processes such as economic methods, data analysis procedures and *mental steps* were exempted. Since the 1980s, a series of decisions made by the US Supreme Court (and, as a consequence, by the European Tribunals, in the name of a sort of 'Americanization of the law') have questioned this principle. Large software multinationals have quickly picked up on the poten-

tial of this development. The situation has become so nonsensical that the US Patent Office is forced to face hundreds of requests every year for patents for software concepts. With the Patent Office having no means to establish the real novelty and originality of the concepts, there have been devastating consequences for small and mid-sized enterprises that, lacking the economic resources to pay for expensive legal actions concerning the paternity of an idea, have no way to defend themselves against industry giants such as Microsoft.

### Towards a 'Free Culture'

The few examples mentioned should be sufficient proof of the schism between modern intellectual property laws and common sense. The interests of the few (corporations and their shareholders) are jeopardizing the interests of humanity, as the progress of science, technology and culture are threatened. In *Free Culture*<sup>7</sup>, Lessig expresses this concern, highlighting the intrinsic risk of the protection of 'creative property', which allows those who own the rights to intellectual property to control the development of culture. Lessig's reasoning demonstrates that some of the most important innovations of modernity, such as photography, cinema and the Internet, were made possible thanks to a climate in which knowledge was freely shared and disseminated. According to Lessig, present regulations constitute insurmountable barriers to the free circulation of ideas, thereby obstructing the development of culture. For Lessig, 'free culture' does not imply the denial of intellectual property. His proposal, which is realized in Creative Commons licences<sup>8</sup>, offers a way to avoid the extremes of an anarchic 'no rights reserved' and the total ownership expressed in the formula 'all rights reserved'<sup>9</sup>. Creative Commons licences aim to realize the principle of 'some rights reserved': authors retain the right to make their content freely available as they see fit. This proposal restores liberties once taken for granted, decreasing the gap between legislation and common sense.

<sup>4</sup> Lazzarato, Maurizio: La politica dell'evento. 25

<sup>5</sup> In South Africa, recent statistics from the Department of Health (<http://www.doh.gov.za>) report 1,700 new cases of HIV infection each day, and a total of 6-8 million people infected (of a population of about 40 million).

<sup>6</sup> The African continent, with 70 per cent of infections of the number worldwide, represents only 1 per cent of the global market for drugs, compared with 80 per cent represented by the USA, Western Europe and Japan. In view of this scandal, the expression 'health apartheid' formulated by Médecins Sans Frontières appears profoundly justified. The struggle between the right to health and the defence of companies' profits inspired the novel *The Constant Gardener* (2001) by John Le Carré: a harsh indictment of the economic interests of pharmaceutical companies.

<sup>7</sup> Lessig, Lawrence: *Free Culture*.

<sup>8</sup> Web: <http://creativecommons.org> (accessed 4 April 2011).

<sup>9</sup> For a critical reading of the presuppositions of *Free Culture* and an original exposition of the main positions emerging in the debate around Creative Commons, see: Pasquinelli, Matteo: *Animal Spirits*.

## A Relativist Ethics

Leaving aside the legal constraints upon remix, it is evident that formulating a morally satisfying solution in regard to remix culture remains a difficult task. In fact, attaining a shared ethics in the present relativist atmosphere is a near-utopian aim. Furthermore, it seems even more difficult to formulate an ethics that would apply equally to the plagiarism *tout court* of the Borgesian hero César Paladión, and a song featuring a very short sample of *O' Sole mio* (1898). There seem to be an infinite number of intermediate positions between those who believe that no-one invents anything, and those attached to a kind of fetishized vision of the author.

### The Recognition of Peers

What is needed is to imagine a subjective ethics. As such, an ethics of this kind is difficult to make extrinsic and collective, but its apparent relativism can be qualified by the 'recognition of peers'. As the primary need of anyone who gives life to a creative act is the recognition of their own community, absolute relativism is modulated by the judgment of individuals who share values, references, aesthetic canons or other qualities. This solution seems adequate to that 'world of strangers' outlined by Ghanaian philosopher Kwame Anthony Appiah. According to Appiah's philosophy of cosmopolitanism, in the present interconnected world it is possible for different cultures to live peacefully together by adhering to their own specific sets of values, without ever needing to formulate a final, universally applicable solution<sup>10</sup>.

If we leave economic interests aside, attending to an ethics founded on the *recognition by peers* might represent a viable and defensible approach to the phenomena that characterize the present age. If this necessitates the abandonment of a shared ethics, it is worthwhile to point out that a unified moral vision is less essential to a remix culture than it is to religions and other ideological forms.

<sup>10</sup> Appiah, Kwame Anthony: *Cosmopolitanism*.

On the issue of artistic and, more particularly, archaeological objects, Appiah considers it laughable for modern states to claim as national heritage the objects of historical and artistic interest found within their territories. According to Appiah these objects should instead be considered the heritage of all humanity, and therefore be made accessible to everybody. If this reasoning is applied to cultural production as a whole, a cosmopolitan view leads to the conclusion that any cultural object should be accessible and usable (for new production) by all.

## Informal Behavioural Codes

Rather than norms enforced through sanctions<sup>11</sup>, it is legitimate to formulate behavioural rules: crediting one's sources is a good habit to foster; just as it is good form to make one's own creations, constructed from the creative work of other people, available to anyone who wishes to use it. All the informal behavioural codes already widely in use in online communities appear to support the viability of such an ethics. Entering a newsgroup used by developers who have chosen to use open source software, downloading a file using file sharing software, contributing to the creation of a Wikipedia lemma, even purchasing something from e-Bay, we contribute to the existence and the continued operation of a series of habits that, though they do not necessarily constitute a shared ethics, represent the *conditio sine qua non* to gain access to the community one is approaching<sup>12</sup>.

## Aesthetic Fallout

Departing ethical considerations for aesthetic ones, it is clear that current copyright laws and policies have significant consequences for aesthetics, for they reinforce the sense that some practices, because they are not strictly legal, are 'underground'. In fact, this is a complete misnomer. The existing normative/repressive complex functions to imbue remix culture with an aura of the forbidden, just as 1970s alternative cultures were termed such largely due to their use of drugs and the experimentalism of their lifestyles in contrast to those of the middle classes. Today, many artistic practices that challenge injunctions against free access to, and creative reuse of, culture are labelled 'illegal'. As such, institutional funds are denied to such practitioners and they are held at a distance by the organizers of international festivals, exhibitions and lectures, as well as being excluded from coverage by the global media.

<sup>11</sup> Lessig himself states that before entering a legal plan it is essential to take the crucial matter to be that the 'right to quote – or as I will call it, to remix – is a critical expression of creative freedom that in a broad range of contexts, no free society should restrict'. Lessig, Lawrence: *Remix*. 56

<sup>12</sup> A very enjoyable parody of the 'relationship rules' to be adopted on Facebook is offered by the video *Facebook Manners And You*. Web: <http://www.youtube.com/watch?v=iROYzrm5SBM> (accessed 4 April 2011).

### The Plagiarism Experience

In the late 1990s, the experience of some 'plagiaristic' works of net.art is emblematic. Artists such as Vuk Cosic and the Italian duo 0100101110101101.org copied entire websites and republished them under a different domain, reclaiming these operations as legitimate net.art performances (examples are Cosic's *Documenta Done* (1997) and *Hell.com* (1999) and *Vatican.org* (1999) by 0100101110101101.org). The apotheosis of this practice took place in 1999, when Amy Alexander duplicated the 0100101110101101.org website and published it on her own website plagiarist.com. The Italian artists responded by linking Alexander's website on their homepage, thereby 'realizing a paradoxical conceptual copy of a copy of their copies'<sup>13</sup>. As 0100101110101101.org themselves explain, such practices undermine copyright completely:

*"A work of art, on the Net or not, cannot be interactive as such, it is people who have to use it interactively, it is the spectators who have to use the work of art in an unpredictable way. By copying a website, you are interacting with it, you are reusing it to express some contents that the author had not implied. Interacting with a work of art means to be user/artist at the same time; the two roles co-exist in the same moment. Thus we should talk about meta-art, of fall of the barriers of art; the spectator becomes an artist and the artist becomes a spectator: a witness with no power on what happens on their work.*

*The essential premise to the flourishing of reuse culture is the total rejection of the concept of copyright, which is also a 'natural' need of the digital evolution<sup>14</sup>.*

What is most instructive is the reaction of the 'institutional' art world to these plagiarist short circuits. Attempting to exploit the hype surrounding this new form of art, museums, public institutions, curators and galleries risked the very basis of their authority – the originality and uniqueness of the work of art – as they confronted the implications of such appro-

priations. Initial curiosity quickly turned into diffidence, and it is not difficult to see why. The possibility of considering something immaterial such as a website as a work of art raised concerns, as well as the overt hostility of art merchants. It was the threat that plagiarist practices represented to authoriality that was ultimately too much for an institution that, behind its façade of openness, remained deeply conservative and rooted in a reality constituted by atoms and *eternal values*<sup>15</sup>. This moment inaugurates the (still present) fracture between the world of 'institutional' art as a whole (bearing in mind that there are significant exceptions), and artistic practices that question the principles of authorship and originality that are the foundations of copyright. These are forced to survive as spectacle, living off the crumbs of the art world, who disguise this 'magnanimity' as an opening towards the new. There are still those artists who refuse to accept the remains and reclaim the whole cake.

### Forced to be 'Underground'

Many remix practices are placed outside mainstream flows not because of aesthetic or ideological differences, but because they are not acceptable to the cultural establishment. In other words, they are bound to be labelled 'underground' even though their underlying creative processes take place *in the light* and are popularly and widely expressed. Similarly, in the field of music, there is an increasing distance between artists and companies managing copyrights, and a discomfiting lack of proposals that might satisfy all the interests involved. The case of DJ Danger Mouse is instructive<sup>16</sup>. In 2004, the artist published a record entitled *The Grey Album*, which remixed Jay-Z's *The Black Album* (2003) and the Beatles' *The White Album* (1968). As the remix process was performed without permission, it soon captured the attention of EMI's lawyers. In response to this legal attack, *Grey Tuesday* was organized: on 24 February 2004, activists and musicians posted and published the incriminated album on as many websites as possible. Not satisfied with ordering DJ Danger Mouse to cease selling *The Grey Album* and threatening to destroy all copies of the record, EMI's lawyers threaten legal action against anyone who publishes the 'illegal' album online. The lawyers

<sup>13</sup> Deseriis, Marco and Marano, Giuseppe: Net.art. 84 [translation by the author]. In this book, which offers a brilliant interpretation of the pioneering phase of net.art, it is possible to read a precise reconstruction of the history of 'plagiarisms' to which I refer (See: 78-85).

<sup>14</sup> Private conversation between Deseriis, Marano and 0100101110101101.org, quoted in: Deseriis, Marco and Marano, Giuseppe: Net.art. 82-84 [translation by the author].

<sup>15</sup> Elsewhere I defined the contemporary art system as "a hologram of a vanished world, the representation of an ancient society in which everything was weighed up in terms of atoms". See: Campanelli, Vito (ed.): *L'arte della Rete*. 85

<sup>16</sup> Web: <http://www.dangermousesite.com> (accessed 4 April 2011).

seemed ignorant of the dynamics of the Net, and their threats seem comparable to attempting to stop a swarm of grasshoppers by means of a scarecrow. Furthermore, we can note that once again the attitude of international record labels, along with contemporary art institutions, cover contemporary artistic practices based on remix with a gloss of illegality. As Daphne Keller observes:

*"Much of today's most innovative cultural production takes place in the shadow of the law: many DJs and other artists produce their work in the knowledge that a copyright holder could sue, that distribution of their work could be enjoined by law, and the sampler held liable for substantial monetary damages"<sup>17</sup>.*

### In the Shadow of the Law

It is important to note that acting 'in the shadow of the law' influences the aesthetic perception of many works. According to their own personal perspective, a member of an audience might confer a work of art with positive values such as breaking with tradition and the reclamation of creative spaces or, alternatively, with negative values such as the misappropriation of others' intellectual works and lack of 'originality'. A similar situation characterizes the file-sharing phenomenon. The activity of downloading from P2P networks, for the reason that it is experienced as rebellious and seditious, becomes a particular kind of aesthetic experience because of the injunctions in place. Simultaneously, the *vox populi* accepts the idea that those who perform these activities embody the model of a transgressive, 'outlaw' life-style. The perception of P2P as analogous to smoking pot or going to a club for swingers is inappropriate, because the activity of 'digital swingers' is never hidden in the way that sly or morally disputable practices are. It is not something that happens in the dark of a filthy club, or in some metropolitan ravine, it is rather a phenomenon that would lose its intrinsic meaning if the acquired materials were not displayed, in fact the three stages of: downloading of a cultural object from the Internet, organizing it within an archive and exhibiting the archive, are not separable stages, rather they constitute a gestural *continuum* that flattens the existence of the contemporary *flâneur* into a specific aesthetical canon, that of the 'data dandy'<sup>18</sup>.

<sup>17</sup> Keller, Daphne: 'The Musician as Thief', in: Miller, Paul D. (ed.): *Sound Unbound*. 136

<sup>18</sup> Recalling Oscar Wilde, Dutch media theorist Geert Lovink defines the modern media user as a 'data dandy': '*The Net is*

Therefore it can be claimed that the cultural products assembled over years are never hidden because accumulation and exhibition are two sides of the same coin<sup>19</sup>.

## Intrinsic Ethicity of Online Communities

The same dynamic characterizes also the remix culture as a whole, indeed the remix makes sense not only as a practice/process but also as a product that one can show to the world and/or to the smaller community of one's own peers.

The desire to exhibit the results of our *raids* in the file sharing platforms, as well as to demonstrate our unequalled creativity through continuous remixes, is already enough in itself to deny, in the most absolute way, that we are in front of practices perceived as morally reprehensible and, as such, condemned to some form of hiding. The contemporary *flâneur* does not hide, he/she does not live in the darkness of some suburban ravine but in the light of the perpetual sparkling of digital worlds. Therefore the imaginary that the digital *flâneur* brings into play with his/her remixes is not that, tired and decadent, of an outlaw forced into hiding, but that, typically baroque, of a network society's inhabitant, proud of this status and of the possibilities it offers.

To put the point another way, to continue to consider the remix culture as a culture that takes place 'in the shadow of the law' is certainly instrumental in protecting the economic interests of corporations but, from the perspective of aesthetic criticism, it is as insane as to continue to ignore that networks have become nowadays the *medium* and the message of any artistic practice.

---

*to the electronic dandy what the metropolitan street was for the historical dandy. . . . The data dandy has moved well beyond the pioneer stage; the issue now is the grace of the medial gesture."*

For Lovink, just as *flâneurs* displayed their clothes on crowded boulevards, Web users 'stroll' and strut about social networks and file-sharing platforms, displaying their archives of movies, music and images. These latter objects are the icons of a digital modernity. See: Lovink, Geert: *The Data Dandy*. 99

<sup>19</sup> Moreover, accumulation of images, sounds and suggestions that may later be creatively re-edited is a necessary activity for any artist, at least if it is true that, as Paul D. Miller (aka DJ Spooky - That Subliminal Kid) states, 'as an artist you're only as good as your archive'. P.D. Miller, 'In Through the Out Door: Sampling and the Creative Act', in: P.D. Miller, *Sound Unbound*, op. cit., 16.

Returning for a moment to the desire to exhibit our personal archives of data and our reworkings of these collections (that is to say: our remixes), it is impossible not to acknowledge a state of things in which that desire is continually mortified by the complex of copyright laws and pronouncements. These, in concert with mainstream media and institutions which express the *will of power* of corporations, insist on characterizing as “underground”, “unconventional”, “outlaw”, “antisocial” and so on, a series of phenomena that often, for their own nature, do not embody at all those values.

Millions of individuals worldwide are using the “creative tools” that marketing has led them to purchase, and are rearranging fragments of that data flow with which mass media have saturated their lives. Although they are acting *in the light of the sun* they find themselves forced within labels such as *Carbonari* and conspirators. These individuals – young people, students, workers, honest citizens and “good family men” – are continually being pushed into the darkness with the aim to reinforce in the public imaginary the idea that handling cultural copyrighted contents is equivalent to making unworthy acts such as those which are usually associated with darkness.

This constant struggle between the *light of the righteous* (the holders of intellectual property rights) and the *darkness of the wicked* (the remixers) suggests to me a parallel with the alternation of the Dionysian gray area to the Apollonian light of reason, a theme dear to Maffesoli. According to the French thinker, after the struggles of modern intelligentsia (vainly striving to impose the Apollonian “daytime regime” on the “night regime” of Dionysus), the two ‘regimes’, respectively related to ‘science’ and ‘common sense’, must move forward together because there is no a science which is not based on common sense. Yet – as Maffesoli remarks himself – this relationship is lacking in many theoretical systems that bypass the manifestations of a common sense highly related to daily life. Here, if we replace the word ‘science’ with ‘law’ we see that in the contemporary age it becomes possible to bring out a contradiction very similar to the one Maffesoli identifies in the modern age; in fact, a law that does not reflect the common sense is like a science that denies the experience coming from daily life: an unbearable theoretical construct, completely abstract<sup>20</sup>. In other words: something of which we would like to do without, especially at a

time, as the current one, which left in the attic the distinctive features of modernity (rationalism and individualism) to embrace a multiculturalism based on digital networks (the authentic heart of the remix culture) and therefore on the ability of individuals to give life to increasingly global networks and, through them, to create relationships, to share ideas and projects, to put into play ones own intimacy and imaginary.

To state the point one final time, it might be desirable that the legal culture should put itself on the same level of other fields of knowledge in which the sharp fracture of post-modernity already represents a point of no return. Concepts such as ‘author’, ‘original’, ‘copy’ etc., sorely tried in the transition from modernity to post-modernity, have now exploded into countless particles and are centrifuged in the current remix culture on a daily basis. Faced with this scenario, the pretension to be staked out behind legal principles (born in distant and different eras) appears for what it is: a petty attempt to continue to offer representations of a world that no longer exists. Therefore if one can not do without looking for ethical principles capable to take away the remix culture from that state of anarchy which seems to be so connatural to it, then it is in digital networks that those principles are to be found. Moreover, it is only through a full participation in such a communities, that is to say through the involvement in their daily practices (and among them, *ça va sans dire*, in the remix practices), that one can acquire such an ‘ethical know-how’<sup>21</sup>. The online communities are characterized by an intrinsic ethicity and therefore by ethical principles which, while not requiring an explicit formalization, regulate community life. These principles are learned by all participants without any effort (Varela would say: in an instinctive way), indeed it is sufficient to live in the community in order to perceive it as completely transparent.

Obviously, besides being non-formalized, ethical principles governing online communities are also in constant evolution because, unlike the written law, they directly reflect the common sense, as a result they register also the smallest fluctuations.

In conclusion, to find an answer to the question posed at the beginning of the paper (Is it appropriate to establish a remix ethics?), one must look at online communities and at the evolution of common

<sup>20</sup> Maffesoli, Michel: Apocalypse.

<sup>21</sup> Varela, Francisco: Ethical Know-How.

sense related to their daily practices. To the *commons* the arduous sentence.

## References

- Appiah, Kwame Anthony: *Cosmopolitanism: Ethics in a World of Strangers*, New York, W.W. Norton & Co., 2006
- Bazzichelli, Tatiana: *Networking: The Net as Artwork*, Aarhus, Digital Aesthetics Research Center - Aarhus University, 2008
- Campanelli, Vito: *Web Aesthetics: How Digital Media Affect Culture and Society*, Amsterdam/Rotterdam, Institute of Network Cultures/NAi, 2010
- Campanelli, Vito (ed.): *L'arte della Rete l'arte in Rete. Il Neen, la rivoluzione estetica di Miltos Manetas*, Rome, Aracne, 2005
- Deseriis, Marco and Marano, Giuseppe: *Net.art. L'arte della connessione*, Milan, Shake, 2003
- Keller, Daphne: 'The Musician as Thief', in: Miller, Paul D. (ed.): *Sound Unbound: Sampling Digital Music and Culture*, Cambridge, MA, MIT Press, 2008
- Lazzarato, Maurizio: *La politica dell'evento*, Catanzaro, Rubettino, 2004
- Lessig, Lawrence: *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, New York, Penguin Press, 2008
- Lessig, Lawrence: *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, New York, Penguin Press, 2004
- Lovink, Geert: 'The Data Dandy', in: Adilkno: *The Media Archive*, New York, Autonomedia, 1988. Web: <http://thing.desk.nl/bilwet/adilkno/TheMediaArchive/26.txt> (accessed 4 April 2011)
- Maffesoli, Michel: *Apocalypse*, Paris, CNRS, 2009
- Miller, Paul D.: 'In Through the Out Door: Sampling and the Creative Act', in: Miller, Paul D. (ed.): *Sound Unbound: Sampling Digital Music and Culture*, Cambridge, MA, MIT Press, 2008
- Pasquinelli, Matteo: *Animal Spirits: A Bestiary of the Commons*, Rotterdam/Amsterdam, Institute of Network Cultures/NAi, 2008
- Rifkin, Jeremy: *The Age Of Access: The New Culture of Hypercapitalism, Where All of Life is a Paid-For Experience*, New York, J.P. Tarcher/Putnam, 2000
- Varela, Francisco J.: *Ethical Know-How: Action, Wisdom, and Cognition*, Stanford, CA, Stanford University Press, 1999.