

INTELLECTUAL PROPERTY

Books on graphic design ethics use a lot of paper explaining the protection of intellectual property. Nothing is more sacred for designers than the right to originality, and nothing makes them angrier than others copying their work. Well-known designers employ lawyers to track down cases of copyright infringement.

This fixation on intellectual property is somewhat understandable as the work of graphic designers today is mostly immaterial and produces value through ideas, images, and concepts, which can be easily copied in digital form. Copyright law in itself seems benevolent, if it would protect the author against someone profiting from stealing ideas. There is nothing ethical about someone stealing another's work and profiting from it. However, copyright law doesn't really protect individual designers that well. It mostly hinders the sharing of information and blocks access to knowledge, even information and knowledge that was created publicly.

COPYRIGHT NOTICE

THE COPYRIGHT PROPRIETORS HAVE LICENSED THE MATERIAL IN THIS DVD / VIDEOGRAM FOR PRIVATE AND DOMESTIC USE ONLY AND ANY OTHER USE OF THE WHOLE OR ANY PART OF THE MATERIAL (INCLUDING ADAPTING, COPYING, ISSUING COPIES, UNAUTHORISED LENDING, PERFORMING, BROADCASTING INCLUDING IN A CABLE / TELEPHONY SERVICE OR MAKING THE SAME AVAILABLE TO OR VIA THE INTERNET OR AUTHORISING ANY OF THE FOREGOING) IS STRICTLY PROHIBITED.

DreamWorks home entertainment copyright notice, 2001.

UNITED STATES AND FOREIGN PATENTS AND TRADE-MARKS COPYRIGHTS

A COPYRIGHT

WILL PROTECT YOU FROM PIRATES.

And make you a fortune. If you have a PLAY, SKETCH, PHOTO, ACT, SONG or BOOK that is worth anything, you should copyright it. Don't take chances when you can secure our services at small cost. Send for our **SPECIAL OFFER TO INVENTORS** before applying for a patent, *it will pay you.* **HANDBOOK on patents sent FREE.** We advise if patentable or not. **FREE.** We incorporate **STOCK COMPANIES.** Small fees. Consult us.

WORMELLE & VAN MATER,
Managers,
Columbia Copyright & Patent Co. Inc.,
WASHINGTON, D. C.

Copyright notice by Columbia.

In the end copyright law does little for the majority of designers if they cannot afford lawyers. Companies such as H&M and Urban Outfitters have made it their business model to steal from other designers, aided by armies of lawyers who will see to it that they can get away with it in some form. Tech companies spend a lot of time patenting every idea, to maintain monopolies over potential future products. Because filing patents and hiring copyright lawyers is pricy, copyright law ends up serving corporations and slowing down innovation, instead of protecting individual creatives. A case in point are companies that patent words and colours, allowing them exclusive use. The company T-Mobile bought the rights to the colour magenta in 2008, a primary colour for the printing industry. They sued other companies over using a colour they claim as their own.²⁹

Culture and knowledge are collectively created and publicly funded, by systems of education, scientific research, collective historical efforts, publicly run archives, and study centres, which is

why they have been called 'intellectual commons'. Like the common lands that offered a collective space for collective making of community and resources, knowledge and culture are created collectively, and are collectively improved by discourse and innovation. Copyright law is a way of privatizing collective knowledge, and limiting access to that knowledge for the purposes of profit, a process not unlike the enclosure of the common lands that expelled peasants from publicly accessible lands. Which is why Max Haiven calls this process of limiting access to knowledge and culture 'enclosure 2.0'.³⁰

While capitalism is celebrated for its innovative qualities, patents actively restrict innovation by privatizing and therefore limiting the access to culture and knowledge.³¹ By its fixation on copyrights, the graphic design industry is defining culture and knowledge as forms of property that have to be bought and traded. Designers should profit from the works they create, but the current

Dear friends at Linotype!

THIS is indeed an embarrassing situation. To our knowledge the site you refer to **AND the activities** taking place there does **NOT** violate **Swedish** law. As a matter of fact I'm quite sure it doesn't even **violate GERMAN** law. You should also be pleased to notice that **SWEDISH** law, as far as one can tell, conforms to the specifications of the harmonisation directive **2001/29/EC**.

But let's cut to **core** of the problem. The **Pirate BAY** does not in anyway handle your **intellectual** property or any of the data contained in the designs, nor do we **RELAY** such data.

The site, and the tracker, is merely a way of connecting people; kind of like what **NOKIA** does. The actual data **IS** stored on the individual users' **computers**; if horrible crimes of bloody **MURDER** and such are being committed, **As we** speak, it is them who are the **criminals**. One would not **prosecute** Nokia just because **terrorists** use **THEIR** phones.

However, this activity is not **illegal** in **SWEDEN**. There are some more or less relevant cases from the **Swedish** Supreme **COURT**, but I doubt that they would be much use to you. **CONSIDERING** the current situation we feel that we are **obliged** to leave the torrent on the site until the Swedish law is changed or the **Supreme** Court rules that what we do is illegal.

Best wishes!

/JUDAS, on the behalf of The Pirate Bay

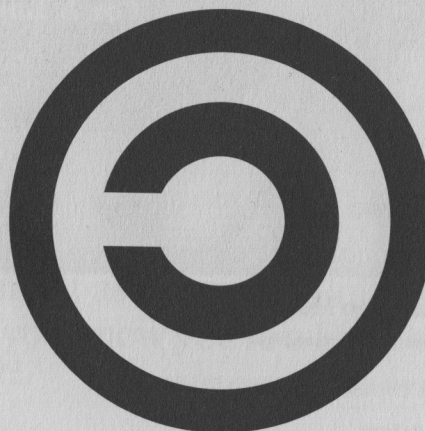
The Pirate Bay letter to Linotype, 2006.

copyright system does not live up to its claim that it serves everyone equally.

There are good alternatives to copyright that believe in the protection and care for intellectual commons. One of these is Creative Commons, a non-profit that offers various systems of open access to knowledge, promoting collaboration and creativity while protecting the creative's right to profit.³² Another one is Copyleft, a reciprocal license from the software community that looks more at culture and knowledge in the long run. If you license a work as Copyleft, it should be publicly available and everyone is allowed to modify and adapt it, as long as any derivative is also licensed as Copyleft, which means all adaptations are also freely available, and no version can ever be restricted.³³

OSP calls for a generous artistic practice that recognizes that culture is above all based on the circulation of ideas, and on the fact that any work is derivative by nature, in the sense that it is informed by preceding works.

OPEN SOURCE PUBLISHING



Copyleft logo.



Automated designed T-shirts design for sale on Amazon, 2013.

version of Adobe Photoshop. Its 'Smart Portrait filter' can alter the facial expression of an existing person's portrait: '...generating happiness, surprise, anger, or aging any portrait'.²⁵ Although marketed for personal use, it is clear how such computing power can also be used for manipulation or a culture of visual fake. A *New York Post* article interviewed influencers who said: 'Everyone's editing their photos', adding that being natural on the popular app: '... isn't always financially rewarding'.²⁶ This pushes visual culture towards an algorithmic capitalist aesthetic; a world of digital fakes and post-truth images, engineered to maximize likes, clicks, and advertising profits.

In 2017, Adobe estimated that almost one-third of all internet traffic is non-human.²⁷ Those are automatic programs called 'bots' that crawl the internet, luring humans to their generated web shops. Whatever term you search for, you will find T-shirts, mugs, and other results generated for you. An entire production chain of design, production, and shipping automated and without human intervention. These artificial intelligence systems sometimes reveal their true stupidity, like in 2013 when Amazon sold T-shirts that carried the text 'Keep Calm and Rape A Lot', and 'Keep Calm and Knife Her'. It turned out these designs, based on the famous 'Keep Calm and Carry On' design from 1939, were generated with



Disnovation.org, Pirate Cinema, still from pirated Hollywood video, 2013.

out any human oversight, and Amazon retracted the items.²⁸

Contrary to the promise that capitalism creates an abundance of choice, the aesthetics of automation have evolved into a more uniform visual culture. On top of that, access to technology is distributed very unequally worldwide. High-bandwidth internet is limited to urban areas, primarily in wealthy countries. One in four people in the world does not have access to internet, and 60 per cent doesn't have a smartphone.²⁹ Large parts of the world population have to make do with low-resolution images, pixelated cinema, or no digital communication at all. In an essay from 2012, artist and writer Hito Steyerl speaks of a 'class of images', where HD, 4K, and rich visual media are available to those with access to technology and the money to pay for copyrights, while the rest of world is left with visual debris, the so-called 'poor images'. Understanding images as an expression of inequality, reveals the ownership and production standards of images. Steyerl also finds an empowering potential within the poor image: 'The economy of poor images', she says, 'enables the participation of a much larger group of producers than ever before'.³⁰

The Hacker Ethic

The data economy has proven to be just as exploitative and proprietary as the manufacturing economy that preceded it. The more digital the work of graphic designers is becoming, the more

the privately owned infrastructure will influence the production process and the aesthetics. The tools that graphic designers use are owned by companies that answer to shareholders: Adobe, Apple, Google, Facebook, and Linotype. They create the code, standards, platforms, colours, and filters that shape a lot of graphic design.

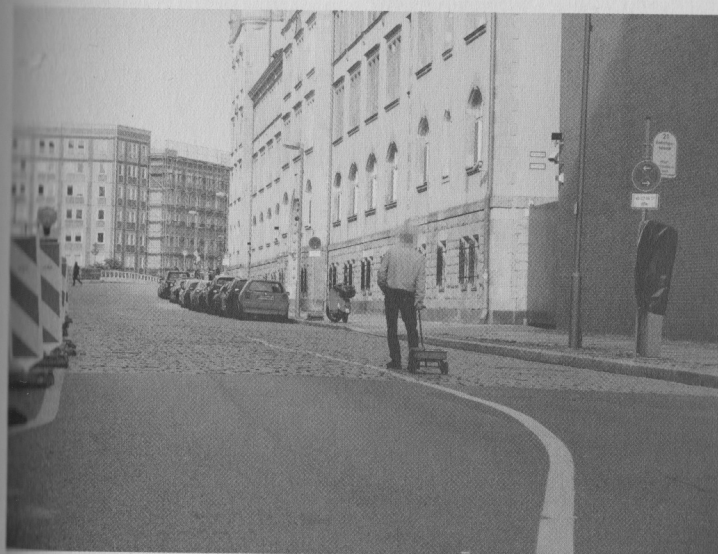
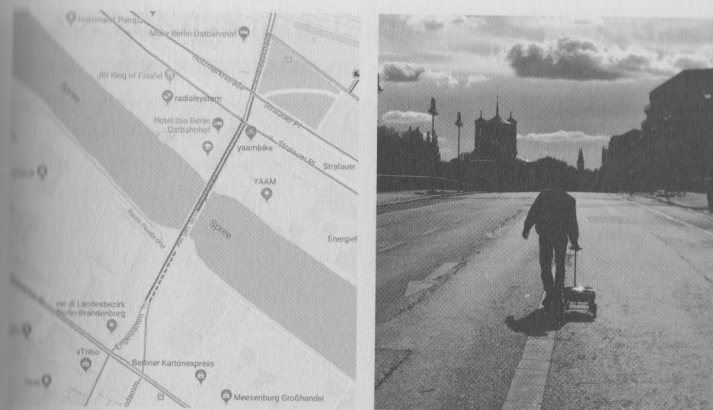
What designers can learn from hackers is that in order to use tools critically, they need to be understood, adapted, and customized. 'Designers need to learn how to write, read, and fix code. They need to get literate before they can call themselves hackers', says Anja Groten from Hackers & Designers.³¹ This is why more and more design schools teach coding, so that designers can create their own tools and filters in order to customize their designed output. This makes designers less dependent on preformatted tools from media companies.

Some argue that designers don't need to learn to code in order to understand the tools they use. In his book *New Dark Age*, James Bridle warns that good programmers can be just as uncritical of the economic and social context of technology and that it is more about learning a critical understanding of technology than the skill of coding itself.³² A good example is the traffic jam that artist Simon Weckert created in March 2020. He noticed that Google Maps uses location data from users to warn for traffic jams. Weckert put 99 smartphones with location tracking in a hand barrow, and walked with it through Berlin. This tricked Google Maps into thinking large buses were jamming the traffic, while there was in fact very little traffic. No matter how 'smart' technology is, a good idea can still outsmart it.³³

Open Source

The digital technology available today was developed by sharing source codes and hardware blueprints. Artist and developer Roel Roscam Abbing points out that early social media platforms were developed together with users, such as Twitter where the @ and the # were proposed by users before they became recognizable features.³⁴ Early computer users were also actively building and programming the platforms. The process of peer production is a form of collective making that is also used for websites like Wikipedia.

Richard Stallman echoes Bridle's concern that it's not about



Simon Weckert, Google Maps Hacks, 2020. Image via simonweckert.com/googlemapshacks.html

teaching everyone to code, but about open collaboration. 'Either the users control the program, or the program controls the users.' Free/Libre, or open-source software (FLOSS) can do just that. The source code of FLOSS is freely available so others can modify, improve, and redistribute it. Open source doesn't mean that all software should be free, or that the work of programmers has no value. Stallman explains that this is about software 'that respects

Every non-free program is an injustice

RICHARD STALLMAN, DEVELOPER



Chaos Communication Congress, Leipzig, Germany, 2017.

users' freedom and community'.³⁵ More and more designers bring the hacker mentality into graphic design, for instance Open Source Publishing (OSP) from Brussels, Belgium. This graphic design collective only uses free and open-source software. One of their activities is designing typefaces with open-source tools, which are released as Libre fonts, 'meaning they are released under libre software licenses that allow modification, re-distribution and use'.³⁶ In the last chapter you can read more about how OSP makes graphic design using open-source software.

Activism surrounding open-source software reminds us that a reciprocal exchange of knowledge is not a given, but must be defended against continuous attempts at enclosure by capitalism.³⁷ The software and hardware that is now sold, was in large part collectively built using open-source software, by exchanging ideas and blueprints. Tech companies have understood well how collective sources can be enclosed and exploited. Platforms such as Airbnb and Uber have successfully appropriated resources that were first for free social use, like letting someone use your spare room, or giving someone a ride, and have turned it into the

'sharing economy'. These companies effectively have used a visual language that appears social and community-like, while in fact they are robbing us of our few remaining social potential spaces that we have for equal exchange, while profiting from it. A process that Max Haiven calls 'enclosure 3.0'.³⁸ This goes to show that these 'commons' where social exchange is possible outside the market, even if it is sharing a room or giving someone a ride, need to be defended against enclosure if we appreciate their social value.

Ethical Digital Design

As we have seen, hacker culture provides a valuable guideline for all critical makers—including designers—in the form of what is known as the hacker ethic. Although not limited to one manifesto or text, it is helpful to quote some of the texts associated with it. First the seminal book *Hackers* (1984), in which Steven Levy says: 'Access to computers should be unlimited and total', and that the hacking ethic is about 'all information should be free', and hackers 'should be judged by their skills, not by their background, ethnicity, gender, position, or education'.³⁹ The second one is from digital activist and designer Aral Balkan, who co-wrote an ethical design manifesto in 2017:

Technology that respects human rights is decentralised, peer-to-peer, zero-knowledge, end-to-end encrypted, free and open source, interoperable, accessible, and sustainable. It respects and protects your civil liberties, reduces inequality, and benefits democracy. Technology that respects human effort is functional, convenient, and reliable. It is thoughtful and accommodating; not arrogant or demanding. It understands that you might be distracted or differently-abled. It respects the limited time you have on this planet.⁴⁰

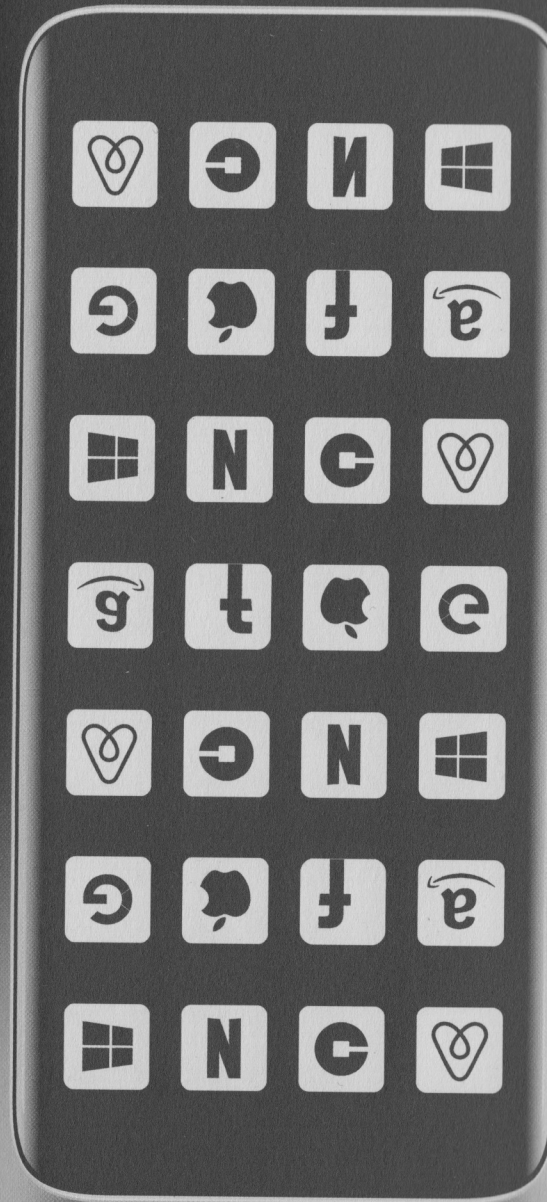
The Dutch collective Hackers & Designers brings together disciplines for hybrid experiments. Anja Groten is one of the founders, and writes: 'Hacking is not discipline-specific.' She sees hacking first and foremost as a social activity. 'The technologies we are building and using are created by a vast number of other people.'⁴¹ Hackers & Designers invite both creatives and developers to

Hacking is a way to emancipate users of technology from being passive consumers to becoming critical makers.

ANJA GROTEN, DESIGNER

experiment in workshops with critical making: a way of engaging with design and technology in a playful manner that challenges ownership of the network. Certain aspects of the hacker have already been appropriated by tech companies and used for profit motives. It is essential that the hacker ethic is not just practiced, but its values should also continuously be defended and propagated.

Designers who are intrigued by the hacking mentality, but don't know where to start: it's a good thing that hackers embrace the digital commons and often share their knowledge. Documentation, tutorials, and instructional videos can be found everywhere on the web for free. A good start are the annual hacker conferences such as Chaos Computer Congress in Germany, and Defcon in the US. All lectures can be viewed for free online at media.ccc.de and media.defcon.org. Artists and designers are regular visitors and speakers, and although some lectures are technically challenging, they often are practical. One of the lectures at Defcon 16 in 2013 explains in detail how to hack outdoor digital billboards.⁴² What does the hackers mentality have to offer? Anja Groten from Hackers & Designers sums it up: 'Hacking is a way to emancipate users of technology from being passive consumers to becoming critical makers.'⁴³



→ Disnovation.org, Profiling the Profilers, 2018–2019.