



# The shame of creativity - a (not so) legal view on counterfeit

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## The value of creation

I have always tried to look at Intellectual Property from a human perspective and not from an exclusive legal point of view, because I truly think Intellectual Property is about human being.

And as I wanted to follow that idea for this article, I read something that I found pretty interesting.

In *M Le magazine du Monde* n°22228 dated July 2nd, 2016, you can read [the story of Yander Zamora](#), a photographer who took a worldwide published picture of Air Force One landing in La Havane. Yander Zamora sold his picture to Reuters, the press agency, despite the fact that he is employed by a Cuban journal.

Journalist Géraud Bosman-Delzons explains in his article, that it was not the first time this photographer did that but it was the first time he accepted to be credited as the author.

Why the fact for a photographer to fully enjoy his paternity right would need an article, you might ask?

Well, what the journalist explains is that the Director of "Granma", the journal Yander Zamora works for, told the young photographer that he didn't appreciate the fact that he also works for Reuters and doesn't loyally give all his work to the journal.

What we also learn is that the Director of the journal admitted the fact that he couldn't pay Yander Zamora enough for his work.

And while I was reading that article, what I found striking is the notion of value of the author's rights. For this employer, the value of the Intellectual Property rights of the photographer is directly connected to a notion of loyalty.

The concept that lies beneath the story is: if I cannot pay for your Intellectual Property rights, you should still be loyal, give them to pay and accept not to be paid enough for your creation.

In our laws, we do protect strongly the right for an artist to be paid for his creations, and the right to be recognized as their author.

We are quite lucky to have such legislation in place.

In a place where this type of laws that we have don't exist, someone like Yander Zamora would have to sell his works secretly without asking for the right to be recognized as the author.

Guess what, that's exactly what happened to this photographer who sold many of his pictures to Reuters, asking to never credit his name.

The notion of loyalty was so strong that he had to give up on that and also on the moral value of his shots. The judgement of the journal's Director on the value of Yander Zamora's works changed the way the photographer dealt with his rights.

## **Our judgment on creation**

After reading that article, I realized that not only this journal Director, but all of us, have a different perception of the value of creation.

As soon as we look at a piece of art, as soon as we listen to the first seconds of a song, as soon as we lay our eyes on the first minutes of a movie, we judge it.

But we never see this judgment as something subjective that only applies to us, and relates to our tastes, education and habits.

We just frankly and honestly judge it, and are immediately willing to set up the price that we are willing to pay for it.

Remember when your mom told you: don't say it's disgusting, say you don't like it?

We should apply this sound advice when it comes to creation.

And the law does a pretty good job at following this advice.

It is clear in Europe that we, as artists, creators, innovators, own Intellectual Property rights on our creations regardless of their merit or their value.

We surely think about it when we create. But do we when it comes to judging other people's creations?

It is precisely when we take a judgmental look at someone else's creation that we can come up with subjective analysis like: why would I pay for this movie instead of downloading it for free if it's not good?

Piracy is directly connected to our estimation of the value of creation. As soon as a user estimates that a song, a movie, or any piece of art, is not good enough, he is willing to access it without giving one single dime to its creator.

Strange fact is, this same user still wants to own this exact creation he despises, but he sets up the price of it regarding the value he gave to it.

That sounds pretty much like being our own judges.

And that is a problem when it comes to following the law.

## **We are our own judges**

When I realized that one of the problems about piracy is that we allow ourselves to be our own judges, I tried to understand how we came to such a situation.

If you look at music for example, have you ever thought of not paying the price on the label when checking out of the store?

The new era of technology we live in has changed our vision on things.

How?

In his TED conference "[The key to growth? Race with the machines](#)", Erik Brynjolfsson explains how he sees and defines the new age we live in.

He considers it to be "digital, exponential and combinatorial", and I think these three words make a very good job at defining it.

But these three words make it hard for Intellectual Property laws to adapt.

“Digital”.

We live in a digital world where everything can be replicated by anyone.

You just need an iPhone to take a great picture, publish it online, make it famous by sharing it worldwide and selling it to an official press agency.

You just need a computer to write a book, send it to Amazon, auto-publish it and make money out of it.

And you just need an incredibly affordable Netflix membership to have instantly access to thousands of movies and TV Shows.

The value of Intellectual Property rights lying behind every creation has declined because of this digital duplication. Everything is about copy and paste.

Would you give value to the action of copying and pasting?

At college, we have learned that there is no value to a work done by only copying what you read. You have to build something upon the knowledge you get from your readings, to make your creation count.

Users look at creation through the access and the service provided only.

What they see is the fact that Netflix has servers and algorithms that can provide them with a mass of programs.

Do they make the distinction between the technical service provided and the programs themselves? I am not sure about that. The duplication process brought to us by technology has broken our understatement of what creation really is.

And the other two words used by Erik Brynjolfsson won't help either.

"Exponential" won't, because laws have never been the fastest and easiest things to deploy, whereas new technologies are.

"Combinatorial" won't help either as new technologies expand on top of each other thanks to the users themselves.

In this world of automated processes, we have lost our connection to an essential process: creation.

And it's by understanding creation that we can understand what Intellectual Property rights are all about, and give them the value they deserve.

We don't know how a TV Show is produced, shot and edited.

We don't know how much work is needed for a song writer to have his album in stores.

We don't know what time it took to this young writer to come up with this amazing story about wizards and muggles.

What we see is the ease of copy and paste, the ease of access to everything we want, the ease of being our own judges and decide whether we are going to buy in stores this wonderful album that we love, or download it for free on the internet because we don't like it that much, but yet, still want to own it.

## **Reconnect to creation**

All governments fight against counterfeit and piracy of artistic creations.

I think there is another way to make users change their mind about the value of creation, and the value of Intellectual Property rights.

We need to reconnect the users to the creation process.

When I was running Mangako a few years ago, a young digital publishing house specialized in manga, I sadly realized that many of our users were complaining about paying 1.59 Euros for a chapter, because they thought the money was going entirely in the publisher's pocket.

It is a pretty standard argument raised by hackers to justify piracy over the web, along with the well-known "this artist has already earned enough money with that song, he doesn't need more".

Truth is, in our creation process, only the author was paid.

And the sales wouldn't cover all our money expenses including production, translation and edition.

When we decided to shut down Mangako, I kept thinking that we might have not taken the chance

to explain that creation process enough to our readers.

Would it have been different if we had found a way to make them pay the authors directly, or at least, understand clearly what, in their payment, was going to the author?

We need to explain.

We need to show what long processes lay behind every creation, so that creators don't have to be ashamed of asking money for it, and live on that money.

It is not because you think that this new Disney animated film has made the studio earn enough money, that you have the right to tell the creators behind, that they don't deserve to get paid for the years they have spent creating something for your entertainment, whether you like it or not.

An inventor should never hear that he is taking advantage of his Intellectual Property rights without doing anything.

He has accomplished something by coming up with an innovation, filing a patent and, in a way, changing the world.

And these creation processes take years. Years to think, define, adjust, and make the most out of an idea so that you can get the best experience ever, even sometimes a life-changing experience.

The value of Intellectual Property should never be associated with shame.

Next time, come up with an animated movie, a song that moves people throughout the world, or an innovation that can change people's lives, and you will never talk the same about the value of Intellectual Property rights, neither be ashamed of it.