

# Remote Control: The Rise of Electronic Cultural Policy

By  
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Since the early 1990s, the United States has been formulating, executing, and imposing a form of “electronic cultural policy.” This phrase means two things: a state-generated set of policies to encourage or mandate design standards for electronic devices and dictate a particular set of cultural choices; and the cultural choices themselves, which have been embedded in the design and software of electronic goods. The goal of electronic cultural policy has been to encourage and enable “remote control,” shifting decisions over the use of content from the user to the vendor. The intended macro effects of such micro policies are antidemocratic. Their potential has created the possibility of a whole new set of forms of cultural domination by a handful of powerful global institutions. Yet so far, the actual consequences of these policies have been different from those intended, igniting activism and disobedience on a global scale.

*Keywords:* copyright; encryption; cultural imperialism; trade

The relationship between digital technology and creative imagination is becoming more complex and less predictable every day. While once it seemed obvious and easy to declare the rise of a “network society” in which individuals would realign themselves, empower themselves, and undermine traditional methods of social and cultural control, it seems clear that networked digital communication need not serve such liberating ends (Castells 2000). In fact, the struggles between extreme forces—information anarchy and information oligarchy—have rendered any simple formulation of the new creative age almost immediately archaic (Vaidhyathan 2004).

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A fierce global battle is raging over the terms of access, use, reuse, combination, recombination, execution, and distribution of cultural materials. It is not necessarily aligned along a North-South axis; it is more often a struggle between individuals and communities that are reaching out and puncturing the fragile, permeable membranes of state-set cultural limits. At stake is Antonio Gramsci's notion that "all men are intellectuals" in that they may work to "sustain a conception of the world or modify it; that is, to bring into being new modes of thought" (Gramsci and Forgas 2000). While inexpensive digital technology has exponentially expanded the power of individuals to master their own media spaces and manipulate texts and images in ways that seem to signal an age of "semiotic democracy" (Coombe 1992), powerful forces have acted to reengineer—one might say "reimagineer"—from above these otherwise liberating and empowering systems.

The nexus of such reimagineering is electronic cultural policy. It is a particular flavor of cultural policy that guides the architecture of interfaces, networks, standards, protocols, and formats that house and deliver cultural products. Cultural policy is itself an understudied factor in global cultural change (and stasis). Only recently have scholars such as Toby Miller, George Yúdice, Stanley Katz, Gigi Bradford, and Lawrence Rothfield taken seriously the systematic interactions between states and cultural practices, between the bureaucratic and the creative. Although it is common in the United States to assume that culture is in general subject to minimal state influence (with the obvious counterexamples of lightly funded yet oddly controversial national endowments), much of the mechanics and economics of culture are subject to heavy levels of governance from the state. Trade policies, defense policies, and educational policies all have cultural elements to them and depend on complementary cultural policies to generate consensus and mobilize support. As Toby Miller and George Yúdice (2002) wrote, "National cultural policies are, then, a privileged terrain of hegemony."

## The Goblin Edit

Increasingly, digital creators are puncturing this hegemony. They are employing tools that allow them to evade some of the most powerful instruments of cultural policy. They are undermining many of the explicit goals of nationalism and capitalism. And they have tripped political alarms in ways that make powerful interests demand more expansive means of enforcement. One example of such practice is the work of the Goblin.

The Goblin is the pseudonym of an amateur Russian digital video editor named Dmitri Puchkov. Not satisfied with merely watching illegal copies of Hollywood films, he has differentiated some products within the rather crowded Russian video market. The Goblin redubs non-Russian films into colloquial Russian, trumping the rather unsatisfying subtitle translations available on the market (Walsh 2003). The Goblin's greatest hits are redubs of the first two of the *Lord of the Rings* trilogy. By rewriting the script and recording the soundtrack, he turned Frodo Baggins into Frodo Sumkin and the rest of the "good" characters into carica-

tures of incompetent Russian officials. The evil Orcs became Russian gangsters. Gandalf the Wizard constantly quotes Karl Marx. The Goblin is doing what Gramsci celebrated. He is “bringing into being new modes of thought.” He is remastering the cultural signs that are given him and refashioning them to fit his daily concerns and specific political environment.

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Puchkov originally made these new versions for his friends, but they made copies and spread them widely. Pirate video merchants all over Russia are distributing Goblin edits, which are in high demand, for about \$10. By throwing out the old soundtrack and revising the characters completely, the Goblin has produced a new work, one that does not directly compete with the original in the marketplace. No one who wants to watch the original “good” Frodo Baggins would want the Goblin version in its stead. But the real value of the Goblin edit is that it uses a familiar English text and Hollywood production (and New Zealand settings) to comment on Russian politics and society. This is multilayered cultural criticism and revision that cleverly surpasses the influence of the original in its relevance to current events. It should make some feel queasy and others giggle. It should make everyone pause and think. It makes Hollywood nervous and angry (Vaidhyanathan 2004).

What are the implications to the cultural, political, and economic status of Hollywood if all films are to be considered permanent “works in progress”? Should creativity be reserved for professionals and experts? Or will teenagers in their basements and libraries be able to soup up or strip down the signs, symbols, and texts that make up such an important part of their lives? Should the major companies in the global motion picture industry, bolstered by the political power of the United States government, be able to dictate the form and format of distribution around the globe? What are the implications for local cultural forms if powerful media companies use law and technology to ossify their advantages? In lawsuits, congressional hearings, and international negotiations, Hollywood studios claim they need maximum and near-permanent control over their products to justify the massive investments they make in production, marketing, and distribution. The commercial film industry and the governments that do its bidding are willing to go to

extreme measures to preserve their global cultural and commercial standing. What does a consideration of practices such as the Goblin Edit and the predictable policy backlash from Hollywood reveal about the notion of “cultural imperialism”?

### Not Exactly “Cultural Imperialism”

“Cultural imperialism” has become a cliché. The academic “cultural imperialism thesis” is in severe need of revision. Once dominant among leftist critics in the 1970s and 1980s (Schiller 1976), it has been supplanted and modified by the rise of cultural studies (Tomlinson 1991). Yet it still resonates in North-South public discourse and some anxious corners of academia (Feld 2001). While those who complain about cultural imperialism cite the ubiquity of KFC in Cairo and the McDonalds in Manila, anxious cultural protectionists in the United States quiver at the sound of Spanish spoken in public or mosques opening in Ohio. Some American nationalists argue that cultural imperialism would be good for the world, as we Americans have so much figured out (Rothkopf 1997). Others dodge its complications by celebrating “Creolization” at all costs, while ignoring real and serious imbalances in the political economy of culture (Cowen 2002). While the evidence for cultural imperialism is only powerful when selectively examined, the evidence for infrastructural imperialism is much stronger. There are imbalances of power in global flows of culture, but they are not what traditional cultural imperialism theorists claim.

Instead, it seems that if there is a dominant form of cultural imperialism, it concerns the pipelines, not the products—the formats of distribution and the terms of access and use. It is not exactly “content neutral,” but it is less necessarily “content specific” than cultural imperialism theorists assume. The texts, signs, and messages that flow through global communications networks do not carry a clear and unambiguous celebration of ideas and ideologies we might lazily label “Western”—consumerism, individualism, and secularism. These commercial pipelines may carry texts that overtly hope to threaten the tenets of global capitalism, like albums by the leftist rock band Rage against the Machine, films by Michael Moore, or books by Naomi Klein. Time Warner does not care if the data inscribed on the compact discs it sells simulate the voice of Madonna or Ali Farka Toure. What flows from North to South does not matter as much as how it flows, how much revenue the flows generate, and who may reuse the elements of such flows.

### Domestic Electronic Cultural Policy

The battle over formats and terms of delivery and distribution date back to the struggles to regulate early radio in the United States. From the beginning of “mass” electronic media in the United States, it became clear that major industry players were wise to capture regulatory initiatives to limit competition. By moving technical standards into the realm of licensing, fewer voices could influence public delib-

eration and distract consumers from the loudest calls for their attention (McChesney 1993).

This model of industry-state synergy extended through the twentieth century to broadcast television, cable television, and telecommunication. In stark contrast, the Internet developed as a content-delivery network with minimal state oversight and no dominant firms dictating standards or restricting entry into the content markets. (Microsoft's late, triumphant entry into the browser market and Google.com's dominance of the search engine are the major exceptions to the early hypercompetitive nature of the Internet, yet neither achieved dominance with the aid of the state; Lessig 1999.)

As the Goblin has demonstrated, the combination of a relatively open, relatively inexpensive medium such as a global, expanding, packet-switching digital network and powerful, adaptable, customizable, portable personal computers has generated some remarkable opportunities for democratic creativity. Panic over such radical democracy has also pushed established content producers to try to rein in the democratic nature of both the personal computer and the Internet (McChesney 1993; Vaidhyanathan 2004).

In one sense, such widespread democratic cultural production (peer-to-peer production, one might say) seems less than revolutionary. It merely echoes how cultural texts have flowed through and been revised by discursive communities everywhere for centuries. Texts often undergo a process similar to a game of "telephone," through which a text is substantially—sometimes almost unintentionally—distorted through many small revisions. In some cases like the Goblin Edit, however, something more is going on. This is an example of a direct ideological challenge to an oppressive and corrupt political system. A disempowered member of that system is using democratizing technology (digital editing software, a personal computer, an optical storage drive, the Internet, etc.) to revise a dominant, global, and powerful commercial product for local needs. This is occurring within a context of increased partnership and cooperation between the Russian and American governments in matters of cultural and technological policy (i.e., global intellectual property treaties and the instruments designed to enforce them). Such radical textual revisions have occurred in other contexts and have helped build political critiques, if not movements. For instance, historian Lawrence Levine (1988) has documented how working-class players and audiences in nineteenth-century America adapted and revised the works of William Shakespeare to their local contexts, concerns, and ideologies. And historian Eric Lott (1993) has shown how *Uncle Tom's Cabin* was reworked by working-class white communities to aid the cause of racial dominance instead of the Christian liberationist message the book was intended to serve. Whether serving progressive ends or regressive, racist ones, cultural democracy (and thus the technologies on which it depends for revision and distribution) can have profound political effects in the real world. Elements and themes from such recaptured and reworked texts may serve as raw material in the development of ideologies or agendas. And they may stir hearts and minds toward actions.

## Sites of Electronic Cultural Policy

By the end of the twentieth century, major cultural industries in the United States decided that copyright was obsolete and insufficient to protect their interests and expand their markets. Copyright, as it had emerged in much of the world, granted strong public interest safeguards such as “fair use” or “fair dealing,” nonprotection of facts and ideas, and eventual expiration and entry into the public domain (Vaidhyanathan 2001). Frustrated with the longevity and strength of these democratic safeguards, the leaders of copyright-producing industries started a steady movement to shift the site of regulation from civil courts to machines themselves. Understanding that multilateral policy-making bodies had the power to impose policies on sovereign states without deliberation or compromise within them, industry leaders and representatives from the U.S. Patent and Trademark Office and Department of Commerce employed forums like the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) and regional organs such as the European Union (EU) and the Free Trade Area of the Americas (FTAA) to gain leverage and avoid public interest nongovernmental organizations (Sell 2003). They sought to standardize intellectual property across the globe as more nations joined the ranks of the industrialized and consumptive. American and European companies seeking new markets did not want to see their products copied in countries with weak or no intellectual property protections. So the developed world pushed for the establishment of WIPO and the Trade Related Aspects of Intellectual Property Rights (TRIPS) accord. WIPO members generate treaties and agreements about global intellectual property standards. Signatories of the TRIPS accord may, through the WTO enforcement mechanisms, seek retribution for a violation of intellectual property standards or enforcement by another.

In the 1980s, the United States tried to use WIPO, under the auspices of the United Nations, to negotiate the first round of global electronic cultural policy treaties. After encountering resistance, and realizing that such a forum allows developing nations the ability to form blocs and act in concert to protect their interests, the United States moved its intellectual property efforts into the mainstream trade negotiations through the General Agreement on Tariffs and Trade (GATT). As GATT morphed into a permanent resolution body, the WTO, in the 1990s, the United States used it to force nations that sought favorable trade in other areas to sign the Agreement on Trade Related Aspects of Intellectual Property (TRIPs), a set of global minimal standards for copyright, patent, trade secret, trademark, semiconductor, and geographic marker regulations (Sell 2003).

But by 2001, the United States found that its leverage at the WTO was weakening, most significantly because of failures to standardize intellectual property regimes. In this case, however, it was the patent system instead of the copyright system that stifled the global reach of American policy. Many developing nations—some overwhelmed by the spread of HIV and AIDS—stood their ground on measures to allow production of generic versions of expensive HIV-retarding drugs.

The Doha Round of the WTO negotiations made it clear that the United States and Western Europe could not globally dictate the terms of intellectual property. The efforts of these developing nations were bolstered by a large, vocal, and growing human rights campaign that focused on how the U.S. patent system rendered essential drugs unaffordable to millions of needy people throughout the world (Mayne 2002).

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Such globalization and standardization efforts have generated much consternation among developing nations. But most of the opposition has laid within areas of regulation that have much clearer life-or-death ramifications, such as agriculture, pharmaceuticals, and the exploitation of natural resources and rare biological material. Farmers do not always appreciate being told they must respect limits on the use and replantation of patented seeds and plants, and gestational publishing and media companies must play by rules written by their more powerful and established global competitors. Yet Northern concerns that developing nations serve as havens for software and video pirates (and huge potential markets for cultural goods and pharmaceuticals) has kept the pressure on their governments to adopt and enforce laws that resemble those of the United States and Western Europe.

As a result of the 1997 WIPO Treaty, many countries, including the United States, have passed laws forbidding the distribution of any technologies—even simple mathematical algorithms—that might evade or crack access or copy-control mechanisms that surround digital materials. Such digital rights management technologies protect not only copyrighted material but also material that is already in the public domain and facts and data that are not covered by copyright law. Digital “lockdown” grants far greater control over works than traditional copyright law ever did. Through such laws as the U.S. Digital Millennium Copyright Act (DMCA), information regulation is leaving the realm of human judgment and entering a technocratic regime instead.

By any reasonable measure, recent changes that expanded the powers and lengthened the terms of copyrights in the United States have been complete fail-

ures. The changes have done nothing to stem real piracy and nothing to prevent widespread file sharing. Yet they have burdened scientists, librarians, scholars, students, and engineers. They have chilled some political speech, art, and Web linking. These radical changes have been hard on the legitimate users of copyrighted materials and irrelevant for those who flaunt laws and technological controls. Librarians worry while pirates flourish. Where once users could assume wide latitude in their private, noncommercial uses, now a layer of code stands in the way of access to the work itself, preventing a variety of harmless uses. Because access controls allow content providers to regulate use, they can set all the terms of use. The de facto duration of protection under legally protected technological restrictions is infinite. While U.S. copyright law in 2001 protects any work created today for life of the author plus seventy years, ninety-five years in the case of corporate “works for hire,” electronic gates do not expire. This allows producers to “recapture” works in the public domain. This also violates the constitutional mandate that Congress pass copyright laws that protect “for limited times.” The DMCA and other such global legal regimes work over and above real copyright law (Lessig 2004 **1999 IN REFS**).

Most dangerously, the DMCA ensures that producers may exercise editorial control over the uses of their materials. They can extract contractual promises that the use will not parody or criticize the work in exchange for access—many Web sites already do this. Just as dangerously, the DMCA could enable producers to contractually and electronically bind users from reusing facts or ideas contained in the work. Despite the ineffectiveness and counterproductivity of the law and the technology it supports, the copyright industries insist on defending the DMCA as if their futures depend on it. Despite its failures to protect music and video, some have found a use for the DMCA. It is more important than ever in garages, offices, and living rooms as a method to restrict competition. Increasingly, hardware industries (industries outside what are generally considered “software” or copyright industries like film, music, text, and computer code) are using the DMCA to lock in monopoly control over secondary goods. These are goods that have nothing to do with copyright, nothing to do with creativity, knowledge, or art. Because it is possible to put a computer chip into almost anything, companies do. If a company puts software on a chip that sits on a removable part of a machine, and puts some other software on a complementary chip in the larger device, the DMCA prevents another company from developing a replacement for that part (Vaidhyathan 2004).

## Regulating Global Broadcasting

The most ambitious attempt at imposing electronic cultural policy on the rest of the world involves a draft treaty considered through 2003 and 2004 by WIPO. It is officially called the Consolidated Text for a Treaty on the Protection of Broadcasting Organizations and colloquially the Global Broadcast flag provisions. This draft treaty would bind all its signatory states to create a sui generis property right over

broadcasted video content. Broadcasters (not copyright holders) would control the distribution rights to the material. Consumers would have no established rights to copy for home use, later viewing, or adaptation and alteration to cope with sensory disabilities. Even the broadcasting of public domain works would “recapture” them so that the broadcasters would have control not unlike maximum copyright protection. As with the DMCA, anyone who circumvents copy control or distribution control technologies would face severe penalties. Such provisions, if globally adopted, could shut down independent video-recording firms like TiVo and ReplayTV and replace them with recorders owned by, controlled by, and monitored by broadcasters such as News Corporation (WIPO 2004).

The American broadcast flag story is less alarming (if only because consumer advocates and the electronic industry tempered it) but just as important. The big movie studios, through their lobbying organization the Motion Picture Association of America (MPAA), claim they need to rein in the rampant sharing of digital files over peer-to-peer networks, even though such sharing will continue as long as there are hackable DVDs on the market. To gain a remarkable amount of control over personal mediascapes, the major studios and broadcast networks have come up with proposed technological standards that would guide the use of the digital signals in broadcast television. These FCC-mandated standards would require electronics manufacturers to build into their televisions devices that would regulate the access to and copying of encrypted material. They would determine which devices could and could not play material that contains a small bit of code called a “broadcast flag.” The presence of the flag would tell a digital device (computer, home digital recorder, television, etc.) whether the content is authorized to be played. One may still record *The Sopranos* for later home viewing using an old analog machine such as a VHS recorder. But VHS is a dying medium. Electronics stores are considering dropping VHS players from shelves in favor of digital video recorders like TiVo and nonrecording devices like DVD players. Video stores are expanding their DVD offerings and shrinking VHS space. So as they break, VHS machines will find their way to landfills and museums. And with them, substantial consumer autonomy will go as well. The U.S. broadcast flag has two major problems. The first has to do with consumer rights. The second—and perhaps the more important issue in the long run—concerns creativity and innovation. One of the basic tenets of U.S. media law in the past two decades has been that users have a certain amount of autonomy to make choices about how, when, and in what form they will use lawfully acquired content within their homes. Private, noncommercial, noneducational uses are generally considered noninfringing. Among users, the concept of fair use has grown into a penumbra of rights that copyright users confidently enjoy without fear of being sued. Either the law does not explicitly forbid such uses (such as making mixed tapes or CDs), or it explicitly allows them (such as time-shifting television programs) (Vaidhyanathan 2001).

U.S. leaders are considering even more extreme electronic cultural policy measures. One bill introduced to Congress in 2003 would allow copyright holders to hack in and disrupt a computer’s ability to communicate with others if they suspected it might be distributing their material—all without due process. Another

bill would require all machines that work with digital code—from microwaves to MP3 players to mechanical pets—to include copy-control technology that would restrict their customizability. As each effort to install new controls into digital infrastructure fails, industry leaders clamor for more intrusive and restrictive measures. Each of these proposals pushes the global information ecosystem toward a condition of disequilibrium, igniting unpredictability where all yearn for stability and proprietary restrictions where many yearn for openness. Understandably, there is a creative and political backlash.

### Cultural Anti-Imperialism

In early 2004, word quickly spread among Internet-connected music fans that a mysterious producer known only as DJ Danger Mouse had, in a flash of recombinant brilliance (or Creole creativity) mixed the lyrical tracks from Jay-Z's recent *Black Album* with the harmonic bed of the Beatles's 1968 album, *The Beatles*, known widely as the "White Album." Danger Mouse, whose real name is Brian Burton, made a particularly bold and witty move by blending two entire albums, making them talk to each other and discover their common rhythmic core. While bold, "The Grey Album," as Danger Mouse called it, was only the most recent and most high-profile example of the phenomenon of "mash-ups" or "mashes." For more than five years, amateur producers have been using inexpensive mixing software such as ProTools to create stunning and surprising mixes of temporally disparate music. One noteworthy example combines the guitar riffs from Nirvana's 1991 hit "Smells Like Teen Spirit" with Destiny's Child's 2001 hit "Bootylicious." Another features the hook from the Clash's 1983 song "Rock the Casbah" with Pink's "Get the Party Started." Mashups have attracted the attention of lawyers representing major music publishers and record labels. Danger Mouse agreed to cease distributing copies of "The Grey Album" after lawyers from the Beatles's label, EMI Music, demanded he do so or face civil penalties. Despite Danger Mouse's willingness to conform to legal demands, his work continues to move through Internet music communities. In fact, in February 2004, dozens of Web sites flaunted EMI's authority and made statements about the cultural value of digital remixing and sampling by openly posting the songs from "The Grey Album." Their coordinated protest was known as "Grey Tuesday" (Walker 2004).

This phenomenon seems fresh and almost revolutionary when examined exclusively through the medium of the Internet and its effects on the major commercial music industry (Walker 2004). But it is merely the latest incarnation of a widely shared, deeply embedded cultural habit of cultural recombination across time and space. This habit has found voice in works as canonical as Mark Twain's *Adventures of Huckleberry Finn* (1884) and *A Connecticut Yankee in King Arthur's Court* (1891) and as disposable as David Shire's "Night on Disco Mountain" from the soundtrack of *Saturday Night Fever* (1977). It was central to the development of hip-hop culture in the 1970s, when DJs challenged themselves to surprise and tickle audiences with odd and unexpected live mixes of beats lifted from

Kraftwerk, the Beatles, or Led Zeppelin with elements of rhythm and blues hits or funny sounds captured from television. But now such recombinant “creative destruction” is harder and more expensive than ever. The only room for it is underground or through anonymous channels of distribution like peer-to-peer file sharing networks or global piracy trade routes (Vaidhyanathan 2001).

## A Global Free Culture Movement?

Because of recklessly designed multilateral policy initiatives, global information regulatory systems are absurd. Participating in a pirate economy is easier than ever. Participating in a legitimate, competitive economy is easier than ever. Participating in a legitimate information or cultural economy is harder and more expensive than ever. Such absurdity stems from a widespread anxiety that digitization and networking would wreak havoc on cultural industries. To some extent they have. To an equally important extent, they have locked winners into place and chilled legitimate free markets of technology and creativity while granting prominence to illicit and subversive creativity and distribution. The spread of such top-down global electronic cultural policy has the potential to chill both technological and cultural experimentation.

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[The Global Broadcast flag] provisions, if globally adopted, could shut down independent video-recording firms like TiVo and ReplayTV and replace them with recorders owned by, controlled by, and monitored by broadcasters such as News Corporation.