Chapter 11
Law, Deviation and Paradigmatic Change: Copyright and its Metaphors

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ABSTRACT

Drawing on debates in Sweden about Internet freedom, particularly those connected to copyright and file-sharing, and on the European legislative trend of amending copyright, this chapter analyses metaphors and conceptions in terms of a societal paradigmatic shift and the collision of mentalities. Kuhnian paradigms are wedded with the mentalities of the French Annales school of historic research. The chapter argues that the “building blocks” of these mentalities and paradigms can be studied in metaphors, in public debates or in legislation, which may reveal the conceptions they emanate from. This chapter touches upon ethical, moral and legal issues related to the digitisation of society. The relevancy of this chapter in relation to the theme of the book is found in the problematisation of “deviancy”. One has to ask from what perspective or paradigm the judgment of the behaviour takes place, and in what historical context it is made.

INTRODUCTION

Somewhat more than one hundred years ago, labour strikes were still illegal in most European countries. Labour unions had no right to represent their members and negotiate with employers. Collective agreements were not formally accepted in Sweden until 1928. These legal instruments had quite a dramatic history before they became the leading mechanisms (especially in Sweden) for regulating the labour market. Indeed, less than 80 years ago, workers were killed in Sweden when taking part in a demonstration for labour rights (Ådalen 1931). Those supporting collective labour rights were united in their opposition to the prevailing logic of production within the guild system in the handicraft and agricultural sectors. Despite the fact that the large-scale conditions of industrial production had long been present in their sectors, it took some time before these
instruments were accepted. Today, however, they are widely cherished in the industrialised world. Now, as we transition from an industrial society to more of an information society based on digital technology, we have reason to bring with us the experiences from earlier and similar periods of transition in industrial history.

The relevancy of this chapter in relation to the theme of the book is that it examines the question of what perspective or paradigm one is judging “deviant behaviour” from, and in what historical context it takes place. Part of what is considered deviant behaviour online is, rather, a consequence of the new system’s expectations and conditions around the social norms and behaviours that the digital context offers. An understanding of this is required to effectively regulate any behaviour connected to this emerging context. If, for example, a legislator chooses the wrong battles on this issue, there are clear negative consequences for the overall respect for and legitimacy of laws and the legal system.

Ulrich Beck claims that sociology needs to change if it is to understand and explain the changing needs of a transitional society (Beck 1995, p. 231). Social science cannot rest too rigorously upon the “truths” related to the structures of the industrial age. Take copyright law as an example—it is developed in industrial society as a means of stimulating creativity and ensuring a return in profit for investments in intellectual products such as literature, music, film and other media. The “risk society”, in Beck’s terminology, is seen here as a label for the transitional society, since that society is still in conflict over the new practices, which are not yet legally codified. The focal point is shifted from a purely hierarchical, top-down structure towards an increasingly local influence facilitated by networking. The transition towards a new society is initiated by an unregulated bottom via an emerging core technology and its initial drivers. We can only learn how to cope with these changes in society and law by comparing them with corresponding shifts in the past. It is in times like these that labels used for describing key conceptions can be questioned and renamed. The labels used to describe phenomena in the digitised milieu online, which are often metaphorical in nature, are quite naturally borrowed from the analogue context that created them. We point out a few metaphors or conceptions that have been the subject of particularly heated debate.

This chapter touches upon ethical, moral and legal issues of the digitisation of society. A few of the illustrations used are connected to the debate in Sweden around Internet regulation, such as the copy-based formulations of the Swedish Copyright Act, the rise of a Pirate Party successful enough to win two seats in the European Parliament in 2009, and the rise of a blogosphere with political ambitions strong enough to affect the implementation of surveillance laws and other legislation. To a certain extent, we will use file-sharing as an example of deviation from copyright regulation (making it be regarded as illegal). The example is interesting from a historical perspective since Svensson and Larsson’s study (2009) shows that among Swedish 15- to 25-year-olds, the file-sharing of copyrighted content is not perceived to be a deviation from social norms, despite being a deviation from legal norms. Furthermore, the debate around file-sharing and privacy has also been going on in relation to European legal trends connected to the creation and implementation of directives expanding copyright legislation (INFO-SOC), its enforcement (IPRED), and the internal market (Telecom Reforms Package). These legal initiatives amend copyright or affect its enforcement, meaning that the metaphors embedded in copyright and the conceptions behind it are of interest if one seeks to understand the overarching paradigmatic battle or incompatible mentalities.

THEORETICAL BACKGROUND

Mentalities and Paradigms

Historically, research stemming from the famous Annales school has often used the term “mental-