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*Published in:*  
Societal Studies

2012

[Link to publication](#)

*Citation for published version (APA):*

Larsson, S. (2012). Conceptions in the Code: What “The Copyright Wars” Tell us about Creativity, Social Change and Normative Conflicts in the digital society. *Societal Studies*, 4(3), 1009-1030.  
[http://www.mruni.eu/en/mokslo\\_darbai/sms/paskutinis\\_numeris/dwn.php?id=326827](http://www.mruni.eu/en/mokslo_darbai/sms/paskutinis_numeris/dwn.php?id=326827)

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# CONCEPTIONS IN THE CODE: WHAT “THE COPYRIGHT WARS” TELL US ABOUT CREATIVITY, SOCIAL CHANGE AND NORMATIVE CONFLICTS IN THE DIGITAL SOCIETY

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Received on 8 June, 2012; accepted on 19 July, 2012

**Abstract.** *This article theoretically analyses via scholarly literature the consequences of how the networked technology, the Internet is conceptualised. The Internet, as argued here, can be understood in many ways, in the sense that the digital environment is very much dependant on metaphors and conceptual loans to be spoken and thought of. This affects our behaviour and social norms and forms a number of legal challenges emerging in the transition from pre-digitalisation to digitalisation. The objective of the article is to understand digitalisation and social change better, including legal dilemmas, from a conceptual metaphor perspective; hence the article is looking for conceptions “in the code”. In order to do this, three main topics around which the analysis circles, are chosen: 1) conceptions of the Internet and how metaphors control what we think of it; 2) the role of digital technology in creating a gap between law and social norms: the example of copyright; and, 3) legal conceptions of creativity challenged in a digital context. This means that the article opens a multidisciplinary dialogue between the cognitive theory and the sociology of law, which here, for example, relates to studies in culture and technology, in order to speak of legal and social issues related to digitalisation.*

**Keywords:** *Internet, metaphors, conceptions, copyright, code, creativity, social change.*

## Introduction: The Digital Society

*Poets, deserted by the world before,  
Turn round into the actual air:  
Invent the age! Invent the metaphor!*<sup>1</sup>

This article is a theoretical, an explorative and an interdisciplinary piece, and it analyses via scholarly literature the consequences of how the networked technology that is the Internet is conceptualised. The Internet, as argued, is a combination of its infrastructure and protocol, and the social organisations forming upon the technology that sets up the constraints and possibilities by its structure and protocol.<sup>2</sup> For example, the digital environment is very much dependant on metaphors and conceptual loans to be spoken and thought of.<sup>3</sup> This is a way to exemplify how technology often plays an important role in processes of social and normative change, which may affect behaviour and social norms, in this case forming the legal challenges emerging in the transition between pre-digitalisation and digitalisation. Seen from the perspective of social change, indicated by the title, the “law lag” stimulates a viable and relevant discussion. This analysis is made regarding the very concepts themselves that are used for describing the new organisation and societal challenges that have merged in and around the digital technologies and their artefacts. The awareness of how concepts are renegotiated is of relevance for this analysis (see for instance Leliūgienė and Sadauskas’ analysis on “community”, in *Societal Studies*).<sup>4</sup> This highlights the importance of metaphors and the cognitive structures they relate to,<sup>5</sup> not the least important for law,<sup>6</sup> including copyright law in a digital society.<sup>7</sup>

The objective is to understand digitalisation and social change better, including legal challenges that have emerged as a result. In order to do this, the analysis focuses on the following topics:

1. *Conceptions of the network and how metaphors control how we think of it:*  
Cognitive metaphor theory demonstrates our absolute dependency on metaphors

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- 1 The poem is part of Archibald MacLeish’s “Hypocrite Auteur” from *Collected Poems 1917–1982*. MacLeish, A. “Hypocrite Auteur” from *Collected Poems 1917–1982*. Houghton Mifflin Company, 1985.
  - 2 Andersson, J. Det Dumma Nätet. In: Andersson, J.; Snickars, P. (eds.) *After the Pirate Bay*. Stockholm: Mediehistorisk Arkiv, Kungliga Biblioteket, 2010, p. 49–72.
  - 3 Larsson, S. *Metaphors and Norms. Understanding Copyright Law in a Digital Society*. Lund: PhD Thesis, Lund Studies in Sociology of Law, Lund University, 2011.
  - 4 Leliūgienė, I.; Sadauskas, J. Approaches and typology of the concept of the community. *Societal Studies*. 2011, 3(4): 1281–1297.
  - 5 Lakoff, G.; Johnson, M. *Metaphors We Live By*. Chicago, IL: University of Chicago Press, 1980; Lakoff, G.; Johnson, M. *Philosophy in the Flesh: the Embodied Mind and Its Challenge to Western Thought*. New York, NY: Basic Books, 1999.
  - 6 Larsson, S. Conceptions, categories, and embodiment – why metaphors are of fundamental importance for understanding norms. In: Baier, M.; Åström, K. *Social and Legal Norms*. Ashgate (forthcoming); Winter, S. L. *A clearing in the forest: Law, Life, and Mind*. Chicago and London: University of Chicago Press, 2001.
  - 7 Larsson, S., *supra* note 3.

for our everyday talk and thinking.<sup>8</sup> This is of relevance for how we conceptualise a new technology or clusters of new technologies such as the Internet as “a network society”,<sup>9</sup> “a knowledge society” or “an information superhighway”, as well as the detailed processes within it. The digital technology has created a great need for concepts to label and navigate in this (new) environment, which often are metaphorical loans from an analogue context, such as “trash can”, “streaming” and “desk top”.<sup>10</sup>

2. *The role of the digital technology in creating a gap between law and social norms: the example of copyright:* It is a well-known fact that online behaviour of media consumption does not comply with copyright regulations,<sup>11</sup> this difference can also be expressed in terms of a gap between legal and social norms.<sup>12</sup> The enforcement of copyright, the process challenged in a digital society, is sometimes referred to in terms of “copyright wars.”<sup>13</sup>
3. *Legal conceptions of creativity challenged in a digital context:* Copyright, as is formulated in present rather homogenously articulated IP regimes,<sup>14</sup> has through the years been criticised for representing a conception of creativity that is too much constructed in line with the romantic notion of the “solitary genius.”<sup>15</sup>

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- 8 For more details look into Lakoff, G.; Johnson, M. *Metaphors We Live By*, *supra* note 5; Lakoff, G.; Johnson, M. *Philosophy in the Flesh: the Embodied Mind and its Challenge to Western thought*, *supra* note 5; Larsson, S., *supra* note 3; Winter, S. L., *supra* note 6.
  - 9 Castells, M. *The Information Age: economy, society and culture, Volume 1: The Rise of the Network Society*. Malden Mass: Blackwell, 2000.
  - 10 Larsson, S. 459 miljarder kronor – om metaforer, flöden & exemplar. In: Andersson, J.; Snickars, P. (eds.) *Efter the Pirate Bay*. Mediehistoriskt arkiv, Kungliga biblioteket, Stockholm, 2010; Larsson, S., *supra* note 3.
  - 11 Lessig, L. *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York: Penguin books, 2004; Lessig, L. *Remix: Making Art and Commerce Thrive in the Hybrid Economy*. New York: Penguin Press, 2008; Litman, J. *Digital Copyright*. Prometheus books, 2001; Litman, J. Real Copyright Reform. *Iowa Law Review*. 2010, 96; Vaidhyathanan, S. *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity*. New York: New York University Press, cop, 2001.
  - 12 Altschuller, S.; Benbunan-Fich, R. Is music downloading the new prohibition? What students reveal through an ethical dilemma. *Ethics and Information Technology*. 2009, 11: 49–56; Feldman, Y.; Nadler, J. The Law and Norms of File Sharing. *The San Diego Law Review*. 2006, 43: 577–618; Larsson, S., *supra* note 3; Schultz, M. F. Copynorms: Copyright and Social Norms. In: Yu, P. K. (ed.) *Intellectual Property and Information Wealth: Issues and Practices in the Digital Age*. Greenwood: Praeger Publishers, 2007; Schultz, M. F. Fear and Norms and Rock & Roll: What Jambands Can Teach Us about Persuading People to Obey Copyright Law. *Berkeley Technology Law Journal*. 2006, 21(651): 651–728; Strahilevitz, L. J. Charismatic Code, Social Norms, and the Emergence of Cooperation on the File-Swapping Networks. *Virginia Law Review*. 2003, 89(3): 505–595; Strahilevitz, L. J. Social Norms from Close-Knit Groups to Loose-Knit Groups. *The University of Chicago Law Review*. 2003, 70(1): 359–372; Svensson, M.; Larsson, S. Intellectual Property Law Compliance in Europe: Illegal File sharing and the Role of Social Norms. *New Media & Society*. 2012.
  - 13 Patry, W. *Moral Panics and the Copyright Wars*. Oxford University Press, 2009; Lessig, L. *Remix*, *supra* note 11.
  - 14 Larsson, S. Den stigberoende upphovsrätten. Om konsekvenserna av rättslig inlåsning i en digital tid. *Retfærd, Nordic Journal of Law and Justice*. 2011, 4/135; Larsson, S. The Path Dependence of European Copyright. 8:1 *SCRIPT.ed. A Journal of Law, Technology & Society*. 2011, 8.
  - 15 Patry, W., *supra* note 13; Rose, M. *Authors and Owners: The Invention of Copyright*. Cambridge and London: Harvard University Press, 1993.

This may include a narrow or non-present conceptualisation of the Internet and what the Internet can lead to in terms of remixing,<sup>16</sup> crowdsourcing<sup>17</sup> or other types of mass collaboration.<sup>18</sup>

As indicated under each of the three topics, there are a number of analyses of relevance to each of the topics. However, what marks the novelty of the contribution that this article makes to the discussions on the combination of the conceptual significance of metaphors in the digital society, the gap between social and legal norms as well as how conceptions of creativity in copyright law are particularly challenged in the digitally augmented reality is that analyses that combine the three topics above are rare. There are few works that stand out in terms of importance for this article, such as Stefan Larsson's *Metaphors and norms—understanding copyright law in a digital society*<sup>19</sup>, parts of the work of Lawrence Lessig, as well as William Patry's *Moral panics and the copyright wars*.<sup>20</sup> The three listed topics or questions mean that the article evokes a multidisciplinary dialogue between cognitive theory and sociology of law, not the least relevant for questions of culture and technology, in order to speak of legal and social issues related to digitalisation. As mentioned, it is more theoretically explorative and tentative than empirical in its deconstruction of *conceptions in the code*, be it the Internet and programming protocol, our understandings of it, or copyright law.<sup>21</sup>

## 1. Conceptions of Technology and Social Change

Historically, technology has often played an important role in social and normative transitions.<sup>22</sup> The combustion engine took a central position in what later became known as the industrialised society, an urbanising era of factories and production, following the rural society tied to agriculture and trade.<sup>23</sup> With each type of society it is likely that specific conceptions emerged tied to the patterns of behaviour relevant to the type. Some conceptions are in conflict when society changes, some new conceptions emerge.<sup>24</sup>

16 Lessig, L. *Remix*, *supra* note 11.

17 Brabham, D. C. *Leveraging the Collective Intelligence of Online Communities for Public Good*. Dissertation, The University of Utah, Department of Communication, 2010; Howe, J. *Crowdsourcing: Why the Power of the Crowd is Driving the Future of Business*. New York: Crown Business, 2008.

18 Surowiecki, J. *Massans vishet: hur det kommer sig att flera stycken är smartare än några få och hur kollektiv klokskap formar affärsverksamheter, ekonomier, samhällen och nationer*. Stockholm: Santerus, 2007; Tapscott, D.; Williams, A. D. *Wikinomics: How Mass Collaboration Changes Everything* (extended edition). London: Atlantic, 2008.

19 Larsson, S., *supra* note 3.

20 Patry, W., *supra* note 13.

21 See Lessig's use of the double meaning of "code" in Lessig, L. *Code version 2.0*. New York: Basic books cop, 2006.

22 Vago, S. *Law and society*. 9th edition. Prentice Hall, 2009, p. 335–336.

23 Ewerman, A.; Hydén, H. *IT och social förändring*. Byggnadsrådet, 1997.

24 As stated by Larsson: "The conception defines what is a socially meaningful use of language of a given phenomenon, and it does so through metaphor. By opening up for the social aspects of meaning-making, the context-dependency and the situated, the socio-cultural implications are of great importance." Larsson, S., *supra* note 6. See also Larsson, S., *supra* note 3 and Larsson, S. *Metaforerna och rätten. Retfærd Nordic Journal of Law and Justice* (forthcoming).

Digital technology has changed conditions for communication in its widest sense and has, therefore, caused a changed behaviour in the society in connection with what can be perceived as a normative change, for instance regarding file sharing of media content.<sup>25</sup>

Technology plays a significant role in why copyright is contested in a digital society, and the result can be interpreted as a battle between norms that occurs in times of change. On the one hand we find the norms that seem more traditional, perhaps tied to the preconditions of the old technology and often formally anchored in law.<sup>26</sup> On the other hand we find emerging social norms not anchored in any formal statutes, possibly in great contrast and conflict to the traditional norms. Social change, as is sometimes argued, can be found in the dynamic combination of many factors, of which technology is one. As Castells, on the verge of a new millennium, captures the novelty of the time in terms of “networks”:

“Networks constitute the new social morphology of our societies, and the diffusion of networking logic substantially modifies the operation and outcomes in processes of production, experience, power, and culture. While the networking form of social organization has existed in other times and spaces, the new information technology paradigm provides the material basis for its pervasive expansion throughout the entire social structure.”<sup>27</sup>

This new form of arranging social life, this new “social morphology of our societies” asks interesting questions of law, among other disciplines, to answer: does a specific law or legal regulation apply well to this new form? If not, how it may be revised, if it should. A consequence of digitalisation is sometimes spoken of in terms of a social change. However, a social change is a broad term. To use Vago’s description, a social change means “that large numbers of people are engaging in group activities and relationships that are different from those in which they or their parents engaged in previously.”<sup>28</sup> This is a simple definition that requires some sort of additional explanation. Vago continues with stating that:

“Society is a complex network of patterns of relationships in which all the members participate in varying degrees. These relationships change, and behaviour changes at the same time. Individuals are faced with new situations to which they must respond. These situations reflect such factors as new technologies, new ways of making living, changes in place of residence, innovations, new ideas, and new social values. Thus, social change means modifications in the way people work, rear a family, educate their children, govern themselves, and seek ultimate meaning in life.”<sup>29</sup>

25 Larsson, S.; Hydén, H. Law, deviation and paradigmatic change: Copyright and its metaphors. In: Vargas, M., *et al. Technology for Facilitating Humanity and Combating Social Deviations: Interdisciplinary Perspectives*. IGI Global, 2010.

26 Larsson, S., *supra* note 3; Svensson, M.; Larsson, S., *supra* note 12.

27 Castells, M., *supra* note 9, p. 500.

28 Vago, S., *supra* note 22, p. 331.

29 *Ibid.*, p. 331.



Whether we accept or not all these types of changes that Vago addresses, many of these types can also describe the changes occurring in a digitalising society. Many types of behaviour change: i.e. the very way people make their living, communicate; understanding of social values and innovation also change.

Social changes are in some way linked to the technological development, in this case enabling a digital environment, a "network society,"<sup>30</sup> the interconnection of people, processes, applications, work tasks and leisure pursuits, which have led to a globalised society, a "one-world" context where "causes and effects can reverberate throughout the entire system," in the words of Robert Hassan.<sup>31</sup> The trends connected to the human norms of conduct have the potential to disperse throughout the network to the extent they are dependant on the constraints and possibilities of the network, and challenge, for example, legal notions operational under the geographical delineations of a nation.

The labelling of the Internet and its social consequences addresses the fact that whenever someone attempts to describe or give a name to a new situation that has not occurred before a metaphor is likely to fill the spot. And, indeed, are there metaphors to name what age we have moved into? Manuel Castells so convincingly argues for "the network society," calling the network the "fabric of our lives"<sup>32</sup> where "the new information technology paradigm provides the material basis for its pervasive expansion throughout the entire social structure."<sup>33</sup> Another metaphor, "the information superhighway" can be read about in sources dating back as far as the 1990's such as the Green paper preceding the InfoSoc directive.<sup>34</sup> This metaphor reached its peak of use in 1996, according to Blavin & Cohen.<sup>35</sup> One more metaphor is "cyberspace", which to some might seem a little less of a metaphor, which, in turn, describes a common feature of metaphors, they tend to sink in out of the conscious level of peoples' minds to become perceived less as metaphors. The problem with all of these grand metaphors is that they risk leading the associations to a place where it suddenly seems like *everything* has changed, *everything* is new. The tricky balances lie in acknowledging what really is new, and then place this new element in the old prevailing structures.

When searching and describing a social change it is also about who is doing it, about the eye that is observing. Consider the example of Putnam's lonely bowlers expressed in an essay in 1995, later developed in the book *Bowling alone: The collapse and revival of American community*.<sup>36</sup> Putnam interprets the decline of people participating in

30 The most influential text on the "network society" is likely Manuel Castells' trilogy on the information age, where the second volume is named *The rise of the network society*; Castells, M., *supra* note 9; Castells, M. *The Information Age: economy, society and culture, Volume 2: The power of identity*. Malden Mass: Blackwell, 2004; Castells, M. *The Information Age: economy, society and culture, Volume 3: End of millennium*, Malden Mass: Blackwell, 2000.

31 Hassan, R. *The Information Society*. Polity Press, 2008.

32 Castells, M., *supra* note 9, p. 362.

33 *Ibid.*, p. 500.

34 European Commission Green Paper of 27 July 1995 on Copyright and Related Rights in the Information Society COM(95) 382.

35 Blavin, J. H.; Cohen, I. G. Gore, Gibson, and Goldsmith: The Evolution of Internet Metaphors in Law and Commentary. *Harvard Journal of Law and Technology*. 2002, 16(1): 265–285.

36 Putnam, R. D. *Bowling alone: The collapse and revival of American community*. New York: Simon & Schuster, 2000.

voluntary associations, such as bowling leagues in the United States, as a sign of a more and more lacking social capital in society, that the members of American society are losing the connection with each other, family, friends, neighbours and even democratic structures. As a response to this view, Scott and Johnson a few years later concluded in their article *Bowling alone, but online together: social capital in e-communities* that although membership in these voluntary associations, such as bowling leagues, service clubs, parent-teacher associations and so on declines, the participation in the new forms of voluntary associations online, the “e-communities”, appears to be rapidly increasing.<sup>37</sup> The Internet is to some extent the new arena for social connections, giving birth to a solidarity that has other preconditions to be formed over, which the Putnam’s analogue perspective did not consider. It is easy to be sceptical about seeing social media, micro blogging and Facebook friends as a social glue of some kind, but it is much more interesting to look for what all these phenomena mean, in terms of sociality, and meaning-making. To what extent these phenomena are replacing more traditional forms of being part of something social, to what extent are they extending and complementing this possibility. For example, what does the deconstruction of dichotomies such as private/public mean? These things matter and, particularly, for their role in regulating social vis-à-vis legal norms in a digital society.

## 2. When There Is a Gap Between Legal and Social Norms

Around the time the European Enforcement Directive (IPRED) was implemented in Sweden, in the year 2009, the Cybernorms research group conducted a study regarding the strength of social norms relating to copyright, as well as to actual file sharing frequencies.<sup>38</sup> The study included two surveys with approximately 1000 individuals between 15 and 25 years that were conducted a few months before the implementation and a few months afterwards. The results were striking, yet not particularly unanticipated. Although the frequency by which the respondents’ file-sharing decreased as a result of the law, the strength (or weakness) of the social norm to support copyright was equally low.<sup>39</sup> This means that a short-term effect of the law was that some people made the choice not to file share (as much) due to a fear of getting caught violating the law, but not due to the reason that the action itself would be perceived as wrongful in any way:

“In other words, it was due to the fear of being punished by the state that some individuals chose to stop file sharing and not because they themselves or people in their lives have changed their minds on the issue itself. They stop as a result of a fear of getting caught

37 Scott, J. K.; Johnson, T. G. Bowling alone but online together: social capital in e-communities in community development. *Journal of the community development society*. 2005, 36(1).

38 Reported in Larsson, S., *supra* note 3. Larsson, S.; Svensson, M. Compliance or Obscurity? Online Anonymity as a Consequence of Fighting Unauthorised File-sharing. *Policy & Internet*. 2010, 2(4): 77–105; Svensson, M.; Larsson, S., *supra* note 12; Svensson, M.; Larsson, S. *Social Norms and Intellectual Property. Online Norms and the European Legal Development*. Lund: Lund University, Research Report in Sociology of Law, 2009.

39 Svensson, M.; Larsson, S., *supra* note 12.



and being punished and not because the social landscape has altered. Young people do not subscribe to the arguments on which the law rests and neither do those people who are close to them. However, some young people do submit to the authorities and the threat of punishment."<sup>40</sup>

This reaffirms what many already suspect. Large segments of society, very likely most often the tech savvy young people, definitely mediated by the use of digital and networked technology, do not feel that it is normatively wrong to break the law when it comes to copyright and file sharing.

It is safe to say that copyright is, for several reasons, one of the most problematic areas at the intersection of new technologies and law.<sup>41</sup> The intensity of the debate from late 1990s up to the present day is the unquestionable sign of it. For this reason the intersection is reviewed as a case in this article. Copyright is also regarded as an important case on a societal level. For instance, the law professor James Boyle early on identified copyright as one of the crucial issues in the construction of the "information society," in *Shamans, Software and Spleens: Law and the Construction of the Information Society*.<sup>42</sup> Boyle has further emphasised the need for a collective flag under which so many seemingly disparate issues related to the new technologies and regulation could be collected, and has identified this as an "environmentalism for the Net"<sup>43</sup> or a "cultural environmentalism, an environmentalism for the mind."<sup>44</sup> Further, Boyle argues that, in the last fifty years, copyright has expanded its protection and that this has been done "almost entirely in the absence of empirical evidence, and without empirical reconsideration to see if our policies were working."<sup>45</sup> This "evidence-free" development runs on "faith alone" and it is a faith that is based on a "cluster of ideas" that Boyle identifies.<sup>46</sup> This "cluster of ideas" is of relevance to the underlying conceptions of the copyright debate, as analysed in Stefan Larsson's *Metaphors and Norms—Understanding Copyright Law in a Digital Society*.<sup>47</sup> Although the "cluster of ideas" leads to what professor Jessica Litman describes in terms of "choosing metaphors" in copyright development in her book *Digital Copyright* from 2001. Using probably her strongest contribution to the copyright debate she outlines "an evolution in metaphors" that "conceal an immense sleight of hand":

"We as a society never actually sat down and discussed in policy terms whether, now that we had grown from a copyright-importing nation to a copyright-exporting nation, we wanted to recreate copyright as a more expansive sort of control. Instead, by changing

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40 Svensson, M.; Larsson, S., *supra* note 12, p. 13.

41 Lundblad, N. *Law in the Noise society. ICT-Policy Making and Societal Models*. Gothenburg: PhD Thesis in Informatics, IT University, 2007.

42 Boyle, J. *Shamans, Software and Spleens: Law and the Construction of the Information Society*. Harvard University Press, 1996.

43 Boyle, J. Politics of Intellectual Property: An Environmentalism for the Net. *Duke Law Journal*. 1997, 47.

44 Boyle, J. *The Public Domain. Enclosing the Commons of the Mind*. New Haven & London: Yale University Press, 2008, p. 241.

45 *Ibid.*, p. 236.

46 *Ibid.*

47 Larsson, S., *supra* note 3.

metaphors, we somehow got snookered into believing that copyright had always been intended to offer content owners extensive control, only, before now, we didn't have the means to enforce it."<sup>48</sup>

This transition, starting with the conception of mutual benefit for the creator and the public and ending with the conception of copyright as a system of incentives, completely changes the arguments and rhetoric around it.<sup>49</sup> This is also supported by a law professor William Patry, who has focused on the importance of metaphors in what he describes as the “copyright wars” in *Moral panics and the copyright wars*.<sup>50</sup>

One of the American law scholars who early on identified copyright as central to the understanding of regulatory issues with the Internet and new digital technologies was Lawrence Lessig, a professor of law at Stanford University. He has written a number of publications on the interplay between regulation and what the Internet brings in terms of creativity, culture and innovative forces and the mind. He has produced one of the most relevant analyses from sociology of law point of view in *Code and Other Laws of Cyberspace*,<sup>51</sup> which he updated in *Code Version 2.0*.<sup>52</sup> Here Lessig describes the programming code as law, as a directing action and thus making the software architect a sort of lawmaker. This duality, of a legal code and a programming code, is reflected by the title of this article, connecting the cognitive theory and all other theories behind the notion of “conceptions” with this duality in terms of “conceptions in the code.”<sup>53</sup> Lessig's *Remix: Making Art and Commerce Thrive in the Hybrid Economy* is also of relevance to the analysis of copyright and the social practices affected by it.<sup>54</sup> It is in this book that Lessig highlights the metaphoric influence on the debate over copyright, facing problems in a digital society:

“The inspiration for this book is the copyright wars, by which right-thinking sorts mean not the ‘war’ on copyright ‘waged’ by ‘pirates’ but the ‘war’ on ‘piracy’, which ‘threatens’ the ‘survival’ of certain important American industries.”<sup>55</sup>

Lessig's arguments and analyses of conditions for creativity are relevant to any analysis of the purpose and outcome of copyright regulation. Lessig has maintained a constant focus on culture and creativity, and the legal foundation that would best serve its preservation in a digitalised world. The implications of Digital Rights Management are also relevant here, shown by Tarleton Gillespie, who analyses the technological focus of the copyright battle.<sup>56</sup> Since digital technology, code included, offers opportunities for reshaping structures, architectures and conditions for action, its *generativity* is a relevant

48 Litman, J. *Digital Copyright*, *supra* note 11, p. 86.

49 Larsson, S., *supra* note 3, p. 105.

50 Patry, W., *supra* note 13.

51 Lessig, L. *Code and Other Laws of Cyberspace*. New York: Basic books, 1999.

52 Lessig, L., *supra* note 21.

53 For more on the theoretical background of “conceptions”, see Larsson, S., *supra* note 3, p. 52–53, 65–68, 123–124.

54 Lessig, L. *Remix*, *supra* note 11.

55 *Ibid.*, p. xv.

56 Gillespie, T. *Wired Shut? Copyright and the Shape of Digital Culture*. MIT Press, 2007, p. 181–185.

term, first coined by Jonathan Zittrain, a US professor of Internet law and of computer science, and developed for example in *The Future of the Internet and How to Stop It*.<sup>57</sup>

These are merely a few examples of the growing body of literature on issues related to copyright in the online context, and it is a clear sign of legislation under great strain. Legislation has been challenged for a few years; a legislation gap that shows no comforting signs of being functionally negotiated over the course of the next few years exists. This means, all in all, that not only is copyright of vital importance when trying to understand the regulatory challenges of an intensely digitalised and networked society, it also includes aspects of global business, debates on incentives for creativity and culture, investment protection, privacy issues, issues of democracy and who is to determine the law.

Lessig reaffirms the importance of studying law and "regulability" in relation to new technologies that are of importance to social norms in an online environment, however, there is the group as for example: Boyle, Litman and Patry who supports the continued and detailed analysis of metaphors and underlying conceptions in copyright.<sup>58</sup> As I mentioned above, some scholars take on a power struggle perspective, often referring to "the war on file sharing."<sup>59</sup> On the one hand, in this imagined battle stands up "the Hollywood Empire" that is colonising the globe, and, on the other hand, emerge the anonymous millions of "kids" illegally file sharing.<sup>60</sup>

"This war too has an important objective. Copyright is, in my view at least, critically important to a healthy culture. Properly balanced, it is essential to inspiring certain forms of creativity. Without it, we would have a much poorer culture. With it, at least properly balanced, we create the incentives to produce great new works that otherwise would not be produced."<sup>61</sup>

These different explanatory perspectives clearly show that there is something about the copyright and file sharing issue that connects to a technology that somehow participates in fundamentally challenging older structures: legal, technological, and economical including norm structures. There is something about the "network," which Manuel Castells chose to describe as the single most important characteristics of our times.<sup>62</sup>

The productive regulation mechanism of the given issue of copyright in a digital context lies in the gap between the social and the legal norms and in the difference of the conceptions that construct these dissimilar norms. The fact that this regulation is amazingly homogenous throughout the globe, as well as in Europe, due to international treaties and agreements between states and supranational "harmonisation" within the EU makes an analysis of the central metaphors in copyright valid for far more than any

57 Zittrain, J. *The Future of the Internet, and How to Stop It*. London: Penguin Books, 2008.

58 See also Larsson, S., *supra* note 3.

59 See, for example, Patry, W., *supra* note 13.

60 See also Lessig, L. *Remix*, *supra* note 11.

61 *Ibid*, p. xv.

62 Castells, M., *supra* note 9, p. 500.

single country.<sup>63</sup> Its conceptualisation and its shaping will affect patterns of creativity, our communication in digital networks, and ask questions of privacy in terms of how much of our activities online may be justifiably monitored. This gap, and what is at stake makes metaphor and conception analysis in connection with legal and social norms both important and attractive.<sup>64</sup>

The gap may, however, be conceptualised in different ways. For instance, Schultz advocates the use of the concept of “copynorms” to analyse social norms in relation to copyright, as they “moderate, extend, and undermine the effect of copyright law.”<sup>65</sup> Strahilevitz analyses the influence of social norms in loose-knit groups or in situations where interaction is anonymous.<sup>66</sup> Strahilevitz also analyses file-sharing software ability to reinforce descriptive norms in themselves, as it creates the perception that unauthorised file sharing and distribution is a common behaviour, even more prevalent than it actually is.<sup>67</sup> Strahilevitz made his claim in 2003. Since then, file sharing has undisputedly increased and developed in terms of technology and techniques. Feldman and Nadler<sup>68</sup> made an experimental study on the influence of law on social norms regarding file sharing of a copyrighted content, which bears a resemblance to the above mentioned study of norms.<sup>69</sup>

This gap problem of legal norms in relation to social norms can be described as classic, although occasionally criticised, in the field of the sociology of law.<sup>70</sup> The gap problem has been around for quite some time, and has remained remarkably similar to the versions presented by Pound and Ehrlich a hundred years ago.<sup>71</sup> There is an inherent risk in describing the discrepancies of a gap, this figurative metaphor, which lies in the fact that it might lead associations towards interpreting the problem of the gap from the perspective of law. The gap does not have to be a problem at all, even though it is from a legal point of view. The problem may depend on the type of the gap at hand. The gap interpretations tend to be law-centred, as with Roscoe Pound’s *Law in Books and Law in Action*,<sup>72</sup> and not as widely approached as is noted in Eugene Ehrlich’s *Living Law*.<sup>73</sup>

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63 Larsson, S. *A Journal of Law, Technology & Society*, *supra* note 14.

64 Larsson, S., *supra* note 3.

65 Schultz, M. F. Copynorms: Copyright and Social Norms, *supra* note 12.

66 Strahilevitz, L. J. *Virginia Law Review*, *supra* note 12.

67 Strahilevitz, L. J. *The University of Chicago Law Review*, *supra* note 12.

68 Feldman, Y.; Nadler, J., *supra* note 12.

69 Svensson, M.; Larsson, S., *supra* note 12.

70 Nelken, D. The ‘gap problem’ in sociology of law: A theoretical review. 1981. In: Nelken, D. *Beyond law in context. Developing a sociological understanding of law*. England: Ashgate, 2009.

71 Banakar, R. The Sociology of Law: From Industrialisation to Globalisation. *U. of Westminster School of Law Research Paper*. 2011, No. 11-03.

72 Pound, R. Law in Books and Law in Action. *American Law Review*. 1910, p. 12–36.

73 Ehrlich, E *Fundamental Principles of the Sociology of Law*. Cambridge, Mass.: Harvard University Press, 1913/1936.

### 3. The Law Lag

The development of law is generally conservative and retrospective. Values embedded are long lasting and consequent upon the main principle of predictability.<sup>74</sup> The problem, however, is how to deal with when law lags social development, following relatively sudden changes in the social structures in a society, perhaps, as a result of new technology, which emerges and challenges the conservative and often retrospective legal setting.<sup>75</sup> The dependence of the path chosen in law can sometimes likely be explained by the lock-in effects of the unavoidable use of metaphorical concepts and conceptions.<sup>76</sup> As the legal realist Roscoe Pound put it, a hundred years ago:

“[L]aw has always been dominated by ideas of the past long after they have ceased to be vital in other departments of learning. This is an inherent difficulty in legal science, and it is closely connected with an inherent difficulty in the administration of justice according to law—namely, the inevitable difference in rate of progress between law and public opinion.”<sup>77</sup>

Cognitive linguistics teaches us not only that abstract concepts are largely metaphorical, but also that a metaphor depends on a larger context. This contextuality derives from the social world that can also be analysed. Meaning is not only built up by the kinds of bodies and social experiences we have, it is framed and constrained by the systemic nature of cognitive processes such as metaphors. This is the reason the Internet and similar technologies have such vast implications for legal imperatives. Legal imperatives need to be placed in a context of “massive cultural tableau”<sup>78</sup> in order to be comprehensible and understandable. Legislators, too, can only act in terms of the embedded cultural understandings that enable meaning, which Winter describes as “an important part of any statute is not made by the legislator but is contingent on the pre-existing practices that are conventional for and constitutive of that culture.”<sup>79</sup> From the perspective of a norm research, this ties into what Hydén states as no legal regulation is stronger than the social norms it rests upon. The further the legal imperative has travelled from the social norm, or, perhaps, vice versa, the stronger the need for sanctions and control for the legal imperative to be followed.<sup>80</sup> This relationship becomes far more attention-grabbing in times of social and cultural change, due to the fact that when the contextual environment is in rapid transformation, the tacit assumptions and social sedimentations that render the legal metaphors their meaning are also on the move.

74 Larsson, S. *A Journal of Law, Technology & Society*, *supra* note 14.

75 Abel, R. L. Law as Lag: Inertia as a Social Theory of Law. *Michigan Law Review*. 1982, 80: 785; Larsson, S. *Retfærd, Nordic Journal of Law and Justice*, *supra* note 14.

76 Larsson, S. *Retfærd, Nordic Journal of Law and Justice*, *supra* note 14; Larsson, S., *supra* note 3; Larsson, S. *A Journal of Law, Technology & Society*, *supra* note 14.

77 Pound, R., *supra* note 72, p. 25–26.

78 Winter, S. L. What is the ‘color’ of law? In: Gibbs, Jr.; Raymond, W. (eds.) *The Cambridge Handbook of Metaphor and Thought*, Cambridge University Press, 2008, p. 375.

79 *Ibid.*

80 Hydén, H. *Normvetenskap*. Lund: Lund University, Lund Studies in Sociology of Law, 2002, p. 272. See also Svensson, M.; Larsson, S., *supra* note 12.

Consequently legal concepts can become metaphorical if their meaning expands into new areas, and the fixed conceptions that once ensured their legitimacy may seem unjust in the eyes of the reality that has moved on.<sup>81</sup>

In this case, copyright is the conservative legal construction that bears elements that do not fit emerging social norms of sharing content and cultural expressions in a digitalised era of networks.<sup>82</sup> These social changes are connected to a technological development that has moved behaviour into an interconnected environment, which has brought what is often termed a “network society.” The homogenous and general characteristics of the global copyright have mainly been developed during the 20<sup>th</sup> century and are very much tied to a technological development that has allowed the distribution of the content. These characteristics have been developed in an analogue setting where heavy investments were needed for most of the production, reproduction and distribution. Some of the characteristics show examples of being conceptions of an industrialized society, which has been embedded in incredibly well spread, global and strong regulations.<sup>83</sup> At the same time, some of these characteristics are now challenged in practice due to the changes in preconditions for production, reproduction and distribution that the digitisation and rise of a network society contributes to. An example: the concepts and specific terminology of Swedish copyright stems to some extent from the preparatory works of 1956, prior to the Copyright Act from 1960 (it speaks of the expanding possibilities of reproducing sound with innovations such as the *magnetophone*—an early and very large tape recorder). Of course, the act has continuously been changed over the years, but many of the terms are still used. This development has led to a legal regulation that is so complex that even legal experts think it is complex. In fact, when some additions were made to the law in 2005 (to harmonize with the INFOSOC EU directive) the experts on legal construction in Sweden, the Council on Legislation (Lagrådet), concluded that it would be desirable to do a complete editorial review of the Copyright Act instead of implementing the “patchwork” that the changes in the law now meant. The Council, however, stated that it understood the hurry to implement the directive.<sup>84</sup> Sweden had already received a remark from the EG Court for a delay.

This shows three things: it shows that the architects behind the legal construction thought analogically; it shows the strong interconnectedness between the national legislations, via international treaties as well as the European Union; it displays an incremental development—a common feature with law. The freedom to rethink copyright law is limited, or at least not easily made, as seen in the international perspective. Still,

81 Larsson, S., *supra* note 3, p. 123–126. See also Larsson, S., *supra* note 6.

82 Boyle, J., *supra* note 44; Jensen, C. The More Things Change, the More They Stay the Same: Copyright, Digital Technology, and Social Norms. *Stanford Law Review*. 2003; Larsson, S. 459 miljarder kronor – om metaforer, flöden & exemplar, *supra* note 10; Lessig, L. *Remix*, *supra* note 11; Litman, J. *Digital Copyright*, *supra* note 11; Netanel, N. W. *Copyright's Paradox: Property in Expression/Freedom of Expression*. Oxford University Press, 2008; Svensson, M.; Larsson, S., *supra* note 12.

83 Larsson, S. *A Journal of Law, Technology & Society*, *supra* note 14.

84 Prop 2004/05:110 Upphovsrätten i informationssamhället – genomförande av direktiv 2001/29/EG, m.m., appendix 8, p. 558.



the regulating process seems to lack the critical element in the legislative trend so far. Policy makers seem to be beyond all doubts that the legislative tradition on copyright is not only to be followed but the protection should also be expanded. A strong and unified copyright in the EU and a strong enforcement of this copyright is seen as the only measures that will ensure innovation and creativity in a society. There seems to be no room for doubts here. If copyright protection is failing, the only answer to be reached in this way of thinking is to enhance the enforcement, the control of data streams and online behaviour, possibly with unintended consequences.<sup>85</sup>

#### 4. Conceptions of Creativity in Copyright

As stated, copyright is one of the most problematic areas in the intersection of technology and law. This is also the reason why it can be used for unveiling issues of conceptual and social change in a digital society, for example, regarding how we conceptualise creativity and how conceptions of creativity can be deconstructed from copyright law and compared to digital practices that challenge these legally embedded conceptions of creativity. This means that motivation for studying copyright from a metaphorical perspective comes from the functionality of the regulation compared to its purpose, which is often described in terms of stimulating creativity or "content production". Nicklas Lundblad, a Swedish IT debater, PhD in Informatics and a Google employee, analyses the "noise society" in his thesis, of which copyright is a major part:

"The old idea, that policymakers needed to 'foster' or 'enable' or 'encourage' creativity, and that they would be addressing a caste of creators seems dead wrong. Creativity is everywhere. It is the default setting. The policy challenges and metaphors need to change. People create songs, web pages, blogs, videos and other material. They contribute to Wikipedia and chat rooms all over the web. Citizens live in a sea of creative havoc and in the age of 'user-generated content'."<sup>86</sup>

The concept of creativity that is embedded in the prevalent versions of copyright regulation seems to face considerable problems in the meeting with the types of creativity that are mediated by a digital environment. A rhetorical twist put forward by those who benefit from the prevailing copyright model regards depicting it in terms of a "war", perhaps, in order to legitimize aggressive methods against file sharers of unauthorised content.<sup>87</sup>

In *The Future of Ideas: the Fate of the Commons in a Connected World*, Lessig expands his concern that a too-protective intellectual property regulation will not only stifle creativity in the sense of making new artwork in a remix culture, but will also

85 Larsson, S.; Svensson, M., *supra* note 38. For a follow-up study on this, see Larsson, S.; Svensson, M.; de Kaminski, M. Online piracy, anonymity and social change—Deviance through innovation. *Convergence: The International Journal of Research into New Media Technologies* (forthcoming).

86 Lundblad, N., *supra* note 41, p. 128.

87 Patry, W., *supra* note 13.

stifle the innovation that is otherwise propelled through the digital environment.<sup>88</sup> Vaidhyanathan paints a bleak picture on the future and contemporary imbalance on how copyright functions as a regulative force in relation to creativity in *Copyrights and Copywrongs: the Rise of Intellectual Property and How It Threatens Creativity*.<sup>89</sup> Vaidhyanathan breaks down the conception of the creator as a “solitary genius” and instead shows how traditions and culture play an essential role. In doing so he depicts the traditions of American blues, jazz, hip-hop and rap, an example that is again examined in the analysis section of the thesis.<sup>90</sup> Copyright has been criticised for representing a conception of creativity that is too much constructed from a romantic notion of the “solitary genius.”<sup>91</sup> This likely includes a narrow or non-present conceptualisation of the Internet and what the Internet can lead to in terms of remixing<sup>92</sup>, crowdsourcing<sup>93</sup> or other types of mass collaboration<sup>94</sup> that much more acknowledges practices of what can be termed as “borrowing”, as Arewa addresses:

“This individualistic and autonomous vision of musical authorship, which is central to copyright law, has de-emphasized the importance and continuity of musical borrowing practices generally.”<sup>95</sup>

This means that how creativity is conceptualised in copyright has been criticised for not representing a true picture of how creativity is actually happening. Does creativity stem from the hard and focused work of a solitary genius or from inspired creators standing on the shoulders of the already existing culture? How new are the new melodies, movies and paintings and to what extent do they depend on what has already been made? The answer to creativity is probably a little bit of both, however, there are important elements in how copyright is globally conceptualised, in law, that lean towards the conception of the solitary genius.<sup>96</sup> Arewa shows how even the creation of classical music has been romanticized and contributed to the notion of the lone genius who creates independent of time and context (even Mozart and Beethoven borrowed ideas from others).<sup>97</sup> This dilemma has been relevant for far longer than the Internet has been around, but it has been further accentuated by the opportunities of digital networks and the remix culture.

For example, Tapscott and Williams set out to understand what drives mass collaboration in a digital environment, an organisational form that copyright law

88 Lessig, L. *The Future of Ideas: the Fate of the Commons in a Connected World*. New York: Vintage Books, 2002.

89 Vaidhyanathan, S., *supra* note 11.

90 *Ibid.*, p. 120f.

91 Arewa, O. B. From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context. *North Carolina Law Review*. 2006, 84(2): 547–645; Larsson, S., *supra* note 3; Patry, W. *How to Fix Copyright*. Oxford: Oxford University Press, 2011; Patry, W., *supra* note 13; Rose, M., *supra* note 15.

92 Lessig, L. *Remix*, *supra* note 11.

93 Brabham, D. C., *supra* note 17; Howe, J., *supra* note 17.

94 Surowiecki, J., *supra* note 18; Tapscott, D.; Williams, A. D., *supra* note 18.

95 Arewa, O. B., *supra* note 91, p. 547.

96 Larsson, S., *supra* note 3, p. 105–111.

97 Arewa, O. B., *supra* note 91.

appears not well designed for.<sup>98</sup> Lessig, in *Remix*, describes an aspect of how creativity can be expressed differently in a digital environment with regards to that the bits and pieces of any form of expression can be ripped, remixed and reassembled to a new creation.<sup>99</sup> Lessig makes the distinction in terms of a "Read Only" ("RO"), culture and a "Read/Write" ("RW") culture, which regards the participatory possibilities of culture. The RO culture is in this sense more steeped in consumption and the production is professional, and the RW culture includes amateur creativity and performance. With these distinctions Lessig argues that the RW culture, in the sense of amateur creativity, has been the dominant culture until recording opportunities opened up in the 20<sup>th</sup> century, when the "tokens of RO culture" developed.<sup>100</sup> And it is the RO culture that has shaped copyright as we know it. The underlying conceptions of copyright are tied to a particular set of constraints that now are completely remodelled, which in a sense, and somewhat ironically, make us return to an emphasis on the practices of RW culture. Which, in turn, fundamentally challenge copyright, in its conventional wording:

"The natural constraints of the analog world were abolished by the birth of digital technology. What before was both impossible and illegal is now just illegal."<sup>101</sup>

This means that law has become the constraint, not the artefact, nor the architecture. The line of argument that Lessig follows is a heavy stroke on the rhetoric that more protection by necessity leads to more creativity, which in Lessig's perspective, from a digital "Read/Write" outlook, is plainly false. This also means that an underlying conception in a legal construction can be in conflict with actual practices of what it seeks to regulate. There can even be contradictions within law. For example, the "concept" of the performer has been analysed as seen from three different legal perspectives.<sup>102</sup> Birštonas *et al.* conclude that the limits are drawn differently in the different legal fields of tax law, intellectual property regulation and social security law, for the same phenomenon.<sup>103</sup> Depending on how copyright is conceptualised, the debates, the arguments and the regulatory efforts will be constrained within the logic walls of the leading conception. The exceptional experiment that is the Internet has proved that creativity (of some kind) thrives without regulated incentives, especially in more collaborative forms.

The further elaboration of the reification of copyright is to focus on a conception of copyright as the incentive for creativity, where creativity is viewed as something that must be incentivised. Litman shows that how the conceptualisation of copyright has changed over time, especially during the latter half of the twentieth century, from a mediator of interests between the authors and the public, towards the model where creativity needs to be incentivised, thus resulting in a conception of copyright as a system of "holes" that needs to be mended. The problem of conceptualising copyright

98 Tapscott, D.; Williams, A. D., *supra* note 18.

99 Lessig, L. *Remix*, *supra* note 11.

100 *Ibid.*, p. 29.

101 *Ibid.*, p. 38.

102 Birštonas, N.; Matulevičienė, J.; Usonienė, J. The concept of the performer in the context of intellectual property, tax and social security laws. *Societal Studies*. 2012, 3(1): 231–248.

103 *Ibid.*

as a “system of incentives” is twofold. On the one hand, it leads to a beneficial rhetorical position for arguing for more protection and more powerful copyright enforcement, and, on the other hand, it can be questioned from the perspective that it does not really reflect the truth of how creativity is best stimulated, and, perhaps, especially so in a digital context.<sup>104</sup>

## Conclusion: Conceptions in the Code

The findings of this article regard digitalisation, social change and the role of law. It problematizes and raises awareness of how the images and metaphors we use to understand the abstract entities of the Internet as well as different functions in the code actually affect how we legislate and how we behave. The article addresses the particularities of copyright law specifically, due to the fact that this legal field has proven to be one of the most problematic areas in the intersection of technology and law. The reason is that technology often seems to play an important role in social and normative transitions. Digital technology has changed conditions for communication and has, therefore, caused alterations in societal behaviour in connection with what can be perceived as a normative change, for instance, regarding file sharing of media content, challenging copyright. The article focuses on the cognitive processes of how we conceptualise both the “social morphology of our societies”<sup>105</sup> in its broadest sense, and also in some of its detailed relation to copyright in order to see what that means for law, as well as how we legislate in relation to social change. Cognitive metaphor theory demonstrates our absolute dependency on metaphors for our everyday talk and thinking and this article demonstrates that this is of relevance for how we conceptualise a new technology or cluster of new technologies such as the Internet. Digitalization has created a great need for concepts (that often are metaphorical) to label and navigate in this (new) environment. This affects how we conceptualise reality, and widens the gap between social and legal norms relating to copyright, which forms the case in the article. There is a mismatch of law and social norms that in this case calls for an exposure of the conceptions that regulation is based upon, what drives its development and what made it malfunction or become incompatible with the social patterns of online behaviour. The depiction of the conception of creativity that is embedded in copyright highlights some of the challenges that have to do with digitally mediated versions of remixing, crowdsourcing or other types of mass collaboration. A law that addresses creativity and innovation at its core needs to adapt to a major change in the practices. However, if the legal development of this particular legal construct has not been based on evidence, as Boyle points out, it is likely that the contemporary emerging practices of creativity, innovation and culture in a digital sphere will meet great challenges before being acknowledged in and by the law.<sup>106</sup> There is a clear risk that the law in such a case

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104 Larsson, S., *supra* note 3, p. 105–112.

105 Castells, M., *supra* note 9, p. 500.

106 Boyle, J., *supra* note 44.

becomes a tool to control what types of creativity and innovation should be held as most important and should maintain a privileged position, since the process of selection is largely controlled by an industry tied to the traditional and, perhaps conservative, types of culture-production. By analysing *the conceptions in the code* one can demonstrate a multidisciplinary dialogue between cognitive theory and sociology of law utilised in order to analyse and illuminate legal and social issues related to digitalisation, and social change and normative conflicts in the digital society. It becomes clear that there are thought structures, conceptions, hidden in both copyright law as well as in the coded architecture of the digital environment, that controls the development of both. If we seek to change these underlying conceptions, perhaps, especially in terms of law and conceivably, if we want them to be better adjusted to the constraints and possibilities of contemporary societal structures, one way is to change the surface-based metaphors that express and reproduce them. Change the metaphors in law, and the conceptions beneath may be replaced by ones that better offer reconciliation between social and legal norms.

*A world ends when its metaphor has died.*

*An age becomes an age, all else beside,  
When sensuous poets in their pride invent  
Emblems for the soul's consent  
That speak the meanings men will never know  
But man-imagined images can show:  
It perishes when those images, though seen,  
No longer mean.<sup>107</sup>*

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107 The poem is part of Archibald MacLeish's "Hypocrite Auteur" from *Collected Poems 1917–1982*. MacLeish, A. "Hypocrite Auteur" from *Collected Poems 1917–1982*. Houghton Mifflin Company, 1985.

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## KODŲ SAMPRATOS. KĄ „AUTORINĖS TEISĖS KARAI“ SAKO APIE KŪRYBIŠKUMĄ, SOCIALINIUS POKYČIUS IR NORMATYVINIUS KONFLIKTUS SKAITMENINĖJE VISUOMENĖJE

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**Santrauka.** Šis straipsnis yra teorinio pobūdžio ir analizuoja, kaip mokslinėje literatūroje konceptualizuojamos tinklo technologijos – t. y. internetas. Internetas, mano požiūriu, yra infrastruktūros ir protokolų bei socialinių organizacijų derinys, dėl savo struktūros ir protokolų turintis apribojimų ir teikiantis galimybių. Pavyzdžiui, skaitmeninė aplinka yra priklausoma nuo metaforų bei konceptualių skolinių, apie kuriuos reikėtų kalbėti ir galvoti. Tai būdas parodyti, kokią svarbią reikšmę technologijos dažnai turi socialinių ir normatyvinių pokyčių laikotarpiu, kai keičiasi elgesys ir socialinės normos – šiuo atveju sprendžiant teisinės problemas (įveikiant iššūkius), kylančias diegiant skaitmenines technologijas. Atsižvelgiant į socialinės kaitos perspektyvas, svarbu aptarti „teisės inertškumą (atsilikimą)“. Atlikta ir sąvokų, vartojamų apibūdinti naują organizaciją ir socialinius iššūkius, susijusius su skaitmeninėmis technologijomis ir jų artefaktais, analizė. Suvokti ir aptarti šias sąvokas svarbu atliekamai analizei (žr., pavyzdžiui, Leliūgienės ir Sadausko bendruomenių analizę Socialinių mokslų studijose). Tai pabrėžia metaforų svarbą ir jų sąsają su kognityvinėmis struktūromis, jų reikšmę įstatymų kūrimui, taip pat ir autorių teisių įstatymams skaitmeninėje visuomenėje.

*Straipsnio tikslas yra geriau suprasti skaitmeninių technologijų ir socialinių pokyčių ryšį, įskaitant teisinės problemas, kurios kyla kaip šio proceso rezultatas.*

**Reikšminiai žodžiai:** internetas, metaforos, koncepcijos, copyright, kodas, kūrybiškumas, socialiniai pokyčiai.

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