

"The Culture of Ownership and the Ownership of Culture"

Reader

Compiled by Hinrich Sachs and Barnaby Drabble

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"Intellectual property is the oil of the 21st century. Look at the richest men a hundred years ago; they all made their money extracting natural resources or moving them around. All today's richest men have made their money out of intellectual property."

- Mark Getty of Getty images, grandson of the oil magnate J. Paul Getty, 1995

Thomas Jefferson to Isaac McPherson

13 Aug. 1813 Writings 13:333--35

“It has been pretended by some, (and in England especially,) that inventors have a natural and exclusive right to their inventions, and not merely for their own lives, but inheritable to their heirs. But while it is a moot question whether the origin of any kind of property is derived from nature at all, it would be singular to admit a natural and even an hereditary right to inventors. It is agreed by those who have seriously considered the subject, that no individual has, of natural right, a separate property in an acre of land, for instance. By an universal law, indeed, whatever, whether fixed or movable, belongs to all men equally and in common, is the property for the moment of him who occupies it, but when he relinquishes the occupation, the property goes with it. Stable ownership is the gift of social law, and is given late in the progress of society. It would be curious then, if an idea, the fugitive fermentation of an individual brain, could, of natural right, be claimed in exclusive and stable property. If nature has made any one thing less susceptible than all others of exclusive property, it is the action of the thinking power called an idea, which an individual may exclusively possess as long as he keeps it to himself; but the moment it is divulged, it forces itself into the possession of every one, and the receiver cannot dispossess himself of it. Its peculiar character, too, is that no one possesses the less, because every other possesses the whole of it. He who receives an idea from me, receives instruction himself without lessening mine; as he who lights his taper at mine, receives light without darkening me. That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property. “

John Perry Barlow

The Economy of Ideas: A framework for rethinking patents and copyrights in the Digital Age (Everything you know about intellectual property is wrong)

1992

(Edited extract)

A Taxonomy of Information

It seems to me that the most productive thing to do now is to look into the true nature of what we're trying to protect. How much do we really know about information and its natural behaviours?

What are the essential characteristics of unbounded creation? How does it differ from previous forms of property? How many of our assumptions about it have actually been about its containers rather than their mysterious contents? What are its different species and how does each of them lend itself to control? What technologies will be useful in creating new virtual bottles to replace the old physical ones?

Of course, information is, by nature, intangible and hard to define. Like other such deep phenomena as light or matter, it is a natural host to paradox. It is most helpful to understand light as being both a particle and a wave; an understanding of information may emerge in the abstract congruence of its several different properties, which might be described by the following three statements:

Information is an activity.

Information is a life form.

Information is a relationship.

In the following section, I will examine each of these.

I. INFORMATION IS AN ACTIVITY

Information Is a Verb, Not a Noun.

Freed of its containers, information is obviously not a thing. In fact, it is something that happens in the field of interaction between minds or objects or other pieces of information.

Gregory Bateson, expanding on the information theory of Claude Shannon, said, "Information is a difference which makes a difference." Thus, information only really exists in the Delta. The making of that difference is an activity within a relationship. Information is an action, which occupies time rather than a state of being which occupies physical space, as is the case with hard goods.

Information Is Experienced, Not Possessed

Even when it has been encapsulated in some static form like a book or a hard disk, information is still something that happens to you as you mentally decompress it from its storage code. But, whether it's running at gigabits per second or words per minute, the actual decoding is a process that must be performed by and upon a mind, a process that must take place in time.

Information Has to Move.

Sharks are said to die of suffocation if they stop swimming, and the same is nearly true of information. Information that isn't moving ceases to exist as anything but potential...at least until it is allowed to move again. For this reason, the practice of information hoarding, common in bureaucracies, is an especially wrong-headed artefact of physically based value systems.

Information Is Conveyed by Propagation, Not Distribution.

The way in which information spreads is also very different from the distribution of physical goods. It moves more like something from nature than from a factory. It can concatenate like falling dominos or grow in the usual fractal lattice, like frost spreading on a window, but it cannot be shipped around like widgets, except to the extent that it can be contained in them. It doesn't simply move on; it leaves a trail everywhere it's been.

The central economic distinction between information and physical property is that information can be transferred without leaving the possession of the original owner. If I sell you my horse, I can't ride him after that. If I sell you what I know, we both know it.

II. INFORMATION IS A LIFE FORM

Information Wants to Be Free.

Stewart Brand is generally credited with this elegant statement of the obvious, which recognizes both the natural desire of secrets to be told and the fact that they might be capable of possessing something like a "desire" in the first place.

English biologist and philosopher Richard Dawkins proposed the idea of "memes," self-replicating patterns of information that propagate themselves across the ecologies of mind, a pattern of reproduction much like that of life forms.

I believe they are life forms in every respect but their freedom from the carbon atom. They self-reproduce, they interact with their surroundings and adapt to them, they mutate, they persist. They evolve to fill the empty niches of their local environments, which are, in this case the surrounding belief systems and cultures of their hosts, namely, us.

Indeed, sociobiologists like Dawkins make a plausible case that carbon-based life forms are information as well, that, as the chicken is an egg's way of making another egg, the entire biological spectacle is just the DNA molecule's means of copying out more information strings exactly like itself.

Information Replicates into the Cracks of Possibility.

Like DNA helices, ideas are relentless expansionists, always seeking new opportunities for Lebensraum. And, as in carbon-based nature, the more robust organisms are extremely adept at finding new places to live. Thus, just as the common housefly has insinuated itself into practically every ecosystem on the planet, so has the meme of "life after death" found a niche in most minds, or psycho-ecologies.

Information Wants to Change.

If ideas and other interactive patterns of information are indeed life forms, they can be expected to evolve constantly into forms, which will be more perfectly adapted to their surroundings. And, as we see, they are doing this all the time.

But for a long time, our static media, whether carvings in stone, ink on paper, or dye on celluloid, have strongly resisted the evolutionary impulse, exalting as a consequence the author's ability to determine the finished product. But, as in an oral tradition, digitized information has no "final cut."

Digital information, unconstrained by packaging, is a continuing process more like the metamorphosing tales of prehistory than anything that will fit in shrink-wrap. From the Neolithic to Gutenberg (monks aside), information was passed on, mouth to ear, changing with every retelling (or resinging). The stories, which once shaped our sense of the world, didn't have authoritative versions. They adapted to each culture in which they found themselves being told.

Because there was never a moment when the story was frozen in print, the so-called "moral" right of storytellers to own the tale was neither protected nor recognized. The story simply passed through each of them on its way to the next, where it would assume a different form. As we return to continuous information, we can expect the importance of authorship to diminish. Creative people may have to renew their acquaintance with humility.

But our system of copyright makes no accommodation whatever for expressions which don't become fixed at some point nor for cultural expressions which lack a specific author or inventor.

Jazz improvisations, stand-up comedy routines, mime performances, developing monologues, and unrecorded broadcast transmissions all lack the Constitutional requirement of fixation as a "writing." Without being fixed by a point of publication the liquid works of the future will all look more like these continuously adapting and changing forms and will therefore exist beyond the reach of copyright.

Copyright expert Pamela Samuelson tells of having attended a conference last year convened around the fact that Western countries may legally appropriate the music, designs, and biomedical lore of aboriginal people without compensation to their tribes of origin since those tribes are not an "author" or "inventors."

But soon most information will be generated collaboratively by the cyber-tribal hunter-gatherers of cyberspace. Our arrogant legal dismissal of the rights of "primitives" will be soon returning to haunt us.

Information Is Perishable.

With the exception of the rare classic, most information is like farm produce. Its quality degrades rapidly both over time and in distance from the source of production. But even here, value is highly subjective and conditional. Yesterday's papers are quite valuable to the historian. In fact, the older they are, the more valuable they become. On the other hand, a commodities broker might consider news of an event that occurred more than an hour ago to have lost any relevance.

III. INFORMATION IS A RELATIONSHIP

Meaning Has Value and Is Unique to Each Case.

In most cases, we assign value to information based on its meaningfulness. The place where information dwells, the holy moment where transmission becomes reception, is a region, which has many shifting characteristics and flavours depending on the relationship of sender and receiver, the depth of their interactivity. Each such relationship is unique. Even in cases where the sender is a broadcast medium, and no response is returned, the receiver is hardly passive. Receiving information is often as creative an act as generating it.

The value of what is sent depends entirely on the extent to which each individual receiver has the receptors - shared terminology, attention, interest, language, paradigm - necessary to render what is received meaningful.

Understanding is a critical element increasingly overlooked in the effort to turn information into a commodity. Data may be any set of facts, useful or not, intelligible or inscrutable, germane or irrelevant. Computers can crank out new data all night long without human help, and the results may be offered for sale as information. They may or may not actually be so. Only a human being can recognize the meaning that separates information from data.

In fact, information, in the economic sense of the word, consists of data, which have been passed through a particular human mind and found meaningful within that mental context. One fella's information is all just data to someone else. If you're an anthropologist, my detailed charts of Tasaday kinship patterns might be critical information to you. If you're a banker from Hong Kong, they might barely seem to be data.

Familiarity Has More Value than Scarcity.

With physical goods, there is a direct correlation between scarcity and value. Gold is more valuable than wheat, even though you can't eat it. While this is not always the case, the situation with information is often precisely the reverse. Most soft goods increase in value as they become more common. Familiarity is an important asset in

the world of information. It may often be true that the best way to raise demand for your product is to give it away.

While this has not always worked with shareware, it could be argued that there is a connection between the extent to which commercial software is pirated and the amount which gets sold. Broadly pirated software, such as Lotus 1-2-3 or WordPerfect, becomes a standard and benefits from Law of Increasing Returns based on familiarity.

Exclusivity Has Value.

The problem with a model that turns the physical scarcity/value ratio on its head is that sometimes the value of information is very much based on its scarcity. Exclusive possession of certain facts makes them more useful. If everyone knows about conditions, which might drive a stock price up, the information is valueless.

But again, the critical factor is usually time. It doesn't matter if this kind of information eventually becomes ubiquitous. What matters is being among the first who possess it and act on it. While potent secrets usually don't stay secret, they may remain so long enough to advance the cause of their original holders.

Point of View and Authority Have Value.

In a world of floating realities and contradictory maps, rewards will accrue to those commentators whose maps seem to fit their territory snugly, based on their ability to yield predictable results for those who use them. In aesthetic information, whether poetry or rock 'n' roll, people are willing to buy the new product of an artist, sight-unseen, based on their having been delivered a pleasurable experience by previous work.

Reality is an edit. People are willing to pay for the authority of those editors whose point of view seems to fit best. And again, point of view is an asset, which cannot be stolen or duplicated.

Time Replaces Space.

In the physical world, value depends heavily on possession or proximity in space. One owns the material that falls inside certain dimensional boundaries. The ability to act directly, exclusively, and as one wishes upon what falls inside those boundaries is the principal right of ownership. The relationship between value and scarcity is a limitation in space.

In the virtual world, proximity in time is a value determinant. An informational product is generally more valuable the closer purchasers can place themselves to the moment of its expression, a limitation in time. Many kinds of information degrade rapidly with either time or reproduction. Relevance fades as the territory they map changes. Noise is introduced and bandwidth lost with passage away from the point where the information is first produced.

Information as Its Own Reward

It is now a commonplace to say that money is information. With the exception of Krugerrands, crumpled cab fare, and the contents of those suitcases that drug lords are reputed to carry, most of the money in the informatized world is in ones and zeros. The global money supply sloshes around the Net, as fluid as weather. It is also obvious, that information has become as fundamental to the creation of modern wealth as land and sunlight once were.

What is less obvious is the extent to which information is acquiring intrinsic value, not as a means to acquisition but as the object to be acquired. I suppose this has always been less explicitly the case. In politics and academia, potency and information have always been closely related.

However, as we increasingly buy information with money, we begin to see that buying information with other information is simple economic exchange without the necessity of converting the product into and out of currency. This is somewhat challenging for those who like clean accounting, since, information theory aside, informational exchange rates are too squishy to quantify to the decimal point.

Nevertheless, most of what a middle-class American purchases has little to do with survival. We buy beauty, prestige, experience, education, and all the obscure pleasures of owning. Many of these things cannot only be expressed in nonmaterial terms, they can be acquired by nonmaterial means.

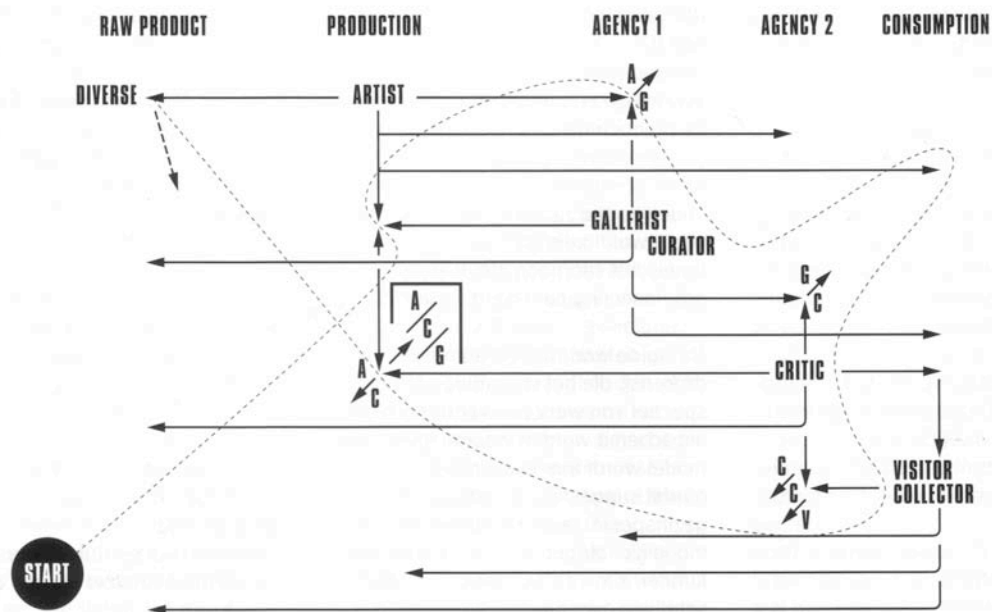
And then there are the inexplicable pleasures of information itself, the joys of learning, knowing, and teaching; the strange good feeling of information coming into and out of oneself. Playing with ideas is a recreation which people are willing to pay a lot for, given the market for books and elective seminars. We'd likely spend even more money for such pleasures if we didn't have so many opportunities to pay for ideas with other ideas. This explains much of the collective "volunteer" work, which fills the archives, newsgroups, and databases of the Internet. Its denizens are not working for "nothing," as is widely believed. Rather they are getting paid in something besides money. It is an economy, which consists almost entirely of information.

This may become the dominant form of human trade, and if we persist in modelling economics on a strictly monetary basis, we may be gravely misled.

"The Death of the Author"

...a text is made of multiple writings, drawn from many cultures and entering into mutual relations of dialogue, parody, contestation, but there is one place where this multiplicity is focused and that place is the reader, not, as was hitherto said, the author. The reader is the space on which all the quotations that make up a writing are inscribed without any of them being lost; a text's unity lies not in its origin but in its destination. Yet this destination cannot any longer be personal: the reader is without history, biography, psychology; he is simply that someone who holds together in a single field all the traces by which the written text is constituted. Which is why it is derisory to condemn the new writing in the name of a humanism hypocritically turned champion of the reader's rights. Classic criticism has never paid any attention to the reader; for it, the writer is the only person in literature. We are now beginning to let ourselves be fooled no longer by the arrogant antiphrastical recriminations of good society in favour of the very thing it sets aside, ignores, smothers, or destroys; we know that to give writing its future, it is necessary to overthrow the myth: the birth of the reader must be at the cost of the death of the Author.

From Roland Barthes (Image, Music, Text , 1977)



Hans -Christian Dany,
 Diagram from the Article You Can Call It Luxury
 In Casco Issues 7 Utrecht 2002

In his text "You can call it luxury" Hans-Christian Dany sketches out the division of roles within the Artworld as follows: On the level of cultural production the artist creates to a greater or lesser extent a raw product, which is then worked on and improved in its passage through two levels of agency on the way towards its eventual public presentation and consumption. The first agency is that of display, the work of the curator or gallerist, and the second that of discourse, the work of the journalist or critic.

In opposition to this scenario provided by today's exhibition practice, Dany assumes constantly changing roles. Following his own example, he questions how deprofessionalising and dissolving the traditionally separate professions of artist, curator, gallerist and critic, might lead to an agreement upon a primary productive way of working across all professions.

(Note by Hinrich Sachs)

Copyleft

From Wikipedia , the free encyclopedia. 2004

Copyleft is that property of a human creation that aims at preventing that the use, the propagation and the modification of that creation would be hindered by Intellectual Rights .

One of the most important reasons why creators or authors might want to make copyleft applicable to their work is that in doing so they hope to create the most favourable conditions for a wide range of people to feel invited to contribute improvements and/or elaborations to this work, in a continuing process.

Using copyleft has for many also a strong ideological connotation, there is a section below going in detail over this issue. However, this ideological debate is avoided by the founder of what is regarded as the most successful roll-out of copyleft in a single product, Linus Torvalds , who foremost considers the practical side of the GNU GPL copyleft license he applied to the Linux software.

In an interview published August 18, 2004 in Business Week , Linus Torvalds draws the attention to the fact that the approach without impediments for spreading knowledge is the normal way for progress in science (i.e. when using the scientific method): always building further on what others have discovered before, not being hampered by secrecy surrounding prior research results. This means that the definition above not only applies to "human creation", but that as well "human discovery" or "human invention" can be included in a copyleft approach.

The ideological debate

For many people Copyleft is a technique which uses the established framework of Intellectual Property Rights as a means of subverting the restrictions this framework imposes on the dissemination and development of humankind's knowledge. In this approach the intention of copyleft is to permanently minimize the restrictions imposed under Intellectual Property regimes . To date, copyleft uses copyright to ensure the right to use, modify, and redistribute Intellectual Property. When a copyright holder licenses his work in a fashion which allows the licensee to use, modify, and share the work only so long as the licensee grants these same rights to others in turn , empowering the copyright holder with the use of copyright law as a means of ensuring these rights are passed on, the work has been copylefted. The canonical copyleft license is the GNU General Public License crafted by Richard Stallman .

Copyleft is not a term in law. It is a legal tool formulated by one side of a political and ideological debate over Intellectual Property.

Art - documents

Copyleft also inspired the arts (especially where traditional notions of intellectual property are experienced as hampering creativity and/or creative collaboration and/or easy distribution of art creations), with movements like the Libre Society and open-source record labels emerging. E.g. also the Free Art license is a copyleft license that can be applied to any work of art.

Copyleft licenses for materials other than software include the Creative Commons ShareAlike licenses and the GNU Free Documentation License (GFDL)

Note that the notion of copyleft, to make sense, somehow requires a space where hassle-free & cheap copying is common (...computer files or Xerox copies, etc), or, to put it otherwise, where one can give away without "losing" what one is giving away (like knowledge): e.g. copyleft is more difficult to put in practice for those arts that are characterised by the production of unique objects, that can not be copied just like that - unless there is no fear of the unique original getting damaged. To illustrate this with an example: suppose there is a public display of some world famous paintings, e.g. some of the many copies and derived works Andy Warhol (had) made of his own art works, and suppose an accidental visitor decides to "enhance" these paintings with some grattage and peinture brulée effects (not neglecting to sign his respectful contributions with some spray paint), then there is no (legal) way of stopping this guy if he can be considered copyleft licensee of these paintings. This - and other examples - may indicate that copyleft is not the ultimate philosopher's stone that would be able to solve all intellectual property related issues once and for all: especially in art, that also has a tradition of creation as a solitary process (along with, but quite separated from, a tradition of cooperative creativity), "community drive" is not in all cases desired.

Copyleft licenses for art generally are aware of such limitations, so they differ from copyleft licenses for software, e.g. by making a distinction between the initial work and the copies (where some essential copyleft provisions are only applicable to the copies) and/or by leaning on notions that are less objective to put in practice (more like declarations of intent), for example stipulating copyleft to be subject to respect - in a programmers' world the implementation of copyleft itself is the maximum respect one can get. In other words: in art copyleft has to hinge on broader notions regarding authors' rights, which are even more complex (and more differing between countries) than mere copyright law, see e.g. Moral rights, droit d'auteur, Intellectual rights and Berne Convention for the Protection of Literary and Artistic Works.

Commercialisation of copylefted art

In art the concept of a "commercial service surrounding a copylefted creation" is maybe (even) harder to put in practice than in software development. Public performances could be considered as one of a few possibilities of providing such "services". Apart from the fact that not every artist is a born performer.

Often copylefted artistic creations can be seen to have a (supporting) publicity function, promoting other, more traditionally copyrighted creations by the same artist(s). Artists sticking to an uncompromising copylefting of the whole of their artistic output, could, in addition to services and consultancy, revert to some sort of patronage (generally considered as somehow limiting artistic freedom, even when state-operated like in some countries of northern Europe), or to other sources of income, not related to their artistic production (and so mostly limiting the time they can devote to artistic creation too). The least that can be said is that copylefting in art tends toward keeping the art thus produced as much as possible out of the commercial arena - which is considered as an intrinsic positive goal by some.

“Who’s behind our cultural revolution?”

by Stephan Dillemath, 2002

in The Academy and the Corporate Public

(selected extracts) full text can be found at www.societyofcontrol.com/

Today is Friday, 22 March 2002. I read what follows this provocative headline on the ‘Undercurrents’ page in the London Evening Standard’s weekly magazine:

“First we had the entrepreneurs, a very Eighties concept. Then came the enfantpreneurs, those annoyingly smug whizz-kids with clever dotcom ideas. That was the Nineties. So what now? Anyone remotely interested in qualifying as hip, aware or dinner-party-conversation-friendly needs to know the latest business buzzword: the ‘culturepreneurs’.

The word has no dictionary definition as yet, but culturepreneurs are essentially brokers who peddle culture - art, cinema, music, literature, sometimes all together - to the masses. Theirs is the new cool profession. (...).

The article continues raving on about what is obviously a new discovery - “culture sells”. Furthermore, we learn that a business club called ‘The Club’ has been established in London’s ICA1, and that it is now important “to network with the suits, the advisers and investors”. What is being presented to us here in the guise of the latest trend could appear at first a little puzzling ... has the merger between culture and capital not been long since identified and critically analysed? But on the other hand, are we not also fascinated by the speed of appropriation of any critique² of the market into another form of marketing device? Perhaps we could just relax, and see that over-hyping trends actually brings them to an end faster than any critique might do - but that is just what consumerism seems to be about anyway: - appropriating, hyping, selling, wasting, trashing.

And what about us? Can we find any positive interpretations of the increasing interest, both general and monetary, in culture? Can we avoid simply falling into a new kind of cultural pessimism? Should we just stick to the stock-taking of our cultural output, or are there other methods, through which we could create a distance, and establish an overview?

Global Changes

Only in the last decade of the 20th century did a wider public become increasingly aware of the path that advanced capitalism has taken over the last 100 years: a triumphal procession of economic liberalisation around the globe, a process referred to as ‘globalisation’ or ‘privatisation of the public’.

The so-called ‘public sphere’ - which was formerly a domain of the state - now seems to have been increasingly handed over to the interests of the ever-merging international corporations. In a kind of reversal of the forces of imperialism and colonialism, the weakened nation states are nowadays more afraid of the forces of capital withdrawing or pulling out. Submitting themselves to a new order and global competition, they cut wages and dismantle social security, just to attract ‘investment’

from those who were traditionally called 'exploiters'. And as cultural producers, we risk catching ourselves as the couch potatoes in the spectacles occurring before us: the corporate mega mergers taking over the national state's self-proclaimed autonomy, and claiming the democratically organised public sphere as their own playground.

The new expansion of power, the economic, and thus political occupation of the public sphere, goes hand in hand with an appropriation of sign, image, language and logos. In this game, art plays an important role in transmitting the message and moulding attractive sites for speculation and investment. Culture offers lifestyle, symbolic value, image transfer, commodity, and tourist attraction. It would appear that culture has become the pyrotechnics in the big spectacle: 'The West Taking The Rest'.

The scenario of a changing public sphere that I have mapped out here very generally has various impacts on the significance of art in our (Western) society, the role of the artist, and his or her professional life...

A Corporate Public?

Let's take a short moment for reflection: When the size of the state's income declines, governments start to pull out of their former obligations to support the arts financially. But cultural representation remains an important card to play within a period of intense global competition. It opens the doors to an increasing influence for corporate collecting, corporate museums, foundations and sponsorship in the arts, meaning that the artist, the art institutions, and finally most of cultural life come to depend more and more on corporate money, taste and influence.

Can we flip to the other side of the equation and call this the construction of a corporate public?

Theodor W. Adorno

Culture Industry Reconsidered

(From "The Culture Industry: Selected Essays on Mass Culture" London: Routledge, 1991, written in the late 1940's)

(selected abstracts)

The term culture industry was perhaps used for the first time in the book *Dialectic of Enlightenment*, which Horkheimer and I published in Amsterdam in 1947. In our drafts we spoke of 'mass culture'. We replaced that expression with 'culture industry' in order to exclude from the outset the interpretation agreeable to its advocates: that it is a matter of something like a culture that arises spontaneously from the masses themselves, the contemporary form of popular art. From the latter the culture industry must be distinguished in the extreme. ...To the detriment of both it forces together the spheres of high and low art, separated for thousands of years. The seriousness of high art is destroyed in speculation about its efficacy; the seriousness of the lower perishes with the civilizational constraints imposed on the rebellious resistance inherent within it as long as social control was not yet total. Thus, although the culture industry undeniably speculates on the conscious and unconscious state of the millions towards which it is directed, the masses are not primary, but secondary, they are an object of calculation; an appendage of the machinery. The customer is not king, as the culture industry would have us believe, not its subject but its object. The culture industry misuses its concern for the masses in order to duplicate, reinforce and strengthen their mentality, which it presumes is given and unchangeable. How this mentality might be changed is excluded throughout...

...The cultural commodities of the industry are governed, as Brecht and Suhrkamp expressed it thirty years ago, by the principle of their realization as value, and not by their own specific content and harmonious formation. The entire practice of the culture industry transfers the profit motive naked onto cultural forms...The autonomy of works of art, which of course rarely ever predominated in an entirely pure form, and was always permeated by a constellation of effects, is tendentially eliminated by the culture industry...

...What parades as progress in the culture industry, as the incessantly new which it offers up, remains the disguise for an eternal sameness; everywhere the changes mask a skeleton which has changed just as little as the profit motive itself since the time it first gained its predominance over culture...

...The concept of technique in the culture industry is only in name identical with technique in works of art. In the latter, technique is concerned with the internal organization of the object itself, with its inner logic. In contrast, the technique of the culture industry is, from the beginning, one of distribution and mechanical reproduction, and therefore always remains external to its object. The culture industry finds ideological support precisely in so far as it carefully shields itself from the full potential of the techniques contained in its products. It lives parasitically from the extra-artistic technique of the material production of goods, without regard for the obligation to the internal artistic whole implied by its functionality (*Sachlichkeit*), but also without concern for the laws of form demanded by aesthetic autonomy. The

result for the physiognomy of the culture industry is essentially a mixture of streamlining, photographic hardness and precision on the one hand, and individualistic residues, sentimentality and an already rationally disposed and adapted romanticism on the other. Adopting Benjamin's designation of the traditional work of art by the concept of aura, the presence of that which is not present, the culture industry is defined by the fact that it does not strictly counterpose another principle to that of aura, but rather by the fact that it conserves the decaying aura as a foggy mist. By this means the culture industry betrays its own ideological abuses.

...The most ambitious defense of the culture industry today celebrates its spirit, which might be safely called ideology, as an ordering factor. In a supposedly chaotic world it provides human beings with something like standards for orientation, and that alone seems worthy of approval. However, what its defenders imagine is preserved by the culture industry is in fact all the more thoroughly destroyed by it. The color film demolishes the genial old tavern to a greater extent than bombs ever could: the film exterminates its imago. No homeland can survive being processed by the films which celebrate it, and which thereby turn the unique character on which it thrives into an interchangeable sameness...

...In contrast to the Kantian, the categorical imperative of the culture industry no longer has anything in common with freedom. It proclaims: you shall conform, without instruction as to what; conform to that which exists anyway, and to that which everyone thinks anyway as a reflex of its power and omnipresence. The power of the culture industry's ideology is such that conformity has replaced consciousness...

...In the products of the culture industry human beings get into trouble only so that they can be rescued unharmed, usually by representatives of a benevolent collective; and then in empty harmony, they are reconciled with the general, whose demands they had experienced at the outset as irreconcilable with their interests. For this purpose the culture industry has developed formulas, which even reach into such non-conceptual areas as light musical entertainment. Here too one gets into a 'jam', into rhythmic problems, which can be instantly disentangled by the triumph of the basic beat...

...The total effect of the culture industry is one of anti-enlightenment, in which, as Horkheimer and I have noted, enlightenment, that is the progressive technical domination of nature, becomes mass deception and is turned into a means for fettering consciousness. It impedes the development of autonomous, independent individuals who judge and decide consciously for themselves. These, however, would be the precondition for a democratic society, which needs adults who have come of age in order to sustain itself and develop. If the masses have been unjustly reviled from above as masses, the culture industry is not among the least responsible for making them into masses and then despising them, while obstructing the emancipation for which human beings are as ripe as the productive forces of the epoch permit.

THE MOUSE THAT ATE THE PUBLIC DOMAIN:
Disney, The Copyright Term Extension Act, And Eldred V. Ashcroft

By CHRIS SPRIGMAN

Tuesday, Mar. 05, 2002

http://writ.news.findlaw.com/commentary/20020305_sprigman.html

Mickey Mouse Goes to Washington

Back in 1998, representatives of the Walt Disney Company came to Washington looking for help. Disney's copyright on Mickey Mouse, who made his screen debut in the 1928 cartoon short "Steamboat Willie," was due to expire in 2003, and Disney's rights to Pluto, Goofy and Donald Duck were to expire a few years later. Rather than allow Mickey and friends to enter the public domain, Disney and its friends - a group of Hollywood studios, music labels, and PACs representing content owners - told Congress that they wanted an extension bill passed. Prompted perhaps by the Disney group's lavish donations of campaign cash - more than \$6.3 million in 1997-98, according to the non-profit Center for Responsive Politics - Congress passed and President Clinton signed the Sonny Bono Copyright Term Extension Act .

The CTEA extended the term of protection by 20 years for works copyrighted after January 1, 1923. Works copyrighted by individuals since 1978 got "life plus 70" rather than the existing "life plus 50". Works made by or for corporations (referred to as "works made for hire") got 95 years. Works copyrighted before 1978 were shielded for 95 years, regardless of how they were produced. In all, tens of thousands of works that had been poised to enter the public domain were maintained under private ownership until at least 2019.

The CTEA vs. The Public Domain

When copyright expires, works are said to "fall into" the public domain, where they are usable without charge or need of authorization. The linguistic convention by which works "fall" when they enter the public domain is revealing: immanent in the phrase is the notion that a work is debased when no longer copyrighted. Perhaps it is this view that allows statutes that shrink the public domain to gain widespread support.

But disparagement of the public domain is out of step with our constitutional history, with the economics of information markets, and with the real way in which art, literature, and music are produced in our culture.

Authors in ancient times, as well as monks and scholars in the middle ages, wrote and were paid for their writings without copyright protection. Taken as a whole . . . the evidence now available suggests that, although we should hesitate to abolish copyright protection, we should equally hesitate to extend or strengthen it.

What was true in ancient Greece and Rome and in medieval Florence is equally true today in Brooklyn's DUMBO - painters paint, and writers write, for reasons other than the size of the royalty check. But even if you assume that exclusive rights do make

some difference, there was no attempt back in 1998 (nor has there been since) to justify the CTEA's 20-year extension. Of course, \$6.3 million in campaign contributions can make up for quite severe deficiencies in the data.

Artists Depend On A Rich Public Domain

If we know little about the utility of longer copyright terms, there is abundant evidence regarding the vital importance to the progress of our culture of a robust stock of public domain works.

Most artists, if pressed, will admit that the true mother of invention in the arts is not necessity, but theft. And this is true even for our greatest artists. Shakespeare's *Romeo and Juliet* (1591) was taken from Arthur Brooke's poem *Romeus and Juliet* (1562), and most of Shakespeare's historical plays would have infringed Holingshead's *Chronicles of England* (1573). For the third movement of the overture to *Theodora*, Handel drew on a harpsichord piece by Gottlieb Muffat (1690-1770). Passages of both works are compared at this very interesting web site .

Cultural giants borrow, and so do corporate giants. Ironically, many of Disney's animated films are based on Nineteenth Century public domain works, including *Snow White and the Seven Dwarfs*, *Cinderella*, *Pinocchio*, *The Hunchback of Notre Dame*, *Alice in Wonderland*, and *The Jungle Book* (released exactly one year after Kipling's copyrights expired).

Borrowing is ubiquitous, inevitable, and, most importantly, good. Contrary to the romantic notion that true genius inheres in creating something completely new, genius is often better described as opening up new meanings on well-trodden themes. Leonard Bernstein's reworking in *West Side Story* of *Romeo and Juliet* is a good example.

None of this is intended as an argument that art should be "freed" from copyright. Our copyright regime is almost as old as our Constitution, and the creation of exclusive rights for limited periods is as sensible an approach now as it was at the Founding. What is needed is a more balanced approach to assessing the costs and benefits of the expanding scope and duration of IP rights, including copyright terms. Perhaps if campaign finance reform succeeds in helping good arguments compete against ready cash, copyright will right itself.

NOTES ON THE MUSEUM'S PUBLICITY

Andrea Fraser – In Lucitania, place unknown, 1990

According to the National Endowment for the Arts, in order for an institution to qualify as a museum in the United States it must, among other things, have "permanent facilities open to the public on a regularly scheduled basis," and be "a non-profit tax-exempt organization." The non-profit tax-exempt status of an art museum, even and particularly its income-generating activities, such as merchandising, depends on the museum's primary charitable purpose of "Providing educational experiences for the public". This educational purpose is conceived of as accomplished in the first instance, not in any actively educational programs or practices, but simply in the presentation of art to the public, not only "on a regularly scheduled basis" (like any commercial art gallery), but specifically by "a non-profit tax-exempt organization. "

It would seem, then, that it is this non-profit tax-exempt status that qualifies an art work to be the object of the educational experiences on which this tax-exempt status depends.

This tautology can be broken by introducing a single displacement, it is not tax-exempt status as such that conditions the educational value of the art objects, but the philanthropic gestures through which those objects find their way into the non-profit sphere.

So I arrive at the rather contradictory logic of the private non-profit art museum's status as a public institution. The material condition of the art museum is that it is publicly subsidized -directly through municipal support and state and Federal grants; indirectly through its tax-exempt status and the charitable deduction. (Under the Tax Reform Act of 1969 the tax-payer's share of every\$ 1.000 donated to a tax-exempt organization was estimated at 60-70 %.)

Yet this publicity is predicated on, and at the same time concealed by, the much more highly publicized privacy of the bankers and financiers, lawyers and industrialists, executives and corporations, on whose philanthropic engagement in a non-profit organization the museum's educational function depends.

Public subsidy is allowed no such publicity. The charitable deduction is invisible; municipal support goes to the most menial, least visible aspects of the museum's functioning - utilities, building maintenance, and security. There are no plaques reading, 'This light bulb was given to the museum by the city of New York.'

The museum's purpose is to publicize art, but to publicize it only as an emblem of bourgeois privacy, in a sense, to publicize privacy. It is in this, I would say, that the museum's educational function consists.

But of course, this has always been the logic of American public policy. Public provision, if it must exist to stabilize a population subject to the violent vacillations of capital, should exist always only as a promise (never a right), perpetually retreating into the private sphere. Historically, this retreat has left a trail of institutions and organizations operating in the name of public education.

When art museums began to be established in numbers in the United States, in the last quarter of the 19th century, what limited public relief programs that existed were being systematically dismantled and privatized. Some of the proponents of privatization founded museums and libraries, others established Charity Organization Societies. Like museums, these Societies would offer only things of the mind and spirit. Instead of providing material relief, they sought to educate.

In what did this education consist? Not schooling, not training, but rather "friendly visits" that aimed "to regenerate character, which involved the direct influence of kind and concerned, successful and cultured, middle and upper-class people upon the dependent." Education by example; education by identifications structured within public policy and institutional discourse.

If the museum's publicity has the function of structuring popular identification with bourgeois privacy, it does so first simply through its visibility and accessibility, open "on a regularly scheduled basis," it offers up the content of homes to public display.

Second, as "a non-profit tax-exempt organization," often with direct municipal subsidy, the museum imposes on a population an economic investment in itself, in as much as the museum comes to that population already with the population's support.

Third, on this, the museum's real "debt" to the public, is superimposed a symbolic debt of the public to it; a debt produced in a philanthropic gestures of the patrons who provide it with more visible support. The museum draws a population into a cultural covenant, making that population beholden to make itself worthy of capital's gifts.

Finally, after indebting a population to it, obliging that population to enter it, the museum offers to it, as its own, what has already been made "Public" culture.

If culture consists of the narratives, symbolic objects and practices, with which a particular group represents its interests and its experience, its history and possible futures, fine art represents the interests and experiences first of the professional community of primarily middle-class artists who produce it, and second of the bourgeois patrons who collect it and re-present it in museums under their own names.

The museum, as a public institution, offers up this high culture as the general public culture, the national and universal culture, turning it into the single cultural currency that would define an individual as a member of civilization; representing the bourgeoisie as being in primary and privileged possession of this civilization; and banishing all symbolic objects produced outside of the specialized sphere of publicized artistic activity to the oblivion of individual lives -where they would have no authority to represent "public" experience

Intellectual property: Enhancing corporate monopoly and bioserfdom

By Hope J. Shand

Extracts from: Fatal Harvest: The Tragedy of Industrial Agriculture, 2002
Expanded version can be found at <http://www.mindfully.org>

Twenty years ago, the concept of intellectual property was little known or discussed outside of corporate boardrooms, government patent offices, or an exclusive circle of trade negotiators.

Today, intellectual property has become a powerful tool to enhance corporate monopoly and consolidate market power. Exclusive monopoly patents are giving a steadily shrinking number of corporate "gene giants" unprecedented control over the biological basis for commercial agriculture. Intellectual property is being used to eliminate the right of farmers to save and exchange seed and to breed their own crops. Instead of promoting innovation in agriculture, patents are stifling research and hindering. Monopoly control over plants, animals, and other life forms jeopardizes world food security, undermines conservation and use of biological diversity, and threatens to increase the economic insecurity of farming communities.

WHAT IS INTELLECTUAL PROPERTY?

The term intellectual property (IP) refers to a group of laws — such as patents, plant breeders' rights, copyright, trademarks, and trade secrets — that are intended to protect inventors and artists from losing control over their intellectual creations: their ideas. Intellectual property rights are granted by a state authority for a specified time period. The inventor has the right to exclude others from making, using, or selling his/her creation and to determine under what circumstances others may use the protected idea or innovation. The types of intellectual property most relevant to plants and other life forms are patents and plant breeders' rights. Proponents of intellectual property argue that these laws promote innovation by rewarding inventors of new technologies and that IP laws are essential because a temporary monopoly enables companies to recoup their research investment.

THE EVOLUTION OF INTELLECTUAL PROPERTY IN U.S. AGRICULTURE

Historically, farmers have been the primary innovators in agriculture. They have played, and continue to play, a major role in contributing to the introduction and development of crops and livestock. One hundred years ago, virtually all of the crops grown in the United States were farmer-bred varieties.

But times have changed. The past 35 years have witnessed the privatization of plant breeding and seed sales. The seed industry, increasingly dominated by agrochemical and drug companies, began lobbying vigorously for stronger intellectual property protection for plants as a way to stimulate innovation and to create incentives for corporate breeders. In reality, plant patenting was exactly what the industry needed to privatize, through legal means, what it could not control by physical means.

The pattern is a familiar one. Every time plant intellectual property laws have been amended, it expands the scope of protection and the rights of corporate breeders at the expense of farmers, diversity, and society. It is clearly in the interest of those with money and power to amend any intellectual property system to strengthen their legal monopoly.

CONTROL OF BIOTECHNOLOGY

Intellectual property has been a major factor in the growth and consolidation of the U.S. biotechnology industry. In the 1980s U.S. patent laws were redefined to allow for exclusive monopoly control of all biological products and processes. Over the course of a single decade, the U.S. government took giant steps to accommodate the corporate desire to patent life. As one industry analyst explains, "Since 1980 it can no longer be said that something is not patentable just because it is living.... Biotechnology has advanced so rapidly in recent years that there is now virtually no life form which does not have the potential as the subject of patent application."

The patenting of life forms represents a radical departure from the scope of traditional intellectual property law. In addition to the basic criteria for patenting (novelty, usefulness, and non-obviousness) there is a well-established doctrine in patent law that "products of nature" are not patentable. But with the advent of genetic engineering, it did not take long to redefine what is considered human "invention" and legally patentable.

THE GENE GIANTS

"Seeds are software. And we have the seeds."

— Romo Garza, CEO of Grupo Pulsar, a Mexico-based conglomerate that controls 25 percent of the global vegetable seed market

Recent years have seen a breathtaking consolidation of power over plant genetic resources worldwide. Seed is the first link in the food chain. Whoever controls the seed controls the food supply. For companies that have combined interests in seeds and agrochemicals, the patented seed is the ideal delivery system for a package of proprietary technologies: genes and related inputs. With the advent of genetic engineering, the multinational Gene Giants are staking far-reaching claims of ownership over a vast array of living organisms and biological processes. As a result, fewer and fewer companies are making critical decisions about the agricultural research agenda and the future of agriculture worldwide. The power of exclusive monopoly patents is giving these companies the legal right to determine who gets access to proprietary science and at what price.

BIOSERFDOM

With the evolution of intellectual property laws, farmers are losing the right to use and develop plant diversity. Today, under U.S. patent law, it is illegal for farmers to save patented seed and reuse it. Why does this matter? Farmers have been selecting seeds and adapting their plants for local use for more than 200 generations.

When genetic engineers at Monsanto or DuPont develop a new variety of soybean, corn, or cotton, they are building on the accumulated success of generations of

farmers who have selected and improved seeds for thousands of years. The companies insist that they "invented" their genetically engineered plants and that they should be rewarded with exclusive monopoly patents. In reality, corporate plant breeders are fine-tuning and modifying plants that were developed by anonymous farmers and the more recent contributions of institutional breeders.

RIGHTS FOR WHOM?

There is no doubt that patents are a powerful tool to protect corporate monopoly, but they do not necessarily promote innovation. The monopolistic nature of the patent process can restrict innovation, limit competition, and thwart new discoveries. Over time, intellectual property regimes have grown into mechanisms that allow corporations (not individual inventors) to protect markets rather than ideas. In today's knowledge-based economy, intellectual property assets have surpassed physical assets such as land, machinery, or labor as the basis of corporate value.

Today, the battleground over intellectual property has moved to the international arena. The World Trade Organization's (WTO) rules on intellectual property obligate all member countries to implement minimum standards of IP for plant varieties and microorganisms. In the developing world, where the majority of farmers depend on farm-saved seed as their primary seed source, the notion of legal restrictions on seed saving is perceived by many as both alien and life-threatening.

THE FUTURE

IP laws require urgent societal review. Patents and plant breeders' rights are stifling the free flow of information and genetic resources that are so vital to human survival and sustainable agriculture worldwide.

Civil society organizations and some governments are campaigning actively against the patenting of life. Farmers and indigenous peoples' organizations are vocally denouncing patents which they believe threaten food security and human dignity and are predatory on their resources and knowledge.

The future of agriculture depends on the promotion and protection of the farmer's inalienable right to save and exchange seed. If we are to reclaim agriculture, we must resist monopoly control of life. If we are to make agriculture truly sustainable, it must be built on biological and cultural diversity, not uniformity, and on democratic institutions that are people-centered, not profit-centered.

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concept from the website www.textz.com

napster was only the beginning

a spectre is haunting the corporate world--the spectre of organized world-wide file-sharing. mp3, to name the most common synonym for the becoming-distributor of millions of former customers, has clearly shown that the flows of digital data are much more driven by people and popular protocols than they are determined by legislation, ownership or the new global rules of the corporate-political. napster has reverse-engineered the ideology of a whole industry, and it has finally proven its total, complete and absolute obsolescence. today more than ever, the nets are zones of excess, immune against the business model of electronic scarcity. the transnational companies that are trying to break up the file-sharing networks have declared a war they will never be able to stop. there are going to be thousands of napsters. textz.com is not even zero-point-five of them.

we are not the dot in dot-com, neither are we the minus in e-book. the future of online publishing sits right next to your computer: it's a \$50 scanner and a \$50 printer, both connected to the internet. we are the & in copy & paste, and plain ascii is still the format of our choice. it shouldn't require a plug-in to read a book on the net, nor should it require a credit card. the text industry is a paper tiger. along with the mass erosion of their proprietary rights goes the vanishing of their digital watermarks. packed today, cracked tomorrow. whatever electronic gadgets they will come up with--they are all going to be dead media on their very release day. forget about your brand new kafka dvd. i already got it via sms. one shouldn't expect the 50 million former users of napster to be digitally illiterate: they won't judge an e-book by its cover.

this is not project gutenber. it is neither about constituting a canonical body of historical texts (by authors so classical that they've all been watching the grass from below for almost a century of posthumous copyright), nor is it about htmlifying freely available books into unreadable sub-chapterized hyper-chunks. texts relate to texts by other means than a href. just go to your local bookstore and find out yourself. the net is not a rhizome, and a digital library should not be an interactive nirvana. the conceptual poverty of today's post-academic, post-corporate public online services--and we haven't seen dot-museum yet--is not and has never been a desirable alternative to the dystopic vision of a future controlled by the super-pervasive data-streams of the emerging military-entertainment complex. there are still other options. nostalgia is slavery. stay home, read a book.

information does not want to be free. in fact it is absolutely free of will, a constant flow of signs of lives which are permanently being turned into commodities and transformed into commercial content. textz.com is not part of the information business. they say there was a time when content was king, but we have seen his head rolling. our week beats their year. ever since we have been moving from content to discontent, collecting scripts and viruses, writing programs and bots, dealing with textz as warez, as executables--something that

is able to change your life. this is not promotional material. facing the unified principles of information--the combined horror of global communication and so-called guerilla marketing--there is no more need for media theory or cultural studies. the resistance against corporate culture can itself no longer remain in the cultural domain. you make a mistake if you see what we do as merely apolitical.

we are studying the coils of the serpent, watching the walk of the penguin, mapping the moves of our wired enemies. intellectual, digital and biological property--cornerstones of the new regimes of control--are the direct result of organized corporate piracy. they are not only replacing such dubious and obsolete notions as freedom, democracy, human rights and technological progress. all these new forms of ownership are, in the first place, attempts to expropriate people's work, data and bodies--just as the they begin to acquire, for the first time in history, the technical means to organize them in a radically different way. today's global media and communication conglomerates are mafias, and we shouldn't count on what's left of the national governments when it comes to fighting back. "humanity won't be happy until the last copyright holder is hung by the guts of the last patent lawyer." napster was only the beginning. the nineties of the net are over. let's move on.

a.s.ambulanzen, berlin/germany, march 2001

Free Culture
Lawrence Lessig, 2004

(Extracts from Preface) Full book can be downloaded at
<http://free-culture.org/freecontent/>

At the end of his review of my first book, *Code: And Other Laws of Cyberspace*, David Pogue, a brilliant writer and author of countless technical and computer-related texts, wrote this:

Unlike actual law, Internet software has no capacity to punish. It doesn't affect people who aren't online (and only a tiny minority of the world population is). And if you don't like the Internet's system, you can always flip off the modem."

Pogue was skeptical of the core argument of the book—that software, or “code,” functioned as a kind of law—and his review suggested the happy thought that if life in cyberspace got bad, we could always “drizzle, drizzle, drizzle, drome”-like simply flip a switch and be back home. Turn off the modem, unplug the computer, and any troubles that exist in that space wouldn't “affect” us anymore. Pogue might have been right in 1999—I'm skeptical, but maybe. But even if he was right then, the point is not right now: *Free Culture* is about the troubles the Internet causes even after the modem is turned off. It is an argument about how the battles that now rage regarding life on-line have fundamentally affected “people who aren't online.” There is no switch that will insulate us from the Internet's effect.

But unlike *Code*, the argument here is not much about the Internet itself. It is instead about the consequence of the Internet to a part of our tradition that is much more fundamental, and, as hard as this is for a geek-wanna-be to admit, much more important. That tradition is the way our culture gets made. We come from a tradition of “free culture”—not “free” as in “free beer” (to borrow a phrase from the founder of the free software movement), but “free” as in “free speech,” “free markets,” “free trade,” “free enterprise,” “free will,” and “free elections.” A free culture supports and protects creators and innovators. It does this directly by granting intellectual property rights. But it does so indirectly by limiting the reach of those rights, to guarantee that follow-on creators and innovators remain as free as possible from the control of the past. A free culture is not a culture without property, just as a free market is not a market in which everything is free. The opposite of a free culture is a “permission culture”—a culture in which creators get to create only with the permission of the powerful, or of creators from the past. If we understood this change, I believe we would resist it.

Like the arguments for free software, an argument for free culture stumbles on a confusion that is hard to avoid, and even harder to understand. A free culture is not a culture without property; it is not a culture in which artists don't get paid. A culture without property, or in which creators can't get paid, is anarchy, not freedom.

Instead, free culture is a balance between anarchy and control.