

# Art, creativity, intellectual property and the commons

## Can free/libre culture transform art?

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Giles Moss

**L**et us begin with a story about art. In this story, art produces aesthetic works of durability and stability — things that “stand up on their own”. The act of artistic production doesn’t come from nowhere; neither is it born in the heads of private individuals. It doesn’t dwell in a social nothingness. Nor does it start with a blank canvas. Any moment of production involves the reassembling and rearranging of the diverse materials, practices and influences that came before it and which surround it. Out of this common pool, art creates aesthetic works with emergent properties of their own. From the social world in which it lives, art creates *affect* and *precept*. It forms new ways of feeling, seeing and perceiving the world. It gives back to us the same object in different ways. In so doing, art invents new possibilities and makes available new forms of subjectivity and life. Art is creative and productive.

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### Art as property?

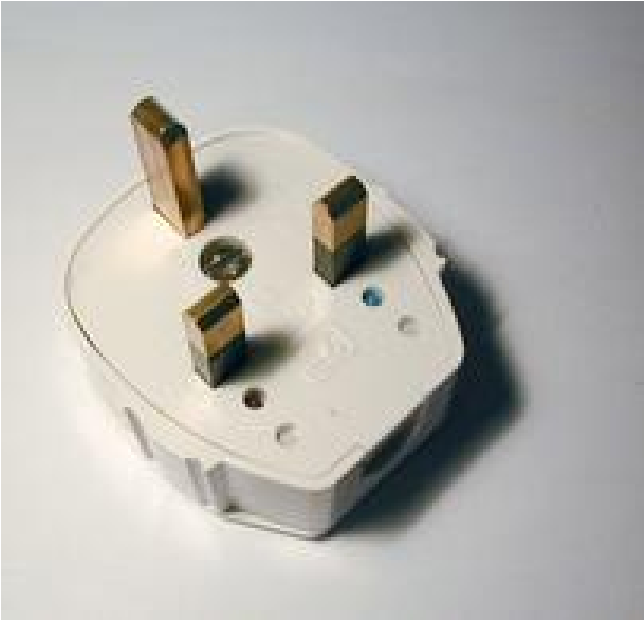
This is a plausible story about the “truth” of art. But it’s not the story we are commonly told. Normally, art and cre-

ativity are associated in people’s mind with a more heroic tale. Here, the moment of production is reduced to the actions of an individual creator. Creativity is considered to be a moment of individual genius, born out of a social vacuum, solely from the minds of private individuals *ex nihilo*. In this view, art is an autonomous sphere, existing independently from and impervious to other aspects of the social world (e.g., technology, economics, politics). It is this enduring discourse of artistic creativity that sociologists and philosophers have had so much fun demystifying and debunking in the past. Time and again they’ve highlighted the absurdity of romanticism and subjectivism. They remind us that there is no such thing as a private language of creativity. Artistic creativity is a social practice. It cannot help both influencing and being influenced by other aspects of social life. As if anyone ever really doubted these things in the first place.

Critiques of romanticism and subjectivism have been restated so many times that they may sound tired and repetitive to some. It might appear trite and even boring to keep remaking this case. But even so, discourses of subjectivism and romanticism *continue* to permeate interpretations of creativity. Nowhere is this clearer than in legal and economic definitions. In intellectual property law, for instance, we find that discourses of the author, romanticism, subjectivism, originality and genius are still rife. Given this, it is no surprise that sociologists will keep reminding us, pointing to the sociological “facts” of art and creativity.

Political economists take a different approach. They ask

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why these specious discourses of romanticism and subjectivism remain pervasive. And they argue that the reasons are clear-cut. Look no further than the commodification and privatization of artistic creativity. The story goes like this: in order to generate profit from art, creative products must be transformed into property that may be owned and exchanged by private profiteers. “Intellectual property rights”, enforced by the state, are the mechanism for achieving this. Intellectual property requires a legal persona who “owns” the creative product in order to function: the “author”. This legal fiction is the sovereign “individual”, endowed with the power of creation, someone who “justifiably” has ownership rights over their creative goods and “deserves” to be handsomely rewarded. These creative goods, even though they were created in and out of the public, may then be owned by private entities (and not necessarily the “original creators”) and removed from what we share in common. Then, as property, these creative products can be exchanged among private hands, and traded and consumed in the market place.

Creators may be understandably flattered by their association with the mythical identity of the creative genius. They can easily forget how they were inspired and influenced by others (friends, lovers, enemies...) and of the legitimacy of any previous “sources”. They might yet start believing that

they are above and beyond this world: the true romantic genius. But they will soon be brought back down to earth in one respect. For they will also have to be their own mini legal-experts. They must manage and defend the alleged misuse, unauthorized reproduction, or plagiarism of “their” works by others. It is no wonder that new digital technologies — media for sharing and reproducing immaterial goods like never before — are so dangerous and alarming. Fortunately for them, this situation will not be so for long. Many of these creative and freeing technologies are currently being brutally reconfigured to prevent the re-use of immaterial goods, such as sampling CDs, recording and reusing television or invoking montages of images on a computer screen. Our artistic geniuses (and their corporate friends) may sleep soundly in bed again.

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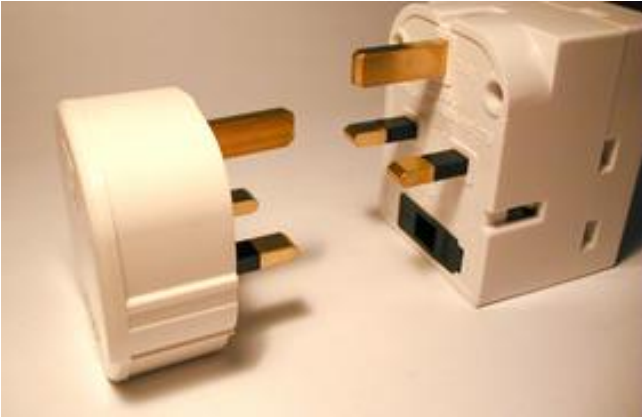
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## The alternative vision

It is too easy for the creative to overlook how the myth of the romantic creator allows creativity to be linked into the system of profit — that it is most often employed to justify the ownership and exploitation of creative works by private corporations. This tendency is further supported by the claim that art is somehow autonomous from society. In truth, like many of us, artists are of two minds where money is concerned. Sometimes they are critical. But mostly they collaborate. The art market sustains the livelihood of many independent artists who are understandably wary to bite the hand that feeds them. Nonetheless, the art market also has pernicious effects. Capital has always shaped and controlled bourgeois art, whether through speculators and investors, corporate art portfolios, or indirectly through government pressure to create artists who are vocationally trained, ready for the advertising agencies and marketing departments. But there is now a new intensity to capital, a new plane of or-

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ganization that segments and overcodes the practices and subjectivity of the creative. Private corporations (creating what Walter Benjamin called the mythology of “newness”) harvest the work of artists so that new commodities can promise beautification and aesthetic “novelty”. Numerous artists are co-opted into the ranks of bureaucrats and managers, finding themselves no longer creating art, but marketing and selling commodities. Art has obsolescence built in, oriented towards fashion and the valorization of the putatively “new”. Arts and Humanities departments in universities make room for “Marketing” and “Creative Industries” departments, where the value of creativity is reduced to its profitability.

This list of corruptions is not exhaustive. We could go on and on citing other examples. But our point is simple. All these developments fit neatly with the transient, throwaway culture of postmodern consumerism, but less so with a view of art as autonomous from society and immune to social interests. Instead of concerning ourselves with the question of art’s so-called autonomy, we should be confronting more pressing questions. For example, what vision of creativity and of themselves do the creative hold? As we have described, the prevailing system of intellectual property law, and the discourses of romanticism and subjectivism that sustain it, create a particular set of interests for artists. This is the possessive individual, the creative genius. Here, the creative become divided from one another. They are not encouraged to share thoughts, concepts and work. They are not encouraged to contribute to the common. Instead, they jealously protect “their property” from others who are un-

derstood as competitors. This vision of creative production is easily linked to the capitalist system of property, market exchange and exploitation. Most importantly, it allows corporations as private entities to own and profit from creative works. Indeed, overall, this is a vision of the art world created in capitalism’s own image.

This is the dominant discourse and practice of creativity today. But — *and a big “but”* — it is not the only vision of creativity available to us. There are alternatives. If we look hard enough we find networks of individuals and groups who understand creativity in terms quite different from the present intellectual property system. We find a vision of creative production more like the story which opened this article. Notable examples of such networks go under the names of the “creative commons”, “copyleft”, “free/libre” and “open source” production. These networks produce creative works (concepts, ideas and art) that exist outside the current property regime. They therefore seek to turn the intellectual property regime and its vision of creativity and the interests of the creative on its head.

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Rather than privatizing their creative works, these networks share them and hold them in common. To do so, they adopt an ingenious “viral” device, implemented through public licences, known as *copyleft*. This ensures that their creative works can all be shared, contested and reinterpreted among the creative as a community of friends. It also guarantees that future synergies based on these concepts and ideas are equally open to others. Whereas copyright operates through law to prevent the modification and re-use of concepts and ideas, copyleft ensures that these concepts and ideas remain openly available and resistant to being privatized. So the concepts and ideas of these networks, like the symbols and signs of language, remain public and non-owned. For these groups consider it shameful that private entities are allowed

to “own” creative works and prevent others from using and re-interpreting them. For them, creativity and the creative depend upon what is common. They depend upon their social life.

## Conclusions

In our view, the attempts of these networks to reinstate a “commons” in a world of capitalist privatization is a significant contemporary development. If nothing else, these networks create a vantage point from which we can view the profound increase in the commodification and privatization of our common creative life — where shared concepts and ideas are privatized and expropriated from the common by profit-makers. Thanks to them we are less likely to allow the marketing and PR of the creative industries fool us into thinking they are the true friends of creativity. Or convince us that sharing our creative work with one another is criminal. If anything, property is the corruption and the crime, an act of theft from the common substrate of creativity. Copyleft groups have created critique and resistance to the intellectual property regime. More positively, these networks have given us new possibilities. They are not only reactive, but productive: they make available new forms of subjectivity and life; they remind us that we only ever attain the possible by time and again reaching for the impossible; they are social laboratories. Let us hope, for a possible future of creativity to come.

## Sites to visit

Open Source Art (<http://opensource.boxwith.com/>) Open Source Music (<http://www.locarecords.com>)

Open Source Film ([http://www.archive.org/movies/opensource\\_movies.php](http://www.archive.org/movies/opensource_movies.php))

Creative Commons (<http://creativecommons.org/>)

Libre Culture (<http://www.libresociety.org/>)

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**David Berry** is a researcher at the University of Sussex, UK and a member of the research collective The Libre Society (<http://www.libresociety.org>). He writes on issues surrounding intellectual property, immaterial labour, politics, open-source and copyleft. **Giles Moss** is a doctoral student of New College, University of Oxford. His research interests span the field of social theory, but he currently works on the intersections of technology, discourse, democratic practice and the concept of the “political”.