Creativity and Its Discontents

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Creativity as a Construct of Rights

In recent discussions of IPR, particular rights—around issues such as territories, ownership, and negotiations among different rights holders—are often the key site of contestation. But most fundamental to such discussions are the author’s rights. Distributor’s rights are safeguarded under contractual transfer of author’s rights, so that the distributor should be seen as a function of the author,1 and user’s rights are often formulated under the promises of further creativity and innovation. The protection of author’s rights has become a common moral principle for IPR critics of all positions, but the concept also raises the question of creativity ownership. Highlighting the author’s rights might reestablish the connection between creativity and labor, but it also reduces creative acts to products negotiable among discrete individuals, running the risk of turning all aspects of humanity into property. The author’s autonomy seems to be protected: because the products of one’s labor supposedly belong to the laborer alone, one can sell it to others at one’s discretion. However, such autonomy is most fragile within a hegemonic structure, and these individual exchange activities are easily manipulated by the dominant class. We need a much more complex understanding of the author in order to arrive at a proper understanding of the production of creativity that can resist commodification.

In the previous chapter I argued that we must consider the author as (constructed as) both an artist and a laborer. Here I demonstrate that author’s rights should also be put under critical scrutiny—it should not be understood as natural and inalienable, but must be negotiated along two lines of logic: the public nature of any rights and the spontaneous and diffusive tendency of the signification of signs, that is, textuality. Both logics emphasize connectedness through differences in terms of people and in terms of signs, and their juxtaposition reminds us of the mutual conditioning between people
and their ideas. Only by rescuing the uniqueness of human creativity can we
resist viewing creative products as controllable social products, and there-
fore relocate the liberating dimensions of art and culture. Chapters 1, 2, and 3
demonstrate the intricate relationship between the two logics of art and labor
in the forging of the creative economy and the subversive meanings of cre-
ativity to this overarching system. While the creative economy dialectically
manipulates the tensions between artistic production and industrial produc-
tion to turn creativity into a new condition of production, creativity is liberat-
ing because of the mutual conditioning and rejection between textuality and
industrialism.

Between Economy and Ideology

As individual modern legal concepts, trademarks, patents, and copyrights
all have long and separate histories in the West, let us first revisit briefly how
IPR developed in order to distinguish earlier forms of IPR from current forms
in their different economy-ideology relationships. According to Christopher
May and Susan K. Sell, trademark protection was the first form of intellectual
property in Europe that resembled current patterns of law, when guilds devel-
oped methods of differentiating guild-sanctioned goods from others and of
enforcing their chartered monopolies in the Middle Ages. In the twelfth and
thirteenth centuries early forms of patent evolved when sovereigns began to
reward those who introduced new knowledge or industrial practices into their
territory, particularly in the form of technology transfer that reduced imports
and expanded exports. Two most copyright scholars date the emergence of mod-
ern copyright to 1557, when the members of the English book trade received a
royal charter and became the Stationers of London, although it is also certain
that some form of copyright had been developed earlier. Unlike trademark
and patent, which refer to commercial and industrial practices and knowl-
edge in a general sense, copyright is related to the invention of a specific tech-
nology: the moveable type printing first used by Gutenberg in 1451 in Europe.
A. J. K. Robinson demonstrates that exclusive rights to print certain books
were granted by the Senate of Venice to individuals as early as 1469, eighteen
years after mass printing was invented. As industrialization and commercialization continued to develop rapidly,
these primitive IPR concepts were constituted in national laws and enjoyed
stronger protection. The first patent law dates to 1474, when Venice enacted
its first patent statute decree, requiring the inventors or manufacturers to reg-
ister their new and inventive devices in order to obtain the right to prevent
others from using them. Print capitalism began to drive the socioeconomic
development of Europe in the sixteenth and seventeenth centuries,\(^5\) and the
first copyright law, the Statute of Anne, was passed in the U.K. in 1709, which
soon led other European countries to pass their own versions of copyright
laws. In 1787 the U.S. Constitution enacted its Patent and Copyright Clause
(Article I, section 8, clause 8), which grants Congress the power to promote
the sciences and arts by ensuring the rights of authors and inventors. Trademark
is treated separately in the U.S. Constitution, as part of the commerce
law, while European countries enacted individual trademark laws, such as the
Trade Mark Registration Act in 1875 in the U.K. and Legislation Relating to
Commercial Marks and Product Marks in 1857 in France. Each of these legal
concepts was a necessary byproduct of the new industrial and market condi-
tions, and they individually and collectively witnessed the expansion of capi-
talism.

In spite of the increasing attention given to intellectual property legis-
lation among Western countries, in the nineteenth century there was not a
clear set of international standards all countries needed to follow. The diver-
sity of intellectual property policies among countries was in part a function
of their different stages of development.\(^6\) Individual IPr-related laws were
developed to introduce foreign technologies or artistic works to a country
and to provide incentives for domestic innovation and creativity. In other
words, these national laws were international in scope but driven by national
interests. As capitalism continued to develop, patents and copyrights were
increasingly conceptualized as trade issues that involved grave international
commercial and political interests, and a dense network of bilateral treaties
began to emerge in the nineteenth century. Out of the complexity and con-
fusion arose a quest for broader multilateral agreements. At the same time,
individual inventors like Thomas Edison and Werner von Siemens and their
corporations, as well as established authors like Victor Hugo and Mark Twain
and their publishers, pressed for higher standards of international patent and
copyright protection.\(^7\) With the active involvement of these interested parties,
particularly the lobbying efforts of large predatory corporations, multilateral
patent and copyright treaties were developed; the most important ones were
the Paris Convention for the Protection of Industrial Property of 1883 and the
Berne Convention for the Protection of Literary and Artistic Works of 1886.\(^8\)
In the early twentieth century, with extensive national and international IPr
laws in place, lawsuits abounded, along with growing international competi-
tion.\(^9\) Although these treaties might be seen as evidence that some forms of
globalization existed before the 1970s, the scope and power of these treaties
by no means matched those of the Agreement on Trade-Related Aspects of Intellectual Property Rights, to be discussed later.

Underlying this legal history, which was heavily manipulated by commercial and political interests, was a parallel history of philosophical discussions among thinkers and critics concerning the meanings and values of IPR. Adam Smith contended in 1762 that “the property one has in a book he has written or a machine he has invented, which continues by patent in this country for fourteen years, is actually a real right.” But the combination of the individual concepts of patent, copyright, trademark, and the like into a coherent concept of “intellectual property” occurred only in the nineteenth century. Borrowing John Locke’s ideas of property rights to articulate the ownership of abstract ideas, prominent nineteenth-century moral and political philosophers such as Herbert Spencer, Lysander Spooner, and Thomas Jefferson wrote of IPR as an abstract philosophical concept; thus the concept of IPR must be traced back to Locke. According to Locke, people have a natural right to the things they have removed from nature by their own labor, and people should be protected by the state from any—including the state’s—infringement on their property: “The labour of his body, and the work of his hands, we may say, are properly his. WHATSOEVER then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, thereby makes it his property.” Given the logic of the inalienable relationship between a person and his labor, property rights are intrinsic to human beings and should be applied universally. To Locke, the role of the state is to enforce, instead of legitimize or negotiate, this universal right. Property was not created by government, but it was the source of government. As a result, “government has no other end but the preservation of property.”

Two centuries later, Spooner, who is considered the first person to use the term “intellectual property” in print, argued that concepts of property rights apply to intellectual property as well: “When a man digs into the earth, and finds, and takes possession of, a diamond, he thereby acquires a supreme right of property in it, against all the world. . . . By the same rule, when the scientist, in his laboratory, discovers that, in nature, there exists a substance, or a law, that was before unknown, but that may be useful to mankind, he therefore acquires a supreme right of property in that knowledge, against all the world.”

In Locke’s moral philosophy man evolves by conquering nature; the nineteenth-century notion of IPR is also individualist in nature. Celebrating man’s material and intellectual reign over nature, both property rights
and intellectual property rights promote competition to drive social development. This is particularly evident in nineteenth-century IPR moral philosophy, which celebrates social progress and individualism by arguing that intellectual property—primarily human ideas—epitomizes social development through diversity and selection. In general, we can say that the seventeenth-century discourse of property rights and the nineteenth-century discourse of IPR are both rooted in a certain “possessive individualism,” which is driven by the concerns of human freedom and market relations. As C. B. MacPherson explains, in possessive individualism one is human only insofar as one is free, and free only insofar as one is a proprietor of oneself; therefore society can only be a series of relationships between sole proprietors, i.e., a series of market relations. As a result, market logics are legitimized by the ideology of individualism.

Echoing MacPherson’s logic, Nicos Poulantzas argues that modern property rights law is manifested, not directly as an instrument of the dominant class, but indirectly through dominant values such as liberty and equality. Accordingly legal norms can be granted a wider validity, effectively subordinating everybody to the interests of the dominant class. MacPherson and Poulantzas are correct in identifying liberty and equality as the key ideological components of the property rights concept, but in the era of global capitalism, economic forces have now gained a much more powerful role. Economics directly interfere with the operation of IPR, without resorting to its legitimization by existing modernity concepts such as freedom and justice. Instead of promoting new ideas, the current IPR legal system has a tendency to protect monopolies, secretly allowing market competition to wither. Herbert Spencer celebrates the concept of intellectual property as a manifestation of free competition that leads to evolutionary progress, but today’s IPR legal regime often deters competition and favors monopolies.

I am not arguing that the notion of possessive individual rights no longer applies to the current regime; in fact the ideology is only reinforced by transforming and aggrandizing individual interests into corporate interests. This new global order is epitomized by the latest monopolization of IPR by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which incorporates the standards of protection embodied in earlier multilateral IPR treaties like Berne and Paris and adds the new considerations of global markets and new technologies. The most significant contribution of TRIPS is in the realm of enforcement, because it is administered by the powerful World Trade Organization (WTO), which directly links IPR to the chains of trade. The Agreement entitles a member country whose nationals are in-
jured by another member country’s failure to comply with TRIPS standards to file a complaint with a WTO panel; if the panel finds noncompliance, the victim country can employ otherwise proscribed trade sanctions against the offending country. Enforced by the WTO, IPR, and others such as the General Agreement on Trade in Services (GATS), has become the most important global regime to regulate the transfer and commodification of intangible materials. While IPR history can be seen as progressing from the national to the global, it is also characterized by the move from competition to monopoly, contradictory to our commonsense understanding of globalization as market-driven. The nineteenth-century concepts are based on individual freedom, but the new IPR regime is driven by corporate interests, and it is meant to maintain the present global order instead of promoting change. In the words of Samir Amin, “The WTO’s plan for world economic government is an ultra-reactionary project in the full sense of the word: it means returning to earlier forms of the international division of labor.” It is largely through the keen pursuit of a number of private enterprises that TRIPS and the resultant IPR regime can organize these once rather discrete treaties and concepts into a new global regime; TRIPS may be seen as a stunning triumph of the private sector in shaping global IPR rules and in enlisting states and international organizations to enforce them. Many of the WTO’s treaties can be understood along the logic of dispossession, as strategies of current neoliberal capitalism to usurp everything, tangible and intangible, from the public to the private.

The economic determinism of classical Marxism, by which some Marxists boil everything down to simple results of economic logics, has been widely criticized. But the new phase of global capitalism might prove once again the validity of this strand of thought. Logics of global capitalism have now infiltrated all parts of our lives, and the wide spectrum of the social and the cultural is indeed increasingly and directly conditioned by economics. The enormous legal power inherent in IPR also clearly supports the new global capitalism. We need to be reminded that late capitalism “is a system which is no longer governed by any transcendent Law; on the contrary, it dismantles all such codes, only to re-install them on an ad hoc basis.” The IPR regime is such a system: it is so powerful, but it is also full of contradictions and room for negotiations, so that stakeholders can advance their benefits. In contrast to the nineteenth century’s IPR philosophy of individualism and competition, the underlying agenda of the WTO is to further strengthen the comparative advantages transnational capital already receives. But this does not mean that the current IPR regime is devoid of all normative values. The difference between nineteenth-century philosophical discourse about IPR and today’s
WTO regime resides in the different relationships between the legal and the moral: the previous IPR discourse legitimized itself by resorting to already accepted normative values of modernity, whereas the contemporary IPR discourse needs to enforce a new set of moral norms in order to validate this global legal regime.

It has been widely assumed that ideologies are first articulated in existing customary rules and moral standards, which are then incorporated into law. Once a formal legal rule has been announced, it often subsumes existing customs, and members of the society look henceforth to the legal rule rather than to customary practices for guidance. Legal regulation, according to Hugh Collins, is a more precise and advanced articulation of the requirements of the dominant ideology, instead of embodying anything new. The recent advent of the IPR legal regime might demonstrate an opposite movement: IPR laws are designed not to supersede but to condition new customary practices demanded by a new economic structure. The creative economy cannot operate without people’s voluntary respect for IPR, but this new norm is extremely difficult to establish, in part because the copying and the sharing of intellectual property have been made much easier by newly available technologies. The IPR morality might deter certain law-abiding global citizens, but IPR offenses are still part of the everyday for many people. Piracy and counterfeiting cannot be eradicated, in spite of fervent attempts to do so. Contrary to Collins’s argument, the IPR legal regime is not designed to take over existing practices, but to enforce a new but “unnatural” global ideological structure. It is therefore both ideological and legal: its aim is to perpetuate respect for intellectual property ownership, but its legal dimension demonstrates how difficult this ideological task is, in that it has to resort to the threat of punishment to stop people from copying. If the concept of property rights needs such ideas as individualism or progress to legitimize its advocacy of ownership, the new IPR regime resorts to the already normalized property rights logic to infiltrate a new moral system.

There is a clear artificiality about this IPR regime, and some Marxist scholars describe IPR as another form of reification. In order to protect the wide range of intangible materials appertaining to the current phase of capitalism, IPR deals with extremely diversified matters embedded in very different social, cultural, and political contexts, while at the same time coordinating capital and knowledge flows within and between the developed and the developing world to maintain global order. Tarleton Gillespie describes the new copyright system as a “regime of alignment”: the alignment of distribution systems through material and legal constraints, the alignment of allied insti-
tutions through technologically enforced licenses and ideological linkages, and the alignment of access, use, and consumption through a network of restrictions and facilitations. This logic can be expanded to explain the current manifestation and power of IPR in general, which further aligns the different rights components of patents, trademarks, copyrights, and so on. The seemingly unrelated issues IPR has to deal with include online media piracy, developing countries’ access to medicine, and the effects of transnational brand names on global consumers, to name a few. Although IPR does not work to conflate and reduce all these relatively autonomous social and cultural fields into simple structures, it effectively organizes these disparate matters by promising and endorsing the unified moral discourse of respect for ownership, “Thou shalt not steal.” At stake is the conflation of old property rights morality and new IPR discourse. The strong component of rights in recent IPR discussions allows moral topics to evade actual economic logics to form a new global common sense. The notion of rights, I believe, is both the ultimate goal and the magical element holding the artificial IPR system together, which also indirectly holds together the creative economy.

Authors’ Rights and Creative Commons

There are two prevalent approaches to dealing with IPR. First, there is the positivist approach, with which legal experts and lawmakers try to perfect the legal system. Such discussions involve a careful balance of interests and various contexts of events, and as such make the discussions highly technical. Copyright, for example, might be among the most incomprehensible and self-contradictory modern laws, because it is full of exceptions and room for argument. The IPR legal regime in general is a quintessential example of a modern technocratic device because of its extreme technicality.

Recently IPR discussions have proliferated in public space, particularly on the Internet. Based on the amount of critical public commentary IPR has received, some argue that no area of the law has been under more fire. However, these discussions are confined among a relatively small group of interested and informed individuals, and their pervasive discussions have not yet led to general public comprehension of the real implications of IPR on global politics. Most depressing, these discussions have had minimal effects on actual legislations. While the Sonny Bono Copyright Term Extension Act of 1998, which provides twenty more years of monopoly to copyright owners, has attracted much criticism in the past ten years, the U.S. Supreme Court is still unmoved by a recent constitutional challenge to the law led by a team of
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As a cultural studies scholar, I am wary of taking the positivist approach to critically deal with IPR, in spite of my appreciation of the tremendous efforts esteemed scholars and activists have devoted to educating the public about the social meanings of IPR. As Herbert Marcuse pointed out as early as the 1940s, in our modern society, which honors technological process as a new rationality and a new standard of individuality, the free economic subject is “rationalized” into the system. It might be futile to interrogate the IPR regime through its technicality because that would only lead to the perfection of the system, instead of nurturing a critical position from which to reflect on the taken-for-granted notions of property and of rights. One IPR expert admits that the more she is drawn into the study of intellectual property, the more she speaks the language of the law and develops her critique based upon the law, and therefore the more she becomes “co-opted” by the law.

The second dominant approach in current IPR studies focuses on the discussion of rights, or more precisely, the balance of interests among stakeholders. These critics can be categorized into two opposing camps. Those advocating strong IPR protection claim that the protection of the rights holders and the fostering of creativity is basically the same thing: by protecting existing work from infringement, creators’ financial rewards are maximized, thus encouraging further creative acts. Collective well-being and social advancement will ultimately be achieved through the protection of individual rights holders. Those promoting a weak IPR regime argue that the more easily ideas and expressions can be accessed and circulated, the more creative products will result. They criticize tight IPR controls for being hegemonic and for fortifying the uneven global distribution of wealth both on the individual and international levels. They believe that the purpose of intellectual creation is to serve all humankind, which is better fulfilled by allowing the fruits of knowledge and creativity to remain public. While the advocates for strong IPR tend to identify with the rights holders and those supporting weak IPR with users, what is taken for granted in both camps is the endorsement of the “author”: among IPR advocates the author is understood strictly as the idea originator, while those promoting weak IPR see users as potential authors who should be allowed to adopt existing ideas to create new ones. This is clearly evident in the logic of Creative Commons.

Creative Commons, which emphasizes sharing rather than owning, is one of the most influential alternative copyright programs. The project aims to develop alternative approaches within the legal framework of the current copyright system to handle copyright licensing that encourages contributions
to the public domain. Johanna Gibson is right to point out that Creative Commons challenges the dominant model of creativity, which promotes adherence to the original form and the mythology of the creator. Creative Commons demonstrates that creativity and knowledge can be transferred and developed in processes of viral form. It confronts the ways creativity has been industrialized, and the license also dilutes the economic drives of creative acts that underpin the current IPR regime.

However, Creative Commons is ultimately also a project for the author and supports IPR’s underlying property rights and possessive individualism rhetoric. In Creative Commons, the author is considered both the copyright holder and the user: the author retains the rights to her works and also accesses others’ works to produce additional works. Within specified limits, people may use the works licensed under Creative Commons without paying royalties, but all current Creative Commons licenses require that users and copiers supply attribution in the manner specified by the original author or licensor, and they also state that the author’s moral rights cannot be affected by the license. Authors who choose to license their work with Creative Commons and similar alternative programs do not forfeit their names, but the licenses allow their names to travel more freely, and the authors can see their work distributed on the Internet and other media more effectively. Presenting one’s work under a Creative Commons license or other alternative licensing option does not mean giving up authorship rights—quite the contrary. These licenses can be seen as reinforcing the author’s control by allowing her to tailor her own copyrights, as Creative Commons licensors can stipulate how their works may be used and quoted.

In a way, this understanding of the author as both the rights holder and the user protects both the stakeholders and the public domain. But the two are tied together in the sense that the public must first of all endorse the concept of the individual author. An author’s moral rights are held supreme in Creative Commons, and I believe that it is precisely this thinking that needs to be reexamined. Hannah Arendt believes that rights are not something in-born, but that they are always negotiated within a political community and given to individuals by that community, and she warns us that the notion of the private should not be taken for granted but be the dialectic other to be disparaged or negotiated by all meaningful political discourses. By emphasizing the moral rights of individual authors, Creative Commons tends to decontextualize their works from the common social conditions in which the authors are caught, in spite of its opposite claim. What I find problematic
about the project is that despite its publicized aim of promoting sharing, the authors remain isolated individuals.

The persistent themes of Adorno’s criticism of popular culture—the standardization of commodities, consumers’ submissiveness to authority, and the manipulation of mass consciousness through entertainments—have been deemed obsolete in the late capitalist economy, because people are no longer considered separated into the two discrete categories of producers and receivers, but all are producers and receivers in some sense. Everybody participates in the affective economy, so that power is dispersed and simple control is impossible. The rhetoric of Creative Commons, in which everybody is free and equal, seems to fit this new scenario much more aptly than Adorno’s oppositional model can. But when everybody is considered a private subject equal to everybody else, it is impossible to conceptualize politics. Arendt states that because humans are not born equal, we need to come together and do our best to build a fair community out of the inequalities provided. Politics therefore should be about publicizing and socializing private conflicts, broadening the scope of matters concerning individuals to allow collective bargaining. Creative Commons tends to facilitate the reverse: sharing is possible only after the recognition of the author’s private and privileged position, which can be occupied by each of us. This gives us the dangerously false impression that both authority and coercion have disappeared.

Equality is not given but must be painstakingly negotiated and constructed among inequalities. Creative Commons does not play the public role of revealing and negotiating the interests of different groups; it is conceptualized simply as an inert platform facilitating an author’s organization of his or her own rights. The celebration of individuality is in accord with our capitalist society’s emphasis and manipulation of differences and liberty to promote the unrestricted exercise of individual goals, which not only breed apolitical relationships and perpetuate social hierarchy, but also hinder the conceptualization of alternative politics. I support the way Creative Commons helps authors find alternative copyright options, but we should not expect it to challenge the underlying logic of IPR; quite the contrary, Creative Commons is only one of IPR’s effects, giving us yet another copyright option in the age of flexible accumulation. The acts of negotiation that Arendt treasures are simply not structured in Creative Commons, which therefore excludes politics.

A structural limitation of Creative Commons resulting from its nonconfrontational politics is its noncommercial nature: it is stipulated that the li-
Censed work cannot be used for commercial purposes. This rule is not forced upon Creative Commons by the commercial world, but it is an internal recognition that the license can only function this way. Consider that once a Creative Commons work becomes profitable, those authors who locate their earlier contributions to the work could ask for a share, and goodwill would collapse. By imposing a noncommercial environment, Creative Commons will remain marginal and nonoppositional to the mainstream copyright cultures.

One alternative to the Creative Commons project is hacking. However, as I pointed out in the previous chapter, the dominant imagination of the pirate, the quintessential figure of antilegality, is extremely individualistic, and its romantic image is built around the discourse of agency. The contemporary reverberation of the romantic pirate figure is most obviously detected in the hacker discourse, in which figures such as Linus Torvalds, the Finnish university student who developed Linux, are celebrated as heroes. In fact the hacker discourse is largely a representational product, fictively in popular films and literature, or socially in hacker publications. In Hollywood representations, for example, while hackers might be positioned as dangerous and sometimes naïve, the characterization of the hacker as hero is also extremely common. The release in 1983 of the hacker thriller movie WarGames (directed by John Badham), which features a teenage computer genius who accidentally hacks into the Pentagon’s defense system and initiates a countdown to the Third World War, both produced and reflected the formation of a new hacking culture emerging at that time. Many young males were attracted to the smart and good-natured protagonist and started to model themselves after him. One first-generation hacker recounted, “I’ll admit it, my interest in hacking was largely influenced by WarGames.” Hollywood’s subsequent enthusiastic adoption of the hacker narrative is the best demonstration of the heroic dimension of the common hacker discourse, attesting to Wirtén’s criticism of the resurrection of the author in anti-IPR discourses.

The reality is that hacker culture is highly collective in nature, which has not been properly documented in mainstream representations. Hackers form communities through different public fora, from print pamphlets and electronic bulletin boards in the era before the Internet, to various online means such as email lists and blogs. They also announce new hacking methods and document their hacking experiences in these public arenas. Their fame is constructed from “forbidden knowledge,” in the contradictory sense that it is both private (an illegal and solitary experience) and public (knowledge made
known to others). What is privileged in mainstream representations is not communal activities but the visibility of the hacker hero.

In fact these hacker and open source software communities are much more destructive to the current IPR system than programs like Creative Commons. I find Christopher Kelty’s remark enlightening, that free software should be rethought as a collective, technical experiment rather than as an expression of any ideology or culture. Although Kelty is also interested in Creative Commons because of its practical approach to solving real problems instead of engaging in ideological entanglement, I believe it is open source software like Linux that is more germane as a real alternative to the dominant IPR logic because of its technological and negotiation dimensions. First, at stake in open source software is the technology that strives to advance potentials, not the will of individual agents to realize control over the technology. Second, the participants constantly interact and negotiate during the process, and they give and take in ways that form a community. Although in this software the human dimension is clearly essential, the participants are mostly nameless volunteers, and they find a sense of satisfaction in contributing their creativity to the project, often without any financial reward or fame.

Besides operating systems such as Linux and Android, the vigorous subtitling activities taking place online demonstrate another open source development. Many illegal sharing activities found in the Chinese cyberworld concern the uploading and downloading of contemporary foreign television programs, particularly those from Japan and the United States. The uploading can be extremely systematic and efficient, almost simultaneous with the program’s first broadcast in the original countries. While these activities demand uploading efforts by residents in foreign countries, core to these activities is subtitling, as most Chinese people do not understand the original dialogues. As such, a number of subtitling groups have arisen in Chinese-speaking communities, such as subpig, TVBT, FRM, and YTET, and they are extremely efficient and mutually competitive in subtitling the programs. Kelly Hu provides an intimate study of the operations of these groups; she finds that almost all participants are voluntary, and they remain mostly anonymous. There are core members in each of these groups who constantly recruit and train volunteers, and the volunteers in turn work cooperatively and responsibly without any real financial reward. Such fan labor is driven by a number of factors, including passion for the programs, the sense of belonging to the group, and the sense of satisfaction driven partly by the competition among the subtitling groups. These subtitling activities, as I have said, can also be understood as
part of the open source movement, as the addition of subtitles modifies the
content and helps distribute it to a wider audience. Not only can such non-
profit sharing intervene and disturb the commodity society, but the partici-
pants also develop bonds by sharing their creative labor, therefore recon-
necting the content recipients’ individuated experiences conditioned by the
modern mass media environment. However, these activities are not radically
severed from mainstream society. Hu, interestingly, describes the work ethic
of such labor as neoliberal, as they are affective, flexible, and mediating. But
Hu does not explain how the absence of personal financial gain can be fac-
tored into this neoliberal work ethic. Or is this form of labor a critique of neo-
liberalism? Also the reputation earned in such activities is very different from
that of the traditional author, which ascribes the cultural products to personal
ownership. It is the new communal connections brought about by these ac-
tivities which most interest me.

Reexamining the logic and assumptions of the author’s rights is a funda-
mental challenge to the current IPR hegemony, and also encourages exami-
nation of the piracy and counterfeit cultures. Anthropologists have inces-
santly reminded us that the notions of “authenticity” and “rights” in the IPR
discourse are not universal, and that different people understand counter-
feiting and piracy in a wide range of ways. Research shows that Vietnamese
consumers of counterfeits care less about brand or product authenticity than
quality or affordability, while Indonesian indie fashion designers engage in
bricolage to respond to and become part of a new transnational youth cul-
ture.48 East Indians understand “real” and “fake” in immigration terms: buy-
ing American brands, although in the form of counterfeit products, helps
them to access the foreign and a better place.49 Instead of holding on to au-
thor’s rights as inviolable, we need to explore how appropriations and circu-
lations can be understood and practiced differently so that we can expand the
repertoire of politics against the hegemony of “originality” and beyond the
IPR confine. These activities are vivid examples showing us the limitation of
using the economic rationale in understanding culture, and they also demon-
strate that we do not need to take the author’s moral rights for granted.

Beyond Rights: Connections of Humans and Signs

The IPR regime focuses so narrowly on the author because it is the author
who produces signs and expressions. A more pertinent question to ask is
whether signs or text can be owned. In connection with the practices of com-
munity and technology just discussed, the notion of textuality also directly
challenges any blind endorsement of the author’s rights. According to Saus-
surean linguistics, no text is created or owned by one author, but all signifi-
cations are related synchronically and diachronically; thus the notion of textu-
ality. Roland Barthes, arguing the death of the author, asserts, “A text is not a
line of words releasing a ‘theological’ meaning (the ‘message’ of the Author-
God) but a multi-dimensional space in which a variety of writings, none of
them original, blend and clash.”50 All texts are necessarily incomplete, and
meanings necessarily proliferate, which is particularly evident on the World
Wide Web, which more ostensibly demonstrates how meanings are produced
and related to others in complex, multilayered ways. Textuality therefore pro-
vides a model for us to understand meaning production completely different
from the dominant IPR discourse. We do not need to mythologize text as a
living organism that grows on its own, but human participation and commu-
nications are always an essential part of the textualization process, echoing
the serendipity discussed in chapter 1.

While the basic unit of a text is the sign, individual signs also have textu-
ality, preventing their meanings from being contained. Trademark laws are
designed to legalize and protect ownership of trademark as sign, and it is
widely argued that the culture of signs has increasingly fashioned our present-
day “disorganized” capitalism, in which people are actively shaping and being
shaped by the expressive component of commodities.51 Through the com-
modification of signs, everyday life is aestheticized. Cultural relationships can
now be produced and manipulated by the culture industry, which constructs
and circulates signs and affects. At the same time, this global order must be
maintained by shifting structures of cultural differences to legitimize the in-
equality essential to globalization.52 We might say that globalization is char-
acterized by the mutual conditioning of the production of “culture” and the
production of “cultural differences”; such mechanisms make signs the fund-
damental components of today’s global order. However, the strong ideologi-
cal desire to control signs is always resisted by the sign’s own textuality—the
tendency of proliferation and reordering, and signs signify by engaging in
the metonymic transfer and exchange of meanings. If we could displace the
ownership discourse into a textuality discourse, the subversion of IPR could
be realized without identifying any subverting subject position, allowing us
to resist taking the simple discourse of rights for granted.

Branding is a major manifestation of the ways sign is used and exploited by
multinational corporations, but, as Naomi Klein demonstrates, global brand-
ing also helps unite diversified “antiglobalization” coalitions and agendas. Due
to the sheer scope of impact and the global ambitions of multinational corpo-
rations, their fame and success also facilitate the “creative” coalitions of activists: “So you can build a single campaign or coalition around a single brand like General Electric. Thanks to Monsanto, farmers in India are working with environmentalists and consumers around the world to develop direct-action strategies that cut off genetically modified foods in the fields and in the supermarkets. Thanks to Shell Oil and Chevron, human rights activists in Nigeria, democrats in Europe, environmentalists in North America have united in a fight against the unsustainability of the oil industry.”53 Unlike appropriation artists such as Hans Haacke and Dorean M. Koenig, who appropriate famous brand names to protest against copyright hegemony and the corporate control of culture,54 these programs call attention to the brand itself rather than the artist function. In such movements, the driving force does not come from a hacker or a pirate; it is the brand itself that activates the energy. These activist activities indirectly witness the fantastic and all-encompassing nature of brands and trademarks, which unite diversified and always changing products under a single image. And with their metonymic effects brands also negatively help bring together originally quite disjointed political projects.

Globalization relies on representations for the circulation of meanings and power, yet these border-crossing globalized trademarks are transgressive in nature and can be usurped by other players in ways subversive or not. While oppositional programs can be organized around a brand name, appropriations of famous trademarks can take place in different contexts. In a recent article Paul B. Bick and Sorina Chiper call our attention to the swoosh sign and the name “Nike” carved into a gravestone in Haiti, where the visual sign, more than the name of the dead, designates the deceased. While the swoosh's multiple and idiosyncratic recontextualization does not suppress its source meaning, in the sense that its intended suggestions of freedom, speed, and grace continue to signify here in the tomb, the trademark has also become a convenience object, a collective symbol that anyone can feast on, whose meanings both multiply and impoverish.55 Signs transgress because they build new connections and open new horizons, waiting to be understood and rewritten.

Not just signs, but even information tends to proliferate in the creative economy, which is characterized by the urge to aestheticize information and knowledge into a stylistically, or even emotionally, pleasing experience. Therefore dry knowledge and information must be turned into enjoyable consumption—whether as experience, feelings, or emotions—so that information is given a humanistic veneer. But softening its edges also incurs the production of residues that are of no use. Alan Liu describes a “politics of
cool” that is recently evidenced in design and popular culture. “Cool” refers to stylization, but this politics of stylization is also a politics of inefficiency and ineffectiveness; residues are cool. “Cool is information designed to resist information—not so much noise in the information theory sense as information fed back into its own signal to create a standing interference pattern, a paradox pattern.”56 Precisely due to “creative” components, although late capitalism promotes the circulation and production of knowledge and information, its efficacy is defined not by its “useful” but by its “pleasurable” consumption, so that the continual circulation of knowledge and information is conditioned oftentimes by the ineffectiveness of its consumption. This is attested to in many current advertising campaigns; between presenting information and presenting style, there lies a constant tension over how each would bring the other into crisis. Liu’s model demonstrates the “failure” of the creative economy to come to terms with creativity, and it also avoids the subjectivist dimension of the author function, privileging neither the control nor the agency of the people. This politics of cool, in which the creative economy is invaded by creativity itself, is structural. The underlying force of creativity is as destructive as it is constructive. As a style instead of an art, cool is purely formal and residual, and it therefore evades the traditional aesthetic baggage of finding truth.

Tarleton Gillespie criticizes modern people’s blind faith in technology to fix social problems.57 I also trust technology, but my faith lies in the exact opposite of its utilitarian functions: technology also has its textuality, which can corrupt the modern concepts of control and efficiency. I think technology as text also has its own “creative” dimension. As Friedrich Kittler illustrates, in order to match our everyday language, computer codes have a tendency to infinitely expand, and so redundancy will increase: codes will grow wild, no matter how economical or orthogonal their first design may have been.58 The perfection of technology therefore can lead to excess and become subversive of technological control itself. Most counterfeiting and piracy activities are not willed by politically conscious agents, but are in part products of our technological world. Piracy and counterfeiting are particularly prominent in developing countries, as globalization encourages the equalization of cultural tastes but promotes unequal distribution of wealth, while the availability of cheap technologies helps bridge this gap. More often than not, piracy is not the act of a lone hero but a function deeply embedded within the new economy made possible by technological development.59

This logic of textuality can indeed be understood as the logic of the network. Our creative economy is densely located in our network society, and
this network society might facilitate the pluralization tendency of textuality, which the IPR regime works to tame. Today’s network society might give rise to the managerial and negotiation frameworks of global trade and finance coordinated by multilateral trade organizations, new political and military alignments among different nation-states, a hierarchy of geographies based on labor migration, and knowledge networks set up among major universities and research centers. However, we do not want to equate networks with capitalism, as networks both precede and are the result of the phenomena attributed to late capitalism. As Scott Lash argues, “Information and communication are neither instrumentalities nor finalities: information and communication build networks, and they make connections. Information and communication are now—in what is no longer an industrial society, but now primarily a media society—prior to both instrumentality and finality.” Our network society encircles us with privatized human expressions, confers economic rights to copyright owners, and develops a new economy around the circulation of copyrighted materials. However, it also makes room for many other forms of circulation and signification beyond the control of the dominant power, such as the rampant media piracy seen on the Internet. As the major result and site of power of the current network society, the WTO, the global platform and organization that facilitates most global economic negotiations and policing, is in constant crisis. The many multilateral treaties that the WTO negotiated are both powerful and vulnerable. If network society is the ground from which global capitalism sprouts, the former also always puts forth seeds that subvert the capitalist order. The WTO crisis is a natural result of its own ambitious project, and the difficulties of locating common interests among countries will always be roadblocks for the WTO. It is in this overall cultural economic framework that the IPR regime functions and wields power, and it is also in this framework that the IPR regime might witness its own implosion.

The notion of networks brings us back to Arendt, whose influential theory of human rights endorses not the individual human as such but the human community. As Étienne Balibar succinctly explains, “[Arendt’s] idea is that, apart from the institution of the community (not in the sense of ‘organic’ community, another form of naturalistic myth, but in the sense of reciprocity of actions), there simply are no humans.” Politics is so important to Arendt’s philosophy precisely because each one of us is connected to and made meaningful by someone else; likewise the interconnectedness of signs and meanings is important. The notion of IPR is so problematic because creativity and knowledge, whose production and reception are caught up in chain relation-
ships, are isolated into discrete objects for private ownership. We must reexamine how “correlation” can be reconceptualized, in terms of both humans and signs; thus my discussions in this section.

It is impossible to return to a precapitalist folk culture in which the relationship between cultural productions and their producers was supposedly not alienated by consumer culture. But the social embeddedness of cultural productions should not be articulated in market terms only, and there are still acts of copying and sharing in today’s culture that evade private property logics. To bring my discussions in the previous chapters together, in order to contest the overblown discourse on authors and property, what we need is not only a politics of labor, but also a politics of text, or a politics of network. Whereas the politics of labor diffuses the artist function, the politics of text resists any attempt to set up the subject position of the owner. We must resist any simple discourse of control in understanding human expression if we still want to give humanity room in this all-encompassing late capitalist society. I believe that a respect for textuality, which sounds obsolete since the fall of deconstruction, is one way to counter the IPR privatization tendency; it is also an ethical position we must hold on to in order to assert the meanings of the humanities in the age of late capitalism.