

UNIVERSIDADE DO PORTO

Faculdade de Belas Artes

Authors' Rights and Rights' Authors

On the Relationship Between Copyright and Artistic Work

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Dissertação para Obtenção do Grau de
Doutoramento

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Porto, 2020

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Resultado final

O presente trabalho foi aprovado por unanimidade depois de julgadas as Provas de Doutoramento, prestadas a 02 de Setembro de 2020, por Fátima Silva São Simão.

Agradecimentos

A presente investigação não teria sido possível sem a orientação e apoio incansável da Professora Helena Santos, a quem em primeiro lugar dirijo o meu profundo agradecimento, por toda a dedicação, cuidado e amizade com que seguiu este processo, sempre com a dose certa de entusiasmo e disciplina.

Ao Professor Heitor Alvelos, meu co-orientador, agradeço todo o empenho e rigor com que seguiu o meu trabalho desde o início, criando as condições que viriam a inspirar o desenvolvimento deste projecto e a possibilidade da sua inscrição, apesar do percurso inusitado e arriscado que cedo se adivinhava.

Quero agradecer também às várias direcções do UPTEC – Parque de Ciência e Tecnologia da Universidade do Porto, por me terem garantido as condições para que eu pudesse levar este projecto de investigação a bom porto e por terem acreditado na sua pertinência para o trabalho que venho lá desenvolvendo há mais de dez anos. Uma nota de apreço especial à equipa da qual faço parte, pela paciência, pelo carinho e por todo apoio que me deram sempre. Obrigada, Susana, Cláudia, Isabel, Nelson, Miguel, Miguel, Miguel, Carla, Elsa, Lúcia, Marta, Egle, Mariana e todos os que, durante o período desta investigação, fizeram parte do UPTEC. Não poderia deixar de agradecer especialmente ao Professor Novais Barbosa, à Clara Gonçalves, pela confiança que demonstraram em mim. Agradeço ainda aos vários criadores e criativos, cujas empresas e projectos tenho tido o privilégio de acompanhar e cujos desafios e sucessos estão na base das inquietações que motivaram este trabalho de investigação.

Um agradecimento muito especial à Teresa Nobre, companheira activista, pela força e lucidez que sempre me inspiraram e pelo entusiasmo que sempre demonstrou em relação a este projecto. E ao Diogo Morais de Oliveira, por tantas experiências, aprendizagens, angústias e conquistas que partilhamos ao longo de todo o processo.

Ao Rogério Nuno Costa, agradeço por ter acreditado e abraçado o desafio de fazermos uma performance sobre direitos de autor e para fins académicos - haveria proposta mais sisuda?, com todo o seu profissionalismo e talento com que a transformou num exercício tão divertido quanto rigoroso.

Ao Daniel Pinheiro, devo muito mais do que um agradecimento! Imagino o alívio que não sentirá ao ver este projecto terminado... Não fora a sua amizade e dedicação e provavelmente isto nunca mais tinha um fim.

Não poderia deixar de reconhecer o apoio da Creative Commons, do futureplaces, do Armazém 22 e o Ballet Contemporâneo do Norte, sem os quais não teria sido possível desenvolver as ferramentas de investigação que permitiram realizar este trabalho.

À minha família, agradeço os mimos, neste como em tantos outros momentos da minha vida. E como os últimos também são os primeiros, por fim, aos meus artistas, meus amigos, meus queridos rebeldes inconformados e inconstantes, devo um reconhecimento especial, muito para além do que é possível expressar por palavras, pela força, pelo ânimo e pela dose certa de insanidade, sem a qual nenhum investigador deveria ter que viver. Falo da Sophie, do Flávio, Bruno, Mariana, Isabel, Filipe, Ruben, Marisa, Sara, Cristina, Vânia, João, Catarina, Gisela, André, Inês, Constança, Joana, Sérgio, Vanessa, Miguel... E de tantos outros, que não poderei elencar todos – eles sabem quem são e que cabem aqui. Este trabalho é para eles.

Resumo

Neste estudo, clarificamos os efeitos dos direitos de autor no trabalho artístico, desmontando a complexidade em torno do seu debate político e revelando a desconfiança e ambivalência dos artistas perante um conjunto de direitos que deveriam existir, em primeiro lugar, para os proteger. Partindo do modelo dos círculos concêntricos das indústrias culturais de David Throsby (2008) e analisando-o à luz das recentes transformações desencadeadas pelas tecnologias digitais e face ao testemunho de artistas acerca das práticas e desafios do seu trabalho, propomos um novo modelo que oferece uma perspectiva clara sobre a organização do mercado de trabalho cultural e o papel que o direito de autor nele desempenha. Este estudo visa, portanto, apontar direcções necessárias ao desenvolvimento de novas políticas culturais e reformas do direito de autor, que não continuem a favorecer sobretudo os já privilegiados agentes do sector cultural e que sejam capazes de minimizar desigualdades sociais, económicas e culturais, ao repensar o papel do artista na era digital.

O surgimento do conceito de artista, conforme hoje o conhecemos nas sociedades ocidentais, está na origem do direito de autor (*copyright*), cujos desenvolvimentos vêm normalmente associados a grandes transformações tecnológicas. Com a revolução digital e a afirmação da sociedade em rede, o direito de autor passou por uma das mudanças mais profundas e participadas, conhecidas até ao momento. Por outro lado, a culturalização da economia e a sua recíproca economização da cultura criaram espaço para o aparecimento das chamadas indústrias criativas, com o *copyright* enquanto sua característica agregadora e central, transformando artistas em 'empreendedores criativos', ao mesmo tempo que o apoio público à cultura veio diminuindo. Nesse contexto, o direito de autor tem sido encarado como um activo essencial dos percursos artísticos e dos negócios culturais, e a narrativa política em sua defesa vem-se espalhando por todo o mundo. Ao mesmo tempo, movimentos da sociedade civil, inspirados nas comunidades de software *open source* e na cultura *peer-to-peer*, têm vindo a desenvolver alternativas e a promover o debate contra um dominante discurso proteccionista em torno do direito de autor. Embora esses movimentos tenham sido particularmente interessantes para os consumidores/ "utilizadores" de cultura, eles demonstraram já ser importantes para os próprios artistas (num período em que a distinção entre ambos é cada vez mais difícil de fazer). Dadas as características específicas do trabalho

cultural, desde os artistas a cada uma das diversas camadas de intermediários, o papel do direito de autor na estrutura organizacional e na dinâmica desse sector permanece ambíguo e obscuro, especialmente para os próprios artistas (autores). Oferecendo pouca ou nenhuma vantagem ou mesmo impondo obstáculos à prática criativa e à exploração económica do trabalho cultural aos pequenos e médios artistas e estruturas (públicas e privadas), as reformas do direito de autor dos últimos anos têm-se revelado inadequadas, contribuindo apenas para reforçar os desequilíbrios e desigualdades das estruturas e dinâmicas dos mercados culturais, contribuindo para a crescente precariedade da grande maioria dos artistas e profissionais da cultura.

Palavras-chave: direito de autor, artistas, trabalho cultural, indústrias criativas, política cultural

Abstract

In this study, we clarify the effects of copyright in artistic work, by unravelling the complexity of its political debate and revealing artists' distrust and ambivalence regarding a set of rights that should be there to protect them. Taking David Throsby's concentric circles model of the cultural industries (2008), and analysing it in face of the recent transformations raised by digital technologies and artists' testimonials about their work practices and challenges, we propose a model that allows to have an insightful notion of the cultural labour market organization and the role of copyright in it. Therefore, this study aims at pointing key directions for the development of new cultural policies and copyright reforms, that no longer continue to favour the already privileged players of the cultural scene and are instead capable of minimizing social, economic and cultural inequalities, rethinking the role of the artist in the digital era.

The emergence of the concept of the artist as we know today in western societies is in the origin of author's rights (copyright), whose developments have been linked to major technology transformations over time. With the digital revolution and the emergence of the networked society, copyright has gone through one of the profoundest and most participated changes known to date. On the other hand, the culturalization of the economy as well as its reciprocal economization of culture, created the space to the rise of the so called creative industries, with copyright becoming its central feature and transforming artists into 'creative entrepreneurs', while public support to culture kept dropping. In this context, copyright has been regarded as the essential asset of artistic careers and cultural businesses, and the political narrative in its defense has spread all over the world. At the same time, civil society movements, inspired by open source software communities and peer-to-peer culture, started to develop alternatives and promote the debate against the mainstream protectionist copyright discourse. Although such movements have been particularly interesting to cultural consumers and users, they also proved to be important to artists (in a time distinction between both is less and less clear). Given the specific characteristics of cultural work, from its core artists to all its many layers of intermediaries, the role of copyright in the organizational structure and dynamics of this sector has remained ambiguous and obscure, especially, to artists (and authors) themselves. Offering little to no advantages or even

imposing obstacles to creative practice and to the economic exploitation of cultural work by small and medium artists and structures (public and private), copyright reforms in the recent years have proven inadequate, only contributing to reinforce the inequalities and imbalances of the cultural markets' structures and dynamics, contributing to the growing precariousness of the great majority of artists and cultural professionals.

Keywords: copyright, artists, cultural work, creative industries, cultural policy

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List of Acronyms

CAE – Critical Art Ensemble

CC – Creative Commons

CMO – Collective Management Society

DCMS – Department of Culture, Media and Sports

DRM – Digital Rights Management

EC – European Commission

EU – European Union

GATT – General Agreement on Tariffs and Trade

GDA – Gabinete dos Direitos dos Artistas (Office of Artists Rights)

GDP – Gross Domestic Product

IP – Intellectual Property

IPR – Intellectual Property Rights

MEP – Member of European Parliament

MES – Minimum Efficient Scale

SACEM – Société des Auteurs, Compositeurs et Éditeurs de Musique (Society of Music Authors, Composers and Editors)

SME – Small and Medium-Sized Enterprise

SPA – Sociedade Portuguesa de Autores (Portuguese Authors' Society)

TPM – Technological Protection Measures

TRIPS - Trade-Related Aspects of Intellectual Property Rights

UK – United Kingdom

US – United States

USA – United States of America

Introduction

A STUDY IN SEARCH OF ITS DISCIPLINE OR THE CHALLENGE OF INSCRIBING A RESEARCH ABOUT COPYRIGHT

“For whence I am persuaded that till property is taken away, there can be no equitable or just distribution of things, nor can the world be happily governed; for as long as that is maintained, the greatest and the far best part of mankind, will be still oppressed with a load of cares and anxieties.”

Thomas Moore, in *Utopia* (1516)

To develop a research study about copyright nowadays is not an uncommon thing. The proliferation of studies and papers about copyright, copyright-related issues and intellectual property in general has increased progressively over the past decades, as a consequence of the changes and impacts brought by the emergence of digital technologies (Towse, 2002; Tian 2009; Haggart, 2014; see also Chapter 4). As we will see in Chapter 1 (section 3.), “The emergence of major expansions of copyright laws have often been directly driven by advances in technology.” (Tian, 2009: 11). Such expansions and reforms of the law are result of tensions, reflections, policies and research over time. None of them, however, has been as prolific and popular as the latest developments in copyright regulation – what some would call the third phase of copyright law (Haggart, 2014: 15-16).

As detailed in Chapter 1 (section 3.), such popularity has led not only to a growing proliferation of studies and discussions among students, scholars and experts, but also to the emergence of civil movements and organizations in an attempt to participate and influence the political debate about copyright. In fact, it was the engagement in such movements that motivated the very existence of this doctoral research. Unsatisfied with proposals and information accessible both in our professional and activist circuits, we decided to expand our curiosity and restlessness a level further and start an academic research project that would help us understand the effects of copyright in cultural work – particularly, in the work of core artists¹.

Working as manager of a creative industries centre², in Porto, since 2009, we selected, supported and guided young arts and humanities businesses and projects through their development process. We also worked with students and faculties, creating connections and opportunities between university and market, in what is often called the third mission of universities. In such context, and following our former educational background in economics, copyright kept appearing in political and academic discourses as a central asset for the creative industries. We were puzzled: what did that mean? That was not what we were experiencing in our own professional context. In fact, what we were observing was often precisely the contrary: young start-ups, students and artists in general struggling with distrust, threats and sometimes even law suits due to copyright issues. Wherever we looked for professional or academic advice the result was typically the same: copyright was central and creative industries should focus in their intellectual property. At a political and market level, such narrative was also growing: funding schemes, contests and public or private clients (usually bigger structures than the ones we supported) began to present new clauses in their contracts and regulations addressing copyright or intellectual property in general - often not even in a very legal way, as we later learned, let alone ethical. The result of such engagements and contracts was often undesirable, with young artists and cultural companies being forced

¹ By “core artists” we mean artists working in the fields of music, visual arts, performing arts, literature and film, as described in Chapter 5, section 2.

² The researcher has been director of the creative industries centre of UPTeC – the Science and Technology Park of the University of Porto, since 2009, after finishing her MA in Cultural Policy and Management, at the City University of London. She has also been production manager of the futureplaces – digital media and local cultures, an event related to the collaboration program between the University of Porto and the University of Texas in Austin, between 2008 and 2018.

to wave their rights in exchange of a small subsidy, a temporary recognition or a lousy commission. Copyright was a currency. But shouldn't it be a right? There had to be alternative approaches!

We had heard of open licenses in software and content before but it was only in 2011, at an academic conference in the University of Barcelona, that we first heard about Creative Commons licenses being introduced in Portugal. That led us to meet Teresa Nobre³, the young lawyer responsible for such venture, who was at the time struggling to institutionally inscribe Creative Commons Portugal and in search of partners to help her volunteer work. After two years working in the promotion of the licenses to our community of creative start-ups and arts, humanities and digital media students, we finally formally joined the open culture activist movement as public lead of Creative Commons Portugal. That engagement gave us access to a wide international community of lawyers and researchers working in the development and promotion of the Creative Commons open licenses but also advocating for more open copyright regulations' updates. We were thrilled! We finally had alternatives to offer to the artists and cultural professionals that sought for our support. However, as we got involved with the organization and after participating and even delivering some workshops and training to promote the licenses, we realized it had some problems too. Namely, despite their international range and the huge quantity of content and information on the web, the licenses were still only popular in within the narrow circuits of a privileged few and their communication did not seem to be very structured or address any clear target audience, suggesting it was not a central concern. As the licenses were developed, almost exclusively by lawyers, mainly for digital use and to provide access to culture, Creative Commons had no specific communication dedicated to its different stakeholders. Even us, non-lawyer members of the organization, struggled to understand (and explain) some things. This revealed to be, at the same time, cause and consequence of the organization's lack of engagement with the type of small and medium independent artists and cultural professionals we were working with, that could largely benefit from the licenses potential as strategic tool for their careers and businesses. So, although we had found an alternative to copyright orthodoxy and we understood it could be beneficial to young artists and creative entrepreneurs, we had no means to communicate that potential in simple and effective way. And, considering such

³ Who we interviewed for this study (see Chapter 2 and Chapter 7).

licenses were still based on copyright regulations, we also did not fully understand why copyright, a right designed to protect the authors, seemed to actually be working against them. And this was important not only to inform the open culture activist communities we were engaged in but also the communities of academics, policymakers and, above all, artists. In fact, it was fundamental to understand clearly such dynamics if we wished to progress professionally and deliver knowledgeable advice to any student, freelancer, entrepreneur or artist reaching us for help. And, considering the proliferation of incubators, co-work and makers' spaces, accelerators and other similar initiatives, it was important for that knowledge to be built, debated, validated and shared within the appropriate context of public university.

From our professional, activist and research experience, it soon became clear that, more than understanding the strategic role of open licensing (and copyright) for cultural businesses or artistic practice, what we were looking for was to clarify current cultural work dynamics and structures and the effects of copyright on them. How and why was this right of the authors being used as a barrier to market entry? How come some of these authors took so much benefit from it and others did not? In what way did that influence the work of core artists? And who exactly were these core artists? In what way were they different from cultural intermediaries, in terms of their work activities and relations?

This research study is an attempt to answer such questions. Throughout our dissertation, we try to unravel the hugely complex subject of copyright, observing it from different perspectives and exposing their commonalities, eventually leading us to understand and model the effects of copyright in cultural work. As most research projects, our study about copyright began with a rupture (Quivy and Campenhoudt, 1988: p.22-26). Such rupture phase started within a professional context and the consequent frustration of not finding the satisfactory answers to our concerns neither within orthodox protectionist legalists or among progressive open culture activists.

Under the above circumstances, to say we were in search of a discipline is not just a metaphor...

Working within the creative industries sphere, back then, we had no idea or, at least, no concrete idea of what exactly we were looking for. We were just intrigued by such growing political pressure over creative and cultural initiatives to focus on copyright, by the sudden

overload of information (or, more accurately, discourse) about it and how unclear and ambiguous it all seemed to be. Being it from more institutional/ political ends or from more civil/ activist circles, the information we received was not just unclear but also not very useful for the purpose of our professional activity of supporting the development of cultural projects and business. Unless one would blindly follow a more closed or open militant position in relation to copyright, it was considerably difficult to work, in an exempt way, strategies for implementation, sustainability or expansion within the cultural industries in such muddy grounds. Working mostly with independent artists and small creative start-ups in a peripheral western country such as Portugal, it was not easy to even consider copyright as a strategic instrument, let alone to point out the best approach for each singular project in search of professional advice. We needed clear instruments and solutions for this - such was our substantive *imagery* starting point (Becker, 1998: p.43-56).

According to Howard Becker, “we start with images and end with them” (*id., ib.:* p.43) and this is exactly what has happened in our case. Engaging in this research project has allowed us to move from substantive imagery to scientific imagery, “the imagery shared by a professional group whose members make their living studying and writing about such matters for the edification and judgement of professional peers” (Becker, 1998: p.57): to get a hold on the field’s terminology, the literature, the (pre)conception. To get a hold on the knowledge that would allow us to formulate our research question and begin our academic journey around copyright, eventually contributing to shed some light over such an obscure theme.

But even that scientific imagery was in itself a challenge to conceive: we wanted to study the effects of a *legal* matter over an *artistic* context, from an *economic* perspective. The first methodological questions then emerged. Where do we inscribe our study? What scientific discipline can give us the tools to develop such cross-disciplinary approach?

Although our further path was still very unclear at the time, it became evident that we were not going to study copyright from the law’s specific perspective. We were essentially looking at the economic effects of copyright – a topic covered by cultural economics. In his 2001 paper about the cultural economics discipline (or the economics of the arts), Mark Blaug presented the fields and developments of this now 60 years old research ground for the study of “1) taste and taste formation, 2) demand and supply studies, 3) the media industries, 4) the art

market, 5) the economic history of the arts, 6) the labour markets for artists, 7) Baumol's cost disease, 8) non-profit arts organizations and, 9) public subsidies to the arts." (Blaug, 2001: p.123). In the same article, Blaug identifies the economics of copyright as one of the strongest trends for future research in the field of cultural economics (Blaug, 2001: p.132). More recently, cultural economics has also been critical to understanding the 'new' creative economy "dominated by the digital revolution in the use of knowledge and information and its distribution via the Internet" (Towse, 2011: p.1), which is also in the origin of the growing interest about copyright, as we will see in the following chapters. Hence, we understood our 'trendy' study was clearly inscribed within the domain of cultural economics research – although the 'canonical economic studies' context and its research tradition do not yet entirely allow to accommodate advanced research in such a recent discipline, whose relations with core economic science and methods is very conflictual, due, in the first place, to its interdisciplinary assumptions (Throsby, 2001: pp.1-5; Towse, 2011: p.1).

So, however *fashionable* our topic seemed to be (or really because of this characteristic), we still had to find the academic context to develop our work. One thing that was clear was that we needed to be close to artists' and creators' world, if we wished to understand their relation to copyright. Although our professional activity already granted access to young creative entrepreneurs and freelancers, our substantive and scientific imageries indicated we really needed to focus on core arts activities to clarify the roots of our problematic and add actual new knowledge to the cultural economics discipline. In the end, the Fine Arts School revealed to be an appropriate territory to develop this study, as its Arts and Design PhD programme offered the necessary degree of (cross-)disciplinary freedom and methodologic flexibility. Professor Helena Santos, expert in cultural economics and sociology in the Faculty of Economics and Management, and Professor Heitor Alvelos, expert in design and media studies in the Fine Arts Faculty, accepted to supervise the study and this is how our research team was formed. Later on, as our research was already in progress and for external reasons, beyond our control, the Arts and Design programme was closed and the project moved to the PhD in Design programme. Such change was in effect quite natural, not only because of the formal involvement of Professor Alvelos (director of the PhD in Design) in the project, but also due to the umbilical relation of the discipline of design with the creative industries in general. The strong connection to media and cultural studies and the intrinsic multidisciplinary

approach of the programme was also a plus to this study. Moreover, “design is one of the most dynamic and diverse of the creative industries (...). [It] is also a fundamental input into most products and services in the new economy; it is one of the key instances of creativity-as-enabler of the service economy.” (Cunningham *in* Hartley, 2011: pp.290-1). On the other hand, design has been at the centre of most European policy reports on creative industries, where it is proposed as the core “driver of user-centred innovation” (HKU, 2010: p.6), whose integration “with traditional manufacturing sectors to add value and enhance the economic performance and robustness of European industry” (Lämmer-Gamp, 2014) is considered essential. In line with this centrality, as it touches different kinds of intellectual property (industrial design, trademarks and copyright), design is a recurrent mention in recent intellectual property reports, often even more than copyright itself (WIPO, 2019)⁴. Within the context of this study, the centrality of design in the creative industries is also particularly relevant as it often represents an important opportunity in terms of the secondary activities of core artists, as no other cultural industry has such a high proximity to industrial activities, adding them a specific aesthetic/symbolic plus-value - or, paraphrasing Lash and Urry (1994) providing industrial objects a design-intensive value (p.130; see also Chapter 5, section 3.).

However confusing and challenging this study’s institutional inscription might have been, the fact is that this actually represented a great opportunity for the research itself. In fact, this apparent lack of disciplinary territory inside the university context (which we later understood not to be an exclusively Portuguese problem) was in itself quite revealing of the problems we would uncover during our research path. Indeed, it was probably the first evident sign of the lack of articulation between the universe of copyright regulation and the world of the arts, to which such regulation was originally designed to protect. In other words, the substantive imagery we initially had about the detachment between copyright law (or author’s rights) and its subject (the authors) was turning into scientific imagery also due to institutional difficulty in properly accommodating/ inscribing our problematic.

Such scientific validation was also provided by our exploratory readings. Having figured out the territory of study in which our research would navigate, we started to explore the

⁴ Design is the only creative activity consistently covered by both copyright and industrial property rights (IPR), which makes design researchers and experts usually more interested, aware and open to debate about intellectual property. We will develop more on copyright and IPR in Chapter 1, section 2.

essential cultural economics texts about copyright and the creative industries. From the important work focusing on the economics of copyright by Ruth Towse, Christian Handke, Françoise Behnamou, Joelle Farchy or Richard Watt, to other fundamental cultural economics readings (particularly, literature about theories of value and cultural labour) of William Baumol, David Throsby, Pierre-Michel Menger, Eleanora Belfiore or Kate Oakley, only to name a few, the exploratory readings have helped us refine our research goals, which became more and more clear as we progressed in the theoretical analysis of such readings and confronted them to the experiential reality we were already immersed in.

Let us not forget that, as detailed above, the researcher's professional activity has been the management and development of a cultural industries centre, providing space and support to projects, start-ups and companies in the creative and cultural sector, hence, dealing with many of the challenges, opportunities and difficulties addressed in this study. On the other hand, and as result of our first attempt to find answers and alternatives to mainstream discourse, our (also referred) engagement as a volunteer in Creative Commons gave us access to a great number of international copyright experts (namely, lawyers and researchers) committed to build alternative solutions to the progressively protectionist copyright reforms taking place all around the world. So, at this point, our experiential reality essentially involved a creative industries professional and educational background and an open cultural activist engagement. That allowed us to develop an approach based on participatory and semi-participatory observation, being influenced and influencing our own everyday practice (Quivy and Campenhoudt, 1988: p.82; Candy, 2006; Davies, 2007: p.34, 170-1). On one hand, the professional context allowed us to understand empirically the main challenges and difficulties of young creative entrepreneurs and artists when having to deal with copyright; on the other hand, the activist context allowed us to observe the challenges and difficulties faced by activists, researchers and policymakers in trying to raise awareness and find alternatives to what they believe to be a better copyright system. At the beginning, the ditch between these two worlds seemed almost impossible to bridge and, whenever solutions came about, they were always unidirectional from the legal sphere to the art world, almost never the other way around (see Part II, Chapter 7, section 3.). In other words, there were a lot of training workshops, certificates, content, events and other actions created to raise awareness among artists and creative professionals. As professional business developer and volunteer activist,

the researcher was also engaged in this dynamic, promoting or participating as trainer, lecturer or speaker in many different occasions and contexts.

This experience made evident that this 'bridging' matter was not a problem only concerning the open 'copyleft' supporters but also protectionist copyright defenders. It was also revealing of the huge distance between different copyright stakeholders' discourses and perspectives. And, although not very conceptually clear, at the beginning, this was, in fact, the main motivation for this research project: to understand and clarify the actual effects of copyright in cultural work, creating tools that would allow an approximation of the many different discourses, in a way that would be accessible to all interested agents, from the artists to the lawyers, economists, researchers, policymakers and end users of the work at stake.

We start by introducing the concept of authorship, based on Michel Foucault's considerations (1969), and its relation to the historical development of copyright (and authors' rights), until the recent effervescence that has put it at the centre of cultural economics concerns (Chapter 1). We then present our methodological approaches, in themselves much revealing of the obscurity of our subject (Chapter 2). In our third chapter, we focus on the evolution and value of the cultural industries, giving particular attention to David Throsby's model of the concentric circles of the cultural industries (2008) and the characteristics of cultural work. Chapter 4 addresses the emergence of the digital revolution and the phenomena of "culturalization of the economy" (von Osten as cited by Raunig *et al*, 2011), highlighting the influence that has had in the transformation of the cultural industries as social network markets. In Chapter 5, we start from Chris Bilton's (1999) 'adhocracy model' and list the main digital transformations in the core arts, to propose a model of the organisational structure of cultural labour and reflect on the centrality of copyright to the cultural industries. Chapter 6 is dedicated to the analysis of developments in cultural policies and how they relate to copyright. In Chapter 7, we discuss the results of our field work, revealing some insights of artists and cultural professionals' impressions about copyright and the influence it has in their work. We finally present the steps to the construction of the new model we propose, explaining how copyright influences cultural work structures and dynamics, reflecting on the need to revisit artists' social contract (Chapter 8). We conclude by presenting the main findings of our study, acknowledging its limitations and proposing new paths for further research about the economics of copyright and cultural policy.

Chapter 1

WHY COPYRIGHT?

“Leave, I was going to say leave all that. What matter who’s speaking, someone said what matter who’s speaking. There’s going to be a departure, I’ll be there, I won’t miss it, it won’t be me. I won’t say anything, there’s going to be a story, someone is going to try and tell a story. Yes, no more denials, all is false, there is no one, it’s understood, there is nothing, no more phrases, let us be dupes, dupes of every time and tense, until it’s done, all past and done, and the voices cease, it’s only voices, only lies.”

Samuel Beckett, in *Texts for Nothing*, n.3 (1967)

Over the past decades, digitisation and the rise of the creative industries have brought copyright to the centre of the political debate about culture. However, before we dive into the discussion about the role of copyright for artists in the digital era, it is important to reflect about why and how it was originally created and how it has evolved throughout time. To understand that, we will briefly recall Foucault’s (1969) considerations about the concept of author and the origins of the artist as we know it today. Then, based essentially on Françoise Benhamou and Joëlle Farchy’s work (2009), we will discuss the main philosophical and practical reasons that led to the emergence of copyright, in the United Kingdom, and *droit d’auteur*, in France, unveiling the main principles behind such laws. Finally, departing from YiJun Tian (2009) and Balyne Haggart (2014) analysis, we will see how such norms have been disseminated around the world (and have been transformed to adapt to different times and places), reflecting about power relations between countries, the most recent copyright law reforms and proposals and the overwhelming participation of civil society movements that have been rising against them.

1. What Is An Author?: The Origins of Authorship in Western Societies

Looking back at Howard Becker's seminal work *Art Worlds* (1982), we find that every work of art results from an act of cooperation:

All artistic work, like all human activity, involves the joint activity of a number, often a large number, of people. Through their cooperation, the art work we eventually see or hear comes to be and continues to be. The work always shows signs of that cooperation. (Becker, [1982] 2008: p.1)

Becker also states that "someone must have an idea of what kind of work is to be made and of its specific form", although "[t]he way the work is produced bears no necessary relationship to its quality." (*id., ib.* p.2). What is also worth noting is that, according to Becker, once idealized, the work of art happens anyway: through a combination of artistic and non-artistic activities (*id., ib.:* p.5). Becker also suggests,

We think it important to know who has that gift [of conceiving and producing an artwork] and who does not because we accord people who have it have special rights and privileges. (...) Such a belief does not appear in all, or even most societies; it may be unique to Western European societies, and those influenced by them, since the Renaissance. (Becker, [1982] 2008: p.14-15)

Such concept of 'artist' or 'author' has not always even been the same throughout history. Although there is evidence of the importance of the connection between the author and his work dating from Roman times⁵,

The contested, but dominant, definition that our society gives to art and the artist is the fruit of a process of differentiation of human activities whose origin can be situated in the Renaissance. Beginning in Italy, at the end of the 15th century, the activities of the painter, sculptor and architect, considered as radically different from the manual trades, achieved the dignity of "liberal" arts. The artist is no longer an artisan, but a creator, a sort of *alter deus* free from ordinary norms; the charismatic representation of the artist merges with an aristocratic

⁵ "The Roman poet Martial inveighed against unauthorized recitation of his works as *plagium* – kidnapping – leaving no doubt his idea of the bond that ties an author to his work. (Though courts even today will sometimes characterize copyright infringement as plagiarism, more precisely the term means what Martial meant – a writer's false claim that another's work is his own.) According to the legend, when the sixth-century monk Columba secretly copied a psalter belonging to Abbot Finian, King Diarmid ordered the unauthorized copy given to the Abbot: "To every cow her calf, and to every book its copy."" (Goldstein, [1994] 2003: pp.30-31)

image of the work of art, unique and irreplaceable. We are at the point of departure for the modern idea of the creator and the created object. (Becker, [1982] 2008: pp. 353-354)

As the author explains, the conditions for the real "modern idea of the creator and the created object" (*id.*, *ib.*) have consolidated their roots during the industrial revolution, prompting what Bourdieu called 'artistic autonomy', with its first manifestations in the literary field (due to its strong connection to the printing press):

[The] movement towards artistic autonomy accelerated abruptly with the Industrial Revolution and the Romantic reaction. The development of a veritable cultural industry and, in particular, the relationship between the daily press and literature, encouraging the mass production of works by quasi-industrial methods (...) coincides with the extension of the public, resulting from the expansion of primary education, which turned new classes (including women) into consumers of culture. (Bourdieu, 1984: p. 2-3)

Nevertheless, as Becker affirms, "the work of non-artists, industrial workers, workers in the crafts, and folk artists, all of whom (so the argument goes) produce the same object or performance over and over with no discernible change (...) vary too; the difference is that no one cares about the variations in what they produce, only about the similarities." (Becker, [1982] 2008: p.301-2). So, the perfect ground to separate the artists from the rest of society as specially gifted people worthy of special rights and privileges was set:

At an extreme, the romantic myth of the artist suggests that people with such gifts cannot be subjected to constraints imposed on other members of society; we must allow them to violate rules of decorum, propriety, and common sense everyone else must follow or risk being punished. The myth suggests that in return society receives work of unique character and invaluable quality. (*id.*, *ib.*: pp.14-15)

As appealing as such mythology appears, in practice, it hides also important economic dynamics:

The Romantic mythology of the bohemian, starving artist was first forged in the world of literary production because that world offered the first example of a developed cultural industry. All the cultural industries that have emerged since then likewise based their activities on the overproduction of goods and on the permanent, excess supply of talented candidates. This is notably the case in the most speculative segments of these industries (...): an extremely high number of candidates for an artistic career, statistically low chances for success, a rapid

obsolescence rate for artistic goods, and a very wide dispersion of artists' income (Menger, 2014: p.132)

Several authors affirm the emergence of authorship as we know it today as a clear result of capitalist ideology (e.g. Michel Foucault, Roland Barthes⁶).

The philosophical considerations of Michel Foucault (1969) on modern authorship, is of utmost relevance. Focusing on literary authors his analysis may be extended to other kinds of arts (Foucault, 1969: p.309). As he states, our culture privileges an idea of individualized 'author' (*id., ib.:* p.300). On the other hand, it also implies the disappearance of the subject, as "it is primarily concerned with creating an opening where the writing subject endlessly disappears" (*id., ib.:* p. 301). Unlike the "Greek narrative or epic, which was designed to guarantee immortality to the hero" or the tradition of Arabic stories, known for their ability to defeat death (particularly well represented by Sherazade's strategy in *The Arabian Nights*), modern writing is "linked to sacrifice and the sacrifice of life itself; it is a voluntary obliteration of the self that does not require representation in books because it takes place in the everyday existence of the writer. Where a work had a duty of creating immortality, it now attains the right to kill, to become the murderer of the author", and this translates in "the total effacement of the individual characteristics of the writer" (*id., ib.*).

At the surface, this might seem a paradox. Does Foucault exalt the individualization of the author and, at the same time, proclaim the death of the author (as did Roland Barthes)⁷ through his own work? As we will see in the next chapter (section 6.), this apparent contradiction resonates with other contradictions that characterize cultural work nowadays. It is therefore important to define what represents authorial (artistic) work.

What, in short, is the strange unit designated by the term work? What is necessary to its composition, if a work is not something written by a person called an 'author'? (...) Assuming

⁶ The author is this modern figure, produced no doubt by our society insofar as, at the end of the middle ages, with English empiricism, French rationalism and the personal faith of the Reformation, it discovered the prestige of the individual, or, to put it more nobly, of the "human person". Hence it is logical that with regard to literature it should be positivism, resume and the result of capitalist ideology, which has accorded the greatest importance to the author's "person". (Barthes, 1967: p.2)

⁷ According to Barthes, "all writing is itself this special voice, consisting of several indiscernible voices, and that literature is precisely the invention of this voice, to which we cannot assign a specific origin: literature is the neuter, that composite, that oblique info which every subject escapes, the trap where all identity is lost, beginning with the very identity of the body that writes." (Barthes, 1967: p.2)

we are dealing with an author, is everything he wrote and said, everything he left behind, to be included in his work? (...) Plainly, we lack a theory to encompass the questions generated by a work and the empirical activity of those who naively undertake the publication of the complete works of an author often suffers from the absence of this framework. (Foucault, 1969: p.302)

Nevertheless, despite the obscurity of what actually is the work of an author, Western culture relies on the idea that such work has a somehow sacred aspect to it.

The extremely visible signs of the author's empirical activity are effaced to allow the play, in parallel or opposition, of religious and critical modes of characterization. In granting a primordial status to writing, do we not, in effect, simply re-inscribe in transcendental terms the theological affirmation of its sacred origin or a critical belief in its creative nature? (*id., ib.:* p.303)

It is this sort of holiness around an author's work (which, as Foucault puts it, we cannot quite grasp what it is) that allows us to associate the name of the author, not just to the designation of the person, but to "one or a series of definite descriptions" of the work it represents (Foucault, 1969: p.303). In other words, "the link between a proper name and the individual being named and the link between an author's name and that which it names are not isomorphous and do not function in the same way" (*id., ib.:* p.304). According to Foucault, the author's name doesn't necessarily represent only one person; it can very well represent a collective of people, engaged in the production of a certain type of work, which is presented under the same name. The author's name represents, therefore, a sort of classification of a particular work as it "establishes different forms of relationships among [works]" (*id., ib.*). At the same time, the name of the author also represents a particular discourse, which "status and [...] manner of reception are regulated by the culture in which it circulates" (*id., ib.:* p.305).

We can conclude that, unlike a proper name, which moves from the interior of a discourse to the real person outside who produced it, the name of the author remains at the contours of texts – separating one from the other, defining their form, and characterizing their mode of existence. It points to the existence of certain groups of discourse and refers to the status of this discourse within a society and culture. The author's name is not a function of a man's civil status, nor is it fictional; it is situated in the breach, among the discontinuities, which gives rise to new groups of discourse and their singular mode of existence. Consequently, we can say that, in our culture, the name of the author is a variable that accompanies only certain texts to

the exclusion of others; a private letter may have a signatory, but it does not have an author; a contract may have an underwriter, but not an author; and, similarly, an anonymous poster attached to a wall may have a writer, but he cannot be an author. In this sense, the function of an author is to characterize the existence, circulation, and operation of certain discourses within a society. (Foucault, 1969: p.305)

In this context, the works produced by the authors present four fundamental features, which are summarized by Foucault as follows:

[T]he 'author-function' is tied to the legal and institutional systems that circumscribe, determine, and articulate the realm of discourses; it does not operate in a uniform manner in all discourses, at all times, and in any given culture; it is not defined by the spontaneous attribution of a text to its creator, but through a series of precise and complex procedures; it does not refer, purely and simply, to an actual individual insofar as it simultaneously gives rise to a variety of egos and to a series of subjective positions that individuals of any class may come to occupy. (Foucault, 1969: p.309)

For the purpose of this research, it is important to underline such characteristics, as one would expect author's rights and copyright to be intimately dependent of the modern concept of 'author' embraced by Western culture (described above), strongly tied to the idea of property and the influence of Christianity. In referring to the works of an author, Foucault explains that

First, they are objects of appropriation; the form of property they have become is of a particular type whose legal codification was accomplished some years ago. It is important to notice, as well, that its status as property is historically secondary to the penal code controlling its appropriation. (...) In our culture – undoubtedly in others as well – discourse was not originally a thing, a product, or a possession, but an action situated in a bipolar field of sacred and profane, lawful and unlawful, religious and blasphemous. It was a gesture charged with risk long before it became a possession caught in a circuit of property values. But it was at the moment when a system of ownership and strict copyright rules were established (toward the end of the eighteenth and beginning of the nineteenth century) that the transgressive properties always intrinsic to the act of writing became the forceful imperative of literature. (...)

Secondly, the 'author-function' is not universal or constant in all discourse. Even within our civilization, the same types of texts have not always required authors; there was a time when those texts which we now call 'literary' (stories, folk tales, epics and tragedies) were accepted, circulated, and valorised without any question about the identity of the author. (...)

The third point concerning this 'author-function' is that it is not formed spontaneously through the simple attribution of a discourse to an individual. (...) Modern criticism, in its desire to 'recover' the author from a work, employs devices strongly reminiscent of Christian exegesis when it wished to prove the value of the text by ascertaining the holiness of its author (...) [Finally], all discourse that supports this 'author-function' is characterized by [a] plurality of egos." (Foucault, 1969: pp.305-9)

Therefore, according to Foucault, the idea of 'author' is not only dependent on its context and time, it also comprises a plurality of 'selves', which, as we have seen above, may or may not belong to the same physical person. Especially since the early Nineteenth Century, authors appear as "initiators of discursive practices" (*id., ib.:* p.310).

The distinctive contribution of these authors is that they produced not only their own work, but the possibility and the rules of formation of other texts. (...) The author of a novel may be responsible for more than his own text; if he acquires some 'importance' in the literary world, his influence can have significant ramifications. (*id., ib.:* p.310)

Besides being this sort of gate to new possibilities of discourse (or other creative practice), being an author also implies the possibility of difference (to the initiated discursive practice).

The initiation of a discursive practice, unlike the founding of a science, overshadows and is necessarily detached from its later developments and transformations. As a consequence, we define the theoretical validity of a statement with respect to the work of the initiator, (...) [T]he work of these initiators is not situated in relation to a science or in the space it defines; rather, it is science or discursive practice that relate to their works as the primary points of reference. In keeping with this distinction, we can understand why it is inevitable that practitioners of such discourses must 'return to the origin'. (...) The phrase, 'return to,' designates a movement with its proper specificity, which characterizes the initiation of discursive practices. If we return, it is because of a basic and constructive omission, an omission that is not the result of accident or incomprehension. (...). This non-accidental omission must be regulated by precise operations that can be situated, analysed, and reduced in a return to the act of initiation. The barrier imposed by omission was not added from the outside; it arises from the discursive practice in question, which gives it its law. Both the cause of the barrier and the means for its removal, this omission—also responsible for the obstacles that prevent returning to the act of initiation—can only be resolved by a return. (*id., ib.:* p.311-2)

This 'return' is at the same time a basic feature and contradiction of our concept of authorship. And, as we shall see in the following chapters, it also reflects the fundamental

contradiction of contemporary authors' rights regulation in our culture: we will argue that a law originally created to protect the interest of the authors seems to have been transformed into an obstacle to the emergence and freedom of those same authors.

Nevertheless, Foucault underlines that "A last feature of these returns is that they tend to reinforce the enigmatic link between an author and his works. A text has an inaugurative value precisely because it is the work of a particular author, and our returns are conditioned by this knowledge." (Foucault, 1969: p.313). It is also these 'returns' that "form a relationship between 'fundamental' and mediate authors" (*id., ib.*) and, thus, establish hierarchies between authors which become more and more complex as we refer to a book, a group of works or an entire discipline (*id., ib.*).

At a time when the Internet and digital transformation were embryonic, Foucault's essay remains visionary in setting the direction on research about authorship and its related subjects by proposing that we focus more on the developments of authorship (or the 'author-function') and its relation to social transformations.

The author — or what I have called the 'author-function' — is undoubtedly only one of the possible specifications of the subject and, considering past historical transformations, it appears that the form, the complexity, and even the existence of this function are far from immutable. We can easily imagine a culture where discourse would circulate without any need for an author. Discourses, whatever their status, form, or value, and regardless of our manner of handling them, would unfold in a pervasive anonymity. No longer the tiresome repetitions:

'Who is the real author?'

'Have we proof of his authenticity and originality?'

'What has he revealed of his most profound self in his language?'

New questions will be heard:

'What are the modes of existence of this discourse?'

'Where does it come from; how is it circulated; who controls it?'

'What placements are determined for possible subjects?'

'Who can fulfil these diverse functions of the subject?'

Behind all these questions we would hear little more than the murmur of indifference:

'What matter who's speaking?' (*id., ib.*: p.313-4)

If such questions were already urgent in Foucault's time, after the digital revolution, with all the new creation techniques and different authorial formats that are now at the disposal of

virtually everyone with access to an Internet connection, it is hard to understand how such questions remain the same, and how the corresponding legislation lags alarmingly behind technology.

It is in line with Foucault's restlessness – in returning to the fundamental author's work – that we will discuss the pertinence of today's authors' rights and copyright regulation and the possible directions it could take, to provide a more balanced and up to date response to contemporary cultural dilemmas. For that, we need first to unravel the origins of such regulations, what they actually protect and how they have evolved through time.

2. Between Book Publishers and Playwrights: A Brief Introduction to Author's Rights

Considering the Western notion of 'author' presented above, the discussion on the author's "rights and privileges" has been as inevitable as it is intrinsic to such concept. The conflicting ideas of John Locke and Jeremy Bentham about property (in the 17th and 18th centuries, respectively) come to mind: on one hand, property is regarded as natural to the individual as it results from their own work (therefore, the work is the natural property of the author) and, on the other hand, property is regarded as the result of its economic efficiency (Benhamou & Farchy, 2009: 5-6). These two conceptions, followed by Kantian thought and the French Enlightenment idea of common good would influence the rise of two different approaches to the rights of the authors (*id., ib.:* p.6-8).

Copyright protects original works of authorship that are fixed in a tangible form. A copyright covers not just unauthorized copying but also rights over the distribution of copies, derivative works and public performances and displays. (...) property rights in copyrightable goods are subject to significant limitations. 'Original' does not mean novel or creative but simply that the work originates with the author: that is, the author did not copy it from another person. (Landes *in* Towse, 2011: p. 100)

But if, on one hand, “in UK copyright law, for example, ‘originality’ means the employment of ‘labour, skill, and judgement’, on the other hand, for European author’s rights regulation, the concept of originality requires that a work be its author’s ‘own intellectual creation’” (Towse, 2010: p.463). This difference comes from the distinct philosophical backgrounds of the law:

Copyright in what is now called Anglo Saxon tradition is essentially conceived of as an economic right that enables trade to take place in information goods. From the start, it applied to publishers as well as to authors. In Continental Europe countries, influenced by the Kantian concept of the author, copyright is an author’s right (*droit d’auteur*) attached to the personality of the author; it embodies *droit morale*, what are now called moral rights, the right to attribution, disclosure and withdrawal, and these rights are inalienable. The underlying rationale for this concept of copyright is natural justice rather than to facilitate transactions. With the globalization of the cultural industries and increasing standardization of copyright worldwide, however, the distinction between the civil law countries’ emphasis on moral rights and copyright in the common law tradition is eroding. Moral rights have been incorporated into Anglo-Saxon law and European countries have extended copyright to neighbouring rights (rights neighbouring on copyright) to performers and to firms producing information goods. In Anglo Saxon law, statutory rights such as performers’ property rights are also called neighbouring rights. (Towse, 2002: p.4)

It is important to note that *copyright applies to all original intellectual creation*, from music to computer software, visual arts to scientific papers; virtually to *all creative works*, despite their origins. Furthermore, it does not require any particular merit or recognition of the author and it does not exclude anyone from it (from a child’s drawing to an edition of a classic symphonic concert, copyright is automatic for all fixed expressions of ideas). Moreover, authors can “license, assign and sell these rights outright or in part or transfer them to an agent; only the author’s moral rights in the work may not be sold or transferred. (...) In general, the economic case for copyright for authors is the same as that for patents for inventors: it creates statutory property rights that overcome free-riding problems of information goods and therefore provides an incentive mechanism for rewarding creators and for the disclosure of their works.” (Towse, 2002: p.4). And, although “both patents and copyrights are monopolies (...) copyright is a much weaker monopoly” (*id., ib.:* p.5).

The quintessential concern of intellectual property regulation and copyright in particular has been the balance between the individual incentive to create and social access to information and culture. As inherited from Adam Smith (1776), artists' career development is a sort of 'lottery game' (we will develop this further in Chapter 3), on the other hand, the artists are



Fig. 1: Copyright exists to keep the balance between private incentive and public access (Gaylor, 2008)

aware of their public mission as producers of culture and goods/ experiences outside market logics (Benhamou & Farchy, 2009; Abbing, 2002; Steyerl, 2012). From a purely economic perspective, intellectual property comes as a response to the so-called non-rivalry and non-

exclusion of collective (public) goods. Intellectual property rights (IPR) are nothing but a mechanism to create an artificial monopoly (and with it an artificial scarcity) in trying to incentivise private initiative to create (through copyright) and innovate (through industrial property, including patents, industrial design and trademarks). The non-rivalry aspect of collective goods translates into the fact that consumption of that same good from one individual does not diminish the possibility of others to equally consume it. This characteristic is intrinsically related to the non-exclusion aspect, which means that it is impossible to exclude anyone from using the collective good, even if they have not participated in financing it. Under such circumstances, the market fails to generate incentives for private action and, therefore, state intervention is required (Benhamou & Farchy, 2009: p.8-9). In the case of cultural and creative goods, such intervention can come in the form of public funding, which can be direct (subsidies, awards or grants) or indirect (tax incentives or assisted financing) (Klamer et al., 2006; 2010) or artificial monopolies conceded *via* copyright regulation (Benhamou & Farchy, 2009; Towse, 2002). As we will explain in more detail in the following chapters, this artificial monopoly, although automatically granted by law to the author, is usually not exploited by the author herself. Instead, intermediaries to whom authors license or yield in exchange of providing the means for production and diffusion of the works are actually the ones benefiting from such legal fiction (Benhamou & Farchy, 2009: p.10). In fact,

very few authors manage to live from their author's rights, which instead of contributing to the correction of a highly imbalanced star system (we will discuss it in Chapter 3), seem only to reinforce its inequalities (*id.*, *ib.*: p.54; see also Chapter 7).

Still following Françoise Benhamou and Joelle Farchy, although some authors signal forms of protection go back to Antiquity times, more often than not the act of copying was regarded as recognition of mastery rather than a crime (Benhamou & Farchy, 2009: p.19). However, the first copyright privileges were only known in the 15th Century, as consequence of Gutenberg's invention of the printing press (1450), when the Republic of Venice conceded, in 1469, the exclusive edition privileges to Johann von Speyer in exchange of him introducing this new technology in the city. Not too late after that, the first exclusive rights of control over the production of his work were handed over to the historiographer of the same Republic (1486). But the first modern copyright law, known as the Statute of Anne, was only introduced in 1709, in England, which granted authors the right to claim copyright over their work for a period of fourteen years (which could be doubled if the author was still alive by the end of such period). Long after to the "copying restrictions [that] were enforced by 'Guild regulations and royal printing privileges', some of which stemmed from even earlier practices in the territories of Venice and Rome" (Quintais & Poort *in* Hugenholtz, 2018: p.12). Such norm stressed London publishers who saw their publishing privileges (acquired in 1557) at risk (*id.*, *ib.*: pp.19-20). In fact, the Statute of Anne was more concerned with market regulation than with the actual protection of the author:

[A]s much as that Act resulted from the London publishers' demand for statutory exclusive rights, it also reflected Parliament's disdain of the monopoly of the Stationers' Company. This self-regulated publishers' cartel controlled the book trade and, pursuant to several licensing acts and other regulations, played a vital role in censoring publications unfavourable to the Crown or the Church (...) [C]opyright law was not born as a response to a world of free copying. Quite the contrary, as much as it was responsive to publishers' demands for statutory exclusive rights, modern copyright law was also a countermeasure against an oppressive regime of press control in which censorship and exclusive print privileges were conflated. Thus, the Act contained key elements that are best understood as measures that aimed to prevent the Stationers' monopoly from re-emerging. It vested initial copyright in authors rather than publishers to weaken the Stationers' stronghold on the catalogue (...). It limited the term of copyright to achieve two outcomes: maximizing access to books as they became part of the public domain and traded in a competitive market, and constraining the incumbent Stationers'

market power over in-copyright books by forcing them to compete with out-of-copyright books (...). The Act removed the Stationers' Company enforcement and adjudication powers, and created a price-control mechanism to prevent 'too high and unreasonable' prices (...). Lastly, while copyright depended on registration with the Stationers' Company, an alternative mechanism for securing copyright was created should the Stationers' Company refuse to register a work (Katz *in* Towse & Handke, 2013: pp.209-210).

The Statute of Anne would later inspire the American Copyright Statute, adopted in 1790, which granted rights exclusively to American authors, only introducing protection to foreign authors after 1891 (Benhamou & Farchy, 2009: p.20).

In face of the printing revolution, the Statute of Anne represents a legislative response to the abuse from major economic groups (Katz *in* Towse & Handke, 2013: pp.210), who benefited from excessive advantage over potential competitors (in other words, almost absolute market control) and, therefore, practically dictated cultural development directions (as they controlled which books could or could not circulate). This utilitarian background is mostly adopted in the so-called common law countries such as the United Kingdom, the United States of America, Ireland, and to some extent the Netherlands and the Nordic European countries (Benhamou & Farchy, 2009: p.22). The essence of copyright in these countries has been economic and utilitarian as it defends those who assume the economic risk of financing the creation of the work (which could be the producer or the author herself) (Benhamou & Farchy, 2009: p.23). This happened because such early copyright laws were mostly concerned in regulating "the printing, reprinting, and sale of books. Only later were other types of work added, such as sheet music and theatre plays. In modern-day language, one can say that in the early days of copyright was almost *exhausted* upon sale: no restrictions existed regarding the public performance of these works, their translation, or adaptation through musical arrangements. Only reprinting a legally obtained copy was forbidden. This began to change from the end of the eighteenth century onwards, starting with France." (Quintais & Poort *in* Hugenholtz, 2018: p.12).

Unlike copyright countries, French *droit d'auteur* (the inspiration for most continental Europe countries) focuses on the person who has created the work, the subject of the right is the author rather than the work. Author's rights are attached to the person who creates the work and not to the production/ financing it implies (Benhamou & Farchy, 2009: p.23). The main

difference between the French *droit d'auteur* and the Anglo Saxon copyright rests in the so-called moral rights. Author's rights are divided in two parts: property or economic rights (common to both *droit d'auteur* and copyright) and moral rights (originally exclusive of *droit d'auteur* tradition laws). Such rights typically include disclosure rights, paternity rights, the right to repent and the right to the respect of the integrity of the work (*id., ib.:* p.22-23). Despite the distinction between moral and property rights and a lot of discussion and controversy around whether they should even exist⁸, moral rights also have economic implications. This is particularly evident in the case of the integrity as it is a sort of guarantee of reputation externalities created by the work of art, commonly recognized and praised in the art world. Once this integrity is violated without the consent of the author, the work of art loses value eventually impacting on the value of the whole portfolio of works from that same artist, including future works. Moral rights are, therefore, an incentive to the development of an author's good reputation (which, as we will discuss in Chapter 3, is fundamental to the artistic career) (*id., ib.:* p.25-26). Oddly enough, "despite the perpetual presence of unauthorized copying, from the sheet music pirates of the eighteenth and nineteenth century to the internet 'pirates' of today, the right of reproduction (a 'copy-right') appears to have been less controversial than various rights relating to communication or making works available to the public" (Quintais & Poort *in* Hugenholtz, 2018: p.13). This partially explains why, as we have seen before, differences between *droit d'auteur* and copyright tend to weaken: in the US, eleven states already explicitly recognize moral rights as mandatory, which through court decisions has been expanding to other states to the extent that, in 1990, the Visual Artists Rights Act consecrates the moral rights of artists in a federal law. And, in the UK, moral rights have even been integrated by the country's copyright law in 1988. On the other hand, countries like France have been restraining moral rights' perverse economic effects through limiting the possibility of individual authors to oppose the distribution or circulation in the case of collaborative works. This merging process between

⁸ As an example, the successors of Victor Hugo complained against the publication of a sequel of *Les Misérables* (not only did they demanded the interdiction of the book's circulation but also compensation for damages caused and respective interests). As in many other cases, it happens that Victor Hugo himself was very suspicious of moral rights as he believed that the public should completely take over the property of the work once it was published, exempting author and his heirs from this moral dimension of rights (Benhamou and Farchy, 2009: p.25). This is consistent with testimonies from the artists we have interviewed for this research project: one theatre director was sued to pay two thousand euros by the Portuguese Author's Society (the national collective rights management organization) for staging a Heiner Muller play, who himself defended that his work of art was a sort of payback to the theatre world (see Chapter 7, section 3.).

the different approaches to copyright has been reinforced through the increasing number of international agreements and conventions (Benhamou & Farchy, 2009: p.26-27).

Nevertheless, although the origins of the French *droit d'auteur* were also related to competition problems, its different focus can help better understand the current dilemmas around copyright law. In France, it was not until 1760 that the idea of author's rights was introduced, when Diderot proclaimed the property of the author over her work, recognizing it as a tradable good with commercial (economic) value. Although here publishers controlled the market for books and literary works, the emergence of author's rights in France is more related to the theatre sector and it is coincident with the rise of collective rights management (Benhamou & Farchy, 2009: p.20).

“The origins of collective management are often traced back to the *Bureau de législation dramatique*, a venture designed by playwrights to defend their interests against actor-controlled *Comédie Française*, which held a theatre monopoly in Paris in the eighteenth century. The Bureau was created at a famous dinner on 3 July 1777, by the popular playwright Beaumarchais (born Pierre Augustin-Caron) and twenty-two colleagues disgruntled with the remuneration received from theatres for the performance of their works. Thanks to the popularity and lobbying of Beaumarchais and his contemporaries, the Bureau obtained royal support and a ‘concession from the *Théâtre Français* for playwrights to be remunerated not only by the honour to be performed, but also with royalties’. At the time, the main concern of the *Bureau* was theatrical works, as music was deemed a ‘minor art’, and music publishers viewed as ‘shopkeepers’.

In 1789, the French revolution brought the abolition of privileges. As a result, the interests of musical authors had to wait a couple of years to return to the political agenda. This occurred in January 1791 in the form of a decree from the National Assembly. As Ginsburg notes, the main motivation for the decree was ‘to break the *Comédie Française*'s monopoly on the works of Corneille, Molière and Racine’; hence, ‘the decree's recognition of authors' rights principally was a means to terminate that monopoly’. Nevertheless, the decree recognized the exclusive performing right (*droit de représentation*) for dramatic and musical works lasting for five years after the author's death. (...) Later that year, a new decree specifically recognized ‘public performing rights including concerts, thereby giving rise to what today we consider the rights of authors and composers’.

The 1791 laws, by releasing the theatres from governmental control or censorship, are said to have directly contributed to the rise in the number of theatres. (...) Note, however, that Maslan links this heyday for theatres in Paris to the abolition of the existing legal privileges, not to the

recognition of performing rights to playwrights.” (Quintais and Poort *in* Hugenholtz, 2018: p.14-16)

Another important outcome of these legal diplomas was the creation of “*Société des Auteurs* with the objective of managing and enforcing the newly created performing rights, as well as collecting royalties from theatres across the country” (*id., ib.*). The organization would eventually merge with another competing agency forming in 1829 the Society of Dramatic Authors and Composers, “the first and oldest CMO⁹ in France” (*id., ib.*). Two years later, rights of reproduction were also considered in the law. But it was only in 1838 that the property of literary and artistic works was considered in the *Traité des droits d’auteurs, dans la littérature, les sciences et les beaux-arts* (Benhamou & Farchy, 2009: pp.20-21). After a series of lawsuits favouring authors against the concert-café benefiting from their production (but unwilling to fairly pay for the work), by 1850, “the union started to collect royalties from café owners for public performances of musical pieces” leading to the creation of the *Société des Auteurs Compositeurs et Éditeurs de Musique* (SACEM), still “one of the biggest and most important collective rights management organizations (CMOs) in Europe” (Quintais & Poort *in* Hugenholtz, 2018: p.17). In 1866, France adopted a law that limited author’s rights to a duration of fifty years after the demise of the author. Despite a series of converging instances following up the French lead, all throughout Europe, countries developed their own copyright rules, different in duration and scope (Benhamou & Farchy, 2009: p.21-22). As a consequence, in 1844, the first attempt to an international agreement was adopted by the British parliament: the International Copyright Act established that foreign authors’ works should be protected under the same national laws under reciprocity from their country of origin (Benhamou & Farchy, 2009: p.27). A number of international bilateral treaties were being held as well:

Dissatisfaction with this bilateral approach led to the initial steps towards a first multilateral treaty. (...)

In 1878, (...) the meeting of the International Literary Congress in Paris, under the presidency of Victor Hugo, led to the foundations of the International Literary Association. This was extended and renamed in 1884 as the International Literary and Artistic Association (ALAI).

Among the resolution passed at the founding meeting was that:

⁹ Collective Management Organization

All literary, scientific and artistic works will be treated, in all countries other than their country of origin, according to the same laws as those applicable to works of national origin. This same system will apply to the performance of dramatic and musical works.

The ALAI played a key role in the drawing up and establishment of the Berne Convention, signed on 9 September 1886. Through the principles of national treatment and reciprocity, the Berne Convention 'allowed foreign authors to benefit from rights currently in force in countries where their works were performed'. (Quintais & Poort *in* Hugenholtz, 2018: p.18)

The Berne Convention was initially adopted by ten countries and established the protection of the author by life plus fifty years. It was only in 1989 that the United States joined the convention. India joined in 1928 and China adhered in 1992. A number of texts were discussed and rewritten since the original diploma, defining the list of protected literary and artistic works, the last update being from 1979. In 1928, the convention recognized moral rights to its terms. Resale rights¹⁰ are also addressed, namely the terms and taxes applied determined by each domestic legislation. By 2006, 159 countries had entered the agreement, but although the convention established the standards for the convergence of national laws, it did not predict their enforcement (Benhamou & Farchy, 2009: p.27-28).

The Berne Convention has been under the guardianship of the World Intellectual Property Organization (WIPO), a specialized institution founded in 1967, as result of the work developed at the United Nations' bureau of intellectual property protection (1893). In 2006, WIPO gathered a total of 183 countries and was responsible for the administration of six great international intellectual property treaties beyond the Berne Convention, as it is the case of the Rome convention for neighbouring rights (performers, phonogram producers and broadcasting organizations' rights), to quote an example. Such treaties set the standards for international copyright law and often inspire (or are even fully adopted by) national legislators (*id., ib.:* p.29), although not always peacefully and equally, as we shall see in Chapter 6.

But WIPO is not the sole international organization to participate or influence copyright regulation. As we have seen before, copyright law has always been very much connected to competition law. This is also the case in the international arena. Since 1990, the General

¹⁰ Resale rights are the rights conferred to the author of benefiting from later sales of the work. For example, if a painter sells a painting to someone and that someone later resells the work, the original author is entitled to a percentage over the profits of that second sale.

Agreement on Tariffs and Trade (GATT), celebrated in 1947, also embraces intellectual property issues, which some authors indicate as the result of an attempt from the United States to reinforce their favourable position in intellectual property negotiations (Benhamou & Farchy, 2009; Haggart, 2014; Hugenholtz, 2018; Tian, 2009). From 1981, in an attempt to defend their technology companies, the US succeeds to create a GATT *task force* for intellectual property issues and, from 1984, the country engages in a series of bilateral agreements, pressuring countries under development to adjust their domestic IP legislations in their favour. The strategy eventually ended with the signature of the Trade Related Aspects of Intellectual Property Rights (TRIPS) which forces the integration of intellectual property (copyright and industrial property) among World Trade Organization (WTO) affairs. This was also result of the need to approach such matters not in isolation, as it had been happening over the past. On the other hand, such integration has also brought new challenges in terms of worldwide intellectual property negotiations (Benhamou & Farchy, 2009: p.30).

In the case of Europe, the European Commission has been making efforts in terms of harmonization of copyright legislations among its members, adopting, in 2001, a directive for that exact purpose, in light of the new technologies and challenges of the digital era. In trying to create the best regulative environment for the development of a digital single market, the European Commission has been in line with the WTO approach, looking at copyright from a market-oriented perspective. We can now say that, in European Union countries, copyright holds an inevitable tripartite position: national, European and global (Behnamou & Farchy, 2009: p.31). With such different scales of regulation to be considered, depending on the copyright negotiations at stake, the risk of having them influence the purpose or content of the work itself is high.

This becomes particularly evident when we look at the multiple exemptions and limitations to copyright. From the wide yet ambivalent 'fair use' in the US to the exhaustively detailed but more concrete lists of exemptions and limitations in European countries, the idiosyncrasies of each country's legal framework make it nearly impossible to understand what is or is not allowed to the user. This is likely why the 2001 European directive towards the harmonization of copyright rules among EU countries did not succeed in its original purpose, as the states could choose if and how to adapt the new regulations to their own

domestic contexts (the only successful rule being the private copy exemption, which was applied by virtually all member states). On the other hand, the control over exemptions and limitations has, to some extent, become a business in itself, as copyright owners (often intermediaries to whom authors' have licensed their rights in exchange of a fixed and/ or variable remuneration) license their work for specific purposes (for example, educational). Only inalienable exemptions such as parody or quotation are safeguarded, these becoming more and more rare as copyright systems seem to progressively converge (Benhamou & Farchy, 2009: pp.32-37).

3. Copyrights and Copyfights: Tensions in the Digital Era

Copyright regulation has always been influenced by technological development (Tian, 2009: p. 13).

Historically there has always been a very close relationship between technology and law. This is particularly true in the IP and Copyright law areas. The emergence of major expansions of copyright laws have often been directly driven by advances in technology. As the Intellectual Property and the National Information Infrastructure Report ('NII White Paper') observed, 'from Gutenberg's moveable type printing press to digital audio recorders and everything in between – photocopiers, radio, television, videocassette recorders, cable television and satellites, ever-improving technology brings never-ending challenges for copyright law to respond to.' (Tian, 2009: p.11)

As YiJun Tian also explains, the digital revolution has been no different: "advances in technology and digital convergence have profound effects on changes in the international socio-economic and legislative environment. Over the past decades, advances in technology have truly created a 'global arena in terms of business, trade, and communication', and significantly enhanced the creation of the real global market, the development of the knowledge-based economy and the pace of globalization" (*id., ib.:* p.19-20). As we will detail

in chapters 4 and 5, new digital technologies allowed for the emergence of new business models that explored the emerging global network communication systems and their potential to disseminate and distribute copyrighted content. Focusing on ‘knowledge-value’, “This not only means that IP law-making plays an increasingly important role in current international IP trade, but also that lawmakers from various countries are now forced to consider conducting their copyright policy and law reforms in the context of the knowledge economy and ‘technology-impelled globalization’” (Tian, 2009: p.20). On the other hand, new digital technologies “also contribute to accelerate the pace of globalisation (...) In a small way, this will also contribute to the growth of civil society and the public’s involvement in the process of international norm-setting” (*id.*, *ib.*: p.21).

After a thorough analysis of the extensive list of international copyright agreements celebrated since the original Berne Convention in 1886, “the most powerful copyright treaty, prior to the TRIPS” (Tian, 2009: p.22), Tian concludes that “a constant expansion of IP protection has become a trend. A number of IP treaties (such as TRIPS and WIPO Internet Treaties, see previous section) have been concluded and revised in order to respond to increased technological challenges, and have constantly raised the level of international IPRs protection. Although the WIPO Digital Agenda 1999 and some ongoing IP debates have reflected certain human development concerns, mainly due to the involvement of developing countries and civil society groups (...), no pro-developing countries’ international IP agreement has been reached since 1996”, translating into a growing conflict between developing and developed nations (Tian, 2009: p.57-58).

In turn, and according to Blayne Haggart, such tensions “affect the development of a country’s copyright law” on a domestic level (Haggart, 2014: p.15).

Since its emergence in its modern form in early eighteenth-century England, copyright has gone through three phases. These phases have been driven by technological change and the creation of linkages to other issues, even as copyright itself has remained recognizable as a limited property right granted to creators in their works. In its initial phase, which lasted until the late nineteenth century, copyright was largely a national affair. Violating the copyright of other countries’ citizens was a way of ensuring inexpensive access to cultural products and to the technological information and knowledges that could help countries modernize and develop. Then, starting in the mid-1800s, copyright began to be internationalized to a significant degree,

first through a series of bilateral treaties of reciprocal protection and then through an international treaty, the 1886 Berne Convention.

The current period, dating to the mid-1980s, is characterized by the aggressive pursuit of ever-stronger global copyright laws. These changes have been driven primarily by the United States. US content industries, interested in protecting and expanding their own global economic position, successfully linked US government officials' concerns about declining US global economic dominance to their self-interest calls for increased IP protection as a means of arresting the perceived decline. (Haggart, 2014: p.15-16).

Like other authors (Benhamou & Farchy, 2009; Tian, 2009; Hugenholtz, 2018), Haggart recognizes that, through pushing copyright international standards towards a more restrictive framework, developed countries strive to maintain their dominant position and the dependency of developing countries in terms of intellectual production. This has economic effects and cultural impact.

A country's copyright laws can have important economic and cultural implications. In addition to their already noted effect on future creation, stronger copyright protection can raise the cost of acquiring information needed for countries to modernize. The global spread of strong copyright protection in effect acts as barrier to development. Just as the most developed states advocate or impose liberal free-trade policies because they provide them with a competitive advantage while ignoring historical reality that their own economic development depended on protectionist measures, strong copyright is being pursued by those firms and countries, such as the United States, that currently enjoy a lead in information production and information technology. (Haggart, 2014: p.16)

As we will see (Chapter 6, section 2.), culture reflects “how we understand ourselves and our society and thus the question of who gets to make cultural products is a profoundly relevant one” (Oakley & O'Brian, 2016: p.3).

Copyright law, by its very nature, affects who can access what information and cultural works, and on what terms. It influences who gets paid and how much, favouring some groups over others. (...) It influences the very process of creation, enabling some types of writing and art while effectively outlawing others or pricing their creation out of existence. Most important, these biases are not the result of anything inherent in the creative process – there is nothing “natural” about copyright – but rather they are the outcome of political decisions dating back hundreds of years. (...) Global copyright policy is currently in a drawn-out moment of transition in which digital technologies are challenging long-standing copyright-based business models

and providing previously marginalized groups with the tools to engage substantively in copyright debates at home and abroad. (Haggart, 2014: p.4)

In fact, copyright reforms over the past twenty years have become particularly (un)popular among the general public, as the latest extensions in copyright duration and scope (namely to digital media and the internet) affect the everyday life of many citizens. Such popularity has translated into a much stronger participation of society in the political debate about copyright issues (*id.*, *ib.*: p.4-5). Regulations such as the US Protect Intellectual Property Act (PIPA) or Stop Online Piracy Act (SOPA), in 2011, the international US-driven Anti-Counterfeiting Trade



Fig. 2: Copyleft has been the name attributed to the movements advocating for more flexible copyright rules (still from Gaylor, 2008)

Agreement (ACTA), in 2012, or, more recently, in 2018-9, the European Directive on Copyright and the Digital Single Market have all gained public notoriety as a result of unprecedented mass protests they triggered worldwide, sometimes leading to aggressive persecutions and even death (Gaylor, 2008, Haggart, 2014; Knappenbergen, 2014; Reda, 2018). We are here referring to cases such as those of Copyleft¹¹ activists Aaron Swartz (USA), Peter Sunde (Sweden) or Bassel Khartabil (Syria), whose lives have been tragically affected by copyright conflicts. Swartz, one of the leading figures of the open culture movement in the West, who participated in the creation of the Creative Commons licenses and founded Demand Progress¹², after being legally persecuted by the Massachusetts Institute of Technology (MIT) for accessing and downloading scientific papers from their servers and even being followed by the Federal Bureau of Investigation (FBI), decided to end his life in 2013, with age 27 (Knappenbergen, 2014). Peter Sunde and his fellow ‘The Pirate Bay’¹³ platform co-founders,

¹¹ Copyleft has been the name attributed to open culture activists and all those advocating for a more flexible copyright regulation, more up to date with challenges and opportunities brought by digital technologies.

¹² “Demand Progress and our more than two million members seek to protect the democratic character of the internet — and wield it to make government accountable and contest concentrated corporate power.” (Demand Progress, 2010)

¹³ Probably the most popular peer-to-peer file sharing platform: “The galaxy’s most resilient Bit Torrent site” (The Pirate Bay, 2003)

Fredrik Neij and Gottfrid Svartholm, were charged for promoting copyright infringement by a consortium of major American entertainment companies, led by the International Federation of the Phonographic Industry (IFPI), all sentenced to jail time and 6,5 million Dollar fine (Klose, 2013). Peter is now an active politician of the Pirate Party, in Sweden, and founder of several technology ventures. Bassel Khartabil “was Creative Commons’ Syrian project lead, the cofounder of Syria’s first hackerspace, and a prolific open source contributor to projects like Firefox and Wikipedia. Bassel’s final project, relaunched as #NEWPALMYRA, entailed building free and open 3D models of the ancient Syrian city of Palmyra. (...) Bassel was taken from the streets in March of 2012 in a military arrest and interrogated and tortured in secret in a facility controlled by Syria’s General Intelligence Directorate. Despite international outrage at his treatment and calls for his release, in October of 2015 he was moved to an undisclosed location and executed shortly thereafter.” (Creative Commons, 2019). After his death, Creative Commons and Bassel’s wife created a fellowship programme to support “outstanding individuals developing free culture projects in their communities under adverse circumstances” (*id.*, *ib.*). Such ‘martyrs’ are evidence that not only is copyright an economically and politically relevant topic - we never heard of mere technical software engineers being dragged to such misfortune - but also that it is clearly not yet adapted to the needs and demands of the latest generations of society¹⁴.

In the following chapters, we will attempt to clarify the underlying layers of the worldwide copyright debate, in order to understand how copyright actually affects artists, creative professionals, firms and ordinary citizens/ users, and how they can take the most out of these laws, which have been created and supposedly updated in order to defend their own interests. For that, we need first to look at the change in political discourse from culture-based to a creative industries based approach and how that has affected perception of what value and work mean in the cultural and creative sector.

¹⁴ In Chapter 6, we will go back to this discussion, exploring the relation between copyright regulations and cultural policy.

Chapter 2

METHODOLOGICAL APPROACHES

"A Mystery Man, tall, well-dressed and groomed, older than Fred, approaches him.
 MYSTERY MAN
We've met before, haven't we?
 FRED
I don't think so. Where was it that you think we've met?
 MYSTERY MAN
At your house. Don't you remember?
 FRED
(surprised)
No, no I don't. Are you sure?
 MYSTERY MAN
Of course. In fact, I'm there right now.
 FRED
(incredulous)
What do you mean? You're where right now?
 MYSTERY MAN
At your house.
 FRED
That's absurd."

David Lynch, in *Lost Highway* (1997)

As presented in the Introduction, our research did not follow a traditional path, from institutional affiliation to the *fashionability* (actuality) of the topic. At the same time, its embeddedness in professional and activist arenas has brought specific challenges to the possibilities of approaching the topic and the object(s). Methodology resulted in a plurality of empirical strategies. If it would be the case of using a conventional classification, ethnographic approach would be the closest one, based on participatory observation and action research, with systematic back-and-forth of theoretical readings – experimenting and exploring different data gathering techniques, and being influenced and influencing our own

everyday practice (Quivy and Campenhoudt, 1988: p.82; Candy, 2006; Davies, 2007: p.34, 170-1). Last but not least, along the research process a small group of people played different and important roles in specific (experimental) stages of the empirical research, making it collaborative, as we will detail *infra*.

In the following sections, we will present in detail our methodological approaches and the several iterations we did until we were finally able to design and implement the instruments that would allow us to reach the results of this study, developed between October 2013 and January 2020.

1. Exploratory Interviews and Readings: from Substantive to Scientific Imagery

It was within the immersive context of professional and activist practice that we began our exploratory phase. As seen, our context allowed privileged access to many different actors of the copyright system. We started with a series of exploratory interviews to such actors, considering two essential questions: 1) what do you understand by 'copyright'? and 2) what experiences did you have with copyright?. Some interviews were informal conversations, fifteen of which were recorded (Table 1 presents the essential sociographic information about the formal interviews).

Exploratory interviews allowed us to start framing our problematic more accurately and orienting our exploratory readings into a following literature review that would go beyond cultural economics texts. The main findings resulting from such exploratory work also allowed us to decide on the subsequent methodological instruments we would develop and use in the construction and verification phases of this study (following Quivy and Campenhoudt, 1988: pp.24-25). It is important to underline that we had initially planned to develop about fifty exploratory interviews. However, as the work evolved, we decided to stop recording them at the fifteenth, as we had already collected a substantial range of common concerns shared by the different agents and we realized that, although the experiences were different, the

problems and feelings about them were very much the same (as we will see, distrust in responsible institutions or feelings of vulnerability were quite transversal to our conversations, both with national and international artists). We also understood that we needed to move on to another phase, choosing our informants more accurately and analysing the results accordingly to interviewees sociographic information. Nevertheless, the exploratory interviews we did not only revealed the direction for our following steps but also became an interesting model to introduce the topic to the subjects we later approached within this study (namely, through guided interviews and focus groups)¹⁵.

EXPLORATORY INTERVIEWS							
Sociographic Information							
	Main Occupation	Secondary Occupation	Age	Gender	Residency (City)	Nationality	Date of Interview
EI_1	Actor	Bar Manager	26	Male	Porto	Portuguese	27/12/13
EI_2	Media Artist	University/Higher education teacher (Performing Arts)	36	Male	Porto	Portuguese	27/12/13
EI_3	University/Higher Education Teacher (Art History)	Arts Education Manager at Museum	49	Male	Porto	Portuguese	27/12/13
EI_4	University/Higher Education (Media Art)	Filmmaker	40	Male	Porto	Portuguese	27/12/13
EI_5	Bar Manager	Art Photographer	34	Male	Porto	Portuguese	27/12/13
EI_6	Playwriter	Translator	38	Female	Porto	Portuguese	27/12/13
EI_7	Actor	Bartender	39	Male	Lisbon	Portuguese	27/12/13
EI_8	University/Higher education teacher (Design)	Designer	45	Female	Porto	German	03/01/14
EI_9	Actor	Shop Assistant	32	Male	Lisbon	Portuguese	05/01/14
EI_10	Creative Entrepreneur (Illustration Agency)	N/A	42	Female	Porto	Portuguese	07/01/14
EI_11	Creative Entrepreneur (Design Studio)	Designer	35	Female	Porto	Portuguese	07/01/14
EI_12	Creative Entrepreneur (Design Studio)	Designer	34	Male	Porto	Austrian	07/01/14
EI_13	Visual Artist	Director of Artistic Residency	47	Female	Trélex	Danish	14/03/14
EI_14	Theatre Director	University/Higher Education Teacher (Performing Arts)	38	Male	Porto	Portuguese	10/04/14
EI_15	Creative Entrepreneur (Architecture Studio)	Musician	32	Male	Porto	Portuguese	15/06/14

N/A: Non Applicable

Table 1: Exploratory interviews sociographic information

As said, the formal exploratory interviews helped us identify the main concerns and challenges faced by different copyright beneficiaries from the cultural sector. The diversity of backgrounds and ages (all active individuals between 26 and 49 years old) made us realize some patterns in their answers, particularly a transversal lack of information and a lot of

¹⁵ The results of our complete field work (including exploratory interviews, particular approaches, case studies and focus groups) are presented in Chapter 7.

misconceptions about copyright. And, even though most of them were born and based in Portugal, the three foreign interviewees indicated this pattern was probably not just specific to Portugal or Portugal-based agents – something we already expected through conviviality in Creative Commons community of experts.

The main findings of this work (presented in Chapter 7) pointed the direction and conditions to our next research moves. First, we should try to keep clear the difference between cultural intermediaries (whether they were authors themselves or not) and core artists (whether they had parallel occupations or not). In other words, the distinction between main and secondary occupation was indicative of the perspective our interviewees had about copyright and this meant we needed to keep their analysis separate. On the other hand, we should not be too worried about geography. From our exploratory interviews, we confirmed what we already supposed from the substantive imagery we had built before: despite differences between local/ national copyright regulations, artists and cultural agents concerns and doubts seemed to have a lot in common, in spite of the place where they were based.

Such impressions were, of course, consolidated with the exploratory readings we were already doing at this stage. These readings included 1) articles and books about copyright, starting with Ruth Towse and Christian Handke's studies and following to authors as diverse as Françoise Béhnamou and Joelle Farchy's *Droit d'Auteur et Copyright* (2009 [2007]), Lawrence Lessig's *Free Culture* (2004), Adrian Johns' *Piracy* (2009) or Paul Goldstein's *Copyright's Highway* (2003 [1994]), 2) Cultural Economics manuals, such as the *Handbook of Cultural Economics* (Towse, 2011) or the *Handbook on the Digital Creative Economy*, and other important references about the cultural and creative industries (David Throsby, Kate Oakley, Dave O'Brian, Richard Caves, Terry Flew, Jason Potts, to name a few) and, finally, 3) some literature about the impacts of digitization in society (for example, Manuel Castells, 2010), the role of the state in the economy (Mariana Mazzucatto, 2013) or perspectives of artists in relation to the economy and society (Joseph Beuys, (1972) 1997).

In fact, exploratory readings were the starting point of the reflexive process of literature review that came later, presented throughout the following chapters, with analysis of texts about the value of creativity and the cultural industries (Chapter 3), the transformations of the economy and the relation between innovation and culture (Chapter 4), the impacts of

digitization in the cultural sector (Chapter 5), the conceptual and historical origins of copyright and their evolution (Chapter 1), the developments of cultural policy and its relation to copyright (Chapter 6) and the reflection about the contribution of our research findings to the development of Cultural Economics discipline and the information towards necessary changes in cultural policies (Chapters 7 and 8). Note that the exhaustive theoretical analysis, from Chapter 1 to 6, was essential to cover most necessary fronts of our research problem – that, combined with the results of our field work, lead us into developing the analytic model of the Concentric Circles of Cultural Work (Chapter 3, 4, 5 and 8), allowing us to (at least temporarily) solve our main research question of what is the relationship of copyright with cultural work structures and dynamics. Such extensive theoretical reflection is also an evident sign of the complexity of the phenomena and layers affecting and affected by copyright – as one of our focus group participants very well put it “Copyright is a sort of Babel Tower, with all its very complex layers that we can hardly understand.” (Chapter 7, section 3.).

It is also important to note that, given the complexity of the topic, formulating our research question was also not an easy task and it was only through the analysis of results from our exploratory work that we started to realize what we were actually looking for. Until then, our goal was to understand in what circumstances was copyright a barrier or an opportunity to market entry and artistic creation. At this point we believed we had to cover not only cultural economics texts but also Artistic Studies literature, which would have probably turned this study either endless or too superficial. Nevertheless, throughout this research work, we have informally interviewed other artists and cultural professionals, seeking to confirm the pertinence and interest of our problematic. Such exercise was important because, as copyright laws and research were constantly being revisited and adjusted, during the entire period of this research, this was a way to make sure our study was not rapidly becoming obsolete. Such informal contacts were held in the context of our professional and activist activities, but also in specific moments dedicated to our study, as we will see in section 5 – table 2 presents a summary of the main contexts.

PARTICIPATION IN EVENTS AND ACTIVITIES								
Name	Type	Organizing Entity	Duration	Date	Place	Type of Participation	Website/ Web Entries	General Description
Open Knowledge Festival	Conferences and Workshops	Open Knowledge Foundation	3 days	Jul-14	Berlin, Germany	Attendee	http://report2014.okfestival.org	Parallel to the event, there were two meetings of the Creative Commons (CC) international community (our first presential meetings as CC volunteer).
Open Education Resources Workshop	Workshop	Creative Commons	2 days	Oct-14	Porto, Portugal	Participant, Host	http://infojustice.org/archives/33398	At this session, held at UPTEC - Science and Technology Park of the University of Porto, we discussed opportunities and challenges and produced tools for Open Education Resources in higher education contexts.
Creative Commons Global Summit 2015	Conferences and Workshops	Creative Commons	4 days	Oct-15	Seoul, South Korea	Attendee, Speaker	https://creativecommons.org/2015/09/10/cc-global-summit-program-schedule/	First CC Summit participation, where I did the first public presentation of the CC Toolkit for Business project
futureplaces.org 2016	Conferences and Workshops	University of Porto and University of Texas in Austin	5 days	Oct-16	Porto, Portugal	Participant, Workshop leader	http://futureplaces.org/labs/2016-copywrong/	At futureplaces 2016, we organized the first focus group for project Copywrong, as a Citizen Lab workshop model.
Digital Single Market and Creative Content – Author’s Rights Reform	Parliamentary Conference	Digital Single Market Working Group from the Culture, Communication, Youth and Sports Commission, at the Portuguese Republic Assembly	1 day	Apr-17	Lisbon, Portugal	Participant	http://app.parlamento.pt/comissoes/programa_cmod.pdf	This session was designed to understand and discuss the position of Portuguese cultural agents in relation to a possible copyright reform, in the context of the European Copyright Directive proposal. We participated in representation of UPTEC, as business development expert in creative industries.
Creative Commons Global Summit 2017	Conferences and Workshops	Creative Commons	4 days	Apr-18	Toronto, Canada	Attendee, Speaker	https://creativecommons.org/global-summit2017t.sched.com/speaker/fatimasasosimao1	In this event, we had the opportunity to share and explain the project Copywrong for the first time to the CC community, collecting feedback and suggestions from the participants.
IVIR Summer Course on International Copyright Law	Training	Institute of Information Law, University of Amsterdam	5 days	Jul-17	Amsterdam, The Netherlands	Participant	https://www.ivir.nl/civilsocietyscholarships/	In this course, copyright lawyers and experts gather to provide an overview of the state of the art of copyright regulations, structures, reforms and international agreements.
Annual Congress of the Society of Economic Research on Copyright Issues	Academic conference	SERCI - Society of Economic Research on Copyright Issues	2 days	Jul-17	Turin, Italy	Participant	http://www.serci.org/	At SERCI's annual congress we had the opportunity to meet some of the main economics of copyright researchers and receive feedback on the working paper "Open Business Models for the Creative Industries: how the use of open licenses in business can increase economic results and cultural impact".
futureplaces.org 2017	Conferences and Workshops	University of Porto and University of Texas in Austin	5 days	Oct-17	Porto, Portugal	Performer	http://futureplaces.org/2017-copywrong/	At this edition of futureplaces, we presented Copywrong performance-as-tool live for the first time.
European Copyright Action Days – Communia Salon	Conference, debates and visit to European Parliament	Comunia Association	3 days	Mar-18	Brussels, Belgium	Participant, Speaker	https://www.comunia-association.org/salon/	In this event, we again had the opportunity to meet many copyright stakeholders, defending different perspectives and view for the European Copyright Directive Proposal. We also did a presentation about open business models for the creative industries and made a visit to the European Parliament, where we met Julia Reda and learned about the point where negotiations on the new directive were at the time.
Creative Commons Global Summit 2018	Conferences and Workshops	Creative Commons	4 days	Apr-18	Toronto, Canada	Participant, Performer	https://ccglobalsummit2018.sched.com/speaker/fatimasasosimao1	At this summit, we finally presented Copywrong performance-as-tool live to the CC community.
Unfinished Summer School 2019	Performing Arts Training	Armazém 22 and Ballet Contemporâneo do Norte	5 days	Aug-18	Vila Nova de Gaia, Portugal	Speaker, Performer	https://www.facebook.com/events/441065189695232/	Invited by Rogério Nuno Costa, we organized another of our focus groups at this summer school and presented the performance Copywrong live to a group of young performers.
Challenging (the) Content – Content Made in Europe in the Digital Economy	Conference	Austrian Presidency of the Council of the European Union	2 days	Oct-18	Austria, Vienna	Speaker	https://www.eu2018.at/calendar-events/political-events/BKA-2018-10-08-CONTENT-Conference.html	In this conference, we were invited to speak in a panel about The Appropriate Skills for Future Creators in the Creative Sectors (Session 4: Creative innovation in the digital context: technology, talents, skills).
Creative Commons Global Summit 2019	Conferences and Workshops	Creative Commons	4 days	May-19	Lisbon, Portugal	Speaker	https://ccglobalsummit2019lisbonportugal.sched.com/speaker/fatimasasosimao1	At this summit, we organized three sessions, two of which were also our last focus groups for this research: "Open Business and the EU Copyright Reform" and "Copyright Art - Why and How Artists Address Copyright in Their Artistic Work"

Table 2: Summary of most relevant participations in events and activities, in the context of this research.

It is also important to highlight that we were facing a problem often mentioned by most of our exploratory readings related to the economics of copyright: the lack of empirical studies in this field (Towse, 2010; Handke, 2011; Cammaerts *et. al*, 2013). Our own empirical findings were confirming that clarification about the different relations that different cultural actors establish/ have with copyright was in need of further exploration. Based on this, at this stage of our research (early 2015), we decided we would develop six case studies about different types of cultural agents, in our attempt to identify the effects of copyright in their work.

2. In Failure We Found Light: Six Abandoned Case Studies and Other Methodological Challenges

Early in 2015, we chose a case study methodology, taking advantage of the creative start-ups context where we were professionally immersed and of the network of artists we had approached during our exploratory phase. We formulated our central hypothesis: copyright does not normally benefit small and medium authors and cultural professionals. On the contrary, it is very interesting for major cultural agents and superstar artists. The focus was then the small and medium authors and cultural agents. At first, we believed that the best way to test our hypothesis could be through the analysis of case studies (Davies, 2007: p.184). After evaluating several possibilities, we finally selected six possible cases (all Portuguese) to analyse:

- Canal 180 (see www.canal180.pt), an open source TV channel and content production studio, which we selected for two main reasons: 1.) as a young start-up, it allowed us to observe and collect data from the market entry process and the role of copyright in that process, 2.) as a platform dedicated to culture and creativity (particularly, TV, video and film, music and visual arts), which also developed original content, usually in partnership with individual creators or other cultural media, often international, it allowed us observe the challenges faced in the production of such collaborative work;
- Illustopia (see www.illustopia.com), an illustration agency, which would allow us 1.) to observe other sectors of the cultural industries namely visual arts and literature; 2.) to understand the kind of contracts individual artists were offered and bargaining with industry players such as book editors – in this case, mediated by the agency, which was often only called to action due to the ferocity of the contracts presented to creators;
- Shair (now Zet Gallery: <https://zet.gallery/>), an early stage online art gallery, that was considering to use open licenses as a market entry strategy which could allow us to observe how artists reacted to that and how effective that could be as a strategy – they later abandoned that approach;

- LikeArchitects (no longer in activity since late 2015), an ephemeral architecture studio collective, working mainly for public events and institutions, where we expected to analyse 1.) the challenges copyright implied to collective authorship projects, 2.) in yet another hybrid sector of the cultural industries (visual arts and architecture);
- ± (see <http://maismenos.net>), authored by designer and street artist Miguel Januário, who had also worked as an artistic director for an advertising company and who we expected to provide us information about his relationship to copyright 1.) as a street artist/ individual author and 2. as a designer and cultural worker in the advertising world;
- Rogério Nuno Costa (<https://rogerionunocosta.com>), a performance artist, who could inform us about 1.) the challenges copyright imposes to performance art, and 2.) his particular relation to copyright regulation, because we found out that, contrary to most performers we had been searching, Rogério was actually following and publicly expressing his position about the worldwide copyright debate (mostly from an artistic point of view).

It is important to refer that, as said, the start-ups Canal 180, Illustopia and Like Architects were all incubated at the creative industries centre we managed and it was relatively easy for us to access them. The other three cases had been chosen from the references and suggestions given during our exploratory work. After doing some interviews, namely to the three leading members of Canal 180's team and the performing artist Rogério Nuno Costa, we decided to abandon the case studies option and develop other instruments of analysis. We realized we were being too ambitious, given the amount of information the first interviews were already providing us, and this would force us to narrow down the case studies to a number that we did not consider significant enough to answer our research question. We also reinforced the idea that, despite the many parallels between artists' and (particularly, small and young) intermediaries' challenges around copyright, there were significant differences between them that we had to clarify.

At this moment, we were already working as a volunteer activist for Creative Commons (2013) on the project *CC Toolkit for Business* (since October 2014; see Annex A)¹⁶, which was already providing some important information about the role of copyright in cultural industries' business models. We decided to use that project and resulting outputs as an instrument to continue our analysis in this front.

But we were still missing an instrument to observe the relation of core artists with copyright. For that purpose, we developed the project *Copywrong - performance-as-tool* (Copyworn, 2017; see Annex C)¹⁷, actively participating in the creative process and creating a model of research about copyright that was comfortable enough to the core artists to participate. In fact, starting to develop the case studies only made evident the timidity and discomfort of cultural professionals when asked to talk about copyright. Besides regarding it as a complex subject, when questioned about what copyright meant to them, our interviewed subjects would often start with "I don't know much about it..." or "I am not an expert in this...". This was already observable during our exploratory interviews, as we will see in Chapter 7.

It is important to note that, in our research, the interviews we did were held in quite very different contexts, and we have always followed quite an open (or, sometimes, semi-open) approach to our interviewees, since proximity to the empirical arena allowed it (taking them more as moments within a process than as formal inquiry procedures).

Below, we present the mentioned instruments of analysis, the *Creative Commons Toolkit for Business* and *Copywrong, performance-as-tool*, in detail.

¹⁶ The toolkit's materials were first published in 2015, on Creative Commons blog (<https://creativecommons.org/2015/11/13/creative-commons-toolkit-for-business/>). The final website was only launched on January 2019, after being translated into Spanish by the CC Paraguay team (<https://business-toolkit.creativecommons.org>).

¹⁷ For the development of Copywrong performance-as-tool, we had the support of Creative Commons, futureplaces (see Introduction), Armazém 22 (a performance art venue in Portugal) and BCN (North Contemporary Ballet, a dance company also from Portugal),

3. A Preliminary Approach: The Creative Commons Toolkit for Business

From our preliminary findings and considering our privileged context within the Creative Commons community (which, as seen, allowed us to follow and participate in many copyright-related discussions and projects), we realized that, if we wanted to contribute to copyright's research and political debate, it was essential to make the case for the Creative Commons (CC) licenses' economic effects. A lot has already been written and studied on the economic effects and implications of copyright in the cultural and creative industries. But, at the time, there were not many studies about the use of open licensing in business or their contribution to the emergence of new business models, particularly, about

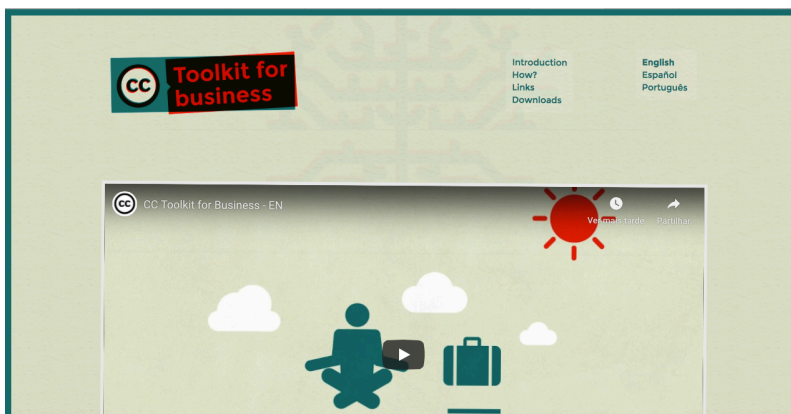


Fig. 3: Screenshot of the Creative Commons Toolkit for Business website (<https://business-toolkit.creativecommons.org>)

those reinventing business strategies adequate to the digital economy through their intellectual property rights (IPR) management¹⁸. In other words, for those to whom copyright does not offer fair compensation for their work and often even prevents them from entering the market and/ or accessing their audiences, how could open licenses represent alternative strategies to overcome such challenges and how effective could that be?

In late 2014, Teresa Nobre, the copyright lawyer responsible for introducing the Creative Commons licenses in Portugal (in 2010), suggested we took the opportunity of participating in the recently launched CC Toolkits project, taking the coordination of the creative industries toolkit section. The aim of the project was to develop toolkits in different areas such as education, culture, policy, science and creative industries (which we later proposed to change to 'business'). Inspired by the exploratory interviews and tentative case studies we were developing, with the collaboration of Teresa Nobre, for the next two years, we coordinated

¹⁸ Some important references included the studies of Marcel Boyer and Jacques Robert (2006) or Bart Cammaerts, Robin Mansell and Bingchun Meng (2013). A lot more about this has been published since then.

the development the *Creative Commons Toolkit for Business* as our first consistent contribution to the open culture movement but also as an observation instrument for this study. As expected, such work finally allowed us to, on one hand, analyse more deeply the relationship between the Creative Commons open copyright-based licenses and business models and, on the other, the reactions and feedback from the CC community itself and from students and young creative entrepreneurs participating in our seminars, workshops and one-to-one mentoring sessions we have been organizing since.

As an instrument of observation, the *CC Toolkit for Business* allowed us not only to better understand the position of leading members of the CC community but also some of the major challenges they themselves faced when trying to make the case for a more open approach to copyright regulation. The latter again pointed to the need to understand the effects of copyright in cultural work. However, the main result of this instrument, discussed in Chapter 7, was the possibility to clarify the benefits open licenses (and, therefore, a potentially more flexible copyright regime) could represent for cultural businesses (particularly, for smaller and younger projects) and to identify a list of more or less successful examples of companies and professionals already applying open strategies to their business models. Such work was particularly important to frame a model of open interviews that would test the instrument itself (see Chapter 7, section 2.) (table 3...)

INTERVIEWS TO CULTURAL BUSINESS PROFESSIONALS								
Sociographic Information								
	Age	Gender	Residency (City)	Nationality	Name of the Company	Description of Business	Cultural Industry	Date of the Interview
BI_1	40	Male	Lausanne	Swiss	Strategyzer	Business consultancy and software	N/A	16/10/14
BI_2	27	Female	Porto	Portuguese	Building Pictures	Film and video production company specialized in architecture sites filmming.	Film production	30/06/15
BI_3	29	Female	Braga	Portuguese	Shair	Online gallery	Visual Arts	20/07/15
BI_4	38	Male	Porto	Portuguese	Canal 180	TV production and distribution company	TV	28/07/15
BI_5	40	Male	Porto	Portuguese	Canal 180	TV production and distribution company	TV	29/07/15
BI_6	37	Female	Porto	Portuguese	Canal 180	TV production and distribution company	TV	13/08/15
BI_7	58	Male	Aveiro	Portuguese	Cortebel	Shoe production company	Fashion	21/01/16
BI_8	47	Male	Vancouver	Canadian	Creative Commons	Non-profit organization dedicated to the development and promotion of open copyright-based licenses	N/A	29/04/17
BI_9	38	Male	Copenhagen	Danish	Danish Design Center	Design research, consultancy and training	Design	29/04/17
BI_10	37	Male	Lisbon	Portuguese	Monster Jinx	Music production and distribution collective	Music	09/05/19
BI_11	47	Male	Amsterdam	Dutch	Tribe of Noise	Online music distribution platform	Music	09/05/19
BI_12	30	Female	Porto	Portuguese	Moot- the Movement Lab	Dance and movement online trainin platform	Dance	09/05/19
BI_13	43	Male	Madrid	Spanish	SafeCreate	Copyright registration and management consultancy and software	N/A	09/05/19

N/A: Non Applicable

Table 3: Business interviews - sociographic information

The first three interviews, were held independently, and lasted about thirty minutes each. On the other hand, as explained in the previous section, interviews BI_4, BI_5 and BI_6 were developed at Canal 180, while trying to build our first case study which we later quitted. Interviews BI_8 and BI_9 to members of Creative Commons, were important to understand how the community was using the *CC Toolkit for Business* and what other instruments they were using to support businesses in adopting CC licenses. The last four interviews described in table 3 took place in a context of public panel discussion moderated by the researcher, during the Creative Commons Global Summit 2019. Although none of these interviews was analysed in detail, the outputs were crucial to inform and consolidate the results presented in Chapter 7, section 2.

4. Every Researcher is An Artist (and Viceversa): Copywrong - performance-as-tool

In their *Handbook of Research in Social Sciences*¹⁹, Quivy and Campenhoudt ([1988] 1992) describe the three stages of research: rupture (see Introduction), construction, and verification (p.25). The construction stage of this research (Quivy and Campenhoudt, 1992: pp.108-153) was only completed when we defined the instrument *Copywrong – performance-as-tool* (Annex C), this time counting with the collaboration again of Teresa Nobre and the artists Rogério Nuno Costa and Daniel Pinheiro. After the development and testing of the *Creative Commons Toolkit for Business*, we realized that, to engage in a conversation about copyright with artists and understand what they felt and struggled with when dealing with copyright rules, we could use something similar to the toolkit we had just developed. But it had to be more “artistic” and it had to involve the artists from the very beginning of its creation.

In 2014, we coordinated the video-installation *de Eus* (see Annex B) as an academic assignment to be presented in the Art and Design PhD students’ exhibition, at the Faculty of

¹⁹ In this study, all non-English references were translated by the researcher.

Fine Arts. That project was in fact our first attempt towards the design of an efficient communication device that could clearly expose the challenges artists' have to face in their work because of copyright. Our aim was mainly to test the possibility of turning a participatory creative process into an observation instrument and understand both the engagement of the artists involved and the reaction of an audience of arts students and faculties.

Using parts of the recordings of our exploratory interviews interspersed with selected excerpts of Foucault's *What is an Author?* seminal text (1969), we invited the Portuguese choreographer Mariana Amorim to compose and interpret a dance inspired by the selected recordings. The work involved not only the movement of Mariana (choreographer) but also video editing by Daniel Pinheiro (media artist), voice-over by Tiago Boto (actor) and sound design by Anselmo Canha (musician). The final installation was exhibited at Faculty of Fine Arts of the University of Porto, in late July. This first experiment²⁰, although it presented the essential questions we envisioned (from the recordings of the interviews and excerpts of Foucault's work), revealed too limited. First of all, because of the short time to develop the project (about one month), each one of the collaborating artists worked individually under instructions/ recommendations towards the final work, therefore, we could not follow and observe the entire process, having only been present during the final editing and setting up

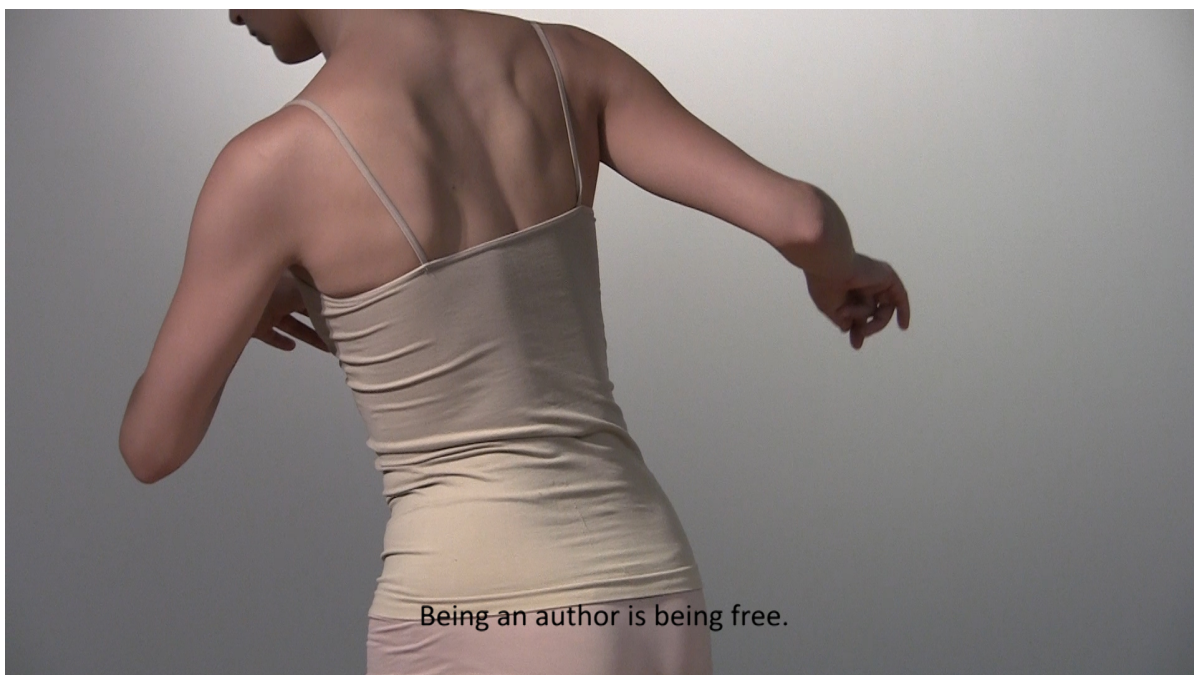


Fig. 4: Still image from the video-installation de Eus (2014)

²⁰ Video published and available at <http://futureplaces.org/essays/de-eus-collaborative-video-installation/>

of the video-installation. Another problem was the art forms involved. On one hand, we used dance/ performance which, despite the evident message of the recording voices on the video, is in itself a very abstract form that could only be interpreted after speaking to the choreographer – which, although interesting from our study’s perspective, we did not have the chance to explore in such short experiment. On the other hand, the fact that the video-installation was presented in the context of an exhibition was not very efficient in terms of audience observation, as that would imply being permanently *in loco* – an impossible task due to the researcher’s professional obligations. Last but not least, the fact that the exhibition was held between late July and early August, aside from the vernissage, the audience affluence was very little. However, the experience was mainly relevant because it allowed us to identify potential problems and, therefore, take clearer decisions in relation to what we could do and how to do it if we wanted to observe a creative process and its results’ effects on the artists and audience, from a copyright perspective. *de Eus* was the necessary prelude to the next steps in our research path.

After the experiences of *de Eus* and the *CC Toolkit for Business*, we were finally ready to develop an instrument that was going to be crucial to reach our final results and findings.

As seen before (section 3.), of the preliminary six “abandoned” case studies, one aimed at understanding copyright in a performance arts context. This implied searching for a performer with some experience in relation copyright. Rogério Nuno Costa was that performer (GI_1). Our goal at the time was to try to identify what were the reasons that led an artist to affirm a stand against or on behalf of copyright (this did not mean they had to have a clear understanding of the law), hoping to uncover the challenges and advantages copyright really offered to the performing arts.

Instead of analysing his case study, we proposed to develop and implement an actual performance art work with him. In the context of this research work, such performance was a participant observation device that allowed us to go a step further in our research (Quivy and Campenhoudt, 1988: p.82; Davies, 2007: p.168-172). At the same time, it was also practical communication mechanism to raise artists' awareness about copyright – subject which, as we will see from results presented in Chapter 7, they often struggle to understand let alone deal with it. *Copywrong* performance was, therefore, an ethnographic quasi-experimental exercise: we needed to experiment an entire creative process to understand the actual challenges copyright imposes to artists and observe the solutions they found to overcome them; but we also needed to observe their reactions to the resulting artwork as audience.

The choice of a performance as a tool was the result of the failed experience with *de Eus* video-installation. Art film or video art could have been possibilities although, with the



Fig. 5: Copywrong performance-as-tool team, before the first international presentation of the project, at the Creative Commons Summit 2018, in Toronto (photo by Sebastiaan ter Burg)

previous production of *de Eus* video-installation, we realized that due to the amount of skills and technologies involved it could have distracted us from the actual creative process. On the other hand, other art forms would not have allowed us to observe directly the reactions of the audiences nor adapt to

them immediately in the same participatory way as live performance does. Additionally, due to its liveness inseparable feature, performing arts are probably the most complex art form, in terms of copyright, as their immediate result is not only always ephemeral but also unexpected. Finally, only the experiential concreteness of performance enabled to approach such a complex subject in a light, simple and effective way.

Besides having actually worked about authorship and copyright issues through performance²¹, the performer Rogério Nuno Costa, based in Helsinki (Finland), had also been one of the very few Portuguese artists to assume and publicly express his thoughts about copyright. In 2015, Rogério exchanged some emails and letters in his attempt to withdraw from the artists' rights office GDA (Office of Artists Rights) due to their position in defense of the Portuguese private copy law, which proposed the application of a general tax to digital content storage and distribution devices, voted in 2014. He later made this discussion public on his blog²², in an attempt to raise debate about copyright and collective management societies. Rogério was, therefore, the right artist to help us develop our project, as he revealed not only interested in collaborating but also very comfortable among artistic references and examples we could use and work from to build a performative device that would serve our purposes. Rogério's contribution was also important due to his particular approach to performance as he has been developing several projects where he plays with the performative aspects of certain communication formats such as conferences, seminars, debates, contests, highlighting the power of performance as an education instrument. That knowledge was crucial to set up the structure of *Copywrong*.

After some work with Rogério, we decided to also involve in the project Daniel Pinheiro, media artist, and Teresa Nobre, the international copyright lawyer and Creative Commons activist. Their participation contributed to introduce the dichotomy between technology and law, through the introduction of the necessary technological layer and legal accuracy and the challenge that combination in itself represented. It is important here to refer that during the process, we also had the opportunity to interview Daniel, Teresa and another Portuguese copyright lawyer, Diogo Morais Oliveira, also volunteer member of the Creative Commons community. And, while the interviews to Rogério and Daniel added to our analysis of the artists' position in relation to copyright, the interviews to Teresa and Diogo had a completely different contribution to this study (table 4). Despite of their proximity to artists' communities and sympathy and activism for open culture licenses and a more flexible copyright regime, both offered us a very interesting perspective on the crucial role of the lawyers, as they can

²¹ Namely in his contribution to project Mash Up (<https://rogerionunocosta.com/atv/>).

²² <http://universidadyliopisto.blogspot.com/2015/03/world-wild-web.html>

easily choose to contribute either to complicate or simplify the copyright system (see Chapter 7).

GUIDED INTERVIEWS Sociographic Information								
	Main Occupation	Secondary Occupation	Age	Gender	Residency (City)	Nationality	Date of Interview	Duration of Interview
GI_1	Actor	Masters Student	37	Male	Helsinki	Portuguese	09/08/16	108 minutes
GI_2	Media Artist	University/Higher education teacher (Performing Arts)	36	Male	Porto	Portuguese	09/08/16	92 minutes
GI_3	Lawyer	N/A	39	Female	Lisbon	Portuguese	10/12/19	67 minutes
GI_4	Lawyer	N/A	32	Male	Viana do Castelo	Portuguese	12/12/19	66 minutes

N/A: Non Applicable

Table 4: Guided interviews - sociographic information

We finally had all the ingredients: the researcher, the performer, the media artist and the lawyer. The creation process of *Copywrong* model took us about one year, including a lot of meetings (live and remote) and emails exchanged between the four team members. It also involved, at least, twelve more formal and informal interviews to artists²³, which we decided not to include directly in our analysis because, as seen above (section 2), the purpose of such interviews was more to confirm our findings and their pertinence to date than to provide any substantially new information. The development process of *Copywrong* also involved two focus group discussions prior to the presentation of the final work (to which we called *Copywrong Labs* on the project's website) and two more focus groups after *Copywrong* performance's premiere, at futureplaces 2017 (see Introduction), in Porto.

The first three labs presented below (FG_1, FG_2 and FG_3) followed the same guidelines:

Copywrong Lab is a 2,5 to 3 hour workshop divided into 2 or 3 parts, depending on the group and how the conversation follows.

- 1.) "What do you understand about copyright?" - 1 hour discussion on the perception of the participants about the topic.
- 2.) "How does it influence your work? Please share some experiences you had related to copyright." - 1 to 1,5 hours to share experiences and testimonies.

²³ Some of these interviews were carried with artists participating at the second focus group session, before we started the group discussion. These six were video recorded and are available at Copywrong's website: <https://copywrong-cc.tumblr.com/labs>

3.) “Please suggest some actions you think could contribute to clarify your concerns about copyright.” - 0,5 to 1 hour to collect contributions that can be integrated in the final performance. (Copywrong website, LABS, 2018).

At all sessions, it was explained to the participants that the results of the discussions would be used both to the development of the performance but also of this study. Below, we briefly explain each one of these focus group sessions and provide a table with sociographic information of the participants. Results from the analysis of these discussion sessions can be found in Chapter 7.

FG_1: futureplaces 2016

The first focus group was held at futureplaces – medialab for citizenship. In 2016, together with Rogério Nuno Costa and Daniel Pinheiro, we proposed to organize a Citizen Lab²⁴ with the aim of collecting suggestions and feedback for the development of *Copywrong* and for the current research. In this session, held on the 20th October 2016, both the researcher and Daniel were present but Rogério could only participate remotely²⁵, as he was in Finland at the time. Eleven participants showed up. This session was divided into two parts: the first one lasted about one hour and half and the second part lasted forty-five minutes. The whole session was recorded in video and a shorter edition of it is available on the project’s website, as mentioned above. Most participants were either students or faculties and, apart from



Fig. 6: Copywrong Citizen Lab (FG_1), at futureplaces 2016

participants FG_1.3, FG_1.6, FG_1.9, FG1.10 and FG_1.13, all other participants were either very young or very distant to the art world. Despite of the relevant research findings and

²⁴ Citizen Lab was a type of session specific of futureplaces, where researchers were invited to present proposals for an action (usually, a training workshop) that should be open to anyone willing to participate and included in the event’s program, with the aim of collecting data and information useful to their own research projects. Copywrong Citizen Lab was part of futureplaces 2016 program (<http://futureplaces.org/labs/2016-copywrong/>).

²⁵ We also used these sessions to test some technological features we would later include in *Copywrong* performance. Rogério participated in this focus group through a platform named Zoom. All technology decisions on this project were taken by Daniel Pinheiro.

creative suggestions for the performance in progress, the lesson learnt from this first focus group was that we needed to refine the selection of our study subjects. Given the artistic format we had chosen – performance, we realized we needed to focus exclusively on performance artists (from theatre, dance, performance art).

FG_2: A22

After the experience of FG_1, we decided to organize another focus group session with performance artists only. The session was held at Armazém 22 (A22), in Vila Nova de Gaia, which supported the project by providing us the space for the focus group to happen. On the

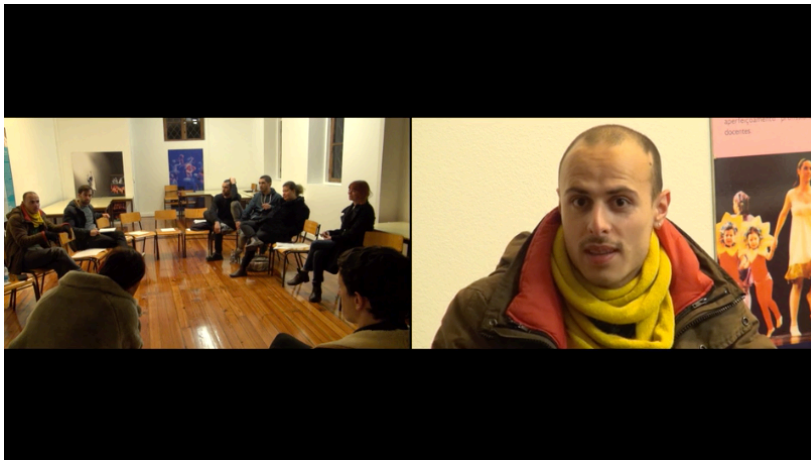


Fig. 7: Copywrong Lab (FG_2), at A22

14th January 2017, we gathered a group of six performance artists from Porto to again repeat our questions and promote a discussion that would result much more informative than the previous one, as artists felt more comfortable. This happened not only because,

this time, instead of being part of an event programme, the session was held specifically for this group only and at a place that they felt familiar with – a performing arts venue. All three team members – researcher, Daniel and Rogério – were present and, from this research perspective, we strongly believe that the presence of the two artists helped the flow of the conversation. On the other hand, it was more challenging, from the research point of view, to make sure subjects did not diverge from the initial proposal – it is important to recall that, to this study, Rogério and Daniel were also subjects under analysis. The discussion lasted longer than the previous focus group (two and a half consecutive hours, with no breaks) and each participant had much more time to speak. After a certain point, people were so comfortable that they lost the common initial insecurity we had spotted before, in the interviews. At this stage, they started to speak openly in a very transparent way about their experiences with copyright: from their reactions and feelings when someone “stole”

something from them to their own “stealing” moments (suggesting an interesting discourse analysis) and to some lively discussions about topics related to copyright that definitely were not clear neither to the younger ones nor to the more experienced artists in the room.

FG_3: Unfinished Summer School

Focus group three was also part of an event programme: this time the Unfinished Summer School, promoted by Rogério, at A22 again. We organized an entire day starting with the focus group session, in the morning, and moving to a copyright workshop by Diogo Morais Oliveira, in the afternoon, followed by an actual presentation of the *Copywrong* performance. The session counted with the participation of five young performers, a visual artist and a more experienced choreographer, who was also a member of GDA (Gabinete dos Direitos dos Artistas), a collective management society in Portugal, dedicated to neighbouring rights²⁶. This session’s results were particularly interesting when compared with the previous focus group discussion, as they allowed us to understand some differences between the questions raised by younger freshly graduated performers when compared to the more experienced group of the former session. It also brought about some new issues worth analysing for the purpose of this study, given the specific experiences of this group of participants. Although the discussion was even longer, a lot of it was out of our control, from a research perspective, as both Rogério, the leading trainer of the summer school, and Diogo, who was leading the following copyright workshop, made long interventions with examples and answers to some of the questions raised by the group.

FG_4: CC Global Summit

The last focus group was very different from the previous three. It was organized as a public panel session at the Creative Commons Global Summit, in 2019, in Lisbon. After a brief introduction to the project *Copywrong* and this study, this last discussion session involved five artists from different art fields that had also different relations to copyright: 1.) Steve Kurtz, co-founder of Critical Art Ensemble²⁷, a famous American art collective working since 1987, 2.) Vanessa Canto, a young Portuguese economist, dancer and founder of Moot – The

²⁶ Neighboring rights are a set of rights related to copyright that apply to the performance arts. We develop more on this in Chapter 1.

²⁷ <http://critical-art.net>

Movement Lab²⁸ platform, 3.) João Pombeiro, designer, software programmer and collage artist, member of the Portuguese artistic collective behind the famous web character Bruno Aleixo²⁹, 4.) Sérgio Braz d'Almeida, an experienced filmmaker and visual artist based in Lisbon and 5.) Josi Guaimas, a webdesigner and media artist from Paraguay, co-founder of Argentinian art collective Kube y Su Conjunto³⁰. This time, we invited these specific artists not only for their diverse artistic experience but also by their diverse stand in relation to copyright. Although such diversity was not the focus of our study, the results from this discussion were absolutely crucial to our analysis, not only because of the artists' statements but also because of the questions raised by the audience. This audience counted with more than fifty people, between lawyers, economists, policymakers, educators and artists from all over the world, all interested in or connoisseurs about copyright and Creative Commons alternatives.

²⁸ <https://www.mootmovementlab.com>

²⁹ https://pt.wikipedia.org/wiki/Bruno_Aleixo

³⁰ <http://kubeyconjunto.com>

Focus Group Sessions Sociographic Information							
	Main Occupation	Secondary Occupation	Age	Gender	Residency (City)	Nationality	Date of the Interview
FG_1: futureplaces							
FG_1.1	PhD Student	Landscape Architect	25	Male	Porto	Dutch	20/10/16
FG_1.2	PhD Student	Designer	27	Female	Porto	British	20/10/16
FG_1.3	Choreographer	Dance Teacher	34	Female	Porto	Portuguese	20/10/16
FG_1.4	Masters Student	Filmmaker	23	Male	Braga	Portuguese	20/10/16
FG_1.5	Masters Student	N/A	22	Male	Porto	Portuguese	20/10/16
FG_1.6	Theatre Director	Translator	35	Female	Porto	Portuguese	20/10/16
FG_1.7	Masters Student	N/a	25	Female	Porto	Portuguese	20/10/16
FG_1.8	Degree Student	N/A	21	Female	Porto	Portuguese	20/10/16
FG_1.9	University/ Higher Education Teacher (Communication)	Filmmaker	67	Female	Washington DC	German	20/10/16
FG_1.10	PhD Student	Theatre Director	36	Female	Lisbon	Portuguese	20/10/16
FG_1.11	University/ Higher Education Teacher (Communication)	N/A	66	Female	Austin (TX)	American	20/10/16
FG_1.12	University/ Higher Education Teacher (Communication)	Painter	52	Female	Austin (TX)	American	20/10/16
FG_1.13	PhD Student	Designer	35	Male	Lisbon	Portuguese	20/10/16
FG_2: A22							
FG_2.1	Performer	Bartender	26	Male	Porto	Portuguese	14/01/17
FG_2.2	Actor	Theatre company director	33	Male	Porto	Portuguese	14/01/17
FG_2.3	Choreographer	Dance Teacher	33	Male	Porto	Portuguese	14/01/17
FG_2.4	Performer	Art Model	24	Male	Porto	Portuguese	14/01/17
FG_2.5	Theatre Director	Writer	40	Female	Porto	Portuguese	14/01/17
FG_2.6	Dancer	Dance Teacher	34	Female	Porto	Portuguese	14/01/17
FG_3: Unfinished							
FG_3.1	Performer	Dance Teacher	23	Male	Guimarães	Portuguese	25/08/18
FG_3.2	Actress	N/A	25	Female	Lisbon	Portuguese	25/08/18
FG_3.3	Performer	N/A	25	Female	Monchique	Canadian	25/08/18
FG_3.4	Baker	Performer	25	Female	Guimarães	Portuguese	25/08/18
FG_3.5	Performer	N/A	24	Male	Porto	Portuguese	25/08/18
FG_3.6	Illustrator	N/A	37	Female	Porto	Brazilian	25/08/18
FG_3.7	Choreographer	Dance Teacher	48	Male	Porto	Brazilian	25/08/18
FG_4: CC Summit							
FG_4.1	Performer	University/ Higher Education Teacher (Art)	62	Male	Tallahassee (FA)	American	11/05/19
FG_4.2	Dancer	Creative Entrepreneur (Dance Platform)	31	Female	Porto	Portuguese	11/05/19
FG_4.3	Visual Artist (Collage)	Designer	35	Male	Coimbra	Portuguese	11/05/16
FG_4.4	Filmmaker	Visual Artist (Photography)	40	Male	Lisbon	Portuguese	11/05/19
FG_4.5	Media Artist	Webdesigner	33	Male	Buenos Aires (AR)	Paraguayan	11/05/19

N/A: Non-application

Table 5: Focus groups - sociographic information

All these semi-guided discussions not only reinforced some of the ideas already revealed by the previous interviews we had done but also allowed us to gather artists' comments, critiques and suggestions about the direction of the creation process and pertinence of tools such as *Copywrong*, which aimed at making copyright issues more accessible and, therefore, clear to the principal interested subjects – the authors of intellectual, literary and artistic work. The device ended up including not only the performance *per se* but also a website, where all the process, materials, references and content involved are presented and openly licensed, so that anyone can access and use them for other creations: <https://copywrong-cc.tumblr.com>.

The Performance

Copywrong performance-as-tool was publicly presented in three occasions: 1.) at futureplaces, in October 2017, in Porto; 2.) at the Creative Commons Global Summit, in April 2018, in Toronto; and 3.) at the Unfinished Summer School, in August 2018, in Vila Nova de Gaia. Below, we present the creative process and structure of the performance.

With feedback collected during focus group sessions and after a long process of watching and sharing references (often illegally, according to the Portuguese authors' rights law), we finally decided to follow up on Daniel Pinheiro's suggestion to use Legacy Russell's video "Bruce Nauman Cruising To Drake On Tha Block"³¹, a 2011 artistic video that uses Bruce Nauman's "Walking in an Exaggerated Manner around the Perimeter of a Square" video-performance (1967-68) to the sound of Drake and The Dream's song "Shut it Down". By its very remixed nature, Legacy's work in itself already posed a lot of questions in terms of copyright and appropriation – precisely for that reason, we decided to use it. It is here important to note that Legacy Russell's work is very much based on remixing pre-existing art works³². This particular piece results in an unusual combination of two different artists' works: the contemporary art icon of the 1960s, Bruce Nauman, and the well-known Canadian rapper and hip hop singer, Drake. The works chosen by Legacy are both still under copyright protection according to the United States law (the country where she is based) and so, although her aim was to discuss art and its context³³, it also naturally raises a lot of copyright problems. So, after a long discussion with Teresa Nobre about the legal problems and failures we could explore, it was decided Daniel would replicate Bruce Nauman's action live while playing Legacy Russell's video. That would be the central action of *Copywrong performance-as-tool*.

³¹ The video is still available on YouTube to this day, which raises a lot of questions about the efficiency (and intention) behind the platform's copyright infringement filters; although the artist had to remove it from Vimeo for copyright reasons.

³² More information at <http://www.legacyrussell.com>

Other artists are well-known by this appropriation approach to art. Sherrie Levine (<http://www.aftersherrielevine.com>), Soda Jerk (<https://www.sodajerk.com.au>), Girl Talk (<http://illegal-art.net/girltalk/>) are a few good examples of artists whose work became popular and appreciated precisely for the unusual way in which they explicitly appropriate other artists' work.

³³ <https://www.artsy.net/article/legacyrussell-legacy-russell-bruce-nauman-cruising-to-drake>

After reading the *Copywrong* manifesto (Annex C) we have composed for the purpose³⁴, Rogério, the host, would explain what Daniel was going to do during the session. Teresa, in the representation of the law, comes in through live streaming (giving this Godlike-Wizard-of-Oz-Big-Brother impression) interrupting Legacy Russel's video playing on screen and Daniel's action – the discussion starts.

The performer (Daniel) tries to convince the law(yer) to allow him to make his art. As they reach no conclusion, he shows the video again being immediately stopped by the voice of the law once more. The discussion carries on and, according to it, it becomes more and more evident that, if Daniel wants to correctly follow copyright rules, he won't be able to make his art – becoming clear the poor bargaining power of artists, discussed in Chapter 5 (section 2. and 3.), Chapter 6 (section 3.)

and Chapter 7. Meanwhile, the title of the performance he is trying to make, which initially started as *“Walking in an Exaggerated Manner around the Perimeter of a Square”* (the same as used by Bruce Nauman, in his original video-performance), keeps being altered in an attempt to



Fig. 8: Copywrong performance-as-tool presentation, at the Creative Commons Global Summit 2018, in Toronto

abide by the law until ridiculously becoming *“Walking in an Exaggerated Manner Around the Perimeter of a Square”* after Legacy Russel's *‘Bruce Nauman Cruising to Drake on tha Block’* (2010) after Bruce Nauman's *“Walking in an Exaggerated Manner Around the Perimeter of a Square”* (1968-69) with Drake's music *Shut it Down* (2010) by Daniel Pinheiro (2018) after Daniel Pinheiro's original concept”, becoming a kind of caricature of the strategies and efforts artists have to employ in trying to get around the legal constraints imposed by copyright (see Chapter 7).

³⁴ The *Copywrong* manifesto is copy paste exercise of many different art texts and manifestos about copyright followed by all the quotes and references that were used; the live reading includes all the content in the document, with all its references, in an attempt to guarantee copyright clearance.

By the end of the performance, having realized that it is not possible to present Daniel's proposal live if we wish to rightly follow the Portuguese copyright rules, we invite the audience to decide whether they wish to see it or not, informing that we will all be outlaws if they decide the artist should carry on. While all this is happening, the researcher takes notes of everything that happens live throughout the session – such notes have been shared on *Copywrong's* website and include what we decided to call *Copywrong's* "recipe", a kind of



Fig. 9: Copywrong performance-as-tool presentation, at futureplaces 2016, in Porto

manual to implement the performance format in different legal contexts. During the voting process, the researcher shows a selection of posters highlighting the most common problems and doubts about copyright identified previously in our interviews: 'Myths and Misunderstandings', 'Ethics vs Law', 'Plagiarism vs Appropriation', 'Need for More Transparency and Access', 'Coffee Money', 'Censorship', 'Affects Creativity', 'The Younger the More Unaware', 'Some Ignore Copyright', 'No Confidence in Institutions', 'What is Copyrightable?', 'Uninterested in Recognition', 'Recognition of Authorship' (developed in Chapter 7). At the same time, excerpts of the research interviews can be heard (adapted from the sound edition we used in project *de Eus*).

In all three public presentations of *Copywrong*, being the audience composed of mainly artists, researchers and lawyers, and although Daniel's next action was not hard to guess, the audience always voted to carry on and see the final result. Depending on the audience participation (in the first presentation, the performance was actually repeatedly interrupted with questions), the whole *Copywrong* performance would take about forty-five minutes long. By the end of every presentation, in all three occasions, there was a very intense and exciting discussion about copyright, with the audience sharing some experiences and making a lot of pertinent questions. This feedback summed up and confirmed the results of all our previous research work.

After this long field research work, as we analysed and confronted our findings with literature review, we finally realized what was the missing part of the puzzle we had been looking for the whole time. The main result of this study is, thus, the analytical model of the concentric circles model of cultural work presented in Chapter 8, as our contribution to clarify the relationship between copyright and artistic work.

5. Concluding Methodological Considerations

Before we dive into our research, it is important to refer that we are aware that the back and forth dialectic method of this research represents, on one hand, its bigger fragility but, on the other, it can also be seen as its greatest richness. This happened because we proposed a study about a dynamic subject. As we have seen and will develop further in our text (Chapter 1 and 6), with the digital revolution, copyright regulation has been subject to debates, changes and reforms all around the world, for the past twenty years. Particularly in the western societies, copyright and author's rights have been subject to profound scrutiny and discussion (Chapter 2, section 3.). This research was developed during that exact period, being both a result and, we hope, a contribution to this controversial theme.

As we will see throughout this text, polarized transformations have taken place around copyright: on one hand, national and international regulations seem to move towards more restrictive and protectionist approaches while, on the other, alternative licenses and open culture movements emerge and grow. However, and despite the recent centrality of copyright within the cultural industries framework (see Chapter 3 and 6), from one end to the other, it seems evident that the obscure multiplicity of opinions and perspectives (which some authors defend as intentional; Dobusch and Quack, 2012; see Chapter 3, section 1. and Chapter 7) from one end to the other of copyright experts, supporters and beneficiaries seemed to be impossible to unravel. Such obscurity was also present in our theoretical search: virtually every day, a new book, paper, video news about copyright would be published. So much for the traditional literature review... In sum, our own methodological approach is a

reflection of this obscurity, which obliged us to continuously follow paths we could have not even imagine, let alone plan, at the beginning of this research. Nevertheless, it was this very same obscurity which inspired the creation of our model of analysis. Based on practical tools and the help of the artists themselves, our research would lead us into the theoretical model we propose as a step further in the clarification of the effects of copyright in the work of artists and cultural industries dynamics.

Chapter 3

'EVERY MAN IS AN ARTIST': DEFINING THE VALUE OF CREATIVITY

“Only art is capable of dismantling the repressive effects of a senile social system that continues to totter along the deadline: to dismantle in order to build a social organism as a work of art. This most modern art discipline – Social Sculpture/Social Architecture – will only reach fruition when every living person becomes a creator, a sculptor, or architect of the social organism.”

Joseph Beuys, *'Every Man an Artist: Talks at Documenta 5'* (1972)

In this chapter, we will analyse the work of Nicholas Garnham (2005), Kate Oakley (2009) and David Throsby (2008b), for their contribution to unveil discourse transformations about creativity and the reasons behind the shift from the concept 'cultural industries' to 'creative industries', reflecting on the differences and similarities between definitions. We will then look closer into the value of creativity and, mainly with support of the research of Ruth Towse (2010; 2011), Eleanora Belfiore and Colin Firth (2014) and Erwin Dekker (2014), we will try to clarify why it is important to (at least try to) define it, if we wish to understand copyright's effects in its promotion or prevention. We chose to develop on the idea of the value of creativity as result of the work of creative artists, by taking David Throsby's 2008 concentric circles model of the cultural industries and proposing an adaptation that helps clarify the role of intermediaries. Finally, we present a thorough analysis on the characteristics of artistic work, based essentially on Pierre-Michel Menger (2014), Façoise Benhamou (2011) and Ruth Towse (1996; 2011) analysis, how such characteristics have evolved within the creative

industries context and in the digital economy in general, as authors such as Graham Murdock (2003) and Marion von Osten (2011) point out.

1. On Creativity, Whatever that Means: The Many (In)Definitions of a Valuable Concept

While regarded as a key instrument for the control of the value of intellectual property over creative production, copyright is intimately related to the long-lasting ongoing discussion about the value of creativity (Handke et al., 2016: p.150). As we have seen (Part I), it is a subject of cultural economics study. In his 2001 overview of this recent discipline, *Where Are We Now On Cultural Economics?*, Mark Blaug announced the economics of copyright as one of “the new topics coming just over the horizon” along with international trade of cultural goods and culturally sustainable development (Blaug, 2001: p.132-133). On the other hand, under the more recent creative economy framework, the relationship between copyright and the value of creativity appears to be crucial to understand how much copyright affects the creative industries (and culture) in terms of the added value it apparently promotes.

But the academic debate around the value of creativity has decades (if not centuries) and many different approaches and frameworks (Throsby, 2001; Jacobs & Loots, 2012). In essence, “the notion of ‘value’ is the origin and motivation of all economic behaviour” and “from a very different perspective, ideas of value permeate the sphere of culture” (Throsby, 2001: p.19). Considering the diversity of approaches - sometimes radically opposed and subjective, up to now – it has been virtually impossible to reach a general consensus among scholars, policy makers or creative industries’ practitioners in general, about what the actual value of creativity is.

And the primordial problem seems to extend way beyond (and even before) the value question: the concept of creativity itself does not seem to leave much room for agreement

and consensus also. Many cultural economists and researchers of creative industries matters point repeatedly to the definition of creativity presented by John Howkins: “Creativity is the ability to generate something new. (...) Creativity is not necessarily an economic activity but may become so when it produces an idea with economic implications or a tradeable product.” (2001: p.x). Howkins goes on describing creativity as this “self-sufficient” “universal talent”, that is “fun”, competitive and charismatic but also “surprising” and “generally a positive virtue” (Howkins, 2001: p.10-15). Another popular definition was suggested by Richard Florida (2002): “Creativity – ‘the ability to create meaningful new forms’ as Webster’s dictionary puts it – is now the decisive source of competitive advantage.” (p.5). Researchers within creativity studies underline that “the word creativity has a fairly short history” (Runco & Jaeger, 2012: p.93) and the so-called standard definition of creativity “requires both originality and effectiveness”, where “effectiveness may take the form of value” (*id., ib.:* p.92). Cultural economics’ authors, such as David Throsby, simply define “creativity as the creation of value” (2001: p.103).

Academic definitions of creativity have always encompassed both *novelty* and value or fitness to purpose (...) and highlighted the complex interactions and collective systems which lie behind individual creativity (...). Not only is the emphasis on individual idea generation empirically misleading, it places a disproportionate burden on a few individuals and distorts the priorities of organizations seeking to develop creative products and services. (Bilton, 2015: p. 154)

Chris Bilton (2015) highlights that “artistic ‘creativity’ has also blurred into models of industrial ‘innovation’, advocated by management gurus as a response to ‘turbulence’ and discontinuous change in contemporary markets” (p.153). Kate Oakley takes this idea further, by suggesting the recent notion of creativity not only affects the market but also society as a whole:

[I]n its form as an abstract noun, the term ‘creativity’ did not appear in the *Oxford English Dictionary* until 1933 (...) Having emerged in educational and psychological circles, in the 1920s, (...) it is a specifically modern response to rapid social and technological change. (...) we now have a term that is designed not only to cover both economic growth and social good, but to suggest that there is never any conflict between them (Oakley, 2009, p.405).

On the other hand, this widespread notion “stresses the instrumental utility of creativity, while diminishing notions of fantasy, play or uselessness” that ultimately leads to the current

“confusion about the relationship between culture, creativity and innovation” (*id., ib.:* p.406). In fact, some authors warn that “the tendency to focus on the novelty of innovation rather than its value can have destabilizing effects on the organization” (Bilton, 2015: p.155). All in all, nowadays, “creativity remains an elusive phenomenon” (Throsby, 2001: p.106).

2. Defining the Undefinable: the “Imprecise Muddle” of the Creative Industries

If creativity is a difficult concept to grasp, let alone creative (or cultural) industries. The chaotic, unclear and diverse set of definitions (and even terms) to define the ‘same’ sector makes research and measurement of such sector virtually impossible.

Collectively, these industries take many names: cultural industries, creative industries, cultural-products industries, the creative economy, and the cultural economy. While individual authors are often consistent in the terms they use (at least within a single manuscript), when viewed collectively, these terms appear as an imprecise muddle... (Boggs as cited by Flew, 2012: p.183)

Yet, this “imprecise muddle” has been the basis for strategic political decisions and an array of programs and schemes to promote their development and it is particularly unusual for appearing primarily in Australia (with 1994’s *Creative Nation* agenda) and later in the United Kingdom (with Tony Blair’s Department of Culture Media and Sports distinction between heritage and creative industries) political context (Menger, 2010: p.5).

As Terry Flew puts it, “the creative industries concept is unique, at least in terms of cultural theory, in having its origins in policy discourses.” (Flew, 2012: 183). According to the author, if not more, the creative industries were an extremely successful case of political marketing, with the concept being exported from the UK to the whole world. (São Simão, 2013: p.4)

As Kate Oakley pointed out: “the DCMS’ delineation of 13 ‘creative industries’ sectors back in late 1990s (DCMS³⁵ 1998) has been globally exported (Cunningham, 2002) with a rapidity and effectiveness that many UK-based creative industry firms would envy” (Oakley, 2009: p.404). This British political origin of the concept of the creative industries has direct implications on the way copyright regulation has evolved over the past twenty years, as we will see in Chapter 6.

What is also important to underline is that this new concept represented a shift from the previous sector’s designation as ‘cultural industries’, introduced in the late 70s by Adorno and Horkheimer (1979), which even for the UK – that has always had a considerably specific cultural policy and management framework, only paired by the United States and few other Commonwealth countries – was disruptive. As Justin O’Conner affirmed, this shift was clearly intentional:

In fact, it was coined by John Newbiggin, a policy advisor, in a smoke filled room very late at night. They needed a report on the minister’s desk by nine in the morning and they thought ‘let’s call them creative industries’. In that sense, it was quite contingent – but these things often have a deeper logic. The reason ‘creative’ was chosen was because it avoided the connotations of culture (Poettschacher interview to Justin O’Connor *in* Robert Punkenhofer, 2010: 37).

The introduction of the term creative industries in political discourse in the UK was the result of a “shift from state to market across the whole range of public provision, initiated under the Thatcher government” (Garnham, 2005: p.16), after which culture became rapidly and efficiently ‘thingified’ (Oakley, 2009: p. 406). It is also interesting to note that, regardless of its name, this new group of industries (sector?), now included the so-called ‘low arts’ – such as pop music, movies, television and literature, and not just the ‘high arts’ (Blaug, 2001: p.133) – quite possibly because the former is more easily ‘commodifiable’ than the latter.

Moreover, despite being “a response to a neo-liberal regional *hangover* in the UK and the growing economy of image, where culture actually becomes an instrument” (São Simão, 2013: p.6), this new definition was rapidly integrated in academic debate and the new UK

³⁵ Department of Culture Media and Sports.

DCMS' definition³⁶ quickly became one of the most well-known and recognized definitions of the creative industries (Potts & Cunningham, 2010; Oakley, 2009; Wjinggaarden et al., 2016; Throsby, 2008b; Jacobs & Loots, 2012). Since then, many different theories and models were developed in an attempt to circumscribe, characterize and clarify this "new" sector's dynamics and effects in the general economy. Examples of these models are "the copyright-based model adopted by the World Intellectual Property Organization (WIPO, 2003), models derived from a cultural studies perspective in which these industries are seen as purveyors of symbolic texts (e.g. Hemondhalgh, 2002), and a model developed within UNESCO's Institute of Statistics (2007) to provide a basis for working towards international consistency in statistical collections" (Throsby, 2008b: p.148), to name a few, most of which including Information and Communication Technologies (ICTs) activities as part of this new sector. Ultimately, the purpose of such prolific exercise has been an attempt to make possible an effective measurement, monitoring and understanding of the dynamics and impacts of the creative sector in the overall economy.

At the same time, "policy documents and grey literature increasingly presented innovation as a synonym of creativity and the creative industries" (Oakley as cited by Wjinggaarden *et al*, 2016: p.2). Or, as David Throsby (2001) argued, "creativity has entered the discourse of economics only as it may be the generator of innovation and hence the precursor of technological change" (p.93). Indeed, this "new analytic definition of the industrial components of the economy in which creativity is an input and content or intellectual property is the output" (Potts & Cunningham, 2010: p.164) kept trying to indicate some clearer understanding of the sector and of the need for "further discussion of the intersection between economic analysis of the arts and culture on the one hand and modern analysis of economic growth (and growth policy) on the other" (*id., ib.:* p.165).

But, although apparently new, as Garnham demonstrates (2005), this "shift to creative industries did not come out of the blue" (p.16):

³⁶ In 2001, the DCMS defined the creative industries as "those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property". These industries included Advertising, Architecture, Art & Antiques Markets, Crafts, Design, Designer Fashion, Film and Video, Interactive Leisure Software, Music, Performing Arts, Publishing, Software and Computer Services, Television and Radio (DCMS, 2001).

When Adorno and Horkheimer first coined the term 'cultural industry', they did so for polemical reasons and to highlight what they saw as a paradoxical linkage between culture and industry (Adorno and Horkheimer, 1979). (...) A general shift to the commodification of cultural products and the alienation of the cultural producer as a wage labourer within increasingly concentrated large-scale corporations, rather than either the low educational level of the masses or the direct bourgeois control of cultural production, that explained both the forms of contemporary culture and the ideological hold of both democratic capitalist and authoritarian regimes. (Garnham, 2005: p.17)

In his thorough summary of the background of the creative industries, the author presents the concept as the result of decades of academic schools in debate, namely, 1.) post-industrialism, which understands human capital (especially based on scientific knowledge) as the driver for capitalist development; 2.) Schumpeterian long-wave theory, where innovation plays a central role as a driver to economic growth; 3.) information economics and theories of the firm, that consider information a scarce resource unequally distributed between different markets; 4.) the recent service economy and post-fordism, that underlines "the shift from manufacturing to services as the dominant sector of the economy" (Garnham, 2005: p.23); and 5.) the technologies of freedom school, which "argued that the mass culture accompanying Fordism, and the rising relative real prices of cultural goods and services identified by Baumol (...) were due to the high costs of both production and distribution, which the ICTs revolution radically reduced" (Garnham, 2005: p.24). Under this perspective, it seems that the creative industries term emerges not only as replacement to the former cultural industries discourse, but also and maybe essentially as a way to include computer software among them. This allowed "software producers and the major publishing and media conglomerates to construct an alliance with cultural workers and small-scale cultural entrepreneurs, around a strengthening of copyright protection" (*id., ib.:* p. 27). On the other hand, and based on the idea that the UK had a competitive advantage over other world economies due to the widespread use of the English language, Garnham (2005) also argues that this change also made possible to the cultural sector to claim for public support in order to respond to the increasing global demand for cultural products and services (p.27).

As we will see again below, together with the increasing deregulation, uncertainty and precariousness in the labour market, the emergence and progressive highlight of the creative sector in overall economy translates into what some authors like to call "a culturalisation of

the economy and a corresponding economisation of culture” (von Osten as cited by Raunig *et al*, 2011: p. 133; see also Lash & Urry, 1994; Murdock *in* Beck, 2003; Garnham, 2005; Oakley, 2009). In such context, the creative industries can be regarded “as a technology that aims not so much at the capitalization and mobilization of cultural sectors in particular as at the restructuring of relations between the subject of labour and processes of valorisation, optimization and acceleration”, which ultimately has “an impact on the understanding and conceptualizing of labour, subjectivity and society as a whole (von Osten *in* Raunig *et al*, 2011: p. 135).

And here seems to lay “the conceptual difference defining the distinction between the branding of the cultural industry and the creative industries: whereas the culture still seemed to emphasize the abstract collective component of culture, a constant appeal to the productivity of the individual occurs in the creative industries.” (Raunig *in* Raunig *et al.*, 2011: p.201). As a result, instead of an increasing support to the arts and cultural activities – as it eventually would be expected, there were considerable cuts in cultural funding, over the last decades (Garnham, 2005; Oakley, 2009, von Osten *in* Raunig *et al*, 2011).

[D]riven by the competition for geographic advantages in the global market, European labour markets have been revamped and city districts enhanced with a culturalised vocabulary. Meanwhile, budget cuts in the social and cultural fields are legitimized under the paradigm of ‘self-reliance’ of cultural producers as entrepreneurs (the core concept of the creative industries ideology) in this notion of economy based on ‘talents’ and self-initiative. (von Osten *in* Raunig *et al.*, 2011: pp.139-140)

This ‘self-reliance’ often translating into intellectual property as it became particularly obvious in policy documents such as the European Union’s Lisbon Strategy, in 2000 – which completely absorbed the UK creative industries framework and political model, “with the aim of making the EU ‘the most competitive and dynamic knowledge-based economy in the world’ by 2010” (Minichbauer *in* Raunig *et al*, 2001: p.150). Thus, it became clear “the shift from a policy largely oriented to support for creative production (for example, regional policy) to a policy of ‘hard law’ regulations (such as those pertaining to copyright)” (Minichbauer *in* Raunig *et al*, 2001: p.148).

After 20 years of debate and political reforms it seems reasonable to affirm that, despite such intense debate, policy-makers continue to fail to (or maybe simply choose not to) embrace the diversity and idiosyncrasies of the creative sector as a whole and, in particular, of those core cultural activities, more related to artistic creation – as we shall see, what David Throsby (2008b) called the core creative arts, in his concentric circles model of the cultural industries.

This confusion poses a problem for those who would argue that the primary importance of cultural activities is their effect on wider economy (...) and therefore now need to provide evidence for these wide economic effects of cultural activities; but it poses a greater problem for cultural policy-makers and advocates, who, having appropriated the term ‘creativity’, must now show how cultural creativity is different from other kinds of creativity, and the basis for any claims of prominence in the debate. (Oakley, 2009: p.407)

As we will discuss further in Chapter 8 (section 2.), this intentional ambivalence is quite parallel (and possibly even one of the causes) to what Dobusch and Quack (2012) call “strategic ambiguity”, in their analysis of the recent copyright debate. Such correspondence can help better understand why copyright debate has become so relevant as well as controversial over the past few years. In fact, as Nicholas Garnham (2005) puts it:

We can only understand the use and policy impact of the term ‘creative industries’ within the wider context of information society policy. For the use of the term ‘creative industries’, as with related terms such as ‘copyright industries’, ‘intellectual property industries’, ‘knowledge industries’ or ‘information industries’, serves a specific rhetorical purpose within policy discourse. It serves as a slogan, as a shorthand reference to, and thus mobilizes unreflectively, a range of supporting theoretical and political positions. This lack of reflexivity is essential to its ideological power. (...) It assumes that we already know, and thus can take for granted, what the creative industries are, why they are important and thus merit supporting policy initiatives. (p 16)

In fact, as Ruth Towse points out, referring to UNCTAD’s Creative Economy Report 2008, this new approach to cultural activities emphasizes the importance of the sector as “the new driver of the twenty-first century economy and it relies on creativity protected by copyright to deliver growth” (Towse, 2010: p.462) – as such, maybe copyright also serves as what Garnham calls a slogan. Nevertheless, the creative industries became central to the idea of knowledge economy, particularly (but not only), in the EU:

Creativity is an important source for competitiveness in a knowledge based society, and the application of ICT for content production and dissemination is a key factor for the promotion of growth and employment. It is important, however, not to see culture and the market, creativity and competition as contradictory. On the contrary, creativity and innovation need to be present in all policy areas” (Minichbauer *in* Raunig *et al*, 2011: p.149).

Thus, despite the unclear definition and instrumental approach, as creativity became increasingly valuable as the drive for economic growth, the creative industries have definitely become central to many western political strategies over the last few years. However, equally important to note is that the artist, the once “classical subject of exception, with its precarious employment situation, has thus been discursively transformed into a model economic actor” (von Osten *in* Rauning *et al*, 2011: p. 137), as a result of (and a justification for) the crescent deregulation of the labour market, as we will explore further later in this chapter. Last but not least, it seems fair to argue that the original attempt to find a common ground that would allow measurement and comparison between the creative industries and the aggregate economy or to understand its different performances and results at an international level, almost completely failed. It is pretty clear today that the “imprecise muddle” of concepts and definitions (Boggs as cited by Flew, 2012: p.183) has resulted into an equally “imprecise muddle” of statistics and metrics that ultimately result into poor knowledge about the value of creativity - crucial to inform policy makers, managers, researchers and other workers in the creative sector (Garnham, 2005; Oakley, 2009; São Simão, 2013; Throsby, 2008b; Towse, 2010). We will come back to this throughout our analysis.

3. An Approximate Definition: The Concentric Circles Model of the Cultural Industries

Considering the many possible definitions of creativity and the creative industries, in order to contribute to the clarification of the value of the creative industries (and the role of copyright in this regard), David Throsby's concentric circles model of the cultural industries (2008b) offers a heuristic background framework to discussion.

Among the many attempts to analyse the creative industries, David Throsby's (2008b) concentric circles model provides an important approach as it is based "on the proposition that cultural goods and services give rise to two distinguishable types of value: economic and cultural" (p.148). To do so, the author focused on "the proportion of creative labour employed in production as a proxy to cultural content" (*id.*, *ib.*: p.147).

According to Throsby's proposal, the concentric circles model of the cultural industries (which, for matters of simplification only, we will here consider equivalent to the creative industries), offers a gradual classification of the creative activities, according to their incorporation of cultural and economic value. As the author explains:

The model asserts that it is the cultural value, or cultural content, of the goods and services produced that gives the cultural industries their most distinguishing characteristic. Different goods have different degrees of cultural content relative to their commercial value; the model proposes that the more pronounced the cultural content of a particular good or service, the stronger is the claim of the industry producing it to be counted as a cultural industry. Thus are the concentric circles delineated: at the centre are core industries whose proportion of cultural to commercial content is judged according to given criteria to be the highest, with layers extending outwards from the centre as the cultural content falls relative to the commercial value of the commodities or services produced. (Throsby, 2008b: p.148-149)³⁷

There are four concentric circles to be considered: at the centre, we find the "core creative arts", which include literature, music, performing arts and visual arts; these are followed by what the author calls the "core cultural industries", film, museums, galleries and libraries and photography; after that we find the "wider cultural industries" of heritage services, publishing

³⁷ Such rational is equivalent to relationship Chris Bilton (1999) establishes between symbolic value and material value of goods and services. We will go back to this on Chapter 5, section 1.

and print media, sound recording, television and radio, and video and computer games; finally, in the last circle of the “related industries”, we find advertising, architecture, design and fashion (Fig 10).

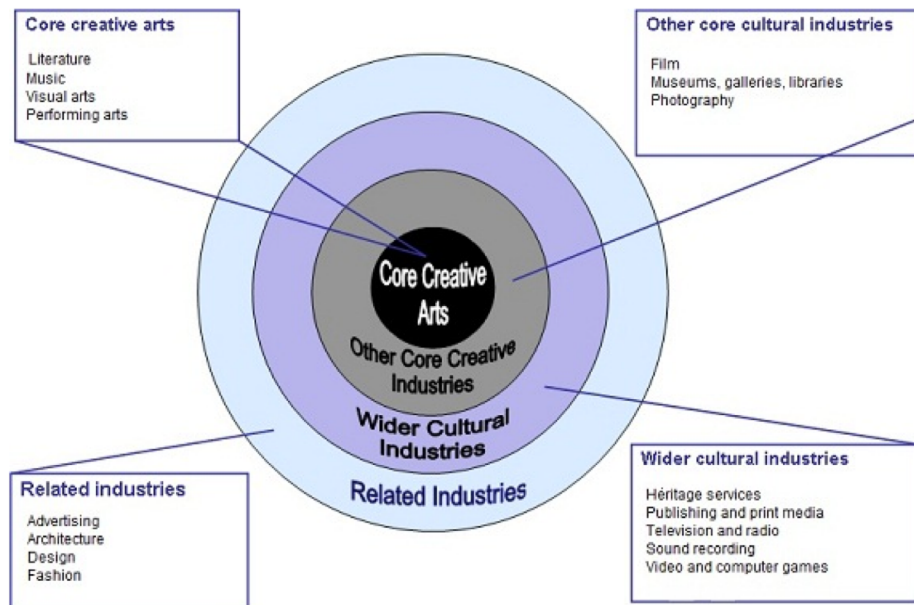


Fig. 10: David Throsby's concentric circles model of the cultural industries (2008b)

As criteria to classify the different activities, Throsby (2008b) “accords primacy to the processes of artistic (as distinct from scientific) creativity” and this is “why the creative arts – music, drama, dance, visual art, literature – lie at the centre of the model, with successive layers of the concentric circles defined as the ideas and influences of these creative activities diffuse outwards” (p.149). He, thus, proposes a type of value chain model, where “downstream functions such as distribution are represented as distinct industries in their own right, incorporating original creative ideas produced in the core into their production processes as intermediate inputs. For example, television scriptwriters, located at the core of the model, sell their work to broadcasters located in the “wider cultural industries” circle” (Throsby, 2008b: p.151).

Departing from his model and for the purpose of our study, we can therefore suggest that the two central groups of the core creative arts and other core creative industries aggregate the groups of activities more directly related to the artists, what we will simply call the core arts. We are here also assuming the inclusion of photography in the visual arts category and the exclusion of museums, libraries and galleries as, although they might encompass certain

creative tasks such as those of curators and programmers, their main activities do not represent the core creative act of making artworks but more of selecting/ distributing/ exposing them. At a second layer, that of the wider creative industries, sit what Throsby calls the distribution industries or what we here call channel arts: those activities that essentially distribute the work developed at the core arts group or, when producing their own content, they do so with the goal of addressing the needs/ expectations of a certain audience that they wish to develop or preserve, therefore, with a distribution/ educational/ commercial purpose which is stronger than the artistic purpose – we include here the museums, galleries and libraries excluded from the central core arts group. Finally, we can also redefine the related industries as functional arts or the group of activities that serve a certain functional purpose with clear commercial motivations attached to it (the design of a building, an object, a piece of clothing, a graphic image, an add, etc). In short, the new groups of activities we suggest come as follows:

- Core arts: literature, music, visual arts (including photography), performing arts and film
- Channel arts: museums, galleries and libraries, heritage, publishing and print media, TV and radio, sound recording, video and computer games
- Functional arts: advertising, architecture, design and fashion

The model could thus be represented as shown in Figure 11 below. We will go back to this in Chapter 5 (section 2. and 3.).

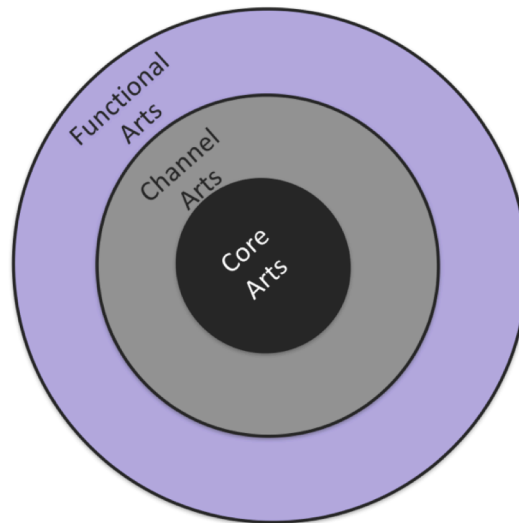


Fig. 11: The concentric circles model of the cultural industries redefinition

Unlike most previous (rhetorical) discussions, Throsby's proposal relies on empirical tests in trying to apply his model to the creative sectors of Australia, Canada, New Zealand, the UK and the US. By doing this, the author identified that “there is no common standard for identifying and classifying either cultural industries or cultural occupations across countries”, considering that “each of the five countries uses different amalgamations of particular activities in their industry definitions for the cultural sector”. He also argues that “the number of individual cultural industries or groups of industries that could be identified varied from country to country, from 10 in Canada to 24 in New Zealand”. Finally, in what concerns the cultural occupations aspect, the author understood that there was a need to “identify a subgroup of specifically creative occupations within the broader cultural occupation category” (Throsby, 2008b: p.152-153). Despite these constraints, it was possible to confirm that, for all five countries under scrutiny, “the proportion of creative labour used in production, as an indicator of the cultural content of the output of the industries included in the model, does indeed decline as one moves outwards from the centre of the concentric circles” (*id., ib.:* p.153). The empirical study also allowed to conclude that the proportion of cultural industries employment in total national employment was significant (around 4%) but it would be considerably higher if the so-called “embedded workers”, workers “employed in core creative occupations within other industries”, were to be added (*id., ib.:* p. 152; see also 155-156).

These results are important not only because they validate Throsby's concentric circles model but also because they confirm some of the major concerns among cultural economics research, namely, the extreme difficulty in measuring the creative sector, as referred before. By comparing his model to other existing framework proposals for the creative industries – namely, the UK DCMS model, Hesmondhalgh Symbolic Texts model, WIPO Copyright model, UNESCO Institute of Statistics (UIS) model and Americans for the Arts model - Throsby also addresses the problem of metrics (Throsby, 2008a). He points out that these different statistical classification systems make it “very difficult to assemble internationally comparable data” and that “estimates of the size and economic contribution of the cultural industry sector to the national economy will differ significantly between the models” (Id, *ib.*: p.221). Interesting to highlight that the WIPO model, “the most wide-ranging” of the models which is “based on industries involved directly or indirectly in the creation, manufacture, production, broadcast and distribution of copyrighted works (WIPO 2003) (...) [which] implies estimates of the economic size of the cultural industries that are more than twice as great as those implied by the most narrowly-defined model, the concentric circles model” (*id.*, *ib.*: p.220-221).

Throsby is not the only one to raise awareness to the problem of poorly reliable metrics to define the value of creativity. Many other authors stress this concern as a primordial fragility of the creative sector above all, because it has direct implications in cultural policy approaches:

First, much of the speculation about the economic effects of the cultural industries on the economy, whether at the national, regional or local level, remains a matter of theoretical assertion rather than empirically established fact” and second, “too strong concentration on the economic contribution of the cultural industries may shift the focus away from the achievement of desirable social and cultural goals (Throsby, 2008a: p.229-230).

4. The Value of Creativity: How to Measure a Mystery?

As we have already seen, one of the main strands of research in cultural economics has been about the question of value: how does one value culture?; or, more recently, how does one value creativity and the creative industries? In other words, what is the value of creativity? And, as we have seen before, given the indefiniteness of the creative industries or creativity, is that really even possible?

According to Dekker (2014), it might be reasonable to affirm that, within the value of creativity debate, there are two fundamental and different approaches: on one hand, the art and commerce approach, where we have a number of theories that suggest that value is essentially a social construct and studies the position of art in society through the observation of the art and the commercial worlds; and, on the other hand, the economics of the arts approach, by a group of more deterministic scholars that defend that value is an absolute characteristic of goods and services, that can be more or less clearly identified and perceived (Dekker, 2014). Authors like David Throsby underline “that value is a socially constructed phenomenon, and that the determination of value – and, hence, of prices – cannot be isolated from the social context in which these processes occur”; so “prices are at best only an imperfect indicator of underlying value” (Throsby, 2001: p.22). Other more deterministic researchers defend that value is intrinsic and absolute and can be clearly determined into financial terms, offering an accurate measure of how much a product or service is worth:

In this approach, value derive from consumer preferences. If individuals value a particular good, then the good will be supplied – given that costs are not too high – by artists and cultural entrepreneurs seeking profit. (Dekker, 2014: p.7)

However, supporters of the economics of the arts approach seem to agree that price is insufficient to capture value:

Consumer surplus is not captured in market prices, imperfectly defined property rights [such as copyright] and government interventions distort the market prices. Uncertainty and imperfect rationality further obscure the information that can be gained from markets. (Dekker, 2014: p.8)

In his paper “Two approaches to study the value of art and culture, and the emergence of a third”, Erwin Dekker (2014) suggests that this third approach is a combination of the two traditional perspectives explained above, focusing on “the relationships between individuals and cultural goods, the coordination through market processes and other social settings, and the norms, conventions and institutions that shape these.” (*id.*, *ib.*: p.13). This seems only to be a natural evolution of the previous approaches as consequence of the challenge evaluation represents for the study of the value of creativity (and/ or culture). Given the wide range of definitions, classifications and difficulties in collecting empirical evidence in the creative industries (Throsby, 2008a; Towse, 2010; Belfiore & Firth, 2014; Dekker, 2014), the process of valuing creativity seems to be an almost impossible task.

Following up on the idea that “capital is accumulated labour” (Bourdieu, 1986: p.16)³⁸, we will here use David Throsby’s assumption that creativity (and, hence, its value) is “primarily but not exclusively” the work of creative artists: “a group of workers for whom the creative act, whatever it is, is unarguably of primary importance” (Throsby, 2001, p.94). In line with the chosen framework based on this author’s concentric circles model, there are two main reasons for choosing this assumption: first, creative artists’ activities are at the centre of the creative industries (Throsby, 2008b); second and consequently, creative artists are thus the group of people who are most affected by copyright and copyright reforms. Let us highlight here that, despite Throsby’s model, most definitions and models of the creative industries also consider what he defined as the core creative arts, if not at the centre, at least among the main sub-sectors of the creative industries³⁹ (Florida, 2002; Howkins, 2001; Hesmondhalgh, 2002; Caves, 2000; Potts & Cunningham, 2010).

This approach also helps avoiding the distraction of the multiple approaches to the value of creativity, intimately related to the lack of consensus about the concepts of creativity and culture (and creative industries), as we have seen above.

Always under David Throsby’s framework, we will thus assume that the result of such work of artists is cultural goods (in the form of objects, content or services) that carry cultural and

³⁸ We will develop this further in Chapter 4, section 3.

³⁹ Most of these models repeatedly considering this idea of a trade-off between creative/ cultural/ symbolic value and economic/ material value, as we have seen in section 3. and will revisit in Chapter 5, section 1.

economic values⁴⁰ (Throsby, 2001: pp.19-43). In other words, we will assume that the value of creativity is result of cultural work.

Both in “economics and culture, the notion of value can be seen, despite its differing origins, as an expression of worth, not just in a static or passive sense but also in a dynamic and active way as a negotiated or transactional phenomenon” (Throsby, 2001: p.19-20). For the author, it is important to note that “if creative work in the arts and culture results in the generation of both economic and cultural value, then it might be expected that economic as well as cultural influence will affect the way creative ideas are formed and rendered” (Oakley & O’Brian, 2016: p.94). In other words, “cultural value influences economic value” (Dekker 2014, p.12) and vice versa (we will explore this further in Chapter 4). This is crucial to our argument, as we shall see in Chapter 6, when we discuss the implications of copyright reforms in creative practice (and production) and cultural policy.

To do this, it is important to recall Throsby’s distinction between these economic and cultural aspects of value:

In the economic domain, value has to do with utility, price and the worth that individuals or markets assign to commodities. In the case of culture, value subsists in certain properties of cultural phenomena, expressible either in specific terms, such as the tone value of a musical note or the value of a colour in a painting, or in general terms as an indication of the merit or worth of a work, an object, an experience or some other cultural thing. (Throsby, 2001: p.19)

This is not exclusive of creative goods and services (other products might also have cultural value, if not more, for historical reasons) but it is particularly evident in this group of products. Much because most of them represent what economists like to call mixed goods (for their both private and public characteristics)⁴¹:

⁴⁰ For the purpose of this study and for a matter of simplification, we assume ‘cultural goods’ and ‘creative goods’ are the same.

⁴¹ In economic theory, goods are divided into two main categories: public and private. Public goods are defined as being ‘non-rival’ (one person’s enjoyment does not diminish anyone else’s possibility to enjoy it too) and ‘non-exclusive’ (nobody can be prevented from enjoying it). Private goods are the exact opposite. In cultural economics, it is commonly accepted that “the arts manifest some characteristics of market failure, including possibilities that the arts give rise to external benefits in production and consumption, that there are non-market demands for the arts for existence, option and bequest values, and that the arts exhibit public-good characteristics alongside the private benefits conferred by individual consumption” (Throsby, 2001: p.140).

A painting by Van Gogh, for example, can be bought and sold as an art object whose private-good value accrues only to those who own or see it; at the same time the painting as an element in the history of art brings wide public-good benefits to historians, art-lovers and the general public. (Throsby, 2001: p.23)⁴²

Somehow “‘at odds’ with conventional economic theory and its declared focus on individual preferences as ultimate arbiter of value” (Belfiore & Firth, 2014: p.3), the author goes on defining the characteristics of cultural value, which include aesthetic, spiritual, social, historical, symbolic, authenticity and locational values (Throsby, 2001: p.28-9; Throsby, 2010 as cited by Belfiore & Firth, 2014: p.7) - it is not hard to identify some of these values (besides the historical) in Throsby’s example of the Van Gogh painting above.

On the other hand, total economic value of creative goods includes non-monetary returns to producers, market use value, non-market use value, option value, existence value, bequest value and instrumental value (Manatu Taonga, 2013 as cited by Belfiore and Firth, 2014: p. 6).

If creative goods prices were to be accurate, they ought to encompass all these different aspects of both economic and cultural values, which would most likely increase them to prohibitive amounts. And although this is not so far from reality if we consider the case of ‘art classé’ and contemporary art markets (Moulin, 1994), it is definitely not the case for other creative goods markets such as music or the performing arts (due to Baumol’s “cost disease of personal services”⁴³).

In either case, the problem of evaluation and consequent pricing subsists. So how does one define the price of a creative good? As we have seen above, the problem of evaluation is intimately related to the instability of definitions of creativity and creative (and cultural) industries, presented in the previous section of this chapter. Despite the many methodologies and models proposed to measure and monitor creativity, studies have demonstrated that it

⁴² One can easily infer the other cultural value characteristics in a Van Gogh painting, besides its historical value.

⁴³ “The cost disease asserts that, at least for live performance, costs are expected to rise cumulatively and almost constantly (...); the reason live artistic performance – like health care, education and other activities with handicraft attributes – suffers from the cost disease is simply that the growth in their productivities, i.e., their rate of labor saving, inherently tends to be markedly less rapid than that of other products in the economy.” (Baumol *in* Ginsburgh and Throsby, 2006: p.347). This phenomena is commonly invoked by cultural economists to justify public funding to the arts.

is virtually impossible to accurately measure it and, therefore, to understand its real role in the overall economy and social dynamics (Throsby, 2008b; Towse, 2010; Belfiore & Firth, 2014). Due to a “lack of consensus on both what should be measured and how it should be measured” (Belfiore & Firth, 2014: p.9), a number of serious gaps remain unsolved within measurement approaches to the creative industries (*id., ib.:* p.14). It is important to note that these gaps are related to what Belfiore and Firth (2014) call “the politics of measurement: why do cultural actors really measure, audit and evaluate?” (p.14). Thus, the lack of reliable empirical studies about the value of creativity is commonly referred in most cultural economics literature. Ruth Towse, for example, addresses this concern in a very clear way:

“As is well known, the contribution to GDP and to employment of the creative industries and their growth rates are bandied about in every official document relating to cultural policy but those data do not address the more difficult task of measuring creativity. What is less well known is that the ‘sectoral’ data are at best compilations of scattered and disparate sources in national income accounts and at worst, shaky guesstimates based on turnover data supplied by the industries themselves (Png,2008). Problems with employment data are even worse” (Towse, 2010: p.470).

And even when empirical evidence is analysed, that is unlikely to have a huge contribution as it is often very circumstantial and hardly comparable to other contexts/ studies. As we have seen in the previous section, in trying to validate his concentric circles model, David Throsby developed a comparison study on the creative industries based on the idea of creative occupation within five different economies. Aware that “cultural content has no immediately obvious unit of account, and in any case it is a concept where interpretation will vary according to the standpoint of the observer” (Throsby, 2008b: p.151) and even despite the five countries analysed were all part of the Commonwealth, as seen above (section 3.), the researcher could not reach any solid conclusion. Although he succeeded in demonstrating the validity of his concentric circles model of the cultural industries, Throsby could not extract any undoubtedly reliable - let alone comparable – results. The case is even harder if, instead of looking into economic solid variables (like employment, in the previous example), researchers decide to analyse the cultural impact of creative goods (Belfiore, 2018).

In turn, some authors have demonstrated that this has also direct implications in copyright regulation:

Measurements of the value of creative industries had led to attempt to value the ‘creative core’ and hence to measure the contribution to GDP of creators who produce it as a measure of the value of copyright. There has been virtually no research that demonstrates the case one way or the other or that shows the responsiveness of the production of creative goods and services to the strength of copyright protection (...). Nevertheless, creativity is at the forefront of debates about copyright law that have taken place over the last century and claims that strengthening copyright increases creativity are almost always made nowadays by the creative industries when lobbying for greater copyright protection. If the creative industries paradigm is to deliver the goods, however, we need to understand the underlying dynamic of the creative industries – the motivation of individual creativity and the role of copyright as an incentive – rather than rely on the rhetoric of copyright lobbyists. (Towse, 2010: p.464)

But although repeatedly “creativity is seen as the key to unlocking social and economic progress” it is also important to remind that Chris Bilton’s concept of ‘uncreativity’, the “‘resistance to new ideas’ is an intrinsic part of the creative process, in particular to the shift from what Boden calls ‘mere novelty’ to ‘valuable innovation’” (Bilton, 2015: p.154). As the author has demonstrated, the ‘uncreative solution’ is often more valuable than the creative approach (*id., ib.*). In other words, not all creative work is worth the same and not all creativity should be valued the same way.

5. Cultural Work: Anticipating the Digital Era’s Uncertainties

Going back to Throsby’s concentric circles model of the cultural industries and the implicit assumption that the value of creativity is result of cultural work, we shall consider the same author’s approach to what he defines as cultural occupations (Throsby, 2008b: p.153). Based on a 1996 Australian Bureau of Statistics classification⁴⁴, Throsby presents cultural occupations as follows (*id., ib.*):

⁴⁴ As we have seen before, depending on the different classifications of the cultural and creative industries, there are, of course, many other correspondent ways to group and classify cultural work and occupations. For the purposes of this study, we will consider Throsby’s assumptions as the basic framework for our discussion.

A) Creative Occupations

- Visual artists
- Photographers, sculptures, craftspeople
- Writers, editors
- Musicians, composers, singers
- Dancers, choreographers
- Actors
- Directors

B) Other cultural occupations

- Designers, architects
- Journalists, presenters
- Producers
- Librarians, curators, administrators
- Technicians
- Support personnel

The classification considered is coincident to the concentric circles model proposal, distinguishing core creative activities as the main creative occupations. As the author states, “the proportion of creative labour used in production, as an indicator of the cultural content of the output of the industries included in the model, does indeed decline as one moves outwards from the centre of the concentric circles” (*id., ib.:* p.153). Therefore, one can assume that the activities included in group A) are typically those at the centre of the concentric circles model, whereas those from group B) are more likely to be found as one moves outwards from the centre. Apart maybe from the editors category⁴⁵, all occupations included in group A) refer to types of work directly related to authorship, being it through creation (visual artists, photographers, sculptures, craftspeople, writers, composers, choreographers, directors) or interpretation/ performance (musicians, singers, dancers, actors). This does not mean that group B) occupations are not related to authorship but it does draw a line between a more artistic and a more functional approach to creation. In fact, for the purpose of this particular research, as David Throsby (2008b), we are simplistically

⁴⁵ Note that Throsby (2008b) does not specifically distinguish editors when defining the activities encompassed in the concentric circles model (see section 3.).

assuming the term 'creative' as a synonym of 'cultural' in the sense of all activities involved in the creation, production and distribution of culture. Therefore, we assume here creative work represents the same set of activities as cultural work, as we are here interested in analysing more artistic activities (as opposed to technical or technological ones). Workers belonging to group A), the core creative artists, are thus those "for whom the creative act, whatever it is, is unarguably of primary importance" (Throsby, 2001, p. 94). This is (or should be) the primary group of people to which copyright (authors rights) laws should be concerned about, as they are authors par excellence (not by commission only), usually with more fragile bargaining positions but still fundamental to cultural diversity and social sustainability, as we will discuss further.

Having assumed that the value of creativity translates essentially into the result of creative (cultural) work, we agreed that the core creative artists, in Throsby's concentric circles model, are those "for whom the creative act, whatever it is, is unarguably of primary importance" (Throsby, 2001: p.94), yes, but also for whom the creative act represents their primary source of income. Such income, as we will also see, does not need to entirely translate as money but does always have an objectively quantifiable component and it is up to each artist/ worker to decide what he values the most as a reward. In sum, in the context of this study, we assume the core creative artists are the central figures of what we here call cultural work – and, thus, the central agents of the cultural and the creative industries.

The characteristics of core artists as group of workers are quite particular and have been under the attention of many cultural economists for decades. Adam Smith, the so-called father of economics discipline, wrote in his seminal work, *The Wealth of Nations*, that cultural work (and the whole service sector in general) represented what he called "unproductive labour" (Towse in Klamer, 1996: p.96). He did so as he believed these workers did not "add value to a 'vendible commodity'" (*id., ib.*). As Ruth Towse argues, this suggests an important distinction between price and value that is not taken into consideration in mainstream economics' models; in fact, for a long time, economics has mainly been concerned "with the

determination of price, not of value” (*id., ib.*), which as we have also seen before, is in itself a big challenge⁴⁶.

And as the problem of defining the value of creativity is related to the problem of defining creativity itself (and the creative industries), so is the problem of defining what is creative/cultural work and its earnings. So, what is creative work? Let us focus again on the core creative occupations defined by David Throsby (2008b). In other words, let us focus on artistic work. According to Ruth Towse, “most artists supply labour to the arts and non-arts sectors (...), work longer than average hours, and earn less in total (in arts and non-arts work) than other workers. They are often self-employed, and if employed, employment is casual and short-term. They have typically undertaken longer education and training than other workers but their earnings from arts work do not rise with length of training, age or experience” (Towse *in* Klammer, 1996: p.98). In other words, “artists’ labour markets are special in being invariably part-time and little influenced by years of schooling. There is an almost chronic excess supply of labour in the performing arts [as in other art forms] which accounts for the prevalence of multiple job-holding on the part of the artists” (Blaug, 2001: p.130). Based on surveys on the structure of active population held in France and the USA, Pierre-Michel Menger, reinforces this idea:

The average age of the artists surveyed is lower than that of the active population, and their level of education is above average. Artists are more likely to live in metropolitan areas; they have higher rates of self-employment; and they show a continual trend toward feminization. The number of artists is increasing faster than the active population as a whole. The same surveys converge to show that, given their level of education and social status of their activity, artists’ earnings are lower on average (Menger, 2014: p.144)

As observed before for the question of creative value, creative work also faces methodological problems. In fact, “the conclusions of empirical testing of hypothesis about the characteristics of employment vary according to sources of data” (Benhamou *in* Towse, 2011: p.53). This happens not only because of the diversity of classifications for the different creative activities but also because of the characteristic intermittence of creative artists work and “the nature of multiple job-holding, which is probably the most distinctive aspect of

⁴⁶ It is interesting here to recall Bourdieu’s critique of the economic science (1986), which we will discuss in more detail in Chapter 3 (section 3.).

artists' labour market" (*id., ib.*). And "once multiple job-holding has been taken into account, earnings functions show that investment in training has a positive effect on the portion of expected earnings derived from non-artistic activities, but hardly any influence on art-related earnings" (Menger, 2014: p.152). According to Françoise Benhamou (2011), multiple job-holding reflects two important aspects of creative workforce: reputation and flexibility (Benhamou *in* Towse, 2011: p.54). These are probably the two main competition factors around which artists and creative professionals work more hard to differentiate themselves from one another, considering the characteristics of the labour market where they operate, as described above – although some authors consider this market to be "atypical and non-competitive", where "artists are imperfect substitutes for each other" (*id., ib.*, p.55). On the other hand, flexibility and reputation seem to have a much stronger impact on creators' chances to find work than education itself: "the probability of obtaining employment at any given moment is determined by the value of the artist's most recent performances or artworks, which carry far more weight than any diploma" (Menger, 2014: p.152). Another important aspect to consider is the idea that there are "two labour markets: one for the superstars and the other for all the more or less starving artists" (*id., ib.*: p.54). It is interesting to note that, according to some authors, this majorly young workforce seems to participate in a kind of lottery game, where

People try to enter artistic professions when they are rather young and can face a high degree of uncertainty. And, as in the case of lotteries, winners may earn a lot of money and artists overestimate their chances of fame and success. High rewards attract risk-seeking individuals. (Benhamou *in* Towse, 2011: p.56)

This also explains the excessive supply of creative labour, much favoured "by art schools, which offer too many programmes compared to future prospects", which in turn is supported by public funding for arts education (*id., ib.*).

However, other authors see this differently: Pierre-Michel Menger affirms that "Artistic activity is, in the highest sense, a kind of labour, not a lottery, but more precisely a kind of labour whose course and outcome are uncertain." (Menger, 2014: p.4), thus attributing creators' decisions in terms of labour to the environment of uncertainty that typically surrounds them. According to Menger, this uncertainty is one of the reasons why creators chose their careers. Seen as naturally independent risk takers, creators tend to pursue paths

that reject the limits and constraints of traditional labour markets. His analysis is based on the critique of traditional economic labour studies, which tend to regard labour as a negative thing:

In classical economic analysis, labour is generally treated as a negative magnitude. It is described restrictively as a “disutility”, an expense of individual energy in exchange for a salary and the consumer goods to which the salary provides access. Leisure and consumer goods are the only sources of satisfaction and individual well-being. Thus, labour is reduced to “negative consumption” When labour is described this way, involvement in the labour market becomes a case of rational behaviour and maximization under constraint: The choice to engage in a remunerated activity can be understood entirely as a choice balancing the sacrifice of well-being provided by the goods and the leisure acquired as compensation for the productive effort. (*id., ib.:* p.72)

As the author argues, this oversimplified version of reality ignores that “the disutility sensed in completion of work varies a great deal depending on the occupation and the job.” (*id., ib.*). This is what Throsby presented as the ‘work preference’ model (Throsby, 2001), where “allocating time to working in their chosen artistic occupation is subject to the constraints of the need to earn sufficient income for the household, not as the loss of leisure time as it is perceived in ‘ordinary’ labour economics” (Towse *in* Towse, 2011: p.133). This happens especially because there are other motivations to labour other than monetary: “the variety and complexity of the tasks, their ability to exploit all the worker’s individual skills, the worker’s feeling of responsibility, the recognition of individual merit, the role of technical competence in the definition and way of exercising hierarchical authority, the degree of autonomy in the organization of tasks, the structure of relations with superiors, with colleagues, and with subordinates, the profession’s social prestige, and the status accorded to those who succeed in it” (*id., ib.:* p.79). Many other studies back up this idea by arguing that artists’ decisions are tied to the dichotomy of ‘commercial’ versus ‘creative’ work⁴⁷ or ‘conservative’ versus ‘experimental’ projects, according to their expectations in obtaining financial rewards through sales and/ or subsidies (Towse *in* Towse, 2011: p.133-134); essentially because “‘art for art’s sake’ is unconcerned with financial gain” (*id., ib.:* p.134). In short, “maximizing pecuniary reward is far from what is sought by creators and performers”

⁴⁷ Which, as we have seen, is reflected by most models of the cultural and creative industries (see section 3. and 4; also Chapter 5, section1.).

(*id., ib.:* p.133). In fact, it is precisely this type of non-pecuniary ‘psychic’ reward that is in line with Adam Smith’s idea of “unproductive labour” (as seen above). And it is also in line with what Menger calls “the irresistible movement toward individualism in complex societies” (*id., ib.:* p.91) or “interindividual differentiation”, which ultimately leads to “the exercise of envious comparison, the kind that poisons interindividual relations, when the inequalities of condition arising from class differences are expressed in it.” (*id., ib.:* p.92). However, this is not always necessarily true. Menger also highlights that individual qualities and talents can be converted into common goods that benefit everyone, in contrast with “consumer goods and services that essentially satisfy selfish preferences (*id., ib.:* p. 95). In fact, for Menger, “a career can be understood, then, as individual development based on a comparison between successive realizations of an individual who accumulates human capital and information about his abilities gained via the trials of interindividual competition”, where “the relation between individualism, the formative value of labour, and the test of uncertainty constitutes the equation of self-fulfilment in work, and it presupposes the social approval of individual value, not the denial of evaluation.” (*id., ib.:* p.103).

In his analysis of the relation of the cultural industries to artistic labour, as we have seen in Chapter 1., Menger states:

The Romantic mythology of the bohemian, starving artist was first forged in the world of literary production because that world offered the first example of a developed cultural industry. All the cultural industries that have emerged since then likewise based their activities on the overproduction of goods and on the permanent excess supply of talented candidates. This is notably the case in the most speculative segments of these industries, wherein the phenomena I have been describing are particularly obvious: an extremely high number of candidates for an artistic career, statistically low chances for success, a rapid obsolescence rate for artistic goods, and a very wide dispersion of artists’ income. (Menger, 2014: p.132)⁴⁸

In this context – as in all “sectors of activity wherein success is highly uncertain” (*id., ib.:* p.228) - which, as we will see below, are becoming more and more since the digital revolution (section 6.), the “vocabulary of talent, genius, brilliance, and creativity is a common means of attributing extraordinary qualities to individuals” (*id., ib.:* p.228). This explains why today,

⁴⁸ It is here interesting to recall that this emergence of this “bohemian, starving artist” figure ultimately lead to the creation of copyright laws, as we have shown in Chapter 1, section 2..

within the political discourse of the creative industries, “the traditionally male notion of genius to produce the idea of the artist as an ‘exceptional subject’”, became so popular, turning “the classical subject of exception, with its precarious employment situation, has thus been discursively transformed into a model economic actor” (von Osten *in* Raunig et al., 2011: p.136-137). We will go back to this in the next section.

On the other hand, in face of this “extremely high number of candidates for an artistic career” (Menger, 2014: p.132), and the resulting excess supply of artistic labour and overproduction of artworks, Menger also argues that, in terms of firm behaviour, this can be regarded as a commonly used strategy for market entry:

Initial overproduction prevents the firm from equally supporting all the products it creates. Thus, heads of advertising make selections based on their anticipation of a given artistic product’s chances for success; their decisions to focus commercial and promotional support on this limited set of goods act, in turn, as a signal for all those who control the crucial selection process (beyond the direct influence of the firm) by informing and advising final consumers. In this way, the firm seeks to maximize the chances for success of the products it has chosen to heavily support, while also creating a reserve goods to be put into circulation should it fail to persuade external mediators to comply with its expectations. (*id., ib.:* p.133)

These mediators are what Menger calls gatekeepers – or what Raymond Moulin calls the “entrepreneur-dealers in the Schumpeterian sense of the word; that is to say, risk-takers and innovators” (Moulin, 1994: p.8), whose behaviour is one of the primary causes of uncertainty in the process of placing creative products in the market, as it is in their hands the power to determine the value of creativity (in other words, its price, often translated into copyright fees), sometimes defined in an arbitrary fashion.

If the preferences of gatekeepers and consumers were relatively stable and easily determined, firms would concentrate their production and their promotional and advertising efforts on a limited number of goods, which would be carefully selected or even developed in function of previous collected data. Yet the opposite prevails: final demand is highly volatile and unpredictable, and gatekeepers use fluctuating criteria that follow the logic of trends as they select among available products. (*id., ib.:* p.132)

It is here important to note that, as we will see over the next chapters (Chapter 5, section 3. and Chapter 6), the ‘gatekeeper’ is often the artist herself and this often promotes (inner)

doubts and conflicts⁴⁹. It is also important to underline that gatekeepers are not necessarily private firms. Much of these intermediary agents belong to the public sector's realm, representing "museums, public libraries, national art galleries, subsidized theatres and public broadcasters" (Murdock *in* Beck, 2003: p.26), which are mainly supported by national tax payers' contributions. Unlike commercial agents, whose primary goal is to maximize profit, the main reason for public structures to exist is "to address "market failures" by producing and distributing forms of cultural expression that were unlikely to survive in the marketplace but which were judged to be essential to the maintenance of a diverse communal culture and the exercise of rational citizenship" (Murdock *in* Beck, 2003: p.27). However, though public mission is commonly regarded as promotion of common good, it is also often criticized for pursuing political agendas and there has been "no agreement about how best to translate these intentions into concrete practices of preservation, subsidy and display" (Murdock *in* Beck, 2003: p.27). This fragility has become more evident over the past few decades, with the emergence of the creative industries discourse which, as we have seen, has only promoted the reinforcement of a more market driven approach (see page 3). In other words, despite their conceptual differences, the current behaviour of both public and private gatekeepers probably presents more similarities than ever before.

Recalling again Throsby's (2008b) concentric circles model, note that these gatekeepers – "critics, radio programmers and so on" (Menger, 2014: p.132) – do not sit at the central core creative arts circle but in the following layers of the other core creative industries and wider cultural industries, suggesting that core artists are the central agents of the cultural and creative sector, regardless of the sector's chosen definition/ model - and that, therefore, the defining difference between cultural and creative industries lays mainly in the gatekeeping (intermediary) layers that follow the central core artists, as we will develop in Chapter 8. To some extent, it also confirms that Throsby's concentric circles is not only a static representation of the structure of the creative sector but also a dynamic approach to the role of each creative industries layer towards the other. In other words, the relationship between Throsby's core circle and the following outwards circles can be one of exchange between

⁴⁹ It is not unusual to observe creative entrepreneurs separating what they consider to be their artistic projects from their commercial activities, through different branding, communication and even legal structure (São Simão, 2013).

creative work/ products and market validation/ access. In fact, as Menger puts it, “creative labour is inserted in a chain of successive interventions by professionals who play the different roles assigned to them in the division of labour (for example, publisher, proof reader, printer, distributor, bookseller, or critic). These professionals conduct their interventions without submitting the core of the activity – the content of creation – to negotiations or to an instability that the artist would be unable to control” (Menger, 2014: p.202). In other words, as we will develop further in Chapter 4, creative labour operates under a network logic. As Howard Becker explains, “all artistic work, like all human activity, involves the joint activity of a number, often a large number, of people” and that “the work always shows signs of that cooperation” (Becker, 2008: p.1; also Chapter 1). This is to say that, without the work of cultural entrepreneurs (gatekeepers) - that sit in Throsby’s circles beyond the central Core Creative Arts, most artworks produced would never be able to see daylight or reach their audiences. As Becker suggests, a composer’s symphony would never reach our ears if it weren’t for the people who invented, manufactured and maintained the instruments; those who created the music notation and those who taught and learned that notation in order to play it; those who provided the rooms for rehearsals or the concert hall for the public performances; those who developed the publicity and placed the ads and sold the tickets for the same performances, etc. And the same amount of people and skills could be listed for virtually all art forms (Becker, 2008: p.2).

Nevertheless, as seen, much based upon the myth of the artist as an individual genius and the idea of the creative labour market as a kind of lottery game, the star system model emerges. For Menger, the star system is an effective mechanism to control market uncertainty in the creative industries (Menger, 2014: p.134-135). However, in such system, almost all the risk is borne by the artists, as “the probationary period of candidates is ever shorter and occurs at an increasingly younger age, because art dealers, publishers, and music producers are no longer truly willing to build careers over the course of time – with the trials and errors and the relatively lengthy periods of investment amortization this implies” (*id., ib.:* p.135-136). As the author explains, such context (which properties overlap and are related to those of the freelance system) allows cultural entrepreneurs “to maintain the better part of their power in negotiations with individual authors or creators by taking advantage of individualized contract relations in a highly unstable labour market” while, at the same time, having “a tool

for rapidly gaining information on artists' competencies: reputation" (*id., ib.:* p.137). Therefore, "no freelancer⁵⁰ is protected in the event of failure" and, "since the fastest and most economical tool for evaluating skills is the exchange of information through personal networks", trust and reputation are the sole guarantee they can rely upon (Menger, 2014: p.137-138); "this explains why, in such a hiring system, a small minority can work with great regularity and combine the advantages of freelancing with those of a virtual salaried employment" (*id., ib.:* p.138) - as it is traditionally evident in the case of film or the performing arts. On the other hand, "freelancing or working independently, rather than in a position of permanent employment, corresponds to the desire for an enjoyable way of life that is not structured by others – a life that is precarious and will never lead to great riches or the social status of international fame but which may still lead to a comfortable living" (von Osten *in* Raunig et al., 2011: p.144).

In analysing Sherwin Rosen's (1981) superstar model, Menger highlights copyright fees as a form of remuneration for creative labour (along with the sale price of an artwork and the income negotiated in contracts dependent on the duration of the work performed and the reputation of the artist), which "varies according to the sensitivity of demand to differences in quality among artists" (Menger, 2014: p.187). Such differences in quality "have decisive importance in orienting consumer preferences" (*id., ib.:* p.188), which in turn lead to the Pareto distribution generally followed by artistic professions income, where "one-tenth of professionals in a given field earn half of all annually distributed income and one-fifth of professionals concentrate 80 percent of earnings" (*id., ib.:* p.159). But unlike other "star jobs" (which can go from surgeons and lawyers to hairdressers or spies), "the quality of artistic goods and services effectively represents a form of subjective utility" (*id., ib.:* p.190). Although in his study "The Economics of Superstars", Rosen (1981) suggests that it is up to experts to evaluate and judge over the quality of a certain artwork, Menger argues that

(...) expert judgement manifests itself not only in individuals who are endowed with uncommon acuity, or in those who are trained to conduct evaluations. Opinions are also product of multiple

⁵⁰ As Hito Steyerl defined, a freelancer is: "1. A person who sells services to employers without long-term commitment to any of them; 2. An uncommitted independent, as in politics or social life; 3. A medieval mercenary. The word "freelance" derives from the medieval term for mercenary soldier, a "free lance", that is, a soldier who is not attached to any particular master or government and can be hired for a specific task." (Steyerl, 2012: p.125).

exchanges, experimentations and confrontations of ideas. (...) Accordingly, the amplification of an artist's reputation is the result of a social process – that is, a mechanism for the diffusion of evaluations conducted by expert consumers or credible professionals. Such diffusion may manifest itself as a gradual widening of the circle in which talent is recognized: from the kernel of peers to critics, art dealers, informed consumers, collectors, and, ultimately lay audiences for whom the information provided and certified by experts constitutes a sufficient and reliable quality signal. Yet, social influence over individual judgement and preferences may take other forms. (Menger, 2014: p.192)

This brings us back to Menger's idea of 'gatekeepers' and their ability to activate "all sorts of techniques for influencing consumers (...): advertising, spontaneous or orchestrated word-of-mouth (buzz), the emission of signals through various rankings, and so on" (*id., ib.:* p.192-193). These techniques are specially used in manipulating information. Under perfect competition, consumers and professionals would have absolute access to virtually all artworks of their interest. Yet, there are inescapable limits to this: considering the oversupply of artworks mentioned above, it is humanly impossible to be informed about each and every piece; on the other hand, "artistic goods are paradigmatic examples of experience goods", which require a direct contact to enable any sort of informed judgement (*id., ib.:* p.193). This means intermediary agents will always play an important role in curating consumers' cultural preferences. In order to save information costs in forming their preferences, consumers tend to follow their peers who have already experienced and judged an artwork (*id., ib.:* p.194-196). In fact, this mimetic behaviour allows consumers (and creators) to benefit from "network effects or externalities: the value of an artwork also depends on the number of individuals who show an interest in it, and who can discuss it amongst themselves" (*id., ib.:* p.197). These individuals are primarily the consumer's reference group or circle of peers:

Competitive differentiation between social groups – which sociology has long analysed, from Simmel's analysis of fashion, to Trade's and Simmel's works on imitation, all the way to Bourdieu's theoretical generalization of the same notion – explains why consumers of symbolic goods can distinguish themselves by perpetually selecting new consumption goods and styles, about which they exchange and obtain information within their circle of peers. (Menger, 2014: p.197)

As "exchange goods par excellence", cultural goods often give way to addictive behaviour among cultural consumers because "the pleasure the consumer obtains from engaging with

artworks increases with the intensity of his consumption” (*id., ib.:* p.198). This both explains and contributes to the existence of the star system – to which copyright is a central control mechanism, as we will discuss in Chapter 5 and 6 - because it is the famous artists who are more likely to “provoke the most frequent or most balanced exchanges among consumers” (*id., ib.:* p.198). Yet, consumers’ addictions (preferences) can also “rapidly take different directions” (*id., ib.:* p.198) for totally subjective (individual or collective) reasons - once again reinforcing Menger’s thesis of uncertainty in creative labour markets. In short, power law⁵¹ is what determines the artists’ possibilities of success:

The probability that an artist will be known and chosen by a new cultural goods consumer is proportional to the number of consumers who are already familiar with him, buy his artworks, discuss him, and await his forthcoming works. This process explains the formation of stable reputations, as well as the cyclical movements sparked by the waxing and waning of fads and fashions. (Menger, 2014: p.199)

As Menger affirms, “the value of an artist’s talent will be a function of the intensity of the demand for that artist” (Menger, 2014: p.200), which ultimately depends on the relationships she/ he establishes with the many gatekeepers that control the sector and their ability to promote and/ or sell her/ his work:

The quality attributed to the winners of the competition can be presented as the result of market strategies, for constructing value and exploiting the oversupply of talented individuals crowding the competition. Talent then becomes a label through which the creativity industry signals the originality of the artists it fashions and promotes. (*id., ib.:* p.201)

This means gatekeepers have the power to translate talent and reputation into labels, transforming the artists’ style and signature (their identity) into a brand and strategically manipulating consumers’ preferences (using social influence techniques such as marketing or copyright strategies) according to sales objectives, where “the artist’s signature to the work acts as a trademark” (Sagot-Duvaroux *in* Towse, 2011: p.43), “selling the artist as a brand”, Lash and Urry recall in their analysis of the cultural industries (1994: p.137). Artist and artwork are thus inseparable, as the value of the latter completely depends on the reputation – more

⁵¹ Power law “describes the stochastic processes that explain why the rich get richer, why city size distribution creates widening gaps that favor heavily populated areas, or why, in the scientific literature, one-fifth of articles account for four-fifths of all citations.” (Menger, 2014: p.199)

than the talent - of the former. This is particularly obvious in pop culture markets, to an extent “it is tempting, in view of this, to discard the hypothesis of intrinsic differences in talent, and to postulate instead the ingenious efficacy of cultural entrepreneurs as well as the weak resistance of audiences to the persuasion of advertising” (Menger, 2014: p.201). In popular culture markets, firms “compete essentially for rapid and brief success” (*id., ib.:* p.202), constantly responding to “feedback loops between the upstream and downstream of creative work” (*id., ib.:* p. 203) and adapting, remaking or even abandoning projects regardless of the stage of development, while constantly measuring their possibilities for success.

The fierce competition between firms at the rate of obsolescence of artworks require producers to exploit the signals of consumer preferences very rapidly. The various procedures for measuring success provide professionals with ongoing information that guides their promotion and investment decisions concerning the artistic careers they will endorse or dismiss; these procedures, moreover, provide consumers with information on the behaviour of others. (Menger, 2014: p.203)

In other words, from a supply point of view, this pop culture market dynamics allows risk assessment on investments, on one hand, and effective influence on audiences, on the other. The main difference to the so-called high culture markets lays in what Menger calls the autonomy of the creative activity. According to the author, high culture markets differ from pop culture because “artistic production is understood to occur essentially prior to a demand that develops gradually” (*id., ib.:* p.201)⁵². In this context, artists benefit from a relative autonomy towards all other market activities, and therefore (in exchange) keep virtually total control of the creative activity.

It should be understood, in fact, as an organizational characteristic. Such autonomy provides information on the degree of control the artist seeks to exercise over his production, but it does not indicate that creative labour is an activity masterfully removed from the network of interactions that render this activity possible and sustainable. (Menger, 2014: p.202)

This means traditionally, even in high culture markets, creators need to compromise with intermediaries (gatekeepers) to guarantee that their work is, at least, shown to the public, let alone sold. In any case, reputation plays a central role as the “dealer’s success with a

⁵² For a clear example on how these market dynamics happen in the traditional visual arts, see Moulin, R. (1994), *The Construction of Art Values*.

particular promotional strategy in the short term depends on financial back-up and, even more so, on cultural reputation” (Moulin, 1994: p.9).

Going again back to Throsby’s concentric circles model (2008b), this analysis can suggest the idea that the trade-off between our Core Creative Arts circle and the following is one of control over the original artwork. In other words, it is not just a mere commercial transaction - where creators sell their primary creative goods to the following market agents so they can add value to it (validate their worth) and resell to final audiences - but rather it is also a power relation over the value of creativity, where control over the resulting artwork is disputed between artist and market gatekeepers (which, as we have referred, is often embedded in the same person).

This brings us to Menger’s suggestion that “there is a disconnect between flexible control over creation and strict control over the distribution process and marketing and sales operations. Without sufficient autonomy (or without sufficiently flexible control), the fuel of creativity evaporates. However, without downstream control in distribution through strategies of selectively promoting artworks and artists with the highest expected commercial potential, overproduction cannot be managed efficiently” (Menger, 2014: p.205).

Yet, as we have seen before, these control mechanisms, which represent different forms of fighting uncertainty, extend beyond the individual level of the creator to the level of the firm and contaminate other sectors of economic activity beyond the arts, giving way to the above cited “culturalisation of the economy and a corresponding economisation of culture” (von Osten *in* Rauning *et al*, 2011: p. 133), phenomena from which the creative industries is corollary (see section 2). Post-fordist disintegrated firms and the contemporary replacement of social structures by information structures gave way to a sort of aesthetic reflexivity, which is more than just “an aestheticisation of everyday life. It is a *Vergesellschaftung* (societalisation) of culture, rather similar to an earlier societalisation of the industrial principle. The societalisation of culture is the principle of an ever more information-intensive industrial production. That is, though manufacturing decidedly matters, it itself is increasingly information- (hence culture-) intensive” (Lash & Urry, 1994: p. 143).

This explains also why “we would replace the remarkable quality of the artist with that of he who succeeds in hoisting a certain artist above the rest” (Menger, 2014: p.106). In other words, this is why the talented (or should we say creative?) work of gatekeepers eventually becomes as valuable (and sometimes even more) than that of the artist herself. As seen, it is not uncommon to find artists that are both creator and producer or entrepreneur of their own projects or even of other creators’ ventures (São Simão, 2013; see also Chapter 5, section 3.).

On the other hand, the advent of the internet and digital progress has allowed these talents to merge, opening way to new forms of creation (from process to object and even to subject) and to the development of new work models and new business models (Chapter 5). At the same time, it allowed free access to cultural content by users, “while also allowing advertisers to purchase target audiences with increasingly specified characteristics”, particularly, through the use of social networks (Menger, 2014: p.204). As we will also see on the next chapter, digital technologies unveiled new possibilities for market dynamics and, hence, for an economic paradigm shift.

In describing the Mathew Effect of cumulative advantage⁵³, Menger points out resource scarcity as a possible explanation to the power of the mechanism of cumulative advantage; in the cultural industries, this has become more evident with the digital revolution of the past decades. Digital technologies have enhanced the network effects on reputation and contributed to extinguish or dramatically reduce artificial scarcity factors. In parallel to the post-fordism phenomena of disintegration of production (Lash & Urry, 1994: p.113; Murdock *in* Beck, 2003: p.19), digital technologies only reinforced the decentralisation process, with its “diversification of consumption behaviour and the viability of niche markets” (Menger, 2014: p.223). However, “we see that disintegration onto market governance in the culture industries has the tendency to minimize the effectiveness of information structures. We see that disintegrated (decentralised) production tends to be tied to an ever more concentrated and globalized distribution function. And that only these concentrated distributors can provide the finance to decentralized producers” (Lash & Urry, 1994: p.113). Besides, the

⁵³ “This model, in brief, seeks to trace the sources of reputation formation so as to determine whether the rating of qualities and their conversion into reputations might constitute a system sensitive to slight initial disturbances in the conditions of the competition.” (Menger, 2014: p.208)

adoption of digital technologies has also made redundant many craft skills, ultimately leading to the out-sourcing and casualisation that characterizes the creative labour market today, which in its turn increases its uncertainty (Murdock *in* Beck, 2003: p.24).

Recalling here Benhamou's (2011) idea of reputation and flexibility as the core competitive factors of any creator to face uncertainty and fight for her/ his position in the creative labour market (Benhamou *in* Towse, 2011: p.54) – which is progressively extending to the whole economy, as we will discuss further in the next section:

An individual who succeeds in developing his career in this project-by-project environment increases his skills and benefits from the advantages of a well-established reputation; the latter allows him to expand his social and professional networks, which supply him with information and job opportunities. This dynamic is particularly influential in professions wherein learning by doing plays an important role and the reputational signal constitutes a highly functional means of obtaining information, one that professionals share via their networks in order to organize labour in a project-by-project basis. (Menger, 2014: p.217)

It is precisely reputation, particularly that based in more recent information, that grants the freelance worker his employment and remuneration expectations. Yet,

It should be noted here that it is impossible to determine or measure the quantity and price of artistic labour in the same way for all artistic disciplines. For artists who cede their rights to publishers, record producers, or gallery operators, earnings are indexed on the commercial career of the artwork itself. In the case of reproducible artworks, earnings are spread over a period that extends, by law, beyond the artist's death and lasts as long as is stipulated by literary and artistic property legislation in effect. Revenue flows are thus a direct function of the market performance of the artwork. (Menger, 2014: p. 219)

In other words, uncertainty (and poor access to information) shows why artists often feel compelled to sell their “literary and artistic property” rights (being copyright the most common form in the creative sector) to intermediary agents. Once artists wave their rights, they no longer control the course of their artworks and have no power to promote or prevent their success in the market (they can always turn to their moral rights – which are non-transferable - for this but this is not a very common situation, especially, among small and medium artists who, as we will see in Chapter 7, are often unaware of this possibility and, even if they are, they usually can't afford legal support to pursue it). The artist's reputation,

in this case, can still influence and be influenced by the success of the artwork but this influence is totally in the hands of the agent that is exploring the rights and the artist has no say about the ways or channels he chooses to sell or share the work.

The price of unique artworks is essentially determined as a function of both the intensity of demand and the (short- or long-term) actions that may be performed to raise the reputation of the artist and influence demand. A given quantity of labour may be paid at a price ranging from zero to infinity. Furthermore, a single artist may observe extreme variations between the effort put into producing an artwork and the remuneration for that effort. An artwork produced in record time may achieve considerable success, whereas a project realized over an entire lifetime may prove incomplete and unexploitable. The pace of creation can also fluctuate considerably over the course of an artist's career – often alternating between demanding or exhausting works (in which he undertakes new experiments), and more ordinary activities (in which he applies a tested and immediately lucrative formula. (Menger, 2014: p. 219)

In spite of copyright (which, as seen, was in part created to reinforce this possibility), the cutting-edge innovative artist is said to hold a temporary market monopoly over his artistic innovation, which he can explore for some time, while the audience finds it in fact new and different. However, given the uncertainty of the art market, this can change at any time:

Alternative career paths must then open, which place the artist in competition not only with his fellow colleagues, but also with himself (that is, with his own past). Cumulative advantage can thus transform itself into cumulative disadvantage. (*id., ib.:* p. 220)

Collaborations then become a mechanism to solve this problem. It is what Menger calls assortative matching, which “characterizes the multiplicative nature of the production function in artistic labour” (*id., ib.:* p.225). Through professional association with other reputed peers, the artist benefits from the multiplicative effects of their collaboration and tries to accelerate the process of accessing the concentrated circles where chances for circulation of artworks are higher. This is not only true in terms of artistic collaborations but also in relation to the intermediaries, whose reputation can increase the artwork/ artist chances of success in the market. This is particularly important in the early years of artistic careers but also for established artists, who consolidate their possibilities of regular work assignments depending on their portfolio of collaborations and the networks which they are part of.

The relative comparison of artworks and artistic performances conducted in competitive tests, together with the lasting indeterminacy of the course of creative activity, imbue artistic labour with a continual tension. It is on the basis that analyses the gaps in reputation and success put forth the casual role of networks of interdependence and cooperation in artistic labour. For in order to create and diffuse their works, creators and artists enter into contractual relations with organizations, such as artist agencies, publishing houses, recording companies, painting galleries, production companies and so on. (Menger, 2014: p.227)

Artistic labour markets are thus highly hierarchical structures, where the artist's reputation can be seen as "a form of capital that can be managed in various ways to protect him from the variability of instantaneous evaluations and to more rapidly increase the benefits derived from his fame" (*id.*, *ib.*: p.228) and, therefore, reduce uncertainty. However, the processes of digitisation and globalisation of the past few decades have led to changes in these hierarchies, progressively transferring "the costs and uncertainties' previously carried by larger companies" to smaller independent agents, allowing "the majors to cut their operating costs substantially" (Murdock *in* Beck, 2003: p.25; see also Bilton, 1999). From this perspective, independents are in the vanguard of casualisation, insecurity, and the accelerated turnover of personnel, rather than expressive diversity" (Murdock *in* Beck, 2003: p.25).

But let us not forget that, despite the impact of digitisation and globalisation, location is still determinant in structuring information (and work) networks. As Graham Murdock (2003) points out, although much of the work in the culture industries has migrated to the digital sphere (not only in terms of traditional functions but also in terms of new forms of collaboration) physical space is still highly determinant in terms of structuring of networks:

Text messaging is no substitute for hospitality and conversation and this can only be done by "being there" at the centre of the new webs of influence as they move between clubs, launches, private viewings, restaurants and dinner parties.

In addition to facilitating contacts with potential employers, agents, patrons, and collaborators, being in the "right place at the right time" also offers cultural workers access to a pool of potential customers. (Murdock *in* Beck, 2003: p.26)

This confirms Richard Florida's idea that the rise of the creative class is particularly evident in urban centres (Florida, 2008), where "artists gravitate toward locations that already have sizeable artists' colonies" (Murdock *in* Beck, 2003: p.26) which, in turn, explains the

progressive increase of incubation, co-working and makers' spaces all around the world, dedicated to host pools of young entrepreneurs, start-ups and freelancers (São Simão, 2013).

With the "culturalisation of the economy and a corresponding economisation of culture" (von Osten *in* Rauning *et al*, 2011: p. 133; Lash & Urry, 1994; Murdock *in* Beck, 2003; Garnham, 2005; Oakley, 2009), today more than ever, this is true not only for the artists but to virtually cultural agents in general, including cultural entrepreneurs (gatekeepers). In other words, the rules that apply to the artists' labour market (or creative work markets) have been progressively applying to the whole creative and cultural sector and even beyond that.

6. 'Every Man is an Artist'?: the Expansion of Precariousness and Uncertainty

As we have seen before, the "vocabulary of talent, genius, brilliance, and creativity is a common means of attributing extraordinary qualities to individuals" (Menger, 2014: p.228). But the idea of artist as the unique genius owner of "special gifts that are quite rare" (Becker, 2008: p.354) is not common to all societies and it was not until the Renaissance that it took shape in the western world (Becker, 2008: p.353), as we have seen in Chapter 1 (section 1.).

Nevertheless, the romantic idea of the artist recently became central to the neo-liberal discourse of the creative industries; much in line with Foucault's notion of the individualized modern author (Foucault, 1969; see Chapter 1, section 1.).

At a time when the old ideas and ideologies of the autonomy and freedom of the individual (especially the individual as genius artist) plus specific aspects post-1968 politics have turned into hegemonic neoliberal modes of subjectivation. Self-precarisation means saying yes to exploiting every aspect of creativity and life. (Raunig *in* Raunig *et al.*, 2011: p.201)

And, according to Marion von Osten, this is not something that applies to the creative industries only:

The figure of the artist as exceptional creator of innovation in modes of production, notions of authorship and forms of living circulates today in various discourses of social transformation. (...) as formerly stable institutional and organizational arrangements have been loosened by deregulation, the typical, masculine, long-term job biography has been eroded. (...) The labour-entrepreneur must simultaneously be the artist of her/ his own life. It is precisely this mystification of the subject of exception, the 'artist' whose way of working is based on self-responsibility, creativity and spontaneity, which grounds the slogans of today's discourse on labour. (von Osten *in* Raunig et al., 2011: p.136-137)

In other words, the creative industries discourse seems to be at the forefront of general neo-liberal policies – or, as Hito Steyerl calls them, “neo-feudal” (Steyerl, 2012: p.126) - and has implicit labour market deregulation. What Howkins called the self-sufficient aspect of creativity (2001: p.10) may be regarded instead as self-exploitation.

[W]hen allied to the well-documented structural inequalities in the creative industries labour market (...), these ideals and beliefs can reinforce a tendency towards self-exploitation, especially among young workers seeking to establish themselves (...). The myth of individual talent provides aspiring creative workers with a 'script for self-identification' (...) which bolsters confidence and self-esteem but at the same time leaves them vulnerable. According to this script, rewards and recognition are unnecessary and external to the self-reliant creative individual's vision and destiny. Exploitation, rejection and arbitrary success and failure might even be said to reinforce the narrative. (Bilton, 2015: p.159)

Under this perspective, the artists hoped “for art to dissolve within life” (Steyerl, 2012: p. 110), beautifully expressed by Joseph Beuys statement “Every man is an artist” (Beuys, 1972), gets an entirely subverted approach: instead of the 'empowerment through art' proposal, the creative industries idea of “the artist seems to be the point of reference for this new understanding of the relation between life and work and for mediating it to broader audience” (von Osten *in* Raunig et al., 2011: p.137) and “creativity shows itself to be the democratic variant of genius: the ability to be creative is bestowed on everyone (...) [but] the call for self-determination and participation no longer designates only an emancipated utopia, but also a social obligation” (von Osten *in* Raunig et al., 2011: p.138). Or, as Hito Steyerl (2012) puts it, “life has been occupied by art, because art's initial forays back into life and daily practice gradually turned into routine incursions, and then into constant occupation” (p.110); this is why “the example of the artist as creative polymath now serves

as a role model (or excuse) to legitimate the universalization of professional dilettantism and overexertion in order to save money on specialized labour” (*id., ib.:* p.112).

Additionally, Lash and Urry’s (1994) suggestion of “the replacement of social structures by information structures” (p.111) opened the way for the replacement of ‘institutions’ by ‘project institutions’ which, on one hand, “seem to have the advantage of being grounded in self-determination and the rejection of the rigid order of Fordist regimes” (Raunig *in* Raunig, 2011: p. 198) but, at the same time, “conversely promote precarisation and insecurity” (*id., ib.:* p.199). These ‘project institutions’ are nothing else than the common freelancers and entrepreneurs of today’s post-fordist economy:

The freelance entrepreneur has become mainstream, no matter whether s/he is floating as a part-time worker or building up one micro-enterprise after another. And even the successors of the twentieth-century culture industry, the major media corporations, conduct a policy of outsourcing and contracting sub-companies under the banner of entrepreneurship. (...) [T]he creative are released into a specific sphere of freedom and self-government. Here flexibility becomes a despotic norm, precarity of work becomes the rule, the dividing lines between work and leisure time blur just like those between work and unemployment, and precarity flows from work into life as a whole. (*id., ib.:* p.199)

It is thus important to highlight that, despite these structural changes, “the dispersal and re-composition of cultural production does not lessen the power of major multi-media conglomerates” (Murdock *in* Beck, 2003: p.27).

But although these transformations are not exclusive to the cultural and creative sphere, and “artists represent a small percentage of the total workforce (...), their living and working conditions may determine the level and quality of the production of culture” (Benhamou *in* Towse, 2011: p.56), we should not forget that “the number of artists is increasing faster than the active population as a whole” (Menger, 2014: p.144; see section 5.). The high status of art is one way to explain such phenomena:

The bohemian artist presented a model for those who had a desire to escape the bourgeois lifestyle. Currently, it is seen as an escape from the world of commerce, technology, and science, in which calculation, efficiency, and rationality rule. By belonging to the gift sphere, art stands in opposition to these worlds.

On the other hand, art offers an alternative. In a technology and consumption-dominated society, it is not so amazing that many people put the arts on a pedestal as a reminder of another, better world. And it is natural that countless youngsters would want to become artists to escape the dominance of the other professions and to creatively display their individuality. They do so because they hope to share in the mystique of the high status of art, but also because they expect that making art will offer them a personal satisfaction that cannot be found in ordinary occupations. (Abbing, 2002: p.290)

Additionally, this might also explain why, unlike in most sectors of the economy, the precarious freelance work condition in culture is often an option more than an imposition:

The motifs of bohemian life come up not only in the discourses of labour market policies and economic success, but also in the field of applied art, where it is used as a social value to distinguish oneself from business as usual. Among this specific group of ‘young creatives’ as well, precarious working conditions are not determined solely by business. In every case I encountered, a way of living was deliberately chosen. In other words, freelancing or working independently, rather than in a position of permanent employment, corresponds to the desire for an enjoyable way of life that is not structured by others – a life that is precarious and will never lead to great riches or the social status of international fame but which may still lead to a comfortable living. This seems a great privilege that most of the people globally do not share (von Osten *in* Raunig et al, 2011: p.143-144)

In other words, progressive uncertainty and precariousness in labour markets in general promotes the rise of the number of artists and creative workers: unable to access or even just maintain economic capital, people turn to activities where they can leverage other forms of reward (or capital, namely, cultural and/ or social, in the Bourdieu’s sense (1986)) – and eventually convert it into economic capital when possible. On the other hand, this is reinforced by the employers strategies of replacing wages for symbolic gratifications such as ‘experience’, ‘reputation’ and other things “good for the CV”.

Nevertheless, artists are too important as a social group to be left out for market forces to select. Especially, considering that such “market forces alone do not select naturally the most talented: selected performers may be untalented, and the inertia of consumers’ behaviour leads them to dominate an increasing share of the market” (Benhamou *in* Towse, 2011: p.56). This leads to a need for market regulation, which can translate into three options: “unions’ negotiations, specific status provided by social security schemes, and artists’ rights” (*id.*, *ib.*:

p.57). In turn, these different possibilities of market regulation need to be managed in face of the strategies adopted by major companies, from which Graham Murdock underlines six that “have assumed particular significance in recent years”: consumer research, branding organization, merchandise development, exploration of different formats, investment in marketing products, and vigorous defense of intellectual property (Murdock *in* Beck, 2003: p. 27-28). Note here that intellectual property (particularly, copyright) represents an effective instrument both for market regulation and corporate strategy. As Murdock states,

Taken together, these strategies are more likely to increase plurality rather than diversity. There may be more cultural products in circulation but they are more likely to be variants or spin-offs of a limited set of master templates. (...) [On the other hand,] A public culture based around publicly funded facilities may be losing its former purchase on the centres of national life and being progressively suffused by the logic of market competition, but it has not yet disappeared. (...) the maintenance of a cultural commons offering full and equal participation to all is likely to become more sensitive as a political issue rather than less. (Murdock *in* Beck, 2003: p. 28-29)

In face of the growing power of big private “impresarios of public culture”, on one hand, and the erosion of the public institutions (Murdock *in* Beck, 2003: p. 27), on the other, it is crucial to understand the actual contribution of copyright to the creative sector’s organization and development, particularly, to its central activities and agents: the artists, creators or authors – holders of authors’ rights and core producers of copyrighted work.

Chapter 4

INNOVATION, CULTURE, NETWORKS AND INSTITUTIONS

*“A large rose-tree stood near the entrance of the garden: the roses growing on it were white, but there were three gardeners at it, busily painting them red. Alice thought this a very curious thing, and she went nearer to watch them, and just as she came up to them she heard one of them say,
 ‘Look out now, Five! Don’t go splashing paint over me like that!’
 ‘I couldn’t help it,’ said Five, in a sulky tone; ‘Seven jogged my elbow.’
 On which Seven looked up and said, ‘That’s right, Five! Always lay the blame on others!’
 ‘You’d better not talk!’ said Five. ‘I heard the Queen say only yesterday you deserved to be beheaded!’
 ‘What for?’ said the one who had spoken first.
 ‘That’s none of your business, Two!’ said Seven.
 ‘Yes, it is his business!’ said Five, ‘and I’ll tell him—it was for bringing the cook tulip-roots instead of onions.’
 Seven flung down his brush, and had just begun ‘Well, of all the unjust things—’ when his eye chanced to fall upon Alice, as she stood watching them, and he checked himself suddenly: the others looked round also, and all of them bowed low.
 ‘Would you tell me,’ said Alice, a little timidly, ‘why you are painting those roses?’”
 Lewis Carrol, in ‘Alice’s Adventures in Wonderland’, Chapter 8 (1865)*

In this chapter, we begin by discussing Jason Potts’ (2013) perspective on the relation between the creative industries and technologic innovation, confronting it with Manuel Castells’ (2010) idea of the network society and Erwin Dekker’s (2016) considerations about Schumpeterian innovation cycles, introducing the discussion about the impact of digitisation in the core creative arts. We then discuss the similarities and disparities between innovation networks (Powell & Grodal, 2005) and cultural networks (Moulin, 1994; Becker, ([1989] 2008) and Lash and Urry’s (1994) idea of the culturalisation of the economy. Picking up Bourdieu’s (1986) conceptualisation of the forms of capital, we then reflect on the role of institutions

within these networks (Powell & Oberg, 2017). In the last section, we analyse the processes of convergence and media blurring boundaries, analysed by Tschmuk (2013), Latzer (2013), Castells (2005) and Rifkin (2005) and recall Potts et al. (2011) idea of the creative industries as social network markets, addressing the need to revisit the role of culture in the digital era.

1. Schumpeterian Art: the Creative Industries as Innovation Drivers

As we have discussed on the previous chapter, the rise of the creative industries as a central sector of the economy results in part to what has been regarded as “a culturalisation of the economy and a corresponding economisation of culture” (von Osten *in* Raunig *et al*, 2011: p. 133; Lash & Urry, 1994 – see Chapter 3, section 6.). However, as we also briefly discussed, this is by no means the only reason for such transformation. We should now focus on another important cause of the rise of the creative industries: the digital revolution.

Following an economic evolution approach (as opposed to economic growth), Jason Potts (2013) highlights an argument which relates the rise of the creative industries to the recent technological progress (particularly, in digital technologies), globalization and all the profound transformations these changes ignited (Potts *in* Towse and Handke, 2013: p.29). According to Potts’ reflection, which follows “the Schumpeterian framework of innovation systems, (...) the creative industries are best understood less as a sector *per se*, but rather as part of the innovation system”, that in turn “extends their role as a general enabling social technology” (Potts *in* Towse and Handke, 2013: p.30).

The creative industries provide services that are inputs into innovation by providing services that furnish the creative capital or by supplying the creative workers who are inputs into the innovation process. (...) To see the creative industries as innovation drivers is not necessarily philistine instrumentalism. It does not deny that artistic, cultural and creative output is a social-politically critical activity or an aesthetic or entertaining end-in-itself. It simply recognizes that arts, cultural and creative industries have always played a key role in the origination, adoption and retention of new ideas into the socio-cultural and economic system. (...) But this

innovation/ transformation value may actually have greater long-run economic value than the short-run value of the arts, cultural and creative sectors. (*id.*, *ib.*: p.30).

It is this long-run economic value that spills over other activity sectors and to society, contributing to general economic development and welfare. And it justifies the need for greater political attention not only in terms of the immediate instrumental “usefulness” of the arts but also in terms of promoting its more experimental and risky endeavours. Public support to the arts, cultural and creative sector is as fundamental as in any other economic area (Chapter 6, section 1.). However, like in other service sectors, namely education or health care, “unless productivity ceases to grow altogether, or begins to grow at the same rate in every sector” (Baumol *in* Towse and Handke, 2013: p.24), the Baumol’s cost disease – that presents these service sectors as “vulnerable to the decline in quality if there is a reduction of time and effort dedicated to them” (Baumol *in* Towse and Handke, 2013: p.20) – will remain uncured (see Chapter 3, section 2.). This is one reason why public support to the arts is still crucial - although, under the recent innovation-centred perspective, not as the old patron figure but as an investor promoting welfare and growth. Such entrepreneurial role of the state as a fundamental agent of any innovation system is true for all economic sectors, as it is appointed by Mariana Mazzucato (2013):

The State... ‘foolishly’ developing innovations? Yes, most of the radical, revolutionary innovations that have fueled the dynamics of capitalism – from railroads to the Internet, to modern-day nanotechnology and pharmaceuticals – trace the most courageous, early and capital-intensive ‘entrepreneurial’ investments back to the State. (...) [W]hen organized effectively, the State’s hand is firm but not heavy, providing the vision and the dynamic push (...) to make things happen that otherwise would not have. Such actions are meant to increase the courage of private business. This requires understanding the State as neither a ‘meddler’ nor a simple ‘facilitator’ of economic growth. It is a key partner of the private sector – and often a more daring one, willing to take the risks that business wont. (p.3-5)

In his book *The Rise of the Network Society*, Manuel Castells (2010) offers a very thorough explanation on how the invention of the internet itself was totally supported by the state, initially as a result from a military project from the US Department of Defense (1969) and was carried through by several American publicly funded universities, until it reached the European research centre that would transform it in what we know today as the world wide

web (at CERN, Geneva, in 1990); and all of this much before private companies showed any interest in it⁵⁴ (Castells, 2010: pp. 45-51).

Thus, the state, not the innovative entrepreneur in his garage, both in America and throughout the world, was the initiator of the information technology revolution. (*id., ib.:* p.69)

Continuously improved computers and mobile communication devices along with increasing broadband capacity led way to a new socio-technical paradigm, where the creative industries appear as a central sector to the emerging innovation system (see Chapter 3, section 2.). This happened mostly because the internet and digital technologies in general – like any other infra-structure – were necessary but not enough to provoke such profound paradigm shift:

[D]iffusing the internet or putting more computers in the schools does not in itself amount to much social change. It depends where, by whom, for whom, and for what communication and information technologies are used. (Castells, 2005: p.5-6)

According to Castells (2005), the new paradigm can be defined by three major trends, being the rise of the creative industries the very first appointed. Along with this trend, Castells also highlights the increasing digitization and consequent diversification and flexibility of today's communication systems (hence, less centrally organized and more inclusive) as well as the expansion of horizontal networks, more or less independent from business and government realms, allowing the emergence of what he calls self-directed mass communication, which ultimately allows "people to communicate with each other without going through the channels set up by the institutions of society for socialized communication" (Castells, 2005: p.13). We will go back to this in more detail in section 4 of this chapter.

As such, the creative industries have been deserving closer attention from governments and policymakers (see Chapter 3, section 2.). Subsidies and funding schemes have been allowing creative entrepreneurs (intermediaries), more than the artists, to explore new concepts and formats ultimately contributing to the reinforcement and renewal of social and cultural identity, the construction of critical thought and to the emergence of new ideas capable of triggering innovation in other sectors. Yet, as said, although sometimes (and maybe intentionally) not too obviously (Dobusch & Quack, 2012), the discourse shift (or the blurring

⁵⁴ "[T]he first reliable Internet browser, Netscape Navigator, [was] released in October 1994." (Castells, 2010: p. 51)

between) from “creators” or “artists” to “creative entrepreneurs” as target beneficiaries of such public programmes (São Simão, 2013: p.14-16) suggests a broader transformation:

In the neoliberal discourse that accompanies these developments, there is also a tendency to incorporate arguments that were considered part of the ‘cultural aspects’ in functions that are ascribed to the market or economic policies. Thus, it is no longer a ‘logic of the market’ versus ‘broad access to culture’, but rather ‘the market provides broad access to cultural goods’. (...) [T]here is a certain likelihood that in the near future the only path in this direction will follow the concepts of creative industries. But then it will not be realized as a cultural policy oriented to content/ structure, but as a cultural policy that is to be shifted to form part of a free market policy. (Minichbauer *in* Raunig et al., 2011: p.158)

In other words, such intervention of the state in market operation seems to be ideological and with devastating consequences:

[O]n the one hand, the state can be, and has been in history, (...) a leading force for technological innovation; on the other hand, precisely because of this, when the state reverses its interest in technological development, or becomes unable to perform it under new conditions, a statist model of innovation leads to stagnation, because of the sterilization of society's autonomous innovative energy to create and apply technology. (Castells, 2010: p.10)

This is particularly true when in face of such a deep transformation as the one we are living today: “a deeper growth of knowledge process in which new ideas, habits and routines, organizations and institutions displace old ideas in an entrepreneur-driven process of innovation that Schumpeter called ‘creative destruction’” (Potts *in* Towse and Handke, 2013: p.29). As Potts (2013) points out, the rise of the creative industries is a result of such innovation process, triggered by the digital technology shock

Following up on Erwin Dekker’s analogy between Schumpeter’s primordial “Theory of Economic Development” (1912) and the avant-garde artistic movement of early 1900s (Dekker 2016), the innovative process of ‘creative destruction’ in the economy as in the arts, science and politics is characterized by a will to break with past conventions (1), a group of avant-garde agents that lead the process (2), a new representation of a dynamic world (3), the embrace of the new and dynamic (4), the promotion of a perpetual dynamic process as opposed to a static equilibrium or utopia (5) (p.20). These elements are common in both the initial ideas nourished by Schumpeter and the arts futurists and they represent the characteristics of the man of action (later mistranslated as the leading entrepreneur), which

Schumpeter and the avant-garde artists themselves claimed to be (*Id*-, *ib*: p.12). However, as Dekker also points out, and somehow confirming this innovation theory, in his later edition of the same work (1926), Schumpeter presents the man of action no longer as the creator of the new norm:

The dynamism of the 1910's is replaced by the rationalization of government, bureaucracies and large corporations, and the role of the entrepreneur will fade, like that of the 'warlord' before him, he concludes somberly (...). The dynamic period, was ultimately a transitory stage. (Dekker, 2016: p.21)

Important to note is that between the two versions of Schumpeter's "Theory of Economic Development", the first great war happened (*id.*, *ib.*: p.20). While the first edition was inspired by the second industrial revolution (the technological acceleration of the period between the last decades of the 19th century and the early years of the 20th century). Innovative and dynamic spirit, the second version was clearly resigned to the devastating effects of World War I in Europe.

In his later work, Schumpeter is far less optimistic that this process of constant renewal can be maintained, and whether society is willing to accept the associated change and uncertainty. (...) he argues that the entrepreneurial energy will be smothered by an increasing rationalization and bureaucratization of the economy. (Dekker, 2016: p.19)

This is probably in the basis of what Castells (2010) describes as a "stable state", which, according to the author, characterized the past century:

'The history of life, as I read it, is a series of stable states, punctuated at rare intervals by major events that occur with great rapidity and help to establish the next stable era.' (...) at the end of the twentieth century, we lived through one of these rare intervals in history. An interval characterized by the transformation of our "material culture" by the works of a new technological paradigm organized around information technologies. (p.28)

As we have seen, over the last decades, digital technologies or information communication technologies (ICTs) may have been "creating the largest set of technological complementarities" ever observed (Bekar & Haswell *in* Towse & Handke, 2013: p.11; see also Chapter 3, section 2.):

They have led to many important changes in the structure of the law, government policy, and business practices. It is already clear that the ultimate impact of digital ICTs on the political, social, and familial spheres will be profound and potentially transformational. Within labour

markets, digital ICTs have been identified as a source of rising inequality in both labour incomes and access to information (the 'digital divide'). Digital ICTs have advanced as key contributor to a range of important dynamics including profound changes in retail market structure and firm organization, the increased globalization of trade, and perhaps even an alteration in the nature of the state. (*id., ib.:* p.11)

Hence, digital ICTs can easily be considered the typical Schumpeterian technology shock, leading to changes in virtually all economic sectors but also to transformations in cultural, social and political order. As such, their contribution to transforming and expanding what was once known as the cultural sector, gave way to the rise of the creative industries – if not more, through the integration of the ICTs themselves as part of the cultural sector (see Chapter 3, section 2.).

Going back to Potts (2013) ideas about the Schumpeterian innovation system, the author argues that the creative industries have the ability to accommodate all three phases of the innovation trajectory, namely: origination, adoption and retention (p.32). Although origination is “usually advanced as the major added value of this sector” it also “may be more indirect, relating instead to the development of innovation technologies (...) [w]here science and technology are unambiguously of value⁵⁵” (Potts *in* Towse & Handke, 2013: p32). The creative industries are fundamental in developing the sense of provocation, critique and openness without which new ideas cannot emerge and progress (*id., ib.:* p.32). In terms of the adoption phase of innovation, Potts argues that “the creative industries supply services that facilitate adoption and adaptation of the ways and means by which new markets and applications of new ideas are developed” (*id., ib.:* p.33). Finally, the author recognizes that the creative industries have an important role in the retention of innovation, “for example, in respect of the construction of new identities associated with the particular innovation” (*id., ib.:* p.33).

Despite their role in the overall innovation process, it is important to note that the impact of digital ICTs on the creative industries themselves has been mostly observed on what Bekar and Haswell (2013) call the commercial creative industries (as opposed to the core creative industries):

⁵⁵ Recalling here the idea of creativity as a human talent and not as the specific skill(s) characteristic of artists and cultural professionals.

For core creative industries ($c_0, c_i \dots$) digital ICTs effects are small relative to more commercial creative industries and tend to impact distribution and consumption channels more than production channels (such as sales of paintings on the Internet). For more commercial industries (\dots, c_{n-1}, c_n) the effects are larger and tend to impact almost all aspects of the industry (for instance, Hollywood blockbusters), and in many instances the industries themselves are viable only as the result of digital ICTs (for example, videogames)⁵⁶. (Bekar & Haswell *in* Towse & Handke, 2013: p.12)

This brings us back to David Throsby's concentric circles model of the cultural industries (Chapter 3, section 3.). Considering Bekar and Haswell (2013) observation, we could infer that the digital ICTs have impacted all other concentric circles much more than the core creative arts, where we have seen artists majorly belong. According to the authors, the practices at the central circle of David Throsby's model have mostly been affected by the extension of the possibilities of access to artworks (Throsby, 2008: p.13). This effect is common to activities in all the concentric circles of cultural industries (*id.*, *ib.*: p.13-18). On the other hand, as we have also seen, the authors seem to suggest that unlike what happens in most complementary creative activities, the core creative arts production has been little affected by digital ICTs but not untouched (*id.*, *ib.*: p.12-13).

However, as we will see below, unlike Bekar and Haswell (2013) argue, the impact of digital ICTs has also hugely affected the production process of the core creative arts, exposing them to exciting and often painful transformations, namely through constraints imposed by copyright.

2. Networks of Value and Globalization: Tightening the Mesh Between Innovation and Culture

As we have seen above, "emerged in the last quarter of the twentieth century on a worldwide scale" (Castells, 2010: p.77), the new "informational, global and networked" economy (*id.*,

⁵⁶ Again, validating the idea of a trade off between symbolic/ cultural value and material/ economic value seen in Chapter 3 (section 3., 4. and 5.) and Chapter 5. (section 1.).

ib.), reflects (another period of) a larger paradigm shift in human history – the information technology paradigm and its networked society (*id.*, *ib.*: p.70). This new framework, brings with it new features: 1.) it has information as its raw material (meaning that technologies act on information and not just the other way around, as it happened in previous historical eras); 2.) its effects are pervasive, in the sense that “all processes of our individual and collective existence are directly shaped (although certainly not determined) by the new technological medium”; 3.) it follows a networking logic “well adapted to increasing complexity of interaction and to unpredictable patterns of development arising from the creative power of such interaction”; 4.) it is based on flexibility, as “[n]ot only processes are reversible, but organizations and institutions can be modified, and even fundamentally altered, by rearranging their components”; and 5.) it grows towards “convergence of specific technologies into a highly integrated system, within which old, separate technological trajectories become literally indistinguishable” (*Id.*, *ib.*: pp.70-72).

It becomes evident that networks, although always existing in previous moments of history, become emphasized as the central system of relations in all aspects of human life.

In sum, the information technology paradigm does not evolve toward its closure as a system, but toward its openness as a multi-edged network. It is powerful and imposing in its materiality, but adaptive and open-ended in its historical development. Comprehensiveness, complexity, and networking are its decisive qualities. (Castells, 2010: p.75)

These (all potentially global) networks are the translation of information systems, where information and knowledge circulate, influence and are influenced through constant reflexive feedback loops (Castells, 2010; Lash & Urry, 1994). This discursive reflexivity (Lash & Urry, 1994: p.94) is only possible under the current informational paradigm:

While knowledge has always been central to technological change, only now ‘is the raw material itself information and so is its outcome’ (...). The initiation of this new informational economy was signaled by the introduction of the integrated circuit in 1957, the microprocessor in 1971, gene-splicing techniques in 1973, and the microcomputer in 1975. These developments together with the exponential growth in computer power have transformed (1) the storage of information, with drastic reductions in cost per unit of memory; (2) the retrieval of information, the processing or analysis of information, the organization of sets of instructions which handle information in order to generate new information, and (3) the transportation of information, with advances in telecommunications (...). (Lash & Urry, 1994: p.94)

This progress has led to many changes, among which an important shift in what used to differentiate producers and consumers. Just as artist and audience tend to merge (see Chapter 3, section 5.), the once obvious distinctive economic roles of producers and consumers has become not so distinctive and has actually given way to new forms of co-production (Lash & Urry, 1994: p.95) or what some authors like to call ‘prosumption’ – term coined by Alvin Toffler, in his 1980 book *The Third Wave* (Ritzer & Jurgenson, 2010): a process in which “buyers and sellers work together in a circular process” (Ridderstråle & Nordström, 2008: p.105). This might suggest that we are crossing a period where “consumer-centred nature of information structures in the Anglo-Saxon world” and “production systems that [have] characterized Japan and Germany” could converge (Lash & Urry, 1994: p.109), eventually questioning capitalism as we know it.

[U]nlike any other revolution, the core of the transformation we are experiencing in the current revolution refers to technologies of information processing and communication oriented, besides inducing new products. What characterizes the current technological revolution is not the centrality of knowledge and information, but the application of such knowledge and information to knowledge generation and information processing/communication devices, in a cumulative feedback loop between innovation and the uses of innovation. (...) Users and doers may become the same. Thus, users can take control of technology, as in the case of the Internet (...). There is therefore a close relationship between the social processes of creating and manipulating symbols (the culture of society) and the capacity to produce and distribute goods and services (the productive forces). For the first time in history, the human mind is a direct productive force, not just a decisive element in the production system. (Castells, 2010: p.29-31)

Is it then reasonable to conclude that what is central and crucial to the new digital information paradigm is knowledge itself and the networks that allow it to circulate and transform, and not so much the role each one plays in the system?

Research has shown “that there are informational, status, and resource advantages to having broad and diverse social circles (Powell & Grodal, 2005: p. 59). Although inter-organisational partnerships have always played a role in business, they “are now core to components of corporate strategy” (Powell & Grodal, 2005: p.57). Also, since the late 1970s, research and development collaborations in every sector have considerably grown, with non-economic structures such as universities and governments playing an important role (Lash & Urry, 1994; Castells, 2010; Mazzucato, 2013; Powell & Grodal, 2005). Information networks may emerge

from different reasons, namely, concerns with market access or development of new technologies (Powell & Grodal, 2005: p.57) – or innovation itself, as it the case within research or artistic practice (as we have discussed in Chapter 3, section 5.), for example. They may also assume different formats: “informal networks (based on shared experience); project networks (short-term combinations to accomplish specific tasks); regional networks (where special propinquity helps sustain common community); and business networks (purposive, strategic alliances between two parties). These types do not represent essentialist categories; rather they may overlap and interweave with one another.” (Powell & Grodal, 2005: p.61). In their analysis of the empirical studies of the role of networks in innovation, Powell and Grodal present some interesting findings (*id.*, *ib.*: pp.65-74).

1. In what they call “formal tie” studies, the authors point out issues such as the “significance of relationship building, and how elements such as trust and cognitive understanding require time to develop” or the importance of partners’ location, being domestic partners more relevant to innovation than foreigners (*id.*, *ib.*; p.65). They also highlight the positive influence of networks on patenting while “rate of increasing (patents) diminished with additional experience” (*id.*, *ib.*: p.66), indicating the existence of ‘cycles of learning’. The analysis continues highlighting the positive influence of direct and indirect ties on innovation and the negative influence of network’s structural holes. Studies about the “influence of networks on survival chances of newly founded firms” (*id.*, *ib.*), highlight the importance of networks in start-up communities. Studies on network dynamics, on the other hand, suggest that “the rate of acquisition of skills and resources from the outside is closely linked to the generation of expertise internally”, reinforcing the idea that experience in managing partnerships influences the possibilities of centrality through a process of feedback cycle. This learning cycle is considered to be a virtuous one as “external linkages facilitate innovation, and at the same time innovative outputs attract further collaborative ties” (*id.*, *ib.*). The authors also address the topic of “technological uncertainty”, presenting results of studies that suggest that “the more risk-taking a company’s strategy, the more alliances a company formed” (*id.*, *ib.*: p.68) or that “managers who perceived the environment as more uncertain were more likely to pursue alliances”, which seems to explain why “smaller firms derived more value from

network linkages than larger firms” (*id., ib.*). Studies also point to the relation of technological cycles and network formation, “with external networks assuming greater importance during periods of technical discontinuity and for firms with more risk-taking strategies” (*id., ib.*). As a conclusion from this set of studies, the authors affirm that “networks provide access to more diverse sources of information and capabilities than are available to firms lacking such ties, and, in turn, these linkages increase the level of innovation inside firms” (*id., ib.*). Still referring to formal ties, the authors point out to the problem of using patents as a measurement of innovation in most of the studies covered: “some kinds of innovations are not patented, and there is variation in the extent of patenting across industries” (*id., ib.*: p. 69). They finish by recalling the importance of weak ties as “bridges to novel information” and the importance of partnership evolution from contractual to relational, particularly in more traditional sectors, where strong ties tend to prevail over weak ties – although again this network configuration tends to alter “as firms increasingly competed on the basis of quality and innovation” (*id., ib.*: p.70).

2. In what concerns “informal ties” research, Powell and Grodal (2005) underline the relevance of proprietary knowledge leaks between both cooperating and rival firms especially “when relationships among engineers in rival firms were particularly close” because, to some extent, “information trading was a means to secure reputation and status in the community” (*id., ib.*: p.71). This is the idea of communities of practice: “Similar in some respects to a technical community, or a sophisticated hobby club, these loose groups are engaged in related work practices, though they do not necessarily work together. Such fluid groups are important to the circulation of ideas.” Some studies suggest that “informal knowledge sharing, widely institutionalized as a professional practice in Silicon Valley, is one of the crucial factors contributing to its fertile innovative climate.” (*id., ib.*). This also seems to be true among biotech industries, often leading to the construction of more formal ties and often related to managerial activities (*id., ib.*: p.71-72). Many studies highlight the importance of trust, fundamental to analysis of the difference between “arm’s length” ties and embedded ties – and although the latter are “superior in conveying complex, context-dependent knowledge”, the balance between both types of ties needs to be struck as it might negatively affect organizational performance (*id., ib.*: p.72). Heterogeneous networks

also seem to positively affect the reputation of individuals, as being part of such networks increases the chances of being regarded as innovators (more than in the case of those engaged in more homogenous ties) (*id., ib.*). Finally, the authors make reference to studies indicating that participation in technical committees “facilitates subsequent formal interfirm alliance formation” (*id., ib.*).

3. The authors go on listing a number of studies in multi-party relationships, which suggest that a considerable number of innovative technologies derive from the existence of such ties. This is not only true between private firms developing proprietary software driven by corporate interests, but also among informal networks of highly distributed end users, who often don't even know each other, developing open source software (*id., ib.:* p.73). The same applies to scientific communities and has led to concerns among scholars about the risks of the increasing commercialization of research in blocking informal knowledge development among scientists (*id., ib.*). Another important contribution to network research is the Actor-Network Theory, which shows “that not only can networks facilitate innovation, but they also constrain it by determining the kind of innovations produced, their subsequent interpretation and their final use” (*id., ib.:* p.74). The authors also stress the importance of markets-as-networks analysis, which suggest that entities can be resources for the network and that the bonds between participants have “an organizing effect on networks, as they shape the identities of actors, and account for different levels of commitment among participants” (*id., ib.*).

As we have seen on the previous chapter, network systems have always been central in the cultural and creative sector (Chapter 3, section 5.) and share many of the characteristics and outcomes presented by Powell and Grodal (2005) in their analysis. On the other hand, as the authors themselves argue, creativity is a central output of networks:

Organizations with broader networks are exposed to more experiences, different competencies, and added opportunities (...). Such access creates an environment in which ‘creative abrasion’, the synthesis that is developed from multiple points of view, is more likely to occur. In this view, “innovation occurs at the boundaries between mind sets, not within the provincial territory of one knowledge and skill base (...). By having access to a more varied set

of activities, experiences and collaborations, companies broaden the resource and knowledgebase that they can draw on. (Powell & Grodal, 2005: p. 59-60)

None of these networking modalities is alien to the cultural sphere (Becker, 1989; Lash & Urry, 1994; Menger, 2014; Relyea, 2017). Oddly enough, and despite its long tradition of network development and its central role to innovation (Potts et al., 2011; see previous section), no example or study about the cultural sector or the creative industries has been referred throughout the entire Powell and Grodal (2005) analysis - or throughout most research on networks and innovation in general... Their study, however, might even suggest one possible answer: as seen, innovation is often measured using patents (p.69) which, unlike copyright, are subject to formal registration and, therefore, easier to track down and control – however, let us not also forget that the authors see this type of measurement as a problem.

Yet, as Lash and Urry (1994) suggest, there is a much closer relation between the technological ‘innovation milieu’ and cultural dynamics than mere contribution or contamination:

The micro-electronics ‘innovative milieu’ is closer to ‘the situation of writers and artists, or stock exchange traders in New York, or to film and TV producers and actors, or financial consultants in LA’ (...). It is similar to what one would find in a university research institute. Indeed in 1964 two-thirds of the Boston agglomeration’s 64 semi-conductor based electronics firms originated in spin-offs, not from other large firms but from research facilities. (...)

Thus on the original supply-side (for labour and product innovation) of these economies of agglomeration were non-economic institutions. On the final demand-side was another non-economic institution, the military. (...)

In this very important sense high technology districts are much more than ‘economic districts’, they are also ‘cultural districts’. On their supply-side are cultural sectors and the university, more a matter of ‘cultural system’ than a production system – or a ‘unit of culture’ rather than a unit of production. On the demand-side was the military, again far from a production system, instead a system of organized violence. Caught in between was the emergent high technology sector, itself taking on more the model of a cultural system, or a cultural institution, than that of a unit of production. (Lash & Urry, 1994: p.97)

Following up again on this notion of “culturalisation of economic life” (Lash & Urry, 1994: p.109), and in addition to the discussion we started in our previous chapter (Chapter 3, section 6.), centred in Pierre-Michel Menger’s (2014) analysis of the artists’ labour market, it is here important to recall some central research about networks in the cultural and creative sector.

According to Howard Becker, artists are “in the centre of a network of cooperative people, all of whose work is essential to the final outcome” (Becker, [1989] 2008: p.25). Such networks the author defines as an art world:

All artistic work, like all human activity, involves the joint activity of a number, often a large number, of people. Through their cooperation, the artwork we eventually see or hear comes to be and continues to be. The work always shows signs of that cooperation. The forms of cooperation may be ephemeral, but often become more or less routine, producing patterns of collective activity we can call an art world. (Becker, 2008: p.1)

An art world is therefore “an established network of cooperative links among participants” (*id., ib.:* p.34). These networks have no boundaries (*id., ib.:* p.35) and can have different scales (*id., ib.:* p.37). They operate under what Becker calls artistic conventions, a kind of earlier agreement that becomes customary, “agreements that have become part of the conventional way of doing things in that art” (Becker, 2008: p.29):

Conventions make collective activity simpler and less costly in time, energy, and other resources (...). Change can occur and does occur whenever someone devises a way to gather the greater resources required and reconceptualises the work so it does not require what is not available.

Works of art, from this point of view, are not the products of individual makers, “artists” who possess rare and special gift. They are, rather, joint products of all the people who cooperate via an art world’s characteristic conventions to bring works like that into existence. Artists are some subgroup of the world’s participants who, by common agreement, possess a special gift, therefore make a unique and indispensable contribution to the work and thereby make it art. (Becker, 2008: p.35)

As we have seen in the previous chapter (section 5.), the creative labour market is in itself a network system, continuously encouraging flexibility and leveraging reputation (Benhamou *in* Towse, 2011; Menger, 2014; Murdock *in* Beck, 2003). But these characteristics are not exclusive to labour. From Hollywood to the great art fairs, networks have long dictated the rules and limits of creative production and consumption in the arts. In fact, art markets have often been compared to stock exchange movements - both highly influenced by external stimulus and subject to speculation (reputation?) but also considerably different in many aspects (Moulin, 2009: pp.45-49) – to the extent that some authors suggest “financial appreciation is the sole criterion for aesthetic judgment” (Moulin, 1994: p.11). As we have seen before (Chapter 3, section 4.), in describing the process of construction of art value,

Raymonde Moulin also emphasizes the importance of networks and the hierarchies that characterize them:

The leader gallery, once assured of the monopoly of a trend, develops a promotional strategy. This strategy aims at creating demand for a new artistic good. It combines the techniques of commercial marketing and advertising, on the one hand, and those of cultural diffusion, on the other. The probability of the dealer's success with a particular promotional strategy in the short term depends on financial back-up and, even more so, on cultural reputation; (...) The leader gallery is the one that is capable of mobilising an important network of galleries at the international level. It is the leader of an informal coalition of dealers agreeing to promote, each in their own sphere, the same artistic innovation. The types of agreement vary and increasingly are only short-term. (Moulin, 1994: p.9)

The other example repeatedly addressed by researchers in describing the network system that characterizes the creative industries is the Hollywood model:

The Hollywood cultural industries have had a long experience with network-based approaches to organization and, for that reason, are fast becoming the prototype for the reorganization of the rest of the capitalism system along network lines. (Rifkin *in* Hartley, 2005: p.361)

After an era of fordist vertically integrated firms, common between the two world wars, the post-fordism models of vertical disintegration (see Chapter 3, section 6.) for US cinema studios was particularly rampant as the emergence of television caused the end of mass movie consumption, translated into a process of minimizing transaction costs through disintegrating production (Lash & Urry, 1994: p.114).

The network system of film production emerged in the 1950s, partially to respond to the need to bring together diverse talent to each unique film project and to pool risks in case any one product failed at the box office. The studio giants began to contract out for talent and services on a project-to-project basis. Independent production companies, made up of artisans and artists formerly under contract at the big studios, began to proliferate. Today, the remaining studio giants rarely produce film in-house. Instead, they act as financial investors, providing seed money to independent producers in return for the right to distribute the end product at movie houses and later on television and video. (Rifkin *in* Hartley, 2005: p.363)

Each of these independent production companies, on the other hand, can work at the same time in several different projects, for several different clients. However, "the major studios and entertainment companies still exercise control over much of the process by their abilities to partially finance production and control distribution of the products" (Rifkin *in* Hartley,

2005: p.363). Finance and access to distribution channels are therefore the main assets to guarantee control over the industry and seem to be intimately correlated to one another and while the “independent film companies produce the bulk of new films, the majors still reap most of the profit” (Rifkin *in* Hartley, 2005: p.364).

But this is not only true for the film industry or fine art markets. Lash and Urry (1994) describe the same type of relations within publishing, broadcasting and music records industry (pp.116-120). In every case, the structure of such industries translates into a network of relations more informal than formal and highly defined hierarchies among its participants (DiMaggio, 1976; Santos, 2001; Relyea, 2017), usually including creators, intermediaries (agents, producers, editors) and major distribution companies (publishers, broadcasters, record labels). More recently, Manuel Castells (2010) reinforced the idea that the “decline of the large, vertically integrated corporation” (p.168) and consequent organizational change extends to the whole economy:

Indeed, (...) the possibility of survival of the corporate model through what they called ‘multinational Keynesianism’; that is, the expansion and conquest of world markets by corporate conglomerates, counting and growing demand from a rapidly industrializing world. But to do so, corporations did have to change their organizational structures. Some of the changes implied the growing use of subcontracting to small and medium businesses, whose vitality and flexibility allowed gains in productivity and efficiency for large corporation, as well as for the economy as a whole.

Thus, at the same time, it is true that small and medium businesses appear to be forms of organization well adapted to the flexible production system of the informational economy, and it is also true that their renewed dynamism comes under the control of large corporations that remain at the centre of the structure of economic power in the new global economy. We are not witnessing the demise of powerful, large corporations, but we are indeed observing the crisis of the traditional corporate model of organization based on vertical integration, and hierarchical, functional management: the “staff and line” system of strict technical and social division of labour within the firm. (Castells, 2010: p.168)

Nevertheless, this “culturalisation of the economy and (...) economisation of culture” (von Osten *in* Raunig *et al*, 2011: p. 133; Lash & Urry, 1994), has been praised by many authors who preferred to call it the creative economy (Florida, 2002; Howkins, 2001).

People have freedom to decide where to live and work, how to do it, when to start and when to stop (...). The number of self-employed workers is largely growing. Although full employment

still exists, “other ways of working, such as permanent freelance work, portfolio part-time work and the one person company have emerged as viable alternatives” (...) and even became mainstream. Not only the numbers of one person companies are increasing but also the number of temporary companies. (...). These companies employ what Howkins calls the “just-in-time” workers, people who have a collection of different jobs in different organizations (...). Temporary companies might last no more than a year and even lack legal structure. Any project-led team of high standard workers can be a temporary company. Because of its ephemeral nature, the temporary companies are focused on their projects’ success – or, in other words, in maintaining positive cash-flows – rather than generating profit (...). Since work has become “more volatile and specialized” (...), some aspects of this work model are being adopted by traditional companies too. (São Simão, 2008: p.17)

But, as we have discussed in our previous chapter, this self-sufficient aspect of creativity may be regarded instead as self-exploitation (Chapter 3, section 6.) and precariousness of work structures and relations.

Under this perspective, networks can be seen as a crucial instrument to develop a reputation, the free-pass to access (creative) work opportunities (Chapter 3, section 5.). As we have seen before, “the probability of obtaining employment at any given moment is determined by the value of the artist’s most recent performances or artworks, which carry far more weight than any diploma” (Menger, 2014: p.152; Chapter 3, section 5.). This theory of reputation is based on the premise that “(1) specially gifted people (2) create works of exceptional beauty and depth which (3) express profound human emotions and cultural values. (4) The work’s special qualities testify to its maker’s special gifts, and the already known gifts of the maker testify to the special qualities of the work. (5) Since the works reveal the maker’s essential qualities and worth, all the works that person makes, but no others, should be included in the corpus on which his reputation is based” (Becker, 2008: pp.352-353). It is important to note that this theory of reputation is only possible in times and societies “which subscribe to more general theories emphasizing the individual over the collective, and under particular social conditions. Having arisen, it can be exported to and adopted by societies which formerly did not bother about such things” (Becker, 2008: p.354). Nevertheless, reputation (along with flexibility) translates into the (social construction of the) value of creativity (Chapter 3, section. 5) or, after Pierre Bourdieu’s words, cultural capital (Bourdieu, 1986).

What seems to have become evident in all technologic, scientific and cultural environments is that networks add value to every agent engaged with them; not just in terms of innovative

and creative outputs but also in terms of opportunities for development and growth, in economic, social and cultural terms.

3. Networks and Capital (Re)Production: the Role of Institutions in Capital Conversion Processes

According to Pierre Bourdieu (1986), there are essentially three forms of capital: economic, cultural and social. In line with our previous discussion (Chapter 3, section 4.), this author understands that “capital is accumulated labour” (Bourdieu, 1986: p.241).

Depending on the field in which it functions, and at the cost of the more or less expensive transformations which are the precondition for its efficacy in the field in question, capital can present itself in three fundamental guises: as economic capital, which is immediately and directly convertible into money and may be institutionalized in the form of property rights; as cultural capital, which is convertible, in certain conditions into economic capital and may be institutionalized in the form of educational qualifications; and as social capital, made up of social obligations (“connections”), which is convertible, in certain conditions, into economic capital and may be institutionalized in the form of title of nobility. (Bourdieu, 1986: p.243)

Picking up again on the idea that the value of creativity results from creative (cultural) work and involves considering both economic and cultural aspects of value (Chapter 3, section 4. and 5.), one can say that, at least, both Bourdieu’s forms of economic and cultural capital are at stake. On the other hand, considering the centrality of networks in the new technological paradigm – which, as we have discussed in the previous section, have long been central in the cultural sphere, social capital has also become essential to understand creative industries dynamics.

As the author argues, “social capital is the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition – or, in other words, to membership in a group – which provides each of its members with the backing of collectively-owned capital,

a “credential” which entitles them to credit, in the various senses of the word.” (Bourdieu, 1986: pp.248-249). This “network of relationships is the product of investment strategies, individual or collective, consciously or unconsciously aimed at establishing or reproducing social relationships that are directly usable in the short or long run” (Bourdieu, 1986: p.249). Networks can thus be seen as the main structures delivering the social capital that allows legitimation (consecration) and reproduction of one’s own capital.

The volume of the social capital possessed by a given agent thus depends on the size of the network of connections he can effectively mobilize and on the volume of the capital (economic, cultural or symbolic) possessed in his own right by each of those to whom he is connected. This means that, although it is relatively irreducible to the economic and cultural capital possessed by a given agent, or even by the whole set of agents to whom he is connected, social capital is never completely independent of it because the exchanges instituting mutual acknowledgement presuppose the re-acknowledgement of a minimum of objective homogeneity, and because it exerts a multiplier effect on the capital he possesses in his own right. (Bourdieu, 1986: p.249)

As Bourdieu explains, all three forms of capital are intimately related and strongly influence one another (*id., ib.:* p.252-255). The rising importance of networks in the digital era has made evident that the relationships and structures (institutions) behind Bourdieu’s social capital are equivalent to those backing up economic and cultural markets. Recalling Powel and Grodall analysis of recent studies on innovation networks (see section 2 of this chapter) – which, as we have seen, are pretty much equivalent to network dynamics in the cultural field (*id., ib.,* pp. 13-18) - it is not hard to understand parallels between the networks described above and those social relations we recognize (family ties, friendship, social rules and contracts, titles...), all mostly based on trust, recognition and reputation (Becker, 2008; Bourdieu, 1986; Menger, 2014). However, as Bourdieu affirms, “the cynical but also economical transparency of economic exchange” seems to be at the roots of social and cultural capital, although here presupposing “a much more subtle economy of time” (Bourdieu, 1986: p.252). And, as the author also highlights, “everything that helps to disguise the economic aspect also tends to increase the risk of loss (particularly the intergenerational transfers). Thus the (apparent) incommensurability of the different types of capital introduces a high degree of uncertainty into all transactions between holders of different types.” (*id., ib.:* p.253). This is particularly true in the case of cultural capital, which, in its institutionalized form, for example through education, has always represented a threat to the established

social and economic order (*id., ib.:* p.254). But education is not the sole institution to legitimize cultural capital. Other cultural institutions, such as museums or theatres, are determinant mechanisms of legitimation of an art world and its implicit cultural capital (and, interdependently, also economic and social capitals) as it is they who hold the power to transform (exclusive) art into (public) culture:

[A]rts making the transition from an innovation to be experimented with to a fully developed art world go through similar transformations. Having created the conditions for a large body of work to emerge, work which can be made and appreciated by people outside the local culture which spawned it, the participants in a new art world develop the organizations and institutions which identify it as art, rather than some other things it might be. They can then argue to the members of other art worlds that what they are doing is art, and the whole apparatus may then be incorporated into what that society publicly accepts as art. (Becker, 2008: pp.346-347)

It is important to recall that beyond this institutionalized state (which is observed in educational qualifications), Bourdieu defends the existence of two more states of cultural capital: the “embodied state, i.e., in the form of long-lasting dispositions of the mind and body” and “the objectified state, in the form of cultural goods (pictures, books, dictionaries, instruments, machines, etc.), which are the trace or realization of theories or critiques of these theories, problematics, etc.” (Bourdieu, 1986: p.243).

In this context, one can argue that copyright is an institutionalized form of cultural capital because, as we have seen in Chapter 1, “Copyright offers an ideal example of a path-dependent institution. It was a response to an enduring problem – how to regulate the market in creative works” (Haggart, 2014: p.51). In other words, if copyright is a cultural institution it should be governed by cultural policy. We will go back to this in Chapter 6.

With the rise of the new digital era, to some extent, the generalization of networks as the central structure for economic, social and cultural exchanges (markets) seems to open new possibilities for cultural capital in all its different states: institutionalized, embodied and objectified. Democratization of access and reproduction of capital through technology progress has undoubtedly questioned the existing order of the world and, therefore, provoked reaction from the groups of power (being them economic, social or cultural).

This embodied capital, external wealth converted into an integral part of the person, into a habitus, cannot be transmitted instantaneously (unlike money, property rights, or even titles of nobility) by gift or bequest, purchase or exchange. It follows that the use or exploitation of

cultural capital presents particular problems for the holders of economic or political capital, whether they be private patrons or, at the other extreme, entrepreneurs employing executives endowed with specific cultural competence (not to mention the new state patrons). How can this capital, so closely linked to the person, be bought without buying the person and so losing the very effect of legitimation which presupposes the dissimulation of dependence? How can this capital be concentrated – as some undertakings demand – without concentrating the possessors of the capital, which can have all sorts of unwanted consequences? (Bourdieu, 1986: p.244-245)

However, and although competing with major industry players, institutions still seem to have the power to legitimize this reproduction of capital, as they represent the central nodes of most social networks:

Organizations with multiple and/ or multifaceted ties to others are likely to have developed better protocols for the exchange of information and the resolution of disputes (Powell, 1998). Parties that develop a broader bandwidth for communication are, in turn, more capable of transferring complex knowledge. (...) These centrally positioned organizations are both capable of pulling promising new entrants into the network and collaborating with a wide assortment of incumbents. (Powell & Grodal, 2005: p.60)

As Powell and Oberg (2017) affirm, “institutions reflect widely accepted cultural understandings. They are imbued with legitimacy and taken for granted.” (p.446). Departing from “Pierre Bourdieu’s provocative discussions of the role of fields in creating, assigning, and maintaining cultural capital” (Powell & Oberg, 2017: p.447) and following up on Max Weber’s framework of social relationships⁵⁷ (*id., ib.:* p. 448), among other references, the author’s reflection about three lines of research on networks and institutions – social network analysis, semantic networks and multi-level networks (*id., ib.:* p. 471) – allows them to present “an organization as an interplay of individuals and organizations” (*id., ib.:* p.467). In a nutshell, Powell and Oberg affirm that 1.) in what concerns social network analysis, “actors make relations in the short run, but in time those choices form their new identity” (*id., ib.:* p.471); 2.) analysis of semantic networks tells us that “[i]n the short run, concepts reference other concepts via semantic connections, but in the long run, these semantic connections define

⁵⁷ “The term ‘social relationship’ will be used to denote the behavior of a plurality of actors insofar as, in its meaningful content, the action of each takes account of that of the others and is oriented in these terms. The social relationship thus exists entirely and exclusively in the existence of a probability that there will be a meaningful course of social action – irrespective, for the time being, of the basis of this probability.” (Powell & Oberg, 2017: p.448)

concepts” (*id., ib.*, p.472); 3.) finally, considering multi-level networks “one might say: ‘[i]n the short run, concepts are adopted by actors, but in the long run actors create and change concepts’” (*id., ib.*). The authors conclude by summarizing the results of their analysis:

A core assumption in our review of networks and institutions is that the situated meaning of relations matters a great deal. Individuals, groups, concepts, values, even fields take on meanings in and through their connections to others. In this regard, we argue that relations are the flows that both create and sustain identities. This duality of individuals and their relations to others and the meanings that adhere to such linkages is fundamental to the view (...) that individuals are often defined by the social groups they belong to and those social groups are defined by their members. We think it is a short step, but a powerful one, to connect one level of social structure (individuals and their relations, individuals and organizations) to larger social and cultural spheres. In this view, institutions are the products of differing network configurations. The relational structures are the scaffolding on which cultural, political and economic institutions rest. The persistence and resilience of these macro-structures depends, we believe, at least in part on the character of the networks that shape them.⁵⁸ (Powell & Oberg, 2017: pp. 472-473)

In this context, maneuvers in copyright regulation and its power to enforce conversion of cultural capital into economic capital (by transforming the result of creative work into property rights) seem to have been the most effective answer found by holders of economic and political power to the new structural concerns within cultural and creative spheres.

To understand how, we need to look into changes in creative practices and the consequent reactions of cultural agents, incumbents and institutions, triggered by the emergence of the new digital technologies.

⁵⁸ Which, as we have seen above, coincides with the Howard Becker’s reflection of the art world and its changes. We will discuss this again in section 5.

4. Media, Convergence and Contamination: How the Economy Copies Culture

Technological change has always affected cultural production. Calling upon the concept of mediamorphosis⁵⁹ (2002) and the idea of ‘cultural paradigm’ (as opposed to technologic paradigm), Peter Tschmuck (2013) considers technology a mere “driver to innovation processes – others are social actors, business and artistic practices – and conceptualises creativity as the main force of paradigmatic shifts” (Tschmuck *in* Handke & Towse, 2013: p. 117). Taking the Greek origin of the word ‘technology’, *téchne*, which means “the study of ‘skill’, ‘craft’, ‘art’” (*id., ib.:* p. 116), the author points out some major technological changes that directly affected the arts and culture: from its role in (1) fixating cultural symbols “on media such as stone, clay, skins, textiles, metal, papyrus and paper” (graphic mediamorphosis – writing); (2) to “the invention of movable type printing by Johannes Gutenberg in the mid fifteenth century [as] a milestone in human development” (graphic mediamorphosis – printing); (3) to the rise of mass media in the twentieth century, which allowed “the formation of large media and entertainment conglomerates that exercised oligopolistic and even monopolistic control over production, dissemination and consumption of cultural and artistic goods” (chemical-mechanical and electronic mediamorphosis); and (4) to the 1960s digital revolution, which has not only facilitated copying and exchanging cultural and artistic content but also enables private users of content to participate in its production and dissemination, resulting in a networked society that has transformed markets and market structures” (digital mediamorphosis) (*id., ib.:* pp.116-117).

Despite all the technological progress since the 1960s, probably the most relevant aspect of technological change to the creative industries was the convergence of media, which “refers to the blurring of boundaries between media, more precisely the blurring of the traditional demarcation between telecommunications (point-to-point) and the mass media” (Latzer *in* Handke & Towse, 2013: p.123) but also “the process of blurring lines between individual and mass communication” (*id., ib:* p.125). In line with Latzer’s reasoning, as we have seen

⁵⁹ “A mediamorphosis consists of a transformation of communication that occurs as a result of technological innovation in the media (...). It dramatically changes artistic and cultural production, which results in altered conditions of production, dissemination and consumption of cultural goods.” (Tschmuck *in* Handke & Towse, 2013: p. 117)

previously (section 1.), Castells (2005) suggests that the new communication system is defined by three major trends:

Communication is largely organized around media business conglomerates that are global and local at the same time (...). These conglomerates are linked to media organizations around the world, under different forms of partnership, while engaging at the same time in fierce competition amongst themselves. (...)

As the network society diffuses, and new communication technologies expand their networks, there is an explosion of horizontal networks of communication, quite independent from media business and governments, that allows the emergence of what I call self-directed mass communication. It is mass communication because it is diffused throughout the internet, so it potentially reaches the whole planet. It is self-directed because it is often initiated by individuals or groups by themselves, bypassing the media system. (...) [T]he new system of global, horizontal communication network that, for the first time in history, allow people to communicate with each other without going through the channels set up by the institutions of society for socialized communication. (Castells, 2005: pp.12-13)

This has meant not only challenges for “business and regulatory models, strategies, classifications and laws” (Latzer *in* Handke & Towse, 2013: p.126) but also to the ways “how we learn, connect and work, the change towards a stronger participatory culture, the transformation from audience to ‘prosumers’, and the co-production of media texts by integrating user-generated content and collective intelligence”, suggesting that convergence is “not only top down but also driven from bottom up”. (Latzer *in* Handke & Towse, 2013: p.129). The primordial example of such technological change is the internet:

[T]he internet is best described as a modular, open system with an end-to-end design that allows innovations at every node of the network, in other words by any user. Altogether, this offers great flexibility and scope for innovatively assembled services. In this way, the previously rigid combination of technology and content is dissolved. (Latzer *in* Handke & Towse, 2013: p.131)

Because of its origins and implications at the technological, economic, political and socio-cultural levels, Michael Latzer (2013) underlines the importance of looking into the current convergence phenomena through a co-evolutionary perspective:

Media change in general and convergence in particular can be conceived of as innovation-driven, co-evolutionary processes in a complex environment. Innovations that are analysed as co-evolutionary, adaptive cycles of renewal are the nucleus of change. They are the central driving forces of dynamic developments in communications and the digital creative economy.

From an evolutionary economic perspective, creative industries are not only the outcome of innovations. With an infra-structure role, creative industries also contribute to the origination, adoption and retention of new technologies in open complex innovation systems (...). Convergence is driven by different kinds of innovations, as reflected in the different levels of convergence. Reciprocities between these different levels are of particular importance. A co-evolutionary approach takes into account the interdependencies of technological, economic, political and socio-cultural processes (innovations) (*id.*, *ib*: p.130).

As YiJun Tian (2009) points out, “Digitisation is causing not only device convergence between high-speed Internet networks, audiovisual media and various electronic devices, but also industry convergence, such as between the broadcast and telephone sectors and between the consumer electronics and computer industries.” (pp.16-17). The author stresses the numerous acquisitions that happened over recent years, namely the acquisition of InterMix Media Inc. – and its Myspace.com growing social network portal – by News Corp., in 2005, or the 2006 acquisition of YouTube by Google (*id.*, *ib*: p.17). This, in turn, highlights that “advances in technology and digital convergence have profound effects on changes in the international socio-economic and legislative environment” (*id.*, *ib*: p.19). We will go back to this in Chapter 6 (section 4.).

The Hollywood case is (again) an interesting illustration of such industry convergence effects. Recalling the post-fordist idea of vertical disintegration, another symptom of the “culturalisation of the economy” is that, as Jeremy Rifkin (2005) puts it (and Lash and Urry (1994) already suggested, under another perspective), the Hollywood network business model has become the reference to many “cutting-edge industries of the twenty-first century”:

The Hollywood network approach to commercial organization is leading the way toward a new network-based economy in cyberspace, just as General Motors hierarchical form of organization did at the onset of the second industrial revolution in the 1920s. (...) Having access to networks is becoming as important in cyberspace commerce as enjoying market advantage was in the industrial era. (...) In cyberspace, the relationships between suppliers and users increasingly resemble the kinds of relationships that the culture industries have forged with audiences over the years. We are entering a more cerebral period of capitalism whose product is access to time and mind. (Rifkin *in* Hartley, 2005: pp.364-365)

Rifkin suggests that this has happened because of “[t]he increasing complexity of large-scale business operations, more discretionary family income, and the entrance of large numbers of

women into the workforce led to the introduction of business services and then later consumer services into the capitalist mix" (*id., ib.:* p.366).

The birth of the service economy has thus led to a diminishing importance of property in both business and personal life. As "services do not qualify as property (...) [o]ur codes of conduct, our civic values, indeed our deepest sense of who we are in relationship to the people, the institutional forces, and the world around us have for so long been mediated by property relations that the thought of being cast adrift in a new, less material, less boundaried, more intangible and ephemeral world of commodified services is unsettling. We'd have to rethink the social contract from beginning to end if we were to wrestle seriously with the impacts of a world based more on access than on ownership" (Rifkin *in* Hartley, 2005: p.368).

In this new context, many goods are now little more than knowledge-value containers, often given away by companies for free to attract customers, to then charge them "for managing, upgrading and otherwise servicing the products" (*id., ib.,* 2005: p.371).

In the case of the software companies, the cost of producing and delivering each additional product approaches zero. At the same time, if the company can convince enough end users to switch to its programs, the firm can set an industry standard and in the process sell upgrades and services to its clients at significant margins. (*id., ib.,* 2005: p.372)

Such business strategy helps companies grow their networks, amplifying the so-called 'network effect'⁶⁰ and rising the possibilities to "capture the attention of potential costumers" (*id., ib.:* p.372). On the other hand, as we have seen in Chapter 3 (section 6.), accompanying this network development, other strategies "more likely to increase plurality rather than diversity" (Murdock *in* Beck, 2003: p. 28) also emerge. To Rifkin, "[t]he new capitalism, then, is far more temporal than material" (Rifkin *in* Hartley, 2005: p. 373).

However, the new social network markets of the creative industries might still not be fully tapped. Although a relatively recent concept, the creative industries are "implicitly defined and classified according to industrial sectors" (Potts *et al.,* 2011: p.95). This means that their definition was based on a classification system with over one hundred years, "when the economy had a simpler structure that could be categorized more readily than now by the type

⁶⁰ "The larger the network, the greater the links, the more valuable the network becomes to those who are part of it." (Rifkin *in* Hartley, 2005: p.372)

of industrial activity in which a firm was engaged in the nature of its material inputs and outputs” (*id., ib.*).

According to Potts *et al.* (2011), “[i]n creative industries’ markets, complex social networks play at least as significant a coordination role as price signals” (Potts *et al.*, 2011: p.96). This happens because “[c]onsumers choice in creative industries is governed not just by the set of incentives described by conventional consumer demand theory, but also by the choices of others” (*id., ib.*) –in other words, social capital (see also Chapter 3, section 5.). For the authors, the creative industries encompass three central features that help distinguish them from other sectors: “(i) agent cognition and learning, (ii) social networks, (iii) market-based enterprise, organizations and coordinating institutions. These three terms are strongly homologous with the triad that forms a ‘unit of analysis’ in media and communication studies, namely audience (reader, viewer, consumer), content or distribution (for example, TV network or press with their associated content or text), and producer (especially large-scale state or private corporations)” (*id., ib.*: p.97). Potts continues:

In our formulation, the interrelationship among agents, networks and enterprise is dynamic and productive, all are engaged in the mutual enterprise of creating values, both symbolic and economic. (...) This is particularly important in light of the increasing significance of consumer-generated content and user-led innovation in new media (...).

When triangulated, these components (agent-network-enterprise) point to a definition of the creative industries in terms of the system of activities organized and coordinated about flows of value through the enterprise of novelty generation and consumption as a social process. This perspective entirely transcends the arts/ culture basis as well as the neoclassical welfare theoretic basis to arrive at a ‘type of market’ classification in an open system. (Potts *et al.*, 2011: p.97)

In fact, going back to Jeremy Rifkin’s (2005) analysis above, this perspective ultimately transcends the creative industries themselves as we have been used to define them because it is clearly extensible to other industries (as it is the case for science and technology-based sectors – see previous section 2. and 3.). Under this perspective, the creative industries come defined as “the set of economic activities that involve the creation and maintenance of social networks and the generation of value through production and consumption of network-valorised choices in these networks” (Potts *et al.*, 2011: p.101) and the “[c]reative products are not defined as such because they are creative *per se*, but because they are novel and of

uncertain value in the creation of new opportunities” (*id., ib.*: p.105). It is thus important to understand “not just how new technologies affect the creative industries but how the creative industries may affect the adoption and retention of new technologies” (*id., ib.*) and this requires a totally new political approach, shifting “from a top-down re-compensatory model to a bottom-up model of experimental facilitation and innovation” (*id., ib.*). It also means that, in this perspective, the creative industries come “re-conceptualized as not just another public goods sector but as essential to the process and structure of economic and socio-cultural evolution, the leading edge of which occurs in social networks that result in emergent structures of coordination” (Potts *et al.*, 2011: p.106).

In sum, the emergence of social networks as a central market feature requires a re-definition of the creative industries, not based on their specific ‘industrial’ role (to answer our question in section 2.: p.127) but on their ability to create and maintain social networks and therefore new uncertain opportunities. Considering the creative industries as a result of the “economization of culture” (von Osten *in* Rauning *et al.*, 2011: p. 133), the cultural industries instead, through the process of “culturalisation of the economic life” (Lash & Urry, 1994: p.109), have contaminated other sectors beyond culture. It is thus crucial to rethink the position of the arts and cultural activities under this new framework. For that, in the next chapter, we will reflect on cultural work organisational structures and dynamics.

Chapter 5

CULTURAL MARKETS IN THE DIGITAL ERA

“On the stage Papageno and Pamina engaged in a dialogue. He stopped his introspection to listen.

Papageno: “My child, what should we now say.

Pamina: “- The truth. That's what we will say.”

Leaning forward and peering, Rick studied Pamina in her heavy, convoluted robes, with her wimple trailing its veil about her shoulders and face. He reexamined the poop sheet, then leaned back, satisfied. I've now seen my third Nexus-6 android, he realized. This is Luba Luft. A little ironic, the sentiment her role calls for. However vital, active, and nice-looking, an escaped android could hardly tell the truth; about itself, anyhow.”

Philip K. Dick, in ‘Do Androids Dream of Electric Sheep?’, Chapter 9 (1968)

This chapter is dedicated to the analysis of the cultural markets structures and dynamics and the changes imposed by digitisation. Starting with Chris Bilton’s (1999) proposal of a new ‘adhocracy’ model in the creative industries, which underlines the centrality of copyright, particularly after the digital revolution, we then introduce a short analysis of each of the core arts markets traditional organization and consequent effects of the digital revolution on them. We finally return to our redesign of David Throsby’s Concentric Circles Model of the Cultural Industries, which we completely transform based on the reflections of this and the previous chapters, and propose a new Concentric Circles Model of Cultural Work.

1. The Risky Business of Culture: Strategic Management in a Mature Network Market

We will now reflect a bit more on the fundamental analysis of creative industries market dynamics from a risk management perspective.

In his study “The New Adhocracy: Strategy, Risk and the Small Creative Firm”, Chris Bilton (1999) presents a thorough overview on the industrial organization structure and strategies

of the creative industries sector. Focusing essentially in the film and music industries (although regularly establishing parallels with other creative subsectors), his insights are very helpful in clarifying the backstage of an apparently diversified and scattered market. His detailed review is extremely useful in terms of throwing the light on the role of copyright as an instrument of market control and understanding the effects of digitisation in the cultural market structures and dynamics.

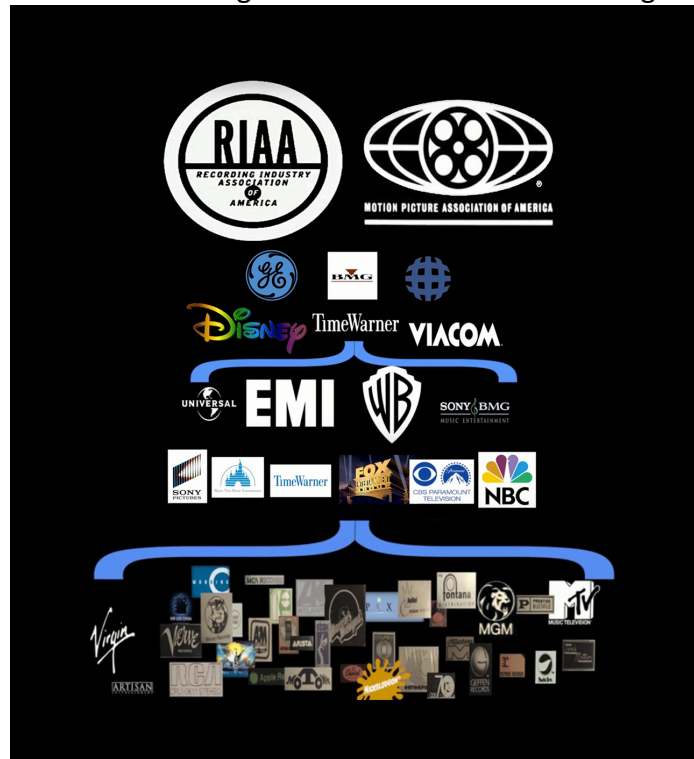


Fig. 122: Cultural industry hierarchy in the USA (Gaylor, 2008)

In line with the previously presented idea of a trade off between symbolic/ cultural value and material/ economic value in cultural activities (Chapter 3, section 3., 4. and 5., and Chapter 4, section 1.), and with his focus on the more commercial activities of the creative industries, the author starts by defining creative business “as a commercial enterprise which deals in ‘symbolic goods’” (Bilton, 1999: p.4) and distinguishing such symbolic goods from material and service goods. As he explains, although material goods and services might often include a symbolic layer to them, they have a clear function to respond to (being it material or immaterial) which if not accomplished will be subject to complaints or rejection from customers (*id.*, *ib.*). On the other hand, symbolic goods translate primarily into a “collection of narratives (or discourses) which are interpreted by the consumer”, and their material

components, “the celluloid on which the film is printed, or the plastic of the compact disc is relatively unimportant” (*id.*, *ib.*: p.5) – as we will see below, the emergence of new digital technologies has made this even more evident. Therefore, if one was to draw a scale of materiality, at one end would be manufacturing goods (possibly containing a “symbolic component which is picked up by advertisers and consumers”); in the middle, there would be “the services industries, [to which] the symbolic content of the ‘product’ becomes increasingly important”; and, at the other end, we would find the creative industries’ symbolic goods, “primarily valued [...] for their symbolic content” (*id.*, *ib.*: p.6).

It is this symbolic content which makes questions of value problematic in the creative industries and which makes ‘symbolic goods’ unpredictable as commodities. It has been argued that symbolic goods are primarily concerned with the transmission of meanings. Yet these meanings are not necessarily fixed, nor are they necessarily controlled by the producer of the message. (...) Consumers and audiences are seen to reinvent meanings and ‘play’ subversively with the dominant messages transmitted by admittedly powerful organisations. In this way consumers are able to subvert the ‘hegemony’ of the dominant political and cultural orthodoxy. (Bilton, 1999: p.6)⁶¹

According to the author, the attempt to streamline and rationalize symbolic goods in order “to conform to a model of production and industrial organisation imported from manufacturing”, this value treatment reveals contradictory⁶², inappropriate and ineffective (*id.*, *ib.*: p.7). In fact, this eventually translates into the range of measurement and monitoring problems that we have discussed before (Chapter 3, section 4.). As a result, generally the creative industries rely on what Bilton calls ‘future value’. Taking the example of the film industry, the author explains:

From an accountant’s perspective, the initial valuation of film in production is based on the costs incurred to make it. This figure is balanced in the accounts by an assessment of future net revenues. As the revenues start to come in, the current value of the film can be calculated by subtracting the actual revenues from the original production costs. Eventually the ‘value’ of the film will be written off or ‘amortised’ over a period of years, as revenues accrue (or not) during the film’s initial period of release, so that the film eventually enters the back catalogue with an official value of zero. Of course, this method of accounting is highly unsatisfactory since either

⁶¹ This is related to the idea that “economic as well as cultural influence will affect the way creative ideas are formed and rendered.” (Oakley and O’Brian, 2016; see Chapter 3, section 4.).

⁶² However, this analysis of the value of creative goods was an important inspiration to the model we propose in section 3 below.

budgetary excesses and overspends in production, or alternatively a disastrous performance at the box-office, will lead to the film's 'value' as it appears in the accounts being grossly inflated. The method takes no account of market conditions or quality of the product. It allows a high-budget flop to remain on the company's books as an asset, whilst a successful film which has covered its costs is 'written off' in the company's back catalogue. (Bilton, 1999: p.7)

Based on this concept of value, it is important to note that "Digital technologies and media convergence have increased the number of potential future outlets for successful products. They have also made it possible to spread the risk of a product across several markets or release 'windows'." (*id., ib:* p.7). It is also one of the main reasons behind the poor bargaining power of core artists. In fact, according to Ruth Towse, the academically famous expression 'nobody knows' (Caves, 2000) "ought to be revised to 'some people know more than others' - that individual creators who supply the novel content face radical uncertainty, whereas the firms in the creative industries 'know more'. Firms can pool risk by holding a portfolio of copyright assets of different ages and riskiness and have access to capital markets; individual creators can rarely do either." (Towse, 2002: p.9). We will explore this more in the following chapters.

However, due to audiences' unpredictable behaviour, "the real 'value' of the product is determined by the consumer, regardless of how much the film cost to make or the quality of its components." (Bilton, 1999: p.8). In face of this uncertainty, companies adopt different strategies in trying to tackle the risks inherent to the creative industries markets. Such strategies differ depending on the companies' size and market power. While major corporations adopt different strategic models in order to maintain their competitive advantage and prevent new companies to enter the market (namely through commercial or cultural business strategies or through the creation of pseudo-independent firms; Bilton, 1999: pp.8-12), small independent structures adopt a more flexible 'adhocracy' approach (*id., ib:* pp.17-21), operating "around the fringes of monopolistic markets" (*id., ib:* p.25). Nevertheless, as we will see in the following chapters, changes brought by the digital revolution have favoured the emergence of new market dynamics which, on one hand, explain recent market opportunities to end-users, individual artists and independent creative structures (such as creative start-ups, SMEs and also artistic collectives and public and private organizations) and, on the other hand, the (consequent) lobbying increase from major corporations towards the enforcement of copyright regulation through governments.

Chris Bilton explains that “Since it is difficult for producers to predict the response of consumers and hence the ‘real’ value of the product, the production of symbolic goods becomes a kind of gamble, investing in the present in order to recoup uncertain future rewards.” (*id., ib:* p.8). In order to control their ‘gambling risk’, corporations typically adopted one of two possible strategies:

- Commercial business strategy which is essentially based on 1.) the reproduction of already tested formulas that proved to be successful in attracting audiences; 2.) the reliance upon the use of a system of star artists, artificially designed by the Hollywood studios in the 1930s, “to bring a measure of predictability to the business of casting” (*id., ib:* pp.9-10) and transforming artists in brands (see also Chapter 3, section 5.); and 3.) the possibility of relying on a network of small independent companies focused in developing new formats and creative proposals, assuming all the risk and cost of innovation (*id., ib:* pp.9-11).
- Cultural business strategy, another way to manage risk, also called ‘portfolio strategy’ because it is “a zero sum game based on a small number of successes cross-subsidising a larger proportion of failures” (*id., ib:* p.11). In other words, it “means maintaining a portfolio of projects in the hope that one project will be sufficiently successful not only to cover the losses incurred by the remainder of unsuccessful or uncompleted projects but to turn a profit.” (Bilton, 1999: p.25).

Both strategies require a strong financial capacity due to the high investment costs either to pay for superstar artists or to maintain extensive portfolios.

Investment in production remains a risky business, best left to the enthusiasts; the real profits lie in buying up and distributing the completed products. Given the share of the market controlled by the majors, the smaller producers simply cannot afford not to do business with them. The net effect is to reinforce the major distributors’ control over the industry. (...)

[These] strategies are successful, not because they are effective methods of managing risk, but because their very inefficiency serves to raise the start-up costs for the industry. This has the effect of discouraging new entrants and reinforcing the monopolistic control over the industry enjoyed by a handful of corporate players. Larger companies in the film and music industries are increasingly concentrating their resources in distribution, leaving the smaller companies to take on the more risky and less profitable job of production. In order to cope with the high level of cost and risk, these smaller companies in turn are dependent upon strategic partnerships

with the majors. In the end risk is not so much managed as channelled into a system which escalates costs and favours the larger players. (*id.*, *ib.*: p.12)

In other words, these strategies aim at strengthening the monopoly control enjoyed by the established industry players” by raising production costs (*id.*, *ib.*: p.13). They also mimic the traditional manufacturing model, as seen above, contradicting the “spontaneity and escapism to which many of the producers and consumers claim to aspire” and the “unpredictable nature of symbolic goods” (*id.*, *ib.*: p.13).

Producers in the cultural industries maintain similar roles and structures to those applied to conventional service or manufacturing industry. Goods are seen to pass down a value chain, beginning in a process of research and development, through production to distribution, sales and marketing. This ‘value chain’ approach is in marked contrast to the more collaborative and arbitrary nature of cultural production mapped by sociological research into the ‘production of culture’; Becker’s model of the ‘art world’ describes a fluid interchange of ideas between different players, subverting the conventional notion of lonely artists and geniuses (...) For all their informality, the cultural industries often appear to be rigidly hierarchical, with junior employees struggling to impress their immediate superiors and the majority of key management roles occupied by middle-aged white men. (...) Yet these rigid structures do not necessarily correspond to the reality; they appear to be shaped by the corporation’s own search for control, rather than the cultural production process.” (Bilton, 1999: p.14)

However, as we have seen in Chapter 3 (section 5.), “individual career paths suggest that real career progression is far more unpredictable and arbitrary” and smaller structures tend to “play the corporate game (...) in order to convey the right impression of corporate seriousness” (Bilton, 1999: p.14). As we will see (Chapter 6), if, on one hand, creative districts, incubators and hubs contribute to promote synergies and economies of agglomeration among the projects they host, on the other, they have an important role in contributing to the neo-liberal post-fordist organization of cultural work (Pratt, 1997; O’Connor, 2015; Grodach *et al.*, 2017). And, as we will also develop in Chapter 6, importing the conventional economic model of manufacturing and services means also to import its inequalities (Bilton, 1999: p.14; O’Connor, 2015; Oakley & O’Brian, 2016; O’Brian *et al.*, 2016). But there is more ‘hidden’ danger to the effort of adopting this unnatural organizational model in the cultural sector:

Instead of engaging with the creative process, managers maintain a professional distance reinforced by job titles and organisational culture. A similar hierarchy is reinforced between

successful and unsuccessful talent, with the successful artists maintaining conspicuously and self-destructively lavish lifestyles, with the support and encouragement of the industry. Conspicuous consumption by rock stars and film stars is itself part of the branding process, designed to impress not only the consumer, but also the struggling 'wannabes' further down the industry food chain who will continue to work for next to nothing in the hope that they too will eventually 'make it'. (Bilton, 1999: p.15)

In other words, the inadequate market organization of the creative industries ultimately impacts on the artists themselves and, consequently, on the art they produce and the cultural goods that "shape how we understand ourselves and our society" (Oakley & O'Brian, 2016: p.3; see Chapter 6, section 2.). In this context, the role of gatekeepers is again determinant.

[T]he 'gatekeepers' of the industry impose a level of control upon the sector as a whole; the methods of assigning values and rewards and of structuring the industry help to insulate the dominant players against market failure and reinforce monopoly controls. (Bilton, 1999: p.15)

As we have discussed in the previous chapter, the event of the internet and digital technologies had a strong impact on cultural markets, especially because "the process of distributing cultural products has become cheaper, easier and less centralized" (*id., ib:* p.15).

Much of the current panic over intellectual property and copyright on the Net, while it is usually justified in terms of concern for the 'rights' of artists and the maintenance of appropriate 'standards', may well be driven by a corporate fear of losing control over the traditional market 'gateways'. The sales and distribution 'rights' they have so assiduously acquired may be (literally) on the line. (*id., ib:* p.15)

New technologies have open opportunities to the emergence of new business models and new possibilities of restructuring the cultural sector (see Chapter 7, section 3.). Nevertheless, such opportunities also represent new challenges. In fact, according to Bilton (1999), the challenges and trends (namely, in terms of labour market) discussed in Chapter 3 (section 5. and 6.) are more of a strategy than a fatality.

[T]here has been a shift towards smaller business units, self-employment, a flexible and semi-autonomous workforce, niche marketing, out-sourcing and a restructuring of monolithic industries around the unpredictable and diverse nature of consumer demand. This has been manifest firstly in the shift towards self-employment and small businesses within the independent sector, and secondly, from the opposite end of the scale, in the attempt by large corporations seeking to reconfigure themselves as aggregates of small business units. (*id., ib:* p.15-16)

This is what Bilton calls the new third strategy of large corporations: the creation of ‘pseudo-independent’ units, “wholly or partly owned subsidiaries of a major corporate player masquerading as genuinely independent small organizations” (*id., ib:* p.16) which “serve to deflect attention from corporate dominance” (*id., ib:* p.16), where “an illusory ‘autonomy’ is underpinned by a centralized command structure which is kept constantly informed through a flow of unseen digital data” (*id., ib:* p.17). Large players, thus, now act as aggregators of smaller independent firms, centrally coordinated, under a ‘loose tight structure’ (*id., ib:*). Such strategy seriously compromises the sustainability of really independent firms and agents which, due to their typical flexible and opportunistic *modus operandi* - to which Bilton calls ‘adhocracy model’ (*id., ib:* p.20), and is in part consequence of their usual shortage in resources, usually lack the conditions to define long-term strategies and compete with their fellows ‘fake’ independents (*id., ib:* pp.18-19). In light of our discussion in the previous chapter (section 2. and 3.), this strategy again suggests a sort of competition with major public institutions, by compromising their role as central knots of wider networks. In fact, governments seem to fail in understanding such new vulnerabilities:

When governments have attempted to intervene in the creative industries they tend to see the sector in institutional terms as a set of more or less successful creative organisations with employees, assets and a regular financial turnover, as if these vital statistics could be separated out from the mess of irregularly employed creative individuals who stand behind them. This bureaucratic myopia ignores the various academic attempts to define the creative sector in relation to a broader civic context (...), or the attempts, often at a local level, to develop a more rounded approach to cultural development. (*id., ib:* p.18)

Without the necessary training and financial means, independent firms’ life expectancy is usually short and can only be overcome through establishing alliances with large corporations (directly or through their ‘pseudo-independent’ subsidiaries), eventually becoming part of these large conglomerates controlled networks (*id., ib:* p.18).

Sometimes this can be seen simply as a variant on the vertical integration strategy; instead of directly controlling supply and demand through vertical integration, the successful corporation buys a stake in smaller competitors allowing it a degree of indirect control without taking on all the risks of operating the subsidiary businesses. Here ‘horizontal integration’ allows a degree of ‘vertical’ control⁶³. At the same time, horizontal integration also represents an attempt to

⁶³ As we will see again, in section 3.

manipulate the market by buying out or surrounding successful competitors (...). Alternatively, horizontal integration can mean diversifying into different sectors, allowing a degree of cross-subsidy from one sector to another. (...) The critical factor in the integrated company is the existence of synergies between different areas of business, so that the whole is greater than the sum of its parts. (*id., ib:* p.22)

This is pretty much the model for most media and entertainment conglomerates around the world. And it is usually carefully monitored and regulated by governments through competition and anti-trust legislation (*id., ib*). However, as we will see in the next chapter (section 4.) such mechanisms are far from being efficient and these large players seem to go under the radar for a long time.

At the same time these partnerships do not signal a concession of strategic control. While U.S. anti-trust legislation and European competition law place limits on vertical and horizontal integration and prevent companies from establishing blatant monopoly control over the entire production-distribution chain, most of the Hollywood majors are able to maintain a strategy of vertical control, through a combination of ownership, business partnerships and controlling 'rights' over key products. When mapping the business interests of the five major global entertainment media corporations, the attempt to maintain a stake in businesses operating at different points on the supply chain is clear enough. It could further be argued that these formal connections are in any case only part of the story; by acquiring the 'rights' to the most popular products (even if these products originated with a different producer), the major companies have sufficient leverage to secure favourable deals with distributors and to manipulate supply. More routinely, by buying up rights to 'blockbuster' movies, the major studios are able to compel distributors to accept a 'package' which includes a hit movie along with a string of less desirable products; this technique, using a quality 'locomotive' to pull through a train of second-rate products, illustrates the importance of controlling the key points in the supply chain. (*id., ib:* p.22-23)

Even more disturbing is that, having majors "recognised that the key to strategic control in the creative industries lies in owning the rights to distribute products" (*id., ib:* p.23), over the last years (see Chapter 1 and 6), they have been focusing on lobbying for the stronger enforcement and extension of copyright laws.

Centralised control in the creative industries and the dominance of the corporate sector is not a new phenomenon. Given the top heavy, capital-intensive economics of producing 'symbolic goods' for a mass market, the distinction between 'pseudo-independents' and 'authentic' independents was always somewhat romantic. Independents have long been dependent on the majors in financial terms for distribution and finance. However, they have also managed to

retain a degree of creative autonomy, an autonomy which benefited not just the small producers themselves and corporate distributors, but also the consumer. Today, with the growing sophistication of the corporate sector, the creative autonomy of ‘independent’ creative micro-businesses faces a renewed threat. In the long term, the trimming back of this unpredictable, loosely organised creative fringe and the installation of a centrally accountable phalanx of ‘pseudo-independents’ may be cutting out the industry’s creative heart to save its corporate face.” (*id., ib:* p.23)

It is, therefore, not only crucial that smaller businesses and independent agents organise themselves and “develop their own approach to long-term strategic planning in order to avoid being outflanked by the corporate sector” (*id., ib:* p.24) but also that governments realise what is really at stake when we are talking about copyright and draw the appropriate policies to face the challenges and inequalities it imposes. We will discuss this further in the next chapters.

2. Core Arts in the Digital Era: the Effects of Digitisation in Cultural Markets

Having understood the strategic mechanisms behind the creative industries markets, we will now go back to David Throsby’s (2008b) concentric circles model of the cultural industries (Chapter 3, section 3.). We have previously concluded that such model can be seen as “not only a static representation of structure of the creative sector but also a dynamic approach to the role of each creative industries layer towards the other. In other words, the relationship between Throsby’s core circle and the following outwards circles can be one of exchange between creative work/ products and market validation/ access” (Chapter 3, section 5.).

With the analysis of the previous chapter in mind, and inspired by Chris Bilton’s proposal presented above, considering the cultural industries pointed by David Throsby in his original concentric circles model and the redefinition suggested in Chapter 3 (section 3.), we can now easily depict certain patterns of behaviour among the different creative industries, by looking into each of their markets’ traditional dynamics and their reaction to the introduction of digital technologies. To do that, we here present a brief analysis of the markets of each one of the core arts group (Literature, Music, Visual Arts, Performing Arts and Film), highlighting the impact of digital technologies on them. We then summarize the main commonalities

between this group of activities. For the purpose of this research, we will here focus only on the industries that compose the core arts group (which include Throsby's Core Creative Arts and Other Creative Industries segments of his Concentric Circles Model of the Cultural Industries), as these are the activities that most directly relate to the work of the artists and authors. This analysis should help us clarify the role of copyright in the different core art markets.

- *Literature (Books):*

In terms of the book industry, Christian Hjorth-Andersen explains that, despite the scarce academic research about the subject, the sector can be told to present and "average cost curve, showing the dependence of average total costs on volume" (Hjorth-Andersen, 2011: p.378). He also explains that most publishing companies are not too big in terms of number of employees and they usually cover three main tasks: "acquisition of manuscripts, editing and layout and sales" (*id., ib.*). Patrik Wistrom and Anette Johansson, on the other hand, present the book industry's value chain as divided in five parts: "content acquisition and creation, content selection and processing; transformation of content into distributable form; distribution; and marketing and promotion" (Picard, 2011 as cited by Wikstrom & Johanssen, 2013: p.344). Also important to note is that, despite overlapping aspects between them, publishing industry has many different variants, from books to magazines, newspapers or academic journals, etc. We are here focusing in the book sector (Literature), although even within it we can find differences in the behaviour of its genre markets: fiction, non-fiction, scientific, technical, comics, children's, enhanced, etc. (Hjorth-Andersen, 2011; Farchy et al., 2013).

One important aspect in such industry is risk, which companies manage by trying to balance their choice of manuscripts between artistic merit and commercial potential⁶⁴ for success but there is not much knowledge about rejection rates or criteria (Hjorth-Andersen, 2011: p.378). What is known is that the book companies almost always share the risk they take with the authors they select, exception made to star authors.

⁶⁴ Bringing us back to the idea of the trade off between symbolic/ cultural value and material/ economic value as defining element of this particular core art sector of the cultural industries (see section 1. of this chapter and Chapter 3, sections 3., 4. and 5.).

Although we don't know much about the contracts celebrated between publishing companies and authors, it seems clear that while, on one extreme, independent authors usually pay for their manuscripts to be published, on the other hand, star authors get their book costs totally covered by publishers and sometimes even receive advance payments and interesting royalty rates (*id.*, *ib*). It is also important to note that, for independent authors, the act of publishing is actually more important than the number of copies sold. In short, it becomes evident that in the book publishing sector there is an "asymmetrical bargaining situation, where the publishing company is much more knowledgeable than the author, and relations between parties may sometimes be strained" (Hjorth-Andersen, 2011: p.379). So the essential factors of the publishing business are finance and copyright. Besides authors and the publishing houses, another important agent that interferes with the book publishing business is the library: "In some countries, authors are compensated to some degree when their work is available free of charge at the public library. Whether the authors are adequately compensated is a moot question, but the publishing companies usually are not." (*id.*, *ib*). On the other hand, "sales to the libraries will tend to diminish the market, as some people will abstain from buying a book and borrow it at the library – the *crowding-out effect* (...) [which] presumably (...) outweighs the sales effect." (Hjorth-Andersen, 2011: p.384).

The book publishing business has four important features that Hjorth-Andreson underlines: 1.) the market conditions, which seems to point to a situation of "monopolistic competition" where fixed costs play a fundamental role (*id.*, *ib*: p.380); 2.) the costs conditions of firms, where variable costs represent a minor percentage of total costs, while "substantial fixed costs with only uncertain sales prospects" are determinant due to the fixed costs "associated to the introduction of each particular book" (*id.*, *ib*); 3.) the aim of the company which, in face of uncertainty, often "publish books that turn out to be failures in the marketplace, and as firms like to promote themselves as guardians of the literature, they frequently claim to cross-subsidize minority literature" (*id.*, *ib*: p.383); and 4.) the evolution of technology which, partially because of the self-publishing phenomena resulting from the dramatic reduction of production costs, has contributed to an increase of the number of titles published but not necessarily to an increase of the number of books sold (*id.*, *ib*: p.383-4).

This happens partly because of the information problem faced by readers (*id., ib:* 384) who, in face of the ever increasing number of choices, end up trusting major industry players that control distribution channels – a role today disputed between media majors and tech giants (Wikstrom & Johanssen, 2013; Farchy et al., 2013). This tension seems to be leading to the growth of mergers between large publishing groups, which imply bigger challenges to the young incumbents trying to prove their new business models (Wikstrom & Johanssen, 2013: p.345). Such tension also suggests a “shift of power from the stage in the value chain where content is created, selected and processed to the stage where content is packaged and distributed” (Picard 2011 as cited by Wikstrom & Johanssen, 2013: p. 347). Simultaneously, although digital technologies seem to have favoured the increase of the number of creative works produced, this does not seem to be reflecting in the diversity of works consumed. This paradox seems to find its explanation in the problem of access or, in other words, the conflict between the star system dynamics and the long tail effect (Farchy et al., 2013: p.359).

- *Music:*

As in literature, music can be said to have more than one specific market, as its different genres or styles reveal more or less distinctive economic dynamics (Burke, 2011: p.297). Nevertheless, in general, we can say that the music sector was traditionally dominated by the so-called major record companies, from which Universal Music Group, Sony Music Entertainment, and Warner Music Group represented the three top international ones (Cameron & Bazelon, 2013: p.4). Due to the high costs associated with scouting, recording and distributing music, these companies, along with a fringe of numerous smaller record labels, were able to control the market, namely through price determination and contracts with artists (who often wouldn't even receive any compensation, as the costs for producing, promoting and distributing their albums were often deducted from their share) (*id., ib:* p.4-5). The need for a minimum efficient scale (MES) to face entry level costs would contribute to “highly concentrated markets and low levels of change in firm ranking (in terms of market share)”, in contrast “with high levels of entry and exit alongside changes in artist ranking by market share” (Burke, 2011: p.297). This happened mostly due to the

economies of scale found in manufacturing, distribution, marketing, finance costs and the speed to market they allowed (*id.*, *ib*: p.298). Another important factor to this traditional music market structure was reputation, which also gave “an advantage to established firms” (*id.*, *ib*: p.299). This meant that most contracts with artists would be signed with majors and, even when this didn’t happen, if the artist was successful, sooner or later, their contract would transfer to the major or, in some cases, the smaller record label representing her would be acquired (*id.*, *ib*: p.299; see also Bilton, 1999). Such market concentration would, of course, not favour the artist, who not only had to deal with very poor bargaining power but also with the fact that, their contract often didn’t necessarily mean their progress. The cannibalism effects in the industry determined that “by signing artists, the record company prevents other firms from commercializing the music at the expense of the revenue generated by the record company’s existing roster of music”, whenever there is an opportunity for cost saving by keeping the artist away from the market (so-called ‘shelving’), at least until “there is no further threat of cannibalisation” (Burke: p.300). This means record companies work as intermediaries, often reluctant to negotiate good terms with artists, as advanced payments (of royalties, for example) can easily represent sunk costs to them (*id.*, *ib*: p.300). The introduction of digital technologies had a strong impact in reducing production, promotion and distribution costs (Waelbroeck, 2013; Cameron & Bazelon, 2013). In fact, as Paul Stepan (2013) highlights, “music industry was the first industry to be hit by new technologies for a number of reasons” that go from absence of any language barrier, to the fact copyright contracts were already traditionally prepared for the global market and to the small size of MP3 files, which were compatible with storage capacity in the early 2000s (unlike video files), making them rapidly easy to share (Stepan, 2013: pp.406-7). For the music industry, digitization’s impacts were strongly felt in three main activities: 1.) finding talent, 2.) recording music, and 3.) promotion, production and distribution (Cameron & Bazelon, 2013: p.5-6). This has made it possible for musicians to manage their own work and eventually create their own labels, on one hand, and, on the other, for users to share music freely among them. As we have seen in book publishing, such change has also led into two contradictory trends: one that reacts negatively to such changes, condemning file sharing as piracy with the argument that “MP3 files are perfect

substitutes for legal sales”, and another that suggests “that music is a good that consumers need to taste before they can determine its value” and embraces the new technological possibilities to approach them (Waelbroeck, 2013: p.390). This has led to the emergence of an array of new business models, from digital music stores, to advertising and/ or subscription-based music services, sales of complementary products, sales of artist-specific complementary products, crowd-based funding or payment a compulsory blanket license (Cameron & Bazelon, 2013: pp.7-13). Such models exist under the tension between an intensified market concentration, where major labels and superstars prevail, and a long tail situation, where independent labels and artists find their niche targets. In fact, for collecting societies (like SACEM in France), the long tail phenomena is known as the ‘long nightmare’, because their costs rise significantly as they “have to redistribute a few cents per title to copyright owners” (Waelbroeck, 2013: p.393). Some authors believe that “Overall, digital music distribution is improving the negotiating power of retailers relative to producers or recorded music (Alain & Waelbroeck, 2006). This is especially true for online intermediaries, who can collect users’ information and gain better knowledge of demand conditions.” (Waelbroeck, 2013: p.390). It is also important to note that most recent studies point to the fact that “empirical evidence does not establish a conclusive – much less exclusive – link between file-sharing and declining sales in recording music” (Cammaerts & Meng, 2011: p.9) and that studies suggesting the opposite might be biased by the major industry players’ interests (Cammaerts & Meng, 2011; Cammaerts et al., 2013; Handke, 2011; Handke et al., 2016). Digitization has also improved the possibilities for collaboration between artists and companies in the music sector, namely at an international level (Waelbroeck, 2013: pp.396-7). Apart from this and because “recording artists saw only a small share of revenue from their music sales under the traditional industry framework; most of their earnings [coming] from concerts and merchandising”, the average musician’s financial conditions don’t seem to have changed a whole lot (Cameron & Bazelon, 2013: pp. 15-16). At the firm level, however, record labels now face the pressure from technological companies, from platforms (Amazon, iTunes, Spotify...) to software and hardware producers (with Apple leading the race). As a response, labels seem to “be shifting to a 360 model in which they make a significant upfront marketing investment in return for a share of

revenue from all the artists' activities, including those that were outside the scope of traditional recording contract" (Cameron & Bazelon, 2013: p.16). But although some authors suggest all these changes might "lead to an erosion of the power of superstars" (*id., ib*), this clearly depends on how much major labels work to maintain market concentration (through mergers and collaborations with tech companies, for example) and control distribution channels, hence, access to music, as recent news suggest they are doing⁶⁵.

- *Visual Arts:*

The visual arts markets follow a rigid structure in what concerns its hierarchies and roles. Between artists, dealers, auction houses, galleries and museums, the distinctive agents that compose the art worlds have very clear position in the market structure, that goes from "paintings, prints, drawings, photographs, sculpture and the like" (Arora & Vermeylen, 2013: p.322).

Like the financial markets, art markets include a "primary market, where contemporary artists sell their work for the first time, and the secondary market or resale market" (Velthius, 2011a: p.38), where "dealers take works on consignment from collectors or institutions who want to sell them" (Velthius, 2011b: p.29). In both cases, asymmetries of information are very present and, similarly to what happens in the music and book industries, there is a case of cross-subsidization between art works (*id., ib*: p.29). This means that the star system is also very present in the visual art worlds, with a very few major artists' works paying off the risk undertaken with the trade of independent and/ or less known works. The uncertainty that characterizes the art markets leads also to an exercise of sharing risk between the dealer and the artist, to avoid the sunk costs that otherwise would occur for every new artist represented (*id., ib*). Another important aspect of the art markets is informality: for most celebrated deals, there is no formal contract. This reduces transaction costs and allows for the maintenance of a certain degree of secrecy, not only about the characteristics of the business but also about the identity of the buyers and sellers and

⁶⁵ "Apple Music Renews Licensing Deal With Warner Music", Billboard, 09/ 07/ 2017: <https://www.billboard.com/articles/business/7957545/apple-music-warner-music-licensing-deal>

sometimes, even of the artist, which often gives way to fraud (Velthius, 2011a, b). Therefore, the agents in the market need to develop networks of trust, where reputation is king. Due to the lack of information, although the art market is often compared to the financial market, research reveals that investment in art is often riskier and less profitable than financial investment (Moulin, 2003: p.47; Velthius, 2011a: p.34). Traditionally, the art market has been geographically concentrated in the West, namely in New York and London (Velthius, 2011a: p.40), recently opening up to other world regions like China and India, much thanks to digital technologies (Arora & Vermeulen, 2013: p.323). Digitization in the art world has significantly contributed to the emergence of new business models, new audience engagement opportunities and even new digital art forms. It has also contributed much to increase transparency and democratize art (*id.*, *ib*). Nevertheless, there seems to be a general resistance in adopting and exploring new digital technologies by traditional agents, being the most proactive structures to do so the artists and galleries involved in digital art (unsurprisingly) and museums, who have been using digital technologies as a way to get closer to the communities they represent (namely, through co-creation and educational projects) and expand their authority in the art sphere (*id.*, *ib*: p.323-4). Another important novelty brought in with digitization is the growing interest of technology giants for the art worlds (eg.: Google Art Project; *id.*, *ib*: p.324). But despite all the excitement around the possibilities brought about by new technologies, the over abundant information, the risk of taste shaping through filter bubbles generated by recommendations made by algorithms based in users' preferences and suppliers' interests, the bending of museums and other art venues' missions to respond to massive tourism demands or the digital divide between those who have access to technologies and those who do not are current concerns that only aggravate the current crisis of legitimacy faced by major arts institutions (*id.*, *ib*: p.326-8).

- *Performing Arts:*

When talking about the performing arts it is inevitable to recall Baumol's cost disease, which implies that technology changes have little impact in productivity: "Since the performer's labour is the output – the singer singing, the dancer dancing, the pianist playing – there is really no way to increase output per hour. It takes four musicians as

much playing time to perform a Beethoven string quartet today as it did in 1800.” (Heilbrun, 2011: p.67). According to Baumol, this explains why the performing arts are a ‘stagnant sector’, where “subvention by public finance or private philanthropy was needed to ensure the survival of quantity and quality in the performing arts” (Towse, 2011: p.341). However, to reduce the performing arts in such way might be risky, as they involve all sorts of different activities, from “live musical performances, musicals, opera, ballet and dance, spoken theatre, circus, cabaret and comedy shows” (Towse, 2013: p.311) to more recent forms of experimental, digital or mixed media performance. In fact, as some authors put it, as artists become more and more institutionalized (artists as brands), their presence – therefore, performativity - seems to have become “an absolute prerequisite” (Relyea, 2013: p.81).

Despite the lack of studies characterizing the performing arts sector and its dynamics - and taking the case of theatre as a sort of “average” performing art activity, some researchers distinguish two types of performing arts organization (markets?): on one hand, we have “the ‘stock system’, where a ‘director-cum-manager’ heads a permanent company, [and] the ‘combination system’, where directors assemble artists for each production in an *ad hoc* basis.” (Urrutiaguer, 2011: p. 420). Such distinction, however, must only be regarded as a sort of modelling, as the differences between performing arts activities, depending on their geographic and cultural context also vary a lot (*id.*, *ib*). Nevertheless, as in the previous art forms here analysed, in the performing arts we can also talk about an excess supply (*id.*, *ib*) which inevitably seems to lead to the formation of a star system, where the winner-takes-all tendency prevails (Towse, 2013: p.320).

Like all other art forms, the performing arts have also been hugely affected by digitization, particularly in what concerns their promotion, production and participation fronts (Towse, 2013: p.311).

In terms of promotion and communication, new digital technologies have allowed performing arts structures to establish a closer relationship to their audiences and supporters, namely, through the use of websites filled with high quality content (from images, to videos and text) – very often already available or easily produced by the organization itself. Adding engagement with audience through social media (which, among other things, allows organizations to understand their audience characteristics

better) and simplified processes of choosing and buying seats and/ or merchandise, to the countless possibilities of sharing information and knowledge about their events, people and history, the impact of digitization in performing arts marketing strategies has been game changing (*id., ib:* p.312). Digital technologies have also changed production processes for a majority of performing arts structures, not only in what concerns lightning, sound or setting development and control, but also because of the influence new digital distribution options have had in the creative production itself, which needs now often to consider (live) filming and streaming (*id., ib:* pp.313-314). Finally, there seems to be a sort of digital encouragement for audience participation, as people using digital technologies to access performing arts contents usually also engage in “live arts attendance, personal arts performance and arts creation” (*id., ib:* p.315). It is also important to note that such engagement has become possible to a much more global scale (*id., ib*) and much more diversified audiences - or content users. However, despite the many opportunities brought about by digitization in the performing arts – from new collaborative or mixed media art works to the emergence of new business models and structures, there are serious risks in terms of social inequalities (for example, of access to equipment), economic monopolies and cultural normalization (*id., ib:* pp.318-20). In fact, from all the core arts we here analyse, and because of its complexity as economic activity and independence as an art form (ultimately, one does not need any tool to perform), we have chosen the performing arts as the basis of our reflection on the effects of copyright in cultural work, which we develop in Chapter 7.

- *Film:*

The film value chain seems to be clearly identified by researchers and it “can be divided into four stages: (i) production/ financing; (ii) distribution/ marketing; (iii) exhibition in movie theatres; and (iv) post-theatrical release” (Cameron & Bazelon, 2013: p.16). Considering the United States reference⁶⁶, researchers also seem to agree

⁶⁶ We are here aware of our choice in assuming an over simplified characterization of the film industry. As Paul Stepan puts it: “Writing about ‘the’ film industry is often equated with analyzing Hollywood and the North American audiovisual sector but neglects the Indian film industry (Bollywood) and the less well-known but for the African continent very important video industry in Nigeria (Nollywood) (...). Furthermore, there is a very vibrant Japanese film industry and another one in South Korea, one in South America and, of course, the one

that the film industry has been traditionally dominated by a few major studios (such as in the case of the music industry), followed by a fringe of independent agents that complete the ecosystem (Cameron & Bazelon, 2013; Stepan, 2013). In fact, despite having been accused for anti-competition practices, for example, when trying to control distribution through ownership of movie theatres (Chisholm *in* Towse, 2011: p.282), such major studios have practically remained the same since the 1930s (Chisholm *in* Towse, 2011; Cameron & Bazelon, 2013). As we have seen before, “most of the Hollywood majors are able to maintain a strategy of vertical control, through a combination of ownership, business partnerships and controlling ‘rights’ over key products” (Bilton, 1999: p. 22), in other words, adopting a “network approach to commercial organization” which has become a reference to more recent network-based industries (Rifkin, 2005: p.364). However, as we have also seen, those same strategies have led to the artificial creation of star system that would help mitigate the business risks (Bilton, 1999: p.9-10). Movie stars function as a sort of guarantee to the investment of the studios which, in turn, works as a guarantee to banks or other private film funders (Chisholm *in* Towse, 2011: pp.283-4). On the downstream side of distribution other common strategies are used by the studios to minimize market uncertainty, namely: copyright (who owns copyright and in what terms), timing (when and for how long will a film be exhibited), geography (where will the film be exhibited) and formats (cinema, TV, DVD, pay-per-view, licensing...) of each film produced (Cameron & Bazelon, 2013: p.17-20; Chisholm, 2011: pp.284-7).

As far as digitization impact goes, the film industry has been strongly affected in all levels of its value chain, both because of new “creative possibilities and lower financial entry barriers” (Stepan, 2013: p.399). But, in terms of economic impact, the most immediately affected level was probably that of distribution: “theatrical distribution; broadcasting including pay TV; and video distribution, which includes an end consumer market, video on demand and video rental” (*id.*, *ib.*: p.400). Due to

producing the most feature films for theatrical use every year, the European film industry. (...) All these industries work differently regarding the organization, role of the producer, investment, copyright, neighbouring rights and so on.” (Stepan, 2013: p.399). However, for the purpose of this research we will follow the generalized narrow approach to the Hollywood model, as we are aware of the American dominance in the international scene and the goal of this work is ultimately to clarify how copyright is being used as a mechanism to facilitate export of that model and reinforce such dominance. We will develop this in Chapter 6.

increasing storage capacity of consumer level equipment and to improvements in terms of quality of files compressing, audio-visual peer to peer distribution (often referred to as ‘piracy’) grew significantly over the past two decades. This has not only been threatening virtually all traditional distribution strategies mentioned above but also opening way to new business models such as “(i) online subscription rentals; (ii) online video stores; and (iii) advertising-based services” (Cameron & Bazelon, 2013: p.21). As in the music industry, in some cases, the traditional film market agents have started to face the competition of tech giants such as Apple, Microsoft, Amazon or YouTube, that use content as a way to attract clients for their products and services (*id., ib:* pp.21-28). At the same time, new kinds of audio-visual content distributors have also emerged (as it is the case of companies such as Netflix or Hulu) (*id., ib*). Such changes have been pressuring the industry towards new directions, to which major companies are naturally reluctant to follow. As a reaction, major industry players have been lobbying governments and regulatory institutions to in order to impose restrictions to file sharing, namely, through regional codes on DVDs or through DRM (Digital Rights Management) and TPM (Technological Protection Measures). Such restrictions have proven quite ineffective as “technical protection is very weak and can be bypassed with many programmes that do not require any advanced knowledge” (Stepan, 2013: p.405). Besides, by making the product (physical DVD or digital file) tied to a particular display equipment or software, such restrictions only reinforced the competitiveness of illegal content, as it carries no such obstacles (*id., ib*). On the other hand, recent research highlights the very poor and unclear information about the actual impact of piracy (Cameron & Bazelon, 2013: p.31; Stepan, 2013: p.401; Handke, 2011: pp.22-25).

In short, for all the core arts, we can generally summarize the common characteristics they share in terms of their traditional market organization (A) and consequent impact of digitization (B) as follows:

A) Core Arts Traditional Market Organization

- Diversity of formats (products) and genres
- Mostly small companies
- Monopolistic competition

- High (and rigid) market concentration
- Excess supply (and rotation) of artists
- Star system (star artists as financial guarantee)
- Sunk costs (for every new work introduced)
- Cross-subsidization between products
- Low bargaining power (and information) of artists
- Risk transfer to artists (especially from stars to the new/ smaller artists)
- “Content is king” (content production control)
- Reputation (networks more important than training/ expertise/ merit)

B) Digitization Impact

- Costs reduction (specially, in production and distribution)
- New business models
- New creative possibilities and art forms
- Stronger globalization effects
- Even higher market concentration
- Even more SMEs, artists and artworks
- Long tail vs star system dichotomy
- Tendency for cultural standardization
- More audience engagement
- More (personal) information control
- More transparency vs more manipulation
- Competition with tech giants
- Cross-subsidization between sectors
- Increasing mergers and lobbying
- “Distribution is king” (power shift towards distribution and information)

From this brief analysis, we can infer that digitization has brought as much challenges as opportunities to the core creative arts. If, on one hand, it has allowed for a more democratic distribution of cultural content, on the other hand, it has not really changed the traditional cultural market structure, in terms of its power relations. In fact, it seems to even have reinforced the power of major industry giants (namely, when compared to public

institutions), that ultimately control the access to existing cultural content (hence the trend towards standardization of cultural products). Our argument is that, in face of such context and considering the lobbying and attention given to copyright law and the pressure for artists to claim their authors' rights, it is important to understand what exactly is the role of such laws and how they actually benefit or harm artists. For that we have developed the model we present in the next section.

3. A New Model for A New (Art) World: the Concentric Circles Model of Cultural Work

In trying to understand the role of copyright in cultural markets structure and, especially, its contribute to artists labour dynamics, after our analysis of Potts *et al.* (2011) analysis of the creative industries as social network markets (Chapter 4), Chris Bilton's (1999) study of the creative industries' markets dynamics and risk control (section 1.), and the effects of digitization in the core arts (section 2.), we are now comfortable to suggest yet another iteration to our adaptation of Throsby's concentric circles model of the cultural industries (Throsby, 2008b; see Chapter 3, section 3.). Taking on the concentric circles model of the cultural industries redefinition, presented in Chapter 3 (section 3., Fig. 11), we now propose yet another model, always following David Throsby's same original exchange principles between creativity and function, thus organized by *the work role/ position in the cultural labour market structure/ hierarchy*. Such redefinition is represented and further explained below (Fig. 12).

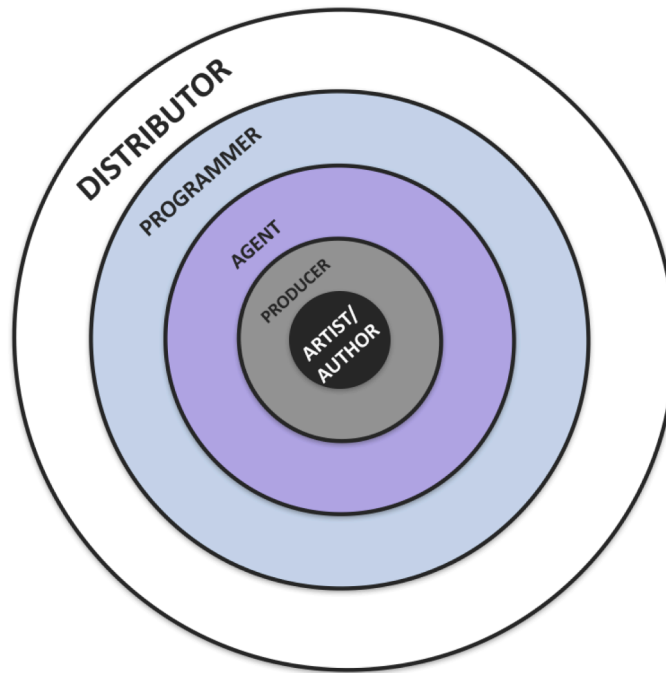


Fig. 12: Concentric Circles Model of Cultural Work

- (1) At the centre of this model, we find the *core artists and creators who generate the idea and express it in any artistic format* (through writing, performance, painting, drawing, collage, design, photography, film, music...) using any kind of technologies (digital or analogue or both). In other words, people who develop work in the core arts defined above (section 6.; see also Chapter 3, section 3.). As we have seen in the previous chapter (Chapter 3, section 5. and section 6), they are easily called genius but also brands (Becker, 2008: p.353; Lash & Urry, 1994: p.137; Menger, 2014: p.228), they are the people (or collectives) who *create, develop and normally would sign the project or piece, claiming their authorship over it* (even if, in the case of major star creators, they sometimes do little more than merely sign the work...).
- (2) In the second layer, we find producers, editors and technical support teams. This is the circle where *work achieves a structured and communicable dimension*. Alone (accumulating both creation and production jobs) or teaming up with smaller or bigger groups of more or less skilled professionals or amateurs, production includes the competences that allow the artwork or creation of any type to be ready to reach its audience, viewers, participants or consumers (they are the already referred independent production teams in film industry, for example; Lash & Urry, 1994; Rifkin,

2005). Although this circle might already represent a sort of gatekeeping (producers can choose the artists with whom they wish to work, especially if they are still young creators at the early stages of their careers, when they have less bargaining/ choice power), *the relationship between producer and artist is quite reciprocal* (artists also tend to choose the teams with which they wish to develop their projects) as the activities involved are very close to the core creation act (and many times involve the participation of other creators, for example, sound design or photography direction in film production). Depending on the artistic field, professional development stage or simple work methodology, the production and technical functions are often accumulated by the core artist or creator herself.

- (3) At the third layer of the circles are the *agents, dealers and managers, which might be considered a first level of pure gatekeeping* (Menger, 2014: p.135; Moulin, 1994), in the sense that they are usually not directly involved in the artistic or creative project development. Still, they can have a pretty close relationship with the creators they represent as their (specialized?) work is to make sure that the artistic product reaches its audience and/ or consumers. In many cases, this is also a function of the producer (for example, again, in film).
- (4) At the fourth layer, we find *programmers, curators and critics, guardians of the next level access gate. They are the people who select who will or will not have access to an audience and whose work deserves or not to be promoted and invested in.* Their job is therefore comparable to that of consultants or stock market brokers, who recommend and signal to their clients (which, in our case, would be the distributors in the next level) which investments will be more profitable or not (Moulin, 2009).
- (5) Finally, in the last circle, we find the *distributors: broadcasters, film studios and record labels, software houses and digital media platforms, theatres, galleries, etc.* As we have seen in the case of the Hollywood model (Rifkin, 2005; Lash & Urry, 1994), *they represent the final investors or clients of the artwork, those who control the access to distribution channels and therefore ultimately decide what is or is not shared to the public and under which conditions.*

Inspired by David Throsby's model, this derived version also suggests a dynamic relation between its layers, all interdependent, which, when not overlapping, relate to one another

by the exchange between cultural work – which is related to cultural capital in Bourdieu’s sense (Bourdieu, 1986) – and finance and/ or access to distribution – which, after Bourdieu’s perspective, are associated to economic and social capital respectively (*id.*, *ib*). It is also important to note that more often than not these circles/ functions overlap between them. This happens not only in the case of artists-producers, which we have already referred, but also in the case of producers-agents, artists-agents, agents-distributors, artists-programmers, producers-distributors and so on, depending to which activity/ role individuals invest more of their time. However, from the core artist perspective, the distance between overlapping roles is bigger as the artist is more famous and powerful (regardless of the quality of their work).

This becomes particularly true in the current digital era, as the post-industrialist individualization of work and the democratization of digital technologies through networks has allowed sharing and accumulation or overlapping of tools and skills that were long restricted to certain activity groups (Castells, 2010; Lash & Urry, 1994; Menger, 2014). It is here also important to note that the relationship between creators and producers or agents often extends to a more or less strong personal level (for example, through marriage, friendship, family ties, etc.) (Menger, 2014).

Because our proposal of a concentric circles of cultural work is more oriented towards work relations (and not industries relations, as Throsby's one), this approach can be applied to each specific creative industry sub-sector, in the sense Potts *et al.* (2011) define them, which includes any sector oriented to or moved by social network markets (see Chapter 4, section 4.). A critical issue here, though, is that, post-fordism and its “culturalization of the economy” has been transforming virtually every sector into a social-network-market-oriented activity (Lash and Urry, 1994)... Oddly enough, this might suggest a repositioning of the arts and the cultural industries (not creative industries) and the need to reclaim their central role as actual innovation drivers in the new digital era – which goes way beyond technological innovation. In other words, the process of “economization of culture” might not be the right way to go if we want to take the most out of creativity. To some extent, we might be in face of the translation of Castells’ dichotomy between the Net and the self-applied to the cultural sector:

In a world of global flows of wealth, power, and images, the search for identity, collective or individual, ascribed or constructed, becomes the fundamental source of social meaning. This is not a new trend, since identity, and particularly religious and ethnic identity, has been at the

roots of meaning since the dawn of human society. Yet identity is becoming the main, and sometimes the only, source of meaning in an historical period characterized by widespread destructuring of organizations, delegitimation of institutions, fading away of major social movements, and ephemeral cultural expressions. People increasingly organize their meaning not around what they do but on the basis of what they are, or believe they are. Meanwhile, on the other hand, global networks of instrumental exchanges selectively switch on and off individuals, groups, regions, and even countries, according to their relevance in fulfilling the goals processed in the network, in a relentless flow of strategic decisions. There follows a fundamental split between abstract, universal instrumentalism, and historically rooted, particularistic identities. Our societies are increasingly structured around a bipolar opposition between the Net and the self. (Castells, 2010: p. 3)

Lane Relyea (2017) relates this precise dichotomy to today's art world:

Of course, doing it yourself and being in a network are not identical – on a desert island you can be self-reliant and yet lack social connections - but today the two do closely overlap. That's because the subject of DIY is not an autonomous individual; rather it's a "free agent" or networker who, by being so thoroughly defined in her or his predisposition to "doing" and making connections, is always situated and contextualized, externalized and performative. And yet, this agent remains "free", despite being context-dependent, because the new context is not thought to be the all-determining social structure or the rigid bureaucratic institution or the brain-washing ideological apparatus. It's the temporary project.

This dual emphasis on networked connectivity and DIY agency helps account for the unique spatial template of today's art: extremely local performances staged against a backdrop of seemingly unimpeded international travel. Both are equally crucial to the art world now that prestige is measured in communicational terms, according to which the only thing more valuable than extensive reach is complex, intimate feedback. (Relyea, 2017: p.6)

This brings us back to the idea of the freelancer which, as we have seen in the previous chapter, is never "protected in the event of failure" (Menger, 2014: p.137; see Chapter 3, section 5.). However, as we have also seen (Chapter 4, section 3.), the cultural sector (with its institutions) along with the education system have been the most privileged spheres in terms of where cultural capital can be reproduced/ legitimized and exchanged by other forms of capital (Bourdieu, 1986, 1989). According to Bourdieu, the emergence/ empowerment of the artistic sphere (and the cultural sector) is parallel to that of the emergence of the artist figure, the so called creative genius, the unique author, as we have seen in Chapter 1 (Bourdieu, 1989: p.2; 1984: p.4).

The movement towards artistic autonomy accelerated abruptly with the Industrial Revolution and the Romantic reaction. The development of a veritable cultural industry and, in particular, the relationship between the daily press and literature, encouraging the mass production of works by quasi-industrial methods (...) coincides with the extension of the public, resulting from the expansion of primary education, which turned new classes (including women) into consumers of culture. (Bourdieu, 1984: p. 2-3).

It is here interesting to remember that the acceleration of artistic autonomy fostered by the industrial revolution, is contemporary to the emergence of the first laws of copyright and author's rights, as we have presented in Chapter 1.

As Bourdieu defends, the field of restrictive production of art, contrarily to large-scale mass cultural production, is intimately related to the education level of its consumers and provides elements of social distinction (Bourdieu, 1984: p.11). As such, it becomes a sphere of cultural capital legitimation and reproduction which, as we have seen in Chapter 4 (section 3.), represents a threat to the established powers. And yet, as we have also already discussed, after the digital revolution, this field is no longer so restricted after all.

Today, according to Lane Relyea, the former mythology of the artist as the unique genius gives way to a "neoentrepreneurial mythology about volunteerism and "do it yourself" (DIY) agency. "In a world regarded as extremely uncertain and fluctuating," Luc Boltanski and Eve Chiapello write in *The New Spirit of Capitalism*, their 1999 study of networked and flexible business and labour practices, "the *self* is the only element worth the effort of identifying and developing, since it is the only thing that presents itself as even minimally *enduring*." (Boltanski & Chiapello, 1999 as cited by Relyea, 2017: p.5). On the other hand, the rhetoric within the art world has shifted "away from architectonics towards flows and atmosphere. It's said, for example, that the museum, like many institutions, is now in ruins, disciplinary walls that once striated space are collapsing, leaving their wake a smooth surface of dispersal (...) "the logics of subjectification that previously operated within their limited spaces now spread out, generalized across the social field." (...) The canon of fine art is in shambles, and yet everyday life becomes aestheticized" (Relyea, 2017: p.8). However cultural institutions still prevail "[e]specially since, as Benjamin Buchloh puts it, museums "transform the primary language of art into the secondary language of culture", and thus represent an important resource for legitimation, social reproduction, and "collective storytelling"" (Relyea, 2017: p.8), because institutions are still central nodes of social networks (Chapter 4, section 3.).

Quoting Susan Buck-Morss, Relyea points out that the risk of loss of such structures is that ““members of the same society become aware that they ‘no longer inhabit the same economy’ [and] reconsider what they owe each other. This process raises the danger not only of a legitimation crisis of the welfare state but also of a deeper crisis in the social polity because it challenges the very definition of the collective itself”” (Buck-Morss, 1995 as cited by Relyea, 2017: p.9). However, the complete dismantling of cultural institutions seems pretty unlikely as “[t]he class of practices whose explicit purpose is to maximize monetary profit cannot be defined as such without producing the purposeless finality of cultural or artistic practices and their products; the world of the bourgeois man, with his double-entry accounting, cannot be invented without producing the pure, perfect universe of the artist and the intellectual and the gratuitous activities of art-for-art’s sake and pure theory.” (Bourdieu, 1986: p.242). The complete disappearing of cultural institutions would mean the end of the art world itself and, ultimately, of the entire western society as we know it.

This is particularly evident if we recall Howard Becker’s reflexions on how change happens in art worlds:

The history of art deals with innovators and innovations that won organizational victories, succeeding in creating around themselves the apparatus of an art world, mobilizing enough people to cooperate in regular ways that sustained and furthered their idea. Only changes that succeed in capturing existing networks or developing new ones survive. (Becker, 2008: p.301)

As Becker points out, art worlds (and their institutions and ‘gatekeepers’) exist and prevail for a purpose and that is to distinguish art works from non-art, i.e., “the work of nonartists, industrial workers, workers in the crafts, and folk artists, all of whom (so the argument goes) produce the same object or performance over and over with no discernible change. But the works produced by all these people vary too; the difference is that no one cares about the variations in what they produce, only about the similarities.” (Becker, 2008: p.8-9; see also Chapter 3, section 5.). However, art worlds and their networks and conventions and coordinators “all change more or less continuously” (Becker, 2008: p.301). These changes can be more or less revolutionary.

Revolutionary innovations, involving deliberate changes in the conventional language of the art, inevitably change who can act together to do what. Art world participants understand that the changes are intended to be major, and to affect cooperative networks, as they do. (...) They attack, ideologically and organizationally, the standard activities of that art world at that time.

(...) An attack on a convention attacks the aesthetic related to it. (...) [A]n attack on a convention and its aesthetic also attacks a morality. (...) An attack on aesthetic beliefs as embodied in particular conventions is, finally, an attack on an existing system of stratification. (...) An attack on the mores (for which, in this case, read conventions) is thus an attack on social structure (for which read the organization of an art world), and sects or innovators in art worlds are at war with the systems of rank current in the worlds whose conventions they attack and attempt to replace. (...) [W]hen someone successfully creates a new world which defines the mastery of other conventions as the mark of artistic value, all the participants in the old world who cannot make a place in the new one lose out. (Becker, 2008: pp.304-307)

It is important to note that, for Becker, revolutionary changes occur only when “their proponents can mobilize the support of others. Ideas and visions are important, but their success and permanence rest on organization, not on their intrinsic worth” (Becker, 2008: pp.309-310). What is also interesting to address is that changes are only considered revolutionary “if the contemporary art world cannot absorb them without important members losing their positions and prerequisites.” (*id.*, *ib.*: p.308). It is through “the process by which participants ignore, absorb, or fight change” that one can understand “the seriousness and extent of the change, which make it a revolution or something less dramatic.” (Becker, 2008: p.308).

Under such perspective, also in the art field (and the cultural sector), we are today in face of a revolution. And just like what happened with the avant-garde futurists during the second industrial revolution (Dekker, 2016; see Chapter 3, section 3.), new art worlds have emerged again as a result of a technology shock, this time, the digital information and communication technologies. And as with futurism, regardless of the technologies and art forms in place, cultural structures and conventions are fundamental to legitimize what is and is not art and consecrate the new art worlds of the digital era.

In terms of cultural policies, it is reasonable to expect a displacement from the market failures' argument (widely generalised after Baumol's cost disease) to the gap between the Net and the self (in Castells' sense), i.e. cultural policies aiming to contribute to filling that gap, which would mean the returning of the subject and promotion of a sector (and institutions) which has already proven to be so central (and avant-garde) to economic development and growth (Chapter 4, section 1.). As we have been demonstrating, the

creative industries approach does not seem to help solve such problems: neither market failures, nor cultural clarification/regulation.

On the other hand, as Bourdieu suggests, purposeless art is a kind of counter-balance to the rational bourgeois world (Bourdieu, 1989: p.242; Chapter 4, section 3.). Hans Abbing goes further in defending this alternative position of art to the rationalized world as he underlines the attractiveness of its high status (see Chapter 3, section 6.), but also its compensatory, extraordinary and sacred aspects:

[A]rt is not some noncommittal alternative to rational activities in modern society, but a necessary compensation for these activities. (...) Although these opposing spheres of art and rationality are threatening to one another, they also need each other to survive.

Both art and science ultimately contribute to cognition, but it's 'magical' art that relies primarily on dense symbol systems as opposed to 'rational' science, which employs discrete symbol systems. (...) In everyday life the discrete approach typical of science is omnipresent, while the density typical of art is often suppressed. Therefore, artistic expressions are extraordinary. This implies that, as long as society primarily operates on the rational knowledge of science, the arts will remain special. This societal imbalance contributes to art's sacredness.

The two interests, art as alternative and art as counterforce, merge at a higher level in a more general interest – the need for a sacred domain. Durkheim has suggested that all societies need a sacred domain. Today, religion no longer supplies a satisfactory sacred domain for society. Art has, in this respect, partially replaced religion. If society needs a sacred domain and art offers this domain, society has an interest in maintaining the arts in their present state. For the time being art must remain sacred. (...) Durkheim associated the sacred domain with collective and rational values that belong to the soul and that oppose the individual and egoistic desires of the body. Art as bearer of civilization's values in other words. (Abbing, 2002: pp.290-291)

This helps explaining why, although “artists represent a small percentage of the total workforce (...), their living and working conditions may determine the level and quality of the production of culture” (Benhamou, 2011: p.56) – and we should not forget that “the number of artists is increasing faster than the active population as a whole” (Menger, 2014: p.144)”, as we have discussed in the previous chapter (Chapter 3, section 6.).

In short, considering that the arts and culture continue to have a determinant role in society as a fundamental human condition/ characteristic/ need, but also as critical contributors to innovation (not just to the development of new products and technologies but also to social organization optimization – including the crumbling institutions of our time), they must

deserve specific attention from governments and institutions. Exaggerated focus on the role of the arts to innovation has led, as we have discussed on our previous chapter, to their dilution onto the broader sector of the creative industries and, as a consequence, created severe misunderstandings, reactions and resistance from the established artistic and cultural structures and agents.

“[A]s in many other countries, the creative sector in Portugal has served more as a political marketing tool rather than as a seriously structured sector that needs to be understood for its own data and characteristics and not just for those desirable ones. Trying to squeeze the creative industries (...) into traditional (or intentional) frameworks of planning and measuring is just not working. And, while doing this, using this same sector as a Trojan horse to eliminate cultural issues from public agendas can even be dangerous.” (São Simão, 2013: p.20)

Let us also not forget here that the concept of creative industries had its origin in the United Kingdom and was exported to other countries without much concern about its adaptability to local realities (Chapter 3, section 1.). This is particularly problematic today as together with the importation of the creative industries pack, a series of concepts and regulations around this sector were also roughly integrated in European policies – one of the most central being the approach to copyright – and, in face of Brexit (Hunt and Wheeler, 2019), if this was already a controversial approach, now it is even more evidently inappropriate.

Chapter 6

COPYRIGHT AND CULTURAL POLICY



Alan Moore and David Lloyd, in *'V for Vendetta'* (1982)

In this chapter, we will discuss the centrality of the state as an economic agent and the evolution of cultural policies over the past 50 years in European countries and the different funding models for culture that characterizes them. Departing from Mariana Mazzucato's idea of entrepreneurial role of the state (2013), we base our analysis in the accurate studies of Terry Flew and Adam Swift (2013), Pierre-Michel Menger (2013) and Arjo Klamer, Anna Mignosa and Lyudmila Petrova (2006), among other authors. Using DiMaggio and Garip's (2012) concept of homophilous networks, we are here trying to understand the position of such policies within the context of the emergence of the network society and relating the consequent policy transformations to the promotion and/ or prevention of social inequalities, in the sense Kate Oakley and Dave O'Brian highlight (2016). Mostly based in Ruth Towse

(2002, 2010, 2011) and Christian Handke's (2011) analysis, we then reflect on the evolution of the relation between copyright and cultural policies and the complementarities and tensions around it. Finally, we look at the international picture, departing from Blayne Haggert's (2014) considerations, we look into recent copyright reforms all over the world, with particular focus on the 2019 European Directive on Copyright and the Digital Single Market. Based on MPs political speeches and considerations, at political level, we reflect on the lack of dialogue between policymakers and other copyright stakeholders which, when in place, is often a deaf conversation, where established powers do not seem any interested in understanding any other perspective.

1. The Entrepreneurial State of Culture: Cultural Policy and the Growing Centrality of Copyright

As we have seen in the previous chapters, on one hand, the reasons for direct public support to the arts and culture are many and, on the other, the role of governments as a "key partner of the private sector" (Mazzucato, 2013: p.5) seems to be evident also.

In the past decades, political discourses constantly enhance the role of the creative industries as innovation drivers (Chapter 4, section 1. and 2.; Chapter 5, section 1.). At the same time, they are also constantly referred to as a paradigmatic example of social network markets, somehow pointing the way (or even setting trends) of current economic dynamics (Chapter 4, section 2. and section 4.). On the other hand, as we have also discussed, the cultural sector is one privileged sphere where cultural capital can be reproduced and exchanged (namely, for economic and social capital; Chapter 4, section 3.) and, for that same reason, it presents itself as a possible alternative to the growing precariousness of work relations in general (as people seek for more valuable reward other than financial; see Chapter 3, section 6.). Last but not least, the cultural field is a sort of counterbalance to the standardized organization of

the bourgeois world and also a replacement for a certain loss of spirituality in modern societies (Chapter 3, section 6.).

Although culture has been at the centre of most European political agendas over the past 50 years, as we will see, at country level, local cultural policies have undergone different approaches and developments as the definition of culture itself kept changing (Chapter 3, section 2.). On the other hand, as discussed in the previous chapter (section 1.), even under the recent innovation-centred approach to the arts, there is a “need for greater political attention not only in terms of the immediate instrumental “usefulness” of the arts but also in terms of promoting its more experimental and risky endeavors” (Chapter 4, section 1., p.120).

Based essentially on the studies of Terry Flew and Adam Swift (2013), Pierre-Michel Menger (2013) and Arjo Klamer, Anna Mignosa and Lyudmila Petrova (2006), who very concisely summarize the developments in cultural policies in Europe, we reflect on the political transformations that have accompanied the recent technology changes and profoundly affected the production (and creation), distribution and consumption/ access/ participation in cultural activities. Such transformations have placed the state as an effective entrepreneurial partner towards a growing privatization of culture, more than the traditional mediator in terms of market failure and social inequalities. In this context, cultural policy has become a sort of competition instrument towards a continuous economic growth, focusing on the creative industries networked processes, characteristic of the informational economy, much more than on the arts, hence, justifying the centrality of copyright (as a privatization instrument) in the creative economy.

Three developments in cultural policy are appointed by Terry Flew and Adam Swift (2013) as key during the twentieth century:

First, the formation of the Arts Council in Britain in 1946, first headed by the Cambridge economist Lord Keynes, saw the scaffolding developed for ongoing government support for the arts. In doing so, it established the principle of an “arm’s length” relationship between the government of the day and individual artists, through the development of independent arts boards engaged in the peer review of creative works. Second, the formation of the Fifth Republic in France in 1958 saw the creation of a Ministry of Culture, headed by the writer André Malraux. Malraux and his successors have seen three major tasks for a national cultural policy: government supports for the creation of new artistic and cultural works; the promotion and

maintenance of cultural heritage; and enabling equitable access to creative works and creative opportunities through all segments of society. Finally, at a global level, agencies such as UNESCO have sought to promote national cultural policies as an element of national sovereignty, particularly in the developing world, and this has involved addressing sources of structural inequality in the distribution of global cultural and communication resources. (Flew & Swift *in* Towse & Handke, 2013: p.155)

These three moments are also a result of relatively different territorial approaches to culture. While in the UK culture assumed a “relatively narrow definition, with creative, performing and visual arts policies being bracketed off from areas such as communications and media (...), the European tradition has tended towards a broader definition, aligning arts and media policy along with areas such as language policy, policies towards citizenship and identity, multiculturalism, policies towards cities and regions, and cultural heritage and tourism” (Flew & Swift, 2013: p.155).

Flew and Swift (2013) also point out some important aspects related to cultural policy in the previous century, namely, what David Throsby refers to as direct and indirect cultural policies and the traditional distance between the technology debate and cultural policy, inherited from the Romantic need to distance the arts from mechanization processes of industrial society (pp.155-156). The authors also underline the fact that “the economics of cultural policy have been dominated by ‘market failure’ rationales”, focusing mostly in the difficulties of capturing cultural value through relative price, the need to persuade the public to consume cultural goods (perceived as merit goods) and “the need to safeguard the arts and cultural heritage for future generations, which would not be adequately secured on the basis of current demand” (*id., ib.*: p.156). Flew and Swift (2013) finally consider main dichotomies at the centre of cultural policy debate: the division between high arts and cultural industries, the difference between aesthetic (cultural) and commercial (economic) value and the tension between excellence versus access (*id., ib.*: p.156). They give particular relevance to the “policy divide between media and communications policy, on one hand, and the arts and cultural policy, on the other” (Flew & Swift, 2013: p.156), which would ultimately become resolved after the digital revolution and the emergence of the creative industries (*id., ib.*: p.157; see Chapter 3, section 2.) – only that didn’t really happen.

Four elements of the rise of social production and the networked information economy particularly impact on cultural policy. First, the *demand for participation* suggests that (...) those engaged in digital cultural activities (...) [expect] to be able to actively participate in the process of developing social meaning. Second, *user-created content* shows that (...) professional content creators (journalists, artists, photographers, designers, etc.) increasingly face competition from ‘amateur’ content creators. Third, *content co-creation* shows that (...) cultural forms are increasingly multi-layered and ‘open’, with the original ‘professional’ content (...) existing alongside a range of user-created content associated with that work (...). Finally, the shifting forces of *value* in a network can be noted (...). In a digitally networked environment, the nature and sources of value are more diverse, and value chains are no longer linear. With content co-creation, for example, it is often the ability to participate among users themselves that is part of what is valued in the content. (Flew & Swift, 2013: pp.159-160)

According to Flew and Swift (2013), although this new approach to cultural policy (or should we say creative industries policy?) has broadened its concerns “beyond a focus on individual artists and cultural institutions” and it carries the risk “that the creative industries themselves come to be seen as the exclusive site of creativity” pushing cultural policy towards the direction of what creative industries representatives “see as important – for example more public subsidy or stronger copyright laws” (*id., ib.:* p.160).

Following up on our discussion in the previous chapters (Chapters 3 and 4), these authors suggest that new forms of cultural policy not only require “an awareness of the value of creativity in a digital networked global creative economy, [they] also require a commitment to forms of cultural policy that actively engage the participants in everyday culture, and not simply the representatives of the established arts sector producer interests, in order to achieve a more democratic cultural remit” (Flew & Swift, 2013: p.160).

Focusing on the European context, Pierre-Michel Menger’s analysis (2013) reinforces this view. For the author, cultural policies “Are part of the history of creation of the Welfare State.” (Menger, 2013: p. 1). As we have discussed before, changes in ideology (Chapter 3, section 1. and 2.) but also in strategy, “as decentralization or territorialized public action are prioritized across the board” (Menger, 2013: p.1). This change translated into two essential policy lines: the preservation and promotion of heritage (as a result of increasing cultural consumption and cornerstone of cultural tourism) and the promotion of the so-called creative industries (Menger, 2013: p.1; 2010: p.2). However, as the author explains, from central

welfare state policy to current utilitarian approach of the creative industries discourse, cultural policy had to go through “four distinct phases: (1) the creation of a systematic cultural supply policy based on two principles – excellence and democratization – and a limited definition of culture suitable for public finance; (2) the gradual decentralization of public action, which leads to an increasing disparity in its aims and functions, and which challenges the initial universalist and unanimist model; (3) a revision of the legitimate scope of public action, which opens the borders of cultural policy to entertainment culture governed by the laws of industrial economy; (4) an increasing tendency to justify cultural policy on the basis of its contribution to economic growth and to the balance of national social diversity, which legitimizes the regulatory power of public action as well as encouraging the expansion of the ‘creative industries’ and the demands for the evaluation of procedures and results.” (Menger, 2013: p.1-2). These changes have resulted in a shift from state-centred cultural policy to local development of ‘creative cities’ (*id., ib.:* p.2).

Starting from a homogeneous “initial definition of culture (...), associated with high culture, with its hierarchies and classifications and its selective renewal and settling principles” (Menger, 2013: p.2), in the first half of the twentieth century, cultural policy inherited its influence from traditional patronage practices of previous periods. Only after submitted to a system of expert judgment could cultural products excellence be consecrate and become eligible to enter museums and repertoire (*id., ib.:* p.2). The system for public action was therefore distinct from “the arena of cultural industries and the entertainment culture, dominated by market forces” (*id., ib.:* p.3).

To be a matter of public policy, culture had to symbolize a national identity whilst also claiming to embody universal values, even if, throughout the last five decades, the valuation of such works was less and less based on easily definable and legitimized aesthetic canons. At the point when public cultural policies were expanding in the 1950s, the publicly recognized values of heritage works had in some way be stripped of the contextual conditions of their financing and selection conditions so that high culture’s greatest works could be treated as unanimously admired public goods. (Menger, 2013: p.3)

Nevertheless, despite “more certain of its values than its procedures” and the different local approaches to it, cultural policy became central to the welfare states across Europe (*id., ib.:* p.3-4). With improvements in general quality of life and increasing education, European

societies became more interested in the consumption of cultural goods, considered a right by the welfare state, “alongside other rights such as education, health and social security” (Menger, 2013: p.4). Soon the welfare state definition of culture would come to be questioned with the participation of local authorities in cultural action:

Public action aimed to fulfil an increasingly diverse range of objectives. The decentralization of cultural policies which took place in the 1960s gave rise to three issues: that of coordinating the different levels of public action; the local authorities’ increasingly broad definition of culture as they advocate a more anthropological definition of cultural identity, to bring it close to an alternative conception of popular culture aimed at restoring creative self-expression to ordinary people (...); and an increasingly diverse approach to promoting demand through a policy of cultural mediation and a stronger commitment to popular participation, thus changing, at grass roots level, the ‘top-down’ public action model for a ‘bottom-up’ policy. (Menger, 2013: p. 7)

Despite these changing trends, after the first oil crisis in the early-70s, Europe’s welfare state model was seriously affected and, as a consequence, a more mercantile approach to culture was adopted (*id., ib.:* p.8). As a way of merging the traditional cultural activities covered by cultural policy and the more commercial cultural and entertainment industries, and to include the emergent software goods and services, the concept of the creative industries emerged (Menger, 2013: p. 9) with all its known consequences (see Chapter 3). Nevertheless, Menger points out three significant changes in cultural policy, related to the emergence of the creative industries as the new central object of public discourse (as opposed to culture):

1. Cultural policy became the product of societies whose growth model is based on technological innovation and on raising the country’s scientific and intellectual capital. (...)
2. This model bundles cultural policy in with economic and social policies at a national and international level. (...)
3. The third evolution concerns employment in the cultural sector. (Menger, 2013: pp.10-13)

But, as Menger himself suggests, what seemed to be a linear course drawn from these lines of change, soon started to show some drawbacks... We will discuss this in more detail below.

Despite the evolution of cultural policy in Europe, as we have seen in Chapter 3, the economic effects of the cultural industries remain “a matter of theoretical assertion rather than empirically established fact” (Throsby, 2008a; see Chapter 3, section 3.) and the contribution

of the creative industries to GDP and to employment are almost impossible to grasp (Towse, 2010: p.470; see Chapter 3, section 4.).

Nevertheless, looking at the main funding systems of the arts and culture in the European Union reveals some interesting aspects about the role of governments in culture. As Klamer, Mignosa and Petrova (2006) have put it, because “the likelihood that the way a cultural good is financed will matter to its valuation and its functioning” (*id., ib.:* p.2), it is important to understand in which way governments, the market and third sector organizations (non-profits) support cultural production.

Some countries focus on cultural heritage; other have, at the core of their cultural policy, issues such as social inclusion and cultural diversity, following a path that characterizes the EU interest regarding the cultural sector. Notably, the creative industries have become increasingly important economic factors within national cultural policies. (...) In line with European Community objectives, support for creativity, heritage protection and promotion, and a focus on creative industries is nearly universal, followed by recognition and promotion of national identity, cultural pluralism, internationalization, and decentralization of responsibilities. (Klamer et al., 2010: p.3-4)

Although, as we have referred, the data available to compare cultural funding (and cultural policies) in different countries is quite poor and inconclusive (Klamer et al., 2010: p.3).

In general, [...] a process of decentralisation and désétatisation has decidedly taken place (and still is taking place) in accordance with what could be seen as the ideals of society that have developed in Europe over the last ten years. ‘The idea is that the state had to hand over much of its responsibilities to the second and third sectors, (i.e. to the market and civil society), especially in the cultural field’ (...). In fact, another feature common to most countries is the increasing opportunity for private individuals, companies, and non-profit organisations to take an active part in cultural policy, not only supporting the cultural sector but also operating within it. (Klamer et al., 2010: p.5).

It is interesting to note that, despite expenditure in culture was growing at the time of the analysis (we must note that it is still before the 2008 crisis), especially among recent member countries in the EU, possibly indicating a need to reinforce their new identity as part of the community, while attempting “to introduce new systems by looking at Europe’s best practices” (Klamer et al., 2010: p.4). What is also interesting is the difference between more

central to decentralized approaches, being countries such as Austria, Belgium, Germany, Poland, Spain and the United Kingdom the champions of local support to culture – although the authors underline that if data from other ministries other than culture was available, this conclusion might have resulted different (*id., ib.:* p.5). Another relevant finding is the distribution of public support to culture, which reveals different national conceptions of culture and of the ways it is related or embedded in others areas, such as sports (relevant in Denmark, Estonia, Ireland and Portugal), religious affairs (in the case of Hungary, Slovakia and Romania), education (in Belgium, Germany, Austria, Denmark, and Estonia) or communication and broadcasting (in Belgium, Bulgaria, Latvia and the Netherlands) (Klamer et al., 2010: p.6).

The study goes on highlighting the importance of indirect support from the state, through the form of tax incentives, for example, reduction of Value Added Tax to cultural products or fiscal incentives to private donations (leaving to private organizations and individuals the choice of whether to use them or not). Again, concerns about the insufficient data about indirect public support to culture is mentioned. But the role “of the state as a facilitator when it introduces clear rules that favour this form of indirect intervention” is praised (*id., ib.:* p.7). Seen as a tool to promote the democratization of culture, indirect public support allows other sectors and people in general to become directly involved in cultural policy. Also, “[t]ax incentives for culture imply a shift of focus from supply towards demand; more responsibility is given to the public” (Klamer, Mignosa & Petrova, 2006: p.35). However, this form of support does not come at no cost, as donors pay “for only a part of it and the government – i.e., taxpayers – pays the rest” (Klamer et al., 2006: p.35; 2010: p.7-8) and “governments need to design tax incentives strategically and with the help of experts” as it is not a simple process (Klamer et al., 2006: p.35).

In what concerns private support to culture, this became more relevant as the process of decentralization was taking place. Taking the form of donations, patronage, maecenas, voluntary work, sponsorships, etc., private support can be given by business or non-profit organizations and, of course, by individual donors. The motivations for private business direct support are usually related to social responsibility and marketing goals and they often involve long-term partnerships between companies and the supported cultural players. They also

represent a strong component of regional activities funding. Many times, this connection to culture is also a way to promote companies image among communities and to gain governments' attention, often resulting in later private-public partnerships (like in the case of private prizes later patronized by states) (Klamer et al., 2010: pp. 8-9). As far as non-profit support is concerned, this can come from different types of organizations: "trusts, associations (clubs, friends' societies, etc.) and foundations" (*id., ib.*, p.8). Again, the question of data difficulties come highlighted. Despite of that, the authors conclude that in countries such as "Belgium, the Netherlands, Portugal, Italy and Spain, art and culture are the priorities of private foundations' support". However, there is no indication for a steady trend and in general such support is directed to organizations in the biggest cities; bank foundations represent an important slice of such support – particularly, in the Mediterranean countries (*id., ib.:* p.9).

The authors go on suggesting more public-private cooperation in the support to the arts as an interesting way to promote the engagement of the market and third sector in cultural policy (Klamer et al., p.10-11). EU structural funds play an important role in fostering such collaborations. However, these incentives are not enough if a serious commitment from national governments is not in place (Garcia et al., 2016).

In countries like Portugal, the clear disinvestment in culture resulted in some failed experiences (to strategies that in other countries worked fine), related to adjustments in cultural policies regarding the new trends of creative industries, supposed/believed to compensate the fragilities of (the then recent/ structural delay of) Portuguese cultural policy. This is the case, for example, of ADDICT, an agency created in 2008 for the promotion of the creative industries in Portugal. Resulting from a *Macroeconomic Study for the Development of a Creative Industries Cluster in the Northern Region of Portugal*, led by the Serralves Foundation (Fleming *et al*, 2008; Quintela & Ferreira, 2018: p.99). ADDICT's strategy never actually worked as a platform for the growth of the regional creative industries agents and structures. In fact, it was regarded more as a tool for the self-promotion of its founding members than an actual instrument for policy-making and community building, raising only suspicion and disappointment among creative professionals and organizations (São Simão, 2013). This happened, in part, due to the poorly justified adoption of a copy-paste strategy

from the British policies for the creative sector, with little regard to local specificities and circumstances at the time (Quintela & Ferreira, 2018: p.101) – in fact, encouraged by the EU. And when it seemed to finally be taking off, engaging in some important European consortiums and networks and slowly beginning to involve a community of creative and cultural organizations and workers, in 2016, ADDICT's executive team and its strategy was dismantled by what would become its administration board, which commissioned a new study about the creative economy in Portugal, completely redirecting the pursued strategy to the moment (Mateus, 2016). Two years later, the agency was bankrupt and eventually closed (Neves, 2018). The same short duration hype happened with the publishing of the so-called Augusto Mateus study of the cultural and creative sector in Portugal (Mateus, 2010): despite all the buzz created upon its launching in 2010, it had very little impact in terms of strategic considerations and actual public policy for the sector, which continued to squeeze its already restricted investment (Quintela & Ferreira, 2018: p.97). Another curious example has been the indefiniteness regarding the portfolio to which creative industries strategies belong, both at central and local government levels – sometimes being attributed to the department of culture, some others to the departments of economy and innovation, leaving no room for any coherent data collection and analysis, let alone solid long-term policies (Quintela & Ferreira, 2018: p.102). These are only a few of the many unclear or failed Portuguese initiatives in the field of culture and creativity, indicative of a possible lack of contextual adequacy of this sort of “copy-paste” policies between the French tradition and the Anglo-Saxon model (Santos et al., 2016: p.57). With its late modernization process (starting with the end of the dictatorship in 1975), it was not until 1995 that Portugal had its first Ministry of Culture, followed by an intense rotation of ministers and deputies – it was even dissolved in 2011, only to be restored in 2015. The late institutionalisation and under-investment in culture have made the development and implementation of cultural policy in Portugal a serious challenge that still goes on (Santos, et al., 2016; Garcia et al., 2016; Quintela & Ferreira, 2018).

With such context in mind, let us go back to Menger's “three significant changes” in cultural policy introduced above.

As we have seen, the new approach focus on the creative industries “bundles cultural policy in with economic and social policies at a national and international level” (change number 2. as seen before in p. 185; Menger, 2013: p.10).

[2.] The European Commission report entitled *The Economy of Culture in Europe* shows the international scale of the operation: it likens culture to an investment sector rather than one of straightforward public patronage and thus recommends the adoption of suitable evaluation and control tools for this new model of public action. The public management of culture and the arts should no longer be this evidence-free zone in which the manipulation of statistical measurement and objectification is seen as reducing the sacred to mere figures and what Kant referred to as the ‘purposive without purpose’ to the utilitarian tools of revamped public accounting principles. (Menger, 2013: p.10)

For this to be true, though, “The cultural sector, the scope of which varies from country to country, must be able to be described in comparable terms and with standardized set of accounting techniques and statistics” (*id., ib.:* p.11) which, as we have already discussed, has been practically impossible (Chapter 3, section 4.). This has led to a recent trend of thought that tries to “move away from the auditing culture, [and] emphasizes that excellence, initially seen as a pillar of the cultural welfarism, should once again become the priority when allocating public resources (...), yet under the banner of innovation, risk-taking and competitive efficiency rather than democratizing and spreading” (Menger, 2013: p.11). As Menger explains, in trying to understand the value of the cultural sector, a number of indicators has been drawn to depict the direct and indirect contribution of culture to the overall economy (*id., ib.*) - moving away the attention from cultural effects on society. In terms of direct contribution, one can find indicators on contribution of culture “to GDP, in added value, in growth rates, in the proportion of jobs directly or indirectly related to the sector and in the quality of these jobs, in the characteristics of businesses and micro-businesses and in their competitiveness (productivity and profitability) and in the volume and structure of cultural consumption expenditure in household budgets” (*id., ib.:* p.11). As for the indirect contribution, focus goes to “the leveraging effect of available cultural goods and services on the development of local tourism and on urban regeneration” (*id., ib.*). Despite all the criticism, what seems to be evident is that “the commitment of states, towns and regions, after three decades of local cultural policy, has passed a turning point beyond which it seemed possible to start questioning opposing models and more effective local development models.

It is significant that one of the main outcomes of action supportive of the so-called creative industries was the proliferation of urban regeneration schemes and the redevelopment of industrial sites within major urban areas.” (Menger, 2013: pp.11-12). This regeneration movement led way to the organization of creative clusters, particularly in urban areas, with their crowds of start-ups, freelancers, creative hubs and cultural venues:

The agglomeration economy is one of the characteristics of cultural entrepreneurship, with its base of micro-businesses, flexible and interdependent resource-sharing networks and with its working population whose structural surplus makes it possible to organize a system which work on a project-by-project basis and on the basis of flexible specialization with lower fixed costs
(*id., ib.:* p.12)

As Menger points out, what seems to be new here is not the discourse – “part of the rhetorical arsenal of political persuasion” - but the “attempt to evaluate it, inspired by economic thinking on endogenous growth and on self-sustainment through creative and destructive innovative impulses” which, in turn, has led to the emergence of a countless number of consultants (intermediaries) (*id., ib.:* p.12; see also section 2. of this chapter). Nevertheless, academic research has been pointing the way towards a more sustainable approach to cultural policy, highlighting that “The commitment to an ecology of cultural diversity has thus become the cornerstone of the re-evaluation of culture as a public good” (Menger, 2013: p.12). In other words, despite the relevance of the creative industries discourse, culture like science, needs to be cherished and supported in its specificities. Under this perspective, we can argue that the creative industries are a sort of “applied culture” (or “applied arts”) sphere which, like applied science, emanates from a more “pure” theoretical and experimental basis, unconcerned with any economic or social objectives but intrinsic and essential to human existence (Bourdieu, 1986; São Simão, 2013; see Chapter 3, section 6. and Chapter 4, section 3.).

Continuing under Pierre-Michel Menger’s perspective, let us now look into what he presents as another structural change in recent cultural policy development, which concerns employment issues (Menger, 2013: p.12).

3. The third evolution concerns employment in the cultural sector. One of the arguments of the creative industries’ policy is the consecration of key values associated with creativity: a flexible and compliant personal approach, an appetite for risk, the ability to cope with the unexpected,

lateral and intuitive thinking, the championing of diversity within teams (...). Artists and those we shall henceforth refer to as creative workers are aiming for the high earning power of the top one fifth of professionals in the hope that the overestimation of their chances of success will end in self-fulfilling prophecy (...).

These characteristics indicate the mainspring of an economy whose production and cultural goods and services is endlessly differentiated and varied. Their impact on the employment situation represents a challenge for welfare state social policies, as the combination of flexible project-by-project working patterns and the individual risk of under-employment is pushed to the limit, overtaxing social welfare mechanisms. (Menger, 2013: pp.12-13)

Menger goes on presenting and criticizing some models of what he calls flexicurity: specific social protection measures adapted to the idiosyncrasies of the cultural labour market (*id., ib.:* p.13-14). Nevertheless, and as we have seen previously, with the culturalisation of the economy, cultural labour market characteristics are contaminating the overall economy, turning job uncertainty and flexibility one of the central attributes of the new digital era (Castells, 2010; Lash & Urry, 1994; von Osten, 2011; see also Chapter 3, section 6. and Chapter 5, section 1.). Considering its longer history in dealing with such problems, cultural policy becomes again central to the extent it can very well be a reference and help inform the development of employment policies adapted to current socio-economic dilemmas.

Last but not least, Menger suggests that cultural policy is today constrained to technology and much oriented to stimulation of copyright-driven activities.

1. Cultural policy became the product of societies whose growth model is based on technological innovation and on raising the country's scientific and intellectual capital. Initially more or less ignored by the EU Lisbon process, culture inveigled its way into the knowledge society. However, it is cultural production which, as the Anglo-American model shows, has to prove its viability in the marketplace, by relying on the supportive public environment essential for company growth, staff training, protecting sources of financing and notably for revenues raised through the consolidated exercise of intellectual property rights (...). (Menger, 2013: pp.10)

As we have seen, in its transformation process from a welfare state model into an idea of state as 'entrepreneurial' agent, all throughout Europe, the growing importance of the creative industries as a central subject of cultural policy has become more and more evident

(see Chapter 3, section 2.), with copyright becoming an essential instrument in favour of the privatization of culture (and precariousness of cultural work, as we shall see in Chapter 7).

Measurements of the value of creative industries had led to attempt to value the ‘creative core’ and hence to measure the contribution to GDP of creators who produce it as a measure of the value of copyright. There has been virtually no research that demonstrates the case one way or the other or that shows the responsiveness of the production of creative goods and services to the strength of copyright protection (...). Nevertheless, creativity is at the forefront of debates about copyright law that have taken place over the last century and claims that strengthening copyright increases creativity are almost always made nowadays by the creative industries when lobbying for greater copyright protection. If the creative industries paradigm is to deliver the goods, however, we need to understand the underlying dynamic of the creative industries – the motivation of individual creativity and the role of copyright as an incentive – rather than rely on the rhetoric of copyright lobbyists. (Towse, 2010: p.464)

As we will see in next chapters, unlike the “rhetoric of copyright lobbyists”, the value of the ‘creative core’ does not necessarily translate into greater returns or work benefits to the so-called core artists, as the value of copyright is often appropriated by intermediaries and, especially, by major industry players (Chapter 8, section 1).

For that, we need first to analyse the role of copyright as a key political (and strategic) tool more thoroughly (section 3.). But before moving on to such analysis, it is also important to underline that, as Menger suggests, most of the changes in European cultural policy are essentially concerned with large-scale urban centres, ultimately contributing to reinforce the precise inequalities they were initially designed to mitigate (Menger, 2013: p.14). We will discuss this in the following section.

2. Networks, Cities, Inequalities and Policy: the Proliferation of Homophilous Networks and the Rise of Intermediaries

As we have seen in the previous chapter, Lash and Urry (1994) suggest that there is a much closer relation between the technological ‘innovation milieu’ and cultural dynamics than mere contribution or contamination (see Chapter 4, section 2.). This explains, at least partially, why if large-scale cities were already home to the most relevant institutions, the rise of the network society does not seem to contribute to change that, as the institutions of our new era (such as science and technology parks or incubators) tend to emerge (physically and also virtually) near the already existing institutions (for example, universities). As Andy C. Pratt (1997) puts it, “The learning region is [...] a particular structured combination of institutions strategically focused on technological support, learning and economic development that may be able to embed branch plants in the regional economy and hence cause firms to upgrade *in situ* rather than relocate away from the region.” (p.130). Picking up again on the idea of institutions as the central nodes of modern networks (Chapter 4, section 3.), one can easily understand Pratt’s (1997) argument as follows:

Innovation requires context, but context – as if a backdrop – is insufficient. Innovation is a practice that requires co-ordination. Entities created by innovation are unstable: they can only be created under heavily controlled conditions, and with much effort and expense made stable under such conditions. Entities (products, networks, or institutions) can only move out into the world if other agents and interests can be enrolled to reproduce the laboratory or factory in the world. To make any of these entities operative requires the building of networks it also requires the exercise of power. Networks should not be seen as neutral, neither should they be seen as unproblematic conduits of power. (p.134)

Andy Pratt takes here the notion of laboratory as “a significant ‘nodal point’ (...) the places where warm unstable science is made stable and cold technology: after which it can be let out into the world to be used” (*id., ib.*: p.132). And, as the author points out, “the process of translation and fixing is not final, it does not stop at the laboratory door or the factory gate, different agencies and users will be constantly in the game of translating the technology into their own interests, this may again create further transformation” (*id., ib.*). Considering the parallel we have previously suggested between art and science, we believe the same sort of

process applies to artistic works as they “transform” into culture (through institutional legitimation; see Chapter 5, section 1.) or creative products or services (as they become appropriated by the market).

We know that “individuals’ choices are influenced by those of their network peers in many social domains” (DiMaggio & Garip, 2012: p.93). In fact, as we have seen before, the cultural and creative sector are ruled by networks of influence (reputation), both in the supply side and labour market dynamics (see Chapter 3, section 5.) and, in the demand side, through consumers’ behaviours (Chapter 4, section 2.). Therefore, this sector is highly affected by what DiMaggio & Garip (2012) refer as the relationship between “ubiquity of network effects and tendencies toward cumulative advantage” (p.93)⁶⁷ or, in some cases, disadvantage (Menger, 2014: p.220; see also Chapter 3, section 5., p.111)

Inequality is exacerbated when effects of individual differences are multiplied by social networks: when persons must decide whether to adopt beneficial practices; when network externalities, social learning, or normative pressures influence adoption decisions; and when networks are homophilous with respect to individual characteristics that predict such decisions. (DiMaggio & Garip, 2012: p.93)

To DiMaggio and Garip (2012), the adoption of a certain behaviour happens when individuals find advantages in it and they usually contribute to intensify the differences between social groups.

The authors go on explaining how network effects⁶⁸ influence social dynamics (*id.*, *ib.*: p.95). Such network effects may come in three forms: local network externalities, “when the value of a practice depends on the number of prior adopters” (*id.*, *ib.*: p.96); social learning and peer assistance, “when network peers provide information that increases the utility or reduces its cost or risk” (*id.*, *ib.*: p.96) therefore reducing uncertainty; and normative

⁶⁷ Which, as we have also seen, through the process of culturalisation of the economy (Castells, 2010; Lash & Urry, 1994; von Osten, 2011; see also Chapter 3, section 6. and Chapter 5, section 1.), is progressively affecting other activity sectors.

⁶⁸ “Network effects occur when the probability that an actor will adopt a practice is an increasing function of the number or proportion of persons in the actor’s social network who already have adopted that practice.” (DiMaggio & Garip, 2012, p.95)

influence, when “rewards [are] bestowed on adopters and sanctions exacted on non-adopters by their peers” (*id., ib.:* p.97), as a sort of social side payment or peer pressure.

For network effects to exacerbate intergroup inequality in adoption of some practice, three things must be true.

First, at the individual level, the probability of adopting a beneficial practice should be a positive function of the financial and cultural resources at a person’s command. In general, financial resources increase a person’s ability to pay, thus raising his or her reservation price⁶⁹. Cultural resources (ordinarily measured as years of formal education) may influence adoption by increasing awareness of new practices (especially of innovations), increasing comprehension of complex innovations, or enabling people to exploit the practices more fully. (...)

Second, actors’ social networks must consist of persons similar to themselves with respect to characteristics that predict adoption of the new practice. Homophily – the tendency of persons to form networks with others to whom they are socioeconomically and demographically similar – has been observed to be ubiquitous across a range of contexts. (...)

For social networks to produce surplus inequality – i.e., inequality greater than that which individual differences would produce in absence of network effects – a final necessary (but not sufficient) condition is that adoption of beneficial practices must be positively associated with prior adoption by one’s network peers. (DiMaggio & Garip, 2012: pp.97-98)

In other words, through their networks, individuals influence one another and guarantee that the processes of legitimisation and maintenance of capital (in Bourdieu’s sense; see Chapter 4, section 3.) occur, and therefore existing inequalities prevail or even aggravate. However, networks can also contribute to mitigate the exact same inequalities.

[H]igh-status people must have an initial advantage in adopting a beneficial practice; networks must be characterized by homophily; and the probability of adoption by any actor must be increased by the prior adoptions of his or her network peers. It follows from this that networks may reduce inequalities under two conditions: first, if initial advantage with respect to a beneficial is negatively related to SES⁷⁰ or other measures of privilege (inverted advantage), and, second, if homophily is insufficient to amplify initial advantages. (DiMaggio & Garip, 2012: p.109)

⁶⁹ Reservation price is “the combination of time, money and effort [spent] toward adoption” and it is “ordinarily associated with financial resources (more wealth, fewer trade-offs) as well as with advantages such as education that may enable one to understand a practice’s potential benefits or to employ it more productively” (DiMaggio & Garip, 2012: p.95).

⁷⁰ Socioeconomic Status

Inverted advantage refers to “cases in which a group that is subject to discrimination, social isolation or both acquires a niche that becomes profitable or prestigious” (*id., ib.:* p.109) or to cases in which “the initially privileged are more likely to participate in [...] harmful activities” (*id., ib.:* p.110). Limited homophily, on the other hand, refers to cases in which “actors intentionally form ties to alters who are different from themselves (e.g., in order to benefit from social learning or externalities); or because salient status characteristics are imperfectly related (as is almost always the case)” (*id., ib.:* p.110). In such cases, “some network ties serve as bridges among groups differentiated by relative privilege [and] generate small worlds – global networks characterized by concentrated regions of densely connected actors united by bridging ties that facilitate the rapid share of information” (*id., ib.:* p.110). Considering our analysis in the previous chapter, one can say that the internet is a case of limited homophily (Castells, 2005, 2010; Chapter 4, section 2. and section 4.), as “status differences between match-makers and match-takers are significant, and high-status alters are [often] willing to use their information or contacts to help lower-status associates”, hence contributing to minimize inequality (DiMaggio & Garip: p.111) and defying the established powers in place (Chapter 4, section 3.). We will go back to this below.

Having understood the relation between networks and inequality, we now follow up again with Menger’s analysis of cultural policy.

The emphasis on creativity and creative industries has gained ground in the public cultural discourse and political agenda as a way to narrow the gap between top-down approach of the state-centred cultural policy doctrine, and the bottom-up approach of spatial agglomeration-driven generation and exchange of ideas and increasing returns to skills in the knowledge economy. At a nation level, a usual social welfare function implies that inequality in income and in various kinds of resources should be reduced. In essence, this implies a more egalitarian distribution of human capital. Human capital development (mainly through a rise in average educational level) translates into rising cultural consumption and rising demand for cultural amenities, leveraging therefore increasing supply of culture. (Menger, 2013: p.14)

However, the focus of modern political attention in large-scale cities somehow contradicts such social welfare goal, as investing in already dense urban centres only promotes and reinforces significant differences at national (and international) level. In line with DiMaggio and Garip (2012), Menger (2013) argues that “major centres are likely to be more densely

connected to each other across the world, and to build a tight network of world cities, as shows in numerous recent studies” (p.14-15) – the homophilous network of major urban centres.

According to the author, if, on one hand, these agglomeration economies and networks seem to result in terms of boosting creativity and innovation, on the other, they are also contributing to a more unequal distribution of resources and opportunities around the world - not only in terms of urban concentration (as opposed to the desertification of rural areas) but also in terms of social injustice and segregation at a local level, due to “large numbers of migrants attracted and housing prices distribution even more skewed than wage distribution of the population of residents.” (*id., ib.:* p.15).

Menger’s perspective is reinforced by Grodach, O’Connor and Gibson’s ideas (2017), which highlight inequalities within cities themselves, as consequence of economic-driven approaches to cultural and urban policies.

Under the rubric of ‘creative industries’, the cultural economy has been positioned as a central part of a ‘knowledge economy’ defined by advanced services, information technologies, and a workforce high in human capital (...). The rise of knowledge and innovation-driven industries has defined urban economic restructuring since at least the 1980s. This growth is typically framed as a response to the deindustrialization and loss of employment in older, heavy manufacturing industries in most OECD countries. It is also a specifically urban process. (...) Policy around this narrative typically does not directly target cultural industry development, but is rather geared toward remaking the CBD⁷¹ for the knowledge industries and advanced business services more broadly. (Grodach et al., 2017: p.18)

Such strategies, under the purpose of urban regeneration, have instead led to processes of gentrification, “contributing to the displacement of residents and small, independent, and artistic businesses” (*id., ib.:* p.19).

Framing the creative economy around primarily knowledge industries in these regeneration strategies across many places has thus contributed to a bifurcated and polarized economy of highly skilled professionals working in the knowledge economy and often a minority and immigrant workforce in the lower wage services industries.

⁷¹ Central Business District

Related to this, a second policy stream looks to the cultural economy to drive consumption and play a role in place branding. Local governments now routinely approach culture as an amenity to attract tourists, increase consumption spending, and improve city image (Grodach et al., 2017: p.18).

As the authors conclude, such political strategies have framed the cultural economy “as a replacement for an outmoded manufacturing economy (...) and a means of redeveloping under-valued land in the urban core. This has exacerbated uneven urban development while threatening segments of the cultural economy workforce itself – especially the ‘independent’ subcultures at the heart of many forms of cultural innovation (...) – thus undermining the gains from existing cultural economy policy.” (*id., ib.:* p.19).

As an alternative, the authors suggest the importance of designing new policies focused on the relationship between cultural industries and small and medium enterprises (SMEs), more capable of providing “stable, higher-quality and more accessible employment than tourism and consumption-oriented redevelopment”. (*id., ib.:* p.19).

Unlike traditional manufacturing industries that compete on cost or volume, small manufacturers and cultural production firms alike compete on innovative design, product differentiation, and specialize in customized production (...). As a result, these firms tend to be highly place-bound and locally-integrated (...). And, when owned by employees themselves, small manufacturers tend to be more innovative, and thus resilient to wider market volatility (...). Possibilities exist for more equitable and collaborative forms of enterprise development in small-scale cultural production, compared with the corporate investment in knowledge, finance, property and consumption sectors that typically dominate regeneration strategies (...). Additionally, small manufacturing enterprises have been shown to make important contributions to environmental sustainability, commercial innovation, and exports (Grodach, 2017: p.19).

Besides the interesting synergies between cultural industries and local SMEs in other sectors (such as architects and building components industry, designers and ceramic producers, film and specific craftspeople, etc.), the authors also signal as evidence to validate their recommendations the rising importance of recent trends such as “‘localist’ movements defined by fair trade, local consumption and customized products”, manufacture and niche production made possible by new technologies and regionally embedded networks (*id., ib.:* p.19-20). To some extent, this “revival of customized, craft production and flexible

specialization [which] is better enacted by small businesses” suggests a market response to what some authors refer to as the crisis of the large corporation and standardized mass production. However, this thesis is not at all consensual (Castells, 2010: p.167). We will go back to this in section 4. below.

On another level, this recent prominent approach to cultural policy has revealed ineffective in tackling social inequality within the cultural sector as well. Despite the already analysed characteristics of cultural work (Chapter 3, section 5.), “CCIs⁷² show significant variation in their individual ‘openness’, although there is a general under-representation of those from working-class origins across the sector (...) [and] even when those from working-class backgrounds enter certain CCIs, they face a “class origin pay gap” compared to those from privileged backgrounds” (O’Brian et al., 2016: p.116). Adding to that, there seem to be “clear differences between the occupations that are currently aggregated together by policy-makers to represent the economic performance of CCIs”, which, as the authors argue, inevitably results into inappropriate policies for all the sectors included in such aggregation (*id., ib.:* p.117).

According to Kate Oakley and Dave O’Brian (2016), in their study of the relationship between social background and cultural consumption and production in the United Kingdom, “[t]he narration of culture’s importance to the service economy means a focus on culture’s role in replicating economic forms of inequality is given greater importance” (p.2; see also Chapter 5, section 1.). The authors analyse such inequalities on the basis of cultural consumption and production (usually treated separately in research). The authors depart from the idea that “cultural products matter because they shape how we understand ourselves and our society and thus the question of who gets to make cultural products is a profoundly relevant one” (*id., ib.:* p.3).

The role of culture within society’s systems of worth and valuation is manifold. It is not simply that individuals lacking the right sort of cultural capital (...) may be marginalized, but also that the output of the cultural industries themselves is part of how we understand class and status. The workforce of these industries, the ‘creative class’ (...) celebrated by policymakers and depicted as key to economic growth in both developed and developing economies (...) is seen

⁷² Creative and Cultural Industries

to be endowed with particular characteristics – flexibility, adaptability, creativity and even ‘tolerance’ – which are themselves often the product of social stratification. To be lacking in these qualities is to be designated as not having value or worth in a society in which (...) ‘definitions of worth that are not based on market performance tend to lose their relevance where market fundamentalism is exercising strong homogenizing pressures on collective identities and on shared definitions of what defines a worthy life’. (Oakley & O’Brian, 2016: p.4)

From a consumption point of view, it is pretty clear that, for example, in the UK, “The wealthiest, better educated and least ethnically diverse 8% of the population forms the most culturally active segment of all” (*id., ib.:* p.4). Despite different perspectives to this reality and lack of information from other countries, what is here important to highlight is that “The idea that not engaging in formal cultural activity is a problem relates to the change in society that has seen cultural engagement become a marker of a particular kind of ‘normality’. An illustration of this new normal comes in the figure of the omnivore. In this case, higher status results from the ability to range widely in one’s cultural consumption patterns, to show an easy familiarity with both ‘popular’ and ‘high’ culture, and crucially to know what sorts of popular culture to espouse.” (Oakley & O’Brian, 2016: p.5). On the other hand, “Contemporary cultural divisions separate those who possess cultural capital from those who lack it by the former’s inclination towards the ‘new’ and ‘cosmopolitan’ tastes (...), or [by] ‘Having a wide range of cultural interests is a form of, rather than an end to, processes of social distinction’” (Oakley & O’Brian, 2016: p.5-6).

This is evident in the education system, where “despite an overall expansion in the undergraduate population, sharp stratification remains. While higher education is often seen as a field that has the potential to confer value through the accrual of different forms of capital, participation does not guarantee this (...). There is clearly clustering of students from more privileged backgrounds within elite institutions (...) and retention figures are also higher for students from more advantaged backgrounds” (Oakley & O’Brian, 2016: p.6). It is also important to refer that, parallel to the increase of degree courses, work-related learning schemes (placements, internships, incubation, etc.) have also proliferated over the past years (*id., ib.:* p.8). To some extent, this has contributed to reinforce the already existing inequalities, limiting the access of students whose parents cannot afford to cover for such long training periods or do not have personal networks that can help support such bulky

investment in education (*id., ib.:* p.9-10). It is thus easy to understand why “the cultural industries workforce [in the UK] shows a social skew, [with] some 44% [coming] from families where parents are degree-level educated, while 14% were privately educated, double the national average of 7%” (*id., ib.:* p.9). Again, as we have seen before (Chapter 3, section 5.), informal networks are crucial: “Knowing people who already work in the cultural and creative industries offers a multitude of advantages that help ensure that the narrow class basis of the sectors is replicated inter-generationally” (*id., ib.:* p.10). Informal recruitment methods, personal and social networks are thus central to the cultural sphere and work conditions or age become determinant barriers to entry, as candidates need to have enough flexibility (in terms of money and time) to compromise with such long periods of low or unpaid work, self-employment, multiple job-holding, long working days and lack of pensions, insurances or paid holidays (*id., ib.:* p.10)... Which, as we have also seen before, are no longer characteristics unique to the cultural labour markets: “The ‘creative class’, ‘hipsters’, ‘neo-bohemians’, even ‘slashies’ (so called because they hold multiple job titles simultaneously) and so on have spawned a large literature of their own, one where critique is sometimes in danger of being appropriated as a lifestyle guide” (*id., ib.:* p.10).

Through this analysis of the UK situation, Oakley and O’Brian (2016) highlight the possible negative impacts of the arts in reproducing social and economic forms of inequality and incorporating them into cultural construction – and hence even reinforcing this same inequality (the problem of underrepresentation). What is interesting about looking at the UK situation is that first, such research is available and up to date, second, the British model of cultural policy making is internationally popular (Oakley and O’Brian, 2016: p.12), and third, considering the assimilation of the creative industries approach by EU cultural policy (as in other parts of the world), it can be indicative of problems that need to be urgently addressed – if not more, because of the uncertainty brought about by Brexit as United Kingdom itself is stepping back from an EU copyright directive proposal to which the country was one of the leading designers/ promoters (BBC, 2020).

Oakley and O’Brian’s (2016) study offers some good insight about the reasons behind underrepresentation of working-class in CCIs. However, it is important to add that “even when those from working-class backgrounds are upwardly mobile into Britain’s high-status

occupations they face a “class origin pay gap” that prevents them from enjoying equivalent earnings to those from intergenerationally stable backgrounds” (O’Brian et al. 2016: p.120). This seems to be a general trend among CCIs, suggesting not only the existence of persistent social exclusivity and elitism (*id.*, *ib.*: p.123) but also reinforcing the thesis of geographic disparities (*id.*, *ib.*: p.127). But differences between subsectors also reveal evident, pointing to problems about CCIs aggregation.

There is a clear question raised as to the coherence of aggregating CCI occupations into a single sector of the economy. Here our analysis speaks directly to a longstanding concern within academic literatures on CCIs that the occupational groups included in their definition are simply too distinct from each other to represent a coherent sector of the economy. This conclusion draws attention to the need for a decomposition of CCIs and attentiveness to the diversity within and between the individual parts. (O’Brian et al., 2016: p.128)

Altogether, these studies show that the lack of political attention to inequalities in the CCIs reveals a general state of negligence towards the social consequences and sustainability of both the economic and cultural value that is actually being promoted. In other words, recalling DiMaggio and Garip’s analysis (2012), nothing in terms of cultural policy seems to have been done in attempting to limit homophily within these socially exclusive circles.

Adding to that and picking up on the discussion above (section 1.), as Justin O’Connor (2015) explains, a new group of intermediaries has emerged as a result of the amalgamation of concepts and strategies around the political approach to culture from the past decades. According to the author, this is the result of “the changing relations between culture and economy, the former [being] concerned with the culturalisation of the economy and the latter with the utilization of culture as economic resource” (O’Connor, 2015: p.376). This last prominent neo-liberal approach has resulted in the growth of the creative industries and the emergence of a whole new range of intermediaries (or gatekeepers) in the cultural sector (and reinforcement of the role of the already existing ones).

Intermediaries actively work within these ‘economic imaginaries’ and help circumscribe a set of activities which can then become the objective correlate of policy intervention and measurement. (...) [I]ntermediaries here are conceived as those who ‘shape and regulate’, ‘organize and govern’ the creative economy. They negotiate ‘power struggles’ and ‘tensions’ around ‘contradictory or resistant elements that cannot be incorporated in particular economic

imaginaries’, and they ‘link actors from different fields but actively transform the knowledge that is being transferred’ (...). That is, one has to do with the intermediaries of a particular policy project, an ‘economic imaginary’, who have already begun to shape, organize and regulate a designated economic space laid open to various forms of ‘observation, calculation and governance.’ (...) (O’Connor, 2015: p.375).

With the rise of the cultural industries in the twentieth century, “cultural intermediaries became increasingly engaged with economic development and urban policy agendas as a way of creating a context in which they could prosper. (...) [T]his engagement came with a powerful imaginary in which culture and economy would be combined in new ways that would transform the city.” (*id., ib.*: p.379). However, with the rise of the creative industries in the last decades, and its consequent democratization of culture, appropriation of cultural movements by industries, increasing precariousness and self-exploitation of workers, and removal of the artists from creative work, the economic role of culture became even more evident (*id., ib.*: pp.382-384).

[T]he terminological shift from ‘creative industries’ to ‘creative economy’ indicates a growing awareness by government agencies that this general mobilization does not necessarily have to restrict itself to the creative sector – those subsectors initially designated by government as creative industries – but can pervade economy and society more generally (...). In this context, cultural intermediaries not only may be irrelevant – this is the age of social media! – but also, in their attachment to purely ‘cultural’ forms, may even be an obstacle. (O’Connor, 2015: p.384)

Nevertheless, regardless of O’Connor’s predictions, despite the important role of intermediaries (gatekeepers) in cultural markets, it is not entirely up to them as individuals the duty of shaping, regulating or organizing an entire economic imaginary or sector alone. As we have discussed before, institutions still have a fundamental role in shaping and governing economy and our everyday life (Chapter 4, section 3.). In particular, the state plays an essential part, namely through the exercise of writing and implementing laws that accommodate everyone’s interests as much as possible in trying to regulate our relations – being them economic, cultural or social.

Following up on the various reflections upon cultural policy in this chapter, and recalling David Throsby’s notions of economic and cultural value (Chapter 3, section 4.), one can say that cultural policy is mostly concerned with these two types of value (or capital). As we have seen,

the creative industries strategy is clearly a response to economic goals. And because governments have failed in addressing (or even establishing) cultural goals, it seems plausible to worry about the sustainability of such strategy and even fear for even more devastating consequences (namely, in terms of cultural diversity and inequality) than the ones we have already discussed.

It was under this complex context, as we have seen in section 1. of this chapter (see also Chapter 1), that copyright laws have gained a central importance as a cultural policy instrument. However, the prominence attributed to economic aspects of culture have also affected the way in which such laws has been reformed and applied in the past few years.

3. Copyright⁷³ and Cultural Policy: Substitutes or Complementary Instruments?

As we have seen before, copyright represents a key instrument both for corporate strategy and for political action (Chapter 5, section 1.). In this section, we will consider the discussion about the role of copyright as a cultural policy instrument.

According to Ruth Towse (and as we have discussed in Chapter 3, section 2.), although “The term creative industries is new, the industries it covers are not. It seems to be a British invention that parcels together what were previously known as the arts (‘high’ culture) and the cultural industries (mass produced ‘low’ culture)” (Towse, 2002: p.6). Despite the many misunderstandings and models, the creative industries and its related policies have

⁷³ Despite the prolific research on copyright issues, particularly within cultural economics researchers (for example, the Society of Economic Research about Copyright Issues (SERCI): <http://serci.org>, but also from legal studies - for example, from the Institute of Information Law, at the University of Amsterdam: <https://www.ivir.nl>; and organizations (for example, from the World Intellectual Property Organization (WIPO): <https://www.wipo.int> ; the UK Copyright and Creative Economy Centre of the University of Glasgow CREATE: <https://www.create.ac.uk>; or the Communia Association: <https://www.communia-association.org>), we have chosen a selection of studies that allow an overview on the relationship between copyright and the creative industries, notwithstanding the interest and quality of other that were not here referred.

progressed (see Chapter 3, section 2.) and “in all these industries, producers rely upon copyright law to establish property rights and protect revenues and this has therefore become a unifying feature of the creative industries” (Towse, 2002: p.7). In a recent paper, Ruth Towse uses Frey’s crowding theory⁷⁴ to explain how copyright “offers a combination of intrinsic and extrinsic reward” (Towse, 2010: p.461).

Copyright consists of two elements, economic and moral rights: economic rights generate extrinsic reward albeit via an indirect channel that may have some ‘crowding in’ features; moral rights are almost entirely intrinsic rewards, though they can be used to extract pecuniary (extrinsic) payments by with-holding permissions (...). Many creators have a strong preference for royalty contracts, although future payment is financially risky, even uncertain, and they prefer that to a financially equivalent spot payment that buys out their rights (...). It may be that the process of getting your work accepted through the hoops of gatekeepers (...) itself affords recognition and intrinsic satisfaction (...) Creators regard copyright as giving them the right to share in the fate of their work as it reaches its audience and, by contrast to government grants, the impartiality of the market is the deciding factor. (Towse, 2010: pp.464-465)

In line with our discussion in Chapter 3, this perspective comes supported by Throsby’s “‘work-preference’ models of artists’ economic decisions about their allocation of labour time to arts and non-arts work” (*id., ib.:* p.466). According to Throsby, artists decide between spending their time developing commercial work (‘extrinsically’ rewarding) and creative work (‘intrinsically’ satisfying). In her paper, Towse (2010) continues, presenting other theories about the different motivations of artists to work. Nevertheless, and in line with the uneven income distribution in artists’ labour markets (Chapter 3, section 5.), the author concludes that “skewed distribution of income is observed in relation to copyright earnings – those of the superstars are very high and the others’ are derisory” (*id., ib.:* p.467). This unequal distribution translates into poor bargaining power from the vast majority of the artists when negotiating their royalty contracts (with gatekeepers) and “strengthening copyright has not apparently resulted in boosting royalty payments” (Towse, 2010: p.467). Two main problems arise at the centre of the recent copyright debate: extension and scope (complexity).

⁷⁴ According to Frey and Jegen (2001), “The Motivation Crowding Effect suggests that external intervention via monetary incentives or punishments may undermine, and under different identifiable conditions strengthen, intrinsic motivation.” (p.589)

Copyright law since the English Statute of Anne in 1709 (which itself was preceded by considerable debate) has set down the main tenets according to which subsequent changes to the law have been and continue to be made. Those changes have extended the scope and duration of the term of copyright by applying the underlying principles to new art forms and technologies. (...) [C]opyright's law accretions have become exceedingly, some would say excessively complex, without enabling it to ride the 'digital challenge' now facing policy-makers. (Towse, 2011: p.103-104)

To Towse (2010), if we wish to understand the relationship between copyright and cultural policy, three main things need to be addressed: "first, the creative industries paradigm fails to focus on creativity in the sense of the creation by individual creators of the novel creative content that forms the core of the creative industries⁷⁵; second, the need to research the motivation that copyright offers these creators; and third, the need for reliable national statistics for measuring creative activity" (p.474).

As we have seen in Chapter 3 (section 4.), one of the major challenges to understand the actual effects of copyright in economic and cultural terms is the almost impossible task of measuring creativity. Measurement seems to be almost impossible both at national and international level (*id., ib.*: p. 7). Therefore, although copyright has become central as a political instrument in the creative industries context, different countries adopt different indicators and strategies, often being "divorced from cultural policy" (Towse, 2002: p.8). Politicians continue to search for academic support about "the balance of costs and benefits to the various stake-holders and enable governments to make evidence-based policy" (Towse, 2011: p.102). The problem is, as Ruth Towse points out, very few economists have shown interest in copyright issues or are extremely critical even about the actual need for its existence (*id., ib.*). Still according to Towse, copyright is a second best solution for the market failure that results from the tension between "the economic incentive to create works of art, literature, music and so on as against the disincentive it causes to users, whether intermediate producers or final consumers" (Towse, 2011: p.105).

Almost all economists are agreed that the copyright term is now inefficiently long with the result that costs of compliance most likely exceed any financial benefits from extensions (and

⁷⁵ Again bringing back the idea of the symbolic/ cultural and material/ commercial trade off of the cultural sector (see Chapter 3, sections 3., 4. and 5. and Chapter 5).

it is worth remembering that the term of protection for a work in the 1709 Statute of Anne was 14 years with the possibility of renewal as compared to 70 years plus life for authors in most developed countries in the present, which means a work could be protected for well over 150 years). (...) In addition, the scope of copyright is very broad and nowadays covers many items of no commercial value that were never intended to be commercialized, as is the case of a great deal of material on social-networking sites. (...) In general, the lack of discrimination in this 'one-size-fits-all' aspect of copyright is another subject on which economists are agreed: in principle, the incentive should fit the type of work depending upon the investment required, the potential durability of the work and so on – computer software and operas do not have much in common. (...) As it is, that copyright is recognized to have become excessively complex and therefore very costly for users and authors. (Towse, 2011: p.105-106)

Apparently, however, it has not become costly enough for the gatekeepers – or, at least, not for some of them (see Chapter 5, section 1.) In addition, lays the fact that authors usually need to rely on such gatekeepers (intermediaries) to manage and distribute their work, leaving in their hands the determination of their eventual financial reward (Towse, 2011: p.106). As a result, “only a small minority earn an amount comparable to national earning in other occupations and only 'superstars' make huge amounts. Copyright produces limited economic rewards to the 'ordinary' professional creator” (*id., ib.*). We will discuss this further in Chapter 8.

Many have been the attempts to circumscribe the value of copyright (see section 1.). In 2011, Christian Handke compiled a comprehensive summary on the research about the economic effects of copyright to that date. Despite some interesting results, Handke underlines a few inherent difficulties to the study of the economic effects of copyright, namely:

- The difficulties to measure the value of copyright as, unlike the patent system, there is no need for registration (Handke, 2011: p.10) or, as Towse puts it, “Copyright’s scope is universal with the definition of the law. Even where copyright may not be regarded as useful in the production of some cultural goods or services, it still applies” (Towse, 2011: p. 111);
- The substantial differences between the different creative industries that produce copyrighted goods “for example, in terms of size and growth, cost structure, and relevant demand conditions such as the substitutability of unauthorized and authorized copies” (Handke, 2011: p.9);

- “studies on the size of copyright industries tend to be commissioned by interested parties (...) [and] there is a tendency to exaggerate figures (...). A related problem is that the underlying methods are often not fully transparent” (*id., ib.:* p.17)

This makes it particularly hard, for example, to understand the actual impact of piracy in sales loss or the “real cost to the industry – losses in profit rather than sales”, somehow suggesting “copyright law is anyway excessively complex and unnecessary if suitable business models are developed that would enable the market alone to reward the owner” or even that “copyright inhibits the development of these models” (Towse, 2011: p.108). From a Schumpeterian perspective, copyright is thus an instrument to prevent the process of creative destruction (*id., ib.:* p.109), hence, to prevent paradigm shift. Nevertheless, despite all different definitions and approaches and measurement difficulties, considering the aim and object of copyright regulation, Ruth Towse suggests that “anything that is original for the purposes of copyright is creative” (*id., ib.:* p.8) and, as we also noted previously in this chapter (section 1), “Creativity plays the equivalent role in the creative industries to that of innovation in other sector of the economy” (*id., ib.:* p.8). As we have also seen before (Chapter 5, section 1.; Bilton, 1999):

Features common to all the creative industries are high set-up costs for content and low/negligible marginal costs of delivery (...). These are the classic economic characteristics of natural monopolies. These features are responsible, at least in an analogue environment, for market concentration into an oligopolistic industrial structure with a few large firms dominating the industries (Disney, Sony, Seagram, Time Warner, to name a few international conglomerates; ...). We also observe tacit price fixing (the price of CDs has been investigated by the UK anti-trust body, the Monopolies and Mergers Commission). Another feature is the tolerance of small independent companies in these oligopolised industries. It seems they are necessary to the large corporations as a source of artistic R&D (in the music business this is known as A&R – Artists and Repertoire) because large, bureaucratic organisations apparently lack the ability to spot talent at an early stage. (Towse, 2002: p.9)

In other words, through the strengthening of its duration and scope, copyright has also become a strong tool to prevent competition, particularly from new emerging firms, running against its very original purpose. As Ariel Katz explains, “copyright law was not born as a response to a world of free copying. Quite the contrary, as much as it was responsive to publishers’ demands for statutory exclusive rights, modern copyright law was also a

countermeasure against the oppressive regime of press control in which censorship and exclusive print privileges were conflated” (Katz, 2013: p.210). In fact, “competition policy goals and anti-monopoly measures have shaped the design of copyright since the Statute of Anne, and (...) the first British copyright act sought to encourage learning by granting limited exclusive rights operating within a competitive market system.” (Katz, 2013: p.218).

Copyright duration establishes a boundary between private property and the public welfare. On one side, copyright’s grant of a limited term monopoly operates as an effective incentive system for the production and distribution of creative works. On the other side, there is an intellectual commons. Without a rich and robust intellectual commons, the resources available for future work are diminished. (Shapiro, 2001: p.11)

However, in agreement with Towse and many copyright researchers, Katz defends that “the utility of time has diminished as the term of copyright increased through a series of copyright reforms. The public benefit arising from current copyright terms that can easily exceed a century is highly doubtful” (Katz, 2013: p.212). In fact, following up on the 1993 European’s copyright extension directive (Directive nº 93/98/CEE, Council of Europe), the USA passed, in 1998, the Copyright Term Extension Act (also known as the Mickey Mouse Protection Act or the Sonny Bono Act) which increased the duration of copyright to the life of the author up to plus 95 years, actually freezing the public domain for 20 years (Shapiro, 2001: p.11; see Chapter 1). The same concerns also arise in relation to widening copyright’s scope and complexity or narrowing its exceptions and limitations. As Katz puts it, “the main advantage of relying on internal copyright solutions [as opposed to external competition law] is that this method regulates some uses of existing works as commons” (Katz, 2013: p.218), which are essential for artistic practice and cultural development, as we will see in Chapter 7.

According to Towse, what is also important to highlight is “that individual creators who supply the novel content face radical uncertainty, whereas the firms in the creative industries ‘know more’ (see also Chapter 5., section 1.). Firms can pool risk by holding a portfolio of copyright assets of different ages and riskiness and have access to capital markets; individual creators can rarely do either. Thus, there is an inherent asymmetry between creators and firms and that is unintentionally exacerbated by copyright law, which not only establishes property rights but also creates assets – a case of unintended consequences” (Towse, 2002: p.9-10).

This is particularly favourable to the so-called cultural industry giants (as seen in Chapter 5, section 1.; Bilton, 1999).

Copyright allows these monopolies to exist, in trying to tackle the Baumol's Cost Disease market failures (Chapter 3, section 4.), on one hand, and the characteristics of arts labour markets (Chapter 3, section 5.), on the other.

Copyright plays a role in artists' labour markets by protecting property rights to artistic creation and by providing both a financial incentive in the form of royalty earnings and a non-pecuniary incentive through moral rights and the recognition of artistic status. But while copyright law creates rights, it cannot guarantee rewards, notwithstanding the rhetoric of lawyers and artists' organisations; the value of copyright royalty rates is decided in the marketplace and it is therefore artists' bargaining power with firms in the creative industries determines copyright earnings. Artists' bargaining power is, however, considerably weakened by the persistence of excess supply of creative workers to the creative industries. That is one of the universal findings of research on artists' labour markets. As with artists' earnings from other arts sources, the individual distribution of copyright earnings is highly skewed with a few top stars earning considerable sums but the median or 'typical' author earning only small amounts from their various rights. (Towse, 2002: p.10-11)

We might affirm that, due to artists and small creative structures' fragile bargaining power (consequence of arts labour market characteristics that we have discussed earlier, in Chapters 3 and 5), major companies exercise a sort of 'free riding' over the artificial monopolies created through copyright regulation to protect these exact same artists, that eventually end ripped off from their own rights. As Towse (2002) puts it, "Firms in the creative industries are able to 'free-ride' on the willingness of artists to create and the structure of artists' labour markets, characterised by short-term working practices and oversupply, make it hard for artists to appropriate rewards" (p.9), ultimately absorbing most of the risks of a business controlled by a few number of major corporations and supported by the law.

Unsurprisingly this leads to two related phenomena (which Adam Smith observed in the legal profession of his day – 'the lottery of the law', as he called it in the *Wealth of Nations* Book 1) – very low rewards to the majority of those who work in these industries and very high rewards to the few, whom we nowadays call superstars. It is radical uncertainty that drives this lottery; 'no-one knows'⁷⁶ so they latch on to the famous to provide information about quality. The

⁷⁶ See Chapter 5, section 1.

internal dynamic is that the chance of success is a lure to risk-taking artists, who flock to take their chances. The result is a highly skewed distribution of income. (Towse, 2002: p.12).

If this was already a reality for the cultural sector, the advent of the internet and digital revolution made it even more evident and widespread.

[P]rotectionism is precisely its motivation (...) This is not protectionism to protect the artists. It is instead a protectionism to protect certain forms of business. Corporations threatened by the potential of the internet to change the way both commercial and noncommercial culture are made and shared have united to induce lawmakers to use the law to protect them. (...) For the internet has unleashed an extraordinary possibility for many to participate in the process of building and cultivating culture that reaches far beyond location boundaries. That power has changed the marketplace for making and cultivating culture generally, and that change in turn threatens established content industries. The internet is thus to the industries that built and distributed content in the twentieth century (...) the beginning of the end, or at least a substantial transformation. (Lessig, 2004: p.9)

And, as Towse (2002) explains (following our discussion in Chapter 1), “The very origins of copyright are tied up with the technical ability to copy (...) Until digitization, however, copies of most types of art products were inferior to the original; with digital copying, it is only a figure of speech to make a distinction between the original and copies in relation to some products” (p.12). New digital technologies have allowed “artists to free themselves from dependence on publishers for the marketing of their products, enabling them to retain effective control over their IP⁷⁷” (*id.*, *ib.*: p.13). Furthermore, new business models have changed the way in which people used to access art works, with strong impact in distribution businesses, from physical retail to online sales, based not only on copyright but also in strategic prices, product bundling, network effects, experience effects and versioning, lead time, digital rights management (DRM), taxes on blank supports and copy technologies (Watt, 2014: pp.19-23) and, more recently, blockchain technologies, only to name a few options – although often proven inefficient. According to Towse (2002), “There is a variety of market and non-market price regimes, each with a different set of incentives and rewards to economic agents on the supply side and to consumers of products containing copyright material on the demand side. The question is how much of this is reaped as reward by

⁷⁷ Intellectual Property

creators of content and how much accrues to the firms in the creative industries.” (p.13). And as the author also suggests, “Throughout its 300 years’ history, copyright has adapted to technological change, while retaining essentially the same legal and economic principles” (*id., ib.:* p.12). On the other hand, “Markets can find a way, for example, they solved the incredibly complex problem of administering music royalties by setting up private, co-operative collecting societies” (*id., ib.:* p.16). However, none of these solutions has resolved the asymmetry of information and consequent uneven bargaining power between artists and firms. In fact, it has only been reinforcing the already established homophilous networks of power (see section2.).

The vastly stronger bargaining position of these firms is rooted in the economies of scale and scope and network economies of the creative industries, which has led to large oligopolies and, by contrast, weak organisation of creative and performing artists in highly competitive labour markets characterised by patterns of short term employment and casualization. (Towse, 2002: p.17)

In fact, instead of contributing to balance such asymmetry of market power (the very reason why copyright was originally created), in the recent years, this difference has only been “further exacerbated by the role of copyright in turning a work of art into a durable asset long out of the control of the original author” (*id., ib.:* p.17). On the other hand, through their easier access to capital markets, “Large firms have the ability to obtain capital and to pool risks by holding a broad portfolio of assets (...). By contrast, creators initially have only their human capital as collateral. Having copyright on your works does not help if you have to sell it to finance basic living costs.” (*id., ib.:* p.17-18). In other words, copyright tends to favour those already in power, hence, failing to fulfil the purpose of its own existence to protect creators.

Also according to Ruthe Towse (2002), although it was created as “a means of regulating the uneven bargaining position between individual creators and the firms in the creative industries who hire them”, copyright law has the exact opposite effect:

Various solutions have been suggested to strengthen the position of artists: strengthening copyright to enable creators to trade on the open market; state organisation of royalty and other copyright payments so the state bears the transaction costs; state grants to artists and other creators, which reduce the necessity for them to sell their work cheaply; state-organised

capital loan schemes to enable artists to exploit their works themselves; state-organised loan guarantee schemes combined with private finance (like the US student loan scheme); competitions and prizes to reward successful creators. The first solution, as I argued above, has the opposite of the desired effect as it increases the asset value of copyrights and thus the tendency to oligopolisation of firms in the creative industries; the second has resulted in very high transaction costs in those countries where it has been adopted; and the remainder are essentially means of rewarding individual creators as an alternative to copyright law. (Towse, 2002: p.18)

The author agrees that “The most serious problem of copyright is an economic one – the tendency to oligopoly in the creative industries” (as thoroughly discussed in Chapter 5, section 1.) and, for that reason “copyright policy (so often in the hands of lawyers) should explicitly take cultural issues into consideration.” (*id., ib.:* p.19). This suggests another serious problem, which is a cultural one: controlled by a very small number of large conglomerates (often not even evident when it comes to their real scale and market dominance, as we have seen in Chapter 5, section 1.), copyright allows these players to control a great deal of what is both produced by artists and enjoyed by the end-users/ audiences/ consumers. In other words, due to art markets and labour markets characteristics, copyright seems to contribute to empower even more the already strongest incumbents, granting them greater control over access not only to economic capital but also to cultural capital (in Bourdieu’s sense; see Chapter 4, section 3.) and, hence, reinforcing inequalities and reducing society’s welfare overall – to which, as seen in section 2., cultural policy also does not seem to be able to respond.

Copyright is essentially pragmatic and is based on perceived net social benefit. However, focus by policy-makers of the creative industries in the form of their size and contribution to GDP and to economic growth emphasizes financial benefits and ignores cultural benefits as well as costs. Net social benefit is contingent on the state of technology and on cultural perceptions and therefore needs reviewing as technologies and consumptions habits change but so far this has just led to additions to statutes and extensions of copyrights duration and scope. Moreover, copyright is a line in the sand and moving the line by changing the law redistributes costs and benefits between producers, intermediaries and consumers.” (Towse, 2011: p.118)

In other words, copyright law affects cultural production and, as we have seen before (section 2.), cultural production shapes “how we understand ourselves and our society and thus the question of who gets to make cultural products is a profoundly relevant one” (Oakley &

O'Brian, 2016: p.3). As Lawrence Lessig puts it, "To build upon or critique the culture around us one must ask, Oliver Twist-like, for permission first. Permission is, of course, often granted – but it is not often granted to the critical or the independent. We have built a kind of cultural nobility; those within the noble class live easily; those outside it don't" (Lessig, 2004: p.10-11). For this very reason, cultural policy should be called to action, by taking in consideration the persistent homophilous networks and crescent inequalities (section 2.), also caused by the current copyright system.

The empirical work that has been done is in the context of artists' labour markets, looking at the distribution of artists' earnings from copyright and other sources (royalties appear to contribute very little to the 'ordinary' artist's income). In artists' labour markets there is also a tendency to concentration – the superstar phenomenon. The selection of superstars, however, relies upon a pool of artists (creators) and encourages oversupply with the result that rewards are depressed. Creators often work alone or in small 'craft' firms and, though their work is protected by copyright when it is sold on, these small operators are very vulnerable to economic pressures, reflecting the uneven bargaining power with purchasers in the creative industries. The vicious circle, however, is that strengthening and extending copyright does not solve the problem, it may indeed exacerbate it. Thus copyright policy cannot alone solve this problem. It is a matter for cultural policy too. (Towse, 2002: pp.19-20)

In other words, and following up on our previous discussion (Chapter 4, section 1.), "The case for state subsidy to the arts and culture based on market failure remains as valid as ever and there is no reason to suppose that copyright law and the creative industries paradigm nullifies that" (Towse, 2010: p.475) - in fact, it even seems to worsen it. Public intervention is critical in many respects, as we have discussed throughout this chapter, but if copyright regulation is not taken or at least informed by cultural policy in parallel, the result can be disastrous.

Poorly designed regulation may cause more harm than good; stifle innovation, growth and job creation, waste limited resources, undermine sustainable development; inadvertently harm the people they are supposed to protect and erode the public's confidence in government." (Beales et al., 2017: p.3)

What seems to be evident is that, despite all the problems and inaccuracies described above, interest groups in the "creative industries have spent huge amounts of money lobbying governments for increased copyright protection both through strengthening the law and demanding stronger enforcement, not only within national boundaries but also through

international treaties” (Towse, 2011: p.109) and they do not seem very “interested in objective evidence unless it supports their claims” (*id., ib.:* p.117). This becomes particularly evident when we look at a more international context, as we will see in the next section.

4. World Wide Wars of Copyright: Agreements, Competition, Taxes and the Influence of Other Economic Sectors Over Copyright

As we have seen in Chapter 1, despite the strong territorial aspect of copyright regulations, the complexity of the international framework to which it is tied makes it extremely rigid and difficult to use as a domestic cultural policy instrument. In fact, as we have discussed (Chapter 1, section 3.), even at international level, copyright has been traditionally regarded (and treated) as isolated from other cultural policy affairs. On the other hand, the emergence of the creative industries and dissolution of cultural issues within them, as we have seen previously, has given way to the rising importance of copyright (Castells, 2010; Tian, 2009; Towse, 2011). Following up on what happens with creative industries institutional guardianship (see section 1.), at a more local government level, copyright affairs are also often disputed between culture and economy ministries (as it has been recently the case in Portugal⁷⁸). As in the case of Becker’s “art worlds” argument (see Chapter 4, section 2.), copyright legislation (as any other law) results from a series of tensions and discussions, an equivalent construction of a “world”, in this case, a “copyright law world”.

Although it has only recently emerged into the mainstream of political debate, copyright has long been a controversial subject. The law tends to depoliticize issues so that they seem technical and settled, even as they remain contested. However, underneath the seemingly solid

⁷⁸ According to an employee from the International Affairs Department from the Cultural Strategy, Planning and Assessment Bureau from the Portuguese Government interviewed for this research during the conference Challenging (the) Content, promoted by the EU Austrian Presidency, in Vienna, October 2018, recently copyright matters have become under dispute between the Ministries of Culture and Economy.

surface of settled law lies an ongoing battle among various business and social groups to expand copyright in some cases and in the service of some interests, and to restrict it in others. (...) A historical-institutionalist analysis emphasizes that actors deploy material and ideational resources in order to influence the making of copyright law. Ideationally, they do so by exploiting the tensions inherent in copyright between protection and dissemination, and between competing institutions in pursuit of their perceived interests. Materially, they make use of money, political access, and other resources to influence the decision-makers who actually write the treaties and laws that make up copyright law. (Haggart, 2014: p.49)

In other words, through historical-institutionalist analysis, Haggart (2014) demonstrates how capital, institutions and their networks (as discussed in the previous chapter) are critical tools in the construction of the law - in particular, copyright law – in our current globalised economy.

Going back to Oakley and O’Brian’s (2016) argument that “cultural products matter because they shape how we understand ourselves and our society and thus the question of who gets to make cultural products is a profoundly relevant one” (p.3), being copyright a way to control cultural production and consumption, it is not just an economic affair but it also has an important relation to cultural development, hence, to cultural policy (or its absence). As we will see in this section, despite its complexity, at an international level things seem to become more evident as copyright politics clearly reveals the implicit geopolitical and commercial relations that truly motivate its very existence (Tian, 2009; Haggart, 2014; Hugenholtz, 2018).

As Benhamou and Farchy (2009) state, the current copyright policies depend not only on domestic aspects but are also tied to regional (in the case of the EU, for example) and world pressures (p.31). However, territory is not the sole condition for current copyright adjustments: technological development and trade interests are also often at stake. Oddly enough, these aspects seem to have now much more influence over copyright legislation and enforcement than the original interests that justify copyright’s existence: the authors’ individual benefit and society’s access to knowledge (Haggart, 2014; Lessig, 2004).

Embedded in a dense network of domestic regimes, regional and international agreements, intergovernmental relations, and national and transnational businesses and interest groups, copyright policymaking challenges our traditional divisions between domestic politics and

international relations. Digital technologies and the mass politization of copyright have only complicated the situation. (Haggart, 2014: p.5)

In fact, at an international level, there are many examples of how copyright negotiations tend to succumb to commercial interests. For instance, Benhamou and Farchy (2009) explain how the TRIPS agreements have prevented full adoption of the 1961 Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations, despite being central to the agendas of WIPO, UNESCO and the International Labour Organization (p.31). These pressures mostly come from the developed countries, in particular, the United States:

The United States has been remarkably successful in using a mixture of coercion and persuasion via bilateral, plurilateral, and multilateral agreements in various fora to convince other countries to adopt its particular view of copyright even when it is not in their material interest to do so⁷⁹. Such treaties and bilateral actions by the United States suggest a near-unstoppable drive towards global harmonization in copyright laws, a harmonization that events such as the Canadian Facebook Uprising suggest is not necessarily welcome by citizens in other countries. (Haggart, 2014: p.9)

Even in the US itself, reactions to copyright reforms (as we have seen in Chapter 1, section 3.) suggest that not all American citizens are satisfied with the course copyright politics has been taking.

At European level, it is here interesting to recall the Pirate Party MEP Julia Reda's speech at the voting session that approved the European Directive on Copyright and the Digital Single Market, in 2019:

There are three things about this copyright debate that are unprecedented. First of all, 200.000 people have demonstrated against this reform this weekend. 5 million have signed a petition against upload filters. Never has there been such broad protest against an EU Directive. Second of all, never have protests been ignored so thoroughly by this Parliament. Already last summer, voters were confronted with a massive disinformation campaign. Instead of engaging with their criticism, every critical voice was blanketed with insults. Rumours were spread (...), that emails came from bots. The EU commission has called critics a mob. (...) All these defamations (...)

⁷⁹ In fact, it is not unusual to find in international copyright agreements terms such as 'fair use', for example, a condition that is characteristic of the American copyright law, as we had the chance to learn in some of the trainings and conferences we participated during this research.

were launched by a few lobby groups and spread in the opinion pages of certain newspapers, who hope to financially gain from copyright reform. Unfortunately, the disinformation has worked: today, as photos of the mass demonstrations are going around the world, some still believe that the emails didn't come from real people. This belief that all criticism was controlled from the US has inoculated them from engaging with the subject of the concerns regardless of the fact that the warnings of upload filters came from Germany's national data protection officer, from the UN special rapporteur for free speech, and from leading research centres. Third of all, nobody (...) believes in this reform. Nobody in Germany wants to take responsibility for the upload filters which Article 13 will lead to. But the government will... [the speech was here interrupted by shouting from MEPs] Nobody in the government wants to take responsibility for the upload filters not even Chancellor Merkel but the government will vote for them anyway and yesterday we learned why that may be: the newspaper FAZ has uncovered a horse trade between Germany and France in which Germany seems to have accepted upload filters in exchange for France's agreement to the Nord Stream gas pipeline. (...) This experience, this feeling of powerlessness will have a lasting impact. (...) This Directive must not be adopted without changes. That wouldn't be just disastrous for online freedom, it would also rob a whole generation of their trust in politics and that the European Parliament represents the interests of the public. That's why we need to delete Articles 11 and 13. (Reda, 2019)

Brigitte Lindner, Cyril Ritter and Sabine Kirchmayr-Schliesselberger perspectives about the current relation between copyright, competition law and taxes, at the conference Challenging (the) Content, promoted by the Austrian Presidency of the European Commission, in October 2018, are also interesting examples of the debate in place.

We have had 30 years of organic growth of copyright law. We have eleven directives now and two regulations and counting! And this provides a very high level of protection, and at the same time in this legislation there is also a place for the user. So that is a balance system, it is reasonably balanced. And I think it makes European authors and the European creative sector rather competitive. Of course, in 30 years, things have changed: there were technological advances, there are new players, where are the [digital] platforms and other facilitators on the stage now and where there is also the rights of the user. The user also moved from being a passive consumer to being a more active player because the user now can distribute works, the user can change them, can alter them, the user can create new works where existing works can be integrated... So there is a big change on the scene. But we also have to take into consideration here that the European Court of Justice has been very busy in adjusting this copyright law to these new advances (...). So, I would say that, at this very moment, really the

biggest challenge, as we have seen in the last months, is how we maintain this competitive level of protection in an increasingly hostile environment. (Lindner, 2018)

According to Brigitte Lindner, the polemics around copyright reforms are not new: what is new is the hostility of the tactics and mechanics of it which, according to her, research has suggested to be instigated by “darker forces at work”. Nevertheless, the debate on the new European copyright directive had a “happy ending”, with Parliament supporting the “European sector” (Lindner, 2018). This completely opposite position to Julia Reda’s, stated above, suggests the extreme polarization of the debate about copyright in Europe. Later, in the same conference, Katharina Hiersemenzel, Director of Public Policy at Netflix Europe, was asked about her thoughts on what needs to be done at EU legislation level to grant fair payment for producers. To this, she began by correcting the moderator’s question “For producers or for creators?”. This was followed by some giggles shared with a few audience members, indicating an evident confusion of concepts and misalignment of perspectives among different sector stakeholders in the debate. Considering Netflix has been regarded by creators as an interesting platform to launch and distribute their work (ranging from mainstream blockbusters to niche artistic productions), she also addressed the fact that negotiation with collective rights management organizations is not always the best alternative to negotiate with creators, particularly, those based in southern European countries (Hiersemenzel, 2018).

It is also interesting to note that Brigitte Lindner invoked the European Court of Justice resolution on The Pirate Bay Case (see Chapter 1, section 3.) as a reference to the ongoing discussion about digital platforms. Despite being a reference for copyright developments in what concerns digital platforms like “Youtubes”, as Lindner puts it, The Pirate Bay case is very symptomatic of all the interests, conflicts and misunderstanding behind the current copyright debate in the western world. As Peter Sunde, one of this famous peer-to-peer sharing platform founders, states, The Pirate Bay case was not a law suit, it was a political case (Klose, 2013; see also Chapter 1, section 3.). In fact, The Pirate Bay has little to do with Youtube, in terms of technical structure and business model: while one is based on a peer-to-peer (p2p) sharing system, where each member installs a half-client half-server software connecting to a network of peer nodes with similar technical means; the other is a centralized hosting platform, where management is entirely assured by a centralized server and users are easily

identifiable as the central server collects their IP (Internet Protocol) address to establish connection (Benhamou & Farchy, 2009: p.63). Such dramatically contradictory perspectives are visible during The Pirate Bay trial, in Simon Klose's 2013 documentary *TPB AFK – The Pirate Bay: Away From Keyboard*, where defenders and accusers discourses are so disconnected, they almost seem to be speaking a different language (Klose, 2013). But The Pirate Bay or Youtube are not the sole types of p2p or centralized platforms. As Benhamou and Farchy (2009) explain, p2p platforms can be either based on proprietary or open source software (p.61) which, in its turn, as we have seen in the previous chapter (Chapter 4, section 2.), completely changes the way users relate to such networks, both in terms of the benefits they take and the contributions they make to the system. As such, regulations that target the behaviour of digital platforms should take into account such differences.

Another interesting observation is that, in recent copyright debates, at EU level but not only, focus on digital media seems to only add one more layer of intermediation between the original creator of the work (the artist) and the market (the reward). In the words of Cyril Ritter, expert in competition law at the European Commission, the reason why digital companies tend to collaborate or enter joint ventures is usually the will to gather larger data collections, so they can more easily monetize them (namely, through digital marketing techniques). This very much emphasizes network effects and the 'winner takes all' effects, leading to monopoly results, even when there wasn't necessarily bad market behaviour at stake (Ritter, 2018; see also Chapter 5, section 1. and 2.). In fact, network effects often lead to conglomerate effects, which means the more a company is present in certain markets the more it has the chance of entering new ones; this, in turn, leads to economies of scale and scope. This is usually a very different situation from young creative start-ups such as the online music platform Soundcloud (see Chapter 7). When asked about their concerns about the new copyright direction in Europe, at the same Challenging (the) Content conference, Christine Nitsch, Director of Strategy and Research at the German based thriving platform (with about three hundred workers), referred to three main problems about the upcoming copyright legislation in Europe: 1.) the texts remain vague in what concerns liability, 2.) they do not take into consideration the size or the nature of the business or organization, and 3.) copyright is still not harmonized among European countries (Nitsch, 2018). Thus, this makes it particularly challenging for smaller or younger developing structures, with little resources

to allocate to legal issues (as, in their earlier years, they are often more focused in product/service development). Nevertheless, competition law comes in whenever there is the case for anti-competition agreements between firms or abuse of dominance. As Ritter points out, although copyright regulation is more sector oriented, it is a complementary tool to competition law and it should not be legitimized simply because competition law has been ineffective (Ritter, 2018). In other words, competition law and copyright (and other) regulations should work in tandem, at the expense of one being used to break the other. The same principle should apply between copyright and cultural policy.

These new network economies are another good example of Lash and Urry's (1994) idea of "culturalisation of the economic life" (p.109) as they represent identical dynamics to those we find in the cultural markets' star system, as discussed in Chapter 3 (section 5.). In the digital era, network effects allow major firms to become market stars while an excessive supply of smaller, more or less starving entrants wait for their (remote) chance to succeed - what Chris Bilton (1999) calls "The New Adhocracy", analysed in the previous chapter (Chapter 5, section 1.). On the other hand, adding software businesses and cultural industries as creative industries (see Chapter 3, section 2.), the new copyright beneficiaries, has reduced artists (and artworks) to data and marketing instruments, pointing to the idea that the strong lobbying behind copyright reinforcement is not so much a question of protecting artists and existing small and medium structures or of preventing the entry of new value creation proposals in the cultural sector but more about maintaining dominant market positions (way beyond the cultural sector), that provide evident competitive advantages and conglomerate effects of major industry players in the information economy run. This idea is reinforced by what Manuel Castells (2010) calls "the decline of large, vertically integrated corporation as an organizational model" (p.168), described in Chapter 4 (section 2.).

Another important aspect concerning changes in the digital economy concerns tax policies. As Sabine Kirchmayr-Schliesselberger explains, the new major digital players pay much lower taxes than traditional companies (not only in the cultural sector) because the tax system has not yet totally adjusted to the new market organization, where companies do not necessarily have a physical presence. As mentioned before, existing bilateral trade agreements represent a barrier to tax regulation reforms and negotiations have been particularly hard in this field.

And while sectors like print media or broadcasting are subject to double taxation, others are not willing to accept that. That was the case in recent OECD⁸⁰ negotiations on the topic, in which countries like Germany or the United States were willing to accept conditions for the software sector but ended up refusing to adopt them due to potential consequences in their local automobile industries (Kirchmayr-Schliesselberger, 2018). This also contributes to explain why copyright has been such a hot topic: unable to count on competition law or tax regulations to protect creative businesses and under the pressure of cultural and entertainment (copyright) lobbies, policymakers have turned to copyright regulation as it practically concerns the creative sectors only. In other words, as we have seen in this section, the international debate on copyright regulation is currently more an ideological discussion than an informed policy matter. Recalling the 1980s debate about the “measurement of the ‘value’ of the arts and the economic importance of the arts to the national economy”, Christian Handke, Paul Stepan and Ruth Towse (2016) do not hesitate in affirming that copyright “has become increasingly politicized as the sector is seen as a major source of growth, especially in post-industrial developed countries but also for developing countries”, adding that “cultural economists have been well armed to resist these assertions, though lobbyists have mostly managed to grab the attention of policy-makers, not the dismal scientists” (p.150).

What seems to be evident for cultural economists is that the internet represents an important market for informational (symbolic) goods and services and “much internet traffic consists of reproducible cultural works” (Handke *et al*, 2016: p.146). As Handke, Stepan and Towse (2016) put it, “The cultural sector exhibits: radical uncertainty and unpredictable changes in demand; challenges with incentivizing investments in the supply of goods and services that have external benefits and public good characteristics; superstar effects and highly skewed earnings; as well as informal and flexible employment of creative workers” (p.146). In other words, the study of the economics of culture seems to reveal very informative to the digital economy, as it has always dealt with symbolic and informational goods and services and the difficulties of valuing and financing them.

⁸⁰ OECD – Organization for Economic Cooperation and Development

The economics of culture – having long ignored the cultural industries that, ironically, are its principal source of employment and value added – has to a great extent structured itself not around concern for the industrial economy but rather around matters related to public economics and non-profit organizations. As such, ‘free’ culture – in reality, financed by the taxpayer for purposes of public interest (democratization or the demand for diversity, for example) – in essence correspond to the public model, the goal being to organize culture in a way that is free of the demands of the market.

The Internet has very much revived the debate on free culture, bringing with it both confusion and paradoxes, as evidenced by the many conflicting view points on the subject. In France, for example, the Ministry of Culture decided to make certain museums free of charge in order to attract a broader audience; almost simultaneously, it passed rather controversial law banning free downloads – that notorious cultural assassin. (Farchy, 2011: p.245)

Access to culture thus seems to be the essential question behind copyright debate as “the most fundamental impact of digitization on the creative economy is that goods and services that were previously rival and excludable, at least to some extent, have become in effect public goods for the Internet users (...) and the copyright system, the possibility of technical protection methods and perhaps user ethics are the only barrier to ‘free’ use.” (Handke *et al*, 2016: p.150-1). On the other hand, the Internet affects creation processes in all art forms (from music to film, videogames, visual arts and even performance) as it provides new technical tools and collaboration formats that were not possible before (Benhamou and Farchy, 2007; Farchy, 2011; Handke *et al*, 2016). And this is why, cultural policy should have a more active role in copyright debates. Much more than an economic matter, copyright should be discussed in light of its cultural effects and how it interferes in the work of artists (and authors, in general), the core producers of our culture, which, as we have seen repeatedly in this chapter, influences the way “how we understand ourselves and our society” (Oakley and O’Brian, 2016: p.3).

In the following chapters, we will analyse our findings about the way artists perceive copyright and their perspective about copyright’s (economic and cultural) influence to their work. Such perception has helped us develop a simple model of cultural labour market layers, which allows us to understand the effects of copyright on them, in an attempt to contribute to a clearer understanding of the relation of cultural policy to copyright issues.

Chapter 7

BABEL TOWERS AND “COFFEE-MONEY”: WHAT RIGHTS TO WHAT AUTHORS?

*“11:1. And the earth was of one tongue, and of the same speech.
11:2. And when they removed from the east, they found a plain in the land of Sennaar, and dwelt in it.
11:3. And each one said to his neighbour: Come let us make brick, and bake them with fire. And they had brick
instead of stones, and slime instead of mortar:
11:4. And they said: Come, let us make a city and a tower, the top whereof may reach to heaven; and let us
make our name famous before we be scattered abroad into all lands.
11:5. And the Lord came down to see the city and the tower, which the children of Adam were building.
11:6. And he said: Behold, it is one people, and all have one tongue: and they have begun to do this, neither will
they leave off from their designs, till they accomplish them in deed.
11:7. Come ye, therefore, let us go down, and there confound their tongue, that they may not understand one
another's speech.
11:8. And so the Lord scattered them from that place into all lands, and they ceased to build the city.
11:9. And therefore the name thereof was called Babel, because there the language of the whole earth was
confounded: and from thence the Lord scattered them abroad upon the face of all countries.”*
GENESIS 11:1-9, THE BIBLE, PROJECT GUTENBERG
<http://www.gutenberg.org/files/8300/8300-h/8300-h.htm#Book11>

In this chapter, we present the results of the instruments we developed to analyse the relation between copyright and artistic work, from an economic and a cultural perspective: Creative Commons Toolkit for Business and Copywrong performance-as-tool. We first present the main results of our exploratory interviews, which helped us identify what we were really looking for and how we could reach our results. We then present the results collected during the focus groups and collaborative work we developed with copyright experts and artists, which resulted in the research instruments presented in chapter 1: the video-installation *de*

Eus, the Creative Commons Toolkit for Business and the performance *Copywrong*. As explained, from a research perspective, such instruments were developed with the purpose of understanding how artists and cultural professionals relate to copyright. Nevertheless, at the same time, they also allowed to raise awareness about some of the challenges copyright imposes to core artists work and careers. We summarize here the most relevant examples, reactions and feedbacks from different agents and audiences with whom these projects were developed and shared in the course of this field work.

It is important to remember that, as noted in Chapter 2, such results were obtained not through a rigid linear process, but through iterations and retroactive circuits that informed and influenced one another throughout the whole process (Quivy and Campenhoudt, [1988] 1992). It is also important to highlight that not all results have been integrated in this dissertation, as they often were more indicative about the directions to be taken than actually relevant from an information point of view. Such immersive work has allowed us to draw important conclusions that help clarify the role of copyright in artistic work, which became the basis of the model we have been building throughout this text and fully present in the next chapter.

1. Copyright Perspectives: How Different Cultural Agents See Copyright

With the purpose of clarifying the role of copyright for the cultural and creative industries as well as raising awareness about challenges and opportunities to artists and cultural professionals, particularly to those in the core arts group (Chapter 5, section 2.), we have developed two main research instruments that became the pillars of our research methodology (section 2. and 3.). Such instruments were preceded by the early findings of fifteen exploratory interviews and the outcomes of our first attempt to develop case studies (which, as seen in Chapter 2, were later abandoned). They also reflect the results of the four

guided interviews we did to selected lawyers and performers, in different moments of this research process.

As explained in Chapter 2, the various iterations of the analytical model we present in Chapter 8 were developed after several attempts to find the best way to understand, clarify and demonstrate the economic and cultural effects of copyright in core artists work. As said, the starting point of this research was a series of fifteen interviews to cultural professionals, creative entrepreneurs and other cultural agents (from academic researchers to amateur creators) which allowed us to refine our research questions as well as understand the actual doubts and (mis)information cultural workers have about copyright and its effects on their professional practice (being them individual or collective, artistically or economically motivated – see Chapter 3, section 5.). Such exploratory interviews also allowed us to narrow down the group of people about whom this research would focus – the core artists. In a first approach, however, such group included artists, cultural freelancers and entrepreneurs.

Alongside the participation in several conferences and training programmes about copyright and copyright related issues (which we have described in Chapter 2), this exercise led us into developing three different practical instruments aiming to test our hypothesis with different audiences: 1.) the video-installation *de Eus*⁸¹, exhibited at the Faculty of Fine Arts of the University of Porto, targeting arts students and professors; 2.) the *Creative Commons Toolkit for Business*, which combines a series of materials that explain what are the benefits and how can one use open licenses (in this case, Creative Commons) for business model development, addressed to cultural and creative entrepreneurs and freelancers; and 3.) *Copywrog – performance-as-tool*, a performative conference-class prepared for artists and cultural sector professionals, which demonstrates the difficulties and frustrations copyright regulation imposes to artistic practice.

As seen, prior to development of these projects, a series of exploratory interviews and a first attempt to define and analyse six case studies took place, which we later decided not to explore (Chapter 2, section.3). However, this first attempt was crucial to understand this was not the adequate methodology to our research purposes and, although we didn't realize it immediately, these were also not the profiles of people we needed to analyse. It also made

⁸¹ The title means “of Mes”, playing with the idea of the plural self and the Portuguese wording for “of Mes” (de Eus) and God (Deus).

us realize that not only were there questions we had not anticipated but also that we could not assume a mere external observing position regarding our sample.

From the diversity of perspectives and issues raised during exploratory interviews and focus groups (mostly with Portuguese or Portugal based authors or cultural workers but not only), it was possible to identify several common concerns and questions transversal to all of them. Below we describe the first findings that resulted mainly from the interviews we did (exploratory and guided).

- Need for Recognition, not “Coffee Money”

The interviews, above all, confirmed a general feeling of insecurity and lack of information of cultural professionals about copyright regulation implications, very much in line with most empirical studies in the field and confirming the power of this law’s ‘chilling effects’ (which we will discuss below). In fact, apart from lawyers, none of our interviewees had a clear idea of what copyright actually meant and what were its implications to their work. What seemed to be evident was the desire for recognition and although the need for an economic compensation was also often addressed, this didn’t seem to be so central, namely because most of these artists and professionals had never actually earned any expressive compensation from their copyright. In fact, we even had a case of a musician (who is also an architect) who claimed to even be angry with the money his band would receive from the Portuguese collective management society SPA: “We never know what we are going to get. Might be 3 euros, might be 300! And this one time I called them to ask how they calculated it, they even told me ‘oh it’s too complicated, don’t worry about it’. It seems completely arbitrary.” (EI_15). This was later confirmed by one of our interviewees promoting a young TV channel, who managed to negotiate their copyright clearance fees for broadcasting from around 5000 euros per year to little more than 500 (BI_4). As we will see below (section 3.), in our first focus group (FG#1), the financial compensation of copyright was even referred to as “coffee money”, meaning that it did not actually contribute to their household budgets. This conclusion even made a participant inflect on her position towards the relevance of copyright to their practice – which they initially thought to be very central in financial terms – during one of the discussions (FG_1.6). This nonchalance with the financial compensation was also well illustrated by an example lawyer GI_4 shared during his interview: a consecrated Portuguese sculptor he represented on trial was offered several hundred thousands of euros

in exchange for the rights to use the sculptures she had produced for a particular building; she refused all the offers, claiming that her work had been specifically developed for that purpose and was not to be used as merchandise or any other ends. According to lawyer GI_4, this was just one of the many signs of the little respect the building teams showed for the artist's work - who they had hired for her well-known artistic reputation – which went on to the point of even tampering the sculptures she had originally built, to which she responded by destroying them. Another interesting contribution was that of one of our interviewees during the first case study development, that claimed that it is the copy that actually elevates a creative work to the category of art⁸² (BI_4).

- No Trust in Institutions

During the interviews, participants also affirmed a lack of trust in the institutions from which they expected some protection and guidance (resonating to the idea that institutions are still regarded as central, as discussed in Chapter 4, section 2. and 3.), particularly referring to the main collective management society (SPA (Portuguese Authors Society), created in 1925. Most interviewees manifested to have more trust in other similar and more recent structures (such as GDA – Office of Artists Rights, which was created in 1995 to support artists, particularly performing artists, managing their neighbouring rights – see Chapter 1, section 2.) but very little knowledge about their actual functions or even about their existence (EI_6, FG_1.3). This was evident also during all our focus groups (see section 3.) and both lawyers we interviewed (GI_3 and GI_4), referred to emerging artists' associations, at national and European level, as important in trying to cover such lack of trust and respond to artists' actual needs. However, the examples they referred seem to have very confusing structures themselves: Performart⁸³, created in 2015, in Portugal, involves both independent cultural structures, representing artists, but also public organisms and even private intermediaries; or PEARLE⁸⁴, existing since 1991, at a European level, equally involving artists and intermediary organizations; or the European Create.Refresh⁸⁵ movement, created in 2018 to raise awareness about the European copyright directive proposal's risks, which involved individual artists, public and private cultural organizations and creative structures from the digital sector

⁸² We will discuss this further in the Conclusion.

⁸³ <https://performart.pt>

⁸⁴ <https://www.pearle.eu>

⁸⁵ <https://createrefresh.eu>

and research institutes. None of which was ever referred by any of the artists or cultural professionals we talked to.

- The Tower of Babel: Lack of Information and Alternatives

Another not so surprising result from our field research was that no author or cultural professional had a clear idea of what authors' rights are and/or what rights they actually held as authors/ creators, let alone about the alternatives to that – most participants in our interviews and group discussions had never heard about Creative Commons licenses or other open licenses (EI_3, EI_5, EI_7), for example, or did not see how they could be useful for their practice (EI_1, EI_13, EI_15). Except for EI_2, EI_4 and EI_10, most artists and cultural professionals we talked to did not know about the duration and scope of their local copyright laws or even about what it means for a work to be in the public domain (even later, during our focus groups and other interviews, this continued to be the norm). During Focus Group #1 session, a choreographer said copyright regulations were a kind of Tower of Babel, nobody really understood (FG_1.3; see section 3.) – in other words, 'nobody knows' (see Chapter 5, section 1.). Both interviewed lawyers (GI_3 and GI_4) also emphasized the lack of information of their artist clients in general, especially noticeable in first contacts. When asked about the reasons that led to the creation of Creative Commons, GI_3 stated that the licenses were essentially created with digital content users in mind and not so much for traditional authors, although they tend to be more and more the same at the same time (as discussed in Chapter 4, section 4.).

“Artists will always need legal support, they will always need to enter the legal system as they will need to negotiate contracts with editors and other agents that will economically explore their works. The Creative Commons licenses don't solve that problem. But they solve the problem of the independent author that wants to publish autonomously and wishes that everyone can use their work, even if only for noncommercial purposes.”⁸⁶ (GI_3)

On the other hand, GI_4 highlights that this is precisely the type of artists that he is used to work for:

“The licenses are much more in line with the mindset of the artists I have been working with. Most artists that attend my training sessions at universities and incubators or those who come

⁸⁶ The original interviews were all held in Portuguese. The parts transcribed in this document have been translated by the researcher.

to find my services are interested in seeing their work become known and reused by other artists. What really bothers them is when someone uses their work commercially without asking for any permission or recognizing their authorship.” (GI_4)

We are talking about two very particular lawyers, who work as freelancers with small independent artists (with who they have been professionally growing together) and who are themselves open culture activists, being GI_3 more experienced and (maybe, therefore) more oriented into policymaking (from national level to WIPO debates). However, it is precisely their open culture activism that has brought them closer to the community of young artists, freelancers, start-ups and policymakers. In line with the presentations held in universities and incubators, exploratory interviews and focus groups, this suggests that, when informed, not all artists are interested in using their author’s rights in the same way, being many of them interested in a more flexible approach that allows their work to circulate and also turns other artists’ works accessible for them to use and adapt.

- Chilling Effects and Fragile Bargaining Power

The lack of information often leads artists not to publish, exhibit, perform or produce some of their ideas, afraid of possible legal consequences such exposure could lead them to - a clear result of the so-called ‘chilling effects’ of copyright (Benkler, 2003: p.42-45; Cammaerts et al., 2013: p.12; Kawashima, 2010: p.349). This was the case of the performer and media artist GI_2, who has more than once decided not to apply to important artistic awards, afraid of copyright infringement consequences. In fact, those who decide to take that risk at times incur into legal complications. A young Brazilian artist, in one of the seminars we delivered at the Multimedia Master of the Faculty of Engineering of the University of Porto, explained that after contributing to a collective exhibition with a pair of photographs of his, he was sued, because, although these photographs were taken by himself, they were part of a previous collaborative project with another artist. Not even the fact that he had previously asked for his partner’s permission (obtaining no reply) and that he properly credited the name of the partner and project they were collaborating were enough to prevent him and the exhibition organizers from being sued by his former colleague. Oddly enough, the litigation had no consequences and the process was removed by the accusing part probably due to financial reasons. In another seminar, a Portuguese designer explained she started to receive threats by email from the United States, after using a detail of a flower photography she found on

the internet as inspiration for a wallpaper pattern she was developing. In this case, she searched for the help of a lawyer friend, who advised her not to do anything and proceed with her work. After a while, the emails eventually stopped⁸⁷. This suggests that, in some cases, copyright can also be used as a threatening or even destructive mechanism between artists to eliminate competition (always by the stronger party or the incumbent). This kind of fragility was true not only to artists but also to creative entrepreneurs, particularly young start-up promoters, who also revealed a lot of doubts. Nevertheless, our focus groups and interviews confirmed that entrepreneurs are usually more aware of regulations (even if not absolutely clear about the information they had) than artists as they have usually, at least, heard about copyright or even where to find information about it (EI_4, EI_8, EI_10, EI_11, EI_12, EI_15). This somehow reinforces the idea that artists are attracted to risk (see Chapter 3, section 5.) – as we will see below (section 3.), some don't even care about copyright at all, although they are aware that can lead them into trouble (FG_2.3).

- Copyright Myths and Self-Censorship

In the interviews and group discussions, some artists revealed to deliberately have no concerns at all about copyright matters and would not mind being copied at all, many of them even considering this possibility as flattering (FG_2.2, FG_2.3, FG_2.5, FG_4.1, FG_4.2, FG_4.3, FG_4.5, GI_1). Such position was the result of a mixture between a lack of information and/ or interest about the law and their focus on the creation process and novelty of their artistic work.

Often, we identified some myths about authors' rights regulation (see section 3.): for example, the case of authors deciding to use public domain music to their own creations as a way to avoid copyright concerns, unaware of the fact that the performance or the recording of such public domain score (subject to neighbouring rights) might not yet be in public domain as well (EI_1.1). These myths and/ or concerns often had influence in their artistic choices and in the final outcome of their work, often leading to self-censorship (FG_1.6, FG_1.10, FG_2.1). Some of the artists clearly stated to adapt their works to the legal restrictions (FG_1.3, FG_1.10, FG_2.1) although, due to the already mentioned asymmetries of information, we

⁸⁷ These two cases are not referenced in Chapter 2, as they were result of questions raised during seminars we delivered and not guided or instructed by us, in the course of this research. However, given the repetition of this kind of stories, we found it important to address them here.

could understand that, in fact, those adaptations usually had little or no impact at all in terms of copyright infringement. In fact, these myths often seem to come from the arts schools and faculties, as both lawyers (GI_3 and GI_4) explained. We will come back to this in section 3. Recalling a trial where he was defending a photographer whose pictures had been illegally used by a well-known fashion brand, the lawyer GI_4 mentioned the interesting example of a brand designer stating in court that he had learnt in school that photographs were only protected if they had a watermark, which is not true. The court ultimately decided in favour of the photography artist and, in his final verdict, the judge mentioned that, although author's rights marked the end of Dark Ages and the beginning of Renaissance, despite the asymmetries of information, this sort of appropriation usually happens with the work of small and unknown independent creators and never with well-known artists let alone big companies or brands (GI_4). But this confusion also seems to happen on the side of the responsible institutions. One musician explained us that he had once one of his concerts interrupted by the public inspection agents (from General Inspection of Cultural Activities - IGAC) asking him for the SPA license to play his own work: "What were they expecting? That I declared to wave the rights to myself?!" (EI_15), he wondered.

- International Imbalance and Cultural Colonialism

Another interesting finding of this round of interviews and discussions was the confirmation of how copyright regulation (and intellectual property in general) affects the global distribution of wealth and culture, influencing directly or indirectly both business development and artistic practice, not only due to the already mentioned 'chilling effects' but also due to the fragile bargaining position of artists in all sorts of collaborations and conflicts, as seen in Chapter 6 (section 3. and 4.). For example, 'chilling effects' were evident in the case of one of the interviewed artists, who referred that he had once not submitted a work to a competition promoted by the Andy Warhol Foundation. The competition only accepted works specifically and explicitly inspired by Andy Warhol's art. Afraid that he might face copyright claims for directly using excerpts of one of the artists' original films, the artist withdrew from applying (GI_2). In the case of collaborations, an example was the case of a young Portuguese TV channel that had to interrupt their thriving collaboration with indie platform Pitchfork due

to copyright problems, as the latter was bought by the media group Condé Nast, in 2015⁸⁸. In case was a specific project called 'Director ID'⁸⁹, where the Portuguese start-up invited a video director to make his own short biopic, only having to follow some simple guidelines. The content would then be edited by the start-up and distributed together with Pitchfork. The Portuguese channel continues to produce this content but without the collaboration of Pitchfork (BI_4). But there are also cases of evident conflict. We found an example during an interview to the director of a shoe production company in Portugal funded in 1965 (currently struggling to maintain its activity). The company was involved in an intellectual property dispute with the French giant Palladium in the 80s about the design of a certain model of boot the shoe company had developed for the Portuguese army troops fighting in the Colonial War in Africa (1962-1974). After two years of litigation in a French court (and all the high costs involved), the Portuguese company won the case. However, they still saw themselves forced to wave the intellectual property of that same model to Palladium (with no financial compensation in return) as they had no means to protect it in face of the progressive pressure felt by the Asian competition at the time (BI_7)⁹⁰.

- No Access to Support

Another evident finding was the fact that, in general, artists do not search for legal advice. Being because they don't trust institutions or because they cannot afford to pay a lawyer, they usually don't even consider this possibility. According to the lawyers (GI_3 and GI_4), this happens mostly because they have no resources to do so but also, and once they don't really trust collective management societies (CMOs), they usually have no knowledge of where to find alternative legal support. Most of these two freelance lawyers' artist clients found them through personal networks or their Creative Commons activist information sessions in conferences or at universities and have only consulted them very occasionally (GI_3 and GI_4)). In fact, most of GI_3's artist clients are musicians that were friends or

⁸⁸ <https://pitchfork.com/news/61621-pitchfork-acquired-by-conde-nast/>

⁸⁹ <https://pitchfork.com/news/57581-kristoffer-borgli-featured-in-latest-episode-of-pitchforktv-and-canal-180s-director-id-series/>

⁹⁰ Note that, although what was in question was the original design of the boots, this was not a case of copyright litigation (instead, the process was about industrial design). However, the dispute in question was about authorship and, throughout our research we could not find a clearer example to demonstrate our argument here.

acquaintances of her first client, a record label that resulted from an internationally famous Portuguese band. The band no longer exists but the label is still active and has a long list of musicians it represents and to whom the lawyer provides her services, which often include transactions of intellectual property rights as a kind of currency, with no financial resources involved at all. A lot of GI_3 clients also come from her activist training sessions about intellectual property and Creative Commons, in universities, incubators and museums. As for GI_4, his first client was also the artist who called his attention to copyright as a growing trending area in Law. The artist, who had been his friend since high school, was about to start her master degree in London and contacted him after she received the enormous copyright terms to which she had to agree once she registered at the university. Another of GI_4's major artist clients is a well-known Portuguese choreographer who, although based in France for many years, is originally from GI_4 hometown, and they know each other since very young age. Although most his clients came to him through personal networks, the proportion is changing since he started to offer free training sessions about intellectual property and Creative Commons.

According to GI_3, this is very different, for example, in countries such as the United Kingdom where, probably due to its utilitarian approach to authors' rights (as seen in Chapter 1, section 2.), it is not so hard to find the so-called legal clinics or intellectual property clinics, promoted by the governmental Intellectual Property Offices or by charities, that provide free regular legal support about copyright⁹¹ and other intellectual property rights. Such is not the case in European countries like Portugal. According to both lawyers, financial reasons are also behind the fact that there are not so many lawyers and judges interested in working with copyright, unless it is related to Information Technologies' businesses⁹².

From preliminary exploratory interviews with different cultural agents to the final guided interviews and focus groups with more clearly identified individuals, the first major conclusion of this phase was that different agents had different perspectives of what copyright represents and how it influences the cultural sector and artistic work.

⁹¹ We could find examples of such clinics promoted by the Intellectual Property Office (<https://www.gov.uk/government/organisations/intellectual-property-office>), the British Library (<https://www.bl.uk/business-and-ip-centre/national-network>), the Chartered Institute of Patent Attorneys (<https://www.cipa.org.uk/need-advice/ip-clinics/>) or the Chartered Institute of Trade Mark Attorneys (<https://www.citma.org.uk/trade-marks-ip/need-advice/free-advice-clinics.html>).

⁹² Copyright applies to software source code

To clarify such differences and which groups of individuals were more relevant to our research, we developed two main instruments that would allow us to observe the relation of these different groups of cultural professionals to copyright. On the other hand, such instruments also provided useful information and tools we could share with those same groups, while reflecting upon their own reactions and suggestions. In the following sections, we present the main findings such instruments revealed during their development process.

2. Copyright in the Creative Industries: the Creative Commons Toolkit for Business

As discussed before, despite the ambivalent definition and lack of consensus about the creative industries (Chapter 3, section 1. and 2.), copyright (and intellectual property in general) has been regarded as the key central feature for this sector (Chapter 3, section 2. and 4.). As seen in Chapter 1 (section 3.), with the introduction of new digital technologies and particularly the possibilities of storage and sharing brought by the internet, once again, copyright has been subject to reforms and updates which have led to the emergence and destruction of many cultural businesses, affecting the way in which general public accesses and uses cultural content and art and leading to its growing interest and participation in political copyright debate. However, recent copyright reforms suggest that such public participation, as we have seen in Chapter 6 (section 4.), does not seem to have been entirely taken into account. Nevertheless, regardless of their positions or directions, these political decisions and discussions around copyright have had serious economic implications, both for older cultural industries, with traditional products and business models, and to emerging start-ups and organizations with focus on innovation at product and business strategy level. As discussed in Chapter 3, this is also the result of a series of questions such as the failure of the creative industries paradigm or the need to understand the real incentive that copyright represents to creativity (Towse, 2010: p.474), which has only made evident the conflict between new more open and sustainable versus old proprietary economic paradigms (Cammaerts, Mansell & Meng, 2013; Dobusch & Quack, 2012; Handke, 2011; Towse, 2010).

In this context, it became important to analyse recent business models that were only made possible through the adoption of open copyright-based licenses such as Creative Commons (Lessig, 2008; Cammaerts, Mansell & Meng, 2013; São Simão, 2017; Stacey & Pearson, 2017). As we have also discussed in Chapter 6, many academics seem to agree that there is still little independent research about this topic, being the majority of the existing studies commissioned by interested parties, particularly by large market players (Cameron and Bazelon, 2013; Cammaerts, Mansell & Meng, 2013; Dobusch & Quack, 2012, Handke, 2011; Towse, 2010).

In a period when large economic groups continue to pressure and lobby governments to reinforce and extend copyright protection (Cameron & Bazelon, 2013; Cammaerts, Mansell & Meng, 2013), open licenses such as Creative Commons have come to represent an important alternative to give way for the adoption and development of sustainable business models that are already structure for many cutting-edge start-ups and organizations. We here list some examples of new and old companies adopting open licenses as a strategic tool in their business models.

However, due to the mentioned above instability around copyright regulations (namely, the approval of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC), these models remain under threat and their efficiency and contribution to economic growth needs to be more carefully analysed and clarified, in order to balance the dialogue and promote a more transparent discussion regarding copyright reform (and eventually even about other intellectual property rights) among all interested parties – and not just among those with strong bargaining power (see Chapters 5 to 6).

Using the *Creative Commons Toolkit for Business* (see Chapter 2, section 4.) and some of the examples identified in the book *Made with Creative Commons*, by Stacey and Pearson (2017)⁹³, among other references, we have tried to illustrate the main economic benefits of open licensing for companies as well as to suggest some problems that contribute to possible bias in the international debate about copyright reform.

⁹³ Stacey and Pearson identified a collection of new profit and non-profit organizations that use Creative Commons licensing as a key element of their business models and have proven sustainable (even thriving) so far.

We will not here discuss the concepts of open business models and how open licenses such as Creative Commons can be used as a strategic tool to develop more up to date ways of building a business (see annex A). We will present six benefits suggested by the *Creative Commons Toolkit for Business*, using some common practices and successful examples of companies and creators who use CC licenses as a more or less central feature in keeping the sustainability of their businesses. We finally suggest the possibilities for new organizational formats deriving for such open attitude towards business.

As said, within the *CC Toolkit for Business* project, we identified six major benefits of the use of CC licenses (or CC licensed work) while designing the firm's business model⁹⁴: i) Reducing production costs; ii) Reducing transaction costs and legal uncertainty; iii) Increasing access to innovation; iv) Increasing first mover advantage; v) Increasing "opportunity benefits"; vi) Promoting sustainability. Below, we present each one of them in light of the feedback with creative professionals and entrepreneurs we had the chance to interview, during this research.

i. Reducing production costs

By using the available CC licensed works, a company or freelance individual can significantly reduce the investment it needs to launch a new product or service in the market (Creative Commons, 2015a).

A good example of this specific benefit are audiovisual companies that often use CC licensed music to complement their videos. Building Pictures⁹⁵ (BI_2), a Portuguese start-up focused on developing videos for architecture and construction sectors' communication, uses CC licensed music as soundtrack to most of its productions.

Another good example would be self-publishing authors, who cannot afford to hire photographers or illustrators to include pictures in their books as they do not have an

⁹⁴ The ideas presented in this section result from a document produced for the development of the Creative Commons Toolkit for Business, coordinated by Fátima São Simão (Creative Commons Portugal Public Lead) and Teresa Nobre (Creative Commons Portugal Legal Lead), with collaboration of Paul Stacey (former Creative Commons Associate Director of Global Learning) and contributions from Eric Steuer, Sarah Pearson and John Weitzman. The document is available for consultation at the following link: <https://docs.google.com/document/d/1rDLqZ95fatIAz-17efwJL7oXz9Y48peExZF4y4EQNks/edit?usp=sharing> (Creative Commons, 2015a).

⁹⁵ www.buildingpictures.pt

intermediary or investor to help support their initial production process and costs (Cameron & Bazelon, 2013; Bazen *et al.*, 2015).

As we will see Chapter 8, if the bargaining power is weak, there is little one can do against competitors with stronger copyright enforcement capacity, regardless of legal protection – as seen in Chapter 5 (section 1.), artists and small companies have no alternative but to do business with major industry players (Bilton, 1999), who currently dictate the rules of the market. In this context, open licenses can grant greater flexibility at market entry level. Going back to the Building Pictures example: there is no guarantee that another film production company can't use the same music on their videos, regardless of it being openly licensed or copyrighted. And, depending on the CC license chosen, it might imply that the final work must be openly licensed or not commercialized– but it can still be useful for communication purposes, for example (BI_2).

On the other hand, it suggests the possibility of talent scouting through CC content search, which represents in itself a business model per se and can be particularly beneficial for companies that do not have a good support network or knowledge about who can provide the products/ services they are looking for. The Noun Project⁹⁶, for example, is a communication design company that offers an enormous diversity of icons for free, under Creative Commons licenses. To use the icons without the reference requirements of the platform, one must pay (for each icon or for subscription). Many designers see in this platform a good opportunity to enter the market, gain visibility, test design proposals or simply monetize old icons they would not otherwise do. “The Noun Project currently has about seven thousand designers from around the world. But not all submissions are accepted. The Noun Project's quality-review process means that only the best works become part of its collection.” (Stacey & Pearson, 2017: p.92). And, again in the case of Building Pictures, besides now having a better knowledge of music composers worldwide, for bigger productions, the company already has the means to hire and pay a sound designer or composer to develop exclusive music to their videos in a more professional customized way. Also, by resolving part of its production problems, the use of CC licensed work allowed the company to accelerate its market entry process and thus be rapidly and widely exposed to other bigger players in the

⁹⁶ <https://thenounproject.com>

market that, depending on their interest on the published work, decide to hire the entrant's services or consider them for future ventures, potentially under better contracts (as the bargaining position of the "newbie" player has meanwhile got stronger).

ii. Reducing transaction costs and legal uncertainty

Many creators and cultural professionals who have tried to use copyrighted works owned by third parties are aware of how burdensome the rights clearance process can be (see section 3. of this chapter) – as we have seen before, some actors "know more" than other (see Chapter 5, section 1.). Authors and owners may sometimes be difficult to locate; other times they are not interested in engaging in negotiation; the terms and conditions imposed may also make it impossible to get a deal; lastly, when a company does reach an agreement, if it doesn't hire a specialized lawyer to draft the contract, it will probably be at risk of not getting all the rights it needs in order to proceed with the intended use (GI_3).

On the other hand, as we have also seen, copyright is often an obscure subject for creators, putting them in a fragile position when writing or bargaining a contract with an agent, editor, publisher or any other kind of intermediary to promote, produce or distribute their work, as the asymmetry of information and risk sharing between them is highly unbalanced (see section 3.; also Caves, 2000; Muthoo, 2006; Towse, 2002; Farchy *et al.*, 2015: p.290-292). In particular, "a too strong copyright regime (...) [raises] transaction costs and copyright-based earnings, transferring rents to creators from users; it would, however, raise the costs of creation" (Towse, 2002: p.5). The problem is that, as research has been telling us and as we will see below, most of these earnings do not go back to the original creator of the work but to the intermediary who owns the rights instead (Muthoo, 2006; Towse, 2002, 2010; Cameron and Bazelon, 2013; Cammaerts, Mansell & Meng, 2013). A strong copyright regime does not only mean it is highly protective in terms of duration and scope but also that it is – inevitably and consequently - too complex and ambiguous to be understood by anyone other than experts (Dobusch & Quack, 2012). This means artists often need to rely on lawyers (if they can afford one), collective management organizations (if they trust them) or informed advice from other experienced peers (which all represent transaction costs, if not more, in terms of the time spent in finding and consulting them). And, even so, this doesn't give the author any guarantee of making a reasonably interesting agreement. On the contrary, depending on how unfamiliar the author is with copyright contracts, it is pretty likely that they will not preserve

their own interests (especially, when they are young and at the start of their careers, as our interviewees have demonstrated) and copyright revenues often result in very low payments, if any at all (Cameron and Bazelon, 2013; Cammaerts, Mansell & Meng, 2013; Towse, 2002) – what we can call “coffee-money” (see section 3.).

Creative Commons has been working for more than ten years with lawyers worldwide so that its standardized license suite works in every single of the 70 jurisdictions where it is represented by affiliates. CC licenses are probably the free standardized copyright licenses with the highest global reach. They are currently used by millions of people and businesses, including some of the biggest institutions in the world, such as Google, Wikipedia, Flickr, YouTube or Vimeo (see *State of the Commons Report, 2017*⁹⁷). And in the few cases where the licenses have been challenged in court, courts have considered the licenses to be valid (Creative Commons, 2015a).

OpenDesk is an example of how CC open licenses can not only simplify licensing processes but also promote the internationalization process of a start-up (Stacey & Pearson, 2017). By connecting designers to its customers and local makers around the world through its online platform, OpenDesk has developed an easily affordable way to set up contemporary office spaces. Most of its designs are licensed with CC-BY-NC license, which means the customer and maker can copy the design as long as they don’t use it for direct commercial purposes. In fact, the company is actually so committed to this open licensing spirit that they developed a whole page on their website explaining their business model⁹⁸.

This is also what music platforms such as Jamendo, “the biggest online provider of free music” (Bazen et al., 2005: p2) or the well-known American Bandcamp⁹⁹ or German service Soundcloud¹⁰⁰ provide. Any musician has (at least) the option of uploading their music under CC licenses¹⁰¹, clarifying from scratch the ways in which they allow it to be used and avoiding any in between negotiations that would just delay access and/ or shorten the possibilities of use and dissemination of their work.

⁹⁷ <https://stateof.creativecommons.org>

⁹⁸ <https://www.opendesk.cc/about/non-commercial-use>

⁹⁹ <https://bandcamp.com>

¹⁰⁰ <http://soundcloud.com>

¹⁰¹ In the case of Jamendo, all songs are uploaded under Creative Commons by default, having the artist the option to decide which license he prefers.

This is precisely why companies such as Building Pictures also benefit from this advantage of CC licenses: because of their clear design, whenever the company chooses a CC licensed song to include in their videos, the licensees do not need to locate the composer, agent or record label for copyright clearance. CC licenses can therefore be an effective means to help professionals reduce their transactions costs (on both ends of the negotiation) that would otherwise be necessary every time they made another sale or wanted to use or reuse content in their commercial activity. By doing so, these licenses also grant a possibility of control that would otherwise be almost completely in the hands of specialized intermediaries which is neither interesting for the creator nor for the final user.

iii. Increasing access to innovation

Companies in general (and also individual freelancers and artists) might be interested in testing their products and get some feedback from their closest followers before releasing them in the market. Using CC licenses on creative content and making it available to its target audience may turn out to be an effective way of doing market tests before its final version is actually released (Creative Commons, 2015).

By doing so, potential users and partners try the work beforehand and provide their feedback in the development process. Such feedback can be used to improve and promote the final work and make it shareable through this network of customers-collaborators, which considerably contributes for its marketing without any additional costs. It is a way to grab the attention of early adopters that can effectively influence following users. At the same time, by releasing and allowing clients and partners to openly reuse and readapt their products, the company/ creator engages them in the development process, sharing ownership and benefiting from a collaborative research and innovation process, sometimes international, accessing skills they might have never been able to reach or afford otherwise. This is, in fact, what happens between small firms that represent research and development sources to larger less flexible corporations, that “apparently lack the ability to talent spot at an early stage” (Towse, 2002: p.9; Bilton, 1999).

A successful example of this is Arduino, “an open source electronics platform based on easy-to-use hardware and software”¹⁰². By providing openly licensed products and content they

¹⁰² <http://www.arduino.cc>; What is Arduino?

allow their community of users to actually engage in an open innovation process that can actually result in new products. “All aspects of the platform were openly licensed: hardware designs and documentation with the Attribution-ShareAlike license (CC BY-SA), and software with the GNU General Public License¹⁰³” (Stacey & Pearson, 2017: p.47). This allows “users to modify it and create a lot of different variations, strengthening the platform far beyond what the founders thought of building” (*id., ib.:* p.49). For Tom Igoe, one of the platform’s founders “Open sourcing makes it easier to trust a product.” (*id., ib.:* p.48). And this is probably why, Arduino has been able to keep its Playground wiki, “where users can edit and add pages, contributing to and benefiting from collective research” (*id., ib.*). Being their huge community of users probably their biggest asset, Arduino’s open source products have led to other derivative products and businesses to emerge all around the world. Yet, this has not affected the original company and the founders consider it even reinforces the range and strength of Arduino’s ecosystem. Additionally, they kept the trademark for their brand and collect revenue from licensing its use, having representation in Italy, the USA, Taiwan and China (*id., ib.*).

It is also worth mentioning the case of Blender, an animation studio that developed its own open source 3D content creation software and produces CC licensed films, since 1990. By licensing their work, “each open-movie Blender runs produces a host of openly licensed outputs, not just the final film itself but all of the source materials as well. The creative process also enhances the development of Blender software because the technical team responds directly to the needs of the film production team” (Stacey & Pearson, 2017, p.55). This allowed creators to “not only produce high-quality openly licensed content, they would also improve the Blender software in the process (*id., ib.:* p.56). On the other hand, opening up the production process has made people to wish to work for Blender without any particular effort for recruitment. In the case of Blender, it is worth pointing out that the adoption of open licenses also allowed innovation from an economic perspective (and not only technologic or creative): as a way to make their business sustainable (after previous failures with private investors), Blender created a subscription crowdfunding model for its clients/community who, despite all assets being openly licensed, always has access to new products

¹⁰³ GNU General Public License is an open software license created in 1983 by Richard Stallman, also founder of the Free Software Foundation (www.gnu.org).

and features beforehand; revenues are complemented by their Blender Store sales of physical copies of their films and merchandising (*id.*, *ib.*).

This is probably one of the most valued benefits open licenses provide, not only in terms of business model but also in terms of sustainability culture. When we talk about creative industries, we are talking about producers, distributors, editors, agents and many other intermediaries. But we are also (and above all) talking about creators. As depicted in Bazen et al. (2015) study about Jamendo, unlike one would possibly imagine, the main reason for artists to join this online open music platform is not their “desire to reach a wider public, by generating a buzz on the Internet” but rather because they “agree with the underlying principles of CC” of online sharing and creative and cultural collaborative development (p.10).

iv. Increasing first mover advantage

As we have seen before, intellectual property (IP) is a generally well-known market barrier to entry (Samuelson and Nordhaus, 1999: p.160-161; Benhamou and Farchy, 2009: p.97-103). Particularly for start-ups and artists, this can happen in two ways: on one hand, it prevents them from openly using works that are under IP protection and could be more accessible (particularly, those that benefit from public funding, like most scientific production) and, on the other hand, it sometimes prevents their own creative products to enter the market as it is often too costly to protect them (and keep track of their use) when in conflict with more resourceful competitors.

By licensing its own production under CC, a company/ creator not only accelerates the possibilities to access the market (and, thus, increase chances to gain an interesting market share – even if it is a small niche, which for most creative businesses is crucial and often enough) but also raise awareness and building a following that can continue to be constantly used and multiplied in many different ways through growing networks. By using a CC license, the company ensures that the product circulates more freely and thus becomes accessible more rapidly to its potential clients, with the possibility of establishing a first mover advantage. In this case, the open licenses are being used as a channel to access potential clients and users.

As we have seen, this is very much what some record labels now do (Chapter 5, section 2.). In order to resist the shock of digitization, many record labels have opted to change their

business models and, rather than producing and distributing music, they now focus on sales of artist-specific associated products, signing 360° (or full rights) contracts with their artists. Under such model “recorded music is viewed as a low margin product that can be used to drive sales of other more lucrative products associated with an artist” (Cameron & Bazelon, 2013: p11), namely, concerts, merchandising, the use of the artists’ image rights for publicity, etc. This is also a strategy used by technology giants such as Apple, to whom sales of music, apps, videos or books on its iTunes and iBookstore platforms are more a means to increase their technology devices sales than a business in itself (Cameron & Bazelon, 2013: p.9, 25, 43).

Many individual artists or artists’ collectives are adopting more open models: in 2007, for example, Radiohead decided to release their album *In Rainbows* for free download and collected voluntary contributions from their fans (Cameron & Bazelon, 2013: p12; Bazen et al., 2015; p3). They also open licensed the animation data for the music video “House of Cards” under Creative Commons as it was produced with the mentioned above 3D Blender software (Steuer, 2008). Nine Inch Nails, an American industrial rock band, also decided to release their albums under CC (Steuer, 2008). In his *Wired* magazine article, Eliot van Buskirk praised the band’s Grammys nominated album *Ghost I-IV* that “generated \$1.6 million in sales revenue in the first week of the album's availability, despite the fact that the 36-song version of the album is widely available on torrent sites” (Buskirk, 2008). Another example from 2016, is the artwork from David Bowie’s album *Blackstar*, which was also openly released by the graphic designer who developed it, Jonathan Barnbrook. In his interview to Eric Steuer, the author stated “There needs to be a room to share which is above and beyond what is monetary value. Humanity is not built on money—it is built on the meaningful exchange between people.” (Steuer, 2016). However, although the whole group of symbols designed for the album were openly licensed, one can always wonder to what extent a design as simple as black star needs to be licensed for future use or if it should ever be subject to any intellectual property rights considerations at all (Alvelos, 2016)...

Licensing work under CC and rapidly accessing the market can be used as a tool to test potential clients and obtain valuable feedback that allows the improvement of products and services.

By making it accessible, shareable and remixable (under the use of a CC license) by anyone interested, Osterwalder and Pigneur's Business Model Canvas (2010) soon became the most widespread tool of its kind to help young start-ups in structuring their businesses. This was crucial to make their business rapidly gain and keep an important market share, despite the competition that followed. (Or even the competition that was already in place – but not openly licensed.) The choice to openly license the Business Model Canvas made it very easy and cheap to share, use and reuse. In our short interview with one of the authors (BI_1), in 2014, he declared that

The most important thing was it did spread faster because of Creative Commons. People felt that they could own it, they could play with it, they could try it out... Some people started to change it, which was one of our goals – to see if anyone could come up with a better approach. Allowing people to play around with it, to test it was very very important. (BI_1)

Many start-ups, incubators, accelerator programmes, entrepreneurial workshops have been using the Business Model Canvas ever since and continue to promote it, without having to request permission or to pay (or be paid) for doing so. Under the umbrella of Strategyzer¹⁰⁴, a management consultancy and content producer, the Business Model Canvas continues to serve as the main key marketing tool for this company to sell its content (books, software, training videos...) and deliver services such as certified workshops (although others can still develop their own formats), online courses or specialized coaching to young teams – even though they have not openly licensed their following tools (like the Value Proposition Canvas), to prevent them from being used in products. The company has also developed a management software based on the principles of the canvas, that start-ups will easily buy as they are already familiar to them (BI_1).

v. Increasing "opportunity benefits"

Opportunity costs are a well-known economic concept, created to define the cost of not having taken the benefit of an alternative option (Samuelson and Nordhaus, 1999: p127-129). When a creator or a creative company uses a CC license in a product, they face opportunity costs. But they are also increasing the chances to enjoy "opportunity benefits". This means that, by making their work available for others to reuse, readapt and share, creators and producers might be surprised by unexpected returns they would have otherwise not even

¹⁰⁴ <https://strategyzer.com>

guessed possible; namely, the opportunity to find partners around the world that will want to participate in their product's development or invite them to engage in different collaborative projects - very much after the logic propose by Powell and Grodall (2005), presented in Chapter 4 (section 2).

CC licensing opens up the possibility of forming a collaborative, distributed production network that can include fellow creators, end users, customers and partners who make improvements to the actual design or functionality of their product or project. The result can be unexpected: it can be a brand new product, an extended version of the original or even a series of different products (whether or not related to the original). The Dutch music platform Tribe of Noise¹⁰⁵ founder, Hassel von Oorschot, explained this is actually one of the main reasons why musicians adhere to the platform: "a musician in Portugal can suddenly start working on a Swedish project – this has happened! (...) We can't guarantee the same results to all musicians but they do have a better chance to reach different markets and become known in circles they never expected." (BI_11). Bruno 'DarkSunn' Dias, musician, DJ and CEO of Monster Jinx¹⁰⁶, an open music label in Portugal, also saw his songs becoming popular in Argentina, after a famous online show decided to use them: "That was only possible because of CC licenses." (BI_10). The way Monster Jinx monetizes their content is not through selling the music but "everything that can be around the music: books, illustrations, poetry, live performances... We need to be very creative. But that is what we like." (BI_10). It is interesting to recall that, unlike Tribe of Noise and other cases, Monster Jinx is a non-for-profit association and, although artists make money through the projects they create, the management work of the organization is mostly volunteer.

The *CC Toolkit for Business* itself can also be seen an "opportunity benefit" of Osterwalder and Pigneur's popular Business Model Canvas, as one of its key elements, the Creative Commons Open Business Model Canvas, derives from their original design (see annex A).

This is also the case for multiple Arduino products, developed by their followers/ contributors (in some cases, well-known incumbent companies such as Samsung or Intel¹⁰⁷). By openly licensing their products but keeping their brand protected not only has allowed for "dozens

¹⁰⁵ <https://tribeofnoise.com>

¹⁰⁶ <http://www.monsterjinx.com>

¹⁰⁷ <https://www.arduino.cc/en/ArduinoCertified/Products>

of Arduino derivatives out there” (Stacey & Pearson, 2017, p. 49) as it also benefited from many new “ideas and designs that Arduino and the Arduino community use and incorporate into new products” (*id., ib.*). Eventually it has also led to an unexpected business model around Arduino’s brand licensing, that ultimately keeps the company going under the original open spirit which their community values and trusts so much.

This leads to another aspect of open licensing: when a company/ creator marks a product with a CC license, it is also building a reputation, a crucial asset in the cultural sector (Chapter 3, section 5.), as it shows the public that it is broadly interested in collaboration and interaction — even outside the context of the CC license (this is evident, for example, for the case of Alex Osterwalder and Pigneur’s original Business Model Canvas as an unusual marketing tool for other completely different products and services; or also in the case of Radiohead’s “House of Cards” music video, produced by Blender and ultimately nominated for the Grammy Awards, in 2009¹⁰⁸). This means open licenses are also a communication tool as their use can be shorthand for “we get the Internet, we’re on the right side of this debate, and we want our users to know that we see them as partners/collaborators.”, as Creative Commons Director of Content and Community Eric Steuer once put it (Creative Commons, 2015) – however, they too run the risk of becoming too homophilous (see Chapter 6, section 2.), as we will discuss further in the next chapter.

vi. Promoting sustainability

The use of CC licenses or CC-licensed work in a product or service can also send a message to the public that the company is socially aware and is working towards generating revenue but equally ensuring that everyone can improve and benefit from the work that follows.

As we’ve seen in previous examples, CC licenses not only have allowed the emergence of new business models but they also guaranteed that this is not limited to one particular company or agent. Others get the chance to develop their own new business models, create new products and services and generate new jobs and revenue streams after that same original CC licensed product, not having to replicate the entirety of the work processes and models already developed and, thus, preventing redundancy and waste. Therefore, unlike copyright,

¹⁰⁸ For more information see: <http://www.aaronkoblin.com/work/rh/>

open licenses allow for a more efficient networked distribution of resources, preventing excessive capital concentration and hence contribute to increasing general welfare.

Of course, this does not depend only on the use of open licenses but, and mainly, in the general digitization of the economy and in a whole new entrepreneurial attitude and conscience, one more aware of the risks of looking into business as a pure profit-generation mechanism, regardless of its ethical, social, cultural and environmental impacts (Mason, 2008; Cameron and Bazelon, 2013; Towse, 2002; Bazen *et al.*, 2015). But the use of CC licenses (and open licensing in general) in businesses can be a way to promote a network of sustainable open small and medium enterprises (SMEs) – and produce positive externalities - as opposed to a highly concentrated market structure dominated by closed large corporations that, as we have been discussing in previous the chapters.

All the examples mentioned above promote a more sustainable approach to business through open licensing. It is particularly easy to understand this if we focus on the number of derivative business models generated by the original open model. This is very clear in cases such as Arduino, Blender or Strategyzer, whose users have become their partners, clients and sometimes even suppliers. Yet, as most researchers point out, there is still a lack of reliable statistics and further analysis to back up such empirical observation (Towse, 2010; Cameron and Bazelon, 2013; Bazen *et al.*, 2015).

- Open Licensing as Sustainability Strategies for Business

Besides the business and artists' examples mentioned above, many other could illustrate the argument that open licensing can be an efficient instrument for networked sustainability models - both from the private and public sector. Examples such as the already mentioned Jamendo, Soundcloud, Bandcamp, OpenDesk or The Noun Project, among many others, are evidence that there is a growing trend towards the adoption of open licenses as a more or less central strategic tool for contemporary businesses. Another interesting trend is the emergence of companies focusing on more transparent management of artists' rights and

earnings such as Save Creative¹⁰⁹ or Kobalt¹¹⁰. And there are even more examples within non-profits adopting open licensing strategies (as we have seen, in the case of Monster Jinx).

However, this kind of strategies is not exclusive for younger or smaller businesses. Large companies such as the software developer Android¹¹¹ or toys specialist Lego¹¹², which have turned to open innovation strategies to develop and improve their products, prove that, on one hand, open licensing strategies are not just interesting for the cultural and creative industries but also to other economic sectors; and, on the other, that they have also been embraced by established market incumbents (namely, in their attempt to gain or renew their market shares).

This exercise also helped us understand that a more flexible copyright regime can also be relevant to public institutions such as museums and educational structures as the case of the Rijksmuseum¹¹³ in Amsterdam (Stacey & Pearson, 2017: pp.117-120), PLOS - Public Library of Science¹¹⁴ (*id., ib.*, pp.113-116) or the Wikimedia Foundation¹¹⁵ (*id., ib.*, pp.143-145). Even major political institutions such as the US Government Department of Labor¹¹⁶, the European Commission¹¹⁷ or the United Nations¹¹⁸ (only to name a few) have begun to adopt open licenses (namely Creative Commons licenses) for particular sectors like Education and Research (European Commission, 2016; UNESCO, 2016).

However, there still seems to be a general lack of awareness as to their impact and implementation process. In specific cases, the will to promote their use is so misunderstood or overestimated that the use of such licenses is seen as more important than an actual copyright reform (see Chapter 6, section 2.). On the other hand, despite their success, there are not enough efficient mechanisms to prevent the misuse of the licenses (for example, how can one confirm that the person who is licensing the work is the actual author?). This indicates

¹⁰⁹ <https://m.safecreative.org>

¹¹⁰ <https://www.kobaltmusic.com>

¹¹¹ <https://www.android.com>

¹¹² <https://ideas.lego.com>

¹¹³ <https://www.rijksmuseum.nl>

¹¹⁴ <https://www.plos.org>

¹¹⁵ <https://wikimediafoundation.org>

¹¹⁶ <https://creativecommons.org/2016/02/01/u-s-department-labor-adopts-cc-licensing-policy-department-wide/>

¹¹⁷ http://ec.europa.eu/research/openscience/pdf/realising_the_european_open_science_cloud_2016.pdf#view=fit&pagemode=none

¹¹⁸ https://en.unesco.org/sites/default/files/oer_study_march_2017.pdf

that their use is not fully effective. Knowing that legal reforms are generally slow and the development pace of technology required a faster response, these licenses were created to offer a transitory solution and point directions for the necessary copyright reforms all over the world, that could make the law more compatible with contemporary needs and resources.

In this context, open licenses might have become more than just an interesting solution at the private or individual level: they are also a powerful tool at institutional level, as they not only indicate a growing interest for new hybrid structures, laying between public and private, with both economic and social goals and responsibilities, but also the need for a safe ground for publicly and community funded products and services to remain accessible to everyone.

However, as we have seen in Chapter 6, copyright reforms all over the world continue to move in the opposite direction to such possibilities of economic and cultural access, namely in terms of international exchanges. We will discuss this further in the next chapter.

In sum, the findings poured from the *CC Toolkit for Business* project have given us an important overview of general changes in working practices and approaches to copyright, in the cultural and creative industries. However, they have also made it clear that, despite the many commonalities between this sector's agents (particularly, between those at an earlier stage of development), the reason why such open licenses have become so interesting to some cultural industries players but completely disregarded by others – particularly, the artists - was not absolutely clear. What was clear was that the growing adoption of open licenses was clearly a reaction to an inefficient copyright system. However, again in this context of open culture, the artists and authors seemed to be the less considered agents of all. In the following section, we present the outcomes of another instrument that allowed us to move a step further in understanding the effects of copyright in artistic work.

3. Core Artists and Copyright: The *Copywrong performance-as-tool*¹¹⁹

A clearer analysis of the usage of copyright and open licensing in business proved not to be enough if we wanted to understand copyright's implications to the core artists (as workers) and their behaviour in relation to it. It was, therefore, necessary to find another path and it was clear that it had to be more 'artistic' to allow us to observe such group more closely.

- Copywrong performance-as-tool - participatory observation of the relation between copyright and artistic work

After the experiences of developing the *Creative Commons Toolkit for Business* (section 2.), project *de Eus* (section 1.) and the failed attempt of our six initial case studies (see Chapter 2), we started to develop a different kind of tool, one that could be more effective within the artistic context and spoke the artists "language" – a performance. As explained in our Methodological Approach (Chapter 2), we chose the performance format because, after our exploratory interviews and the *de Eus* video, it became clear that from all core arts formats performance art could be the most complex in terms of copyright clearance issues (because of the many layers, skills and outputs it involves, from its conception to its delivery moment) and the most effective in terms of this complexity's communicability - being a live device, it allowed us to observe directly people's engagement, reaction and interaction with the topic (see Chapter 2, section 1.).

As seen before (Chapter 2), Copywrong was actually born from this research's initial methodological plan: the idea of working on different case studies. From the six abandoned cases, we decided to rescue one: the performance artist Rogério Nuno Costa (from now on GI_1), as not only had he developed artistic work about the question of authorship and copyright but he also had a critical approach to performance itself, which communication and pedagogical potential he had been exploring in his most recent artistic projects (namely, the Third Way performance or his ongoing project University | Yliopisto¹²⁰; see Chapter 2). In his interview, in 2016, the artist (GI_1) attributed his interest about copyright to his education at

¹¹⁹ More information about this project is available in annex C and at <https://copywrong-cc.tumblr.com>

¹²⁰ <https://rogerionunocosta.com>

the Master of Contemporary Culture and New Technologies, at the Nova University in Lisbon. His previous training was also in Communication Sciences, hence, he does not have a traditional arts education background and this might be the reason why he is more aware about copyright matters than most artists. Although he did not have an absolutely clear knowledge about copyright rules, like most artists don't (section 1. above, Chapter 5, section 2. and Chapter 6, section 3.), he had a very clear idea about what he called the immorality of major industry players behaviour and how much that influenced the whole cultural market and artistic production dynamics and results. In his words, "major entertainment giants should become illegal, especially, the music industry ones, as they are only finding ways to use the law to prevent us from having access to culture in a time when our personal computers work as a sort of 'portal' to the universal library of knowledge" (GI_1). He understands that they only do this because they would not otherwise survive. He also believes that, given recent technologic developments, we should discuss what exactly do we mean by copyright, what does it mean to be an author and what is art today. He believes that pop culture is already contaminating high art worlds (referring to collaborations between Lady Gaga and Marina Abramovich or Jeff Koons as example), making it impossible to distinguish where one ends and the other starts and turning us all into pop artists. He also claimed that, despite feeling excited about these changes, he strongly thinks there is a dystopian dark side to all this, with big corporations continuing to dominate cultural production and access to an even larger scale – despite the different artistic worlds of the mentioned Lady Gaga and Marina Abramovich, he realized both are clearly superstar artists of our times (GI_1).

For GI_1, the participation in Copywrong meant a possibility to raise awareness among artists and create a community for the discussion of copyright matters that he believed were not being covered by mainstream debate. It was a matter of ethics more than aesthetics but he was also interested in the aesthetics that would result from the exercise creating around the copyright topic, namely, through the inclusion of digital technologies without becoming what he called "another techno-fetishist product". Looking at Copywrong as a kind of game, artist GI_1 affirmed that the audience, in this case, was not only player but also a client for a certain immersive object which he believed should be critical in itself and, for that, copyright was an inevitable concern – in his opinion, most contemporary performances involving digital technologies were not very concerned with this aspect. In this regard, he saw the partnership

with Creative Commons as fundamental, as not only did it validate the work but also increased its potential social impact. He also explained this was exactly the reason why we should not apply for other institutional funding: he believed the traditional Portuguese and European funding schemes for the arts would only limit the project (GI_1). In fact, in another discussion about funding, the Copywrong team considered applying to municipal funding-scheme “Criatório”, launched in December 2016, which would fund up to 16 local projects in different artistic fields, with an amount of 15.000 euros. Following up on GI_1 considerations about funding, we decided not to apply it, as the programme regulation clearly required a declaration of honour from the applicant stating that all author’s rights and neighbouring rights related to the project were cleared (Câmara Municipal do Porto, Edital nºI/366923/16/CMP) – as we will see, a virtually impossible condition in what concerns performance art. Talking with Rogério (GI_1) and Daniel Pinheiro (GI_2), media artist that we also invited to develop Copywrong, it became clear that although this requisite was recent in cultural funding regulations, it was also more and more common to find it in public programmes. Later, other artists would confirm this.

Recalling lawyer GI_4 interview, a similar trend has become very common among design competition programmes promoted by private companies, who use this strategy to build pools of design ideas for their products and branding, without having to pay the original designers, as they require them to wave their rights in favour of the company when submitting their applications (GI_4).

According to GI_1, the lack of funding and the limitations it imposes has led artists to find other ways to fund their projects, which often translates into collaborations with universities and research institutions (he specifically referred to programmes like the CERN artistic residencies scheme¹²¹). Such collaborations allow them to make their projects viable but usually have little to no impact on partner institutions because, on one hand, such institutions are not prepared or not willing to integrate the results in their own practice and, on the other, the artists are really only interested in making their work viable and getting access to the traditional contemporary art circuits of theatres, galleries or museums. Such programmes, although disguised as hybrid and interdisciplinary, are just another way to reinforce the

¹²¹ <https://arts.cern>

separation between disciplines (GI_1) – and, therefore, promoting the proliferation of homophilous networks (DiMaggio and Garip, 2012; see Chapter 6, section 2.) and the contemporary dichotomy between the “Net and the self” (Castells, 2010; see Chapter 5, section 3.). In fact, this not only poses questions about authorship but also about authority and means that, what is often presented as innovative and progressive, doesn’t usually represent any real risk to any of the parts involved (GI_1) – in other words and recalling Bourdieu’s theory of the forms of capital (1986) or Dekker’s reflections about Schumpeter’s theory of economic development (2016), we are again in face of a matter of power and power structures maintenance or disruption, a question of who can claim and use that power, who is in and who is out, regardless of any collective technological dazzle in place. We will discuss this further in section 5. below.

But let us first look at the results from our focus groups sessions, which in general reinforced some of the questions already raised.

As said, we organized four focus group sessions (which we later called Copywrong Labs) to discuss copyright issues with artists, particularly, performance artists (see Chapter 2). The first two sessions were held during Copywrong’s creation process and the goal was no longer so much to understand but more to confirm and search deeper into some of the concerns of artists about copyright that we had already found during exploratory interviews and readings. The third focus group was held during a summer school for young performers at early stage of their careers and, although there weren’t that many outputs (probably because participants were so young and unexperienced but also because the session turned more into a discussion out of our research control, as we will see), some new findings were critical to formulate our conclusions. The last focus group was already organized after Copywrong performance was ready and delivered. However, it was probably the most important session in terms of its outcomes for this research, not only because of the context in which it was organized (as part of the Creative Commons Global Summit 2019 programme, allowing audience questions) but also because we were more confident and aware of the relevant questions we had to do to guide the discussion in the right direction.

We here present a summary of results of each one of these four sessions.

- Focus Group #1 (FG_1)

In our first focus group, held at futureplaces festival, in Porto, in 2018, a group of participants (mostly students and faculties) from different backgrounds joined us. It was an open session to which we had specifically invited some performance artists (from dance, theatre and performance art backgrounds) but that also counted with the participation of designers, filmmakers, communication professionals and visual artists, who joined out of curiosity on the subject. To our first question, participants' answers only confirmed some of the findings we had already learned during this research's exploratory phase. There was a lot of confusion about the scope of copyright, with some participants initially associating its effects only to written text (FG_1.10) or considering copyright what is legally known as image rights (FG_1.7).

Participant FG_1.3 showed to have little concern about the contracts she would sign with venues or performance directors, although she had already feel harmed by later seeing her work (or images of it) being used in other contexts such as TV or radio ads for cultural programs or published on theatre company's websites. Participant FG_1.11, who is an American researcher, referred to the power of funders in trying to control the results and dissemination of the research work they had funded.

Another participant (FG_1.12) raised the question of peer pressure, after publishing online a painting she had made after a famous photographer's work, although she had explicitly mentioned she had the permission from its original author, confirming the idea that established artists also use copyright as a resource to prevent competition of new entrants (see section 1.). As another artists stated:

Copyright is a sort of Babel Tower, with all its very complex layers that we can hardly understand. I prefer to find creative ways to go around it. (FG_1.3)

Other artists also mentioned the difficulties of understanding what is or is not copyrightable (FG_1.1, FG_1.2, FG_1.4), again confirming they would try to find creative ways of avoiding copyright problems.

It definitely interferes! I'm used to work with no funding. And copyright is a problem because it involves money. And for performance it can be very expensive because it's all the texts, all the music... (...) The process is long and really painful! For example, we once only had permission to use a text on the day we were presenting. We had asked for it more than a month before. So what we did was we began to write our own texts and there was even this time when

we only used the directions from a famous play... We developed ways to work without acknowledging that we were using copyrighted material. In the end, what I am doing sometimes is censoring my own work to avoid copyright problems. But, for example, that show we did only with the directions of the original text was one of the most interesting works we ever did. So, sometimes obstacles make you think of creative solutions. But it is still annoying when you can't use a work that you wanted to use! (FG_1.10)

An interesting discussion occurred, with participant FG_1.6 commenting that “when it comes to the theatre, stage directions are also part of the text so they are equally under copyright and you are still using copyrighted material.” to which participant FG_1.10 responded “I know but I know it is not recognizable so I won't have any problems if someone comes and check it.” (FG_1.10). Participant FG1.6 continued her argument:

I'm just saying that even if we think we are creatively going around the problem we are creatively doing something else but the problem remains. (...) If the people actually inspecting it were smart enough they had the grounds to say you have to pay it. (...) I also had once a problem that wasn't a problem simply because we had no inspection. I created a work based on a radio play. And I was told I should not ask for transmission rights because it will block all the process: “just ask for permission to present a performance. Don't ever mention a radio broadcast because you will never get the permission!” I still tried to get the permissions via SPA and even contacted the equivalent French organization that managed the rights for those texts. I never got any reply. So, in the end, I just decided to take the risk and put on the show. But if an inspection came I would be fined. (...) I have no idea how much that would be. (FG_1.6)

Such risky solutions resemble the attitude of young technology expert communities, which, when in face of legal challenges, usually prefer to find technological responses – as it is very clear in Simon Klose's (2013) *TPB-AFK* or Ben Knappenberger's (2014) *The Internet's Own Boy* films, which often lead into actually innovative processes and products, as we have discussed in Chapter 4 (section 2.). In fact, one designer (FG_1.13) suggested this by saying that, as far as art goes, he had the impression that digital was more open than analogue, in the sense that the idea of open culture is much more widespread among digital communities than among artists in general.

Another interesting outcome was the comment of FG_1.2, another design researcher, whose work related a lot to intellectual property as it involved the development of a health product, when she suggested that, from her experience, at university level, patents are a much clearer field of intellectual property than copyright and this difference was much more expressive in

Portugal than in the United Kingdom. This can be related with the actual differences in the roots of author's rights and copyright law (Chapter 1).

When asking about the participants experiences with copyright, another common problem raised by more than one participant was again the lack of trust in institutions (see section 1.). This was something common to participants in all focus groups and interviews. Participants also described several examples of cases in which civil servants at finance or cultural authorities had simply told them to proceed with presentations and pretend they were not using any copyrighted materials because no one would actually come and inspect what they were doing at that time of the day or in that particular venue (FG_1.3, FG_1.6, FG_1.10). In other words, this revealed that, despite the official burdensome of copyright clearance for live performances, the outcome of such process was almost completely arbitrary, depending on the civil servant that would pick up the process. Participant FG_1.6 claimed that such attitude only lowered the standards for artists, as it demonstrated that not even responsible institutions seem to really understand or respect the legal limits or to take artists very seriously when they are new or unknown. She also claimed that making us all pay for using certain types of technology based on the assumption that we are all stealing is definitely also not a good solution – referring here to recent private copy legislation. Besides, not only did participants see institutions more as a kind of “police” rather than supportive structures but they also found they were not completely transparent or even knowledgeable of the problems related to creativity. Some participants claimed they had received money from SPA or GDA¹²² (see section 1.) but they couldn't really understand why or how the amount was calculated – the check had just shown up at home, with no clear explanation (FG_1.3, EI_15). Participant FG_1.9, an American film director and researcher, asked if that money could actually be considered as income or if it was just “coffee money”: everyone agreed it was “coffee money”. In fact, FG_1.6 discourse even changed after the term “coffee money” was introduced in the discussion. Before, she had defended copyright as an important asset to artists. Towards the end of the discussion, her position was different and she was no longer

¹²² Collective management organizations in Portugal: SPA – Sociedade Portuguesa de Autores (Portuguese Authors' Society), specialized in authors' rights management, and GDA – Gabinete dos Direitos dos Artistas (Artists' Rights Office), that works with neighbouring rights management.

sure that copyright granted any protection to artists. This was in fact quite revealing for everyone in the room.

As I heard FG1.3 and FG1.10 about the royalties they get... That's just change! And I'm thinking: well, the amount I was recently payed for a translation than later went into production in the UK was 300 euros – and that's also a few coffees. And they even tell you they can't pay because that is so much! So, the matter of disproportion is at stake here. And still I would definitely struggle for that right [of being payed], even if it isn't a lot, considering that otherwise I will be doing it for free or be payed very little after splitting ticket sales. I can see both sides: the "I've got no money" but I also don't feel like stealing. (FG_1.6)

At this point, FG_1.6 was mainly referring to recognition, giving several examples of situations that led her to this reaction: from translation works that had been poorly payed and later published without any discussion of royalties to the mere possibility of being consulted to authorized the online publication of theatre plays she had written or translated for free for performance purposes only.

I was never even asked whether I agreed with it or not. And it's my work too! And it's not that I'm going to make them take that down – I never had the guts to do it – but I feel extremely vulnerable. And again, it's a farfetched hypothesis to think that someone will be interested enough to use my text or perform it. But still I think something is not right, something has been taken from me. (FG_1.6)

When asked what would she do in case she decided to claim her right, FG_1.6 said she would contact the company directly, without ever considering the possibility of recurring to any institution to help or advise her on the process – this was particularly interesting to note, as we had already been talking about a series of institutions that, at least in theory, should provide this kind of support to artists, only confirming previous statements of artists claiming not to rely on such institutions.

FG_1.3 finally mentioned the fact that there is always a certain percentage of the work you can use and that is often a way to go around the problem of copyright.

We just never know exactly what percentage that is. For example, I think in music it is 30 seconds but it has to be the least recognizable 30 seconds of that song. Or the worse possible 30 seconds of that song! At least, that's what I was told at SPA about a song from a dead Portuguese songwriter. (...) You don't feel that there is anyone who actually knows how things work and that actually can inform us correctly about our options. Besides the amount of money

we need to pay for all rights clearance, considering we receive public funding to create... It's very contradictory! And we never ask ourselves these questions. (FG_1.3)

In the end of the discussion, as planned, participants shared ideas and suggestions of actions to be integrated in Copywrong: 1.) register live and give away all the content and materials we created for others to use as they wished, as a sort of open source performance model; 2.) collecting donations in a crowdfunding way, offering dinners in exchange (apparently, a popular practice among Japanese anime communities; FG_1.2); 3.) considering the copyright issues of the creation process but also of the use of the resulting performance by others; 4.) be metaphorical, revealing instead of explaining; 5.) promote a streaming flashmob, with artists from different locations sharing the same script; 6.) make it funny; 7.) turn it into a publication, a sort of copyright manual for artists. All suggestions were considered and more or less integrated in Copywrong's final format later presented.

- Focus Group #2 (FG_2)

During our second focus group, held at the cultural venue Armazém22 (A22), in Vila Nova de Gaia, we gathered a group of six performers (plus GI_1 and GI_2 who, despite being members of the Copywrong team, for the purpose of this research, were also being observed). Our conversation started again with the kick-off question to which one of the participants replied in a philosophical way:

We need to distinguish what is an author from author's rights. This is an infinite subject, in which I prefer to declare myself as 'copyleft'... As a DJ I am also concerned about respecting author's rights and have the actual recordings I own or borrow – I don't use mp3 files. But when it comes to my own rights, I don't really care much. I've seen my work being copied by other artists before. It's not nice but I'm not going to sue anyone for that. There's that saying 'good artists steal, bad artists copy'... It affects your reputation. (FG_2.2).

To his intervention, another artist replied it all depended on the ends of the use:

"If it is for commercial purposes an author should claim for his rights – you might not want to be associated to a certain brand or business. But artistically... What is new? I don't believe in originality. For me, author's rights depend on the end use."(FG_2.6).

For another participant (FG_2.5), an experienced theatre director, piracy is a lifestyle as valid as following the rules. And both should be possible within the law. She claimed to normally follow all the necessary licensing process to set up her theatre plays mainly for ethical

reasons. We later confirmed that most institutional cultural venues require such licenses in order to allow a presentation. However, she mentioned a situation when she was asked for 2000 euros in advance by SPA if she wanted to present her direction of one of Heiner Müller texts. She didn't have the money at the time so she payed for a small entry to make sure the show wouldn't be cancelled. After the show, ticket sales had summed up little more than 2000 euros:

I didn't pay them and the process went to court. I had all the actors, the crew, no funding... I believe it was the best decision. (FG_2.5)

After two years, she met one of Müller's former colleagues on a trip, to who she explained the episode:

He told me that, being a communist, Heiner Müller himself would never have accepted that. The author claimed he had had debts until he was 45 years and it was the artistic community who supported him. He believed that his work was a way to pay such community and that that was the way in which art can be sustainable. (FG2.5)

All participants agreed that there is an important distinction between appropriation – which they accepted and even regarded as flattering - and plagiarism. They also agreed that it is usually easier to sort out rights problems with living authors, who they could contact and negotiate directly (FG_2.1, FG_2.2, FG2.5). All agreed that, in most cases, dealing with the Portuguese authors' society (SPA) was clearly presented as a burden, which is why they often simply choose to ignore such problems and proceed with their creations without even consulting them. In this context, recognition was the centre of their concerns. And it was the fact of being copied without any previous contact or reference to their name that was more disturbing to most of the participants. However, this situation seems to be the more common the more fragile is the situation of the artists, affecting younger and less resourceful artists more than other (in our sample, that was the case of FG_2.1 and FG_2.4). The only participant in the group that knew about the existence of the Creative Commons licenses (FG_2.5), considered that the principle behind the licenses is very positive, as it allows the author to clearly state the extent to which to share her work. All participants discussed that, in the performance art, there are many different authors for the different layers of the final show: from text to light and sound design, costumes, sets... Although they all come together to a sole final product, each author should be able to decide how they wish to position towards

their own copyright. The general practice is that they completely wave their rights to each specific show. However, participant FG_2.6 raised a huge discussion when she claimed that this is not always true as different performance shows legally require different permits. Apparently, in Portugal, while theatre shows require declarations from all authors and participants, dance performances do not require permission to the use of text, light design or set design to be presented in traditional venues. Independent or alternative venues not even consider such legal processes – which often a reason why smaller artists choose them.

Another interesting thing to note was that younger artists, FG_2.1 and FG_2.4, were the ones who claimed to feel more vulnerable. Given their lack of experience, they had no clear idea how such legal processes worked, and revealed to often sign declarations whenever they were asked without questioning. All participants agreed that there was very little information available and, although some organisations such as the artists' rights office (GDA – neighbouring rights management organisation) were more transparent, the main collective rights management society (SPA) provided no clear information about their processes and numbers. While some of the participants knew it is not mandatory to be registered in such organizations (namely, FG_2.2, FG_2.3 and FG_2.6), they all agreed the system makes them think they are. One of the participants mentioned that if an artist does not wish to be represented by such organizations after her death that needs to be officially stated in a will (FG_2.2) – we confirmed later with one of the interviewed lawyers this is not true (GI_4).

After a while talking, one participant affirmed he had already openly copied another: “I liked that scene so much that I had to include it in my work. And so I did. And there was no problem. The original author never saw my performance.” (FG_2.3). This raised the question of success. All participants agreed that there is usually a problem of copyright if the copy is successful. One of the younger participants, FG_2.1, regretted the moment when a colleague that had previously worked with him in a project with homeless people presented the exact same concept of show at the municipal theatre, with much more funding and resources than the original play he had been collaborating. Again, the biggest frustration was the lack of recognition: “It was my show and he knew it and he still did it without having a word or even make any reference to my name.” Another participant stated he had also collaborated in projects where ideas were taken from other projects: “I didn't feel very good about it at the time. But I later found out that the project we had got our inspiration had itself copied a

previous one!” (FG_2.2). At this point, participants started to discuss examples of cases of different artists having identical scenes or choices for contemporary shows, without ever knowing about each other’s work: “This is actually more common than we think. We all have similar references and sources of inspiration.” (FG_2.5). However, as one artist put it, although they constantly “pirate”, “steal” and “copy” one another, “the final work is original and that’s what’s important” (FG_2.2). He repeated the popular saying among the artist community: “Bad artists copy, good artists steal.” (FG_2.2).

To conclude the session, participants proposed some questions that should be considered in Copywrong: 1.) avoid an educational approach (they all reacted very badly to the idea of an educative performance); 2.) include the idea of the continuous circular process of artists trying to avoid copyright but never actually solving the problem; 3.) consider the dichotomy online vs live; 4.) use telepresence.

- Focus Group #3 (FG_3)

The third focus group session was very different from the previous two. On one hand, because Copywrong performance was already finished and had already been tested twice (we will develop further on this below) and, on the other, because most of the participants were very young performance artists. Another important aspect was that this session was integrated in a summer school programme for performing artists organized by GI_1, at A22, and the participants had already been working and discussing different themes for two days when we met them. Because GI_1 already knew the participants, he ended up leading most of the discussion relating it to other activities in the programme, leaving little margin for things to be conducted as in the previous sessions. Besides GI_1, there were also present a choreographer who also worked at GDA (see above) and the cultural manager of A22, who participants had previously met too. GI_1 and GI_4 were also present. Here too there were some important results to highlight. The first thing, was that, despite their young age, this group of performers had already heard about copyright and one (FG_3.3) had even dedicated time to actually read the Portuguese Author’s Rights Code. However, the only thing he learned from it was that there were a lot of preconceived ideas he had heard or learned at school that were not necessarily true. Another participant (FG_3.1) who had studied in the UK, realized that they had very aggressive copyright and data protection policies: in school, he could not publish or even show any video recordings of his activities and rehearsals and,

whenever that was authorized, he had to blur everyone else's faces on the video. Participant FG_3.4 said she often signed declarations waving her rights even at school. For her final project, she decided not to use any music and collect sounds in what she called public domain when she was actually referring to field recording sounds. She and another participant (FG3.5) referred to experiences of having to change their costumes because the brand label was visible. Participant FG3.2 said she didn't trust GDA's management of her rights. According to her repertoire manager¹²³, they only collect royalties or compensation for image rights to the four national channels and after several years (she was receiving royalties relative to 2012 TV broadcastings). She said this is contradictory to what they claim, which is to manage artists' rights related to any public exhibition – and not just those four channels, which made her feel as if she doesn't really have any rights. To her remarks, an older choreographer that also worked at GDA (FG_3.7), replied that the organization covers artistic performances and those include only musicians, dancers and actors. He also explains that the organization only charges the TV channels, that usually don't want to pay, and part of the money goes to cultural funds while the other is distributed directly to the artists. This can depend on the relevance of the role played (if they had a leading or secondary role), the length of the exhibition, how often it was broadcasted, etc., according to conditions defined in contracts. Most of their budget, however, goes to law suits, usually because of those same four national TV channels that often refuse to pay. The discussion continued, with FG_3.2 explaining that the main national TV channel gave her a contract to sign where she agreed to wave practically all her rights to which her repertoire manager said there was nothing that could be done because if she decided not to sign they would just find another artist to do her job. Another participant (FG_3.6) who is a visual artist and performer mentioned she had to sign similar declarations in major public museums where she presented her work. FG_3.2 said the most outrageous situation was when she had to sign such declaration for a casting at one of the two major private national TV channels.

It was horrible. They literally cornered me there. There were about 20 people in the room [from the channel production team] and me. To them, being an actor is constantly living in a reality show. You feel like you have no rights at all. (FG_3.2)

¹²³ The name GDA gives to each artist's account manager.

GI_1 and GI_2 also referred to the common situation of having to wave their rights to themselves in order to get the permissions and licenses they needed to publicly present their performances in some venues which, although sometimes they found it “ridiculous”, they would still do it because they felt they had no alternative.

The question of unintentional copying due to common references, like in FG#2, was also addressed (by FG_3.6) as well as the importance of recognition and the idea that there is no such thing as originality (FG_3.3). But the collection of references used to produce a certain art work can be original, “the code is original” said FG_3.1. Whether it should be protected or not from being copied or used, depends a lot on the context and the intention behind it (FG_3.1).

- Focus Group #4 (FG_4)

This last focus group with artists was a public session presented at Creative Commons Global Summit 2019. The panel involved the five artists identified in Chapter 2 and an audience of about forty people, including lawyers, educators, artists and students (see Chapter 2, section 4.). The diversity of artists involved in this session proved to be very important as it enriched the discussion and promoted debate with the audience, as well as it allowed us to establish some comparisons between the different focus group sessions.

In this group, we gathered a co-founder artist of a thirty years performing arts group, Critical Art Ensemble (CAE), in the United States (FG_4.1), a dancer who has founded an online training platform for dancers (FG_4.2), a collage and media artist (FG_4.3) and a film director (FG_4.4), all based in Portugal, and finally a co-founder media artist of the project Kube y Su Conjunto, in Argentina (FG_4.5). Besides their enlightening interventions, by the end of the conversation the debate opened to the audience, who also shared very insightful perspectives and questions. It is important to underline that, being part of a Creative Commons event, all artists and audience had already knowledge about copyright and even had some more or less clear positions in relation to it.

Knowing that the collective CAE has publicly presented their thoughts on the topic before (Critical Art Ensemble, 2001), the conversation started with FG_4.1 reflecting on what he believed to be the relationship between copyright and artists. To him and the artists in CAE it is very clear they should stay as much away from copyright as possible, as they believe

copyright only serves institutions and institutional artists. They are also all convinced that creativity is a process where

90% is taken directly from something that was done before and, the other 10%, might be something that looks new – most times it isn't. From a material perspective, it makes no sense to think of art as original. (...) Most artists don't belong to that small elite of those working for rich people or making art to mass audiences. Most of us work for other reasons other than money. This is not to say others are not doing important work. Often they are. But it's not their work that is going to be most historically important because they are making art for money, responding to the market, hence, using formulas they know will work. For those of us doing art for people – people like ourselves – copyright is even a problem: to get payed for your work, the last thing you want is to have something like copyright adding friction to people who can access and distribute your work – which is the main thing you desire! Paul Virillio said 'speed and wealth go hand in hand'. That's true for the stock market but it implies us artists too. When you have copyright, usually everyone gets payed except the artists because they don't control distribution – which is all they need. We need to think of a new model where the art work is not the object but the whole experience. Especially for artists doing ephemeral work. All we want is for people to have access to our work. The more other artists use your work – we love when that happens – the more it is redistributed over and over again and better opportunities you have to work again, earn higher fees, get bigger commissions... Money comes to us in another way. Musicians are already doing it: it's not about selling records or CDs anymore. This model works in two ways for us: 1.) we get payed – even if we're not gonna be millionaires – and 2.) we're adding to the art pool of raw material. Because that's how we see art: it's not the work in itself, it's raw material for future creators to take and make new art. (...) The privatization of art only holds back what you can do, who you can reach and who can access your work. And the question of "how you get payed" is never gonna be answered through copyright. That only makes it worse! (...) It only helps artist that are catering to the market. So, we don't care about it. Because we only do the work want. (FG_4.1)

All other participants essentially agreed with FG_4.1's statement. However, their perspectives were slightly different due to their own contexts and experiences. In the case of FG_4.5, he believed to be something which is very hard to change and so his way of making art was also a way to reach "the responsible people" and to try to influence and overcome copyright regulation in Argentina. Also for his collective, the experience is fundamental:

We need to be focused on the experience because we are competing with very well payed content; experience is a way to make copyright irrelevant. (...) For example, we often offer food or other things to our audience to make sure the experience goes beyond the art work. (FG_4.1)

FG_4.4 said to philosophically agree with FG_4.1: ownership of art didn't make sense to him as well. Especially, working in film, as films are never made by only one person.

When you attribute rights to a film, everyone should have ownership over this object. But that's never really what happens. For example, here in Portugal, normally to make a movie you need a production company [to access public funding]. At the end of the process, that company owns all the rights of the film. It's tricky... And we need to deal with it every day because everything we use in film is under some copyright protection. Actually, I have more questions than answers! Often when you want to use something which you don't own the rights you just leave it to the producer to sort it out. What they do is to pay the SPA [Portuguese Authors' Society] to clear the rights. We once used a song in a film that, although it was a diegetic song – meaning it was playing on the spot we were shooting, we didn't add it to the film – we later learned that, in Portugal, we don't have anything similar to fair use. We never got any problem with it but we are always afraid because the film has been in international festivals around the world. So we never know. (FG_4.4)

Also the collage artist (FG_4.3) agreed with FG_4.1:

We don't own anything. That's part of art history, it's part of the process of creating. In my work, collage, it's impossible to create from nothing. Picasso and Braque were the main artists that brought collage to the general public and they never payed or attributed anything to anyone, although they made fortunes with their work. I also don't think copyright helps artists. I never registered any work. I don't mind people stealing it, I don't care. I'm even a bit flattered – it's because my work is important to them. But it's is completely different when it comes to [commercial] brands because they make a lot of money from it. I had some work stolen for commercial purposes before. (...) In that case, it bothered me. That's why CC licenses can help. They've been very useful to me in that sense because I use the non-commercial license. And I also steal a lot for my collages but I try to base my ethics on the fair use principle. We don't have it in Portugal, but all my work is digital and most servers are US-based so I'm probably covered. Even if I'm not, I'm not really worried. I just think artists shouldn't be so limited by the law. (FG_4.3)

FG_4.4 added that he never had any problems with copyright but he feels that, in Portugal, if he gets sued he has no protection. As FG_4.3, he believes that the fact that most servers are based in the United States, artists tend to follow the US copyright principles when they put something online.

We're actually publishing it in the US. But if someone in Portugal raises any problem then you don't know what to do. My main concern is the lack of clarity in legal processes. (FG_4.3)

As a dancer, FG4.2 had similar concerns. However, due to her recent work as a start-up founder (remember she also has an economics degree), she seemed to have a conflicting perspective:

The challenge is to find a suiting model. We've been discussing this for two years. It is really difficult to create a model that respects the artist while, at the same time, you are struggling with market pressures. We've been dealing with investors that tell us "oh no, this is a very small niche. Professional dancers? How many are there in the world? You should turn this to everyone who likes to dance. In that case, we invest in you." This is the dilemma: if my project doesn't target mass consumption - becoming something completely different - nobody is willing to invest in us. We don't want that so, we've been trying to talk to dancers to join us and share their work. But then I don't have anything to offer them back. We all know we will be promoting their work with the videos. But, being a dancer too, that's the sort of conversation I don't want to have. Because I know they are so tired of that discourse! And so I need to have another kind of approach and that's what we're trying to do: to create a relationship to them - a legal relationship, a contract - that can guarantee some compensation in the longer run. (...) We need another model of remuneration. And nobody knows... Business world has its models, creatives have their models... And when you are in between nobody really knows what can work to respect both sides. We're still in the making... I guess I also have more questions than answers about this. (FG_4.2)

When asked about alternatives to copyright such as the Creative Commons licenses, artists had quite different perspectives, depending on their experience and engagement with the digital world. For FG_4.1, at CAE they deliberately don't care about copyright so it does not make sense to care about any other type of licensing. Institutionalized licenses exist on the principle that someone is going to attack or violate one's art work. Which again, for FG_4.1, doesn't make sense for most of the artists.

I mean I love CC as a concept, as an artwork. But, in practical reality, all we need to do is just not be a part of the copyright scam. (FG_4.1)

FG_4.5 and FG_4.3 regularly used the licenses but for different reasons. While FG_4.5 uses them to prevent his work from being used for commercial purposes, FG_4.3 uses them as a way to find works that are not under copyright (namely, through CC Search engine or through CC filters on Youtube or Vimeo).

But there are still problems even with the use of CC licenses for my work: I sometimes use more than 200 different images in a sole collage work. How could I ever license or make attribution to every single author of the images I'm using? That's impossible! CC is a tool that can be very

useful but that depends a lot on the context. It's very hard to just have a general global rule you can implement every time. I don't license my own work because I don't care how people use it. Only if there are commercial ends to it. And, even in that case, I usually just kindly ask them to stop doing it. (FG_4.3)

Participant FG_4.2 shared a different perspective because of her experience on both sides of the business, as a dancer and a distributor.

It's only normal that artists don't care about copyright because they don't need it, it is not useful for their work development. But when you work as a distributor, you have no alternative but to care about it. Even if the artist doesn't care, you always need to have that agreement. As soon as I talk about internet and video distribution, their immediate reaction is "no" – they're too scared of what's going to happen to their work. However, once you show them the contract and they understand it is all very clear and fair, they actually become very open to it. We have been working with our lawyer to develop a more 'creative' contract: it is a sort of checklist that makes it much clearer for the dancers to understand what they are signing for. That's also why we use CC licenses. Some already know them and so it becomes much easier to make the terms of our contract clear. (...) There will always be those who want to protect their techniques and wish to copyright everything. Like Gaga style, from Israel: you can't even pass the door to get training with them without signing an agreement that you won't talk about it or share it in any way! I once asked them if I could make a video of their technique to my platform. Of course, the answer was "no"¹²⁴. But I find it amazing how they get to protect a technique that is not even new... There are more artists like that, more worried in monetize what they've done than creating new things. How they do it? It's weird... Who gave them permission for it? Why are they not paying all other dancers that developed those moves before them? Gaga makes a lot of money. It's just weird. (FG_4.2)

After this last intervention, the debate opened to the audience which was also quite revealing of the problems we intended to raise with this session/ research. The first question immediately validated our intention with this open session: an American intellectual property lawyer in the audience asked how to bring more of this artists' perspective about copyright into political debate. Being an IP expert, involved in international policymaking, he confirmed the fact that the voices of the artists are usually never heard because they are usually represented by consortiums of distributors (publishers, editors, record labels) or by collective management societies. To this our focus group participants responded in very different ways,

¹²⁴ During the Covid19 pandemic, they made it all open and free, only asking participants to contribute to a teachers fund if could (<https://www.gagapeople.com/en/gaga-during-covid-19/>).

again indicating their different contexts and relation to the digital world. Participant FG_4.1 said he was unconcerned with that, claiming that it is such an irrelevant subject for most artists that they really don't want to waste their time on it. Participant FG_4.3 had a very different perspective:

I care about it and I want to engage in the discussion. Not just because of my work but also because I am a user/ consumer. (...) I do it through the platforms I chose to use. For example, for music, I use Bandcamp and not Spotify. People should know more about the alternatives they have. (...) We're now all creators-spectators. But [copyright] is not really a global discussion. In collage, we don't care. But in music, people are more aware. A lot of people still take images from the internet thinking they are free just because they're online. (...) The discussion only happens when there is business involved. (FG4.3)

Another element in the audience (another intellectual property lawyer, working for the European Commission) pointed out that the discussion had been a lot around the economic aspects of copyright and wanted to know how artists felt about moral rights. It was interesting to note that the debate participants did not really react to this, to which we asked if they knew what moral rights were. Everybody in the audience laughed but our panel guests did not react to the joke – clearly, they had not understand it. Participant FG_4.4 picked up on the previous discussion, completely uninterested (or unaware?) in this last question:

Even with alternative platforms you have copyright and business involved. You'll have more downloads even on Bandcamp if you have a record label behind than if you're doing it on your own. It's like when the printing press was invented: a lot of unknown writers who couldn't publish ended up starving to death. On Spotify, you can't even upload your stuff if you don't claim your copyright. (...) Everything is so complex that, as an artist, I often feel that my rights are actually a barrier to my own work. It's just too complex to understand..."(FG_4.4)

An audience member from Colombia, who was also an artist and a CC activist, said he used CC licenses to feel safer.

As artists, we also need to change the way we deal with copyright. As an artist, I want to earn some money from my work so I can continue doing it. So I use the CC licenses in my films to make sure they circulate more, creating more opportunities to be exhibited and commissioned and I get the chance to make a next one.

The same happens to FG_4.3, who also affirmed to get more payed work offers because he didn't care about his copyright: he just releases his work online under open licenses and more people get to see it and like it and hire him to create more.

From participant FG_4.2 perspective, it is easy to be open when everything else is working.

For dancers in Portugal, for example, if public institutions aren't working well to promote and support their work, you don't have anything left and you are afraid to go open because the general narrative is that you should protect your work. So when I talk to a dancer who gets no public funding to create and lives out of his 20 euros an hour of non-regular classes and I ask them to go open they are scared. When the system responds to artists' needs, everything is ok because you have funding to create your project, food on the table and a roof over your head. But when artists don't have that security, they are scared to share their work because it is all they've got. And they might have been researching and working on those moves and techniques for 10, 20, 30 years! And I come and ask them to share all that online with everyone and tell them that will be good in the long run... I can't even be sure of that! I'm only starting myself. They are investing in me! How can I be sure they will make money out of it some day? How can I be sure more people will attend their classes in the future? If I can't guarantee nothing in return why should they trust? That's my challenge as a distributor. Because I know they depend on the funding of projects they create. And that can be only one, this year, maybe two, next year, and then again none, in the following. You never know! (FG_4.2)

The discussion finished with an intervention from a Portuguese lawyer that worked in an office that provides support and training to artists at the municipality of Lisbon. She claimed that what was really necessary was to inform artists, saying that it is not "understandable artists work with copyright for so many years and they don't know what it is". To this an American artist based in Kosovo responded the following:

There is always this sort of agency attitude in organizations like this. The ownership of artists is turned into "you must learn the rules" when what we really need is the opposite. This is only dangerous to a very very very little minority of artists. (...) I really think what is lacking is that civil servants understand most artists' position which is just as valid. This is not a matter of lack of training or information from creators, it is just a very inhibited world for creation.

FG_4.1 complemented this:

We don't need to worry because poor artists will never get sued. Lawyers don't take cases if they can't make money. What will someone get for suing me? Nothing! (FG_4.1)

- Copywrong presentations

Although they weren't particularly relevant to our research (among other things because, as an active participant in the actual performance, it was practically impossible to accurately register or collect reactions from the audience, although the first two full presentations were

video-recorded and published on the project's website), it is important to briefly reflect on the feedback we collected in the different moments we presented the performance Copywrong. As said in Chapter 2, all three presentations occurred in very different contexts and to completely different audiences:

- the first presentation took place in Porto, on October 2017, at futureplaces festival, for an audience composed of mostly researchers and artists;
- the second presentation happened in Toronto, on April 2018, at the Creative Commons Global Summit, for an audience of lawyers, students and artists, most of which were also open culture activists;
- the third and final presentation happened at Armazém 22, in Vila Nova de Gaia, for a group of young performers (FG#3), within the Unfinished Summer School programme.

In each one of the performances, reactions were overwhelmingly positive. At the end, the audience was very excited and there was always an intense discussion with members in the audience wanting to know more about the process or how they could engage or promote the work – in Toronto, people even stood up to applaud the show and the conversation lasted for almost an hour after the presentation. As said, because we were also involved in the live act, it was not possible to collect detailed feedback. But it was clear that there was an interest in continuing the discussion, which confirmed the pertinence and importance of creating space for the artists to engage and take part in the copyright debate. On the other hand, it was also clear that the device worked as an information tool to the artistic community but not only. The amusing way we found to bring up to discussion such an usually complex and inaccessible issue was very much praised by the artists but also by lawyers and researchers. It is also important to note that, although we are not aware of anyone replicating or adapting the work to their local contexts yet, we have been contacted by artists interested in doing it in Portugal, Poland, Australia and the United States – unfortunately, none of these resulted in actual proposals.

4. Copyright and Artistic Work – Summary of Key Findings

As we have seen, both in business and in artistic practice, the cultural and creative agents face similar challenges, when it comes to copyright. However, it became very clear that, given their fragile isolated position, artists feel much more vulnerable and confused due to their lack of resources (namely, financial) and lack of trust in the institutions that should represent their interests or provide information (namely, the collective management societies or public cultural agencies).

In face of that, it is also quite obvious that most of them decide to ignore the law and simply run the risk of having problems, so they can continue to make their art freely and away from the burdensome complexities of the law, which they also feel that, in any case, will not protect them – either because they don't have the possibility to defend themselves or because they simply have no resources, so eventually they are not interesting targets to chase. What is also curious to note, is that they usually don't have any real problem with it. This suggests that, particularly in performance, the system doesn't really operate efficiently and/ or there is a high degree of tolerance towards artistic works for cultural ends only.

It was also quite interesting to observe that artists that were more aware about copyright were those based or related to the United States or the United Kingdom and that, even when that is not the case, at least in Portugal, artists seem to know more about the Anglo-Saxon copyright system than about their own local context. This brings us back to the reflection about terms and conceptions of the law present in the international debate about copyright, with clear dominance of the utilitarian tradition countries' discourse over the rest of the world, somehow indicating the usefulness of copyright as a modern cultural colonialism mechanism (see Chapter 6, section 4.).

The fact that most artists are more concerned with attribution and recognition matters than with remuneration from copyrighted work was very symptomatic of the fact that, on one hand, they are not making their art primarily for financial reasons (as seen in Chapter 3,

section 5.) and, on the other hand, they do not even consider copyright to be any guarantee of payment – suggesting the weakness of the argument of copyright being an incentive to creation for the general majority of independent artists (see Chapter 5, section 3.). In fact, as seen, the most experienced artists, in general, have a clear conscience of how much copyright is only benefiting a small elite of star artists, who chose to respond to market's needs instead of only working for art's sake (section 3.).

The examples of artists using copyright to prevent other to create or enter the market and of other considering the use of open licenses and experiential layers to their art work because of competition, also indicates that copyright might only be promoting a competitive attitude among artists. By cornering towards a more mercantile behaviour even those who make art for art's sake (namely, through criminalizing their behaviour – as we've seen in most of our focus groups the word "steal" was the term artists used to talk about their own appropriation of other artists' work), copyright's opacity leaves them even more isolated and fragile when having to negotiate with structured institutions or companies – which goes in line with the idea of the "economization of culture" presented in Chapter 3 (section 5.).

What also seems to be obvious – as we had already referred in Chapter 6, section 4. – is that the political and legal circles are quite unaware of the artists' perspectives and relation to copyright, as the interviews with lawyers and the interventions at the end of focus group #4 and presentation #2 of Copywrong revealed, confirming what so many scholars have been defending over the years (Towse, 2011; Handke, 2011).

All in all, our field research only proved to be consistent with the studies and findings from academic literature that we have analysed in the previous chapters. First person testimonials of the artists and discussions and interviews with different copyright system stakeholders have helped us understanding what is the real relation between copyright and artistic work. In the following chapter, we propose a model that we believe can help explain this relation and indicate directions for future research and policymaking.

Chapter 8

RIGHTS IN SEARCH OF THEIR AUTHORS: THE RELATIONSHIP BETWEEN COPYRIGHT AND ARTISTIC WORK

“DOOR-KEEPER (timidly). These people are asking for you, sir.

THE MANAGER (furious). I am rehearsing, and you know perfectly well no one's allowed to come in during rehearsals!
(Turning to the Characters): Who are you, please? What do you want?

*THE FATHER (coming forward a little, followed by the others who seem embarrassed). As a matter of fact ... we have come
here in search of an author....*

THE MANAGER (half angry, half amazed). An author? What author?
THE FATHER. Any author, sir.

THE MANAGER. But there's no author here. We are not rehearsing a new piece.

THE STEP-DAUGHTER (vivaciously). So much the better, so much the better! We can be your new piece.

AN ACTOR (coming forward from the others). Oh, do you hear that?

THE FATHER (to Step-Daughter). Yes, but if the author isn't here ... (To Manager) ... unless you would be willing....
THE MANAGER. You are trying to be funny.

THE FATHER. No, for Heaven's sake, what are you saying? We bring you a drama, sir.
THE STEP-DAUGHTER. We may be your fortune.

THE MANAGER. Will you oblige me by going away? We haven't time to waste with mad people.

*THE FATHER (mellifluously). Oh sir, you know well that life is full of infinite absurdities, which, strangely enough, do not
even need to appear plausible, since they are true.”*

Luigi Pirandello, *SIX CHARACTERS IN SEARCH OF AN AUTHOR: A Comedy In The Making - Act I* (1922)

In this last chapter, we present a summary of the construction of our Concentric Circles Model of Cultural Work, based on the theoretical analysis and the field work we have developed throughout our research, suggesting some possibilities for further empirical analysis of the model in its relation to copyright. We then contextualise this model in light of its possible

contribution to understand the social role of the arts, as proposed by Eleanora Belfiore and Oliver Bennett (2007) and Sigrid Røyseng (2016), to then discuss our main findings, underlining the need to rethink the social contract of the artists.

1. Modelling the Role of Copyright in the Cultural Economy

The instruments presented in the previous chapter have allowed us to test our hypothesis and better understand the actual role copyright plays in the cultural and creative sector. Throughout our research, we tried to simplify the width and complexity of the arguments on which copyright debate sits to the point they could become accessible and understandable to virtually all artists and cultural professionals. Our analysis also allowed to establish a clearer parallel between the effects copyright has on culture and on the economy, showing that, despite the higher awareness of independent cultural professionals and entrepreneurs, in general, they too are in a fragile bargaining position, when negotiating with major players.

It becomes clear that, apart from a small elite of superstars (who we could also call market-driven artists), core artists and authors are the weakest link of the whole cultural production value chain. It is, therefore, essential to reflect upon and design cultural policies that better respond to artists' current needs. Such policies must create possibilities for them to retain a level of control over public access to their own creations, allowing them to explore, innovate and disseminate the economic and cultural results of their work. Recalling our concentric circles model of cultural work, we now suggest how it can be useful in clarifying the relationship between copyright and cultural work in general, with special focus on the work of core artists.

But let us first go back to present the different steps we took in the construction of such model. As shown in Chapter 3 (section 3.), from the many proposals developed in trying to

frame the cultural and/ or creative industries, we have chosen that of David Throsby's concentric circles model of the cultural industries for his simple assumption that cultural (symbolic) value is the result of cultural work¹²⁵:

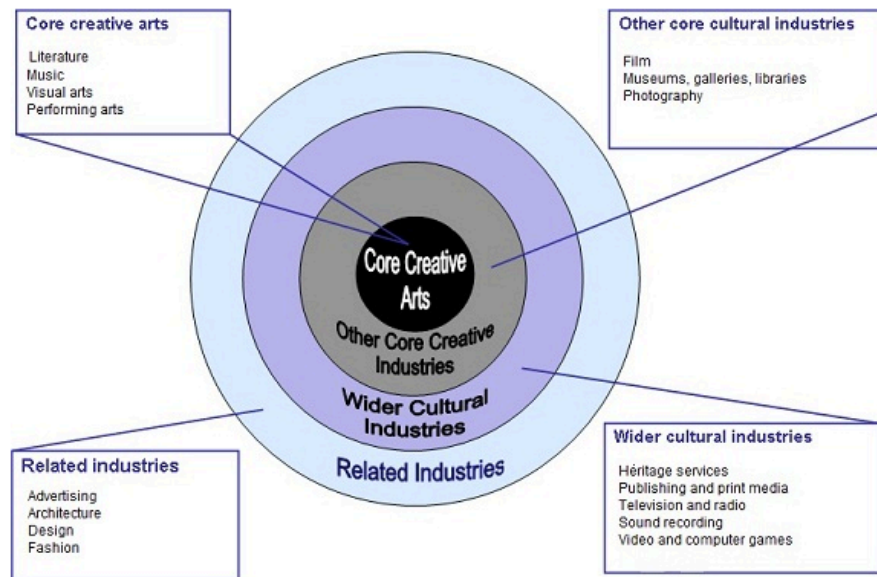


Fig. 13: David Throsby's concentric circles model of the cultural industries (2008)

We then have suggested a first reinterpretation of David Throsby's model, by reorganizing the groups of activities he originally suggests, dividing them between what we called the core arts, channel arts and functional arts, which are no more than the regrouping of layers of cultural activities originally proposed by the author (Chapter 3, section 3.):

¹²⁵ And that there is a trade off between cultural/ symbolic value and economic/ material value, as we move from centre to the out circles of the model (recalling our discussion throughout the previous chapters - Chapter 3, sections 3., 4. and 5., Chapter 5 and Chapter 6, section 3.).

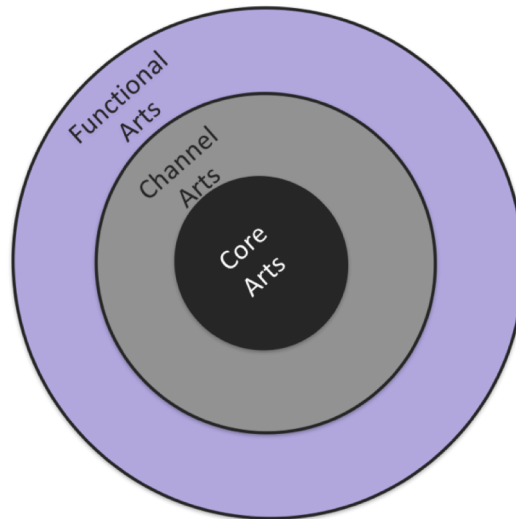


Fig. 14: The concentric circles model of the cultural industries redefined

This first redesigned model allowed us to reinforce the differences (already highlighted by Throsby) between those activities in the cultural sector that directly depend on the work of the core artists, that “group of workers for whom the creative act, whatever it is, is unarguably of primary importance” (Throsby, 2001, p. 94).

Assuming that cultural work is the most direct translation of the value of creativity, as we sustained in Chapter 3 (section 4.) and inspired by Chris Bilton’s ‘new adhocracy’ theory (Chapter 5, section 1.), we then proposed a characterization of the Core Arts (*id., ib.*, section 2.) which eventually led us into another iteration over the original Throsby’s model, based on the relations between different actors of the cultural industries, according to their relative position in the value chain of cultural production (*id., ib.*, section 3.). Fig 15 represents the different layers.

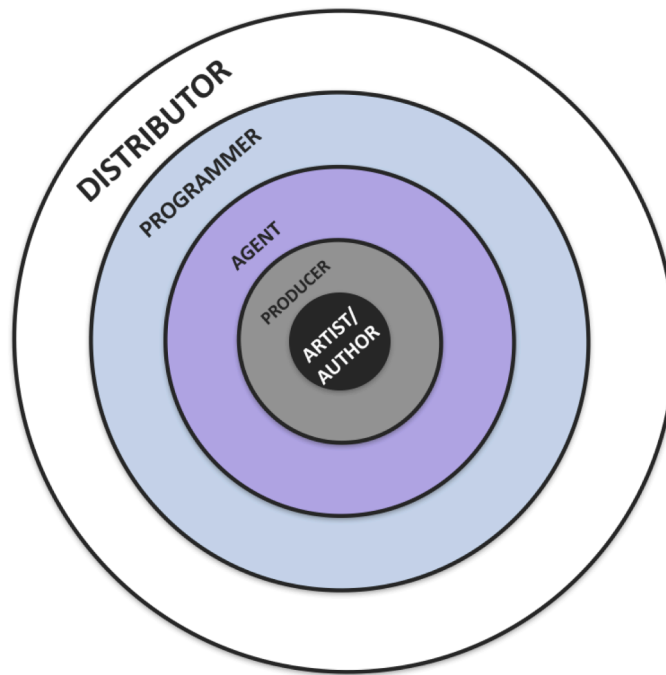


Fig. 15: Concentric Circles Model of Cultural Work

Such model considers the individual work relations between the different actors in the cultural market which can help us clarify the role of copyright in influencing those relations: at the centre, we find the core artist whose work will only be able to reach its potential audience if s/he succeeds in overcoming the several layers of intermediaries, from producer to agent, programmer and, finally, distributor. Such relations can be more or less flexible and/or overlapping depending on the cultural activity we are talking about, which is why we have decided to focus on the core arts activities (literature, music, visual arts, performing arts and film). Despite the differences between the core arts sub-sectors, it is possible to establish sufficient commonalities between each of one of these different markets' dynamics as well as between the impacts digitization has had on each of these activities (as, for example, costs reduction or the emergence of new business models, as seen in Chapter 5, section 2.).

From our analysis in Chapter 6, it was also possible to summarize the role and effects of copyright in cultural production and consumption, as a result of recent policies that have largely affected the cultural sector, often without considering important consequences, such as the standardisation of cultural production or constraints imposed to smaller agents (sections 3. and 4.). The findings of our field work presented in Chapter 7 have contributed to

confirm these theoretical considerations and to understand the way in which artists relate to copyright and how it actually interferes in their work and professional development. Such reflections translate into yet another iteration on our concentric circles model of cultural work, as proposed in Fig. 16.

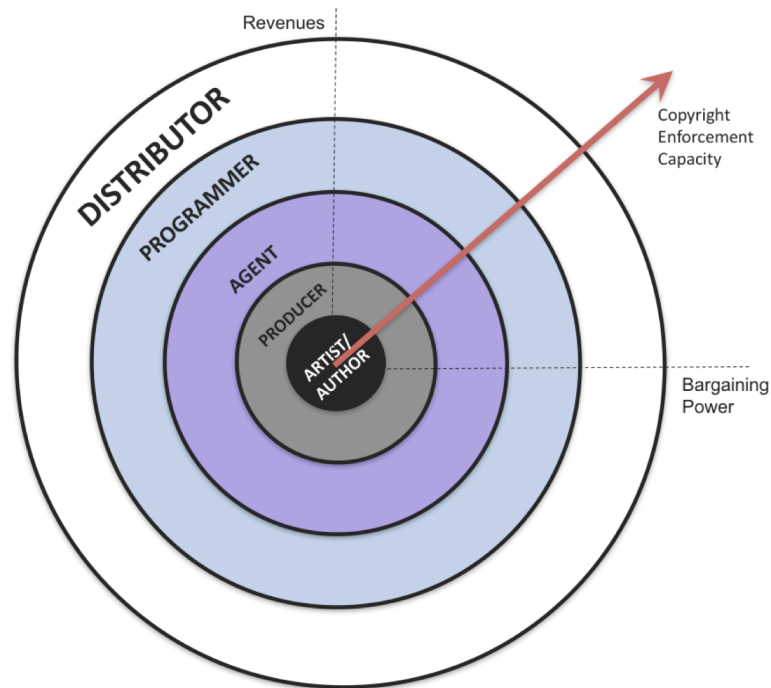


Fig. 16: The Concentric Circles of Cultural Work and Copyright

Figure 16. is an attempt to offer a refined graphic representation of what many cultural economists have been defending over the past decades, based on the idea of a trade off between symbolic/ cultural value and material/ economic value as repeatedly discussed throughout our previous chapters (see Chapter 3, sections 3., 4. and 5., Chapter 5 and Chapter 6, section 3.). Following David Throsby, we assume that from the centre to the outside circles, the level of creativity involved in each of the different actors' work decreases. On the other hand, the level of copyright effectiveness (or the copyright enforcement capacity of each market actor/ layer) increases, due to the crescent bargaining power of the players (which is due to their progressive immersion in market dynamics). In other words, regardless of their motivation (economic and/ or artistic) to work, although artists and authors are theoretically the central subject of copyright protection, in practice, such protection is only effective if they have enough bargaining power (money, information, reputation...) to enforce it. Otherwise, they will be completely left in the hands of the cascade of intermediaries that stands between them and their final audiences/ users/ consumers. Note that we have here left lawyers,

accountants and other liberal services outside the equation, although they might very well be regarded as part of the 'Agents' category.

This relation demonstrates how much copyright is in fact more of a market control instrument (for distributors in the first place), reinforcing intermediaries' power to maintain a market structure that is much more beneficial to them than to the core artists or even to the public/consumers. In fact, as said before, copyright functions as a barrier to market entry, which allows the already mentioned crescent market concentration in terms of distribution (as seen in Chapter 5, sections 2. and 3.), through two intertwined mechanisms: preventing new actors to compete in the sector, and restricting artists' bargaining power from a very early stage in their careers (validating our reflections about cultural work presented in Chapter 3, section 5. and our empirical work, as seen in Chapter 7). This is not only true in economic terms but also in cultural terms, copyright being a powerful mechanism to control access to cultural production and information (as seen in Chapter 5, section 1.).

On that note, another version of the concentric circles model of cultural work, from a micro perspective, could look like Fig. 17. At a micro scale, the closer we are to the centre, the smaller the circle - in this case, representing the relative amount of bargaining power, copyright enforcement capacity and revenues of each different cultural work category.

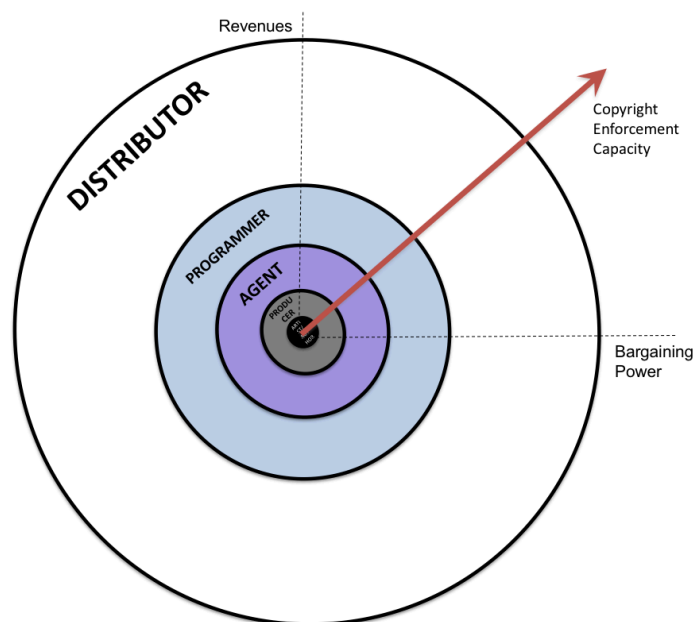


Fig. 17: Concentric Circles Model of Cultural Work (Micro perspective) and Copyright

On the other hand, if we look at it from a macro perspective, the model would look differently, as in Fig. 18. In this case, we are suggesting that the circles represent the relative number of actors in each layer - which should reflect on their bargaining power, copyright enforcement capacity and respective revenues. However, and due to a prevalence of precarious work conditions and individualisation we have analysed in Chapter 3 and 5, and confirmed by findings presented in Chapter 7, the whole, in this case, is not bigger than the sum of the parts, simply because the parts do not add up – amongst other things because, although artists are in much bigger number in comparison to all other work categories, they lack capacity to associate in order to increase their bargaining position. Hence, the feeling of isolation and fragility shared by the core arts group of workers does not allow them to understand the whole picture. As we move outwards, each following layer of group of workers “knows more” (see Chapter 5, section 1.) than the previous. On the other hand, at the centre group of the core artists, “nobody knows” (Chapter 6, section 3.; Chapter 7, section 3.).

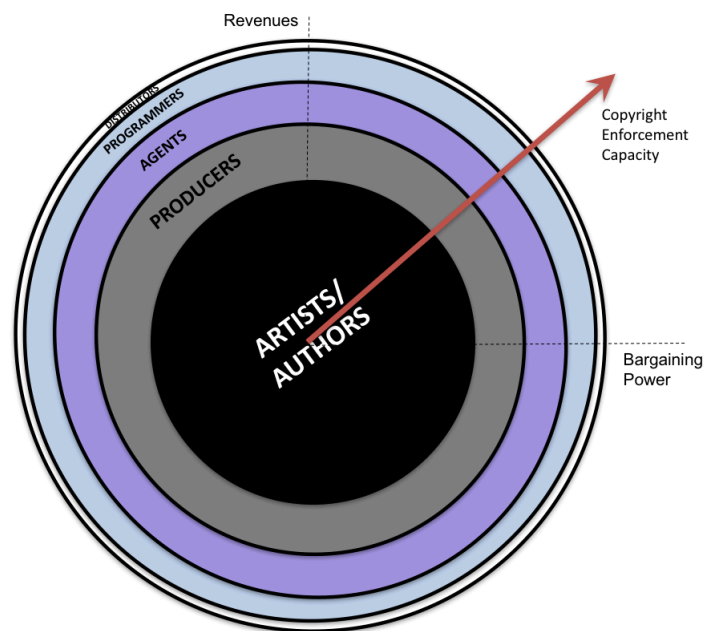


Fig. 18: Concentric Circles Model of Cultural Work (Macro perspective) and Copyright

If we were to make a 3D representation of our model, as one of our interviewed artists suggested (see Chapter 7, section 3.), it would indeed look like a sort of Tower of Babel, with artists in the bottom supporting a whole system that is dominated by a thin layer of powerful distributors. This happens because, under the threat of losing their power in face of democratization of technology and information, the few major economic players have

concentrated their efforts in not only keeping but even growing their position in the market (Bilton, 1999; see also Chapter 5, section 1.) – not by adding more weight to the top thin layer but by reinforcing control over the following intermediary layers through what Bilton (1999) calls the third strategy of large corporations, in his ‘new adhocracy model’, and where copyright lobbying plays an important part. One of the very efficient mechanisms to do so is controlling key institutions (such as universities, museums or even governments) which, as we have seen in Chapter 4, still represent core nodes of our networked society – going back to the Tower of Babel allegory, institutions are still the pillars of the whole structure, as they produce and control shared/collective norms and rules. This reinforces the idea that institutions are as relevant in the digital networked society as they have ever been, as it is to them to represent large groups of individuals, particularly the majority of weaker ones, and not to serve the few already powerful actors of society (Chapter 4, section 2. and 3.). As seen, it is not hard to find examples of companies such as Google or Netflix, that seem to be trying to take over the place of public museums or theatres (see Chapter 5, section 2.), deciding what people can or cannot have access to (or which forms of art and culture should or should not be available), according to their own private interests (as discussed in Chapter 5, section 1.). Such control over content and information has already proven to be dangerous for the maintenance of democratic systems – as, for example, the recent Cambridge Analytica scandal involving Facebook has sadly revealed (The Guardian, 2019)¹²⁶. Such aggressive strategies are also applied by superstar artists, as it was the case of Beyoncé, when she decided to credit all possible references and influences to her album *Lemonade* (2016). including an awkward reference to Animal Collective or Father John Misty, who later criticized the singer for doing so (Helman, 2016). It is also the case for young popstar Taylor Swift, known by her many polemic conflicts with other music stars, who has recently been trademarking phrases from her lyrics, in an attempt to control the exploitation of her work (Hu, 2017). The ‘chilling effects’ of such behaviour has even started to affect music production (Wang, 2020). These moves seem to be more common in music (particularly due to its star system entertainment industry layer) than in other core arts activities, on one hand, suggesting that musicians might probably be more aware of the copyright system than other

¹²⁶ It is also interesting to remember the idea of art at the service of politics, addressed by Adam Curtis, in his film “Hypernormalisation” (2016), when he explains how Vladislav Surkov, who “came originally from the theatre world” and took the ideas he had studied from the avant-garde theatre into the heart of politics (minutes 2:18:20’ to 2:19:55’).

artists. On the other, as seen in Chapter 7 (section 1. and 3.), this also suggests that cultural activities have different dynamics depending on their relation to the market (hence, the motivation to work) being more or less intense – as said, many artists are even unconcerned with intellectual property in order to keep a degree of freedom to their activity.

Nevertheless, regardless of the art forms involved, considering the developments in copyright laws all over the world, as discussed in Chapter 6 (section 3. and 4.), it becomes more and more evident that copyright is an important instrument of control and manipulation of the impacts of digitization in the cultural sector. This is particularly clear in aggressive strategies that aim to promote superstars at the expense of the vast majority of artists' careers or to prevent the emergence of new economic models and cultural practices capable of challenging the general *status quo*, under the dubious excuse of protecting individual artists' interests (Chapter 5, section 1. and 2.).

However, digitization and its promises of economic and cultural democratization have also provided the emergence of alternative instruments (such as open licenses like Creative Commons¹²⁷) that offer authors some control over their rights (even if accidentally) and, hence, the possibility to choose which development and exploitation strategies they wish to pursue, eventually leading to some bargaining power redistribution and indicating alternative directions to more equitable and up to date copyright reforms.

2. Copyright, Cultural Policy and the Value of Creativity

Despite the circumstantial context of different national copyright regulations, the way in which they affect cultural markets (in the sense of exchanging grounds and not just in its economic terms) is quite transversal, at least, across Western societies (as demonstrated

¹²⁷ For the purpose of this research, we have decided to focus only on the Creative Commons licenses, although there are many other examples of open licensing that also deserve attention, such as the open source GNU licenses or the French case of the ArtLibre licenses (<https://artlibre.org>).

through our *Copywrong performance-as-tool* instrument or by the common questions raised at the many seminars and conferences we participated around the world). A good example of this is the Creative Commons licenses themselves: one unique set of licenses that is adaptable to virtually every copyright regulation around the globe – which reinforces the suggestion of the existence of similar problems in most local copyright systems in the world.

We have seen in the previous chapter that, in spite of copyright, many emerging business models - even within traditional economic circuits – are being designed to diversify and innovate in terms of their revenue generation mechanisms and/ or cost savings. In parallel, artists continue to embrace technology as a mean to increase their possibilities to collaborate and explore different formats and languages in their work. Yet, recent reinforcement of copyright regulations in terms of its duration, scope and sharing rules (such as the polemic article 17 of the 2019 European copyright directive suggests¹²⁸) is only contributing to delay what seems to be an inevitable paradigm shift, both in terms of economic and cultural development, as its protectionist approach (influenced by major industry players lobbying) reflects an attempt to stop an already inevitable transformation process on the move. In this context, open licensing as functioned as a sort of demonstrator: accelerating the development and implementation of new business models or increasing the possibilities for cultural sharing and artistic practice, and consequently indicating possible directions for the necessary copyright reforms.

Although examples such as Creative Commons might be making a difference towards indicating possible changes in the bargaining position of artists (and users) around copyright

¹²⁸ On the website saveyourinternet.org, one can read: “On 15 April the Council (= EU Member States) APPROVED the copyright Directive at the Ministerial level at an Agriculture and Fisheries Council Meeting in Luxembourg – see the overview below of how EU Member States voted.

- 6 Member States voted AGAINST: Finland, Italy, Luxembourg, the Netherlands, Poland and Sweden
- 3 Member States abstained: Belgium, Estonia and Slovenia
- 19 Member States voted FOR (...)

Article 17 (ex Art. 13) of the adopted text will force upload filters onto the Internet. The EU Member States will now have 2 years’ time to implement the Directive into their own national legislation. The fight continues, but now at national level. This copyright legislation is a Directive, which means that the EU Member States have some margin for manoeuvre at the national level with regards to how they ensure that the legislation will work in practice. Therefore, it will be important to convince national policymakers to ensure that they implement Article 17 (ex Art. 13) in the least harmful way, by ensuring the best possible protection of citizens’ fundamental rights.” (Save Your Internet, 2019)

It is also interesting to look at the initiatives of Communia Association, in trying to clarify the actual consequences of the new EU copyright directive’s implementation (Keller, 2020).

negotiations and litigations, they clearly have not been enough. The adoption of open licenses also implies risks such as non-exclusivity or the possibility of having undesired uses or derivations of the original product or service. Because they are based on the existing law, there is also the possibility that the person licensing the work might not actually own the work they are licensing; this represents in itself an act of copyright infringement which is not caused (but also not solved) by open licenses. However, it is important to recall that copyright enforcement is no guarantee of results as well, as so-called piracy and peer-to-peer online sharing practice have demonstrated (Benhamou and Farchy, 2009; Cameron and Bazelon, 2013; Bazen et al., 2015). Nevertheless, in terms of general welfare, because open licenses aim at a wider access and a more positive attitude towards sharing practices, these risks seem to be less damaging to general welfare than the impacts of protective IP strategies and regulations, often deliberately repressing creativity and innovation and consequent general economic and cultural development (as we have seen in the previous chapter and in Chapter 5, section 1. and 2.).

The use of open licenses in business models, for example, signals a set of values that point towards a more holistic kind of revenue: one that does not only translate into financial capital accumulation but also implies other types of benefit (namely, cultural, social and economic) and, therefore, more in line with recent sustainability concerns (Chapter 7, section 2.). But there are other problems related to the use of open licenses such as Creative Commons. Besides intrinsic flaws already mentioned, like in other successful organizations, Creative Commons has grown to a point where it is even difficult to control its own mission and expansion. During our participatory observation process, discussions would go from the “becoming obsolete” ideal to defending open licensed content at all cost. In one of our first physical meetings¹²⁹ at Creative Commons, with some of its headquarters staff and volunteers, at the Open Knowledge Festival, in Berlin, 2014, we participated in a team building exercise that resulted in writing down our shared motivation goals. One of the most expressive aims was “becoming obsolete”, which implied the idea that we supported Creative Commons licenses bearing in mind that they were a transitory solution to what we believed to be current inadequate copyright regulation and their job was precisely to indicate that

¹²⁹ Most meetings take place online, with participants connecting from remote locations around the world.

inadequacy. In 2017, although this still remained clear for most members of the organization, at the Creative Commons Global Summit, in Seoul, during a session about copyright and education (promoting the campaign “Right Copyright for Education”¹³⁰), an energetic intervention from the audience called our attention to a different perspective in place. A UNESCO officer responsible for promoting Open Education Resources (OER) fiercely defended growing and strengthening such resources, strongly opposing the important updates and reforms to copyright law flaws that the panel of speakers was discussing.

Among other things, the successful spread of open licenses (not just Creative Commons) have generated the creation of new jobs and structures that did not exist before – they themselves have rapidly grown and their adoption has contributed to the development of yet another homophilous network (DiMaggio and Garip, 2012; see Chapter 6, section 2.), inside the already too homophilous context of copyright. In fact, as lawyer GI_3 pointed out during our interview, this recognition of the limitations of the Creative Commons licenses coincided with the emergence of the Communia Association, from which members are or have been Creative Commons organization’s members too.

Although they were designed thinking about final users and not so much about authors, as we’ve seen in Chapter 7 (section 1.), open licenses have indeed created a space to test alternative (but not necessarily new) ways to create and do business and make art and, therefore, provided new arguments and evidence to frame emerging economic and cultural practices.

However, even in this context, artists remain unprotected and away from the political debate, which continues to neglect the full potential of more open approaches to copyright regulation – still regarded as incompatible and even criminal in relation to traditional systems (Gaylor, 2008; Klose, 2013; Knappenbergen, 2014; Cameron and Bazelon, 2013; see also Chapter 1, section 3. and Chapter 6, section 4. and 5.). As a result, recent policies continue to promote chilling effects and considerable asymmetries of information and bargaining power, often intentionally (Dobusch and Quack, 2012).

¹³⁰ <https://rightcopyright.eu>

Such instrumentalization of the arts is not new. In a study on the social impacts of the arts, Eleanora Belfiore and Oliver Bennet present the different historical moments in which art was connoted as negative or positive to society, explaining that the instrumentalisation of the arts is not exclusively a 21st century phenomena. In fact, they attribute to Plato and Aristotle the first moments in history when the effects of art were expressively regarded as negative (in Plato's Republic, 5th century BC) or positive (in Aristotle's Poetics, 4th century BC). Since then, many have been the moments through mankind's history when art was used and praised for one or another reason: from being an instrument of religious influence (since early 1st century AD), colonizing domain (19th century) or political propaganda for totalitarian regimes (such as the Fascist, Nazi or Soviet) to being praised for its virtues by the French illuminists of the 18th century or again the Romantic poets of the 19th century (Belfiore and Bennett, 2007: 13-21). For the authors, the instrumentalization of the arts is 2500 years old. In fact, they "have been used to enforce and express power in social relations for as long as the arts themselves have been around" (*id., ib.*: 12). What is also interesting to note is that, recalling our reflection in Chapter 1, the moments in Western history when art was mostly instrumentalised for its positive effects coincide with the moments in which authorship (and its inherent individualism) and copyright were brought to intense discussion (see Chapter 1, section 1. and 2.). Such periods – as the 18th century's Enlightenment and 19th century Romanticism – are traditionally seen as decades of economic growth and scientific progress (Belfiore and Bennett, 2007: 13-21). Belfiore and Bennet's findings also show that such positive approach was often a response to dominant negative visions of the arts: "Indeed, a number of the arguments on the cathartic, ethical or humanizing powers of the arts were first elaborated in response to 'negative' theories that were perceived as dominant at the time (*id., ib.*: 25). Interesting to note for our own study is that, these are also the moments in history when the Kantian ideas of 'art for art's sake' came to light (*id., ib.*: 21-24). Such theories, as we have seen in Chapter 1 (section 2.), lay behind the emergence of the French conception of author's rights (Benhamou and Farchy, 2009: 6-8). These opposite approaches to art's effects represent "part and parcel of the dichotomy between the 'instrumental' (economic, social) and the 'intrinsic' (symbolic, cultural) value¹³¹ of the arts that constitute a central feature of contemporary cultural policy debates" (Belfiore and Bennett, 2007: 24).

¹³¹ What Walter Benjamin called its 'aura' (Benjamin, [1935] 1969).

However, as the authors note, although being over 2500 years old, the contemporary debate around the dichotomy behind art's value seems to neglect such historical legacy (*id.*, *ib*: 27). Dichotomy that, as we have discussed in Chapter 1, was at the genesis of the emergence of copyright (centred in instrumental value) and authors' rights laws (focused on intrinsic value). As we have also seen, over little more than a century ago and due to increasing international treaties and agreements, such different laws have been becoming closer and closer, generally embracing that value dichotomy in what is their progressively common essence (Chapter 1, section 2.).

In other words, copyright is an important affair of contemporary cultural policy, as it not only represents an instrument addressing the same essential concerns but also the same stakeholders. And, due to its global width, this is not just true for Western societies anymore. However, as seen in Chapter 1 and 6, the West still dominates copyright debates and its latest reforms around the world have been pressured to privilege industries' interests (personified in or hidden behind the blinding figure of the superstar artist, who ultimately doesn't even need public support) in detriment of most ordinary artists and public well-being. It is therefore crucial not just to bring copyright debate under the umbrella of cultural policy discussion (and not just from an economic perspective) but with an approach that is understandable to all its beneficiaries (artists and cultural professionals but also to the general public) and not only accessible to the closed homophilous circles of superstar, big companies, politicians, lawyers, economists and activists.

Recalling Manuel Castells' thoughts in Chapter 4 (section 1.), "in a post-industrial society, in which cultural services have replaced material goods at the core of production, it is the defense of the subject, in its personality and in its culture, against the logic of apparatuses and markets, that replaces the idea of class struggle." (Alain Touraine as cited by Castells, 2010: 22)

On the other hand, recalling Bourdieu's thoughts (see Chapter 4, section 3. And Chapter 5, section 3.), "the more the official transmission of capital is prevented and hindered, the more the effects of the clandestine circulation of capital in the form of cultural capital become dominant in the reproduction of the social structure." (Bourdieu, 1986: 254). And despite regulations such as the EU copyright directive from 2019 already tried to reinforce authors'

guarantees, it is not only far from being enough but also effective. As lawyer GI_3 confirmed, being in the law doesn't mean it will be respected, especially if the owner of the rights has no resources to enforce those rights – and that, more often than not, is the case for artists (Nobre, 2019). In other words, copyright protectionism might not only be deepening the ditch between artists and intermediaries bargaining power but also increasing the so-called illegal cultural practices such as piracy.

As seen, the progressive protectionism pressured by established power structures has been giving way to the proliferation of the already mentioned homophilous networks and their intrinsic social consequences.

When the Net switches off the self, the self, individual or collective, constructs its meaning without global, instrumental reference: the process of disconnection becomes reciprocal, following the refusal by the excluded of the one-sided logic of structural domination and social exclusion. (Castells, 2010: p.25)

On the other hand, in line with our reflections in Chapter 3 (section 1.), recent studies underline that reports about the cultural and creative industries have been focusing almost exclusively on the economic potential of the artist, leaving behind the traditional mission of the arts in social structure:

Their flexibility, creativity and innovative capacities are appreciated, but their traditional mission as critical and fundamentally challenging our perception of reality and our lives has more or less disappeared in the discourse. (...)

Although artists are seen as crucial to the economic development of the cultural industries, their difficult working and income conditions are hardly mentioned (...). The real working conditions of artists are invisible while their possibilities in a business setting are inflated. (...)

In this way, the idea of autonomy is also changing quite dramatically. While artistic autonomy – both in cultural policy and in the charismatic view of the artist – has been understood as the freedom of not being dependent on the market, autonomy is now understood as a situation in which you are only dependent on yourself. Autonomy is related to your ability to utilize the possibilities of the market. (Røyseng, 2016: p.167)

However, as we have also discussed in Chapter 3 (section 5. and 6.) and demonstrated in Chapter 7, according to the artists and cultural freelance workers themselves, such changes in political narrative only contribute to a growing feeling of isolation and vulnerability. To that

extent, the results of our field work presented in Chapter 7 make it clear that developments in copyright legislation are even reinforcing this crescent fragility of the artists. By using our concentric circles model of cultural work, we have managed to better understand the reasons behind such effect.

It is, therefore, crucial to (re)define core artists' role in society or, in other words, following up on Sigrid Røyseng analysis, re-establish their social contract, hence, their social autonomy (Røyseng, 2016: p.156). For that, we need also to re-establish the balance between all agents involved in the copyright debate by acting in two different but equally important directions:

- 1.) Through education of the cultural and creative professionals, particularly, core artists to whom copyright laws are designed, but also education of policymakers and civil servants about the actual work characteristics and needs of the core arts professionals, decreasing asymmetries of information and bargaining power on both sides of the spectrum; and,
- 2.) Through policymaking towards the design of more up to date, equitable and integrated cultural policies and copyright regulations, restoring the balance between artists (and the general public) and intermediary players' interests (namely, through labour, tax and competition laws) and considering not only local contexts but an ever more intertwined and interdependent global society.

The first approach should promote formal and informal forms of association of artists to debate and defend the protection of their rights (not just authors' rights). Only through the strength of their increasing number (see Chapter 3, section 5.) can they finally have a saying and actively participate and influence the future developments of their rights, not just as authors but also as workers and citizens.

On the other hand, policymakers should go back into discussing what is that societies want/expect from the arts today: what is their role and why is it important to publicly support them? In what cases should that support be granted? Is copyright really the answer? In face of the findings and reflections of this study, it seems clear that it is not. At least, not as it is currently designed. There needs to be a space for exception for pure artistic practice, the kind that is not just motivated by economic factors, the kind that does not only responds to market

pressure. At present and in face of the current copyright regimes, not recognizing such kind of work means criminalizing it as its sole possibility of existence will be outside the law. This not only represents a dangerous threat to our democratic societies but it also translates into a good excuse for continuing to cut the support to culture, progressively closing the circle of possibilities of social mobility and economic redistribution. Recalling our analysis in Chapter 4, according to Bourdieu:

This embodied capital, external wealth converted into an integral part of the person, into a habitus, cannot be transmitted instantaneously (unlike money, property rights, or even titles of nobility) by gift or bequest, purchase or exchange. It follows that the use or exploitation of cultural capital presents particular problems for the holders of economic or political capital, whether they be private patrons or, at the other extreme, entrepreneurs employing executives endowed with specific cultural competence (not to mention the new state patrons). How can this capital, so closely linked to the person, be bought without buying the person and so losing the very effect of legitimation which presupposes the dissimulation of dependence? How can this capital be concentrated – as some undertakings demand – without concentrating the possessors of the capital, which can have all sorts of unwanted consequences? (Bourdieu, 1986: p.244-245)

In other words, copyright (and other intellectual property rights) is the institution that controls the instantaneous transmission of cultural capital which, as we have seen, contributes precisely to “concentrating the possessors of the capital”, having “all sorts of unwanted consequences” (*id., ib.*) that we are all facing today.

We believe that our research has given a step further in clarifying copyright’s actual role in the cultural and creative sector by creating two simple practical instruments (already tested) and a clear theoretical model (yet to be empirically tested) that can support an intelligible debate about copyright that is accessible to all interested parts. Through the creation of the two instruments targeting cultural businesses (*Creative Commons Toolkit for Business*) and artists (*Copywrong performance-as-tool*), we tried to uncover the effects of copyright to the different activities involved in the cultural and creative sector, eventually leading us into building a theoretical model that can be further explored by other researchers, educators and policymakers (Concentric Models of Cultural Work). The many presentations and applications of the intermediate practical instruments and the final theoretical model we developed, in various different contexts, have proven their efficacy in raising awareness and interest from

all different quadrants of the copyright debate (even from major industry players, lawyers and economists¹³²). They also point interesting directions for future research, namely, in the fields of cultural business models and structures, artists' rights regulation (particularly, copyright special exceptions and labour rights inscription), competition law in cultural industries, transaction costs clarification, social and international inequalities, to name only a few.

The results of this study can and should continue to be developed, used, tested, adapted and improved for art's sake, with little concern about their authorship but a lot about their impact in artists' (and everyone else's) daily lives.

¹³² As described in Chapter 2, our participation and intervention in different scope events and conferences, from research to artistic, have allowed us to test our findings among audiences with different backgrounds and interests, demonstrating that, whether agreeing or not, they all clearly understood the message conveyed.

Conclusion

Is Every Man a Pirate?

For the Legitimation of Artistic Work in the Digital Era



Hollywood Burn film, by Soda_Jerk & Sam Smith (2006)

Traditionally law tends to take more time than desired to adjust and embrace technological changes. But unlike in previous equivalent occasions in our history, the current paradigm shift is happening at even faster pace than ever before. In five decades, our lives have changed completely. This requires a lot of effort on governments and communities, who often end discussing issues they do not yet entirely understand. Copyright seems to be one such case. Premature legal solutions have already proven to be ineffective and even incompatible with new technology developments. In turn, such technology seems to be constantly and rapidly

catching up and finding ways to overcome the law. On the other hand, policymakers don't seem to realize the actual extent and impact of their own inefficiency. While major industry players keep growing disproportionately (to the point of overriding entire national economies), the pressure over governments to react and move fast has left policymakers at the mercy of such powerful majors' lobbying. In the past few years, this has been obvious in many fields and, as we have seen in this study, copyright has not been an exception. But societies have reacted and, with the help of research, civil movements have organized themselves in order to step in the discussion and defend the interest of the general public. That has been the case for the emergence of so-called Copyleft organizations such as the Creative Commons, Demand Progress, the Open Knowledge Foundation, Communia Association, the Scholarly Publishing and Academic Resources Coalition (SPARC) and Save Your Internet or Create Refresh campaigns, only to name a few. Indeed, the fact that such complex legal issue has motivated such significant civil movement has even led to the existence of a Pirate Party at the European Parliament since 2009, with copyright as one of the main priorities in its agenda. This happens because when we discuss copyright (and, in particular, author's rights) we are talking about people's natural ability and will to create and relate to one another. Imagining, expressing and sharing art and knowledge is part of being a human. As it is to defend the right to continue to do so freely. As we have seen, authors are those who are able to initiate a discourse, to create a following. That following translates into copy, appropriation, adaptation, sharing. As some would say, it is the copy that makes the author. But the copy makes the author not only because it validates the work in itself but also because it allows the work to even exist in the first place. It is precisely through copying, appropriating, adapting and sharing other authors works that any new author can be born. In art as in knowledge, there are no virgin births, everything is built from the past. And regardless of the established rules, in art as in knowledge, it should not be up (mainly) to the market to decide who is or not an author.

The current copyright system and its lack of connection to cultural policy are transforming the art world (but not only) into a mere transactions market and leaving cultural control in the hands of the major industry lobbyists that progressively grow more and more power to decide what people should know, when and how they should know it. As we have seen, given the growing precariousness of work – a characteristic once particular of the cultural sector but

today disseminated across the whole economy, such power leaves not only artists but virtually everyone also progressively more vulnerable, in a situation where, on one side, big corporations 'know more' while, on the other, 'nobody knows'. And this not only applies to work situations. As we have seen, through culture we build our individual and collective identities. Leaving culture in the hands of major private structures not only affects the way we perceive and embrace work but also the way we live our lives and relate to one another. This has an impact at social and political level too: from individual to world conflicts, a lot could be avoided if access to (each other's) culture was not so restricted.

A robust cultural policy, capable of clearly perceiving such intertwined relations between culture and the economy, is today as crucial as ever. And that means reflecting, once again, on what is the role of the arts (and the artists) in our society and how do we value them without falling into the trap of binding it to simple economic or innovation performance indicators. The creative economy paradigm with its creative industries has failed: artists are not better off today as they were before. In fact, they might even be worse. As they continue to increase in number, artists have now to decide between compromising their art and embrace an entrepreneurial attitude or compromise their art and compete fiercely for the short public funding available. In either case, they compromise their art. And if they do not wish to do so, the only way out seems to be finding (multiple) unrelated jobs and exercise their art as a side activity, with no economic expectations. The only solution in sight for this – which many are already adopting – seems to be the association between artists, so they can fight for their rights has working citizens (including the right to to create freely and to decide which authors' rights they want to have but also for dignifying labour rights) and rejecting the individualistic construction of the divine genius artist, which is not only outdated but has also long turned against them.

In our study, we contributed to the understanding of the structures and dynamics of cultural work, with a special focus on the core artists, clarifying the role of copyright in this context. But it is important to refer that, during the entire period of our research, not only was such context progressing rapidly but also copyright was continuously being discussed, researched and reformed. In fact, it continues to be so. Such dynamic subject was, therefore, a permanent challenge which, as seen, severely affected our methodological approaches and

kept us questioning all the time about the pertinence of our goals. However, such dynamism was also probably the biggest richness of this study as it forced us to test alternative fields and instruments to find our answers. And, as in any relevant research, such alternative approaches have instead only led us to new questions. In what ways could copyright regulation change in order to protect the rights of the authors without becoming a mere currency to which total control is lost once traded? What are the best ways to address the subject with artists, without making them feel completely useless or vulnerable or scared? What can cultural policy do to guarantee the actual representation of the artists in this debate, as a way to fight the dramatic inequalities of the sector? What can cultural economists do in order to raise the interest of other disciplines to a current centrality of copyright which affects them also? Shouldn't universities reclaim their authority over the subject and participate in political debates, as voices of their students and researchers (not only in the arts), reclaiming their centrality in economic and social life – shouldn't that be part of their so-called third mission? How do we build safe harbours for artists to create freely, without having to compromise their art to the pressures of the market or feel the 'chilling effects' of copyright? How can we create a more internationally balanced and equitable framework for the non-commercial and commercial sharing and exchange of cultural goods between countries? What is the social (and economic) role of the artists today? How do we make sure they gather the essential conditions to play that role?

These and many other questions have come to light as we struggled to understand how to answer our initial research question - what are the effects of copyright in cultural work? With this study, we have moved a step further towards the comprehension of the cultural labour market organisation and, particularly, the vulnerable position of average artists in such context. That allowed us to expose the actual relevance copyright has to those very artists (and authors) who, despite being its theoretical beneficiaries are, in fact, today, its hostages. One thing we can clearly conclude from this research: is that art and the creative act is progressively being criminalised, transformed into piracy, unless it responds to specific market or political orientations. To continue to pursue current political directions not only contributes to increase artists' precariousness but even to turn them into felons. That leaves us thinking that if today 'every man is an artist', then every man is a pirate! It is therefore crucial to understand the ways in which artists can effectively organise and respond to the

challenges of the digital era (in different and equally valid professional or purely artistic ways), giving them appropriate legal ground to decide and bearing in mind that, if it is really the art what matters, indeed they should never cease asking “what matter whose speaking”¹³³.

¹³³ See Chapter 1 epigraph.

Bibliography and References

Abbing, H. (2002), *Why are Artists Poor? – The Exceptional Economy of the Arts*, Amsterdam, Amsterdam University Press.

Adorno, T. & Horkheimer, M. (2002 [1947]), "The Cultural Industry: Enlightenment as Mass Deception", in G. S. Noerr (Ed.), *Dialectic of Enlightenment, Philosophical Fragments*, Stanford, Stanford University Press: 94-136, retrieved from https://monoskop.org/images/9/99/Adorno_Theodor_Horkheimer_Max_1947_2002_The_Culture_Industry_Enlightenment_as_Mass_Deception.pdf.

Alvelos, H. (2016), "Freestar", *Heitor Alvelos Wordpress*, blog entry, retrieved from <https://heitoralvelos.wordpress.com/2016/01/30/freestar/>.

Anderson, C. (2009 [2006]), *The Longer Long Tail – How Endless Choice is Creating Unlimited Demand*, London, Random House Business Books.

Arora, P. & Vermeyleen, F. (2013), "Art Markets", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 322-329.

Barrau, G. N. (2008), "Schumpeterian Foundations of Real Business Cycles", BBVA Research Department, Paper Nº 9430, *Munich Personal RePEc Archive* (MPRA) retrieved from https://mpra.ub.uni-muenchen.de/9430/1/MPRA_paper_9430.pdf.

Barthes, R. (1967), "The Death of the Author", in *Aspen no.5+6, item 3, Three Essays*, UbuWeb, UbuWeb Papers, retrieved from http://www.tbook.constantvzw.org/wp-content/death_authorbarthes.pdf.

Baumol, W. J. (2006), 'The Arts in the "New Economy"' in V. A. Ginsburgh & D. Throsby, *Handbook of the Economics of Art and Culture*, Amsterdam, Elsevier/ North-Holland: 339-357.

Baumol, W. J. (2013), “Reining in Those Unstoppably Rising Costs”, in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 20-25.

Bazem, S., Bouvard, L. & Zimmermann, J.B. (2015), “Musicians and the Creative Commons: A survey of artists on Jamendo”, *Information Economics and Policy*, 32, Aix-Marseille University (Aix-Marseille School of Economics), GREQAM, CNRS and EHESS: 65-76, DOI: [10.1016/j.infoecopol.2015.07.007](https://doi.org/10.1016/j.infoecopol.2015.07.007).

BBC (2020), “Article 13: UK will not implement EU copyright law”, Technology, BBC News, 24 January 2020, retrieved from <https://www.bbc.com/news/technology-51240785?fbclid=IwAR2winZrliWNb7QJoVCrE4Gz-mB2ebfTIDv3Ic2SpjXUNEXpolCHy1I3lfc>.

Beales, H. *et al.* (2017), “Government Regulation: the Good, the Bad and the Ugly”, Regulatory Transparency Project of the Federalist Society, retrieved from <https://regproject.org/paper/government-regulation-the-good-the-bad-the-ugly/>.

Beck, A. (2003 Ed.), *Cultural Work – Understanding the Cultural Industries*, New York, Routledge.

Becker, H. (1998), *Tricks of the Trade – How to Think About Your Research While You Are Doing It*, Chicago, The Chicago University Press.

Becker, H. (2008 [1982]), *Art Worlds*, Berkeley and Los Angeles, University of California Press.

Bekar, C. & Haswell, E. (2013), “General Purpose Technologies”, in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 9-19.

Belfiore, E. (2018), “Whose Cultural Value? Representation, Power and Creative Industries”, *International Journal of Cultural Policy*, 26(3): 383-397, DOI: [10.1080/10286632.2018.1495713](https://doi.org/10.1080/10286632.2018.1495713).

Belfiore, E. & Bennett, O. (2006), “Rethinking the Social Impacts of the Arts: a critical-historical review”, *Centre for Cultural Policy Studies Research Papers*, 9, O. Bennett & J. Ahearne (Eds.), University of Warwick, retrieved from https://www.researchgate.net/publication/265023143_Rethinking_the_Social_Impact_of_the_Arts_a_critical-historical_review.

Belfiore, E. & Bennett, O. (2007), "Rethinking the Social Impacts of the Arts", Warwick Publications Wrap, The Warwick University, retrieved from http://wrap.warwick.ac.uk/53054/1/WRAP_Belfiore_Rethinking%20the%20Social%20Impacts%20of%20the%20Arts-IJCPversion%20FINAL.pdf.

Belfiore, E. & Firth C. (2014), "How do we Value (and Undervalue) Culture?", *The Future of Cultural Value*, Warwick, University of Warwick, retrieved from https://www.researchgate.net/publication/272353527_How_do_we_value_and_undervalue_culture_Commissioner_Day_3_brief.

Benhamou, F. (2011a), "Artists' Labour Markets", in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachussets (USA), Edward Elgar Publishing: 53-58.

Benhamou, F. (2011b), *L'Économie de la Culture, Septième Édition*, Paris, La Découverte.

Benhamou, F. & Farchy, J. (2014 [2007]), *Droit d'Auteur et Copyright*, Paris, La Découverte.

Benjamin, W. (1969 [1935]), "The Work of Art in the Age of Mechanical Reproduction", in H. Arendt (Ed.), *Illuminations, Essays and Reflections*, New York, Schocken Books: 217-252, retrieved from <https://web.mit.edu/allanmc/www/benjamin.pdf>.

Beuys, J. (1974), "I Am Searching for Field Character", *Art into Society, Society into Art* exhibition catalogue, Institute of Contemporary Arts, London, retrieved from <http://theoria.art-zoo.com/i-am-searching-for-field-character-joseph-beuys/>.

Beuys, J. & Bodenmann-Ritter, C. (2007 [1972]), "Every Man an Artist: Talks at Documenta 5", in C. Mesch & V. Michely (Eds.), *Joseph Beuys: the Reader*, Cambridge, Massachussets (USA): 189-197, retrieved from https://s3.amazonaws.com/arena-attachments/74912/Every_Man_An_Artist_-_Beuys.pdf.

Bilton, C. (1999), "The New Adhocracy: Strategy, Risk and the Small Creative Firm", *Centre for Cultural Policy Studies Research Papers*, 4, Warwick, University of Warwick, retrieved from http://wrap.warwick.ac.uk/35548/1/WRAP_Bilton_ccps_paper_4.pdf.

Bilton, C. (2015), "Uncreativity: The Shadow Side of Creativity", *International Journal of Cultural Policy*, 21(2): 153-167, DOI: [10.1080/10286632.2014.892933](https://doi.org/10.1080/10286632.2014.892933).

Blaug, M. (2001), "Where Are We Now in Cultural Economics?", *Journal of Economic Surveys*, 15(2): 123-143.

Boggs, J. (2009), "Cultural Industries and the Creative Economy - Vague but Useful Concepts", *Geography Compass*, 3(4): 1483-1498, DOI: [10.1111/j.1749-8198.2009.00247.x](https://doi.org/10.1111/j.1749-8198.2009.00247.x).

Bourdieu, P. (1986), "The Forms of Capital", in J. Richardson (Ed.), *Handbook of Theory and Research for the Sociology of Education*, Westport (USA), Greenwood Press: 241-58, retrieved from

<http://www.socialcapitalgateway.org/sites/socialcapitalgateway.org/files/data/paper/2016/10/18/rbasicsbourdieu1986-theformsofcapital.pdf>.

Bourdieu, P. (1993 [1984]), "The Market of Symbolic Goods", in J. Randal (Ed.), *The Field of Cultural Production: Essays on Art and Literature*, Chapter 1, United States, Columbia University Press: 1-34, retrieved from <http://web.mit.edu/allanmc/www/bourdieu2.pdf>.

Bourdieu, P. (2001), "La marchandisation de la culture", *Inter: art actuel*, 80: 5-9, retrieved from <http://id.erudit.org/iderudit/46057ac>.

Boyer, M. & Robert, J. (2006), "The Economics of Free and Open Source Software: Contributions to a Government Policy on Open Source Software", Project Report, CIRANO – Centre Interuniversitaire de recherche en analyse des organisations, Montreal (Canada), retrieved from <https://cirano.qc.ca/files/publications/2006RP-03.pdf>.

Burke, A. E. (2011), "The Music Industry" in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 297-303.

Buskirk, E. V. (2008), "Nine Inch Nails Album Generated \$1.6 Million in First Week (Updated)", *Wired Magazine*, retrieved from <https://www.wired.com/2008/03/nine-inch-nai-2/>.

Cameron, L. & Bazelon, C. (2013), "The Impact of Digitization on Business Models on Copyright-Driven Industries: A Review of the Economic Issues", Cambridge, Massachusetts (USA), The Brattle Group, Inc, retrieved from https://brattlefiles.blob.core.windows.net/files/6705_the_impact_of_digitization_on_business_models_in_copyright-driven_industries_cameron_bazelon_feb_26_2013.pdf.

Cameron, S. (2011), "Cinema" in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 86-89.

Cammaerts, B. & Meng, B. (2011), "Creative Destruction and Copyright Protection: Regulatory Responses to File-sharing", *Media Policy Brief 1*, London School of Economics and Political Science, Department of Media and Communications, London, LSE Media Policy Project, retrieved from <http://www.lse.ac.uk/media@lse/documents/MPP/LSEMPPBrief1.pdf>.

Cammaerts, B., Mansell, R. & Meng, B. (2013), "Copyright and Creation – A Case for Promoting Inclusive Online Sharing", *Media Policy Brief 9*, The London School of Economics and Political Science, Department of Media and Communications, London, LSE Media Policy Project, retrieved from <http://www.lse.ac.uk/media@lse/documents/MPP/LSE-MPP-Policy-Brief-9-Copyright-and-Creation.pdf>.

Candy, L. (2006), "Practice Based Research: A Guide", *Creativity and Cognition Studies*, Sydney, University of Technology.

Casadesus-Masanell, R. & Heilbron, J. (2015), "The Business Model: Nature and Benefits", Working Paper 15-089, Boston (USA), Harvard Business School, retrieved from https://www.hbs.edu/faculty/Publication%20Files/15-089_afa7e1c9-40d2-486d-9bd4-b8ea71de9058.pdf.

Castells, M. (2010), *The Rise of the Network Society, Second Edition*, Chichester (UK), Wiley-Blackwell Publishing.

Castells, M. & Cardoso, G. (2005 Eds.), *The Network Society – From Knowledge to Policy*, Massachusetts (USA), Center for Transatlantic Relations.

Caves, R. E. (2000), *Creative Industries – Contracts between Art and Commerce*, Boston (USA), Harvard University Press.

Cohen, M. A., Eliashberg, J., Ho T. H., (1996), "New Product Development: The Performance and Time-to-Market Tradeoff", *Management Science*, 42: 173-186.

Creative Commons (2015a), *Creative Commons Toolkit for Business – the 6 benefits explained in detail*, retrieved from <https://docs.google.com/document/d/1rDLqZ95fatIAz-17efwJL7oXz9Y48peExZF4y4EQNks/edit>.

Creative Commons (2015b), *Creative Commons Toolkit for Business* blogpost, retrieved from <https://creativecommons.org/2015/11/13/creative-commons-toolkit-for-business/>.

Copywrong (2017a), *Copywrong – performance-as-tool*, retrieved from <https://copywrong-cc.tumblr.com>.

Creative Commons (2017b), *Creative Commons State of the Commons 2017*, retrieved from <https://stateof.creativecommons.org>.

Creative Commons (2019a), *Creative Commons Toolkit for Business*, retrieved from <https://business-toolkit.creativecommons.org>.

Creative Commons (2019b), “Bassel Khartabil Fellowship 2019”, retrieved from <https://creativecommons.org/bassel-khartabil-fellowship/>.

Critical Art Ensemble (2001), “The Financial Advantages of Anti-Copyright”, Chapter 8, *Digital Resistance: Explorations in Tactical Media*, New York, Autonomedia: 149-152

Cunningham, S. (2011), “Creative Enterprises”, in J. Hartley (Ed.), *Creative Industries*, Malden (USA), Oxford (UK), Blackwell Publishing: 282-298.

Davies, M. B. (2007), *Doing a Successful Research Project – Using Qualitative and Quantitative Methods*, London, Palgrave Macmillan.

DCMS (2001), *Creative Industries Mapping Document 2001, Second Edition*, London (UK), Department of Culture, Media and Sport.

Dekker, E. (2015), “Two Approaches to Study the Value of Art and Culture and the Emergence of a Third”, *Journal of Cultural Economics*, 39: 309-326, DOI: <https://doi.org/10.1007/s10824-014-9237-y>.

Dekker, E. (2018), “Schumpeter, Theorist of the Avant-Garde”, *The Review of Austrian Economics*, 31: 177-194, DOI: <https://doi.org/10.1007/s11138-017-0389-9>.

Dekker, E. & Kuchar, P. (2017), “Emergent Orders of Worth: Must We Agree on More Than a Price?”, *COSMOS + TAXIS - Studies in Emergent Order and Organization*, 1(4): 23-34, retrieved from

<https://poseidon01.ssrn.com/delivery.php?ID=9220050651100030770310670711260011000300500500780680200920851030720670021010090801030290010331270270010290931080860260690240860160390740000020981180140050660270171070580920770030240960>

[31123083103027021100001108065111093124095110112082087096026117022117&EXT=pdf.](https://doi.org/10.1146/annurev.soc.012809.102545)

Demand Progress (2010), “Our Mission”, retrieved from <https://demandprogress.org/about/>.

DiMaggio, P. & Garip, F. (2012), “Network Effects and Social Inequality”, *The Annual Review of Sociology* 2012, Annual Reviews, 38: 93-118, DOI: <https://doi.org/10.1146/annurev.soc.012809.102545>.

DiMaggio, P. & Hirsch, P. (1976), “Production Organization in the Arts”, *American Behavioral Scientist*, 19: 735-752, DOI: <https://doi.org/10.1177/000276427601900605>.

Dobusch, L. & Quack, S. (2012), “Transnational Copyright: Misalignments between Regulation, Business Models and User Practice”, *Osgoode CLPE Research Paper Series* 13/2012, 8: 1-24.

European Commission (2016), *Releasing the European Open Science Cloud – First Report and Recommendations of the Commission High Level Expert Group on the European Open Science Cloud*, Directorate-General for Research and Innovation, retrieved from http://ec.europa.eu/research/openscience/pdf/realising_the_european_open_science_cloud_2016.pdf#view=fit&pagemode=none

Farchy, J., Gansemer, M. & Petrou, J. (2013), “E-book and book publishing”, in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 353-364.

Fleming, T. *et al* (2008), *Estudo Macroeconómico. Desenvolvimento de um Cluster de Indústrias Criativas na Região Norte*, Porto, Fundação de Serralves.

Flew, T. (2012), *The Creative Industries - Culture and Policy*, London, Sage.

Flew, T. & Swift, A. (2013), “Cultural Policy”, in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 155-161.

Florida, R. (2008), *Who’s Your City? – How the Creative Economy is Making Where to Live the Most Important Decision of Your Life*, New York (USA), Basic Books.

Florida, R. (2002), *The Rise of the Creative Class*, New York (USA), Basic Books.

Foss, S. K. & Waters, W. (2007), *Destination Dissertation – a Traveler’s Guide to a Done Dissertation*, Maryland (USA), Rowman & Littlefield Publishers.

Foucault, M. (1992 [1969]), "What is an author?", in J. Marsh, J.D. Caputo & M. Westphal (Eds.), *Modernity and its Discontents*, New York, Fordham University Press: 299-314, retrieved from https://www.open.edu/openlearn/ocw/pluginfile.php/624849/mod_resource/content/1/a840_1_michel_foucault.pdf.

Frey, B. & Jegen, R. (2001), "Motivation Crowding Theory", *Journal of Economic Surveys*, 15(5): 589-611.

Galloway, S. & Dunlop, S. (2007), "A Critique of Definitions of the Cultural and Creative Industries in Public Policy", *International Journal of Cultural Policy*, 13(1): 17-31, DOI: [10.1080/10286630701201657](https://doi.org/10.1080/10286630701201657).

Garcia, J. L., Lopes, J. T., Martinho, T. D., Neves, J. S., Gomes, R. T. & Borges, V. (2018), "Mapping cultural policy in Portugal: From incentives to crisis", *International Journal of Cultural Policy*, 24(5): 577-593, DOI: [10.1080/10286632.2016.1248950](https://doi.org/10.1080/10286632.2016.1248950).

Garnham, N. (2005), "From Cultural to Creative Industries", *International Journal of Cultural Policy*, 11(1): 15-29, DOI: [10.1080/10286630500067606](https://doi.org/10.1080/10286630500067606).

Gaylor, B. (2008), *RIP - a Remix Manifesto*, Montréal, Canada, EyeSteelFilm Productions, 86.24 min., retrieved from <https://www.brettgaylor.com/#/rip-a-remix-manifesto/>.

Ginsburgh, V. A. & D. Throsby (2014 Eds.), *Handbook of the Economics of Art and Culture, Second Edition*, Oxford (UK), Elsevier/ North-Holland.

Grodach, C., O’Connor, J. & Gibson, C. (2017), "Manufacturing and Cultural Production: Towards a Progressive Agenda for the Cultural Economy", *City, Culture and Society*, 10: 17-25, DOI: <https://doi.org/10.1016/j.ccs.2017.04.003>.

Haggart, B. (2014), *Copyright - The Global Politics of Digital Copyright Reform*, Toronto, University of Toronto Press.

Handke, C. (2011), *Economic Effects of Copyright: Empirical Evidence so Far*, Rotterdam, Report for the National Academies of the Sciences.

Handke, C., Stepan, P. & Towse, R. (2016), "Cultural Economics and the Internet", in J. M. Bauer & M. Latzer (Eds.), *Handbook on the Economics of the Internet*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar: 146-162.

Heilbrun, J. (2011), "Baumol's Cost Disease" in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 67-75.

Heilburn, J. & Gray, C. M. (2001 [1993]), *The Economics of Art and Culture*, Cambridge (UK), Cambridge University Press.

Helman, P. (2016), "Boots Explains Animal Collective Credit On Beyoncé's "6 Inch"", USA, *Stereogum*, retrieved from <https://www.stereogum.com/1873310/beyonce-producer-boots-explains-animal-collective-credit-on-6-inch/news/>.

Hesmondhalgh, D. (2007 [2002]), *The Cultural Industries*, London, Sage Publications.

Hiersemenzel, K. (2018), "Fair Payment for Content Producers and Profitable Business Models – a Contradiction?", panel discussion at the Austrian Presidency of the European Commission *Challenging (the) Content*, day 1, session 1, 8th October 2018; video available at <https://vimeo.com/showcase/5467221/video/294198392>.

Hjorth-Andersen, C. (2011), "Publishing", in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 378-385.

HKU, (2010), *The Entrepreneurial Dimension of the Cultural and Creative Industries*, Utrecht (The Netherlands), Hogeschool vor de Kunsten Utrecht.

Holden, J. (2004), *Capturing Cultural Value – How Culture Has Become a Tool of Cultural Policy*, London, Demos.

Howkins, J. (2001), *The Creative Economy: How People Make Money from Ideas*, London, Penguin.

Hu, C. (2017), "Why Taylor Swift Trademarks Her Lyrics and Why Other Acts May Follow Suit", USA, *Billboard*, retrieved from <https://www.billboard.com/articles/business/7973694/taylor-swift-trademarks-lyrics-why-other-acts-may-follow>.

Hugenholtz, B. (2018 Ed.), *Copyright Reconstructed: Rethinking Copyright's Economic Rights at a Time of Highly Dynamic Technological and Economic Change*, The Netherlands, Kluwer Law International.

Jacobs, S., Guiette, A., Loots, E., Schramme, A. & Vandenbempt, K. (2012), "Unlocking the Cultural and Creative Industries' Symbolic Value", Antwerp (Belgium), Antwerp Management School, retrieved from <http://www.denktankvizier.org/wp-content/uploads/2014/10/Unlocking-the-creative-industries-conferenceICCP2012.pdf>.

Katz, A. (2013), "Copyright and Competition Policy", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 209-221.

Keller, P. (2020), "Article 17 stakeholder dialogue (day 5): It all depends", Communia Association website, retrieved from <https://www.communia-association.org/category/eu-policy/eu-copyright-reform/>.

Kim, W. C. & Maubourgne, R. (2005), *Blue Ocean Strategy - How to Create Uncontested Market Space and Make Competition Irrelevant*, Boston, Harvard Business School Publishing Corporation.

Kirchmayr-Schliesselberger, S. (2018), "Challenge Tax Law", interview at the Austrian Presidency of the European Commission *Challenging (the) Content*, day 1, session 2, 8th October 2018; video available at <https://vimeo.com/showcase/5467221/video/294194005>.

Klamer, A., A. Mignosa, & L. Petrova (2010), "The Relationship Between Public and Private Financing of Culture in the EU", paper presented at the 14th International Conference of ACEI the Association for Cultural Economics International, Copenhagen, June 2010, retrieved from <http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=04167464C263144B14C9C58FFC89A40C?doi=10.1.1.432.659&rep=rep1&type=pdf>.

Klamer, A., Petrova, L., & Mignosa, A. (2006), *Financing the Arts and Culture in the European Union*, Brussels, European Parliament, retrieved from [https://www.europarl.europa.eu/RegData/etudes/etudes/join/2006/375309/IPOL-CULT_ET\(2006\)375309_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/join/2006/375309/IPOL-CULT_ET(2006)375309_EN.pdf).

Klose, S. (2013), *TPB AFK: The Pirate Bay Away From Keyboard*, Nonami Films, 85 minutes, retrieved from <https://www.youtube.com/watch?v=neoFDgDOV0I>.

Knappenbergen, B. (2014), *The Internet's Own Boy: The Story of Aaron Swartz*, USA, Luminant Media, Unjustsus Films, 120 minutes, retrieved from <https://archive.org/details/TheInternetsOwnBoyTheStoryOfAaronSwartz>.

Lämmer-Gamp, T. (2014), *Creative Industries: Policy recommendations - promotion of cross-innovation from creative industries*, Berlin, Institut für Innovation und Technik, retrieved from http://www.cross-innovation.eu/wp-content/uploads/2014/04/Report_cross-innovation-creative-industries_final_140315.pdf.

Landes, W. M. (2011), "Copyright" in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 100-112.

Lash, S. & Urry, J. (1994), *Economies of Signs and Space*, London, Sage.

Lastowka, F. G. & D. Hunter (2006), "Amateur-to-Amateur: The Rise of a New Creative Culture", *Policy Analysis*, no. 567, CATO Institute.

Latzer, M. (2013), "Media Convergence", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 123-133.

Lessing, L. (2004), *Free Culture*, New York, Penguin Books.

Lessig, L. (2008), *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, New York, Penguin Books.

Lindner, B. (2018), "Challenge Copyright Law", interview at the Austrian Presidency of the European Commission *Challenging (the) Content*, day 1, session 2, 8th October 2018; video available at <https://vimeo.com/showcase/5467221/video/294194005>.

Mateus, A. (2010), *O Sector Cultural e Criativo em Portugal*, Study for the Ministry of Culture, Lisboa, Augusto Mateus & Associados Consultores.

Mateus, A. (2016), *A Economia Criativa em Portugal: Relevância para a Competitividade e Internacionalização da Economia Portuguesa*, Lisboa, Augusto Mateus & Associados Consultores.

Mazzucato, M. (2013), *The Entrepreneurial State – Debunking Public vs. Private Myths*, London, New York, Anthem Press.

McGuigan, J. (2010), “Creative labour, cultural work and individualisation”, *International Journal of Cultural Policy*, 16(3): 323-335, DOI: [10.1080/10286630903029658](https://doi.org/10.1080/10286630903029658).

Menger, P. M. (2010), “Cultural Policies in Europe. From State to a City-Centered Perspective on Cultural Generativity”, Discussion Paper 10-28, Tokyo (Japan), National Graduate Institute for Policy Studies (GRIPS), retrieved from <http://www3.grips.ac.jp/~pinc/data/10-28.pdf>.

Menger, P. M. (2013), “European Cultural Policies and the ‘Creative Industries’ Turn”, in K. Thomas & J. Chan (Eds.), *Handbook of Research on Creativity*, Edward Elgar: 479-492, DOI: [10.4337/9780857939814.00047](https://doi.org/10.4337/9780857939814.00047).

Menger, P. M. (2014 [2009]), *The Economics of Creativity – Art and Achievement under Uncertainty*, Boston, Harvard University Press.

Merrill, S. A. et al (2013 Eds.), *Copyright in the Digital Era: Building Evidence for Policy*, Washington DC, The National Academies Press.

Minichbauer, R., “Chanting the Creative Mantra: The Accelerating Economization of EU Cultural Policy, in G. Raunig, R. Gene & U. Wuggening (Eds.), *Critique of Creativity – Precarity, Subjectivity and Resistance in the Creative Industries*, London, MayFly Books.

Moulin, R. (1994), “The Construction of Art Values”, *International Sociology*, 9(1): 5-12.

Moulin, R. (2009), *Le Marché de L’Art: Mondialisation et Nouvelles Technologies, Second Edition*, Champs Arts, Éditions Flammarion.

Murdock, G. (2003), “Back to Work: Cultural Labor in Altered Times”, in A. Beck (Ed.), *Cultural Work: Understanding the Cultural Industries*, London, Routledge: 15-36.

Muthoo, A. (2006), “Bargaining Theory and Royalty Contract Negotiations”, *Review of Economic Research on Copyright Issues*, 3(1): 19-27.

Neves, R. (2018), “Cluster criativo do Norte falu com três mil euros e sem bancos”, in *Jornal de Negócios*, 28th October 2018, retrieved from <https://www.jornaldenegocios.pt/empresas/detalhe/cluster-criativo-do-norte-faliu-com-tres-mil-euros-e-sem-bancos>.

Nitsch, C. (2018), “Challenges from the Practical View”, panel discussion at the Austrian Presidency of the European Commission *Challenging (the) Content*, day 1, session 2, 8th October 2018; video available at <https://vimeo.com/showcase/5467221/video/294194005>.

Nobre, T. (2014), “Direito de Autor e Creative Commons”, seminar held at the Faculty of Fine Arts of the University of Porto, organized by Fátima São Simão within the Art and Design PhD Program, on 4th April 2014, https://sigarra.up.pt/fbaup/pt/noticias_geral.ver_noticia?p_nr=6241, available at https://www.academia.edu/11850037/Direito_de_Autor_e_Creative_Commons.

Oakley, K. (2004), “Not so Cool Britannia: The Role of Creative Industries in Economic Development”, *International Journal of Cultural Policy*, 7(1): 67-77, DOI: <https://doi.org/10.1177/1367877904040606>.

Oakley, K. (2009), “The Disappearing Arts: Creativity and Innovation after the Creative Industries”, *International Journal of Cultural Policy*, 15(4): 403-413, DOI: [10.1080/10286630902856721](https://doi.org/10.1080/10286630902856721).

Oakley, K. & O’Brien, D. (2016), “Learning to Labour Unequally: Understanding the Relationship Between Cultural Production, Cultural Consumption and Inequality”, *Social Identities – Journal for the Study of Race, Nation and Culture*, 22(5): 471-486, DOI: [10.1080/13504630.2015.1128800](https://doi.org/10.1080/13504630.2015.1128800).

O’Brien, D., D. Laurison, A. Miles & S. Friedman (2016), “Are the Creative Industries Meritocratic? An Analysis of the 2014 British Labour Force Survey”, *Cultural Trends*, 25(2): 116-131, DOI: [10.1080/09548963.2016.1170943](https://doi.org/10.1080/09548963.2016.1170943).

O’Connor, J. (2009), “Creative industries: a new direction?”, *International Journal of Cultural Policy*, 15(4): 387-402, DOI: [10.1080/10286630903049920](https://doi.org/10.1080/10286630903049920).

O’Connor, J. (2015), “Intermediaries and Imaginaries in the Cultural and Creative Industries”, *Regional Studies*, 49(3): 374-387, DOI: [10.1080/00343404.2012.748982](https://doi.org/10.1080/00343404.2012.748982).

Osten, M. von (2011), “Unpredictable Outcomes / Unpredictable Outcasts: On Recent Debates over Creativity and the Creative Industries”, in G. Raunig, R. Gene & U. Wuggening (Eds.), *Critique of Creativity – Precarity, Subjectivity and Resistance in the Creative Industries*, London, MayFly Books.

Osterwalder, A. & Y. Pigneur (2010), *Business Model Generation - A Handbook for Visionaries, Game Changers and Challengers*, New Jersey (USA), John Wiley & Sons, Inc.

Peacock, A.T. (1994), "Welfare Economics and Public Subsidies to the Arts", *Journal of Cultural Economics*, 18: 151-161.

Pepall, L., Richards, D. & Norman, G. (2008), *Industrial Organization: Contemporary Theory and Empirical Applications, Fourth Edition*, Malden (USA), Blackwell Publishing.

Poettschacher, E. (2010), "Demistifying the Creative Industries - after more than 20 years it is time to ask what is really new about this economic sector", interview to Justin O'Connor in R. Punkenhofer (Ed.), *A Way Beyond Creative Industries*, Wien (Austria), Folio Verlag: 36-39.

Potts, J. (2013), "Evolutionary Perspectives", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 26-36.

Potts, J. & Cunningham, S. (2010), "Four Models for the Creative Industries", *Revue d'Économie Politique*, 120: 163-180.

Potts, J., Hartley, J., Cunningham, S. & Ormerod, P. (2011), "Social Network Markets", in J. Potts (Ed.), *Creative Industries and Economic Evolution*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 95-106.

Powell, W. & Grodal, S. (2005), "Networks of Innovators" in J. Fagerberg et al. (Eds.), *The Oxford Handbook of Innovation*, Chapter 3, Oxford, Oxford University Press: 56-85.

Powell, W. & Oberg, A. (2017), "Networks and Institutions", in R. Greenwood et al. (Eds.), *The Sage Handbook of Organizational Institutionalism*, London, Thousand Oaks, New Delhi, Singapore, SAGE Publications: 446-476, DOI: <http://dx.doi.org/10.4135/9781849200387.n26>.

Pratt, A. C. (1997), "The Emerging Shape and Form of Innovation Networks and Institutions" in J. Simmi (Ed.), *Innovation, Networks and Learning Regions?*, London, Jessica Kingsley Publishers: 124-136.

Quintais, J. P. & Poort, J. (2018), "A Brief History of Value Gaps: Pre-Internet Copyright Protection and Exploitation Models", in B. Hugenholtz (Ed.), *Copyright Reconstructed: Rethinking Copyright's Economic Rights at a Time of Highly Dynamic Technological and Economic Change*, The Netherlands, Kluwer Law International: 11-58.

Quintela, P. & Ferreira, C. (2018), “Indústrias Culturais e Criativas em Portugal: um Balanço Crítico de uma Nova ‘Agenda’ para as Políticas Públicas no Início deste Milénio”, *Revista Todas as Artes*, 1: 88-110.

Quivy, R. & Van Campenhoudt, L. (1992 [1988]), *Manual de Investigação em Ciências Sociais*, Lisboa, Gradiva Publicações.

Rancati, E. (2005), “Global Markets and Time-Based Competition”, *Emerging Issues in Management*, 2, Symphonya: 58-69, DOI: <http://dx.doi.org/10.4468/2005.2.05rancati>.

Raunig, G., Ray, G. & Wuggenig, U. (2011), *Critique of Creativity – Precarity, Subjectivity and Resistance in the Creative Industries*, London, MayFly Books.

Reda, J. (2019), Speech at EU Copyright Directive plenary voting session, Brussels, European Parliament, retrieved from https://www.youtube.com/watch?time_continue=8&v=p72qB3Cc9sl&feature=emb_title.

Relyea, L. (2017), *Your Everyday Art World*, Massachusetts (USA), MIT Press.

Ridderstråle, J. & Nordström, K. (2008), *Funky Business Forever – How to Enjoy Capitalism*, Stockholm (Sweden), Bookhouse Publishing AB.

Rifkin, J. (2005), “When Markets Give Way to Networks... Everything is a Service”, in J. Hartley (Ed.), *Creative Industries*, Massachusetts (USA), Blackwell Publishing: 361-364.

Ritter, C. (2018), “Challenge Competition Law”, interview at the Austrian Presidency of the European Commission *Challenging (the) Content*, day 1, session 2, 8th October 2018; video available at <https://vimeo.com/showcase/5467221/video/294194005>.

Ritzer, G. & Jurgenson, N. (2010), “Production, Consumption, Prosumption - The nature of capitalism in the age of the digital ‘prosumer’”, *Journal of Consumer Culture* 10: 13-36, DOI: <https://doi.org/10.1177/1469540509354673>.

Rosen, S. (1981), “The Economics of Superstars”, *The American Economic Review*, 71: 845-858.

Røyseng, S. (2016), “The Social Contract of Artists in the Era of Cultural Industries”, *International Journal of Cultural Policy*, 25(2): 154-170, DOI: [10.1080/10286632.2016.1229313](https://doi.org/10.1080/10286632.2016.1229313).

Runco, M. A. & Jaeger, G. J. (2012), "The Standard Definition of Creativity", *Creativity Research Journal*, 24(1): 92-96, DOI: [10.1080/10400419.2012.650092](https://doi.org/10.1080/10400419.2012.650092).

Samuelson, P. & Nordhaus, W. (1999), *Economics, Sixteenth Edition*, New York, The McGrawHill Companies, Inc.

Santos, H. (2001), *Coisas que Dão Sentido à Vida: Processos de Construção em Artes de Intermediação*, PhD Dissertation in Cultural Sociology, Porto (Portugal), Faculdade de Letras da Universidade do Porto.

Santos, H., Moreira, R., Ramalho, J & Silva, A. S. (2016), "Un théâtre, une troupe, un territoire, des communautés - Comédias do Minho et son apport à une nouvelle centralité culturelle", *Révue d'Histoire du Théâtre*, 272: 53-64.

São Simão, F. (2008), *Theatre in the Creative Economy: Opportunities for Theatre in Business*, MA dissertation, London, City University of London.

São Simão, F. (2013), "When Buzz Chokes Bizz.. And Culture - Reflections from the Portuguese Creative Industries' Case", *LabForCulture.org*, retrieved from <http://www.labforculture.org/en/users/site-users/site-members/fátima-são-simão/contents/when-buzz-chokes-bizz-and-culture-reflections-from-the-portuguese-creative-industries-case>.

Save Your Internet (2019), "The Council APPROVED the Copyright Directive: How Did EU Member States Vote?", *Save Your Internet*, retrieved from <https://saveyourinternet.eu>.

Schumpeter, J. (1947), "The Creative Response in Economic History", *The Journal of Economic History*, 7(2): 149-159.

Shapiro, M. S. (2001), *Copyright as Cultural Policy*, Center of Arts and Culture, retrieved from https://www.americansforthearts.org/sites/default/files/shapiro_0.pdf.

Smith, P. G. (2004), "Accelerated Product Development: Techniques and Traps", in K. B. Kahn (Ed.), *The PDMA Handbook of New Product Development, Second Edition*, New Jersey, John Wiley and Sons: 173-187, DOI: <https://doi.org/10.1002/9780470172483.ch12>.

Stacey, P. & Pearson, S. H. (2017), *Made with Creative Commons*, Copenhagen, Ctrl+Alt+Delete Books, retrieved from <https://creativecommons.org/use-remix/made-with-cc/>.

Steele, R. D. (2012), *The Open Source Everything Manifesto: Transparency Truth and Trust*, Berkley, Evolver Editions.

Stepan, P. (2013), "Film", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 399-408.

Steuer, E. (2008), *Nine Inch Nails' CC-licensed album nominated for a Grammy Award*, Creative Commons, retrieved from <https://creativecommons.org/2008/12/05/nine-inch-nails-cc-licensed-album-nominated-for-a-grammy-award/>.

Steuer, E. (2016), *Jonathan Barnbrook on his CC-licensed art for David Bowie's Blackstar*, Creative Commons, retrieved from <https://creativecommons.org/2016/02/26/jonathan-barnbrook-interview/>.

Steyerl, H. (2012), *The Wretched of the Screen*, e-flux journal, Berlin (Germany), Sternberg Press.

Tepper, S. J. (2002), "Creative Assets and the Changing Economy", *The Journal of Arts Management, Law, and Society*, 32(2): 159-168, retrieved from https://www.americansforthearts.org/sites/default/files/Tepper_0.pdf.

The Guardian (2019), "The Cambridge Analytica Files", *The Guardian*, retrieved from <https://www.theguardian.com/news/series/cambridge-analytica-files>.

Throsby, D. (2001), *Economics and Culture*, Cambridge, Cambridge University Press.

Throsby, D. (2008a), "Modelling the cultural industries", *International Journal of Cultural Policy*, 14(3): 217-232.

Throsby, D. (2008b), "The concentric circles of the cultural industries", *Cultural Trends*, 17(3): 147-164.

Tian, Y. (2009), *Re-Thinking Intellectual Property: the political economy of copyright protection in the digital era*, Oxon, Routledge-Cavendish.

Towse, R. (1996), "Market Value and Artists' Earnings", in A. Klammer (Ed.), *The Value of Culture – On The Relationship Between Economics and the Arts*, Amsterdam, Amsterdam University Press.

Towse, R. (2002), "Copyright and Cultural Policy for the Creative Industries", *SERCI – Society of Economic Research on Copyright Issues*, retrieved from http://www.serci.org/congress_documents/2002/towse.pdf.

Towse, R. (2010), "Creativity, Copyright and the Creative Industries Paradigm", *KYKLOS*, 63: 461–478.

Towse, R. (2011a), "Performing Arts" in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 339-343.

Towse, R. (2011b), "What We Know, What We Don't Know and What Policy-Makers Would Like Us To Know About The Economics of Copyright", *Review of Economics Research on Copyrights Issues*, 8: 101-120.

Towse, R. (2011c), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing.

Towse, R. (2013), "Performing Arts", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 311-321.

Towse, R. & C. Handke (2013 Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing.

Tschmuck, P. (2013), "Technological Change and Cultural Production", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 116-122.

UNESCO (2016), *Study on International Collaboration on Open Educational Resources (OER)*, Commissioned study prepared under a consultant contract for UNESCO, retrieved from https://en.unesco.org/sites/default/files/oer_study_march_2017.pdf.

Urrutiaguer, D. (2011), "Theatre", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 420-424.

Velthuis, O. (2011a), "Art Dealers", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK) & Massachusetts (USA), Edward Elgar Publishing: 28-32.

Velthuis, O. (2011b), "Art Markets", in R. Towse (Ed.), *A Handbook of Cultural Economics, Second Edition*, Cheltenham (UK), Northampton, Massachusetts (USA), Edward Elgar Publishing: 33-40.

Waelbroeck, P. (2013), "Digital Music", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 389-398.

Wang, A. X. (2020), "How Music Copyright Lawsuits Are Scaring Away New Hits", *Rolling Stone*, retrieved from https://www.rollingstone.com/music/music-features/music-copyright-lawsuits-chilling-effect-935310/?fbclid=IwAR0y09ZwyK46r-AsI_9z-y_qPm3NU7-TXq mz7SlmxGek5du0DpMh_UI2vew.

Watt, R. (2014 Ed.), *Handbook on the Economics of Copyright – a Guide for Students and Teachers*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing.

Wikstrom, P. & Johansson, A. (2013), "Publishing", in R. Towse & C. Handke (Eds.), *Handbook on the Digital Creative Economy*, Cheltenham (UK), Massachusetts (USA), Edward Elgar Publishing: 344-352.

WIPO (2019), "World Intellectual Property Report 2019: The geography of innovation: Local hotspots, global networks", Geneva (Switzerland), WIPO, retrieved from <https://www.wipo.int/publications/en/details.jsp?id=4467>.

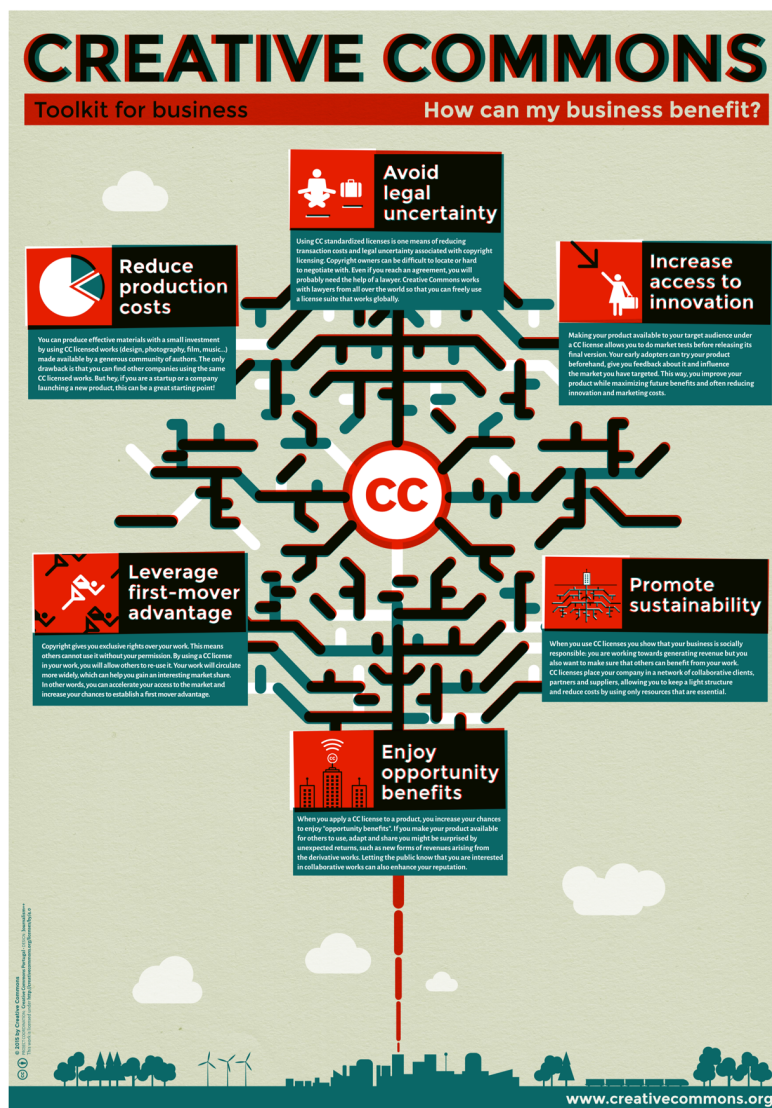
Wijngaarden, Y., Hitters, E. & Bhansing, P. V. (2019), "'Innovation is a dirty word': contesting innovation in the creative industries", *International Journal of Cultural Policy*, 25(3): 392-405, DOI: [10.1080/10286632.2016.1268134](https://doi.org/10.1080/10286632.2016.1268134).

ANNEX A

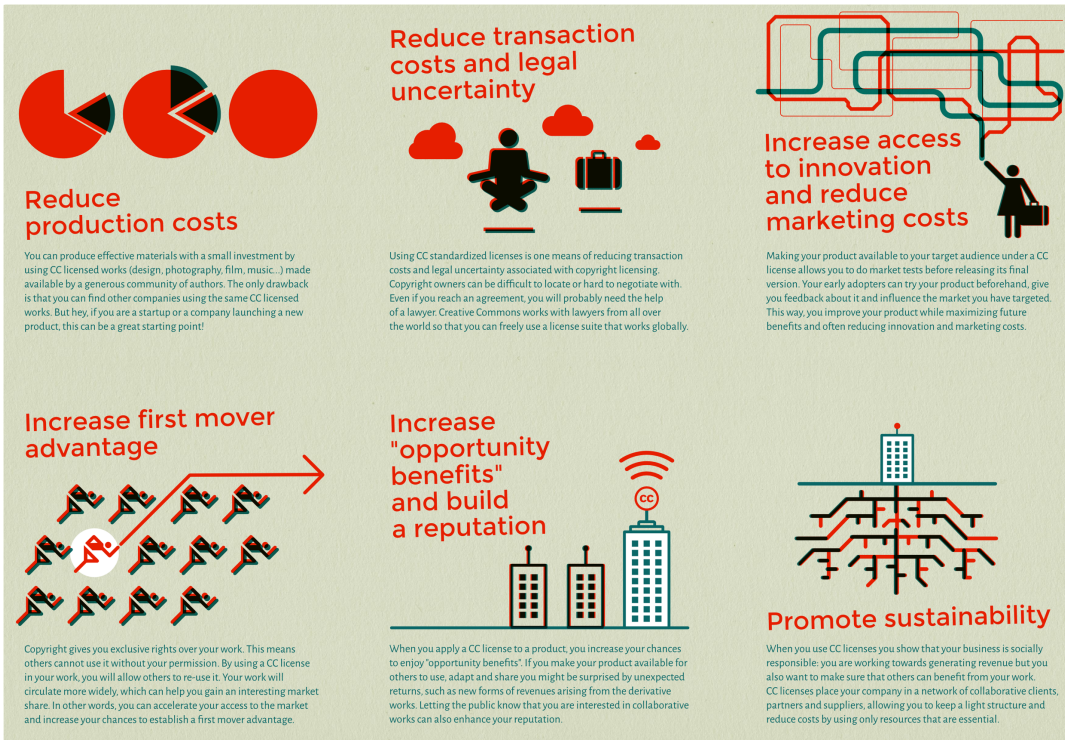
Creative Commons Toolkit for Business

All information at <https://business-toolkit.creativecommons.org>

Poster



Handout



Reduce production costs

You can produce effective materials with a small investment by using CC licensed works (design, photography, film, music...) made available by a generous community of authors. The only drawback is that you can find other companies using the same CC licensed works. But hey, if you are a startup or a company launching a new product, this can be a great starting point!

Reduce transaction costs and legal uncertainty

Using CC standardized licenses is one means of reducing transaction costs and legal uncertainty associated with copyright licensing. Copyright owners can be difficult to locate or hard to negotiate with. Even if you reach an agreement, you will probably need the help of a lawyer. Creative Commons works with lawyers from all over the world so that you can freely use a license suite that works globally.

Increase access to innovation and reduce marketing costs

Making your product available to your target audience under a CC license allows you to do market tests before releasing its final version. Your early adopters can try your product beforehand, give you feedback about it and influence the market you have targeted. This way, you improve your product while maximizing future benefits and often reducing innovation and marketing costs.

Increase first mover advantage

Copyright gives you exclusive rights over your work. This means others cannot use it without your permission. By using a CC license in your work you will allow others to re-use it. Your work will circulate more widely, which can help you gain an interesting market share. In other words, you can accelerate your access to the market and increase your chances to establish a first mover advantage.

Increase "opportunity benefits" and build a reputation

When you apply a CC license to a product, you increase your chances to enjoy "opportunity benefits". If you make your product available for others to use, adapt and share you might be surprised by unexpected returns, such as new forms of revenues arising from the derivative works. Letting the public know that you are interested in collaborative works can also enhance your reputation.

Promote sustainability

When you use CC licenses you show that your business is socially responsible: you are working towards generating revenue but you also want to make sure that others can benefit from your work. CC licenses place your company in a network of collaborative clients, partners and suppliers, allowing you to keep a light structure and reduce costs by using only resources that are essential.



Toolkit for Business

How to use CC in business?

The different Creative Commons licenses result from the combination of four essential conditions:

- BY Attribution
- NC Non Commercial
- ND Non Derivatives
- SA Share Alike

Within these conditions, there are six different types of CC licenses, according to the level of restriction/freedom granted to the final users.

For more information go to www.creativecommons.org and www.cctoolkits.com or contact the CC affiliates in your country (info@creativecommons.org).

Creative Commons Toolkit for Business

www.creativecommons.org

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 DESIGN: Journalistas++
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CC Open Business Model Canvas *Designed for:* _____ *Designed by:* _____ *Date:* _____ *Vers:* _____

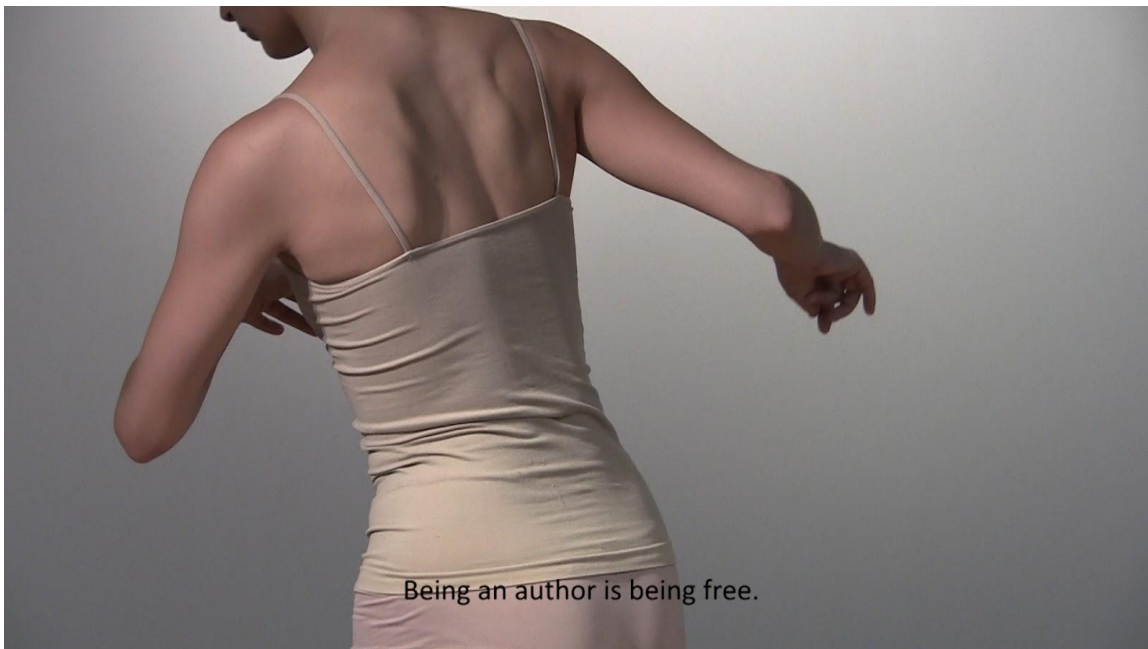
Why? - Problem and Shared Outcome Sought

<p>Key Partners</p> <ul style="list-style-type: none"> - The people/ structures that can help you find your key resources (or even provide them!). 	<p>Key Activities</p> <ul style="list-style-type: none"> - The activities you need to perform in order to deliver your solution. 	<p>Value Proposition</p> <ul style="list-style-type: none"> - The value proposition your solution offers - what you do and why is it better or unique. 	<p>Customer Relationships</p> <ul style="list-style-type: none"> - The customer relationship you develop with which one of your segments and/ or for each one of your activities - how you deliver your activities. 	
<p>Key Resources</p> <ul style="list-style-type: none"> - The resources you need to perform the key activities (starting with the team!). 	<p>Channels</p> <ul style="list-style-type: none"> - The channels you use to approach your segments. 	<p>Common Good</p> <ul style="list-style-type: none"> - Highlight the common good (social, environmental, cultural...) intrinsic to your value proposition. 	<p>Customer Segments</p> <ul style="list-style-type: none"> - The groups you believe to be interested in your solution; the people you want to buy and/ or use your solution. 	
<p>CC Licensed Work</p> <ul style="list-style-type: none"> - CC licensed materials/ content/ products one can find online to use and remix and integrate in your own production/ works, reducing production costs and gaining access to an immense network of creative people. 	<p>CC Licenses</p> <ul style="list-style-type: none"> - Using the licenses for your own production/ works is a way to reach your segments more rapidly and make sure they'll keep sharing, reusing and remixing it, giving you feedback and helping you improve your work. 	<p>Revenue Streams</p> <ul style="list-style-type: none"> - The revenues you will have for delivering your solution through the channels you selected and the relationships you established with your customers (different segments and the adoption of CC licenses in your own production can help increase your revenue streams). 		
<p>Cost Structure</p> <ul style="list-style-type: none"> - The costs you will have for putting resources together and performing the activities as you planned (partnerships and CC licensed work can help reduce your cost structure). 		<p>Revenue Streams</p> <ul style="list-style-type: none"> - The revenues you will have for delivering your solution through the channels you selected and the relationships you established with your customers (different segments and the adoption of CC licenses in your own production can help increase your revenue streams). 		

Open Business Model Canvas by Fátima São Simão, Creative Commons Aug-2014 based on [Business Model Canvas Poster](#), designed by [Business Model Foundry AG](#) CC BY-SA 3.0

ANNEX B

de "eus" | collaborative video



still from the video

de "eus" | collaborative video installation | 6' (single channel) | Portugal, 2014

Fátima São Simão - concept, interviews and script

Daniel Pinheiro - video

Anselmo Canha - sound editing

Mariana Amorim - choreography and performance

Tiago Bôto - narration

"Given the historical modifications that are taking place it does not seem necessary that the author function remains constant in form, complexity and even in existence."

-- M. Foucault *in* What Is an Author?

de "eus" (of selves) is an essay on authorship and the freedom of creation.

This collaborative work is part of an on-going research on authorship and its impacts on the creation of artistic and economic value, within the Doctoral Programme in Art and Design of the Faculty of Fine Arts of University of Porto.

As a result of a series of interviews made to artists, performers, entrepreneurs, researchers and other professionals in the field of culture (including the artists involved in this project), *de "eus"* (the expression in the title resembles the word "god" in Portuguese - "deus") invites to a reflection on the multiple dimensions of authorship and the complexity of rights, liberties and limits that they can enclose.

Poster of the exhibition:

Heterotropias: percursos criativos paralelos

Exposição de estudantes
de Doutoramento
em Arte e Design
2013/14

Bruno Pereira
Fátima São Simão
Parinaz Faghihi
Patrícia Wielewicki
Telmo Castro



PORTO
FACULDADE DE BELAS ARTES
UNIVERSIDADE DO PORTO

23.07—06.08.2014

MUSEU

ANNEX C

Copywrong performance-as-tool

All information at <https://copywrong-cc.tumblr.com>

COPYWRONG :: MANIFESTO

(1) ART WILL EAT ITSELF

(2) In order for culture to stay alive, we have to be open, or permeable. Ideas flow in, and they flow out. This is known as evolution, progress, or innovation. But thanks to Copyright, we live in a world where some information goes in, but cannot legally come out. Often we hear people engaged in creative pursuits ask, “Am I allowed to use this? I don’t want to get in trouble.” In our Copyright regime, “trouble” may include lawsuits, huge fines, and even jail. “Trouble” means violence. So the threat of “trouble” dictates our choices about what we express. Copyright activates our internal censors. Internal censorship is the enemy of creativity; it halts expression before it can begin. The question, “am I allowed to use this?” indicates the asker has surrendered internal authority to lawyers, legislators, and corporations. This phenomenon is called Permission Culture. Whenever we censor our expression, we close a little more and information flows a little less. The less information flows, the more it stagnates. This is known as chilling effects. The answer is: we have some choice regarding what we expose ourselves to, and what we express. We can choose what information to pass along.

(3) Information is power. But like all power, there are those who want to keep it for themselves. The world's entire scientific and cultural heritage, published over centuries in books and journals, is increasingly being digitized and locked up by a handful of

private corporations. Forcing academics to pay money to read the work of their colleagues, scanning entire libraries but only allowing the folks at Google to read them, providing scientific articles to those at elite universities in the First World but not to children in the Global South... It's outrageous and unacceptable. But we can fight back. Sharing isn't immoral — it's a moral imperative. There is no justice in following unjust laws. It's time to come into the light and, in the grand tradition of civil disobedience, declare our opposition to this private theft of public culture. We need to take information, wherever it is stored, make our copies and share them with the world. We need to take stuff that's out of copyright and add it to the archive. We need to buy secret databases and put them on the Web. We need to download scientific journals and upload them to file sharing networks. We need to fight for Guerilla Open Access. With enough of us, around the world, we'll not just send a strong message opposing the privatization of knowledge — we'll make it a thing of the past.

(4) Culture always builds on the past. The past always tries to control the future. Our future is becoming less free. To build free societies you must limit the control of the past.

(5) And here is where the confusion sets in: individual cultural producers (in the broadest sense of the term) are worried about being denied compensation for their work due to unbridled duplication. This is a false anxiety. For example, Elvis was transformed from an individual into an institution. “Elvis” does not refer to a human being; it refers to videos, films, records, and all kinds of merchandise. Elvis, the individual, is so irrelevant to the formula that he does not even have to be alive for “Elvis” to continue.

(6) What is happening now with the copyright industry vs. the people is practically identical to what happened when the printing press was introduced and the Catholic Church declared war on self-educated people. In both cases, it is not really about religion or law, but about the very simple principle that people are people and that powerful people will use their power to keep their power. What is interesting here is that copyright defenders are acting like religious fundamentalists, as if it was something that wasn't allowed to be questioned.

(7) In other words: copyright is brain damage.

(8) We now declare sovereignty over our own heads. Censorship and “trouble” still exist outside our heads, and that's where they'll stay – OUTSIDE our heads. We no longer favor or

reject works based on their copyright status. Ideas aren't good or bad because of what licenses people slap on them. We just relate to the ideas themselves now, not the laws surrounding them. And we try to express ourselves the same way. Like millions of others who don't give a rat's ass about copyright, we hope you join us. Make Art, Not Law.

/

(1) *The title is a recreation of the famous phrase "Pop will eat itself" by David Quantick in an article about the band Jamie Wednesday for the New Musical Express magazine, in 2000, having been later appropriated by 2 Many DJs in 2001 for the launch of the mashup album "As Heard On Radio Soulwax, Part 2".*

(2) *The paragraph starting in "In order for culture to stay alive, we have to be open" and ending with "I can choose what information to pass along" is from Nina Paley's Pecha Kucha talk, in Champaign, Illinois, December 2013.*

(3) *The paragraph starting in "Information is power" and ending with "We'll make it a thing of the past", is from "Guerrilla Open Access Manifesto", written by Aaron Swartz, July 2008.*

(4) *The paragraph starting in "Culture builds on the past" and ending with "To build free societies you must limit the control of the past" is from the Brett Gaylor's open-source documentary "Rip! A Remix Manifesto", 2008.*

(5) *The paragraph starting in "And here is where the confusion sets in" and ending with "Elvis, the individual, is so irrelevant to the formula that he does not even have to be alive for 'Elvis' to continue" is from Critical Art Ensemble's book "Digital Resistance", published in 2001.*

(6) *The paragraph starting in "What is happening now with the copyright industry" and ending with "As if it was something that wasn't allowed to be questioned" is from Christian Engström and Rock Falkvinge's book "The Case for Copyright reform", published with the support from the Greens/EFA group in the European Parliament, in 2012.*

(7) *The phrase "In other words: copyright is brain damage" is from Nina Paley's TED talk given in Maastricht, 2015.*

(8) *And the final paragraph, starting with "We now declare sovereignty over our own heads" and ending with "Make Art, not Law", is from Nina Paley's Pecha Kucha talk, in Champaign,*

Illinois, December 2013, slightly adapted to this project by changing “I” in “I now declare sovereignty over my own head” to “We” - “We now declare sovereignty over our own heads”.



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COPYWRONG :: RECIPE

Ingredients

- 1 manifest
- 1 artist/ performer (or more)
- 1 original performance (?) and its references
- 1 host / moderator
- 1 scorer/ researcher
- 1 lawyer
- Open licensed content as needed

Directions

1. The host reads the manifest (ideally a mashup of different texts) to introduce the topic while the assistant starts to write the actions taking place.
2. Add the artist(s) to present a short original (?) performance that involves sound and movement (identifying its references/ authors).
3. Present references of artists who have done similar works in the past (use video, sound, slides...).
4. Add the lawyer. The host makes questions in order to make sure the performance follows all copyright laws. The assistant continues to take notes. Stir slowly.

5. In case there is no conflict, proceed with original (?) performance as planned and finish presentation.

6. In case there are legal constraints, start searching for presentation alternatives and possibilities *ad nauseum* while discussing them with lawyer.

7. The host should invite the audience to vote if the original (?) performance should run or not - use open licensed playlist while assistant collects and counts the votes (suggestion: CC Affiliates Mixtape #1 ou #CC-10 Europe Mixtape).

7.1. If the audience votes "YES" find the legal exemptions that allow the performance to proceed (for example: invite the audience to become friends and come see it in a private space, on a different date).

7.2. If the audience votes "NO" finish the presentation and go home.

8. Finish with credits and open license music (suggestion: "Copying is not Theft", de Nina Paley).

Note: For a more intense experience, introduce soundtrack with records from other artists/ creators about their experience with copyright and use posters to underline the main problems they identified in previous LABS.

For more hints and ingredients go to <https://copywrong-cc.tumblr.com>



This work is licensed under a [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)

COPYWRONG :: SCRIPT

I.

AUDIENCE COMES IN

"Welcome to Portugal" sign

[“This video has been blocked due to copyright issues...”](#) video is playing on a loop on a projection screen;

+

Square is drawn on the floor with masking tape;

Fátima São Simão in the role of scorer

Rogério Nuno Costa in the role of host

Daniel Pinheiro in the role of performer

Teresa Nobre (remotely) in the role of lawyer

+

Fátima starts writing the items for the meta-performance-as-tool recipe on the board, highlighting some essential points to the discussion as action evolves (ongoing action)

II.

INTRODUCTION

Good evening everyone, and welcome to Portugal! I would like to start this performance with the reading of an original text. The title is “Copywrong” and it’s our manifesto.

Reading of the [MASHUP MANIFESTO TEXT](#) ending up with Rogério introducing Daniel’s intention of doing Bruce Nauman’s performance “Walking in an Exaggerated Manner Around the Perimeter of a Square”;

So, my friend Daniel wants to do a live performance titled “Walking in an Exaggerated Manner Around the Perimeter of a Square” (TITLE 1). For that, he will use the original video performance by Bruce Nauman that has the exact same title “Walking in an Exaggerated Manner Around the Perimeter of a Square” (1968-69). Daniel, are you ready?

III.

THE PERFORMANCE

Daniel plays *Legacy Russel’s* video of the work Bruce Nauman [Cruising To Drake On Tha Block](#), (2011). He places himself in the starting position of Bruce Nauman’s performance. Starts following the video that is being projected.

[The video plays for a few seconds and gets interrupted by Teresa Nobre who is already ‘watching’]

Advogada: Hey, where did you get that video?

Artistas: It’s from Youtube. The video-performance that Daniel wanted to use in his live performance was on Youtube and he decided to use it...

Advogada: No! Stop that video immediately, you can’t show a Youtube video in public.

Artistas: Oops...Why?

Advogada: Because it’s the law! Can I read the law?

According to art. 149.º of the Portuguese Code of Author's Right and Neighboring Rights:
 2 - The communication of a work in any public space requires the permission of the author.
 3 - A public space means a space implicitly or explicitly accessible to the public, with or without paid tickets, ainda que com reserva declarada do direito de admissão.
 Meaning that you need permission of the authors and right holders to play that video in public, regardless of whether it's on Youtube, or in any other other publicly accessible platform, or not.

Artistas: Oh, fine! But we do have permission from the author of this video! I'm sorry, I forgot to mention that earlier. So, this video is a re-interpretation of Bruce Nauman's performance made by an American artist named Legacy Russel (no pun intended), and Daniel has contacted her and asked her permission to use the work in the context of this project and she answered the following:

I've had to remove it from Vimeo for the time being (for copyright reasons). It remains on YouTube, though, which is fantastic. I don't have any qualms about sourcing material in this way; art history is all about the source, the reference, the sample, the remix. Feel free to use as inspiration for your performance - yes. You can credit me accordingly. Let me know if you have any questions. Thanks for your interest in my work. Cheers, Legacy

So, we do have permission. It's here!

Advogada: Ok, but that video isn't a Bruce Nauman's video?

Artistas: Yes, it's a Bruce Nauman's video, but synced with a music from Drake. So, what Legacy Russell did was an appropriation from both works, a sort of mashup, and then she presents it as an art work of her own. And is that video that Daniel not only wants to show, but also use as an inspiration for his own live performance.

Advogada: Ok, I'm not sure I'm getting the idea. Can you show me what do you want to do?

Artistas: Yes, I can show you the video. Just a moment, please... Daniel, are you ready?

[Vídeo + AFTER LEGACY RUSSEL'S 'BRUCE NAUMAN CRUISING TO DRAKE ON THA BLOCK' (2010)]

Advogada: Noooooo! Stop that now! Look the law is very clear:

According to art. 20.º of the Authors Rights Code:
 1 - It is considered a composite work a work in which a preexistent work is incorporated, in whole or in part, with the permission, but without the collaboration, of the author of the preexistent work.
 2 - The rights of the author of a composite work belong exclusively to its author, without prejudice of the rights of the author of the preexistent work.
 Meaning that, regardless of whether Legacy Russels has (or not) Bruce Nauman's permission and Drakes' permission to do this video (which I think she doesn't from her answer, by the

way she talks about sampling and remixing), Bruce Nauman and Drake continue to have the rights on their works and you can't just incorporate their works without their permission.

Artistas: Ok, so, where can we find those authorizations then?

Advogada: You have to ask permission directly to the owners of the rights over the works, that is: 1) to the right holders of the choreographic work, 2) to the right holders of the video work that records the choreographic work, 3) to the right holders of the musical work, 4) to the right holders of the interpretation of the musical work, and 5) to the producers that recorded the music.

Artistas: Ok. So, can I just kill myself now, or is there a more simple way of doing this? I mean, is there any solution, any legal solution? Like, for instance, here in Portugal we could just go to SPA and ask permission to use Drake's music in our performance; could this be a solution?

[Título: AFTER BRUCE NAUMAN'S ' WALKING IN AN EXAGGERATED MANNER AROUND THE PERIMETER OF A SQUARE' (1968-69)]

Advogada: Yes, you can go to SPA (the collecting society that represents the authors) and Passmúsica (the collecting society that represents the performers and the producers) to ask permission to have the music playing live, like if it was to be played at a bar, or coffee shop, but that won't be of great use to you because you want to incorporate the music in your work. You won't get those kind of authorizations from the collecting societies. They can be the intermediary between you and the artists themselves, but if no answer comes from the artists or if they don't give permission, these collecting societies can't do anything, because they don't have authority to grant those permissions.

Artistas: Ok, so, what if Daniel wants to do only the performance, without using the video and, therefore, without using the music as well? Is that possible?

Advogada: Sorry, it's also not possible. The law is again very clear, and it says in art. 108.^o of the Authors Rights Code:

1 - The use of a work by means of a performance requires the permission of the authors, regardless of whether the performance takes place in a public or private place, with or without paid tickets, with or without a lucrative intent.

- *Meanwhile, Daniel is desperate on the floor, getting bored with the whole discussion. Fátima comes to offer some comfort. Turns her back on him as soon as he starts to respond to register his reactions.*

Artistas: So, in a nutshell, Daniel can't use the video, he can't use the music, and he can't even do Bruce Nauman's performance... Ok, but what Daniel is actually trying to do here is what we "les artistes" usually call... a reenactement! He wants to reproduce an original work as if it was a sort of quotation, but presenting it as an original work, Daniel's work! Appropriating part of the work but in a live performative way. Isn't there anything in the Law that can allow us to do this without getting in any trouble?

Advogada: A quotation of a performance by means of a performance?

Artistas: But, in a performance.

Advogada: In a performance.

Artistas: By means of a performance.

[Título: WITH DRAKE'S MUSIC 'SHUT IT DOWN' (2010)]

Advogada: By means of a performance.

Humm, maybe that's possible under the Law, more concretely under art. 75.º, n.º 2 of the Authors Rights Code, which (sorry, I have to read the law again! talking with lawyers can be boring!) that one can - without permission of the rights holders -:

g) insert quotations or summaries of third party works, of any genre or nature, in support of one's own doctrine or for criticism, discussion or teaching purposes, to the extent necessary by the purpose to achieve.

This means that it would be possible to quote a performative work by means of a performance. But you would need to respect the following conditions, which are foreseen in art. 75.º, n.º 4 and art. 76.º, n.º 2 of the Code:

- 1: the quotation must not conflict with the normal exploitation of the work
- 2: the quotation must not cause unjustified prejudice to the legitimate interests of the author
- 3: your work must not create confusion with the quoted work

Meaning that the quotation would need to have such a length that it didn't make sense to Bruce Nauman to give you a permission to do this performance. If you wanted to do a total reenactment of Nauman's work, your use would probably conflict with the normal exploitation of Nauman's work, because the normal exploitation of a choreographic work includes the grant of permissions to perform such work in its entirety. So, your use would need to be less than the use of the work in its entirety. Less than a total reenactment. Then you would have to do it in a way that it's does create confusion with the original performance.

Artistas: But that doesn't make any sense... Listen, Daniel wants to do a "quotation" of an original performance in a "new" performance. Let's say that Daniel is writing an essay and he wants to quote an author. For that he just needs to use quotation marks, and then write the exact words from the original author and make the proper reference in a footnote. When doing that, Daniel doesn't make any changes to the original text, regardless of its size. So, what Daniel wants to do is exactly that, but... (and that's a big but)... Daniel wants to quite the whole text, or, in this case, the whole performance.

Advogada: Ok, but that would need to be in the context of a wider work. What you are saying is that Daniel just wants to reenact Nauman's work. Where is the wider work?

Artistas: The wider work is this work. The wider work is what is happening now. It's the context, it's Daniel's motivation to do it. It's the fact that everything has been done before, but not by Daniel. That is, the quoted work is THE work. This is CONCEPTUAL ART, baby...

(...)

Listen, we are not trying to do any kind of infringement here. We really want to understand... According to the Law, how can we define what is the exact reproduction of the original work and what is the "new work"? Bruce Nauman's performance is quite simple; it's just the artist walking around the perimeter of a square in an exaggerated

manner. What can Daniel do then? How many steps can he give? Can he just do one of the sides of the square? And should he change the way he walks? That would not be a reenactment, but a re-interpretation of a work, and that's exactly what Daniel doesn't want to do. Do you know how many artists have walked in a stage before? Billions! What does it mean not to be mistaken with the original performance?

(...)

Can we show you what we are trying to do here?

Advogada: Friends, I'm the lawyer, I can give you advice, I don't decide, but if we were talking about music, you couldn't play seconds from the chorus, because the chorus is an essential part of the music. If we apply this to Nauman's performance in which the essential part of it are the steps I would say that not even a single step could be done, because Nauman's performance is a repetition of the same single step. But if you want to try it, please do.

Artistas: (DANIEL DOES THE PERFORMANE; TERESA WATCHES)

Advogada: I can't see the difference. I'm sorry. If we had a jury we could try to ask them. In my opinion, it seems risky because you are doing a reenactment.

Artistas: Ok, we give up. This performance can't be done... We have an audience here, sitting in this room waiting for a performance to happen, but the performance can't be done. We could almost say that the performance that you want to do, Daniel, is just this title here:

"Walking in an Exaggerated Manner Around the Perimeter of a Square" after Legacy Russel's 'Bruce Nauman Cruising to Drake on tha Block' (2010) after Bruce Nauman's "Walking in an Exaggerated Manner Around the Perimeter of a Square" (1968-69) with Drake's music Shut it Down (2010)"... And I would add: ...by Daniel Pinheiro (2018)

DANIEL:

Or even better,

*"Walking in an Exaggerated Manner Around the Perimeter of **Copyright**" after Legacy Russel's 'Bruce Nauman Cruising to Drake on tha Block' (2010) after Bruce Nauman's "Walking in an Exaggerated Manner Around the Perimeter of a Square" (1967-68) with Drake's music *Shut it Down* (2010)" by Daniel Pinheiro (2018)*

... after Daniel Pinheiro's original concept.

Ladies and gentlemen and all the in-betweens: this is our performance.

IV

INTERMISSION

Posters with some of the most important questions that resulted from the LABS undertaken in the process of creation of this performance / [Soundtrack with the recordings made from the LABS.](#)

V

Fátima addresses Daniel to know if he would still like to do the performance, but not before knowing if the audience agrees with it, once it might represent a crime.

(Options: 1. Audience is given a YES / NO poll. They vote to the sound of CC licensed music - implies counting the votes and the possibility of messages from the audience; 2. Simply ask the audience whether the artist should proceed with it or not.)

If 'No' wins then the performance is not done;

If 'Yes' wins then the performance will be prepared to be done and the lawyer interrupts saying that even in this case, according to the Law it is possible, yes, that the performance can be done but only if in a non profit, familiar and private environment not having the need to ask permission of the authors; Given this the audience is invited to join outside the team and continue the discussion about these subjects.

[Depois da discussão, se as pessoas quiserem ver a performance, advogada intervém para dizer que há uma solução na lei: Nos termos do art. 108.º do CDADC:

2 - Se a obra tiver sido divulgada por qualquer forma, e desde que se realize sem fim lucrativo e em privado, num meio familiar, a representação poderá fazer-se independentemente de autorização do autor, princípio que se aplica, aliás, a toda a comunicação.]

VI

Nina Paley's "[Copying is not theft](#)"

END.



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