

2012

The Romantic Collective Author

Margaret Chon

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/jetlaw>



Part of the [Intellectual Property Law Commons](#), and the [Internet Law Commons](#)

Recommended Citation

Margaret Chon, *The Romantic Collective Author*, 14 *Vanderbilt Journal of Entertainment and Technology Law* 829 (2020)

Available at: <https://scholarship.law.vanderbilt.edu/jetlaw/vol14/iss4/2>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Journal of Entertainment & Technology Law* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

The Romantic Collective Author

Margaret Chon*

ABSTRACT

Although the romantic collective author is a much more elusive creature than its romantic individual counterpart, it can be discerned amidst the proliferation of expression on the Internet. This Article first outlines the ways in which the romantic author effect operates through both its genius and its arbiter prongs within collaborative authorship practices in digital networks. It next turns to scientific collaboration, where this author effect is attenuated, to assess whether scientific authorship practices might contribute to a more realistic and less romantic understanding of expressive authorship practices. A subsequent case study of collaborative digital authorship by Wikipedia contributors uncovers some of the underlying social processes giving rise to Wikipedia's position of collective genius and authority. Analysis of these collaborative authorship processes reveals implicit certification functions, which can obscure various biases that should be addressed in order to shape a more inclusive and reliable knowledge environment.

TABLE OF CONTENTS

I.	SENSIBILITY AND SENSE: THE ROMANTIC AUTHOR MEETS THE INTERNET.....	832
II.	THE ROMANTIC AUTHOR REDUX	838
	A. <i>Collective Authorship in the Scientific Community</i>	838

* © 2012 Margaret Chon. Donald and Lynda Horowitz Professor for the Pursuit of Justice, Seattle University School of Law. The author is grateful to the participants in the Vanderbilt University Law School Symposium on Copyright and Creativity, especially the Board of the VANDERBILT JOURNAL OF ENTERTAINMENT AND TECHNOLOGY LAW. The author also would like to thank research librarian Kerry Fitz-Gerald as well as her research assistants Marcus Barnes-Cannon, Jenny Ling, Michelle Pham, and David Savage. Finally, the author appreciates Professor Edward Lee's invitation to the Law & Society Association panel on Technology, Social Media, and Intellectual Property in June 2011, where this project had its genesis. All errors are the author's alone. This work is licensed under a Creative Commons Attribution License available at: <http://creativecommons.org/licenses/by/3.0>. The required attribution notice under the license must indicate that the Article was first published in the VANDERBILT JOURNAL OF ENTERTAINMENT AND TECHNOLOGY LAW.

<i>B. Collective Authorship in the “Fact-Based” Digital Community</i>	841
III. DE-ROMANTICIZING COLLECTIVE AUTHORSHIP	844
IV. CONCLUSION	847
APPENDIX	849

A romantic collective author lurks amidst the exploding expressive activity on the Internet. While the opportunity to participate in a community of like-minded individuals may motivate creativity in digitally networked spaces,¹ the construct of the romantic author still very much influences copyright authorship.² Romantic collective authorship insists upon its status as a kind of special authorial intelligence, if not genius.³ It also functions as a type of cultural arbiter, certifying content with cultural authority. Overlooking the effects of these coupled roles (the genius and the arbiter) flattens collaborative creative activity within digital networks and ignores their combined effects in *authorizing* expressive content protected by copyright.

The scholarly critiques of the romantic author focus on current copyright law’s excessive reliance on possessive individualism, claiming that this overreliance then influences copyright doctrine to ignore or devalue collaborative and collective forms of authorship. Accordingly, copyright doctrine is smitten with the “heroic self-presentation of Romantic poets”⁴ who “break altogether with tradition to create something utterly new, unique—in a word, ‘original.’”⁵ This is the crux of these scholarly critics’ “genius” complaint. Less developed, but still central to these critiques, is their claim that the romantic individual author has too influential a role in *authorizing* an approved set of cultural practices as a “secular prophet

1. See RUEDIGER GLOTT ET AL., UNITED NATIONS UNIV., Wikipedia Survey—Overview of Results, United Nations 9 (2010), available at http://www.wikipediasurvey.org/docs/Wikipedia_Overview_15March2010-FINAL.pdf (finding that Wikipedia participants indicated that a significant plurality contribute because they believe in the ideology of the project).

2. See Peter Jaszi & Martha Woodmansee, *Introduction to THE CONSTRUCTION OF AUTHORSHIP: TEXTUAL APPROPRIATION IN LAW AND LITERATURE* 1, 10-13 (Martha Woodmansee & Peter Jaszi eds., 1994) [hereinafter CONSTRUCTION OF AUTHORSHIP]; see also JAMES BOYLE, *Shamans, Software, & Spleens* (1996); ROSEMARY J. COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES* 219 (1998); Keith Aoki, *(Intellectual) Property & Sovereignty: Notes Toward a Cultural Geography of Authorship*, 48 STAN. L. REV. 1293, 1322-27 (1996) (describing “[t]he Romantic Author As an Amalgam of Property and Sovereignty”).

3. See Maria Biagioli, *Genius Against Copyright: Revisiting Fichte’s Proof of the Illegality of Reprinting*, 86 NOTRE DAME L. REV. 1847, 1847 (2011).

4. Jaszi & Woodmansee, *supra* note 2, at 3.

5. Martha Woodmansee, *On the Author Effect: Recovering Collectivity*, in CONSTRUCTION OF AUTHORSHIP, *supra* note 2, at 15, 16; see also Biagioli, *supra* note 3, at 1847-49.

with privileged access to experience of the numinous and a unique ability to translate that experience for the masses of less gifted consumers.”⁶ More recently, Peter Jaszi, a member of the early group of copyright scholars identified with these critiques, reinforced that “one of the specific roles assigned to creative and scientific genius was the work of imposing a comprehensible pattern on the evidence of experience.”⁷ This latter “authorizing” function of the romantic individual author is possibly as significant as the more prominent “genius” role. Taken together, these two functions (the genius and cultural arbiter strands, respectively, of romantic authorship) constitute what Martha Woodmansee and Jaszi together have deemed the “author effect.”⁸

However, this scholarly claim of an overly-consequential author effect depends on a sharp dichotomy between the individual and the collective in order to illustrate (perhaps even to exaggerate⁹) the effect of the romantic author construct upon prevailing notions of legitimate authorship. By merging the romantic author with the rights-bearing individual valorized by liberal political theory, these early critiques developed their genius complaint fairly exhaustively.¹⁰ In doing so, however, they may have inadvertently downplayed how the cultural arbiter (or authorizing) aspect of romantic authorship may have pervaded *collective* creative practices. More specifically, this authorizing strand of romantic authorship shapes both individual and collective authorship at least as powerfully as does the genius strand.

This Article elaborates upon the existence and effect of a romantic collective author. Part I presents some ways in which these combined aspects of the author effect (genius and arbiter) operate

6. Jaszi & Woodmansee, *supra* note 2, at 3.

7. Peter Jaszi, *Is There Such a Thing as Postmodern Copyright?*, in MAKING AND UNMAKING INTELLECTUAL PROPERTY LAW 413, 414-15 (Mario Biagioli et al. eds., 2011). Jaszi illustrates the modern concept of romantic genius with the early twentieth century example of T.S. Eliot’s commentary on James Joyce, lauding his ability to impose a particular order on human experience. *Id.* at 415. A more recent example along this vein might be Salman Rushdie’s recent memorial tribute to Christopher Hitchens, which arguably does similar work in the post 9/11 era. See Salman Rushdie, *Christopher Hitchens, 1949-2011*, VANITY FAIR, Feb. 2012, <http://www.vanityfair.com/culture/2012/02/rushdie-on-hitchens-201202>.

8. Woodmansee, *supra* note 5, at 15; see also Peter Jaszi, *On the Author Effect: Contemporary Copyright and Collective Creativity*, in CONSTRUCTION OF AUTHORSHIP, *supra* note 2, at 29, 29.

9. Cf. Mark A. Lemley, *Romantic Authorship and the Rhetoric of Property: Shamans, Software, & Spleens: Law & the Construction of the Information Society* by James Boyle, 75 TEX. L. REV. 873, 879-82 (1997) (reviewing BOYLE, *supra* note 2) (arguing that romantic authorship is not a fully persuasive explanatory driver of copyright doctrine).

10. See Jaszi, *supra* note 8, at 41-48 (discussing the U.S. District Court for the Southern District of New York’s 1990 decision in *Rogers v. Koons*); Woodmansee, *supra* note 5, at 17-24 (discussing the example of 18th century writer Samuel Johnson).

generally within collaborative authorship practices in digital networks. Then Part II turns to scientific collaboration—where the author effect has less influence—to assess whether these scientific authorship practices might contribute to a more realistic, and less romantic, understanding of expressive authorship practices. Part II also briefly illustrates a specific type of collaborative digital authorship, in the form of contributors to Wikipedia. This analysis reveals that these social practices of collaborative expression give rise to both the collective genius and collective authority aspects of the romantic author. Drawing on possible parallels to the scientific and the product certification realms, Part III then catalogs some of the unintended biases produced by the romantic collective author. Part IV concludes with some suggestions regarding how society can de-romanticize this type of authorship. Addressing the author effect of collective knowledge production is a critical key to ensuring a more equitable access to, construction of, and distribution of knowledge than currently exists.

I. SENSIBILITY AND SENSE: THE ROMANTIC AUTHOR MEETS THE INTERNET

As even early scholarship recognizes, collective authorship practices pervaded creative cultural production well before the architecture of networked digital technologies took hold.¹¹ These cultural practices include appropriation art.¹² Artists' appropriation of other artists' works is an integral and longstanding part of creative production.¹³ But appropriation art came of age in the 1980s as a term used to describe a certain stance towards originality.¹⁴ For example, artists such as photographer Sherrie Levine challenge copyright's notions of what is an original and what is a copy:

11. Woodmansee, *supra* note 5, at 24-25 ("In their recent study of professional writing practices, Andrea Lunsford and Lisa Ede have found that most of the writing that goes on today is in fact collaborative. . . . What gives their study such urgency is the fact that, this powerful collaborative trend notwithstanding, the assumption that writing is inherently and necessarily a solitary, individual act still informs both the theory and practice of the teaching of writing." (footnote omitted)).

12. See Lynne A. Greenberg, *The Art of Appropriation: Puppies, Piracy, and Post-Modernism*, 11 CARDOZO ARTS & ENT. L.J. 1, 13-14 (1992). Appropriation artists "create works by lifting images from artistic works of the past and creating replicas of these images. They reuse these motifs in varying degrees, sometimes by appropriating a part of an image, other times by creating works virtually indistinguishable from the originals." *Id.* at 14.

13. Olufunmilayo B. Arewa, *From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context*, 84 N.C. L. REV. 547, 550-52 (2006).

14. See *supra* note 12.

[H]ow we see and understand things is conditioned by our own experiences, collective and singular, shared and private. [Levine's] works operate overtly as repetitions, as things we may have seen before. In what is arguably her most famous work, *After Walker Evans: 1-22* (1981), Levine drew upon Evans's iconic black-and-white images of the Great Depression taken for the Farm Security Administration . . . during the 1930s. Although Evans's pictures of impoverished sharecroppers, stark buildings, and modest grave sites seem to simply document everyday scenes and situations, they are invested with an irrefutable sense of subjectivity and drama. By re-presenting images—Evans's in this case—as her own, Levine asks us to reconsider objects and raises questions about conventional notions of authorship, originality, and artistic lineage.¹⁵

By obscuring the line between original and copy, this type of art also blurs the line between individual and collective expression. Legal cases involving these artists have pushed judicial analysis of originality and fair use in copyright law.¹⁶ Peter Jaszi suggested recently that, as a result, judges “may be absorbing an attitude of skepticism about fixed identity and stable point of view—recognizing what has been clear for some time in arts practice and aesthetic theory: that . . . constructed culture is fair game for reinterpretation”¹⁷

This skeptical attitude towards some of the basic assumptions of copyright law is not only fostered by authorship practices of commercial artists working in traditional media, but also by cultural, economic, and social practices on the Internet. Digital authorship began to impact society's knowledge universe in the early 1990s, roughly the same time that the earlier versions of the romantic author critiques emerged. Some scholars characterize the creative expression fostered by the architecture of networked digital technologies as postmodern because it challenges many assumptions of possessive liberal individualism undergirding dominant copyright doctrines.¹⁸ Increasingly, these challenges come in the form of collective expression resulting from collaborative creative practices, often but not always, in noncommercial or nonprofit forms.¹⁹

15. Johanna Burton & Carrie Springer, *Sherrie Levine: Mayhem*, WHITNEY MUSEUM AM. ART 1, http://whitney.org/file_columns/0002/8650/brochure_booklet_forweb.pdf (last visited Apr. 14, 2012).

16. Compare *Blanch v. Koons*, 467 F.3d 244, 251-53 (2d Cir. 2006) (finding fair use of appropriation), with *Rogers v. Koons*, 960 F.2d 301, 309-10 (2d Cir. 1992) (finding no fair use), and *Cariou v. Prince*, 784 F. Supp. 2d 337, 347-50 (S.D.N.Y. 2011) (finding no fair use). See generally Randy Kennedy, *Apropos Appropriation*, N.Y. TIMES, Dec. 28, 2011, <http://www.nytimes.com/2012/01/01/arts/design/richard-prince-lawsuit-focuses-on-limits-of-appropriation.html>.

17. Jaszi, *supra* note 7, at 421.

18. *Id.* at 413-14; Pamela Samuelson, *Copyright and Freedom of Expression in Historical Perspective*, 10 J. INTELL. PROP. L. 319, 326-27 (2003) (“The post-modern vision of copyright . . . enable[s] new markets for copyrighted works in the digital networked environment.”).

19. For example, Wikipedia, which this Article analyzes further below, is governed by a nonprofit organization, the Wikimedia Foundation. *Home*, WIKIMEDIA FOUND.,

The doctrinal category of transformative fair use²⁰ bears much of the weight of this current shift.²¹ For example, Anupam Chander and Madhavi Sunder have argued that the growing genre of fan fiction as a specific type of appropriation art requires a more generous application of the fair use doctrine.²² But fair use captures only one doctrinal angle of a shift towards newer types of creative practices. The copyright “work” and “author” are other significant loci of this shift. It is clear that many of these new kinds of authorship practices ultimately produce a type of “collective work” or “compilation” protected under current doctrinal categories of copyright law.²³ In addition, however, it is critically important to examine more closely what the all-purpose term “author” means in the Internet context.

As numerous scholars have noted, the “user” in this context often is a type of author who creates content, often denoted user-generated content (UGC),²⁴ rather than simply being a consumer of copyrighted works. UGC consists of highly decentralized musings upon whatever might be of interest to the particular content creator; it is therefore arguably unique to that individual, but often part of a

<http://wikimediafoundation.org/wiki/Home> (last modified Apr. 2, 2012). Although Facebook is soon to be a publicly held corporation, its millions of users contribute material without any expectation of payment. See Shayndi Raice, *Facebook Sets Historic IPO*, WALL STREET J., Feb. 2, 2012, <http://online.wsj.com/article/SB10001424052970204879004577110780078310366.html>; FACEBOOK, <http://www.facebook.com> (last visited Apr. 14, 2012).

20. See 17 U.S.C. § 107 (2006).

21. Daniel J. Gervais, *Towards a New Core International Copyright Norm: The Reverse Three-Step Test*, 9 MARQ. INTEL. PROP. L. REV. 1, 10-13 (2005) (arguing that copyright is premised upon commercial interests rather than authors' interests); see also Oren Bracha, *The Ideology of Authorship Revisited: Authors, Markets, and Liberal Values in Early American Copyright*, 118 YALE L.J. 186, 228 (2008). In documenting the shift to a more market-based definition of works in the mid-nineteenth century, Bracha stated that:

The urge to protect all market value in ever-expanding derivative markets informed the definition of the work as a permanent essence that could assume many forms. In turn, the notion of multiple forms considered to be instances of the same intellectual essence fueled the process of defining an increasing number of markets as derivative markets for the original work.

Bracha, *supra*.

22. Anupam Chander & Madhavi Sunder, *Essay, Everyone's a Superhero: A Cultural Theory of "Mary Sue" Fan Fiction as Fair Use*, 95 CALIF. L. REV. 597, 612-17 (2007); Jaszi, *supra* note 7, at 418-20.

23. 17 U.S.C. §§ 101 (defining “collective work” and “compilation”), 103 (extending copyright protection to “compilations”); Tyler T. Ochoa, *Who Owns an Avatar? Copyright, Creativity, and Virtual Worlds*, 14 VAND. J. ENT. & TECH. L. 959 (2012) (exploring the realm of multi-player online role-playing games and analyzing whether these games, its players, and its avatars fit within copyright's definition of “collective work”).

24. See Daniel Gervais, *The Tangled Web of UGC: Making Copyright Sense of User-Generated Content*, 11 VAND. J. ENT. & TECH. L. 841, 846-50 (2009); Steven A. Hetcher, *Using Social Norms to Regulate Fan Fiction and Remix Culture*, 157 U. PA. L. REV. 1869, 1874-80 (2009); Edward Lee, *Warming Up to User-Generated Content*, 2008 U. ILL. L. REV. 1459, 1460 (2008).

larger collective. This author's creative activity ranges from pure personal expression on Facebook²⁵ to opinion-based restaurant reviews on Yelp²⁶ to fact-based contributions to Wikipedia.²⁷ Although the term "user" is suggestive of a type of social pariah,²⁸ many have noted that user-based authorship of aggregated works may be in fact the predominant form of expressive activity in digital environments.²⁹ Thus this Article refers to a "collective author" to denote in a generic sense (rather than as a legal term of art) a group of users who create either a joint work, a compilation, or a collective work pursuant to the 1976 Copyright Act.³⁰ This authorial activity, deriving from broadly participatory technologies, undermines the hierarchical and bottleneck control of content suggested by the older, print-based copyright constructs of "author."³¹

Already apparent in the Web 1.0 environment,³² these types of creative activity have accelerated sharply in Web 2.0,³³ which encourages even more interactive and collective knowledge production. Many of these newer creations involve remixes, mash-ups, and other types of appropriation of digital content,³⁴ aided

25. See danah boyd, *Why Youth (Heart) Social Network Sites: The Role of Networked Publics in Teenage Social Life*, in *Youth, Identity, and Digital Media* 119, 119 (David Buckingham ed., 2008).

26. Eric Goldman, 47 U.S.C. § 230 as Economic Policy, Address at the Law & Society Association Annual Meeting (June 2011) (on file with author) (discussing how Yelp users create decentralized and robust restaurant reviews).

27. WIKIPEDIA, <http://www.wikipedia.org> (last visited Apr. 15, 2012).

28. Jessica Litman, *Lawful Personal Use*, 85 TEX. L. REV. 1871, 1876, 1894 (2007).

29. See Chander & Sunder, *supra* note 22, at 600; Gervais, *supra* note 24, at 842-43; Hetcher, *supra* note 24, at 1869-70.

30. 17 U.S.C. § 201(c) (2006).

31. See Gervais, *supra* note 24, at 845-57; Steven Hetcher, *User-Generated Content and the Future of Copyright: Part One—Investiture of Ownership*, 10 VAND. J. ENT. & TECH. L. 863, 883-90 (2008).

32. See Margaret Chon, *New Wine Bursting from Old Bottles: Collaborative Internet Art, Joint Works, and Entrepreneurship*, 75 OR. L. REV. 257, 266-70 (1996).

33. Web 2.0 refers primarily to a collection of digital network technologies that facilitate user-based interaction, in contrast to Web 1.0, which consists mostly of websites that do not allow or promote interactivity of content creation among decentralized Internet user-authors. Brian Getting, *Basic Definitions: Web 1.0, Web 2.0, Web 3.0*, PRAC. ECOMMERCE (Apr. 18, 2007), <http://www.practicalecommerce.com/articles/464/basic-definitions-web-10-web-20-web-30>. Both versions promote greater decentralized access for purposes of consumption than did previous print-based media forms. See Hetcher, *supra* note 31, at 868-83.

34. Kennedy, *supra* note 16 ("For the generation that I spend my days with, there's not even any ideological baggage that comes along with appropriation anymore," said Stephen Frailey, an artist whose work has used appropriation and who runs the undergraduate photography program at the School of Visual Arts in Manhattan. "They feel that once an image goes into a shared digital space, it's just there for them to change, to elaborate on, to add to, to improve, to do whatever they want with it. They don't see this as a subversive act. They see the Internet as a collaborative community and everything on it as raw material.").

and abetted by social media.³⁵ Thus, collaborative, decentralized, and participatory methods of authorship through networked digital technologies are core components of all types of social media. Another significant aspect of Web 2.0 (including its subset, social media) is the ability to aggregate data, either through the combined efforts of various users (as in a Facebook home page) or through the collection and mining of user information by intermediaries, such as Google.³⁶ Less consensus exists on whether social media must be noncommercial in order to be genuine, although some suggest that this is one defining characteristic of social media.³⁷

One might view UGC as a type of authorial practice somewhat at odds with a romantic view of authorship suggested by Wordsworth's *Tintern Abbey*.³⁸ While scholars associate the romantic view of authorship with the Romantic poets who lived in an era suffused with natural beauty, UGC rests on the prosaic foundations of Web 2.0's technical architecture in an environment filled with terabytes rather than trees. Thus the question that the documentary filmmaker heroine of *Bound by Law* asks—"Do I need to clear rights?"³⁹—is the threshold question of too many creative endeavors, especially within digital networks. Some of the strongest scholarly advocates of UGC

35. See, e.g., *Viacom Int'l, Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514, 529 (S.D.N.Y. 2010) (granting summary judgment in favor of YouTube for alleged copyright infringement and violations of the Digital Millennium Copyright Act (DMCA) committed by its subscribers), *aff'd in part*, Nos. 10-3270-cv, 10-3342-cv, 2012 WL 1130851 (2d Cir. Apr. 5, 2012) (affirming district court's holding requiring knowledge or awareness of facts or circumstances that indicate specific and identifiable instances of infringement to disqualify a service provider from the safe harbor). While no consensus definition of social media exists, the following version is probably agreeable to most: "a group of Internet-based applications that build on the ideological and technological foundations of Web 2.0, and that allow the creation and exchange of [UGC]." Andreas M. Kaplan & Michael Haenlein, *Users of the World, Unite! The Challenges and Opportunities of Social Media*, 53 BUS. HORIZONS 59, 61 (2010); see also *Social Media*, WIKIPEDIA, http://en.wikipedia.org/wiki/Social_media (last modified Apr. 15, 2012) (categorizing various communication-based social media applications under headings, such as "Blogs," "Location-based social networks," "Social networking," "Events," "Information Aggregators," and "Online Advocacy and Fundraising," while organizing collaborative social media sites in groups, such as "Wikis," "Social bookmarking," and "Social Media Gaming").

36. See Gervais, *supra* note 24, at 857-67.

37. See *Social Media*, *supra* note 35 ("[S]ocial media tools are generally available to the public at little or no cost.").

38. William Wordsworth, *Lines Composed a Few Miles Above Tintern Abbey, on Revisiting the Banks of the Wye During a Tour 13 July 1798*, in 41 ENGLISH POETRY II: FROM COLLINS TO FITZGERALD 376 (Charles W. Eliot ed., 1909), available at <http://www.bartleby.com/41/376.html> ("Nor wilt thou then forget,/That after many wanderings, many years/Of absence, these steep woods and lofty cliffs,/And this green pastoral landscape, were to me/More dear, both for themselves and for thy sake!")

39. See KEITH AOKI, JAMES BOYLE & JENNIFER JENKINS, DUKE CTR. FOR STUDY OF PUB. DOMAIN, *TALES FROM THE PUBLIC DOMAIN: BOUND BY LAW 6* (2006), available at <http://www.thepublicdomain.org/wp-content/uploads/2009/04/bound-by-law-duke-edition.pdf>.

claim that that the technical environment shapes online individual and social identities in much the same way as the natural environment influenced the predigital poets.”

For example, Madhavi Sunder persuasively argues that digital authors can create a new type of identity politics via the Internet Protocol using intellectual property, an early twenty-first century phenomenon she calls IP3.⁴⁰ As she states:

The twentieth century closed with the rise of identity politics, the Internet Protocol, and intellectual property rights. I suggest that the convergence of these ‘IPs’ begins to explain the growth of intellectual property rights where traditional justifications for intellectual property do not. IP3 reveals intellectual property’s social effects and this law as a tool for crafting cultural relations. Call it the ripping, mixing, and burning of law.⁴¹

She and others thus extend the genius aspect of the romantic individual author to a more general right to flourish broadly within digital networks and beyond. Other scholars challenge the market fundamentalism undergirding dominant copyright doctrines and replace it with what might be called a “network utopianism.”⁴² Normatively aligned with the core value of expressive freedom,⁴³ this scholarship tends to idealize the authorial function within digital networks within a peer-produced, nonprofit framework.⁴⁴ Both the right to flourish and the network utopian streams of copyright scholarship therefore reinforce, perhaps unwittingly, the romantic author effect in digital spaces.

Wordsworth believed that “[g]enius is the introduction of a new element into the intellectual universe: or, if that be not allowed, it is the application of powers to objects on which they had not before been exercised.”⁴⁵ Likewise, modern purveyors of romantic collective authorship claim that:

In . . . purposeful peer-produced projects like Wikipedia, the basic characteristics of the Internet in general and the World Wide Web in particular have made it possible for *anyone, anywhere, for any reason* to begin to contribute to an accretion of conversation

40. Madhavi Sunder, *IP3*, 59 STAN. L. REV. 257, 258-61 (2006); see also JULIE E. COHEN, *CONFIGURING THE NETWORKED SELF: LAW, CODE, AND THE PLAY OF EVERYDAY PRACTICE* 23 (2012).

41. Sunder, *supra* note 40, at 258.

42. See generally YOCHAI BENKLER, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM* (2006).

43. See Chander & Sunder, *supra* note 22, at 612.

44. See generally BENKLER, *supra* note 42.

45. Woodmansee, *supra* note 5, at 16 (quoting William Wordsworth, *Essay, Supplementary to the Preface*, in 1 THE PROSE WORKS OF WILLIAM WORDSWORTH 82 (Clarendon Press 1974) (1876)).

about well-defined cultural objects or about cultural trends and characteristics generally.⁴⁶

Now, the romantic author effect appears through the figure of a collective author, such as those who contribute to produce Wikipedia.⁴⁷

Many of the influential scholarly briefs in favor of collective authorship, including explicitly collaborative forms, thus share a romantic vision of authorship. This vision substitutes collective for individual genius as well as the individual cultural authority.⁴⁸ Thus, rather than proving romantic authorship wrong, collective authorship practices on the Internet show that the romantic author is an intransigent shape-shifter. The aggregations of collaborative work in digital networks shape society's normative understanding of culture; they do so no less powerfully than individuals such as Wordsworth and others did within the confines of print-based copyright.⁴⁹ These collective-user authors mediate the information environment in ways that are concededly more decentralized and participatory than the romantic geniuses of yore due to the available technical architecture, but at the same time are no less authoritative in the ways they ultimately define people's individual and social identities.⁵⁰

II. THE ROMANTIC AUTHOR REDUX

Collaborative authorship in scientific communities may inform the way the romantic collective author effect operates within expressive communities. This Part briefly explores the various dialectics between these various modes of authorship.

A. Collective Authorship in the Scientific Community

Both the genius and arbiter roles of romantic authorship have collateral consequences on knowledge production and knowledge regulation generally, whether through appropriation art on

46. BENKLER, *supra* note 42, at 294 (emphasis added) ("These conversations can persist across time and exist across distance, and are available for both active participation and passive reading by many people in many places. The result is, as we are already seeing it, the emergence of widely accessible, self-conscious conversation about the meaning of contemporary culture by those who inhabit it.").

47. Also contributing to this scholarly discourse of the romantic collective author are the cultural commons strands, often based directly or indirectly upon Elinor Ostrom's and Carol Rose's work on governance within natural resources commons. See Michael Madison et al., *Constructing Commons in the Cultural Environment*, 95 CORNELL L. REV. 657, 659-60 (2010); see also Aoki, *supra* note 2, at 1330-32; Jaszi, *supra* note 8, at 56.

48. See, e.g., BENKLER, *supra* note 42, at 129-30, 265, 279-80.

49. See Woodmansee, *supra* note 5, at 16.

50. BENKLER, *supra* note 42, at 32.

photographic paper or through digital mash-ups. One can detect the various functions of romantic authorship—its emphasis on heroic genius and not-so-hidden mediation between text and the reader, respectively—within collective authorship practices on the Internet.⁵¹ In this Web 2.0 environment, what work does the term “author” accomplish? The answer depends upon the type of interactive technology, its technical architecture, and how it foregrounds authorial presence, either explicitly or implicitly. As expressively constrained as it is, even the occasional individual Twitter post can exemplify both parts of the romantic author effect. For example, Spike Lee’s tweet about Jeremy Lin evinces original intelligence, if not genius, and then authorizes a set of cultural practices of punning around Lin’s last name.⁵² Facebook demonstrates the romantic author effect on a more collective level: one can quickly scan the timeline of one’s Facebook friends and instantly be brought up to date on any number of significant social and cultural events, often expressed idiosyncratically (or in copyright jargon, with originality). To the extent that one is susceptible to social influence, these posts can also alter and authorize new cultural norms.

In the scientific context, collaborative authorship abounds, but the author effect operates quite differently here than in the purely expressive realms often governed by copyright.⁵³ For example, multiple scientists participate “on the extensive collaborative projects typical of ‘Big Science,’” where the major concern is not so much exclusive rights or economic incentives (as highlighted in copyright), but rather “true claims about nature,” which are typically verified by being made public and subject to peer review.⁵⁴ Accordingly, the functions of authorship in the collaborative science context revolve around determining credit and accountability,⁵⁵ rather than characteristics such as originality and fixation delineating an exclusive right under copyright.

While different subcultures within academic science have resolved these core concerns (for example, who receives credit) in various ways, one example may help to illuminate the project of

51. Aoki, *supra* note 2 (describing “[t]he Romantic Author As an Amalgam of Property and Sovereignty”).

52. See Spike Lee, *Tweet of February 8, 2012*, TWITTER, <https://twitter.com/#!/SpikeLee/statuses/167374524290056192> (Feb. 8, 2012, 4:29 PM) (“Tonight Da Orange And Blue Go For 3 Straight And Without Amare And Melo VS.Wizards. It’s On All The Shoulders Of JEREMY ‘MY SHOT IS FALL’LIN”).

53. See generally Mario Biagioli, *Rights or Rewards?: Changing Frameworks of Scientific Authorship*, in SCIENTIFIC AUTHORSHIP: CREDIT AND INTELLECTUAL PROPERTY IN SCIENCE 253, 253-54 (Mario Biagioli & Peter Galison eds., 2003).

54. *Id.*

55. *Id.* at 254-55.

collaborative authorship more generally. In the biomedical research field, leading journals have adopted versions of a proposal mandating that credit be given to each participating scientist as a "contributor" rather than as an "author."⁵⁶ Similar to the way motion pictures list film credits at the end, an article lists each contributor to a scientific article.⁵⁷ But in lieu of a simple list of participants, as would be the case in many non-scientific coauthored articles, the scientific article includes a brief description of the nature of the contribution.⁵⁸ Contributors are also paired with "guarantors" who "insure the integrity of the entire project."⁵⁹ Because the shaping of a scientific canon adheres more to truth claims than does expressive freedom within a literary canon, one can view part of what constitutes "credit" and "accountability" in the scientific realm as a kind of certification: in each case, the scientific participant (whether denoted an author, contributor, or guarantor) not only receives some sort of acknowledgement for the scientific work, but also bears responsibility for the integrity of the work.⁶⁰

Notwithstanding its different goals, this certification process—providing both credit and accountability in scientific authorship—can be an appropriate analogy to what occurs in literary and other expressive realms. Both scientific and expressive types of collective authorship contribute to the stabilization of meaning within culture (broadly writ). For instance, the line between legitimate appropriation and illegitimate plagiarism is one of the tasks confronting the romantic collective author of purely expressive or fanciful works.⁶¹ The difficulty of this assessment is evident in the appropriation art cases mentioned above,⁶² where individual artists would not exist (or at least not exist in the same way) outside the context of a larger collective visual library of expression against which to respond—sometimes through copying. It is also evident where cultural and legal norms of appropriation and attribution are shifting rapidly. Ultimate arbiters of authenticity or cultural authority in expressive knowledge realms include legal institutions like courts, as well as peer communities and the proverbial court of public opinion. While the works of appropriation artists may not appeal to all, they

56. *Id.* at 265.

57. *Id.*

58. *Id.* at 265-66.

59. *Id.* at 267.

60. *See generally id.*

61. *See cases cited supra* note 16.

62. *See cases cited supra* note 16.

have attained a certain cultural status and authority, and so they legitimate practices of appropriation by others.

Despite the parallels, an important distinction exists between scientific content and expressive content. Unlike scientific content, which is more constrained by truth claims validated by peer scientists, artistic and other forms of expressive content are tethered to assessments by a larger public or smaller epistemic community subsets, such as art critics or Wikipedia editors. Romantic collective genius functions in these nonscientific domains to regulate issues of authenticity in the process of shaping a cultural canon rather than a scientific one.

Nonetheless, in both realms, the collective author functions as a type of certification authority, whether of authenticity (as in the case of cultural claims) or of truth (as in the case of scientific claims). In both cases, the author serves a pivotal role of shaping culturally acceptable norms. The social processes leading to this certification of content can be opaque, as the next Section shows through analyzing the example of Wikipedia.⁶³ This lack of transparency in many forms of collective creative activity exists in many private regulatory systems involving multiple actors, such as fair trade certification⁶⁴ or regimes governing product safety within long global supply chains.⁶⁵

Hence the romantic collective author within the Web 2.0 can play a role that is much more capacious than that of the individual author. Authorship is not only a possible instantiation of collective genius, but also an authorization of a *process* of creation leading to the final work, which in turn authorizes *substantive* cultural meaning.

B. Collective Authorship in the “Fact-Based” Digital Community

Collective cultural authorization is especially apparent in more factual works on Web 2.0, such as Wikipedia, which bills itself as “the free encyclopedia.”⁶⁶ In the context of an online encyclopedia, approximating fact-based truth claims is one ostensible goal of the collective work (the Wikipedia Article).⁶⁷

In Wikipedia, the identity of each individual user-author (the “Wikipedia contributor”) is submerged in part because there are no

63. See *infra* notes 66-85 and accompanying text.

64. See Margaret Chon, *Marks of Rectitude*, 77 FORDHAM L. REV. 2311, 2325 (2009).

65. See generally TIM BÜTHE & WALTER MATTLI, *THE NEW GLOBAL RULERS: THE PRIVATIZATION OF REGULATION IN THE WORLD ECONOMY* 126 (2011).

66. WIKIPEDIA, http://en.wikipedia.org/wiki/Main_Page (last visited Apr. 17, 2012). The observations in this Section may be less apropos of more fanciful or freely expressive works.

67. PHOEBE AYERS ET AL., *HOW WIKIPEDIA WORKS: AND HOW YOU CAN BE A PART OF IT* 5 (2008).

obvious by-lines or credits. This makes it arguably one of the more interesting cases of collective authorship among different types of social media. An interested third party may see the identity of the individual Wikipedia contributors to any specific Article by clicking on “View History” at the top of Article page.⁶⁸ This page reveals a list of usernames; however, it does not necessarily reveal personally identifying information. Wikipedia allows anonymous or pseudonymous contributions through usernames.⁶⁹ If a Wikipedia contributor has created a Wikipedia account, the “View History” page reveals whatever username that individual has provided.⁷⁰ Anyone can edit an article page without creating an account, but if the contributor does not create a Wikipedia account, a specific IP address reveals that person’s identity, and this identity is available to anyone, including members of the public who open the “View History” page.⁷¹

While the open technical architecture allows any Internet user to edit a page, the collective author conditions this access upon certain kinds of disciplinary mechanisms.⁷² Viral contracts (sometimes referred to as copyleft⁷³) mediate between internal and external communities in the form of Creative Commons (CC) licenses.⁷⁴ CC licenses, including attribution and share-alike (BY-SA) provisions, presume that collective authorial identity (the contributors as a whole, hosted and organized by Wikimedia Foundation⁷⁵) is a stable basis for licensing downstream authors (whether those authors are other Wikipedia contributors or others external to the community).⁷⁶ In

68. *Id.* at 304. For an example, see *infra* Appendix.

69. AYERS ET AL., *supra* note 67, at 101.

70. Once a person registers an account for more than four days and has edited ten articles, this person is “auto-confirmed” and gets to move Articles and edit semi-protected articles. *Id.* at 303.

71. *Id.* at 303-04.

72. BENKLER, *supra* note 42, at 73, 104.

73. Carol M. Rose, *Ostrom and the Lawyers: The Impact of Governing the Commons on the American Legal Academy*, 5 INT’L J. COMMONS 28, 40-44 (2010) (“From the Copyleft perspective, the critical management questions for the ‘commons’ in information and internet-related technologies are whether an open access regime—not a community-based common pool management regime, which implies exclusion of outsiders—can generate the kind of norms that GC celebrated. Those are the norms that encourage participation while discouraging free riding and patrolling for vandalism.”).

74. *Wikipedia: Text of Creative Commons Attribution-ShareAlike 3.0 Unported License*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia:Text_of_Creative_Commons_Attribution-ShareAlike_3.0_Unported_License (last modified Dec. 20, 2011); *see also Wikipedia Content Licensing*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia_Copyright#Content_licensing (last modified Apr. 18, 2012).

75. *Wikipedia Content Licensing*, *supra* note 74 (“The Wikimedia foundation is not a licensor of content, but merely a hosting service for the contributors (and licensors) of the Wikipedia.”).

76. *See id.*

addition, these licenses signal that individual Wikipedia contributors agree to participate in a collaborative project and to engage with others according to certain stated policies and guidelines,⁷⁷ as well as other less certain normative commitments.⁷⁸ Along these lines, Wikipedia adheres to a number of principles, including the core rule of neutral point of view (NPOV).⁷⁹ These internal requirements govern interventions made through its internal dispute-resolution structures and mechanisms.⁸⁰ NPOV and the remaining four pillars of Wikipedia⁸¹ ensure a layer of harmonization upon an otherwise ad hoc set of Wikipedia contributions. Dissenters can exit from this governance space, but there is constrained opportunity for voice.⁸²

In this context, the collective author functions as a certifier of particular qualities in a product ensuing from a particular process. This function resembles scientific production of knowledge in a global, distributed research space. The credit and accountability integral to scientific knowledge production is also at play in the context of a general knowledge codification in a fact-based work such as Wikipedia. In other words, an author in this context commits to engage in a collective enterprise produced through adherence to shared norms, acquiescence to peer-editing, and agreement to abide by the outcome of informal dispute resolution mechanisms.

77. See *Wikipedia: List of Policies and Guidelines*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia:List_of_policies_and_guidelines (last modified Dec. 12, 2011).

78. Niva Elkin-Koren, *Exploring Creative Commons: A Skeptical View of a Worthy Pursuit*, in *THE FUTURE OF THE PUBLIC DOMAIN* 325, 326 (Lucie Guibault & P. Bernt Hugenholtz eds., 2006) (critiquing the “ideological fuzziness” of Creative Commons and pointing to its political constituencies as an amalgam of “libertarians and anarchists, anti-market activists and free-market advocates”); see also Herkko Hietanen, *Creative Commons Olympics: How Big Media is Learning to License from Amateur Authors*, 2 JIPITEC 50 (2011), available at http://www.jipitec.eu/issues/jipitec-2-1-2011/2963/JIPITEC_Hietanen.pdf; Lydia Pallas Loren, *Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright*, 14 GEO. MASON L. REV. 271 (2007); Catharina Maracke, *Creative Commons International: The International License Porting Project—Origins, Experiences, and Challenges*, 1 JIPITEC 4 (2010), available at <http://www.jipitec.eu/issues/jipitec-1-1-2010/2417/dippadm1268743811.97.pdf>.

79. *Wikipedia: Neutral Point of View*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia:Neutral_point_of_view (last modified Apr. 13, 2012).

80. David A. Hoffman & Salil K. Mehra, *Wikitruth Through Wikiorder*, 59 EMORY L.J. 151, 174-75 (2009) (documenting more than 1500 mid-level administrators and describing the Wikipedia Arbitration Committee, which, as of July 2009, included fourteen active and three inactive members and, as of end of 2008, completed 373 arbitration cases).

81. *Wikipedia: Five Pillars*, WIKIPEDIA, http://en.wikipedia.org/wiki/Five_pillars_of_Wikipedia (last modified Apr. 8, 2012) (stating that Wikipedia is: (1) “an encyclopedia”; (2) “written from a neutral point of view”; (3) “free content that anyone can edit, use, modify, and distribute”; (4) a site where editors “interact with each other in a respectful and civil manner”; and (5) a place that “does not have firm rules”).

82. See *Wikipedia: Arbitration/Policy*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia:Arbitration_policy (last modified Feb. 21, 2012).

Wikipedia contributors seem to care a great deal about the number of times that others have corrected or challenged the contributor's edits.⁸³ On an individual contributor level, this review process may affect the contributor status.⁸⁴ On a collective level, the collective author accredits the knowledge that the social body produces. This governance perspective on collective authorship within expressive realms comports with recent literature on private regulation.⁸⁵

III. DE-ROMANTICIZING COLLECTIVE AUTHORSHIP

Romantic precepts in the collective authorship practices of Web 2.0 have not disappeared or been driven underground, despite this type of authorship's pragmatic technical foundations. The institutional creative process that goes into the production of Wikipedia articles results in a work that is original enough for copyright protection and that merits a stamp of collective intelligence and authority. As argued in Part II, the romantic author effect combines with the social processes of knowledge production to certify the ensuing work. It functions as a guarantor of the collective knowledge within the resulting product by crediting individual contributors (via "View History" in Wikipedia articles) and simultaneously providing accountability for each generated article (through the peer-editing and dispute resolution mechanisms).⁸⁶

Overreliance upon this author effect, however, ignores the risks that come along with digital network collective authorship. And these risks are prevalent in part because of the authoritative status these works enjoy. They include lack of inclusiveness and reliability of the knowledge that is created through these methods. Scholars and others have begun to uncover possible sources of institutional

83. Cf. Eric Goldman, *Wikipedia's Labor Squeeze and its Consequences*, 8 J. ON TELECOMM. & HIGH TECH. L. 157, 172-74 (2010) ("Wikipedia has a limited toolkit of incentives to attract new editors. Broadly speaking, users provide labor to websites for one of three categories of motivations: cash (financial payoffs, either directly or indirectly), credit (recognition and notoriety), and intrinsic motivations. Unlike many other UGC communities, Wikipedia relies almost exclusively on intrinsic motivations because it does not satisfy contributors' cash or credit motivations very well.").

84. Cf. Beth S. Noveck & David R. Johnson, *Society's Software*, 74 *FORDHAM L. REV.* 469, 475 (2005) (discussing "social reputation systems" as a method of governing the digital commons).

85. BÜTHE & MATTLI, *supra* note 65, at 200 ("One effect of this 'world political culture' is the empowerment of transnational communities of scientists and other organizations of experts with a claim to 'develop[ing] rationalized and universalistic knowledge.'" (alteration in original)).

86. See *supra* notes 67-82 and accompanying text.

asymmetries and individual cognitive bias.⁸⁷ For example, Eric Goldman has argued that Wikipedia's reliance on a volunteer corps has the potential to undermine the validity of its articles.⁸⁸ The types of articles available on English Wikipedia are so heavily focused on Western perspectives that Wikipedia itself acknowledges this bias.⁸⁹ And as recently reported in the mainstream media, United Nations University's 2010 survey suggests that less than 15 percent of Wikipedia's contributors are women, and the average age of Wikipedia contributors is in the mid-twenties.⁹⁰ Reasons for this demographic skew are speculative,⁹¹ but even a superficial poke at this collective authorial identity shows that modalities of collaborative authorship result in something less than representative participation. While no definitive study exists on the kinds of participants the Wikipedia editing process strongly discourages, the overly rigid application of rules governing original research may turn away even well-informed newcomers.⁹² The appendix highlights one example of a disaffected (probably female) Wikipedia contributor. Strict insistence on

87. Wikipedia itself acknowledges this critique. *Wikipedia*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Wikipedia> (last modified Apr. 18, 2012) ("Although the policies of Wikipedia strongly espouse verifiability and a neutral point of view, criticisms leveled at Wikipedia include allegations about quality of writing, inaccurate or inconsistent information, and explicit content. Various experts . . . have expressed concern over possible (intentional or unintentional) biases." (footnote omitted)).

88. Goldman, *supra* note 83, at 161-64.

89. *Wikipedia: Neutral Point of View/FAQ*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia:Neutral_point_of_view/FAQ#Anglo-American_focus (last modified Mar. 7, 2012) ("*Wikipedia seems to have an Anglo-American focus. Is this contrary to the neutral point of view?* Yes, it is, especially when dealing with articles that require an international perspective. The presence of articles written from a United States or European Anglophone perspective is simply a reflection of the fact that there are many U.S. and European Anglophone people working on the project. This is an ongoing problem that should be corrected by active collaboration between Anglo-Americans and people from other countries. But rather than introducing their own cultural bias, they should seek to improve articles by removing any examples of cultural bias that they encounter, or making readers *aware* of them. A special WikiProject has been set up to deal with this problem. This is not only a problem in the English Wikipedia. The French Language Wikipedia may reflect a French bias, the Japanese Wikipedia may reflect a Japanese bias, and so on."); *see also* *Wikipedia*, *supra* note 87 ("In 2011 [founder Jimmy] Wales noted that the unevenness of coverage is the reflection of the demography of the editors, which predominantly consists of young male [sic] with high educations in the developed world . . .").

90. GLOTT ET AL., *supra* note 1, at 7.

91. *See id.* at 9-10; Noam Cohen, *Define Gender Gap? Look Up Wikipedia's Contributor List*, N.Y. TIMES, Jan. 30, 2011, <http://www.nytimes.com/2011/01/31/business/media/31link.html> (suggesting that men are perhaps more inclined to contribute to Wikipedia based on "the traditions of the computer world and an obsessive fact-loving realm that is dominated by men"); *see also* Sook Lim & Nahyun Kwon, *Gender Differences in Information Behavior Concerning Wikipedia, an Unorthodox Information Source?*, 32 LIBR. & INFO. SCI. RES. 212 (2010) (finding gender differences in information behavior concerning Wikipedia, such as male students using Wikipedia as an information source more often than female students).

92. *See Wikipedia: Verifiability*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Wikipedia:Verifiability> (last modified Mar. 29, 2012).

verifiability through secondary sources makes it difficult, if not impossible, to edit an erroneous entry based only on accurate primary sources.⁹³ A cursory exploration of Wikipedia reveals some predictable omissions along the axes of gender and race, which a principle of “heuristic diversity”⁹⁴ rather than an overreliance on dominant secondary sources might remedy. Cultural bias, including gender and race bias, is consistently a determinant of reliability and recognition within peer communities.⁹⁵ The xenophobia apparent in the Wikipedia editing process may result from the highly distributed authorial process⁹⁶ combined with the skewed demographic of its contributors and editors as well as other aspects of social stickiness embedded within tacit knowledge production. For example, the first African American female law professor, Lutie Lytle, is not the subject of an article.⁹⁷ This is not to suggest malice or intent, but rather an indifference to the effects of the social practices culminating in a collective author.

The author figure functions as a stamp of authority and approval upon knowledge constructed by these distributed methods. This certification may mislead Wikipedia readers. The construct of a romantic author shapes social reality in ways that elide inevitable differences in perspective even though everyone acknowledges that disagreement exists—it is readily apparent in the View History

93. See, e.g., Timothy Messer-Kruse, *The ‘Undue Weight’ of Truth on Wikipedia*, CHRON. HIGHER EDUC., Feb. 12, 2012, <http://chronicle.com/article/The-Undue-Weight-of-Truth-on-130704>.

94. Henry Farrell & Melissa Schwartzberg, *Norms, Minorities, and Collective Choice Online*, 22 ETHICS & INT’L AFF. 357, 365 (2008) (“[H]euristic diversity (differences, roughly, in points of view) is very valuable to knowledge generation. However . . . diversity of final goals may make group coordination more difficult [S]uch collective projects as Wikipedia, which stress *knowledge generation*, ought to be more tolerant of minorities, even when those minorities have goals that are at odds with those of the majority, as long as those minorities bring different heuristics (and thus different forms of knowledge) to the collective project.”).

95. *Wikipedia*, *supra* note 87; *Wikipedia: Neutral Point of View/FAQ*, *supra* note 89; see also Jodi O’Brien, *Writing in the Body: Gender (Re)production in Online Interaction*, in COMMUNITIES IN CYBERSPACE, at 75, 76-79 (Marc A. Smith & Peter Kollock eds. 1999); danah boyd, *Sexing the Internet: Reflections on the Role of Identification in Online Communities*, Address at Sexualities, Medias, Technologies Conference at the University of Sydney (June 21-22, 2001), available at <http://www.danah.org/papers/SexingTheInternet.conference.pdf>; Morra Aarons Mele, *Exploring the Gendered Web*, BERKMAN CENTER FOR INTERNET & SOC’Y (Apr. 17, 2009), <http://blogs.law.harvard.edu/genderandtech/tag/danah-boyd>.

96. See Goldman, *supra* note 83, at 168 (“Knowing that it is hard to make sustainable contributions, some users choose not to participate. Other users whose contributions are erased never come back. Why has it become so hard for users to make contributions that actually stick? Xenophobia is a major contributing factor. Due to the constant threat of spam and vandalism, some Wikipedia editors become socialized to assume that site edits are made by bad folks for improper purposes, thus developing a ‘revert first’ mentality.” (footnotes omitted)).

97. See generally Margaret Chon, *Sticky Knowledge and Copyright*, 2011 WIS. L. REV. 177, 210.

section of contested articles.⁹⁸ Ultimately, however, collaborative authorship in social media either presents a corporate front or an aggregation of socially constructed (albeit contested) knowledge that reflects the inevitable biases of the community from which it is drawn. Whether individual or collective, romantic authorship emphasizes heroic genius and takes for granted the entitlement to construct a social reality via expression that may be partial and biased.

Perhaps it is possible to compensate for the biases created by the prevailing romantic authorship construct by analogizing collective authorship to the mechanisms governing scientific authorship or to product certification in global regulatory regimes. Along these lines, one of the early proponents of Wikipedia, Yochai Benkler, has recently suggested several design principles that should underlie “cooperative systems for knowledge production.”⁹⁹ Furthermore, the terminology of “contributors,” rather than “authors,” leads to direct comparisons to aggregated knowledge production in other areas such as scientific research.¹⁰⁰ This may help to establish a more dispassionate understanding of the knowledge produced in digital networked media and address the hidden biases that abound from such a production process. The CC license-based production of Wikipedia means that contractual mechanisms combined with enforceable internal norms among collaborators govern the chains of knowledge production.¹⁰¹ These mechanisms and norms are important to comprehend and discuss because collective authors in this context ultimately affect third parties outside the governance structure, as well as downstream creators, through their provision of certified content.¹⁰²

IV. CONCLUSION

The romantic collective author is authoritative; it mediates between text and society. In individual form, the romantic author has a unique privilege to define what counts as legitimate knowledge through a larger-than-average vision and grasp, and thus can

98. AYERS ET AL., *supra* note 67, at 293-94; see *Revision History of Main Page*, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=Main_Page&action=history (last visited Apr. 24, 2012).

99. Yochai Benkler: *Designing Cooperative Systems for Knowledge Production: An Initial Synthesis from Experimental Economics*, in MAKING AND UNMAKING INTELLECTUAL PROPERTY LAW, *supra* note 7, at 149, 152-61 (listing communication, humanization, trust construction, norm creation, fairness, constructing group identity, discipline and punishment, transparency, self-selection, cost, crowding out, as well as leadership and asymmetric contribution).

100. See *infra* notes 53-60 and accompanying text.

101. See *infra* notes 72-82 and accompanying text.

102. See *infra* notes 72-85 and accompanying text.

influence, if not define, cultural norms. In its collective form, the author likewise has roles of genius and arbiter; these roles derive from the collaborative process that leads to the ultimate work. The potential benefits from this type of authorship are vast, particularly in the digital network context.¹⁰³ Yet, the interaction of these romantic precepts and the collaborative process creates some potentially problematic unintended effects. In particular, the complex collaborative processes lead to a final work that the larger community regards as authoritative; this authoritative status hides biases and less-than-complete representation in its information. These worrisome effects of romantic collective authorship are a consequence of many factors: structural inequalities among knowledge exchange partners, the pervasiveness of “sticky knowledge,” as well as other socially determined aspects of knowledge production.¹⁰⁴

The romantic collective author effect is a reminder that the excitement around the potential of the technical architecture to democratize knowledge production should not lead society to idealize collaborative creation. As in scientific or other communities that certify knowledge, oversight in this context is a type of private regulation. Yet good governance attends to the possible tyranny of the majority, whether in democratic government or in peer-production communities on the Internet.¹⁰⁵ By de-romanticizing collective authorship, society can understand more fully its impact in the overall social construction of knowledge. In turn, this awareness may lead to more inclusive and reliable forms of knowledge. And future expressive authorship then may be able to trust more genuinely the shoulders of others on which it stands.¹⁰⁶

103. See Rose, *supra* note 73, at 41-42 (“[I]n the work of Yochai Benkler, whose particular interest has been in vast internet-based ‘distributed’ and ‘granular’ productions like Linux and Wikipedia, where large numbers of diverse, self-selected participants all provide small bits of information to the larger work. Benkler is an optimist about norms, and he thinks that the far-flung participants in these free-flowing enterprises do manage to create governing norms for themselves Norm creation in these contexts is not based on resource management of specific communities. Instead, the norms that Benkler envisions are more akin to those of a world-wide community of volunteers, dropping in and out at will, and each contributing some ‘grain’ of novelty to the larger enterprise.” (citations omitted)).

104. Chon, *supra* note 97, 178-86.

105. See Rose, *supra* note 73, at 33-34 (“From an early point, legal scholars noted uneasily that some of these communities, for all their appeal, had some unattractive features—sexism, for example, as well as other types of hierarchy. . . . [Michael] Heller and . . . Hanoch Dagan put forth a more detailed version of some of these misgivings. . . . [T]hey argued that the governance systems that [Ostrom] applauded could easily suffer from a democratic deficit.”).

106. See ROBERT K. MERTON, ON THE SHOULDERS OF GIANTS: A SHANDEAN POSTSCRIPT 37 (1965).

APPENDIX¹⁰⁷**User:Sara-rockworth**

From Wikipedia, the free encyclopedia

Contents

[hide]

1 My Time On Wikipedia

2 About Me

3 The Real Me

4 Why I Came to Wikipedia

5 Wikipedia Lessons I Learned

[edit] My Time On Wikipedia

I just joined Wikipedia on August 13th, 2010. I started one article—on a woman I had just heard in an interview—and it was a dismal failure. I edited three other articles in my first week. If you are new to Wikipedia, I highly recommend finding a mentor to teach you the ropes before you get started. I have noticed a lot of seasoned or senior editors are not really all that friendly to newcomers. Some are but so far, I have found that to be the exception. I imagine it is because—I have learned—a lot of people come here to edit/add articles only for promotional reasons and then they disappear. If that is your intent, I would seriously consider finding a seasoned editor who you can provide factual, documented, information to and see if they would be willing to review that information and write your article. Otherwise, it is likely to quickly get nominated for deletion. That wasn't even why I came here (more on that below) but I was suspected and accused of it—making for a long (argumentative) week—so that is the place from where my advice is coming. I do plan on sticking around and really learning this process, and how to do it right, *unless* the hostility continues. I can't take that on a daily basis so we'll see

107. *User:Sara-Rockworth*, WIKIPEDIA, http://en.wikipedia.org/wiki/User:Sara-rockworth#My_Time_On_Wikipedia (last modified Aug. 26, 2010).

