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REFLECTING
ON POLICIES
FOR THE
DIGITAL ERA**

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Abstract:

This paper aims to address the current (lack of) articulation between copyright regulation and cultural policies over the recent decades, from the artistic work perspective. Departing from David Throsby's concentric circles model of the cultural industries (2008a) and Chris Bilton's theory of the 'new adhocracy' (1999), among other references, we propose a new model to help clarify the structures and dynamics of the cultural and creative sector – the concentric circles model of cultural work – and their relation to copyright.

Our analysis suggests that, apart from a small elite of market-driven artists (mainly super-stars), core artists and authors remain the weakest link of the whole cultural production value chain. Using our concentric circles model of cultural work, we argue that it is essential to question the progressive centrality of copyright and reflect upon its relation to cultural policies. We highlight that, if such policies were to allow artists (as authors) to explore, innovate and disseminate their art and the economic and cultural results of their work (to face market rules), they should create possibilities for them to retain a level of control over (public) access to their own creations (according to their own interests and goals), which has not been the case over the recent decades.

Introduction

Since the last decades of the 20th century, digitisation and the rise of the creative industries have brought copyright to the centre of the political debate about culture. As YiJun Tian puts it: “The emergence of major expansions of copyright laws have often been directly driven by advances in technology.” (2009:11). Such expansions and reforms of the law are the result of tensions, reflections, policies and research over time. None of these, however, has been as controversial and popular (in terms of public debate, not necessarily of acceptance) as the latest developments in copyright regulation (Haggart, 2014; Benhamou & Farchy, 2014).

The digital revolution has been no different: “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” (Tian, 2009:19-20). New digital technologies allowed for the emergence of new business models that explored the rising global network communication systems and their potential to disseminate and distribute copyrighted content. Focusing on ‘knowledge-value’,

This not only means that IP [intellectual property] 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’ (*id.*, *ib.*: 20).

After a thorough analysis of the extensive list of international copyright agreements celebrated since the original Berne Convention in 1886 Tian concludes that a constant expansion of IP protection has become a trend. A number of IP treaties, such as TRIPS (Trade-Related Aspects of Intellectual Property Rights) and WIPO (World Intellectual Property Organization) Internet Treaties have been concluded and revised in order to respond to increased technological challenges, and have constantly raised the level of international IP protection (see Benhamou & Farchy, 2014). 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, 2009:57-58).

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

The current period [of copyright], 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 [mainly achieved after the II World War] (Haggart, 2014:15).

It is rather consensual among different authors that, by 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 (Benhamou & Farchy, 2014; Tian, 2009; Haggart, 2014; Hugenholtz, 2018). This has evident economic effects but also strong cultural impact:

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, 2014:16)

In line with many cultural researchers, such as Kate Oakley and Dave O’Brien (2006) who argue that 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” (p.3), Haggart (2014) also affirms:

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. (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 civil society in the political debate about copyright issues (id., ib.: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 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).

This is somehow indicative of a lack of articulation between copyright debate agents and academic (and civil society) concerns. In fact, such issue had already been raised by some cultural economists. Christian Handke, Paul Stepan and Ruth Towse (2016) suggest “lobbyists have mostly managed to grab the attention of policy-makers, not the dismal scientists” (p.150). Such concern was also pointed out by Christian Handke in his 2011 comprehensive analysis about the state of the economic effects of copyright studies to that date: “studies on the size of copyright industries tend to be commissioned by interested parties (...) [so] there is a tendency to exaggerate figures (...) [and] the underlying methods are often not fully transparent” (Handke, 2011:17). As the author also claims, such problem is not isolated. Other two inherent difficulties to this field are:

- The difficulties to measure the value of copyright as, unlike the patent system, there is no need for registration (Handke, 2011:10) 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: 111); and
- 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, 2011:9).

Such problems It is important to note that the above problems are transversal to almost all researches about the cultural and creative industries, as many authors have been claiming since the emergence of cultural economics discipline (e.g. Blaug, 2001; Handke et al, 2016). Given this transversality, and the fact of being a current issue (thus changing in the short-term, and lacking consistent empirical data), copyright is complex

to approach and impossible to understand in a way that would fit all its scales and scopes. Our proposal is to address the cultural and creative industries market structure and dynamics from the perspective of the (core) artistic work, presuming its singular characteristics and position inside the cultural field (Bourdieu, 1992; Menger, 2014). Departing from previous analytical proposals – with particular focus on David Throsby’s concentric circles model of the cultural industries (2008a; hereafter CCM) and Chris Bilton’s study of the ‘new adhocracy’ strategies in the cultural sector (1999), among other references, we have developed a model that we hope will contribute to clarify the economic (and cultural) effects of copyright in the cultural sector.

Over the next sections, we will first present an overview of the discussion about the problems of valuation and measurement in the cultural sector, and consider David Throsby’s (2008a) approach of relying on cultural work as the translation of cultural value and proposing a reconfiguration of his concentric circles model of the cultural industries. We will then discuss some common market (and cultural) dominance strategies, based on Chris Bilton’s (1999) theory of the new ‘adhocracy’ of the creative industries, introducing the artists in the equation to understand how such market dynamics is affecting their work(s). After that, we propose a new model – the concentric circles model of cultural work, in an attempt to contribute to the clarification of the structure and dynamics of work relations in the cultural sector. We finally analyse the role of copyright in this context and present briefly the effects of such regulations. We conclude by highlighting some of the problems and contradictions between copyright legislation and cultural policies, proposing topics for further discussion and research.

1. Cultural Work as Value

As mentioned above, the problems of measurement are common to most cultural economics fronts. Many authors have elaborated thoroughly on this issue, in their attempt to make evident the subjectivity of cultural policies and strategies in place in western countries - just to cite some we have followed closely for our analysis: Throsby (2001), Peacock & Rizzo (2008), Towse (2010), Belfiore & Firth (2014), O’Brien (2014) and Dekker (2014). In fact, such discussion has intensified over the past 20 years, with the emergence of the so-called creative industries and the following proliferation of concepts and models trying to frame them. 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. Hesmondhalgh, 2002), and a model developed within UNESCO’s Institute of Statistics (2007) to provide a basis for working towards interna-

tional consistency in statistical collections” (Throsby, 2008b: 148), to name only a few, most of which including Information and Communication Technologies (ICTs) activities as part of the sector.

However, studies have demonstrated that it is virtually impossible to accurately measure the value of the cultural industries and, therefore, to understand their 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, 2014:9), a number of serious gaps remain unsolved within measurement approaches to the creative industries, evidencing “the politics of measurement: why do cultural actors really measure, audit and evaluate?” (*id.*, *ib.*:14). The lack of reliable empirical studies about the value of creativity is commonly referred in most cultural economics literature (e.g. Towse, 2010).

Moreover, empirical evidence, when existing, is often circumstantial and hardly comparable to other contexts/studies. In trying to validate his concentric circles model of the cultural industries, David Throsby (2008a) developed a comparison study about the creative industries based on the idea of creative occupations 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, 2008a: 151) and even despite the five countries analysed were all part of the Commonwealth, the research could not reach a solid conclusion. Nevertheless, because it was based on serious empirical observation and a rigorous theoretical framework, Throsby’s CCM remains a heuristic analytical framework of the structure and behaviour of the cultural sector, as this empirical analysis (despite all its difficulties and handicaps) actually validated not only his proposal but many other creative and cultural industries models we know - at least, in what concerns what Throsby called the core creative arts which, with more or less variations, are common to almost virtually all models known to date. What is also relevant to our analysis is that Throsby’s proposal was based on the analysis of cultural occupations, i.e., cultural work, which is central for copyright purposes.

This classification of cultural occupations used by the author¹ reflects on his model proposal, distinguishing core creative activities as the main creative occupations, i.e. occupations where “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.*:153) - see table 1.

A. Creative Occupations	B. Other cultural occupations
Visual artists	Designers, architects
Photographers, sculptures, craftspeople	Journalists, presenters
Writers, editors	Producers
Musicians, composers, singers	Librarians, curators, administrators
Dancers, choreographers	Technicians
Actors	Support personnel
Directors	

Therefore, one can assume that the activities included in group A are typically those at the centre of the model, whereas those from group B are more likely to be found as one moves outwards from the centre. Except for the editors category², 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 clear line between a more artistic and a more functional approach to creation. In fact, for the purpose of this particular research and in line with David Throsby, we are simplistically 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 interested in analysing artistic activities (as opposed to technical or technological ones). Workers belonging to the core creative activities, are thus those “for whom the creative act, whatever it is, is unarguably of primary importance” (*id.*, 2001: 94), but also for whom the creative act represents their primary source of reward. Such reward, as we will also see, does not need to entirely translate into financial income but does always have an objectively quantifiable component and it is up to each artist/ worker to decide which reward component she values the most. In sum, in the context of this study, we assume the core creative artists are the central actors of what we here call cultural work – and, thus, the central actors of the cultural and the creative industries. This is (or should be) the primary group of people to which copyright (authors’ rights) laws should be concerned with, as they are the authors par excellence (not by commission only), usually with more fragile bargaining positions in the market but still fundamental to cultural diversity and social sustainability, as we will see below.

1 Based on a 1996 Australian Bureau of Statistics classification.

2 Note that Throsby (2008a) does not specifically distinguish editors when defining the activities encompassed in the concentric circles model.

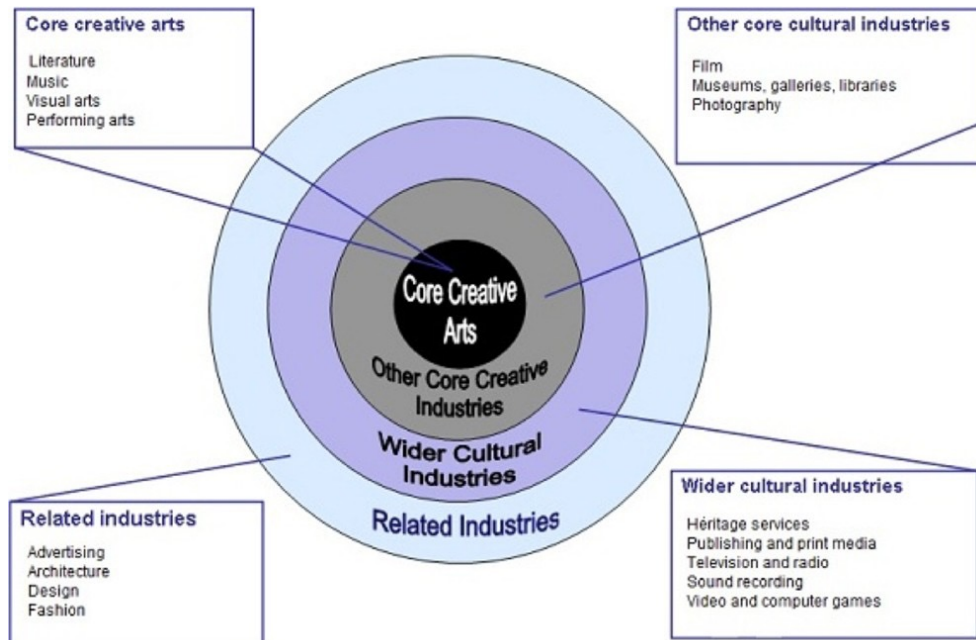


Fig.1: David Throsby's concentric circles model of the cultural industries (2008a)

According to Throsby's proposal, the CCM offers a gradual classification of the creative activities, according to their incorporation of cultural and economic value – see Fig. 1. As the author explains:

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. (p.148-149)

As criteria to classify the different activities in each concentric circle, Throsby “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” (Tp. 151).

Given the main assumptions and implications of Throsby's CCM, we will propose our first redesign of the concentric circles of the cultural industries' model, by means of a re-aggregation of the activities' structural position. Our proposal does not result from an empirical test (Fig. 2).

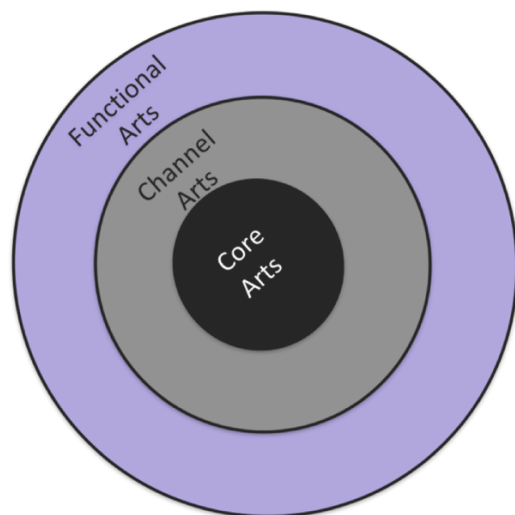


Fig.2: The concentric circles model of the cultural industries redefinition

Such redefinition implies that the “core arts”, aggregating the groups of activities more directly related to artistic work, include activities from the two central layers of Throsby's model. We assume photography and film as part of the core arts; and we exclude 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 producing artworks but instead they have the role of distributing/ exposing them. At our second layer, that of the wider creative industries, sit what Throsby calls the distribution industries and we classify as “channel arts”: those activities that essentially distribute the work produced by the core arts group or, when developing their own creative products, they do so with the goal of addressing the needs/ expectations of a certain audience that they wish to develop or pre-

serve, therefore, with a commercial purpose stronger than the 'pure' artistic one: the museums, galleries and libraries were added to Throsby's original circle. Finally, our redefinition of the related industries designated them as "functional arts": the activities that serve a clear functional purpose defined by 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 in Fig. 2 are:

- **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

Although David Throsby's model derives from empirical tests³, the author clearly addresses (and assumes) the problem of metrics, as different (and often inconsistent) statistical classification systems induce a primordial fragility in the cultural and creative field above all, because of their direct implications in cultural policy approaches (i.e. public decisions) (Throsby, 2008b, esp. 220:221): despite having succeeded in demonstrating the validity of his model, any undoubtedly reliable - let alone comparable - results could not be generalised. Our point is that the case can be 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). Several authors have pointed that this also has direct implications in copyright regulation, such as Towse:

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. (2010: 464)

Because, as we have seen in our introduction, such copyright lobbyists have actually been influencing intellectual property agents and policies, impacting on the cultural sector – and ultimately on the economy as a whole – understanding this "underlying dynamic of the creative industries" means also to understand the impacts of digitisation in the cultural and creative industries – or, at least, in the core arts group defined above. But before, we need to look at some emergent dynamics within the organizational structure of the cultural-creative sector.

2. Market (and Cultural) Dominance Strategies

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 within the creative industries sector.⁴ 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 a 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.

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, 1999:4) 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. On the other hand, symbolic goods translate primarily into a "collection of narratives (or discourses) which are interpreted by the consumer", their material components becoming «relatively unimportant" (*id.*, *ib*:5) – 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

3 Which is also why we have chosen his model as starting point to our proposal, by comparing it to other existing 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, 2008b).

4 Bilton relies on Mintzberg's proposal for organisational structural models (1979), and further research developments, namely on post-fordist small, highly skilled and specialized, and flexible organizations, cultural- creative in particular. The adhocracy configuration aims to «sophisticated innovation» and high flexibility, i.e. «to fuse experts drawn from different disciplines into smoothly functioning ad hoc project teams» (*id.*, *ib*.: 432; see chapter 21).

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.*:6). This draws a close parallel to David Throsby’s rationale behind the concentric circles model, highlighting the trade-off between cultural and economic value. Generally, the creative industries rely on what Bilton calls ‘future value’, i.e. deferred from (and quite autonomous regarding) the (‘present’) production costs and sales, which the digital technologies are making increasingly viable, especially given the possibilities «to spread the risk of a product across several markets or release ‘windows’.” (*id.*, *ib.*:7). Future value, in this sense, is one of the main reasons behind the poor bargaining power of core artists. 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, 2002:9). This helps understanding the high levels of uncertainty that characterise the cultural labour market (e.g. Towse, 1996; Menger, 2014; Benhamou, 2011) - leading to the increasing diversity, functional roles and power of gatekeepers, critical for all types of stakeholders, from individual creators/ producers to large multinationals and policy makers (Caves, 2000; Bilton, 1999).

Under these circumstances, uncertainty also increases on the demand side. In the end, consumers are ‘sovereign’ in determining the real value of cultural-creative products and services: besides socio-structural mechanisms of taste formation and consumers’ practical choices (Bourdieu, 1979), cultural consumption remains quite unpredictable. Big companies adopt different strategies in trying to tackle the risks inherent to the creative industries markets, depending on their size and market power. Major corporations tend to be quite aggressive trying to maintain their competitive advantages and prevent new companies to enter the market, namely through marketing, legal and even organisational-design. Such strategies often also translate into inter-firm’s alliances (namely, media convergence partnerships); mergers and acquisitions (often led by tech giants) and the creation of pseudo-independent firms.

This allows majors to generate flexibility for innovation - the new adhococracy in Bilton’s terms: new small companies «wholly or partly owned subsidiaries of a major corporate player masquerading as genuinely independent small organizations” (*id.*, *ib.*:16). These schemes require strong financial capacity (hiring superstar artists, maintaining extensive portfolios, managing market entries and distribution, etc.) and naturally lead to the rise of production costs - as Bilton argues (*id.*, *ib.*:8-12). On the other hand, small independent structures adopt a more flexible ‘adhocracy’ approach, operating “around the fringes of monopolistic markets” (*id.*, *ib.*:25). Nevertheless, as we will see below, 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 and gatekeeping increase from major corporations towards the enforcement of copyright regulation through governments, in order to maintain or reinforce their market control.

However, “individual career paths suggest that real career progression is far more unpredictable and arbitrary” and smaller structures tend to “play the [dominant] corporate game” (Bilton, 1999:14). If, on one hand, creative districts, incubators and hubs, for example, 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, based on the cult of individual talent as market value (Pratt, 1997; O’Connor, 2015; Grodach *et al.*, 2017), thus by and large developing an ‘economized culture’ and a ‘culturalized economy’ (Lash & Urry, 1994; Warde, 2002), which means virtually undistinguishing both fields.⁶ But there is more ‘hidden’ danger to the effort of adopting this individualized and talent-driven organizational model in the cultural sector, especially for the artists, as the dominant industry appropriates and generalizes (for marketing and branding use of strong stereotypes) the commonly recognisable characteristics of artists and artistic work (Bourdieu, 1979, 1992) - from the personalisation of skills (converted into individual and natural talent) to non-standard and supposedly free ethos and lifestyles. In the end, we are before the ultimate misrepresentation of the expression “every man is an artist” (Beuys & Bodenmann-Ritter, 2007): today, we are all (potential) ‘artists’, probably except the artists themselves, crushed as they are by the conformity of

5 The US leading (global) film industry portrays a good example of these strategies, most effective under the digital turn, for example via the main focus on the production of blockbusters and on powerful promotion strategies (e.g. Stepan, 2013), the control over small independents’ creative agglomerations (Scott, 2002, 2004), the well-known US pressures (lobbied by American majors, Hollywood in particular) for liberalising the global film trade (Crane, 2010), and the recent established power of VOD control over the whole value chain, Netflix being the most visible case (e.g. Benghozi *et al.*, 2015).

6 We are referring to abstract types, as the model implies, not arguing for pure (unreal) types of artists or businesses - it is worth to mention the pioneer research of Raymonde Moulin, 1992.

public policies to market-driven creative industries strategies (and, in particular, the progressive denial of the market-failure argument under the culturalization of the economy). The inadequacy of the market organization of the creative industries ultimately impacts on the artists' life choices and behaviours and, consequently, on the art they produce and, more generally, the cultural goods that "shape how we understand ourselves and our society" (Oakley & O'Brien, 2016: 3) .

The emergence of the internet and digital technologies had a strong impact on cultural markets, especially on the processes of distribution (and, consequently, access), as referred above, entailing what Bilton calls "a corporate fear of losing control over the traditional market 'gateways'" (*id.*, *ib.*: 15). The "new adhocracy" allows large players to act as aggregators of small independent units, centrally coordinated. This allows them to keep virtually absolute control over distribution but also over other intermediate layers of the creative value chain (such as production or programming), ultimately, strongly conditioning the entire creative process. Such strategy seriously compromises the sustainability of really independent firms and agents, including the artists themselves, which, due to their intrinsic adhocracy organizational structure, usually lack the conditions to define medium/ long-term strategies and compete with 'fake' independents.

This organizational redesigning actively contributes to the retreat of public policies when addressing the cultural-creative sector as a whole, as «real» micro and small agents tend to be invisible, hidden amidst the 'expected' turbulence (dynamic) of the sector. Without the necessary training, financial means and adequate mediators (gatekeepers), 'real' independents' (from which core artists tend to be part) life expectancy is usually short and can only be overcome through establishing alliances with large corporations (directly or through their 'pseudo-independent' subsidiaries). They therefore become part of these large conglomerates' controlled networks, and thus adjusting their organizations and outputs to direct commercial goals... in the end compromising the conditions for any experimentation, innovation or artistic creation in the near future (which had been, under the common argument of market failure, the broader justification for public intervention).

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" (Bilton, 1999: 23), over the last years, they have been focusing

on lobbying for the stronger enforcement and extension of copyright laws (Towse, 2010), as we have seen above. It is, therefore, not only crucial that smaller businesses and independent agents manage to organise themselves and "develop their own approach to long-term strategic planning in order to avoid being outflanked by the corporate sector" (Bilton, 1999: 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. From the above synthesis, we can infer that digitisation 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 dominate the most up to date technologies and control the access to existing cultural content (which explains the recent 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 in the cultural and creative sector's structure and dynamics, who/ what are they actually benefiting or harming and how are they really interacting/ interfering with cultural policies.

3. The Concentric Circles Model of Cultural Work

In trying to understand the role of copyright in cultural markets structure and, especially, its contribute to artist's labour dynamics, following up on Chris Bilton's (1999) study of the creative industries' markets dynamics, we are now comfortable to suggest another iteration to Throsby's original concentric circles model of the cultural industries (2008a). Taking on our first redefinition, presented in section 1. (Fig.2), we propose a reconfiguration under the rational of an exchange between creativity and function, symbol and finance (Bilton, 1999), cultural value and commercial value (Throsby, 2008a), according to *the work role (position) in the cultural labour market structure (hierarchy)*. Such proposal is represented and further explained below (Fig.3).

7 According to Bilton, the attempt to streamline and rationalize symbolic goods in order "to conform to a model of production and industrial organisation imported from manufacturing" is intrinsically contradictory, inappropriate and ineffective (*id.*, *ib.*: 7). Among other things, because importing the conventional economic model of manufacturing and services means also to import the social and economic inequalities it generates (Bilton, 1999; O'Connor, 2015; Oakley & O'Brien, 2016; O'Brien *et al.*, 2016)

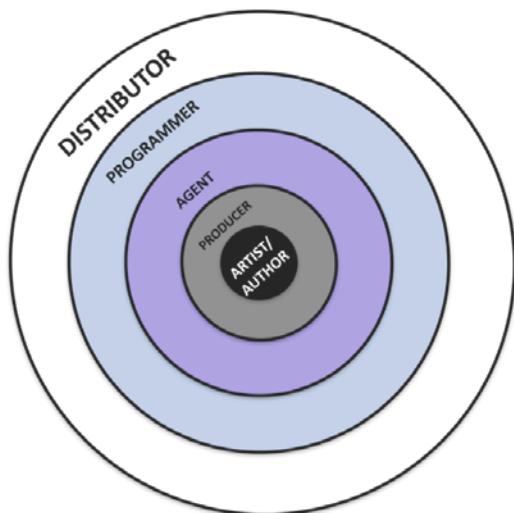


Fig.3: The concentric circles model of cultural work

(1) At the centre of our 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 technologies (digital or analogue or both). In other words, people (individuals or collectives who develop work in the core arts

. Relying on the construction of the artist as *genius* (the 'uncreated creator', in Bourdieu's words, i.e., someone *believed* exceptional, far beyond any social conditions of emergence

– Bourdieu, 2002), artists, or their stereotyped representation at least, have been converted into *brands* by the market (see Becker, 1982:353; Lash & Urry, 1994:137; Menger, 2014:228): people (or collectives) who *absolutely create, develop and normally would sign a project or piece, claiming their singular authorship over it.*

(2) In the second layer, we find producers, editors and technical support teams, summed up as 'producers'. This is the circle where *creative work achieves a structured and communicable dimension*. Alone (accumulating both creation and production jobs) or teaming up with smaller or bigger groups or institutions of more or less skilled professionals or amateurs, the producers have the competences that allow the artwork or creation of any type to be ready to reach its audience, viewers, participants or consumers (the independent production teams in film industry, for example - Lash & Urry, 1994; Rifkin, 2005) Although this circle might already represent a sort of gatekeeping (producers select the artists with whom they wish to work, especially if they are still young creators at the early stages of their careers, when they still have little bargaining/ choice power), *the relationship between producer and artist is quite reciprocal 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, 2014:135; 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 demand and their work can overlap that of the producer (for example, again, in film).

(4) At the fourth layer, we find *programmers, curators and critics ('programmers')*, guardians of the next access gate level. They function as 'professional gatekeepers', defining, in practice, the filters for 'quality', whatever the activity, by *selecting who will or will not have access to an audience and whose work merits 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; Caves, 2000).

(5) Finally, in the last circle, we find the '*distributors*': broadcasters, film studios and record labels, software houses and digital media platforms, theatrical facilities, galleries, etc. *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.*⁸ This is the purest market (commercial) gatekeeping.

As in David Throsby's model (2008), we suggest a dynamic relation between the layers, all interdependent and eventually overlapping, as each one might relate to one another by exchanges between cultural work and finance and/ or access to distribution, depending on the possession of different (in volume and 'quality') assets - namely, after Bourdieu (1986), economic and social capital. Overlapping is indeed quite often, not only in the case of artists-producers (seen above) but of multiple possibilities of combinations, depending to which activity/ role individuals invest more of their time (producers-agents, artists-agents, agents distributors, artists-programmers, producers-distributors, etc.). As a core characteristic of the artistic work is its personalization, overlapping often takes the form of personal relationships (mostly friendship and family ties, see

8 The film industry and the Hollywood hegemonic model are, again, a typical example – see footnote 6.

(Menger, 2014) The distance between the overlapping layers increases as the artist becomes more reputed and powerful (regardless of the quality of the work).

This becomes particularly true in the current digital era, as the individualization of work and the democratization of digital technologies through networks have allowed sharing and accumulation of tools and skills that were long restricted to certain activity groups (Castells, 2010; Lash & Urry, 1994; Menger, 2014).

Because our proposal is 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 of Potts *et al.* (2011), i.e. any sector oriented to or moved by social network markets. A critical issue here, as referred in the previous section, is that post-fordism and its "culturalized economy" has been transforming virtually every sector into a social-network-market-driven activity, i.e. at the same time reducing culture to economics (the «economization of culture»), which might have complicated consequences if the explicit aim is to take the most out of creativity and artistic skills (Lash and Urry, 1994; Osten, 2011)... Oddly enough, this might suggest a repositioning of the arts and the cultural industries (not all the 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. This cannot be performed out of the public realm of intervention, as we will see in the next section.

4. Cultural Work and Copyright: Policies for a New Era

Using our new concentric circles model of cultural work, we suggest below the graphic representation of what many cultural economists have been defending over the past decades about the role of copyright in the cultural and creative sectors.

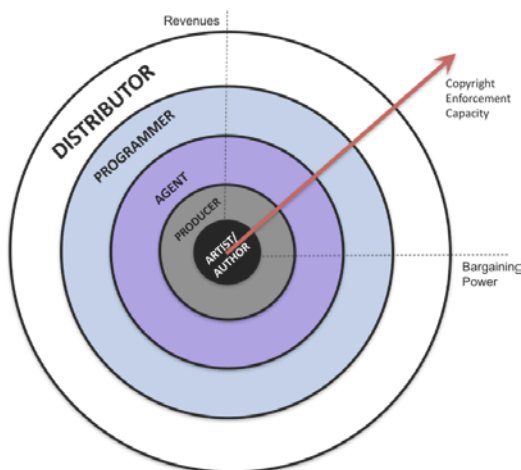


Fig.4: The Concentric Circles of Cultural Work and Copyright

As seen in the previous sections, 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 (i.e. the copyright enforcement capacity of each agent/layer) increases, due to the crescent bargaining power of each following (p)layer (given their progressively stronger commitment to 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 to the hands of the cascade of intermediaries that stands between them and their final audiences/ users/ consumers.

This relation demonstrates how much copyright is today in fact more of a market control instrument (for distributors in the first place), reinforcing gatekeepers' 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 suggested before, copyright functions as a barrier to market entry, which allows the already mentioned crescent market concentration in terms of distribution (section 2.; Bilton, 1999), 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. This is not only true in economic terms but also in cultural terms, being copyright a powerful mechanism to control the access to cultural production and information.

On that note, another version of the concentric circles model of cultural work, from (the artists') micro perspective, could look like Fig. 5: the closer we are to the centre, the smaller the circle - in this case, the circles also represent the relative amount of bargaining power, copyright enforcement capacity and revenues of each different layer.

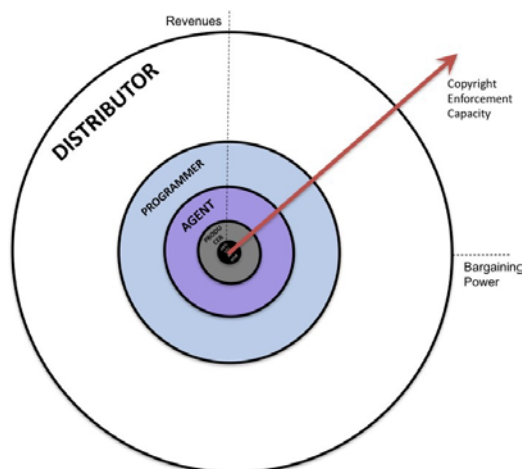


Fig.5: Concentric Circles Model of Cultural Work (Micro perspective) and Copyright

9 We have left lawyers, accountants and other liberal services outside the equation, although they might also be regarded as part of the 'Agents' category.

On the other hand, if we approach it from a (cultural labour) macro perspective, the model would look differently, as in Fig. 6: we are now 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 but it doesn't. However, and due to a prevalence of precarious work conditions, individualisation and personalization, 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, although artists are in much bigger number in comparison to the other layers, they lack capacity to associate in order to increase their effective power. Hence, the feeling of isolation and fragility shared by the core arts workers does not allow them to totally understand the whole picture. As we move outwards, each following group of workers 'knows more' than the previous (as seen in section 2.). On the other hand, at the core, indeed, "nobody knows".

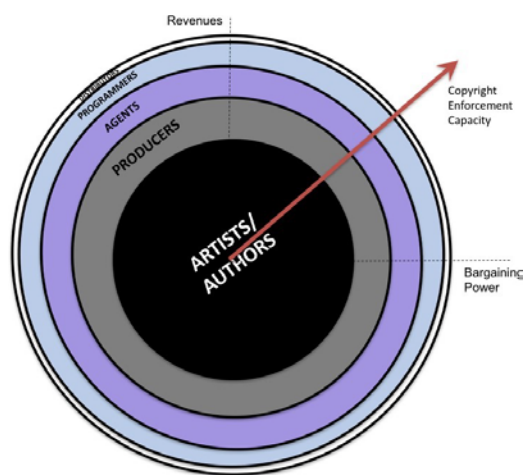


Fig.6: Concentric Circles Model of Cultural Work (Macro perspective) and Copyright

If we were to make a 3D representation of our model, it would probably be 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 widespreading of technology and information, the few major economic players have concentrated their efforts in not only keeping but even strengthening their position in the market – not by adding more weight to the top thin layer but by reinforcing control over the following intermediary layers, namely through the «new adhocracy model» (Bilton, 1999, discussed in section 2.), which allows powerful copyright lobbying. One of the very efficient mechanisms is getting control over key institutions, such as universities, museums or even governments, which argue, still represent the core nodes of our networked society (Powell and Oberg, 2017). Going back to the Tower of Babel allegory, institutions remain the pillars of the whole structure, as they produce and regulate collective norms, rules and practices. This rein-

forces the idea that institutions remain crucial players in the digital networked society, i.e. it must be not taken as a society of individuals: it is up 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 (Powell and Oberg, *Id.*). This also explains why it is not hard to find examples of large companies, such as Google, Apple or Netflix, trying to take over the place of what is usually the role of public institutions (museums, theatres), 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, under philanthropic justifications. Such control over data, content and information has already proven to be dangerous for the maintenance of democratic systems – as the recent Cambridge Analytica scandal involving Facebook has sadly revealed (The Guardian, 2019). Such aggressive strategies have also been used by superstar artists, as it was the case of Beyoncé, when she decided to credit all possible reputed 'inspirations' to her album *Lemonade* (2016), regardless of their real meaning.¹⁰ It is also the case for young popstar Taylor Swift, known by her many polemic conflicts with other music starts, 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 already started to affect music production in general, with musicians preventing themselves to publish new songs, afraid of copyright retaliation from major record labels and peers (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 artists. On the other hand, 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 – 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, 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 (see Handke, 2011). This is particularly clear in aggressive strategies that aim to promote superstars at the expense of other 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.

However, digitization and its promises of economic and cultural democratization have also provided the emergence of alternative instruments (such as open licenses

¹⁰ Including a decontextualized reference to Animal Collective or Father John Misty, who later criticized the singer for doing so (Helman, 2016)

like Creative Commons¹¹) 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. Those instruments must, of course, be object of critical reflection and institutional regulation, empirical research being necessary.

5. Final remarks for a new agenda

Traditionally, law tends to take more time than desired to adjust and embrace technological changes. However, the current paradigm shift is happening at a 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 do not seem to realize the actual extent and impact of their own inefficiency. While major industry players keep growing disproportionately, the pressure over governments to react and move fast has left policymakers at the mercy of such powerful majors' lobbying. Copyright and the cultural policy have not been exceptions. Some organized movements have emerged, such as the so-called Copyleft organizations.¹² Indeed, the fact that such complex legal issue has motivated such significant academic and civil movements 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. Authors are those who are able to initiate a discourse, to create a following (Foucault, 1992). 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 commercial transactions market and leaving entire societies in the hands of the major industry lobbyists. As we have discussed, given the growing precariousness of work – a characteristic once particular of the cultural sector but today disseminated across the whole economy (Lash and Urry, 1994; Osten, 2011), 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 workers end, 'nobody knows'. And this goes beyond the work context. 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 on a political level too. From individual to global conflicts, many could be mitigated or even 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 more crucial than ever. That means reflecting, once again, on what is the role of the arts (and the artists) in our societies and how do we value them (Røyseng, 2016). The creative economy paradigm with its creative industries panacea has failed: artists are not better off today than they were before. In fact, they might even be worse! As they continue to increase, 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 more and more, eventually reducing it more and more to a minor activity, after multiple non-artistic occupations. The only solution in sight for this seems to be the collective associations between artists, so they can fight for their rights as working citizens (including the right to decide which authors' rights they want to have but also for dignifying labour rights) and develop a reflexive and critic attitude around the genius stereotype, which is not only outdated but has also long turned inefficient. Contemporary digital society might open new conditions, especially towards 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.

¹¹ 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>).

¹² To name a few initiatives only: Creative Commons, Demand Progress, the Open Knowledge Foundation, Communia Association, CREATE, the Scholarly Publishing and Academic Resources Coalition (SPARC) and Save Your Internet or Create Refresh campaigns.

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? How do we build safe harbours for artists to create freely, without having to totally 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 and practices between countries? We hope our reflection and our model mean 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 reflection: continuing the current neoliberal approach to culture and copyright, under the umbrella of the creative industries, unless it responds to specific market and/ or political orientations, artistic practice *per se* is progressively moving towards criminalisation. That leaves us thinking that if 'every man is an artist' (Beuys & Bodenmann-Ritter, 2007), sooner or later, in the digital era, we are all pirates! It is therefore crucial to understand the ways in which artists can effectively organise and respond to the challenges of the digital era and how should cultural institutions and policies actually address them. Empirical tests of our model, comparative reasoning and informed interpretation might contribute for a new agenda.

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