

CREATIVE COMMONS AND THE CREATIVE INDUSTRIES

TERRY FLEW¹

ABSTRACT

[257] This article explores the growing significance of legal questions to innovation and creative practice in what are now being termed the creative industries. Noting that the case for strong copyright protection as the cornerstone of innovation is highly contested, it explores the significance of Creative Commons licences as an alternative to Digital Rights Management and copyright law. It also introduces the case studies of music, online computer games, and 'remix culture' that are covered in this special issue of the *Media & Arts Law Review*.

INNOVATION AND THE COPYRIGHT CONUNDRUM

Copyright and intellectual property law has become in many respects the crucible for so many of the issues and challenges presented by the development of new media for law and policy. Among the issues raised are:

- The balance between public good and private benefit criteria for use of, and access to, information;
- The balance between individual rights of ownership and social use for collective benefit;
- The nature of knowledge as both a commodity for commercial exploitation and as a public good for collective use;
- The extent to which, in an increasingly knowledge-based or creative economy where new ideas increasingly are the driver of economic performance, innovation is driven by the 'second mover' principle (that is, new ideas are derived from modifications of existing ideas), meaning that tight controls over intellectual property may serve to thwart innovation;
- What are the best ways in which to promote and equitably share the benefits of creativity in an age of digital networks for people, communities, nations, and global humanity.²

¹ Terry Flew, Associate Professor and Head of Media and Communication, Creative Industries Faculty, Queensland University of Technology, Brisbane, Australia. He is the author of *New Media: An Introduction* (2005) and *Understanding Global Media* (2006 forthcoming). He can be contacted at t.flew@qut.edu.au.

The three processes of convergence, digitisation and networking have presented substantial new challenges to both copyright and intellectual property law, and to the media and entertainment industries, or what have been termed the *creative industries*. Most notably, the rapid development and [258] mass global dissemination of technologies such as personal computers, the internet and email, printers and scanners, digital still-image and video cameras, CD and DVD burners, and various file-sharing technologies, has enabled near-zero-cost reproduction and distribution of digital content. Moreover, as the costs of such technologies have continued to fall sharply as their capacities have increased exponentially over the last two decades, they are truly global technologies, with widespread use in the developed and the developing world. This has meant that near-zero-cost reproduction capabilities co-exist with strong incentives in lower-wage nations to copy such materials and re-sell them at substantially lower prices than those offered to consumers in higher-wage nations.

In addition to the technological imperatives, three other factors make contemporary debates about copyright and intellectual property law central to 21st century economies, societies and cultures. First, as Jeremy Rifkin has argued, there has not only been growth in the creative industries, but also an exporting of their core features — such as the premium placed upon experience, the high costs of initial production and near-zero costs of ongoing reproduction of content, and a high failure rate for commercial product combined with the centrality of prototyping — becoming more general features of high growth 21st century industries.³ Second, the high and ongoing economic rents that can be derived from successful creative product has links to the importance of global branding, and the circulation of corporate trademarks, brands, patents and designs to contemporary global popular culture. As Rosemary Coombe has observed, the recent growth and extension of legal protections to intellectual property has occurred at a time when 'the texts protected by intellectual property signify: they are cultural forms that assume local meaning in the life worlds of those

² For an overview of these debates, see John Howkins, *The Creative Economy: How People Make Money from Ideas* (2001); Terry Flew, *New Media: An Introduction* (2nd ed, 2005); Shalini Venturelli, 'Culture and the Creative Economy in the Information Age', in John Hartley (ed), *Creative Industries* (2005) 391.

³ Jeremy Rifkin, *The Age of Access: How the Shift from Ownership to Access is Transforming Modern Life* (2000).

who incorporate them into their daily lives'.⁴ Third, there has been a strong tendency towards globalisation of copyright and intellectual property law. More than 100 nations signed the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement in 1994, as part of their entry into the newly-founded World Trade Organization (WTO). The TRIPS agenda was basically driven by the United States which, as the world's leading producer and exporter of commercial creative products, sought strong protection of intellectual property on a global scale to fight digital product piracy in nations such as Russia, India and, most notably, China.⁵ China's accession to the World Trade Organization in December 2001 has been accompanied by a strengthening of its copyright and intellectual property laws, to align them with international standards.⁶ This in turn has raised a debate within China about the extent to which it can move from being the 'world's factory' to being an original generator of IP, or from 'Made in China' to 'Created in China'.⁷

While the challenges of copyright in a digital age have generated different responses both within and across the creative industries, the dominant responses in the media and entertainment sectors have been reactive and defensive. In particular, there has been a focus upon on the development of Technological Protection Measures (TPMs) generally, and Digital Rights Management (DRM) in particular. These have typically been accompanied by the heavy use of legal sanctions against those perceived to be transgressors of their copyrighted material, as well as heavy lobbying of parliamentarians to receive favourable legal and policy environments. Both the *Digital Millennium Copyright Act* (DCMA), passed by the US Congress in 1998, and the *Sonny Bono Copyright Term Extension Act* 1998, which extended the term of copyright protection for copyright works from the life of the author plus 50 years to the life of the [259] author plus 70 years, have been widely criticised as poor law and

⁴ Rosemary Coombe, *The Cultural Life of Intellectual Property: Authorship, Appropriation and the Law* (1998) 7.

⁵ Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy* (2002); Susan Sell, 'Intellectual Property Rights', in D Held and A McGrew (eds), *Governing Globalization: Power, Authority and Global Governance* (2002).

⁶ Brian Fitzgerald and Lucy Montgomery, 'Intellectual Property Law and the Creative Industries', paper presented at International Creative Industries Conference, Beijing, China, 7–9 July 2005.

⁷ Michael Keane, 'Created in China: This New Great Leap Forward', paper presented at International Creative Industries Conference, Beijing, China, 7–9 July 2005.

even worse public policy.⁸ Nonetheless, this legislation increasingly constitutes the benchmark for copyright legislation in other countries, such as Australia, through its insertion into bilateral free trade agreements with the United States.

DRM can be defined as the set of technical and legal mechanisms applied to help control access to, and distribution of, copyrighted and other protected material in the digital environment. Development of DRM systems are technically complex, requiring client rendering devices with trusted processing, input and output paths, as well as modifications to current personal computing architecture. A key question arising from DRM strategies as a means to regulate access to digital content is whether or not the costs of DRM, and the more general strategy of *defence-in-depth* of the current copyright regime, justifies its status as the primary solution to the current dilemma. The DRM-driven approach is not a viable solution, as it has at least three adverse consequences:

- Diminished consumer privacy, as DRMs generate significantly increased functional capability to monitor online user behaviour;
- Reduced innovation potential, as the development of new methods to attack peer-to-peer (P2P) file sharing networks and applications has the capacity to inhibit the capacity for 'follow-on' or 'second' innovators to build upon copyrighted innovations, thereby dampening innovation more generally by artificially restricting the public domain; and
- Greater imbalances in the relationship between copyright holders and users of copyrighted materials, as it is impossible to program 'fair use' exceptions into DRM systems, since 'fair use' is a complex legal mechanism, with outcomes dependent on individual aspects of each case.⁹

⁸ Jessica Litman, *Digital Copyright* (2001); Siva Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity* (2001); Michael Perelman, *Steal This Idea: Intellectual Property Rights and the Corporate Confiscation of Creativity* (2002); Matthew Rimmer, 'The Dead Poets Society and the Public Domain' (2003) 8(6) *First Monday* (2003); <http://www.firstmonday.org/issues/issue8_6/rimmer/>.

⁹ Terry Flew, Greg Hearn and Susanna Leisten, 'Alternative Intellectual Property Regimes in the Global Creative Economy', in J Servaes and P Thomas (eds), *Communications, Intellectual Property and the Public Domain in the Asia-Pacific Region: Contestations and Consensus* (2006, forthcoming). On user-led innovation and the public domain more generally, see Stuart Cunningham, Terry Cutler, Greg Hearn, Mark Ryan and Michael Keane, 'From "Culture" to "Knowledge": An Innovation Systems Approach to the Content Industries', in Caroline Andrew, Monica Gatteringer, M Sharon Jeanotte and Will Straw (eds), *Accounting for Culture: Thinking Through Cultural Citizenship* (2005); Mark Dodgson, David Gann and Ammon Salter, 'The Intensification of Innovation' (2002) 6

COPYRIGHT AND THE CREATIVE INDUSTRIES

The concept of the creative industries has clearly been an animator of lively discussions in recent years about the economic, as well as the cultural and aesthetic, value of creative practice. Moreover, it has emphasised the extent to which creative practice cannot be understood as being solely the provenance of those engaged in arts, media or other cultural sectors, but rather an ‘axial principle’ of the 21st century knowledge-based economy, where new wealth is increasingly derived from innovation and the commercialisation of new concepts rather than cost reduction or productivity gains.¹⁰ International interest in creative industries discourse is also linked to the growing tendency towards conjoining of the arts, the media and information technology through the digital content industries.¹¹ There has also been the potential to broaden the scope and purchase of arts and cultural policy so that, rather than thinking [260] of the symbolic goods and services produced in the arts and media industries in terms either of their civilising influence or their ideological proclivities, cultural content could instead be considered in terms of its contribution to national innovation agendas and the formation of creative human capital.¹²

In one of the earliest articulations of the concept, the Department of Culture, Media and Sport (DCMS) in the United Kingdom defined the creative industries as constituting ‘those activities which have their origins in individual creativity, skill and talent, and which have the potential for wealth and job creation through the generation and exploitation of intellectual property’.¹³ The DCMS identified the creative industries as accounting for about 5 per cent of the gross income and employment of the UK economy, growing at three times the rate of the UK economy as a whole. Comparable studies for the United States, Australia, Singapore and the European

International Journal of Innovation Management 53; Committee for Economic Development, *Promoting Innovation and Economic Growth: The Special Problem of Digital Intellectual Property* (2004); Charles Leadbeater and Paul Miller, *The Pro-Am Revolution: How Enthusiasts are Changing our Economy and Society* (2004).

¹⁰ On creativity as an ‘axial principle’, see Kieran Healy, ‘What’s New for Culture in the New Economy?’ (2002) 32 *Journal of Arts Management, Law and Society* 86.

¹¹ William Mitchell, Alan Inouye and Marjory Blumenthal, *Beyond Productivity: Information Technology, Innovation and Creativity* (2003).

¹² Cunningham et al, above n 9.

¹³ Quoted in Flew, above n 2, 116.

Union have — with some variations in terminology and methodology — pointed to similar trends.¹⁴

The DCMS adopted a list-based approach to specifying what the creative industries are, moving from the arts and media heartlands to apparently disparate sectors such as advertising, architecture, design, fashion, online games and software development. Such an *ad hoc* and list-based approach was bound to generate as many questions as it answered. Why isn't sport a creative industry, while fashion is? If you include advertising, why not marketing, since one does not exist without the other? Do architects, journalists and software engineers really see themselves as working in the same broad sector as actors, dancers and visual artists? Do we need to differentiate between those sectors (advertising, commercial television) where the *raison d'être* of creative practice is the desire and need to turn a profit, and the more grant-driven cultures of the creative and performing arts?

The *ad hocery* of such list-based approaches to defining the creative industries has been accompanied by concerns that the term itself simply constitutes an ambit claim on the part of arts administrators to feel important and connected to government, while hiding significant exploitation and self-exploitation in various forms of cultural work.¹⁵ Some analysts have chosen to retain the terminology of 'cultural industries', questioning the extent to which there has been a tangible shift in the operations of these sectors, as distinct from changes in the ideological underpinning that now support state cultural funding, as they have moved from subsidy-driven models towards new enterprise development and public-private partnerships.¹⁶ In many respects, the key issues lie less in tracking the 'tortuous and contorted definitional

¹⁴ Cunningham et al, above n 9; Mitchell et al, above n 11; MKW Wirtschaftsforschung GmbH, *Exploitation and Development of the Job Potential in the Cultural Sector in the Age of Digitization*, Final Report — Summary, (Commissioned by European Commission DG Employment and Social Affairs) (June 2001).

¹⁵ Angela McRobbie, 'From Clubs to Companies: Notes on the Decline of Political Culture in Speeded-up Creative Worlds' (2002) 16 *Cultural Studies* 517.

¹⁶ Deborah Stevenson, 'Civic Gold Rush' (2004) 10 *International Journal of Cultural Policy* 119; David Hesmondhalgh and Andy Pratt, 'Cultural Industries and Cultural Policy' (2005) 11 *International Journal of Cultural Policy* 1; Nicholas Garnham, 'From Cultural to Creative Industries: An Analysis of the Implications of the "Creative Industries" Approach to Arts and Media Policy Making in the United Kingdom' (2005) 11 *International Journal of Cultural Policy* 15.

history' of these debates,¹⁷ but in the implications of those arguments that have constituted creative industries on apparently stronger *terra firma* in terms of their ambiguous relationship to questions of copyright and intellectual property law. John Howkins' work on the *creative economy* is central in this regard.¹⁸ Howkins recognises that attempting to define what is creative is a futile exercise akin to trying to define what is art. Pointing to a blind-spot in the UK DCMS and related discourses about [261] the relationship of the sciences, engineering and technology (SET) sectors to the arts and media in terms of where creative activity actually occurs, Howkins defines the creative economy as simply 'financial transactions in creative products',¹⁹ which are in turn clustered around the copyright, design, trademark and patent industries. In Howkins' analysis, the creative economy accounted for \$US2.2 trillion, or about 7.3 per cent of the global economy in 1999, but within this framework, the role of the creative and performing arts has shrunk to virtual insignificance (1.7 per cent of the total creative economy), as its contribution is dwarfed by sectors such as the publishing, software and research and development industries.

Kieran Healy's point about the dangers of using such findings as the basis for 'a bullish defence of the arts in economic terms' should be taken very seriously by arts advocates and practitioners.²⁰ It points as much to the marginalisation of the arts in the creative economy as to their centrality. Importantly, both the Howkins and DCMS definitions of the creative industries tie it closely to the generation and exploitation of intellectual property. This definition of creative industries as the articulation of creativity to intellectual property generates the problem identified by Healy that 'creativity by itself will not make anybody rich; intellectual property laws do that'.²¹ In one influential formulation, the creative industries are interpreted as the *copyright industries*, as the copyright industries become the downstream distributors of creative

¹⁷ Stuart Cunningham, 'From Cultural to Creative Industries: Theory, Industry and Policy Implications' (2002) 102 *Media International Australia* 55.

¹⁸ John Howkins, above n 2; Howkins, 'The Mayor's Commission on the Creative Industries' in John Hartley (ed), *Creative Industries*, above n 2, 117.

¹⁹ Howkins, *ibid* (2001) 85.

²⁰ Healy, above n 10, 101.

²¹ *Ibid* 97.

content.²² Such a conflation disguises the extent and significance of the imbalance in market power between content creators, users and re-users on the one hand, and the large-scale distributors and publishers which constitute the copyright industries on the other.²³

These imbalances in power and rights generate a quite different order of questions to those which have traditionally framed creative industries discourse. The most common questions have included the recognition of commercial practice as legitimate sites of creativity and aesthetic advancement, the contribution of creative work to the promotion of new ideas and innovation, or the need for artists to think about entrepreneurship and the value of established business practice to their personal and professional development as creative practitioners. By contrast, the issues which are developed in this special issue raise threshold issues about the relationship between the creative industries and intellectual property law, and the 'copyright conundrum' surrounding the balance between the returns for original creation as compared to the social and economic benefits derived from collaboration and sharing, as applied to the impact of digitisation, convergence and networking to the arts and the media.

THE CREATIVE COMMONS ALTERNATIVE

In 2001, leading intellectual property experts, such as James Boyle and Lawrence Lessig, began working with a range of IT specialists, film makers, entrepreneurs and internet activists to develop Creative Commons. Aiming to rebalance copyright law in the wake of the *Digital Millennium Copyright Act*, passed by the US Congress in 1998, which they felt had shifted the copyright bargain too far towards copyright owners and against the users of copyrighted materials, they developed in 2001 a series of flexible and legally valid copyright licences that would increase the amount of creative material available online and reduce the restrictions and costs associated with accessing that material. The result was the development of Creative Commons® licences. The Creative Commons movement has been strongly influenced by the Free Software Movement developed by Richard Stallman and his colleagues, as well as

²² Stephen Siwek, *Copyright Industries in the US Economy: The 2002 Report* (International Intellectual Property Alliance) (2002); Singapore Ministry for Trade and Industry, *Economic Contribution of Singapore's Creative Industries* (2003).

²³ Flew, above n 2, 212–13; Cunningham et al, above n 9, 118–19.

open software initiatives such as the Linux operating system as an alternative to Microsoft's proprietary OS system, and the development of the General Public Licence (GPL). It straddles a line between the strong protection [262] models of DRM and 'defence in depth' through punitive legal sanctions, and the culture of the gift economy which is particularly prevalent in the digital content environment.²⁴

Creative Commons licences take four forms: use with attribution; use for non-commercial uses only; no derivative licences (that is, others can use only direct copies of the original, and cannot produce other works based upon the original); and share alike licences, which require that derivative works are released under a similar licence.²⁵ In contrast to the dominant copyright model, which gives creators of copyrighted works no option to permit others using their work in a professional manner except through legal requirements on those users to seek permission, Creative Commons licences enable content creators to determine, at the moment of making their works public, the conditions under which they can be used by others. Creative Commons licences have three formats. First, there is a lay person's guide for those unfamiliar with complex legal concepts, which is particularly targeted at the creative community. Second, there is a legal version which provides the correct official documentation, and which is adapted for different national legal systems. Third, there is a version in machine-readable code which facilitates the search for digital content through the World Wide Web. As Moore has observed the latter is 'a powerful technical tool which allows creators to embed the licence in the meta-data of their digital content, streamlining their content for use and distribution without concern that it might be used inappropriately or without their permission'.²⁶

While the legal and technical requirements which underpin Creative Commons have been kept deliberately simple (in contrast to the more arcane features of copyright law), the ideas that underpin these developments have considerable weight and significance. Creative Commons draws upon the ideas of the open source software

²⁴ John Frow, 'Public Domain and the New World Order in Knowledge' (2000) 10 *Social Semiotics* 173; Kirsty Best, 'Beating them at their Own Game: The Cultural Politics of the Open Source Movement and the Gift Economy' (2003) 6 *International Journal of Cultural Studies* 449.

²⁵ Christopher Moore, 'Creative Choices: Changes to Australian Copyright Law and the Future of the Public Domain' (2005) 114 *Media International Australia* 71.

²⁶ *Ibid* 79.

developers, such as Eric Raymond's 'The Cathedral and the Bazaar',²⁷ to argue that the case for openness is not only moral but also practical — open systems work to produce a better mouse trap (or, in this case, better computer software), than closed, controlled and centralised systems of knowledge development and innovation. It is also driven by a bias towards the new and towards innovation. As Lawrence Lessig has put it: 'We as a society should favour the disrupters. They will produce movement towards a more efficient, prosperous economy.'²⁸ It is argued that creativity and innovation are best served by information and culture that is as widely available as possible 'to guarantee that follow-on creators and innovators remain *as free as possible* from the control of the past'.²⁹ The idea of an 'information commons' or Creative Commons, which provides a pool of common resources from which to produce new ideas and creative works, is threatened by laws and policies that strengthen the *ancien regime* of intellectual property rights, creating the danger of 'a "permission culture" — a culture in which creators get to create only with the permission of the powerful, or of the creators of the past'.³⁰

CASE STUDIES IN THE CREATIVE INDUSTRIES AND COPYRIGHT

This special issue of the *Media & Arts Law Review* brings together case studies in the creative industries and copyright, as they impacted upon the music industry, the emergent online games industry and the [263] question of sampling of digital content, culture jamming and 'remix culture' more generally. The authors consider the implications of Digital Rights Management frameworks and copyright regimes, and counterpose these to alternative ways of distributing and managing access, use and re-use of digital content such as Creative Commons. Such discussions are timely in light of the Federal Court of Australia's finding that Sharman Networks, founders of the Kazaa file-sharing network, had breached copyright law and authorised copyright infringement of digital music files.³¹ With the Attorney-General Philip Ruddock announcing a parliamentary review of the law governing Technological Protection

²⁷ Eric Raymond, 'The Cathedral and the Bazaar' (1998) 3(3) *First Monday*; <http://www.firstmonday.org/issues/issue3_3/raymond/>.

²⁸ Lawrence Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World* (2002) 92.

²⁹ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (2004) xiv.

³⁰ *Ibid.*

³¹ *Universal Music Australia Pty Ltd v Sharman License Holdings Ltd* (with Corrigendum dated 22 September 2005) [2005] FCA 1242 (5 September 2005).

Measures (TPMs), through the House of Representatives Standing Committee on Legal and Constitutional Affairs, the question of the appropriate legal frameworks to promote creativity, innovation and creative industries development become even more pressing.

Danny Butt and Axel Bruns explore such developments in the music industry, which has been in many respects the front-line of such legal battles. They argue that the primary driver of Digital Rights Management (DRM) measures such as TPMs has been to inhibit copying, even if DRM can be used for other purposes such as specifying use rights and tracking royalties. They contest the claim that strong DRM is a prerequisite for a dynamic music industry, pointing to a growing divergence between what they describe as two ‘music ecologies’: that of the major music distributors and other related media and electronic equipment interests, and a second, much looser network of independent musicians, producers, distributors, markets and audiences. Their argument is that the music majors — or what may be termed ‘Industry-1’ — dominate the legal and policy landscape, and largely present their interests as synonymous with the ‘music industry’ as a whole, including musicians and music consumers. By contrast, Butt and Bruns see the second music ecology — ‘Industry-2’ — as being much closer to the dynamism of where innovation, originality and enthusiasm is with the music industry today. They also note that smaller economies, such as those of Australia and New Zealand, have considerably less to gain economically from the hegemony of the dominant music industry interests. They argue that DRM systems for the music industry can only be effective if they are based upon non-adversarial principles, drawing in the looser networks of music producers, distributors and consumers, encouraging do-it-yourself (DIY) cultural production, experimentation and ‘remix culture’, rather than the current regime, which they see as involving ‘a continuing, costly but in the final instance futile DRM arms race between IP holders and IP users’.³²

Brian Fitzgerald and Damien O’Brien continue to focus upon remix culture, asking the question of what we are free to access and re-use among the cultural resources

³² On ‘remix culture’, see Richard Koman, ‘Remixing Culture: An Interview with Lawrence Lessig’, *O’Reilly Network*, 24 February 2005; <www.oreillynet.com/pub/a/policy/2005/02/24/lessig.html>.

surrounding us as creative people. They discuss a variety of cases involving music sampling in hip-hop culture in particular, and how such cases bear upon the *Copyright Act 1968* (Cth), particularly in terms of fair use, performers' rights and moral rights, noting that there is little case law in Australia at present on the issue of sampling. They extend this discussion to the area of culture jamming, or various forms of activist subversion of corporate culture, including subvertising, guerrilla communication, Google bombing and billboard liberation. They also consider the possibility of Creative Commons licences to minimise potential 'chilling effects' on creativity and innovation arising from overly zealous applications of copyright law in cases, as well as the need for leadership from policy-makers in this field, to better achieve a balance between the interests of creators, owners, performers, users, commentators and the wider community.

Sal Humphreys draws attention to the challenge to intellectual property regimes and copyright law arising from developments in computer games, particularly the rapid growth of Massively Multi-user Online Games (MMOGs) such as *EverQuest*, *Counterstrike* and *The Sims Online*. Humphreys emphasises the extent to which questions of ownership of content in multi-player online games environments is not simply a matter of law, but a question more generally of governance, since the application of rules such as End-User Licensing Agreements occurs long before such questions can be raised before the courts. The complexity of these questions is illustrated by the extent to which the very dynamism of the games [264] themselves rests upon the productivity and the creativity of the players, who are harnessed by the games developers as a large R&D lab, and who derive personal satisfaction from their contributions to these games environments. While these games are what Humphreys terms *collaborative social products*, there is not as yet a system of rights for players in MMOGs in relation to the ownership and use of the products of such creative labour, as the legal framework surrounding games environments remains grounded in an older publishing model, which assumes proprietary ownership, linearity rather than recursivity, and which positions producers and consumers as distinct legal entities. Humphreys sees the scope for Creative Commons licences in this area as limited, instead seeing these hybrid forms as presenting a wider set of issues about the nature of digital citizenship in globalised online environments. It is a timely reminder that, while the concept of creative industries draws more explicit attention to the legal

dimensions of creative practice, the questions raised by power relations in the digital environment for innovation and creativity are never simply legal ones and, moreover, they increasingly transcend national boundaries and juridical domains.