4

Decentering Creativity

Conceptualizing copyright's role in processes of cultural development requires a model of creativity that faces outward: that recognizes the inseparable relationship between authorship and use of cultural works. Such a model must acknowledge the multiple ways in which users and user-authors interact with cultural works, and must recognize that those interactions cannot be explained by telling a story about value-neutral progress, the separability of idea and expression, and the continuous availability of the public domain.

This chapter develops an account of creativity and cultural progress as emergent properties of social and cultural systems. Within preexisting cultural networks, individuals and communities appropriate cultural goods for interrelated purposes of consumption, communication, self-development, and creative play. From each user's situated perspective, the experienced cultural landscape determines the resources that are available to that user. The cultural landscape includes both public and proprietary content, and is shaped both by established conventions of artistic and intellectual production and by the spatial distribution of cultural resources. Both creativity and cultural progress emerge contingently out of interactions between situated users and cultural landscapes. A critical ingredient in this process is the play that cultural landscapes afford, including the extent to which they not only permit purposive creative experimentation but also facilitate serendipitous access and unexpected juxtapositions.

The emergence of networked space alters the cultural landscapes of situated users in important ways, but it does not change the fundamental patterns that this chapter describes. Networked information technologies make available new resources and create new patterns of information flow, but cultural path-dependencies remain important in structuring creative practice. The emergence of networked space also does not diminish the central importance of mass culture within cultural landscapes. Networked information technologies reconfigure patterns of interaction with mass culture, simultaneously empowering users and extending the culture industries' reach.

Understanding cultural progress as decentered, always emergent, and shaped by the contingent particularities of cultural landscapes suggests both a more modest conception of the role that copyright plays in stimulating progress and a more rigorous explanation of the systemic harms that too-expansive copyright can produce. Copyright's role in the contemporary creative ecology is essential but limited: it provides an economic foundation for the organization of

of cultural production. It must perform that role with self-restraint, lest it impair the mobility that is the indispensable ingredient in creative practice.

A Decentered Model of Creativity

In accounting for creative practice by individual authors, it is instructive to recall where Chapter 3 began: with commonly held assumptions about the essentially internal, unknowable nature of creativity. There is broad agreement among creative individuals of all types that creativity is characterized pervasively by an unpredictability that encompasses both inspiration and production. Neither creative inputs nor creative outputs are known in advance, and copyright scholars have taken that fact as evidence of creativity's internal, individual nature. Yet it is possible to be far more precise about both what is not known and what is. Researchers in psychology and education have produced a vibrant literature on the social, cultural, and psychological factors that shape creativity. In addition, social theory tells us a great deal about the processes and practices of cultural production: about how cultural resources are encountered and used and how systems of cultural knowledge evolve.

Together, the evidence from creativity studies and the insights and resources of social theory argue for an account of artistic and intellectual creativity that is decentered: that incorporates multiple contributing factors and makes none primary, and that situates creative practice within the social, cultural, material, and spatial realities that shape and constrain it. Here I will attempt to develop a preliminary description of creativity that satisfies these criteria. I will proceed by developing three interlinked accounts. The first begins with the self and builds outward; it explores "where creativity comes from" at the individual level. The second begins with context and builds in; it inquires how the conventions and forms of artistic and intellectual culture shape the creative practice of individuals and groups. The third interrogates the boundary conditions between the individual and the social, with particular regard to the essential and desirable unpredictability of creative practice.

Situated Users

Because everyone is a user of artistic and cultural goods first and a creator second (if at all), an account of creative practice must begin with users. As we saw in Chapter 3, copyright law and theory rely on highly artificial models of users and user behavior: the economic user, who is interested only in consumption, and the romantic user, who is interested only in expressing an already-formed critical perspective. A model of creativity must replace these one-dimensional figures with a more believable construct that offers a basis for understanding how creative practice emerges and develops. That construct must be capable of explaining why users copy and how access and use become transformation and authorship. In particular, it must shed light on the process by which individual user-authors arrive at unanticipated inspiration and generate unpredicted and unpredictable outputs.

Let us begin by focusing on something that may seem, at first, to be a contradiction in terms: the ubiquity of constraint in the creative process. I do not mean constraint in the sense of coercion or limitation, but rather in the sense of situatedness within one's own culture. Situatedness, in turn, does not

refer to a "situation" in the prescriptive sense (that is, one that might give rise to a legal defense or to an ethical obligation), but more minimally and descriptively to the fact that individuals and groups are located within particular cultural contexts. Each situated self encounters path-dependencies that shape both the content and the material forms of cultural knowledge, and thus shape creative opportunity. Recognizing situatedness does not require submerging the individual irretrievably within the social; creativity has idiosyncratic, internal dimensions as well as external ones. But what is distinct about each individual in relation to the surrounding culture will include differences in situation and the different path-dependencies that result.

Cultural situatedness supplies the framework for a more believable model of the user, one that foregrounds the path-dependencies that all users and user-authors experience. I will call this user the "situated user." Sources ranging from biographies of creators to studies of mass-culture fans reveal that situated users of copyrighted works appropriate preexisting cultural goods for a variety of interrelated purposes: They consume cultural products, including both those that they deliberately seek out and those that they serendipitously encounter or are motivated to try for some other reason. They appropriate cultural goods in order to communicate with one another in a common vernacular. They appropriate cultural goods for purposes of self-development, shaping and reshaping their own intellectual, aesthetic, and hedonic tastes. Finally, situated users appropriate cultural goods for purposes of creative play. Through these processes, some situated users become authors: they create works that are intended to be shared with others, and some of those works attain wider fame and influence.

There are four important points to appreciate about these activities by situated users, which together frame a model of cultural participation that is very different from the one framed by the conventional dichotomies between author and consumer, author and imitator, author and improver, and author and critic that pervade the copyright literature. The first point is that although the activities of situated users can be listed separately for analytical purposes, in practice they often cannot be disentangled. Each feeds into the others in ways that are difficult to identify and impossible to predict. A teenager who enjoys listening to music does so in a way that is never purely consumptive; music becomes both a focal point for interactions with her peers and a source of knowledge about the content of her culture and her relation to it. Acting on suggestions from peers, family members, and teachers and on other environmental clues, she will seek out music that accords with her developing self-image. Eventually, some teenagers will experiment by creating music of their own, and that music will be influenced by the tastes and affinities that they have developed as consumers and fans.

The second point, which follows from the fact of situatedness, is that the cultural activities of situated users take place within a web of semantic entailments. One cannot simply step out of or around the resources, values, and absences within one's own culture, but must negotiate one's way through them, following the pathways or links that connect one resource to the next. Music lovers begin with the tastes cultivated by their immediate surroundings and then sample the offerings recommended by peers, schools, and purveyors of mass culture en route to developing and pursuing their own particular inclinations. A

host of cultural and personal factors explains why Alison Krauss became a bluegrass musician but Sarah Chang became a classical violinist and Stefani Germanotta became Lady Gaga, why Joshua Redman became a jazz bandleader rather than a symphony oboist, why Edward Burtynski photographs epic industrial landscapes but Cindy Sherman stages pulp fiction tableaux, and why Barbara Kingsolver's fiction draws on Native American culture but that of Ian McEwan mines the disaffections of the British upper-middle class.

The process of negotiating cultural pathways, which I will call "working through culture," bears little resemblance to models of progress flowing in value-neutral fashion from continual improvement upon the corpus of established knowledge. Instead, it moves in patterns that are both (and sometimes simultaneously) recursive and opportunistic. Creative practice and cultural progress emerge gradually out of complex patterns of imitation and appropriation. A young boy inspired by the fictional universe of *Star Wars* may be moved to try his hand at drawing robots, starships, and alien worlds. As he shares his interest with others, or browses other science fiction and fantasy video-rental offerings, he may discover other stories with similar characteristics, and imitate and experiment with other styles of artistic illustration. Upon enrolling in art classes, he will encounter other artists and illustrators and experiment by imitating their styles en route to developing a style that is recognizably and consistently his own. Even as his technique matures, imitation and reworking will remain central in his day-to-day creative practice.

On this understanding, creative practice is relational at its core. Carys Craig argues that authorship should be reconceptualized as a dialogic process consisting of "an *intra*personal dialogue (developing a form of personal narrative by drawing upon experience, situation, and critical reflection) and an *inter*personal dialogue (drawing upon the texts and discourses around her to communicate meaning to an anticipated audience)."[1] As Craig recognizes, this is an argument not only about the nature of authorship but also and more fundamentally about the nature of the interaction between emergent self and evolving culture; it is an account of where creativity comes from that locates creativity in the process of working through culture alongside others who are always already similarly engaged.

The third important point about the activities of situated users, which follows from creativity's relational nature, is that the process of working through culture is closely tied not only to semantic links between content but also to the spatial distribution of cultural resources. As Chapter 3 discussed, copyright theorists have tended to offer accounts of creative processes that are highly abstract and seem to presume access to extant cultural resources regardless of their location in space and time. For individuals situated in the real world, questions of access are inextricably bound up with the real-world distribution of artistic and intellectual culture and cultural artifacts. Those resources are distributed spatially in ways that make any particular resource more or less proximate, and therefore more or less relevant, to any given individual.

The set of cultural resources accessible within the cultural landscape that surrounds each situated user is neither geographically discrete nor composed entirely of resources that are publicly owned; therefore, it does not map neatly to the legal category of public-domain expression. Many user-authors will develop their interests and talents primarily through interaction with pro-

prietary, non-public-domain works—the fictional universe of *Star Wars*, for example, is under copyright and will remain that way for a very long time. The cultural landscape is what supplies the elements in culture that are experienced as common, regardless of their ownership status. It is defined by the ways in which artistic and intellectual goods are accessible to individuals in the spaces where they live, and by the forms of interaction with preexisting expression that are possible and permitted.

Fourth and finally, the process of working through culture involves physical interactions among embodied users and between embodied users and material artifacts. Scholars in STS and cultural studies have documented the ways that users employ their bodies to explore the powers and limits of new technologies, new media, and technological and cultural artifacts.[2] Accounts of artistic creativity within copyright scholarship tend to ignore the ways in which culture is similarly apprehended, assimilated, and performed through the body. Copyright scholars may be uniquely predisposed to overlook the importance of embodiedness and materiality because for most of us, the preferred medium of expression is text and the coin of reputation is the idea. If we look beyond the limits of our own assumptions about creativity, however, the body is everywhere around us.

Bodies and embodied perception play central roles in interpretation of and communication about cultural resources. The role of embodied perception in mediating the experience of cultural goods is more readily evident in the performing and visual arts, for which both academic and lay reviewers alike emphasize attributes such as rhythm and flow. But embodied perception informs the experience of literary works as well. Textual works were initially recited rather than read, and many byproducts of orality have persisted in the print era, including both enduring conventions such as poetic meter and avant-garde literary expressions that self-consciously disregard established narrative conventions in favor of other, more discursive rhythms.[3] In the domain of mass culture, singing and moving to music and repeating lines of dialogue or action sequences from favorite television shows and movies are all practices that employ the body as the mediator of cultural experience. Teenagers swap lip-synching videos with friends and acquaintances not only to share the music, but also and more importantly to share an experience that is fundamentally an embodied one. Francesca Coppa shows that textual reworkings by mass-media fans, which focus on plot and character, are forms of dramatic storytelling that reflect embodiedness, "relying on the audience's shared extratextual knowledge of sets and wardrobes, of the actors' bodies and their smiles and movements . . . to direct a living theatre in the mind."[4] A young girl captivated by *Star Wars* may imagine and write her own stories about the characters; eventually, she may write "Mary Sue" stories that create leading female characters and place them in central roles.[5] In either case, she will rely on her accumulated understanding of bodies and embodied behaviors to get the details right.

As might perhaps be expected given our occupational preoccupation with dissent, copyright scholars who have confronted the "remixing" of cultural artifacts have tended to emphasize the manipulation of texts and artifacts embodying others' expression in the service of what Sonia Katyal calls "semiotic disobedience."[6] Within the broader context of situated, embodied interaction, however, the framework of dissent seems incomplete and strained. It seems

both simpler and more accurate to recognize that situated users' interactions with cultural resources are ubiquitous and protean. In particular, many processes of cultural participation occur not via consumption or communication in the abstract, but rather by literally inserting the self into the work, and those processes can be celebratory as well as critical. The writer of critical fan fiction was not born a critic; she was a fan first and still is.

Both physical engagement with artifacts and embodied interpretation of texts remain important as consumption and communication shade into creative play. In the visual and performing arts, the body is an indispensable tool for accessing and mastering prevailing creative conventions; imitation of the masters perfects technique and inscribes glossaries of form. Imitation is the way would-be artists discover and nurture their interest in visual expression, and the way would-be musicians discover and nurture their interest in composition and performance. In literature and film, it is conventional to say that intergenerational dialogue manifests through the interpretation and reworking of texts. But texts are not abstractions; they are manifested through voices and rhythms, characters and settings. Regardless of artistic field or genre, creative outputs do not simply spring forth from the minds of their creators, but emerge through processes that are iterative and literally hands-on, rooted in embodied experience.

The situated user—who copies because copying is inextricably bound up with cultural participation, and for whom the copying of encountered artifacts and expressions is integral to creative play and creative practice—has important implications for copyright's understanding of creativity. As we saw in Chapter 3, that model casts copying, reworking, and derivation as peripheral and inauthentic activities. In recent years, copyright scholarship has puzzled over contemporary cultural practices such as hip-hop sampling, appropriation art, and fan fiction, which more directly foreground their reliance on reworking. As Richard Schur describes, these are practices that invert the traditional abstraction-based hierarchy of copyright law entirely. Within these forms of cultural expression, the relation between idea and expression is not "one idea, many expressions" but rather "one expression, many ideas."[7] The temptation, then, is to cast these works as new challenges for copyright. The key point to appreciate, however, and one that is often lost in discussions celebrating the novelty of "appropriation art," is that appropriation itself is not new. In their reliance on copying, these new creative practices are not fundamentally different from older ones.

To the contrary, the well-known history of both classical and contemporary art forms illustrates the centrality of copying within creative practice. In the visual arts, copying has been considered an essential part of artistic development at least since the Renaissance.[8] Identification and critical analysis of borrowing and reworking are standard fare in contemporary museum exhibits. Thus, for example, the 2003 *Manet/Velasquez* exhibition at New York's Metropolitan Museum of Art celebrated Velasquez as a source of inspiration for the impressionist movement, and featured several Velasquez works side by side with Manet's reinterpretations of those works. The Met's 2010 *Picasso* exhibition, on view at the time of this writing, identifies a number of instances in which Picasso copied images and techniques from others. In music, it is well understood that popular genres such as blues and jazz are created by a ceaseless

process of borrowing. But musicologists who study the classical form now enshrined as elite culture have documented the fact that classical composers were equally dependent on borrowing and reworking. They filled their symphonies and overtures with sound samples ranging from hunting horns to bird calls to carnival music, all sounds heard in the background of their own lives. Sometimes, the borrowings were far more central. The third movement of Mahler's powerful first symphony is based on the French children's song "Bruder Martin" ("Frere Jacques" in the French version); there are countless other examples.[9]

Shifting the focus to literature, drama, and film, the list of borrowings continues. In literature and drama, borrowing and reworking are both conventional and critically prized. Consider some twentieth-century examples: George Bernard Shaw's *Pygmalion* (followed by Lerner and Loewe's *My Fair Lady*), Thornton Wilder's *The Skin of Our Teeth,* James Joyce's *Ulysses* (followed by Charles Frazier's *Cold Mountain*), John Gardner's *Grendel,* David Henry Hwang's *M. Butterfly,* and Gregory Maguire's *Wicked.* Last but hardly least, audiovisual works of mass culture routinely generate both box-office momentum and critical acclaim by reworking existing materials. *Star Wars*, for example, contains elements derived from Akira Kurosawa's *The Hidden Fortress* and other elements derived from the pulp comic-book series *Buck Rogers in the 25th Century*. Charlie Chaplin's iconic *Modern Times* reworks themes and imagery from Fritz Lang's dystopian *Metropolis*. And so on.

All these examples would be beside the point if there were any plausible basis for thinking that when we as a society make claims about the intrinsic worth of art, these are not the sorts of art that we mean. But we do mean these examples, and thousands of others like them, and we routinely invoke them as justification both for having copyright laws and for deciding particular cases in particular ways. Creativity is remix, and always has been.

Returning to the question with which this section began—about the process by which creative practice emerges and develops—we see that creative practice emerges from interactions with cultural landscapes via processes of juxtaposition, iteration, dialogue, and experimentation that are both conceptual and physical. Situated users begin with situatedness and work through culture to arrive at the unexpected. They derive inspiration from the culture within which they are situated, and develop their interests and skills through a continual process of dialogue with peers, with preexisting cultural artifacts, and with one another.

Networks of Culture, Networks of Practice

Emphasizing the path-dependence of cultural participation and creative practice reminds us that creativity has a significant external dimension that is worth examining more systematically. From an outside-in perspective, artistic and intellectual culture is most usefully understood not as a set of end products, such as movies, songs, drawings, and novels, but rather as a set of interconnected, relational networks of actors, resources, and emergent creative practices. Within those networks, creative practice is shaped by all that is culture, including the demands and established practices of knowledge communities and the conventions that crystallize around particular artifacts, techniques, and

materials. It is shaped, as well, by contests over prevailing conventions that arise both within and across cultural boundaries.

The points that I want to make here are informed substantially by methodologies in critical theory and STS that are themselves contested. The strand of critical theory known as deconstructionism and the strand of STS scholarship known as social constructivist theory of technology (SCOT) hold that texts/technologies have no fixed meanings but rather take on meanings ascribed by their readers/users.[10] These theories in turn have engendered two powerful critiques. First, both deconstructionism and SCOT have been criticized for ascribing a version of autonomy to human-generated artifacts. Second and more seriously, they have been criticized for rendering meaningful discussion about larger social and cultural processes impossible. The second critique in particular is compelling for its sheer entertainment value; at times the aversion to fixity within these scholarly literatures smacks of self-parody. It is tempting to conclude that the medium is the message. I think, though, that this is a mistake, and that legal scholars (or at least copyright scholars) have made the further mistake of being too inclined to assume that these substrands stand for their disciplines more generally.

The methodologies of critical theory and STS are most usefully understood as offering points of entry from which to explore the creation of meaning within complex cultural systems. Here the autonomy critique is a red herring; a central tenet of both critical theory and STS is that texts and technologies, and the social practices that cohere around them, are sites of evolving and contested meaning. The STS literature in particular emphasizes that a technology is in fact a "heterogeneous assemblage" of elements that together shape the particularities of its form and use.[11] Over time, these assemblages can shift in response to changing practices, discourses, and institutional alignments. This approach has potentially fruitful applications to the arts and intellectual pursuits that are the traditional subject matter of copyright, which develop within networks of cultural production. In this section, I use the term "networks" not to suggest that the study of culture is reducible to the study of network science, but instead to denote sets of interactions that are simultaneously fluid and constrained and that lack fixed, distinct borders of their own. Networks of cultural production are, of course, both situated within and constitutive of culture more broadly, but these networks also can overlap other sorts of cultural boundaries, and indeed the opportunism that characterizes working through culture makes some such overlaps inevitable. Both boundaries and boundary crossings play important roles in catalyzing cultural progress.

If creative practice is a heterogeneous assemblage of knowledge, materials, and institutions, what are its constituent elements? With respect to the accumulated knowledge that animates creative practice, the approach to the development of scientific knowledge developed by Thomas Kuhn suggests an analogous, multipart model of creativity. Kuhn distinguished between "normal science" and "paradigm shifts" in generally accepted scientific understanding. During periods of normal science, there is general agreement on the fundamental principles that are thought to structure physical or biological systems; during paradigm shifts, that general understanding undergoes radical, discontinuous change. Studies of artistic culture suggest a process that loosely parallels the one Kuhn described: iteration within established conventions, punctuated by

larger "representational shifts." In "normal science" mode, creative practice is more strongly constrained by existing institutions. At moments of representational shift, this is less true. Representational shifts in artistic practice do not inevitably disrupt artistic understanding the way that paradigm shifts in science do, because artistic practice does not require the same sort of grounding in fact that scientific practice does. In artistic and intellectual culture, different ways of seeing, hearing, and conceptualizing the world can more easily coexist. Occasionally, however, representational shifts can inaugurate powerful social narratives that are more closely equivalent to paradigm shifts. A good example of the latter is Adam Smith's "invisible hand," which fundamentally changed the way Western civilization understood economics by endowing the market with an independent, metaphorically embodied existence.

Processes of artistic and intellectual production are mediated by validating institutions, which propagate the established conventions of "normal science" and serve as the first line of reception for (or defense against) representational shifts. Networks of cultural production create particular fields and domains of expertise—for example, twentieth-century poetry or documentary street photography.[12] To an extent, the demarcation of fields and domains is created and maintained by the entities that traditionally have been the concerns of sociology: the communities and institutions that make up "art worlds."[13] Established taste-making institutions within art worlds play important roles in determining the fate of innovations, although new validating institutions will sometimes emerge.

The linked institutions of art worlds are not the sole custodians of "normal science," however. The processes of demarcation and definition extend beyond particular institutions (museums, critics, academic disciplines, and so on) to encompass more deeply embedded conventions. For example, as Chapter 3 discussed, scholars have explored the ways in which a particular understanding of authorship structures copyright's discourses about creativity, authenticity, and meaning. Another example is the distinction, difficult to pinpoint but nonetheless widely agreed to exist, between pornography and art. These and other conventions about the nature of authorship and art are maintained and reproduced by a broad and heterogeneous array of social institutions. In addition, as the Frankfurt School of cultural theory argued and as contemporary media scholars have shown, capitalist models of cultural production and distribution exert enormous influence on the form and content of creative expression. Corporate employers in the creative industries, corporate channels of media distribution, and providers of advertising all shape tastes and conventions in a variety of ways.

The simplistic, content-neutral "marketplace of ideas" model discussed in Chapter 3, in which innovations succeed or fail based on their merit, usefully draws our attention to audience response but does not consider or attempt to describe these overlapping fields of institutional, cultural, and material influence. It therefore cannot explain why some innovations capture the imagination of the relevant public and others fade away unnoticed, nor why the innovations that catch hold take the particular forms that they do. For example, the debate at the start of the twentieth century about whether photography was an art form or merely a technical endeavor required the generation and embrace of a new narrative about art and authorship. That narrative, which emerged as practitioners

of photography built an art world of their own, privileged some aspects of photographic technique over others. A similar process of discursive construction has been underway as practitioners of hip-hop attempt to define both an aesthetic and an art world for themselves and struggle with some of the contradictions that process has entailed.[14]

Social groups also mediate creative practice, functioning both as users and as immediate cultural environments for their members. Such groups can play important roles in determining both conceptions of artistic and intellectual merit and conceptions of the appropriate social domains of creative practice. Moreover, social groups and validating institutions may be interrelated in complex ways. In the case of indigenous or so-called traditional cultures, validating institution and social group are closely linked, so that conceptions of merit are closely bound up with perceptions of cultural identity. As Madhavi Sunder has described, in these circumstances contests over cultural authority can become contests over the meaning of cultural membership. In other cases, as the example of hip-hop illustrates, the relationship between social groups and (traditional or majority) validating institutions may be more nearly disjunctive, and contests over cultural authority can become a defining condition of subcultural identity.[15]

In addition, because creative practice involves physical action by embodied human beings, it is shaped not only by the patterns of knowledge and discourse that crystallize around content in the abstract, but also by the patterns of behavior and discourse that crystallize around artifacts, materials, and social spaces. Representational shifts can result from the opportunities generated by new artifacts and materials and by new spatial configurations. For example, the chemical and physical requirements of traditional, film-based photography emphasize skill in "seeing," "capturing," and printmaking; in digital photography, the potential for manipulation of the initial image shifts the focus to reenvisioning and altering observed reality in an infinite number of ways. The built environment of the concert hall, the home stereo system, the personal digital-music player, and the home digital-recording studio all encourage some forms of interaction with music and some techniques of composition to a greater degree than others. Processes of artistic bricolage are similarly both conceptual and physical. The genre of world music does not simply combine abstract compositional technique from different musical traditions, but also combines disparate rhythms, instruments, and performance configurations. Judges deciding copyright disputes over music sampling have wondered why defendants did not simply make their own recordings of the desired excerpts, but the practice of sampling derives its meaning as intracultural dialogue precisely from using the original recording. In these cases and in countless others, creative practice coalesces around the material and artifactual resources available within cultural landscapes.

Critically, each of the dynamics described above infuses creative processes and practices with a species of path-dependence characterized not by a rigid determinism but by a more fruitful complexity. Creative practice sits at the intersection of struggles between and among elite, corporate, and popular tastemakers over the division of cultural authority, which in turn affect prevailing interpretations of what counts as "normal science," and for whom. To a significant degree, especially in periods of "normal science," creative practice is

constrained in matters of both form and substance. At the same time, creative practice is opportunistic, indiscriminate, and centrally dependent on the borrowing, appropriation, and reworking of whatever it encounters. Situated users have multiple, overlapping affiliations with taste-making institutions and social groups, rendering patterns of cultural influence more complex. And to the extent that cultural artifacts and practices permit a variety of uses and interpretations, their developmental paths are never wholly within anyone's control. Both their origins and their continuing relevance are determined by negotiation and renegotiation at the boundary crossings between overlapping cultural and social networks.

The Play of Culture

The foregoing discussion suggests, as it is meant to, that creative practice is substantially determined by cultural context. At the same time, it is equally clear that creative practice is not fully determined by cultural context; if it were, creative outputs would be easy to predict and we could all move on to other problems. Culture does not function in the same way that chemistry or physics or electricity functions. If you mix gaseous hydrogen with gaseous oxygen, you will get an explosion and a few drops of water, in exactly predictable amounts, every time. If you mix Homeric epics with the history and folk traditions of the American South, you may get *O Brother, Where Art Thou?* or *Cold Mountain* or any number of other possible results. The question thus remains: what, if anything, is it possible to say about all that is unpredictable in artistic and intellectual expression? What increases the likelihood that someone will see, hear, or conceptualize the world differently in the first place? A critical ingredient is the scope that networks of cultural production afford for the play of everyday practice, including not only the extent to which they permit purposive creative experimentation but also the extent to which they enable serendipitous access to cultural resources and facilitate unexpected juxtapositions of those resources.

Some copyright scholars have challenged the presumption of deliberate authorial purpose that undergirds both rights theories and economic theories of copyright, arguing that artistic and intellectual innovation flow in more open-ended fashion from processes of creative play.[16] Play theorists caution that art and play are not one and the same; art involves a type of symbolic mastery that play need not involve. At the same time, they underscore the recurring and inevitable linkages between play and playfulness in creative enterprise. Research in the psychology of creativity supports this position and suggests that a certain kind of unstructured freedom to "see what happens" is an important determinant of creative success.[17]

Yet other social science research also suggests that new pathways of artistic and intellectual exploration are opened partly by types of serendipity that are even further removed from individual control. Just as fields of study and domains of expertise are important determinants of creative practice, so disruption and cross-fertilization between extant fields and domains are important conditions of creative possibility. In science, important paradigm-shifting theories have been generated by scientists who migrated to one field after being trained in another. Others, such as Einstein's theory of relativity, appear to have been stimulated by fortuitous encounters with concrete, practical problems that previous theoreticians had not considered. In art, representational shifts often

have emerged following serendipitous encounters with artifacts, techniques, and assumptions originating within different creative traditions.[18]

Scholars who point to the importance of the chance encounter that yields unexpected fruit are describing both creative play and a different sort of play that is most closely analogous to the play-of-circumstances described in Chapter 2. Like the play-of-circumstances more generally, this sort of play—call it the "play of culture" —has a distinct phenomenology that revolves around the unexpected encounter. Logically and chronologically antecedent to the creative play performed by individuals and groups, the play of culture supplies the unexpected inputs to creative processes. Creative practice appropriates the unexpected and puts it to use; the results of this process, iterated over and over, yield what we name, and prize, as progress.

Together, the play of culture and the processes of creative play that it sustains are what prevent established ways of seeing, hearing, and conceptualizing the world from becoming calcified. The play of culture also fuels serendipitous consumption by situated users and inclines audiences toward the new. For both users and user-authors, the chance encounters it generates are sources of dissonance, provocation, meaning, and unexpected beauty. Sustaining the conditions for those encounters should be a central goal of any system of copyright law.

Mass Culture and Popular Culture in Networked Space

Some copyright scholars and cultural commentators argue that an unregulated global communications network spells doom for the entire enterprise of for-profit cultural production. Commentators who take this position disagree on whether that result should be mourned or celebrated. According to some, in an age of uncontrolled copying, no one will want to invest in the creation of new music, movies, television shows, or books, and we will return to a predigital dark age. Others rejoice at the prospect of mass culture's imminent demise. Freed from the dominance of the culture industries, they claim, we will enter a golden age of amateurism and unfettered creative play in which every individual will have access to cultural resources and collaborators from around the globe. So far, at least, the reality is more complicated than either description suggests. Mass culture is not dead, nor is it likely to be—and that fact should be cause for celebration among advocates of mass culture and advocates of amateur culture alike.

Let us begin by returning to Chapter 2's characterization of networked space as offering a simultaneous opening out and closing in of communicative opportunity. We can trace this dynamic emerging in the realm of artistic and intellectual culture. The emergence of networked space expands the universe of cultural resources available to network users, both by making many existing resources more accessible and by introducing new ones. As existing networks of cultural and institutional influence extend more broadly, they encounter and overlap with a larger number of other networks, and their boundaries become more porous. This in turn increases the likelihood of the unplanned, fortuitous discovery and the unforeseen juxtaposition. Global communication networks

offer more effective access to a wider variety of cultural products, and create a correspondingly greater potential for fruitful cultural hybridization.

Global communications networks also enable new patterns of creative practice. The practices of distributed peer production and "produsage" described in Chapter 2 rely on networked information and communication technologies for both the economies of scale they enable and the social and geographic fluidity that they create. As Yochai Benkler explains, abundant connectivity and excess computing capacity create the conditions for new kinds of collaborative production, such as open-source software and *Wikipedia*, that otherwise would not be feasible economically or socially. In the networked information society as it has developed thus far, artistic and intellectual culture also is less dependent on established channels of production and distribution. For both these reasons, in networked space, artistic and intellectual culture is not only more accessible, but also more diverse, vibrant, and eclectic.

That, however, is only half of the story. Users are still situated within real communities, geographies, and cultures. Networked information technologies alter patterns of information access in important ways, but they do not eradicate the particularities of cultural landscapes or change the culturally contingent nature of creative practice. The process of engaging with networked information resources is still a process of working through culture, node by node and link by link.

Networked information technologies also do not displace mass culture from its privileged position within the cultural landscapes of situated users. The same network effects that contribute to the success of distributed peer production work to ensure the continuing relevance and even dominance of mass culture. Scholars allied with the "free culture" movement have argued that a wide variety of intermediaries will spring up to match the needs and desires of Internet users, and they have been right. Within the "rich get richer" ecology of the network, however, the intermediaries that supply authorized access to works of mass culture continue to enjoy considerable power. As global information networks increase the penetration of mass culture through all major media and to all corners of the globe, alternative cultural resources require more effort to find. And to the extent that the profusion of intermediaries creates more potential for confusion, mainstream intermediaries that offer familiar interfaces and reliable quality likely will continue to enjoy reliable market share.

Yet the continuing dominance of mass culture should not be an occasion for gloom. Disdain for mass culture is fashionable among copyright scholars, but it is shortsighted. Mass culture is, for better or worse, a vital part of the cultural landscapes that situated users inhabit. Works of mass culture unite global networks of fans, creating communities organized around shared experience. Economically minded scholarship addressing the so-called solidarity goods phenomenon recognizes this, but then misses the point by complaining about the very attributes that make solidarity goods valuable: their standardization and their unregenerately middlebrow appeal.[19]

Mass culture also forms the substrate for much that is proudly labeled alternative culture. Many of the new forms of expression that commentators cite as representatively amateur—musical and video mash-ups, fan fiction and fanvids, compilations of information about popular entertainment franchises,

blog commentary on articles culled from the mainstream media, and the like—build from a foundation laid by mass commercial culture. All this adds up to the conclusion that some degree of shared orientation to mass commercial culture is both inevitable and good, for amateurs as well as information plutocrats, and should be distinguished from the relative lock-in produced by copyright rules that place large sectors of the cultural landscape off limits to would-be borrowers.

At the same time, much of what looks like change is really continuity; remix culture has always existed. Creative practitioners have always drawn inspiration from myth, legend, and celebrity. Shakespeare, for example, often used the device of a play-within-a-play to retell the stories of classical mythology, as when the hapless tradesmen of *A Midsummer Night's Dream* perform the tragedy of Pyramus and Thisbe for the royal court. That performance and others like it are the original fan fiction, a practice of participatory and critical engagement with cultural works that stretches back hundreds (even thousands) of years. Renaissance painters clothed their noble patrons in togas and placed them in biblical tableaux. Jumping forward to the twentieth century, one can think of no more omnipresent visual icons of the Pop art movement than Andy Warhol's monumental Campbell's soup cans or his silk-screened portraits of celebrities such as Jacqueline Kennedy Onassis and Marilyn Monroe. Among the works of the twentieth-century painter Larry Rivers is a series of portraits of great artists and performers in the settings that inspired them. In one, the impressionist painter Henri Matisse stares out from within a papier-mâché reproduction of his celebrated *Red Room*; in another, Charlie Chaplin climbs the assembly line in the film *Modern Times*. Only the Matisse work was then in the public domain, but it is hard to see why different conventions should govern the two works, each of which portrays an icon of cultural modernism.

In the space between the middlebrow and the avant-garde, mass culture catalyzes processes of cultural hybridization that arise as creative practice exploits what is ready to hand in the cultural landscape. Today, pop culture rather than Greek mythology or Catholic hagiography is the primary source of new material. That change was only to be expected and should be celebrated by the culture industries, since it underscores mass culture's central importance in the cultural lives of situated subjects. What is most firmly rooted in the public consciousness is not Shakespeare or Homer, but the products of culture industries ranging from Disney and Warner Bros. to Bollywood and Hong Kong.

The benefits of this cultural hybridization do not run only one way. As Naomi Mezey and Mark Niles explain, mass culture benefits from "an interdependence, even a circulation, between mass and popular culture," since "[p]opular culture makes use of the mass cultural resources that capitalism provides, and mass culture often co-opts and markets pop cultural practices."[20] The mass-culture industries borrow indiscriminately from popular, indigenous, and elite cultural forms. Big-budget films adapt fairy tales and traditional legends from around the globe; entrepreneurs bring traditional African music to Western recording studios and the Broadway stage. And as films from *Amadeus* to *Pollock* to *Basquiat* to *Shine* to *Shakespeare in Love* demonstrate, Hollywood has found endless creative fodder in the lives of artists from all eras.

Networked information technologies do mediate processes of cultural hybridization in new and often unprecedented ways. Yet this too was only to be

expected; as we saw in Chapter 2, evolving artifacts and technologies mediate and re-mediate experienced reality, altering users' capabilities and simultaneously reshaping users' perceptions of the world around them. This is as true for the cultural world as it is for the natural, physical one. Consider, once again, the example of photography. As the historical record expanded to encompass photographic documentation, the scope of historically inspired borrowings expanded correspondingly. The most-cited example of this point is probably the big-budget film *Forrest Gump*, which applied the techniques of collage to document its eponymous hero's involvement in various important twentieth-century events, but the documentary form predates *Forrest Gump* by many decades. And once again, the point goes far beyond Hollywood and far beyond collage. I have a friend who paints stunning, fauvist portraits of great jazz musicians, most of whom are no longer living. Because she can no longer see her subjects in person, she works from old photographs. To call this infringement, or derivative in the pejorative sense, would be to misconstrue completely the deeply creative nature of her enterprise. Shepard Fairey created his iconic portrait of Democratic presidential candidate Barack Obama by working from photographs that were his only means of access to his subject. In each case, the photographic record has offered situated users a different way of perceiving history and celebrity, and a new entry point for the reworking of cultural narratives.

Most significantly, networked information technologies heighten situated users' perceptions of the malleability of culture. The boundaries of creative works seem less fixed and more readily amenable to revision, and this creates new fluidity in the cultural environment. As Yochai Benkler, Jack Balkin, Niva Elkin-Koren, and many others have argued, the enhanced malleability of texts, images, and sounds also has important democratic consequences. Widespread, relatively inexpensive access to technologies for manipulating and distributing creative content has democratized cultural production, providing tools for more people to participate in the processes of appropriation, reworking, and cultural dialogue in which creative people have always engaged.

Once again, however, the mass-culture industries also benefit from both the dissolution of boundaries and the adaptive flexibility that digital technologies enable. Successful cultural properties can be versioned in innumerable ways, sliding with ease from the big screen to the home theater to more immersive and participatory gaming environments. Movies on DVD offer deleted scenes, alternate endings, "director's cut" versions, and behind-the-scenes commentary on the production process. These offerings acknowledge that the boundaries of creative works are fluid and that reworking of sounds, images, and texts continues to lie at the heart of the creative process as it is understood by practitioners ranging from the iconoclastic to the mainstream. And the malleability of mass-culture products in turn deepens their cultural power, creating the conditions for their pervasive embedding within the cultural landscapes of situated users around the globe.

In sum, reports of the death of mass culture in the era of global information networks have been greatly exaggerated. There is every reason to expect that in the emerging networked information society, mass culture will continue to enjoy and even to increase its global dominance, and that its ubiquitous offerings will continue to supply inspiration for remix culture, both high and low.

It will do so, however, in a cultural ecology that is more diverse, more democratic, and more volatile. Sustaining this cultural ecology is where the copyright system's core mission lies.

Copyright and Cultural Mobility

This approach to theorizing creative practice and to understanding the relationship between mass culture and popular culture has direct implications for copyright policy and doctrine. Decentering creativity disrupts the tight linkage between copyright and individual, internal creativity that has come to dominate public debate about copyright issues, and that pervades legislative and policy processes. That disruption, in turn, enables an account of the oft-invoked "copyright balance" that emphasizes the process of working through culture and the importance of play within cultural landscapes, and that underscores the connections between cultural mobility and human flourishing. This twofold reframing dictates a very different approach to questions of optimal copyright scope.

Lobbyists for the copyright industries are in the habit of asserting that copyright is the single most critical prerequisite for a vibrant artistic and intellectual culture. Some of this is theater driven by political expediency. No one wants to be against creativity, and if copyright equals creativity, then no one wants to be against copyright. Yet beneath the rhetoric, both copyright lawyers and copyright scholars tend to assume that copyright law is centrally important in stimulating a high level of creativity. Since copyright theory and jurisprudence persistently devalue the role of context in shaping culture, that assumption is unsurprising. The tight linkage between copyright and creativity in turn fuels romantic author narratives and justifies drawing firm distinctions between authors, on the one hand, and consumers, imitators, and improvers on the other. Those distinctions dominate the current landscape of copyright law; they undergird broad rights to control copies, public renderings, and derivations of copyrighted works, as well as expansive readings of the rules that create liability for technology providers.

Decentering creativity challenges the widespread assumption about the nature and direction of copyright's influence on creativity in two ways. First and most obviously, it tends to suggest a much more modest conception of the role that copyright plays in stimulating creative processes and practices. Copyright fulfills some important economic functions (of which more shortly), and therefore plays an important role in organizing cultural production, but it is hardly ever the direct cause of a representational shift in creative practice, nor does it appear to play a direct role in motivating much that is "normal science." Scholars who ask how deploying copyright might stimulate creativity (as opposed to production) are asking the wrong question. Neither creative inspiration nor the creative outputs that follow from it are so easily engineered.

Questions remain, however, about the extent to which the contextual factors that are more important in stimulating creativity are amenable to social engineering. Arguably, the dynamic that I have described would exist in any social and economic system that is sufficiently complex. And if creativity is not especially amenable to social engineering, perhaps both those whose primary

concern is social engineering and those whose primary concern is strong copyright can simply take it as a given. At the very least, then, one might posit that strong copyright does no harm. Put differently, if copyright is not the most important factor in stimulating creativity, it still may be the most important factor within our control. If copyright serves other important functions, such as the organization of cultural production and the distribution of artistic and intellectual goods, perhaps strong copyright is good policy.

Here the decentered model of creativity makes its second contribution: it provides a firmer foundation for arguments about the systemic harms that a regime of copyright can produce. Critics of copyright maximalism have long argued that overly rigid control of access to and manipulation of cultural goods stifles artistic and cultural innovation, and a growing body of anecdotal evidence suggests that copyright's "permission culture" does exert a substantial constraining influence on creative practice.[21] Similarly, research in the psychology of creativity suggests that attempts to impose a rigid structure on the creative process quickly become counterproductive and that the success of the creative process hinges in part on the ability to avoid externally imposed distractions.[22] A model of creativity grounded in the methods of contemporary social theory supplies both a rigorous analytical underpinning for those arguments and observations and a discourse in which to frame them. Within this framework, a regime of copyright that aims to promote cultural progress must be assessed on its effects on creative practice by situated users, and on the extent to which it renders elements of the cultural landscape more or less accessible. And within this framework, those who advocate more limited copyright can be "for" rather than "against" creativity.

What legal regime, though, does the decentered model of copyright recommend? It might be argued that copyright and play are definitionally incompatible. There is an inevitable tension between social theorists' emphasis on mobility, emergence, and decentering and the legal system's need for fixity, clarity, and predictability. Some theorists from both sides of the law/social science divide argue that legal recognition of particular kinds of claims—to specific forms of cultural property or to particular formulations of human rights—itself works a form of imperialism in which the law's need for doctrinal and definitional certainty is inimical to the demands of emergent social processes.[23] To an important extent, though, this social science critique of law's possibility ignores its own most powerful disciplinary insight: law is not separate from social systems. As Naomi Mezey explains, the relationship between law and culture is an interdependent one characterized by cycles of definition, slippage, and redefinition.[24] Within this general pattern, law and culture evolve together; the fixity that law imposes on culture is a matter of degree and may be a defensible means of pursuing other social goals that are themselves evolving.

In designing a good system of copyright, then, we also must consider the other social goals that a system of copyright serves. Here economic theorists' emphasis on the production and distribution of cultural goods becomes important and can be restated more accurately: copyright is a means of creating economic fixity, and thus predictability, in the organization of cultural production. Control of copying, manipulation, and derivation enables the organization of entire sectors of economic activity in ways that produce a variety of concrete benefits, ranging from jobs and exports to independence from patronage to cul-

tural solidarity goods. Those are desirable goods: a society characterized by complete lack of economic certainty would be unstable; state control of cultural production would be undesirable; and a culture without shared expressive referents would be far less enjoyable. But these arguments too have been pushed to extremes in the copyright wars. Lobbyists for the copyright industries argue that because copyright enables economic and cultural productivity, truncating copyright entitlements would be disastrous not only for their employers but also for the country more generally. Neither conclusion follows. In the real world, which is the world that creative communities have always inhabited, play and economic stability are not mutually exclusive. And it is well recognized that economic fixity is not an unmitigated good.

It is therefore correct to say that copyright requires a balancing act, but the decentered model of creativity prompts us to redescribe what copyright balances. What is required is not a balance between present authors and the abstract "public," nor between valuable entitlement and ephemeral "deadweight loss," both formulations that encourage would-be balancers to equate relative concreteness with relative importance. Balance also does not refer merely to a process by which the claims of competing interest groups are aired en route to striking a deal. As Robert Burrell and Allison Coleman have trenchantly observed, references to balancing in copyright rhetoric contain a "semantic ambiguity" that results in a slippage between notions of balance as process and notions of balance as correct result.[25] The notion of balance that I mean to invoke is substantive and concerns the ways in which copyright's goal of creating economic fixity must accommodate its mission to foster cultural play.

Economic analysis can help us understand some of the considerations relevant to the balance between economic fixity and cultural mobility, but both valuation and incommensurability problems prevent a comprehensive summing of the relevant costs and benefits. Modeling the benefits of artistic and intellectual flux is hard to do, and comparing those benefits with the more tangible, predictable gains from existing models of creative production is even harder. The emphasis on "creative destruction" now popular among copyright scholars invokes a historical theory, not an economic theorem.[26] Moreover, creative destruction is nicest for those who do not have to undergo it. It is hardly surprising, then, that economic theorists can't agree on how to model the optimal regime for promoting improvements. No one is against creativity, but that apparent unanimity conceals rather large disagreements about how wholeheartedly and unreservedly we are for it. Modeling the opportunity costs of cultural fixity is equally difficult. Although we can say with some confidence that cultural fixity affects individual behavior, it is hard to assess its cumulative effect on unknown future behavior. To the extent that economic modeling focuses on what is known (or assumed) about benefits and costs, moreover, it tends to crowd out the unknown and unpredictable, with the result that play remains a peripheral consideration, when it should be central.

To grapple with these problems, a larger tool kit and a different attitude toward social engineering are required. Methodologically, the distinction is one between a social theory of creativity that embraces an eclectic range of methods, including economic methods, and an economic model of creativity that has room only for its own methods and that consequently distorts in predictable and predictably damaging ways. Substantively, the distinction is one between de-

ploying known cost-benefit calculations in an attempt to generate predictable results and deliberately leaving room for unpredictable results to emerge. Creativity requires breathing room and thrives on play in the system of culture. Copyright law should be judged based on how well it advances those goals.

Rights theories, meanwhile, can help us articulate some of the aspirations that a good regime of copyright should promote, but furthering those aspirations requires moving beyond abstract ideals to concrete guarantees. Yochai Benkler powerfully advances the cause of a robust vision of liberal humanism that "is concerned first and foremost with the claims of human beings as human beings."[27] Within that vision, it makes sense to talk about liberal ideals of autonomy and self-determination and to understand those ideals as bound up with a larger commitment to human flourishing. But a commitment to human flourishing also requires more direct engagement with patterns of cultural progress and with the material and spatial realities of cultural processes. Autonomy is exercised, and self-determination pursued, by working through culture. Laws granting rights in artistic and intellectual expression should be designed with that process in mind.

Notes

[1] Craig, "Reconstructing the Author-Self," 265.

[2] See, for example, de la Pena, *The Body Electric*; Marvin, *When Old Technologies Were New*, 109-51; Hayles, *How We Became Posthuman*, 25-49, 192-221; Coppa, "Writing Bodies in Space."

[3] For an exploration of textuality's roots in oral tradition, see Clanchy, *From Memory to Written Record*, 266-93.

[4] Coppa, "Writing Bodies in Space," 243.

[5] For an introduction to the "Mary Sue" genre, see Chander & Sunder, "Everyone's a Superhero."

[6] See Katyal, "Semiotic Disobedience"; see also Penalver & Katyal, *Property Outlaws*, 169-82.

[7] Schur, *Parodies of Ownership*, 65-66.

[8] For discussion of the role of the copy over time, see Homburg, *The Copy Turns Original*.

[9] See J. Peter Burkholder, ed., "Musical Borrowing: An Annotated Bibliography," http://www.music.indiana.edu/borrowing/.

[10] A useful introduction to SCOT is Brey, "Social Constructivism for Philosophers of Technology." On deconstruction, see Derrida, *Of Grammatology*; Balkin, "Deconstruction's Legal Career."

[11] For examples of this approach, see Bijker, *Of Bicycles, Bakelites, and Bulbs*; Latour, *The Pasteurization of France*; Law, "Technology and Heterogeneous Engineering."

[12] See Bourdieu, *The Field of Cultural Production*, 29-73; Csikszentmihalyi, *Creativity*, 36-45; Gardner, *Creating Minds*, 34-40.

[13] See generally Becker, *Art Worlds*.

[14] See Farley, "The Lingering Effects of Copyright's Response to the Invention of Photography"; Schur, *Parodies of Ownership*, 166-87.

[15] See Sunder, "Intellectual Property and Identity Politics," 71-73, 91-94; Arewa, "From J. C. Bach to Hip Hop," 79-86; Schur, *Parodies of Ownership*, 24-41.

[16] See, for example, Lange, "Reimagining the Public Domain," 482-83; Lange, "At Play in the Fields of the Word," 148-51; Moglen, "Anarchism Triumphant," 126-29.

[17] On the relationship between art and play, see Sutton-Smith, *The Ambiguity of Play*, 133-50; see also Eisner, *The Arts and the Creation of Mind*. On the relationship between creativity and open-endedness, see Amabile, *Creativity in Context*, 115-20, 231-32: Csikszentmihalyi, *Creativity*, 120-21.

[18] Discussions of the origins of paradigm-shifting theories in science include Simonton, *Origins of Genius*, 123-25; Galison, *Einstein's Clocks, Poincare's Maps*, 221-63. Discussions of the origins of artistic inspiration include Boorstin, *The Creators*, 384-94; Geller, "*Hiroshige v. Van Gogh*," 39-42; Randall, *Pragmatic Plagiarism*, 238-40.

[19] See, for example, Pessach, "Copyright Law as a Silencing Restriction."

[20] Mezey & Niles, "Screening the Law," 100. On the creative fruitfulness of culture markets generally, see Cowen, *In Praise of Commercial Culture*.

[21] See, for example, Aufderheide & Jaszi, *Untold Stories*; Heins & Beckles, *Will Fair Use Survive?*; Lessig, *Free Culture*.

[22] See Amabile, *Creativity in Context*, 115-20, 231-32; Csikszentmihalyi, *Creativity*, 120-21.

[23] See, for example, Brown, *Who Owns Native Culture?*, 209-27; Riles, "Anthropology, Human Rights, and Legal Knowledge," 52-65.

[24] Mezey, "Law as Culture," 35.

[25] Burrell & Coleman, *Copyright Exceptions*, 188-91.

[26] See, for example, Ku, "The Creative Destruction of Copyright," 294-311. The theory of creative destruction originates in Schumpeter, *Capitalism, Socialism, and Democracy*, 81-86.

[27] Benkler, *The Wealth of Networks*, 19.