

RESEARCH

Romantic Remixers: Hidden Tropes of Romantic Authorship in Creators' Attitudes about Reuse

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This article draws from data generated in existing studies in Australia and the U.S. to examine how creators describe themselves and their creative acts when they are recombining or trying to combine copyrighted work with their own work. It finds a surprising congruence of self-perception across very different copyright regimes and creative practices. An undercurrent of Romantic notions about the originality of creative genius runs through even cutting-edge digital practices. This attitude then bolsters strategies used by large media interests to expand copyright monopoly rights and extend them internationally. Results have implications both for policy and advocacy, in particular, how creators respond to campaigns for expanded copyright exceptions, and a reluctance by even remix creators to challenge the legal structures that restrict their creative practice.

Keywords: copyright; Australia; US; Romantic remixers; Romantic authorship; Policy; Advocacy

Introduction

International debate over the extent and function of copyright law has intensified with the growth in digital media and Internet-based media distribution. In what Bill Patry has called the 'copyright wars', large corporate interests, typically large media and software companies on one side, and large tech companies on the other, battle over the future of copyright policy (Patry, 2009). The interests of individual creators are invoked for political purposes by both sides. In particular, media and software publishers and collection societies have conducted broad public campaigns linking copying with stealing and piracy (Patry, 2009; Sinnreich, 2013; Litman, 2006; Gillespie, 2007). 'Copying', in these debates, is not just wholesale copying for commercial purposes. Rather, it encompasses many of the copying practices that creators themselves employ in learning, building, creating and remixing, including copying of only small parts of a preexisting work.

As others have argued, restraints on copying can inhibit creative production, chill innovation, and ultimately harm creators (Lessig, 2004; McLeod & DiCola, 2011). But there is a long tradition in which business interests that monetize creative products invoke the interests of the author when seeking to strengthen copyright monopolies (McCutcheon, 2012; Marshall, 2002). In doing so, they rely heavily on the trope of the romantic author and an understanding of creative practice as fueled by individual creative genius. The implication is that creators should not need to draw on the works of others to create something new; copying, therefore, is often regarded as a form of piracy (Lessig, 2004). The fiction of the transcendent originality involved in the creation of new work serves to legitimate legal and corporate control over how cultural texts are circulated and reworked (Coombe, 1998). The trope of the romantic author, therefore, has potentially profound ramifications for both creators and users, by dictating *how* existing work may be engaged with and *who* has power to imbue content with 'cultural authority' (Chon, 2012).

In this article, we explore how understandings of romantic authorship manifest among those creators who consciously and intentionally copy and repurpose existing content in the creation of their own works. We find that the tendency to glorify the romantic author and to privilege romantic conceptions of originality is noticeably present even among recombinant creators. We posit that this tendency can be exploited

by corporate interests to ratchet up copyright protections and enforcement in ways that may actually run counter to creators' interests. While the ideal of romantic authorship, which glorifies creativity as something transcendent, can help creators to derive a sense of worth in what they do, it can also be exploited to justify low commercial payments for creative work, stifle recombinant creation, and prevent meaningful legal and policy reform that might facilitate ongoing creation. In this article, we explore these complex and conflicting facets of romantic authorship in practice, and we seek to illuminate how contested notions of originality may impact the beliefs that creators hold. We argue that these notions should be carefully interrogated in future debates about copyright law and policy; appeals to the 'interests of creators' are more tortuous than they may seem.

Romantic Authorship in the Copyright Debates

The Romantic conceptualization of authorship, in copyright debates, has a powerful role. The Romantic notion postulates that authors create from a well of internal inspiration, free from the influence of others (Woodmansee & Jaszi, 1994; Kwall, 2006). As we note further below, it is this notion that is frequently used to justify copyright owners' stakeholder arguments for stronger copyright protection and enforcement, and for expanding constraints on how culture is circulated and reconstituted.

The romantic author is someone of enormous creativity and imagination. He – because the author was historically construed as a 'he' – is unique and divinely gifted (Silbey, 2008, p. 343). He receives inspiration as a proverbial 'strike of lightning'; the source of his creativity is transcendental: "man's capacity for artistic creation mirrors or imitates God's creative capacity" (Kwall, 2006, pp. 1952–53). Silbey has observed that "the co-existence of these dual qualities in the author, the human and the divine, functions as an ideology of uniqueness to underwrite the authority that authorship garners" (Silbey, 2008, p. 343).

That art is seen as spiritual as much as material accounts for the frequent disconnect between art and the market. The image of the starving artist in the garret is pertinent here – artists must endure poverty because the market is slow at adapting to their genius (Marshall, 2002, p. 2). Thus, hardships experienced by creators, particularly financial hardships, are readily explained by the Romantic author trope – they are directly connected to the originality displayed by the artist. This, in turn, leads to phrases frequently appearing in discourses surrounding creative practice – of artists waiting for much-deserved recognition; of the glorious struggle of art; of creators finally receiving their due.

The Romantic notion of the author, on which so much of rightsholders' public campaigns are based, has been criticized by sociological, psychological and legal scholars over the last several decades as being at odds with realities of cultural creation (Woodmansee & Jaszi, 1994; Coombe, 1998; Csikszentmihalyi, 1996; Bently, 1994; Lessig, 2004; McLeod, 2007; Silbey, 2008). Critical legal scholarship has drawn attention to the problems with the Romantic author trope, by examining more closely how and why people create. In contrast to the ideal of the divinely inspired 'author-genius' whose work is utterly unique, this scholarship has highlighted that authors routinely seek inspiration from the creative works around them and draw on these works when creating their own (Cohen, 2007, 2011; Kwall, 2005; Fromer, 2010; Chon, 2012). The literature reveals the connection between authors and users by demonstrating that they act in notably similar ways when they experience, experiment with and produce creative works (Tushnet, 2009; Silbey, 2011; Suzor, 2014). Cohen calls this person 'the situated creator' – someone who is both author *and* user, and who draws on the world around them in their creations (Cohen, 2007).

The problems with Romantic authorship are closely tied to problems with the notion of originality. Rose describes the concept of 'originality', which underlies the grant of copyright, as "at best a problematic term" (Rose, 1988, p. 78), arguing that "authors do not really create in any literal sense, but rather produce texts through complex processes of appropriation and transformation" (Rose, 1993, p. 8). He observes, "What current literary thought emphasizes is that texts permeate and enable each other, and from this point of view the notion of distinct boundaries between texts, a notion crucial to the operation of the modern system of literary property, becomes difficult to sustain" (Rose, 1988, p. 78). Foucault famously argued that 'the author' is really a construct – "these aspects of an individual which we designate as making him an author are only a projection... of the operations that we force texts to undergo [and] the connections that we make" (Foucault, 1979).

But as others have noted, "the cult of the romantic author [...] runs deep" (Silbey, 2008, p. 343) and "has proven both durable and adaptable" (Saint-Amour, 2003, p. 6). Romantic conceptions of creative originality, uniqueness, and individuality flourished in the mass media era, promoted as they were by large media companies, and continue in an Internet era (Chon, 2012). In fact, WIRED magazine, the standard-bearer of digital innovation culture, notoriously uses this trope (Streeter, 2010, p. 170). Its pervasiveness can also be seen

in legal decisions, both in Australia and the U.S. (see, e.g., *Rogers v. Koons*, 960 F.2d 301 (2d Cir. 1992); *EMI Songs Australia Pty Limited v Larrikin Music Publishing Pty Limited* [2011] FCAFC 47). The Romantic author is “an intransigent shape-shifter” (Chon, 2012), remarkably adaptive to new technologies and contexts.

Some scholars have argued that the ideology of the Romantic author is, in fact, a result of a cultural history that has been conditioned by “a consolidating and expanding copyright regime” (McCutcheon, 2012, p. 91). The construction of the Romantic author – and understandings of historical authors’ inherent originality – is therefore both highly selective and retroactive, in line with the growing maximalism of copyright law over time (McCutcheon, 2012; Macfarlane, 2007). McCutcheon has observed that the trope of Romantic authorship “has become a standard, disingenuous justification for corporate lobbying and litigation against both the expansion of appropriation art forms (including user-generated content) and the exercise of users’ rights like fair dealing to protect and promote such art forms” (McCutcheon, 2012, p. 73). The figure of the Romantic author is the “rhetorical weapon of choice” for copyright maximalist interests, which are generally corporate and not individual in nature (McCutcheon, 2012, p. 72–73).

One does not have to look far to find examples of large-scale copyright industries adopting the language of Romantic authorship. The Recording Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) are two of the largest pro-copyright lobbying consortia in existence today. Both count global corporations including Warner Brothers, Sony, and Universal among their members. The interests of the RIAA and MPAA are undoubtedly industry rather than individual, but their mission statements and public documents are steeped in allusions to individual originality. The RIAA website states: “Investing in great artists and protecting their creative freedom is at the heart of our work” (RIAA, 2018). Similarly, the MPAA claims to represent “a community of storytellers at the nexus of innovation, imagination and creativity” (MPAA, 2018). Recently, in advocating for a retrospective extension of copyright for pre-1972 music recordings, the RIAA declared that it was seeking to “correct injustice and ensure that music creators who made these timeless recordings finally get their due” (RIAA, 2018). As Lee Marshall has argued, if the content industries want to advance law reform that is against the public interest (and, he contends, “copyright extensions almost undoubtedly are”), then they must have a compelling rationale to do so. “If copyright is understood as a homage to artists, then if there is a conflict of interests in copyright, it is assumed that the rights of artists (and by extension, the rights of the industry who nurture artists) take precedence over the rights of the public” (Marshall, 2002, p. 6).

But where does this leave those individual artists and creators? More specifically, what relationship do those artists who *consciously* adopt and repurpose the works of others have with copyright’s trope of ‘originality’? Some scholars and advocates (e.g. Bollier, 2008; Benkler, 2006; McLeod & DiCola, 2011; Vaidhyanathan, 2001; Schloss, 2004; Demers, 2006) have postulated that participants in remix culture, also referred to as configurable (Sinnreich, 2010), spreadable (Jenkins et al, 2013), and recombinant culture, manifest creative attitudes and actions that defy the strictures of copyright policy. Many more creators, however, employ others’ work perforce—for instance, documentarians, who constantly quote a copyrighted world; nonfiction book authors, who cite each other, quote sources, and refer to a cultural context full of copyrighted work; and musicians who inevitably incorporate tropes from the past into the present (see e.g. Arewa, 2006). In this article, we investigate how creators experience and express the tension between the romantic author and recombinant creator, through creators’ own accounts of their creative processes and motivations.

Australia and U.S. compared

Our research draws on data collected in two copyright jurisdictions – Australia and the United States. The reason for this is largely practical: we, the authors, reside and work in these two jurisdictions respectively. However, we believe that these data may provide a useful snapshot of creative practice in common-law countries with largely identical copyright laws. Australia and the U.S. have harmonized most of their copyright laws in line with World Trade Organization member requirements and the Australia-United States Free Trade Agreement (2004). Where the jurisdictions differ is with respect to lawful exceptions to copyright infringement.

Australia and the United States have copyright policies on exceptions and limitations at opposite ends of the spectrum. We interviewed creators from both jurisdictions, and we found a strong congruence between how creators from both countries spoke about their creative practices. Where things may differ, though, is how creators understand their creative choices in relation to the legal exceptions that operate in their country, and how they are likely to respond to civil society efforts to expand copyright exceptions and limitations or content industry arguments to strengthen copyright monopolies. The *presence* of the trope of Romantic authorship has strong similarities in both countries, but its *impact* on law and policy may play out in different ways.

Australia's exceptions are limited and narrowly defined. The fair dealing exceptions apply only to uses that fall within specific, delineated categories: research or study; criticism or review; parody or satire; reporting the news; for the purposes of judicial proceedings or professional advice; and (newly) for access by persons with a disability. Within these categories, both the Australian legislature and the courts have read down the possible ambit of the exceptions – the fair dealing for research or study exception, for example, includes guidelines in the text of the legislation that a 'fair' amount is generally less than 10% of a work (*Copyright Act 1968* (Cth) s 40), and successive courts have held that the exceptions must be exercised personally and not on behalf of another (*De Garis v Neville Jeffress Pidler Pty Ltd* (1990) 37 FCR 99; *National Rugby League Investments Pty Ltd v Singtel Optus Pty Ltd* (2012) 201 FCR 147). The result is that Australia has one of the strictest copyright regimes in the world, with few exceptions for new creative expression with unlicensed copyrighted material and judicial history tilting toward copyright holders. By contrast, the U.S. fair use doctrine is expansive and judicially favored, allowing unlicensed uses that are 'fair' as measured against four factors – most importantly, the impact on the market for the original work, and whether the subsequent use is 'transformative' in form, substance or meaning (17 U.S.C. §107).

The U.S.'s fair use doctrine has been a driver of technological evolution, as boldly evidenced by Google search engine, which depends on fair use to justify copying (ALRC, 2013, p. 105). At the same time, publishing interests have decried the destruction of traditional business models, and policies such as European Union copyright directives requiring licensing of media content online have accommodated them (European Commission 2016). Nation states including South Africa, Australia and Brazil have opened inquiries into adopting fair use or making fair dealing more flexible (Nicholson, 2018; ALRC, 2013; Productivity Commission, 2016; Anderson, 2010; Malcolm, 2017); Canada and Singapore, among others, have incorporated more flexible exceptions into their codes (*Copyright Modernization Act* (S.C. 2012, c. 20); Band & Gerafi, 2013).

But in both Australia and the U.S., the quality of originality is important to a copyright claim. Copyright law generally provides that literary, musical, artistic and dramatic works will not be subject to copyright protection unless they are 'original' in the sense that they originate from the author. The bar for this originality in the law is actually quite low. It simply means those works have not been copied, wholesale, from another, or that they do not consist entirely of things that belong in and to the public consciousness – such as pure facts and information. But even copyright's low bar for originality carries with it an ideological assumption that a work must originate entirely from an author and no one else (copyright uses the term 'author' for all kinds of creators). In copyright theory, this has elevated the author to a source of 'creative genius' – someone who is able to create something from nothing (Silbey, 2008, p. 342).

Creators in Australia and the U.S. are situated in two very different media environments as well. The U.S. has highly privatized, internationally-dominant media production in which threats to turn to the law to resolve copyright disputes are routinely invoked, even if actual lawsuits are few. Australia has a small creative industries sector, largely supported with government investment committed to fostering Australian content and rarely faced with litigation threats (Cunningham & Turner, 2009). As has been documented elsewhere, the structure of media industries and the threat of litigation can affect whether and how creators are willing to engage in reuse and other forms of appropriation art (Aufderheide, Jaszi, Milosevic, & Bello, 2014). The media environments may also impact on how creators think about creativity and originality.

Given the differences in both legal exceptions to copyright infringement and media environments, we might expect to see more divergence in how U.S. and Australian creators relate to the trope of Romantic authorship. We already know that practice differs dramatically, with American corporations and individuals alike widely employing fair use, while in Australia the option does not exist. In general, however, we found great similarities in the two populations in expressing Romantic attitudes about authorship. We believe that this similarity, which often exist in combination with an expressed frustration about limits to creative practice because of copyright restrictions, demonstrates the strength of underlying ideological framing. Thus, in our discussion below, we have identified where the relevant data have been collected but we present our findings collectively.

Methodology

For this research, we asked if creators who incorporate copyrighted work into their creative practice position that reuse of material within a Romantic conceptualization of creativity. With some exceptions (Bowrey, 2002; Silbey, 2008; Aufderheide & Jaszi, 2018; Sprigman, 2018), there is remarkably little empirical evaluation of creative practice within copyright literature, and no qualitative studies that we know of that directly consider the role of Romantic authorship. We are in a crucial post-remix moment for contemporary creators; the social production promised by the internet (Benkler, 2006) has materialized in part but not completely, and creators must navigate a cultural environment that has evolved but perhaps not radically transformed

with the affordances offered by new technologies. Better understanding of how creators approach their creative practices and view their creative expressions could, we hope, contribute to and improve the development of cultural and legal policy in this space.

To address our research question, we re-used existing data from three surveys conducted with creative populations in Australia and the U.S., in 2015, 2016, and 2017. We analyzed original comments from surveys, interviews and workshops; only open-ended answers were used from the survey data. Finally, we compared responses from these professional creatives with a 2017 survey of the general population. Our interviews and workshops with creators focused particularly on creators who had, at some point in their creative process, used the work of others within one of their own creations. The extent of reuse varied from writers who had used short quotations, to journalists and documentary filmmakers who had used existing footage in their reporting, through to musicians who regularly sampled and videographers who regularly remixed existing content. Our qualitative research therefore particularly examined the recombinant and collaborative nature of creative practice.

Research using these data has established that routinely creators suffer delays, change their work, abandon a project, or even avoid entire kinds of projects, as a response to the challenge of access to existing cultural work (Aufderheide & Sinnreich, 2015; Sinnreich, Aufderheide, Imperiale, & Silvernail, 2018; Pappalardo et al, 2017; Aufderheide et al, 2018). In our use of the data, we wanted to explore how creators explained their choices to themselves, and how they talked about their uses of others' work.

The Australian survey involved 467 valid responses. We also looked at data from a survey with 516 documentary filmmakers in 2015, and a 2016 survey with 1,200 responses conducted with U.S. visual artists. In order to assess preliminarily whether our results reflected a bias of professional creators or national location, we also examined, with the investigator's permission, open-ended answers to a 2014 survey of the general population, internationally, of 1,400 respondents from at least seven countries, including the U.S. and Australia.

Drawing upon cultural discourse analysis (Carbaugh, 2007), we jointly analyzed the interview transcripts, workshop notes and open-ended answers. We looked for cultural patterns in expectations, justifications, and assertion of ethical stances. We created several categories, discussed below, iterating them using grounded theory (Glaser & Strauss, 1968), as we discovered repeating logic in arguments.

Findings

We found that many justifications or explanations of reuse practices share a logic that accords with a conceptualization of creative work as acts of individual genius. We found such comments in four categories: original work is more creative; barriers spur creativity; and two related categories – artists deserve payment; and artists deserve recognition.

Original work is more creative

Both Australian and U.S. creators generally agreed that work which incorporates within it the work of others could be creative. Only 5% of U.S. professionals in the visual arts, 6% of U.S. documentarians, and 8% of Australian creators believed such work could *never* be creative. The great majority in all categories thought that such work could *sometimes* be creative. A minority – 25% of U.S. visual arts professionals, 15% of U.S. documentarians, and 16% of Australians – believed recombinant work was *always* creative. But in their interview and open-ended survey comments, creators often expressed sentiments that such work might not be *as* creative as original work.

In open-ended comments in the 2016 U.S. visual arts survey, a participant remarked, "A final artistic project is only original if it contains only the materials from the mind of the artist!" Another said, "Use of another's work is derivative and not very creative." Other respondents in the same survey spoke dismissively of "less original and talented individuals" and "lazier, contemporary artists" who reuse the works of others.

Similarly, Australian survey respondents sometimes demonstrated a preference for originality, saying: "My work is almost entirely made from my own imagination"; "I write original plays"; "I create original work"; "all my material is original"; and "I prefer to create my own things." One respondent noted that being original is "hard" and that, therefore, using other peoples' material "is not appealing creatively." The level of struggle was sometimes tied directly to the level of creativity in participants' minds. In an interview, an Australian filmmaker reflected on remix and originality in film:

I have a lot of problems with a lot of video art that takes different parts of movies and other artists' work and recuts it. I find certain remix stuff really interesting if it's done in a way that I feel creates something brand new. Whereas if I don't find it that creative, I don't find what they've done new, I'm not that interested, I find it quite lazy.

An Australian musician told us that he was trying to move away from sampling; his goal was to reach a point where he was using “100 percent my own material.” When we asked why, he hesitated, then replied, “It can be a bit more rewarding if [you’re] using all your own stuff, I guess.” A visual artist told us, “I create my own artwork, which takes more time ... but there’s a great sense of achievement in creating original artwork.” Another musician worried that people might not take his work as seriously if he used more samples, even if those samples were used lawfully under a copyright exception. His fear, he said, was that people would think: “oh, you’re just doing that artwork because you can get away with it by not having to clear samples.” Sampling and reuse was, he thought, viewed as easier and therefore less creative, so that his reputation and standing as an artist might be diminished because of the reuse of existing materials.

Our data reflect the pervasive influence of what Woodmansee and Jaszi call ‘the author effect’ (Woodmansee, 1992; Jaszi, 1992). This is the idea that not only do creators strive for Romantic originality in their own work, but that these personal values are then converted into a means of measuring the cultural value of the works of others. Thus, Romantic authorship “functions as a type of cultural arbiter, certifying content with cultural authority” (Chon, 2012, p. 830). We see this when our interviewees discuss the works of others – comparing and contrasting those works with their own, or with the work of creators they admire – where art is deemed better and more authoritative the closer it is perceived to the Romantic idea of originality. We see this, also, in fears and anxieties expressed by interviewees about their own status as artists and how their art and artistic practices are perceived by others.

Barriers spur creativity

Creators reported feeling frustrated when they were prevented from sampling or reusing the work of others, whether because they could not rely on an exception, they were denied permission, they never received a response to their request for permission, or they could not afford the license fee. Yet often creators did not experience this frustration as a problem with copyright policy, but as a natural feature of the creative process. They thus reclaimed agency from frustration by perceiving second-best solutions as creative, often heroically creative, acts. In various ways, they expressed the belief that being told ‘no’ actually spurs creativity, by forcing a creator to be more ingenious in devising workarounds.

A U.S. visual artist said that a creator will often do better work when one road is blocked. A documentarian wrote, “I would find another way to tell the story.” An Australian documentary filmmaker said in an interview, “Constraint can be creative.” A respondent to the Australian online survey wrote, about being prevented from using third party material: “I will create or think of something that may not be 100% in line with my original vision, but will still be very good. Anyone who can’t do that – I would question their labeling themselves as creatives. True creatives know that they can handle such situations effortlessly.”

The ability to find workarounds appears tied to a creator’s sense of pride in their professionalism. A professional creator understands the environment in which they operate, including the probable constraints that may be imposed on them. “A professional can always find a way,” said a U.S. documentarian. An Australian author and filmmaker mused about hearing this justification from peers: “We use pride in professionalism as justification for self-censorship.” She continued, “No creator wants to use the word inhibited. There’s a discursive arm wrestle about how the term is being sutured into experience. ‘I’m not being inhibited, I’m being challenged to be more creative.’”

In this way, Romantic authorship works to validate the very legal restraints that make creativity harder and less democratic. Intellectual property laws are premised on the “founding conceit” of original authorial expression, and so narratives of creativity and originality work to legitimate how cultural texts are controlled and circulated (Coombe, 1998). Even creators themselves view artists as somehow separate from the legal and economic structures that control content and determine the conditions under which culture can be accessed and reconstituted. The tendency to view artistic inspiration and practice as transcendent rather than contingent (Foucault, 1979) means that an inability to overcome structural barriers is seen as the creator’s *own fault* – a failure in creativity and personal grit, and not a problem with a maximalist legal system. The upshot is that recombinant creators who believe this are less likely to challenge – or even question – the legal rules and regulations that impede their work.

Artists deserve to get paid

The Romantic author trope presents art as spiritual and elevated, rather than material. Creators often sought to characterize financial transactions as moral ones, which aligned with their values in showing respect to other creators through payment in exchange for reuse rights. In this framework, art should be paid for not because it is an item to be traded on the market for commercial gain, but because payment functions as

a demonstration of how creativity is valued and appreciated. One Australian creator said, "I would never expect an artist to use my work without paying for it, and I extend that same respect to other artists." Another Australian creator said, "Respecting other creators' ownership of their work is important. I should pay for its use, just as others should pay for my work if they want to use it."

A U.S. visual arts professional commented, "It comes down to this: artists should be paid for their work, even if the use of their work is by another artist." Documentarians made comments such as: "I'm aware that creative work that is clearly creative work is copyrighted and deserves protection and payment for use"; and "I feel those who hold the copyright are entitled to payment."

But while Romantic notions of originality and creativity justify license payments for use and reuse, they link that payment to the creative work of individual artists. Both Australian and U.S. creators often expressed outrage at sky-high license fees charged by multinational media companies, precisely because they did not see that this money would return to the artist. Both U.S. and Australian documentary filmmakers were aghast at being forced to license content such as background music playing in bars where they filmed, TV clips locating a moment historically, and public comments by public figures. This was content they saw as being squarely within the public and historical record, and so it did not neatly fit within Romantic constructions of art that morally compel payment. Some Australian musicians expressed outrage about the *EMI Songs v Larrikin Music* case, in which a current copyright owner (not the original artist) won an infringement claim against the popular music group, Men at Work, for their repurposing of two bars of an old Australian folk song. Men at Work's song, "Down Under," is beloved in Australia and seen not just as creative, but as iconic (Rimmer, 2012).

Creators' alignment of recognition with payment is an implicit contention that in a society where artistic production is historically undervalued, payment functions as a kind of recognition, not just a financial but a reputational benefit. Romantic ideologies of authorship justify the commodification of cultural works (Coombe, 1998) by shifting the focus from money to reputation – it therefore provides a way for creators and the content industries alike to reconcile the crass commercialization of culture with a higher artistic purpose.

In a commercial context, the Romantic author trope produces interesting results. It can help authors to seek payment for their work, by providing justification for why creativity should be valued in the market. But it can also be used to subvert these goals, by stressing the elevated nature of art as distinct from its commodification. Equally, the trope can be used to undermine legal flexibilities that permit creators to reuse content without payment. In Australia, recommendations to introduce fair use provisions into Australia's Copyright Act were abandoned largely due to the success of an industry campaign that sought to link fair use with free use in public consciousness,¹ and thus to argue that fair use fundamentally disrespected creators and the original work that they do.

Artists deserve recognition

Creators often linked payment with recognition, but even more, they stressed the value of recognition in itself, an acknowledgement of the unique creative effort involved in making a work and also a validation of one's identity as a creator. Citation, credit, and attribution were common terms in referring to recognition, and creators sometimes explicitly delinked this from payment.

U.S. visual arts professionals wrote variously: "Credit needs to be given where credit is due. Treat others' art as you want yours treated;" "I think citation of sources, even for open source materials, should be mandatory even for mash-ups/mixed media;" "I always attribute the artist when using images or parts of work;" "I think that artists and scholars should be able to freely use anything in the public domain, but I think it's important that the authors and artists of any reused work are properly credited. I'm comfortable sharing my own work freely, but I expect to be credited for my ideas. Likewise, I'm careful to credit others in my own work."

Documentary filmmakers are typically insistent on proper crediting, no matter what their other positions on reuse. As one said, "I believe the owners of copyrighted material, including myself, should be treated fairly." Interestingly, this is reflected in standards documents that creative communities themselves create. In U.S. codes of best practices in employing fair use, which are designed by creative communities themselves, both documentary and visual arts communities strongly emphasized the importance of crediting—not required at all for employment of fair use—in their recommendations. (International Documentary Association et al., 2005; College Art Association, 2015).

¹ <http://freeisnotfair.org/>.

Australian creators similarly expressed strong feelings about crediting. Attribution was considered to be a fundamental part of creative practice and respectful reuse. "I feel it is important that one is acknowledged for the source of one's work," said a musician. Another musician mused, "I feel like, for me, crediting of an idea is important and the monetary thing is secondary." An online content creator expressed a similar view: "It's not always necessarily about money and distribution. It can be, well, you know, you've got to credit me properly, so people know where it's from. I'm happy with redistributions of my work if there's a credit in there and I get some growth."

Australian creators stressed that they credit existing work "at every opportunity". A filmmaker noted that giving attribution was a "minimum requirement." Other creators stated, "we always credit the work;" and "I'm very conscious that credit is given where credit is due."

For the creators we spoke to, full and proper attribution could sometimes address perceived shortcomings of a legal environment where the rules around permitted reuse are fractious and misunderstood, and in a creative economy that consistently undervalues, financially, the work that creators do. More robust recognition of the norms around attribution and respectful reuse within creative communities could serve to empower creators, and perhaps reduce their need to rely on the complicated rhetoric of Romantic authorship to establish their worth. This argument has been made more completely elsewhere (Pappalardo et al, 2017; Pappalardo & Meese, 2019).

Comparison with general population

These comments came from creators with a strong investment in professional reputation and identity. We compared them to creators with some experience of recombinant creation from the general population, from a 2014 global survey. We found the professionals far more accepting of the originality of recombinant work, but also found similarities in expressions of Romantic notions of authorship.

In the general population, among U.S. respondents who had some experience with recombinant creation, 25% (triple the rate of documentarians and quadruple the rate of visual artists) believed recombinant work was *never* original. Like professionals, they expressed the attitude that originality was preferable. "Remixes rarely become a great song or sound," said one respondent. "I find it a bit of a disrespect to the creator of the art (song/video), especially if the intention of the mash up or remix is questionable," said another. Respondents demonstrated an intuitive connection between getting permission and respect, sometimes justifying the need for that permission with ownership and sometimes with originality. They variously wrote: "Everyone nowadays are using software media or internet, it should always be kept in mind that ownership is a right by every human;" "Mashups are ok as long as there is consent from the owners of videos/music to use that particular file for the mashup;" "I think remixes and mash ups [are] fine if there is a permission [from] the original owner or company;" and "Remixes and mashups should require permission if it is not your original material." Many comments had to do with crediting as an indication of respect to the original creator: "Remixes and mashups are now trending and very millennial, but also needs to be credited to the original makers;" "There always should be credits to original owner of the songs to be remixed or mashed up;" and "It's okay to do remix and mash ups as long as it has the permission of the original composer."

Discussion

The comments of creators within communities of practice for which reuse of copyrighted material is either an active choice or a traditional condition of the practice itself demonstrate that Romantic notions of authorship continue to shape creative identity. Creators, even when committed to configurable cultural practices, default to artistic originality. This occurs in the absence of robust public discourse around the shared nature of culture-building. The Romantic author trope supposes that creativity is innate; that authors create from a well of internal inspiration free from the influence of others; that it is possible to create something from nothing. The trope is seemingly at odds with the collaborative and iterative nature of creative effort, well established in psychology and anthropology (Csikszentmihalyi, 1996). But "the modern concept of the author exhibits a remarkable capacity for revitalization, even in contexts that would seem least hospitable to its colonization" (Coombe, 1998). For the creators we interviewed and surveyed, the cognitive dissonance between belief and practice is managed with justifications that have their own implications for action.

Creators in both the U.S. and Australia have internalized the notion of Romantic authorship to the extent that difficulties created by external copyright policies are sometimes seen as a kind of test of their creative spirit. The onus is thus squarely placed on the creator to respond to copyright restrictions in creative ways, rather than on the regulatory system to adapt to the needs of creators. This is not only convenient for the large businesses of all kinds that manage intellectual property, but also aligns with neoliberal arguments

that prioritize individual responsibility above social and political management (MacPherson, 1962). Creators are proud of their creative ingenuity in developing ‘workarounds’ to the legal restrictions they face, and of their perseverance in creating something despite these restrictions. Romantic ideas of originality and imagination work, therefore, to justify narrow copyright exceptions regimes and practices.

But the embrace of Romanticism also permits creators to reclaim their status as creators, even in situations where they are reusing others’ work. It permits them to assert a distinctive identity for the kind of work they do, and to value it in spite of systemic devaluation of creative work in commercial economies. Creators historically get little of the rewards generated by copyright policies (Towse, 2017; Throsby & Petetskaya, 2017), but it does offer them an assertion of respect often missing elsewhere. Furthermore, creators lack alternative frameworks that provide them such status. The effort demonstrated by respondents to emphasize recognition, even when they explicitly set aside the question of payment, reinforces the importance of respect, recognition, and identity interwoven with their understanding of the copyright regime.

Conclusion

The trope of Romantic authorship, in comments of creators enmeshed in a creative process that either encourages or requires quotation from existing copyrighted work, is persistent and enduring. Our research suggests that the trope is not limited to corporate lobbying efforts to maximize copyright entitlements, but rather contributes to a set of values that have been internalized by creators themselves, even those at the cutting edge of remix culture. Our respondents did not employ alternative definitions of creativity, but rather built their understanding of recombinant culture around Romantic authorship. We saw, for instance, no evidence of notions of an “information commons” or “free culture,” both attempts at reframing creative production for a digital age, in their rhetoric. Our findings show that creators may hold contradictory views at the same time – they may lament high commercial licensing fees while maintaining that reuse should be remunerated; they express frustration about permissions culture but adhere to its tenets; they may be confused or inconsistent about whether recombinant work is sufficiently original to be creative. Sometimes the Romantic author trope may help creators to make sense of these conflicts; at other times, the Romantic rhetoric may be the source of their confusion.

These findings have implications for copyright policy and advocacy. They may explain, at least in part, how policy debates are easily co-opted by large rightsholder interests. They may partly explain, too, creator resistance to exceptions, although such exceptions typically favor new creators without impinging on the legitimate existing market for the original creator’s work. For instance, there is a common reticence in the Australian creative communities about expanded copyright limitations and exceptions, including fair use. In the U.S., creators often treat fair use as a last resort rather than an entitlement. Any engagement with copyright policy requires taking into any strategic consideration the linking, for many, between a Romantic conception of authorship and their very identity.

Creators are in general law-abiding, and our respondents stressed that they do their best to adhere to the strictures of copyright law. Even creators who consciously reuse the content of others are reluctant to do so outside the strict legal rules. The pervasiveness of Romantic authorship means that this reluctance is often justified as a striving for greater originality and the legal constraints are explained away, because a ‘true’ creator can work around them.

What this means for copyright policy is potentially very significant. Copyright law is supposed to serve both creators and the public, but it is a best a compromise – the results of a legislative process that can be influenced by lobbying and vested interests. Copyright law is human-made, and imperfect. Our respondents frequently expressed that they were frustrated or perplexed by the law, but they often did not see it as something they had agency over. The Romantic ideal means that authors are unlikely to challenge the laws that constrain them, but this does not mean that they are not constrained.

Limitations

We focused here on Romantic conceptualizations, and not the full range of emotions and attitudes about copyright. As well, we know from published research and other evidence in these surveys and interviews that creators were intimidated, irritated, frustrated, angry, and disheartened by copyright constraints in their work process. We did not focus on this aspect of their responses because it has been documented in detail elsewhere (McLeod, 2007; Aufderheide et al, 2018; Aufderheide & Jaszi, 2018), and because these were not value judgments about authorship and creativity. The discontents and frustrations of authors were able to coexist with Romantic conceptions of authorship.

We also, in this study, did not quantify the responses, but rather sought out common tropes among them. This is because we opportunistically used data originally collected for other purposes. Future studies could explicitly address the question of creative identity in relation to recombinant culture, collecting data specifically for this purpose. Future studies might also directly address the question of *why* creators embrace Romantic authorship even when it runs counter to their interests, something we could only speculate about with our data.

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Competing Interests

The authors have no competing interests to declare.

References

- Anderson, N.** 2010. US could learn from Brazilian penalty for hindering fair use, *Ars Technica*. Available at: <https://arstechnica.com/tech-policy/2010/07/us-could-learn-from-brazilian-penalty-for-hindering-fair-use/> (Accessed 23 November 2018).
- Arewa, O.** 2006. From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context. *North Carolina Law Review*, 84: 547–645.
- Aufderheide, P** and **Jaszi, P.** 2018. *Reclaiming fair use: how to put balance back in copyright* (Second edition. ed.). Chicago; London: The University of Chicago Press. DOI: <https://doi.org/10.7208/chicago/9780226374222.001.0001>
- Aufderheide, P, Jaszi, P, Milosevic, T** and **Bello, B.** 2014. *Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities: An Issue Report*. Retrieved from Washington, D.C.: <https://cmsimpact.org/resource/copyright-permissions-fair-use-visual-arts-communities-issues-report/>.
- Aufderheide, P, Pappalardo, K, Suzor, N** and **Stevens, J.** 2018. Calculating the consequences of narrow Australian copyright exceptions: Measurable, hidden and incalculable costs to creators. *Poetics*, (69): 15–26. DOI: <https://doi.org/10.1016/j.poetic.2018.05.005>
- Aufderheide, P** and **Sinnreich, A.** 2015. Documentarians, fair use, and free expression: changes in copyright attitudes and actions with access to best practices. *Information, Communication & Society*, 1–10. DOI: <https://doi.org/10.1080/1369118X.2015.1050050>
- Australian Law Reform Commission (ALRC).** 2013. *Copyright and the digital economy (ALRC Report 122)*. Available at: https://www.alrc.gov.au/sites/default/files/pdfs/publications/summary_report_alrc_122.pdf (Accessed 30 November 2013).
- Band, J** and **Gerafi, J.** 2013. Fair use. *Fair Dealing Handbook*. Available at SSRN: <https://ssrn.com/abstract=2333863>. DOI: <https://doi.org/10.2139/ssrn.2333863>
- Benkler, Y.** 2006. *The wealth of networks: how social production transforms markets and freedom*. Yale University Press.
- Bently, L.** 1994. Copyright and the death of the author in law and literature. *Modern Law Review*, 57: 973–986. DOI: <https://doi.org/10.1111/j.1468-2230.1994.tb01989.x>
- Bollier, D.** 2008. *Viral spiral: how the commoners built a digital republic of their own*. New York: New Press.
- Bowrey, K.** 2002. Who's painting copyright's history? In: McClean, C and Schubert, K (eds.), *Dear Images: Art, Copyright & Culture*. London: Ridinghouse Press.
- Carbaugh, D.** 2007. Cultural discourse analysis: communication practices and intercultural encounters. *Journal of Intercultural Communication Research*, 36(3): 167–182. DOI: <https://doi.org/10.1080/17475750701737090>
- Chon, M.** 2012. The romantic collective author. *Vanderbilt Journal of Entertainment and Technology Law*, 14: 829–849.
- Cohen, J.** 2007. Creativity and culture in copyright theory. *University of California Davis Law Review*, 40: 1151–1205.
- Cohen, J.** 2011. *Configuring the networked self: law, code and the play of everyday practice*. Yale University Press.
- College Art Association.** 2015. Code of best practices in fair use in the visual arts. Available at: <http://www.collegeart.org/programs/caa-fair-use/best-practices> (accessed 8 September 2018).
- Coombe, R.** 1998. *Cultural Life of Intellectual Properties: Authorship, Appropriation and the Law*. Duke University Press. DOI: <https://doi.org/10.1215/9780822382492>

- Csikszentmihalyi, M.** 1996. *Creativity: flow and the psychology of discovery and invention*. New York: Harper Collins Publisher.
- Cunningham, S** and **Turner, G.** 2009. *The media and communications in Australia*. Sydney: Allen & Unwin.
- Demers, J.** 2006. *Steal this music: how intellectual property law affects musical creativity*. University of Georgia Press.
- European Commission.** 2016. Proposal for a directive of the European parliament and of the council on copyright in the digital single market, Brussels 2016/0280 (COD).
- Foucault, M.** 1979. What is an Author? In: Harari, J (ed.), *Textual Strategies: Perspectives in Post-Structuralist Criticism*. Cornell University Press.
- Fromer, J.** 2010. A psychology of intellectual property. *Northwestern University Law Review*, 1441–1509.
- Gillespie, T.** 2007. *Wired shut: copyright and the shape of digital culture*. Cambridge, MA: MIT Press. DOI: <https://doi.org/10.7551/mitpress/7253.001.0001>
- Glaser, BG** and **Strauss, AL.** 1968. *The discovery of grounded theory: strategies for qualitative research*. London: Weidenfeld and Nicolson. DOI: <https://doi.org/10.1097/00006199-196807000-00014>
- International Documentary Association** et al. 2005. Documentary filmmakers' statement of best practices in fair use. Available at: <http://cmsimpact.org/code/documentary-filmmakers-statement-of-best-practices-in-fair-use/>.
- Jaszi, P.** 1992. On the Author Effect: Contemporary Copyright and Collective Creativity. *Cardozo Arts & Entertainment Law Journal*, 10: 293–320.
- Jenkins, H, Ford, S** and **Green, J.** 2013. *Spreadable media: creating value and meaning in a networked culture*. New York: NYU Press.
- Kwall, RR.** 2006. Inspiration and innovation: the intrinsic dimension of the artistic soul. *Notre Dame Law Review*, 81: 1945–2012.
- Lessig, L.** 2004. *Free culture: how big media uses technology and the law to lock down culture and control creativity*. Penguin.
- Litman, J.** 2006. *Digital copyright*. 2nd ed. Amherst, NY: Prometheus Books.
- Macfarlane, R.** 2007. *Original copy: plagiarism and originality in nineteenth century literature*. Oxford: University Press. DOI: <https://doi.org/10.1093/acprof:oso/9780199296507.003.0002>
- MacPherson, CB.** 1962. *The political theory of possessive individualism*. 1st ed. Oxford: Clarendon Press.
- Malcolm, J.** 2017. Brazil proposes new digital copyright rules for the WTO. *Electronic Frontier Foundation*.
- Marshall, L.** 2002. Metallica and morality: the rhetorical battleground of the Napster wars. *Entertainment Law*, 1(1): 1–19. DOI: <https://doi.org/10.1080/14730980210001730301>
- McCutcheon, MA.** 2012. The cento, Romanticism, and copyright. *English Studies in Canada*, 38(2): 71–101. DOI: <https://doi.org/10.1353/esc.2012.0012>
- McLeod, K.** 2007. *Freedom of expression®: resistance and repression in the age of intellectual property* (1st University of Minnesota Press ed.). Minneapolis: University of Minnesota Press.
- McLeod, K** and **DiCola, P.** 2011. *Creative license: the law and culture of digital sampling*. Duke University Press. DOI: <https://doi.org/10.1215/9780822393528>
- Motion Picture Association of America (MPAA).** 2018. Who we are. Available at: <https://www.mpa.org/who-we-are/> (accessed 8 September 2018).
- Nicholson, DR.** 2018. Why 'fair use' is so important for South African copyright law. *The Conversation*.
- Pappalardo, K, Aufderheide, P, Stevens, J** and **Suzor, N.** 2017. Imagination foregone: A qualitative study of the reuse practices of Australian creators. *Report produced for the Australian Digital Alliance*.
- Pappalardo, K** and **Meese, J.** 2019. In support of tolerated use: Rethinking harms, moral rights and remedies in Australian copyright law. *University of New South Wales Law Journal*, 42(3): 928–952.
- Patry, W.** 2009. *Moral panics and the copyright wars*. Oxford University Press.
- Productivity Commission (Australian Government).** 2016. Intellectual property arrangements. *Productivity Commission Inquiry Report. No. 78*.
- Recording Industry Association of America (RIAA).** 2018. 89 artists add names to effort calling on Congress to pass the CLASSICS act. Available at: <https://www.riaa.com/89-artists-add-names-effort-calling-congress-pass-classics-act/>.
- Rimmer, M.** 2012. An elegy for Greg Ham: copyright law, the kookaburra case, and remix culture. *Deakin Law Review*, 17(2): 385–423. DOI: <https://doi.org/10.21153/dlr2012vol17no2art85>
- Rose, M.** 1988. The author as proprietor: *Donaldson v. Becket* and the genealogy of modern authorship. *Representations*, 23: 51–85. DOI: <https://doi.org/10.2307/2928566>
- Rose, M.** 1993. *Authors and owners: the invention of copyright*. Cambridge: Harvard University Press.

- Saint-Amour, P.** 2003. *The copyrights: intellectual property and the literary imagination*. Ithaca: Cornell University Press.
- Schloss, J.** 2004. *Making beats: the art of sample-based hip-hop*. Wesleyan University Press.
- Silbey, J.** 2008. The mythical beginnings of intellectual property. *George Mason Law Review*, 15: 319–379.
- Silbey, J.** 2011. Harvesting intellectual property: inspired beginnings and “Work-Makes-Work”, two stages in the creative processes of artists and innovators. *Notre Dame Law Review*, 86(5): 2091–2132.
- Sinnreich, A.** 2010. *Mashed up: music, technology, and the rise of configurable culture*. University of Massachusetts Press.
- Sinnreich, A.** 2013. *The piracy crusade: how the music industry’s war on sharing destroys markets and erodes civil liberties*. Amherst: University of Massachusetts Press.
- Sprigman, CJ.** 2018. Copyright and creative incentives: what we know (and don’t). *Houston Law Review*, 55(2): 451–478. DOI: <https://doi.org/10.1017/9781316471647.003>
- Streeter, T.** 2010. *The net effect: Romanticism, capitalism and the internet*. New York: NYU Press. DOI: <https://doi.org/10.18574/nyu/9780814741153.001.0001>
- Suzor, N.** 2014. Free-riding, cooperation and ‘peaceful revolutions’ in copyright. *Harvard Journal of Law and Technology*, 28(1): 137–193.
- Throsby, D** and **Petetskaya, K.** 2017. Making art work: an economic study of professional artists in Australia. *Report prepared for the Australia Council for the Arts*.
- Towse, R.** 2017. Economics of music publishing: copyright and the market. *Journal of Cultural Economics* 41(4): 403–420. DOI: <https://doi.org/10.1007/s10824-016-9268-7>
- Tushnet, R.** 2009. Economies of desire: fair use and marketplace assumptions. *William & Mary Law Review* 51: 513–546.
- Vaidhyanathan, S.** 2001. *Copyrights and copywrongs: the rise of intellectual property and how it threatens creativity*. New York: New York University Press.
- Woodmansee, M.** 1992. On the Author Effect: Recovering Collectivity. *Cardozo Arts & Entertainment Law Journal*, 10: 279–292.
- Woodmansee, M** and **Jaszi, P.** 1994. *The construction of authorship: textual appropriation in law and literature (post-contemporary interventions)*. Duke University Press Books.

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