THE RIGHT TO CREATE
Cultural Policy in the Fourth Stage of the Information Society

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Abstract / The harmonization of information systems that characterizes this fourth stage of the information society has made possible new types of threats to cultural rights such as the right to create. Here these new threats as experienced by avant garde and traditional artists are explored, with attention to the restriction of speech rights by differential application across the information production chain, the paradox of the simultaneous loss of belief in the possibility of creativity and the commodification of innovative processes and products, the effects of computerization of innovative activity, and new legal approaches to the treatment of non-linear behaviours.

Keywords / art / cultural policy / information policy / information society / innovation / intellectual property rights / postmodernism

It is beyond irony that the millennial cleavage – where we hew together and rend apart – is culture, for it was with the scientification and commodification of culture that the century began. Connections between fact, capital and culture define the arc along which culture inscribes itself vis-a-vis modernity. As a result, cultural policy today participates in and affects all three stages of modernity. It is premodern in its concern for modes of thought and behaviour not always defined as ‘normal’ under modernity including, importantly, those that are traditional. The stuff of cultural policy – the matters with which it must deal – is the stuff of modernity at its height. And this is the policy of postmodernity, for it must cope with problems of identity, drifts in narrative form and the blurring of genre.

Cultural policy has risen in salience on local, national and international agendas. A couple of decades ago, culture was scarcely seen in policy circles. It was of interest as a tool for those in foreign policy. Some cultural policy was buried under other names as were, in the USA, the many constraints on Native American practices, religion, knowledge and language. Some came under the heading of the ‘arts’, and included direct subsidies.

In the 1990s, however, cultural policy has expanded its turf, partly driven by the increasing commodification of cultural products and their growing importance within the global information economy; partly by the resurgence of fundamentalist cultural expressions (themselves responding to the uncertainties
and ambiguities of the postmodern condition); partly by the movement of innovation to the centre of the economic game; and partly by the recognition that cultural knowledge is related to, or encapsulates, other forms of knowledge already utilizable and commodified.

Movements to ‘harmonize’ cultural policy across nation-states are now coming from both the private sector, as in an initiative from the Getty Foundation, and the public, as in the recent UNESCO platform that approaches cultural and creative rights within a human rights framework. The latter is already having effect as it provides a shaping document for newly forming national and regional policies and bodies.

Such moves are interesting for the way they enter one of the keenest areas of international competition today, competition in policy formation itself. They also demonstrate a key trend in the use of information policy tools in international relations: the transfer of the use of a tool from one domain where it may be contested to another in which its seeming irrelevance or relative newness leads it to be easily accepted. In some cases, what is called cultural policy provides cover for political or economic activity. (A recent example of this can be found in elements of the UNESCO report on cultural policy, in which several of its recommendations would actually serve the interests of those marketing new technologies or of those seeking biotechnology resources, rather than of those seeking to protect cultures.)

Treatment of information creators today is often extreme: it is fashionable to insist that the author is dead. Repressive governments first kill off traditional cultural forms and then force their recreation on demand for market purposes. Speech and economic rights of information creators – intertwined at the point of intellectual property rights – are being constrained at the very moment that the demand for speech itself is growing because of the increase in communicative capacity. These extremities themselves demand that particular attention be paid to the rights of information creators, but creation is also a particularly interesting stage of the information production chain, for it simultaneously engages matters at the heart of today’s economy as well as those fundamental to all cultures. Importantly, exploration of the rights of information creators illuminates interrelationships between human rights and civil liberties as exercisable at different stages of the information production chain.

Two types of information creators are discussed in this article: those who work with traditional cultural forms and those who are more experimental or, during modernity, ‘avant-garde’. These are not categorically different but, rather, differ in the relative weights with which one comes to particular tools and practices and the mix of intentions with which those practices are carried out and tools used. Tools and the ways in which they are used may be the most ancient – stone is still cut and moist clay marked and moulded – or new, the most important ones today arriving as computer software. The materials upon which tools are used, too, may be very traditional – paper or the ground – or, again, new, with the the Internet itself serving as material for a growing number of today’s artists.

Both avant-garde and traditional artists value personal and communal
memory, but each may weight the role of participating in its storage or transmission differently vis-a-vis other values such as self-expression and play. The more traditional artist will include a relationship with her or his community as an essential part of identity (though the nature of that relationship can vary widely), while the avant-garde artist may or may not do so (though being outside a community is still to have a relationship with that community). The avant-garde artist may or may not have a spiritual intention when working, while the traditional artist will; either type of artist may or may not have a political intention. The range of aesthetic vocabulary and stimuli is more likely to be broader for the avant-garde artist, but this is not an absolute. This last is also reversible as a rule in the case of those from the elites of the developing world; these artists and art audiences are likely to be the most sophisticated of all regarding the range of techniques and materials with which they are familiar, having had exposure to their own and other traditional cultures as well as those of the developed world.

The penetration and reach of aesthetic activity within particular societies vary widely from culture to culture. In some, every element of the material world is treated as a decorable object while in others those elements treated from an aesthetic perspective are relatively few. In some societies it is expected that everyone will participate in the arts, while elsewhere it is an age- or gender- or class-specific practice only.

Distinguishing one from the other, the traditional from the avant-garde, is increasingly difficult to do. How would one categorize the African band, drawn from musicians from different countries (there are now 50 in Africa) and playing original compositions drawing upon musical traditions of the entire continent: the Hopi flutist, whose compositions and performances draw from music written in Europe at the height of the classical period as well as from the flutes used in ancient religious practice; or the fundamentalist Christian who uses computer visualization to argue for a particular vision diffused through mass media? The same person, of course, may engage in activities that differ in the degrees and ways in which they are traditional at different times.

Via their participation in the social construction of reality, everyone in civil society contributes to the creative basis for both of the more specialized functions of the traditional and the avant-garde artist. This is always the case, but is particularly so during a period so turbulent that creativity is desperately needed as part of society-wide problem-solving, role definitions are uncertain, and the sources of creativity diverse. Universal service and access are thus among policies recommended for inclusion in a cultural policy platform.

The two types of information creators discussed here are not, of course, the only ones. Contemporary constraints on the efforts of those engaged in popular culture and scientific and technical innovation, among other creative efforts, need detailed analysis but this cannot be done within the bounds of a single article. The issues discussed here do, though, affect other types of information creators. And what focusing on these types of information creators does allow is examination of current cultural policy issues using the term ‘culture’ as defined in three distinct ways, each at a different level of analysis: (1) culture as broadly defined to refer to society-level groups of people who identify as
distinct historically and contemporaneously, those who participate in a particular civil society; for the purposes of this article, the term ‘society’ is used to refer to culture in this sense; (2) culture as more narrowly defined to refer to more specific and particularized, usually geographically localized, historical social groupings referred to as ‘traditional cultures’, what is referred to here as ‘tradition’; this definition can be used while keeping in mind Greenfeld’s (1992) insight that there is no one social dimension (cuisine, dress, language, etc.) that can be used universally to distinguish one culture from another; and (3) culture as created by individuals described in the terms of high modernity as avant-garde artists, what is referred to here as ‘art’. Each of these notions must, of course, be understood as constructs themselves (van Staden, in press).

It is important that we are examining these issues as they appear in the fourth stage of an information society that began in the mid-19th century (Braman, 1993). Having already gone through the first stage of electrification and globalization (mid-19th century to the turn of the century), the second of massification and professionalization (turn of the century to the 1960s), and the third of convergence of technologies and awareness of qualitative social changes (1960s–1990s), this fourth stage (1990s) is characterized by harmonization of information systems across national boundaries, with each other, and with other types of social systems. This harmonization of systems offers new possibilities for constraints on creative activity that must now be faced in addition to those that have historically been threats and remain so today. While the ubiquity, capacity and speed of the global information infrastructure make communicative and information-processing potentials more widely available than before, there are many gaps between potential and actualization, and many ways in which actuality can be achieved.

Much of the irony of the moment derives from the fact that this increased attention to the description of culture comes at the point of a rush to cultural extinction. In this the study of culture shares with biotechnology, the analysis and manipulation of genetic information, where the language of description is also becoming more highly articulated just as its subject disappears. In both cases, also, the ability to describe is linked to the ability to establish property rights, real or intellectual. In both, a key development in intellectual property rights law is the enablement of communities (rather than individuals, personal or corporate) to be rights holders. And in both we return, again and again, to questions of identity.

The 1990s shares with the 1870s a statistical concern with culture during a period of major transformation of the state. In the late 19th century, the effort to classify cultures and cultural objects marked the earliest manifestations of the welfare state – notably in advance of any particular military or financial function for the information. There was a resurgence of obsession with cultural matters in the 1930s, when the welfare state underwent its greatest expansion. Now, at the close of the 20th century, the development of techniques for identifying and quantifying cultural capital characterizes the welfare state’s decline.

Recent public discussion of traditional and contemporary arts in the developed world has bemoaned the loss of direct governmental support. While it is true that the effects of the decline of the welfare state are felt in the arts and
culture sectors as elsewhere, there are other problems that also affect the right to create in even more fundamental ways. Here, these new threats to the right to create during the fourth stage of the information society are discussed, together with an exploration of theoretical, legal and economic responses available. The problems examined include:

- Use of the information production chain: use of a model of an information production chain to restrict speech rights by defining them as non-speech;
- Loss of belief in creativity: a loss of belief in the possibility of creative activity and accompanying abandonment of the arts by the intelligentsia;
- Loss of artistic identity: a questioning by contemporary artists of their relationship to society;
- Rise of the probabilistic individual: the replacement of the organic and statistical individuals with the probabilistic individual for purposes of the law; and
- Commodification of information creation and processing: ever greater commodification of creative processes and products.

Use of the Information Production Chain

Perhaps the most devastatingly effective and increasingly used approach to restricting the rights of information creators is defining activities as not speech, making them unprotectable under the umbrella of speech rights. The possibility of this avenue as a legal approach is suggested by the identification of specific types of informational activities as deserving of constitutional protection in the First Amendment to the US Constitution. (Though nation specific, this source is of importance globally because of the influence of the USA in general, its 80-year long effort to exercise the First Amendment extraterritorially, and the power of the First Amendment as a model for the information policy provisions of most others of the world’s constitutions.)

The First Amendment and the Information Production Chain

The First Amendment protects five types of activities: freedom of thought (opinion and religion), freedom to share your thoughts with others (speech), freedom to share your thoughts with others across time and space (press), freedom to get together with others to discuss everyone’s thoughts (assembly and association), and freedom to approach the government and ask for changes if, on the basis of communal conversations, changes are desired by the polity (petition the government).

A study of every US Supreme Court case dealing with information policy from 1980 to 1986 (defined as any decision dealing with any stage of the information production chain, about 10 percent of cases during the period studied) found consistent attention to identifying stages of the information production chain at which activity being contested was taking place in order to apply the pertinent law — including the First Amendment — though often not explicitly (Braman, 1988). Similar studies in other areas of the law find the same kind of attention to distinctions among types of information processing.
The use of distinctions in stages of the information production chain to differentially apply the First Amendment first showed up explicitly in discussions about the speech/action distinction, an ongoing attempt since the first decade of the 20th century when First Amendment rights began to receive detailed judicial attention to determine when speech is communication only and when, as in inciting to riot, it is action as well. This first flowering of interpretation of the First Amendment was stimulated by the most widespread anti-war activity in US history, that of the First World War. Since many of those who encouraged conscientious objection were also communists, this debate also launched the shape of what became the Cold War speech environment. While most often applied to analysis of political speech involving resistance to government policies or strikes, the question also arose, as it did during the 1960s, within the artistic community when materials associated with the nation-state, such as the flag, are used by artists in what they understand as speech acts.

The question of whether or not the First Amendment protected information reception first rose to the constitutional level during the 1960s when speakers from other countries invited to address American academic audiences were refused visas because of political affiliation. While the US Supreme Court’s decision in this case strengthened the constitutional basis of a right to receive information, a strong counter to this position in a different arena appeared during the 1970s and 1980s, when television broadcasters successfully built the argument that their rights as speakers were being abridged by broadcast regulation that required demonstration of fulfilment of the informational needs of specific audiences among licensing requirements.

The 1970s were the formative period for this type of policy approach. During that decade, the US government argued that there was a difference between the transmission of information unprocessed and the transmission of information that was processed in the course of transmission in three different arenas: libel law, common carriage regulation and the attempt to use prior restraint of the press on national security grounds.

**Libel Law and the Information Production Chain**

The doctrine of neutral reportage protects journalists who report on potentially libellous statements made during public proceedings if those statements were passed on untouched. One effect of this doctrine, designed to defend journalists under increasing attack from libel suits often pursued for political reasons, was to permit courts to intervene in journalistic practices, something long resisted when pursued through other routes. Journalistic codes of ethics, for example, first developed in response to threats by the government to intervene in organizational practices, as it was with other industries under laws used as part of the effort to economically restructure the country to end the Depression. Indeed, the thrust of the long-standing refusal in the USA to tolerate the licensing of the press is based on not wanting to offer the government this tool of intervention. Thus its introduction via the doctrine of neutral reportage, applicable via the distinction between information which is processed and that which is not, is notable.
**Common Carriage Regulation and the Information Production Chain**

The second arena in which the distinction between information which is processed and that which is not was used as a formulative argument in the 1970s was in the FCC’s second computer inquiry. This second out of the ultimately three efforts by the FCC to find a way of bounding the domain of its regulatory activity in an environment of converged technologies introduced the distinction between basic and enhanced services as a boundary line: information transmitted unprocessed is *basic* information, and its transmission will be regulated in the same way that common carriage always has been. The services that were conceptually associated with basic information flows were generally POTS (plain old telephone service), traditional voice telephony. That information which was processed in the transmission was said to be *enhanced*, and included data processing and other computerized information flows. These types of information flows, new to the common carrier world, would *not* be regulated by the FCC for the moment under a policy known as forbearance that simultaneously claimed the right to regulate such information flows (and, by extension, the entire computer industry), and took the position that regulation would not be exercised for the time being in order to encourage competition.

The problems with this distinction were many. In a world in which everyone was trying to cope with the same problem, referred to in many places at the time as ‘value added networks’, or VANs, no other country divided things up this way. The line itself was not firm, it was permeable, and it kept moving. Even at the time that the distinction was first proposed, because of the incorporation of computers into the telephone network, there actually were almost no communications that fulfilled the definition of ‘basic’ as there was almost nothing that was not processed by a computer at one point or another during transmission, including simple voice messages. The FCC was in litigation over the distinction immediately, and soon went into another computer inquiry. Still, the effort by the government to use an information production chain distinction to define informational rights and responsibilities is another important leg of this trend.

**Prior Restraint and the Information Production Chain**

The third arena in which the distinction between processed and unprocessed information was used by the US government as the basis of a significant policy was in the arguments it used to try to prevent publication of plans for building a nuclear bomb in *Progressive* magazine. The articles presenting those plans were written by someone who had acquired the necessary information from materials in the public domain, access to which was completely unrestricted other than by the need to have enough knowledge of physics for them to be intelligible. Here the government tried to exercise prior restraint, preventing publication because it believed publication would endanger national security. This was rare in US history, for interpretation of the First Amendment had always supported policies that permit punishment for illegal speech or press
activities after the fact, but forbade policies that exercised prior restraint or pre­
vention of publication or speech before the fact. The magazine's argument was 
that all the information used in the article was in the public domain and thus 
its republication was legal. The government's response was to claim that while 
the use of information in the public domain was permitted, and its passing on 
in an unprocessed manner was also permitted, the processing of that infor­
mation was not permitted.

This astonishing argument never received much discussion, unfortunately, 
because the legal problem was mooted by publication.

**Implications**

In all of these areas – neutral reportage, the second computer inquiry and the 
*Progressive* case – the distinction between unprocessed information and that 
which is processed was used to justify a difference in regulatory and legal treat­
ment. In two of those areas the distinction was used in a way that could be seen 
as non-restrictive at the moment, but could be used to restrict speech activities 
in future, while in the third the policy was restrictive of the right to create from 
the beginning. Neutral reportage provides a defence for journalists in appro­
propriate libel cases, but can be used to justify governmental intervention into jour­
nalistic practices and institutions. The second computer inquiry was an effort 
to define a domain to be left unregulated, but in doing so staked out a huge 
portion of the information production chain as regulable. In the *Progressive* 
case, use of the distinction between processed and unprocessed information was 
decidedly restrictive of speech.

Together, these examples provide models of ways in which the use of dis­
tinctions among stages of the information-processing chain can be used to 
restrict speech activities. Encryption is a current issue of the same kind: those 
seeking the right to encrypt free of government involvement claim First Amend­
ment protections, while the government argues encryption is not speech, but 
information processing, and therefore constitutional protections do not apply. 
So many of the efforts to control informational activities in the Internet environ­
ment fall into the same category that this type of threat to the rights of creators 
is becoming dominant and should be at the centre of the cultural policy agenda.

**Loss of Belief in Creative Activity**

Nothing could be more dramatic than the turn of intellectuals away from art 
and from belief in the very possibility of the creative act, summed up in the oft­
repeated and still fashionable, though ageing, statement, 'The author is dead'. 
This belief on the part of non-artists is here distinguished from this belief on 
the part of artists, discussed in the next section. Three issues arise, involving 
the identity of the author, distinction of creative processes among those of the 
information production chain, and automation of crafts that historically had 
required skill and training.

The postmodern position is that individual authorship as idealized and 
romanticized during modernity does not exist because the role of society in
shaping any text so outweighs the input of the individual that the latter cannot meaningfully be distinguished. This argument rests, however, on an assumption of a society in which everyone contributes to or participates in the social construction of reality in precisely the same way, a position in contradiction to the postmodern emphasis on difference. More nuanced attention to the general concept, however, yields its further articulation by distinguishing among different modes and degrees of action among members of society in the social construction of reality. Some are more passive, as for those for whom Top 10 songs and Hallmark cards serve as personal speech, and some are more active, as for poets who seek always to speak in ways that are new. Along the spectrum of degrees of originality of activity, one can distinguish those whose levels of originality are so high that the term ‘author’ or ‘artist’ can legitimately be applied.

This more sophisticated view distinguishes the particular contributions of artists and authors as specialists at particular stages of the information production chain, identifying these stages in turn will assist those seeking to protect their own intellectual property rights.

Types of information processing in which artists specialize, whether avant-garde or traditional, include:

- **Use of non-linear techniques for problem resolution**: Because until recently both the natural and social sciences assumed that causality was linear, decision-making tools of all kinds use linear techniques of analysis, such as cost-benefit analysis. The development in the 1970s of fractal mathematics and other approaches to the study of non-linear relations in combination with the emergence of computers large enough to do massive amounts of information processing has made it possible to begin to develop non-linear approaches to problem resolution, and experimentation in this area is underway. However self-aware, and however explicitly articulated, both traditional and avant-garde artists use non-linear (as well as linear) approaches to problem-solving, and thus model the use of such techniques for other types of decision-makers.

- **Breaking of symmetry**: It is the breaking of tightly linked relationships that magnifies degrees of freedom and the creative potential within systems. Turbulent and chaotic periods are characterized by a high degree of breaking of previously dominant symmetry, but some breaking of symmetry is needed for adaptation, change and growth during any period. Traditional and avant-garde artists habitually break symmetry in a number of ways.

- **Large-scale pattern recognition**: Each methodology and theoretical approach defines the scale at which patterns are recognized as it identifies the unit of analysis of interest. Most research methods focus on a single unit of analysis, though an increasing number of ways of combining the results of multiple methodologies are being developed. As a result, they are unable to link analyses across scale. Those devoted to creative practices tend towards large-scale pattern recognition – sensitivity to patterns as they occur at the most macro-level in terms of spatial and time-scale. Increasingly, the need for large-scale pattern recognition is acknowledged as critical for strategists and decision-makers; the close of the Second World War saw the first efforts at global
economic planning, and the environmental movement and awareness of the limits to growth further stimulate global thinking.

A separate skill, also widely acknowledged as critically important today, is the ability to design in such a way that the results are ‘scalable’, or repeatable in effect across scale. This highly valued characteristic of software for the computer environment is also a characteristic widely shared by traditional and avant-garde artists whose best work similarly often works across scale.

- **Intense engagement with materials**: The comingling of the tangible and intangible in informational goods and services that is so problematic for neo-classical economics (Braman, 1997, in press) is a particular strength of many information creators. Both traditional and avant-garde artists work through their information processing with intense engagements with materials, often considering them partners, so to speak, in the creative process. In this, artists provide leadership to those in other fields who are coming to realize that materials are not all-malleable, and that seemingly insignificant differences between various pieces of a material can have a significant impact on the outcome of the use of those materials.

- **Storing and transmitting community memory**: This dimension of creative activity might more romantically be described as renewing communal memory by speaking it anew. Like every other information storage medium, community memory needs ‘refreshing’ from time to time (though it is worth noting that it is the oldest media, such as stone and papyrus, that need refreshing the least and the newest, such as computer disks, that need it the most often, meaning the information the latter carry is the most fragile). In some cases synchronously and in other cases asynchronously, doing so also serves as a form of memory transmission.

Every artist, irrespective of position(s) on the spectrum from traditional to avant-garde, refreshes communal memory. Two separate types of activities are involved: The making of art puts memory into a form of storage, while its viewing or experiencing serve as transmission. In this way, too, all members of society participate in the artist’s creations.

**Loss of Artistic Identity**

Artists, like everyone else, ground their actions in the stories in which they find themselves. The loss of the sense of artistic identity in today’s environment is a serious threat to the ability, if not the right, to create. It is an effect of the loss of a story in which identity is expressible.

The sense of loss is expressed differently in different places: artists from around the world participating in a list on the Internet on the topic of arts policy for the Net wonder how an artist operates ‘outside’ society in an environment in which there is no outside, while South African artists of whatever colour find themselves stymied when trying to decide just what the subject is during a society-wide transformation process, and who their audience.

Historical identities are in retreat. ‘Elite’ artists find their funding sources drying up as governments retreat from direct support and younger people with money direct their disposable income elsewhere because art is no longer of
interest, whether for pleasure, direct or indirect economic gain, or the building of social or cultural capital. In some cases the loss of interest derives from the loss of what was considered to be the bases of legitimacy for artistic activities.

The sharply defined outside position for artists under the regimes of the former Soviet bloc has evaporated with the loss of the surface tension that defined the artists as outside to themselves and to those looking for such work. In Islamic countries, artists are being put to death for their work as theocrats rising in power define all images of animals and humans illegal. Traditional artists find themselves undermined as their ability to affect streams of causality is either questioned by those receiving ‘modern’ education or disturbed by the introduction of other types of forces into their environments.

For a romantic ideal, today’s favoured outsider is not the brilliant young artist, but the even younger computer expert who, as did the artist, combines the allure of positive dynamism and creativity with what is perceived as socially destructive tendencies. Software programmers further threaten the identity of the artist when they make available to anyone technical skills historically available only to those artists who had dedicated themselves to laboriously mastering those skills and who had the gift and patience to do so well. The result is that new identities, or reinterpretations of the old for these qualitatively new circumstances, are needed. 3

The Probabilistic Individual

With the close of the Cold War, there has been a need to identify new enemies to justify the maintenance of the military and related national security structures. ‘New security theory’ identifies four categories of enemies in the 1990s, including one that is particularly pertinent to information creators, whether contemporary or traditional, solitary or communal: the ‘enemy’ includes those whose behaviours are statistically unpredictable. Simultaneously, sentencing is becoming harmonized by its computerization, a move which does yield a certain thin equity of judgement, but in which the individual completely disappears in the face of statistical projections about the behaviour of individuals with which there are probabilistic similarities. This move is more than theoretical; one state in the USA recently passed a law that sex offenders may be kept in either jails or institutions upon completion of their criminal terms if they merely ‘don’t seem normal’ psychologically.

Together, such moves constitute a ‘blurring’, in the Geertzian (Geertz, 1983) sense, of the relationship between the individual and the state. This ambiguity in the identity of the citizen is particularly intriguing from a Foucauldian perspective, with its focus on the ways in which the individual is seen by the state. Increasingly, descriptive statistics are taken as descriptive of probabilities, and probabilities descriptive of reality (and, from the national security perspective, a reality of a sort that requires or justifies state intervention).

This identification of the enemy via statistically unpredictable behaviour should be of concern to those who specialize in innovation in all areas of individual and social activity, since by definition much innovative activity is
statistically unpredictable. Indeed, much of our inability to capture things like cultural capital stems precisely from our inability to track non-linear processes using existing statistical techniques.

**Commodification of Creative Processes and Products**

There is a rich and useful debate over both the beginnings of and changes in the commodification of culture over time, and over pinpointing the beginnings and nature of that debate itself as well. Key figures by all accounts include Walter Benjamin (1976), who looked at the dimensions of qualitative difference between those art works that are individually produced and those that are mass produced; Bernard Miege (1987), who reputedly coined the term 'cultural industry'; and Hans Magnus Enzensberger (1974, 1992), who explored what he called the 'consciousness industry' in depth in the 1970s. A longer and richer reading of the history of narrative form, such as that offered by Lennard Davis (1983), suggests that to understand what commodification in these areas means one must look beneath or prior to the level of the commodification of an art object per se and towards the impact on the arts, both innovative and traditional, of general commodification processes. Davis’s history of the emergence of written genres distinguishable in terms of their stances towards facticity (thus separating, for example, journalism from novels, and novels from history) includes economic constraints among the range of social forces that together stimulated the articulation of these genres out of what he describes as the previously undifferentiated matrix of narrative form.

From this perspective, the conjuncture at which we now find ourselves can be characterized as including dominance by cultural industries of the economy; increasing commodification of culture and its creation, processing, distribution and use in various forms; elaboration and rearticulation of intellectual property rights law in directions that expand the domain of property rights created and affected as well as ways in which those rights may be exercised; and the emergence of the subfield of the economics of information that includes efforts to identify, distinguish and quantify a variety of forms of human capital, including cultural capital (Braman, 1997, in press).

The commodification of creative processes and products is a threat to the artist and author because it brings so many additional players into a game that historically had attracted relatively few (and those players are often much better at the 'commodity' aspect of art than traditional and avant-garde artists have been). However, should artists choose to be more aggressive about defining and protecting their intellectual property rights, commodification may also offer opportunities for old players as well as new.\

The multiplication of types of artistic products and processes that are commodified presents a threat to artistic activity, because those that may be distinguished and claimed as the unique domain of the artist are becoming fewer and more narrowly defined vis-a-vis the entire range of types of information creation, processing, flows and use. In response, artists today are beginning to identify themselves as a service industry, in which the transaction
around a specific piece of art is only one step in an ongoing process that includes lectures, teaching, commentary and so forth.

Commodification also presents a challenge to writers in particular, for the assignment of property rights is linked to the ability to describe. (Thus, in a particularly important example, one among the many long-standing, though now removed, barriers to acceptance of the application of intellectual property rights to biotechnology – the results of the manipulation of genetic information, or germplasm – was the inability to describe germplasm in sufficient detail to make the particularity of specific manipulations clear. As descriptive ability grew, so did the range of types of biotechnology products and processes to which intellectual property rights could be staked.)

The commodification of cultural processing and products can also present threats to artistic activity that derive from the growing potential for using cultural resources as inputs into other types of production processes. Biotechnology again presents a premiere example, for it was the realization by the oligopolistic firms of the agro/food/chemical/pharmaceutical industry that wanted to ensure access to the raw materials of biotechnology that underlies many recent moves in development of community-based intellectual property rights that are rhetorically presented as moves to preserve cultures. The connection between biotechnology and culture is that, as these transnational corporations realized, cost-effective and efficient access to the germplasm that serves as raw material for biotechnology also requires access to the indigenous cultures that had learned over time how to use the plants in their environments. In recent years, therefore, the practice of trying to remove populations from areas in which raw materials are sought has in some cases been reversed – local, indigenous cultures have all of a sudden become recognized as part of the ‘resource base’ to be offered by a region. While the new types of intellectual property rights that are being developed as a result of these developments can indeed be useful for indigenous and traditional communities seeking to survive (in every sense of the term) in today’s environment, these rights must be treated as having the potential of being two-edged swords.

Other trends in the economics of art in this environment, discussed at more length elsewhere (Braman, 1996a) include its valuation more as a source of innovation than as a good in itself; recognition of the role of art and tradition in carving out communities within the global information economy; and a decline in the stock of cultural capital.

Conclusions
We are becoming ever more particular, and particularly attentive, to culture – gathering data about it in ever greater detail, developing statistical portraits, gaining in our descriptive abilities and the evolution of genre, quantifying the value to be added, asserting property rights in cultural products and processes, and acknowledging cultural difference to be an important engine of the global economy (what the poet Ed Dorn called ‘the North Atlantic turbine’).

Among the dangers of this focus on symbolic creation, processing, distribution and use – hyperreality in analytical design and practice (Baudrillard,
1983) – is a kind of turning away from the material world that has been described elsewhere in a discussion of information policy and arms control (Braman, 1991). There, one of three problems identified as a problem with the efforts to ‘ephemeralize’ military activity through the use of new information technologies was the danger that absorption in the screen would blind observers to actualities on the ground. In the area of cultural policy, there is also the danger that the growing attention to the development of cultural statistics and the harmonization of cultural policy across nation-states will blind us to the spiralling loss of cultural and linguistic diversity we are experiencing as part of the general loss of diversity in life forms on the planet.

As the place of culture in global economic and geopolitical processes rises, threats to the basic civil liberty and human right, the right to create, are growing. Justifications for and types of restrictions on creativity among other speech rights from the past, such as censorship, physical destruction or removal of production equipment, incarceration of artists and authors, and so on, are still available and still in use. In addition, however, some new types of restrictions on the right to create have been made possible by our transition to the fourth stage of the information society, characterized as it is by harmonization of information systems with other information and communication systems and social systems of all kinds. These new types of threats to the right to create are moving to the centre of the negotiating table over speech rights. Their danger is made even greater by the fact that they are not the traditional types of threats to which sensitivity has been developed and surveillance systems established, and that they are dangers of which most people are unaware.

Distinction of the rights of information creators among the processes of the information production chain and protection of the speech rights (and other First Amendment-like rights) of participants in all stages of the information production chain are among the steps that are the most important in order to protect the right to create in the current environment. Attention to and participation in the development of new forms of intellectual property rights and theoretical and empirical work contributing to the development of complex adaptive systems theory – in which non-linear causal processes are assumed and co-evolution rather than single-system survival the goal – are among the additional tools that may be useful in protecting the right to create today.

Notes
1. Dozens of models of an information production chain have been produced, and can be identified in almost any discourse about the information economy, the economics of information or application of the law to information creation, processing, flows and use, whether explicitly or implicitly. The author has been using a model adapted from those offered by Fritz Machlup and Kenneth Boulding that distinguishes between the stages of information creation (de novo, generation and collection), processing (cognitive and algorithmic), transportation, distribution, seeking and destruction as a heuristic in research in the areas of international trade, constitutional law, arms control agreements, and so forth.
2. The article, ‘Harmonization of Systems’, introduces a three-stage model of the history of the information society. The author is now using a four-stage model, in which what was formerly considered to be the first stage is now broken into two, stage one from the middle of the 19th century to its close, and stage two from the beginning of the 20th century to the 1960s.
3. One example of such a vision is offered in Braman (1996b).
4. In Braman (1996c) several potential avenues for greater protection of the intellectual property rights of artists are identified. In addition to those discussed within this article, mentioned there are patenting of texts, copyright of the genetic information of the artist, branding and use of privacy law.

5. The term ‘survival’ here is being used in the way it is used by the Ojibwe, who describe their K-12 schools for their ravaged communities in Minnesota as ‘survival’ both in the sense of serving the survival of their traditional culture and in terms of providing the preparation students of all ages need to survive in the mainstream culture.

References


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