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Creativity and Copyright: The International Career of a New Economy

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INTRODUCTION

This chapter argues that the idea of intellectual property at the centre of the creative industries is a construction that has little to do with the reality of work in these sectors of the economy. The focus is on three areas: (1) the rise of creative industries discourse; (2) the creation and effects of the British model of creative industries; and (3) creative work and labour. The bulk of the discussion is around the 'career' of creative industries discourse as it intertwines itself with intellectual property. The chapter shows how creative industries held out the promise of a new form of economic activity to replace the supposedly declining heavy industries of the West. In fact creative industries have, so far, offered forms of labour and visions of culture that are deeply problematic. The chapter concludes by assessing the usefulness of a model of the economy based on a version of intellectual property that is set against the reality of work in the creative industries.

We will soon begin to see the 'creative industry' phenomenon as something specifically linked with the Blair and post-Blair years, starting 1997 and in effect lasting for just more than a decade. (McRobbie 2010 32)

The chapter explores the rise of the creative industries and their relationship to intellectual property. The main argument in the chapter is that although intellectual property, in the UK model, seems to be inextricably linked with creative industries and the creative economy, in fact it has a complex and often peripheral role in the practices of those industries and that economy. This is because the term 'intellectual property' was used in a specific way as part of the development of the concept of creative industries. Rather than referring to the legal regime surrounding the protection and exploitation of property rights, intellectual property in the UK's version of creative industries became a catch-all term for an economic and an arts policy. The chapter will demonstrate how this version of intellectual property is deeply problematic, particularly as its usage elides several different ideas.

The chapter begins by outlining the various iterations of the creative industries, from the cultural industries of the 1980s to the digital economy described by recent European Union (EU) policy documentation. Following this overview the chapter uses existing research to consider the extent to which the initially central place given to

a problematic idea of intellectual property in the UK's highly influential definition of creative industries is a reality. In fact, for many in the creative economy, their labour is not primarily concerned with intellectual property, and the exploitation of the intellectual property they produce provides an uncertain basis for their lives. The chapter concludes by surveying the most recent debates defining creative industries. It questions the sustainability of economic activity that is defined by the DCMS version of intellectual property. The DCMS conception of intellectual property is, as this chapter indicates, both at odds with British and international legal frameworks of intellectual property, such as copyright, and at odds with the working lives of those within the creative industries.

MAKING MONEY FROM IDEAS: THE CREATIVE INDUSTRIES

The idea of the creative industries became well known because of work in the UK. In 1998 the UK's ministry of culture, the Department for Culture, Media and Sport (DCMS) produced a definition of cultural and business activities that were seen to be part of a new form of economic activity (DCMS 1998). DCMS began by using 13 sectors of economic activity as the basis for the creative industries: advertising, architecture, arts and antiques markets, crafts, design, designer fashion, film and video, interactive leisure software, music, performing arts, publishing, software and computer services, and television and radio. The 13 sectors were controversial as the definition included such things as database design and computer games that, on the surface, seemed only tenuously linked to cultural activities (Campbell 2013). Indeed academic discussions over what was and what was not a creative industry provoked a rich and intensive debate (e.g. see Flew (2012) for a summary).

Debates over the definition of creative industries focused on the question of what, exactly, brought these 13 sectors together.

In the DCMS work on defining the creative industries, the common link and theme between the disparate sectors was the idea of intellectual property. This idea was focused on the economic importance of the 13 cultural and business sectors, as their economic similarities were seen to be that they derived revenues from their use of intellectual property:

... those industries which have their origin in individual creativity, skill and talent which have a potential for job and wealth creation through the generation and exploitation of intellectual property. (DCMS 2001: 5)

The DCMS thus placed intellectual property at the root of the creative industries in terms of its importance. However, this definition of intellectual property is highly problematic. This is because, in the initial development of creative industries and the mapping of what was and what was not a creative industry, the understanding of intellectual property was not at all clearly defined. Two examples, from a series of critiques of the DCMS 13 by various authors and organizations (Hesmondhalgh 2012; NESTA 2013; Work Foundation 2007), illustrate the problem with the use of the term intellectual property in this context.

In the first instance there is an issue of how the markets for the goods and services captured by the 13 sectors function. Recent debates (NESTA 2013) have shown that particular sectors of the 13 tended to have little or nothing to do with intellectual property in the sense of the exploitation of ownership and control over property rights, such as copyrights or patents. The market for art and antiques, for example, has elements of economic value that are the direct result of the ownership of the intellectual property that subsists in a painting or sculpture. However, much of the economic value in this sector is generated by the physical property, suggesting the market is more akin to the buying and selling of land. In particular it is the sale and resale of the physical property, the painting or sculpture, and the associated processing, auction and brokerage fees (Velthuis 2007) that are the drivers of economic value.

Sectors such as publishing have a closer relationship to the intellectual property protection regime associated with copyright, although 30 years ago this would have been more linked with the activity of selling the physical object. Film and computer games represent the opposite end of the scale, whereby an important (but not the only) source of economic value comes from the control and exploitation of the copyrights over creative and cultural content, although this has begun to change when confronted with the challenge of new technology for content dissemination and delivery (David 2010).

The second example is to do with the activities and working lives of those labouring with the 13 sectors. This is a point that the chapter will explore in much more detail in later sections. Before turning to issues of work and labour, it is worth considering other debates over creative industries that can help to clarify why the idea was so seductive to policy makers and how this seductive aspect has ensured the global dissemination of an, at best, very specific understanding of intellectual property.

The DCMS definition of the creative industries, with its focus on intellectual property, generated extensive criticism and debate. In the first instance, the 13 sectors chosen as the relevant creative industries seemed to rely heavily on the sectors that were more closely associated with technical expertise, such as database design, rather than those sectors most usually associated with the arts, such as performing or visual arts. Peter Campbell (2013) has shown how, when faced with the exclusion of software-related activity that was not computer game creation, the claims as to the strong, or above average, contributions to British GDP and employment were hard to sustain. Part of the attractiveness of the creative industries, as subsequent sections will show, was their capacity to generate economic impact that would be above and beyond other areas of economic activity. If the less artistic sectors were the drivers for this growth, what would that mean for the claims for a new economy based on DCMS's definition of intellectual property?

This first point bleeds into a second question, which concerns the use of intellectual property by DCMS as a basis for defining the creative industries. The use of intellectual property, in the DCMS's understanding, meant that the boundaries around what was, and was not, considered creative industries were unclear. For example, activities that are grouped together as the Galleries, Libraries, Archives and Museums (GLAM) sector, which are all crucial drivers of tourism revenue and have a clear relationship and dependence on the DCMS's 13 sectors, were excluded from the DCMS's original map of creative industries. If the boundaries between particular forms of cultural activity, such as those of the GLAM sector, and creative industries seemed arbitrary (Hesmondhalgh 2012) then the boundaries between the rest of the economy, almost all parts of which have (as subsequent sections of this chapter will describe) a relationship with the DCMS version of intellectual property, were equally problematic. Why the creative industries comprised specific parts of the economy and why they merited the special and particular attention of policy makers was, therefore, difficult to discern, beyond the DCMS policy's faith in its version of intellectual property. Indeed, as Bilton and Leary (2002: 50) assert: 'it is difficult to think of a product which does not exploit some intellectual component in the form of patents, design elements or other intangible, symbolic properties that make that product unique'.

DCMS's 13 sectors reflected several longer-term trends surrounding discussions about culture and the economy, summarized by Garnham's (2005) paper exploring the shift from the term cultural industries to the use of the concept of creative industries within policy discourses. The term cultural industries was most famously associated with the work of the Frankfurt School, who saw the production of cultural artefacts as closely related to the need to create order and submission within the power structures of monopoly capitalism (Adorno and Horkheimer 1997). Creative industries, grounded in the work of

DCMS and its version of intellectual property was the policy application of a longer-term emergence of cultural industries as a viable part of economic life.

Garnham argues the roots of the creative industries in the UK can be found in the strategies for funding the arts during the 1980s, whereby arts organizations made the case for the economic impact that they could have, if given sufficient funds by the state. By the 1990s the cultural aspect of the arts' claims to industrial status had been superseded by the rhetoric associated with a transformation within capitalism to an economy based on information and knowledge. This transformation is discussed in more detail later in this chapter, but at this juncture its importance stands as part of the explanation for the term 'creative' in creative industries and the focus on intellectual property as the key driver for the role of creative industries in the economy.

The development of an information economy was crucial to European Union attempts to remain competitive in a globalized economic order. The broad definition of creative industries used by the DCMS, with an important role for software production and advertising (Garnham 2005: 26), would not exist without the background of the information society and the EU's insistence on the need to employ knowledge as a central aspect of economic production. The employment of knowledge as a central aspect of economic production, although not spelt out in detail in EU documentation (Garnham 2005), has a similar status to intellectual property in DCMS's creative industries, as a seemingly established and coherent term, but one which bears little relation to the legal regimes surrounding knowledge or the realities of work and labour in this economy.

A range of British policy documents and ministerial speeches and statements show how the creative industries are currently understood in the UK. The most recent of those followed the change of government in 2010. By 2012 David Cameron (Cabinet Office 2012), who had said comparatively little on the specifics of art and cultural policy, framed

comments on film policy through the lens of that sector's economic contribution:

Our role, and that of the BFI, should be to support the sector in becoming even more dynamic and entrepreneurial, helping UK producers to make commercially successful pictures that rival the quality and impact of the best international productions ... Just as the British Film Commission has played a crucial role in attracting the biggest and best international studios to produce their films here, so we must incentivise UK producers to chase new markets both here and overseas.

Cultural activity offered the chance to create an export industry that could contribute to British growth and competitiveness, staffed by entrepreneurial workers. Its primary product would be the intellectual property associated with the film industry and it seemed to be an area in which the British could not only compete with international rivals, but could also be seen to be excelling. This is, of course, in contrast to the narratives associated with labour intensive manufacturing and other forms of heavy industry that had seen a decline, for a variety of reasons, in the UK since the 1960s. Film, as an example of one of the creative industries, offered a chance to replace these jobs with a new type of work. This conception of creative industries would prove to be seductive beyond the UK, when framed within the DCMS definition of the 13 sectors of the economy that were creating intellectual property, as DCMS saw it, capable of being exploited.

GETTING CREATIVE WITH THE CREATIVE INDUSTRIES: THE UK AND USA

The previous section suggested that creative industries had been founded on a hopeful, but unclear, conception of intellectual property. The potential offered by this British understanding of creative industries and their role in the economy proved massively influential across the globe, even in contexts where the term itself was rejected. Ross's

(2007) narrative of the differing understandings of creative industries, in connection to the dissemination of the British Model, is an important way of beginning to illustrate the distinction between the DCMS definition and the reality of creative practices. He identifies DCMS's creative industries model as itself a commodity to be exported, drawing interest from a range of nations seeking to develop a new form of economy, whether as a substitute for supposedly declining industrial activities, or as a means of short circuiting the prescriptions of developmental programmes.

The success of the British model of creative industries parallels similar successes in the cultural sector – an innovative repackaging of existing material that is clear or catchy enough to transcend linguistic or cultural barriers. The DCMS 13 created an economic sector, in the first instance, then coupled this sector to a narrative explicitly suggesting that this sector was growing at a much faster rate than the rest of the economy in the UK (Campbell 2013). The union of cultural activity, such as the traditionally publicly funded arts, with software and database design constructed a concept that appealed to aspects of individuals' identity, the need for economic growth and a difficult to refute appeal to the idea that work would no longer be the back-breaking labour of the factory, but would be some combination of individual artistic endeavour within a technologically advanced digitally literate society.

Ross (2007: 20) succinctly captures the objections to this model of the creative industries, which cuts across a range of policy and academic disciplinary areas:

It will not generate jobs; it is a recipe for magnifying patterns of class polarisation; its function as a cover for the corporate intellectual property (IP) grab will become all too apparent; its urban development focus will price out the very creatives on whose labour it depends; its reliance on self-promoting rhetoric runs far in advance of its proven impact; its cookie-cutter approach to economic development does violence to regional specificity; its adoption of an instrumental value of creativity will cheapen the true worth of artistic creation. Still others are inclined simply to see the

new policy rubric as 'old wine in new bottles' – a glib production of spin-happy New Labourites, hot for naked marketization but mindful of the need for socially acceptable dress. For those who take a longer, more orthodox Marxist view, the turn toward creative industries is surely a further symptom of an accumulation regime at the end of its effective rule, spent as a productive force, awash in financial speculation, and obsessed with imagery, rhetoric and display.

But the issue most pertinent to this discussion that Ross's work identifies is the status of intellectual property within the DCMS definition. This is especially clear when the rather glib reference to intellectual property in the DCMS version of creative industries is compared internationally. In the USA the concept of creative industries has gained little traction, within a national setting that has placed intellectual property at the centre of its conception of the economic role of culture has shown how commercial cultural activity in the USA, in this instance film production, is tied up with complicated forms of state subsidy, benevolent tax regimes and the politics of US foreign policy, both in the cold war era and after.

State support for this cultural industry is bound up with an insistence, internationally, by the US that overseas markets must open their borders to US cultural exports, that nation states must be prevented from offering other forms of support, for example the French cultural exception, and that intellectual property rights must be afforded the strongest forms of protection. This situation has underpinned the point Ross makes, that in the USA the creative industries do not exist, rather they are known only as the copyright industries, reflecting the acknowledgement of the basis for their revenue and business models.

CREATIVITY GOES GLOBAL

Although the previous section introduced a range of challenges to the DCMS version of creative industries, this model has generated much interest and a variety of policy

engagements across the world. Interest is partially a result of what Peck (2005: 751) neatly identifies as the ephemeral character of the creative industries, in the sense that the ‘creativity’ which is supposedly at their root is like apple pie and motherhood – hard to be against, yet ultimately a concept that is hard to coherently define.

The nebulousness of creativity was useful when it brought together software and the arts in the DCMS definition. Not only would creative industries offer the vision of a new economy, alongside an economic role for artistic practices, they would be open to anyone and everyone. After all, we are all creative, in our own way.

Arts organizations, start-up businesses, consultants and government bureaucracies all embraced the idea that the economy would now follow a blueprint driven by artistic and cultural production. Whilst the terms for this new economic system vary, being known as the knowledge economy (Foray and Lundvall 1996), as post-industrial (Bell 1974), as financialized capitalism (Engelen et al. 2011), as neo-liberal (Harvey 2007), as the network society (Castells 2000), as digital capitalism (Betancourt 2010) and as post-Fordism (Amin 1994), all of the various labels sought to focus on how the era of large-scale factory production of standardized goods via the physical labour of the worker was being overtaken by another economic system.

The new economy, detailed by Garnham (2005), would be characterized by industrial activity that had high fixed costs of production, for example newspapers or films, but almost no costs of reproduction and distribution, as digital technology made marginal costs of new products close to zero. Other writers have drawn attention to the wider aspects of the new economy that build on this business model, with terms such as ‘cognitive capitalism’ (Moulier Boutang 2011). Moulier Boutang’s description ascribes a range of characteristics to cognitive capitalism (15 in total), with immaterial labour as perhaps the most important. This is the labour of thinking, of interacting with people,

the labour that was traditionally contrasted with the manual work of the factory or the docks. Immaterial labour is now crucial to the economy, even in sectors that are still concerned with the production of material goods. Moulier Boutang gives the example of how even farming depends on mechanization, ICT and digitized forms of information.

In the information-based version of the economy, knowledge becomes the centre of economic life. Privileging knowledge creates a new division of labour, celebrating those able to exploit their cognitive endeavours, for example through possession and acquisition of intellectual property rights, whilst excluding those unable to adapt to the new paradigm, which shifts work away from physical labour and the factory. For Moulier Boutang (2011) firms adopt individualized and flexible forms of production, that even when producing material goods are more dependent on large-scale information about the potential consumer, client or customer than earlier industrial models. Eventually the division between producer and consumer itself is blurred, as the production of economic value is led by the consumer. The blurring of producer and consumer can easily be seen in the business model of the poster child company of the new economy, Facebook. For Facebook, the user is the product itself and the company derives revenue from users’ activity and engagement.

In the cognitive age:

the object of accumulation consists mainly of knowledge, which becomes the basic source of value ... issues such as property rights, positioning in networks, alliances and project management become major institutional and organisational factors. Their role is crucial. The strategies of this capitalism are determined by the quest for a spatial, institutional and organisational positioning likely to increase its capacity for engaging in creative processes and for capturing their benefits. (Moulier Boutang 2011: 57)

The means of capturing the benefits of knowledge, and exploiting those benefits, are not confined to intellectual property. Networks, as described in the work of sociologist Manuel Castells (2000), become the organizational

form and the set of practices for the cognitive age, mirroring the practices and organizations of the cultural sector from which, in the DCMS narrative, it draws much of its inspiration (Garnham 2005).

PRODUCING CREATIVE INDUSTRY POLICY

[!]It would be difficult to identify a non-creative industry or activity. (Pratt 2005: 33)

The crossover between cultural practices and the new economy finds its most obvious expression in theories of convergence culture, theories that have been important to the way creative industries policy is currently understood.

Cognitive capitalism (as one of the many related terms to describe the new economy) is marked by forms of what Henry Jenkins calls convergence culture (Jenkins 2006). In cognitive capitalism, the economic and the cultural become closely intertwined (DuGay and Pryke 2002). It would be easy to say such intermingling had always been the case; however, as Lash and Lury (2007) summarise, it is not that economic practices depend on cultural norms, but rather that forms of culture are now commodified and thus their interchangeability underpins the economy:

when, for example, movies become computer games; when brands become brand environments, talking over airport terminal space and restructuring department stores, road billboards and city centres; when cartoon characters become collectables and costumes; when music is played in lifts, part of a mobile soundscape. (Lash and Lury, 2007: 8)

The overlap and convergence between cultural forms, media and spaces reflects the crossover between culture and economy. In the initial critical theoretical discussions of *cultural* industries (Adorno and Horkheimer 1997) there was a lament about the enveloping of culture by the economy. Under convergence culture this is celebrated, as cultural artefacts and practices can be the source of considerable value for national economies

and can provide forms of work that are 'cognitive' and dependent on individuals' creativity.

The celebration of the convergence between economy and culture is vitally important to the DCMS understanding of creative industries, with its related vision of intellectual property. In the UK, creative industries are now placed within this broader economic narrative that links culture with many forms of economic activity that would not usually be seen as part of the arts, such as manufacturing. The Work Foundation (2007) and most recently the National Endowment for Science Technology and the Arts (NESTA) (2013) have both attempted to chart the relationship between state subsidized forms of cultural and artistic practice and market orientated commercial cultural forms, including design, advertising, film and music, alongside manufacturing and services. This reflects precisely the arguments of Moullet Boutang (2011), whereby cognitive activity is narrated as central to even the most mundane parts of the industrial or manufacturing economy. Indeed for NESTA (2013) the centrality of cultural and creative activity to the rest of the economy is an important justification for state funding and intervention in favour of cultural and artistic organizations.

Policy research argues that cultural practice is embedded in the wider economy, influencing innovation in a range of sectors in a diffused way (Work Foundation 2007). The policy research literature also argues that the metaphor of ecosystems (Leicester and Sharpe 2010) is the appropriate way of understanding the relationship between artistic practice and more traditional economic spheres (Bakhshi et al. 2008). In both the UK (Vaizey 2011) and the USA (NEA 2012) not only are the art schools, subsidized galleries, higher education institutions, advertising firms, film makers and designers seen as part of a cultural ecosystem, but this ecosystem is seen as relating directly to organizations such as the manufacturers of domestic appliances, computers and aircraft. The ecology is, to return to the DCMS definition of creative

industries, one that has intellectual property at its very centre, because the sources of innovation, the avant-garde arts, and the commercial forms of cultural production depend on 'the generation and exploitation of intellectual property' (DCMS 2001: 15)

THE CREATIVE CLASS: INTELLECTUAL PROPERTY'S IDEAL TYPE?

The previous section described how policy research following the initial DCMS definition of creative industries developed into a much wider vision of how economy and society should be organized. This work extended the DCMS definition from an ill-defined idea about intellectual property to a blueprint for policy questions that went beyond just creative industries. However, in this extended version of creative industries, the idea of intellectual property moved further away from the specific aspects of copyright or patents that make up the legal regime protecting and exploiting intellectual property. Rather the eventual meaning of intellectual property in the DCMS definition of creative industries elided the fixed forms of intellectual property in records or paintings with the creative practices and activities that make up most forms of work and labour in the arts. This elision justified the expansion of the enforcement of intellectual property rights for those in control of them, via legislation such as the Digital Economy Act 2010, using the story of promoting and developing the individuals and practices that are supposed to be the source of the value generated by intellectual property.

However, as the remainder of this chapter will show, the DCMS understanding of intellectual property, which elides artistic and cultural practice with the ownership and control of property rights in fixed creative expressions, is far from the reality of those who work in the sectors of the economy defined as creative industries.

In the DCMS definition of creative industries, intellectual property comes from

the 'individual creativity, skill and talent' of the creative worker. Centring creative work as essential for the economy seems like a seductive strategy to a range of political positions. On the political left it offers a non-exploitative vision of work that escapes the manual labour associated with the nineteenth and twentieth centuries. For the political right, it is associated with a form of entrepreneurialism that will do away with the need for state intervention and will give rise to, in essence, a nation of creative shopkeepers, selling their individual intellectual property.

However the reality is very different. Oakley (2009) argues that cultural work is filled with similar pains and pleasures that workers were supposed to escape as they became creative labourers. There remains a great deal of exploitation in this work. The creation of the DCMS version of intellectual property is often irrelevant to the working lives of creative labourers, whereby they are using their creativity, skill or talent, but derive little revenue and often do not control the copyrights or patents that they produce (Gill and Pratt (2008), Hesmondhalgh (2012), Oakley (2009) and Schlesinger and Waelde (2012) all give introductions to these issues). This raises questions as to the capacity for creative industries to genuinely transform economy and society.

The creative worker became prominent during the late 1990s, based on a range of discussions, but figuring most obviously in the ideas of Richard Florida (2002) in the United States. Florida's work offered similar narratives to those displayed in previous sections, whereby creative individuals could transform local and city economies as they represented new forms of labour to replace declining manufacturing and industrial activity. This version of creative individuals was important in British government policy and rhetoric, across a range of areas, including urban, cultural and education policies (Evans and Shaw 2004; Jowell 2004). Creativity, therefore, has an apple pie banality, identified by Peck (2005), that has allowed it to march beyond just economic policies, into social and health policies (Galloway 2008;

Garnham 2005). The fundamental lack of definition has also allowed the concept of creativity to be applied to the entire population, making it a personal quality that everybody possesses. As a result, individual creativity can be the basis for an untapped form of capital, akin to a coal seam or a diamond mine that the British economy can use to return to global pre-eminence.

Although creativity is something that the entire population is said to possess, it is also a quality that is associated with specific occupations. For DCMS it was those occupations in the creative industries. For other writers, such as the consultant Richard Florida (2002), it was a whole section of society that he called the 'creative class'. The creative class has three traits. First, they are highly individualistic, seeing themselves as having moved beyond the discussions of social structures of class, gender, ethnicity and other aspects that characterized debates over the workforce in the twentieth century. Second, as part of their individualism they have an open and tolerant attitude to diversity. Finally they are highly meritocratic. Everyone is creative, so it is by virtue of hard work and having good ideas that the creative class have managed to get where they are (Banks 2009).

WHAT DOES THE CREATIVE CLASS DO WHEN IT CREATES?

The traits of the creative class play out in a highly uneven economy, which has only a limited and contradictory relationship to the idea of intellectual property that DCMS thought was important to the 13 sectors that make up the creative industries. DCMS's act of constructing the creative industries, by defining them in terms of exploitation of intellectual property based on individual creativity that only then has the potential for job and wealth creation, missed much of the reality of how both the supposed creative class and the creative economy functions. For example the two mapping documents, of 1998 and 2001,

have little detailed engagement with the core protection regime of 'creative' intellectual property – copyright – but are rather concerned with identifying and measuring contributions to economic activity GVA, employment and prospects for growth in the 13 sectors.

David (2010) and Schlesinger and Waelde (2012) have explored how intellectual property is most commonly exploited. It is rare for individuals to control their intellectual property in a form that can be used for substantial 'wealth creation'. For example to exploit copyright requires the ability to regulate reproductions of work, the right to copy. It is far more common that larger corporate structures control (legally and economically) such copyrights, even whilst intellectual property ownership remains nominally in the 'artist's' legal possession. The music industry is the paradigmatic example. Schlesinger and Waelde's work is especially important here, as is the cross-industry study conducted by Searle (2011). These authors suggest that creative work is not an individual process. In the case of the avant-garde musicians and dance professionals, researched by Schlesinger and Waelde, there is a sense of community and communality that is part of the creation of artistic artefacts. This larger community makes it difficult to attribute particular intellectual property rights to individual creative acts. In Searle's work, most notably in her discussion of computer games, there is a lack of clarity over ownership within the crowd-sourced nature of modern computer games. Most creative work is collective and non-proprietary. Much that is created is not owned, nor claimed, by its creators. Much that is owned is claimed by actors who cannot be said to have been its sole creators. This raises questions as to the potentially exploitative structure of computer game generation. Likewise for the owners of indie record labels, the broader community of which they are part is crucial to their economic models. Intellectual property exploitation is, however, the core practice of the major labels.

The communality of creative work casts doubt on the role of the individual at the heart

of the British model of creative industries. Intellectual property is not the source of revenue that allows these workers to live. Rather it is often given away free as a method of making a living in other ways. Avant-garde musicians and dancers, for example, are often occupied by work in state-funded institutions, most notably university music and dance departments, which serve as their main source of income (Schlesinger and Waelde 2012). This practice is mirrored in other parts of this economy. A range of work across creative industries, whether new media (Gill 2010), television (Hesmondhalgh and Baker 2011) or music (David 2010) shows how the majority of fiction writers, journalists, musicians, actors, dancers and visual artists make either none or very little of their earnings from intellectual property rights (royalties from reproductions of their works), but rather make their livings predominantly from the sale of original works, live performances and work for hire; and/or related employment, such as teaching, tutoring, talks, mentoring, training, or working at and managing events/venues, etc., etc. These positions are a useful illustration of the problems of the DCMS approach to intellectual property and creative industries. These individuals are creative workers, but their relationship to forms of intellectual property such as copyright is in most cases peripheral compared to the importance of their status as performers. Moreover it is their cultural value or worth as producers and performers that secures them jobs and incomes, rather than reproduction revenue from copyright. In the DCMS version of creative industries intellectual property is the source of value. In reality the fixed forms of property, such as copyright, are only tenuously related to job and wealth creation for most creative individuals. The value of their work results from its reputation amongst critics and peers, rather than its commodity value as a product to be exploited. In Searle's work, these debates between the cultural and economic (or copyright) values of a given piece of work illustrate how non-economic forms of value that come from culture as an expression of identity or as a contribution to a canon

or field outweigh the DCMS vision of an ill-defined intellectual property system that is supposed to motivate, protect and reward the participants in the creative economy.

THE EFFECTS OF CREATIVITY

If research has suggested that intellectual property protection is at times peripheral to creative workers, then what is the reality of the creative economy and the role of intellectual property in this new economy? The rest of this chapter turns to a series of key issues within the creative economy, focusing on the effects of maintaining the idea that the new economy will be premised upon strong intellectual property rights. As examples from the disciplines of economic geography, the sociology of work and critical political economy will show, the effects of the myths underpinning policy surrounding creative industries are at best unevenly distributed rewards and at worst perniciously exploitative.

In the UK, home of the British model of creative industries, there is a major split between the dominant position of London, with knock-on effects into the south east of England, and the rest of the UK. London is a global and globalized city, with a range of creative industries that are both globally connected and interrelated across industrial sectors. Outside of London the story is different, with a much more local creative economy served by localized creative industries (Chapain and Comunian 2010).

The uneven geography of the creative industries produces an uneven distribution of work and rewards in this sector. The lack of clarity over the boundaries of what actually constitutes a creative industry, especially given the unclear relationship between work, reward, motivation and intellectual property for those labouring in the sector, impacts upon the day-to-day realities of work as well (McRobbie 2010). Individuals, communities and societies have differing views of what constitutes good and bad work in these sectors. These views of

what is good work and what is bad work are divided around two specific forms of labour. The first is associated with positive forms of self-expression and creativity, thus requiring sacrifice in the form of long hours, low pay and precariousness, whilst other forms of work are maligned because of the supposed lack of creativity associated with them.

McRobbie's work places this division within a longer historical trend, whereby the cultural practices of emerging entrepreneurs of the 1980s UK gave way to much more exploitative labour structures as creative industries became codified and taken up by policy makers. During the 1980s in the UK the fashion industry micro-businesses associated with subcultural scenes and the related informal and alternative publishing and media channels were a response to deindustrialization, reflecting the rise of identity politics and the birth of a specifically cultural form of entrepreneur. By the late 1990s and into the 2000s, these subcultural entrepreneurs gave way to a night-time economy driven model of cultural work (Chatterton and Hollands 2001) that spilled over into more traditional service and leisure sector businesses, of bars and clubs (Thornton 1995). Very often the specific service sector jobs associated with subcultural scenes had very little to do with intellectual property, at the very same point when the British Government was drawing on their symbols and signs of success, in the form of such hideous tropes as 'Cool Britannia' (Oakley 2004), to underpin the DCMS model of creative industries. Rather this work reflected the aestheticization of services and leisure as culture and economy become increasingly intertwined. This aestheticization is part of the broader trend towards cognitive capitalism outlined earlier in the chapter, but is also part of the increasing importance given to the labour of consumers in producing the culture that owners of intellectual property seek to control and exploit.

The rise of creative jobs that are not about the production of intellectual property, but rather reflect the aestheticization of the service sector, for example event managers, is

influential in carrying over the negative working conditions experienced within the night time economy, into other parts of the creative industries. These include insecurity, poor working conditions, long hours and a lack of professional status. The convergence culture discussed by Lash and Lury (2007) manifests itself in work, whereby jobs become hybrid forms of work and multiple forms of employment are necessary to make a living. For some this can be both empowering and rewarding. For example, the workers in Schlesinger and Waelde's (2012) research into avant-garde musicians and dancers were not making money from copyright exploitation but often held stable and relatively high status positions within higher education institutions. However, for others the results are far less benign.

As with the rest of the cognitive capitalist economy, much work is low paid, with the resulting poor standards of living. Whilst this is true for those working as cleaners, care workers or in other supposedly low skilled, but often highly affective, areas of the economy, it is particularly important in the creative industries. This is because the narrative of poor pay and poor conditions is linked to the narrative that creative industries offer good work, or at least work that is better than both the factory and the low-skilled sector. For writers such as McRobbie the consequences are that 'the creative sector finds itself full of young people who are burnt out, exhausted, unable to consider having children and often self-exploiting on the basis of the "pleasure in work" factor' (McRobbie 2010: 2).

WORK, THE SELF AND THE MARGINALIZATION OF INTELLECTUAL PROPERTY

Recent research into work in the creative industries (Gill 2010; Hesmondhalgh and Baker 2011) points very straightforwardly to the idea that a major part of what is produced in this sector of the economy is not the version of intellectual property that the British

Model sees at the heart of creative industries, but rather is selves and individuals. Economic value depends on the cultivation and maintenance of an individual identity that can be used to generate revenues. Gill (2010) summarizes this trend neatly in the idea drawn from one of her research participants, that 'life's a pitch'.

Fundamentally the idea of constantly pitching oneself for various types of work within the creative industries is deeply ambivalent. On the one hand this form of labour is empowering, offering autonomy and the chance to express oneself in exchange for very flexible employment patterns. On the other hand the promise of self-expression and self-realisation can equate to long hours, low pay and a range of damaging effects that locate themselves in the individual psychology of the creative worker. Hesmondhalgh (2012: 243) summarizes this ambivalence:

The cultural industries might not provide good, meaningful work as reliably as many policy makers claim. But such work is available there and it remains plausible to suggest that it might be more available in making television programmes, music and magazine journalism than in other industries.

The self-realization and self-expression of what allegedly comes from work based on culture and creativity can be framed within a larger narrative of ambivalence, whereby the pleasures and pains of creative work can be seen as a highly privileged position when compared to other forms of work. The creative industries offer what Hesmondhalgh and Baker call a 'very complicated version of freedom' (2011: 13).

This complicated version of freedom is bound up with the aesthetic positions that are related to DCMS's intellectual property based vision of the creative industries. Within this reading artistic and individual genius is protected by intellectual property rights, but in fact this idea of individual genius is highly problematic (David 2010) and has pernicious effects on the reality of work in the creative industries. Whilst it is large corporate bodies that tend to own and control property rights

in culture, the narrative of individual genius leads creative production to be seen to be unlike other forms of work. Rather workers are seen as being 'paid for their hobby', rather than working at all (Gill 2010).

The idea of being paid for one's hobby and that one's work should rise above both the market and its monetary concerns creates a demand for constant self-discipline in the face of a need to reject claims for high pay, decent conditions and professional status. Work, as one's hobby, with the worker's self as a commodity, in association with the creative ethos discussed earlier in this chapter leaves little room for the individual to consider structural questions of class, gender or ethnicity.

Gill and Pratt (2008) describe how the creative industries are mainly populated by young, able-bodied, well-educated and socially networked people. The sector's composition by this section of society goes hand in hand with high levels of gender inequality and specific forms of exclusion. Ball et al.'s (2010) study of recent graduates in the creative industries illustrates this point:

42% of [survey] respondents had undertaken unpaid or voluntary work or work experience since graduating. Those most likely to have done so were: women, older graduates, graduates with disabilities and those from fine art courses. Findings showed that those from more advantaged backgrounds had more chance of gaining relevant work experience (by working unpaid or undertaking internships, before or after graduation) because their parents could support them. (Ball et al. 2010: 12)

The practical reality of exclusions based on class or gender, with an associated meritocratic assumption to justify these exclusions is the key point in McRobbie's (2010) critique of the promise of the new economy and the role of creative industries. The idea of working at one's hobby, expressing one's self and one's identity creates a stark division between success and failure. Failure is not just the failure to get work or to have a sustainable career. Failure is in fact a failure of the self, that one's own identity is somehow unworthy

of work in this new economy. Moreover, taking work in the institutions associated with normal or regular work (McRobbie gives the examples of teaching and social work) means one has failed to be a creative worker. Thus the individual's identity and the categories of work that are not seen as creative are all lessened and undermined, despite their obvious social and economic importance. To get a non-creative job is to admit defeat in the struggle associated with the life of the artist, a myth that is important for the DCMS version of the creative industries:

this would in many ways mark a moment of personal failure to live up to the dream of a talent led economy, where the myth of personal creativity is so dominant and everything else is second or third best. (McRobbie 2010: 2)

And, as Ross (2008: 34) comments, the legacy of the artistic myth continues to drive the naive hopes of a policy that has really not understood the real meaning of work in the industries that policy thinks is grounded on the exploitation of a rather incoherent idea of intellectual property:

No doubt it is ritually assumed that creative jobs, by their nature, are not deficient in gratification. If anything, their packaging of mental challenges and sensuous self-immersion is perceived to deliver a surplus of pleasure and satisfaction. Proponents of this line of thinking may well concede that the life of creatives, in the past, has also been associated with misery, frustration and deprivation, but the given wisdom is that those pitfalls were primarily the result of economic inattention and social marginalization. In a milieu where creativity is celebrated on all sides, such drawbacks will surely dissolve.

The various strands of research described in this section of the chapter all suggest that what drives creative industries' success is not DCMS's idea of intellectual property, nor are the 13 creative industries sectors primarily staffed by people exploiting the intellectual property they create. This is because there is a range of employment types in these sectors and even where there are workers who derive revenues directly from intellectual property, most often as copyright, those revenues are

too small for almost all of those that do to make a living from them (Schlesinger and Waelde 2012). Rather what is created and exploited is the self, with creative industries based on an army of low-paid, insecure, artistic and service-based labour searching for the 'one big hit' of intellectual property that will allow them to enjoy the promise offered by the DCMS definition of creative industries. Intellectual property may, therefore, be seen more as an act of seduction to potential creative workers, as opposed to both the protection and the form of economic value that policy has been keen to assert.

CONCLUDING THOUGHTS: CAVEATS TO THE CREATIVE INDUSTRIES

Writing in 2013 it seems as if, McRobbie's caution notwithstanding, the creative industries are now firmly embedded within the policy discourses of both government and academia. The term survived academic dissent to give rise to a range of books (e.g. Flew 2012, 2013), journals, courses and academic institutions, as well as surviving a change of government in the UK. If creative industries have embedded themselves within UK policy discourses, irrespective of whichever party is in power, it is unlikely that the global promulgation of this configuration will cease. However, there are challenges to these conceptions of the creative industries, with intellectual property at the heart of the government's definition. These challenges cast doubt on the prospects of the term and the continued insistence on defining the sector based on a form of property exploitation that does not create much, or possibly any, benefit for the types of individuals who are seen to be its standard bearers. Indeed, one may question the extent to which policy has ever understood the challenges identified by this chapter. Indeed, in the UK, the home of the British model of creative industries:

public policy has concerned itself with skills and training issues, and asserted the importance of entrepreneurship and business skills within the arts education tradition, but beyond that it has paid little attention to the issues of cultural work. (Oakley 2009: 59)

If the promise of creative industries, founded on intellectual property has been unfulfilled, what is the future in this area? Fundamentally, the idea of creative industries will need to be re-founded, with a basis that moves away from the DCMS's version of intellectual property. This is because, as Towse's discussion of intellectual property and the creative industries identifies, the narrative of creativity, the apple pie, has too closely conflated intellectual property's legal protection and the economic benefits a creative or cognitive economy is supposed to bring to workers labouring in such sectors:

it is very easy to slip between the use of copyright as a way of defining the creative industries and the idea that their contribution to the economy is caused by the presence of copyright. (Towse 2010: 382)

As this chapter has indicated, the creative industries were meant to solve the problem of the supposed transformation of Western economies from manufacturing of tangible goods, based on the institution of the factory, to the creation of a service-led economy with a radically different type of labour. This vision has, of course, been subject to the sorts of debates outlined by this chapter. However, the cultural activities that became problematically conflated with the production and exploitation of a specific version of intellectual property in the creative industries might still have potential as an alternative form of creative work.

The first way to study this is by raising the question of how creative industries are defined. The definitional question concerning creative industries is still on-going, in terms of settling what is or is not a creative industry. For example, DCMS removed certain forms of software design from the DCMS 13 in 2011, and the specific methods by which to measure creative industries' activity have witnessed the production of an on-going series of papers, most recently by the UK's National

Endowment for Science Technology and the Arts (NESTA 2013). Following both of these developments, DCMS has subsequently issued a consultation on how best to define the creative industries. But the question of definition that the British government is currently grappling with is secondary to a proper analysis and discussion of the role and function of culture and its relationship to the economy. The lack of this discussion has allowed DCMS to elide the reality of cultural work with corporate dominated forms of making money from intellectual property rights such as copyright.

Culture, stripped of its context and meaning and repackaged as creativity, runs the risk of merely replicating the dominant and long-standing economic structures it might appear to be rebelling against. Indeed, as Ross (2009) points out, creativity is now the 'new oil' for the new economy. The connection between economy and culture, in the face of the potential misuse of culture to support continuing economic inequality, means there is a need to understand the interdependence between culture and economy.

There are also interdependences within cultural production itself. In the models of creative industries (Leicester and Sharp 2010) that sought to move away from the individualist production of intellectual property assumed by DCMS's definition, there is interdependence between large organizations, smaller organizations, firms, entrepreneurs and state funded arts institutions, as well as government. This interdependence is part of the way the utopianism associated with figures such as the artist can thus diffuse across the rest of the economy. If cultural labour is somehow emancipatory, as seen in the understanding of both Richard Florida (2002) in the United States and in left-wing discourses in the United Kingdom, then this aestheticized new economy forces us to ask what this cultural labour is and what its 'emancipatory' relationship to the economic world actually is. Freedom is a potentially double edged sword. Thus the critical role of culture investigated by the Frankfurt School's original use of the term cultural industries, which saw the

revolutionary potential of forms of culture that were not mass produced to transform the monopoly capitalist settlement, can be re-made. Whilst, as Lash and Lury (2007) show, the division between culture and economy has become even further blurred since the era of the Frankfurt school, in the discussions in this chapter creative industries activity has raised critical questions for the rest of the economy and society surrounding payment, ownership and the ability of individuals to have fulfilling and rewarding work in the age of an aesthetic, cognitive capitalism.

Without this critical interrogation the assumption that creative industries are fundamentally based upon individual creativity protected by intellectual property rights will continue to function as a rhetorical mask for what are, at best, deeply problematic changes within the contemporary economy. Within this economic settlement it seems as if the responsibility for one's labour, indeed as Gill (2010) indicates, for one's self, is no longer a social matter, and it has been left to the individual to produce the intangible goods that will sustain them, based on our own sense of creativity. The risks posed by this settlement have been made clear by the discussion in this chapter and they are risks that have been, to a lesser or greater extent, compounded by the policy decisions associated with the definition of the creative industries as intellectual property based sectors of the economy. The question such policy documents leave us with is whether we really are, indeed, all creative? If we are not then the consequences seem to be punishment, rather than the sorts of protections supposedly associated with intellectual property, in exchange for the admission of a failure to be a member of a fantasy vision of a creative class.

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