

The State of Free Culture, 2011

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Late last month, the *Declaration on Sustainable Models for Creativity in the Digital Age*^{*} was released by the Free Culture Forum, a loose global network of artists, cultural producers, political activists and scholars in the field of free culture. It was a result of the discussions during the Forum, which took place for the second time in October last year in Barcelona. After focusing the year before on legal aspects of free culture, questions of how to make the production and circulation of free culture sustainable were foregrounded this time. I will use this opportunity to assess the state of free culture today. I will do that by first locating free culture within the broader movement for the digital commons, then look at the first two phases of free culture which centered around technological and legal issues, in order to focus on the current phase of economic and institutional experimentation.

Free Culture and the Digital Commons

Free Culture is part of the heterogeneous movement for a digital commons. The digital commons, as a general definition, is the sum of all informational resources created and shared within voluntary communities of varying size and interests. These resources are typically held de facto as communal, rather than private or public (i.e. state) property. Management of the resources is characteristically oriented towards use within the community, rather than exchange in the market. As a result, separation between producers and consumers is minimal in the digital commons.

The movement as a whole is made up of three broad strands. The Free Software movement, which started in the mid 1980s, focuses on software code. It's the most advanced and established of the three. The Access to Knowledge (A2K) movement, which emerged in the late 1990s following the struggle over access to HIV/AIDS drugs in South Africa, focuses on knowledge-intensive goods, such as scholarly publications or medicines. Around 2000, the Free Culture movement emerged, focusing on the full range of artistic endeavors, from writing to music, from film to comics. Its most prominent project is Wikipedia, the cooperative effort to create a comprehensive reference work in hundreds of languages, 37 of which have passed the important milestone of 100'000 articles. All three strands share an understanding that in a digital context cultural works and knowledge goods are fundamentally different from physical goods, since they can be easily and cheaply copied, shared and transformed. Because sharing means multiplying rather than dividing, they are naturally abundant. Thus, there is no ethical justification to prevent anyone from enjoying the benefits of using them. These are social movements, committed to large-scale, collective action aiming to transform social reality.²

The Emergence of Free Culture

The practice of free culture – sharing, reuse and cooperative production – has always existed in computer networks, long before there was a proper name for it. In the early days, these practices were an extension of the cooperative culture of computer programming. The first multi-player games emerged in the late 1970s and a few years later several of them were accessible over the Internet. Quickly, they became very popular among the then still relatively small group of people who has access

1 Disclosure. I'm one of the editors of the declaration mentioned in this article. However, this article does not fully reflect this collective view in this declaration, rather they are my personal opinions.

* <http://fcforum.net/sustainable-models-for-creativity>

2 For an overview of the three movements and their relationship to one another, see Stalder, Felix (2010). Digital Commons. In: Hart, Keith; Laville, Jean-Louis; Cattani, Antonio David (eds). The Human Economy: A World Citizen's Guide. Cambridge, UK, Polity Press, pp. 313-324, <http://remix.openflows.com/node/137>

to the Internet. Generally, these were open-ended, text-based environments where users would create their own spaces and interact with each other. While there existed a certain sense of ownership over the spaces created individually, there was also a sense of a shared responsibility for the environment as a whole.³ Starting in the early 1990s, artists not directly connected to culture of computer science or hacking began to experiment with the possibilities of the Internet and the potential to create different sets of relationships among artists and the public, based on ideas of interactivity and/or community. Among the pioneering projects was the artist-run network node *The Thing*, founded in 1991 in New York and quickly gaining nodes across Europe. For much of the decade, the high-tech character of these projects provided both sense of a shared experience and a significant hurdle of much of the cultural world to understand or even participate in these endeavors.⁴ Many of the main questions of what is now Free Culture – the relationship between artist and audience, reuse and copyright, economies of sharing, critique of dominant cultural institutions – were beginning to be articulated.⁵

At the turn of the century affordable computers had become powerful enough to support a broad range of (semi)professional cultural production, significantly lowering the barriers to many aspects of making culture. Moreover, the Internet had spread widely throughout society (although unevenly in respect to region and class). Core sectors of the economy at large were changing from the logic of mass production to an ‘informational paradigm’ which demands communicative and creative skills from its workforce and vastly expands the field of cultural production (in the creative industries). Thus more people than ever before had the skills and the means to produce and distribute their own cultural works.

Cultural production at large was being affected by cheap mass (self-)communication, easy conversion between media and decentralized distribution. First, remixing – using existing works to create new ones – has become central to cultural production. Second, subcultures of small or non-commercial cultural producers, long excluded by the efficient distribution mechanisms of the cultural industries, found themselves on the same technological footing with established players and able to connect to audiences of any size. This helped them to increase and improve their cultural output. Third, many of the actions that copyright law granted exclusively to rights-holders – making and distributing exact copies or transformed works – were now being done by masses of people without authorization, not in the privacy of their homes but online (that is, in public). Much of what constituted the new digital mass culture was a violation of copyright law and rights owners – fearing loss of control over cultural works which they regard as their exclusive property – organized to reassert that control. In a series of international agreements (most importantly, the World Intellectual Property Organization Copyright Treaty, 1996) and national legislations (for example, the US Digital Millennium Copyright Act, 1998 and the EU Copyright Directive, 2001) the rights of owners were strengthened. At the same time, litigation against copyright infringement escalated.

The tension between the enforcement of increasingly restrictive laws and the growing popularity of permissive cultural practices rose to the surface and spilled into the mainstream. In part as a response to the aggressiveness of the cultural industries, in part drawing inspiration from the Free Software movement, large numbers of users and producers recognized the need to defend their culture. Their goal has been to protect and advance the freedoms that had defined digital culture from the beginning. In a series of influential books, Lawrence Lessig, a law professor and a leading figure of the Free Culture movement, argued that recent changes in law and technology could easily restrict freedoms and create what he called a permission culture. This would allow owners of past cultural works to grant

3 Evard, Rémy (1993). Collaborative Networked Communication: MUDs as Systems Tools. *Proceedings of the Seventh Systems Administration Conference (LISA VII)*, November. available at <http://www.ccs.neu.edu/home/remy/documents/cncmast.html>

4 Tribe, Mark; Jana, Reena (2006) *New Media Art*. Cologne: Taschen Verlag.

5 nettime (ed.) (1999). *ReadMe! ASCII Culture and the Revenge of Knowledge*. New York, Autonomedia

or withhold permission, at their discretion, to those seeking to create the culture of the present. The effect would be a vast increase in the control exercised by a few over the many, implemented through Digital Right Management (DRM) technologies and ubiquitous surveillance of social communication. This would cripple the potential for the emergence of a read/write culture in which the ability to consume cultural works (read) would be matched by that to produce them (write). For such a culture to flourish, he argued, people need to be able – technically, legally, and socially – to build on and transform the culture in which they live.⁶

The Free Culture movement began to take shape. One focus was to develop tools allowing copyright law, as it exists, to support rather than restrict the sharing and transformation of cultural works. Following the lead of Free Software, a series of licenses was developed to enable creators to make their works available freely. Among the first were the Open Content License (1998) and the Free Art License (2000), both based closely on the GNU GPL license. In 2001, Creative Commons (CC) established itself as one of the central hubs of Free Culture, by offering easy-to-use, customizable licenses granting some rights to the public. Works published under a Creative Commons license are always freely usable for non-commercial purposes. Some versions of the license also allow free transformation of the works and others allow commercial use. A combination of good timing, user-friendly implementation and significant support from leading American universities made CC licenses the *de facto* standard legal foundation of free culture, despite criticism and weaknesses.⁷ By mid 2009, it was estimated that some 250 million works had been published under one or other of the CC licenses. This mass adoption of CC licenses shows the breadth of the Free Culture movement.⁸

It took slightly less than a decade to establish Creative Commons as the *de-facto* legal standard of Free Culture. During the same period, it became increasingly understood at the legal dimension constitutes only one of many transformations connected to free culture. These other dimensions are now becoming increasingly to the foreground.

Growing Free Culture

The starting point for the discussion at the Free Culture Forum was a recognition that “in order to develop and grow, the human capacity for creativity requires access to existing culture, knowledge and information. Everyone can contribute to the production of culture, values and wealth on different scales, ranging from very basic to very complex creative contributions. The resources and time required for creative activities also vary in scale. We want to promote ways of liberating this time and these resources so that the distributed potential can be deployed in a sustainable way.”⁹ From this recognition, two points can be made. First, it makes no sense to establish strict and hard dividing lines between creators and audiences, because even exceptional artists are embedded in larger social environments that produce much of the innovation that these artists then articulate and digital technology allows to perform small creative productions on top of very large ones (think of editing a blockbuster movie on a home computer and putting the resulting clip up on youtube.). Second, while recognizing the important of highly distributed and modular acts of cultural production, there are also cultural products that require long-sustained individual and collective efforts to be produced. For Free Culture to be sustainable, it needs to be develop frameworks in the full range of creative scales – the

6 Lessig, Lawrence (2004). *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*. New York, Penguin Press URL: <http://www.free-culture.cc/freecontent/>

7 The main criticism concerns the fact that some of the Creative Commons Licenses are considerably more restrictive than the free licenses in the software field, by, for example, not allowing any creative reuse. See, <http://freedomdefined.org> The main weakness concerns the fact that

8 http://wiki.creativecommons.org/Metrics/License_statistics

9 All quotes in this section, unless otherwise noted, are from the FCForum Declaration. <http://fcforum.net/sustainable-models-for-creativity>

very small and the very large and everything in between – can flourish. Its unsustainable to limit free culture to the non-professional (“user generated”) aspects of culture without finding ways of liberating also professional culture.¹⁰ In terms of the small acts, which are part of human nature, the main issues are about removing barriers, in terms of copyright restrictions, lack of technical and cultural skills, but also discriminatory exclusions from public discourse. In terms of developing a professional free culture, one of the main task is to find new economic models that can sustain artists without taking away the freedom of the audiences/users. This is not an impossible task as the free software movement has shown, but it has also shown that it requires significant institutional innovations, which in the field of culture need to be very different from those successfully developed in the field of software.¹¹

Of the ten economic models listed in the *Declaration* and elaborated in the accompanying *How-To for Sustainable Creativity*,* I want to highlight three.

First, “*crowd-funding*. Enabling individual citizens or entities to contribute to a cultural enterprise by becoming stakeholders. This contribution can take the form of an investment before the work has been created, or via micro or macro credits or donations towards existing works.” Today, there are dozens of infrastructures that enable anyone to begin to raise funding through small (and, of course, large) donations from people interested in seeing a project being realized. Among the most successful platforms is kickstarter.com. On this platform, creators can publish their projects plans, including the amount of money they need to do it, and people who like to see this realized can pledge money towards it. If the entire sum is being pledged within the announced time-frame, the money is released to the project. As Kickstarter explains, their approach is closest to patronage, since it “is not about investment or lending. Project creators keep 100% ownership and control over their work. Instead, they offer products and experiences that are unique to each project.”¹² While kickstarter does not require projects to be realized under a free license and is not directly promoting free culture, it helps to solve one of the crucial challenges of free culture. Even if copies can be made and distributed for free, the first copy still needs to be financed. While the classic approach of the cultural industries has been to finance the first copy as investment which generates incomes through the control all subsequent copies, crowd-funding allows to raise money up front. Not as investment, but as kind of community contribution towards something that enough people want to see existing, just for the pleasure its existence and not for any monetary payback. It's kind of a non-capitalist venture financing which requires to build communities from the start, rather than working cloistered and then releasing the finished work into the world. While creating communities is not easy and on kickstarter as everywhere else, many more project are ignored than appreciated, it is a system that allows also for small but devoted niches to be sustainable.

Second, “*commons-based strategies and distributed value creation*. The providers of commercial platforms for cooperation share their revenues with the creators who produce the material that makes their services valuable, while commoners are able to freely share and exploit the commons.” The idea behind is that there need to be a revenue sharing between the providers of the platform which enables the users on the one hand, and the users who create content and thus make platform interesting and valuable, on the other hand. One of the working models here is YouTube, which has a program to split revenue generated by the platform 50:50 with creators who provide the content. While this has been created primarily to appease major copyright holders, it allows also other creators to generate income. In theory, this represent a balanced recognition that both the platform and the content creator generate value that is monetized in this commercial environment. In practice, however, it instigates a popularity

10 To avoid complex debates , a working definition of professional as “seeking to make a living out of the creative work” was used at the Forum.

11 See, Weber, Steven (2004). *The Success of Open Source*. Cambridge, MA, Harvard UP

* <http://fcforum.net/sustainable-models-for-creativity/how-to-manual>

12 <http://www.kickstarter.com/> “lean more” March 2011.

contest replicating the advertisement driven model of television. The popularity contest works on two level. First, in order to make money, one needs to create content that can be associated with ad terms that are popular and thus expensive (their price is determined by Google's very flexible bidding system) and one needs to create content that is popular with the viewers. While hard numbers cannot be provided due to Google's confidentiality agreements, it appears that the amount shared with the users is about \$ 0.75-2.50 / 1000 views of a video (and the associated clicks on the add-messages). Thus, this is only a suitable models for a very particular type of cultural works. But for these, it can work.¹³

Third, “collective financing systems. A flat-rate on internet connections can be consider only if it implies an equitable and democratic resource- pooling system and recognizes citizens rights to share and re-use works freely.” While such a system – a culture flat rate – does not (yet) exist, it is being promoted by parts of the content industry. Within the free culture movement, it is highly contentious, in part because there are many different variations of the flat rate and none of them is worked out in all details or tested under real-life conditions. The industry proposal is to allow file-sharing while measuring downloads and then dividing the sum raised through the flat rate by the number of downloads.¹⁴ Within the Free Culture movement, some see this as an acceptable compromise to end the “war on sharing” and avoid the imposition of ever stricter copyright enforcement laws (such as the “three-strikes-and-you-are-out” rules adopted in France under the name of Hadopi).^{*} Most others, however, see substantial difficulties because of the experience with existing collecting societies, because of the built-in bias towards the already popular, and because of the lack of any provisions to allow reuse of works. In the strict form favored by the industry, the flat would extend the producer consumer divide, which is widely seen as antithetical to Free Culture. There are, however, also proposals for a flat rate as a general funding mechanism for digital culture that could supplement other financing mechanisms without the need to measure all downloads and the associated bias towards the popular.¹⁵ The latter proposals, however, are still very theoretical and lack even the limited political support that the more strict version of the flat rate have. To avoid confusion between the two type of proposals, the Declaration adopts the term “collective financing system” and specifies numerous conditions under which a levy would be an acceptable form to make free culture sustainable. Thus, the critique elaborated at the FCForum of the flat rate proposals can be viewed as a left-wing critique focusing on social effects of the design and administration, rather than a right wing-critique of the legitimacy of creating a levy in the first place.

Towards Institutions of the Commons

Even if we only consider the three models mentioned above, it becomes clear that the challenge of Free Culture goes far beyond simply sticking a free license to a work and publishing it online. Free culture is not a niche, but the culture native to digital communication networks. To exorcise sharing and reuse from our contemporary environment, draconian measures (“war on sharing”) need to be adopted that would be – in effect – indistinguishable from totalitarian censorship. To prevent this from happening and to realize the potential for a renewal of democratic culture, we need new institutions that are capable of sustaining these new cultural practices – based on sharing, reuse and cooperative production – on all scales, from the very small and quotidian to the very large and exceptional. This involves both the removal of existing blockages and the creation of new models, platforms and institutions that channel the creative energies inherent in all human being into socially constructive and thus sustainable directions.

13 <http://www.google.com/support/forum/p/youtube/thread?tid=08ee94752dd1c334>

14 See, Grassmuck, Volker (2009).The World Is Going Flat(-Rate). .ip-watch.org (May, 11).

* <http://www.laquadrature.net/fr/hadopi>

15 See, Agrain, Phillipe (2010). Le partage est légitime. <http://paigrain.debatpublic.net/?p=1766>

Crowd-funding shows that the “audience” can be included from the beginning and that it can play a role far more than passive (even if admiring) consumers of the work. They desire to see a work happen and can be a force that makes it happen. And while there is money involved, the relationships created are not shaped through the commercial market and do not conform to its social model of narrowly self-interested actors (*homo economicus*). Thus the problem of financing the first copy can be solved without the need to revert to copyright based controls. The models of distributed value creation highlight the fact that there can be a balance between the financial interests of creators of large commercial social platforms and the users who make them valuable. While the YouTube model is clearly limited in its reliance on advertisement, it is a first step into the right direction and shows that access-based financing can be combined with free and unlimited access. The debates around the flat-rate indicate the need to develop new institutions cannot be left to communities and the market alone. At some point the legal and institutional framework needs to be adapted. This cannot be done without deeply engaging with the political system and the state (on regional, national and international levels). However – and this is my personal view – that at the moment, all the Free Culture movement is capable of doing is helping prevent the worst legislation from being passed. It is not yet in a position to pro-actively shape new regulation. At the moment, bottom-up approaches are more promising, even if we acknowledge that they are structurally limited. It's not an either-or question, rather than an assessment where our current strengths are.