FORGET IPR (+ OA + CC)

https://editionofone.substack.com/p/forget-ipr-oa-cc

> Beware of the man whose God is in the skies.
> – George Bernard Shaw

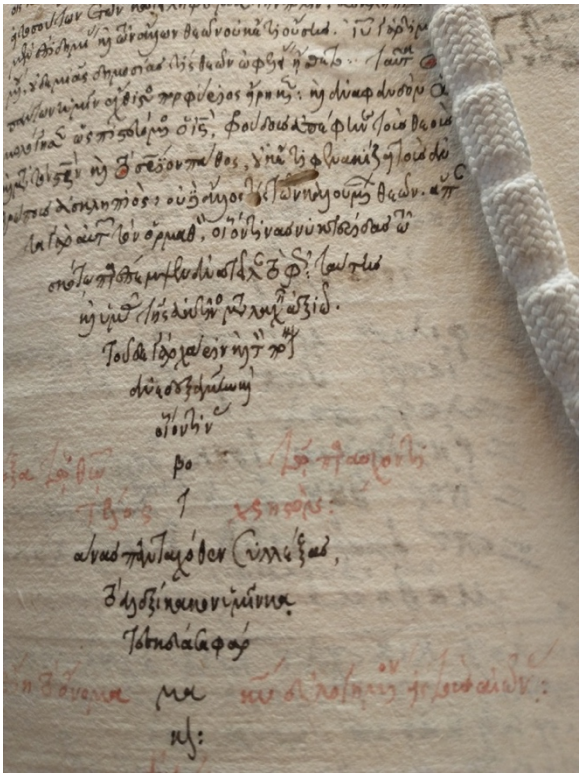

Image – MS. Canon. Gr. 27 (c.1501-1502), w/ Worm Holes. Bodleian Libraries, Oxford University, Oxford, England, UK. Photo: Gavin Keeney.

I. IPR + OA + CC

> *Fare forward, travellers!* not escaping from the past / Into different lives, or into any future; / You are not the same people who left that station […]
> – T.S. Eliot

As of 2024, all arguments *for* Intellectual Property Rights (IPR) tautologically exist *within* IPR law. The historically and legally determined tautology can only be escaped by going *beyond* IPR law, and all justifications for the abolition of IPR law, elective or otherwise, involve arguments made *outside* of IPR law. If the first arguments for IPR law were made *before* IPR law, as early as the 1400s, with the arrival of the moveable-type printing press, it only makes sense (logically or illogically) that all arguments *against* IPR law would need to occur *after* IPR law. This is the Gordian Knot of the 500-600-year imposition of IPR law, and, as all such knots, a proper reply (escape route) will resemble Alexander the Great's answer to the Gordian Knot – i.e., taking a "sword" to it.

Thus, the question of how to step beyond IPR law to justify the abolition of IPR law involves *where* such a position might be found "today" – or "tomorrow," given that there are elaborate and menacing forms of self-interest and/or industry interest aligned against any such move. If, with Prud'hon (and George Bernard Shaw), authors and artists were to decide that "property is theft," and authors and artists (artist-scholars) were to wish to finally admit that IPR law is a form of slavery (to the art-academic industrial complex), the last step *before* abandoning IPR law, for artist-scholars, would be the Open Access (OA) CC0 "license" currently available as last outpost in the proverbial frontier

of the so-called knowledge or cultural commons. As “last outpost,” the CC0 license permits artist-scholars to renounce all rights with the exception of moral rights. This position is, therefore, still *within*, but *at the edge of* IPR law. Creative Commons (CC) licensing for works, created to push back against late-capitalist intrusions into academia (e.g., the vacuuming up of digital works to lock them behind paywalls), came about through a well-intentioned, almost “utopian” regard for universal access to knowledge – an outcome, obviously, of the digital “revolution” (Web 1.0 and Web 2.0). The CC0 license was, arguably, the last option *then* available that could please academic authorities and placate industry and IPR law. Lodging works in the severely compromised cultural commons, a requirement for artists and scholars to merely survive, was a classic case of being forced on to the back foot, but without turning and heading in the other direction. Artists and scholars were duly caught in the game of academic and art-world brinkmanship, seeking to leverage their symbolic capital without fully capitulating to the machinic edicts of the publishing world. They were “caught” in a trap … Open Access and Creative Commons measures were then quickly gamed by industry, a situation that has prompted, “now” (or “tomorrow”), the next step. If that “next step” constitutes a step into the wild blue yonder, it also involves dealing with that last puzzle known as “moral rights” – a set of rights that has very little agency today but remains nonetheless a stumbling block at that frontier cautiously provided by Capital to give authors and artists the impression that they are engaged in “radical” works that default to the public domain. The problem “today” is that the public domain is policed and commodified – a type of “parking lot” for works, before another money-making, rent-seeking edifice is erected on the “parking lot.” What is called “the public domain” today is, therefore, not quite a public domain, in the classic sense. Despite all of the apparently progressive arguments made within the charmed circles of IPR law for Open Access and Creative Commons measures, have authors and artists actually escaped the slavery of IPR law?

II. PARALOGISMS FOR ARTIST-SCHOLARS

> Property is the cage with gilded wires, to which the poor larks are sometimes so thoroughly accustomed that they no longer even think of getting away in order to soar up into the blue.
> – Paul Sabatier

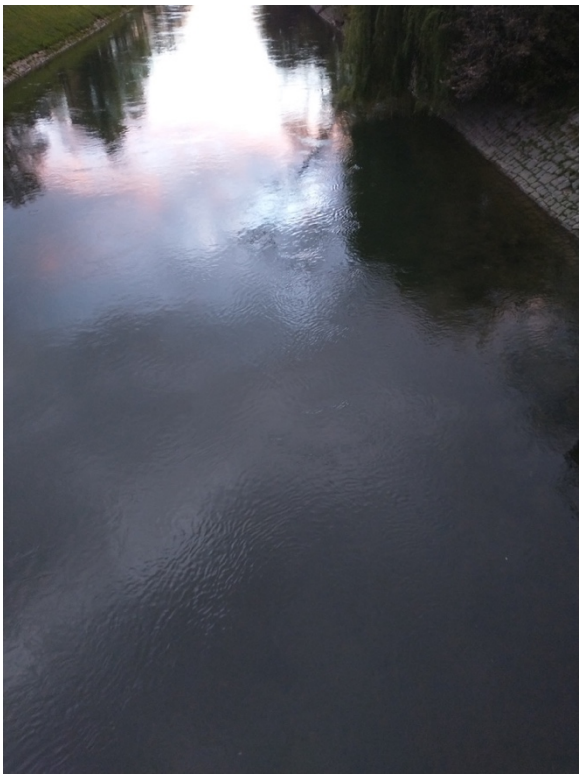

Image – Upstream (at Dusk). Ljubljana, Slovenia, April 2023. Photo: Gavin Keeney.

The following paralogisms (false conclusions) illustrate the conundrums of that last outpost at the frontier, where what "was" (IPR law) is replaced by what "will be" (the wild blue yonder). They are classic Kantian "false conclusions" because they are all a result of argumentation within the charmed circles of IPR law. The arguments go around and around (and around) in circles and return. There is no escape from within such arguments. The antidote to the diagnosis (illness) lies outside of the "pathology" of the paralogisms. The antidote constitutes a new model of "direct action" for authors and artists; and "direct action" in this sense has not quite arrived culturally, even if it exists, as potentiality, personally. Direct action will, out of necessity, require a "leap" – an at-first-personal leap, and, then, hopefully, a collective leap.

N.B. – The eight paralogisms are taken from the "Summary" section of the recently completed PhD project, "Works for Works: 'No Rights'" (2021-2024), Postgraduate School, ZRC SAZU, Ljubljana, Slovenia. As such, and according to the rules of the present-day, hyper-commodified and policed knowledge commons, they constitute a form of self-plagiarism.

EIGHT QUESTIONS

1. QUESTION – What is a "semi-divine" *oikonomia* – for works of literary-artistic scholarship – and how does it differ from the prevailing ecosystems to be found in present-day neoliberal academia and the art world?

1.1. ANSWER – Such a "semi-divine" *oikonomia* (household/estate) suggests, to a degree, what existed prior to the creation of copyright (*privilegio*) in the fifteenth-century, through ad hoc and formal scriptoria but also through forms of classical patronage.

2. QUESTION – As an appendage to the 500-600-year capitalist commodification and exploitation of works (and labor), plus the construction and privileging of "authorial presence," are the concepts of "authorship" and "intellectual property" passé, and have they not outlived their combined usefulness?

2.1. ANSWER – In terms of the present-day stature of Open Access (OA) publishing, with for-profit publishers claiming the lion's share of OA publications, the institutional or disciplinary biases "pushing" OA are in most cases underwritten by an incessant culture of competition, which in turn is driven by external forces often openly engaged in defining what is "useful" and what is "useless" through monetary measure.

3. QUESTION – Is the presence of prior art in all works of literary-artistic merit justification for refusing abject commodification, and is not the proverbial "anxiety of influence" an example of how all authors and artists appropriate, assimilate, and re-mix prior art?

3.1. ANSWER – With the cultural commons currently hyper-commodified, and competition between institutions characterized by metrics associated with ranking and funding mechanisms, the apparent elephant in the room is everything assimilated to the cultural commons through the elaborate channels created to actually hide such assimilations and privilege works as property.

4. QUESTION – Does a "No Rights" status for works of literary-artistic merit suggest the abolition of IPR, or does it suggest a classic *détournement* of IPR law and a passage into the "wild blue yonder"?

4.1. ANSWER – Any such "wild blue yonder" is currently inadmissible within the prevailing ecosystems associated with both academia and the art world due to the prevailing standards, which are more or less reducible to competition for attention and resources, plus an emphasis on careerism and celebrity.

5. QUESTION – Does the "wild blue yonder" indicate anything real, or is it an empty signifier covering a black hole?

5.1. ANSWER – Such an exit from the current standards and protocols of "cultural production" would need to be carried out through works and through an entirely novel means (ecosystem) for the creation and dissemination of works.

6. QUESTION – Could the "wild blue yonder," instead, be a synonym for the /Empyrean/, and, if so, how is the /Empyrean/ different from a black hole?

6.1. ANSWER – The term *Empyrean* (/Empyrean/) suggests the renunciation of personal agendas for a collectivist ethos that, in turn, becomes the foundation for the creation of works that inhabit a dimension otherwise inaccessible when personal agendas prevail or the commodification of works is the default purpose (goal) for works.

7. QUESTION – What is the /Empyrean/ – as disclosed, for example, by Dante in *The Divine Comedy*?

7.1. ANSWER – Dante's /Empyrean/ is, effectively, reached through Grace and cannot be accessed through effort alone, suggesting that "No Rights" will remain a category *of and for* works that exist only through a non-proprietary, collectivist ethos.

8. QUESTION – Is the /Empyrean/ accessible, for artist-scholars, once IPR law is abandoned, and what might be the benefits of gaining access *through and for* works?

8.1. ANSWER –As "wild blue yonder," the /Empyrean/ is a goal versus a destination, yet approachable (accessible) through works *and/or* life-works.

CONCLUDING UNSCIENTIFIC POSTSCRIPT

> For it is great to give up one's wish, but it is greater to hold it fast after having given it up, it is great to grasp the eternal, but it is greater to hold fast to the temporal after having given it up.
> –Søren Kierkegaard

Since "No Rights" does not mean abandoning rights to works such that others might assume those rights, the "wild blue yonder" inferred also requires protecting works from exploitation and misappropriation. Therefore, the primary means of safeguarding works is the *ideational* transfer of moral rights from authors to works, by authors – but, once again, through an a-legal means beyond the scope of IPR law and embedded within and exemplified through works-based agency.

"~~NO RIGHTS~~"

The significance of the "paralogisms" is that they are all stuck in the current ecosystem of authorial rights and copyright. They are, therefore, semi-absurd and cannot be left behind without a second negation – "~~No Rights~~" – which then takes the entire exercise elsewhere; i.e., out of IPR entirely and into a custom ecosystem ("wild blue yonder") that ignores copyright and IPR entirely, plus commodity status (including OA and its implicit careerist agenda as dictated by academia and the art world).

There are two historical examples: 1/ prior to copyright (*privilegio*), and before the printing press, the so-called right (permission) to copy a manuscript belonged to whomever held the manuscript in their library, thus scriptoria; 2/ during the years of resistance to communist rule in the Soviet Union dissidents issued what was called *samizdat*, i.e., writings and works that circulated secretly and privately (P2P style) amongst fellow dissidents. Both of these examples illustrate that the work itself has preeminence (via P2P distribution/dissemination) – i.e., that the ontic rights are co-equivalent to what has come to be called moral rights. This all went awry, of course, with the printing press and then with the digital "revolution." Moral rights are reducible to "right of identity" and right to protect works against misuse and misappropriation. Moral rights, by IPR law, belong to the author and in many countries cannot be renounced.

And thus, the question of PhD or ~~PhD~~ (Thesis or ~~Thesis~~). How does one negotiate the extravagances of a research PhD (not to be confused with the contemporary and debased *taught* or *professional* PhD) when the entire complex is loaded, from the beginning, with authorial privileges and abject careerism? Can an author finish a PhD (i.e., submit and defend a thesis/dissertation) without finishing a PhD, other than by failing the defense (e.g., Nietzsche, Benjamin, and Derrida)? Is there justification for finishing a PhD that is against the entire ecosystem of academia and such privileges? Could a PhD or ~~PhD~~ act and/or serve to "prove" that the entire ecosystem that it is produced

from within is corrupted *from within* (and *from without* by "industry" meddling in academia to define what is permissible)?

[…]

OUTTAKES

"Ego-histoire," *Substack* (June 21, 2023)

https://editionofone.substack.com/p/ego-histoire-85b118e1b986

"The Author Disappears," *Substack* (August 7, 2024)

https://editionofone.substack.com/p/the-author-disappears

"The Back Foot," *Substack* (August 12, 2024)

https://editionofone.substack.com/p/the-back-foot

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