

Creative Commons and the Creative Industries

Perspectives from the Creative Industries

**RICHARD NEVILLE, PROFESSOR RICHARD JONES,
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Richard Neville is one person that I am sure does not need an introduction, but we must give him one.

He is very well-known throughout the world as a social commentator and a futurist. We all know Richard from various initiatives he has been involved in from the Oz trials, right through to his social and political commentary in Australian television and media. I met Richard at a conference in Brisbane in 2004 and he said that he had been in India and had listened to Richard Stallman, who is the free software guru, talk about free and open source software. He said how fascinated he was with the concept. I asked him, 'Have you heard about the Creative Commons?' and he said, 'Sort of.' I said, 'Would you come and speak at a conference we're planning?' and he said, 'Yes, I'd like to. I really think these initiatives are very good'.

*As well as the paper by Richard Neville, a number of other experts also provide us with their experiences and thoughts regarding the adoption of Creative Commons in the Creative Industries. **Professor Richard Jones** presents reactions to open content licensing from the Australian independent film sector; **Professor Barry Conyngham AM** discusses his personal experiences as composer, educator and academic manager; and **Professor Greg Hearn** considers the implications of Creative Commons for the business side of the creative industries.*

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Perspectives from the Creative Industries⁴⁰

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RICHARD NEVILLE

In the Botanical Gardens, where I walked a few minutes ago to clear my head, there was a line of poetry on a plaque near a tree. The poet is incredibly out of fashion at the moment – and this line of poetry says something like, “all pines are gossip pines the whole world through”. It is under a Bunya Pine. It takes 4 seconds to recite that poem, or that line, that fragment if you like, and it is on a bronze plaque. No permission, I imagine was sought to use it. And no permission was required to go back into the archives of your library or on the Internet and dig up some of James Elroy Flecker’s other poems, one of which is called ‘A Message to a Poet a Thousand Years Hence’. It is a brilliant poem. I will not recite it now, but he actually sends a message to a poet in the future, and that is a poem that was probably written in about the 1920s.

There is an anecdote from Professor Lessig’s book *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, dealing with a group of filmmakers in Italy doing a documentary on opera. In a scene they filmed, the stage hands in the opera house were watching an episode from ‘The Simpsons’. They wanted to use this and, of course, asked one of the creators, Matt Groening for permission to use four (4) seconds of footage. Groening said sure. Next step however was the lawyers who worked for Fox, and they replied US\$10,000 please. That four (4) seconds was never used. We are living in a culture when four (4) seconds from a distinguished poet has always been free, even forty (40) minutes worth, but four (4) seconds from a very satirical and kind of interesting show, The Simpsons, even though the creators would be happy to allow it to be used for the furtherance of creativity and discussion, is blocked.

There is a resurgence of creativity in our society today and not just in the West. It is happening globally, and it certainly excites people at universities and in the corporate world. I ask myself, what is it about the ages of

⁴⁰ We acknowledge the assistance of Suzanne Lewis and Vicki Efthivoulou in editing this paper.

creativity that are in common with each other? When you look back you can count them on less than two hands: Ancient Greece, the Greece of Socrates – what was it about incredible turbulence that produced so many ideas? Not just Socrates, the pre-Socratics, and going right on to Plato and Aristotle. Sure there were slaves and they did a lot of housework, so the men had more time. If you are my age you are supposed to be so dominated by text. According to some today's trendy, exciting, new generation is visual and musical. I do not accept that, because in the end we come back to something even more basic, which is conversation.

Socrates invented democracy, but he never wrote a book. As far as I know he never wrote a line – he had dinner parties. But what if Rupert Murdoch's Fox was there and he bought the rights to those dinner parties? Would we be in touch with the ideas of Socrates today and would other philosophers have been able to come along and build on Socrates' ideas? This idea of sharing and collaboration is absolutely vital to what we are talking about. I am all for providing an incentive to creative artists and I do respect to a point, intellectual property. But surely there is an incentive to disseminate, to be creative and to disseminate what you think is important and to impart knowledge. I think that this incentive overrides the financial one.

What other ages can you think of? We will skip through Christianity and Islam, but if you think of Elizabethan England we have exactly the same. We do not know who wrote Shakespeare and if it was Shakespeare, he sure workshopped a lot. It is a very collaborative environment that nurtured all those brilliant poets, including the genius of Shakespeare and the Shakespearian era.

When next are you going to think of? Maybe the Renaissance, when people again started to talk to each other, collaborated. In fact, just to give Christianity its due, St Francis of Assisi started talking to the birds. He reconnected Christianity with nature, for the first time since the whole of the Dark Ages. Giotto painted images that helped to kick start the Renaissance, which was nothing more than a huge conversation. Half the works that are painted by so-called masters probably were not even painted by the masters, but no one seemed to be quite so uptight back then.

In my student days artists were the creative people – a very small elite group at university. They had to have duffle coats, long hair, smoke a bit of pot, smoke a lot of pot, and get government grants. I was really shocked when I found out that one of Leonardo de Vinci's best friends was an accountant. I thought, “gee, I got all that wrong”, but actually it was the

accountant, Pacioli I think was his name, who invented double entry book-keeping. There you are. Even the accountants were creative in the Renaissance.

Think of Paris at the turn of the century, think of the jazz era, New York and how could I not even mention the Sixties? Love it or hate it, these are creative periods, a lot of social and political change, and what is the core value in those periods – collaboration, sharing. The music of the Sixties is not just about the content. The Beatles were a bit more generous about sharing than has been indicated. In fact two of them wrote a song for the *Oz* trial and the music was much more collaborative. That is the whole idea of festivals.

Having music festivals was to try and, not very successfully, close a bit of gap between the musicians and their audience. The street took fashion back from the couturiers. No one went to Paris in the 1960s. Vogue was forgotten, it was Mary Quant and what people wore down at the Chelsea Antique Market. Politics of protest was much more about not having particular leaders but sharing ideas and thinking of very creative and inventive ways of protesting the war in Vietnam. If you saw a picture of, for example, the CIA/Vietnamese guy shooting the suspected Vietcong, that would be in the Sunday papers. A magazine like *Oz* could get that picture, put blood all over the face of that unfortunate victim and put on a headline which said something like, ‘The great society blows another mind’. You could communicate. You could respond, as has been said here this morning, respond to the culture around.

One of the flowerings of the 1960s, apart from the music and the fashion and the sexuality and the drugs (the point about marijuana was that it gave people a sense of community and collaboration, we can argue about the long term implications of that, but that is what it was about) was cutting through this idea of the isolated genius in the garret, the huge ego. We are talking now about the late 60s and early 70s. What happened – technology changed. There was cheap printing, cities all over the world could consume incredibly cheap newspapers and magazines all through the United States and Europe, Australia, even South America. And that is not all. There was something called the UPS, which is not the United Parcel Service, but the Underground Press Syndicate.

In other words, any newspaper that thought of itself as being radical anywhere in the world could use articles from any other newspaper anywhere in the world for free. In fact *Oz* magazine went one step further:

we abolished copyright altogether. We just said that anyone who contributes to *Oz* – you have just got to let your copyright go. It did not stop anyone from contributing and it did not hurt the sales of *Oz*. If I had not done that, I would have been able to retire onto a gorgeous island somewhere in the Pacific. I am proud of that. I am not advocating the abolition of copyright at all, but I am saying it did not really bring the walls down.

Tariq Ali, another 60s radical who has not yet dropped off the perch, came out here and reminded me that he had a newspaper called *The Black Dwarf*, which also published all this stuff and, in a way, did not take intellectual property too seriously or copyright too seriously. One day he opened his mail and there were the songs written for us, a song called ‘A Street Fighting Man’ by Mick Jagger. They had printed it on the front page for anyone to use or record. I said, “what did you do with the lyrics?”, and he said, “oh, I tossed it in the bin”. There was a certain sense of disposability.

In this cauldron of late 60s was Rupert Murdoch. He had moved from Australia to London. A darker side of the 60s looking back at them now, was of course, sexism. Some of the images in *Oz* were of nude ladies. I was amazed to read in one of the histories of Murdoch recently published, that Murdoch flipped through *Oz* magazines, saw a topless girl and said, “we should have something like that”, and he made it the ‘Page 3 Girl’ in *The Sun*, and it made his fortune. He did not pay us anything, any money for the ideas, and he is the one charging \$10,000 for the four (4) seconds.

We have a situation today where the documentary *Outfoxed* uses internal memos by people at Fox Studios to outline how the news would be shaped that day. It was more or less a directive. Murdoch actually took legal action to try and stop those being used in the film. He failed. What is the slogan of Fox Media in the States, does anyone know? – ‘Fair and Balanced’. First of all that is a black comedy in itself, but are you aware that Rupert Murdoch tried to copyright ‘Fair and Balanced’? By an inch, he failed. But the next time something like that will succeed, and there is a danger of entering an age where people will, and corporations and very rich people with an incredible retinue of lawyers, will end up owning words in English dictionary. That is not all that far fetched. On some of the art that we saw today that was screened in the presentation, the political art, in other words the remix, how many people in this room had seen some of that before – quite a lot. And you saw it on the Web presumably? And there is a ton of that stuff and even more amazing stuff called Flash Art, which uses a type of cartoon which is hard to copy and show.

What concerns me about that material being locked out of public discourse at the moment is that it is only available to people with a certain amount of Web curiosity and prowess. I think it is a completely fantastic way of communicating and I do think it supersedes text and cartoons in delivering a message of dissent in our day and age. But until we can construct a means where that material can be broadcast more easily, then what is going to happen is that the dissent will remain locked up in a rather small group. That is the danger of what is happening now.

I said earlier that creativity and collaboration was becoming a hugely admired thing within the corporate world right now. If you take a big company like Siemens, one of the sponsors of QUT in some areas, it is a great big, German organisation, but highly creative. Seventy-five percent of the revenues of Siemens comes from products and services only invented in the last five years. That is 75 percent and that percentage is rising. They do not let researchers work alone, they have innovation groups and they are very into the future. They use collaboration like a lot of corporations to encourage creativity and diversity. Yet, while it is used internally in corporations, in terms of the broader discourse, a lot of creativity is being locked out.

We had the statistic this morning that 67 percent of artists, or creators, feel absolutely happy about their work being modified. The point I am trying to make is that, to me, the bigger issue here is: what is this debate? What is this issue between intellectual property and the Creative Commons? What is the deeper meaning of it? In a strange sort of way, it is paralleling other kinds of bifurcations that are going on and it relates to the spirit of the age that we are inhabiting right now. Just as, whether or not Australia and America sign the Kyoto Protocol. That is an issue bigger than just the environmental politics of it. It is to do with sharing, and participating, being together on a journey.

One of the most remarkable things about the response to the tsunami disasters in our region in the Indian Ocean is that it was the citizens of the world who led the desire to contribute, the willingness to express their compassion financially. Never let it be forgotten that the first offer that Australia made was something like \$35 million. That was the first offer John Howard made. The first offer made by George Bush was \$15 million. That was about 3 or 4 days after it started. And then we got a lecture on US generosity. Blair did not come back from his holidays for quite a long time.

The point about all this is that, by the time their policy advisers had worked out what was happening, the citizens were already doing it, the citizens of the world. What did they know, what were their feelings, what were the conversations they were having with the rest of the world, either metaphorically or real, that enabled them to respond in a way that seemed to indicate a different kind of spirit of the age that we live in? That sometimes we have to sacrifice something to gain more. There is an old spiritual teaching: the more you give, the more that you get. And we are locked into situations now of personal interest and of national interest. But in a globalising world the national interest must ultimately be subservient to the world interest.

I am trying to say that the problem is not about stealing; it is about sharing, and it is about understanding that everybody profits by liberating creativity and letting collaboration stalk the planet. In short I think that it is a very vital and hopeful signal about the spirit of the age that this Conference is happening because we are really locked. We are all members of the human race and the future of the human race is a race between self-destruction and self-discovery. And for the self-discovery of the human race to be successful we must have a Creative Commons.

PROFESSOR RICHARD JONES

Although I haunt academic corridors these days, I am primarily a filmmaker and it is this perspective I bring to these discussions. What I have been thinking about is how Creative Commons might engage independent film makers in Australia. My particular focus is not on where I think Creative Commons flourishes, which is in its potential to help emerging film makers get their work out into the world. Instead, I have been looking at the independent film sector, which is governed by funding agreements, cast and crew awards, up front distribution contracts and, in general, more traditional approaches to IP. This talk is based on interviews with a small but productive group of Melbourne film makers, many of whom spent the time politely biting my head off, particularly when I outlined the more utopian, indeed evangelical, ideals and rhetorical strategies of Creative Commons. Filmmakers are, by nature and profession, a suspicious lot. To quote Dorothy Parker, when approached with ‘an exciting new idea’ the first thing we must ask ourselves is – “what fresh hell is this?”

In the light of the enthusiastic language used by leaders of the Creative Commons at this conference, in particular our North American colleagues, this talk is going to feel a bit like mentioning a pre-nuptial in the throes of passion. If you have almost hit the heights, please just hold on for a moment while I outline some difficult issues we need to grapple with first.

The people I interviewed have made over 30 publicly funded films each, with many national and international awards and wide distribution, mainly television. We are deeply involved in film making as a practice, as a passion and as a political action. We are the type of people who would ordinarily be quite engaged by the ideals of the Creative Commons. But film makers also tend to see trouble a mile away. We have a sort of professional radar. You have to anticipate problems all the time in making films, and we are often approached to participate in other people's grand schemes, many of which come to nothing. As nuts and bolts folk the rhetoric used to promote Creative Commons means little. What really means something is: what are the practical implications? What are the problems? What solutions? How do we take the next step? As they say in China: "talk doesn't cook rice".

I want to introduce a few key issues, some of which I am pleased to say have already been raised at the conference. The first question is: so what's new? We continually share our audio and images, and way before the so-called 'digital revolution'. To this extent, the promotional rhetoric sounds like 'spruiking'. There is little interest in configuring the Creative Commons movement as an incremental step in a long history of shared creativity – with all its attendant problems - instead proposing a radical, indeed revolutionary, break with the past, which is cast as progressively more problematic, as increasingly 'a barrier to creativity'. Thus, the Commons rides in to save the day, to bestow on us our freedoms, like Brecht's 'bourgeois mounted messenger', whether we need them or not. Perhaps it is just the language, but this signals a highly paternalistic approach and has disturbing echoes of the neo-conservative language used to support other US led global endeavours.

What I will argue is that the conditions and aspirations of independent film makers in this country are not usefully addressed by the founding arguments used to promote the Commons. There are significant and specific local industry conditions that make these arguments - for example, the high cost of lawyers and executives stomping on artists' creativity - a little hard to take. These rationales are off-kilter with how we produce our creative work in the Australian independent film sector. The more

iCommons Australia avoids uncritically importing American assumptions and addresses the specific needs and aspirations of local film makers, the more likely the uptake of its licenses and its cause in the independent sector.

This may well be a problem related to the global reach of the Commons, but it may also be that leaders in Australia have not engaged sufficiently with the public institutions that support and fund independent films here. These organisations, for example the Australian Film Commission, Film Victoria, the unions and our professional bodies, such as the Australian Screen Directors Association and the Australian Writers Guild, have grappled with the delicate issues of making public funded work freely available for many years. They are worth engaging with, not the least because in funding our films they have substantial impact on what rights we can licence to the Commons.

A difficult and unspoken issue is clearly the amorphous border between ‘amateur’ - not as a measure of quality but as an issue of earning living - and ‘professional’ film makers. I can see iCommons working quite effectively for ‘amateurs’, although I don’t find the work available to date particularly inspiring. The minute you make films for a living however, you step into another world, although not the one described by most promoters of Creative Commons. The costs of production and the variety of contracts with funding bodies, distributors, authors, cast and crew, musicians and so on, make it very difficult to licence our films to the Creative Commons at the moment. I expect that this won’t be resolved unless and until public funding bodies, film unions, distributors and producers are able to incorporate Creative Commons licencing rights into our production agreements. It will take an enormous and protracted effort to accomplish this, and I am not sure at this stage whether the will is there.

Our general experience as film makers is of a sharing and caring environment similar to the Commons, which in itself is nothing new. What seems to be new, although largely rhetorical, is the digital ‘revolution’. This so-called revolution has been with us for over twenty years now. It is actually only revolutionary if you fetishize the digital side of the equation in a binary that counter-poses the analogue to the digital. This opposition, often implied in the language of Creative Commons, isn’t particularly helpful. We move seamlessly between analogue and digital processes, in both production and distribution. If you remove the digital references, what you find is the age-old issues of ‘originality’, authorship, copying and theft. In many ways, this is the same old wine, in a brand new (digital) bottle.

What is at stake, and what the Creative Commons still struggles with, and has yet to resolve, is the difficult issues relating to moral rights. These are critical concerns with widely divergent responses from different member countries, which makes it difficult to share films in a global digital environment. Should the licences remain silent on moral rights, require an explicit disavowal or facilitate authors in protecting them? I won't approach this question from a legal perspective except to say that the focus should be on how to best retain and enforce moral rights, and for reasons other than the legal issues pertaining to jurisdiction and interoperability. Instead, I hope to show that moral rights are not necessarily about an author's ego or artistic preciousness, or their unwillingness to share the products of their labour, as is commonly assumed. Rather, this is about responsibilities that extend well beyond our individual rights and aspirations, and for good reasons. You might say "well just don't sign up to the Creative Commons, don't share the work". That is a serious option, but I would reply that we will all be the poorer for not finding ways to resolve the issues, for just walking away. I don't suppose I need to remind you of the exceptional contribution made by Australian independent film makers to our history, culture and political debate over the last 70 years, or our tremendous desire to continue getting this work into the public arena.

Let me explain a little more about why I think the American experience can't easily be mapped onto the Australian independent film industry. The highly influential US version of Creative Commons is decidedly reactive. It plays to the 'autre', an individual genius who is hard done by in a crass encounter between 'Art' and money. This relies for its momentum on the assertion that executives, distributors and even producers are squashing our creative expression, our freedoms no less! Well, hang on a minute. In this country film production is not dependant on evil, money hungry moguls and grasping, conniving lawyers. This is most particularly true of documentary production, which is likely to form the substantive base for sharing work via iCommons. Independent Australian films (and film makers) are primarily developed and funded by public organisations. We work with a network of institutions, like the Australian Film Commission, Film Victoria, SBS, ABC and others. Their executives and commissioning editors are not stomping all over us poor creatives and ruining our great work. Thankfully, there is a significant flow between the independent film sector and these public institutions. Every commissioning editor and project officer I know is also a filmmaker in their own right. They frequently have exceptional track records, are seen as part of the team, and are not the sorts of executives who do not know what they are talking

about, who say, “just cut it here”, or, “just make it a love story” or whatever. If you have seen ‘Swimming with the Sharks’, you will know what I mean about this particularly US version of what it is like to work with ‘the suits’.

We often thank our commissioning editors publicly for contributing the ideas, expertise and resources that make our films happen. The ‘us vs. them’ binary that drives much of the rhetoric of Creative Commons, as I have said, cannot be mapped very easily onto the industry we work in. This is not to say there isn’t creative tension; it is simply to say the public funding system in Australia does not necessarily lead to the same issues that Creative Commons people from the US are talking about, although this seems to be an underlying dynamic in the Australian movement, at least to date.

In seeking to protect their moral rights, which is a high stakes issue in any form of distribution, film makers are not necessarily solely interested in attribution, their own reputations and the integrity of the work as it reflects on themselves. They are often more deeply engaged with the distribution issues embedded in the politics of the film. How is the work going to be placed? Where is it to be placed? What context is it going to be used in? Can someone else pick it up and pass it on to someone who won’t respect the original agreements? For example, if we are licensing a film made with indigenous communities, are re-users going to understand and respect all the issues involved? What if there are images of deceased indigenous people in the film?

If we put our films into the Commons, it doesn’t seem that we can qualify the context of use very well. For example, I have made a film about racism and against racism. If I put it into the Commons, could someone else pull it out – a little section of it – and actually use it as a racist clip, because it is de-contextualised and reconstructed? We all know it is one thing to have a license that protects your rights, and quite another to have an ability to enforce it, or even to know that these rights have been compromised. Prior written agreement per use seems for the moment at least to be the only viable option. It is interesting that while the CC logo represents the Commons and its ideals, it is not in the Commons. Any use of the logo, except for the purpose of indicating that the work is licensed under the CCPL, can only be made with prior written consent, presumably based on articulating the context. Thus leaders of the Commons have encountered the problems I am talking about, and seem to have fallen back on traditional IP processes to solve them.

An example of the type of moral rights issues that emerge: a colleague is making a film called 'My Father's Eyes', in which she has a profound and moving look at the way her father photographed her as a young girl (and seems to have sexualised her through his images). In the context of her voice-over in the film, you understand it, but this context could be ripped out and images could be used in all sorts of other ways. What I am arguing here is that the real and insistent position of many independent film makers is – “do not reuse my work in strange and unintended ways. I'm just not going to let you do that”. Unfortunately at the moment this only seems possible by withholding the work from online distribution until a way is found to agree on context, not just use (and re-use). Of course, any published work can be pirated and re-used. This is not just an online issue. The potential for theft shouldn't mean that we don't vigorously seek protection, or at least try to minimise the risk.

Usually the first question we ask when approached about using our images is “well, what's the context?” We swap materials with each other often, at least when we can, but need to say, “well, show your final version to us, and we'll approve the end use of it, and not just give a generalised consent to any use whatsoever”. These days the people in our films often have a similar requirement. This 'right' can and I think should be given to on screen subjects, particularly in work that is made by, for, about and with specific individuals and communities. For example, I am working with men in a maximum-security prison at the moment. We are doing photography as a way of engaging these men in education. This includes a series of fantastic portraits. These prisoners have signed consent forms, but they are only asked to consent to two specific contexts of use: an exhibition for family and friends at the prison, and non-public screenings to develop further funding for the project. I think this is a respectful way of working with the men, particularly because a generalised consent does not sufficiently protect them. It wouldn't enable them to specifically consent to uses in new or unforeseen contexts, for example a book publication or web compilation of the images. My experience is that most of the prisoners would consent to unlimited use if I asked. However, I can't bring myself to do this, because I know from experience that in ten years their life circumstances may have changed dramatically, and that some may not want anybody to know that they had been in a maximum-security prison. I've photographed the men as well, and completely accept that even though I could potentially put these photos online, I shouldn't, much as I'd love to. I am responsible for how these images may move out of our control, and the impact this might have on the prisoners' lives. I don't think this example

can be distinguished as extreme or highly unusual. Many independent film makers, particularly in documentary production, work in sensitive environments with similar consent issues.

While this 'protective' approach doesn't completely safeguard the subjects, it does limit the risk. This is a political decision; it is a social decision; it is an issue of control. But it is control sought for reasons other than ego or money. One challenge to the Creative Commons is – can you construct a licence to say – “yes perhaps you can use the work but specifically describe the context to me first and I will tell you for sure then”. Another option, which I have used, is to require that we receive the material that a user wants to include our images in - with briefing notes – and that we select and cut the images into it. I am not seeking this just for myself, but for the subjects, actors, crew, funding bodies and everyone else involved in the films. This is where Creative Commons comes a little unstuck. It seems to be geared for a sole author, not for the complex network of creators that contribute their images, stories and creative work. I feel much more obliged to the film's subjects and contributors than I am to anonymous digital remixers in Europe. If this protection cannot happen, Creative Commons strips away the politics of context. I would like to see some serious work towards resolving the issue, particularly by moving on from the libertarian abstractions I read on www.creativecommons.org.

I guess we are still more comfortable sharing our work in a face-to-face environment via a network of obligations, friendships and professional standards that I don't find on-line. In a face-to-face relationship, creators are frequently quite generous about sharing their work. I remember a film colleague helping me to ask his mate Paul Kelly to let me use a song called 'Before Too Long' in a film for prisoners in Pentridge, and Paul wanted to support that. He asked me about how it would be used, why and so on, then said – “look I'll make sure you get the rights cleared. There you go. Let's play a game of pool”. We are looking at an eyeball to eyeball negotiation, one that ultimately comes down to the sort of trust you get amongst a community of filmmakers who have long term friendships and professional relationships, and who know where each other lives!

Another thing that concerns me about the American experience, as reported by the US Creative Commons' folk, is the notion that lawyers are substantially depleting our budgets, creating 'barriers to our creativity'. But from the budgets most of us work on, lawyers get hardly a penny. Sorry about that. The reason is that we do not need lawyers all that often. When we are funded by Film Victoria, we have access to a Film Victoria lawyer.

ABC has lawyers. SBS has lawyers. Touch wood, I have never been sued, although I have done my own contracts for almost twenty years, including a substantial amount of licensing rights. We all know how to license third party content – we can license music with our eyes closed. This is generally a pro forma process, and there is considerable help available via free copyright advice services and industry bodies. It seems to me that we are in a quite different world to Professor Lessig's experience of the US film industry: another US rationale for the Creative Commons that does not make a lot of sense to independent filmmakers here.

There is an area where Creative Commons' ideals can really come to the fore, although it seems to get little attention. The real interest of independent filmmakers is in this notion of the release of Crown copyright via Creative Commons' style licences. We are generally not looking to re-use some individual artist's view of the world or for the kind of 'clip art' I have seen available in the Creative Commons. We all do political, cultural and historical documentaries that aim to have some sort of public impact. Hence, what we are looking for is better and cheaper access to our national sound and image archives, such as those held by the ABC and Film Australia. My experience is not that the ABC or Film Australia withhold access for political reasons (although there is one example of this that quickly turned around in the face of industry concerns), but rather that the legitimate costs of providing this service are often too high, and many of these costs are met by film-makers via license fees. I have no doubt that the ABC and Film Australia would provide better access with increased funding. Even the commercial networks in Australia don't have a serious reputation for 'blocking' independent film makers' access to their footage. In fact, 60 Minutes recently gave a colleague a great deal of assistance in finding the right footage for a very reasonable price. If the Creative Commons can provide a service here, by lobbying for the release of Crown Content, and arguing for increased public funding for access, this is likely to have a tremendous impact on independent film making and public debate in digital environments, and would go a long way to facilitating the sorts of freedoms Creative Commons espouses.

With the Creative Commons online archive, there is a bit of a wait and see attitude. How good is the reference engine, can we find the materials we need easily, and are they useable quality? Is the material we are looking for actually in the Commons? It is hard to think that the Creative Commons 'bank' will come anywhere near the depth and quality of, for example, the 70 year collection of films, photos and sound held by Film Australia. Why set up another archive when a tremendous public resource already exists,

and can potentially be added to by users? Further, the archival librarians in public institutions are the unsung heroes of documentary film making, and I cannot see an online engine providing the service they offer to the independent community. I can ring them up and say, “Look, I remember there was a shot of Malcolm Fraser walking out of a court room”, and they will say “1974 – Queanbeyan County Court”; and give me details of who shot it, how much footage, and sometimes even a shot list. A filmmaker’s time spent searching for usable footage can be extremely costly, and can draw significant attention away from all the other work. If you replace these human wellsprings of knowledge with some sort of digital search engine, what have we lost?

Another issue to touch on briefly is that in our funding agreements we typically assign all rights to the funding body, distributors and broadcasters. Our films cost a lot of money. We do not fund them ourselves. We cannot afford to make these films in a way that would be professionally satisfying, most often because we believe in paying our crews decent wages. To acquire the funding the trade off is that we assign our rights. If the moral rights issues were resolved, most of us would put our films, or bits of them, into the Creative Commons. The thing is, we generally do not own them. To be more specific, one of our biggest problems in contributing to the Commons is that actors are paid residuals and, in order to maximise the money that goes onto the screen – the production values – we buy the most limited licences possible for the distribution required. Generally, the more rights and territories you license, the more it costs. Our licences are limited by medium, territory, duration and use. If we are making a film in Australia, we will generally only licence the relevant Australian rights, otherwise we are spending a lot of money that goes out of the production budget unnecessarily. We could afford another four days’ shooting with that money. It is very hard to offer much into Creative Commons, with its worldwide reach, because what we can offer is so limited. Creative Commons therefore has to have a fairly significant engagement with funding institutions like the Australian Film Commission, and of course the Media Entertainment and Arts Alliance (who deal with actors wages and residuals⁴¹ to enable funded film makers to contribute to the Commons. This, as I’ve said, is best achieved by

⁴¹ ‘Residuals is the term used to describe royalties paid to actors, directors, and writers for airing programs originally and in subsequent replays and re-runs, and for cassette sales and rentals’: Robert G Finney, ‘Unions/Guilds’ *The Museum of Broadcast Communications*
<<http://www.museum.tv/archives/etv/U/htmlU/unionsguilds/unionsguilds.htm>> at 28 August 2006.

seeking to have Creative Commons style licensing opportunities incorporated into our production agreements.

These are difficult issues. They may ultimately prove prohibitive for 'professional' film makers. And yet I think there is a general sense of the Commons as a good thing, although it is nothing new. What is relatively new is machine readable licences, the digital exchange, the increased opportunity for sharing and caring, re-mixing and so on. These activities may contribute to opening up the limited number of distribution channels and facilitate public discourse, which, in the Australian independent sector at least, doesn't seem to be in decline. However, like the pre-nuptial, these issues have to be addressed specifically, pragmatically and in detail if the Creative Commons is going to move from a brief, passionate interlude to a sustained and no doubt difficult engagement with the needs and realities of funded film making in this country.

BARRY CONYNGHAM AM

My contribution to this discussion will be from a few perspectives based on my personal experiences as composer, educator and academic manager.

First as a creative professional. I have been an active composer of contemporary classical music for nearly forty years. I think that the changes that have come in music the last few decades are, in fact, paradigm shifts. I was fortunate enough as a musician to enter into the digital age very early in the 1970s at the University of California and at Princeton where I was first exposed to and studied computer-generated music. A few years before, the famous German composer, Karlheinz Stockhausen, said that all the orchestras and all the opera houses would disappear within 30 years and that all music would be electronic. I believed him and set out to see what the future was going to be made of. Well, the opera houses and concert halls are still there but I do not know how many people in this room have heard live non-electronic music recently, other than their own bathroom, singing. Today, virtually all music comes out of loudspeakers; even if we can see the 'live' performer or performers the sound comes to us indirectly, electronically. Even if music involves the voice, or instruments designed and constructed hundreds of years ago, we now mostly, overwhelmingly, hear music and see it being made via electronic means. We all know that this transformation started more than a century ago but the second half of the 20th century saw the completion of the process such that now we conceive, create and experience almost all music with great

involvement of synthetic electronic production. Digitally based techniques have accelerated this. With this in mind, issues of reproduction and ownership attribution have all come under pressure. In this context it seems to me any innovation that seeks to create new ways of dealing with fundamental issues of ownership, use and sharing and that appears to be solving problems caused by the changes that have happened in this period, has to be thoroughly interrogated and — if useful and progressive — embraced. But I do think that even in the presentations this morning we run the risk of simplifying the discussion: we have got so used to a black and white world, dare I say a zero and one world, that the debate seems to be happening as if it were a bipolar argument. We must not let simple explications and arguments be the basis of the decision. The interrogation must encompass the complexities and the humanity of the modern world. So as a composer, while I am interested, even excited, by the possibilities of the Creative Commons, I still wish to maintain a sceptical perspective and look carefully at the detail and the implications.

I also react as an educator and teacher. Like many composers, artists and writers, I have been involved in teaching, in my case, creative music teaching, for many years. I think the Creative Commons idea has the power to impact positively on teaching — it assumes freedom to use other people's creative output, which is very valuable when you are learning. When you try to teach people how to make music, one of the things I encourage them to do is to discover all the possibilities — to imagine all the ways a work can go: where can this tune go next, where can this line go next, where can this harmony go next? And I am sure that writers, painters and all creative teachers try to get the developing artist, the student, to know as many of the potential ways of creating a particular piece of work as possible. It seems Creative Commons, by its very nature, is enhancing that. We now live in a market place that covers the world: everything is owned, everything is for sale, including ideas, music and art. Every time you use or sample or test someone else's idea you wonder if you need permission or if you have the right permissions. Maybe that will not always be so, but certainly for the moment the world we live in is essentially market driven on a global basis and therefore something that enables some creative material to be used, tried out, borrowed, extended without having to go through a commercial transaction is very worthwhile.

One of the outcomes of the Creative Commons idea is to facilitate and encourage the mixing of things. Within music, the notion of mixing has always been there. Seventeenth-century composers such as Monteverdi mixed songs of their time to create something new and vibrant. Japanese

traditional music was vitalised by mixing different sources of musical material. Classic, pop, jazz — virtually all genres — have been affected by this process. Music is about mixing things. Music, until the last hundred years or so, was also social activity, a shared activity, an instant ‘live’ activity. Not recorded, not frozen, not made from pre-recorded material. Music was made by people, together. Now, of course, the twin processes of technological change and commercialisation mean most music is recorded and indeed made from the endless mixing of pre-recorded material. This evolution demands constant exploration of the mixing idea. And what is more beautiful than mixing lots of peoples’ ideas? In a way it has been ever thus but the consciousness, the tracing of the sources of the mixture is now more explicit. And for a developing musician, it seems to me that to be able to mix things freely, from hopefully the very best of your fellow artists, to extend the range of the possibilities, is a powerful part of learning and finding your own personal expression. To be able to do that in the freest most comfortable way is very attractive.

Like most artists, composers aim to create their work on their own, creating their own world. But to get to that point they must also absorb and experience the art of others. It seems to me that for developing artists, being able to work with any material freely without fear of liability is a liberating force that I quite like. But I do have one major misgiving. It goes back to the nature of creativity. To me, being creative involves imagination and I guess one of the concerns about the nature of a lot of digital art, in all its forms, is that it concentrates more on judging what has come to you and then saying ‘yes’ or ‘no’ to it. Selecting, structuring and mixing can become the main activity — even the only activity. For me this is the second stage of being a creative person. The first part is the making of the content or at least the affecting of it in a substantial way. In other words, its not just taking material and deciding whether you like and think it is interesting, or you think someone else might get some pleasure or some intellectual impact from it if you present it in a different context or mix. It is also that you work the material in your own way before you use it.

The key is the use of imagination. For me it is essential that I imagine my worlds before I create them. I am concerned that the way we have taken on the power of digital electronics in music (recorded material) has been dominated by the model of collage. While collage has been very productive, in music, visual arts and all the arts, it is only part of the creative process. So while the Creative Commons may enable greater sharing and access to all the sounds and ideas in music it could have a

tendency to reduce the creation of the basic stuff of music. Music will become one huge remix.

My last perspective is as a person responsible for an institution. As the Foundation Vice-Chancellor of Southern Cross University, I perhaps had a slightly different perspective than other CEOs or managers, perhaps a different motivation in my reactions to many things. I was keen to progress the institution and was interested in innovation, new ideas, and new ways of dealing with things. I was willing to take risks. So my first reaction to Creative Commons as an academic manager, the CEO of a new institution, was that I saw it as something that might add to the opportunities and the choices of the University. But my message here is that even in this receptive situation there were restraints. As the person responsible for a complex organization I had to exercise appropriate good sense and healthy scepticism. What looked good on the surface, sounded inspirational and liberating, might not ultimately deliver, or might carry an unseen cost. Also, within any large institution, even a relatively new one, many individuals are inherently conservative, resistant or at least suspicious of the new. There will be people who, if they are established enough, will not want to give up what they have or will be on the lookout for issues that reduce their influence or authority. So to all involved in Creative Commons dealing with institutions: have patience with your friends — they may be drawn to the idea but because of their institutional context they will need to be given strong, balanced and clear arguments.

Finally, a comment on the moral rights issue that was raised this morning. I was fortunate enough to be involved in the campaign for moral rights in Australia from what I think was close to its outset. The fact that the Creative Commons' legal framework has been created in such a short time is quite amazing, given that I remember the first campaign for moral rights in Australia that I was involved in was back in the late 1970's early 1980s. But, as I am sure most of you know, the Australian legislation was only passed very recently. The fact that the legal structures and processes have come together rather quickly here is very encouraging. One observation in relation to moral rights. It seems to me that of all the moral rights that creators desire, attribution seems the strongest. People value acknowledgement. The commercial impact may be far less important to most than the personal impact. I think for most creators, reward of a financial or material nature is secondary to the 'reward' of knowing that you have communicated with your fellow human beings, and they know who you are. If there is wide connection and communication of meaning and it is acknowledged, I think that is worth more than many thousands of

dollars. I believe that artists are, foremost, people who are trying to do that — to communicate, to share something, and to say something that will make peoples' lives better. If the creative commons idea with its emphasis on improving the breadth and accessibility of content can do this while protecting the original creator it will have a greater chance of been embraced by those creators.

PROFESSOR GREG HEARN

My question is “why might the business side of the creative industries be interested in the idea of the Creative Commons”? I want to suggest that at least four trends that have some resonance with the idea of a Creative Commons and these are trends that business people are talking about. They are not radical ideas at all. Then I want to talk about what I see might be some of the resonances and some of the challenges as a result of these shifts.

These ideas come out of two or three studies that we have done in CIRAC with the music industry, with the creative industry sectors across Queensland, and now into the national mapping project that we are doing in CIRAC where we are looking at all the sectors of the creative industries. Without being empirically driven by those studies, they are reflections that I have had as a result of that work.

The first shift is from the idea of a consumer to a co-creator of value. You probably have all had the experience of going to IKEA and being co-opted into becoming their labourer and assembling the furniture when you brought it home, so the idea of a co-creation of value is not new or radical. More and more consumers are co-creators of value. In a sense the whole marketing process is about figuring out what is valuable and how to capture that value and produce it. We can talk about students buying a degree from the university. What is the value of that degree and how much do they actually contribute to the creation of the value of that degree through their own labour and their own effort? Think about eBay, an interesting example of co-creation of value, and in the creative industries, as Richard said, this idea is not such a radical idea at all. The best example in our research is in the computer games industry where fans often create the code and, in fact in some cases, own the code. Co-creation of value is an idea whose time has come. The creation of value is not the same as the appropriation of value – who gets to put the value in the bank accounts is a very separate issue – but co-creative activity is a trend that is on the rise.

Another trend is the shift from supply chain thinking to the idea of a value network. In the industrial age, the idea is of a tangible material product moving along a supply chain, from producer, perhaps a beef cattle baron in outback Queensland, to a consumer in a fancy restaurant, perhaps in Japan. In the creative industries, and in all sorts of other industries, that idea of a supply chain is giving way to the idea of a much more complicated set of relationships that could be described best as a value network. Everybody in that network has to create value and add value to be part of the network, otherwise the network will simply route around them. A network has the advantage that it is multi-directional and that there is more than one path that is possible.

Value networks are a trend that is more and more manifested in the creative industries as well. As a result the shift is from value residing in products, individual products, to the value actually residing in the network. Everybody has a Visa Card, the value of a Visa Card does not reside in the piece of plastic, but resides in the number of people and services that it connects you to. Operating systems are, of course, the classic example of network value. It just happens that our operating system has been appropriated by one company, but nevertheless the value is not really in the code, it is in the connection and in the cost of changing that network and including other examples that we could point to. I guess you could say movies, that typically rely a lot on word of mouth, are an example again of the value in the network, because word of mouth is simply a cultural network, and the value of all sorts of products in the creative industries, in particular, are driven by cultural networks.

From simple co-operation models or simple competition models, the idea of complex 'competition' is another trend to consider. A beautiful word coined by a couple of business academics but simply means that in any value ecology there are not just competitors and consumers; there are suppliers, competitors and there are complementors. There are companies that are not your direct competitor that are nevertheless very important in your particular ecology because without their product, your product has no value. Microsoft has no value without Intel. And more and more we need to understand the way our value has been created as being an ecosystem of both competitors and co-operators. That is not a radical idea; that is just the way that business works, and moreover, those roles change in quite a dynamic way. People who are your competitors one day may be collaborators the next day. We need to get away from simple ideas of cooperation or competition.

Finally, there is an important shift from thinking about the creation of value at the level of individual firms, to the need to think about whole innovation systems. Firms simply do not survive unless they are part of a labour market, where they need to have access to skills. They need to have appropriate legal infrastructure, and they exercise their corporate activity in the context of government policy and government interventions. In thinking about how value is created, it is not just created in firms; it is created in a total innovation system. I think a lot of those ideas characterise thinking in business generally these days and they also characterise and are exemplified in a number of cases in the creative industries as the canary down the mine of the innovative sector, that is, in some senses out in front of other industrial sectors.

How does the concept of Creative Commons then resonate with those kinds of ideas? Well I think there are some obvious ones, and I think there are also some obvious challenges. There is a resonance in the sense that Creative Commons is clearly inspired by the idea of networks. Also value creation in the Creative Commons is a network function and that is something that business processes are evolving towards anyway. Ideally it reduces transaction costs, which means that ecologies are more efficient. It builds skills and creates a labour market which, both Barry Conyngham and Richard Jones saw as also being a very valuable part for film and music sectors. It allows naturally competitive and/or cooperative relationships by the variety of licences that you can structure.

I am arguing that the world of Creative Commons and the world of the corporate are not that far apart if you are looking, perhaps, into the future over maybe a decade or so (perhaps even shorter than that). There are a number of evolutionary trends in the way that social life and business, as being part of that, is evolving, that come together around the idea of a Creative Commons. But I do not think it is all necessary light and no dark. Networks are often thought of as a good thing because everybody is involved with them, but networks are not necessarily, or inherently, equalitarian. Networks themselves evolve to quite large discrepancies in the number of nodes that are connected to particular players. I suspect that in the network economy, inequality is going to be as much of an issue as it is already and so issues of appropriation and distribution are obviously also notions we need to consider.