



## *Structures of Sharing: Depropriation and Intellectual Property Law*

MARCUS BOON

**ABSTRACT (EN):** Intellectual property law is concerned with control over the production and distribution of copies (“materially fixed expressions”) of ideas. Copies are in fact ubiquitous and the attempt to situate copies within a certain discourse or discipline relies on particular philosophical decisions that can be shown, historically and otherwise, to be finally political and ideological. If the copy always evades and exceeds disciplinarity, including “multidisciplinarity” and law, what do we do about these copies that are ultimately depropriated, that is, lacking a “proper” place or location, yet nonetheless recognizably present? The author explores the work of French filmmaker Jean-Luc Godard as an example of an attempt to think and make a copy-based art that refuses the logic of IP, and argues that legal scholars need to consider broader issues of political economy when debating contemporary IP law.

**RÉSUMÉ (FR):** Le droit de la propriété intellectuelle s’intéresse au contrôle de la production et de la distribution de copies d’idées (« fixations matérielles de l’expression »). Les copies sont omniprésentes et la tentative de les situer à l’intérieur d’un certain discours ou discipline dépend de décisions philosophiques particulières dont on peut, de façon historique ou autre, finalement démontrer le caractère politique ou idéologique. Si la copie se soustrait toujours à la disciplinarité—y compris la « multidisciplinarité »—et au droit, et les dépasse, que pouvons-nous faire de ces copies qui sont ultimement désappropriées, c’est-à-dire auxquelles manquent une place ou

un lieu « propre », mais qui sont toutefois visiblement présentes? L'auteur explore le travail du cinéaste français Jean-Luc Godard en tant qu'exemple d'une tentative de penser et de créer un art basé sur la copie qui refuse la logique du droit de la propriété intellectuelle et soutient que les spécialistes du droit doivent considérer des problèmes d'économie politique plus larges lorsqu'ils débattent du droit de la propriété intellectuelle contemporain.

## A. INTRODUCTION

I wrote a book that was published about a year and a half ago called *In Praise of Copying*.<sup>1</sup> I wrote the book because it seemed to me that all around me, there was a proliferation of practices of copying, particularly by students I worked with, but very little by way of a justification of these practices, which tended to be engaged in with a sense of guilt, below the radar of the law. When they were justified, as in the case of the important work by Lawrence Lessig and James Boyle, it was through a quite cautious affirmation that stressed the importance of IP law, while arguing for quite modest adjustments that would allow certain kinds of sharing to happen, in the name of creativity.<sup>2</sup> The kinds of sharing, particularly of music, that people were and still are engaging in went far beyond what Lessig and Boyle argued in favour of. And I became fascinated by the radical gap between legal discourses concerning copying, and the actual practices of copying that people engage in today in everyday life. On closer inspection, the relatively limited framework of copying that is recognized as such, whether affirmatively in the case of hip hop sampling or literary citation, or negatively as in the counterfeiting of branded goods or the appropriation of indigenous cultural forms, appeared to me as part of a much broader set of practices or processes that could equally be described as copying. These would include: the generalized phenomenon of language acquisition by humans and non-humans; the principle of economic equivalence, by which one thing is established as having the same value as another thing (termed *economimesis* by Jacques Derrida<sup>3</sup>); the sexual (or asexual) reproduction of organic life forms as variations or permutations of the DNA molecule; and so on.

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1 Marcus Boon, *In Praise of Copying* (Cambridge: Harvard University Press, 2010).

2 Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin Press, 2004); James Boyle, *The Public Domain: Enclosing the Commons of the Mind* (New Haven: Yale University Press, 2008).

3 Jacques Derrida, "Economimesis" translated by Richard Klein" (1981) 11:2 *Diacritics* 3.

I became intrigued by the relationship between laws that regulate copying and philosophical and anthropological descriptions of copying practices. I was particularly struck by the work of René Girard, who makes a grandiose but compelling argument that mimesis is the fundamental problem faced by human beings, who are constituted as such through a drive to imitate, but who at the same time struggle to establish their separate and individual identities. For Girard, violence is the result of this struggle for originality or authenticity or ownership (both of self and object of desire), and the law attempts to moderate claims to identity and ownership, while at the same time enacting the cathartic process of scapegoating certain individuals as being responsible for the evils of mimesis.<sup>4</sup> For my purposes, those who violate IP laws are scapegoated as engaging in illicit acts of “copying,” so that the rest of society may enjoy the cathartically produced (but illusory) sense of being innocent of copying themselves.

Girard’s work raises a fundamental question, one that is relevant to the topic of IP and interdisciplinarity: what is the place, field, or form in which the problem of imitation can be responded to in a human society? Law would be one structure that attempts to appropriate or organize mimesis. Art would be another. Economy would be a third. For Girard, only religion, and more specifically a Christian practice of counter-sacrifice, can respond adequately. I would like to radicalize or at least open up the problematic as set up by Girard, through the work of Georges Bataille, and his notion of “the accursed share” by which Bataille means the excess that is always present and must always be disposed of in some way by any human society.<sup>5</sup> This excessive “share” is “accursed” because it is generally forbidden or tabooed; yet, at certain key moments, the taboo is reversed and the share must be used up. For example, violence is forbidden in most societies, yet becomes mandatory when there is a war. There are reasons to question whether “excess” is the best word for this thing that can’t be organized or

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4 The simplest account of Girard’s ideas concerning mimesis is probably the interview with him at the end of René Girard, *To Double Business Bound: Essays on Literature, Mimesis, and Anthropology* (Baltimore: Johns Hopkins University Press, 1978). The fullest account is in René Girard, *Things Hidden since the Foundation of the World*, translated by Stephen Bann & Michael Metter (London: Athlone, 1987), particularly Book 1, ch 1, and Book 3, ch 1 & 2. The most well known account is in René Girard, *Violence and the Sacred*, translated by Patrick Gregory (Baltimore: Johns Hopkins University Press, 1977), in the chapter “From Mimetic Desire to the Monstrous Double” at 143.

5 Georges Bataille, *The Accursed Share: An Essay on General Economy, Volume 1: Consumption*, translated by Robert Hurley (New York: Zone Books, 1988).

framed, but if one thinks about mimesis and therefore copying in terms of the problematic set out by Bataille, the question is raised: is there indeed a generalized taboo on the excessive but inevitable proliferation of copies that is being enacted, or *contained*, at present through IP law? And what is the relationship between IP law and this more general taboo? One place to look for this connection is in the concept of moral rights, which is often raised, both legally and otherwise, as the justification of IP law. I hope you can see that the problem of interdisciplinarity is raised here: the law is only one of a number of structures by which humans seek to contain practices of copying in particular societies. Intellectual property law is itself only 300 years old, and belongs to a very particular set of cultural histories, specific to European and North American modernity, but is now being elevated to the status of a universal in the age of globalized capital.

Presenting this kind of material to legal scholars I feel naïve. I am not making an argument against the existence of the law either in general or specifically in the case of intellectual property. I am questioning whether the law can do what it ostensibly sets out to do, which is to regulate the production of copies. If the answer to this question is affirmative, then one needs to explain why copying proliferates to such a radical extent beyond the reaches of the law. Is this just a matter of a lack of fine tuning the law such that it is able to address all situations? Or is it a problem of enforcement such that there is simply a lack of political will to track down and prosecute all IP law violators? Of course, one could say that we are continually acting in a social and legal space in which our actions are made with only a general awareness of the actual nature of the legal code that governs that space. The entire range of legal mechanisms in our society come into play in articulating, testing, disputing, and enforcing the specific discursive/legal meaning of acts and events that remain opaque in the moment of their lived reality. If the answer is negative, meaning, to repeat, that there is something about the production of copies that will always remain beyond the capability of the law's ability to regulate, it would be important to unequivocally affirm that. Fair use and the public domain are ways of articulating a margin of unregulatability. They are typically justified with reference to the needs of the liberal subject, the affirmation of a public space tended by a liberal-democratic state. These needs and this affirmation are in turn limited by those of commerce and private interest. But the limits of fair use and the public domain are breached so regularly today, and the terms are so often invoked in situations where in fact the rights implied by these concepts no

longer exist, that we should at least question whether they remain an appropriate vocabulary for enframing debate about IP.

In my book, I discuss this problematic in terms of appropriation and deappropriation.<sup>6</sup> For many philosophers, appropriation is constitutive of being human and of the world more broadly. In order to survive, we eat, we build territories, we take, and we give. Marx in his early manuscripts spoke of man's entire relation to the world as one of sensory appropriation, and more broadly affirmed that all political-economic systems involve appropriation. Capitalism and colonialism are both particular regimes of appropriation then, as are feudalism and "primitive accumulation," while communism as presented in *The Communist Manifesto* involves a reappropriation of that which has been appropriated by the bourgeoisie.<sup>7</sup> A final appropriation if you like. Marx distinguished in the *Grundrisse* between property and private property, but insisted on the necessity of the former: "an appropriation which does not make something into property is a *contradictio in subjecto*."<sup>8</sup>

A question remains however about how fundamental appropriation is, and whether all entities can finally be defined as property, whether private or common. I argue that there is another position with respect to being, and that one name for it is deappropriation. By deappropriation I mean to suggest both certain things that are inherently unownable, that cannot be made property, and are therefore necessarily part of a public domain or commons, but also other things whose status outside of ownership is established by shared consensual protocols and practices. Legally speaking, deappropriation takes at least two forms. One a positive form, which would include notions of public domain, open source, creative commons licensing, etc., in which the law is used to define a set of conditions under which access to ideas and their expressions is defined. The other a negative form, as in many file sharing communities and informal economies where local and sometimes more than local practices continue to exist outside of, or alongside, the law for various periods of time. Deappropriation, and a set of related words that include "unbelonging," "decreation," etc., have a place in the history of thought, which might include the work of Simone Weil, Roberto Esposito,

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6 Boon, above note 1 at 223–37.

7 Karl Marx & Friedrich Engels, *The Communist Manifesto* (New Haven: Yale University Press, 2012).

8 Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy* (London: Penguin Books, 1993) at 87–88.

or more recently, Ranjana Khanna.<sup>9</sup> But what I want to emphasize here is not the curious philosophical pedigree of the term depropriation, but the way that contemporary situations are developing that require this kind of vocabulary and thought.

Today we increasingly encounter situations in which something like depropriation is recognizably occurring, especially in situations that concern intellectual property. IP, according to common wisdom, is one of the forms of property . . . but we should at least explore the inverse proposition: that property itself might only be a kind of intellectual property, in other words, property might be inseparable from the idea of property or even the ideology of property.

The main issue for me in thinking about intellectual property in interdisciplinary terms remains the relation between the law and the economy. Whenever I discuss copying with people, the principal argument against any substantial reform in IP law, allowing ordinary people to make and share copies of whatever kind, is that such a reform destroys people's ability to make a living from their creative work. Even if it can be proven that the creative work that they call their own is almost entirely reliant on images, ideas, words, and techniques that are taken from other people, there is still an intense belief that IP is the only way to guarantee economic survival. Thus, a recent book like Robert Merges's *Justifying Intellectual Property* can construct an argument in favour of IP whose "justification" is basically that it supports neo-liberal democratic capitalist economy.<sup>10</sup> Which indeed it does. You own something if you work on it (Locke),<sup>11</sup> you exist as a subject because you are capable of ownership (Kant and Hegel),<sup>12</sup> and the law and state exist in order to protect that right (ditto).<sup>13</sup> Merges makes no mention of Marx, or the vast history of the contestation of the rights of the bourgeois subject, which, via Kant again, Merges believes to be universal. There is a vast global underclass who own nothing, whose work does not result in

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9 Simone Weil, "Decreation" in George A Manichas, ed, *The Simone Weil Reader* (Mt Kisco: Moyer Bell, 1985) at 350–56; Roberto Esposito, *Communitas: the Origin and Destiny of Community* (Stanford: Stanford University Press, 2010); Ranjana Khanna, "Unbelonging: In Motion" (2010) 21:1 *Differences* 109.

10 Robert P Merges, *Justifying Intellectual Property* (Cambridge: Harvard University Press, 2011).

11 *Ibid* at 31–67.

12 For Kant, *ibid* at 68–101; for Hegel, see George Friedrich Wilhelm Hegel, *Philosophy of Right*, translated by TM Knox (London: Oxford University Press, 1967).

13 Merges, above note 10.

their acquiring property rights, who do not benefit at all from IP law, and whose lives and cultural practices exist almost entirely within a pirate or black market economy that is illegal but affordable.<sup>14</sup>

I have to turn to French legal philosopher Bernard Edelman's remarkable book, *The Ownership of the Image*, for a different version of this history.<sup>15</sup> In this book, Edelman examines the historical relationship between the evolution of the photographic and cinematic images and the law that designates who owns them. Edelman astutely notes that when photographic images first appeared in the 1840s, they presented a problem for IP law. While a painting or a book might well be said to have a single author (regardless of Foucault's claims in "What Is an Author?"<sup>16</sup>), who is it that owns the photographic image? The person who takes the photo? The person whose image is used? The person who owns the camera? Who develops the photograph? These were new problems and Edelman tracks the way that at first the law has no consistent answer to them. It is only as photography emerges as an important form of economic activity that the question is resolved. The problems multiply with the arrival of the cinema, since now in addition to the cinematographer, etc., there is the director, the screenplay writer, the producers, the actors, and many more. Edelman shows the way that the evidently social character of movie making (it is a collective production, in terms of labour, subject matter, etc.) is pushed aside in order that cinema may be integrated as a form of capitalist economic activity. Edelman relates with delightful sarcasm the way that any Lockean ideas of labour resulting in ownership disappear with the evolution of large cartels of movie investors, who, despite the fact that they do not labour on the movie at all, other than investing in it, nevertheless become the copyright owners of the movie.

An orthodox Marxist response to this situation would be collective ownership, with laws that support it, as indeed happened in the early years of the Soviet Union. A collective appropriation. There is a surprising lack of historical scholarship on actually existing socialist societies and IP, and regardless of the failures of the broader system, it would be interesting to

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14 See Ravi Sundaram, *Pirate Modernity: Delhi's Media Urbanism* (New York: Routledge, 2010); Brian Larkin, *Signal and Noise: Media, Infrastructure, and Urban Culture in Nigeria* (Durham: Duke University Press, 2008). These two works are remarkable ethnographies of IP in India and Nigeria, respectively.

15 Bernard Edelman, *Ownership of the Image: Elements for a Marxist Theory of Law*, translated by Elizabeth Kingdom (London: Routledge & Kegan Paul Books, 1979).

16 Michel Foucault, "What Is an Author?" in James D Faubion, ed, *Aesthetics, Method, and Epistemology: Essential Works of Foucault 1954–1984* (New York: New Press, 1999) at 205.

have more detailed case studies of modern, non-capitalist legal and political approaches to questions of IP.<sup>17</sup> I want to focus here however on examples of contemporary struggles involving depropriation that suggest other possibilities: the market for psychoactive substances, a.k.a., drugs; the increasingly complex production and distribution of music that samples and resamples itself, a.k.a., Tumblr tunes; WikiLeaks and other attempts to share private and/or national archives; the Occupy movements. I cannot discuss any of them in detail here but I want to at least point out that each of them challenges our idea of what *intellectual property*, or better, to use Hardt and Negri's term, *immaterial property*,<sup>18</sup> is. In each case there is something that resists becoming property, but which nonetheless is the object of active social engagement. Part of the engagement, in each case, is the development of practices of depropriation that maintain and affirm the status of the object of interest as unownable — and public.

With the struggle to decriminalize the use of various psychoactive substances (marijuana, psychedelics, etc.), we are in the realm of what Timothy Leary called the fifth freedom: the freedom to alter your own mind.<sup>19</sup> While this is often given a libertarian reading, in which my mind is my own private property and therefore I should be able to do what I please with it, one could equally think of it in terms of depropriation: that it is the possibility and practice of non-ownership, of sharing my mind with a plant or a chemical in a Latourian actor-network that is at issue here.<sup>20</sup> With music as the site of so many struggles over IP recently, there is the possibility that a sound cannot be owned, that because of what it is, a sound evades ownership and is easily, even necessarily shared. With WikiLeaks we have the possibility of contesting the ownership of national archives, and the emergence of new kinds of public space in which information cannot be or at least has not yet been controlled because of its almost instantaneous distribution across computer databases around the globe. With the Occupy protests, what is at issue is again a reinvigorated public space that is at once local and transnational, simultaneously private or state and public property, and yet none

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17 Michael A Newcity, *Copyright Law in the Soviet Union* (New York: Praeger Publishers, 1978) and Serge L Levitsky, *Introduction to Soviet Copyright Law* (Leyden: AW Sythoff, 1964) are both useful but out of date in terms of methodology and perspective.

18 The term is first used in Michael Hardt & Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin Press, 2004) at 180–82.

19 Timothy Leary, *The Politics of Ecstasy* (New York: Putnam, 1968).

20 Bruno Latour, *We Have Never Been Modern*, translated by Catherine Porter (Cambridge: Harvard University Press, 1993).



of the above. It is an actively existent space: participatory, yet unowned (thus it is “occupied” through active practices of use of a space that accord with the ideals of a liberal democracy, but which are visibly and brutally crushed by the forces that dominate that same democracy).

I don’t intend to solve the problem of what the relation between the law and depropriation is here. I would like to conclude by discussing some comments made by French filmmaker Jean-Luc Godard, who throughout his career has questioned ideas of property of various kinds. In recent years, Godard has gotten involved in IP disputes in France, contributing to the legal expenses of people accused of file sharing.<sup>21</sup> His most recent movie *Film Socialisme*<sup>22</sup> (translation: “filmed socialism,” i.e., the film as an act of socialism) is, as with many of his films, full of appropriations from multiple sources who he lists at the beginning of the movie. In an interview published in the 1960s, he says regarding his early film *Breathless*:<sup>23</sup>

People, in life, quote what pleases them. We have therefore the right to quote what pleases us. I show people “quoting” — only I arrange it so that the quote pleases me. In the notes I keep of what might be useful to me in a film I also put a sentence from Dostoievsky, if I like it. Why be constrained? If you want to say something, there is only one solution: say it. Moreover, the genre of *Breathless* was such that all was permitted, that was its nature. Whatever people might do — all this could be integrated into the film. This was even my point of departure.<sup>24</sup>

Quotation is a practice of appropriation, but the point here isn’t to draw attention to the source of the image or its recontextualization, it is simply to acknowledge that such a circulation does already exist, and that it is also part of the practice of film making. In recent years, Godard has repeatedly insisted that: “il n’y a pas de droits d’auteur, il n’y a que des devoirs,” — “there are no rights of authors, only duties.” For example, in an interview in the *Nouvel Observateur* in 2001 we find the following exchange:

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21 Xeni Jardin “Jean-Luc Godard Donates €1K for Accused MP3 Downloader’s Defense: ‘There is No Such Thing as Intellectual Property’” *Boing Boing* (13 September 2010), online: Boing Boing <http://boingboing.net/2010/09/13/jean-luc-godard-dona.html>.

22 *Film Socialisme*, DVD, directed by Jean-Luc Godard (Paris, France: Wildbunch Distribution, 2010).

23 *À Bout de Souffle (Breathless)*, DVD, directed by Jean-Luc Godard (Paris, France: Carlotta Films, 1960)

24 Jean-Luc Godard, “Interview in Cahiers du Cinema” reprinted in Sallie Sears & Georgiana W Lord, eds, *The Discontinuous Universe* (New York: Basic Books, 1972) at 296.

NO: You've earned a proper living?

JLG: I've lived as a technician . . . That's why I don't understand these questions of paying rights to the whole world. It's an incredible abuse. One can't film a TGV train that's going by in the countryside, or the Eiffel Tower any more. It's Proudhon in reverse: "Property is theft." Here, theft becomes property. That's why I prefer to speak not of author's rights, but of author's duties. This right has no juridical basis, born in the organization of society. The author has only duties. When a poor man says he has the right to eat, what that means is that he has the duty. He has to live, to continue. Rights are the social organization of this duty.<sup>25</sup>

What does it mean to place duty before rights in this way? Godard was recently asked about a particular image used in *Film Socialisme* that was copied from Agnès Varda's recent film *Les Plages D'Agnès*.<sup>26</sup> He responded that he used Varda's image for his own purpose, without harming her use of the image, to develop a meaning that interests him.<sup>27</sup> If we think of authors (but not only authors) as fundamentally social beings, who live and work because of the network of structures of sharing that they inhabit, rather than as isolated individuals who own whatever they think or are involved in, then creative acts emerge not from the right to claim ownership of something and profit from it, but from a duty to contribute to the structures of sharing that one inhabits, and to develop the insights and work of others in a meaningful way.

Depropriation is a practice that might be associated with such structures of sharing, the possibility of acting and/or living without relying on a philosophy of rights, and a discourse of intellectual property. It is not necessarily beyond the law — indeed Godard vacillates between claiming that "there is no such thing as intellectual property" and acknowledging the limited right of familial inheritance in a work — or the economy: he recognizes Varda's right to receive some kind of payment for the use of "her" image. But

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25 Interview of Jean-Luc Godard by Jacques Drillon, *Le Nouvel Observateur* (5 October 2001), online: *Le Nouvel Observateur* <http://artsetspectacles.nouvelobs.com/p1905/a43503.html> [translated by author].

26 *Plages D'Agnes*, DVD, directed by Agnès Varda (Paris, France: Les Films du Losange, 2008)

27 Interview of Jean-Luc Godard by J M L (18 May 2010) in J M L, "Le droit d'auteur? Un auteur n'a que des devoirs" *Les Inrockuptibles* (18 May 2010), online: *les inRocks blogs* <http://blogs.lesinrocks.com/cannes2010/2010/05/18/le-droit-dauteur-un-auteur-na-que-des-devoirs-jean-luc-godard>.

he knows that calling the image “hers” is merely provisional and that finally images do not belong to anyone, they are inherently social, collectively produced objects. The question today remains: how can we create structures that enable us to live in accord with that recognition?

A significant body of scholarship undertaken in the last decade, beginning perhaps with the publication of Antonio Negri and Michael Hardt’s *Empire*, has attempted to elaborate the possibility of new kinds of social movement in the wake of globalization. The increased focus of scholars on an expanded notion of the commons, the common, or other terms for a shared, public world has so far involved relatively little focus on intellectual property issues, even though contemporary debates concerning IP are rich in new formulations of such structures of sharing. IP scholars similarly have paid little attention to Hardt and Negri’s notions of multitude, immaterial labour, and the common.<sup>28</sup> Today, IP scholarship still tends to focus on the right to postmodern pastiche (and the postcolonial critique of the presumptions of postmodernism) even though broader theoretical debates about postmodernity have moved far beyond these questions, and the economic and political forces that are responsible for the “postmodernization of production” are all too obvious. At the same time, Hardt and Negri’s celebration of the creativity of the multitude, and of a global society built around a notion of the common is perhaps symptomatic of what Slavoj Žižek sees as a refusal by leftist artists and activists to recognize the need to actually work with and change structures such as legal systems, rather than seeking out temporary or provisional spaces that are beyond the reach of the law.<sup>29</sup> To my mind, a question remains whether the word *structure* is a synonym for *law*.<sup>30</sup> Again, this is where the problem (or tool?) of interdisciplinarity is a crucial one. If, as I believe, structure and law are not synonymous, what is their relationship? Is the emerging, semi-autonomous practice of sharing

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28 Michael Hardt & Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000), which has little or no discussion of IP; see also Michael Hardt & Antonio Negri, *Multitude: War and Democracy in the Age of Empire* (New York: Penguin Press, 2004), which devotes ten very interesting pages to the topic at 179–88; Michael Hardt & Antonio Negri, *Commonwealth* (Cambridge: Harvard University Press, 2009). Although this piece is built around an analysis of property and the common, it has no sustained analysis of IP.

29 Slavoj Žižek, “Resistance is Surrender” 29:22 *London Review of Books* (15 November 2007), online: London Review of Books [www.lrb.co.uk/v29/n22/slavoj-zizek/resistance-is-surrender](http://www.lrb.co.uk/v29/n22/slavoj-zizek/resistance-is-surrender).

30 One could ask this question of any of the post-Lacanian critical theorists, including Žižek, *ibid.* Are all proposals of an alternative to the law merely evasions of the law unless they confront it?

merely awaiting its inevitable articulation within the law? Insofar as it continues to exist in a way that contradicts existing law, how can the “duty” that guides it be acknowledged or supported by legal scholars?

Either way, the possibilities for rethinking IP law, or indeed interdisciplinary scholarship on IP are severely limited, if such scholarship tacitly or explicitly accepts the order of the current political-economic system, and its affirmation of private enterprise as equivalent to the common good. If private ownership of immaterial labour is required in order to make wage labour viable, then the particular contemporary forms of IP law necessarily follow as a consequence. But the right to make certain kinds of copy cannot be treated justly without recognizing the broader challenges to “the common,” to a public culture, or to a shared commons that we face today. In what ways can legal scholarship contribute to a broadening of the ways in which we think of political economy both historically and today in its emergent forms? What other branches of legal scholarship, and what other disciplines do IP scholars need to consider and dialogue with in order to open up the broader questions of IP’s relation to political-economy?

Increasing recognition of this problematic may explain the rise of political parties such as Germany’s Pirate Party, whose main focus appears to be IP law reform.<sup>31</sup> The apparently absurd “single issue focus” of such groups in fact recognizes that the new forms of freedom discovered via collective collaboration on the Internet require a full rethinking of our political and economic systems in order that they might be sustained or expanded. Of course, that’s a tall order, and one that so far these emerging parties are not capable of responding adequately to, but it’s precisely the fact that current practices of copying go so far beyond dominant legal, economic, and political models that makes them such powerful tools for modelling other, and hopefully better, forms of sociality.

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31 Sven Becker et al, “The Grand Experiment: German Pirate Party Attempts to Reinvent Politics” *Der Spiegel* (25 April 2012), online: Spiegel Online International [www.spiegel.de/international/germany/germany-s-pirate-party-seek-to-reinvent-politics-a-829451.html](http://www.spiegel.de/international/germany/germany-s-pirate-party-seek-to-reinvent-politics-a-829451.html).