# FCJ-001 Report: Creative Labour and the Role of Intellectual Property

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This report is based on the survey I conducted for the fibrepower panel initiated by Kate Crawford and Esther Milne – 'Intellectual Property-Intellectual Possibilities' (Brisbane, July 2003). I wanted to explore in some empirical fashion the relationship between intellectual property and creative labour. Why? Largely because such a relationship is the basis for defining what is meant by creative industries, according to the seminal and much cited mapping document produced by Blair's Creative Industries Task Force (CITF). Despite the role IP plays in defining and providing a financial and regulatory architecture for the creative and other informational or knowledge industries, there is remarkably little attention given by researchers and commentators to the implications of IP in further elaborating conceptual, political and economic models for the creative industries. There is even greater indifference towards addressing the impact of exploiting the IP of those whose labour power has been captured: young people, for the most part, working in the creative and culture industries. Angela McRobbie's work is one of the few exceptions (see also Gill, 2002).

At a different level, I was curious to see how a mailing list might contribute in a collaborative fashion to the formation of a research inquiry in which the object of study – creative labour and IP – is partially determined by the list itself. Finally, after leveling critiques at various times and occasions against what Terry Flew (2001) identifies as the 'new media empirics', I thought it necessary to engage in a more direct way with this nemesis-object: what, after all, can a new media empirics do and become when it is driven through what I have developed elsewhere as a processual model of media and communications? (Rossiter, 2003b) I will address this question in the concluding section of this report.

As I noted in an earlier paper (Rossiter, 2003a) posted to the fibreculture mailing list: The list of sectors identified as holding creative capacities in the CITF Mapping Document include: film, music, television and radio, publishing, software, interactive leisure software, design, designer fashion, architecture, performing arts, crafts, arts and antique markets, architecture and advertising. The Mapping Document seeks to demonstrate how these sectors consist of '… activities which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through generation and exploitation of intellectual property' (CITF: 1998/2001). The CITF's identification of intellectual property as central to the creation of jobs and wealth firmly places the creative industries within informational and knowledge economies.

In posting the survey questionnaire to the list, I was interested in ascertaining the following:

1. The extent to which respondents perceived their primary activities

(i.e., activities other than eating, sleeping, watching TV, having sex, substance abuse, etc. – though I guess many would argue that they are indeed primary activities, and perhaps also creative ones!) to correspond with "creativity", however that term might be understood (n.b., the survey synopsis clearly framed creativity in relation to the Creative Industries discourse, so the latitude for interpreting the term creativity was relatively circumscribed).

2. Whether a very partial mapping of the fibreculture network produced

results similar to the sectors identified in the CITF Mapping Document. Whatever the results, I was interested in what they might then say about national, regional or State manifestations of the creative industries: are Australia's Creative Industries the same as the UK? Is there a temporal factor at work? That is, given the time of development, incubation, etc., would a mapping exercise produce different results depending of when and how it was conducted? In other words, how does the stability of the empirical object – creative labour – relate to the contingencies of time? This is as much a methodological question as it is a question of politics and ethics.

3. To establish whether respondents perceived or understood an extant

relationship between their labour and intellectual property.

4. To find out whether IP in the workplace makes work a political issue.

At the time of the survey, the fibreculture list had just over 700 subscribers (June, 2003). All responses came on the same day I posted the survey, most within a few hours of it appearing on list. This in itself perhaps says something interesting about the "attention economy" of email lists and the time in which any posting may receive a response: i.e., while the Stones could sing about the redundancy of newspapers after a day, do list postings have a life of three or so hours? Not so bad actually, though it's probably much less – more like seconds, depending on whether a post is read or not.

11 Of the 700 or so subscribers then, I received seven responses. That's 1% of all list subscribers, a lovely sample to be sure. One of the respondents provided a follow-up response as well. There was one other query from someone asking whether they could do the survey even though they thought they weren't a creative worker; they were a copyright lawyer – a category Richard Florida assigns to "creative professionals" – 'business and finance, law, health care and related fields', as distinct from the core Creative Class: 'people in science and engineering, architecture and design, education, art, music and entertainment, whose economic function is to create new ideas, new technology and/or new creative content' (2002: 8). Curiously, there is no mention – at least in this initial definition – of the role intellectual property plays in constituting a "creative class" so if you want to protect your creations with the help of the law, professionals like London solicitors can really help with this. [1] No doubt there are national-cultural and socio-political explanations for the differences between how creative workers are perceived and constituted in the UK and North America. To my knowledge, there is yet to be a study that inquires into the different national and regional formations of creative industries, classes, economies and cultures. One could argue that OECD research papers and reports along with those by neo-conservative, libertarian think-tanks such as Demos and the Cato Institute do such work; however, while they certainly compile statistics and bring a dual mode of commentary and hyperbole to such figures, they do very little by way of historical, political, economic and cultural analysis of the variable conditions that have led to the emergence of creative labour and its attendant industries across these geopolitical regions.

**Reflexivity and Empirical Research**

12 While the sample I am drawing on is most certainly small, it is not insignificant. Indeed, I think its minutiae corresponds to larger patterns of creative labour in Australia, and most probably elsewhere, as I extrapolate below. Interestingly, I'm told by a psychologist friend researching the formation of depression in migrants that current, more reflexive literature on quantitative, empirical research argues that the fuss over sample sizes (i.e., the need to have a large sample if the claims and results are to have any scholastic purchase on the phantasm of veridicality) is problematic in all sorts of ways (see Edwards, 1997; Silverman, 2001). For instance, at what point can one say a sample is representative of the community, user-consumers, demographic, socio-technical network, etc. under analysis? As Pierre Bourdieu (1973) argued so acutely and with such verve, public opinion does not exist. What exists, for Bourdieu, is the discursive form of the survey or opinion poll, the interests that drive it, and the ends to which it is put. Of course my own survey is not immune from the sort of critical, theoretical and political interests I bring to the analysis of responses.

13 Then there's the whole pseudo-scientific language of "observation", as though there might have ever been some sort of impartiality underpinning the process of enacting the survey. Scott Lash associates such a paradigm with "reflective modernisation" and the work of Giddens, Habermas and Parsonian structural functionalism and linear systems theory: 'The idea of reflective belongs to the philosophy of consciousness of the first modernity.... To reflect is to somehow subsume the object under the subject of knowledge. Reflection presumes apodictic knowledge and certainty. It presumes a dualism, a scientific attitude in which the subject is in one realm, the object of knowledge in another' (2003: 51). In contrast to a reflective first modernity, Lash posits a reflexive second modernity and non-linear systems of communication and risk comprising of quasi-objects and quasi-subjects and their theorisation by the likes of Luhmann, Beck and Latour, along with Castells' network logic of flows:

14 > Second modernity reflexivity is about the emergent demise of the distinction between structure and agency altogether.... Second-modernity reflexivity presumes a move towards immanence that breaks with the [ontological] dualisms of structure and agency.... The reflexivity of the second

> modernity presumes the existence of non-linear systems. Here system dis-equilibrium and change are produced internally to the system through feedback loops. These are open systems. Reflexivity now is at the same time system de-stabilization. (2003: 49-50)

15 The extent to which reflexive non-linear systems wholly dispense with or depart from a constitutive outside in favour of a logic of immanence is a problematic I have begun to question with other fibreculture members in an earlier posting to the list (Rossiter, 2003a). [2] Like the question of and tension between new media empirics and processual media theory, it is a problematic I will return to in my concluding remarks.

16 I think one reason I received even seven responses had much to do with prior knowledges and trust established between myself as "observer" and the "participants" in this survey: i.e., I had either met or knew very well six of the seven respondents. Here, it is worth turning again to Bourdieu, who frames the concept of reflexivity in particularly succinct terms: 'What distresses me when I read some works by sociologists is that people whose profession is to objectivize the social world prove so rarely able to objectivize themselves, and fail so often to realize that what their apparently scientific discourse talks about is not the object but their relation to the object' (1992: 68-69). Put in terms of non-linear systems theory, the on- and off-line relationships, trust and symbolic economy I had established largely through an online network operated as a feedback loop into the call for interest in and responses to this current survey. Obvious as it may sound, this very historical and social dimension to a communicative present actively destabilises any rhetorical claims that I might attempt in the name of conducting a survey that follows the scientific principles of objectivity and impartiality and methodologies befitting quantitative research. The only thing that is remotely impartial about this survey is the anonymity of the respondents as I present them here.

17 Feedback loops further destabilise the very object-ness of this report as a discrete posting to a mailing list insofar as anyone who responds to this report breaks up components of the report by way of selective quoting or paraphrasing and interjecting their own critiques or comments. [3] Many of us do this when we reply to an email, separating the sender's text from our own; in so doing, we are translating or mimicking the effect of dialogue. Such a process is also registered in a material, symbolic form in the partially dissipative, non-linear structure of discussion threads as the user recombines and shifts between postings, disrupting what otherwise appears as a condition of equilibrium within the linear organisation of the archive. Further registration of feedback loops are made in the googlisation of this combinatory knowledge and information formation, where any particular posting has the potential to move up the vertical scale of "hits" depending on the key words used in the user's search, the online links made to the posting, and the popularity of the posting: in short, the coding of the google software program plays a determining role in the hierarchisation of information that is then further shaped by the interests and habits of users. The economy and architecture of the google search engine has been subject to considerable debate and discussion in lists such as fibreculture and nettime, along with many other online fora, print and electronic media. If the posting of this report, for example, were made on any number of web conferencing systems, collaborative text filtering sites or blogs, such as slashdot.org, indymedia.org, makeworld.org or discordia.us, then a very different information architecture of feedback loops would prevail. Okay, time now to get to some substance of the survey.

**Creativity – What's in a Name?**

18 When I asked respondents what creative activities they engaged in, a list of 4-6 fields, practices or sectors of creativity by any one person was compiled. These included writing, performing and producing music; writing academic and policy papers (considered by one respondent and assumed by others as 'creative endeavours'); photography; design (interactive, information, education); publishing and editing; new media arts (dv, net.art, print, electronic music); painting; and creative writing. Three things stand out for me here:

19 1. Irrespective of whether or not respondents went on to identify

themselves as part of the Creative Industries project, however that might be understood, the range of creative activities any single person might undertake suggests that diversity rather than specialisation is a defining feature of creative workers. This isn't to say that specialisation doesn't

occur in any particular idiom of creativity – I think it's safe to assume that it would, but rather that respondents were not limited to one particular set of creative skills, trainings, or passions. Thus these respondents are clear exemplars of the so-called fragmented postmodern subject, traversing a range of institutional locations and socio-cultural dispositions.

20 2. Many of the respondents are engaged in academic work either on a full-time, continuing basis or as sessional, casual teachers. In both cases, university related activities and non-university related activities were understood as holding creative dimensions. If nothing else, the diversity of creative activities identified by respondents indicates the complexity of labour in the contemporary university, further suggesting that: (a) the university cannot accommodate the diverse interests and economic necessities of its constituent labour power, and/or (b) that individuals wish to distinguish between the kind of work they do at university and its concomitant values and the kind of work they do outside the university, or (c) that there is zone of indistinction, if you will, between the university and its so-called outside, given that all sectors of cultural production and intellectual labour are today subject to market economies. The extent to which tensions exist between these realms, or whether they are better characterised as a sort of zone of indistinction that cannot be reduced in such a manner, varies, I suspect, according to the contingencies of time, interests, values, labour conditions, age, class, gender, etc. of individuals as they are located in different institutional settings. Each of the above possibilities corresponds with the economic and labour conditions peculiar to the creative industries operating in the UK, as McRobbie explains:

21 > Those working in the creative sector cannot simply rely on old working patterns associated with art worlds, they have to find new ways of "working" the new cultural economy, which increasingly means holding down three or even four "projects" at once. In addition, since these projects are usually short term, there have to be other jobs to cover the short-fall when the project ends. The individual becomes his or her own enterprise, sometimes presiding over two separate companies at the same time. (2002: 519; see also Beck, 1992: 127-150; Bauman, 2001: 17-30)

22 3. There is much overlap between this list of creative activities and the CITF's list of creative sectors, with the exception that traditional arts and crafts and antiques do not figure in the former; this comes as no surprise, given that the survey was conducted on a listserve for critical Internet research and culture. As for how this list relates to Richard Florida's composition of the Creative Class in the US, there is an obvious absence in my survey of engineers and scientists. Again, you might say this should come as no surprise; one could, however, describe software programmers, "codeworkers" and game designers as computer scientists or information engineers – though no doubt there would be some disciplinary and perhaps ontological dispute over this.

23 Having established that they all are engaged in creative activities of one kind or another, there were then considerable differences amongst respondents as to whether they perceived themselves as engaged in the Creative Industries. Two respondents said they didn't – one being a bit hesitant as to whether they did or not, the other indifferent, implying the term was no more than a 'tag' associated with 'official places' and 'certain faculties'. Four respondents stated that they did associate their activities with the Creative Industries, some more emphatically so than others. One of those responded by writing that 'Yeah, but I'm a special case : )', indicating that creativity, at least for this person, comes with a sense of individuality, difference and exception. Yet such subjectivities carry more baggage than this. As Angela McRobbie notes, 'Individualization is not about individuals per se, as about new, more fluid, less permanent social relations seemingly marked by choice or options. However, this convergence has to be understood as one of contestation and antagonism' (2002: 518). Much of this report seeks to unravel various tensions that underpin labour practices within the creative industries.

24 A seventh respondent took a more reflexive, marxian and historically informed position, choosing to problematise and open up the question in the following way: 'All industry is creative; all human activity creates something; and nearly all human activity is subsumed under industrial imperatives (including the consumption of media and other products). Therefore I think this is probably a question whose answer is presupposed in the historical facts of its own terms'. On these grounds, then, irrespective of whether respondents did or didn't identify their creative activities with the Creative Industries, there is a sense amongst these respondents – perhaps unconscious – that

there is an "idea" of what constitutes the creative industries, and any particular respondent's identification with those industries is based, perhaps, on whether one meets the criteria or fits into the discursive boundaries, categories, or ethos of the Creative Industries, as established in part in the survey's preamble.

**Intellectual Property and Creativity**

25 The importance of intellectual property (copyrights, patents, trademarks) as a source of income was met with a mixed response. For one person it was important, for the rest it wasn't, at least in an exclusive sense: labour was paid for on an hourly basis or IP was assigned to the company or publisher commissioning the work; in other instances remuneration from IP contributed to a respondent's income, but wasn't relied upon as a primary source of income. Creative workers were thus primarily alienated from their intellectual property in one form or another. Such responses clearly signal a tension and power relationship between creative workers and their employers with regard to the CITF definition of creative industries as those activities that have 'the potential for wealth and job creation through generation and exploitation of intellectual property'. Thus despite all the rhetoric around informational and creative labour consisting of "horizontal" and "fluid" modes of production, distribution and exchange, clearly there remains vertical, hierarchical dimensions within the "New Economy". If IP is to function as the mainstay of capital accumulation within informational economies, it doesn't take much imagination to foresee industrial, legal and political dispute focussing on the juridico-political architecture of IP. The extent to which workers are able to mobilise their potential power in an effective manner (i.e., in a way that protects and secures their interests whilst inventing new political information architectures) depends, I would suggest, on their capacity to organise themselves as a socio-political force. I will address this issue in relation to the problem of immaterial labour in more detail below.

26 Respondents found IP a source of tension not only at the level of financial remuneration; a tension prevailed around the concept of IP as well. In response to the question of whether intellectual property is important as a principle – that is, as a system or framework consisting of rules and beliefs that enables the transformation of labour into legal, moral and potentially economic values – one person stated that they found it of no importance at all. All others found it was, though the response, as expected, was mixed: 'Yes, but in a negative sense. The whole structure of IP has turned into a perversion of its intended principles: namely, that alienation rather than one's inalienable rights in one's own work is the guiding principle of IP law. Put differently, rights are seen to exist only so that they can be sold. That is a function of capital, long since dead. I would prefer a rights structure that existed to ensure the free flow of ideas'. In a similar vein, though without the libertarian overtone, another respondent writes: 'It is important to me as a principle to be critiqued, developed and (in some cases) rejected. The arm of IP is extending in several directions and in many industries – and it's that reach that needs to be reviewed with some urgency'.

27 A third respondent strongly rejected the idea that IP might be understood in terms of principles: 'No', they write, 'It's important to me as a discursive field!' By my reading, such a statement suggests that the respondent understands principles as holding some kind of unchanging, transcendental and universal status, while a discursive field is historically and culturally mutable and holds the potential for local intervention by actors endowed with such capacities. (A similar distinction is often made in philosophy between the universality of morals and the contingencies of ethics.) The idea of IP as a discursive field rather than a principle is also interesting in relation to the second response tabled above, which implies that limits need to be established with regard to IP and the extent to which it governs areas of life previously outside a market economy. Current debates around patenting the human genome, database access to DNA information on sperm and embryo composition and their relationship to insurance premiums and future employment possibilities (see Gattica for the filmic version of this scenario), and the pressure on developing countries to import GM food coupled with uneven, neo-colonial trade agreements along with clientelistic conditions imposed by the World Bank and IMF's structural adjustment and debt management policies are the most obvious examples that come to mind here (see Hoogvelt, 2001).

**Intellectual Property and the Labour Contract**

28 The tension associated with IP was further extended to the workplace, with all but one of the respondents noting that they had heard of and in some instances personally experienced conflicts over IP issues. If such accounts are the norm rather than the exception, this clearly signals a need for much greater attention to be given to the role of IP in the workplace, and the status it holds as a legal and social architecture governing the conditions of creative production, job satisfaction, employer-employee relations and thus life in general. While only two respondents reported of losing a job or contract for refusing to assign IP to their employer, many commented on the problems of such a condition – as one person noted: 'This is common in film music now: if you don't sell your rights to the film maker, you are not given the contract'. Another highlighted the legal and institutional distinction between private and state sectors. Addressing the Australian situation, this respondent notes that government bodies such as councils and departments 'are exempt from recognising author rights under the current copyright act – therefore to refuse to hand over intellectual rights in these cases is to refuse to work'.

29 Here is a curious and paradoxical case in point in which the call to a 'refusal of work' – a political concept and strategy derived from radical workers' movements of the 1960s in Italy – is jerry-wired into the system itself, albeit with a significant proviso of political proportion. The Italian autonomists seek to liberate work from relations of waged labour and the capitalist State, to unleash 'a mass defection or exodus' and in so doing subtract the labour-power which sustains the capitalist system, affirming the 'creative potential of our practical capacities' in the process (see Hardt, 1996: 6; see also Virno, 1996b: 196-197). There's a bit of a different rub, however, in a capitalist logic of post-Fordist flexible accumulation, whose modes of social and political regulation set the scene for our current informational paradigm. While the worker within Fordist systems of assembly-line mass production and mass consumption conditions the possibility of, to refer to the classic example, the assemblage of motor vehicles that, ideally, are then sold to the leisurely consumer who built the vehicle in their eight hour working day, the case of IP and creative labour operates in substantially different ways.

30 Within an informational paradigm, the appropriation of labour power by capitalists does not result in a product so much as a potential. This potential takes the "immaterial" form of intellectual property whose value is largely unquantifiable and is subject to the vagaries of speculative finance markets, "New Economy" style. Thus, in the case of government institutions that don't recognise an individual's IP rights, there is nothing to 'hand over' in the first instance. That is, the right to a refusal of work is not possible; or put differently, the creative potential of work, as registered in and transformed into the juridico-political form of IP, is undermined by the fact that such a social relation – the hegemonic form of legitimacy – is not recognised. As noted by another respondent: 'I don't think you "lose" a contract for refusing to sign IP over … it's more like you never had it in the first place if you do work for hire'. Instead, one does not so much refuse to work as decline to provide a service, whose economic value as wage labour – that is, labour separated from its product (Marx in Harvey, 1990: 104) – bears no relationship to the potential economic value generated by the exploitation of IP. In effect, then, "creativity" goes right under the radar. Prostitution functions in a similar manner. One does not buy "love" from the prostitute, one acquires a "service" in the form of an orgasm, or "little death", with no value in and of itself. The prostitute's love does not figure in the relationship; love is off the radar. Like intellectual property, the expression of the orgasm in a given form – sperm, for the male who appropriates the labour power of the prostitute – nevertheless holds the potential to translate into economic, social, political and biological values if its eruption is arranged under different conditions – the normative ones peculiar to heterosexual couplings living in advanced economies, for example.

31 A couple of respondents, both now working in the higher education sector, had mixed responses to the kind of conditions such a setting enabled vis-à-vis labour and IP. Respondent 1: 'I would always give in [and sign over IP] when I was self-employed, now I only take jobs where I'm happy with the IP arrangements'. Such a position is possible when, as noted earlier, producing IP for others (i.e., employers/clients) is not the primary source of income. Interestingly, the other respondent anticipates conflicts over the assignation of IP within university settings – Respondent 2: 'as i continue to collaborate in university settings, the problem will arise'. The problem of job security arises where IP policies can vary substantially from university to university and at an intra-

university level depending on the kind of contract an individual is able to negotiate with management as universities undergo increasingly deregulation toward a system that destroys the legal concept fought for by unions of collective wage agreements. At my own university, to take a typical example of someone working in the higher education sector, the subject materials I produce are the intellectual property of the university. These educational materials will often incorporate parts of articles I have written or am in the process of writing. (They will also include lists of references to articles and debates located in open-access online repositories, as found in the fibreculture and nettime archives, for example.) And here, a curious institutional tension over IP emerges: depending on the publisher, the IP of articles and books I write belongs to the publisher. One of the respondents noted how this problem of proprietary rights of academic IP has been dealt with in recent legislation in Australia: 'the new IP rules (e.g., the one which came into effect on 14th March) gives the university ownership of all IP created by staff (with a "scholarly work" exception). This creates major problems – for example, academics moving to different universities who intend to use educational materials they have developed previously'. Thus the extent to which IP functions as an architecture of control is and has always been dubious at the level of the everyday. Just think of what happened with the appearance of the xerox machine in university settings – in effect it became a free license to appropriate the property of writers, with myriad staff and students reproducing the pages of otherwise copyright protected materials.

32 Even if the legal aspects of IP are frequently difficult if not impossible to regulate, there are important symbolic dimensions to IP that have implications and impacts at the level of subjectivities and their degree of legitimacy within institutional and national settings. Here I am thinking – yet again – of that rather chilling line in the CITF's definition of the Creative Industries in which IP is not only generated, but more significantly, it is exploited. The exploitation of IP is not simply a matter of extracting the potential economic value from some inanimate thing; the exploitation of IP, let us never forget, is always already an exploitation of people, of the producers of that which is transformed from practice into property, which in its abstraction is then alienated from those who have produced it. While there are clear problems with such a system, IPRs are not necessarily a bad thing. As I have argued elsewhere, to simply oppose IPRs is not a political option (Rossiter, 2002). Individuals and communities must look for ways in which IPRs can be exploited for strategic ends. Such a political manoeuvre is possible, for instance, in efforts to advance Indigenous sovereignty. To return to the relationship between the exploitation of IP and the political status of subjectivity, it should be noted that QUT holds a policy in which students retain control of all IP they produce, with some exceptions. [4] Such a policy initiative seems to be the exception within an environment of "enterprise universities" (Marginson and Considine, 2000) whose economic viability depends upon obtaining the maximum leverage possible within a political economy of partial deregulation.

### Intellectual Property and (Dis)Organised Labour

33 Most of the respondents corrected the assumption in my question on the relationship between collaborative production and the difficulty of assigning IP rights to individuals or joint-authorship. Respondents noted that corporations own the creative efforts of both individuals and collaborations, since the corporation has paid for that work. This brings me to the final component of the survey – the relationship between IP and the problem of disorganised labour. It seems to me that unions are among the best placed actors to contest the seemingly foregone conclusion that corporations have an a priori hold on the appropriation of labour power. As Castells has noted in a recent interview:

34 > … with the acceleration of the work process [enabled by new ICTs], worker's defense continues to be a fundamental issue: they cannot count on their employers. The problem is that the individualization of management/worker relationships makes the use of traditional forms of defense, in terms of collective bargaining and trade union-led struggles, very difficult except in the public sector. Unions are realizing this and finding new forms of pressure, sometimes in the form of consumer boycotts to press for social justice and human rights. Also, individual explosions of violence by defenseless workers could be considered forms of resistance. (Castells and Ince, 2003: 29)

35 However, there is an impasse of paradigmatic proportion to the potential for unions to assist workers – particularly younger workers – within creative industries or knowledge and information

economies. The so-called strategy of consumer sovereignty is a relatively weak one, and only further entrenches the problem of individualisation inasmuch as the potential for a coalition amongst workers is only further sidelined in favour of that mantra urged on by our politicians who are so keen to protect "the national interest" – yes, the national economy is fragile, so enjoy yourself and go out and shop! There is a general perception that unions and their capacity to organise labour in politically effective and socially appealing ways are a thing of the past. To address this issue I will first table comments from respondents. I will then move on to the thesis of "immaterial labour", as presented by Lazzarato, Hardt and Negri, and argue why the condition of "disorganised labour" more accurately describes the circumstances in which labour finds itself within an informational paradigm.

36 Three of the respondents stated they did not belong to a union, one with perhaps a degree of ironic self-affirmation characteristic of what Lash and Urry (1994) term 'reflexive individualization': 'Nope', writes one person, 'I'm a manager and self-employed :7′. In his book on globalisation, Ulrich Beck identifies a nexus between those who work for themselves – a mode of coordination he attributes to "life-aesthetes" in particular – and their desire for 'self-development'. He goes on to suggest that such dispositions lend themselves to 'self-exploitation': 'People are prepared to do a great deal for very little money, precisely because economic advantage is individualistically refracted and even assigned an opposite value. If an activity has greater value in terms of identity and self-fulfilment, this makes up for and even exalts a lower level of income' (2000: 150). Voluntary and service labour by many artists within the cultural sector would also fit this condition of self-exploitation.

37 Richard Caves prefers to explain the condition of non-union labour in more economic terms. Citing the example of independent filmmaking, Caves notes that '30 to 35 per cent of production costs [can be saved] by operating a nonunion project' (2000:133). In productions involving union labour, most of these additional costs are a result, so Caves claims, of inefficient and interventionist management practices and regulations by unions, which sees workers being paid for standing around doing nothing. Caves casts unions as manipulative entities who have a propensity to "hold-up" production unless their wage demands are met (132). Certainly, the militancy of unions has long been a staple of news narratives structured around a binary logic that has little time for articulating larger contextual forces and values that give rise to particular actions. Irrespective of whether the political form is union or non-union, issues of creative governance are always going to have local or national peculiarities, and will vary from industry to industry. In every case, however, the challenge for creative workers is, it seems to me, to create work that holds not only the maximum potential for self-fulfilment and group cooperation on a project, but just as importantly, creative workers need to situate themselves in ways that close down the possibility of exploitation.

38 The other respondents belonged to various unions or professional organisations: NTEU (2), MEAA/AJA (2), the College Arts Association (USA) and APRA, 'which is not really a union, but it primarily concerned with IP'. All these respondents were aware of their union's policy on IP issues, though one respondent held a high level of cynicism: 'I've never heard a union take a credible position on IP'. The follow-up question on the efficacy of unions in instances of dispute with management over IP elicited further cynicism from another respondent: 'Unions are too stupid to do this properly. They are as much a part of the problem since they agree to perverse work relations. Unions are corporations'. Others noted that disputes of this nature were 'an ongoing battle on many fronts' and that 'the MEAA/AJA newsletter often has such stories. Most of it is so thoroughly covered in case law that the major players don't bother to buck the system. The case of US freelance journos seeking payment for new media republication of their stories is seminal'. The *Tasini et al. vs. The New York Times et al.* case which this second respondent refers to is notable for the successful class action filed in 1993 by the National Writers Union (NWU) on behalf of freelance journalists against *The New York Times*, which had resold and republished articles electronically from their print archive and were refusing to pay freelance journalists for republication on the grounds that there was no difference in form between a print, microfilm or microfiche archive and new archival and storage media such as online newspapers or magazines, electronic databases such as LexisNexis or CD-ROMs. [5] Despite the US Supreme Court ruling in favour of Tasini in 2001, *The New York Times* refused to compensate journalists and decided instead to delete all freelance written articles from their electronic archival media.

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The *Tasini vs. The New York Times* case prompts two key issues that I will only flag here: firstly, material previously part of common repositories of knowledge such as public libraries becomes subject to litigious society within the political economy of a digital age, resulting in the erasure of what would otherwise be a digital commons (see Frow, 1996); and secondly, while freelance journalists – i.e., those who belong to the class of creative labourers – obtained some success in this instance, the *Tasini vs. The New York Times* case foregrounds the continued importance the nation-state and its domestic legal regimes hold for any analysis of information societies. While digitally encoded information has the capacity to transcend borders of the nation-state, we are again reminded of the socio-political forces which shape our understanding of and relationship to media technologies. Further, the socio-technical condition of all communications media is always already situated within specific discourse-networks; the media situation in turn gives rise to the problematic of translation for media-culture and its attendant labour practices and modes of creation. To put it simply, while the *Tasini vs. The New York Times* case set a legal precedent for how media corporations are to go about republishing the work of commissioned freelance journalists, such a ruling has no legal bearing outside the US in terms of how some of the very same transnational media conglomerates conduct their business practices in other countries.

40 To summarise: while the majority of respondents did belong to one or more unions, a good proportion of these respondents did not seem satisfied with or have any great faith in the efforts of unions to negotiate disputes over IP in the workplace.

### Multitudes and the Exploitation of Network Sociality

41 The final question in the survey asked respondents if they thought there was a need for workers in their field to become more organised, particularly around the impact that IP has on their potential income. One person said 'yes', and two others didn't know or weren't sure. The remaining four respondents took the opportunity to register more developed responses. One person stated that 'Musicians need a militant union. That said, the old divisions of labour in what are generally considered "the creative industries" (really the cultural industries) have broken down because of technological changes'. Interestingly, this respondent correlates the convergence of different media technologies with the demise of the previous markers of class distinction premised on the vertical organisation of labour within the culture industries. It has been commonplace since the late-90s to hear stories of musical entrepreneurs who simultaneously engage in the previously separated activities of production, distribution and consumption. Yet such horizontal organisation isn't without its own class distinctions that continue to operate in symbolic, economic, and political dimensions.

42 While the old divisions of labour may have been cast away, at least within the advanced economies, this isn't to say that new divisions of labour haven't taken their place. Indeed, the task of identifying new divisions of labour within the creative industries and informational economies has been one of the key underlying interests and motivations behind this report. Such divisions are invoked by another respondent:

> 43 I think the issue is broader than the impact on our "potential income" as individual workers – perhaps this is already too close to the commodity rhetoric that has permeated the creative industries. Part of the problem is that we are taught to respond to our projects as personally-owned intellectual products that must be protected, so that we can drain the maximum profit from their use. This disguises several processes that go into creative work. Open source programming networks, for example, reveal other ways to interpret and develop our intellectual labours.

44 Here we have it then, the return to the classic debate over closed regulation vs. open flows within a field of new ICTs. But there's more to it in this instance. This respondent rightly observes that creativity is irreducible to the generation and exploitation of IP. Herein lies a key tension that proponents of the Creative Industries face with a potential constituency that in the majority of instances resides outside the institutional borders of the university or a government department of creative industries. This tension concerns the relationship between discourse and identity formation. Just as the success of governments operating within liberal democracies depends upon getting the right spin, so too does the capacity for the Creative Industries project to obtain a purchase with a variety of actors that include politicians and government departments, university officials, students, academics, industry managers and creative producers. In other words, within a discursive regime of neoliberalism that grants hegemony to those with greater institutional,

political and economic purchase – e.g., industry managers, government departments, and university professors – there remains a constitutive outside of creative and service workers with little or no political representation.

45 Such a condition of "invisibility" is symptomatic of the dependency of capital on the commodity value of labour-power. It was on the basis of this relationship between capital and labour-power that Italian radical leftists in the 1960s and 1970s such as Mario Tronti would observe that '*Labour is the measure of value because the working class is the condition of capital*' (cited in Wright, 2002: 84). Within the workers' movements of the 1960s, the class function to supply capital with labour-power and produce surplus value was seen as the condition for dismantling and disarticulating the reproduction of capital (see Wright, 2002: 84-85; Moulier-Boutang, 2003). As noted earlier, the technique for undertaking this action was referred to as the 'refusal of work' – a radical intervention which unleashed the creative capacities of workers and affirmed their 'right to nonwork' (Virno, 1996a: 20; see also Tronti, 1980).

46 Recognising the political limitations of the unitary concept of class within a post-industrial, post-colonial era, Hardt and Negri (2000) have spearheaded the internationalisation of the Italian autonomist concept of "the multitude" – the movement of movements that goes beyond the traditional working classes who have established political representation within the institutional structures of trade unions and social-democratic parties. Developed out of the activities Negri and others have with *officine precarie* (non-unionised precarious, unpaid workers), the multitude is a political, "post-representational" and in some instances ethico-aesthetic expression of those seeking to actualise another possible world – ethnic and social minorities, women, exploited workers, activists, leftist intellectuals, etc. According to Paolo Virno, the multitude is opposed to the Hobbesian concept of "the people", which 'is tightly correlated to the existence of the State and is in fact a reverberation of it' (1996b: 200). Against the political unity and will of the "the people", the multitude's 'virtuosic' heterogeneity – or 'ensemble of "acting minorities"' – 'obstructs and dismantles the mechanisms of political representation' (Virno, 1996b: 201). Redefining the position of the multitude, Negri's oral intervention at a meeting of *officine precarie* in Pisa earlier this year is apposite on the correlation between exploitation and creative labour, though in ways that contradict his earlier thesis with Hardt that Empire has no outside:

47
> The concept of the multitude can only emerge when the key foundation of this process (i.e. the exploitation of labour and its maximal abstraction) becomes something else: when labour starts being regarded, by the subjects in this continuous exchange of exploitation, as something that can no longer enter the relation of exploitation. When labour starts being regarded as something that can no longer be directly exploited. What is this labour that is no longer directly exploited? **Unexploited labour is creative labour**, immaterial, concrete labour that is expressed as such. Of course exploitation is still there, but exploitation is of the ensemble of this creation, it is exploitation that has broken the common [i.e. abstract labour in a wage relation] and no longer recognises the common as a substance that is divided, produced by abstract labour, and that is divided between capitalist and worker in the structures of command and exploitation. Today capital can no longer exploit the worker; it can only exploit cooperation amongst workers, amongst labourers. **Today capital has no longer that internal function for which it became the soul of common labour, which produced that abstraction within which progress was made. Today capital is parasitical because it is no longer inside; it is outside of the creative capacity of the multitude**. (Negri, 2003: 4; my emphasis) [6]

48 Now this a lengthy quotation to be sure, and I elect it at this particular moment for its immense richness. I will attend to Negri and Hardt's work on immaterial labour in more detail shortly. At this stage, however, it is worth spending a little time unpacking some of Negri's key points, since they are commensurate with my larger critique of creative industries and the role of intellectual property. It strikes me that Negri is decidedly dialectical in his thinking of the relationship between capital and the multitude. What we read here is not talk of indeterminacy, flows and zones of indistinction – the primary conceptual metaphors used to describe the biopolitical operation of Empire; rather, there is a return to the bad old language of dialectics, albeit without the full force of its logic. If capital is no longer inside but outside the creative capacity of the multitude, such a condition is made possible by the fact of its relation with the inside of the multitude. Capital, then, operates as the constitutive outside of the multitude, a socio-technical body that, according to Negri, has somehow escaped or transcended abstract labour in a wage relation yet at the same

time continues to exist in an immanent relation with capital: 'exploitation is of the ensemble of this creation'. So exploitation persists, but it is no longer the 'direct' exploitation of abstract labour. Rather, it is exploitation of 'cooperation amongst workers'; that is, it is an *indirect* exploitation of that which has become 'creative labour'. What does Negri mean by this? As I read him, Negri is suggesting that capital – which supposedly is no longer inside – exploits creative labour inasmuch as creative labour constitutes (i.e., provides the enabling conditions for) capital's new location *outside* 'the creative capacity of the multitude'. What Negri is saying, then, is that nothing less than a revolution has taken place!

49 To speak of a revolution of our time – of a dramatic rupture from a prior order, a transformation that historically has been characterised by excessive violence and bloodshed – is a mistake. There has not been a revolution. Rather, capital has transmogrified into an informational mode of connections and relations, a mode that does not so much come *after* industrial and post-industrial modes of production as incorporate such modes within an ongoing logic of flexible accumulation. Within an informational mode of connection, the creative capacity of the multitude comprises a self-generating system in which abstract labour as a wage relation is not so much replaced – for such a socio-political relation is in fact very much a reality – as it is given a secondary role in favour of what Andreas Wittel terms a 'network sociality' consisting 'of fleeting and transient, yet iterative social relations; of ephemeral but intense encounters'. Further:

50 > In network sociality the social bond at work is not bureaucratic but informational; it is created on a project-by-project basis, by the movement of ideas, the establishment of only ever temporary standards and protocols, and the creation and protection of proprietary information. Network sociality is not characterized by a separation but by a combination of both work and play. It is constructed on the grounds of communication and transport technology. (Wittel, 2001: 51)

51 The conditions of work described here by Wittel join the refrain of characteristics attributed to labour in the creative industries as seen in studies by leftists such as McRobbie, Andrew Ross, and Castells as well as their libertarian counterparts like Caves, Florida, Leadbeater, Howkins and Brooks. While these scholars and commentators do not all use the term creative industries, they all describe similar patterns of labour. This isn't to say that creative labour is universally the same. Earlier I suggested that we are yet to see a study that comparatively maps the national characteristics of creative labour. Perhaps one reason such a study is yet to emerge has to do with the mistaken view often propagated by creative industry commentators, policy makers, new media critics, and global theorists alike that the nation-state is obsolete. One thing a comparative study of creative labour in their national locales would reveal is the role IP law has at the level of the nation-state. In accordance with the TRIPS Agreement (1995), member states are responsible for administering and governing IP law within their respective territories. This is just one layer that distinguishes the manifestation of creative labour in one country from the next. Other layers, or rather systems of arrangements, are defined by the socio-political, cultural, institutional and economic peculiarities of locales, nation-states and regions and the multiple contingencies that articulate creative labour in singular ways.

52 As I have been arguing, there are two key issues at stake for workers undertaking creative labour within informational economies:

53 1. The mode and form of exploitation. For proponents of the Creative

Industries, this consists of the exploitation of IP. Wittel also alludes to such a condition, noting that network sociality involves 'the creation and protection of proprietary information', but he refrains from engaging the political dimensions that underpin such activities. To the extent that the respondents to my survey provide an index of abstract labour in the creative industries, then one can contest Negri's claim that creative labour has transcended modern and postmodern forms of capitalism that function through the exploitation of labour as a wage relation.

54 2. However different the articulations of creative labour may be, they

hold one thing in common: disorganisation. The history of workers' movements is a testament to the force of organisation in contesting the exploitation of labour by capital. The question is, can creative labour organise itself within an informational mode of connection?

55 In describing the circumstances from which the multitude emerges, Negri comes close to suggesting that creative labour is in fact organised: Capital 'can only exploit *cooperation* amongst

workers, amongst labourers'. [7] Hardt strikes a similar tone in his earlier work on Deleuze: 'Spinozian democracy, the absolute rule of the multitude through the equality of its constituent members, is founded on the "art of organizing encounters"' (1993: 110). As I have suggested, Wittel's notion of 'network sociality' may be a more useful description of Hardt and Negri's multitude: such a socio-technical formation is not so much *directly* exploited, as it is *indirectly* exploited. 'Content is not king', as one Silicon Alley PR brochure in 1999 declared, '… the user is'. Capital thus continues to exploit creative labour, since its social mode is one of cooperation. If the various studies of creative industries have got it right, then such cooperation takes the form of emphemerality, fleeting, project-by-project engagements and value adding personal relationships designed to enhance network capital. The function of the creative worker is not to produce, but to set new trends in consumption (see Boris Groys, cited in EU, 2001: 36).

56 Such activities are depicted well in the documentary film *The Merchants of Cool* (2001), where Douglas Rushkoff narrates the busy lives of "trend-spotters" and "cool-hunters" who track down youth whose vanguard sensibility for hip-consumerism is packaged and choreographed through symbolic affiliations with major brands and their vehicles: Sony, Pepsi-Cola, MTV, etc. "Cool" youth, with their predilection for creative-consumption, function as underpaid and exploited cultural intermediaries for their less imaginative compatriots in consumerism. As Tiziana Terranova notes, this kind of operation or process is not about capital 'incorporating' some authentic, subcultural form that somehow resides outside of capitalism's media-entertainment complex. Instead, it is a 'more immanent process of channeling collective labor (even as cultural labor) into monetary flows and its structuration within capitalist business practices' (2000: 39).

57 However, the socio-political organisation of creative labour requires a radically different impetus that is yet to emerge. As one respondent soberly puts it: 'that organisation is not going to take the role of unions as we currently know them, who for the most part have no clue'. The respondent elaborates this observation, or perhaps it was a perception, with the following example: 'I do know a young woman trying to effect change in the union movement in nz [New Zealand] and organise cinema workers…but finds the entrenched movement incredibly uninterested in understanding the desires and motivations of the young people working in these fields…which is a prereq (sic) for representing them adequately'.

**Immaterial or Disorganised Labour?**

58 Maurizio Lazzarato defines the emergent and simultaneously hegemonic form of immaterial labour 'as the labour that produces the informational and cultural content of the commodity' (1996: 133). Lazzarato discerns 'two different aspects' within immaterial labour:

59 > On the one hand, as regards the "informational content" of the commodity, it refers directly to the changes taking place in workers' labor processes in big companies in the industrial and tertiary sectors, where the skills involved in direct labor are increasingly skills involving cybernetics and computer control (and horizontal and vertical communication). On the other hand, as regards the activity that produces the "cultural content" of the commodity, immaterial labor involves a series of activities that are not normally recognized as "work" – in other words, the kinds of activities involved in defining and fixing cultural and artistic standards, fashions, tastes, consumer norms, and, more strategically, public opinion. (1996: 133; see also Terranova, 2000: 41-43)

60 It is this second aspect of immaterial labour that most readily corresponds with the types of work engaged by those in the Creative Industries. Note that the "content" of the commodity is not the sound of music, the image-repertoire of the screen, the flash of animation, etc. As with Wittel, the content for Lazzarato is a social relationship: 'Immaterial labor produces first and foremost a "social relationship" (a relationship of innovation, production, and consumption)' (138).

61 Hardt and Negri expand upon this definition to include affective forms of labour, as found in domestic and service work that involves the care of others (2000: 292-293). Importantly, the concept of immaterial labour is not to be confused as labour that somehow has eclipsed its material dimension. Hardt and Negri note that affective labour, for instance, 'requires (virtual or actual) human contact, labor in the bodily mode'. However, 'the affects it produces are nonetheless immaterial. What affective labor produces are social networks, forms of community, biopower' (293). I have no idea how such products are immaterial. Moreover, such an understanding of affect obviates an inquiry into the more nuanced concept of affect as found in the work of Deleuze and Guattari, as well as Massumi. For these thinkers, affect consists of the sensing of sensation. A

material dimension is apparent here insofar as the sensing of sensation assumes that a process of corporeal transformation and de-subjectification is under way. Thus the "product" of immaterial labour in its affective mode is precisely this transformation, which is also a change in materiality and the relationship between various actants.

62 Lazzarato, Hardt and Negri are concerned, then, with defining immaterial labour in terms of the *product* of labour that is immaterial (e.g., knowledge, communication, affect-care, etc.) as distinct from its actual undertaking. It is true that one does not sell care as a material product, but rather the image of care. One may also the sell the memory of care, but this operation depends upon a medium which still, nonetheless, communicates such memories in the form of an image. Memory is thus predicated on an image. And images, as we know, saturate the marketplace. Or as Lefebvre once observed, 'We are surrounded by emptiness, but it is an emptiness filled with signs' (cited in Coombe, 1998: 133). All images are encoded by communications media, and as such they possess a material dimension. Palpable as an image may be, care, in its commercial form, is not something that one holds or drives down the street, but a service one acquires. Yet the immaterial labour that produces the service of care holds a material dimension. The material dimension of this operation of exchange-value tells us something of great significance vis-a-vis the commodity object. What, in fact, is occurring in this relation of exchange is nothing less than the de-ontologisation and deterriorialisation of the commodity object itself. I am speaking here of a question of boundaries and a question of time; in short, a question of the limits of capital. It is a category error to understand the commodity object as a "thing in itself". When the commodity object is situated, as it is, within a system of social relations, the extent to which it becomes intelligible is only possible in terms of a social relation. That is, the commodity object is simultaneously constituted by and conditions the possibility of the contingencies of a social system. It is impossible, then, for the commodity object to be extricated from this system. To do so is to speak of a utopia, the utopia of post-capitalism. Were such world to actualise, it would not feature a role for the commodity object.

63 Because the concept of immaterial labour is open to various abuses, misunderstandings (my own included), and complex intellectual filiations, I suggest that it be dropped within critical Internet, cultural and information theory in favour of a concept of disorganised labour. Creative and informational modes of labour as they currently exist are better understood as disorganised; by conceiving work in this manner, the political dimension of labour is retained insofar as opposition and revolution have in modern times required workers to either self-organise or form a compact alliance with intellectuals, who have formed the symbolic spearhead of political change. Granted, our times consist of post-Fordist modes of production, exchange and accumulation integrated with informational modes of connection, all of which have seen the steady erosion of organised labour. Even so, there persists an ineradicable class dimension to labour and the uneven distribution of capital. From these conditions, the re-organisation of labour is possible. And while the failures of revolution are well documented and acutely experienced by many, and the problems of political and symbolic representation clearly theorised in the work of Baudrillard, Spivak, Balibar, Mouffe and others, there remains the need – perhaps greater than ever before – to retain a sense of the importance, a sense of the urgency, for labour to have the means and the potential to organise itself.

64 The distinction between conceiving labour as immaterial or disorganised has implications not only at the level of political theory. While Hardt and Negri's book *Empire* has without question captured a latent structure of feeling simmering within many leftist movements, it is now time to extend that political momentum in ways that go beyond the partisan interests of "the multitude" and engage workers at the local level of their everyday institutional circumstances. The condition of disorganised labour corresponds, of course, with the disorganised technics of capitalism, as discussed by Lash and Urry (1987). However, these two arrangements are not equivalent. The disorganised technics of capital – flexible accumulation, transnational labour mobility, risk societies, etc. – are simply another mode by which capitalism is managed in a "postnational", globalised setting. Disorganised labour, on the other hand, is symptomatic of the demise of union power, the deinstitutionalisation of labour, and the consolidation of individualisation within a neoliberal paradigm.

65 Lash and Urry (1994: 10) suppose that the different temporal modes by which organisations and technologies operate conditions the possibility of disorganised capitalism. They associate a decline

in national institutions and their capacity to regulate flows of subjects and objects within a national frame with the end of organised capitalism. While they seek to go beyond a dualistic mode of thinking, they in fact reproduce such a mode: 'Disorganized capitalism disorganizes everything' (1994: 10). As rhetorically appealing as this slogan may be, such a blanket approach to the complexity of contemporary capitalism precludes the possibility of labour organising itself in multi-temporal ways through various media of communication in conjunction with the cultural peculiarities of socio-institutional locations. Crucially, the exploitation of creative labour continues as what the autonomists have called 'a theft of time'. The possession of time by any kind of worker is the condition of possibility for the organisation of labour.

66 The failure of Negri, Lazzarato and others who gather around the concept of immaterial labour is, quite remarkably given their respective intensely political life experiences, a failure to understand the nature of "the political". The concept of immaterial labour, in its refusal to locate itself in specific discourse-networks, communications media and material situations, refuses also to address the antagonistic underpinnings of social relations. As Marx so clearly understood, capital is first and foremost a social relation (this, the autonomists know well). This remains just as true today for those engaged in creative, intellectual and service industries – tiers of labour that, in their state of disorganisation, of course hold intimate connections with other sectors of work no matter how abstracted they may be from one another in geographical, class, cultural, economic and communicative terms.

67 There is a remarkable correspondence between Hardt and Negri and other "radical" Italians on immaterial labour and the disorganised multitude, and the kinds of views put forward by many proponents of the Creative Industries such as Florida, Caves, Leadbeater, Brooks, Howkins, the National Research Council of the National Academies (US) and their Australian counterparts. If there is a perception that Hardt and Negri et al. offer a structure of feeling for the renewal of left politics and activism and that Creative Industries is, broadly speaking, an extension of Third Way ideology and neoliberalism with a softer face, then the similarities between these two camps are in some respects greater than their differences. The variegated system of disorganised labour within creative industries and informational economies is homologous, I would suggest, with Hardt and Negri's multitude; organised labour is seen by Hardt and Negri as an obsolete, politically limited vestige of a socialism constituted by industrial capitalism. [8] The promotion by the Creative Industries of "individual creativity and skill" at the expense of the social relations that make both individual and collective activities possible corresponds at a discursive level with neoliberalism's "customisation" and atomisation of the subject, or what Brian Holmes (2002) cogently diagnoses as "the flexible personality". Furthermore, in isolating the networked individual as the unit of creative production there is an implicit hostility within Creative Industries to the concept of organised labour, the practice of which has historically placed demands on capitalists for fairer and more equitable working conditions. Creative Industries is far from alone here. As Justin Clemens argues, the affirmation of bricolage, mobility, and heterogeneous subcultural styles so typical within many Cultural Studies 'accounts unfold[s] on the basis of a prior covert identification of organization with authority, and authority with oppression' (2003: 174). [9] Surely it is time to get over such hostility toward the dark phantasm of organisation?

68 Unions today not only have increasingly limited purchase on governments with neoliberal dispositions, they also have limited appeal for younger workers whose political ideologies have emerged within a neoliberal paradigm and whose social experiences are not, for the most part, formed within the institutional cultures offered by union movements, as has been the case for older generations. Just as Hardt and Negri dismiss 80s and 90s postmodernism for its collusion with corporatist culture (and there is much merit in this thesis, as documented more succinctly by Thomas Frank), so too their own multitude is entwined within the arguably more accentuated managerialism of creative industries, where labour continues its transformation into surplus value, only this time in the form of intellectual property – a socio-juridical form that lends itself more readily to the technical system of electronic stock markets and financial speculation than it does to a radical politics. Though here, of course, one finds the counter-forms of p2p file-sharing, tactical media and open source movements; digital piracy of software, music and new release cinema; clones of drug, technical and GM food patents, etc. The extent to which these counter-practices can be called a politics in the sense of an organised intervention into hegemonic regimes is,

however, questionable and needs to be assessed on a case by case basis. Is digital piracy, for example, a political act or just a business strategy by less powerful economic actors in their efforts to circumvent transnational corporate monopolies and the legal regimes and trade agreements that advance corporate interests?

**Conclusions**

69 At the start of this report I sought to make a case for a processual media empirics as distinct from the new media empirics. The former is concerned with analysing and being a part of the movements and modulations between the conditions of possibility and that which has emerged as an object, code or meaning within the grid of the present. The latter is primarily interested in delimiting the field of movement, and stabilising the object of study as an end in itself. Processual media theory does not dispense with the empirical, rather it is super-empirical. But its mode of empiricism does not conform to the logic of immanence as expounded by Lash in his book *Critique of Information*: 'The global information society has an immanentist culture, fully a one and flat world culture. As such, its regime of culture is radically empiricist' (2002: 167). The world Lash describes is not one that contains the wonders, difficulties and complexities of life. Nor for that matter is the world Hardt and Negri call Empire: 'In this new historical formation it is thus no longer possible to identify a sign, a subject, a value, or a practice that is "outside"' (2000: 385). Today's media-information cultures – the situation of creative labour – are indeed characterised by reflexive non-linear systems; they do not, however, eschew their constitutive outsides.

70 In his essay on Blanchot, Foucault notes that 'Any reflexive discourse runs the risk of leading the experience of the outside back to the dimension of interiority; reflection tends irresistibly to repatriate it to the side of consciousness and to develop it into a description of living that depicts the "outside" as the experience of the body, space, the limits of the will, and ineffaceable presence of the other' (1990: 21). Further: 'it risks setting down ready-made meanings that stitch the old fabric of interiority back together in the form of an imagined outside'. Such a mode of reflexivity is one that Lash and Beck attribute to "first modernity". It is a mode of reflexivity that is anterior to a processual understanding of communication, where transformation, agonism and change are integral to the operation of reflexivity.

71 Processual reflexivity is the operative mode peculiar to quasi-subjects and quasi-objects situated in socio-technical arrangements and conditioned by the accumulation of knowledge, experience and socio-political and economic forces. It is a reflexive mode that 'must not be directed toward any inner confirmation – not toward a kind of central, unshakable certitude – but toward an outer bound where it must continually contest itself' (Foucault, 1990: 21-22). The non-discursive dimensions of creative labour operate as the constitutive outside of the Creative Industries; the invisible plurality of creativity cannot be generated in order to be exploited in the form of IP, yet the lives in which creativity subsists certainly can be exploited. For this reason, the antagonism intrinsic to "the political" will persist as a socio-technical potential of labour-power. The trick is to work out ways in which the antagonisms underpinning creative labour within a system of intellectual property regimes might be translated otherwise.

72 So how, we might ask, can a para-radical, all-too-social politics be created as organised labour within informational media ecologies? Slavoj Zizek is only partly right when he declares with typical impudent brio that 'the key Leninist lesson today is that politics without the organizational *form* of the party is politics without politics' (2002: 558). The time for parties is over! Go to your next Creative Industries bonding session if you want to play with cherry-flavoured vodka. It is now time for modest, pragmatic engagements with localised networked politics. This amounts to finding a form or modality of political organisation that appeals to those working within the creative industries. In doing so, one is also attending to the question of how we think the relationship between communications media and the new institutional possibilities they enable.

73 Given the reluctance by unions to organise their constituencies within the logic of what Régis Debray terms 'mediology', and what we translated in the fibreculture reader as the mediation of politics within a digital present (Brown et al., 2001: v), it is unlikely that the organisational habitus of union culture will provide the institutional framework for creative labour. Or as Danny Butt (2003) notes in his response to an earlier draft of this report, 'The union that should represent the interests of my colleagues remains monist, masculinist, and mired in a basic inability to simply listen and understand the motivations and experiences of its constituency'. This is but one

instantiation of the antagonism of "the political" as it figures in the complex of relations between the institution of unions and the informational-material situation of creative labour. Tensions of this order do not, however, preclude the possibility of translating some of the fundamental values peculiar to union culture (collective bargaining, equality and democracy, safe and healthy working conditions, etc.) into the political form of *organised networks*: a conceptual technics in which networks rather than the organisation or institution per se are the condition of possibility for labour articulated within new media terrains. [10] Ultimately the challenge of political organisation is a challenge for all critical creative workers as they subsist in the form of networks, not the party.

### Author's Biography

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### Notes

[1] Florida does go on to discuss IP, but not in terms of how its exploitation defines creative industries, as the CITF Mapping Documents of 1998/2001 have it.

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[2] My quarrel here is not with Deleuze's concept of a logic of immanence but rather with Lash's (2002) shorthand version of it, which conveniently elides the conceptual – and ultimately political and ethical – nuisance of thinking through the operation of the constitutive outside *within* a logic of immanence.

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[3] Of course other media do this as well – books, films, tv ads, oral histories, radio interviews – though in ways specific to their material forms, technical features, socio-cultural situations, etc.

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[4] As QUT's 'Intellectual Property Policy' document states: 'In the absence of any agreement or assignment varying this position, QUT is not entitled to the ownership of intellectual property created by a student in the course of study at QUT. However, QUT may place conditions on student enrolment or participation in courses, subjects or projects, so that a student assigns to QUT ownership of intellectual property created, either generally or by reference to specified criteria. In such cases, students must be fully informed in relation to any potential restrictions on publication in accordance with QUT's Code of Good Practice for Postgraduate Research Studies and Supervision'. https://www.qut.edu.au/admin/mopp/Appendix/appendix22.html

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[5] Thanks to Hugh Brown for bringing the details of this case to my attention. A comprehensive account and documentation of this case can be found at: National Writer's Union (NWU), *Tasini v. The New York Times*, 2000, https://www.nwu.org/tvt/tvthome.htm

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[6] Initially I read Negri's intervention as belonging to the genre of the manifesto. But as the transcriber and translator, Arianna Bove, informed me: 'maybe it sounds like a manifesto because it was an oral intervention, the context being one where in my view Negri was questioning the idea

of a “public sphere” which Virno seems to hold onto, albeit in a modified form, in some of his writings’. Personal email, 29 September, 2003. Negri’s intervention took place in a seminar called ‘Public Sphere, labour, multitude: Strategies of resistance in Empire’, organised by Officine Precarie in Pisa, with Toni Negri and Paolo Virno, coordinated by Marco Bascetta, 5 February, 2003. The version that appeared in MakeWorld #3 is slightly edited, and the word-by-word transcript (with part of Virno’s response) is translated here: https://www.generation-online.org/t/common.htm

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[7] The notion of cooperation is related to the other autonomist key concepts of the “general intellect” and “mass intellectuality”. See Virno (1996c) and Lazzarato (n.d.). For a discussion of these terms, see Terranova (2000: 45-46). For a detailed history of the Italian autonomists, see Wright (2002).

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[8] Here I am drawing on Timothy Brennan’s (2003) critique of Hardt and Negri’s *Empire*, though Brennan is making a comparison between immaterial labour and the multitude. As I have argued above, the term immaterial labour is one that I see as conceptually flawed, and is better described in terms of disorganised labour. For their part, Hardt and Negri (2003) are disappointing in their response to what they fairly address as Brennan’s aggressive critique inasmuch as it is heavy on taking a point-by-point refutation of Hardt and Negri’s thesis and some examples, yet offers little by way of an alternative.

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[9] Many of the key proponents of the Creative Industries, at least in Australia, have had prior intellectual lives and academic careers studying precisely these sort of cultural phenomena.

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[10] Such a term perhaps best defines the activities of fibreculture, as discussed at the recent planning meeting in Sydney. In addition to the annual fibreculture meetings, this was the first face-to-face planning meeting of fibreculture facilitators and other participants (17-18 November, 2003). For a summary of the agenda, see the posting to the fibreculture list by Esther Milne, 13 November, 2003.

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Interesting examples of union culture articulating itself in the form of organised networks can be found at the following sites: IT Workers Alliance (AU), https://itworkers-alliance.org and CyberLodge, taking the labor movement open source (US), https://www.cyberlodge.org/. See Burgmann (2003: 269) for a brief discussion of the emergent political consciousness amongst IT workers – made possible, of course, by the crash in the IT sector which led to a radical change in the material and discursive conditions of programmers, web designers, etc.

## Appendix

Rossiter, Ned. ‘POS: intellectual property’ [survey questionnaire], posted to fibreculture mailing list, 30 June (2003). Available at:https://lists.myspinach.org/archives/fibreculture/2003-June/003106.html

(and by all means, keep sending me your responses!)

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The Creative Industries Faculty, Queensland University of Technology (QUT), Brisbane, Australia

https://www.creativeindustries.qut.com

CyberLodge, taking the labor movement open source (US)

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Fibreculture 2003 Brisbane meeting

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For Youth By Youth

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IT Workers Alliance (AU)

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Media, Entertainment and Arts Alliance (MEAA incorporating Australian Journalists' Association (AJA))

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Young Unionists Network

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