

Artistic Freedoms at Risk

1. Freedom to Create
2. Freedom to build audience
3. Freedom from censorship
4. Freedom of negotiation
5. Freedom to sustain a career

Over the past decade artists have found their creativity and livelihood increasingly challenged by government, corporations, and lawyers.

Some of these challenges are familiar, such as in culture-war battles over controversial content, but increasingly they have taken a new shape in pre-emptive strikes against technological and aesthetic innovation. In the most outrageous cases, new rules and policies have been established in the name of artists while ultimately reinforcing the interests of corporations. Examples include recent music sampling and file-sharing lawsuits meant to protect an artist's copyright. But by creating laws to protect existing inefficient business models over emerging more transparent and potentially equitable models, these legal and legislative precedents have effectively traded the future for the past. Furthermore, by placing tremendous financial and time burdens on emerging forms of remix culture they threaten to drain historic wellsprings of creativity, an intellectual-property version of killing the goose that laid the golden egg.

Below is a short guide to understand how a handful of artistic freedoms are currently threatened by law, legislation and technical standards.

Freedom to Create

Documentary Film and Film

A profit-driven push toward a narrower understanding of copyright has led toward the privatization or denial of access of vast amounts of content (text, music, video). C-SPAN now routinely denies "fair use" requests for its publicly-funded, public interest hearing video footage. This footage is now unavailable to artists and documentarians.

Sampling

Sampling case law and the music sample clearance process, which now demands that artists must clear even a one-note sample, has effectively transformed many musicians into outlaws. Certain songs which use many samples are now simply too expensive to license to justify their creation. Artists who build their art out of found sound may have no way of finding the copyright owner. However, these "orphan copyrights" are not exempted from clearance requirements and they must be cleared or they cannot be used. Artists who need major label access to clear major label controlled samples regularly sign restrictive major label contracts which take away master copyrights as a condition of this license clearance access. These contracts ensure a small handful of labels will always control what are considered to be the "most valuable" copyrights. Status advantages are being reinforced. Furthermore, since corporations and lawyers benefit from sample license inefficiencies, it is unlikely that these communities will seek or embrace license reform themselves.

- Legally there have been state, national and Supreme Court cases that have reinforced this imbalanced copyright system.
- Legislatively there have been some opportunities to push for compulsory or statutory licenses as a solution to the inefficiencies and expense associated with direct license clearance. There has also been work done to shore up "fair use" rights which allow artists, journalists, etc. to use

small bits of music, film, video without first clearing a license.

- Regulatory agencies like the FCC and the FTC have been looking at the way that concentrated ownership of copyright might be harming creativity at the Copyright Office has been looking at the problem of "orphan works".
- Innovations in technology have turned every laptop into remix studio for film and music but there has been a push for technology companies to include digital rights technology and other fingerprints and locks that would limit users. There are also technologies that automatically censor for "obscene content" thus taking the final cut away from creators.

Freedom to build audience

A wave of media consolidation has limited artist access to venues to perform or display their work and has raised economies of scale to reach potential audiences. Through the governmental deregulation of media ownership rules, global conglomerates have created local monopolies in radio, performing venues, cable, and the internet. As a result, many artists face serious new barriers to reaching their audiences. This development reinforces and accelerates a rich/poor divide within artist communities. It increases the likelihood of payola like practices. It dramatically reduces the diversity of channels and the risks taken by these channels. Since radio consolidation there are fewer classical music stations and not one commercial traditional jazz station in the country.

Freedom from censorship

The culture war has become a permanent feature of American life, a potential cost of creating art in this country. FCC fines, for example, have a disproportionate punitive impact when enforced against marginalized communities, effectively levying a poll tax on their "free speech". In addition, new attacks are moving beyond content to technology, such as in the cases of Grokster and Napster. These battles tilt the scale away from individuals and emerging communities toward politically powerful corporations.

Freedom of negotiation

As art and media industries consolidate to a handful of conglomerates that are themselves at times mere wings of vertically integrated international corporations, more and more individual artists who want representation, a label, a publisher, a venue for their art find themselves individually negotiating with large companies. The structural imbalance of these negotiations often leave artists little choice but to sign away control of art, copyrights, performances etc. as a condition of access to potential audiences. In music this imbalance ensures that over 90% of artists who sign major label deals are in the red to their labels with sharecropper contracts. These contracts loan resources to artists to make their art but rarely convey ownership of masters. Since these contracts are privately negotiated they avoid the public scrutiny that might eliminate some of the more onerous standard terms.

Freedom to sustain a career

A 2002 NEA study used census and tax data to document what many of us know from experience. Most artists work more than one job and many live very close to the poverty line. Artists with little income and no financial cushion are unlikely to insure themselves. This exponentially increases their vulnerability to illness and bankruptcy. Many talented artists leave the field due to personal or family illness. Work towards universal health care would therefore have a direct impact on the careers of many artists. There are also a broad range of issues from contract reform, which would address some of the previously mentioned negotiating inequalities, to ownership limits that might ensure that artists could never completely give away rights to their work.

Organizations

1. Creative Commons
2. Future of Music
3. Guerilla News
4. Internet Archive

Last year there were over 50 separate issues in the courts, at congress, in the regulatory agencies of the FTC and the FCC, in state and local legislature and in the establishment of technical standards that will impact artists freedom, creativity and livelihood.

There are many organizations doing work to protect artists rights by organizing grassroots campaigns, participating in civil disobedience, engaging the policy debate and building equitable structures outside of the control of the current industry.

Creative Commons (www.creativecommons.org)

Thus, a single goal unites Creative Commons' current and future projects: to build a layer of reasonable, flexible copyright in the face of increasingly restrictive default rules.

Future of Music Coalition (www.futureofmusic.org)

Future of Music Coalition (FMC) is a nonprofit education, research and advocacy organization that identifies, examines and translates the challenging issues at the intersection of music, law, technology and policy.

Guerilla News Network (www.gnn.tv)

Guerrilla News Network is an independent news and media production organization. Our mission is to expose people to important global issues and engage them into the news reporting and dissemination process. We provide original video programming and daily news coverage through our user driven website. Join the news revolution: www.gnn.tv

The Internet Archive (www.archive.org)

The Internet Archive is a 501(c)(3) non-profit that was founded to build an 'Internet library,' with the purpose of offering permanent access for researchers, historians, and scholars to historical collections that exist in digital format. Founded in 1996 and [located in the Presidio of San Francisco](#), the Archive has been receiving data donations from [Alexa Internet](#) and others. In late 1999, the organization started to grow to include more well-rounded collections. Now the Internet Archive includes [texts](#), [audio](#), [moving images](#), and [software](#) as well as [archived web](#). Archive has been a wonder to all the independents wanting to stream video on the web, for free. im sure they have a description on their site somewhere.