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ART AND PROPERTY

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Introduction: Plessner vs. Vuitton

In January 2011 the Danish artist Nadia Plessner exhibited her painting *Darfurnica* in the Galleri Esplanaden in Copenhagen. Referring to Pablo Picasso's *Guernica* both in name, theme and style, the work seeks to draw attention to the conflict in Darfur, while at the same time addressing the fact that mass media in the western world have closed their eyes to it, directing their attention to celebrities instead. Hence, next to players in the conflict like president Al-Bashir, Barack Obama, Janjaweed militia and Chinese oil companies, the picture shows paparazzi chasing stars like Victoria Beckham, Paris Hilton, and Britney Spears (shaving her head). Most importantly, in the center of the painting the two themes collide in the shape of an emaciated black child carrying a Chihuahua and a Louis Vuitton Audra-model handbag. The famous logo with the designer's initials is replaced by the letters S and L, referring to *Simple Living*, the title of a 2007 drawing by Plessner depicting the same boy.<sup>1</sup> Then she wrote: 'Since doing nothing but wearing designer bags and small ugly dogs apparently is enough to get you on a magazine cover, maybe it is worth a try for peo-

ple who actually deserve and need attention. If you can't beat them, join them!'

On the basis of the 2007 drawing and the distribution of it on the Internet and on T-shirts, Louis Vuitton had already accused the artist of violating intellectual property rights. The court in Paris had decided in favor of the multinational bag manufacturer. Plessner stopped using her drawing.

Until 2011, that is, when the boy with the bag reappears in *Darfurnica*, as well as on posters and advertisements that went with the exhibition. Once more Louis Vuitton takes legal action, this time at the court in The Hague, since the artist lives and works in the Netherlands. In a so called 'ex parte' case, in which the claimant can ask for a preliminary decision to defend his or her intellectual property rights and which neither requires the presence nor even the notification of the defendant, the judge forbids Plessner continuous use of the bag. In a subsequent preliminary injunction filed by the artist, however, the court of The Hague decides in favor of Plessner. According to the judge, there is a conflict between intellectual property rights and freedom of expression, but since the artist's usage of the bag is not of a purely commercial kind, and since it lies in the nature of art to 'offend, shock, or disturb', he considers it 'functional and proportional'. Plessner is allowed to use the bag, in her art as well as in publicity.<sup>2</sup>

The themes of Plessner's work together with her political commitment as an artist already form an interesting example of how global politics finds its way into the arts. Even more relevant, however, is the court case between Plessner and Vuitton, which has nothing to do with Darfur, but draws our attention to a fundamental relation between art and politics. The case raises the question: to whom does art belong? This concerns not so much the simple question of who owns a *work* of art, but rather the more important one of who can lay claim to the various images, icons and ideas which are present in art, but which are also part of our everyday lives? This question becomes all the more urgent now that digital reproduction makes images potentially ubiquitous.

The question of the relation between intellectual property and artistic (re)production can be formulated in old-fashioned Marxist terminology:

what is the nature of the contemporary relations of production and property in the arts, and how do they relate to the means of production? This question, posed in this way, may seem highly untimely, but it should be of interest to any aesthetic theory that pretends to be thoroughly materialist, which means one that is concerned with the relation between art and the (re)production of human life and of social relations. So what does it mean to ask this question?

## Art and Intellectual Property

Property relations in the arts have been defined, since the eighteenth and nineteenth century, by copyrights and intellectual property rights. These seemingly self-evident institutions, in other words, have existed for barely two hundred years. According to Martin Luther, for instance, there is no such thing as intellectual property, since all ideas belong to God and can therefore neither be claimed nor owned by individuals (cf. Woodmansee 1994, 42). The dawn of modernity witnesses the birth of the aesthetics of ‘genius’ (for instance in Kant and Schopenhauer): the idea that artists make their own rules and that art is good art if it is original and authentic. Nathalie Heinich calls this the ‘vocational regime’ of art (Heinich 1996, 35). This regime is closely related to the importance of the individual in other spheres of society, such as politics and economy. One can argue, as Paul de Bruyne and Pascal Gielen do, that ‘the myth of the individual artist is a product of the mental space of free market capitalism’ (De Bruyne and Gielen 2011, 5). Indeed, unlike those of the Middle Ages, ideas of scholarly and artistic nature are from now on thought to belong to their inventor like commodities belong to their owner; and the creative genius, like the property owner, needs to be protected by the law.

Within the arts, the notion of creative genius is challenged by the avant-gardes of the twentieth century. Dadaism and Surrealism, for instance, mock the idea of originality by producing nonsensical artworks and performances, poems made from newspaper scraps, and ‘automatic’ writing. Coincidence and the subconscious rule their art instead of the ‘strong’ artistic subject. The surrealist painter Max Ernst writes that ‘the fairy-tale

of artistic creativity, this pitiful relic of the myth of divine creation, has remained the last delusion of Western culture’ (Ernst 1992, 492) – a delusion that the avant-gardes are intent to do away with.

Not only did the avant-gardes criticize the idea of artistic genius, but they deliberately refrained from originality by presenting as artworks ordinary objects (readymade), advertisement and popular culture (pop-art), or exact copies of other artworks (copy or appropriation art). *After Walker Evans* (1979) by Sherrie Levine, for instance, is a photo of a photo by Walker Evans from 1936, and hardly discernible from the ‘original’. She herself is copied, in turn, by Michael Mandiberg, who scanned the pictures and placed them on the website [www.aftersherrielevine.com](http://www.aftersherrielevine.com) (2001), where one can download an ‘original’ Levine (or Evans) complete with a ‘certificate of authenticity’.

In spite of its revolutionary spirit and frivolous jests, the avant-garde has not succeeded in overthrowing our modern understanding of art and the artist completely. Rather, as is quite common in history, the new paradigm or regime coexists with and runs parallel to the old one. As Boris Groys argues, the artist today has to be both creator and selector. The artist’s selection is his creation, but what he creates has to be first selected to become a work of art:

‘[T]he creative act has become the act of selection: since Duchamp, producing an object is no longer sufficient for its producer to be considered an artist. One must also select the object one has made oneself and declare it an artwork. Accordingly, since Duchamp there is no longer any difference between an object one produces oneself and one produced by someone else – both have to be selected in order to be considered artworks. Today an author is someone who selects, who authorizes. Since Duchamp the author has become a curator. The artist is primarily the curator of himself, because he selects his own art. And he also selects others: other objects, other artists.’ (Groys 2008, 93-94)

Groys fails to note, however, that there is a tension between these two identities of the artist; between what one could call the ‘modern’ and the ‘avant-gardist’ side of contemporary art. After all, even though the avant-

garde artist rejects the idea of genius, he still depends on it. One could even say that he is an extreme form of it: as with a magic wand, the avant-gardist turns a urinal into a work of art. There is no skill involved; only the 'touch' of the artist. The contemporary artist, as Groys describes him, therefore has two souls in his chest: he bears traces both of the creative genius and of its negation, the frivolous copyist. His products are at the same time masterpieces and heaps of trash.

This tension expresses itself, among other things, in the problematic attitude of contemporary art towards intellectual property rights, of which the Plessner case is but one example. On the one hand, intellectual property is, as we have seen, the very condition of possibility of the figure of the artist in modernity, and is inseparably connected with our notions of originality and creativity. On the other hand, intellectual property forms a problem for contemporary art practices, which involve copying, appropriation, and montage of existing fragments of the world as well as of other works of art.

One could reformulate this problem in Marxist terms, as a conflict in the mode of production caused by the development of artistic means of production (cf. Tucker 1978, 4). Relations of production – intellectual property rights – have been more or less static since the nineteenth century. To be sure, laws of copyright and intellectual property have developed and have become increasingly detailed. However, its basic premise (creative expressions are commodities) and goal (to protect these commodities) have remained the same. Means of production – that is, artistic techniques – have, on the contrary, altered drastically. This was already true for the historical avant-gardes, and even more so for our time. 'Technique' should here be understood in its broad meaning, not merely entailing styles of painting, composing etc., but also materials, instruments, sources, and technologies of (re)production.

The Internet, obviously, plays a key role, since it makes possible the digital reproduction and distribution of images, texts, music, and ideas. As a consequence, questions concerning copyrights, intellectual property and 'free use' are the subject of hot debate within the arts. On one side are industries (most notably the film and music industries) as well as several

artists that disapprove of free exchange, which would deprive them of their income. They conceive of it as criminal activity, labeling it as piracy, theft, or plagiarism. Court cases are held against creators of peer-to-peer networks such as Napster (successfully) and torrent-websites such as the Pirate Bay (unsuccessfully), as well as against some of their users.<sup>3</sup>

On the other side are artists who see in the Internet not a threat to their intellectual property, but rather the possibility to reach their audiences in new ways, without the interference of institutional mediators such as museums, record companies, or publishing houses.<sup>4</sup> Initiatives such as 'Creative Commons' and 'Wiki loves art' promote the free exchange of the products of intellectual labor. Some artists, such as the remix artist *Girl Talk* and cartoonist Dan O'Neill, criticize the notion of intellectual property, which, so they argue, was once meant to protect artists, but now mostly functions for the profit of big companies.<sup>5</sup> They consider themselves an artistic vanguard, striving to initiate a political debate on the use and misuse of intellectual property for art.

For audiences, finally, and especially for young audiences, illegal downloading and file sharing seems to be the norm. Polls show that few think of it as criminal activity.<sup>6</sup> During the elections for the European Parliament in Sweden in 2009, the Pirate Party, affiliated with the website The Pirate Bay, even received enough votes for two seats. But not only do many share the intellectual property of others. Web 2.0 depends on people sharing the output of their own creativity – music, movies, pictures, ideas, news – by means of YouTube, Twitter, Flickr, Facebook, Wikipedia, etc.

How should we understand these developments? It appears as though new media, and most notably social media, are causing a shift in the artistic relations of production, undermining intellectual property and copyright laws and blurring the difference between artist and audience. Are we indeed on the brink of an age in which, as Joseph Beuys once said, 'everyone is an artist'? Do the 'internal dynamic' of Internet use and consumer demand make intellectual property moribund? Or will capitalism tighten its grip and will all these debates merely lead to the setting of new boundaries, the production of new legislation?

## Intellectual Property and ‘the Common’

To appreciate fully the range of this problem, one should broaden one’s scope beyond art and look at shifts in the structure of capitalist production per se. Intellectual property has been one of the key issues in recent debates in political philosophy and social theory about what is called ‘the common’. Michael Hardt and Antonio Negri, following eighteenth century political and economic theory, use the concept of ‘the common’ to refer to goods that are neither private property, owned by individuals, nor public property, owned by a government. In earlier days ‘the commons’ referred to the meadows where everyone could graze their cattle and the forests where everyone could collect firewood. In their most recent book *Commonwealth* (2009) Hardt and Negri distinguish between two different kinds of ‘common’. The first concerns the common in the traditional sense of natural resources: air, water, the ‘fruits of the soil’, etc. More important, however, is their introduction of what they call a dynamic, artificial, or human common, existing of, among other things, language, knowledges, codes, images, affects – in short those things which form the fabric of social interaction and communication (Hardt and Negri 2009, 139). Unlike the first type of common, the second type has no scarcity. If I share an idea with someone, this does not reduce my possibilities of using this idea. On the contrary, in most cases the possibilities of a successful appropriation of an idea increase the more it is shared.

As many theorists have argued, capitalism today increasingly depends on information, communication, ideas and knowledge (cf. Virno 2004, Boltanski and Chiapello 2005, Hardt and Negri 2009). In what is called ‘post-industrial’, ‘post-Fordist’, or ‘biopolitical’ production, the main products and resources are no longer material goods, but rather codes, interactions, information, social relations and forms of life. Obviously, this does not mean that production of material goods, or the exploitation of natural resources have ceased to exist; it means, rather, that immaterial production has become ‘hegemonic’, in other words, it has become the driving force behind those other forms of production. According to Hardt and Negri this implies that capitalist production increasingly depends on the common.

Marx referred to the exploitation of common property as ‘primitive’ or ‘original’ accumulation. Drawing on Rosa Luxemburg and Hannah Arendt, David Harvey argues that this kind of accumulation should not be considered a transitory phase of capitalism that is no longer relevant, but rather as a continuous condition and source of capitalist creation of surplus value. This is why he prefers to call it ‘accumulation by dispossession’ (Harvey 2005, 144). Indeed, several theorists have argued that today we are witnessing a new wave of ‘enclosing’ the commons (Harvey 2005, 148; Žižek 2009a, 92). In contrast to the eighteenth century, however, today people are not merely dispossessed of natural resources on which they depend for their very lives; they are also deprived of common knowledge, information, images, and codes, which are turned into private property through patenting and copyrights. Commodification extends from human interaction such as care, culture, and communication, to life in the most literal sense, since genetic codes are considered types of information too. According to Slavoj Žižek this new wave of accumulation, of harvesting and enclosing the common, poses the threat ‘that we will be reduced to abstract subjects devoid of all substantial content, dispossessed of our symbolic substance, our genetic base heavily manipulated, vegetating in an unlivable environment’ (Žižek 2009a, 92).

Hardt and Negri, by contrast, are more optimistic. They argue that capitalism in the age of biopolitical production is haunted by an internal contradiction. Capitalism benefits from, and even depends on, the free and frictionless exchange of information and ideas, on creativity and communication. Scientific developments, for instance, would be unthinkable without the free exchange of ideas and knowledge in journals and in conferences. The relations of property ruling the common, however, contradict capitalist relations. Exploiting the common, capitalism destroys the very basis of biopolitical labor, reduces its productivity, and therefore forms its own obstacle.

In the shape of biopolitical production, Hardt and Negri argue, capitalism ‘provides the tools or weapons that could be wielded in a project of liberation’ (Hardt and Negri 2009, 137). Biopolitical production, in other words, empowers the multitude of workers and expands the common:

‘This is how capital creates its own gravediggers: pursuing its own interest and trying to preserve its own survival, it must foster the increasing power and autonomy of the productive multitude. And when that accumulation of powers crosses a certain threshold, the multitude will emerge with the ability to rule common wealth.’ (Hardt and Negri 2009, 311)

Several theorists have criticized Hardt and Negri’s analysis of capitalism, and especially their expectation of its transition or transfiguration into communism. Žižek argues, for instance, that the way they turn the flexibility of work relations and the mobility of financial capitalism into the power of the ‘multitude’ is nothing more than a purely formal inversion. Moreover, they have fallen prey to the old Marxist dream of historical progress, assuming the existence of an internal dynamic within capitalism which causes its inevitable downfall. Hardt and Negri, he argues, return to the idea that ‘history is on our side’ (Žižek 2009b, 266). According to Harvey, capitalist accumulation thrives on having something ‘outside of itself’. If this ‘other’ is not given in the form of non-capitalist societies, it can even create it itself, as in Marx’s notion of the industrial reserve army (Harvey 2005, 141). Consequently, it would be highly naïve to believe that capitalism will take care of its own demise. Similarly, Franck Fischbach, Étienne Balibar, and Jacques Rancière reject any kind of thinking in terms of historical necessity (Fischbach 2011, Balibar 2011, Rancière 2010).

This is not the place to go into the details of this complex political-philosophical debate. However, it is clear that the debate on the developments of capitalism towards post-Fordist or biopolitical production, and the shifts in the mode of production that these developments entail, are of great importance to certain pressing questions within the field of art. One can easily draw a parallel between the ‘scientific common’ and an ‘artistic common’, which would then exist of shared expressions, images, tunes, stories, etc. Likewise, culture and art depends on the common, on the free exchange, sharing and combining of these cultural goods. Art, especially since the avant-gardes, involves varying on a theme, copying, parodying, pastiche, montage, etc. An enclosure of the artistic common, such as we are witnessing today, would seriously jeopardize a vital artistic practice.

Formulated in terms of the above mentioned debate in political philosophy, then, we can now ask the following question: will intellectual property rights eventually collapse under the weight of new technological developments, dissolving into an artistic and cultural ‘common’ or will artistic practices be continuously and increasingly frustrated by patenting and privatization, in short by the enclosure of the common?

## The Artist as Producer

In light of this question it is worthwhile to take a look at one of the first texts concerned with art and the common, namely Walter Benjamin’s 1936 essay ‘The Work of Art in the Age of its Technological Reproducibility’. Although Benjamin never explicitly uses the concept, it will prove fruitful to read his essay through the lens of our present situation. Perhaps Benjamin’s essay, written on the threshold of an earlier shift in the means of artistic production, will provide our contemporary discussions with a ‘dialectical image’, ‘wherein what has been comes together in a flash with the now to form a constellation’ (Benjamin 1999, 462; V.1, 576).<sup>7</sup>

The thesis of the ‘artwork essay’ is familiar enough: technological reproducibility, most notably through photography and film, destroys the artwork’s unique appearance in time and space, and consequently the magical remnant Benjamin calls ‘aura’. The artwork’s emancipation from ritual makes its foundation in politics possible. This connection between aesthetics and politics, however, is only partly understood in most of the literature. Most readings focus on the ‘democratic’ potential of technological reproduction: the sheer ubiquity of technologically reproducible art makes it available to many at once, providing the masses access to works of art traditionally reserved for the happy few.

While this is certainly one of the ways Benjamin conceives of the relation between aesthetics and politics, it is not the whole story. An extension of the audience alone is not a sufficient condition for what he famously calls the ‘politicizing of art’ by communism (SW 3, 122; VII.1, 384).<sup>8</sup> His remarks on communism are often regarded with unease, ignored, or considered to

belong to the context of his time and hence unimportant for ours. Nevertheless, it is precisely the communist thesis of the artwork essay that makes it relevant for our present purposes. What is, then, the relation between technological reproducibility and communism?

Benjamin is primarily concerned with a shift in the means of production of art (i.e. the technological reproducibility of art) and its possible consequences for the relations of production. The latter he analyzes, broadly speaking, in two terms: in terms of an inversion of authority and in terms of a redistribution of property. With regard to the first, the artwork's authority consists of its aura. While in primitive times, this authority was granted by the ritual character of the work of art, in modernity this has been replaced by its uniqueness and its 'eternal beauty'. When one admires the beauty of an artwork, Benjamin argues, one really admires the judgment of one's ancestors, hence affirming the authority of tradition (see the important note in the essay 'On Some Motifs in Baudelaire', SW 4, 352-53; I.2, 638-39). Reproducible art departs from the notion of 'eternal beauty'. While Greek sculpture is necessarily created in a single stroke, a finished film is, by contrast, the result of the selection and montage of an abundance of material (SW 3, 109; VII.1, 362).

Likewise, the movie actor playing in front of the camera does not give a single and unified 'performance', since his role in the film consists of a series of discrete moments. The camera, for which the actor is playing, as he himself is well aware of, is in fact the invisible eye of the masses. They control him, 'test' him, as it were, through the apparatus, and their 'invisibility heightens the authority of their control' (SW 3, 113; VII.1, 370). Hence, the traditional relation of authority between performer and audience, in which the latter is enchanted and controlled by the former, is reversed, placing the audience in control.

More important for our present purposes, however, is the way Benjamin considers the shift in the relations of production with regard to property. Referring to Russian documentary films, he argues that 'any person today can lay claim to being filmed' (SW 3, 114; VII.1, 371), thus transposing Marx's call to place the means of production in the hands of the proletariat to the realm of art. According to Benjamin, art too is an industry, in

which the relations between artist, artwork and public are mediated by record companies, studios, and publishing houses. A truly revolutionary art, he argues, not merely (and not even necessarily) has property relations as its theme: it will in itself, by means of artistic technology, contribute to a revolution in property relations.

It is here where one should locate the link between technological reproducibility and communism or 'the common'. According to Benjamin, means of technological reproduction have the potential of granting everyone equal access to artistic means of production – creating the possibility not only of becoming the subject of an artwork, but also of becoming an artist. Furthermore, reproduction techniques enlarge the reservoir of accessible images, tunes, etc., of which the 'artistic common' exists, to an unprecedented scale.

Benjamin refers to a similar shift in the means of literary production that occurs with the emergence of journalism. Every reader has the potential to become a writer, and hence 'the distinction between author and public is about to lose its axiomatic character' (SW 3, 114; VII.1, 371). These remarks refer back to Benjamin's lecture 'The Author as Producer' (1934) where he writes the following:

'Rather than asking, "What is the attitude of a work *to* the relations of production of its time?" I would like to ask, "What is its position *in* them?" This question directly concerns the function the work has within the literary relations of production of its time. It is concerned, in other words, directly with the literary *technique* of works.' (SW 2, 770; II.1, 686)

As an example he mentions the Russian 'operative' writer Sergei Tretyakov, who in his literary experiments actively participated in agricultural communities, and engaged these communities for writing literature. What distinguishes Tretyakov from other forms of 'committed' literature such as Activism and New Objectivism is the fact that politics is not so much the subject of his literature as it is the objective of his technique. Likewise, a truly revolutionary form of visual art would be one that places the means of production in the hands of the many, turning the audience into a producer.

## Technological Determinism

Benjamin has often been accused of ‘vulgar’ Marxism and technological determinism. Many criticize his naïve optimism, reading the artwork essay as a ‘prediction’ of how reproduction technologies will necessarily bring about a democratic culture (cf. Bürger 1974, 38–42; Jameson 1981, 25; Rochlitz 1996, 161). This reading, however, is incorrect. Not only would this kind of technological determinism contradict Benjamin’s suspicion of the notion of ‘progress’ (cf. Lijster 2010), it also contradicts his intentions in the artwork essay.

Writing to a friend about the *Arcades Project* Benjamin tells that he is ‘pointing [his] telescope through the mist of blood towards a mirage of the nineteenth century, which I am trying to paint in the strokes that it will have for a future state of the world, one freed from magic. Of course I will first have to build this telescope myself’ (Benjamin 1966, 698). The artwork essay, he adds, is meant to be this telescope. In other words, the essay is the attempt to rewrite history from the perspective of a redeemed future. It is therefore neither a description nor a prediction, but should be understood as emphatically *messianic*. Benjamin did not believe that the new means of technological reproduction would necessarily bring about social progress, nor a definitive destruction of the aura; he believed, however, that they constituted a unique historical chance.<sup>9</sup>

To understand what Benjamin means by a world ‘freed from magic’ we should consider his distinction between two kinds of technology – a distinction often overlooked, since it is absent from the third and most familiar essay version of 1939. Technology, he argues, mediates between humanity and nature, but can do this in different ways. The first technology, based on magic, seeks to master nature. In doing so, however, it makes maximum use of human beings, culminating in sacrificial death. By contrast, the second technology, based on play, ‘aims rather at an interplay between nature and humanity’ (SW 3, 107; VII.1, 359). It aims, in other words, not at mastery over nature, but rather mastery over the relationship between nature and humanity.<sup>10</sup> Art, according to Benjamin, is part of both the first, magical, and the second, playful, technology. The artwork’s aura, its enchanting semblance, and its uniqueness and inap-

proachability, subject the beholder to the authority of tradition. Its playful side, on the other hand, entails its ability to create and facilitate new forms of intersubjectivity and perception. Film, according to Benjamin, constitutes a potential breakthrough of the latter: ‘In film, the element of semblance has yielded its place to the element of play, which is allied to the second technology’ (SW 3, 127; VII.1, 369).

But again, for Benjamin this is a mere potentiality, and is neither the actual situation, nor is it something very likely to happen. Even the most advanced human technologies – of this he is acutely aware – can be employed for the goal of a mastery of nature, and subsequently result in human sacrifice. Likewise, artistic technologies are ever threatened to be absorbed by ‘magical’ practices. Western film industries, Benjamin notes, recreate a false aura for the movie star to compensate for the his loss of aura and authority inside the studio, while fascist politics answer to the withering of aura with the cult of the leader and the cult of the masses, thus fixating traditional relations of authority and property.

Benjamin’s point in the artwork essay is not that the technological reproduction of art necessarily resists this process of re-enchantment. His effort, as he makes clear in the introduction, is to ‘neutralize a number of traditional concepts – such as creativity and genius, eternal value and mystery – which, used in an uncontrolled way [...] allow factual material to be manipulated in the interests of fascism’ (SW 3, 101–102; VII.1, 350). The essay, in other words, attempts to provide the present with critical force. It is not the description of a politics of art, but the execution thereof.

## Conclusion: Art and Revolution

The question, then, whether shifts in the means of production of art, such as the one Benjamin detected in his day and the ones which we are witnessing today, will bring about a shift in the relations of production of art has to remain open. We cannot rely, in other words, on an internal dynamic or necessary course of history, and it is not to be expected that new means of (re)production and the subsequent dependency on the artistic

common will cause the end of intellectual property. On the contrary: in the case of literature, the developments of reproduction technologies resulted in the implementation of laws of intellectual property, which until then had been superfluous.

New technologies, new means of production can be exploited by and implemented in existing relations of production. Of this Benjamin was well aware: his *Arcades Project* was to become an archeology of nineteenth-century technologies which never reached their full potential due to the fact that they were incorporated in existing power relations, and fettered by the range of possibilities of older technologies (what today we would call the ‘horseless carriage’ syndrome) (Benjamin 1999, 4-5; V.1, 46-47).

The lessons we can learn from Benjamin’s artwork essay for the contemporary discussions concerning art and intellectual property are the following. First, there is no straight line from digital reproducibility or any other technological development to a revolution in intellectual property relations. If anything, these technologies provide an opportunity to ask questions that before could not be asked. They create and expand the ‘artistic common’ which is however always in danger of being exploited and enclosed by capital.

Second, political commitment does not mean that the artist, as a prophet or saint, discloses the truth about society, but rather means that he is involved in revolutionizing the artistic production process by redistributing the means of production.<sup>11</sup> This implies, however, that we understand this debate not merely in terms of intellectual property rights, but in terms of private property *per se*. As Žižek argues, to disconnect these issues means to strip this debate of its genuinely revolutionary and subversive edge (Žižek 2009a, 98).

Third, to rethink artistic modes of production a new *theory* of art is required. As earlier remarked, intellectual property is fully entangled with a discourse on art, still quite dominant today, that revolves around the creative genius, eternal beauty and the masterpiece. Benjamin’s artwork essay was an attempt to formulate a theory of art that would no longer depend on these notions. They have proven to be quite stubborn, however,

not least because they are related to the way in which art and authorship is organized in our society. Within this theoretical framework, it will be impossible to come up with alternative ways of organizing intellectual property. Stepping out of it, however, may mean getting rid of the idea of the individual artist altogether. And this is a step that few even of the opponents of intellectual property rights would be willing to take.

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# Krisis

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Thijs Lijster – Art and property

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<sup>1</sup> The title of the drawing refers, in turn, to the title of the reality show ‘The Simple Life’ starring Paris Hilton and Nicole Richie.

<sup>2</sup> For my discussion of this case I have drawn on Ramaer (2011) and the artist’s website [www.nadiaplessner.com](http://www.nadiaplessner.com). The full verdict of the court can be read on: [www.rechtspraak.nl](http://www.rechtspraak.nl).

<sup>3</sup> For now, film and music industries are the ones most affected by file sharing. As e-readers will grow more popular similar problems are to be expected for the publishing industries. And consider the consequences of file sharing for product design once, in the near future, 3D printers become affordable for individual users.

<sup>4</sup> This is not just the case for beginning artists. A famous example is the band Radiohead, who placed their 2007 album *In Rainbows* on the Internet.

<sup>5</sup> See Brett Gaylor’s documentary *riP!: A Remix Manifesto* (2008). In this documentary Gaylor discusses, among other things, a U.S. law from 1998 which extends the protection of intellectual property until 75 years after the author’s death, and which was called by its opponents the Mickey Mouse Protection Act, since it prevented free exchange and use of Walt Disney’s earliest Mickey Mouse cartoons.

<sup>6</sup> See for instance a poll by CBS News, February 9 2009.

<sup>7</sup> Roman numbers refer to the volumes of Benjamin’s *Gesammelte Schriften* (1974-1989), while references to Benjamin’s *Selected Writings* (1996-2003) will be abbreviated as SW.

<sup>8</sup> For reasons to be explained below, I will refer to the second (1936) edition of the essay.

<sup>9</sup> Consequently, one could consider the artwork essay, in Irving Wohlfarth’s words, ‘a historical gamble’ (Wohlfarth 1979, 60).

<sup>10</sup> The origin of this distinction in Benjamin’s work can be found in the important last fragment of *One-way Street*, titled ‘To the Planetarium’: ‘The mastery of nature (so the imperialist teach) is the purpose of all technology. But who would trust a cane wielder who proclaimed the mastery of children by adults to be the purpose of education? Is not

education, above all, the indispensable ordering of the relationship between generations and therefore mastery (if we are to use this term) of that relationship and not of children? And likewise technology is the mastery not of nature but of the relation between nature and man. Men as species completed their development thousands of years ago; but mankind as a species is just beginning his. In technology, a *physis* is being organized through which mankind’s contact with the cosmos takes a new and different form from that which it had in nations and families’ (SW 1, 487; IV.1, 147). For an elaborate interpretation of this fragment, see Wohlfarth (2002).

<sup>11</sup> Considering this, one could even say that Plessner’s artistic technology runs counter to her explicit political commitment. As a ‘technician’ she opposes intellectual property right, but as a committed artist she remains within the modern or romantic image of the artist as a prophet.