

## REMIX TO RECYCLE: AN “ENVIRONMENTALIST” APPROACH TO REUSING WORKS

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### *Abstract*

*The technological advancement in the realm of communications and cultural exchange, along with the facilitation of artistic creativity and publication, which it affords, has contributed to a major shift in our understanding of the governing principles of culture. While largely obliterating the distinctions between high and low culture, and between producer and consumer of culture, the shift in question has demolished the publication hierarchy of previous centuries by exposing the concepts of “genius author,” “originality,” and “uniqueness” as unsustainable. Alternatively, it has ushered in the “remix author,” endeavoring to validate the reuse of existing works as an equal creative principle. Still, an artist or participant in the cultural exchange, who ventures into this new realm of creativity, faces a fundamental problem – the copyright framework that has, in more recent times, become little more than a money-making machine, which interferes inadequately with furthering knowledge and creative expression. This has resulted in a cultural environment which can be seen as “polluted” by regulations. By analogy with industrial practices, the remedial course this paper stipulates is one of endorsing “recycling” as a practical solution, which removes the obstacles that corporate interests have placed on the way of the new remix creativity. This approach of creative reuse of existing works is proposed as being both “environmentally-friendly” and a long-due acknowledgement of the nature of creativity. It shows that creativity has been previously veiled and thus hindered by a notion of “originality,” first introduced with the eighteenth-century’s romantic concept of authorship and then enshrined in an extensive copyright legislation. The inhibitory effects of the status quo of regulations and the indicated path toward a “healing” change are indicated by examples.*

### *Introduction*

A notable portion of new productions in cinematography, released in the past couple of decades, are reworkings of familiar stories: from interpretations of Shakespeare, to versions of fairy tales, to different readings of Biblical stories, to subversive adaptations of Ancient Greek myths. A similar observation can be made about music as well, where many new productions are covers

or remixes of earlier works. While audiences and critics will generally be divided in their opinions with regard to the “faithfulness-to-the-source” criterion, a no less significant aspect of such reworkings needs to be addressed: the relationship between “recycling” culture, on the one hand, and its “sustainability,” on the other. In what follows, I propose a peculiar “environmentalist” approach to the issue of reusing narratives, themes, and elements thereof in contemporary artistic productions. This strategy of comparing cultural with industrial production aims to show that adopting the ecological norms of the latter will foster and ensure a more viable, fair, and emancipatory model of cultural creativity. To show why this is necessary, I will first offer an overview of what conditioned the present “polluted” state of popular culture, supported by examples of its detrimental effects on both the consumption and a recycling reinvention of art. I will then discuss a new model of culture that can be properly called “greener,” as well as a culture of inclusion and participation, which can legitimately replace the one that is currently dominant but can be shown to be a culture of exclusion, exclusiveness, and overregulation. Finally, I will discuss two recent legal developments that can be seen both as milestones and as a promise for the eventual embrace of the creative reuse of works as a legitimate, natural, and sustainable mode of artistic expression, which has been also immensely facilitated and made immediately possible by the fast-developing technology of the twenty-first century.

### ***Reuse vs. Originality***

From the vantagepoint of a contemporary ecological thinking, recycling is integral to environmental protection: along with waste recovery, it helps reduce the negative impact that economy and industry have on nature. Today, the reuse of discarded products and materials toward a more sustainable development of human civilization is mandated by laws and regulations; the failure to salvage or reutilize such products and materials is condemned and penalized. But in the realm of culture in general and in artistic production in particular, the situation is very much the opposite – it is the reuse of (material from) existing works that is being vilified and punished by the law, unless of course the right to such reuse is purchased. In my view, this leads to the gradual exhaustion (through restricted access) of creative resources and provides for an unsustainable model of popular culture. The latter may appear to be thriving because of large profits but is unfeasible in the long run because the copyright legislation that regulates it serves much less for furthering creativity than for enriching those “possessing” the cultural products. The copyright industry is geared predominantly toward the consumption of culture and, while seemingly not inhibiting recreative artistic endeavor, it discourages many aspiring artists, especially little known and new on the horizon, by levying fees for the lawful reuse of material from existing works that are well beyond their means.

This state of affairs is conditioned by the present-day consumerist society, where cultural artefacts and works of art are largely objectified as commodities and are frequently in demand not only for their aesthetic but also for their exchange value. The exchange value of art is principally determined by its uniqueness and originality – the more abundant it is in terms of available copies, the lesser its value. In the cases of mass-production and availability, the first releases of a new music record or the first screenings of a new film, for example, tend to sell for more than their subsequent issues or showings. The same applies to rare print publications,

copies, tapes, and so on – the more unique they are, the higher their price. Thus, it is not so much the direct gratification value of a work of art (the beauty of the painting, music piece, text), as its *exceptionality* that determines its economic worth, although arguably the psychological link between the singularity of an object (an artwork) and the pleasure derived from it plays its part as well.

This is owed to a model of perceiving creativity and authorship as *extraordinary* activities requiring *unique* talent and skills traditionally associated with the idea of artistic genius, nowadays firmly rooted in the definition of the term “artist.” Conceived in the eighteenth century, this model is built around the shift in meaning of the concepts of “art” and “artist”, which prior to that commonly meant “skill” and “skilled person,” respectively, to dismiss the sense of acquired or taught aptitude and defy the requirements of the compound model of writing with regard to form and suitable theme,<sup>1</sup> in favor of an intrinsic quality possessed by the genius author. The meaning of “genius” also changed from “characteristic disposition” to “exalted special ability”<sup>2</sup> – one who could “[act] creatively under laws of its own origination.”<sup>3</sup> This model, often referred to as “the genius author,” is the result of the professionalization of writing and the commodification of art as elements of the industrialized society,<sup>4</sup> to which the Romantic movement of the late eighteenth and early nineteenth centuries is often seen as a reaction. Romanticism was the response of certain poets and thinkers who refused to accept that the quality of art is to be assessed in terms of popular taste. Instead, they saw art as a “superior reality” whose merit could not be properly esteemed, in the words of Sir Egerton Brydges, “by the multitude of readers that an author can attract,” for “[w]ill the uncultivated mind admire what delights the cultivated?”<sup>5</sup>

Two general categories of art were conceived in the eighteenth century, which drew a division line between works based on the “originality” criterion: “organic” versus “manufactured” works, where the former “grow” spontaneously, and the latter “are made” under the dictation of learning.<sup>6</sup> Consequently, a clear pattern of denunciation of the previous model of writing-as-craftsmanship was installed with the help of both lawyers and poets (the earliest lawsuit on ownership of work and originality being the 1741 Alexander Pope vs. publisher Edmund Curll), and eventually came to serve as the benchmark for quality poetry and art in general, as opposed to the reuse of pre-existing themes or materials as a second-rate work.

This model developed and became firmly established during the nineteenth century, then came to dominance and continued to prevail (outside of academic circles) during the

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<sup>1</sup> Martha Woodmansee, “The Genius and the Copyright,” in *Eighteenth-Century Studies*, Vol. 17, No. 4, Special Issue: The Printed Word in the Eighteenth Century (Summer, 1984), p. 427.

<sup>2</sup> Raymond Williams, *Culture and Society 1780–1950* (New York: Anchor Books, 1960), p. 47.

<sup>3</sup> Samuel T. Coleridge, *Coleridge’s Lectures on Shakespeare and Some Other Poets and Dramatists* (London: J.M.Dent & Son; New York: E.P.Dutton & Co, 1907), p. 46; Archive.org, <https://archive.org/stream/coleridgesessays00cole#page/n7/mode/2up>.

<sup>4</sup> Martha Woodmansee discusses this at length in “On the Author Effect: Recovering Collectivity,” *Cardozo Arts & Entertainment Law Journal*, Vol. 10:279 (1991), pp. 279-292, and “The genius and the copyright: economic and legal conditions of the emergence of the ‘author’,” *Eighteenth-Century Studies*, Vol. 17, No. 4, Special Issue: The Printed Word in the Eighteenth Century (Summer, 1984), pp. 425-448.

<sup>5</sup> Raymond Williams, *Culture and Society 1780–1950*, p. 38.

<sup>6</sup> Edward Young, *Conjectures on Original Composition*, edited by Edith J. Morley, 1918 (Cornell University Library, 2009), §43, §105–§115.

twentieth century and into the new millennium. In this way, uniqueness and originality became – and still largely are – the prime selling points of art, which in turn became a commodity having a price tag attached to it. For protection of the “genius” element of art, that which made it distinctive, copyright legislation was put in place, whose fundamental purpose was to encourage learning and creativity by safeguarding the creator’s interest and effort for a limited period of time, which was to allow for the artist and/or publisher to make sufficient earnings, before releasing the protected idea into the public domain for use by others.<sup>7</sup> Production and distribution times significantly shortening as industrialization progressed, and sales turnover considerably expanding over the years, it was not unreasonable to expect that the better a given artwork sells, the sooner it would be released into the public domain, especially once certain profit levels were reached.

However, a trend remarkably converse to such expectations was observed as the time span of copyright protection repeatedly increased over the years – from the initial 14 years<sup>8</sup> to the current “life of the author” plus 50 or 70 years (where copyright duration is based on the author’s death), or 50 or 70 years from publication (where this duration is based on publication and creation dates). As a result, in today’s rapidly developing world, it is virtually impossible for an artist to borrow from a copyrighted work, or to use the entire work to produce a new version of it, without first having to conduct negotiations with and pay substantial fees to its copyright holders, who these days are rarely individuals but most commonly corporate entities. Nowadays, copyright protection – and, more importantly, prosecution for infringement – extends to areas one can find it hard to conceive reasonable. An apt example is the case, one of many, described by Lawrence Lessig, in which a mother made a 29-second home video of her toddler son dancing in their living room to the “barely discernible” beat of a song by Prince “playing on a radio somewhere in the background.”<sup>9</sup> Soon after uploading the video to YouTube for her parents to see, Universal Music Group representatives ordered removal of the video and then threatened the mother with a \$150,000 fine for violating their copyright property in Prince’s song (the ensuing in legal battle lasted from 2007 until 2017 and ended in a settlement).<sup>10</sup> In a similar vein, a two-decade-long legal saga came to an end in 2019 when the British band The Verve were given back the rights to their second-biggest hit “Bittersweet Symphony” in a generous gesture by the Rolling Stones, who had been collecting all the revenues made from selling the song since 1997. For their part, The Verve had been found guilty of sampling a portion from the orchestral cover of the 1965 Rolling Stones’ song “The Last Time” by the Andrew Oldham Orchestra (not even the actual song but a *cover version* of it) that was longer than the five-note sample, whose rights they had duly secured in exchange for 50% of the revenue “Bittersweet Symphony” would bring. Over this, The Verve lost 100% of the song’s earnings for a period of twenty-two years, until Mick Jagger and Keith Richards transferred the rights back to the band in what The Verve’s Richard Ashcroft called “a fantastic”

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<sup>7</sup> *Statute of Anne, April 10, 1710*, [http://avalon.law.yale.edu/18th\\_century/anne\\_1710.asp](http://avalon.law.yale.edu/18th_century/anne_1710.asp).

<sup>8</sup> *Ibid.*

<sup>9</sup> Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (New York: The Penguin Press, 2008), p. 1.

<sup>10</sup> *Ibid.*, pp. 1–4.

and “life-affirming development.”<sup>11</sup> Ironically, “The Last Time” had been copied “from a 1955 gospel track by the Staple Singers, called ‘This May Be the Last Time’, which itself was based on some traditional gospel songs”<sup>12</sup> – but the Rolling Stones never paid any royalties for it as the copyright law was different in 1965. Another example of artwork reuse raising eyebrows is attested by Andy Warhol’s demand that Terry Gilliam pay him (which he did to avoid a law suit) for showing briefly in the background of a scene from *12 Monkeys* one of Warhol’s xeroxed copies of Da Vinci’s *Last Supper*. I will mention just one more instance among numerous others, which is quite striking and all the same indicative: Walt Disney’s irreciprocal gratis reuse of characters and plots from fairytales from the public domain, as well as from the works of authors such as J. M. Barrie (*Peter Pan*) or Rudyard Kipling (*The Jungle Book*). Listing no less than thirty-two stories that have been freely sampled by Disney and thus contributed to the creation of his both artistic works and media empire, a publication by the On the Commons website ends up with an unambiguous and very indicative statement:

Stories that the Disney Corporation has In Turn Contributed to the Public Domain (Which Are Not Legally Available for Anyone Else to Build Upon Because Copyright Limits Keep Being Extended to Keep Mickey Mouse locked up in Disney’s Castle):  
NONE!<sup>13</sup>

### ***The DJ and Remix Culture***

Reuse of pre-existing material to create a new work has gradually become a fundamental principle of creativity since the time of the first photomontages, and since the deejays and selectors of Jamaica discovered that they could vary the existing music recordings by manipulating the turntable and equalizers, as well as by overlaying it with vocalizations of beats and chanting. Later on, as the budding craft of turntablism was exported to New York in the early 1970s, a Jamaican-American teenager discovered that he could isolate and quickly repeat short beat sections from jazz/funk records, thus inventing the popular hip-hop style.<sup>14</sup> As Van Dorston notes, by employing affordable equipment, the emerging figure of the hip-hop DJ “could selectively take any sound and leave behind the posing rock star hero attitudes provided by corporate rock, toss aside the leads [and] re-edit other people’s texts and call them their own.”<sup>15</sup> This constituted an emancipatory act, an act of enabling social groups previously excluded from the music-making elite to produce music.<sup>16</sup> In less than 20 years, the practice of

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<sup>11</sup>Mark Savage, “The Bitter Sweet Symphony dispute is over” (BBC.com, May 23, 2019), <https://www.bbc.com/news/entertainment-arts-48380600>.

<sup>12</sup>Mike Masnick, “A True Story of 'Copyright Piracy': Why the Verve Will Only Start Getting Royalties Now for Bittersweet Symphony” (TechDirt.com, May 25, 2019), <https://www.techdirt.com/articles/20190525/00140242276/true-story-copyright-piracy-why-verve-will-only-start-getting-royalties-now-bittersweet-symphony.shtml>.

<sup>13</sup>On the Commons team, “How Disney Raids the Public Domain and gives nothing back in return because Mickey Mouse is locked up under copyright in the castle” (On the Commons, 2013), <https://www.onthecommons.org/magazine/how-disney-raids-public-domain>.

<sup>14</sup>Bill Brewster and Frank Broughton, *Last Night a DJ Saved my Life* (New York: Grover Press, 2000), p. 226.

<sup>15</sup>A. S. Van Dorston, “Postmodernist Music: The Culture of “Cool” Vs. Commodity: Shop as Usual... and Avoid Panic Buying” (Fast and Bulbous, 1990), <http://fastnbulbous.com/postmodernist-music-the-culture-of-cool-vs-commodity-shop-as-usual-and-avoid-panic-buying/>.

<sup>16</sup>Ibid.

appropriating from existing music recordings completely subverted the traditional notions of music making and of the "form" of music in general, serving, among other things, as basis for two of the world's currently most popular music styles: hip-hop/rap and electronic music (with the host of all sub-genres they include).

In this way, the DJ, working in a club, constructing musical progressions (also known as "sets") from pre-recorded compositions, or using sophisticated digital/computer equipment to sample fragments of pre-existing music to re-mix with newly generated sounds, became established as performer and composer. As Brewster and Broughton write in their detailed study of the rise of DJ culture, *Last Night a DJ Saved My Life*,

a DJ is an improvisational musician. It just happens that in place of notes he has songs, in place of piano keys or guitar strings he has records. And just like a musician, the DJ's skill lies in how these are chosen and put together. Think of a DJing performance in a compressed time-frame and it might help. Where a guitarist can impress an audience by playing a 30-second improvised sequence of chords and notes, what a DJ does takes a lot longer – a DJ needs to be judged on a two or three-hour narrative of records. And there are now so many records available, and so many mixes of most songs, that a DJ's records are fully analogous to the notes of an instrument. [...] The DJ is a musical editor, a *metamusician*, he makes music out of other music.<sup>17</sup>

Remix and its underlying principles of appropriation and recontextualisation – cut/copy & paste, to use the popular computer terminology – are today widely employed beyond the domain of music, with the most obvious manifestation in digital text being blogging and in video/film being mashups. The principles of remixing are less conspicuously manifested in a large share of works but in the beginning of the twenty-first century, a very significant part of new works in all spheres of art are remakes, revisits, reproductions of familiar narratives, plots, and themes. Such art products have amounted to a culture that is largely fashioned around building upon the works of others, the reuse rather than the production of new, "original," "unique" material, which was the main characteristic of nineteenth-twentieth century artistic creativity. This kind of culture has been dubbed Remix culture: "a society that allows and encourages derivative works by combining or editing existing materials to produce a new product."<sup>18</sup>

Lessig, to whom we attribute the coinage of the Remix culture concept, envisages as desirable such a society which will no longer restrict and prohibit but will foster creative efforts at remixing by integrating, modifying, and expanding on works with copyright holders. To this end, in 2001, he founded the Creative Commons, a non-profit organization whose main function is to develop, support, and steward legal and technical infrastructure that maximizes digital creativity, sharing, and innovation<sup>19</sup> – a service offered entirely for free to users. And yet, in order for the ideas and principles informing the Remix culture to become a mainstream philosophy of creativity in the Western and West-influenced societies, a more substantial shift in the paradigm of thinking about art is necessary. We need to stop thinking of works that are

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<sup>17</sup> Bill Brewster and Frank Broughton, *Last Night a DJ Saved my Life*, pp. 19–20.

<sup>18</sup> Kirby Ferguson, "Everything is a Remix" (Everything is a Remix, 2011, 2015), <http://everythingisaremix.info/watch-the-series/>.

<sup>19</sup> Creative Commons, "Our Mission," <http://oer2go.org/mods/en-boundless/creativecommons.org/about/mission-and-vision/index.html>.

created using pre-existing material – be they themes, plots, ideas, images, scenes, or melodies – as inferior; and equally, we need to remove the legal obstacles that still stand on their way.

Such a change will be possible in the conditions of a complete overhaul of our understanding of the supporting media of the arts, which before the advent of the era of digital storage and transfer were strictly dependent on materials that are, by nature, unalterable: canvas, paper, tape, stone, or metal. Unlike the pre-digital artworks, which formed the backbone of a read-only culture, “works are [now] created in a continuous flow, without aspiring to become immutable objects, always subject to the possibility of being modified.”<sup>20</sup> Such works enable a read/write culture<sup>21</sup> and make it possible for the users to create art as easily as they consume it.

In the first decades of the new millennium, we already have a plethora of materially bound works, as more novels, stories, poems, songs, melodies, photographs, videos, and films were produced in the second half of the twentieth century than in the entire history of arts before. This excess, occurring in the conditions of an artistic culture tightly regulated by copyright legislation continuously amended to accommodate corporate interests at the expense of individual interests, can no longer be perceived one-sidedly, as welfare, but must also be assessed for its impairing effect on creativity. The “environmentalist” approach to the question of reusing existing materials in the arts promised in the beginning demands from us that we consider the present situation from the position of people who are inundated with commodified art, which we can only consume, and if we want to give expression to our inspired creative impulses, we are required to pay amounts of money that are beyond the means of the vast majority of us. In a manner of speaking, we must ransom out what many believe should be a universal right but has been curtailed by corporations and institutions governed by pecuniary interests, unless we want to face and suffer penal actions. Lessig writes that the current copyright legislation, inadequate as it is to deal with the twenty-first century’s remix creativity, can only accomplish one thing, namely, to condemn entire new generations as criminals:

In a world in which technology begs all of us to create and spread creative work differently from how it was created and spread before, what kind of moral platform will sustain our kids, when their ordinary behavior is deemed criminal? Who will they become? What other crimes will to them seem natural?<sup>22</sup>

Or, as Adolfo Estalella writes,

They are two paradigms of culture that are completely at odds with each other. One simply sees culture as a commercial object from which it can extract full financial benefits. The other sees it as a space for open participation, in which users can participate by constantly re-creating works, thus participating in the remix culture.<sup>23</sup>

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<sup>20</sup> Adolfo Estalella, “From Remix Culture to Collective Creation,” in *Creación e Inteligencia Colectiva* (Asociación Cultural Comenzemos Empezemos, Instituto Andaluz de la Juventud, Universidad Internacional de Andalucía, Festival zemos98, 2005), <http://www.zemos98.org/festivales/zemos987/pack/pdf/adolfoestalellaeng.pdf>.

<sup>21</sup> The terms read-only (RO) culture and read/write (RW) culture were coined by Lawrence Lessig in analogy to computer file properties and modification rights. (*Remix: Making Art and Commerce Thrive in the Hybrid Economy*, p. 28).

<sup>22</sup> Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, p. xviii.

<sup>23</sup> Adolfo Estalella, “From Remix Culture to Collective Creation,” p. 189.

Prior to the invention of the printing press in the fifteenth century, it was precisely the continuous reuse of plots and the reshaping of narratives that drove culture's recreation and evolution. The spread of the printing culture from the fifteenth century onwards, a period which Thomas Pettitt refers to as the Gutenberg Parenthesis, changed the game all along. Whereas the pre-parenthetical period was an era of a predominantly oral culture characterized by being "re-creative, collective, con-textual, unstable, traditional," centered around "performance," the Gutenberg Parenthesis became an epoch of artwork that is "original, individual, autonomous, stable, canonical."<sup>24</sup> In order to sustain itself, the culture of printed text, whose center is "composition," required and established strict regulations governing ownership, privileges, and rights. But they no longer reflect the reality of twenty-first century post-parenthetical culture, which Pettitt describes as thriving by "sampling, remixing, borrowing, reshaping, appropriating, recontextualizing."<sup>25</sup> The culture of the twenty-first century increasingly gravitates around the remix, which largely draws on the creative reuse of already existing artworks. Thus, whereas the Gutenberg Parenthesis was a time of containment, the new epoch of Remix culture appears to be a time of conjunction.<sup>26</sup>

It is extremely important to realize that unless culture in general and the arts in particular are left unimpeded in their natural flow of recreation – which is possible through recycling what has been produced and what is available – the tendency of exhaustion, of loss of meaning, and of becoming increasingly superficial of not only the objects of art but also of our entire socio-cultural and individual existence will only aggravate further. We ought to see culture as an environment which has been polluted by the numerous unrecyclable artefacts piled in heaps, an environment which desperately needs recycling to be able to flourish. In this regard, in the subtitle of his book *Free Culture*, Lessig makes an unambiguous statement on the culprit of the current situation: the "big media uses technology and the law to lock down culture and control creativity."<sup>27</sup>

I see a promising sign of healing from the "containment" of the Gutenberg Parenthesis in an announcement from June 2014 that the National Academy of Recording Arts and Sciences of the United States (NARAS), the organization behind the Grammy Awards, amended its rules and regulations to permit musical compositions featuring samples and interpolations of pre-existing songs to participate in *all* Grammy Award song writing categories, including Song of the Year. Such musical compositions were previously allowed *only* in the Best Rap Song category. Commenting on the NARAS decision, contributing writer for a number of music and culture magazines Andrew Parks writes for *Wondering Sound* that while "this probably won't erase their reputation of being woefully behind the times", it stands for a ground-breaking

<sup>24</sup> Thomas Pettitt, "Before the Gutenberg Parenthesis: Elizabethan-American Compatibilities," in *Media in Transition 5: Creativity, Ownership and Collaboration in the Digital Age, Plenary 1: "Folk Cultures and Digital Cultures"* (MIT, 2007), [http://web.mit.edu/comm-forum/legacy/mit5/papers/pettitt\\_plenary\\_gutenberg.pdf](http://web.mit.edu/comm-forum/legacy/mit5/papers/pettitt_plenary_gutenberg.pdf)

<sup>25</sup> Ibid.

<sup>26</sup> Thomas Pettitt, "The Gutenberg Parenthesis: Oral Tradition and Digital Technologies" (MIT, 2010), <https://commforum.mit.edu/the-gutenberg-parenthesis-oral-tradition-and-digital-technologies-29e1a4fde271>.

<sup>27</sup> Lawrence Lessig, *Free Culture: How the Big Media Uses Technology and the Law to Lock down Culture and Control Creativity* (New York: The Penguin Press, 2004).



recognition of “an influential, valid form of expression that’s been around since the “80s.”<sup>28</sup> This signals the reinstating of the remix to its proper position, of which Lessig writes,

We begin with some creative work, work which some author produced by mixing bits of culture and his own creativity together. That work is then remixed by others, through the addition of other creative work, or even through simple criticism of that work. This is remix. And in this sense, life is remix. In this sense, culture is remix. Knowledge is remix. Politics is remix. Remix is how we create. Remix is how we recreate. Remix is how we are human, and how we as humans make culture.<sup>29</sup>

Another recent development which is worth mentioning furthers the recognition of the remix and its principles as art proper in the strictly formal and mandatory definitions of the legal domain. The Federal Supreme Finance Court (FSFC) of Germany ruled in the end of October 2020 that turntables, CD players, and mixing consoles can be treated as musical instruments and, likewise, DJs as musicians:

The DJs not only play sound carriers from other sources, but also perform their own new pieces of music by using instruments in the broader sense to create sequences of sounds with their own character.<sup>30</sup>

The ruling was made in light of the current economic crisis impacting German business (and the world) as a consequence of country-wide lockdowns to prevent the spread of the COVID-19 virus, along with the legislation and regulations adopted to help businesses, including the clubbing and nightlife business, survive. Recognizing that works created by reusing material from pre-existing works should be treated on par with “original” works (regardless of how problematic the concept of originality may be) and that DJs and remixers are artists is a clear indication of the direction in which popular culture is going: abandoning the “genius” author fallacy and restoring Remix as *the* way “we as humans make culture.”<sup>31</sup>

### ***Conclusion***

Remix culture is an undeniable fact that has been enabled by readily available, affordable, and user-friendly digital technology. Texts, songs, videos, and films are being produced now, some thirty years after the personal computer became ubiquitous, at an unprecedented speed and in previously inconceivable volumes. The automatic protection of copyrights that has been in effect for the past forty years, along with the excessively narrow allowance for the free reuse of fragments of existing works, and the unaffordable fees payable for the lawful reuse and the

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<sup>28</sup> Andrew Parks, “Grammy Board Finally Recognizes Sampling as a Form of Songwriting” (Wondering Sound, 2014), <http://www.wonderingsound.com/news/grammy-board-finally-recognizes-sampling-form-songwriting/> (archived copy available at: <https://archive.vn/2fKbu>).

<sup>29</sup> Lawrence Lessig, “(Re)creativity: How Creativity Lives,” in Porsdam, Helle (ed.), *Copyright and Other Fairy Tales: Hans Christian Andersen and the Commodification of Creativity* (Cheltenham, UK: Edward Elgar Publishing Limited, 2006), p. 16.

<sup>30</sup> Damion Pell, “Germany has just declared that techno is music and the DJ is a musician” (Decoded Magazine, October 30, 2020), <https://www.decodedmagazine.com/germany-has-just-declared-that-techno-is-music-and-the-dj-is-a-musician/>.

<sup>31</sup> Lawrence Lessig, “(Re)creativity: How Creativity Lives,” p. 16.

legal services required for arranging it, have had an inhibitive effect on culture’s natural course of progression. The legal framework controlling the access to and the reuse of works is the product of the idea that the author draws inspiration solely from what enables them to claim exclusive ownership of their creative output – all conceived and developed in the eighteenth and nineteenth centuries. While the “genius author” concept has been proven untenable in academic circles, its reign in popular culture remains largely undisputed. This has provided for a disparaging attitude toward “unoriginal” artists who sample, borrow, and reuse existing artworks. It has also enabled an array of preposterous demands for compensation for borrowing from works that would have been quickly dismissed had the current copyright law not been as exacting. In my view, it is an unambiguous ramification of this state of affairs that our cultural environment is a dangerously polluted and urgently needs remedial measures if we want to see our artists and culture as a whole thriving. I see no more feasible a solution than the facilitation and encouragement of recycling of cultural products. This is *not* a novel idea, as I incidentally discovered while researching one of the examples given here. In the conclusion to their comics-based discussion of copyright and “how it’s supposed to work,” Aoki, Boyle, and Jenkins write,

The ecological idea really works. What we need here is sustainable development. We’ve learned that development must be balanced with environmental protection. In the cultural realm, we need to have a similar balance between what is owned and what is free for everyone to use... a cultural environmentalism.<sup>32</sup>

It can only be regrettable that to this day all that we have is the recognition that songs made using samples and interpolations should be treated as equal to any other musical composition, and that DJs are creative musicians and producers, too. It seems the emancipation of creative work still has a long way to go.

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<sup>32</sup> Keith Aoki, James Boyle, Jennifer Jenkins, *Bound by Law?* (Duke University Press, 2008), p. 64.