

The price of glass slippers:
Folklore, intellectual property, and neoliberalism

by

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Abstract

This research presents a theoretical framework to illustrate the way that individualism facilitates the exploitation of communal goods, particularly in connection with the commodification of folklore present in neoliberal society. Although contemporary folklorists understand folklore as the product of mutually sharing traditions – a peer-to-peer and collaborative process which continuously evolves through community participation – the insertion and prioritization of the individual by historical folklore collectors, copyright law, and neoliberal ideology functions to transform the creation and dissemination of folklore into an individual's intellectual property. The positioning of the individual above the community in the folklore process serves the purpose of copyright, a system designed to reward the author figure, the solitary and individual genius, and coincides with the ideology of neoliberalism, which places further emphasis on the individual, validating the increase of protection of physical and intellectual property through privatization and commodification.

List of Abbreviations Used

Berne Convention	The Berne Convention for the Protection of Literary and Artistic Works
CC	Creative Commons
IP	Intellectual Property
OS	Open Source
Paris Convention	The Paris Convention for the Protection of Industrial Property
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Statement

A brief word on spelling and grammar is necessary as the reader may notice some minor discrepancies between specific words within direct quotes and the usage in the text. For example, European authors generally use the term *privatisation*, while American authors use *privatization*. The same can be said about *globalisation* and *globalization*. I have chosen to use the latter spelling in both cases throughout the text in this example, but, when quoting directly from the source, I have retained the author's distinctive spelling and terminology when appropriate.

Additionally, throughout the text I discuss the folktale *Cinderella* and its adaptations. Simple capitalization occurs when discussing the titular character, i.e., Cinderella, while quotations are placed around the word when discussing a particular written version of the tale in a collected work, i.e., Helen Creighton's "Cinderella". The word is italicized when discussing an adaptation such as a film or a novel, i.e., Walt Disney's *Cinderella*. These designations all match the criteria of APA guidelines. However, I have also chosen to italicize the word when discussing the general concept of the tale. My reasoning is thus: although there is no single point of origin for folklore – especially true in the case of *Cinderella*, which is found all over the world – there are common themes that appear throughout various versions. Differentiating the larger ideal form from a specific individual version, then, is necessary in an analysis of how these versions function.

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Chapter 1 – Introduction

When NASA launched the two Voyager space probes in 1977, they chose to consult noted American folklorist and ethnomusicologist Alan Lomax regarding the probes' cultural payload: two golden records containing the best possible representation of the sonic landscape of Earth. Shortly after the spacecrafts were launched, however, a letter arrived from Moe Asch, founder of the influential Asch Records/Folkways Records label. The letter, according to Lomax biographer J.F. Szwed (2011), asserted that select “recordings for which he held copyrights – the Navajo ... and the Pygmies – had been launched and written about without his permission, and he was concerned about abridgement of his rights on earth and presumably in space as well” (p. 376). Although this complaint may be absurd from a cultural point of view – protesting the potential dissemination of Earth's knowledge to the galaxy – it nonetheless is quite appropriate from a business one. Asch certainly did own the copyrights to these recordings, meaning he was entitled to all the benefits and advantages that ownership entails, including blocking others from using, distributing, or even listening to the copyrighted work.

In the same vein, in May 2013, the Disney Corporation filed an application with the US Patent and Trademark Office for the term “Día de los Muertos”. Día de los Muertos, or “Day of the Dead” in English, is a traditional holiday celebrated in Mexico and across Latin America. Disney was looking to secure the rights in order to produce themed merchandise related to a new film in development, which was titled after the holiday. Outcry on social media, claiming cultural appropriation and exploitation, however, led to a change.org petition that garnered more than 20,000 signatures. Once the backlash became apparent, a spokesperson for Disney told CNNMexico that “it has

been determined that the title of the film will change, and therefore we are withdrawing our application for trademark registration” (Rodriguez, 2013, para. 16). Again, although this attempt by Disney may seem absurd from a cultural point of view – attempting to monopolize the name of a traditional holiday celebration - it was quite appropriate from a business one. They were trying to protect their merchandising rights related to the film: if they happened to block others from using the term Día de los Muertos, then it was for their benefit.

How exactly did field recordings of folksongs by the Navajo and Mbuti people of the Ituri Rainforest region in the Democratic Republic of Congo end up being owned by a record label executive in New York (NASA, n.d.)? How is it possible, if not for public opposition, for an American company situated in California to trademark the traditional folk holiday of Mexico and Latin America? Simply put, how is it possible to own the folk?

Traditionally, products of the folk, such as folksongs, folklore, and folktales, were more akin to a collaborative and collective experience rather than an individual creation. This collective process exists in contrast to our modern view of the author figure – the single creative individual. The products of the folk were inherently non-authored, culturally created through countless transformations and peer-to-peer interpretations by both the tellers and the audiences (Hafstein, 2014; Porsdam, 2016). Of course, the collective nature of folk products has not stopped it from becoming a historical source of income for private individuals and companies, as converting folklore and its themes into revenue is not a new phenomenon (e.g., Toll, 1983; Hallett & Karasek, 2001), but how is it possible to actually *own* the stories of the people, to transform culture into a product?

The answer lies in an analysis of the economic philosophy known as neoliberalism, what scholars Carroll and Jarvis (2015) describe as “the ongoing project of *global* [emphasis added] capitalism” (p. 282). Although neoliberal ideology is most often associated with the reduction of the place of the state within the economy, something Michel Foucault deemed “anti-statism” or “state-phobia” (2008, p. 76), it is also heavily related to intensifying the relationship between international capital and global markets (Carroll & Jarvis, 2015). Lessening – or outright removing – restrictions on capital allows not only for freer movement of capital in the sense of spatial reach, but also removes restrictions on the kind of capital possible. Many things that once belonged to the commons, whether it be the natural commons (such as land, minerals, or forests) or the cultural commons (such as arts, performing spaces, or media), have now been exploited, transformed, and privatized into an individual’s gain (Standing, 2019). Neoliberalism explicitly promotes this kind of exploitation, encouraging the commodification of things that have never before been commodified (Standing, 2017). Folklore is just one more item that has been commodified – facilitated by neoliberal ideology and practices – and sold back to the folk who had participated in its initial creation.

1.1 - Selling Tradition: The Commodification of Folklore

Prior to further analysis on this topic, there is a need, first, to establish an understanding of the term *commodity* and the process of *commodification*. A commodity is, simply, an item in capitalist society that can be bought, sold, or traded (Donham, 1999; Le Blanc, 2016). Karl Marx (1983) distinguished a commodity by its purpose: to produce something to satisfy a social want, need, or desire, which, in turn, can then be exchanged for something else of value, is to produce a commodity. Commodities are intimately

linked with capitalism; David Harvey (2010), economic geographer and professor of anthropology, wrote that commodities are a “universal presence within a capitalist mode of production” (p. 15) and are “essential to our existence: we have to buy them in order to live” (p. 16).

Commodification, on the other hand, is the process that transforms a *thing* into a *commodity*. It presumes that property rights that exist in traditional commodities, such as clothing, minerals, or agriculture, can be reproduced in non-tangible items, such as services, ideas, or social relations, and that a price can be attached to them (Harvey, 2011). Commodification is especially pervasive in relation to items of common ownership, transforming them into objects of trade, produced solely for their exchange value. Economist Guy Standing (2019) argues that to depict culture in this way, to measure it by profit and gains as one does a commodity, is to prioritize cultural aspects that are commercial or lucrative and to belittle those that do not generate a profit. Therefore, once folklore is commodified and translated into a marketable object, it is then produced solely with the intent of generating revenue (Thomas, 2000). Furthermore, the commodification of folklore is contrary to the idea of social memory and to a cultural commons. Giving folklore a value in exchange fails to recognize it as a crucial aspect of cultural and national identity, that which continues to inform existing communities (Andersen, 2010; McKay, 1994).

1.2 – Bridging the Gap: Folklore and Neoliberal Scholarship

Scholarly research has been sparse when it comes to exploring the intersection between folklore and neoliberalism. Although some research has illustrated the way in which companies, such as toy makers Mattel (Thomas, 2000), and New Age spiritual

practitioners (York, 2001) commodify certain folkloric themes, these texts merely hint at the relationship between folklore and neoliberalism, rather than detail their explicit connection. Furthermore, while research has shown the impact that neoliberalism has had on the natural commons (Klein, 2014; Standing, 2019; Wengraf, 2018), little has been said about its effect on the cultural commons.

This work explores this relationship more fully, detailing the connections between folklore, copyright and intellectual property law, and neoliberalism. Through an interdisciplinary approach combining information studies, folklore studies, cultural studies, economic and political studies, and legal studies, this research reveals how the ideology of neoliberalism combined with the history of copyright law encourages the transformation of cultural goods into an individual's intellectual property. Examining folklore within this context is essential to understanding how traditional and cultural creations can be appropriated and exploited. This, in turn, influences the perception and appreciation of unique cultural expressions. If traditions are weakened through the commodification process, then communal and national identities are weakened as well. In other words, social, or collective, memory – the shared traditions and customs that reinforce community identity and solidarity such as folklore – becomes eroded, resulting in a homogenizing of world culture and prioritizing creations that generate profit.

1.3 – Thesis Structure

This research focuses on the commodification of folklore present in neoliberal society. Through the prioritization of the individual by historical folklore collectors, copyright law, and neoliberal ideology, the collaborative and peer-to-peer process of folklore creation and dissemination transforms into an individual's intellectual property

(IP). The focus of this text is on the theme of folklore in general, rather than on a specific song or tale, and is meant to provide a larger overview of the history and process of commodification to create a theoretical framework to illustrate the way that individualism facilitates the exploitation of communal goods. Although analyzing folklore in general, I have used *Cinderella* and its adaptations as an example of this process throughout the text because of the global reach and the individualist nature of the *Cinderella* story which, I contend, makes it a perfect example of neoliberal commodification. However, *Cinderella* is just one example of commodified folklore, and although there are other folktales, folksongs, and folk themes that illustrate this process as well, there are no doubt still others that do not fit as easily within this framework.

Furthermore, this research exclusively concerns itself with intellectual property law within the confines of North America and Europe. There are two reasons for this decision: first, Britain was the initial driving force behind the creation of international copyright law which spread throughout the continent of Europe. Britain's signature on these international copyright documents also established these same rights on the nations they held dominion over at the time, such as Canada. Second, despite not initially signing international copyright treaties, the United States now leads the charge in IP proliferation and expansion. Thus, although recognizing the way IP laws function in relation to other nations' folklore is critical for understanding and protecting their traditional cultural forms, examining each unique nation's international treaties and folklore requires a more meticulous and diligent approach, and is outside the scope of this particular research.

1.4 – Thesis Outline

In Chapter 2, I present a brief introduction to contemporary folklore studies, including how folklorists understand the concept of folklore, where folklore comes from, and who the folk are. This is followed by an in-depth examination of folklore studies in the nineteenth and the first half of the twentieth century, the period when, although the discipline was in its infancy, it was at its most popular. I introduce three terms that describe how historical folklore collectors began the process of commodification of the folk. The first, “folkloristic paternalism” refers to the bourgeois perspective of “saving” tales and songs of the lower classes from “extinction”; the second, “mediator of authenticity” refers to the ability of these collectors to determine what was actually worth saving; the third, “the idealized storyteller,” refers to the process of accrediting community-created folklore to a single, idealized version of an individual meant to represent all the folk.

In Chapter 3, I discuss the historical birth of the author figure, the solitary genius who creates wholly original works of art, and the popularization of this perspective along with the rights that this figure was and still is granted. I present this in conjunction with a brief outline of copyright history in North America and Europe, ranging from The Berne Convention for the Protection of Literary and Artistic Works (1886), the first international copyright treaty, to the Canada-United States-Mexico Agreement (2021), a provision of which includes an extension to the Canadian copyright regime. I then discuss the purpose of current copyright practices and whether they incentivise creativity or reward exploitation of prior creations, such as folklore. The process of copyrighting folklore is then discussed as well as its place outside of traditional intellectual property.

In Chapter 4, I present a brief history of neoliberalism and its connection to intellectual property proliferation. I discuss three different aspects of the reproduction of neoliberal ideology: meritocracy, the concept that personal successes and failures can be accredited to the individual based on merit and performance; globalization, the philosophy of reproducing neoliberal ideology worldwide; and commodification, best exemplified through the encouragement of rentier capitalism. I examine how these aspects of neoliberal ideology function to justify the exploitation of folklore as well as the process of commodification. Furthermore, I illustrate this process of neoliberal commodification by comparing it to Disney's *Cinderella*, and discuss why it works as a perfect vehicle for the reproduction of neoliberal ideology.

In Chapter 5, I discuss the future of neoliberalism, folklore, and copyright law in response to the previous chapters' findings. First, I argue for the recognition of community and global interdependency in contrast to neoliberalism's obsession with the individual. Second, I examine open source (OS) software and Creative Commons (CC) licenses, systems I view as having a folklore-like process of community creation. They are able to exist within IP laws while simultaneously allowing peer-to-peer collaboration. Finally, I discuss Canada's possible role – a role they are uniquely positioned for – in the future of copyright law and whether the country is able to affect genuine change.

Finally, in Chapter 6, I return to the initial question posed at the start of this work; how can one own the folk? I explore the apparent contradictions between community creation and copyright law and discuss the implications of measuring the creations of the folk through the lens of copyright law. I then discuss how this thesis contributes to the information management field, as well as ideas for future work regarding this research.

The transformation of cultural stories into products for consumption is the result of something more than a drive for revenue; it is symptomatic of a neoliberal society. The thread that runs from the collection of folklore to the commodification of folklore uniquely prioritizes the individual – whether it be the individual’s actions of collecting, editing, and presenting folklore, the individual’s original contribution to a piece of folklore, or the individual’s adaptation of folkloric themes. The prioritization of the individual makes it possible for folklore to be bought, sold, or traded – just as any other commodity. This research presents the theoretical framework for understanding how this commodification of folklore is not only possible but encouraged.

Chapter 2 – Folk or Fiction: Folklore, Folklorists, and Authenticity

Woody Guthrie, the legendary twentieth century folksinger and songwriter, released his autobiography, *Bound for Glory*, in 1943. It follows his childhood, his early travels across America, and eventual public recognition as a musician. Although the work is written in a partially fictionalized manner – specifically in the reproduction of folk speech – one can glean significant insights into his trials and tribulations as a folk performer, particularly in the way that creations of the folk are perceived and appraised. One of the most memorable sections of his book, for example, details his audition at the Rainbow Room in New York City, a place where he joked that “the shrimps are boiled in Standard Oil” (Guthrie, 1983, 290). Located on the 65th storey of the Rockefeller Center, the Rainbow Room was a private event space where the elite congregated and enjoyed fine dining. Once he had finished performing his material in front of the audience of agents, administrators, and executives, he recalled that,

A lady nodded her head from the boss’s table.

“Now, oh yes, now, what kind of a costume shall I get for him?”

“Which?” I said, but nobody heard me.

She folded her hands together under her chin and clicked her wax eyelashes together like loose shingles in a high wind.

“I can just imagine a hay wagon piled high with singing field hands, and this carefree character following along in the dust behind the wagon, singing after the day’s work is done! That’s it. A French peasant garb!”

“Or – no – wait! I see him as a Louisiana swamp dweller, half asleep on the flat top of a gum stump, his feet dangling in the mud, and his gun leaning near his

head! Ah! What a follow-up for the gunny-sack girl singing, ‘Hillbilly Bride’!”
(Guthrie, 1983, pp. 293-294)

To the audience present, it did not matter that Guthrie was from Okemah, Oklahoma, or the fact that he had no connection to a French peasant or a Southern swamp dweller. They wanted to present Guthrie as an authentic folk artist – and they were the ones who decided what authentic meant to their patrons. It has traditionally been the bourgeoisie – middle-class folklore collectors and editors – who determined what was authentic when it came to folk creations (Keil, 1978; McKay, 1994).

Noted Nova Scotian folklorist Helen Creighton readily admitted to deleting or recording over songs or stories that she thought were too problematic – usually because they contained profanity, sexual material, or other things she deemed unworthy of representing the authentic folk (Creighton, 1975). For Creighton and other collectors like her, the authentic folk were mild-mannered, protestant, and rural (Bronner, 2005). This is no doubt a strange action to take when considering that products of the folk are something folklore historian Giuseppe Cocchiara (1981) deemed “the people’s sacred heritage” (p. 147). Sacred though it may be, the heritage still needed to be packaged in a way that could be sold to an audience. Authenticity, in this and many more cases, was in the eye of the beholder. The reason for this is simple: authentic is an ambiguous term, wholly dependent on the user. The search for true authenticity is one of the most prominent problems with historical folklore collectors (Hafstein, 2014). Authenticity is something that can never truly be tested or proved.

As the analysis of folklore collectors and their activities in this chapter will show, early folklorists explicitly lay the groundwork for the commodification of folklore in the

future. The thread from a collaborative and collective creative process to an individual's intellectual property first runs through the nineteenth and early twentieth century folklore collectors – inserting themselves in the folklore process through various means.

2.1 – A Contemporary Understanding of Folklore and its Creation

Prior to presenting a discussion on historical folklorists and folklore collectors, it is first appropriate to present to the reader a brief discussion on the contemporary field of folklore studies. This is done not to judge these historical figures harshly nor is it to present a type of revisionist history, but to contrast what is common knowledge in the field today with what it assumed to be self-evident when it was in its infancy. Many of the activities conducted by historical folklorists and folklore collectors seemed, at the time, to not only be correct, but to be an application of common sense. Presenting a contemporary perspective first allows the reader to understand a complete picture of the concept of folklore as we now understand it. Introducing the philosophy that folklore is a collective creative endeavor, one that exists without a single author figure, is necessary to understand how historical folklore collectors saw the folklore process as something much different.

Simon Bronner (2017), American folklorist and president of the Fellows of the American Folklore Society, described the term folklore as an amalgam of two important ideas: the first, “folk”, can be understood as a “group of everyday life” and the second, “lore”, as “cultural or oral learning and expression” (p. 1). The connection between these two ideas is the notion of tradition; thus, folklore is the “process of acquiring and transmitting [tradition]” (p. 1). Folklore, then, is the result of mutually sharing cultural traditions between a particular group of people with a common factor, such as location,

class, or employment (Bronner, 2017). This can take the form of art, literature, knowledge, or practices – all of which are disseminated through cultural or oral learning and expressions centred in communities (Andersen, 2010). Furthermore, traditions that create folklore are not exclusively restricted to the past or dependant on anachronistic elements. Folklore is not a process of cultural archaeology, digging up artifacts and dusting them off to put on a shelf for display. Alan Dundes (2007) throughout his career as a celebrated folklorist, consistently argued that folklore was ever evolving and dynamic. Bronner (2007) agreed, noting that folklore was not a relic of the past, something preserved and separated from contemporary life, but “an expression of present-day issues” (p. 54). Tradition and modernity do not exist as a dichotomy nor are they mutually exclusive. Folklore creation is a process that consistently creates itself anew with each new interpretation, dependent on the society that it represents.

Since folklore continuously grows and evolves over time, many scholars argue that the concept of folklore is an alternative to authorship (Porsdam, 2016), a process Theodore Hafstein (2014) deemed “the antiauthored” (p. 22). Although the ideology of authorship will be more fully analyzed in chapter 3, a brief word here about the figure of the author is appropriate to understand how folklore can be viewed as a conflicting process. Michel Foucault (1979) argued that the figure of the author is “caught in a circuit of property values” (p. 20), while Hafstein (2014) noted that norms of ownership are “intrinsic to authorship” (p. 22). Furthermore, the figure of the author is most commonly understood to be an isolated individual possessing creative autonomy (Maxwell, 2014). Whereas authorship is associated with ownership and individualism, folklore is peer-to-peer and collaborative, transforming itself through each listener and performer.

Because of its peer-to-peer and collaborative nature, folklore inherently cannot be stagnant like other forms of media; a novel, for example, cannot be radically changed once it has been published, without incurring subsequent editions and publications. The same can be said for most other forms of “formal entertainment” like films or plays. Martin Hallett and Barbara Karasek (2001) argue that the audience represents the role of a passive consumer during formal entertainment, a role clearly and unquestionably separated from the creator, performer, or writer, whereas informal entertainment, such as folklore, offers no conventional boundaries between performer and audience. This is how folklore is able to continually change and evolve. This is also why Shelly Romalis (1999) claimed that the very idea of tradition and folklore exists as a form of resistance to mass culture. Mass culture is inundated with boundaries, like that of author and audience, whereas folklore is boundaryless.

Furthermore, Charles Keil (1978) argued that the traditional notion of the folk was made up of assumptions and biases that placed the folk in a derogatory light. Traditionally, just by using the term folk, all things created by them were consigned to a status of something lower class, identified with the vulgar and the uneducated. Ian McKay (1994), Canadian historian, researcher, and professor, continued this train of thought when he argued that “[t]he very category ‘Folk’ suggested a way of defining a set of people who were somehow different (variously simpler, kinder, slower, and more rural – more innocent, in a word) than those who were categorizing them” (p. 275). Although this is no longer the case in folklore scholarship, just as it is no longer the case to consider folklore as exclusively the product of the past, these prior perspectives still very

much inform the popular understanding of what folklore is and what folklorists do.

Bronner (2007) writes that,

[I]t is still mistakenly thought that the only people who study folklore are antiquarian types, devotees of ballads which are no longer sung and collectors of quaint customs which are no longer practiced. Folklore in this false view is equated with survivals from an age past, survivals which are doomed not to survive. (p. 56)

The next section of this chapter will illustrate how and why this conception became so prevalent. After all, if folklore is the continuous sharing of traditions and stories and is dependent on a peer-to-peer process, then how can one reconcile the popular view that it is the remnants of the past? The untouched leftovers from a bygone era? As the quote from Bronner (2007) above shows, it is often the case that when a non-folklorist thinks of folklore they think of a relic, a type of cadaver from history that has no contemporary counterpart. This mythology not only works to sustain itself, but it also contorts folklore in a way that allows it to be more easily commodified.

2.2 – Historical Collectors and the Prioritized Individual

In the nineteenth and the first half of the twentieth century, two core concepts dominated the landscape of folklore scholarship: extinction and authenticity. The concepts manifested themselves in three distinct ways through the action of folklore collectors and early folklorists: folkloristic paternalism, collectors as mediators of authenticity, and the creation of the idealized storyteller. All three manifestations function to prioritize the individual above the community in the folklore process. Contemporary scholars may be in agreement that folklore is an authorless process, made

up of incremental and nuanced changes over time, but historical figures were of a very different mindset. By inserting and prioritizing the individual, collectors uniquely prepared the songs and stories of the common people to be transformed into copyrighted material.

2.2.1 – Folkloristic Paternalism

Historical folklore scholarship assumed folklore to be something old and in danger of extinction; it was a folklorist's solemn duty to prevent that from happening. These old tales, once properly saved, could reconstruct the intangible patriotic qualities of the country in which they were collected. The Grimms, for example, two of the most famous folklorists during the early period, collected folklore with the hope of "rescuing something ur-German" (Bronner, 2007, p. 56), that is, something truly original to Germany that exhibited the qualities of the nation, before it disappeared forever. Jacob Grimm went as far as to compare the song of the folk to the song of a bird or to the sound of converging streams in a river, equating the mysteries of the folk to that of the natural landscape of Germany (Cocchiara, 1981). A collective national identity, they thought, could be found from these old stories and songs; the older the folklore, the purer the German people would have been who created it. Helen Creighton did the same on a smaller scale, and her work came to represent the very essence of Nova Scotia (Henderson, 1973). That essence, it turned out, was very much related to the sea. The fisherfolk were the archetypal Nova Scotians for her and for the middle-class cultural producers, despite the fact that industrial workers far outnumbered fisherman. In fact, in the 1920s, people employed in the fishing industry numbered just over 8 percent of the

workforce (McKay, 1994). However, so popular were her works in Nova Scotia and beyond that her choices and assumptions became a taken-for-granted reality.

Ian McKay (1994) spoke harshly of this process, writing that, “Folk theorists deprived the living human beings among the peasants of all creativity and transformed them into mere vessels of national essence, bearers of cultural treasures whose true value they themselves could never understand” (p. 15). This process of depending on the folk for national identity and yet needing to “rescue” these stories and songs from them I have termed ‘folkloristic paternalism’. Middle- and upper-class folklore collectors – as the majority of these collectors were (McKay, 1994) – denied creative autonomy to the folk while at the same time celebrating their creations. Folklore was at risk of extinction and needed to be saved from its current guardians, i.e., members of the lower-class, rural, backwards, and arrested in time, and placed it in the care of those in positions of power (Romalis, 1999).

2.2.2 – Mediators of Authenticity

The second concept, very much connected to the first, was that each item of folklore, whether it be a tale or a song, can be traced back to one point of original creation; this original and authentic version was what folklorists pursued. Beginning in the nineteenth century, authenticity came to be directly linked with value: the authentic was worthy of being studied whereas the copied was not worth a folklorist’s time (Teilmann, 2006). This concept aids in explaining why early folklorists were so fascinated by those they deemed technologically primitive. An authentic version of a centuries-old song would not be found in a pub in a capital city, surrounded by the latest inventions and perspectives. No, the authentic version of a song would more likely be

found far from the influence of modernity, in a place somehow lost in time (Ishemo, 2002). The authentic songs and stories were as close to the original as possible, not influenced by any form of print, exclusively transmitted orally (McKay, 1994). Hafstein (2014), writing about this time period, noted that it was assumed that,

[C]omplex forms, such as folktales, were created only once, in one place and at one time and by one individual, before setting out on their travels on the tongue of the folk over shorter or longer distances in space and time. Creative agency is reserved, in this view, for the original moment of creation.” (p. 23)

The task of the folklorist was to find or reconstruct the original version of these tales or songs, to find the single ur-form. This notion placed the folklorist in a position that I have termed a ‘mediator of authenticity’. Once again, this position removes all creative autonomy from the folk, reserving it for the imagined original teller. It is only they, not the folk, who are able to determine what is, and what is not, authentic and therefore worthy of saving. Thus, folkloristic paternalism goes hand-in-hand with the notion of collectors as mediators of authenticity. Not only do collectors rescue folklore from the folk, but they also have no problem with letting some of it become “extinct”. If it is not authentically folk – i.e., representative of national identity or old enough to be considered authentic and original – then it is better left unrecorded.

Creighton’s first trip to Devil’s Island, off the coast of Halifax, exhibits each concept clearly. She describes the tough, dirt road with endless ruts that lead to a ramshackle collection of houses surrounded by woodlands, where, in the centre, a small wooden house belonging to the Hartlans was located. She recalled that, in the kitchen,

[W]as [a] board with nine German letters that was placed above the entrance to keep witches out. There were ten letters in the English translation which meant, ‘And the Word was made flesh and dwelt among us.’ (John 1:14) Enos, who I am sure never practised witchcraft, but who firmly believed in it, explained in all seriousness that a witch could go over the board but not under it. Since there was no open window above the board, they were now protected. (p. 51)

This description of Enos Hartlan’s folk beliefs is meant to illustrate how he lives in the past and she, a guest who views the situation from an outsider perspective, lives in the present. Devil’s Island is a portal back in time to a less refined and more primitive world where witches and the supernatural roam the land freely. Notice how Creighton claims that Hartlan explained his folk beliefs in *all seriousness*. She must attempt to convince herself and her readers, people who live in a sophisticated time period not ruled by superstition, that people still believe in such things. In fact, Creighton (1975) even goes on to claim that the whole island “seemed unreal, this setting so near home, yet so remote. It was like stepping into a different world” (p. 58). It has a lost in time quality, and the tales and songs need to be rescued and brought back to the modern world. This quality was also what drew Creighton to Devil’s Island in the first place; she was already predisposed to consider that things collected here would be worth saving because of their supposed age.

2.2.3 – The Idealized Storyteller

Finally, because of folkloristic paternalism and collectors positioning themselves as mediators of authenticity, collectors had inserted themselves into the folklore process. Their choices and assumptions directly informed the public about the folk, their stories,

and their songs. Furthermore, beginning with the Grimms, nineteenth and twentieth century collectors emphasized the narrative over the individual teller or contributor, editing the stories in order to make their collections more readable and imposing their own personal judgment and tastes. It was the case that collectors would attempt to reconstruct the original version of a song or a tale out of those that were collected. They would combine versions, remove sections, and rearrange in order to present the most authentic version (Dorson, 1983; Hafstein, 2014; Hallett & Karasek, 2001). These collectors occupied a position between collecting and presenting stories and authoring them. Collectors determined what was worth saving, what was authentic, and what needed editing or reworking.

How could one guarantee to an audience that what they were reading was authentic? Collectors often presented an idealized storyteller: a one-dimensional character that embodied all the qualities of the folk. For example, in the second edition of the Brothers Grimm's *Kinder-und Hausmärchen*, their first collection of folktales, the image of "Old Grethel" was illustrated on the title page. Old Grethel was meant to be an older peasant woman who was a relic of the ancient past, described in the text as "an honest good-humored farmer's wife who, a while ago, lived far off in Germany" (Hafstein, 2014, p. 29). Dorothea Viehmann, the model for the illustration, was, in reality, the wife of a tailor from a well-respected family, similar to many other contributors of the Grimm's' collection. Charles Perrault's *Contes de Ma Mère L'oye* featured an illustration of a figure known as "Mother Goose" on the frontispiece, an older peasant woman telling stories to children seated around her. Hans Christian Anderson credits some of his most famous stories to a poor old woman in a spinning room

(Hafstein, 2014). Even Creighton, as mentioned above, transformed Enos Hartlan, into this kind of archetypal figure. Each of these examples show an idealized storyteller that takes the place of the actual contributors.

Furthermore, consider the following recollection that Jim Garland, miner, folksinger, and activist, told to Shelly Romalis (1999):

During one of their meetings, held at Arjay Baptist Church soup kitchen, my sister Aunt Molly Jackson sang a song she had recently made up; she called it The Hungry Ragged Blues. The Dreiser [Committee to aid striking coal miners] were so impressed by her that they thought she was just about the whole Kentucky [coal miner] strike. In fact she had done very little in the strike aside from going down into Knox Country a time or two to solicit vegetables for the community kitchen ... But the writers, skilled at manipulating symbols, didn't question their find: they spotted a gem and slated a purposeful role for her. With her perfect image as a miner's wife, an embodiment of Appalachia, they felt confident that Molly would generate enormous interest – not only in this particular strike, but in the oppression of workers all over the world. (p. 42)

Garland criticizes the notion that one woman could embody all of Appalachia, but would the Grimms not have done the same? They were in search of something essential to Germany, just as the writers who Garland spoke of were in search of a symbol to represent the Kentucky coal miners. Aunt Molly Jackson was the idealized storyteller for these writers, one that represented more than just herself.

2.3 - Chapter Summary

Contemporary folklorists recognize folklore as the product of common people sharing traditions in a peer-to-peer process. Despite the popular misconception, this does not rely on stories and songs exclusively from the past. Folklore, rather, is continually evolving and transformative. Furthermore, a contemporary understanding of folklore requires the reader to understand that folklore – whether it be folksongs or folktales – is a product of something more than a lone individual’s imagination. It is, in the words of Hafstein (2014), “the antiauthored” (p. 22), the product of community creation and traditions that have been shaped and changed continuously in nuanced and incremental ways. As this chapter illustrated, however, historical folklore collectors understood folklore as something much different, consistently attempting to recast it into the image of an individual’s creation. They accomplished this process through their own actions; first, by inserting themselves into a position where it was up to them to rescue these songs and stories from their current guardians; second, by positioning themselves as the voice of the folk, determining which of these songs and stories were actually worth saving; and third, by crafting a generalized and idealized informant, a combination of many individuals that came to embody all the qualities of the folk. These three actions heavily feature the individual, prioritizing their perspective and opinion much higher than the community. The obsession with folkloristic paternalism, with the authenticity of folklore, and with the idealized storyteller all function to posit folklore within the narrow confines of copyright. By prioritizing the individual so heavily, historical collectors prepared it become intellectual property, as the next chapter will show.

Chapter 3 – The Creator, the Copyright, and the Credit

In the beginning of the twentieth century, *Kinder-und Hausmärchen* was one of the most popular books in all of Germany and was outsold only by the bible (Panttaja, 1993). Although the Grimms viewed the individual folktales that made up their collection as common goods, meaning that they did not claim exclusive ownership to them, they also retained the copyright on the collection, creating a steady stream of exclusive income (Hafstein, 2014). Although they had no doubt contributed their time and labour to collecting the tales, how is it that they came to profit from the stories of the folk? Fiona Macmillan (2016) saw the legality of folklore as a “vague, poorly defined idea of cultural heritage” which she compared to “the strong private rights inherent in law’s construction of intellectual property” (p. 111).

Prior to analyzing the effect that neoliberalism has had on transforming folklore into a commodity, it is first necessary to familiarize the reader with the part that copyright has played in converting the creations of the folk into an individual’s IP. Repositioning folklore away from a product of community creation and towards an individual’s property corresponds with the intention of copyright: to reward the author. As we have seen from the last chapter, the ways in which historical folklorists collected and codified folklore began this process of emphasizing the individual and positioned the community as subordinate to the individual’s wants and needs.

Copyright is one of several rights collectively known as intellectual property rights – along with patents, trademarks, and design rights – that are meant to protect creations of the mind, limiting what others can do with the copyrighted material (Mead & Saunderson, 2016). Copyright itself is intimately linked with the birth of the author, a

relatively new figure dreamt up near the end of the Enlightenment era and elevated to its current position during the Romantic period (Foucault, 1979; Frankel & Gervais, 2016; Hafstein, 2014). Modern copyright is author-centric, and Roland Barthes (1967) went as far as to argue that “contemporary culture is tyrannically centered on the author” (p. 2).

Despite the dichotomy between authorship and folklore, the copyright industry functions and thrives on enclosure, that is, on limiting other’s use of that which is copyrighted (Fredriksson, 2016; Porsdam, 2016). The copyrighting of folktales and songs – to create revenue for a specific individual or corporation – arrests the lifecycle of the tale or song, no longer allowing others to interpret them. Authorship is intimately tied with the social order of property, the latter of which Foucault (1979) argues “governs our culture” (p. 20). Rather than a peer-to-peer process involving the common people, it becomes a peer-to-peer process of the elite, involving only those that can afford to pay for usage rights and production or publishing fees.

This chapter examines the copyrighting process further. First, by illustrating the prevalence of the ideology of authorship and how this supported the creation of copyright law. Second, by examining the various reasons for and against the existence of copyright law, as well as the position that the public domain has to play in access and dissemination of information. Finally, by illustrating the ways in which folklore can be transformed into lucrative copyrighted works from either major or minor efforts by collectors, performers, or artists.

3.1 – The Birth of the Author and Authorial Rights

Although we may take it for granted now, the figure of the author has not always been so ubiquitous. Yes, most books, plays, and other works have always been accredited

to one or another individual or individuals, but the theoretical position that the author holds in our contemporary society – that is, the ideology of authorship – has not always been so prevalent. For example, Barthes (1967) writes that,

[I]n primitive societies, narrative is never undertaken by a person, but by a mediator, shaman or speaker, whose “performance” may be admired (that is, his mastery of the narrative code), but not his “genius.” The author is a modern figure, produced no doubt by our society ... discover[ing] the prestige of the individual, or, to put it more nobly, of the “human person.” (p. 2)

Although Barthes’ language in the above quote is archaic, particularly in reference to so-called “primitive societies,” he nonetheless illustrates the important differences in the discourse surrounding the figure of the author. The person, that is, the genius individual, is who the author has come to be associated with in contemporary society. They are not the mediator or the performer, but the beginning and end of the work.

After 1750, in the wake of the Enlightenment’s elevation of the individual, there began to be recognition of the author as a specific and unique talent, an individual that became part of, what Frankel and Gervais (2016) call, “the creative class” (p. 21). Prior to this time period, there was no conception of what we now associate with the author figure: the author as a stand-in for property owner (Fine, 2017). From 1750 to 1800, many began to argue for the ideology of authorship. By the Romantic Era, 1800 and onwards, such associations were commonplace (Johns, 2010). Theodore Hafstein (2016) argued that this time period essentially created an “anti-Copernican revolution” (p. 195): placing the creative person at the centre of the universe. The creator of literary works came to be associated with the inventor of scientific works – both were solitary geniuses

who, inspired by their muses, created entirely original inventions (Porsdam, 2016). The author became inseparable from their work (Maxwell, 2014). It was with this in mind that the notion of protecting the works of these geniuses was born. Patenting, an act with its own volatile history, was already in full swing, and proponents of it saw the link between the two. They insisted that authorship and invention were part of a greater manifestation of one fundamental principle known as intellectual property (Johns, 2010). The creative agency that was born out of the association of the author with a creatively autonomous agent who created works of art in isolation greatly informed copyright law (Maxwell, 2014).

Copyright itself was a totally unknown concept before the eighteenth century and, even then, it was exclusive to Britain. Although initially created with the Statute of Anne in 1710 and primarily benefitting the publishers of books, it eventually morphed into something resembling its modern form in the 1770s: as a temporary and limited right of the author focused on the expression of ideas rather than on the ideas themselves (Barg, 2018; Johns, 2010). Originally, under the Statute of Anne, the term for protection was 14 years, based on the seven-year term attributed to most traditional apprenticeships under the Statute of Monopolies (Fine, 2017). The foundation of international copyright, however, would not be laid until the introduction of The Berne Convention for the Protection of Literary and Artistic Works in 1886 (Bannerman, 2011). This was essentially the copyright equivalent to The Paris Convention for the Protection of Industrial Property which entered into force in 1884. Although created to benefit the holders of patents, the Paris Convention had two main objectives that influenced the Berne Convention: the first was “to extend to all member nations the principle of national

treatment (in other words, the obligation to treat foreign nationals no less favourably than nationals)” and the second was “to guarantee minimum standards of protection for patents, industrial designs and trademarks” (Frankel & Gervais, 2016, p. 17). The Berne Convention did the same for copyright; establishing national treatment for copyrighted works and harmonizing each signee’s minimum standards of protection while granting authors a temporary monopoly in the form of copyright on their artistic outputs (Bannerman, 2011; Frankel & Gervais, 2016). It became the model on the rights of the author and on protected works, greatly influencing all other copyright acts that came afterwards (Bannerman, 2011; Barg, 2018).

As mentioned above, copyright as we know it now strictly protects the expression of ideas, that is, the way in which creations of the mind are conveyed and communicated (Barg, 2018). Essentially, these expressions must be original and conveyed in a tangible form; ideas or facts cannot be copyrighted (Murray & Trosow, 2013). In a simplified example involving literature, Agatha Christie could not hold the copyright on the idea of a detective solving a murder mystery on a train, but she can hold the copyright on the way this idea is expressed in *Murder on the Orient Express*. Furthermore, no formalities are actually required in order for the copyright to exist, meaning that even if Christie had never published her book, she would still technically be the copyright holder as long as she had fixed her work to a tangible medium, i.e., written it down or typed it out (Bannerman, 2011; Murray & Trosow, 2013). The same is true for an audio or visual recording or broadcast; the copyright is asserted at the moment of fixation. Similarly, the moral rights exist at the moment of fixation as well. Moral rights grant the author the right to claim authorship and the right of integrity of the work (Barg, 2018). However,

moral rights exist independently of economic rights, and belong to the author even after the author transfers their economic rights (Murray & Trosow, 2013). Even without the benefit of income generation, the work still heavily involves the author, as the moral rights illustrate.

Dr. Chidi Oguamanam (2018), professor of law at the University of Ottawa, argues that the “United States is the singular most influential champion of intellectual property globally” (p. 315). Although I have yet to mention the United States in my brief history of copyright law, it is with good reason: they refused to sign the Berne Convention until 1989, 103 years after it was initially established. As to why it took them so long, that is a topic for a different writer. However, it is noteworthy to state that, in the beginning, the United States was a fledgling and developing country and relied upon cheap (and illegal in Britain) pirate copies of books and literature to educate their population. As the United States became more and more of a global force, however, their copyright laws began to become more and more strict and exclusionary, eventually leading to them becoming a signatory of the Berne Convention under the leadership of President Ronald Reagan (Johns, 2010). Almost immediately after signing onto the Berne Convention, however, the United States entered into a brief period of intense lobbying, culminating in 1995 with The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS, under the purview of the World Trade Organization (WTO), was substantially based on the previous instruments of the Paris and Berne Conventions, with one notable exception: an effective enforcement and dispute settlement mechanism handled by the WTO (Frankel & Gervais, 2016). Thus, WTO member countries can challenge any other member country that are deemed protectionist

or substandard, for better or worse. Although writing about its relation to climate change, popular author and political analyst Naomi Klein (2014) details several successful challenges, including against power subsidy programs, renewable energy programs, and solar support programs across the world. These examples illustrate how the threat of sanctions against offending countries functions as a strong incentive towards compliance with TRIPS, even in the case of something as important on a world-wide scale as climate change. This protective mechanism is, in part, why Frankel and Gervais (2016) describe TRIPS as “the instrument that has had the most dramatic impact on international intellectual property rules” (p. 28). In fact, the preamble of TRIPS specifically recognizes the link between intellectual property rights and private rights (Frankel & Gervais, 2016). With TRIPS, intellectual property came to be viewed as someone’s actual *property*, solely theirs and in need of protection. Originally envisioned as a temporary monopoly in order to reward creativity, American-led copyright laws have transformed the conception of copyright from creative work into property (Garcelon, 2009).

What treaties like the Paris and Berne Conventions and, later, the TRIPS agreement have accomplished is to impose minimum standards on the international community; what America has done, however, is encourage greater than minimum standards through other multilateral trade deals, specifically in reference to enforcement time (Frankel & Gervais, 2016; Oguamanam, 2018). Thus, although Canada had originally enforced the copyright term of 50 years after the life of the author (the minimum amount allowable under TRIPS), the American-led Canada-United States-Mexico Agreement made one of its provisions a term of 70 years after the life of the author (“Consultation on the Implementation of CUSMA Extension to Canadian

Copyright Terms,” 2021). This is in spite of the fact that a Congressional Research Service report found that only 2% of copyrights between 55 and 75 years old generate any form of commercial income (Jenkins, 2021, para. 18). America is not only increasing the length of its copyright terms but is encouraging all other nations to do so as well, effectively ensuring the further generation of profits from a small sliver of eligible works, while the rest languish behind copyright (Oguamanam, 2018). Jordan Fine (2017), Senior Editor of the Intellectual Property Journal, notes that the decision to protect works for 50 or 70 years are completely arbitrary and are not based on any scientific evidence. Fine (2017) goes as far as to argue that the “global norm is to take an evidence-free approach” regarding copyright (p. 353). This denies the access and dissemination of information while also repulsing a robust public domain.

3.2 – Incentivizing Creativity: Copyright and the Public Domain

Simply put, the purpose of IP rights is both to reward the creator of the work and to promote the circulation of the work throughout society. It is an exclusionary device meant to reward the innovator and discourage others from making, selling, or using the particular creation of the mind (Davis, 2006). A copyright allows the monopolization and exploitation by the rights owner for a limited time period, thereby ensuring that the market is able to adequately reward the creator for their creativity (Mead & Saunderson, 2016). Copyright, then, is meant to incentivize creativity through the immediate potential reward of income and the long-term potential reward of overall knowledge dissemination. These are potential rewards because they nonetheless depend on the quality of the creation and the appetite of the consumer.

3.2.1 – The Individual’s Copyright

Prior to the robust copyright system that international treaties like TRIPS provides today, however, the potential for either reward was drastically lowered. In the particularly telling experience of Hans Christian Andersen prior to this period, Helle Porsdam (2006) wrote that, between 1868 and 1875,

Andersen received about \$2200 in royalties ... from his American publishers. Before 1868, he had received nothing at all from the United States. His royalties from England amounted to £368 – a ridiculously small amount, which can only be accounted for by the fact that there was no international copyright protection during Andersen’s lifetime. English and American publishers could – and indeed did – print whatever part of Andersen’s oeuvre they wanted without paying him anything.

... [F]urthermore, as Andersen’s fame grew in England and later also the United States, it became harder to interest respectable publishers in publishing the later stories in an English translation. The more popular Andersen became, the more likely it was that cheap pirate editions would be published. (p. 7)

Despite the popularity of his work, there was no international protection against piracy during Andersen’s lifetime, meaning he could not reap the rewards of his creativity. True, his name and stories were spread far and wide, ensuring the reward of knowledge dissemination, but Andersen was not adequately financially rewarded outside of his home country of Denmark. The benefit of copyright in this particular case, and many more cases like this, is the assurance that the creator’s time and labour are rewarded. A popular perspective in favor of copyright is based on the labour theory of value by John Locke,

arguing that because of the individual labour involved, the creator should be rewarded with property rights, i.e., intellectual property rights (Standing, 2019). However, this justification is once again based on the ideology of authorship and is narrowly focused on the isolated genius that creates something out of nothing. It emphasizes the private interests of authors over their creative work as their property (Kim, 2008). The Lockean view fails when considering other ways of viewing authorship and ideas.

If ideas are seen as collective, are based upon the access of other ideas, or are simply due to sheer luck within the context of cultural history, then the Lockean view breaks down. T. S. Eliot (1982), a twentieth-century modernist poet, wrote that “[n]o poet, nor artist of any art, has his complete meaning alone. His significance, his appreciation is the appreciation of his relation to the dead poets and artists” (p. 37). What Eliot is describing in this quotation is his “impersonal theory of poetry”, the idea that all poetry, or generally all art, is based upon the work that has come before it. Although Eliot did not create his poetry in the way that folklore is created – collaborative, collective, peer-to-peer – he also did not create his poetry within a cultural vacuum, indeed no one can. His art is influenced by all the poetry that he himself has read in his life, as well as the poetry that those poets themselves have read, and so on. Eliot is recognizing the creation can be more than the ideology of authorship. He even goes as far to argue that Shakespeare, who many would consider *the* great genius of isolated creativity, owes much of his knowledge of history to Plutarch’s writings (Eliot, 1982). Artistic works, in the words of Barthes (1967), are a “tissue of citations, resulting from the thousand sources of culture” (p. 4).

Furthermore, in an official government document we can see the argument against the ideology of authorship that has influenced these laws so heavily; a 1957 Royal Commission on Patents, Copyright, Trademarks, and Industrial design concluded that modern copyright systems represent “a European approach to copyright, granting high levels of copyright and placing the rights of the authors above the interests of users, consumers, and the public” (Bannerman, 2011, p. 37). Market value is placed above access and broad participation (Murray & Trosow, 2013).

It can be argued that all creativity relies upon that which has come before it. Authors, artists, and performers all respond to earlier forms in their field. The past and the present are constantly in dialogue, guiding and shaping what kind of new art is created. Although this is an explicit statement in folklore, all expressions of creativity, whether so-called low art or high art, are at some level influenced by others (Treiger-Bar-Am, 2016). What modern copyright systems like TRIPS do, however, is remove the context of the art and reward the creator as if they alone have created their work. In this way, copyrights are a powerful way of denying an intellectual commons, transforming creativity into private property (Standing, 2019). Furthermore, although copyright laws are supposed to only be related to the expression of the idea, rather than the idea itself, thanks to the broadening of policies and growth of monitoring, many ideas now become caught in a complex web of restrictions and licenses (Maxwell, 2014).

3.2.2 – The Public Domain

The public domain exists alongside copyright and, in fact, was created in conjunction with it. Prior to copyright laws, there was not a free-for-all of information; the right to copy any and all books was exclusively held by printers and publishers within

the Stationer's Company (Hafstein, 2014). Thus, when created, copyright laws designated some works as outside the copyright mechanisms. That being said, there is a prevailing viewpoint that everything within the public domain is simply the leftovers of IP, that which has fallen out of protection (Craig, 2014; Porsdam, 2016). Works in the public domain are seen as either orphaned – that is, authorless because of the inability to find the author or right's holder – or authored but only present because the allotted time has passed after the death of the author (Maxwell, 2014). The public domain, then, is a place defined by absence, absence of authors, absence of protection, and absence of legal architecture.

The risk of this view, of dichotomizing the public domain and intellectual property, is that we may end up defining the public domain in the negative: everything that *does not* fall within IP. This encourages the view that the public domain is the other side of the IP coin. However, the public domain is, in reality, a reservoir of creativity, ideas, and information. Jennifer Jenkins (2021), director of Duke University's Center for the Study of the Public Domain, writes that,

The whole point of copyright is to promote creativity, and the public domain plays a central role in doing so. Copyright law gives authors important rights that encourage creativity and distribution—this is a very good thing. But it also ensures that those rights last for a “limited time,” so that when they expire, works go into the public domain, where future authors can legally build on the past—reimagining the books, making them into films, adapting the songs and movies.

(para. 4)

Thus, we must also acknowledge that the public domain is the place where creators can *actually create*. The public domain provides the space where individuals can build upon the work of others – legally. However, this also means that, because the public domain offers no protection, material that is considered part of it can be used disrespectfully and without economic return to those who created it. If we consider folklore as part of the public domain, as many do, then this becomes particularly worrisome. The cultural traditions that make up folktales and folksongs can be exploited with no thought to the culture that created them. Indigenous knowledge systems are particularly susceptible to this form of exploitation; intellectual property systems see this knowledge as available for the taking (Frankel & Gervais, 2016).

Because most folklore was collected during its boom in the nineteenth and early twentieth century, it technically belongs to the public domain; not because it was created communally – literally, that is, by *the public* – but because the copyright that once existed has expired. Copyrights that still exist on the *Cinderella* folktale, for example, only apply to the unique and original aspects of those versions or adaptations (Murray & Trosow, 2013). However, it is prudent to ask ourselves whether folklore belongs in the public domain in the first place. Certainly it is authorless, but it is inherently this way, designed to be without one. It is not something fallen out of copyright, nor is it created by an individual and that individual lost to the record book. However, it is also true that folklore as a community creation does not ideally belong within the confines of IP, either. If it were to exist in the public domain, then it may have the effect of not having any protection, whereas within the law of copyright, folklore becomes completely divorced from the community (Porsdam, 2016). Too broad a protection arrests a story's

development, while too narrow opens it up to exploitation (Andersen, 2010). I will return to this question later, but, for now, it is important to consider its place within – or without – the history of copyright law when examining the actions of historical folklore collectors in the next section: how they obtained material, who they viewed as owning it, and what rights they viewed themselves as having over it.

3.3 – Copyrighting Folklore

As discussed above, the modern concept of the author figure that informs intellectual property laws is modelled on the isolated – culturally and physically – genius; the person who creates great works of art from a place deep within themselves (Hafstein, 2014; Maxwell, 2014). Where does this leave folklore, then? As a process that explicitly exists outside of authorship, how can folklore be reconciled with IP and copyright? Theodore Hafstein (2016) argues that traditional expressions have been cast “in the mould of the universal individual subject – the unpublished works of an unknown author” (p. 198). The collective and incremental creation of folklore does not conform with copyright law, where a work has to be considered the product of an individual. IP and copyright laws prioritize the individual, where so-called originality is rewarded. As the last chapter illustrated, historical collectors of folklore began inserting the individual into their collections through their own actions, which resulted in them earning copyrights. Collecting, reworking, and editing are all ways in which to acquire copyright protection (Hafstein, 2014). Helen Creighton viewed the songs and tales she collected as hers – not only in copyright terms but in terms of her tangible property. In fact, in one rather startling example from her autobiography (1975), she details how a fellow folklore collector coming to Nova Scotia to record and collect was akin to them trying “take” all

her songs (p. 131). Creighton was not alone in this view, however, as many other collectors viewed their time and labour dedicated to collecting folklore and folksongs as equivalent to ownership (Szwed, 2011; Weissman, 2020).

IP and copyright laws are also only relevant when work is fixed into a tangible medium (Bannerman, 2011; Murray & Trosow, 2013). This means that folklore as a performance – whether it be the performance of a folksong or the storytelling of a folktale – cannot be copyrighted unless transformed into a fixed state. If we understand the collective experience of folklore as ephemeral, meaning they are not based on a text or another material form, then they are unable to achieve any form of protection (Macmillan, 2016). Fixing folklore into a tangible medium, however, simultaneously arrests the lifecycle of the folklore while also earning the performer (or author, recorder, etc.) copyright protection for their original work. The audience becomes the passive consumer as the copyrighted work does not encourage interaction. The perspective of the author takes precedent (Zipes, 1979). Changes to folklore are apart of its natural lifecycle, but now, thanks to the robust copyright systems in place, even minor alterations are subject to their own copyrights and represent a commercial resource if another individual were to base their work on it (Cantwell, 1996). Dick Weissman (2020), a performer during the folksong revival of the 50s and 60s, illustrates this process by noting that,

During the folk song revival, some of the performers, notably Fred Hellerman of the Weavers, and Peter, Paul, & Mary, would actually write new melodies and/or lyrics and add them to traditional songs. If someone else recorded the new version, then they had to pay the normal royalties. For example, Hellerman wrote an introductory bridge and a new verse to the traditional song *I Never Will Marry* and

copyrighted it under his own name. It was recorded by Harry Belafonte and numerous other artists and Hellerman reaped a harvest of royalties. (p. 26).

This “harvest of royalties” is only possible because of the insertion of the individual’s place within folklore and because of the ideology of authorship apparent in copyright law. Original works of art are rewarded, even if only minor sections of it are original, while folklore, as the recycled work of the common people, is available for the taking (Hafstein, 2014).

As an example of the copyright process involving folklore, *Ella Enchanted*, a 1997 novel written by Gail Carson Levine, is an adaptation of the *Cinderella* folktale. The novel was, in turn, adapted into a film, with each adaptation earning their own copyright (O’Haver, 2004). The unique elements of *Ella Enchanted*, although based on folklore, will not enter the public domain until 70 years after the death of the author, in the case of the novel, and 70 years after the death of the last person among the director, screenwriter, or composer, in the case of the film (Deazley & Meletti, 2017). Although the original narrative elements of the story, what can be considered the story’s essential qualities, is technically left free for others to adapt or change, each new addition earns its own copyright, meaning others cannot adapt, remodel, or take inspiration from these unique copyrights (Murray & Trosow, 2013). The folklore process is blocked, allowing only certain elements of the story to be adapted, while newer additions are unable to be engaged with.

3.4 – Chapter Summary

The ideology of authorship is strongly linked with the creation – and contemporary execution – of copyright laws. While the figure of the author became

elevated to its status as the solitary and individual genius, the work that they produced became inseparable from them. The point of copyright law, from the Paris Convention to the Berne Convention to TRIPS, is to promote creativity and distribution by rewarding the author figure for their original work. The author figure and the copyright regime, however, are directly contrary to the perspective of folklore as a collective process. To reconcile the two, historical folklore collectors inserted the individual into folklore, ensuring that their collections and work could be copyrighted. Furthermore, because IP and copyright laws are only relevant once the work is fixed into a tangible medium – again, another procedure contrary to the folklore process – collectors were essentially plucking tales and songs out of the air, viewing them as free for the taking. Through the process of copyright, folklore becomes divorced from the community that created it. If it is true that folklore does not belong in the intellectual property sphere, however, then it is also true that it does not truly belong in the public domain either. Viewing it through the lens of the public domain suggests one of two things: either folklore once had an original author and that author is now unknown, or it does not have an author and has no protection from exploitation. By inserting and prioritizing the individual, folklore became an object that could fit within the mold of international copyright law. Once neoliberal ideology was accepted as hegemonic, as the next chapter will show, folklore was able to be transformed from an individual's copyright into a commodity, one that could be bought, sold, or traded as the owner saw fit.

Chapter 4 – What’s Ours is Mine: The Renovation of Liberalism

The term neoliberalism was first coined in 1938 as a way for the economists, sociologists, business leaders, and journalists in attendance at the Walter Lippman Colloquium to describe their intention to “renovate liberalism” (Slobodian, 2020, p. 4). Neoliberal policy and influence, however, remained on the margins of world thought and influence until the early 1970s, which saw the end of the post-war boom (Carroll & Jarvis, 2015; Harvey, 2011). Growth, profit, and employment levels all plunged while inflation increased, ushering in the worst recession in a generation. Citizens, in return, abandoned their support for centre-left governments and turned to new conservative administrations that began to usher in neoliberal policies as a response (Carroll & Jarvis, 2015). The UK and US lead the way in neoliberalization with the election of Margaret Thatcher (1979) and Ronald Regan (1980), respectively, while many other countries followed their lead, including the election of Brian Mulroney (1984) in Canada (Conrad & Hiller, 2006; Harvey, 2011). Carroll and Jarvis (2015) argue that what came next was an “ideological revolution” (p. 288) in approaches to economic management and market policies. These included market reforms, liberalization, removal – or minimization – of the state’s place within the economy, and intensifying the relationship between international capital and global markets. French sociologist Alain Touraine (2001) noted that, through neoliberalism, “the market has replaced the state as the principal regulatory force in our society” (p. 9). The market became omnipotent, an all-powerful presence that, if left to its own devices, would reward those deserving of it. Furthermore, the deregulation of this market, it was reasoned, meant that it was no longer under the control of bureaucrats and politicians who had led the world to recessions and inequalities (Touraine, 2001). The

market would take care of itself without them and produce equalities – if not equalities of outcome, then, at least, equalities of opportunities (Littler, 2018).

Deregulation of the market, however, meant that restrictions on capital were also removed, allowing for globalized and liberalized trade. With regulations out of the way, the intellectual property sector, epitomized in the World Intellectual Property Organization (WIPO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights, was able to expand and justify international IP laws and mechanisms – including that of copyright. To illustrate this expansion, in 1995 WIPO employed around 500 people; in 2017, that number increased over twofold, with WIPO employing around 1,200 people, meaning that they staff more people in Geneva than any other international body except the United Nations itself (Standing, 2017).

The expansion of IP and copyright corresponds with what Judith Butler (2020) recognized as “the neoliberal consecration of individualism” (p. 44). It is only natural that an economic philosophy that focuses so much attention on the individual would function in harmony with a system meant to reward the creatively autonomous individual – the author. By placing further emphasis on the individual and on the protection of that individual’s property, that which was once community created and owned – such as folklore and other common goods – becomes a commodity within this system; one that is able to be bought, sold, or traded. Folklore, through constant historical insertion and prioritization of the position of the individual, functions as a commodity within neoliberal ideology extremely successfully.

4.1 – Neoliberal Ideology

Michel Foucault (2008) argued that neoliberal theory was, in part, a reaction to Nazism, as Nazism could be boiled down to the “unlimited growth of state power” (p. 111). This is, as proponents and theorists will testify, one of the main ideological principles of neoliberalism: the reduction of the place of the state and its power. The “proper” role of the state, it is argued, is to create and preserve institutional frameworks with which to ensure free-markets and free-trade, not to restrict or impede capital or individuals (Harvey, 2011). To accomplish such goals meant the liberalization of the markets – the insertion of the individual within the economy (Standing, 2017). Liberalism itself can be boiled down to the theory of freedom for the individual (Althusser, 2014). The prioritization of the individual and of the individual’s rights goes hand-in-hand with reduction of the place of the state; by reducing government spending through austerity while simultaneously advocating for the role of the private sector within the economy and society, neoliberalism encourages the elevation of the individual rather than reliance on the state and government (Klein, 2014). Day and Uetricht (2020), however, put it more bluntly: “[n]eoliberalism is the economic philosophy... that [holds] that the majority’s needs could best be served by allowing private capitalist markets to expand into every crevice of society” (p. 21). Every crevice of society also means every crevice of *all* societies, as globalization – one of the main ideological tenets of neoliberalism – encourages the outgrowth of capital and international markets (Conrad & Hiller, 2006).

All three aspects of neoliberalism, reduction of state power, the elevation of the individual, and the reliance on globalization, are deeply connected in cyclical way. The reduction of the power of the state is informed by globalization, which tells us that we are

individuals whose freedom holds priority over state power (Malešević, 2002). This, in turn, encourages privatization, which justifies the loss of state power, and which makes room for the individual's position within the world economy (Harvey, 2011). Reduction of state power leads to individualism which leads to globalization which leads back to reduction of state power again.

Although there is much more to be said about the philosophy and the operation of reducing state power, that analysis is outside the scope of this work. Two other main tenets of neoliberalism, however, – individualism and globalization – are directly related to the process of commodifying folklore. First, individualism, corresponding with the purpose of copyright, emphasizes the place of the author and creator while justifying their position through meritocracy. Second, globalization reproduces neoliberal hegemonic order world-wide which allows for privatization of resources and control of national economies. Both function to encourage, in the words of Guy Standing (2017), “the commodification and privatisation of everything that [can] be commodified and privatised” (p. 11).

4.1.1 –The Individual and Meritocracy

Neoliberal ideology revolves around the figure of the individual – just as classic liberalism did. The difference, however, is that neoliberalism is meant to guarantee not just personal freedoms, but individual freedoms in the marketplace (Harvey, 2011). These individual market freedoms create a figure that Michel Foucault (2008) described as *homo oeconomicus*. Although this term was originally used by John Stuart Mills in reference to the unlimited capacity of humans to make rational decisions, Foucault reappropriates it to describe the transformation of human beings into entrepreneurs

through neoliberal discourse. *Homo œconomicus*, Foucault (2008) argues, is a being that is “his own capital ... his own producer ... the source of [his] own earnings” (p. 226). *Homo œconomicus* is the person of enterprise, able to rise to the top based on their own merit. Neoliberal ideology creates a world in which opportunity is available for all because of the logic of *homo œconomicus*. Successes and failures are dependent on the individual, specifically in terms of their personal virtues and performance, rather than on any societal or systemic problems or advantages (Slobodian, 2020). The individual is responsible for their own actions and, although it takes a special person - one who is willing to work hard and sacrifice – to make the most out of their opportunities, those opportunities are theoretically available to all (Harvey, 2011). David Harvey (2011) relates this to Darwinism, writing that “In a Darwinian neoliberal world ... only the fittest should and do survive” (p. 157).

The theory that argues that no matter what economic class or societal position a person is born into, that person, as long as they have enough talent and commit enough effort, can rise to the top of the economic and social ladder is known as meritocracy (Littler, 2018). Jo Littler (2018), professor of Social Analysis and Cultural Politics at the University of London, argues that “over the past few decades, the language of meritocracy has become ... a key ideological term in the reproduction of neoliberal culture” (p. 2). Of course, rising up the social and economic hierarchy is a trope with considerable history, especially in the US, where people understand the American Dream mythos as the fulfillment of the promise of meritocracy. But, as Littler (2018) argues, “it has been reinvigorated as a form within neoliberal culture and calibrated through an insistent emphasis on the self-fashioning of the entrepreneurial, self-promotional working

subject” (p. 59). The American rags-to-riches canon may have started with Benjamin Franklin, but neoliberal ideology posits that any individual is able to achieve the same success (Walker, 1983).

Furthermore, Simon Bronner (2005) argues that few Americans are truly willing to admit that they are lower or higher than the middle-class. Indeed, a study by the Rand Corporation (Wenger & Zaber, 2021) placed the middle-class income at 75 percent of the US median income, meaning a household would have to earn at least \$51, 527 USD to qualify. Although just 51 percent of US households qualify to be deemed middle-class using this measurement, 89 percent of respondents to a 2015 survey claimed to belong to the middle-class (Wenger & Zaber, 2021). This confirms that most Americans view themselves as middle-class earners, despite evidence that the numbers of those who actually belong to the middle-class are consistently shrinking. Bronner (2005) suggests this is because that no matter where American citizens actually lie on the economic scale, they are always “aspiring upwards” (p. 13). The figure of *homo aeconomicus*, after all, is aspiring upwards; they cannot be lower-class if they are constantly working hard and committing effort. Similarly, they cannot be upper-class if there are those who are above them. This is the paradoxical nature of neoliberal ideology: no one ever has enough, despite where they position themselves on the economic scale. Most are beyond rags; they are just still waiting on the riches.

Despite the reality that neoliberal policies and processes are, in fact, crisis-inducing in terms of increasing massive inequalities and market failures, the myth of meritocracy is so deeply embedded in neoliberal ideology that it is able to convince the population that they may end up being that special someone who earns their way to the

top (Carroll & Jarvis, 2015; Klein, 2008; McChesney, 1999). The individual who does make it is exceptional – exceptional in drive, talent, and want – which also functions to trump any concern for social and economic solidarities (Harvey, 2011). The rhetoric of meritocracy also justifies the individual’s successes. *Homo æconomicus*, because of their entrepreneurial nature, deserves their place in society. Their creations, especially when considering the figure of the author, are the outcome of their own special nature. This, in turn, works to justify their intellectual property rights as well as the increase and expansion of IP laws. Strong private property rights are a characteristic of neoliberalism for this very reason (Harvey, 2011). It is only natural, then, that neoliberalism has become the dominant political trend globally – regardless of left or right position on the political spectrum (McChesney, 1999). After all, few are able to argue against the rights of the individual thanks to the globalized hegemonic order.

4.1.2 – Globalized Hegemony

Globalization is one of the key tenets of neoliberalism. Although it is a term that can sometimes be misunderstood due to disputing definitions, Conrad and Hiller (2006) assert that it is the process that imposes “free-market capitalist principles not merely on international trade relations but on the internal affairs of nations around the world” (p. 210). Thus, in the context of this text, we can understand globalization as the process of neoliberal governments, particularly that of the United States and the United Kingdom, reproducing neoliberal ideology worldwide (Harvey, 2011; McChesney, 1999). Robert W. McChesney, however, is less generous in his choice of words; he writes that,

Globalization is the result of powerful governments, especially that of the United States, pushing trade deals and other accords down the throats of the world’s

people to make it easier for corporations and the wealthy to dominate the economies of nations around the world. (McChesney, 1999, p. 13)

Hegemonic dominance is the articulation and justification of neoliberal ideology.

Innocently enough, it is – at least in appearance – meant to represent a broad-based consent (Morton, 2007). This is the stratagem of neoliberal hegemony; it has become so incorporated into the interpretation of common-sense techniques that it has come to be accepted as the natural way of seeing and understanding our world (Harvey, 2011).

Antonio Gramsci saw the process of achieving a regime's hegemony as accepting their norm in place of our own lived reality (Gencarella, 2010). Despite the massive evidence to the contrary, for example, an individual, if they work hard enough, is able to ascend the social and economic ladder thanks to meritocracy. Common folks accept this view as pervasive despite their own positions in society. Neoliberal hegemony convinces others that they, in fact, are the uncommon one for not achieving social and economic elevation. In other words, hegemony convinces others “to accept their own status at the periphery” (Gencarella, 2010, p. 222).

Furthermore, because of the way that globalization spreads throughout the world, neoliberal hegemony is unique in the sense that it is truly an international hegemony within capitalist modernity (Morton, 2007). Paradoxically, however, because of the way that globalization ensures the individualization of us all, it also functions to make us all alike (Maleševic, 2002). The privatization of media outlets as well as that of cultural producers all result in a more homogenized world culture (Standing, 2019). Neoliberal rhetoric, celebrating individual liberties and freedoms, is reproduced worldwide, ensuring the continuation of the international hegemonic order.

Whether it is described as domination or imposition, globalization functions as a vehicle to spread and disseminate neoliberal ideology, including its justification for privatization. This, in turn, creates worldwide hegemonic order, safeguarding neoliberal policies and practices so they are able to continue unimpeded. National markets and economies are assimilated, removing protectionist barriers and sovereignty, ensuring that international capital can flow within a free global market (Klein, 2014; Slobodian, 2020).

4.1.3 – Earning Income: Rentier Capitalism

The production of goods and services in order to generate income is far from a new phenomenon in a capitalist society. What is new, however, is the ascendancy of what Guy Standing (2017) terms the *rentier capitalist* in the neoliberal age. The rentier's income is based on rental property, not only from housing and land, but from any and all commodities. The rentier capitalist, in short, gains income from already possessing capital. If all individuals in a neoliberal society are positioned as *homo oeconomicus*, then it stands to reason that this encourages all new forms of enterprise and capital accumulation. Websites like FatLlama (<https://fatllama.com>) and Rnters (<https://www.rnters.com/en>) accomplish this on a smaller scale, encouraging patrons to generate income from renting out any and all of their physical possessions. This includes equipment, supplies, vehicles, parking spots, and even friendships (Blake, 2021).

Intellectual property has become one of the most common forms of rental income on a larger scale. This is accomplished because corporatization, commodification, and privatization, facilitated by neoliberal ideology and practices, have become rampant, opening up previously untapped areas of profitability (Harvey, 2011). This is illustrated through information collected by WIPO, noting that “knowledge and technology-

intensive industries”, which account for over 30% of global production, gain as much or more in rental income from IP rights as from the actual production of goods or services (Standing, 2017, p. 50). Copyrights, patents, industrial designs, and trademarks all make up this new form of IP commodity (Standing, 2019). Similar to the way in which neoliberalism encourages the exploitation of physical and natural resources, instruments such as TRIPS, administered by WTO, and other multilateral agreements designed to protect private intellectual property rights, like those administered by WIPO, encourage the buying, selling, trading, and renting of ownership rights (Frankel & Gervais, 2016).

In copyright law, since the originator automatically owns the copyright at the point of creation without the need for any formalities, they are able to keep the rights to rental income, assign them, or sell them at their leisure (Standing, 2017). Copyright is a system that best represents rentier capitalism; it thrives because it simultaneously places the utmost importance on the figure of the author while simultaneously allowing them to actually sell their ownership rights. If they sell their economic rights, the author still is in possession of the moral rights of the work, meaning they and their heirs still benefit from the reputation of the work (Barg, 2018). This means the author figure remains essential while no longer being associated – economically – with the work. In this way, the rentier benefits not only from income generation, but from the work’s status, creating a contrived scarcity that drives up the price for the rights holders while protecting its reputation (Standing, 2017).

Martin Fredriksson (2016) argues that the current copyright industry perfectly represents “the neoliberal process of commodification” (p. 163). Everything that passes through it becomes a commodity. If rental income can be obtained from any commodity,

then it makes sense that neoliberalism encourages everything and anything to be transformed through commodification. Furthermore, because of the expansionist nature of IP law under neoliberalism, the copyright landscape has swollen, transforming the usage of culture into what Maxwell (2014) calls “a matrix of restrictions and licences” (p. 103). Not only are works more easily able to become commodities, but they also are under an incredible amount of protection once they do.

4.2 – *Cinderella* as the Commodified Folk

Disney’s *Cinderella* is an apt metaphor for the process of neoliberal commodification, first, in the sense of its spatial reach, and second in the sense of its didactic storytelling. Even in the literal sense, Disney’s 2015 live-action version of the *Cinderella* folktale was commodified prior to its theatrical release. Although the usual dolls and dresses for children were being produced, the adult market was also being targeted; makeup by MAC cosmetics, Swarovski crystals, gold charms, sneakers, China sets, and more were rolled out to entice Disney’s target audience of “modern-day princesses” (Harwell, 2015, para. 3). Even luxury shoe brand Jimmy Choo joined in the merchandising, creating a line of shoes that allowed the wearer to “live [their] *Cinderella* moment” (Avril, n.d., para. 1). The price of these shoes, however, ensured that one would have to actually possess the wealth of a princess to afford them, with the *Cinderella*-inspired heel, dubbed the “Avril”, retailing for just under \$6,000 CAD.

The irony of this merchandising is potent. Although seemingly everything associated with Disney becomes a commodity – according to the Top 150 Global Licensors ranking, a list of the world’s top IP owners, the Walt Disney Company has consistently been the world’s largest brand licensor, earning \$54 billion USD from IP

rights in the year 2020 alone (*Top 150 leading licensors, 2021*) - *Cinderella* is unique in the sense that its origins stem from a community-created and collaborative story. With versions found all over the world, from China to South America to the Canadian Maritimes, *Cinderella* has been successfully transformed into intellectual property and a licensing juggernaut for an individual company (Creighton, 1993; Yolen, 1977).

4.2.1 – *Cinderella* and Globalization

Regarding the spatial reach of Disney's *Cinderella*, the dissemination – particularly their original adaptation from 1950, although the 2015 film grossed over half a billion dollars worldwide (Orange, 2015) – is so widespread that it is generally the only variant of the tale that audiences are exposed to (Blankier, 2014). Jack Zipes (1979), in fact, argues that the Walt Disney versions of folktales, in general, take precedent over their original folk versions, heavily influencing the general understanding of the narrative and characters. When people think of *Cinderella*, they are no longer aware of their own cultural version of the story. In 1893, historical folklore collector Marian Cox identified three hundred and fifty versions of *Cinderella* for the first time (Cocchiara, 1981). Now, over a hundred years later, there is only one-ultimate version of *Cinderella* that takes precedent. Similar to the way globalization functions as a vehicle to spread and disseminate neoliberal ideology, Disney's *Cinderella* has been disseminated throughout the world, homogenizing world culture by replacing the unique versions of the tale in the consciousness of a nation's citizens. This is what inspired author Jane Yolen (1977) to dub this process “the mass market Cinderella” (p. 22)

4.2.2 – *Cinderella* and the Meritocratic Individual

Regarding the didactic nature of the story, Disney's *Cinderella* also functions well as a metaphor for the process of neoliberal commodification. Folklorist Elisabeth Panttaja (1993), writing about the Brothers Grimm's "Cinderella", notes that the story "prizes innate nobility over striving" (p. 94) and is fundamentally a story about class differences, not about rags-to-riches. Cinderella and her father were once part of the nobility but lost their wealth to misfortune. Grimm's "Cinderella" is about the recovery of riches that were once possessed thanks to Cinderella's innate nobility (Yolen, 1977). Perrault's "Cinderella" is even further from the rags-to-riches story that Disney presents.

Philosopher, historian, and archaeologist R.G. Collingwood (2005) argues that the most important idea in Perrault's tale is the connection between Cinderella's mother with helpful animals. The lesson of this tale is based on totemism or, more precisely,

that a human being may be an animal and vice versa; and not merely an animal but a helpful animal, protecting and guiding its own human kindred. It further implies that the human kindred thus protected are themselves, in virtue of their relation to this animal, animals of the same species. (p. 250)

Perrault's "Cinderella", then, can be seen to possess a moral lesson of social solidarity.

When we compare the Disney adaptations, however, what we find is an unmistakable shift in the narrative. The story becomes one about aspiration and ascension, the confirmation of the idea of meritocracy and individualism (Panttaja, 1993). Returning to Yolen (1977), she connects this meritocratic rise of Cinderella with the American dream mythos, writing that every child is taught "that even a poor boy can grow up to become president. ... It is little wonder, then, that Cinderella should be a perennial favorite in the

American folktale pantheon” (p. 21). *Cinderella* has been reconstructed to be a tale that perfectly encapsulates the neoliberal ideology of individualism. The modern *Cinderella* assures the viewer that if they want something badly enough, in this case wealth and leisure, then they can make it happen. Cinderella is not an inherently noble character, nor does she illustrate the benefits of social solidarity, rather, she is passive and self-disciplined who succeeds because she wants to badly enough. This is the idealized neoliberal character.

4.3– Chapter Summary

Neoliberalism is characterized by globalized and liberalized trade. This is accomplished by reducing state power, which simultaneously prioritizes the individual and stresses the importance of globalization. The prioritization of the individual within the economy creates what Foucault (2008) called *homo æconomicus*, an inherently entrepreneurial person able to elevate their social and economic standing through their own merit. This system, known as meritocracy, is essential in the reproduction of neoliberal culture, justifying each citizen’s social and economic standing as well as the rewards for their outputs. Furthermore, this and other aspects of neoliberal ideology are spread globally through globalization, creating an international neoliberal hegemonic order which provides further justification for privatization and commodification. Placing emphasis on the individual also functions to increase the protection of that individual’s property – both physical and intellectual. As the intellectual property sector has become more robust than ever, it should come as no surprise that an economic philosophy focused so much on the individual would function in harmony with a system meant to reward the creatively autonomous individual – the author. All these aspects function

together to transform creative outputs into commodities. Neoliberal commodification can be seen as the natural progression of copyright law, culminating in rentier capitalism. Furthermore, despite arguments against it, folklore is technically considered a part of the public domain, which means the entrepreneurial figure is able to add their own unique and original element to the story or song, making it their own private property with guaranteed protection. The rights to this can then be bought, sold, or traded, entirely dependent on the rights holder and the market. Finally, I presented Disney's *Cinderella* as an example of neoliberal commodification. First, because of its global reach dissemination, it connects directly to globalization. Secondly, because of its didactic lesson in individualism, it functions to reproduce neoliberal ideology.

Chapter 5 – Happily Ever After?

Standing (2019) argues that the concept of social or collective memory – the memory of shared traditions and customs that reinforce community identity and solidarity – “shapes our sense of social identity” (p. 51). What we were and how we thought in the past informs who we are in the present. Although Standing is speaking primarily about the natural commons as social memory, mutually sharing traditions is also at the heart of the folklore process (Bronner, 2017). Furthermore, the folktale, Zipes (1979) argues, was originally a way in which people could “express the manner in which they perceived ... their social order and their wish to satisfy their needs and wants” (p. 5). However, commodified folklore – that is, tales that are no longer dynamic but have been transformed into an individual’s static work – record and reiterate these previous expressions without the benefit of interactive growth (Gencarella, 2010). A society without a robust social memory, continues Standing (2019), “fosters narcissistic individualism and weakens any sense of universalism” (p. 52). The individualism embedded within the copyright process and within the ideology of neoliberalism privileges market values over community identity, as well as broad participation and access (Murray & Trosow, 2013). Because of the individualization process present in contemporary IP laws, social memory becomes fragile and eroded. Commodified folklore prioritizes one view – the “creator’s” view – and does not consider the complex web of perspectives and expressions that are present within a community.

As there is a dichotomy between the individual and the community, so, too, are there dichotomies between authorship and folklore, and neoliberalism and social memory (Porsdam, 2016; Standing, 2019). Community, folklore, and social memory are each one

element of a larger cultural and social process of cultural creation and exchange. Carys J. Craig (2014), Academic Director of the Osgoode Professional Development LLM Program in Intellectual Property Law at York University, argues that encouraging a participatory and interactive society, “further[s] the social goods that flow through public dialogue” (p. 78). The individual, authorship, and neoliberalism, however, are powerful ways of denying a participatory and interactive society; turning public goods – that is, ideas and culture – into private property (Standing, 2019).

How is it possible, then, to encourage respect for a robust and healthy social memory? How can we encourage a participatory and interactive society from within the systems of neoliberalism and copyright law? In this chapter I offer three possible solutions to these problems. The first, in response to neoliberalism’s obsession with the individual, is by recognizing human interdependency and by promoting the notion of radical solidarity. The second is by promoting the use of Creative Commons licenses and the open source development model as a way in which to encourage community creation and participation in contrast to traditional norms of authorship. Third is by recognizing the unique position that Canada holds within the international copyright law system; a position from which it is possible to affect genuine change in relation to the individual and copyright protection.

5.1 – The Individual and Society

A recent study of British undergraduate students at Oxford University found that the majority of students did not support affirmative action or attention to inequality or diversity when it came to admissions, scholarships, or allocation of resources. Instead, they supported the meritocratic “blank slate approach” (Soares, 2017, p. 2301). This

approach favors the view that, despite any apparent historical or contemporary class or economic disadvantages, everyone should start with a brand-new slate, so-to-speak, and all students must earn by merit and skill what they have. This approach, however, is directly contrary to lived reality of many British youths. The advantage of white students in the Oxford Admission process is well documented, but, even before the admissions process, many youths are faced with discrimination and unfair barriers; tutors for university preparation, for example, are more likely to choose white and private-school students than they are to select minority and students who attended state-run schools with the same national exam grades (Soares, 2017). Meritocracy in this case exists only in the mind of those who are already in a position of advantage, who have convinced themselves that they have earned their positions through their own hard work and merit rather than through systemic structures of inequality.

Neoliberalism rejects the need for inclusive solidarity and recognition of interdependency, particularly through meritocratic self-sufficiency and competitive individualism. David Neilson (2015), professor of Sociology and Labour Studies at the University of Waikato, argues that neoliberal ideology and discourse is reliant on the “active fostering of social division” (p. 198). Promoting a framework of solidarity, however, combats this social division and mentality of individual reliance. This entails, in the words of Gaile S. Cannella and Mirka Koro-Ljungberg (2017), promoting “[d]iverse knowledges, multiple ways of being/living, critical multiculturalism, justice education, and practices of reconceptualization” (p. 160). In a practical sense, universal social and material security through global cooperation is facilitated by social solidarity (Neilson, 2015).

Although neoliberalism did not start the process of commodification, it justifies it through the myth of individualism, one of its main tenets (Slobodian, 2020). I posit that this is a myth because there is no such thing as a true individual. There was never a time in a person's life, whether they view themselves as a self-sufficient individual or not, when they could truly do anything without the help of others – whether it be feeding themselves or standing on their own. The food we eat is reliant on other people, consider how one is able to obtain a carrot: it begins with the collecting of seeds, then the growing of the food, the harvesting of crops, the cleaning and packaging, the shipping and delivery, the stocking in a store, and the many other things that require human interactions. One can only stand because of other humans building foundations and floors, or the process of building roads or streets or sidewalks. If we separate ourselves from the myth of individualism, then social solidarity allows us a framework to consider the production of humanity without the need to rely on neoliberal notions of the individual (Butler, 2020). Humans depend on one another and must create social bonds of interdependency.

5.2 – Creative Commons, Open Source, and Folklore

This interdependency is not only relevant to the physical production of things, but to the theoretical production of art and creation as well. Lawrence Lessig (2006), academic, attorney, and activist, argues that “[e]very act of consuming culture is an act of constructing culture. Through both, cultures get made. Every act of reading and choosing and criticizing and praising past culture is an act through which present culture gets made” (p. 17). The process of creation, as Lessig and many more argue, is interdependent (e.g., Barthes, 1967; Eliot, 1982). The creatively autonomous individual operating in

isolation is a myth that can no longer stand up to scrutiny, especially now that new technologies facilitate the exposure of new information so easily (Porsdam, 2016). No one creates in a cultural vacuum, regardless of what IP rights propound (Mead & Saunderson, 2016). This is why Lessig co-founded the Creative Commons project, a counterpoint to the copyright industry, based on the philosophy of sharing and contribution (Scharf, 2017). CC offers creators four licensing conditions that can operate on their own or be combined with each other. They are: 1) the Attribution license where the work is free to use but credit must be given to the original work and creator; 2) the NonCommerical license where usage of the work is granted as long as the use is not-for-profit in nature; 3) the ShareAlike license where anyone can modify a work as long as that adapted work is also licensed under a compatible CC license; 4) the NoDerivatives license where the work can only be shared in its original form and modifications to the work cannot be shared without permission (Apfelbaum & Stadler, 2021). CC licenses remove the guesswork from licensing – especially for educational and non-commercial use. Carrie Bishop (2015), Project Rights Officer in the legal department of the Tate galleries network, argues that using CC licenses “encourage[s] participation and the sharing of knowledge which in turn benefits both users and the artist/estates” (p. 9).

Although CC licenses technically operate within the confines of IP law, they nonetheless represent an attempt to transform the private property approach of modern IP regimes into something more able to facilitate engagement and open access as well as blur the lines between author and user (Garcelon, 2009; Kim, 2008; Scharf, 2017). In contrast to the private property approach, CC licenses fall under the purview of the “public policy” approach to copyright (Kim, 2008, p. 188). Minjeong Kim (2008),

professor within the department of Journalism and Technical Communication at Colorado University, explains that this approach “underscores the importance of public interests in accessing and using copyrighted work. It also underlines the role of copyright as a matter of public policy that aims to achieve a proper balance between private interests and public interests.” (p. 188). These licenses allow creators the protection of copyright, i.e., their work cannot be exploited for commercial gains without their permission as works in the public domain would be, while simultaneously allowing forms of engagement and interaction which were not previously possible because of the restrictive nature of modern copyright (Apfelbaum & Stadler, 2021; Scharf, 2017). Works with CC licenses now number over two billion, illustrating a positive sign of change in the outlook based on creative works as private property (Apfelbaum & Stadler, 2021). Creative Commons has contributed to the growth of the cultural commons through these measures, ensuring that all can benefit from works with CC licenses (Kim, 2008).

Michael Jon Andersen (2010), *juris doctor* and former senior editor of *Case Western Reserve Journal of Law*, sees the growth of CC in connection with folklore as a positive development towards its protection as well. He notes that,

By encouraging creators of works based on oral narratives to permit remixing and sharing of their works, the community can encourage the involvement of unidentified authors. While the additional contributions of unidentified authors would not be protected, subsequent additions incorporating the change would be subject to limited protection. (p. 164)

Andersen is explicitly linking folklore to an oral narrative, one that grows and evolves through each telling. However, with the introduction of CC licenses in the folklore

process, one can see how these tales can continue to grow and evolve while being protected in a fixed medium.

Similarly, the open source software and development model follows this same approach. Unlike traditional copyrighted works that block transformation and modifications, the open source model allows for community engagement thanks to the renunciation of propriety control by the creator. Each subsequent change and version are beholden under this same licensing agreement (Garcelon, 2009). Lee Davis (2006) compares this process to that of jazz music. He writes that,

Musicians start with a basic tune and then improvise, combining the sequence of the notes in new ways, taking the tune in new directions, imposing new rhythms. If their improvements were openly shared with other jazz musicians, and these musicians systematically cooperated in changing the basic melody, which they then made publicly available, they too would be following the logic of open source. (p. 138)

In this illustration, we can see the recognition that the process of creation is just as important as the end product by removing creativity autonomy from the sole possession of the author or creator and placing it back in the hands of the culture that helped create it (Porsdam, 2016).

OS and CC licenses, in the words of Davis (2006), “harness the creative potential of a community of artists to improve existing works, instead of passively accepting that the original is the best expression of the idea” (p. 140). In this way, I propose that OS and CC are a possible way of protecting community creations within the confines of copyright and IP laws while simultaneously allowing the peer-to-peer and collaborative

nature of folklore to thrive and prosper. Alan Dundes argued that we are constantly producing new folklore; new media technologies can only intensify this process (Dundes, 2007; Gencarella, 2010). Thanks to social media, online video sharing platforms, peer-to-peer networking, community-created and edited online encyclopedias, and many more collaborative processes facilitated by new technologies, the philosophy and execution of the folklore process continues to be relevant (Porsdam, 2016). OS and CC licenses are a remedy to the exclusionary nature of copyright laws, allowing folklore to exist without divorcing it from its original purpose of community creation while protecting it from exploitation. Returning to my question posed in chapter 3: does folklore belong in the public domain? Ideally, no, nor does it belong within the rigid confines of the traditional intellectual property structure. It belongs in systems like OS and CC licensing; systems that allow and rely on further transformation and collaboration.

5.3 – Canada and Copyright

Canada is uniquely positioned for in a role to affect genuine change in the future of international copyright law. Sara Bannerman (2011) of the Australian National University notes that theorists envision middle powers – that is, developed countries but not world leaders – such as Canada as being “well suited to play a role in furthering issues of social policy and social justice in international forums” in relation to international intellectual property (p. 31). Fine (2017) also argues that Canada is in a position to be an international leader in copyright reform, particularly in reference to term lengths. Canada clearly has a history of social policy and social justice initiatives in the context of international copyright which makes these statements all the more hopeful.

It is also the case, however, that at no time has Canada ever truly had autonomy over its own copyright law. In 1886, Canada joined the Berne Convention under Great Britain's signature as a colony (Bannerman, 2011). In 1921, attempting to gain jurisdiction over its own copyright from within the confines of the Berne Convention, Canada crafted a law that was essentially the same as the current law in the UK to ensure that it would be approved by London (Murray & Trosow, 2013). Once approved, Canada joined the Berne Convention as an independent nation (Bannerman, 2011). It was not until 1982, the year of the repatriation of the constitution, that Canada was able to craft a copyright law free from the influence of the UK. However, by this time they were still beholden to the Berne Convention, meaning they had very little genuine say (Murray & Trosow, 2013). Even now, thanks to the American-led Canada-United States-Mexico Agreement, Canada has become beholden to America's copyright rules ("Consultation on the Implementation of CUSMA Extension to Canadian Copyright Terms," 2021).

This is not to say that Canadian copyright law can never be autonomous. Canada has, on numerous occasions, attempted to push forward copyright reform. In fact, in 1889, just three years after becoming a part of the Berne Convention under Britain's signature, Canada attempted to denounce the convention, arguing that it exclusively benefitted European countries at the cost of the interest of developing economies in North America. Canada's efforts in copyright reform, however, have largely been unsuccessful up to this point in time, including failed attempts to make radical changes to the international copyright system in the 1960s and 1970s, and four attempts to amend copyright laws between 1997 and 2017 (Bannerman, 2011; Titolo, 2017). However, even within the confines of TRIPS and WIPO treaties, there is flexibility. Titolo (2017) argues

that Canada does not need to adopt the restrictive language of these treaties during the ratification process and, instead, can provide a more appropriate balance between owner and user rights. Furthermore, recent decisions in court cases have also been encouraging in regard to copyright law. In 2004, the court emphasized the importance of users' rights and a balanced copyright in the CCH Canadian limited case. In 2012, the court ruled against Access Copyright's argument that distinguished between teacher and student copying in Alberta. Finally, in 2021, the Supreme Court of Canada's decision in the Access v. York case, as Michael Geist (2021), Professor of Law and Canada Research Chair in Internet and E-commerce Law at the University of Ottawa, argues, "removes any doubt that the Supreme Court remains strongly supportive of user's rights in copyright" (para. 1) while simultaneously "re-affirming the importance of the copyright balance and fair dealing" (para. 13).

Copyright has focused too heavily on protecting prior work rather than on promoting the present and future (Mead & Saunderson, 2016). Open communication between creator and audience elevates public dialogue and encourages a "higher quality of expression" (Craig, 2014, p. 78). The copyright system should facilitate a process of cultural and social exchange, encouraging creation and dissemination of works. Economic and other incentives are important, but not at the risk of discouraging a participatory and interactive society.

5.4 – Chapter Summary

Although the previous sections have outlined the ways in which folklore has become commodified, in this chapter I offered three possible avenues to remedy the situation. First, by promoting a framework of solidarity. The myth of individualism

functions to justify the exploitation of the traditional commons and to elevate the individual above the community; recognizing the importance of radical interdependency is a direct response to neoliberalism's obsession with the individual. Second, I argued that copyright systems like the Creative Commons project and Open Source software development have a folklore-like process of engagement and collaboration. CC licenses and OS development model, however, have an added benefit of protecting community creations from within the confines of copyright and IP laws while simultaneously allowing the peer-to-peer and collaborative nature of folklore to thrive and prosper. Finally, because of Canada's position within the world political order, I argued that it is uniquely prepared to affect genuine change in the future of international copyright law. Canada's history, especially the Supreme Court of Canada's recent ruling in *Access v. York*, shows that the country is ready to truly hold autonomy over its own copyright laws and influence other countries as well.

Chapter 6 – Conclusion

The original question posed at the start of this work can now be answered succinctly. How does one own the folk? Answer: *by participating in the intellectual property system under the direction of neoliberal capitalism*. Because of the prioritization of the individual and the ideology of authorship, what started with a desire to protect national heritage by “saving” the last remaining products of the folk was quickly transformed by the copyright industry into an income generation tool. This industry, in turn, was greatly expanded and protected thanks to the further idealization of the individual through neoliberal IP laws, treaties, and agreements.

Contemporary folklorists recognize folklore as the product of mutually sharing traditions and as a peer-to-peer and collaborative process. Hafstein (2014) argues that folklore is “the antiauthored” (p. 22) because it cannot be attributed to a single author figure, instead relying on continuous evolution through community participation. Folklore is anonymous not because the author’s name has been forgotten, but because it is the result of multiple creations that intersect and combine to create a greater whole. Historical folklore collectors in North America and Europe, however, viewed the folklore process as something distinctly different, frequently altering it to better suit their needs, and entangling it with individualism. Through positioning themselves as the ones responsible for “rescuing” folklore from its current guardians, historical folklore collectors prioritized the individual’s, above the community’s, choices about which of these songs and stories were actually worth saving. They then removed creative autonomy from the community by crafting a generalized and idealized informant figure, an embodiment of the folklore process within a single individual.

The positioning of the individual above the community in the folklore process serves the needs of copyright – a system designed to reward the author figure, the solitary and individual genius. Despite the dichotomy between individual creation and community creation, folklore was able to exist relatively easily within the confines of IP law due to the previous prioritization of the individual. Through the copyright regime, folklore grew further divorced from the community that created it and became inseparable from the work of an author. Although folklore does not ideally belong within the confines of IP laws, neither does it belong in the public domain. Folklore within the public domain offers no protection from exploitation; rather than continuously evolving and growing within the public domain, each new iteration, addition, or adaptation earns itself a new copyright, still prioritizing the individual's position in the process.

Neoliberalism places further emphasis on the individual, particularly regarding their place within the economy. Foucault (2008) described the individual in the neoliberal economy as *homo oeconomicus*, an inherently entrepreneurial person able to elevate their social and economic standing through their own merit. The concept of meritocracy not only justifies each citizen's social and economic standing, but the rewards for their outputs as well. This further validates the process of privatization and commodification, which also serves to increase the protection of property – both physical and intellectual. As the IP sector expands under neoliberalism, it functions to transform creative outputs into commodities – the rights of which can be bought, sold, or traded, entirely dependent on the rights holder and the market.

By shifting away from individualism and its prioritization, folklore can separate itself from the commodification process and, instead, become part of the community

creation process once again. I have outlined three possible ways for this to take place. First, promoting a theoretical framework of solidarity directly confronts the idealization of the individual; second, promoting the use of CC licenses and OS development models allows for a more participatory process within the copyright system; and, finally, promoting international IP law reform from within Canada can be particularly effective as Canada is in a position to affect genuine change.

6.1 – Implications of Findings

The commodification of folklore can be traced by following the path of individualism. Historical folktale collectors, such as the Grimms and Creighton, made it possible to copyright folklore, to fix these tales and songs to a singular author figure. Copyright law, prioritizing the individual, further removed the products of the folk from their source. Finally, because of neoliberal ideology and expansion of intellectual property mechanisms that prioritizes the individual's unique contributions to a song or story, folklore is able to be bought, sold, or traded – just as any other commodity.

The commodification of folklore is contrary to the idea of social memory and to a cultural commons. Ideas and cultural expressions are public goods and should be recognized as such, especially considering their lack of scarcity; one person reaping their benefits should not prevent others from doing the same. Despite this, the intellectual property system now in place rewards the individual, further diminishing an already fragile cultural commons. Profits and rewards are funneled to a select few, while access to information and culture is obstructed for the common people. If folklore and tradition are inaccessible because of the commodification process, that is, because of the economic

and creative barriers in place, then communal and national identities are inaccessible as well.

The prioritization of creations that are profit generating, combined with the globalization process produced by neoliberal hegemony, ensures that only specific forms of cultural expressions are displayed on the world stage. These forms create a homogenized international culture that replaces the distinctive and characteristic differences of geographically smaller cultures. Replacing unique cultural creations with those that are meant for consumption, while cutting away our own cultural roots that inform the perception of self, effectively influences the creation – or lack – of cultural and individual identities. Neoliberal ideology tells us that we are all the same, globalization makes it so.

Furthermore, intellectual property only exists insofar as it is recognized and acted upon. Laws and treaties are not the only things that shape IP, but so too do the practical actions that society takes when confronted with it. IP is not a natural creation; it is an artificial one; it is the culmination of various processes that prioritize the individual's contribution over community, culture, and influence. Arbitrary and evidence-free decisions regarding protection terms and rights usages should not be accepted so apathetically. Reformation and improvement of international intellectual property rights, then, is not only warranted, but possible.

6.2 – Contribution to Scholarly Field

The commodification of folklore is not a problem exclusively reserved for folklorists or political theorists. It contains, in fact, some of the core issues discussed among library and information professionals: issues of information access,

representation, and interaction, as well as accountability and personal autonomy. Library and information professionals exist everyday within the space between copyright and creative freedom, often at the forefront of empowering patrons, students, or researchers in regard to their rights and permissions. Melody Herr (2022), Head of the Office of Scholarly Communications at the University of Arkansas, argues that “advocates – *LIS professionals in particular* [emphasis added] – should empower CC license holders themselves” (p. 5). Information freedom and promotion of the commons in response to intellectual property rights, as the championing of Creative Common licenses as well as the recent reaction to the *Access v. York* case shows, have become an issue deeply embedded within the library and information professions.

6.3 – Further Research

Creating a theoretical framework that recognizes the process of folklore commodification, as well as the individualization process present throughout it, is a necessary first step in understanding how unique cultural stories become commodified on the world stage. As this text offers a theoretical framework for understanding this problem, further research can be accomplished in the form of case studies involving specific folktales – such as an analysis of *Cinderella*, *Beauty and the Beast*, or others. Analyzing particular written and collected versions in conjunction with the unique cultural and local versions of a tale using this framework would be able to illustrate the differences not only in morality or recorded hegemony, but in the actual folklore process itself. The same can be said in regard to a particular historical folklore collector. Analyzing precisely what they collected, discarded, or championed would further reveal the prioritization of profit generation.

Furthermore, this framework can also be applied to other works within the commons, cultural or otherwise. Recognizing the process of individualization and commodification within the social commons, for example, could reveal some very interesting insights in the way in which we value and interact with information regarding housing, something that has been transformed through time and rhetoric to be understood as an investment rather than a human right, or healthcare, services of which are at constant risk of privatization.

Finally, the folklore process is not exclusively related to verbal works. The physical works of folk art – such as carving, painting, or sculpting – could also be analyzed using this framework, revealing which forms of folk art are commodified due to profit generation potential and which are ignored or replaced due to their inherent locality.

References

- Althusser, L. (2014). *On the reproduction of capitalism: Ideology and ideological state apparatuses* (G. M. Goshgarian, Trans.). Verso.
- Andersen, M. (2010). Claiming the glass slipper: The protection of folklore as traditional knowledge. *Case Western Reserve Journal of Law, Technology & the Internet*, 1(2), 148-164.
- Apfelbaum, D. S., & Stadler, D. (2021). A crash course in Creative Commons licensing. *Serials Review*, 1–4. <https://doi.org/10.1080/00987913.2021.1963634>
- Avril. (n.d.). Jimmy Choo. Retrieved January 10, 2022, from <https://us.jimmychoo.com/en/collections/womens-edits/the-cinderella-edit/avril/crystal-covered-pointy-toe-pumps--AVRILSXU001721.html?geoip=geoip>
- Bannerman, S. (2011). Canadian copyright: History, change, and potential. *Canadian Journal of Communication*, 36(1), 31–49. <https://doi.org/10.22230/cjc.2011v36n1a2321>
- Barg, J. (2018). Conventional minimum in copyright protection (The Berne Convention). *International Journal of Medicine and Medical Research*, 4(1), 89–93. <https://doi.org/10.11603/ijmmr.2413-6077.2018.1.8710>
- Barthes, R. (1967). The death of the author (R. Howard, trans.). *UbuWeb*. http://www.tbook.constantvzw.org/wp-content/death_authorbarthes.pdf
- Bishop, C. (2015). Creative Commons and Open Access initiatives: How to stay sane and influence people. *Art Libraries Journal*, 40(4), 8–12. <https://doi.org/10.1017/S0307472200040049>

- Blake, T. (2021, December 24). *20+ things you can rent out for profit today – ideas for 2022!* This Online World. <https://thisonlineworld.com/rent-items-for-money/>
- Blankier, M. (2014). Adapting and transforming “Cinderella”: Fairy-tale adaptations and the limits of existing adaptation theory. *Interdisciplinary Humanities*, 31(3), 108–123.
- Bronner, S. J. (2005). *Grasping things: Folk material culture and mass society in America*. University Press of Kentucky.
- Bronner, S. J. (2007). Introduction: Folklore as a mirror of culture. In S.J. Bronner (Ed.), *Meaning of folklore: Analytical essays of Alan Dundes* (pp. 53 - 54). Utah State University Press.
- Bronner, S. J. (2017). *Folklore: The basics*. Routledge.
- Butler, J. (2020). *The force of nonviolence: An ethico-political bind*. Verso.
- Cannella, G. S., & Koro-Ljungberg, M. (2017). Neoliberalism in higher education: Can we understand? Can we resist and survive? Can we become without neoliberalism? *Cultural Studies ↔ Critical Methodologies*, 17(3), 155–162.
<https://doi.org/10.1177/1532708617706117>
- Cantwell, R. (1996). *When we were good: The folk revival*. Harvard University Press.
- Carroll, T., & Jarvis, D. S. L. (2015). The new politics of development: Citizens, civil society, and the evolution of neoliberal development policy. *Globalizations*, 12(3), 281–304. <https://doi.org/10.1080/14747731.2015.1016301>
- Cocchiara, G. (1981). *The history of folklore in Europe* (J. N. McDaniel, Trans.). Institute for the Study of Human Issues.

- Collingwood, R. G. (2005). *The philosophy of enchantment: Studies in folktale, cultural criticism, and anthropology* (D. Boucher, W. James, & P. Smallwood, Eds.). Oxford University Press.
- Conrad, M. R., & Hiller, J. K. (2006). *Atlantic Canada: A concise history*. Oxford University Press.
- Consultation on the implementation of CUSMA extension to Canadian copyright terms. (2021, February 11). *Librarianship.ca*. <https://librarianship.ca/news/gc-cusma-copyright-term/>
- Craig, C. J. (2014). The Canadian public domain: What, where, and to what end? In R. J. Coombe, D. S. Wershler-Henry, & M. Zeilinger, (Eds.), *Dynamic fair dealing: Creating Canadian culture online* (pp. 65 - 81). University of Toronto Press.
- Creighton, H. (1975). *Helen Creighton: A life in folklore*. McGraw-Hill Ryerson Limited.
- Creighton, H. (1993). *A folk tale journey through the Maritimes* (M. Taft & R. Caplan, Eds.). Breton Books.
- Davis, L. (2006). Should the logic of ‘open source’ be applied to digital cultural goods? An exploratory essay. In H. Porsdam (Ed.), *Copyright and other fairy tales: Hans Christian Andersen and the commodification of creativity* (pp. 129 – 146). Edward Elgar.
- Day, M., & Uetricht, M. (2020). *Bigger than Bernie: How we go from the Sanders campaign to democratic socialism*. Verso Publishing.
- Deazley, R., & Meletti, B. (2017, May 18). Public domain. *CopyrightUser*. <https://www.copyrightuser.org/create/public-domain/duration/>

- Donham, D. L. (1999). *History, power, ideology: Central issues in Marxism and anthropology*. University of California Press.
- Dorson, R. M. (1983). Folktale performers. In R. M. Dorson (Ed.), *Handbook of American folklore* (pp. 287 – 300). Indiana University Press.
- Dundes, A. (2007). Folklore as a mirror of culture. In S.J. Bronner (Ed.), *Meaning of folklore: Analytical essays of Alan Dundes* (pp. 55 - 66). Utah State University Press.
- Eliot, T. S. (1982). Tradition and the individual talent. *Perspecta*, 19, 36–42.
<https://doi.org/10.2307/1567048>
- Fine, J. (2017). Negotiating with ghosts: The arbitrariness of copyright terms. *Intellectual Property Journal*, 29(2), 334–354.
- Foucault, M. (1979). Authorship: What is an author? (D. F. Bouchard, trans.), *Screen*, 20(1), 13–34. <https://doi.org/10.1093/screen/20.1.13>
- Foucault, M. (2008). *The birth of biopolitics: Lectures at the Collège de France, 1978-79* (M. Senellart, F. Ewald, & A. Fontana, Eds.; G. Burchell, Trans.). Palgrave Macmillan.
- Frankel, S., and Gervais, D. J. (2016). *Advanced introduction to international intellectual property*. Edward Elgar Publishing.
- Fredriksson, M. (2016). Pirates, librarians and open source capitalists: New alliances in the copyright wars. In H. Porsdam (Ed.), *Copyrighting creativity: Creative values, cultural heritage institutions and systems of intellectual property* (pp. 153 - 167). Routledge.

- Garcelon, M. (2009). An information commons? Creative Commons and public access to cultural creations. *New Media & Society*, 11(8), 1307–1326.
<https://doi.org/10.1177/1461444809343081>
- Geist, M. (2021, August 3). Copyright vindication: Supreme Court confirms Access Copyright tariff not mandatory, lower court fair dealing analysis was “tainted.” *Michael Geist*. <https://www.michaelgeist.ca/2021/08/copyright-vindication-supreme-court-confirms-access-copyright-tariff-not-mandatory-lower-court-fair-dealing-analysis-was-tainted/>
- Gencarella, S. O. (2010). Gramsci, good sense, and critical folklore studies. *Journal of Folklore Research*, 47(3), 221–252. <https://doi.org/10.2979/jfolkrese.2010.47.3.221>
- Guthrie, W. (1983). *Bound for glory*. Plume.
- Hafstein, V. T. (2014). The constant muse: Copyright and creative agency. *Narrative Culture*, 1(1), 9 – 48. <https://doi.org/10.13110/narrcult.1.1.0009>
- Hafstein, V. T. (2016). Author unknown: Last words. In H. Porsdam (Ed.), *Copyrighting creativity: Creative values, cultural heritage institutions and systems of intellectual property* (pp. 195 - 207). Routledge.
- Hallett, M., & Karasek, B. (2001). Introduction. In *Folk & fairy tales* (2nd ed., pp. 12 – 20). Broadview Press.
- Handler, R., & Linnekin, J. (1984). Tradition, genuine or spurious. *The Journal of American Folklore*, 97(385), 273-290. <https://doi.org/10.2307/540610>
- Harvey, D. (2010). *A companion to Marx's Capital*. Verso.
- Harvey, D. (2011). *A brief history of neoliberalism*. Oxford University Press.

Harwell, D. (2015, March 11). What \$4,595 ‘glass slippers’ say about Disney’s princess sales machine. *Washington Post*.

https://www.washingtonpost.com/business/economy/what-4595-glass-slippers-say-about-disneys-princess-sales-machine/2015/03/11/b58f28f6-c29d-11e4-ad5c-3b8ce89f1b89_story.html

Henderson, M. C. (1973). Folklore scholarship and the sociopolitical milieu in Canada.

Journal of the Folklore Institute, 10(1), 97 – 107.

Herr, M. (2022). Abusive copyright litigation, proposed solutions, and the implications for Creative Commons licenses. *The Journal of Academic Librarianship*, 48(1),

102475. <https://doi.org/10.1016/j.acalib.2021.102475>

Ishemo, S. L. (2002). Culture, liberation, and ‘development’. In D. Eade (Ed.),

Development and culture (pp. 25 - 37). Oxfam GB.

Jenkins, J. (2021, December). *Public Domain Day 2022*. Center for the Study of the Public Domain; Duke University School of Law.

<https://web.law.duke.edu/cspd/publicdomainday/2022/>

Johns, A. (2010). *Piracy: The intellectual property wars from Gutenberg to Gates*. The University of Chicago Press.

Keil, C. (1978). Who needs “the folk”? *Journal of the Folklore Institute*, 15(3), 263–265.

<https://doi.org/10.2307/3813980>

Kim, M. (2008). The Creative Commons and copyright protection in the digital era: Uses of Creative Commons licenses. *Journal of Computer-Mediated Communication*,

13(1), 187–209. <https://doi.org/10.1111/j.1083-6101.2007.00392.x>

- Klein, N. (2008). *The shock doctrine: The rise of disaster capitalism*. Vintage Canada
Random House.
- Klein, N. (2014). *This changes everything: Capitalism vs. The climate*. Alfred A. Knopf
Canada.
- Le Blanc, P. (2016). *From Marx to Gramsci: A reader in revolutionary Marxist politics*.
Haymarket Books.
- Lessig, L. (2006). (Re)creativity: How creativity lives. In H. Porsdam (Ed.), *Copyright
and other fairy tales: Hans Christian Andersen and the commodification of
creativity* (pp. 15 – 22). Edward Elgar.
- Little, J. (2018). *Against meritocracy: Culture, power and myths of mobility*. Routledge.
- Macmillan, F. (2016). Arts festivals as cultural heritage in a copyright saturated world. In
H. Porsdam (Ed.), *Copyrighting creativity: Creative values, cultural heritage
institutions and systems of intellectual property* (pp. 95 - 115). Routledge.
- Malešević, S. (2002). Globalism and nationalism: Which one is bad? In D. Eade (Ed.),
Development and culture (pp. 38 - 44). Oxfam GB.
- Marx, K. (1983). *The portable Karl Marx* (E. Kamenka, Ed.). Penguin.
- Maxwell, J. W. (2014). Resisting enclosure: Licences, authorship, and the commons. In
R. J. Coombe, D. S. Wershler-Henry, & M. Zeilinger, (Eds.), *Dynamic fair
dealing: Creating Canadian culture online* (pp. 100 - 112). University of Toronto
Press.
- McChesney, R., W. (1999). Introduction. In N. Chomsky, *Profit over people:
Neoliberalism and global order* (pp. 7 – 16). Seven Stories Press.

- McKay, I. (1994). *The quest of the folk: Antimodernism and cultural selection in twentieth-century Nova Scotia*. McGill-Queen's University Press.
- Mead, D., & Saunderson, F. (2016). Libraries, creativity and copyright. In H. Porsdam (Ed.), *Copyrighting creativity: Creative values, cultural heritage institutions and systems of intellectual property* (pp. 53 - 73). Routledge.
- Morton, A. D. (2007). *Unravelling Gramsci: Hegemony and passive revolution in the global political economy*. Pluto Press.
- Murray, L. J., & Trosow, S. E. (2013). *Canadian copyright: A citizen's guide* (Second edition). Between the Lines.
- NASA. (n.d.). *Music from Earth*. Retrieved January 17, 2022, from <https://voyager.jpl.nasa.gov/golden-record/whats-on-the-record/music/>
- Neilson, D. (2015). Class, precarity, and anxiety under neoliberal global capitalism: From denial to resistance. *Theory & Psychology*, 25(2), 184–201. <https://doi.org/10.1177/0959354315580607>
- Oguamanam, C. (2018). Wandering footloose: Traditional knowledge and the “Public Domain” revisited. *The Journal of World Intellectual Property*, 21(5–6), 306–325. <https://doi.org/10.1111/jwip.12096>
- O'Haver, T. (Director). (2004). *Ella Enchanted* [Film]. Miramax Productions.
- Orange, B. A. (2015, May 6). *Disney's Cinderella crosses \$500m at worldwide box office*. MovieWeb. <https://movieweb.com/disney-cinderella-movie-worldwide-box-office/>
- Panttaja, E. (1993). Going up in the world: Class in "Cinderella". *Western Folklore*, 52(1), 85 - 104.

- Porsdam, H. (2006). Introduction: Hans Christian Andersen, best of story tellers. In H. Porsdam (Ed.), *Copyright and other fairy tales: Hans Christian Andersen and the commodification of creativity* (pp. 1 – 14). Edward Elgar.
- Porsdam, H. (2016). Introduction. In H. Porsdam (Ed.), *Copyrighting creativity: Creative values, cultural heritage institutions and systems of intellectual property* (pp. 1 - 15). Routledge.
- Rodriguez, C. Y. (2013, May 11). *Day of the Dead trademark request draws backlash for Disney*. CNN. <https://www.cnn.com/2013/05/10/us/disney-trademark-day-dead/index.html>
- Romalis, S. (1999). *Pistol packin' mama: Aunt Molly Jackson and the politics of folksong*. University of Illinois Press.
- Scharf, N. (2017). Creative Commons-ense? An analysis of tensions between copyright law and Creative Commons. *Journal of Intellectual Property Law & Practice*, 12(5), 376–383. <https://doi.org/10.1093/jiplp/jpx023>
- Slobodian, Q. (2020). *Globalists: The end of empire and the birth of neoliberalism*. Harvard University Press.
- Soares, J. A. (2017). Meritocracy dismissed. *Ethnic and Racial Studies*, 40(13), 2300–2307. <https://doi.org/10.1080/01419870.2017.1344271>
- Standing, G. (2017). *The corruption of capitalism: Why rentiers thrive and work does not pay*. Biteback Publishing.
- Standing, G. (2019). *Plunder of the commons: A manifesto for sharing public wealth*. Pelican Books.
- Szwed, J. F. (2011). *Alan Lomax: The man who recorded the world*. Penguin Books.

- Teilmann, S. (2006). On real nightingales and mechanical reproductions. In H. Porsdam (Ed.), *Copyright and other fairy tales: Hans Christian Andersen and the commodification of creativity* (pp. 23 – 39). Edward Elgar.
- Thomas, J. (2000). Ride ‘em, Barbie girl: Commodifying folklore, place, and the exotic. In Stewart P., Siporin S., Sullivan C., & Jones S. (Eds.), *Worldviews and the American West: The life of the place itself* (pp. 65-86). University Press of Colorado.
- Titolo, D. (2017). Canadian copyright law and the *Charter of Rights and Freedoms*: Statutory property rights trump constitutionally guaranteed expression. *Journal of Intellectual Property Law & Practice*, 12(1), 30–42.
<https://doi.org/10.1093/jiplp/jpw174>
- Toll, R. C. (1983). Folklore on the American stage. In R. M. Dorson (Ed.), *Handbook of American folklore* (pp. 247 – 256). Indiana University Press.
- Top 150 leading licensors. (2021, June 22). License Global: The Licensing Industry’s Thought Leader. <https://www.licenseglobal.com/rankings-and-lists/top-150-leading-licensors>
- Touraine, A. (2001). *Beyond neoliberalism* (D. Macey, Trans.). Polity.
- Treiger-Bar-Am, K. (2016). Copyright, creativity, and transformative use. In H. Porsdam (Ed.), *Copyrighting creativity: Creative values, cultural heritage institutions and systems of intellectual property* (pp. 169 - 194). Routledge.
- Walker, R. H. (1983). Rags to Riches. In R. M. Dorson (Ed.), *Handbook of American folklore* (pp. 67 – 72). Indiana University Press.
- Weissman, D. (2020). *A new history of American and Canadian folk music*. Bloomsbury Academic.

Wenger, J. B., & Zaber, M. A. (2021, May 14). Most Americans consider themselves middle-class. But are they? *The Rand Blog*.

<https://www.rand.org/blog/2021/05/most-americans-consider-themselves-middle-class-but.html>

Wengraf, L. (2018). *Extracting profit: Imperialism, neoliberalism and the new scramble for Africa*. Haymarket Books.

Yolen, J. (1977). America's Cinderella. *Children's Literature in Education*, 8(1), 21–29.

<https://doi.org/10.1007/BF01143277>

York, M. (2001). New age commodification and appropriation of spirituality. *Journal of Contemporary Religion*, 16(3), 361–372.

<https://doi.org/10.1080/13537900120077177>

Zipes, J. (1979). *Breaking the magic spell: Radical theories of folk and fairy tales*. University of Texas Press.