RESPONSE

THE PEOPLE'S COPYRIGHT[†]

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CONTENTS

[†] An invited response to Kristelia García, *The Emperor's New Copyright*, 103 B.U. L. REV. 837 (2023).

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INTRODUCTION

In *The Emperor's New Copyright*, Professor Kristelia García describes various "extrastatutory revenue stream[s]"[1] that operate openly under the shadow of the Copyright Act of 1976 ("1976 Act").[2] Building upon her important earlier analysis of copyright arbitrage,[3] which focused on legitimate (albeit questionable) statutory revenue streams made possible by the 1976 Act's many ambiguities, Professor García now explores arguably illegitimate (perhaps even illegal) sources of revenue. The proverbial Emperor has no copyright in these areas, and yet some of the empire's subjects profit richly from transactions over his nonexistent garments.

The arguments in *The Emperor's New Copyright* contribute to a growing literature that describes (and decries) improper use of intellectual property ("IP") laws—copyright,[4] patent,[5] trademark,[6] and others.[7] IP can be deployed for purposes inconsistent with its fundamental public policies of promoting creativity, innovation, and competition, consistent with and balanced against broad public access to knowledge. While some of the traditional copyright industries may no longer wield the same clout as they did before the advent of digital networked technologies,[8] new powerful players have emerged: tech-

[1] Kristelia García, *The Emperor's New Copyright*, 103 B.U. L. REV. 837, 841 (2023) [hereinafter García, *Emperor's New Copyright*].

[2] 17 U.S.C. § 101-810. These include the abuse of judicial process (copyright trolls), overextension of copyright protection (clearance culture), misrepresentation of the subject matter of copyright (purveyors of artificial intelligence-generated art, conceptual art, and certain forms of nonfungible tokens), resistance to public domain status of works (noncompliance with *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020)), contractual overriding of copyright's public law defaults (YouTube's Content ID system), exploitation of copyright's statutory loopholes (Taylor Swift's negotiation over terrestrial performance royalties), and copyright "plus" industry norms (music industry interpolation credits).

[3] Kristelia A. García, *Copyright Arbitrage*, 107 CALIF. L. REV. 199, 199 (2019) [hereinafter García, *Copyright Arbitrage*] ("Regulatory arbitrage—defined as the manipulation of regulatory treatment for the purpose of reducing regulatory costs or increasing statutory earnings—is often seen in heavily regulated industries. An increase in the regulatory nature of copyright, coupled with rapid technological advances and evolving consumer preferences, have led to an unprecedented proliferation of regulatory arbitrage in the area of copyright law.").

[4] *See infra* Part II.

[5] *See generally* Robin Feldman, *Intellectual Property Wrongs*, 18 STAN. J.L. BUS. & FIN. 250 (2013).

[6] *See generally* Leah Chan Grinvald, *Shaming Trademark Bullies*, 2011 WIS. L. REV. 625; Jessica M. Kiser, *To Bully or Not To Bully: Understanding the Role of Uncertainty in Trademark Enforcement Decisions*, 37 COLUM. J.L. & ARTS 211 (2014).

[7] *See generally* Rochelle Cooper Dreyfuss & Orly Lobel, *Economic Espionage as Reality or Rhetoric: Equating Trade Secrecy with National Security*, 20 LEWIS & CLARK L. REV. 419 (2016).

[8] *See* Tim Wu, *When Code Isn't Law*, 89 VA. L. REV. 679, 697-99 (2003).

savvy entrepreneurs, oligopolistic tech platforms,[9] and exceptionally strategic individual creators, none of whom have qualms taking copyright matters into their own hands. As Professor García astutely observes, they do so primarily to further private, rather than public, benefit.[10]

Aside from her moral repugnance at certain forms of copyright overreach, Professor García worries that these nonstatutorily authorized revenue streams have multiple negative social impacts. According to her, they encourage nonproductive economic rent-seeking, transgress congressional intent undergirding the public law framework, and exacerbate inequalities already rampant within the copyright ecosystem.[11] And she pinpoints three main contributors to this unsettling state of affairs: (1) asymmetry in power and information among stakeholders, (2) exploitable ambiguities in the statute, and (3) the federal government's abdication of its role in safeguarding public interest values.

In response to Professor García's scholarly provocation, I offer two friendly interventions. The first is to situate these problems outside of her chosen competition and regulatory law frameworks to see what other perspectives (such as sociolegal or critical theoretical approaches) can contribute. The second is to build briefly upon her initial discussion of copyright misuse and to enlarge (via judicial means) the legislative reforms she proposes.

I. SITUATING EXTRASTATUTORY REMEDY STREAMS

Copyright's public law framework is vulnerable to many forms of insider baseball, not to mention outsider incomprehension. This is the common starting point for both Professor García's analysis and my Response. An eminent IP law professor once declared that the 1976 Act is the most blatant example of industry capture in the entire U.S. Code.[12] The decades of industry lobbying and bargaining culminating in the 1976 Act resulted in so many technology-specific provisions that it is anything but user-friendly to all except the savviest copyright specialists, enabling workarounds by these very same savants.[13] Subsequent

[9] *See* John B. Kirkwood, *Tech Giant Exclusion*, 74 FLA. L. REV. 63, 65 (2022).

[10] *See* García, *Emperor's New Copyright*, *supra* note 1, at 841-43.

[11] *See id.* at 846-72. *See generally* JESSICA SILBEY, AGAINST PROGRESS: INTELLECTUAL PROPERTY AND FUNDAMENTAL VALUES IN THE INTERNET AGE (2022) (arguing value of equality is not a feature of IP policy).

[12] Due to the length of time elapsed since I heard this statement, I would prefer not to give public attribution—but I'm happy to do so if contacted directly.

[13] *See* García, *Copyright Arbitrage*, *supra* note 3, at 252 (describing how members of Congress could not understand 1976 Act when passed). Indeed, this was also true of its predecessor, the 1909 Act. Copyright Act of 1909, Pub. L. No. 60-349, 35 Stat. 1075 (repealed 1976). As Jessica Litman wrote, "Where the [1909 Act] failed to accommodate the realities faced by affected industries, the industries devised expedients, exploited loop-holes, and negotiated agreements that superseded statutory provisions." Jessica Litman, *Copyright Legislation and Technological Change*, 68 OR. L. REV. 275, 304 (1989).

amendments, particularly the Digital Millennium Copyright Act, have aggravated the basic lack of transparency in this sprawling statutory edifice.[14]

Professor García points out the many ambiguities and complexities in the 1976 Act,[15] exacerbated by rapid changes in the types of devices and technologies that are the subject of its regulation.[16] The upshot? Copyright stakeholders, particularly sophisticated copyright industry insiders, can and often do exploit copyright for private, rather than public, benefit—what she terms private policymaking through "faux copyright" and "monetized noninfringement."[17]

Multiple historical examples abound of this capture by copyright insiders, especially when combined with outsider gullibility. Professor García's examples involve newer technologies such as artificial intelligence-generated art (the protectability of which is still up in the air as of the date of this publication[18]) and certain forms of nonfungible tokens ("NFTs"). Yet many instances of public domain books and music, based on older technologies, have been and continue to be marketed and sold as copyright-protected content.[19] Outside the copyright troll context, repeat industry players have been known to weaponize copyright in litigation against "one-shotters"[20] in the music industry. In the transactional realm, Olufunmilayo Arewa has described how flexible "Hollywood

[14] *See* Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998).

[15] Some of these, 17 U.S.C. §§ 114, 115, 109(a), 110(11), 106(4), are described in detail in García, *Copyright Arbitrage*, *supra* note 3, at 217-33; others, described here, include 17 U.S.C. §§ 102, 107, 114, 512.

[16] In *Copyright Arbitrage*, Professor García also describes the relative structural weakness in oversight by the U.S. Copyright Office, compared to analogous agencies such as the U.S. Patent and Trademark Office. García, *Copyright Arbitrage*, *supra* note 3, at 258-60.

[17] Professor García describes these activities

> as falling into one or more of several (often overlapping) categories: (1) faux copyright and monetized noninfringement stemming from the abuse or misuse of statutory rights, both incidental and intentional, or from outright chicanery; (2) monetized noninfringement made possible by powerful platforms, such as YouTube, wielding their size and influence to effectively override statutory law via private policymaking; and (3) faux copyright and monetized noninfringement occurring when powerful individuals (or groups of individuals) wield their market power in order to close perceived gaps in the statutory law in their favor.

García, *Emperor's New Copyright*, *supra* note 1, at 847.

[18] The U.S. Copyright Office is currently holding AI Listening Sessions to gather viewpoints from stakeholders. *Spring 2023 AI Listening Sessions*, COPYRIGHT.GOV, https://copyright.gov/ai/listening-sessions.html [https://perma.cc/3SGX-PZHX] (last visited Apr. 30, 2023).

[19] *See* PAUL J. HEALD, COPY THIS BOOK! WHAT DATA TELLS US ABOUT COPYRIGHT AND THE PUBLIC GOOD 71-88 (2020) (describing routine claims of copyright ownership over public domain choral works); Jason Mazzone, *Copyfraud*, 81 N.Y.U. L. REV. 1026, 1038-47 (2006).

[20] *See* Marc Galanter, *Why the "Haves" Come out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 107 (1974); *see also* Cathay Y.N. Smith, *Weaponizing Copyright*, 35 HARV. J.L. & TECH. 193, 204-05 (2021) (describing how Sony filed arguably retaliatory lawsuit against two musical artists in copyright termination dispute).

accounting" practices have been the industry norm for decades, arguably tilting the revenue stream of motion pictures steeply in favor of the studios rather than the participating creators.[21] Arguably, copyright by its very design encourages sophisticated intermediaries to exploit and extract value that would otherwise go to creators from minoritized or other politically less powerful communities.[22]

The public law baseline of the 1976 Act is the starting point for an enormous amount of private ordering. Economic activities are expected to follow from a legal framework in which the government bequeaths a legal right against the world, precisely so that rights-holders may engage in subsequent commercial transactions with others. However, these innumerable private agreements are not subject to public checks and balances in the case of contractual overreach, not to mention consistent oversight.[23] Thus, should it be a surprise to find that people are buying or selling the equivalent of the Emperor's invisible apparel? Both sociolegal and critical theoretical approaches suggest that the answer is no.

The governance landscape of private law such as contractual terms of service, voluntary licenses or assignments, voluntary industry codes, social norms, or other nonstatutorily mandated agreements is not well explored generally. Nor is its relation to the public law framework well settled.[24] And this is the location where many, perhaps most, of copyright overreach occurs.

In a purely descriptive sense, sociolegal scholars observe that public and private forms of ordering compete with or even complement each other. A well-known example is the widely used Creative Commons license—a voluntary license that deviates from the "all rights reserved" default implicit in the 1976 Act.[25] Private ordering does not always result in extrastatutory revenue streams; in the case of Creative Commons (or some kinds of open source licensing), quite the reverse. But it is an essential aspect of IP's legal pluralism.[26] Private actors are free to take matters into their own hands when the public law framework does not quite fit. Given the amount of contractual freedom allowed around the statutory framework, one could even argue that if the art world wants to assign

[21] *See* Olufunmilayo B. Arewa, *Zombies, Ghosts & Hollywood Accounting Intangibles and Intellectual Property Strategies*, *in* STRATÉGIES INTERNATIONALES ET PROPRIÉTÉ INTELLECTUELLE 431 (Alexandre Quiquerez & José Augusto Fontoura Costa eds., 2019).

[22] *See generally* K.J. Greene, *"Copynorms," Black Cultural Production, and the Debate over African-American Reparations*, 25 CARDOZO ARTS & ENT. L.J. 1179 (2008).

[23] One notable exception is the California State Legislature, which investigated recording industry contracts in the early 2000s. MATT STAHL, UNFREE MASTERS: RECORDING ARTISTS AND THE POLITICS OF WORK 143-82 (2013).

[24] Edward Lee, *NFTs as Decentralized Intellectual Property*, 2023 U. ILL. L. REV. 1049, 1064-75 (discussing private ordering as an alternative to update copyright law).

[25] *About CC Licenses*, CREATIVE COMMONS, https://creativecommons.org/about/cclicenses/ [https://perma.cc/4GZS-X5GR] (last visited Apr. 30, 2023).

[26] *See generally* Margaret Chon, *A Rough Guide to Global Intellectual Property Pluralism*, *in* WORKING WITHIN THE BOUNDARIES OF INTELLECTUAL PROPERTY: INNOVATION POLICY FOR THE KNOWLEDGE SOCIETY 446 (Rochelle C. Dreyfuss, Harry First & Diane L. Zimmerman eds., 2010).

value to nonfixed works, such as conceptual art or NFTs, why not let it?[27] With regard to "life rights"[28] and interpolation credits,[29] a slightly different question emerges: If a particular copyright community (e.g., filmmakers or musicians) decides to create their own attribution or publicity right beyond what the statute requires, why object?

Put another way, it is unclear whether the 1976 Act is to be interpreted as a ceiling rather than a floor regarding legally recognized rights, not to mention their numerous exceptions and limitations, absent a preemption issue. Numerous scholars have written about how agreements, customs, and social norms can, and perhaps should, shape transactions and even doctrine within IP.[30] The 1976 Act minimally addresses attribution and publicity rights,[31] yet they could be viewed as ethical and cultural dimensions to the dominant economic instrumentalist public law framework. Life rights or interpolation credits simply illustrate the layered and nonunitary nature of legal systems.

Of course, Professor García makes an important normative point: private actors can go too far, especially when private ordering and social norms deviate too radically from the public bargain embedded in the statute. But even if we agree on this point (as we do), then how does one draw the line precisely between legitimate and illegitimate sources of revenue? For example, on its face,

[27] Some have noted how the fixation requirement, which is not mandated by treaty law, can systematically render certain types of creative works nonprotectable under federal copyright law, thereby impacting minoritized communities such as indigenous groups or formerly enslaved peoples. *See generally, e.g.*, Trevor G. Reed, *Fair Use as Cultural Appropriation*, 109 CALIF. L. REV. 1373 (2021); Timothy J. McFarlin, *A Copyright Ignored?: Mark Twain, Mary Ann Cord, and the Meaning of Authorship*, 69 J. COPYRIGHT SOC'Y U.S.A. (forthcoming 2023) (on file with author). In addition to these equity-based observations, Brian Frye has recently suggested that "[w]hen lawyers and law professors look at NFTs, they tend to see a copyright market. I think they're mistaken. The NFT market shows us that the art market has always been a market for brands . . . ." Brian L. Frye, *Tokenized Brands*, 9 ST. THOMAS J. COMPLEX LITIG. 31, 32 (2023).

[28] "A life right is understood to encompass all of 'the personal details and characteristics that make up someone's life, such as their image, name, likeness and experiences.'" García, *Emperor's New Copyright*, *supra* note 1, at 851 (quoting Carlianna Dengel & Liesl Eschbach, *Life Rights Agreements—What You Need To Know*, ROMANO L. (May 24, 2022), https://www.romanolaw.com/2020/10/29/life-rights-agreements-need-know/ [https://perma.cc/6NVF-V65S]).

[29] *See id.* at 869 ("[A]n interpolation credit is one offered by the songwriter(s) or other copyright holder to a third-party songwriter who did not participate in the composition process in any meaningful way.").

[30] *See* PATRICIA AUFDERHEIDE & PETER JASZI, UNTOLD STORIES: CREATIVE CONSEQUENCES OF THE RIGHTS CLEARANCE CULTURE FOR DOCUMENTARY FILMMAKERS 30-33 (2004); Christopher Jon Sprigman, *Are Negative Spaces Likely To Be Fragile?*, *in* IMPROVING INTELLECTUAL PROPERTY: A GLOBAL PROJECT 18, 18-27 (Susy Frankel, Margaret Chon, Graeme B. Dinwoodie, Jens Schovsbo & Barbara Lauriat eds., 2023). *But see* Jennifer E. Rothman, *The Questionable Use of Custom in Intellectual Property*, 93 VA. L. REV. 1899, 1946-64 (2007).

[31] *See* 17 U.S.C. § 106A (limited moral rights).

clearance culture is based on legitimate voluntary licensing norms—the question is how these norms should be applied (on admittedly fact-specific and indeterminate grounds of fair use) and with which presumption (in favor of the user or the owner)?[32] The nature of the fair use doctrine emerges as a significant culprit and accessory to copyright overreach by powerful industry repeat players and risk-averse intermediaries. Yet it may be that we are expecting this doctrine to do more work than it can in resolving what is fundamentally an issue of inequality in bargaining power and structural positioning.[33]

If one views copyright as a regressive and excessive tax to begin with,[34] then any extrastatutory revenue streams should be discouraged. A query emerges, however, whether YouTube's private policymaking (through exploiting the delta between its nonrecognition of fair use under its private governance regime, Content ID, and the judicial recognition of fair use under the 17 U.S.C. § 512 public law framework) is really any different from Google (YouTube's parent company) shaping public law by taking strong positions in litigation[35] or by lobbying members of Congress. Again, from a legal pluralism perspective, these activities are simply competing forms of ordering.

Whether transactional or litigation, public lawmaking or private policymaking, these activities exemplify the sociolegal observation that the "haves" consistently come out ahead.[36] Shifting to a critical theoretical frame, which emphasizes the chameleon-like yet enduring and embedded nature of structural inequality, the fact that knowledgeable repeat players continue to game the copyright system in their favor through new means is hardly a surprise. It is, however, a nontrivial point that bears repeating.

II. EQUITABLE AND COMMON LAW TOOLS TO ADDRESS ABUSE OF COPYRIGHT

Professor García concludes by recommending a number of largely legislative-based proposals. These include mandatory statutory licensing, amendments to prevent exploitation of statutory ambiguities by private parties, amplifying 17 U.S.C. § 506 to include civil liability for copyright overreach, and mandatory disclosures.[37] And they are all excellent suggestions to curtail undesirable forms of private ordering.

In addition to these proposals, some of the examples discussed by Professor García could fall under a general concept of "abuse of copyright" rather than the

[32] *See* Rothman, *supra* note 30, at 1911-16.

[33] *See* Anjali Vats, *The Racial Politics of Fair Use Fetishism*, 1 LSU L.J. SOC. JUST. & POL'Y 67, 71-72 (2022).

[34] *See generally* Glynn Lunney, *The Copyright Tax*, 68 J. COPYRIGHT SOC'Y 117 (2021).

[35] *See, e.g.*, Authors Guild v. Google, Inc., 804 F.3d 202, 229 (2d Cir. 2015); Authors Guild, Inc. v. HathiTrust, 755 F.3d 87, 105 (2d Cir. 2014).

[36] *See* Galanter, *supra* note 20, at 107.

[37] García, *Emperor's New Copyright*, *supra* note 1, at 888-91.

narrower equitable defense of misuse that she notes.[38] As I have suggested, courts might expand the existing doctrines, including but not limited to misuse, to reach all manner of undesirable end runs around the public bargain; courts might even recognize a private right of action to address various forms of copyright overreach.[39] This obviously would dovetail with Professor García's recommendation to expand bases for liability under 17 U.S.C. § 506. Even absent action by Congress, however, courts can use equitable and common law principles to develop this concept of copyright abuse beyond the current confines of misuse.

Although the equitable doctrine of IP misuse has existed since the 1900s,[40] copyright misuse only emerged in full force in 1990[41] and has evolved primarily in the context of software licensing practices. Courts have expanded the concept to include anticompetitive practices that do not have to rise to the level of antitrust violations, overclaiming by asserting copyright over plainly nonprotectable content, abuse of litigation process, false claims of copyright ownership, and other violations of the general public policy embodied in the grant of a copyright.[42]

Some legal scholars have suggested that copyright misuse could address overreach in digital copyright anticircumvention provisions or form consumer contracts.[43] Others have argued that it should be guided by First Amendment principles when copyright holders attempt to suppress speech.[44] Addressing both

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[38] *See* García, *Emperor's New Copyright*, *supra* note 1, at 848-49 ("This practice looks a lot like copyright misuse, an affirmative defense to a claim for copyright infringement that may be available when 'copyright . . . holders assert their rights, not to protect from market harm to the protected works, but to protect other aspects of their market by using the protected work.'").

[39] Margaret Chon, Presentation at Intellectual Property Scholars Roundtable: Abuse of Copyright: Intervention into Racial Inequity? (Aug. 11, 2022); *accord* Broad. Music, Inc. v. Columbia Broad. Sys., Inc., 441 U.S. 1, 25 (1979) (recognizing plaintiff's assertion of copyright misuse in context of declaratory judgment action).

[40] *See generally* Christina Bohannan, *IP Misuse as Foreclosure*, 96 IOWA L. REV. 475 (2011).

[41] *See, e.g.*, Lasercomb Am., Inc. v. Reynolds, 911 F.2d 970, 973, 979 (4th Cir. 1990) (recognizing that copyright misuse is valid defense in infringement action).

[42] *See* Smith, *supra* note 20, at 198 (focusing on speech suppression and privacy concerns, but recognizing "many other problematic and abusive uses of copyright, such as overreaching copyright claims, copyright trolling, anticompetitive uses of copyright, or even abusive claims of copyright over employee creations"); *see also* John T. Cross & Peter K. Yu, *Competition Law and Copyright Misuse*, 56 DRAKE L. REV. 427, 438-42 (2008) (describing abuse cases in United States and Canada); Cathay Y.N. Smith, *Copyright Silencing*, 106 CORNELL L. REV. ONLINE 71, 71 (2021).

[43] *See* Dan L. Burk, *Anticircumvention Misuse*, 50 UCLA L. REV. 1095, 1096-97 (2003); Lydia Pallas Loren, *Slaying the Leather-Winged Demons in the Night: Reforming Copyright Owner Contracting with Clickwrap Misuse*, 30 OHIO N.U. L. REV. 495, 500-01 (2004).

[44] *See, e.g.*, David S. Olson, *First Amendment Based Copyright Misuse*, 52 WM. & MARY L. REV. 537, 537-38 (2010); William F. Patry & Richard A. Posner, *Fair Use and Statutory Reform in the Wake of* Eldred, 92 CALIF. L. REV. 1639, 1658 (2004) ("The doctrine of

patent and copyright law, one scholar suggests a concept of "inappropriate use" of IP that includes "pressuring others into surrendering rights, harassing competitors, and engaging in complex anticompetitive schemes."[45] Another recently suggested that misuse could address "uses of copyright to achieve noncopyright objectives, regardless of whether the reasons for those uses may seem justified."[46]

Abuse of copyright may be a useful strategy to counter the general lack of U.S. public law oversight of private law vehicles such as contractual terms of service and other licenses as well as assignments.[47] Governing law could fall under the umbrella of copyright rather than contract law. A capacious concept of copyright abuse might circumvent some of the worst overreaches of private ordering (including mandatory arbitration clauses in terms of service),[48] not to mention avoid the general bias toward freedom of contract. While beyond the scope of this Response to flesh out fully, this concept has the potential to address many of the questionable extrastatutory practices described by Professor García.

CONCLUSION

Should we curb the overreaches perpetrated by the Emperor's Copyright? Professor García obviously thinks so, and I agree. Although our reasons may be slightly different, we both worry that extrastatutory revenue streams threaten the fragile and already lopsided copyright social bargain, whether enacted through public law or implemented via private law. From my perspective, characterized by the IP social justice "tenets of socially equitable *access, inclusion, and empowerment*,"[49] these recent end runs around the explicit and implicit public policy bounds of the 1976 Act spell even greater inequality, exclusion, and

copyright misuse is . . . applicable where litigation is threatened in an effort to extract a licensing fee or other profit when there is no reasonable basis for supposing that the threatener's copyright has been infringed. The intent and effect of such behavior are to give the copyright owner more legal protection than copyright law is designed to do—which is a serviceable definition of copyright misuse.").

[45] Feldman, *supra* note 5, at 253-54.

[46] Smith, *supra* note 20, at 197-98.

[47] By contrast, the European Union has "required the nullification of license terms that override specific exceptions mandated by [EU] directives." Jonathan Band, Protecting User Rights Against Contract Override 1 (May 2023) (unpublished manuscript), https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1099&context=research [https://perma.cc/74KA-JVJP].

[48] In a lawsuit brought against Getty Images, Inc. for "fraudulently claiming ownership of copyrights in public domain images (which no one owns) and selling fictitious copyright licenses for public domain images (which no one can legally sell)," the district court ultimately granted Getty Images's motion to compel arbitration. Class Action Complaint at 1, CixxFive Concepts, LLC v. Getty Images, Inc., No. C19-386, 2020 WL 3798926 (W.D. Wash. July 7, 2020); Order Granting Defendant's Motions To Compel Arbitration at 12, *CixxFive Concepts*, No. C19-386, 2020 WL 3798926.

[49] Lateef Mtima, *IP Social Justice Theory: Access, Inclusion, and Empowerment*, 55 GONZ. L. REV. 401, 416 (2019) (emphasis in original).

disempowerment for already minoritized and marginalized copyright stakeholders. Regardless of one's particular theoretical lens, however, Professor García does us all a great service in reminding us that the people's copyright should be paramount over the Emperor's Copyright, whether new or old.