

# Reframing Essay

by Natalia Ivanova Mount

Annotated by

Dadais Americanus

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## Building a fair art market in a sharing economy

The economics of the art market are broken. To fix them, we need to reevaluate the way we value and fund the labor required to produce art.

*The political economy of creative works is organized primarily around the intellectual property economy. Intellectual property provides the means for enforcing exclusivity around art, which in turn drives the economics of scarcity that have created a market failure in the art market. Works protected by intellectual property can be referred to as “Art,” with a capital A (see Art. 1, Sec. 8, Clause 8 of US Constitution, which provides the Constitutional basis for IP laws in the United States).*

Efforts to resuscitate the market have produced brilliant research in cultural theory and art theory but most of this work is largely inaccessible to anyone but academics. Recently, there has been a concerted effort to include unrepresented voices and marginalized communities in the discussion, but I argue we cannot talk about equity in the arts if we don't address the underlying structures of fair labor, intrinsically connected to the value we attribute to art and art production. How can we build a new art market when those with power continue to propagate a system that is based in competition, scarcity, and individualism that primarily benefits them?

*The intellectual property system is a primary tool wielded by those with power to drive competition, scarcity, and individualism. The system has been propagated around the world through colonial enterprise, imposed upon non-Western countries through trade agreements. IP creates competition within countries through rights to exclude that are national in scope. At the international level, competition is created by blocking imports of Art that infringe national-level IP. Scarcity is created through the right to exclude, which prevents people from freely copying and disseminating Art. Individualism is inherent to the IP system, which fails to recognize collective authorship. Instead, IP laws generally force artists to identify themselves as individuals in order to receive IP protection.*

When funding mechanisms break, individuals and organizations depend more on mutual production, cooperation, reciprocity and collaboration. Since the value of art in the traditional market system is directly linked to labor and capital, we need to create an alternative that recognizes broader value contributions. We must avoid the consequences of other failing economic models that:

1. Operate on the basis of perpetual scarcity in order to create monopolies;

*Although IP purports to provide rights to exclude for only limited times, as a matter of practice, IP is the tool for perpetual scarcity. Over the past 230 years, copyright terms have been consistently expanded from ~28 years to ~120 years. Patent terms have expanded from 17 years to 20 years and many businesses try to “evergreen” patents by patenting different pieces that are necessary to practice a particular invention. Trademarks have no expiration and last so long as they are used in commerce.*

2. Assure profits are held by the top 1 percent of the population through privileged market access, tax laws, and systemic racism;

*The complexity of the IP system and the cost of utilizing it creates a remarkably effective means of extracting wealth from the 99% and redistributing it to the 1%. Property systems as a whole are inseparable from systemic racism and the IP system is arguably a modern-day ethereal chimera that advances the systemic racism known across real property systems into the world of intangible property.*

3. Homogenize and commodify culture, turning a producer society into a consumer society.

*IP is the primary way in which culture, intangible and non-rival, is rendered into a tangible and rival commodity. However, IP laws have rights for IP producers that can be reevaluated and reorganized to create a new culture of collective-producer empowerment, focusing the homogenizing effect of the IP system into a laser-like tool that can be wielded by an empowered collective.*

Mirroring other market systems, the art market represents a network of direct market players, suppliers, and entities that influence the business environment. Not only do art buyers, sellers, professionals, and institutions control the production and exposure of new art, they also decide its value. The value of a contemporary artwork is calculated through a formula: The time spent making the work, the cost of materials and labor, its size and medium, the artist's educational background and reputation, the market price for similar works, what stage of their career an artist was in when the work was created, and the scarcity of production. This artificial value of the work is tested on the international art market by traveling exhibitions and projects, and the hosting cities have a make-or-break impact on the perceived value of the art. By the time the work enters the secondary market, the artist has no royalty laws to protect their investment and stands to gain nothing from subsequent sales.

*What if we could redefine the art market to make it broader? The Art market (i.e., market for creative works protected by IP) is broader than the traditional art market because it would include industrial art, or Art protected by patents. The benefit of reimagining the art market towards an Art market could enable a commons to capture a much larger market value, which could then be used to redistribute funds from industrial art to all artists in the commons (i.e., use the value of patent Art to redistribute to traditional artists).*

*Consider the ways in which the current art market "others" untrained/folk art production when it identifies such art as "outsider art." Meanwhile, the broader economy within which the current art market exists consistently alienates artists from the economic power of their production, intermediating institutional capital between art production and art distribution. In this way, the 99% of art producers become "economic outsiders." If one were to organize all artists into an Art commons (even "outsider art" is protected by IP), the economic power of the collective could be used to disintermediate institutional capital in profound ways.*

One of the artificial measurements used to determine the value of an artist is their demographic, because the higher an artist is in art market hierarchy, the more likely they are to be wealthy. Those

with money are more likely to gain favor with institutions such as education and award-conferring bodies and in turn more likely to be recruited to work at an established, internationally renowned institution. This is one of the mechanisms through which the market reproduces itself, and accordingly, establishes a second-class tier of art organizations.

*One can also view the current relationship between artistic value and the demographics of the art producer as a function of the segregation of traditional artists from the negotiating power of industrial artists. In the broader Art market, the value disparity is even more magnified: software developers, scientists, and engineers are paid well into the six figures for their art. A commons could seek to break down this segregation inside of the commons and function as a kind of Artists' union with wealth distributed equitably as a basic income.*

Though large institutions depend on a mass of small organizations as a point of contrast, the behemoths are still perceived by both the general public and those with specialized interest to be more valuable. That means the value of art labor and production is directly linked to the social value of the institution. It is worth noting that generally, art professionals' labor is still valued less than their counterparts in fields like technology, finance, law, and medicine.

*If we look at the world of art institutions/organizations through the lens of market competition, the dynamics look similar to any other market where large behemoths function like monopolists, capable of wielding market power in ways that skew and distort public perception of value. Behemoths may function alone, or as cartels with other behemoths to ensure hegemony and to "detect and punish" rivals that could dislodge the market power of the behemoth. Absent some type of external intervention, the only method that seems capable of breaking up the power of the behemoths is collective action of smaller organizations. This can be done through a commons, which can transform the smaller organizations into a block that can rival the market power of the behemoths. The bigger the commons, the better. An Art commons, i.e., one open to anyone creating IP-protected "Art," could theoretically dwarf the behemoths.*

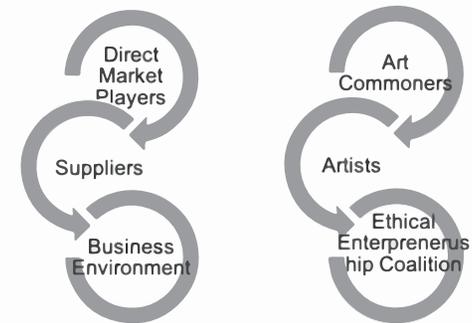
In his 2002 essay “Heart of Darkness: A Journey into the Dark Matter of the Art World,” Gregory Sholette says the composition the art world is akin to “dark matter,” which comprises 85 percent of matter in the universe. The art world’s dark matter are the marginalized artists, who are essential to the survival of the mainstream, big art business. Extending this idea further, the dark matter of the cultural industry are those marginalized artists who operate in the independent art scene, and through their invisible, and usually low-wage labor, perpetuate a market system that primarily serves the top 1 percent of the art world, whose power is able to perpetuate it.

*To continue with this analogy, by expanding the notion of the art world to the “Art” world (i.e., the world of works protected by IP), we’d be moving from inclusion of dark matter in the universe (i.e., all art producers in the art world), to inclusion of entire other universes of art in what we could consider to be an Art multi-verse. In the world of IP, the current art world is essentially a particular kind of copyright universe. An Art multi-verse would include other copyright universes (e.g., those of software and written works), patent universes, and trademark universes.*

*We could also flip the analogy to galaxies comprising a single Art universe, rather than multiple universes. Think of the current art world as our own galaxy, the Milky Way, which is comprised of ~95% dark matter (i.e., same point available as that made in Heart of Darkness). All “mass” in the Art universe can be understood as every art production that is protected by IP (which is pretty much everything etched into some type of medium). We then have different galaxies of Art mass, each behaving by certain rules and dynamics heavily informed by the way in which IP affords exclusivity for that particular type of mass.*

*Better yet, we may go one gravitational ecosystem lower, imagining ourselves inside an Art galaxy (like the Milky Way) of which billions of other art galaxies do (or could) exist. Through this lens, we orbit around a galactic center that is our global economy. Spiral Art arms extend out from the galactic center, each comprised of different forms of IP that give birth to Art, like stars, around which commons, like planets, orbit. Such a perspective enables us to remind ourselves that the political*

*economy that gives rise to exclusive Art is a product of a very particular, Eurocentric way of thinking. Just as galaxies move further apart from one another over space and time, we are growing more and more distant from alternative epistemologies (e.g., indigenous knowledge going extinct) that could give rise to new galaxies/new economies. Our Art practice then becomes a perennial exercise of self-location, humbled by the universe of infinite possibility, in which we struggle to create Art that enables life to flourish.*



### A global sharing economy for art

Direct market players like producers, buyers, and consumers are perpetuating an art market that undervalues labor. I propose we replace these roles with art commoners, comprising art professionals, funders, and the public, who are engaged in the co-production of social and public goods, and measuring their value. Next, we should replace the suppliers from the traditional market system with artists, who can divide their labor and production, creating new relationships with their peers and the public, and share the power associated with their skill, knowledge, experience, and position in order to empower others.

*The commons proposed above is entirely consistent with what could exist within the architecture for what I would propose to be a broader Art galaxy. If we imagine locating a commons (i.e., a planet upon which we reside within any given Art solar system) within an architecture for an Art galaxy, we could avail ourselves to greater market power available for redistribution when we scale up to considering art as all Art, defined by that*

*which is protected by IP. By putting IP at the center of this conceptualization, we also avail ourselves to very precise and immediately deployable legal frameworks that can be used to efficiently enforce and enact collectively defined ethical frameworks embedded as “morals clauses” into IP/art licenses. The IP legal framework also enables us to collect wealth via IP royalties that can be redistributed as basic income to all commoners/producers.*

Lastly, we need an ethical entrepreneurship coalition to replace current entities that influence the art market, such as governments, infrastructure providers, and industry associations. The coalition will invest in the sharing art economy, a fair distribution of profit, and the mobilization of social capital and community. Global affinity groups will develop an international commons-centric art world, which will operate autonomously, in parallel to the official international art market.

*A “morals clause” embedded into an IP agreement provides an enforceable legal tool that can convey ethical principles into the Art market (for more context on a “morals clause,” check out this three-part post (part 1, part 2, part 3) I wrote for Corporate Accountability Lab, which dives into the morals clause and its viability in an IP license). The enforceability of the morals clause can be conditioned on the right to use, share, display, or commercialize the artwork (such rights are technically conveyed in an IP license, which calibrates the way in which a licensor manages the “right to exclude,” inherent to the IP). The means of creating a morals clause are not bound by any legal restriction: one can write a morals clause individually, collectively, through democratic processes, through conveyance to another group/collective, etc. In short, the world of authoring a morals clause could itself become the defining program of an ethical entrepreneurship coalition, itself ripe for experimentation and artistic exploration.*

*A morals clause could then be enforced by a coalition of IP lawyers. The world of IP licensing is undergoing dramatic changes, with new litigation-to-license business models like “patent trolling,” or “copyright trolling” becoming popular. The use of these models has created well-deserved criticism*

*because of the ways in which they force art consumers to pay licenses or otherwise face severe legal consequences, but the legal model itself is sound. If the model were adapted to the enforcement of morals clauses, the enforcement would look much more like a Robin Hood model than a “trolling” model. As a Robin Hood model, there would be opportunity for the legal work to be done on a pro-bono basis, especially if the morals clauses were used to protect things like human rights and the environment in the supply chains in which the artwork is being used.*

### **A new currency for the art world**

If we are creating a new art market, it follows that we will reconsider what constitutes fair labor and how the value of art is appraised. We will create an alternative currency that builds community assets and social capital, as well as solidarity among all participants, and private and public partners.

*By linking art to IP-defined Art, an alternative currency used for the exchange of art could be backed by IP. The value of IP is already recognized within the world of fiat currency, which would enable the alternative currency to have immediate and recognized value within the current economy.*

Our goal is not to annex the art market from capitalism but to expand the art practice and production for the common good. Rather than extracting labor and resources from our communities through exploitative art practice and production, we will create art and culture commons. This strategy has the potential to weaken the capitalist structures of the art market, prompting a reconfiguration that liberates cultural workers.

*An IP-backed alternative currency is consistent with the goal of not annexing the art market from capitalism. Instead, if sufficiently scaled, the alternative currency could have real potential to compete alongside fiat currency, and at least theoretically (IP is deemed to constitute upwards of 84% of the value of Fortune 500 companies), replace fiat currency. By linking the availability of the alternative currency to compliance with the morals clauses that exist inside the IP licenses used by*

*the commons, the morals clauses could function as the means for reconfiguration of the capitalist structures.*

## Saving the independent arts ecosystem

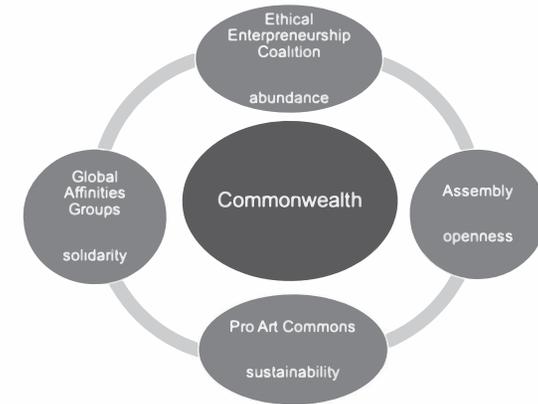
Along with the art value crisis, there is also a crisis in how our society values independent art spaces and their contributions to the commonwealth. The economic power of the independent art scene has been eroded during the past 20 years and the whole art ecosystem has become dangerously unbalanced. Art professionals who work in the independent art scene are constantly competing for funds, looking for long-term financial security, and health. However, these same art professionals, end up organizing and producing in the mode of 'self-exploitation,' due to a lack of funding that guarantees fair wages. Funders reign in the activities of independent art spaces and render them impotent, and artists voluntarily join the ranks of the 'working poor,' perpetuating the art world's hierarchies and institutional hegemony.

Instead of applying Band-Aids to a broken art market, I propose we co-create a new one.

*If we sufficiently expand the commons to incorporate as many artists as possible who wish to participate in a world of basic income and profit sharing (e.g., including artists like inventors who create high-value industrial art), the commons could become a self-sustaining vehicle for self-governance and equitable redistribution, co-created by all commoners. The sense of self and purpose that could arise from a group of Art commoners, all creating and producing art for the purpose of collective liberation, could be an explosive source of creative inspiration. Such inspiration may create positive feedback loops for creating more and more inspired Art.*

## A new model for artistic commons

This is my proposed investment model for Pro Art Commons:  $\frac{1}{4}$  artists,  $\frac{1}{4}$  public,  $\frac{1}{4}$  cultural workers, and  $\frac{1}{4}$  funders.



## Pro Art Commons for sustainability

- Create shared material and immaterial resources and services, solidarity bonds with local and global commons, and open co-ops.
- Produce art and programs.
- Earn living wages.
- Equally share assets, profit, income, expenses, and funding.
- Practice transparency in all operations through open coop tools.
- Create an alternative currency that has a circulation through services artists need, including landlords, supermarkets, restaurants, and cinemas.
- Practice reciprocity and cooperation in all operations.
- Empower other organizations with the tools to reframe their practice to a commons-centric model.

## Creating an assembly for openness

- Engage in the research and development of commons-centric models for art organizing, production, and exhibition.
- Engage with specific issues, emergent from Pro Art Commons such as an alternative, social currency, an alternative art market and the value of art and art labor in a post-capitalist economy.

- Organize international knowledge-sharing events, such as symposiums, reading groups, debates, working groups, forums, digital participatory platforms, and other projects.
- Create new strategies to mitigate traditional art market structures that are exploitative, countering them with an equitable set of economic relationships, such as: people before profit, fair labor, and open participation in the arts.
- Research, develop and pilot programs, such as a universal basic income for artists, collectives, DIY spaces, and independent art organizations.
- Advocate for more infrastructural resources and funding for emergent art and culture commons and other open organizational models.

### **Create global affinity groups for solidarity**

- Create a global network of commons-oriented affinity groups, which will engage in knowledge-sharing, mutualized art production, labor and exchange.
- Artists and cultural workers use a fair license when contributing to material and immaterial art commons.
- Produce the first decentralized, peer-to-peer, global art biennial.
- Co-create a digital platform and a global network for the open distribution of research and field work, specific to a commons-centric art practice, production, and presentation in the context of post-capitalism.

### **Creating abundance through the Ethical Entrepreneurship Coalition**

- Change the art market and funding dynamics from a position of scarcity to a position of abundance.
- Work directly with city and state agencies to turn these government bodies into enabling and empowering partners for an ethical art economy that is generative.
- Invest in the infrastructure and sustainable growth of an ethical

art economy, fair profit, and the mobilization of social capital. Collectivize risk, break competition and monopolies, and disrupt institutional hierarchies.

### **Building a commonwealth**

- All circles will work towards the commonwealth, and supreme authority is vested in the people. All circles work towards an open, knowledge-based society.
- All circles, previously fragmented, will connect and feed from each other through a rhizomatic structure that is based in openness, knowledge-sharing, and fair labor practice and production.
- Shared resources and services will create social value in our individual and collective production of art. Any surplus in the system will be reinvested, and shared.

*Pro Arts COMMONS & Occupy IP joined forces to re-frame the value of art and art labor in the context of a sharing economy through the use of transgressive practices in art & law.*

This is an experiment in socially engaged art. If artists are willing to activate the terms upon which their art enters the market — by creatively deploying the copyright attached to their art — might we relocate the political agency of art? Can a work of art have direct political agency, not through debates over righteousness of its “political aesthetic” or political content, but through artists reclaiming the legal and economic scaffolding surrounding it? And beyond this critical intervention, how can artists be empowered by creative retooling of intellectual property? How can we jailbreak intellectual property law?

If we sufficiently expand the commons to incorporate as many artists as possible who wish to participate in a world of basic income and profit sharing (e.g., including artists like inventors who create high-value industrial art), the commons could become a self-sustaining vehicle for self-governance and equitable redistribution, co-created by all commoners.

The sense of self and purpose that could arise from a group of Art commoners, all creating and producing art for the purpose of collective liberation, could be an explosive source of creative inspiration. Such inspiration may create positive feedback loops for creating more and more inspired Art.

Our goal is not to annex the art market from capitalism but to expand the art practice and production for the common good. Rather than extracting labor and resources from our communities through exploitative art practice and production, we will create art and culture commons. This strategy has the potential to weaken the capitalist structures of the art market, prompting a reconfiguration that liberates cultural workers.

This is an experiment in radical law. We inhabit a system that affords more legal protection to someone who performs shelter, performs outrage at indignity, or performs place than someone who claims them as a right. Artists' economic rights, mediated through their capacity to exclude others from their creations, are sacrosanct in US law (and increasingly interpreted in ways that tragically erode the public domain). What happens if we radically repurpose these rights for the public good? Would that not be promoting “the Progress” intended the US Constitution's protection of intellectual property rights?

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By linking art to IP-defined Art, an alternative currency used for the exchange of art could be backed by IP. The value of IP is already recognized within the world of fiat currency, which would enable the alternative currency to have immediate and recognized value within the current economy.

An IP-backed alternative currency is consistent with the goal of not annexing the art market from capitalism. Instead, if sufficiently scaled, the alternative currency could have real potential to compete alongside fiat currency, and at least theoretically (IP is deemed to constitute upwards of 84% of the value of Fortune 500 companies), replace fiat currency. By linking the availability of the alternative currency to compliance with the morals clauses that exist inside the IP licenses used by the commons, the morals clauses could function as the means for reconfiguration of the capitalist structures.

## Pro Arts Gallery & COMMONS

Pro Arts COMMONS is a collectively-held space in Oakland, California that blurs the line between art, debate, experimentation, and collaboration. Through the sharing of material and immaterial resources, we reflect Oakland's existing artistic and cultural fabric, while creating future landscape of other commons-centric spaces that encourage the economic and cultural power of the community. Our collaborative activities are rooted in these mutual values and principles.

## Pro Arts COMMONS Project

Pro Arts COMMONS Project is a global, peer-to-peer networked community, spearheading a movement towards a post-capitalist art economy. Working together, commoners and affinity groups aim to reframe the value of art and art labor in the context of a sharing economy. We disrupt the logic of capital through sustaining those commons-centric spaces, practices, and value production models that re-wire the broken connections between artist, community, and everyday life.

## Natalia Ivanova Mount

Natalia Ivanova Mount is a dynamic cultural activist, organizer and sociologist of art with extensive experience in nonprofit leadership, development and strategic partnerships. She has organized numerous exhibitions and

site-specific projects, experimental theatre productions, sound-based performance, film, radio, and public programs and events. In the beginning of her career, Natalia worked at MoMA PS1 and the Clocktower, both located in NYC. Currently, she is the Executive Director of Pro Arts Gallery & COMMONS where she is actively engaged in the co-creation of the first Art & Culture Commons model in Oakland, CA.

## OccupyIP

OccupyIP makes art out of intellectual property (IP), utilizing law, Art, and economic supply chains as new media for political action. OccupyIP empowers IP producers — artists, writers, scholars, inventors, anyone producing creative works — to activate the terms upon which their art enters the market in harmony with their radical politics. What happens when we turn a part of the law that has become sacrosanct across the world — the economic rights of IP producers — against its intended purpose? What if IP producers reclaim the legal and economic scaffolding surrounding their individual creative works to protect social actions, be in solidarity with workers in supply chains, or highlight the absurdity of maximalist intangible property? OccupyIP currently consists of two meta-projects. “The People’s Guide to Intellectual Property” is a pedagogical exercise in 3-parts: (1) theory, critical essays on the origins and political economy of IP today; (2) tools, practical guides on how Artists can activate morals clauses in licensing or employment contracts, how IP can be used for commoning, and how to make art out of the law; and (3) tutorials, because no one should need a law degree to understand how their art enters the market. “Occupations” is occupyIP in praxis; experiments, laboratories, actions, performance.

## Dadais Americanus

Dadais is interested in making art out of intellectual property itself, utilizing law, Art, and economic supply chains as new media for political action. He approaches intellectual property from the perspective of a patent lawyer, a student of liberation praxis, and an amateur folk artist. He lives in Manzanares el Real, Spain.



[www.proartscommons.org](http://www.proartscommons.org)