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Creative Communities and Intellectual Property Law

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Intellectual Property JOTWELL

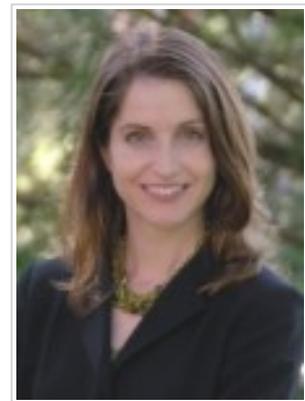
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CREATIVE COMMUNITIES AND INTELLECTUAL PROPERTY LAW

🕒 Nov 1, 2017 | 👤 Laura A. Heymann | 💬 Add a Comment

Betsy Rosenblatt, *Belonging as Intellectual Creation*, 82 Mo. L. Rev. 91 (2017).

In late November 2016, recreational knitters Krista Suh and Jayna Zwieman conceived of The Pussyhat Project — a way for knitters and crocheters to participate in the January 21, 2017, Women’s March on Washington by creating a simple hat for marchers to wear. To facilitate the project, there was a [website](#) (featuring several patterns for free download, the first created by yarn store owner Kat Coyle), an Instagram account, and a hashtag. There wasn’t, however, a focus on a particular level of output. Rather, the goal of the project was to [foster community](#) through creative work, building on existing networks of knitters and [highlighting](#) the ways in which knitting circles are often “powerful gatherings of women, a safe space to talk.”



[Laura A. Heymann](#)

The community’s boundaries were porous and self-policed. Anyone was welcome to claim membership; the only requirement was to create or be the recipient of creation. Although the basic form of the hat was loosely defined — pink in color and rectangular in shape — individual knitters were free to stylize their hats in any way they wished. Patterns were freely shared, and distribution took place via a voluntary infrastructure. The community that resulted [produced](#) tens of thousands of hats in two months, and representative hats now reside in the [collections](#) of major museums across the country.

Scholars will undoubtedly have much more to say about this movement as its history is written, including critiques involving, *inter alia*, [race](#), class, [gender identity](#), and the sociology of [protest movements](#). For now, the project is worth adding to our consideration of other organic communities that have inspired creativity without a focus on commercialization — even if they also feature stronger policing mechanisms (Wikipedia), more reliance on traditional IP inputs ([fan edits](#) and cosplay), or more emphasis on reputation building (message boards and Facebook posts). What do these community gardens of creativity — unburdened by concerns about monetization or propertization — tell us about what the goals of intellectual property law should be?

Professor Betsy Rosenblatt suggests in her recent article that the law has too narrow a focus. Creating with and for others, [research](#) shows, promotes a sense of belonging, which, in turn, motivates and improves the results of creativity. Indeed, for the pussyhat knitters, a sense of belonging to a social movement likely provided the entire motivation to create. (I should make clear here that the example throughout of the Pussyhat Project is mine, not Professor

Rosenblatt's.) So if the law focuses only on the tangible results of creativity — what Professor Rosenblatt refers to as “stuff” — and fails to consider the importance of belonging, it might incentivize less creativity than it otherwise would.

What does it mean for a creator to belong? Professor Rosenblatt writes that a sense of belonging is both personal and “contextually mediated.” It arises when an individual feels “included, valued, and respected” by members of a group to which she is connected and with which her “values are in harmony.” (P. 96.) Belonging may be, at times, officially determined, but a *sense* of belonging can be only a psychological and emotional phenomenon. One cannot experience a sense of belonging unless one perceives oneself to belong, depending on “the individual’s subjective experience of interactions with in-group and out-group members.” (P. 100.) Whether a group offers official validation in the form of an award or membership criteria, unofficial acceptance in the form of discussions and ratings of one’s creative efforts, or simply the ability to become part of the group through an act of creativity, the emotion that is likely to spur creativity is the (scientifically tested) feeling of connection these activities inspire.

So if a sense of belonging both inspires and is inspired by creativity, and if creativity is what our intellectual property system aims to incentivize, at least in part, shouldn’t our system take belonging more into account, along with other noneconomic motivations? If it did so, what might such a system look like?

We would start by determining what conditions facilitate a sense of belonging. Research on organizational membership might help us to understand the psychology behind individuals’ decisions to join a community, commit to that community, or take a leadership role in that community. Shared semiotics and discourse no doubt create the bonds that allow an individual to feel included. Reputational and other benefits from a creative community may create a desire (or perceived obligation) to return those benefits in kind. We might also consider, as Professor Rosenblatt suggests, the importance of shared endeavors, participation in decision-making, psychological reward, and community values. (Pp. 101-03.) (The success of the Pussyhat Project, for example, seemed to result from all four — indeed, the freedom participants were given to make their creativity manifest was probably a significant validating factor.)

This is an important, albeit challenging, project, and, to her credit, Professor Rosenblatt remains cautiously optimistic about intellectual property law’s ability to respond fully to these questions. Focusing primarily on copyright law, she suggests that greater attention should be paid to attributional and reputational interests and to rules that encourage collaboration and playfulness — all areas that align with the inherently psychological nature of belonging. Yet, even starting modestly, we cannot ignore some important threshold questions that will help to anchor foundational principles. Should intellectual property law remain agnostic if, for example, the sense of belonging it promotes results in a group that is socially undesirable and/or dangerous to others? Should it matter whether intellectual property law is used to foster a sense of belonging or to assert a preference for disassociation? Without a firm sense of our values regarding these questions, our ability to foster the conditions for socially beneficial creativity will be hampered.

So what might we learn from the Pussyhat Project, insofar as it serves as one case study for Professor Rosenblatt’s proposal? The creative productivity generated by the pussyhat knitters would not have resulted without a sense of belonging. It also would not likely have resulted if the project had been bound by formal rules, by a sense of ownership, by exclusion, or by a definition of “the work” — all intellectual property law’s vocabulary. Not all communities, of

course, are creative (or creative in the same way), and not all creators benefit from community (or benefit from it in the same way). But Professor Rosenblatt's thoughtful article reminds us that the intersection of creativity and community is a subject worthy of our continued attention. It asks us to consider whether the law should pivot to do more to actively engage inspiration, focusing on the psychological motivations that, for many individual creators, are central to creativity — or whether the law should instead recognize its limits and simply do its best not to get in the way.



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