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Julia Choucair Vizoso and Chris R. Byrnes

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ABOLITIONIST CREATIVITY, CARE, AND THE SHADOW OF INTELLECTUAL PROPERTY

Julia Choucair Vizoso* and Chris R. Byrnes**

ABSTRACT

This Article offers a theory and praxis of abolitionist creativity that situates and transforms the power of intellectual property in the political economy toward abolition. We begin by invoking the legacy of Sojourner Truth who, in addition to her better-known contributions, innovated radically with her copyright in the context of slavery abolition in the nineteenth-century United States. We show how Truth occupied the legal and economic structure that governs the expression of creativity towards her abolitionist goals. Inspired by her example, we argue that contemporary abolitionists can intervene in the intellectual property system in ways that unshackle creativity from its legal codification as a right to exclude. Reimagining creatorship not as a right to exclude but as a duty to care for each other and our ecological worlds, we offer strategies and examples of abolitionist creativity in two struggles: prison abolition in the United States and transnational solidarity with Palestinian liberation.

* Julia Choucair Vizoso is an independent knowledge producer and co-founder of AbolishIP. She holds a Ph.D. in Political Science from Yale University and an M.A. in Arab Studies/B.S. in Foreign Service from Georgetown University.

** Chris R. Byrnes is an intellectual property lawyer and co-founder of AbolishIP. He holds a J.D. from Georgetown University, a Master of Theological Studies in Religion, Ethics & Politics from Harvard University, and a B.A. in Physics from Denison University.

INTRODUCTION: SOJOURNER TRUTH AS ABOLITIONIST CREATOR

I Sell the Shadow to Support the Substance.

– Sojourner Truth

In 1864, Sojourner Truth had a copyright filed in her name for her *cartes de visite*,¹ pocket-sized photographic portraits that were wildly popular in the mid-nineteenth century.² Invented and patented in 1854 by a French photographer,³ these easy-to-make portraits quickly dominated commercial photography.⁴ *Cartes de visite* were exchanged among loved ones and friends—keepsakes that were poignantly meaningful amid the separations and losses of the American Civil War.⁵ The cards also became relatively inexpensive collectibles, as celebrities sold them at their speaking engagements or by mail order.⁶ Truth, now in her sixties and well-known for her anti-slavery activism and oratory skills,⁷ sat for at least twenty-eight portraits and made hundreds of copies she then sold to fund her anti-slavery speaking tours,⁸ and donate to “the first Michigan Colored Infantry fighting in the Civil War.”⁹ Starting in February 1864, almost all her cards displayed on their back a copyright in her name: “Entered according to the act of Congress, in the year 1864, by

¹ The authors thank Professor Celnisha L. Dangerfield for first bringing to their attention Sojourner Truth’s copyrighted *cartes de visite*, during her presentation at Race + IP ’23 Conference, April 14, 2023.

² Andrea L. Volpe, Opinion, *The Cartes de Visite Craze*, N.Y. TIMES (Aug. 6, 2013, 2:11 PM), <https://archive.nytimes.com/opinionator.blogs.nytimes.com/2013/08/06/the-cartes-de-visite-craze/>.

³ John Plunkett, *Carte-de-Visite*, in 1 ENCYCLOPEDIA OF NINETEENTH-CENTURY PHOTOGRAPHY 276, 276 (John Hannavy ed., 2008).

⁴ Volpe, *supra* note 2.

⁵ *See id.*

⁶ Susan Long, *Self-Representation in the Nineteenth Century*, 106 LA TROBE J. 48, 54 (2021); *see also Six Abolitionists in Photographs*, NAT’L GALLERY OF ART (June 14, 2024), <https://www.nga.gov/stories/six-abolitionists-in-photographs.html>; Max Peterson, *The Revolutionary Practice of Black Feminisms*, NAT’L MUSEUM OF AFR. AM. HIST. & CULTURE (Mar. 4, 2019), <https://nmaahc.si.edu/explore/stories/revolutionary-practice-black-feminisms>.

⁷ Marilyn Creswell, *Sojourner Truth and the Power of Copyright Registration*, LIBR. OF CONG. BLOGS (Dec. 8, 2020), <https://blogs.loc.gov/copyright/2020/12/sojourner-truth-and-the-power-of-copyright-registration>.

⁸ *See* DARCY GRIMALDO GRIGSBY, ENDURING TRUTHS: SOJOURNER’S SHADOWS AND SUBSTANCE 11 (2015); Peterson, *supra* note 6.

⁹ Creswell, *supra* note 7.

Sojourner Truth, in the Clerk's Office, of the U.S. District Court, for the Eastern District of Michigan."¹⁰ On the front, under her portrait, the cards displayed her chosen name in print, SOJOURNER TRUTH, along with the phrase: "I Sell the Shadow to Support the Substance."¹¹

Sojourner Truth gained fame in her lifetime as a feminist abolitionist.¹² Today, she is also recognized as an early representative of the Black feminist tradition, able as she was to link race and gender and to ground herself in her lived experience as a Black woman.¹³ Truth is less known as a "copyright innovator,"¹⁴ though her decision to copyright her *cartes de visite*, "claiming ownership of her image for her own profit," was certainly novel.¹⁵ As Darcy Grimaldo Grigsby's *Enduring Truths: Sojourner's Shadows and Substance* documents, Truth was innovating in multiple ways when she chose to have her photographs bear a copyright in her name.¹⁶ Not only did she assert copyright over a photograph one year before photography became legally covered by copyright law,¹⁷ but hers were the *only* cards from the period to feature a copyright in the name of the sitter.¹⁸ Few cards of the time bear copyrights at all, and those that do name the photographer.¹⁹ The photographs of many of her contemporaries, including Frederick Douglass who was an avid portrait sitter and recognized the power of photography,²⁰ include the photographer's name at the bottom of their cards.²¹

¹⁰ GRIGSBY, note 8, at 11 fig.7B.

¹¹ *Id.* at fig.7A.

¹² See MANISHA SINHA, *THE SLAVE'S CAUSE: A HISTORY OF ABOLITION* 434 (2016).

¹³ See Peterson, *supra* note 6.

¹⁴ Creswell, *supra* note 7.

¹⁵ See Peterson, *supra* note 6.

¹⁶ GRIGSBY, *supra* note 8, at 139.

¹⁷ LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 327 (3d ed. 2005).

¹⁸ GRIGSBY, *supra* note 8, at 139.

¹⁹ *Id.*

²⁰ JOHN STAUFFER, ZOE TRODD & CELESTE-MARIE BERNIER, *PICTURING FREDERICK DOUGLASS* ix (2015).

²¹ See, e.g., *Recent Acquisition: Carte de visite Portrait of Frederick Douglass*, BOS. ATHENÆUM (Mar. 23, 2022), <https://bostonathenaeum.org/news/recent-carte-de-visite-portrait-of-frederick-douglass>.

Truth's copyright was not only innovative but also radical. For a formerly enslaved person to claim ownership of their image was "revolutionary."²² Truth herself was explicit about the interplay between her image, property, and self-agency.²³ In the *New York World* in 1870, she declared that she "used to be sold for other people's benefit, but now she sold herself for her own."²⁴ In asserting her copyright, Truth also seized an area of U.S. law—intellectual property ("IP")—which was certainly not enshrined with her well-being in mind or that of the communities to which she was devoted.²⁵ A Black woman who had never learned to read or write, Truth was not the archetypal "Author"²⁶ envisioned by the writers of the Constitution: the Romantic White male.²⁷ In these ways, Sojourner Truth is an inspiring subject for critical race IP, the interdisciplinary movement engaged with how "people of color theorize, enact, and perform new relationships to intellectual properties, discursively and materially, thereby changing the material realities in which they live."²⁸ She is an early embodiment of how disempowered groups can "claim themselves as subjects of property—that is, as autonomous individuals with constitutive personhood interests in property—rather than as mere objects, or someone else's property."²⁹ By deploying her image and copyright, Truth compels us to remake "understandings of Black creatorship, Black citizenship, and Black personhood."³⁰ Celnisha L. Dangerfield's scholarship on Truth's *cartes de visite*

²² Peterson, *supra* note 6.

²³ GRIGSBY, *supra* note 8, at 125.

²⁴ *Id.*

²⁵ See, e.g., ANJALI VATS, THE COLOR OF CREATORSHIP: INTELLECTUAL PROPERTY, RACE, AND THE MAKING OF AMERICANS 198 (2020).

²⁶ See U.S. CONST. art. I, § 8, cl. 8. "Author," under U.S. copyright law, is the person who creates "works," the original expression of which warrants their protection under laws of intellectual property. See *Definitions*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/help/faq-definitions.html> (last visited Aug. 9, 2024).

²⁷ See, e.g., VATS, *supra* note 25, at 27–65 (analyzing how U.S. IP law codes creatorship along Euro-American racial conceptualizations of citizenship); JAMES BOYLE, SHAMANS, SOFTWARE, AND SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY 51–59 (2009) (discussing the imaginary of the Romantic author).

²⁸ Anjali Vats & Deidré A. Keller, *Critical Race IP*, 36 CARDOZO ARTS & ENT. L.J. 735, 766 (2018).

²⁹ Anupam Chander & Madhavi Sunder, *The Romance of the Public Domain*, 92 CALIF. L. REV. 1331, 1335 (2004).

³⁰ VATS, *supra* note 25, at 179 (writing of more recent interventions by the artist Prince and the athlete Marshawn Lynch).

from a Black feminist lens situates Truth's copyright as an "act of indignant agency."³¹ By asserting her intellectual property, argues Dangerfield, Truth circumvents the rules of place imposed on a formerly enslaved, illiterate Black woman, and "flips symbols of Whiteness and patriarchy so they work for her—not against her."³²

The evocative caption that Truth had printed on her cards, "I Sell the Shadow to Support the Substance,"³³ also invites us to engage its multiple meanings and possibilities. In the nineteenth century, shadow was a term used in and for photography in poetic and more mundane ways; Truth herself used it to refer to photographs in her daily speech.³⁴ Therefore, as an obvious photographic metaphor, Truth sells the image of the self (shadow) to support her embodied self (substance). Even as a superficial metaphor, however, its implications are deep. As Grigsby observes, Truth "sells not her substance, not herself, not her 'I' but her shadow, a substitute so elusive as to thwart bodily violation. Here the commodified self is redefined as part of the image world, of representation, not embodiment."³⁵ Moreover, Grigsby reveals how shadow and substance, beyond photographic metaphor, manifested an intervention in legal and economic debates of the time; namely, whether paper could substitute coin as value.³⁶ Pro-slavery positions vehemently opposed paper money on the basis that it was a representation, not a "substance" like gold.³⁷ Truth's *cartes de visite* functioned as a sort of paper money: by "making cheap paper notes, printed and reproduced in multiples, featuring her portrait . . . [s]he had invented her own kind of paper money, and for the same reasons as the Republican government: in order to produce wealth dependent on a consensus that representation produces material results, to make money where there was none, and to do so partly in order to abolish slavery."³⁸ Dangerfield offers a Black feminist interpretation of the exchange implicit in Truth's powerful

³¹ Celnisha Dangerfield, *Rupturing Tradition: Theorizing Black Women's Place in the Discipline Through the Disruptive Rhetoric of Sanctuary*, ELECTRONIC THESES AND DISSERTATIONS 119–21 (2023), <https://digitalcommons.memphis.edu/etd/3340>.

³² *Id.* at 133–34.

³³ GRIGSBY, *supra* note 8, at 63.

³⁴ *Id.* at 85, 88.

³⁵ *Id.* at 126.

³⁶ *See, e.g., id.* at 145.

³⁷ *Id.*

³⁸ *Id.* at 153.

phrasing—one in which “the capitalistic system that once held her in bondage is reimagined as a model for individual and collective liberation.”³⁹ In this reading, Truth sells her shadow in exchange for her right to define her own place; by buying her *cartes de visite*, buyers “buy in” and support the substance, which is “the restoration of stolen humanity.”⁴⁰

Sojourner Truth’s creative engagement with photography and copyright epitomizes the theory and praxis of abolitionist creativity we present here.⁴¹ We invoke her as a Creator and Activist who recognized the power of photography not simply as a new visual technology for moral suasion and narrative-making in the struggle to end slavery, but also as a legal and economic intervention to assert both autonomy and solidarity. Truth not only carefully curated the aesthetics of her portraits, but she radically occupied the existing legal and economic structure that governed its expression: the copyright system. She did so both in the service of her own autonomy as an ex-slave and also on behalf of those who were still enslaved and those fighting for their liberation.

Seen in this light, Truth’s metaphor assumes a new interpretation. The shadow is her intellectual property, and she sells it to support the substance: abolitionist care; care for herself as a former slave, for the persons still enslaved, and for those fighting for their liberation; care towards a future without slavery. As Truth’s copyrighted image was her shadow, intellectual property is a shadow in today’s global economy. Like how Truth’s metaphor “emphasizes the *immateriality* and *ephemerality* of photography,”⁴² intellectual property rights by definition deal with the immaterial and are limited in time. Reminiscent of our own shadow, intellectual property is simultaneously omnipresent and inconspicuous: copyright adheres automatically and intellectual property runs through every industry, supply chain, and many trade agreements, dominating the global economy.⁴³ Yet the details of this vast and powerful system are of little substance to the majority of people in the world, who have vague or no awareness of its idiosyncrasies.

³⁹ Dangerfield, *supra* note 31, at 144.

⁴⁰ *Id.*

⁴¹ We purposefully lead this Article with storytelling as praxis. For a discussion of storytelling as critical race and critical race IP praxis, see Vats & Keller, *supra* note 28, at 767–69, 782–84.

⁴² GRIGSBY, *supra* note 8, at 88 (emphasis added).

⁴³ Intangible assets held by firms worldwide were worth \$74 trillion in 2021, up 25% since 2019. Annie Brown, Jack Gregory & Sacha Wunsch-Vincent, *Intangible Assets Grew to USD 74 Trillion. Which Are the Most Intangible-Asset Intensive Firms?*, WIPO: GII INNOVATION INSIGHTS BLOG (Nov. 11, 2022), https://www.wipo.int/global_innovation_index/en/gii-insights-blog/2022/intangible-assets.html.

If intellectual property is the shadow, then the substance must be elsewhere. For Truth, the substance was to be found in the care she gave herself and others in service of the abolition of slavery. What might be possible today if we center the substance of abolitionist care? The theory and praxis we offer here stakes a bold response: nothing less than an uncaging of both creativity and care from the shackles of a racialized economy. We show how creatorship can be reimagined not as a right to exclude but as a duty to care for each other and our ecological worlds. Moving to praxis, we offer strategies and actions from two contemporary contexts: prison abolition in the United States and transnational solidarity with Palestinian liberation.

I. CREATIVITY AS CARE

Sojourner Truth's *cartes de visite*, like countless works of creativity, were brimming with the worldview, commitments, passions, and emotions of their Creator. Yet in the language of the law, creative works are reduced to a single, distinct juridical concept: intellectual property (and in this case, specifically copyright, which governs works that are fixed in any tangible medium of expression). Though "property" can elicit visualizing *things* or objects, all property—physical or intangible—is best understood as a form of social relation.⁴⁴ "To claim property in something"—whether it be in the expression of an idea, a technique for doing something, or a physical entity like a house—"is, in effect, to construct a relationship with others, namely, a relation of exclusion."⁴⁵

As a mode of social organization along exclusionary lines, property has many possibilities as a tool of domination.⁴⁶ Intellectual property rhetoric is inseparable from racial scripts of White supremacy and colonialism, argues Anjali Vats,⁴⁷ and legal interpretations of *who* gets to assert intellectual property rights continue to be both racialized and gendered.⁴⁸ Based on concepts that devalue the knowledge and

⁴⁴ Property as a set of relations rather than things is prevalent in most critical-theoretical treatments of property. See, e.g., Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1721 (1993) (exploring how in the United States, "[p]ossession—the act necessary to lay the basis for rights in property—was defined to include only the cultural practices of whites. This definition laid the foundation for the idea that whiteness—that which whites alone possess—is valuable and is property.").

⁴⁵ ROBERT NICHOLS, *THEFT IS PROPERTY!: DISPOSSESSION AND CRITICAL THEORY* 31 (2020).

⁴⁶ *Id.* at 130.

⁴⁷ See, e.g., VATS, *supra* note 25, at 27–65.

⁴⁸ See, e.g., K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 AM. U. J. GENDER, SOC. POL'Y & L. 365 (2008); K.J. Greene, "Copynorms," *Black Cultural Production, and the Debate Over African-American Reparations*, 25 CARDOZO ARTS & ENT. L.J. 1179,

practices of non-whites, intellectual property has aided extractivist policies towards Indigenous communities whereby Traditional Knowledge is turned into commodities.⁴⁹ Scholarship also shows that “[i]ntellectual property law was not merely an incidental part of the colonial legal apparatus, but a central technique in the commercial superiority sought by European powers,”⁵⁰ and that more powerful countries continue to assert intellectual property rights at the expense of developing countries, in what Lateef Mtima calls “IP imperialism.”⁵¹ In a sense, intellectual property has incarcerated creativity by trying to fit it into the restrictive, Eurocentric, dominant paradigm of private property.

Abolition is inherently creative. In his landmark work *Black Reconstruction in America*, published in 1935, W.E.B. Du Bois expressed a vision for “abolition democracy” as a positive project, not merely a negative one.⁵² In Du Bois’s critique of the post-Emancipation period in *Black Reconstruction*, abolition “required not only the dismantling of chattel slavery, but also the construction of new institutions, new practices, and new social relations that would afford freed Black persons the economic, political, and social capital to live as equal members of society.”⁵³ Grounded in Du Bois’s vision, contemporary prison abolitionists emphasize that abolition does not seek to simply eliminate prisons, but to “imagine and build a more humane, free, and democratic society that no longer relies on caging people to meet human needs and solve social problems.”⁵⁴ It is the creation of new forms and institutions that address what are essentially social, economic, and political problems that will render the prison obsolete. As Fred Moten and Stefano Harney declare, the object of abolition is “[n]ot so much the abolition of prisons but the abolition of a society that could have prisons, that could have slavery, that could have the wage,

1183 (2008); Debora Halbert, *Feminist Interpretations of Intellectual Property*, 14 AM. U. J. GENDER, SOC. POL’Y & L. 431 (2006).

⁴⁹ See DEBORA J. HALBERT, RESISTING INTELLECTUAL PROPERTY 141–63 (2005).

⁵⁰ Ruth L. Okediji, *The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System*, 7 SING. J. INT’L & COMPAR. L. 315, 324 (2003).

⁵¹ Lateef Mtima, *What’s Mine is Mine but What’s Yours is Ours: IP Imperialism, the Right of Publicity, and Intellectual Property Social Justice in the Digital Information Age*, 15 SMU SCI. & TECH. L. REV. 323, 324–25 (2012).

⁵² See W.E.B. DU BOIS, BLACK RECONSTRUCTION AND OTHER WRITINGS 225 (Eric Foner & Henry Louis Gates, Jr. eds., 2021) (1935).

⁵³ *Abolition Democracy 13/13*, COLUM. CTR. FOR CONTEMP. CRITICAL THOUGHT, <https://blogs.law.columbia.edu/abolition1313> (last visited Aug. 14, 2024).

⁵⁴ Dorothy E. Roberts, Foreword, *Abolition Constitutionalism*, 133 HARV. L. REV. 1, 12 (2019).

and therefore not abolition as the elimination of anything but abolition as the founding of a new society.”⁵⁵ In this sense, abolition is “a radically imaginative, generative, and socially productive communal (and community-building) practice.”⁵⁶

Because abolition is about imagining, creating, and making things as much as it is about dismantling, making art for abolition is an especially generative process.⁵⁷ Art-making is an opportunity to “strategically and intentionally focus radical imagination,” says kai lumumba barrow, and thus “critical to developing movement-building strategy and concretizing our dreams and hopes.”⁵⁸ For Critical Resistance, “the practices of creating are acts of resistance.”⁵⁹ For Dylan Rodríguez, abolition itself is a “praxis of creativity.”⁶⁰ It is a “creative project, a performance, . . . a pedagogy and curriculum” as much as it is a practice and analytical method.⁶¹

Abolitionist conceptualizations and descriptions of creativity exist in polarity with the racialized and colonial past and present of intellectual property. So far, however, they have largely coexisted. Yet abolitionist praxis already carries an alternative to creativity as a relation of exclusion: creativity as a relation of care. By *care*, we mean a method “used to imagine, prefigure and enact alternative ways of being together” in non-exclusionary relational arrangements.⁶² Abolitionist care counters the dominant liberal understanding of care, which, as Miriam Ticktin shows, locates it as a finite resource to be distributed among individuals (via welfare or humanitarianism) or motivated by “sentiments such as sympathy, pity, or

⁵⁵ Fred Moten & Stefano Harney, *The University and the Undercommons: Seven Theses*, SOC. TEXT, Summer 2004, at 101, 114.

⁵⁶ Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1576 (2019).

⁵⁷ See, e.g., Sidney Madden, Sam Leeds & Rodney Carmichael, ‘I Want Us to Dream a Little Bigger’: Noname and Mariame Kaba on Art and Abolition, NPR (Dec. 19, 2020, 8:00 AM), <https://www.npr.org/2020/12/19/948005131/i-want-us-to-dream-a-little-bigger-noname-and-mariame-kaba-on-art-and-abolition>.

⁵⁸ *Art & Abolition*, CRITICAL RESISTANCE (May 4, 2016), <https://criticalresistance.org/resources/art-abolition/>.

⁵⁹ *Id.*

⁶⁰ Rodríguez, *supra* note 56, at 1580.

⁶¹ *Id.* at 1578.

⁶² Miriam Ticktin, *Care and the Commons*, in *The Politics of Care*, 20 CONTEMP. POL. THEORY 890, 916 (2021).

compassion, which create hierarchies by distinguishing between deserving and undeserving individuals.”⁶³

Care, like creativity, is inherent in abolition.⁶⁴ Reflecting on her own experience in abolitionist movements, for example, Patrisse Cullors concludes that “abolition asks us to cultivate a culture of care,”⁶⁵ to “implement a new practice that is centered in care and dignity.”⁶⁶ In her essay *Free Us All*, Mariame Kaba describes defense campaigns in support of incarcerated people as an “ethic and practice of abolitionist care.”⁶⁷ Through the Care Not Cops and Care Not Cages campaigns across different U.S. cities, coalitions of formerly incarcerated people, their families, and survivors of harm center care.⁶⁸ Pedagogy has also been organized around Abolitionist Care as a subject.⁶⁹ According to Shatema Threadcraft, “[o]ne of the most compelling cases [abolitionists] make against incarceration is that it represents a collective failure of care.”⁷⁰

In summoning the abolitionist commitment to care for a reimagining of creativity, we see parallels with Indigenous movements that have used legal innovation and inversion to unravel proprietary logics and imbue them with regimes of care and stewardship.⁷¹ Led by Indigenous leadership in Aotearoa/New Zealand, Bolivia, or Canada, movements have insisted that struggles over land should not be waged as conflicts over property but rather “as struggles over the very meaning of the relationship between human societies and the broader ecological worlds in which

⁶³ *Id.*

⁶⁴ Abigail Glasgow, *Art as a Radical Tool for Realizing Abolition*, HARPER’S BAZAAR (Aug. 17, 2023), <https://www.harpersbazaar.com/culture/features/a44795715/art-as-a-radical-tool-for-realizing-abolition/>.

⁶⁵ *Id.*

⁶⁶ Patrisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 HARV. L. REV. 1684, 1694 (2019).

⁶⁷ Mariame Kaba, *Free Us All*, THE NEW INQUIRY (May 8, 2017), <https://thenewinquiry.com/free-us-all/>.

⁶⁸ See *Care Not Cops*, CRITICAL RESISTANCE, <https://criticalresistance.org/care-not-cops/> (last visited Aug. 12, 2024); Jeremy Levenson, Lauren Textor, Ricky Bluthenthal, Anna Darby, Rafik Wahbi & Mark-Anthony Clayton-Johnson, Commentary, *Abolition and Harm Reduction in the Struggle for “Care, Not Cages,”* 121 INT’L J. DRUG POL’Y 1, 2 (2023).

⁶⁹ *Abolitionist Care—Feminist No Borders Summer School*, MALDUSA (Apr. 16, 2023), <https://www.maldusa.org/l/abolitionistcare>.

⁷⁰ Shatema Threadcraft, *Mass Incarceration and Public Care*, in *The Politics of Care*, 20 CONTEMP. POL. THEORY 900, 900 (2021).

⁷¹ See, e.g., NICHOLS, *supra* note 45, at 147–50.

they are situated.”⁷² Similarly, we insist that struggles over creativity and knowledge should not be waged as conflicts over property, but as struggles to assert care in the relations among human societies and ecologies.

Replacing exclusion with care as the relation that should govern the flow of creativity and knowledge moves us away from rights-based claims about creatorship. In an abolitionist formulation, Creators and Authors do not deserve rights because of “hard work, innovation, ingenuity, and ruggedness” or because they produce “a social and economic good” simply by virtue of creating.⁷³ Rather, Creators have a responsibility to use their creativity towards care. Creatorship no longer comes with a property right. Creatorship comes with duties of care.⁷⁴

If the substance of care is a relation of non-exclusion, why even call into play the shadow of intellectual property, which by definition is a relation of exclusion? To continue with the metaphor, we contend that, as a shadow, the intellectual property system is also vulnerable to the direction of the light cast. As part of its structure and design, it contains key loopholes that create unintended space for seepages.⁷⁵ We identify four critical loopholes in the copyright system that make it vulnerable to abolitionist praxis:

1. Created by Humans Only. Only persons, not corporations nor machines, can create copyright-protected works.⁷⁶ As a human-oriented system, the

⁷² *Id.* at 149–50, 151.

⁷³ Vats, *supra* note 25, at 6, 1.

⁷⁴ In articulating this shift from right-based property to duty-based care, we draw on Robert Nichols’s discussion of Indigenous relations to the land which operationalize “an ethic of care for the living earth.” See NICHOLS, *supra* note 45, at 106; see also LEANNE BETASAMOSAKE SIMPSON, AS WE HAVE ALWAYS DONE 43 (2017) (“Indigenous bodies don’t relate to the land by possessing or owning it or having control over it. We relate to land through connection—generative, affirmative, complex, overlapping, and nonlinear *relationship*.”). There is also, of course, considerable work on Indigenous approaches to remaking intellectual property systems along different conceptions of knowledge, but here we limit ourselves to drawing parallels to the mention of “care” specifically. For discussions of this broader body of work, see, e.g., HALBERT, *supra* note 49; Vats & Keller, *supra* note 28.

⁷⁵ We borrow the languages of loopholes and see pages from Lawrence Liang’s concept of “porous legalities.” Lawrence Liang, *Porous Legalities and Avenues of Participation*, in SARAI READER 05: BARE ACTS 6, 15–16 (Monica Narula, Shuddhabrata Sengupta, Jeebesh Bagchi, Geert Lovink & Lawrence Liang eds., 2005).

⁷⁶ *Thaler v. Perlmutter*, No. 22-1564, 2023 U.S. Dist. LEXIS 145823, at *20–21 (D.D.C. Aug. 18, 2023) (“[T]he Copyright Office acted properly in denying copyright registration for a work created absent any human involvement.”).

copyright economy can be organized by individuals around any common interest or point of care.

2. Inalienable. Even incarcerated persons—who in the United States are subjected to “civic and social death”⁷⁷ and deprived of numerous civic and economic liberties—preserve their intellectual property.⁷⁸ Obviously, alienability in principle is not universal in practice, and is mediated by social and economic structures of inequality. For example, for incarcerated persons, their ability to assert this right is constrained by general brutalizing practices of incarceration, such as the fact that they are often prevented from creating artistic works and expressing themselves in the first place—among other factors that can make access to copyright difficult.⁷⁹
3. Permissionless. Copyright has a very low threshold for protection: it applies automatically to any originality fixed in any tangible medium of expression (as soon as words hit the page, paint is on paper, or music is recorded, copyright protection arises) and the hurdle for what constitutes originality is very low.⁸⁰ Lower thresholds allow for more equal access to rights.
4. Transnational. International treaties and trade agreements harmonize the rules for receiving and enforcing copyright protection.⁸¹ Historically, trade agreements generally have furthered the colonial and imperial interests of more powerful states.⁸² On the flipside, however, the reach and similarity of copyright also allow for transnational solidarities across

⁷⁷ DYLAN RODRÍGUEZ, FORCED PASSAGES: IMPRISONED RADICAL INTELLECTUALS AND THE U.S. PRISON REGIME 133 (2006).

⁷⁸ See, e.g., Lateef Mtima & John R. Whitman, *Copyright Protection in Brief*, in THE SENTENCES THAT CREATE US 149, 149–51 (Caitis Meissner ed., 2022) (providing advice to incarcerated persons on how to copyright their work).

⁷⁹ *Id.* at 151; Viva R. Moffat, *The Free Exercise of Copyright Behind Bars*, 80 WASH. & LEE L. REV. 741, 747–48 (2023).

⁸⁰ Mtima & Whitman, *supra* note 78, at 149.

⁸¹ *Global Aspects of Copyright*, CREATIVE COMMONS, <https://certificates.creativecommons.org/cccertedu/chapter/2-2-global-aspects-of-copyright> (last visited Aug. 12, 2024).

⁸² See, e.g., The Beehive Design Collective, *Free Trade and the Global Resistance to Corporate Colonialism*, COLBY COLL. LIBRS., <https://digitalcommons.colby.edu/exhibit/free-trade-and-the-global-resistance-to-corporate-colonialism/> (last visited Aug. 12, 2024).

different “abolitionist geographies,” meaning the many struggles of abolition that materialize across time and space out of distinctive interactions between local forms of carcerality and freedom-making conditions.⁸³

We hope that highlighting these characteristics does not signal a belief in universally accepted legal standards or in liberal fantasies about the universality of intellectual property rights-based protections. As the critical scholarship we reference at the start of this section demonstrates, intellectual property protection has operated inseparably from broader patterns of domination. And as our qualifiers in the list above elucidate, the four characteristics of copyright are mediated by structures of inequality.

Rather, we invoke these loopholes in the spirit of what intellectual work should aspire to do, as called for by Ruth Wilson Gilmore: “to make the contradictions apparent so people can start to see how the patterns that seem to *completely* cage us might—if we just turn our attention slightly differently—become patterns that we can use to undo the caging that we rail against.”⁸⁴ By turning our attention slightly differently, these four defining characteristics of copyright also leave room for undoing creativity-as-exclusion. They invite performative critique, remaking, and reimagining.⁸⁵

To illustrate how exactly creativity can be transformed in the service of care instead of exclusion, we must go to praxis. In the discussion that follows, we visit two ongoing experiments of abolitionist creativity that emerge from different geographies and in which we are personally involved. We begin within a movement that is explicitly motivated by the “unfinished work of the nineteenth-century movement for the abolition of slavery” and as such is its most direct descendant: the prison abolition movement in the United States.⁸⁶ Grounded specifically in imprisoned persons’ ongoing struggle to engage with and produce knowledge and art, and their resistance against increasingly restrictive technologies of censorship,

⁸³ See generally RUTH WILSON GILMORE, *ABOLITION GEOGRAPHY* (2022).

⁸⁴ Ruth Wilson Gilmore, “*Abolition Geography: Essays Towards Liberation*”: An Interview with Ruth Wilson Gilmore, NEW BOOKS NETWORK, at 54:00 (June 27, 2022), <https://newbooksnetwork.com/abolition-geography>.

⁸⁵ We see this approach to be in harmony with Anjali Vats’s approach to identifying the resistance and “rescripting” that can be possible by harnessing intellectual property rights in transgressive ways. See VATS, *supra* note 25, at 204–08.

⁸⁶ Alyosha Goldstein, *Introduction: Abolitionist Worldmaking*, 75 AM. Q. 359, 359 (2023).

we explore the implications of abolitionists activating their legal rights as Creators and Authors against the carceral state. From prison abolition, we go to Palestinian liberation, the imperative cause for transnational abolitionism. Through a copyright license of a media organization in Lebanon, we reflect on abolitionist creativity as a new frontier for knowledge and art production in solidarity with Palestine.

II. CREATING FOR PRISON ABOLITION

Robert Saleem Holbrook was only sixteen when he was sentenced to life imprisonment without the possibility of parole.⁸⁷ During his twenty-seven-year incarceration,⁸⁸ he became a “prison agitator and abolitionist.”⁸⁹ In 2014, he brought a lawsuit against the Pennsylvania Department of Corrections and employees of the State Correctional Institution at Coal Township, where he was incarcerated, for confiscating his incoming mail.⁹⁰ Confiscated content “included academic correspondence with a college professor; essays written by Angela Y. Davis and James Baldwin; and issues of *The Movement*,”⁹¹ a newsletter published by the Human Rights Coalition, whose mission is to “empower prisoners’ families to be leaders in prison organizing.”⁹² As described by the Abolitionist Law Center, the “public interest law firm and community organizing project” that filed the lawsuit,⁹³ the censored content “touched on the most vital issues of the operation of the prison system in Pennsylvania,” including “the pervasive racism that defines the criminal legal system in Pennsylvania and the United States.”⁹⁴ The court found in favor of the plaintiffs “on multiple claims at the summary judgment stage,” and the

⁸⁷ Abolitionist Law Center, *Dismantling the Master’s House by Robert Saleem Holbrook*, MEDIUM (Apr. 5, 2021), <https://abolitionistlawcenter.medium.com/dismantling-the-masters-house-by-robert-saleem-holbrook-ceb9588f7bc5>.

⁸⁸ Jessica Blatt Press, *Citizen of the Year Awards: Robert Saleem Holbrook*, PHILA. CITIZEN (Jan. 15, 2024), <https://thephiladelphiacitizen.org/citizen-of-the-year-awards-robert-saleem-holbrook/>.

⁸⁹ Abolitionist Law Center, *supra* note 87.

⁹⁰ *Holbrook v. Jellen*, ABOLITIONIST L. CTR., <https://abolitionistlawcenter.org/cases/holbrook-v-jellen/> (last visited Aug. 12, 2024). The Human Rights Coalition and Kristi Brian, a professor at the College of Charleston, were also listed as plaintiffs. *Id.*

⁹¹ *Id.*

⁹² *About Human Rights Coalition*, HUM. RTS. COAL., <https://www.hrcoalition.org/about> (last visited Aug. 12, 2024).

⁹³ *About Us*, HUM. RTS. COAL., <https://abolitionistlawcenter.org/about-us> (last visited Aug. 12, 2024).

⁹⁴ *Holbrook v. Jellen*, *supra* note 90.

defendants “settled the damages and injunctive claims.”⁹⁵ Holbrook was finally released in 2018,⁹⁶ after the Commonwealth of Pennsylvania was forced to re-sentence hundreds of juvenile offenders as a result of the U.S. Supreme Court decision in *Miller v. Alabama*.⁹⁷ In 2020, he became the executive director of the Abolitionist Law Center.⁹⁸

Holbrook’s story bespeaks the cruelty of the U.S. legal system, the only one in the world that sentences children to life imprisonment without parole.⁹⁹ It also manifests in racism. Black youth “are twice as likely to receive a juvenile life without parole sentence compared to their White peers for committing the same crime,”¹⁰⁰ one of the myriad ways the racism of criminal justice-based incarceration reveals itself.¹⁰¹ The censorship suffered by Holbrook was also racialized. In their vast censorship, prisons specifically target books related to racial equality¹⁰² and written by Black authors.¹⁰³

For contemporary abolitionists in the United States, Holbrook’s experience is not “an isolated blemish on America’s otherwise fair system of criminal justice.”¹⁰⁴ Instead, his struggle exemplifies how the U.S. criminal punishment system as a

⁹⁵ *Id.*

⁹⁶ Press, *supra* note 88.

⁹⁷ *Miller v. Alabama*, 567 U.S. 460, 465 (2012) (holding that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders).

⁹⁸ *Holbrook v. Jellen*, *supra* note 90.

⁹⁹ *Juvenile Life Without Parole (JLWOP)*, JUV. L. CTR., <https://jlc.org/issues/juvenile-life-without-parole> (last visited Aug. 12, 2024).

¹⁰⁰ Joshua Aiken, *Why Do We Lock Juveniles Up for Life and Throw Away the Key? Race Plays a Big Part.*, PRISON POL’Y INITIATIVE (Sept. 15, 2016), https://www.prisonpolicy.org/blog/2016/09/15/juvenile_lwop/.

¹⁰¹ For evidence of other racial bias in law enforcement, *see, e.g., Criminal Justice Fact Sheet*, NAACP, <https://naacp.org/resources/criminal-justice-fact-sheet> (last visited Aug. 12, 2024). For a summary of the vast archive of data and studies on the racism of imprisonment, *see* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1194–99 (2015).

¹⁰² *See, e.g.,* THURGOOD MARSHALL C.R. CTR., HOWARD UNIV. SCH. OF L., BANNING THE CAGED BIRD: PRISON CENSORSHIP ACROSS AMERICA 4 (2021), <https://thurgoodmarshallcenter.howard.edu/sites/tmrc.howard.edu/files/2021-10/HU8108%20%28Prison%20Censorship%20Report%20Update%29v1-revised.pdf> (finding a “nationwide trend of prisons banning books relating to racial equality”).

¹⁰³ *Banning Books in Prisons*, EQUAL JUST. INITIATIVE (Jan. 7, 2020), <https://eji.org/news/banning-books-in-prisons>.

¹⁰⁴ Roberts, *supra* note 54, at 14 (writing of the “astounding amount of human confinement”).

whole is “the container for Black freedom and the vehicle for Black labor exploitation.”¹⁰⁵ Rooting itself in Du Bois’s concept of “abolition-democracy,”¹⁰⁶ contemporary scholarship on abolition sees prison (along with other carceral institutions) as an iteration of the racialized social control that characterized racial chattel enslavement and the transatlantic trafficking of captive Africans.¹⁰⁷ Slavery was abolished only in the negative sense, while freed slaves remained constrained by racism and capitalism.¹⁰⁸ Abolitionists note the Thirteenth Amendment—which abolished plantation slavery in 1865—is itself a “juridical translation of slavery from a racial chattel institution to a criminal justice function.”¹⁰⁹ As the Amendment reads: “[n]either slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.”¹¹⁰ Moreover, the formal end of chattel slavery brought about a surge in Black criminalization and incarceration, with dramatic shifts in prison population demographics from almost exclusively White during slavery to majority Black after.¹¹¹ In the words of Angela Davis, incarceration transferred “significant numbers of black people from the prison of slavery to the slavery of prison.”¹¹²

After Emancipation, criminal control and law enforcement continued to implement the logic of slavery, functioning as a means of legally restricting the freedoms of Black people to keep them in their place in the racial capitalist hierarchy.¹¹³ Through their deep analysis of the carceral institutions of the contemporary American state, prison abolitionists coined the term “prison industrial

¹⁰⁵ Jamie M. Jenkins, Note, *Free Their Minds: Legacies of Attica and the Threat of Books to the Carceral State*, 123 COLUM. L. REV. 2321, 2324 (2023).

¹⁰⁶ DU BOIS, *supra* note 52.

¹⁰⁷ See, e.g., ANGELA Y. DAVIS, ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE 96 (2005) (“Prisons have thrived over the last century precisely because of . . . the persistence of some of the deep structures of slavery.”).

¹⁰⁸ See generally DAVIS, *supra* note 107, at 9–12.

¹⁰⁹ Rodríguez, *supra* note 56, at 1580.

¹¹⁰ U.S. CONST. amend. XIII, § 1 (emphasis added).

¹¹¹ Dorothy E. Roberts, *Constructing a Criminal Justice System Free of Racial Bias: An Abolitionist Framework*, 39 COLUM. HUM. RTS. L. REV. 261, 267, 268 (2007).

¹¹² ANGELA Y. DAVIS, *From the Prison of Slavery to the Slavery of Prison: Frederick Douglass and the Convict Lease System*, in THE ANGELA Y. DAVIS READER 74, 75 (Joy James ed., 1998).

¹¹³ See Roberts, *Abolition Constitutionalism*, *supra* note 54, at 14.

complex”¹¹⁴ in the 1990s “to name the expanding apparatus of surveillance, policing, and incarceration the state increasingly employs to solve problems caused by social inequality, stifle political resistance by oppressed communities, and serve the interests of corporations that profit from prisons and police forces.”¹¹⁵ If in the nineteenth century human freedom required the abolition of slavery, today, for prison abolitionists, it requires the abolition of the prison industrial complex.¹¹⁶

Holbrook’s resistance against the confiscation of his correspondence, and his fight to read works in the Black Radical Tradition,¹¹⁷ also testify to the fact that knowledge and the imagination are themselves targets of the prison industrial complex. Prisons do not just brutalize the bodies of incarcerated people¹¹⁸ and experiment with technologies of bodily immobilization; prisons innovate “ways to control incarcerated people’s thoughts and words—to restrict their ability to create art, to express themselves through writing, to access knowledge and education, to communicate with their loved ones.”¹¹⁹ Prisons routinely “ban the creation of art,” punish those who make artwork, and destroy artistic work that does emerge or seek to suppress it—especially when incarcerated people receive recognition for their work or when their work shines a negative light on the prison system.¹²⁰ Prison, says Kaba, is the “frontline war in a society that seeks to censor and control people and ideas.”¹²¹

It is in this context that abolishing censorship was a core demand of the historic Attica uprising, when 1,281 incarcerated persons took control of the Attica

¹¹⁴ *Id.* at 6.

¹¹⁵ *Id.*

¹¹⁶ See CR10 PUBL’NS COLLECTIVE, ABOLITION NOW!: TEN YEARS OF STRATEGY AND STRUGGLE AGAINST THE PRISON INDUSTRIAL COMPLEX xii (2008).

¹¹⁷ Cedric Robinson termed the “Black Radical Tradition” to describe the intergenerational commitment to Black freedom and liberation, a collective consciousness “informed by the historical struggles for liberation and motivated by the shared sense of obligation to preserve the collective being, the ontological totality.” CEDRIC J. ROBINSON, BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION 310, 171 (Univ. of N.C. Press 2020) (1983).

¹¹⁸ See McLeod, *supra* note 101, at 1173–74.

¹¹⁹ Jess Zhang, *Prison as Censorship: Exhibition Curated by Mariame Kaba Serves as an Abolitionist Call to Action*, PRISM (Oct. 24, 2023), <https://prismreports.org/2023/10/24/prison-as-censorship-abolitionist-call-to-action>.

¹²⁰ See Moffat, *supra* note 79, at 754–55.

¹²¹ Zhang, *supra* note 119.

Correctional Facility in upstate New York in 1971.¹²² It is also why “new abolitionists”¹²³ emphasize prison mail programs—and the knowledge transferred through them—as an indispensable tool of resistance. The organization Critical Resistance, for example, sees prisoner mail as “an essential part” of “building politicized relationships with imprisoned people” and a way to connect incarcerated persons with the resources to “fuel their resilience and resistance.”¹²⁴ For Holbrook, the restrictions on what he could receive in the mail carried “life or death consequences” because they restricted knowledge about the very structures that were the cause of his oppression.¹²⁵ After all, it was through his earlier reading in prison of historical tracts on rebellion and abolition in the United States, and of anti-colonial struggles of the colonized and oppressed peoples around the world, that “the seeds of abolition were planted,” that he had resisted “an environment designed to lay dormant the human soul.”¹²⁶ As the “most focused and incisive ‘students’ of the prison,” imprisoned radical intellectuals have produced paradigmatic political and intellectual work.¹²⁷

More recently, a new frontier for censorship has emerged inside the prison industrial complex. Prisons across the United States have introduced mail digitization programs, whereby private contractors are hired to digitize, database, and then destroy the physical copies of incoming mail.¹²⁸ As a consequence, many imprisoned persons can now only view scanned copies of their mail, either as printed copies or digitally viewable on a tablet.¹²⁹

¹²² See HEATHER ANN THOMPSON, *BLOOD IN THE WATER: THE ATTICA PRISON UPRISING OF 1971 AND ITS LEGACY* 64, 79 (First Vintage Books 2017) (2016). Thompson’s book was itself banned in prisons. See Jenkins, *supra* note 105, at 2323.

¹²³ See Roberts, *supra* note 54, at 5–7, 11–12 (gesturing towards different definitions of “abolition”).

¹²⁴ *Prisoner Mail Programs*, CRITICAL RESISTANCE, <https://criticalresistance.org/prisoner-mail-programs/> (last visited Aug. 13, 2024).

¹²⁵ See Holbrook v. Jellen, *supra* note 90.

¹²⁶ Abolitionist Law Center, *supra* note 87.

¹²⁷ RODRÍGUEZ, *supra* note 77, at 114.

¹²⁸ Leah Wang, *Mail Scanning: A Harsh and Exploitative New Trend in Prisons*, PRISON POL’Y INITIATIVE (Nov. 17, 2022), <https://www.prisonpolicy.org/blog/2022/11/17/mail-scanning>.

¹²⁹ *Id.*; see also Sanya Mansoor, *As Texas Prisons Move to Digitize Mail, Advocates Say Family Bonds Grow Weaker*, TIME (July 20, 2023, 11:32 AM), <https://time.com/6296247/texas-prisons-mail-digital>.

For the imprisoned, physical mail is an invaluable tangible, embodied connection to their loved ones,¹³⁰ “proof of life in a system that seeks our erasure and death.”¹³¹ Mail is not just read; it is touched, traced, and revisited often for comfort.¹³² If Sojourner Truth referred to her *cartes de visite* as a shadow of herself, then the practice of banning physical mail leaves imprisoned persons with only a shadow of the shadow of their loved ones. Digitization also significantly heightens the already extreme surveillance and assault on the privacy of the imprisoned. Electronic copies of mail that can be kept indefinitely enable anyone with access to mail databases “to conduct individualized or system-wide keyword searches, at any time, for any reason.”¹³³ In fact, private contractors “explicitly advertise mail digitization services as surveillance tools.”¹³⁴ Already, digitization has “chilled the expression of members of the public who otherwise wish to send mail to people incarcerated in correctional facilities.”¹³⁵ Greater surveillance capacity can also be deployed for further censorship.

Like Holbrook’s 2014 lawsuit, litigation against mail confiscation and digitization relies primarily on First Amendment arguments.¹³⁶ Two lawsuits filed in 2019 by the Abolitionist Law Center—one on behalf of four prisoners’ rights organizations, the other by an incarcerated person—claim that mail digitization is “a violation of the confidentiality guaranteed between lawyers and their clients, as protected by the First Amendment.”¹³⁷ Digitization “violates the expressive, associational, [and] privacy” rights of incarcerated people and of their friends, family, and supporters who send them mail, states a lawsuit filed on behalf of five

¹³⁰ See, e.g., Mansoor, *supra* note 129.

¹³¹ Panel: *Why Physical Mail in Prison Matters*, BEYOND PRISONS (Mar. 29, 2022), <https://www.beyond-prisons.com/home/panel-why-physical-mail-in-prison-matters>.

¹³² Stephanie Krent, *NYC’s Nightmarish Plan to Prohibit Physical Mail in Jails Should Be Abandoned*, KNIGHT FIRST AMEND. INST. AT COLUM. UNIV. (Jan. 9, 2023), <https://knightcolumbia.org/blog/nycs-nightmarish-plan-to-prohibit-physical-mail-in-jails-should-be-abandoned>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Complaint at 2, Knight First Amend. Inst. v. Fed. Bureau of Prisons, No. 1:21-cv-6579, 2021 WL 3413666 (S.D.N.Y. Aug. 4, 2021).

¹³⁶ See *Media Alert: Trial Begins in Challenge to State Prisons’ Legal Mail Policy*, ABOLITIONIST L. CTR. (Feb. 19, 2019), <https://abolitionistlawcenter.org/2019/02/19/media-alert-trial-begins-in-challenge-to-state-prisons-legal-mail-policy>.

¹³⁷ *Id.*

people incarcerated in San Mateo County jails, several of their family members, and A.B.O. Comix, a collective of artists who correspond with people in jail.¹³⁸

Yet, as a new strategy by the Abolitionist Law Center articulates, digitization also violates the rights of anyone sending digital mail as *Creators*.¹³⁹ Books, letters, photographs, drawings, poems, and other forms of recorded expression being sent to prison are automatically copyright protected—meaning their authors have the exclusive rights to copy, display, or reproduce their work.¹⁴⁰ As authors, they can decide who can copy, display, or reproduce their work; and they can sue whomever they believe is reproducing their work without their consent.¹⁴¹ Built on private corporations scanning (without authorization) the copyright-protected works sent to imprisoned persons, the business model for mail digitization relies on copyright infringement.¹⁴² Moreover, this act of scanning and digitizing may not fall under the most relevant exception to copyright: fair use.¹⁴³

By asserting their rights as a Creator (copyright owner), anyone who sends mail to prison has the power to demand that the unlawful reproduction cease and seek compensation for damages. They also have the chance, through legal discovery to reveal the otherwise confidential commercial interests between prisons and private contractors, as well as how exactly prisons are storing and using the trove of personal information collected by the companies. Better understanding these collaborations has so far eluded Freedom of Information Act (FOIA) requests.¹⁴⁴

In one sense, a litigation strategy that activates copyright protection against prison mail digitization is simply one more tool in the resistance against the oppression of incarcerated people. This approach to the law echoes Holbrook's own description of how he engaged the legal system from prison:

¹³⁸ Complaint at 2, *A.B.O. Comix v. Cnty. of San Mateo*, No. 23-CIV-01705 (Cal. Sup. Ct. Mar. 9, 2023), <https://www.eff.org/document/abo-comix-v-county-san-mateo-complaint>.

¹³⁹ Nicola Lee-Osterreich, Jessica Tsibidis-Goldberg & Karalyn Joseph, *Litigating Abolitionist Copyright*, ABOLISH IP 24 (Nov. 30, 2023), <https://www.aboliship.org/litigationguide>.

¹⁴⁰ *Id.* at 7–8.

¹⁴¹ *Id.* at 8–9.

¹⁴² *Id.* at 22–24.

¹⁴³ *Id.* at 29–30.

¹⁴⁴ See *Knight Institute v. Federal Bureau of Prisons*, KNIGHT FIRST AMEND. INST. AT COLUM. UNIV., <https://knightcolumbia.org/cases/knight-institute-v-federal-bureau-of-prisons> (last visited Aug. 14, 2024) (noting that after the Bureau of Prisons “produced responsive records” the case was settled in 2022).

To read how African and Asian liberation movements used a body of law promulgated by colonial powers to liberate themselves from colonial oppression resonated with me. What resonated more was how despite using it, they did not, for one minute, believe in the body of laws created by the colonial powers. To them, it was just another tool in their war chest.¹⁴⁵

Holbrook expands on this approach in his description of the 2014 lawsuit:

Me and other comrades viewed our campaign on prison censorship as a plantation rebellion. We filed grievance after grievance on every denial, had people on the outside challenge the censorship and organize direct actions against it. As organizers and abolitionists we weren't trying to make our imprisonment more comfortable. **For us, it was a matter of survival and an organizing strategy.** Books on slave rebellions were political education for us, and the ability to hold political education multiplied our numbers.

When it comes to the law, the same applies, it can be an organizing strategy. We certainly didn't believe in the law and all of us at one time or another during our imprisonment spent time in the hole for attempted escape or suspicion of escape. We didn't pin our hopes of freedom in the law, our motto was we'd either get out the "white way" or the "right way", [sic] the white way being the law and the right way meaning going over or under the wall. For us it was using the tools or weapons at our disposal to gain our freedom.¹⁴⁶

While the legal strategy we propose here carries echoes of Holbrook's instrumentalist approach, crucially, it also bears an ethic and practice of abolitionist care. In her essay *Free Us All*, Kaba considers how letter writing can be one tactic (among others) of abolitionist care for incarcerated people because it connects "people in a heartfelt, direct way that teaches specific lessons about the brutality of prisons" and such care "underscores that our fates are intertwined and our liberation is interconnected."¹⁴⁷ Such engagements across prison walls, argues Christopher Paul Harris, "initiate a process of undoing" and a "collective undertaking of self-abolition."¹⁴⁸ By activating their power as Authors and directly confronting the

¹⁴⁵ Abolitionist Law Center, *supra* note 87.

¹⁴⁶ *Id.*

¹⁴⁷ Kaba, *supra* note 67.

¹⁴⁸ Christopher Paul Harris, (*Caring for*) *the World That Must Be Undone*, in *The Politics of Care*, 20 CONTEMP. POL. THEORY 904, 909 (2021).

corporate interests of incarceration, letter writers move beyond the conceptual undoing described by Kaba and Harris to the material undoing of carceral logics. Moreover, beyond a single legal strategy, prompting senders of mail to think about themselves as Creators opens other abolitionist paths. Beyond prison mail, should abolitionists allow their writing, art, and knowledge production to be commercialized inside supply chains that are complicit with the prison industrial complex? If censorship is not merely a component of prison, but “the prison itself is censorship,” as Kaba argues,¹⁴⁹ how might abolitionist Creators occupy their copyright against censorship as a whole?

III. PRODUCING LIFE-AFFIRMING KNOWLEDGE FOR PALESTINE

*From the narrow window of my small cell—
I can see your big cell!*

– Samih al-Qasim¹⁵⁰

Emerging out of the resistance to the transatlantic slave trade and its legacies, “abolition” has clear origins in a particular geography.¹⁵¹ Yet abolition is foundationally an international movement,¹⁵² concerned with “abolition geographies”¹⁵³ and horizons of human freedom wherever they emerge.¹⁵⁴

¹⁴⁹ *Return to Sender: Prison as Censorship*, ELIZABETH FOUND. FOR THE ARTS: PROJECT SPACE PROGRAM, <https://www.projects-space-efanyc.org/return-to-sender> (last visited Aug. 14, 2024).

¹⁵⁰ Samih Al-Qasim, “End of a Talk with a Jailer,” in *Three Poems* (trans. Nazih Kassis), 20 MANOA, no. 1, 2008, at 144, 145.

¹⁵¹ See *Historical Context: Abolishing the Trans-Atlantic Slave Trade*, LOWCOUNTRY DIGIT. HIST. INITIATIVE: VOYAGE OF THE ECHO, <https://ldhi.library.cofc.edu/exhibits/show/voyage-of-the-echo-the-trials/historic-context--abolishing-t> (last visited Aug. 14, 2024); *The Origins and Nature of New World Slavery: Abolition*, DIGIT. HIST., https://www.digitalhistory.uh.edu/disp_textbook_print.cfm?smtid=2&psid=3047 (last visited Aug. 14, 2024) (surveying the historical opposition to enslavement by geographical location).

¹⁵² See generally THE ROUTLEDGE INTERNATIONAL HANDBOOK OF PENAL ABOLITION (Michael J. Coyle & David Scott eds., 2021) (featuring essays on abolition in the United States, New Zealand, South Africa, England, Spain, Argentina, Rwanda, Brazil, Ireland, and Ghana).

¹⁵³ GILMORE, *supra* note 83.

¹⁵⁴ See Emlio Dabed, *Palestinian Legal Activism, Between Liberation and the ‘Desire’ for Statehood*, THE NAKBA FILES (Feb. 23, 2017), <https://nakbafiles.org/2017/02/23/palestinian-legal-activism-between-liberation-and-the-desire-of-statehood> (arguing that the Palestinian national movement “always defined its struggle as a battle not for statehood per se, but for the liberation of Palestine”).

Palestinian liberation is a touchstone for abolition. A century of anti-colonial Palestinian resistance has paved many potential abolitionist futures.¹⁵⁵ In one abolitionist iteration, Palestinians have modeled a disengagement from and abandonment of the colonial criminal legal system as well as a collective organization of an alternative system through the “rebel justice” institutions and practices that emerged during two of the Palestinians’ “most effective and sustained anti-colonial uprisings of the twentieth century,” the Great Revolt and the First Intifada.¹⁵⁶ In another implication for abolition, the Palestinian struggle reminds us that the fixation on state sovereignty is relatively recent and that the past and present are full of decolonial and revolutionary praxis.¹⁵⁷

Palestine also teaches about settler-colonial logics of incarceration and about resisting them. The condition of thousands of Palestinians imprisoned by Israel for resisting occupation,¹⁵⁸ and the centrality of the Palestinian prisoners’ movement in the broader struggle for liberation,¹⁵⁹ comprise what Abdul Rahim al-Sheikh calls the “sixth Palestinian geography.”¹⁶⁰ At the same time, as al-Sheikh asserts, Palestinians in the other five geographies—Jerusalem, the West Bank, Gaza, the diaspora, and the Palestinian communities inside Israel—are also incarcerated.¹⁶¹ From inside brick and mortar prisons, Palestinians teach about incarceration in historical Palestine; from historical Palestine, Palestinians teach about incarceration and abolition worldwide.

Black-Palestinian solidarity has also modeled how abolition geographies can come together not simply as “a recognition of parallel oppressions, humiliations,

¹⁵⁵ See Devin G. Atallah & Urmitapa Dutta, “Creatively in Coalition” from *Palestine to India: Weaving Stories of Refusal and Community as Decolonial Praxis*, 78 J. SOC. ISSUES 434, 445 (2022); see also Alex Winder, *Anticolonial Uprising and Communal Justice in Twentieth-Century Palestine*, RADICAL HIST. REV., May 2020, at 75.

¹⁵⁶ See Alex Winder, *Forging Justice from Below: Palestinians, Indigeneity, and Abolition*, 50 J. PALESTINE STUD., no. 3, 2021, at 43, 43.

¹⁵⁷ See, e.g., Noura Erakat, *Designing the Future in Palestine*, BOS. REV. (Dec. 19, 2022), <https://www.bostonreview.net/articles/designing-the-future-in-palestine>; Dabed, *supra* note 154; Atallah & Dutta, *supra* note 155.

¹⁵⁸ Khalida Jarrar, *Freedom is Coming: Shattering Slavery and Emptying Prisons*, JADALIYYA (Jan. 10, 2024), <https://www.jadaliyya.com/Details/45699>.

¹⁵⁹ See, e.g., *id.*

¹⁶⁰ *Symposium on the Palestinian Prisoner Movement: The Sixth Geography*, MAJALLAT AL-DIRASAT AL-FILASTINIYYA, Autumn 2021, at 9, 11.

¹⁶¹ *Id.*

violence, and carcerality under occupation but a shared vision of liberation,” in the words of Robin D.G. Kelley.¹⁶² For the Black Radical Tradition of abolitionist struggle—which has “always been transnational in character and multivalent in scope”¹⁶³—allying with the Palestinian struggle was central to the anticolonial turn of the 1960s and particularly after the 1967 Arab-Israeli War when Israel occupied the whole of historical Palestine (and territory in Syria).¹⁶⁴ Beginning in this period, the Israeli occupation of Palestine became critical to U.S. imperial culture: while Zionism became a symbolic storehouse for articulating liberal freedom and colonial violence, Palestinian narratives of dispossession and resistance animated antiracist, anti-imperial politics.¹⁶⁵ As Noura Erakat and Marc Lamont Hill describe, “[e]lements of the Black radical tradition that allied with the Palestinian struggle understood it not only as a principled response to a specific historical injustice, but also as the signpost of an analytical understanding of imperialism, colonialism, and White supremacy as global phenomena that subsume the Black American condition.”¹⁶⁶ It is against this history that Fred Moten, in an address at the American Studies Association Annual Meeting in 2009, describes his solidarity with the Palestinians through support “of the boycott of Israeli academic and cultural institutions” as “nothing more than another way of saying that I am committed to the black radical tradition.”¹⁶⁷

The analytical understanding that grounds Black-Palestinian transnational solidarity is not limited to an analogy between two settler-colonial, racialized states or to discursive and cultural affinities. Instead, abolitionists highlight the specific metrics and materialities that characterize an intense alliance around technologies of oppression, violence, and carcerality: “concrete alliances, mutual training programs, concerted policing strategies, weapon exchanges, and synchronized acts of

¹⁶² Robin D.G. Kelley, *From the River to the Sea to Every Mountain Top: Solidarity as Worldmaking*, 48 J. PALESTINE STUD., no. 4, 2018–19, at 69, 85.

¹⁶³ Noura Erakat & Marc Lamont Hill, *Black-Palestinian Transnational Solidarity: Renewals, Returns, and Practice*, 48 J. PALESTINE STUD., no. 4, 2018–19, at 7, 8; see also Russell Rickford, “*To Build a New World*”: *Black American Internationalism and Palestine Solidarity*, 48 J. PALESTINE STUD., no. 4, 2018–19, at 52, 53.

¹⁶⁴ See Rickford, *supra* note 163, at 55–56.

¹⁶⁵ See generally KEITH P. FELDMAN, *A SHADOW OVER PALESTINE: THE IMPERIAL LIFE OF RACE IN AMERICA* (2015).

¹⁶⁶ Erakat & Hill, *supra* note 163, at 8.

¹⁶⁷ Fred Moten, *The New International of Insurgent Feeling*, BDS (Nov. 16, 2009), <https://bdsmovement.net/news/new-international-insurgent-feeling>.

oppression.”¹⁶⁸ Unearthing these specific, shared modalities animates the long-term strategies of abolitionists. For example, the international campaign to pressure G4S,¹⁶⁹ “the world’s largest security company and the third largest private sector employer in the world,”¹⁷⁰ to cease its training of Israel’s police force emphasized the company’s deep involvement in the global prison-industrial complex.¹⁷¹ Recognizing shared experiences of violence also animates spontaneous acts of solidarity in moments of heightened violence. During the summer of 2014—amid the concurrent Israeli bombardment of the besieged Gaza Strip, which killed 2,251 and injured 10,000 Palestinians, and the racialized police violence in the U.S. city of Ferguson, Missouri, following the police murder of Michael Brown—organic acts of mutual recognition and affirmation emerged between Palestinians and American protestors.¹⁷² As Angela Y. Davis put it, “when we see the police repressing protests in Ferguson we also have to think about the Israeli police and the Israeli army repressing protests in occupied Palestine.”¹⁷³ Not simply symbolic or a thought experiment, solidarity is forged around common technologies of state violence: for example, in an act of care, Palestinian activists sent advice to protestors in Ferguson on how to avoid and remedy a specific tear gas after they noticed through images on social media that the tear-gas canisters being used were exactly the same as those used against them in occupied Palestine.¹⁷⁴ Abolitionists also warn that the Israeli occupation of Palestine is a laboratory for technologies of punishment and carcerality that are exported and repurposed globally, including drones, AI-operated weapons, and biometric surveillance such as facial recognition.¹⁷⁵

¹⁶⁸ Steven Salaita, *Zionism and Native American Studies*, 2 ABOLITION 199, 200 (2020).

¹⁶⁹ See *Stop G4S*, BDS, <https://bdsmovement.net/stop-g4s> (last visited Aug. 14, 2024).

¹⁷⁰ *G4S: A Big Company with Growing Pains*, SILENT PROS., <https://silentprofessionals.org/g4s-a-big-company-with-growing-pains> (last visited Aug. 14, 2024).

¹⁷¹ See ANGELA Y. DAVIS, *FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT* 55 (2016).

¹⁷² See Erakat & Hill, *supra* note 163, at 8–9; Kelley, *supra* note 162, at 69–70; Isabel DeBre, *What is Gaza’s Ministry of Health and How Does it Calculate the War’s Death Toll?*, PBS NEWS (Nov. 7, 2023, 3:24 PM), <https://www.pbs.org/newshour/world/what-is-gazas-ministry-of-health-and-how-does-it-calculate-the-wars-death-toll>.

¹⁷³ DAVIS, *supra* note 171, at 45.

¹⁷⁴ *Id.* at 139–40.

¹⁷⁵ Petra Molnar, “*All Roads Lead to Jerusalem*”: A Lucrative Border Industrial Complex, TRANSNAT’L INST. (Dec. 19, 2023), <https://www.tni.org/en/article/all-roads-lead-to-jerusalem>.

Transnational solidarities have also emerged between imprisoned persons. As Critical Resistance states on its website:

Our vision for a world free of cops and cages does not stop at the constructed borders of the United States; PIC [prison industrial complex] abolition is international, and that includes supporting the struggle for the freedom of all Palestinian political prisoners enduring apartheid Israel's prisons and jails, and for the complete dismantling of its racist and militarized systems of control.¹⁷⁶

For their part, imprisoned Palestinians have expressed solidarity with prisoners in the United States, such as in August 2018 when “imprisoned Palestinians of the Popular Front for the Liberation of Palestine” wrote to U.S. prisoners who were participating in the national prison strike, “[w]e know that your victory will also be a victory for Palestine—just as our victories in Palestine will be a victory for all of the struggles against imperialism, racism and oppression in the United States and globally.”¹⁷⁷

The recent and ever-expanding criminalization of solidarity with Palestine across the United States and Europe brings into sharper focus why Palestinian liberation is a signpost for abolitionism.¹⁷⁸ Since 2014, U.S. lawmakers have introduced 293 bills targeting advocacy for Palestinian rights, in response to the spread of the Boycott, Divestment, Sanctions (BDS) call from Palestinian civil society that seeks to withdraw support from entities complicit in Israel's human rights abuses.¹⁷⁹ Though only a fraction of these bills passed—due in part to strong opposition from grassroots and civil liberties organizations who deem boycotts to be constitutionally protected—thirty-six states currently have anti-boycott laws on the books.¹⁸⁰ The American Civil Liberties Union has argued that “states should not be

¹⁷⁶ *Solidarity with the Struggle for Palestinian Liberation*, CRITICAL RESISTANCE (Oct. 10, 2023), <https://criticalresistance.org/updates/solidarity-with-palestine-oct23>.

¹⁷⁷ *Palestinian Prisoners Declare Solidarity with US National Prison Strike*, LIBERATION NEWS (Aug. 22, 2018), <https://www.liberationnews.org/palestinian-prisoners-declare-solidarity-us-national-prison-strike>.

¹⁷⁸ See, e.g., *Palestine in School, Criminalising Palestine Solidarity*, TRIBUNE (Oct. 13, 2023), <https://tribunemag.co.uk/2023/10/criminalising-palestine-solidarity>.

¹⁷⁹ See *Statistics*, PALESTINE LEGAL, <https://legislation.palestinelegal.org/#statistics> (last visited Sept. 2, 2024); *New Resource on the Right to Boycott*, PALESTINE LEGAL (Dec. 8, 2022), <https://palestinelegal.org/news/2022/11/14/new-resource-on-the-right-to-boycott>.

¹⁸⁰ See *Statistics*, *supra* note 179.

sanctioning business on the basis of First Amendment-protected expression and association.”¹⁸¹ According to Meera Shah, a senior staff attorney at Palestine Legal (an organization that protects the civil and constitutional rights of people in the United States who speak out for Palestinian freedom),¹⁸² “[l]egislation targeting boycotts for Palestinian rights has paved the way for anti-boycott laws targeting other social justice movements Anyone interested in seeking social, political, or economic change and protecting our right to dissent should be challenging these anti-BDS measures.”¹⁸³

In thinking with Palestinians about liberation-as-abolition, and amid the suppression of existing forms of Palestine solidarity, abolitionist creativity offers new economic tools and actions for solidarity with Palestinian liberation. As in the case of prison abolition, the guiding question is: what might be possible if we empower ourselves as Creators?

One answer comes to us from an independent media organization in Beirut, *The Public Source*, which is “dedicated to uncompromising journalism and critical commentary from the left.”¹⁸⁴ In 2023, in collaboration with the Authors of this Article, the publication changed its copyright policy from a Creative Commons Attribution-Noncommercial-ShareAlike license¹⁸⁵—which allows anyone to copy, redistribute, and adapt content to any medium or format and for any noncommercial purpose, so long as they give appropriate credit and distribute any adaptations under the same license¹⁸⁶—to the following: “[a]ll rights reserved; those who accept a Duty of Care to Palestinian life, including the principles of the Boycott, Divestment, Sanctions (“BDS”) movement, and agree to produce under this same license, may freely use this work for any purpose. We ask them only for attribution.”¹⁸⁷ In the editorial that accompanies this license, we explain how this experiment in solidarity seeks to activate the identity of a knowledge *producer*, in the economic sense, based

¹⁸¹ *ACLU Letter Opposing Final Passage of S. 1 (Combating BDS Act)*, ACLU (Feb. 6, 2019), <https://www.aclu.org/documents/aclu-letter-opposing-final-passage-s-1-combating-bds-act>.

¹⁸² *About*, PALESTINE LEGAL, <https://palestinelegal.org/about> (last visited Aug. 14, 2024).

¹⁸³ *New Resource on the Right to Boycott*, *supra* note 179.

¹⁸⁴ *About The Public Source*, PUB. SOURCE, <https://thepublicsource.org/about> (last visited Aug. 15, 2024).

¹⁸⁵ *See, e.g., The (Dis)order Report*, PUB. SOURCE (Dec. 1, 2022), <https://web.archive.org/web/20221201121413/https://thepublicsource.org> (using the Creative Commons copyright license).

¹⁸⁶ *Attribution-Noncommercial-Sharealike 4.0 International 4.0 Deed*, CREATIVE COMMONS, <https://creativecommons.org/licenses/by-nc-sa/4.0/deed.en> (last visited Aug. 15, 2024).

¹⁸⁷ *License FAQs*, PUB. SOURCE, <https://thepublicsource.org/license-faqs> (last visited Aug. 15, 2024).

on an analysis and recognition of the ubiquitous and all-encompassing presence of intellectual property in the global economy.¹⁸⁸

The *Public Source* copyright license is rooted in abolitionist principles.¹⁸⁹ By centering Palestinian life, this experiment in abolitionist creativity honors Gilmore’s reflection that abolition is about “building life-affirming institutions.”¹⁹⁰ In excluding only those who exclude Palestinian life, the license turns the exclusionary logic of copyright on its head, towards a world where the institutions and practices of knowledge and creativity are only life-affirming.

In addition, by activating the legal technology of Duty of Care, this intervention centers the ethics of care that undergirds abolitionist thinking. Duty of Care is a legal obligation one has toward others and the public to take reasonable measures to prevent foreseeable harm.¹⁹¹ As the legally cognizable form of care, inserting Duty of Care into a copyright license “reorients disputes away from the technicalities of intellectual property infringement and centers the question of what it means to care for Palestinian life.”¹⁹²

In line with the abolitionist emphasis on positive—not just negative—interventions, asserting intellectual property rights constitutes a positive, affirmative intervention in the economy. Boycotts, divestments, and sanctions, though valuable actions in themselves, are fundamentally about negation. By conditioning the free movement of our own knowledge production on the freedom of Palestinians, we honor abolitionist principles to affirm and create alternative worlds, coupled with rejecting existing ones. As the *Public Source* FAQs page states, “We are trying to consciously occupy the system with terms that connect our intellectual property to the world as we aspire it to be—one where knowledge and creativity can be shared freely only when people are free.”¹⁹³

¹⁸⁸ Julia Choucair Vizoso, *Seizing Knowledge Production in Solidarity with Palestine*, PUB. SOURCE (June 2, 2023), <https://thepublicsource.org/knowledge-production-palestine-solidarity>.

¹⁸⁹ See *License FAQs*, *supra* note 187.

¹⁹⁰ ANGELA Y. DAVIS, GINA DENT, ERICA R. MEINERS & BETH E. RICHIE, ABOLITION. FEMINISM. NOW. 51 (2022) (citing Ruth Wilson Gilmore, Remarks at the Making and Unmaking Mass Incarceration Conference (Dec. 2019)).

¹⁹¹ See *Negligence*, LEGAL INFO. INST.: WEX, <https://www.law.cornell.edu/wex/negligence> (last updated July 2023).

¹⁹² *License FAQs*, *supra* note 187.

¹⁹³ *Id.*

Like the case of copyright litigation for prison abolition, the specific copyright license we discuss here is but one iteration of abolitionist creativity for Palestinian liberation. Elsewhere we discuss how intellectual property strategies can be used in resistance to surveillance and censorship in digital spaces and in physical sites of protests, as well as in collaboration with actions to withhold labor.¹⁹⁴

IV. CONCLUSION: AN INVITATION

A world without slavery, without prisons, where Palestine is free, is a creative endeavor. Nothing but every creative bone is needed to imagine and create this life-affirming future. But to liberate, we must liberate creativity itself. Abolitionists of past and present already have the tools to jailbreak creativity out of the economic and legal structures of exclusion. Creativity as care abolishes intellectual property.

¹⁹⁴ See Julia Choucair Vizoso & Chris Byrnes, *Abolitionist Creativity*, TRANSNAT'L INST. (Feb. 9, 2023), <https://www.tni.org/en/article/abolitionist-creativity>.

