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# Open Sourcing Smell Culture: Past and Future Models for Perfumery

Like the media industry, the perfume business is in a moment of transition – one with increasing democratization by consumers and independent creators.

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**T**he perfume industry is in the middle of a big transition; a move towards this generation's favorite buzzword: Democratization. This move, like others before it, is fueled by a culture of information sharing online, and new organizations only too eager to help. Moreover, as laypeople are discovering perfumery as a creative practice, they are increasingly questioning existing systems. Change is imminent, but any industry attempts at adaptation will fester if it doesn't also address the two-headed beast of secrecy and exclusion. In short, we need to create new systems to protect

intellectual property, which would serve both to encourage this flourishing outsider perfumer culture and facilitate progress.

Although making change to given systems can be an unnerving process, there are other sectors to look to for insights. Most saliently, the media.

## Media: Then and Now

In the mid-2000's, television and film media were weathering a transition from analog to digital. Optimistic techno-futurists foretold a people's revolution through an accessible, affordable, digitized, and therefore truly open media landscape.

Founded in 2005, Al Gore's Current TV aimed to prove them right with the first democratic cable network. Indeed, Current relied almost entirely on Viewer Created Content (VC2) or templated edits of snippets of Citizen Journalism (CJ) to feed the on-air stream. This democratization of the media—understood as a removal of traditional gatekeepers—was spoken about reverentially as a quasi-moral calling, all made possible thanks to new access to digital filmmaking tools.

Indeed, investing in gear and software was now anybody's game. Cheap and ubiquitous video cameras and software allowed almost everyone to participate. Meanwhile, an open knowledge base was growing online, accompanied by new structures designed to meet the increasing demand for viewership: Vimeo (2004), YouTube (2005) and a plethora of new, niche film festivals. The independent media scene was flourishing.

But this explosion of content came with plenty of problems. There was simply, and suddenly, too much media for the existing paying platforms to handle. While TV networks, rental services and theatrical systems created distribution funnels, P2P sharing systems complicated matters further by allowing for uncontrolled unpaid distribution (e.g. piracy). Moreover, every meaningful piece of video was joined online by twice the amount of amateurish content. The good stuff – no matter how you defined it – was too easily lost in the noise.

The result of all this quickly became a simple problem of livelihood. Existing power players were losing views to on-demand, user-generated content, and newly minted creators were unable to earn a living within the “old” way of doing things. And yet, 14 years after the launch of YouTube—and in the midst of a very real shift in content consumption (see 2017's Nielsen ratings for proof)—we've come to a time where these new structures are working, for the most part, pretty well. Newer online platforms have figured out how to pay their creators through ad-sales revenue sharing, and older media companies have adapted by embracing the one-time threat as a major asset, as Disney did in 2014, when it acquired



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*Understanding that creator-owned content was part of the media future, Disney acquired the YouTube-reliant content creator and aggregator Maker Studios, in 2014.*

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This new system is complicated, but it's starting to work. One of the reasons it works is because all the transactions, acquisitions, licensing deals and revenue share agreements are supported by clear structures for the use and protection of intellectual property (IP). Without these structures, even the biggest content creators would never have had a chance, simply because they would have had no defensible rights. Without clear IP structures, they would have had nothing to sell. Moreover, IP in media has adapted to and allowed for change and supported—for the most part—the proliferation of a free media. So, in the interest of later applying this to perfumery, let's briefly look at how protections work in media.

## IP Structures

The traditional transactional way of acquiring media content works in two ways. The first is the “classic” acquisitions model where content is purchased and ownership is – simply – transferred, in perpetuity. On the other hand, the licensing model preserves ownership but allows content to be exploited in individually-negotiated sectors (ex. educational licenses, territory-based theatrical licenses, distribution platforms or product licenses).

These interdependent models are reliant on the baseline concept of ownership and authorship and are supported by intellectual property law. However, ideological concerns around the creative restrictions of copyright led to the development of the “copyleft” movement,<sup>2</sup> which challenged restrictive ownership models through new licenses that allowed people to freely distribute and modify existing work, often with the stipulation that the same rights be preserved down the line.

The development of copyleft ideologies eventually spawned what has now become the *de facto* standard: Creative Commons (CC). Founded by

Lawrence Lessig in 2001, Creative Commons publishes a series of licenses that allow creators to communicate which rights they reserve and which they waive for the benefit of others. A piece of video released under a CC license could – for instance – allow others to use it freely with the preservation of comparable rights, with attribution, or in a number of other ways. These licenses are an expansion of existing models and can still be defended using copyright law.

Interestingly, copyright law itself also offers systems for sharing or working with other people's content. Fair Use allows third parties to use content without the copyright holder's permission, under the condition that they meet several pre-determined benchmarks (for instance that the work be satire or educational in nature, or that only a small portion of the work be used).

Public Domain, for its part, refers to work whose intellectual property rights have expired, are inapplicable, or have been forfeited in some way. Early movies, formulas in Newtonian physics, some software code and cultural goods like recipes are often in the public domain.

As varied as they may be in ideology and execution, these structures all have in common that they are legally defensible. They also allow people to enjoy their right to create and to build upon or quote creative influences, while protecting the people creating the work in the first place. Most crucially, they support a free media.

With the exception of copyright protection, the perfume industry landscape today is strikingly similar to the media landscape at the dawn of YouTube. Most of the data points correspond.

In fact, we're currently witnessing a "democratization" of creation. New perfumers are able to access materials thanks to suppliers like Perfumers Apprentice and Perfumers' World, while information is being freely shared through organizations like The Institute for Art and Olfaction (which I founded in 2012), Smell Lab (co-founded by filmmaker Klara



Protecting original works of authorship such as literature, movies and architecture, one could reasonably assume that copyright protection could also apply to scent formulation.

Ravat in 2015) and platforms like The Good Scents Company, Basenotes and Fragrantica.

We're also experiencing the same qualitative issues that media weathered in the early days of digital—I don't know what the perfume equivalent is of a cat video, but I'm pretty sure I've smelled an olfactory Rick-roll—as well as the concurrent complaints that "good" perfume is being lost in the noise of ever-increasing release schedules.

Even the human narratives are the same. On the one hand: "They're excluding us!" and on the other: "These people aren't *real* perfumers!" (the subtext: "We want to make a living!" and "Our very livelihoods are at stake!").

The narrative is strikingly similar. Given how it played out in media, it might be wise to consider a shift towards creative decentralization as a possible future.

To help the industry weather this shift, we need rational, realistic and accessible systems for sharing that also support the multifaceted individual impulse that drives creativity, and the human



*At what point does a copy become its own thing? The Chanel logo has been used in a variety of products, increasingly removed from initial use and purpose.*

desires for sustainable incomes and peer recognition. In order to achieve this, it becomes crucial to address the glaring difference between media and perfume, the very backbone upon which any system must be based: Protective structures that support intellectual property rights. As it stands, the existing structures (trademark, patent and copyright) are not clear enough to be functional in this increasingly complex industry.

Of these structures, trademark is perhaps the most proven protective strategy. Identifying the source of the goods of one party from those of others, trademark applies to logos, brand names and slogans. From a formulation perspective, it could also apply to company-specific environmental scenting under the so-called “trade dress” rubric (for more, please explore Charles Cronin, Claire Guillemin and Christophe Laudamiel’s fascinating work in this domain).

The second mechanism for protection is patent law, covering industrial processes like the development of new molecules. The duration of protection depends on the type of patent granted. Thus, when the patent runs out the “copycats” rush in, creating their own versions of a previously captive molecule. Thus, IFF’s Iso E Super is now created and marketed by other fragrance houses, under different names.

Finally, we come to copyright. Protecting original works of authorship such as literature, movies and architecture, one could reasonably assume that copyright protection could also apply to scent formulation. However, the cases brought around Trésor by Lancôme demonstrate that this is not the norm. Alleged copycats of the perfume were ruled in violation of copyright in the Netherlands (Lancôme vs. Kecofa, 2000<sup>3</sup>), but not in France, where the courts ruled several times over that fragrance is too subjective to be clearly defined and is therefore not copyrightable.

## Perfume History Matters

I became interested in all this because—along with Luca Turin and other partners—I’ve been laboriously documenting the re-launch of a historic perfume: *Iris Gris*, launched by Jacques Fath in 1946.



*In 2000, Lancôme accused Kecofa of copycatting its formula. The Netherlands ruled in Lancôme’s favor, while France ruled that that fragrance is too subjective to be clearly defined and is therefore not copyrightable.*



*The variety of copyright and sharing structures that are available. Creative Commons provides an opportunity for the fragrance industry to create sharing licenses.*

Although this particular effort was made primarily in the name of commerce, the same process could be engaged in for the sake of history and shared culture. In following this story, it became clear that difficulties relating to ownership and access would prove to be the central challenge in any future public-facing recreation or preservation efforts.

Beyond the question of trademark rights, relatively simple to unravel by court filings and paper trails, lies a more complex problem: How does a person or a company assert ownership over an idea? Who has the *right* to a formula when the original owners, the original perfumers, and even the original company are long gone?

Potential answers to these questions vary wildly, but one aspect that repeatedly comes up is that of fidelity to the original. Nevertheless, even this simplified arbiter of “right” and “wrong” of “real” and “fake” becomes overly-complex for the simple fact that attaining fidelity requires a Byzantine level of patient research, unfortunately blocked at almost every opportunity by understandably anxious gatekeepers.

In the traditional world of fine fragrance, there is little existing culture of public sharing. Surreptitious “sharing” – however – happens all the time, mostly in GC-MS labs. Unfortunately, GC-MS analysis is often pointless when trying to unlock a historic formula for the simple fact that it relies on the availability of an authentic source sample, and age, rarity (and in some cases reformulations) often make that very difficult to find.

Furthermore, without access to information about the formula (including, for instance, the composition of historic bases), we cannot engage in any real comparison. We find ourselves in a circle of mystery, where research grinds to a halt, secrets are maintained, and historic reformulation becomes

a question of good nose work based on a “well it’s the best we’ve got” sort of pragmatism. Poetic and marketable, but certainly not historically precise.

## Open Sourcing Smell Culture

Experiencing these frustrating barriers, a thinking person can’t help but come to the question of *why* there is no culture of sharing in perfumery. Internet chatrooms propose the usual suspects: A tradition of elitism, resistance to change, Euro-centrism and a general culture of exclusion. But maybe that’s not fair. Perhaps, it’s simply due to an understandable (and very human) feeling of protectionism, ironically spurred by a lack of actual protection. Since there are no legal structures to support ideas (formulas, in this case) from being copied, the formula holders have no choice but to revert to the only option left to them: Secrecy.

For formulas of perfumes still on the market, these trade secrets allow businesses to survive. When it comes to our shared international perfume heritage, however, the lack of publicly accessible knowledge prohibits people from doing far-reaching important historical work for the public good. The net result is that secrecy becomes a recipe for exclusion and for creative stagnation.

To change this—and to move culture forward—we need to find a new way to think about intellectual property and create a structure that would formalize strategies for making derivative, or replicative works. This would give agency to the creators by allowing people to confidently share their own work, and – of course – credit the work of people they’ve borrowed

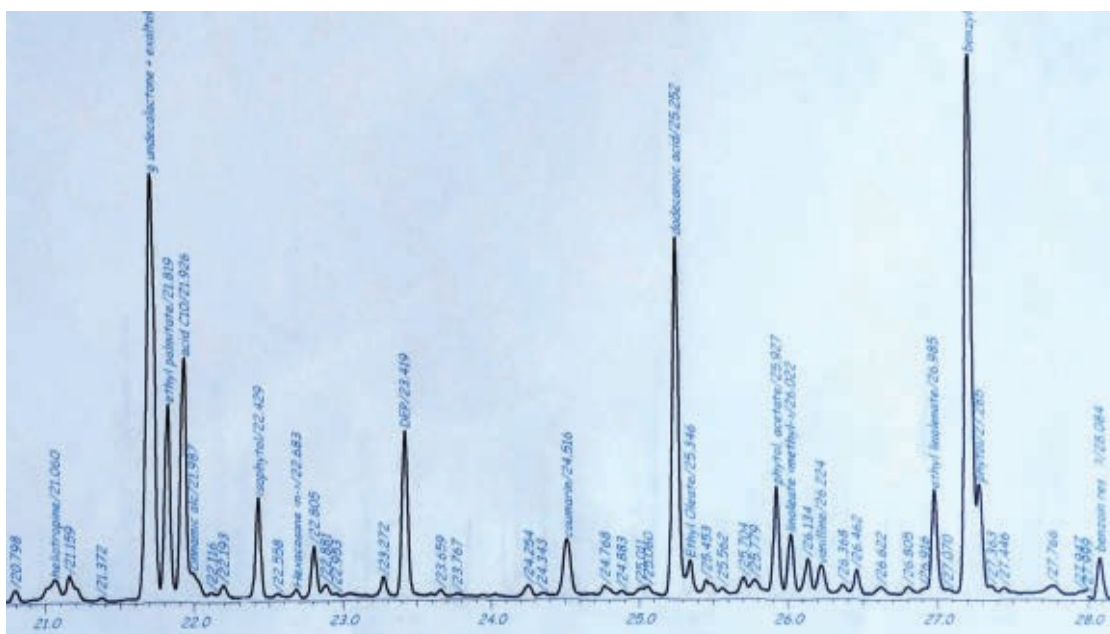
## Exploring Open Source Culture

Founded in 2012 on the very principles of open source culture, The Institute for Art and Olfaction began exploring this in earnest in 2018 in a series of events in partnership with Mediamatic, in Amsterdam. We will further explore the topic in 2019 and beyond, joining forces with Christophe Laudamiel, and drawing from other experts in the field of I.P., open source culture and Creative Commons. The program consists of an ongoing series of events (our monthly Perfume Design Challenge, Open Sessions, and more to come), and the development of a usable and public online component, which we hope to unveil in July of 2019. Meanwhile, we’re collecting willingly-shared formulas and data.

from or remixed. Christophe Laudamiel’s “Sailors” perfume provides an exemplary model for how this can be done.<sup>4</sup>

In addition to encouraging the interchange of ideas, a mechanism like this would serve to help usher historic, out-of-production formulas into the public domain.

The good news is that we already have a model courtesy of our friends in media and their enthusiastic adoption of Creative Commons licensing. Although Creative Commons relies on copyright law to implement (and as we’ve seen, this is nothing but clear in perfumery), using this as a launching point we can start to model behavior and to create



Fragrance “sharing” often comes in the form of GC-MS analysis but is limited in unlocking historic fragrance formulas.

fragrance-industry-specific attribution and sharing licenses. Where copyright law fails, we could use contract law by centering information and sharing in a publicly accessible database, enforcing adherence to our shared agreements through legally binding terms and conditions. Eventually, this cultural shift could usher real, legal change, and prompt the industry to consider fair use and public domain as actual, desired outcomes.

## Final Thoughts

A “riddim” is a publicly shared fragment of music that songwriters and performers in the Jamaican dancehall scene are free to make use of in their own music. Riddims are enthusiastically promoted and openly used in hundreds of songs and live performances. It is a riddim, in fact, that propelled dancehall rapper Sean Paul to win a Grammy Award in 2004.

Likewise, in early hip-hop, where a rich culture of sampling musical work combined with an impulse to create that—for a time—superseded any fear of legal retribution. The result was a fluid and rapidly evolving musical genre that has had an undeniable impact on creative culture from the latter part of the 20th century to now.

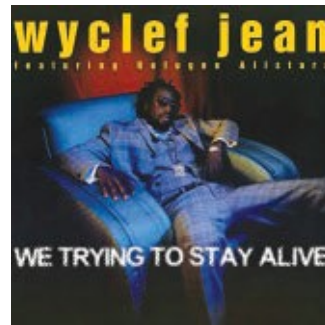
Perfumery—at its core—is a creative pursuit, and creative pursuits require the free flow of ideas and intellectual resources to progress. If perfume is to be understood as a legitimate and contemporary creative practice, and if it is to thrive, we need to learn something from those Riddim producers, those hip-hop emcees and those copyleft pioneers. We need to loosen the industry-wide death-grip on how we perceive and protect intellectual property. We need to place our shared historic cultural knowledge into the public domain, allowing it to be examined and expanded upon to fit the changing face of our world.

**Riddim.**

*A riddim is a publicly shared fragment of music that songwriter and performers can use. Is there a fragrance equivalent?*



Similarly, hip-hop culture promoted the sampling and sharing of music.



*Beegees: Staying alive, 1977 // Wyclef Jean: We Trying to Stay Alive, 1997*

For this to work, we need to share with people within and outside the industry, while simultaneously protecting the rights of the people who do the creative work. It is only with a more open approach that this medium will survive: The successes won't be based on who *does* and *does not* have access to information, but on efforts to put *shared* information to better and better use.

Without information-sharing and transparency there can be no creative progress. Without progress, culture stagnates, becomes fossilized, and eventually becomes irrelevant. Let's choose a better future.

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