

## CULTURE

As the entertainment industry unrelentingly steps up its campaigns against copyright infringements, an eclectic, low-profile group of 'copyleft' activists in Spain is challenging the very concept of intellectual property in the name of cultural freedom. A legal technicality embodied in the innovative Creative Commons licenses is their main weapon. By **Mencía Manso de Zúñiga**

# Battling for culture's common good

CC licenses were officially presented in Spain in October and their influence is gradually spreading

**A**cuarelaLibros is a small publishing house, a business with a bottom line and the aim of making money from selling books. Antonio Casado is a philosopher, and the author of Spain's first biography of Thoreau. Between Acuarela and Casado there is a straightforward business relationship that the two hope will be mutually beneficial: one writes, the other publishes and the two share the revenue accrued from the sales according to a set formula.

Acuarela is selling Casado's book at €12.50 — as is normal practice in the industry. What is more unusual is that the work will also be available to download for free on the web and surprisingly, the publisher, Amador Fernández, is not only happy about it, he is encouraging Casado to take this step. What most would see as a business blunder, for Fernández is savvy marketing, as well as an ethical and political choice.

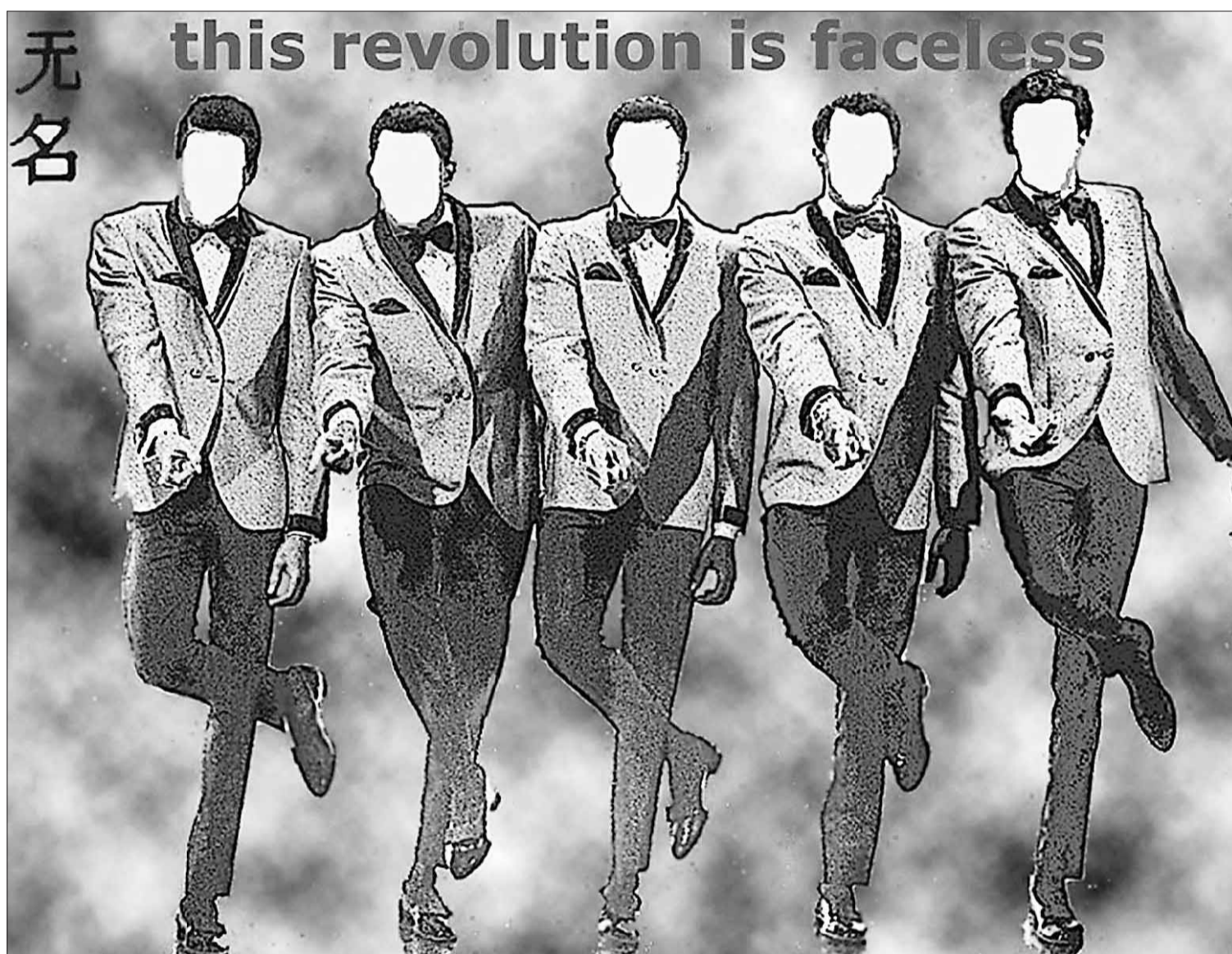
"In an economy of attention such as the one we live in, small publishing houses must seek visibility, and this grants us that visibility," he says, explaining that its flexibility helps Acuarela's products stand out in a saturated market.

At Traficantes de Sueños, another Spanish publisher engaged in the unusual practice of allowing the free circulation of electronic versions of their products, they agree. "There's the false myth" that distributing a book for free will encroach on the market quota of the published product, "but it's just the opposite, it's a marketing ploy that boosts sales," Pablo, one of the members of the Traficantes collective explains.

The two publishing houses are pioneers in Spain of the so-called 'copyleft' movement, which gathers an eclectic pack of musicians, writers, painters and other artists, who have chosen to share — rather than withhold or give up — their intellectual property; their creations, that is.

The group has recently rallied around an innovative intellectual property licensing system known as Creative Commons. Created by Stanford Law Professor Lawrence Lessig in 2001 and presented in Spain in October 2004, these licenses challenge traditional copyright by transforming the "all rights reserved" clause into one of "some rights reserved." This legal technicality allows authors to decide whether consumers can use new technologies to copy, swap and, depending on the terms of the contract, even sample and transform their works and use them for their own creative purposes, as long as no profit is derived from this use and the original author is cited.

Since the licenses were trans-



The logo of the Italian copyleft authors' collective WuMing Foundation, which like its books is licensed under a Creative Commons license.

lated and adapted to Spanish law, Acuarela has used them for four of its books. The publisher's three top-selling products are under a Creative Commons agreement.

Copyleft activists, still a disheveled, low-profile group in Spain, argue that Creative Commons and other similar licensing systems adapt an outdated copyright model to technological innovations such as the Internet

## Activists argue that these licenses de-criminalize the sharing of culture through P2P networks

and all its spin-offs. The licenses, they add, are formulas to decriminalize the sharing of culture at a time of heightened industry campaigns against the Internet file swapping networks that enable these free exchanges to take place.

Although the movement, as journalist and Creative Commons supporter Javier Candeira says, "is still teething," in its short life to date it has already stepped on people's toes, especially in the music industry.

The music sector, one of the most fruitful in the spread of free file-swapping practices, is the hardest hit by industry pressure to enforce existing copyright agreements and to persecute all those who break these contracts, even if they do so unwittingly from their home computer.

With record sales plummeting over the past two years at a rate of some 10 percent a year, according to industry sources, record companies have been quick to blame piracy — a category into which bootlegging and Internet downloads are indiscriminately lumped together — for the slump.

When Madrid Rock, an emblematic record store in the Spanish capital, announced last month it would close its doors after 24 years in business, the industry pointed an accusing finger at the Internet's file-swapping, P2P networks. Dismissing rumors that the shutdown of the always busy downtown store responded more to real estate interests than to an economic crisis, Madrid Rock managers argued that the business was simply "not profitable because of piracy and the Internet."

Admittedly, a report by Nielsen Consulting, reveals that Spain

led the European ranking of users of file swapping networks in 2003 and another study by the Massachusetts Institute of Technology ranks Spain eighth in the world in terms of the number of files loaded onto local computers. Moreover, says this study, in 2002 Spanish downloads represented 2.5 percent of the world's total, but the country's internet users amounted to only 1.3 percent of the web-surfing popula-

## Spain leads the EU ranking in terms of the number of users of file swapping systems

tion, meaning Spaniards are particularly active in the P2P sphere.

According to the publishing and authors' association SGAE, which also works as an industry watchdog, in Spain there are some 180 million to 200 million illegal music downloads a year. Under systems such as Creative Commons licenses, those downloads could be legalized.

For the SGAE and record companies such as Sony BMG, this proliferation of illegal copy-

ing and distributing of music over the Internet indicates a breakdown in society's moral values. Although bootlegging, which has mushroomed all over Spain in the past five years, absorbed 24 percent of the industry's sales in 2003, people like José María Cámara, head of Sony Music Entertainment here, has presented it in the past as "only the tip of an iceberg that hides a dramatic erosion of coexistence."

In equally alarmist terms, SGAE representative Teddy Bautista, defined piracy in a recent TVE debate program as "a breakdown in social values" and "a sign of the country's backwardness." Spanish law, Bautista argued, should get tough on any sort of copyright infringement.

At present Spain does not persecute individual users of P2P networks, but since the October reform of the penal code, anybody who has the means to violate existing intellectual protection regulations can go to jail. This means that anyone who downloads from the web a protected work which they have had to 'unprotect' can expect to face the full force of the law, explained lawyer José María Anguiano last November in an interview with EL PAÍS. Moreover,