

# Collectively Setting Conditions for Re-Use

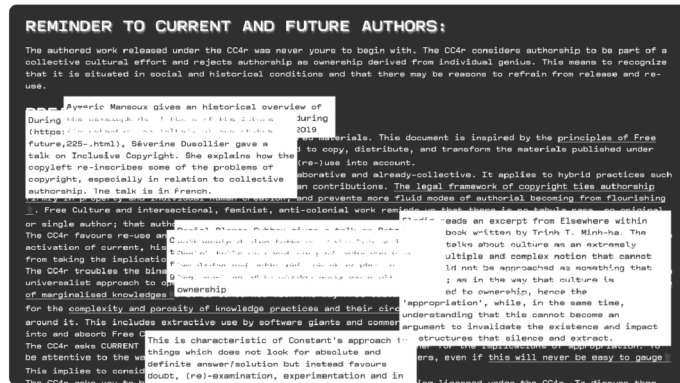
Élodie Mugrefya and Femke Snelting

For Constant, the ebb and flow of images, notes, texts, and media files that emerge from cultural work belong to the world rather than to any of us individually. Oriented by a feminist and intersectional understanding of authorship, we consider cultural expressions as always already situated within the communities with which we exist. Constant therefore commits to release materials often and early in the research, and makes an effort to provide access to source files as much as to final results. Free Culture<sup>1</sup> licenses are both a way to manifest our engagement with the hybrid, relational, and networked nature of cultural production and a way to make the conditions for re-use explicit. Constant's day-to-day fostering of the persisting presence of (un)known genealogies is an attempt to resist the dominant ideological framework of conventional intellectual property law and its normalized assumptions about individual authorship, exclusivity, and originality.

Free/Libre and Open Source Software (F/LOSS) practice and Free Culture have energized Constant's collective work for more than twenty years. As a legal invention, Free Culture licenses are useful to make other modes of sharing feasible within the law, but, maybe more importantly, they sparked an urgent reimagining of authorship as a webbed, relational practice. Developed on the crossing between the pragmatics of software production and a situationist refusal of intellectual practice as property, Free Culture licenses are a legal "hack" that redirects conventional copyright to create conditions for collective experimentation and study, for generous sharing, and for iterative development.<sup>2</sup> Excited by its potential to foreground relational aspects of authorship (such as with the project Copycult: The Original Sin in 2001), Constant committed to using and producing Free/Libre and Open Source Software and has distributed all of its work under free licenses ever since.

Yet over time, some of the initial spark and potentiality of this inventive proposal has been normalized and the problems and omissions of Free Culture licensing have become increasingly apparent. The extent to which extractivist platforms have embraced Free Culture, capitalizing on voluntary work and free labor, has become clear, as well as how the success of Free/Libre and Open Source Software relied on its alignment with an IT industry profiting from exploitation and speculating on growth.<sup>3</sup> By their attachment to conventional copyright, free licenses continue to hold on to authors as individualized humans who make original works as if created from scratch. They are legally recognized citizens who have the privilege to decide what happens to a work in the future. In this way, free licenses perversely reconfirm the ideas of ownership, individuality, and originality, and repeat the colonial gesture of creating a ground zero for the circulation of knowledge as a “free” object. The coloniality of Free Culture gets further intensified in universalist campaigns for open content and open data, presuming that all knowledge of the world should be released, without consideration for its conditions of production or for the implications of its re-use.<sup>4</sup> It ignores, as Black feminist theorist Katherine McKittrick writes, “how our ideas are bound up in stories, research, inquiries, that we do not (or should not claim we) own.”<sup>5</sup>

As an association motivated by an intersectional feminist approach to attribution and contribution that wants to challenge anthropocentric assumptions about cultural creation and knowledge production in general, the problems with Free Culture licenses had become difficult to ignore. But as we knew from the beginning, these licenses are about making an imaginative opening, a proposal to invent other frameworks for supporting creative work.<sup>6</sup> We do not want to revert to conventional copyright, nor give up on the possibility of a legal framework for authorship altogether, even if we have come to embrace extra-legal action and civil disobedience in the meantime.<sup>7</sup> After more than twenty years of copyleft-activism, for Constant, it was time to think again.



A genealogy of hyperlinks in the Collective Conditions for Re-Use (CC4r) license.

## Forking FAL: Collective Conditions for Re-Use 1.0 (CC4r)

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In 2019, Constant organized Authors of the Future, a study-day that gathered different threads and proposals for reimagining copyleft through a renarration of the history of Free Culture licenses, taking into account other genealogies besides software production<sup>8</sup> such as a redefinition of authorship as circulation<sup>9</sup> or facilitation<sup>10</sup> (rather than expression), a proposal for legalizing collective attribution,<sup>11</sup> and a comparative reading of several more recent license proposals such as the Decolonial Media License and the Consumer's Dilemma license.<sup>12</sup> These reflections were continued during the worksession Unbound Libraries in 2020 with a collective close reading of the Free Art License (FAL).<sup>13</sup> This particular license has been an inspiring project for Constant because, in contrast with more mainstream projects such as Creative Commons, FAL maintains its enthusiasm for F/LOSS ideology and reformulates the interrelated mechanisms of “use, copy, distribute, transform, and prohibition of exclusive appropriation” in its own poetic way. The writing of this license and the collective practicing of its implications are part of an ongoing artistic project with explicit anti-capitalist politics.<sup>14</sup>

This close reading of FAL reminded us how much the politics of our practice had diverted from the framework and language it established, and it felt urgent to rewrite the familiar document that now felt alien. A few months after the Unbound

Libraries worksession, we gathered with a group of Constant companions to rewrite the Free Art License into another type of document, which eventually became the Collective Conditions for Re-Use (CC4r). One of the main issues we wanted to address was the establishment of the author as an individual, validated by the law, by explicitly reminding users of the entangled nature of authorship. Instead of starting with: "The Free Art License grants the right to freely copy, distribute, and transform creative works without infringing the author's rights," we reformulated this preamble into: "The CC4r considers authorship to be part of a collective cultural effort and rejects authorship as ownership derived from individual genius. This means to recognize that it is situated in social and historical conditions and that there may be reasons to refrain from release and re-use." This reminder of the collective conditions for authorship is followed by another important deviation from FAL, which suggests the possibility of not-sharing: "To take into account that the defaults of openness and transparency have different consequences in different contexts." With this counterintuitive move, CC4r not only opens up to other authorial relationships but makes space for opacity and refusal.

CC4r further denaturalizes the figure of the author by introducing several types of authors that each bring their own networks of identification and responsibility. In CC4r, the "legal author" is the author assigned by copyright law. Sometimes they are also referred to as a "reluctant author" to remind us of the discomfort produced by conventional legal frameworks. "Current authors" are the ones involved in the formulation of the work that is licensed under CC4r. "Future authors" are those committing to the conditions of the license - those that are considering re-use. By pointing out the temporality of their relationship, we hope to crack open the transparent and eternal identification of "authors" with "their" work.

The most important move CC4r makes is to invite users to take responsibility for (re-)use. "The CC4r favors re-use and generous access conditions. It considers hands-on circulation as a necessary and generative activation of current, historical and future authored materials. While you are free to (re-)use them, you are not free from taking the implications from (re-)use into account." This call for careful attention from potential re-users is a way CC4r wants to stay with the potential of Free Culture, but without the universal reliance on freedom bound by law.

## Toward Collective Conditions for Re-Use

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The Collective Conditions for Re-Use (CC4r) license is one of many attempts at an affirmative critique, an experiment with possible and impossible, desirable and absurd, experimental and utopian (extra-)legal models for authorship. It provided a welcome opening into a new chapter in Constant's thinking about sharing culture and knowledge, but obviously only addressed some of the issues.<sup>15</sup> For the remainder of this article, we will share some of our attempts, reflections, and doubts.

### *From Freedom from to Freedom to?*

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When forking FAL, we took care to replace many of the references to "freedom" with terms like "relations" and "conditions." We suspended the idea that "freedom" was a useful term altogether in order to create some space in a debate that has for too long considered cultural content as simply free for the taking (and giving!). As a writer and researcher on feminist energy politics, Cara Daggett reminds us how mainstream discourses in the West locate "freedom" predominantly in the affordances of private property and in fantasies of being self-made.<sup>16</sup> This "freedom as detachment" coincides with the Modern construction of the legal subject as an unmarked individual, bearing fundamental rights, such as for example "free speech."<sup>17</sup> But there is another understanding of freedom, which flourishes with interdependency and the inherent relationality of the world: "If you look at other traditions of freedom that value dependency . . . you could think of freedom as being more protected from the potential of being exploited, being enslaved, being killed, being made into an abstract unit."<sup>18</sup> In contrast with "free as in speech, not as in beer" or other ways that Free Culture proponents cling to autonomy and sovereignty, Constant is interested in practices that support a relational understanding of freedom; the *freedom to*, not *freedom from*.

## From Any Purpose to *Not for Any*\*

As a consequence of the first axiom in free software, “the freedom to run the program as you wish, for any purpose (freedom 0),” Free Licenses allow you to collaborate with people that might not be your friends. Licenses such as FAL grant users explicit and unambiguous permission to use a work for whatever they want. This refusal to control the destiny of a work opens up possibilities for cultural cross-pollination beyond closed, self-referential communities and provides an imaginary opening for situations that call for adversarial or critical forms of re-use. The hands-off practice promoted through free licenses also helps to diffuse some of the proprietary obsessions and culture of control around authorship.

More recent rearticulations of free licenses try to come to terms with a fundamental critique of the meritocratic assumptions in the Free Culture movement and the realization that an inclusive understanding of freedom might need to include the freedom to exclude.<sup>19</sup> The culture of formulating codes of conduct and guidelines started to merge with that of content licenses, which makes sense when you consider authorship to be bound to its conditions.<sup>20</sup> The licenses that emerge from these conversations tend to renegotiate “freedom 0” because, as the Queer Code of Conduct argues, “If you don’t set up your own rules, you implicitly endorse those prevalent in society – including the unwritten ones – many of which we recognize as unfair to many people.”<sup>21</sup> But what does it mean to rule out certain types of use beforehand and to exclude certain users? How do you disentangle usage from the conditions that the work emerged from to begin with? And who are you to define what will happen next?

CC4r tries to find another approach, avoiding blanket permissions and also outright exclusions. It complicates the proposal of “freedom 0” by encouraging reflection and conversation. Even if the license clearly favors re-use, future authors are invited to take responsibility for the implications of their re-use, also when that would mean to expressly disrespect the work or the conditions in which it was “generated.” Of course, this approach abandons all hope that such collective conditions could or should be legally enforceable under current copyright law.

## From Individual to Interdependent Conditions

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The Brussels edition of Festival Mondial des Cinémas Sauvages insists on sharing digital copies of all the movies that are screened. It distributes these movies “wildly” without bothering about copyright restrictions. The organizers consciously decided not to impose a free license under which all the movies would fall, nor do they offer a list of licensing options to contributing filmmakers. Instead, they invited contributors to determine the conditions under which they wanted the movies to be distributed. Some responded that they preferred their film to be watched in-person instead of online; others insisted on noncommercial environments or celluloid projection. This gesture – to start from the intention of exchange and distribution rather than from restrictions for use – subtly shifts the conversation from giving “permission” as a defensive stance to a playful exchange about the conditions into which filmmakers would want to invite audiences.

Although it is an exciting proposal, the growing list of conditions falls back onto the figure of the author as an embodied, responsible, and clearly determined entity. The privileged assumption that there is a rightful person (or several people) to make such a decision for a work and for authorship still means exclusive control. What if the submission form asked about interdependencies, about origin stories and references, inviting an ongoing reflection on collective conditions for re-use – not just going forward from the submission but also backward into the interactions from which the work emerged?

## From Expression to Circulation

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CC4r starts with “The authored work released under the CC4r was never yours to begin with” to challenge the ways that free licenses tend to resort to creation together with ownership in their operations. During the study-day Authors of the Future, curator, choreographer, and performer Daniel Blanga Gubbay proposed that we move away from concepts of “original work” and “creation” and focus instead on the life

or the circulation of a work. Speaking from the field of performing arts and citing Graham Harman, Daniel invited us to think of a movement as an object of study; not the body doing the movement, but the movement itself. Although a movement of, for instance, flamenco, becomes visible to us only when traversing a body, this movement has had its own life before traversing this particular body and may then be conceived as a separate entity from the body in motion – a separate entity holding some form of agency. This proposition implies that a body is only temporarily inhabited by the movement-entity and that, consequently, this movement-entity should not be a property of the body. “The movement is not the movement of the body, where it is a belonging of authorship, but is a movement by the body, it is rendered visible by the body but it is not of the body.” In that sense, the movement-entity proposition makes room for understandings that “exceed the anthropocentric perception of life.” Daniel argues that this proposition is “a kind of shift from the idea of expression that somehow has been at the core of the Western idea of dance, to circulation or from property to use.”<sup>22</sup>

The shift deflects the notion of originality that is implicitly endorsed within the framework of copyright. It emphasizes the transmissive, even contaminating, and ever-moving nature of movements, words, languages, knowledge, etc. Departing from *circulation* and *use* makes it possible to regard a series of words as a detached object from the mouth that articulates them, because these words have been said before in one way and will be said in another. If the person talking is only one stop in the circulating flow of these words, they are experiencing a non-anthropocentric relationship of exchange where it is unhelpful to try to determinate in terms of “whose words” and “from when.”

## From Authorship to Attribution

When we say, as we did at the beginning of this essay, that “cultural expressions belong to the world rather than to any of us individually,” we do not mean to invisibilize those people, materials, and processes that make culture happen – quite the opposite. Of course it matters who composes, writes, codes, or draws. But as Sara Ahmed writes in *Differences That Matter* (2004), there is a tension between recognition and individualization: “A feminist approach cannot afford to collapse the issues of embodiment and subjectivity with the ontology of identity.”<sup>23</sup> In other



words, we cannot assume that the embodiment of the author is transparently aligned with their identity, nor with the work itself. When we consider cultural production as webbed and entangled, we need to find a way to address these entanglements without losing sight of the collective conditions that made it possible.

In a recent research project, Séverine Dusollier, feminist legal scholar and long-term companion of Constant in reflecting on Free Culture, questions the automated “pairing” of a creation or an artifact with a subject, whether individual or collective.<sup>24</sup> Together with Valérie-Laure Benabou, she proposes we think of cultural production through the framework of “attribution” and radically widen our understanding of who and what contributes to the generation of a work. In this way, we might be able to move away from the essentializing role of the author and toward an approach that acknowledges different contributions, including care work and maintenance. This extended relationality would not just pay attention to how one author references another: it would make a whole network of contributors emerge that have interdependent roles in the production, circulation, and development of culture.

Through this move from author to contributor, the context of authorship is opened up, which, as Sara Ahmed states, complicates the work instead of de-limiting or resolving it.<sup>25</sup> If we could manage to make this shift, it would have huge implications not only for the status of individualized authors but for the cultural industry as a whole.

## From Universal Openness to Situated Opacity

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“An open future means knowledge is shared by all – freely available to everyone, a world where people are able to fulfill their potential and live happy and healthy lives. A closed future is one where knowledge is exclusively owned and controlled leading to greater inequality and a closed future.” This sloganistic quote from the website of the Open Knowledge Foundation exemplifies several things we try to break from with the formulation of the CC4r. There is, of course, the oversimplified and unhelpful binary separation between open and closed – as if situations, works, and practices do not already exist within the space between open and closed. The assessment that “open” equals “good” leaves little space for ambiguity or for situated opacity. Also, the

statement ignores any consideration of the structures of oppression that link closedness to inequality, or otherwise said: how exclusion and extraction have created inequalities more profound than can be addressed by opening content.

The conception of the universal applicability of openness, regardless of the conditions within which any content may have taken form, seems rather common in Free Culture – as if a work could be considered cut from any connections to histories, communities, geographies, etc. and stay significant in relation to the intentions with which that work was brought about. To assume an equal “everyone” already demonstrates a profound impotence, or unwillingness, to take note of the violent histories of extraction and capitalization that populate human interactions between ourselves and others. CC4r asks us to pay attention to the conditions and connections of a work as a way to consider, even approximately, its potential relation to “situated opacity.”<sup>26</sup>

How can we create conditions for re-use which acknowledge different kinds of contributors? What would a decolonial and feminist license look like which could acknowledge entangled notions of authorship? CC4r opens up a space for negotiation and conversation, but is far from answering any of these questions. With CC4r, we hope to incite thoughtful and irreverent practices that do not evade these questions but instead invite its users to inhabit them. For us, CC4r is more than a license. It is a commitment to care for the collective conditions of the many, for “these explosions, the principle and economy of which we have not begun to grasp, and whose outbursts we cannot predict.”<sup>27</sup>

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## Footnotes

1. We use Free Culture as a shortcut for the messy amalgamate of copyleft and open content initiatives for which Aymeric Mansoux uses the acronym FLOCKEW (free/libre/open content/knowledge/expression/work). See Aymeric Mansoux, “How Deep is Your Source,” in *Digital Art Conservation, Preservation of Digital Art: Theory and Practice*, ed. Bernhard Serexhe (Karlsruhe: ZKM, 2012).
2. See also “the four essential freedoms” as formulated by the Free Software Foundation: “The freedom to run the program as you wish, for any purpose (freedom 0); The freedom to study how the program works, and change it so it does your computing as you wish (freedom 1); Access to the source code is a precondition for this; The freedom

to redistribute copies so you can help others (freedom 2); The freedom to distribute copies of your modified versions to others (freedom 3). By doing this you can give the whole community a chance to benefit from your changes. Access to the source code is a precondition for this.” “What is Free Software?,” GNU Operating System, accessed March 22, 2022,

<https://www.gnu.org/philosophy/free-sw.en.html#four-freedoms>.

3. Cristicuffs, “Free Property: On Social Criticism in the Form of a Software License,” *Gruppen Gegen Kapital und Nation*, June 6, 2013, <https://gegen-kapital-und-nation.org/media/pdfs/en/copyleft.pdf>.
4. See for example Severine Dusollier, “The Master’s Tools v. The Master’s House: Creative Commons v. Copyright,” *Columbia Journal of Law & Arts* 29 (2006), 271-93.
5. Katherine McKittrick, *Dear Science and Other Stories* (Durham, NC: Duke University Press, 2022), 15.
6. “We no longer have the law and what is outside the law. We have the law as a project and the world that the law creates by narrating it.” Nicolas Malevé, “CCinContext,” Constant, May 10, 2007 (originally published 2006), <http://www.constantvzw.org/verlag/spip.php?article82>.
7. Constant supports the extra-legal practice of shadow libraries (Monoskop, libgen, Sci-Hub, Memory of the World) in projects such as Interfacing the Law. See “Interfacing the Law,” Constant, <https://constantvzw.org/site/-Interfacing-the-law,212-.html>.
8. See Aymeric Mansoux, “Free Only-If” (presentation, Authors of the Future, ISELP, Brussels, September 27, 2019).
9. See Daniel Blanga Gubbay, “Being Danced by the Dance,” *DiVersions* (Brussels: Constant, 2020), <https://constantvzw.org/site/DiVersions-v2-workshop-guided-tour-publication.html>.
10. See Eva Weinmayr, “Situated collective authorship” (presentation, Authors of the Future, ISELP, Brussels, September 27, 2019).
11. See Severine Dusollier, “Inclusive Copyright” (presentation, Authors of the Future, ISELP, Brussels, September 27, 2019).
12. For further information see *Authors of the Future: Re-Imagining Copyleft* (Brussels: Constant, 2019), <https://sound.constantvzw.org/Authors-of-the-future/materials/booklet.pdf>.
13. The Free Art License is a Free Culture license created in 2000 based on contributions from artists and legal scholars to the mailing list [copyleft\\_attitude@april.org](mailto:copyleft_attitude@april.org), including Melanie Clément-Fontaine, David Geraud, Isabelle Vodjdani, and Antoine Moreau.

14. From the preamble of version 1.1 (2001): “Creating is discovering the unknown, it is inventing reality without any preoccupation about realism. Thus, the object of art is not equivalent to the artistic object, finite and defined as such. This is the essential goal of this Free Art license: promoting and protecting artistic practices freed from the rules of the market economy.” “Free Art License,” Constant,  
[https://copycult.constantvzw.org/texts/lal\\_en.html](https://copycult.constantvzw.org/texts/lal_en.html).
15. CC4r has been used for Eva Weinmayr, *Noun to Verb: An investigation into the micro-politics of publishing through artistic practice* (London: HDK-Valand, 2021); Varia, *Vernacular Language Toolkit* (Rotterdam: everyday-technology-press, 2022); erg, *Teaching to Transgress Toolbox platform* (Brussels: erg, HDK/Valand, ISBA, 2022), and “Michel, Cassandra, Google and the others,” *Algolit* (Brussels, 2022), among others.
16. Cara New Daggett, interview by Albert Tarrats et al., *Son[i]a*, Radio Web MACBA, January 14, 2022, audio, 01:29:14, <https://rwm.macba.cat/en/sonia/sonia-343-cara-new-daggett>.
17. “Many postcolonial scholars have seriously contested the category of the citizen as the universal bearer of rights, and the representative capacity of the citizen to participate in the public sphere as an unmarked individual remains mythical, at best.” Lawrence Liang, “Beyond Representation: The Figure of the Pirate,” *Access to Knowledge in the Age of Intellectual Property*, Gaëlle Krikorian and Amy Kapczynski eds., (Zone Books, 2010), 360.
18. Daggett.
19. “By striving for selected disconnection and challenging the very idea that online discourse is necessarily generative, the communities advocating for defederation also challenged the broader liberal assumptions about openness and universality on which prior Fediverse software was built.” Aymeric Mansoux and Roel Roscam Abbing, “Seven Theses on the Fediverse and the Becoming of FLOSS,” *Transmediale Journal* 4, July 7, 2020,
20. “In their formulations, they sometimes cross with other documents, such as code of conducts, human rights and collective labour agreements. Some read as manifestos or statements, others simply ask you to behave.” Varia, *Not for Any\**, <https://varia.zone/not-for-any/>.
21. Some examples include the Peer Production License, Non-White Heterosexual Male License, Climatestrike License, (Cooperative) Non-Violent Public License, Anti-Fascist MIT License, BOLA License, and the Anti-Capitalist Software License.
22. Daniel Blanga Gubbay, “Being Danced by the Dance,” *DiVersions v2* (Brussels: Constant, 2020), 73.

23. Sara Ahmed, *Differences That Matter: Feminist Theory and Postmodernism* (Cambridge, UK: Cambridge University Press, 2004), 123.
24. “TRIBU/A3: Attribution – Auteur – Autrice,” SciencesPo Law School, <https://www.sciencespo.fr/ecole-de-droit/en/actualites/construction-historique-et-culturelle-de-l-attribution.html>.
25. “By opening out the process of writing to the contexts of authorship, such a feminist approach would not de-limit or resolve the text, but complicate it.” Ahmed, *Differences That Matter*, 123.
26. Opacity, as defended by Édouard Glissant, insists on the right to be incomprehensible to others. This opacity is a form of psycho-cultural thickness which envelopes each of us and which should or could never be entirely deciphered. Glissant sees this “irreducible singularity” as “weaving” us to each other in ways that can simply not be grasped by universalist systems of thought and which subsist in their incommensurable complexities, unbothered by reductive configurations. Édouard Glissant, *Poetics of Relation*, trans. Betsy Wing (Ann Arbor, MI: University of Michigan Press, 2018).
27. “Chaos-world is what I call the current clash of so many cultures that are burning, pushing each other away, disappearing, yet remaining, falling asleep or transforming themselves, slowly or at lightning speed: these outbursts, these explosions, the principle and economy of which we have not begun to grasp, and whose outbursts we cannot predict.” Édouard Glissant, *Traité du Tout-Monde* (Paris: Gallimard, 1997), 12.

Élodie Mugrefya is happily part of Constant where she takes part in its artistic and collective research while shyly developing a writing practice that intersects with Constant’s themes of interest, notably notions surrounding collectivity, technological infrastructures and socio-political troubles.

Femke Snelting develops projects across design, feminisms, and free software in various constellations. Until recently, she co-initiated research projects, digital tools, methods and publications with Constant; currently she runs the Institute for Technology in the Public Interest with Seda Gürses, Miriyam Aouragh, and Helen Pritchard. With Jara Rocha, she is about to publish *Volumetric Regimes: Material Cultures of Quantified Presence* (Open Humanities Press).