

Cancel culture: how the creative industries should ride out the storm

Cancel culture is upon us. This is what we are currently being told by British and French mass media, who have finally caught up with the content of the latest, and first non-fictional, book ever published by acclaimed, yet heavily criticised, American author Bret Easton Ellis, "White". The polemic rages on both sides of the pond, ignited by more than 150 public figures signing a controversial letter denouncing cancel culture. So, what's going on? What is "cancel culture"? Why should you pay attention to, and be cautious about it, as a creative

professional? Is this even a thing in Europe and, in particular, in France and the United Kingdom? If so, how should you position yourself, as a creative, on, and about, cancel culture?



1. What is it? Where does it come from?

Following the 1990s' culture wars, which sprung up in the United States of America as a way of denouncing and forbidding contemporary art exhibitions and other medium of creative expression judged by those instigating such culture wars as indecent and obscene, "cancel culture" has taken off in the early 2000s on social media, and has since become a cultural phenomenon in the USA and Canada – especially in the last five years or so – pervading every aspect of Northern America's mass media.

"Cancel culture" refers to the popular desire, and practice, of withdrawing support for (i.e. cancelling) public figures, communities or corporations, after they have done or said something considered objectionable or offensive. "Cancel culture" is generally performed on social media, in the form

of group online shaming.

Therefore, as a result of something said or done, which triggered negative reactions and emotions such as anger, disgust, annoyance and hate from some members of the public, a natural person or legal entity or group of natural persons ends up being publicly shamed and humiliated, on internet, via social media platforms (such as Twitter, Facebook and Instagram) and/or more localised media (such as email groups). Online shaming takes many forms, including call-outs, cancellation or cancel culture, doxing, negative reviews, and revenge porn.

While the culture wars of the 1990s were driven by right-wing religious and conservative individuals in the US (triggered by "hot-button" defining issues such as abortion, gun politics, separation of church and state, privacy, recreational drug use, homosexuality), the cancel culture of our 21st century is actually a left-leaning supposedly "progressive" identity movement which has taken hold in recent years due to the conversations prompted by #MeToo and other movements that demand greater accountability from public figures. According to the website Merriam-Webster, *"the term has been credited to black users of Twitter, where it has been used as a hashtag. As troubling information comes to light regarding celebrities who were once popular, such as Bill Cosby, Michael Jackson, Roseanne Barr and Louis C.K. – so come calls to cancel such figures"*.

Yep. Check out your Twitter feed by typing in the search bar the hashtags #cancelled, #cancel or #cancel[*then name of the individual, company, organisation you think might be cancelled*], and you will be able to review the top current cancellation campaigns and movements launched against Netflix,

British actress Millie Bobby Brown, twitter user @GoatPancakes_, etc.

So under the guise of defending laudable causes such as the recognition of the LGBTQ community and fighting against racism, sexism, sexual assault, homophobia, transphobia, etc., some communities of online righteous vigilante use violent methods, such as cancellation, in order to administer a virtual punishment to those who are on their radar.

This call-out and cancel culture is becoming so pervasive and effective that people lose their jobs over a tweet, some upsetting jokes or inappropriate remarks.

The Roseanne Barr's story is the ultimate cancellation example, since her ABC show, "Roseanne", was terminated with immediate effect, after Ms Barr posted a tweet about Valerie Jarrett, an African-American woman who was a senior advisor to Barack Obama throughout his presidency and considered one of his most influential aides. R. Barr wrote, in her litigious tweet, if the "*muslim brotherhood & planet of the apes had a baby = vj*". Whilst Ms Barr's remark was undoubtedly in extreme bad taste, it is fair to ask whether her tweet – which could have easily been deleted from Twitter to remove such kick well below the belt dealt to Ms Jarrett – justified wrecking Ms Barr's long-lasting entertainment and broadcasting career in one instant, permanently and for eternity.

To conclude, social media channels have become the platforms of virtual trials, where justice (i.e. cancellation) is administered in an expeditious manner, with no possibility of dialogue, forgiveness and/or statute of limitation. This arbitrary mass justice movement is not only cruel, but tends

to put everything under the same umbrella, indiscriminately: so a person who cracked a sexist joke on Twitter would become vilified and even “cancelled”, in the same manner than an individual effectively sentenced for sexual assault by an actual court of justice.

How did we get to this point? Why does a growing number of Northern Americans feel the uncontrollable need to call-out, cancel and violently pillory some of their public figures, corporations and communities?

A pertinent analysis, although skewed by a European perspective, is that made by French sociologist Nathalie Heinich in French newspaper *Le Monde* and explained on the podcast “Histoire d’Amérique”, dedicated to Bret Easton Ellis’ “White”.

According to Ms Heinich, there is no legal limitation to freedom of speech – a personal liberty which is enshrined in the first amendment to the US constitution, in the USA. As a consequence, the US congress cannot adopt laws which may limit or curb freedom of expression, as is set out in this first amendment. Therefore, according to N. Heinich, since the US authorities cannot forbid speech and freedom of expression, it is down to US citizens to take on the role of vigilante and organise spectacular information and public campaigns, in order to request the prohibition of such expression and such speech.

This analysis made by this French sociologist needs to be nuanced: whilst it is true that no US statute or law may curtail freedom of speech in the USA, there is consistent and ample body of case law and common law, which rule on the

categories of speech that are given lesser or no protection by the first amendment of the Bill of rights. Those exceptions include:

- incitement (i.e. the advocacy of the use of force when it is directed to inciting or producing imminent lawless action, *Brandenburg v Ohio* (1969));
- incitement to suicide (in 2017, a juvenile court in Massachusetts, USA, ruled that repeatedly encouraging someone to complete suicide was not protected by the first amendment);
- false statement of fact and defamation (*Gertz v Robert Welch, Inc.* (1974));
- obscenity (*Miller v California* (1973) established the Miller test whereby speech is unprotected if "*the average person, applying contemporary community standards, would find that the subject or work in question, taken as a whole, appeals to the prurient interest*", and "*the work depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law*", and "*the work, taken as a whole, lacks serious literary, artistic, political or scientific value*"), and
- child pornography (*New York v. Ferber* (1982) which ruled that if speech or expression is classified under the child pornography exception at all, it becomes unprotected).

Therefore, there are some common law exceptions to the first amendment consecrating freedom of speech in the USA, but they are few and far between, and they need to be hotly, and expensively, debated in court, probably months or years after

the triggering content was made available in the public space in the first instance, before being found, by a court, unprotected by freedom of speech, in favour of higher public policy interests.

As a result, many American and Canadian citizens resort to violent tactics, in order to request the immediate, swiftly-enforced and free of legal fees and court fees, prohibition of controversial art exhibitions, entertainment shows, movies, jokes, remarks, etc. first through the 1990s culture wars, and now through the 21st century's cancel culture.

This is paradoxical since cancel culture and call-out culture are some of the tools used to advocate for worthy causes such as fighting against racism, sexism, sexual predation and aggression, promoting LGBTQ rights. However, the methods used, through cancel culture and online shaming, to achieve those laudable goals, are very violent and totalitarian, all taking place in the virtual realm of social media, but with very serious and long-lasting "real-life" consequences such as loss of employment, loss of reputation, self-harm and sometimes, suicide.

2. Can cancel culture enter through our European borders, in particular in France and the United Kingdom?

I hate to break it to you, but cancel culture is already upon us in France and the United Kingdom. We are in a globalised world, all of us are online and check the media and social media from all over the world, thanks to the internet. So this Northern American trend has, of course, reached our European

shores.

It is worth noting that the recognition of “cancel culture”, and the realisation that it has become a sizable part of online culture, took place in the United Kingdom (“UK”) at the beginning of the year 2020, when British television presenter and socialite Caroline Flack committed suicide allegedly because she was vilified on social media and by British tabloids, further to being sacked from British reality show “Love Island”. This UK epiphany about “cancel culture” arrived earlier than elsewhere in Europe, probably due to the shared language, and culture, that the British have with Americans and Canadians.

France is only now getting familiar with this new concept of “cancel culture”, further to hearing about the “letter on justice and open debate”, drafted, and signed, in July 2020, by more than 150 global intellectuals and authors (among whom Margaret Atwood, Wynton Marsalis, Noam Chomsky, J.K. Rowling and Salman Rushdie), and denouncing the excesses of online shaming and cancel culture. France is currently going through a phase of introspection, asking itself whether “la culture de l’annulation” could take off on its Gallic shores. And it is.

Proof is, I was interviewed for the 8.00pm TV News of France TV on Sunday 20 September 2020, to discuss the attempts made by no less than the new very controversial French minister of the interior, Gerald Darmanin – who was himself under criminal investigation for sexual coercion, harassment and misconduct in 2009, and then again between 2014 and 2017 – to eradicate from all SVoD services platforms such as YouTube, Spotify, Deezer, Dailymotion, the release of the first music album created by Franco-Senegalese 28 years’ old rapper, Freeze Corleone, “La Menace Fantôme” (“LMF”). On which grounds is

such cancellation requested? Provoking racial hatred and racial slander, no less.

Artist Freeze Corleone is an uncompromising rapper, abundantly peppering his raps with the French translations of "nigger" ("négro") and "bitches" ("pétasses") in the purest Northern American rap tradition (F. Corleone lived in Montreal, Canada, before settling down in Dakar, Senegal). He also obscurely refers to "Adolf", "Goebbels", "Ben Laden" and "Sion" in his rather enigmatic LMF lyrics. However, qualifying his body of work in LMF as racial slander and/or provoking racial hatred is a stretch. If you do not like it, because this content triggers you, just move on and don't listen to it.

Freedom of speech is enshrined in the French declaration of rights of the human being and citizen, dated 1789. Article 11 of such declaration provides that the *"free communication of thoughts and opinions is one of the most precious rights of the human being: any Citizen may therefore speak, write, print freely, except where he or she has to answer for the abuse of such freedom in specific cases provided by law"*.

And such specific cases where freedom of speech may be curtailed, under French statutory law, include:

- Law dated 1881 on the freedom of the press which, while recognising freedom of speech in all publication formats, provides for four criminally-reprehensible exceptions, which are insults, defamation and slander, incentivising the perpetration of criminal offences, if it is followed by acts, as well as gross indecency;
- Law dated 1972 against opinions provoking racial hatred,

which – like the four above-mentioned exceptions, is a criminal offense provided for in the French criminal code;

- Law dated 1990 against revisionist opinions, which is also a criminal offense in order to penalise those who contest the materiality and factuality of the atrocities committed by the Nazis on minorities, such as Jews, homosexuals and gypsies before and during world war two, and
- Law dated July 2019 against hateful content on internet, which provisions (requiring to remove all terrorist, pedopornographic, hateful and pornographic content from any website within 24 hours) were almost completely censored by the French constitutional council as a disproportionate infringement to freedom of speech, before entering into force in its expunged finalised version later on in 2019.

Therefore, according to French sociologist Nathalie Heinich, France does not need “cancel culture” because freedom of speech is already strictly corseted by French statutory laws. By this, she means that French individuals won’t have to take to social media platforms, in order to “cancel” whoever is misbehaving, since the all-pervading French nanny state will strike the first blow to the “offender”, in the same manner than French minister of justice G. Darmanin unilaterally requested all cultural streaming and video platforms, from YouTube to Spotify and Deezer, as well as all French radio and TV channels, to immediately and permanently remove the songs of Freeze Corleone’s LMF, further to opening a criminal inquiry against the latter, for allegedly committing racial slander and/or provoking racial hatred through his lyrics.

Is this above-mentioned French regal method a better tool than having the populace publicly decrying and shaming an individual who "steps out of line", by using "cancel culture"? By no means, because, at the end of the day, it's our collective freedom of speech which is being breached and infringed, on a whim. And that is unacceptable, in a democracy.

On the other side of the channel, the legal framework around freedom of speech is no panacea either. Freedom of expression is usually ruled through common law, in the UK. However, in 1998, the UK transposed the provisions of the European Convention on human rights, which article 10 provides for the guarantee of freedom of expression, into domestic law, by way of its Human rights act 1998.

Not only is freedom of expression tightly delineated, in article 12 (Freedom of expression) of the Human rights act 1998, but there is a broad sweep of exceptions to it, under UK common and statutory law. In particular, the following common law and statutory offences, narrowly limit freedom of speech in the UK:

- threatening, abusive or insulting words or behaviour intending or likely to cause harassment, alarm or distress, or cause a breach of the peace (which has been used to prohibit racist speech targeted at individuals);
- sending any letter or article which is indecent or grossly offensive with an intent to cause distress or anxiety (which has been used to prohibit speech of a racist or anti-religious nature, as well as some posts on social networks), governed by the Malicious communications act 1988 and the Communications act 2003;

- incitement (i.e. the encouragement to another person to commit a crime);
- incitement to racial hatred;
- incitement to religious hatred;
- incitement to terrorism, including encouragement of terrorism and dissemination of terrorist publications;
- glorifying terrorism;
- collection or possession of a document or record containing information likely to be of use to a terrorist;
- treason including advocating for the abolition of the monarchy or compassing or imagining the death of the monarch;
- obscenity;
- indecency including corruption of public morals and outraging public decency;
- defamation and loss of reputation, which legal framework is set out in the Defamation act 2013;
- restrictions on court reporting including names of victims and evidence and prejudicing or interfering with court proceedings;
- prohibition of post-trial interviews with jurors, and
- harassment.

In Europe, and in particular in France and the UK, there is already a tight leash on freedom of speech, whether at common law or statutory law. However, "cancel culture" is nonetheless permeating our European online shores, following the trend started in Northern America. As a result, it is a tough time

to be a free and creative European citizen, let alone a public figure or corporation, in this 21st century Europe. Indeed, not only could you have trouble with the law, if you were to make triggering or contentious comments or jokes or lyrics in the public domain, but you could also be shot down in flames by the online community, on social media, for your speech and expression.

3. How to ride the storm of “cancel culture”, while remaining consistently creative and productive?

In the above-mentioned cultural and legal context, it is crucial for creative professionals to think long and hard before posting, broadcasting, speaking, and even behaving.

As a result, book publishers use the services of “sensitivity readers”, before releasing a new work, whereby such consultants read books to be published, in order to look for, and find out, any clichés, stereotypes, scenes, formulations that may offend a part of the readership. This use of sensitivity readers is becoming more and more systematic, especially when the author speaks about themes which he, or she, does not personally master.

For example, an heterosexual author who describes a gay character, or a white author who describes Mexicans, in his or her new book, will most definitely have a sensitivity consultant review his or her output before publication. Almost inevitably, such sensitivity reader will request that some changes be made to the written content, so as to avoid a boycott of the published book, or cancellation of the author

and book, altogether.

Whilst some of the classics of global literature were perceived as very shocking when they were first released (think "Lolita" from Vladimir Nabokov about the obsession of a middle-aged literature professor with a 12 year's old girl, which today would probably be described as a glorification of pedophilia), they would probably never see the light of day, if they were to be published in our era.

Therefore, today's cultural sensitivities push towards the publication and broadcasting, of written, audio and visual creative content which is bland, right-thinking, watered-down, in which the author only refers to what he or she knows, in the most neutral way possible.

This need to use "auto-censorship" in any content a creator wishes to publish is compounded by the fact that today, consumers of creative content do not differentiate between the author of the work, and his or her creative output. There is no separation between the author and content creator, and his or her body of work and/or fictional characters. With Millennials and US universities becoming obsessed with identity questions (i.e. the identity or feeling of belonging to a group, such as the gay community, the black community, etc.), it is the person who writes the book, or song, or writes or directs a film, who is now also important, maybe even more important than the work itself.

As a result, any content creator who writes or sings or produces an audiovisual work about a community other than his or her own, may be accused of cultural appropriation (i.e. the adoption of an element or elements of one culture or identity

by members of another culture or identity) and even become the object of victimhood culture (i.e. a term coined by sociologists Bradley Campbell and Jason Manning, in their 2018 book "The rise of victimhood culture: microaggressions, safe spaces and the new culture wars", to describe the attitude whereby the victims publicize microaggressions to call attention to what they see as the deviant behaviour of the offenders, thereby calling attention to their own victimization, lowering the offender's moral status and raising their own moral status).

In this climate, it is therefore easier to publish or broadcast creative content if you belong to a minority (by being, for example, homosexual, black, brown, or a female), while white heterosexual male creators have definitely become disadvantaged, and more susceptible to being targets of "cancel culture".

To conclude, a lot of prior thoughts and research and preparation and planning need to be put into the creation, and then broadcasting and publication, of any creative content today, not only with respect to such output, but also in relation to the identity, and positioning, of his or her author. If this conscious effort of adhering to right-thinking and bland ideologies is appropriately and astutely done, you and your creative output may successfully ride the storm of, not only French and UK legal limitations to your freedom of expression, but also the nasty impact of cancel culture and online shaming, hence maximising your chances that your creative work generates a commercial success.

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