

Steal This Multimedia

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In academia we routinely work through the logic of part versus whole. In our professional lives, the whole is more important than the part: a book chapter in an edited collection is a self-contained piece of work, yet reviewed as a part; a single authored monograph is treated as the ultimate whole. Tenure committees are frequently flummoxed by the need to evaluate a coauthored book: is the candidate's work divided into parts? Or should it be reviewed (w)holistically? Deleuze and Guattari played with this formulation when they noted that "The two of us wrote this article together. Since each of us was several, there was already quite a crowd."

In our work as teachers and critics, on the other hand, we operate in a world of parts, when we make use of the fair use provision granted to us under the constitution. Genre matters in interpreting fair use, but we usually don't consider it for the classroom. Standing at the photocopier 10 minutes before class, 10% of a book of poems, we reason to ourselves, is the same as 10% of a scholarly book, and the same as 10% of an edited collection. Count the pages, hold your breath, and hit the "collate" button. And yet, a poem is a whole, as is a single essay.

In this paper, I'll argue that our problems with fair use provisions of copyright law result from a fundamental tension in the relationship between "wholes" and "parts." The whole, I argue, is an undifferentiated or unmarked field of media materials - what I call the "great grab bag of media," while the individual part is overdetermined or fetishized,

sometimes to the point where we cannot get access to it at all. Our problems come when we, or the courts, try to determine: what is a part? What is a whole? What is a reasonable excerpt and what is infringement?

For multimedia scholars, copyright law and its associated costs carry a particular urgency. Scholars have always had to rely on the synecdochal relationship of part and whole in order to conduct their criticism - but this economy becomes most especially compressed in film and television criticism, where every frame is potentially a permissions disaster. In print format, film studies articles routinely use still frames to stand in for a sequence. In film criticism lucky enough to be able to present a moving image for critique, the film clip is again used as an illustrative portion. Thus for us as scholars, it is the part, not the whole, that is most important: a piece of film, a piece of poem, a piece of music.

And yet it is this very insistence on the power of parts that has us in trouble again and again. James Boyle notes that while using video clips should be considered fair use, most authors are loath to test this. And very few publishers are -- requiring permissions to be obtained for all third-party materials beyond casual quotes, regardless of whether this could be considered "fair" or not. In the area of fair use for criticism, genre matters: small prose quotes are fine, but lines of poetry are more likely to be queried, and images are virtually never allowed without permission, making multimedia projects a maze of permissions, licenses and their associated "fees." In documentary film, errors and omission insurance can often only be obtained after a costly permissions clearance process.

For Rob Mitchell, Phillip Thurtle and myself, the calculus began when we tried to

negotiate permissions to include stills and video for our forthcoming Biofutures DVD-rom. Consider:

-- Universal Pictures charged us \$500 for each single still image from Jurassic Park.

-- They also charged a standard rate of \$3000 per minute for video sequences, even though these are made up of  $24 \times 60 = 1,440$  still images, or 720,000 dollars.

These contradictory examples seem to indicate two things. First, Universal Pictures and other rights holders operate under a confused understanding of whether a piece of cultural material constitutes a whole or a part - a confusion that goes back to Thomas Edison, who, having to operate in a copyright environment that had not caught up with movie technologies, registered each of his films as a single image (because, as he said, nobody watches a film as a string of individual frames). But second, Universal Pictures also seeks to break down all these wholes and parts into a kind of virtual cultural equivalence, where a film becomes a kind of database of images and clips from which can be extracted value according to an involved, but scientific, algorithm of value.

Anyone who spends any time looking at the current literature on copyright and value very quickly comes back to John Locke. There has long been a strain of Lockean legal analysis of copyright that argues that labor on the land (to produce property) is equivalent to the author's "labor on the page" to produce "intellectual property." This has usually been critiqued on two fronts: first, that Locke himself considered copyright to be an issue of printers and stationers' monopolies, not of property, and second, that intellectual labor is not subject to the same model because scarcity is no longer an issue. Certainly Locke himself, and later Thomas Jefferson, were rightly reluctant to enter into a

discussion of intellectual labor in terms of "property talk," as Siva Vaidyanathan calls it; they were much more concerned with the effect copyright monopoly would have on free speech, than on any imagined profit.

While Locke's property/labor "mixing metaphor" may ultimately be a dead end in any cogent discussion of copyright law, however, his work continues to haunt digital "property talk" through the tropes of virtual productivity and scarcity. I find Locke useful for a discussion of copyright because his work shows us clearly the logic at the heart of property, which is a logic of the virtual. As Bob Markley notes, Locke's theory of labor and property is dependent on his positing of infinite (or at least undifferentiated) resources. Thus Locke presents the land of America as unmarked territory or "vacant space", which can be exploited according to what Markley calls the "geometry of infinite productivity." This imagining of resources as unmarked, an endless undifferentiated field, is further virtualized by the introduction of money. Locke notes the invention of gold as a representation of labor, even while being a way of virtualizing spoilsable goods. Gold is "portable labor." It is also unmarked: every piece of gold is like every other, in an infinite process of exchange.

This logic of equivalence and unmarked resources, circulating in a flow of exchange, demands of authors a whole formed out of value-equal parts, a collage rather than an assemblage. Lev Manovic, for example, identifies a hybrid database logic at work in new media authoring, in which authors put together a coherent narrative from a stable of virtual "objects". New media objects, he argues, "are collections of individual items, where every item has the same significance as any other." The database as a new Locke's America.

Most of those who hold the power over the reproduction of print, image and multimedia materials operate according to a purely database logic. Their material is a potential source of revenue -- a stable of materials they allow to be reproduced for a set price. These materials, like Locke's precious metals, become unhinged from their creators, entering instead into the market of equivalences. Sherman Young notes an extreme example in the bulk purchasing of music rights by private equity group Dimensional Music Publishing, who acquired a back catalog of 25,000 songs, including works by John Denver, the Byrds and Jefferson Airplane, from Dreamworks Music Publishing, and then sold it to Australian asset management group Colonial First State. The Sydney Morning Herald noted that the catalog "offered investors high-yielding cash flows in low-volatile markets", through the leveraging of royalties. As an undifferentiated field of potential wealth, like Locke's America, the music catalog can be leveraged, regardless of its actual content, to produce profit. These materials can be mined over and over and over for wealth: copied indefinitely for a license fee.

At the same time, though, this multiplying wealth must be manipulated in order to maintain demand. Disney routinely places its work "back in the vault" to create an artificial scarcity -- better buy that copy of Bambi quick, mom and dad, or your kids won't be able to see it until we release it again in ten years. The MPAA and RIAA use the idea of scarcity as a threat (if you copy music, then the artists will not produce more because there's no incentive for them to do so), but in fact they are creating scarcity by locking away cultural materials from use. As scholars, we should take this model of false scarcity seriously; working on a multimedia project we very quickly come to the conclusion that there is a scarcity of materials that can be used free of charge. Prices can

be jacked up in an intellectual land-grab, effectively locking out scholars.

Marcel Mauss noted that in Roman households, goods could be distinguished between the *familia* and the *pecunia*: the *familia*, endowed with the intimacy of the family and the household, and the *pecunia*, undifferentiated goods to be sold at market. He noted that animal livestock, for example, must undergo rituals to prevent them from returning to their homes; thus, pecuniary goods are goods that enter the market and become unstuck from home and obligation.

The RIAA and MPAA generally make use both of *pecunia* and *familia* as tropes in their war on copyright violation. Creativity, they argue, must be rewarded -- and they use the concept of personal romantic authorship to argue for the relationship between artist and creation. But their fundamental argument is that of the *pecunia*: the author must be rewarded through profit, but the "author" is equal to the license holder. By the time it gets to equity group purchases, the goods have long left the household. Meanwhile, artists themselves, Metallica notwithstanding, are often happy to give away tracks for remixing, or even as in the case of Jane Siberry, offering their work for donation. They work according to the logic of the *familia*, in which works are valued for their power to create intimacy, connectedness, responsibility and obligation. This kind of logic is the same one invoked by advocates of the creative commons license, who argue that "creativity is built on the past."

Perhaps ironically, though, the law of the *familia* is not the answer to our problems with using media. It is only when we are told "no" that we are given a glimpse of another kind of world, in which specific media objects (parts) become so overdetermined that they do not participate in the equivalence economy of the great

media grab-bag. Universal Pictures would not under any circumstances allow Rob, Phillip and I to reprint the iconic image of the tyrannosaurus rex eating a man seated on a toilet, and gave no reason for the decision. The Jurassic Park image could have been denied for two reasons: either Universal didn't want to be associated with toilets, or they considered the image so iconic they wanted total control over it, which seems to indicate a slippage in their mind between the function of copyright and the function of a trademark. Some materials cannot be purchased at any cost, because of the perceived damage they may do to the reputation of the creator -- for example, the recent case between Carol Shloss and the Joyce estate. Lawsuits over infringement, primarily motivated by money, are superseded by lawsuits over control and access to a particular image or piece of writing. In these cases, fair use provisions are crucial; it is not sufficient to rely on the good will creative commons licensing. This was the fear of both Locke and Jefferson: that copyright would allow monopolists not just the control of markets but the control of what can be said at all.

It is possible that we underestimate the radical nature of our entire enterprise as academics. Educational fair use assumes that materials will be used to illustrate, or to be sources of critique: that is, to retain their "wholeness" and be analyzed from the outside. But this fails to take into consideration ways in which materials can be used to critique themselves, or be reconfigured to participate in their own critique, by being remixed into new works. Perhaps scholarly multimedia is threatening because we are not just creating labor (or meta-labor), but critiquing the labor of others, unraveling the work that went into the creative process. In other words, we are un-Locking Locke. Critique is the ultimate act of reverse engineering; and multimedia scholarship is the ultimate act of

remixing.

Any such act, of remixing knowledge, is an act that mixes up wholes and parts, that combines parts together into new wholes, or other parts. But whatever the outcome, it is an act that requires a more nuanced understanding of the intensities involved in databases and media repositories. Our cultural heritage is neither the great media grab bag nor the great vacant spaces of America; rather, it is a complex ecology of competing interests in ownership: whether for pure profit or in the name of individual stewardship. I began this paper thinking of us as scholars in Jurassic Park, stumbling around in a reconstituted Garden of Eden, while the virtual, corporatized, copyrighted dinosaurs tried to eat us. But we're really more like hackers, stealing into the server farm in the middle of the night and reconfiguring all the electric fences. Given the small amounts of money companies have to make from us, with our puny permissions slips, I wonder whether it's we as critics who have become overdetermined: we are dangerous to the bottom line, not because we are "stealing media" but because of what we do with it when we get it.

Thank you.