EVERYTHING (OLD WAS NEW) ALREADY: THEORIES, HISTORIES, AND POLITICS OF APPROPRIATION, CONTEMPORARY ART AND CULTURE

by

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Abstract

The past decade and a half of technological innovation and explosion of historical multiplicities have reignited the debates on appropriation. This dissertation contributes to the discussion for the purposes of understanding appropriation’s significance to our fluctuating conceptions of authenticity and originality, and to our long-standing cultural institutions (specifically, copyright).

Critics of certain kinds of appropriation (like pastiche) have argued it is nothing more than a vague, empty form of mimicry, more closely related to theft than to creative production. On the other hand, advocates for certain kinds of appropriation (like parody, satire, or collage) have regarded it as a useful form of criticism and as a catalyst for inventing new modes of expression in a postmodern moment. Some of the most conspicuous and effecting conversations about appropriation and creative production have lately occurred in relation to intellectual property legislation. Although it is often taken for granted that copyright laws protect creative producers, this dissertation follows recent revelations in literary, and communications studies which have revealed the complex tension between these producers and the economically directed industries that are both driven by, and support those producers.

This thesis updates arguments about appropriation for a contemporary context by critically examining these claims from a postcolonial, Marxist perspective considered largely through contemporary Western visual art, film, fashion, and music. This thesis argues that it cannot be predetermined as to whether acts of appropriation are wholly laudatory, or wholly critical. Instead, I argue that appropriation has always carried the ability to oscillate between both poles in an intertextual exchange that remains dependent on the variables of the viewer’s context and the artist’s production. However, this intertextuality is often impeded by our fetishization of artists and creative works, and by the institutions that benefit from those fetishes.
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Chapter 1
Introduction

1.1 Research Topic and Questions

This dissertation investigates the common occurrence of ‘appropriation’ – or, the reuse (some might say ‘stealing’) of existing forms, styles, methods, and images – in contemporary creative production. It attempts to theoretically and historically situate the context of twenty-first century appropriation and, in so doing, considers definitive expressions of identity, politics, and economy as they exist today.

As such, this project has pursued a study of the fundamental aims/methods of creative production, and the reception/consumption of creative materials as they relate to modernist conceptions of authenticity and originality. It also re-examines the state of authenticity and originality as they exist after the post-structuralist and postmodern critiques which both encouraged and announced their demise. For instance, throughout this dissertation I ask: is authenticity still a valid pursuit in creative production? How does appropriation disrupt the aims of this pursuit? Is originality still the basis by which we ascribe value to creative materials? How, then, can or do we assign value to appropriative creative materials?

Since the context of these questions is biased towards certain dominant Western cultural understandings of creativity, it is also pertinent for this thesis to examine the ways in which marginalized, or non-Western cultural understandings of creative production and consumption intersect with dominant modes of production and consumption. In particular, what can marginalized practices of appropriation (or re-appropriation, as the case may be) reveal to us
about the critical capacity of appropriative modes of production/consumption? What do these criticisms expose in regards to the possession of creative materials related to larger cultural identities? What do appropriative gestures signify about ‘Others’ in relation to our ‘selves’? How has the proliferation of appropriative acts via emerging digital technologies challenged some of our long-standing institutions – such as copyright?

With this in mind, the three primary questions motivating this thesis are: Is contemporary appropriation chiefly about (re)possession? Is possession in late-capitalist culture intrinsically tied to identity? If so, does this mean that contemporary appropriation is intrinsically tied to identity?

1.2 Theoretical Engagements

1.2.1 Postmodernism: The Rhetoric of Contemporary Appropriation

To date, the majority of critical discussion on the topic of appropriation occurred most explicitly during the late 1970s and 1980s. This discussion is thought to have been prompted by the 1977 exhibition at Artists Space in New York City titled, *Pictures*, curated by Douglas Crimp. *Pictures* probed what Crimp believed to be a common everyday experience of culture at the time – an experience which was increasingly mediated by images (“pictures”). Indeed, the five artists shown in *Pictures* methodically, and deliberately, constructed artworks out of appropriated images from everyday sources such as newspapers, magazines, films and videos, etc.

The critical and theoretical dialogue surrounding what came to be known as the ‘*Pictures* Generation’ of artists was heavily informed by an anti-modernist point-of-view focused on breaking down hierarchical, universalized structures of knowledge. Much of this discussion was
centred on the task of distinguishing new forms of avant-garde derived appropriative practices (such as photo and media-based appropriations) from so-called traditional, or modernist derived forms of appropriative practices (such as painting, or sculpture-based appropriations). As such, rather than contribute to the disruption of modernist ideals, this dialogue unwittingly reinforced distinctions between ‘high’ and ‘low’ creative practices.

Although contemporary rhetoric on appropriation is still heavily informed by this earlier discussion, this dissertation exploits the benefit of hindsight in order to correct some of the modernist aesthetic politics of that earlier discourse. The thing that is more important to take away than the specific periodization and cataloguing of appropriation as a particular historical moment, type of practice, or group of artists is the “momentum” of interest in it as a subject and how the critical discussion of it tends to develop distinct “focus and urgency” in different time periods.¹ For instance, how can we articulate the difference between practices of appropriation in the late 1970s and early 1980s with practices of appropriation two and a half decades later – today? As Jan Verwoert put it:

To practice and discuss appropriation in the present moment means something different than it did before and to bring out this specific difference it seems necessary to grasp what was at stake in the late 1970s for a better understanding of what, by contrast, is at stake now.²

In Verwoert’s diagnosis, the appropriation of the 1970s and 1980s *Pictures* Generation artists conveyed “an intense sense of an interruption” to the modernist version of static, finite

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² Ibid.
historical time by transforming the material aspects of culture into usable figures. But the reuse of similar materials today – thirty years later – constitutes the sense of a dynamic, infinite temporality wherein images exist in a perpetual state of accumulating circulation. As Verwoert claims, the difference between appropriation then and now is a matter of the “radical transformation of the experience of the historical situation, from a feeling of a general loss of historicity to a current state of an excessive presence of history, a shift from not enough to too much history or rather too many histories.” One effect of this has been the realization that history can be made, its physical detritus altered, and its future manipulated. Or in Verwoert’s words there is, today, a “performativity” of history. History is no longer seen as a passive ruin. Now it is seen as an active construction and appropriation provides the building blocks.

### 1.2.2 Aesthetic Theory: Authenticity and Originality

An interesting attribute of appropriation is its tendency to be distinguished less by its own formal qualities, or communicative properties than by its most pertinent diametrics – authenticity and originality. In terms of creative production, the latter two concepts are perhaps most closely associated with aesthetic theory and artistic formalism which, beginning in the eighteenth century, came to be used to denote a select form, judgement, attitude, experience, and value of art. In other words, ‘aesthetics’ provided a structured methodology for determining whether an artwork was ‘good’ or ‘bad’. Authenticity and originality were key components in this

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3 Ibid.
4 Ibid.
5 Ibid.
methodology. The worth of an artwork was determined largely according to its ability to provide an authentic experience of originality. But by its very nature, appropriation is unoriginal – borrowing as it does, from previously existing materials. Historically, this has relegated it to the realm of ‘bad art’. However, in the late nineteenth and twentieth centuries, more generalized, and contextually-based questions challenging previously held ideas about art and authorship began to arise. These questions have tended to be skeptical of whether the use of a standardized modern aesthetic methodology based on authenticity and originality is sufficient to ground meaningful theoretical discourse.

Walter Benjamin and others have argued that the very idea of origination is itself, a construction more than it is a reality. In fact, as the Greek philosopher Parmenides first posited, nothing comes from nothing, and all things are composed from a concoction drawn from the other things, cells, masses, and energies surrounding it.6 Nothing can exist without the influence of, nor without influencing, its environment. However, in this project my approach to this discussion is more dialectical than disputative, without intention of resolving the conflicts between the two opposing relations of appropriation and authenticity/originality, nor aiming to establish one or the other as more or less valuable. I would even go so far as to suggest that appropriation is not, in fact, always in conflict with authenticity and originality. At least not as much as authenticity and originality are, by their own right, more in conflict with the processes of creative production, which rely heavily on previously existing forms, structures, contents and configurations. In other

words, and what I do argue in this dissertation is that creativity is based in appropriation not, as is most popularly assumed, in originality.

As Jean-François Lyotard wrote, while art is driven by “its meeting with others,” the most important and crucial aspects of this meeting is not really the borrowing of styles, motifs, techniques, etc. Rather, it is first about “extending the concept” of the whole enterprise of art itself and, secondly, it is about “the means of bearing witness to this.” Appropriation is not only a prolific component of contemporary and historical art-making, but also of Western culture in the broader sense. Therefore, this project argues that, more than simply a twentieth and twenty-first century aesthetic trope, appropriation is really a complicated, inter-textual communication device that has been employed beyond the visual art context, and which traverses historical periods of time. Rather, appropriation is manifested through our everyday lives in the ways in which we produce and consume culture itself.

1.2.3 Postmodern Pastiche and Parody: Jameson vs. Hutcheon

Just less than a decade after Douglas Crimp curated the Pictures exhibition, appropriation gained intellectual interest from literary theorists such as Fredric Jameson and Linda Hutcheon. Both argued that appropriation in the visual arts, literature, film, fashion, music, and everyday life signaled a shift from modernity to late-capitalist postmodernism – an attitude that is indicative of the theoretical and critical discussion on the topic at the time. For Jameson and Hutcheon, it did

\[\text{footnote}{\text{7} \quad \text{Jean-François Lyotard, “Music and Postmodernity”, New Formation, Issue 66 (2009): 46.}}\]

\[\text{footnote}{\text{8} \quad \text{Ibid.}}\]
so in the form of ‘pastiche’ and ‘parody’, respectively. But above and beyond the formal or
categorical distinctions that were being made about appropriation at the time, was a desire to
grasp and describe the larger historical context of the late 1980s and 1990s. For instance, Jameson
argued that postmodern culture had become a ‘pastiche’ in and of itself – where history was lived
through a series of disjointed and superficial images lacking in critical perspective or agency. For
him, commodification has resulted in the transformation of human experience into a product and
art manifests signs and signifiers only in so far as these parts can be exchanged. On the other
hand, Hutcheon countered that postmodern culture did, indeed, contain critical perspective and
agency. In her view, these took the form of ‘parody’ produced and experienced at the level of the
everyday, as exemplified by the parodic appropriations of artists and writers.

Mike Featherstone has argued that postmodernism should be understood as more than
just an unfolding of the logic of capitalism in the Jamesonian sense. Rather, in order to
understand postmodernism, Featherstone believes we need to approach it on three levels. First, at
the level of changing artistic, and intellectual fields – particularly in fields struggling against
traditional canons of creativity. \(^9\) Second, according to changes found in the broader cultural
sphere in terms of modes of production, circulation, and dissemination of goods. \(^10\) Lastly, at the
everyday level encompassing the “practices and experiences of different groups who as a result of
the first and second set of changes start to use regimes of signification in different ways and
develop new means of orientation and identity structures.”\(^11\)

While, following Featherstone, this thesis aims to keep its distance from some of the
totalizing and modernist presumptions of Jameson and Hutcheon’s theories of postmodern

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\(^10\) Ibid.
\(^11\) Ibid.
appropriation, I do believe it is important and useful to examine their debate in light of its subsequent influence on the theoretical positioning of appropriation in today’s critical discourse.

1.2.4 Late Capitalist Marxism: Appropriation as Production

This dissertation assumes the position that appropriation is a facet of creative (re)production bound to the distribution and circulation of artworks. Antagonistic to the naturalized modernist goals of originality and authenticity still aimed for by artists, dealers/sellers, and critics, appropriation makes visible the signifying act of mimesis present in all creation. Through redundancy, repetition, and ultimately multiplicity, appropriation draws attention to the reiterative acts of expression through which culture is constructed. This study considers appropriation from a critical Marxist theoretical vantage point, which places the forces of capital at its core. As such, I am neither providing an impossibly comprehensive survey of the history of appropriation, nor a complete compendium of the variations, types, or possibilities of appropriation in creative production. Instead, I wish to reveal the depth and degree to which appropriation infiltrates the (re)generation of creative production and consumption as an industry itself. This will allow me to determine and situate the possibility for a paradigm shift towards a cultural sensibility turned more towards conscious collective sharing than towards capital accumulation.

Following Stuart Ewen’s 1988 coining of the term ‘commodity self’ to describe the link between identity and material goods in late capitalist culture, this thesis argues that the things we
create are considered extensions of our *selves* just as much as the things we *buy* or accumulate. In Western culture, we tend to think of the things we create as expressions of our physical, intellectual, and emotional being. As such, our determination over them is proprietary, which is heavily reinforced by their potential to hold lucrative commodity capital. Indeed, in the realm of business, investors, managers, and scholars now regularly refer to ‘intellectual capital’ and accord it with the same values and protections as those allotted for tangible capital. This is still a fairly recently adopted way of speaking about creative materials – even in business dealings – and it has not yet been wholly accepted within the Humanities.

‘Art’ and ‘commodity’ have enjoyed a long history of separation that still seems to pervade the contemporary limits of culture – even if only in an imaginary way. In some ways, humanistic creative sympathizers still gloss over the commodity aspect of creative materials to detrimental effect. Among other things, *not* giving the art-is-commodity fact of contemporary capitalism its full disclosure is retarding our ability to reconceptualize the framework of tangible institutions related to appropriation – such as copyright – in a way that *will* allow for the actual protection of creative freedoms. If, as I suggest, the first advance would be to acknowledge that the history of copyright originated with the interests of sellers and not producers, then the second would be to consider how the long-repressed actuality of intellectual capital can be re-inserted into the copyright discussion.

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1.2.5 Politics: Postcolonial and Identity Issues

In simple terms, ‘politics’ in the context in which I am employing it here assumes a critically aware point-of-view. As Steven Best and Douglas Kellner have observed, it also assumes recent models of politics that have “redefined the ‘political’ based on changes in society, technology, economics, and everyday life.”\(^\text{13}\) This type of politics is characterized by a subjectivity that places cultural production as central to social relations. While not all appropriation is necessarily political in this way, this thesis will reveal the ways that it has been used, and continues to be used, as a tool for the politicization of certain aspects of culture, personal identity, and everyday life (such as colonial representations of North American aboriginals).

1.3 Methods

1.3.1 Interdisciplinary Processes

In many ways, this dissertation resembles a ‘cultural studies’ style of examination whereby I strive to maintain the ability to imagine what Lata Mani has described as “a location where the new politics of difference – racial, sexual, cultural, transnational – can combine and be

articulated in all their dazzling plurality.”14 Jennifer Daryl Slack defines ‘articulation’ as a method to “explore the workings of a complex world”.15 Slack writes that within the discipline of cultural theory, articulation represents a coming together of “two critical dynamics” – the first of which is constituted as “a contingent joining of parts to make a unity or identity that constitutes a context”.16 Throughout this thesis, for instance, I bring together what might otherwise be considered theoretically competing, historically dissonant, or aesthetically unrelated arguments, ideologies, and practices in order to create what Slack describes as a “connection or relation at a particular historical conjecture.”17 That is, in order to describe the state of appropriation in Western culture as it stands today.

The second dynamic of articulation named by Slack refers to “the empowerment and disempowerment of certain ways of imagining and acting within that context.”18 For this project, that has meant considering how appropriation “does the work of empowering ways of thinking, being, and acting in the world as possible or not.”19 As such, this thesis aims to illustrate what Slack calls “a sort of map” of the “who and what” is valued or disesteemed by appropriative practices, and who and what benefits from or does not benefit from appropriation.20 However, as Slack notes, “a conjuncture never is ‘sewn up,’ or an absolutely fixed unity, but a web of articulating, dynamic movements among variously homogeneous and heterogeneous forces and

16 Ibid, 225.
17 Ibid.
18 Ibid.
19 Ibid.
20 Ibid.
relations."\textsuperscript{21} That means that the articulation of appropriation in this dissertation is not concrete, but rather only a representation of a particular ‘conjuncture’ in its ongoing, static relation to fluctuating histories and contexts.\textsuperscript{22}

Since, as Cary Nelson, Paula A. Treichler, and Lawrence Grossberg have pointed out, cultural studies has no prioritized disciplinary investment, it follows that neither does it tend to favour one methodology over any other. Nevertheless, cultural studies is not merely a theoretical practice either. Rather it “offers a bridge between theory and material culture.”\textsuperscript{23} It also self-consciously incorporates notions of politics, power, and context into its analysis.

Cultural studies is often thought to be embodied by two recent opposing historical schools of thought – the Frankfurt School, and the British school. But in “Critical Theory and Cultural Studies: The Missed Articulation,” Douglas Kellner suggested that the two approaches can, in fact, be complementary.\textsuperscript{24} Kellner summarizes the Frankfurt School interdisciplinary methodology as a combination of a critique of the “political economy of the media, analysis of texts, audience reception studies, and the social and ideological effects of mass culture and communications” in order to identify the commercial drives behind the industrialization and mass-production of culture (ie. ‘culture industries’).\textsuperscript{25}

Kellner notes that it is important to remember that the Frankfurt School worked during an era of large corporations, organized capitalism, and Fordism and was, therefore, “articulating a

\begin{flushright}
\textsuperscript{21} Ibid.
\textsuperscript{22} Mani, 2.
\textsuperscript{23} Ibid, 6.
\textsuperscript{25} Ibid, 13.
\end{flushright}
theory of the stage of monopoly capitalism which became dominant during the 1930s.”

Thus, the Frankfurt School articulated what was to become an historical shift towards mass consumption, where culture would be “indispensable to producing a consumer society based on homogeneous needs and desires.”

British cultural studies, on the other hand, emerged in a later era of capitalism within a “more variegated and conflicted cultural formation.”

The original project of cultural studies (Richard Hoggart, Raymond Williams, E.P. Thompson) was to defend working-class culture against mass culture as a force of “progressive social change” that could still be “mobilized and organized” against the inequities found in capitalist societies towards a “more egalitarian and socialist” society.

This thesis, with its mix of attentions to various forms of creative practices, attempts to move beyond the demarcations between high and low (popular) culture. As such, throughout this dissertation, I draw examples from both the so-called ‘high’ art practices of visual arts ‘propre,’ as well as from film, television, music, fashion, and literature in order to ask how and why appropriation operates in our society at large. Ultimately, I aim to enable a political, social, and historical context in my analysis of appropriation in the visual arts. As such, I also follow what Nelson et. al. have identified as cultural studies concern with “the everyday terrain of people, and with all the ways that cultural practices speak to, of, and for their lives.”

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26 Ibid, 14.  
27 Ibid, 15.  
28 Ibid, 15.  
29 Ibid.  
30 Lata Mani, 11.
1.3.2 Epistemological Issues

1.3.2.1 Historical Narratives: The Problem with Establishing a Beginning

The ‘Beginning’ (capitalized) of appropriation as a creative act has been located in everything from the *Pictures* Generation, to the media borrowings of Pop Art, to Robert Raschenberg’s combines, to the readymades and collages of Dada, to Braque and Picasso’s cubist collages and assemblages. Arguments holding that appropriation is a particularly postmodern phenomena have been exaggerated so that today critics, theorists, and artists alike tend to set up their discussions of appropriation, and issues pertaining to appropriation, as though its existence as a practice is unique to the twentieth and twenty-first century. In truth, establishing the genesis of appropriation is a defeating, albeit entertaining, task. In fact, a potentially infinite variety of appropriative gestures have been produced by artists for centuries.

For example, in the same year that the *Pictures* exhibition opened, art historian Margarete Bieber published a tome of *Ancient Copies: Contributions to the History of Greek and Roman Art* (1977) in which she follows the methodological precedent of studying copies established by nineteenth century art historians such as Adolf Furtwängler. Throughout the book, Bieber explicitly acknowledges and consciously preserves what has become the art historical convention of examining pre-modern Roman sculptures in order to understand the Greek culture from which they were copied. According to Bieber, studying copies in detail allowed art historians like Furtwängler to decipher between ancient Hellenistic artists who merely “took inspiration from...
older works”, and “genuine, exact, and “unselfish” Roman copyists.” Where, today, we tend to favour artwork that appears more unique, or less referential, ancient practices favoured the opposite: work that could most skillfully recreate past sources.

Hierarchical and relativist modernist method of inquiry aside, Bieber’s study is interesting to the beginning of my project at hand in the way it acts as a statement about the history of copying itself. She summarizes the questions motivating her study by asking: “Where is the borderline between Greek and Roman art? Has Roman art its own creative power and formative ability?” In many ways, the Pictures Generation of artists, critics and theorists were explicitly testing the limits of these same questions by asking what it meant to be an ‘author/artist’, and what it meant to make a unique, authentic work of ‘art’ during and after the shift from modernism. Early in her first chapter, Bieber makes a fortuitously revealing statement about the historical existence of appropriation: “I am of the opinion that the art of copying did not yet become extinct at the period indicated by [early twentieth-century classical archaeologist, Georg] Lippold” – who argued that the practice of artistic copying ended between 200 A.D. and 250 A.D., with the bulk having occurred between 50 B.C. and 250 A.D. The assumption present in both Lippold and Bieber’s argument is twofold. First of all, they assume that since circa 250 A.D., artists have no longer copied previous works of art, but rather, have produced non-copied, or original works of art. Secondly, Lippold and Bieber both assume there is a distinction to be made between consciously copying for the sake of copying itself, and unconsciously building on previous sources.

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32 Bieber, 16.
33 Ibid, 3.
In fact, it wasn’t until the late fourteenth, fifteenth, and sixteenth centuries that innovation of form and content – originality – became the privileged goal of production. It was during the Renaissance that the modern concept of ‘Art-with-a-capital-A’ first began to emerge, together with related notions about the status of the artist as a creative genius, the importance of originality (over craftsmanship) in assessing the merit of art objects, and the significance of using aesthetic criteria to judge works of art. In *Raphael, Dürer, and Marcantonio Raimondi: Copying and the Italian Renaissance Print* (2004), Lisa Pon argues that the idea of the artist as a ‘possessive author’ – as “both the sole source and ultimate owner of his images” – first began to take hold at the end of the fifteenth century and beginning of the sixteenth century.

The emergence of these two concepts – the unique artwork, and the possessive author – during the Renaissance period were made all the more complex and, as Pon describes, “remarkable”, considering the concurrent cultural proclivity for practices of appropriation via a sharp rise in the popularity of perfecting imitative art-making, a growing market for forgeries, as well as the technological developments in reproductive printing techniques. The word ‘renaissance’ literally means ‘rebirth’. During this period, philosophical and political writers began to articulate a longing for the Classical world of ancient Greece and Rome, with particular emphasis on reviving the languages and intellectual traditions of these long-dead civilizations. Hence, the ‘rebirth’ that was happening in the Renaissance was really a ‘rebirth’ of Greek and Roman ideals. What followed in terms of creative production were paintings, sculptures, tapestries, architecture, etc. representing the ‘idealized’ bodies of Greek and Roman sculptural

36 Ibid, 22.
bodies, styles of dress, and architectural models. In many ways, Renaissance artists and architects were appropriating, and attempting to surpass, aspects of Greek and Roman aesthetics, formal techniques, and content for their own philosophical, political, and historical purposes.\(^{37}\) Pon recounts that during this period, “the opposing twins of the desire for novelty and the deeply felt links to the past provoked cultural discussions about the nature of artistic influence and independence.”\(^{38}\)

If there was anything that was so-called ‘new’ about the *Pictures*-era employment of appropriation then, it was certainly not the act of reviving, reusing, or reprinting itself. Perhaps it could be said that it was the taking-up of newly developing technological media in the form of photography, film, and video by visual artists, together with the break-down of modernist hierarchies that brought the employment of appropriation back to our attention in the 1970s and 1980s to the same degree to which it had been concealed, unrecognized, and sometimes even flat-out denied during the High Modernism of the 1940s and 1950s in favour of perpetuating the quest for originality. Better yet, perhaps it can even be said that the practice of reusing existing forms, styles, methods, and images has always been an essential component of creative production.

### 1.3.2.2 Definitions: The Problem with Defining a Form

Appropriation is a broad term, encompassing hundreds of off-shoot types of techniques and activities including pastiche, parody, mimesis, collage, remix, satire, repetition, etc. The *Meriam-Webster Dictionary* defines ‘appropriated’ in three ways:

\(^{37}\) See: Bieber.  
\(^{38}\) Pon, 22.
1: to take exclusive possession of: annex
2: to set apart for or assign to a particular purpose or use
3: to take or make use of without authority or right

The *Oxford English Dictionary* offers a narrower version of the term: “the deliberate reworking of images and styles from earlier, well-known works of art.” Following Oxford, my use of ‘appropriation’ in this dissertation is specific to the production and consumption of creative and cultural materials by means of pre-existing creative and cultural materials. Unlike more specific idioms such as ‘parody’, ‘satire’, or ‘mimesis’, the word ‘appropriation’, illicits particularly polarizing reactions that betray many of the naturalized assumptions, cultural prejudices, and disciplinary dogmas I wish to scrutinize. By using the broader term, ‘appropriation’, this project attempts to remedy the hierarchical distance between differing types of appropriation for an era which has witnessed incrementally expanding copyright laws delegitimatizing *all* forms of appropriation and, in the process, impeding creative production.

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1.4 Methodological Considerations

1.4.1 History of the Current Research Interests

My interest in the topic of appropriation was first animated by the release of the second studio album from Detroit rock band The White Stripes fourteen years ago. My reaction to the record, titled *De Stijl* (2000), was a simultaneous mixture of delight and satisfaction. Delight in the novelty of my then-favorite band referencing my then-favorite art historical movement. Satisfaction in the chance it afforded me to exercise my still-newly acquired ‘insider’ knowledge of the art historical canon to recognize and understand a citation outside of the classroom. Back then, I was struck by the complexity present in Jack White’s creative attempt to resurrect the spiritual, social, and aesthetic objectives of what was, ultimately, a failed modernist idealism. What I could not fully articulate at that time, was the haunting notion that White’s act of appropriation might itself also represent something larger about our common historical, political, and cultural circumstance.

Hence, my Master’s research took a necessary, yet peripheral detour into an investigation of the debates about authenticity and originality as manifested in the history and culture of rock & roll. When I returned to the topic of appropriation more explicitly for my doctoral research proposal, I did so largely *inspired* by Jameson’s analysis of postmodernism as pastiche. In Jameson’s text, I finally recognized an opening into which I could begin to assess appropriation’s construction within, and influence on contemporary culture as a phenomenon unto itself. Although the past six years have critically altered my point-of-view on Jameson’s conception of
pastiche, my own research is still somewhat indebted to both his and Hutcheon’s concern for the broader context.

Once pointed out, it is actually fairly simple enough to see that appropriation is very much still a prolific component of contemporary art making as demonstrated by the vast amount of reference-based works in the three most recent Canadian Biennials of Contemporary Art at the National Gallery of Canada (2010, 2012, and 2014), the ubiquity of the electronic dance remix version of Top 40 hits, ‘retro’ Mad Men television-show inspired fashion trends on haute couture runways, or the 2013 Baz Luhrmann remake of The Great Gatsby – in which the title character played by Leonardo DiCaprio tellingly muses, “Can’t repeat the past? Why of course you can. Of course you can.”

But after the publication of Jameson’s essay and Hutcheon’s subsequent rebuttals, the interest in appropriation as a theoretical and critical subject waned briefly, particularly by those who witnessed the so-called first incarnation of ‘Appropriation Art’ by the Pictures associated artists and its constituent debates first-hand. “It was so over” recalled keynote speaker, Johanne Sloane at the 9th Annual York University Art History Graduate Student Association Symposium on “Appropriation: People, Places, Things” (2010). But even over the course of the last seven years during which I have undertaken this project, I have taken note of a growing re-interest in appropriation.

Several well-established annual academic conferences and symposiums have recently made appropriation, or variations thereof, the single central thematic topic for consideration. The University of Oregon Department of the History of Art and Architecture invited papers on the

\[41\] The Great Gatsby, film, directed by Baz Luhrmann (Burbank, California: Warner Bros., 2013).
theme of “the copy” for its 10th Annual Graduate Student Research Symposium held April 17-18, 2014. The Third Annual University of California, Riverside History of Art Graduate Student Conference called for papers on the subject of “Assimilation & Appropriation in Art”, which were heard on May 14-17, 2014. The 2014 Graduate Symposium hosted by the Kress Foundation Department of Art History at the University of Kansas, examined “Materiality and Memory in Visual Art and Culture” on March 28-29, 2014. Inspired by Fredric Jameson’s insights into postmodern culture, Ontario College of Art and Design hosted a Contemporary Art, Design, and New Media Studies Conference on March 6-7, 2014 on the theme of “Recombinant Creativity - Temporal Intersections, (de)Historicizing Strategies, and Contemporary Cultural Products”. On October 10-11, 2008 the Department of Modern Languages, Literatures, and Culture at Brock University in St. Catharines, Ontario held its Image and Imagery: Fifth Biennial International Conference on the topic of “Re-making, Re-writing, Re-discovery: Exploring Intersections of Visual, Textual, and Oral Modes of Artistic Expression”.

Similarly, the past year has seen a number of academic journals calling for research related to questions of appropriation for special thematic issues such as the upcoming Volume 3, Issue 3 of *Interventions Journal* to be published this year in conjunction with Columbia University’s graduate program in Modern Art: Critical & Curatorial Studies which, titled, “The Rhetoric of Memory”, will include papers centered on the nature of memory and its influence on the creation and presentation of artworks. Or, the forthcoming Winter 2014 issue of *SYNOPTIQUE: An Online Journal of Film and Moving Image Studies*, published by Concordia University’s Mel Hoppenheim School of Cinema whose title will be named “Out of the Dark Stacks and Into the Light: Re-Viewing the Moving Image Archive for the Twenty-First Century”.

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Evidence of renewed enthusiasm for the topic of appropriation also exists today in the form of a wide range of popular and critical discourse stemming from sources as diverse as the academic conferences I listed above, to tumblr websites, to exhibitions, to festivals. For instance, the tumblr website Who Wore it Better is an “ongoing visual research project” started in 2013 by Alison Feldish and Derek Frech. Feldish and Frech regularly post two images of similar-looking artworks side by side – such as Walter De Maria’s The New York Earth Room, and Mike Bouchet’s The New York Dirty Room; or Elaine Sturtevant’s Duchamp Bicycle Wheel, paired with Marchel Duchamp’s Bicycle Wheel. But where celebrity tabloid and fashion magazines commonly publish features containing two images of similar-looking outfits worn by stars and ask viewers to rate which star looks better, Feldish and Frech insist their website was never intended to be viewed in a “competitive or mean-spirited” way. Instead, their aim is “to promote formal and conceptual dialogue over originality.” The images on Who Wore it Better are presented with little accompanying information – only the name of the artist and title of the artwork are supplied underneath each picture. No contextual information regarding the artwork’s history or production is provided, nor information about the artists themselves (though links to biographical information are sometimes included). No dates are given either, leaving it unclear which artwork was created first, or whether or not the lineage of the artworks are connected directly via homage, allusion, or reference, or whether the similarities are purely coincidental. Although the tumblr site does reveal how originality is a limiting and constructed ideal of a

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43 Alison Feldish and Derek Frech as quoted in Tom Cheshire, “Research project shows how often great artists think alike,” wired.co.uk, September 10, 2013, online: http://www.wired.co.uk/magazine/archive/2013/09/play/original-ish-works-of-art, accessed June 16, 2013.
44 Feldish and Frech, “Who Wore it Better.”
culture obsessed with exclusivity, in an online article for the San Francisco MoMA’s blog site “Open Space” art critic, Tom Sussman argued that, in practice, *Who Wore it Better* actually “invites snap judgments rather than careful deliberation.”

In an effort to instigate a more studied conversation on the topic, in 2013 The Power Plant Contemporary Art Gallery in Toronto hosted a four-day *Uncreative Writing Workshop* with Kenneth Goldsmith where participants learned to “employ strategies of appropriation, replication, plagiarism, piracy, sampling, and plundering, all as compositional methods” while also tracing “the rich history of forgery, frauds, hoaxes, avatars, and impersonations”. Similarly, in October 2012, Tate UK asked the public to respond to the question, “When is appropriation homage and when is it plagiarism?” on their popular interactive blog page, “Tate Debate”, which poses a new question related to visual art production and consumption every few weeks to which gallery and website visitors are encouraged to post their responses. Overall, although the nature of an online discussion like this is that comments are kept relatively short, many of the responses to “When is appropriation homage and when is it plagiarism” were thoughtfully composed, and many included links to further discussions, arguments, and information on the topic.

Appropriation has also recently been the central topic for exhibitions and festivals, such as the Festival of (In)Appropriation: A Festival of Experimental Found Footage Films. Since 2009, (In)Appropriation has run a carefully selected annual program of “contemporary, short (20

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minutes or less), audiovisual works that appropriate existing film, video, or other media and repurpose it in “inappropriate” and inventive ways.\textsuperscript{48} The travelling festival is meant both to showcase, and to encourage, the plundering of “official state and commercial archives, resources like vernacular collections, home movie repositories, and digital archives” for the purpose of generating “novel juxtapositions and new meanings and ideas”.\textsuperscript{49} The festival has proven successful enough to have already produced six programs worth of audiovisual works, with a current call for submissions to the seventh festival. Although, as the title of the festival suggests, the topic of appropriation is still a provocative one, there is certainly a recently emerging fascination for its processes and implications.

It is no coincidence, for instance, that the spring of 2009 saw the staging of a large-scale retrospective exhibition, \textit{The Pictures Generation, 1974-1984}, by the Metropolitan Museum of Art in New York. The exhibition included artwork by all but one of the five artists featured in the 1977 \textit{Pictures} exhibition, plus twenty-five others generally considered either greatly influential to, or part of, the 1970s and 1980s network of appropriation artists. In a New York Times review, Holland Cotter wrote that the exhibition “tackles a subject…that has been begging for museum attention. It does so at a time when the work in question has particular pertinence to what’s being made today.”\textsuperscript{50} Of course, these artists were connected by more than just the appropriative means taken to construct their work. Cotter mentions that the artists in this exhibition “were all making art that combined elements of Pop and Conceptualism with social concerns about consumerism,

\textsuperscript{49} Ibid.
political power, and gender.”

Certainly the *Pictures Generation* artists were also linked by their common historical and geographical context (most having been born and raised in 1940s America).

To reinforce this, Cotter links the Met exhibition with an equally broad show which ran concurrently at the New Museum. *The Generational: Younger Than Jesus* was the first iteration of a triennial exhibit of fifty artists from twenty-five countries all under the age of thirty-three. *Younger Than Jesus* was meant to “identify stylistic trends that are emerging among a diverse group of creators, and provide the general public with a first in-depth look at how the next generation conceives of our world.”

Cotter described *Younger Than Jesus* as an “echo” of *The Pictures Generation*, pointing out that the artists in *Younger* were “as young as the “Pictures” artists were then.” He points out that the *Younger* artists were using the technologies of their own era to cull, and reuse materials from their everyday lives in much the same way their predecessor colleagues did. Cotter wonders whether we should be alarmed by this – “Has new art come no further than this?” But I would suggest instead that many of the subjects and techniques of both ‘generations’ of artists are still just as relevant. After all, the Renaissance lasted four centuries, but the *Pictures* and *Younger Than Jesus* artists are separated by only a few decades.

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51 Ibid.
53 Cotter.
54 Ibid.
55 Ibid.
The Met exhibition came hot-on-the-heels of the Guggenheim Museum’s opening of the retrospective exhibition, *Richard Prince: Spiritual America* in September 2007. Both exhibitions were quickly followed by several other large-scale, high-profile exhibitions featuring the work of 1970s and 1980s appropriation artists by major institutions. In 2009, the Musée d'Art Moderne et d'Art Contemporain in Nice, France unveiled *Robert Longo: Retrospective*; in 2011, the Whitney Museum of American Art opened the retrospective, *Sherrie Levine: Mayhem*, which was quickly followed by a huge retrospective of the work of *Cindy Sherman* at the Museum of Modern Art in New York City in 2012; and most recently, *Barbara Kruger* opened at Modern Art Oxford in June 2014. Each exhibition has garnered a range of critical reviews and commentary focusing on the appropriative practices of the artists showcased. Fitting, since appropriation itself appeared as the central thesis in all six of these exhibitions. There is something about the appropriative actions of the pictures generation artists that has caused a re-examination today.

**1.4.2 Rationale for Approach to Sources**

This project is primarily structured as an exposition of a theoretical concept – appropriation – that has been defined by the dominance of a certain cultural sensibility regarding creativity – the artist as genius creator of unique, original objects. As such, it is also an exercise in considering the relationship between creative works and their modes of production.

Art history’s primary attention to documenting the tangible aspects of artworks, art-making, and reception, together with its concern for social, political, and cultural contexts has often positioned the referential analysis of artworks as subsidiary. This dissertation takes the referential nature of artworks as its primary occupation, which counters a false evolutionary vision of art history, and which illuminates the extent to which context affects the circumvolution
of process and reception. Throughout this project, I do consider the formal attributes of particular forms of appropriation through the use of examples culled from the visual arts, music, film, and fashion. However, I am more interested in how disparate debates about these formal aspects have had practical consequences for the (re)circulation of creative materials in social, political, and legal contexts than I am in producing a compendium of precise formulations of formal characteristics for future referential use by other art historians, theorists, or artists. It is my belief that the nature of appropriation as mimetic and reference-bound is such that it renders a formally driven analysis futile unless both its mimesis and its referentiality is ignored completely.

Although, in a very general sense, this project is intended for an audience concerned with the practice of formal analysis and the historical documentation and examination of visual artworks, it is not exclusively art historical – at least not in the ‘traditional’ sense of the discipline. Positioned between art history, visual analysis, literary criticism, cultural studies, and critical theory, Everything (old was new) Already converses both with and across disciplinary divides expressly for the purpose of seeking answers to the questions that guide it. Similarly, at various points throughout, this project borrows aspects of art historical visual analysis, Marxist inquiry, postcolonial ethics, literary criticism, feminist discourse, and even psychoanalytic theory. At times during my discussions, when one of more of these discourses are no longer able or useful in clarifying, critiquing, or illuminating a particular concept, I adopt the lens of another in order to move the analysis forward.

For many of today’s theorists, culture is a process rather than a specific set of media. It hovers in a perpetual state of meaning production that has a direct effect on the composition of social identities. This means that cultural production (popular or otherwise) is inherently political. Things such as paintings, mp3s, CDs, records, clothes, television shows, films, and even language
itself carry the interests of the economically and ideologically dominant but, by the same token, also reveal certain opportunities of resistance. Culture is constructed from within rather than from above (top-down) and so even though producers may attempt to control the meanings, pleasure, and behaviours of their commodities, the consumer always completes these elements. For this reason, this dissertation will consider appropriation from the perspective of production as well consumption.

In the case of this dissertation, the primary cultural producers who will be analyzed are contemporary visual artists and curators, fashion designers, and filmmakers. Through my personal and professional associations and visits with artist-run centres, commercial galleries, university art collections, and provincial and national art institutions, I have collected a series of formal and informal interviews and experiences on the topic of appropriation. These experiences have unofficially contributed to this dissertation’s information regarding the methods, tools, and processes (both physical and intellectual) involved in the construction of artworks containing quoted elements as well as the opinions and thoughts of producers on the subject of appropriation itself. Furthermore, there is also a relatively large amount of accessible archival information such as exhibition catalogues, and collected audio and visual material that I have consulted as documentation of particularly relevant exhibitions. It should be noted, however, that even though I have labelled artists here as producers (in this sense: makers of creative works), the nature of this particular project will also view them as consumers. That is because artists who use appropriated materials are both consuming these materials and re-producing them under a new context.

Consumers, in this case, also include the viewers. As such, this research project will also consider the reception of creative works that include appropriated elements – by considering
exhibition reviews from art journals, magazines, and newspapers – as well as an analysis of the theoretical discourse on the topic of appropriation itself. In particular, Chapter 5 of this dissertation will include the reception of appropriation in the culture industry according to the law. For this chapter, I have considered both recent legal cases, as well as legal commentary on the debate and discussion over ‘fair-use’ policies by both lawyers and academics.

1.5 Description of Dissertation: Chapters

Topically, this dissertation moves from the general to the specific – from theory to praxis. Each of the following chapters was written, and should be read, organically – as an exegesis of one topic (appropriation) journeyed through a multitude of related concepts as they arise therein. As such, each chapter does not necessarily “give away the answers”, or “name the destination” outright, while proceeding to use the remaining pages to justify the claims stated at the outset. Rather, each chapter reflects on a broad aspect of appropriation: its theoretical context; its form and its content; its politics; and, finally, its effects on the institutional governance of creative production (specifically, copyright). The specific arguments held in the body of each chapter tend to roll along the discursive trajectory that is created as one question leads to another and which ends, ultimately, at the foot of the next broad issue. Although this is not a narrative strategy, per se, it does re-create some of the climactic realizations experienced during the research and writing of this project.

Chapter Two critiques the long-standing, and generally negative assumptions about the nature and operations of appropriation by considering it in relation to its theoretical antithesis –
authenticity. Section 2.1 examines authenticity as a modernist concept that is socially and culturally produced and reproduced as both a material and non-material commodity. As such, it is subject to the hierarchical restrictions present in systems of class and labour. More specifically, I examine authenticity as it has been constructed through intersections between the visual arts, music, and fashion. Section 2.2 furthers this analysis to suggest that the constructed authenticity of any creative commodity is determined by its intertextual relationship to other creative commodities, as well as to perpetually fluctuating external factors – such as the development of digital (and other) technologies.

In Chapter Three, I take a closer look at the formal qualities of appropriation. There are many iterations of appropriation but in this chapter I have chosen to examine the formal aspects of pastiche, specifically. The reason I have chosen pastiche is because it is a more elusive or, at least, less defined form of appropriation. Other forms – like mimesis, imitation, or parody – have more articulated, and accepted parameters of purpose, style, and structure, which often work to mask, or shield their appropriative nature from negative ‘accusations’ of inauthenticity or unoriginality. However, as I explain in Section 3.1, the term ‘pastiche’ has often been used in a derogatory sense – to indicate something as objectionable or distasteful both because it was composed by means of reusing previously existing materials or texts, and/or to indicate the product itself as distasteful because of its appropriative nature. In other words, the appropriative aspect in pastiche is commonly held to be explicitly inauthentic and unoriginal. This section challenges the notion that to name something a ‘pastiche’ is to describe it as containing illegitimate and reified versions of historical material.

In Section 3.2, I go on to suggest that pastiche allows for an interstitial reading of history existing through and between creative texts. This section examines the amorphous affectation,
and ambiguous point-of-view of pastiche as found in certain examples culled from the horror movie genre in order to consider appropriation writ-large both in relation to, and in contrast with, other more distinct forms of itself (particularly parody). Following this, Section 3.3 considers arguments that suggest the formal qualities of appropriation are both indicative of, and constituted by, broader characteristics present in Western culture in the late twentieth and twenty-first centuries.

Chapter Four of this project cautiously adopts Hutcheon’s theory on the politics of parody to examine the appropriations (some may say ‘re’-appropriations) that have become a salient mechanism employed by many contemporary First Nations visual artists in Canada. Even in these instances, appropriation appears as more than just a conscious creative expression, strategy, or trope. Section 4.1 argues that although the disposition of appropriation is most visible when rendered materially, the spirit of its sensibility is also present in appropriative critical gestures as well.

However, Section 4.2 considers how not all appropriation is necessarily political. In fact, some is downright depoliticized. A significant motivating factor for many of the First Nations artists whose works I consider in Chapter Four is their first-hand experience of the aestheticization of many of their traditional cultural artifacts – such as the trendification of moccasins, headdresses, war paint, and peace pipes. In these instances, the appropriation does appear as a reifying force emptying the original source of any significant sacred or culturally significant meaning in a ruthless and damaging manner. Here, appropriation is more reminiscent of the historically guileless type described by Jameson.

The ways in which appropriation appears to challenge identity – cultural and individual – is the underlying, consequential subject of the final two chapters of this project. The primary
subject of Chapter 5 – copyright law – is an exponent of the protection of identity. As such, it tends to inhibit acts of appropriation, which inherently borrow the identities of the sources from whom it draws. Copyright law includes protection from questionably ethical acts of appropriation involving theft, or forgery. But it also inhibits critical acts, mimetic acts, and even unconscious acts of appropriation. The rapid growth of digital technology over the past few decades has brought appropriation’s tensions with the law to a head. The lines that may have once distinguished producers from users and consumers are becoming less and less clear, yet the laws over using and reusing creative and cultural materials are becoming tighter and tighter – particularly in the United States.

In Section 5.1, I use analysis from literary criticism, communication and media studies, and law to examine how the production, accumulation, and protection of cultural and intellectual property exists in-tandem with a larger economic drive for cultural capital. In Section 5.2, I return to a consideration of cultural appropriation, this time as it is being debated in relation to cultural property protections. This section delves into the rights of aboriginal peoples to protect the material manifestations of their cultural identity as a representation of their larger struggle against colonial assimilation.

What I find in Chapter 6 is an affirmation of how deeply our individual and collective identities are entrenched in the materials of our environment – especially the materials over which we claim ownership through cultural or creative production. In this chapter, I use the contemporary state of this fetishization as the subject through which to explore the concept of the ‘author’ as a modernist pretext which, ultimately, ensures profit protection and capital accumulation.
Chapter 2
Theoretical Foundations – Authenticity and Intertextuality in Appropriation

2.1 Authenticity

2.1.1 The Authenticity-Appropriation Paradox: Existential Authenticity for the Visual Arts

I am opening this chapter by examining the two most relevant (and seemingly opposing) dialectics pertinent to this research project: appropriation and authenticity. We may think of appropriation, on the one hand, as most closely related to imitation, copying, or reproduction. On the other hand, authenticity is most often associated with realness, sincerity, and uniqueness. In the visual arts, Benjamin is often cited as the earliest and most preeminent thinker of the effects of reproduction on the authenticity of artworks. Contrary to some of the other forms of authenticity I will discuss in the following pages (such as Heideggerian authenticity) authenticity of the type discussed by Benjamin exists quite apart from, or beyond, social structures and is more reminiscent of what Charles Guignon calls “ordinary” authenticity.56

For Benjamin, authenticity is found in texts/artworks that contain ‘aura’ – an elusive, non-material, emotional quality, which “acts as an apparition of a distance, however near it may

be.” This non-material effect emphasizes uniqueness and creates an imagined distance between the viewer’s everyday existence and the text itself. By this account, the reproduction of a text – its copied version – rarely contains the auratic effect of the original (unless *posing* as an original, as in the case of a ‘fake’ or ‘forgery’). The auratic aspect of the text/artwork is corroded in favour of a mass exchange and the distance between the object and the individual decreases with the plurality of copies and meanings. Hence, the reproduction comes closer to the viewer’s everydayness. According to Benjamin, what a reproduced object may gain in accessibility (both physical and intellectual) it loses in auratic value and, in the process, its authenticity depreciates.

In late capitalist culture, this dialectic exists at a delicate balancing point where consumers exhibit strong desires for authentic texts (or experiences) but the logics of the market economy would dictate that any authentic text demonstrating profitability must be reproduced ad infinitum – or at the very least, until it can no longer be perceived as profitable. Presumably, this jeopardizes the very quality that made the text valuable in the first place. After all, authenticity appears to us as though it is a non-reproducible element. Greater than, more than, or beyond the material aspects of the text itself, authenticity appears to us as the preservation of a record of privilege, or ‘essence’, in a text.

Similarly, when we speak of authentic individuals we think of someone possessing a character encompassing a ‘truth-to-self’ ideal – or what Guignon has described as an individual’s

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58 See Chapter 5 of this dissertation.
59 Benjamin, 255.
60 I am using the term ‘text’ here, in its broadest possible sense. In this discussion I would include texts as diverse as literary texts and visual artworks, to films, clothing, music, and religious artifacts, to experiential texts such as tourist experiences and spiritual or religious experiences.
ability to live out their ‘calling’, or ‘fate’. It is presumed that this quality is a natural one, bestowed from conception. Although one’s calling is, perhaps, not necessarily a biological quality per se, it is certainly understood to be something that cannot be acted out, imitated, or appropriated. Following Lionel Trilling, and Charles Taylor, Guignon notes that Benjamin’s conception of authenticity is the most common (or “ordinary”) understanding that has developed over the past four centuries. Like Trilling and Taylor, he argues that the Western idea of a “self-encapsulated individual with its own inner resources and depths” arose simultaneous to a “widespread sense that social existence is something alien to our true being as humans.”

These ideals assume that society’s social structures are artificial constructions and, as a result, our modern and contemporary notion of authenticity “sees the only authoritative source of guidance as located within ourselves” – in the ‘real’, ‘true’, deepest sense of ourselves.

However, this ideal of authenticity is complicated by the very social structures it seeks to abject. As individuals age, they take on the public actions, roles, and norms that have been approved and accepted by our cultural context. But as Guignon reiterates, when we re-enact (or appropriate) socially constructed behaviours, “our actions spring not from our own choices and motivations but from the trends and fads of the surrounding world” thereby leading us to an inauthentic existence. Guignon proposes that a solution to this paradox can be reached by considering authenticity from the ‘existential’ tradition of philosophy – particularly as depicted by Martin Heidegger’s philosophy of being.

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61 Guignon: 278.
62 Ibid.
63 Ibid: 279.
64 Ibid.
65 Ibid.
Heidegger's view of individuality appears as a compromise: whereby our cultural context provides us a with a limited number of possibilities from which to define ourselves, the way in which each person configures these possibilities is what determines our existence as individual.\(^\text{66}\) In other words, our cultural context, and social structures are the “conditions of possibility” for our existence (or, ‘being’), but it is the effect of our choices and actions in bringing to realization our potential, which determines our authenticity.\(^\text{67}\) From this view, those individuals who “own up to” the realization of their potential “in a way that is vivid, focused, steady, and intense” can be said to possess an authentic being; but those who “simply drift with the crowd…avoiding any responsibility for his or her own” configurations are living an unrealized, inauthentic existence.\(^\text{68}\)

For Heidegger then, the underlying ‘origin’ of authenticity is our social structure itself, which is different from the ‘truthful essence’ conceived of in most common, or ordinary, understandings of authenticity.\(^\text{69}\) I would suggest that Heidegger’s version of authenticity allows for an openness that can be viewed as more in line with postmodern multiplicity because it can be achieved “in almost any specific identity one happens to take up”.\(^\text{70}\) In other words, Heidegger’s authenticity is *configured* according to the available, variable means, as opposed to *bequeathed* according to a limited set of *standardized, fixed conditions*. This means that according to Heideggerian logic, authenticity is actually constructed by the appropriation of a previously existing “range of possibilities”.\(^\text{71}\) Furthermore, these range of possibilities are ‘always already’

\(^\text{66}\) Heidegger as summarized in Guignon: 282.
\(^\text{67}\) Ibid.
\(^\text{68}\) Ibid: 283.
\(^\text{69}\) Ibid: 285.
\(^\text{70}\) Ibid: 286.
\(^\text{71}\) Ibid: 282.
embedded historically throughout our social and cultural context. That authenticity is produced by means of appropriation, and that appropriation is also the central means for creativity, is a concept that I will continue to expand on throughout this dissertation.

The first section of this chapter is prefaced on Heidegger’s existential interpretation of authenticity – one that assumes authenticity as “a matter of style rather than of content” – and will examine four ways in which authenticity is produced with a specific relationship to visual art and appropriation: as a commodity, via reproduction, according to class, by virtue of association, and through a process of labour.

2.1.2 Commodifiable Authentication: Material Constructions

Anthropologist Charles Lindholm has described the factors involved in the construction of authenticity as it pertains to the field of Western art history. First of all, he notes that the transcendent value of an artwork is primarily determined according to its direct connection with a particular artist-genius. The determination of an artist as genius is, of course, made by the collective agreement of art historians, critics, other artists, and art audiences. Although certainly talent, technical proficiency, and contextual importance are also factors considered in this agreement, in the end, all of these rely “on a subjective sense of emotional communion with the artwork that is akin to a believer’s faith in prophecy.” This argument, once again, points to those

72 Ibid.
74 Ibid, 18.
aspects of authenticity that raise questions regarding its legitimacy as a theoretical concept versus its practice in everyday life. For example, many of the theoretical arguments against authenticity have maintained that authenticity’s reliance on the fictitious idea of originality render it conceptually improbable. And yet, even after the theoretical arguments are made against it, authenticity still persists as a cultural praxis.

One major reason for this persistence, in the art world specifically, is because the certification of an artwork’s authenticity is imperative in establishing both its cultural and its economic value. In this case, physical properties do play a role in the endorsement of authentic worth – chemical composition and genealogical records are consulted in any attribution process – but these are only necessary after the aura offered by an artist-genius has already been confirmed as worthy of such processes in the first place. Lindholm points out that although accreditation based on physical and technical research “rationalizes the value” established on the artwork, in fact, it also “undermines the charismatic aura” that is actually at the centre of its value. This ruse of authenticity, however, is becoming more and more complicated to maintain for three reasons, which are identified by Lindholm as: disagreements and disputes regarding validation amongst subject experts, the diminishment of artistic aura due to an increase in commodification, which has revealed artworks as exchange items, and the rapid development of technological and digital imitation devices. Although auratic texts are hyperbolized as “priceless”, all of them have a monetary price attached. Even an item, service, or experience that is donated will have a tax exemption benefit, or capital effect of some kind.

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75 Ibid, 13.  
76 Ibid, 18.  
77 Ibid.
Indeed, in business and marketing departments, authenticity itself has recently become a quality of considerable currency. James H. Gilmore and B. Joseph Pine II refer to authenticity as “the new business imperative” and argue that individuals/consumers are increasingly viewing the world “in terms of real and fake”, which has resulted in a consumer demand to buy real things from genuine producers and “not a fake from some phony.” Gilmore and Pine associate this desire with the rise of what they have termed an “Experience Economy” dominating today’s economic landscape. Now, consumers expect more than just quality out of their goods and services – they want producers to create “memorable events that engage them in an inherently personal way”, and the most profitable experiences, are those that are perceived as the most “real. Original. Genuine. Sincere. Authentic.” Consequently, academic business discourse is now largely focused on the management of “customer perception of authenticity” as a “new business imperative.”

Authenticity is, in fact, quite marketable – Coke is the authentic cola, Aardvark Safaris Incorporated offers authentic safari vacations, one can purchase authentic-looking Chanel handbags from illegal vendors on the street of almost any major urban centre, and Jennifer Lopez is really just Jenny From the Block. Lindholm has traced the historical development of this type of commodifiable authenticity in America since the late half of the nineteenth-century where, he

79 Ibid, xii. In Gilmore and Pine’s view, the Experience Economy has supplanted the Service Economy, which overtook the Industrial Economy, which in turn, replaced the Agrarian Economy – each having borne out changing consumer sensibilities and perceptions, 2.
80 Ibid.
81 Ibid, 3.
notes, it was not even part of the consciousness of merchandisers and buyers.\(^82\) Rather, most of
the population was fascinated by the ability that new reproductive technologies had for making
accessible those items that had previously only been afforded by the wealthy classes.\(^83\) At this
time, fakes and imitations were openly manufactured for ordinary individuals to purchase,
display, and boast about in a celebratory “explosion of shameless copying”.\(^84\) It is easy to see how
this helped to shape what is now considered “conspicuous consumption”, whereby the
accumulation of possessions has become one of the foremost distinguishing characteristics of
North American identity.\(^85\)

Daniel Miller has referred to this process as an ‘objectification’ – using external objects
as the experience of inner being/identity.\(^86\) I would argue that this is derived from Karl Marx’s
concept of ‘versachlichung’ (thingification), in which objects (or commodities of any type,
including experiences) are bestowed with living abilities.\(^87\) It is here that commodities have been
separated from their material and physical value in order to be given new values – values, which
in fact, they do not actually possess. Both versachlichung and objectification point to the way that
human identities have come to be associated with things in a way that makes it appear to be a
natural occurrence. Lindholm believes that these processes have been accelerated since the
modernist and post-modernist proliferation and availability of “optional identities.”\(^88\) Here,

\(^{82}\) Ibid, 52.
\(^{83}\) Ibid.
\(^{84}\) Ibid, 53.
\(^{85}\) Ibid.
\(^{86}\) Daniel Miller as quoted in Lindholm, 53.
\(^{88}\) Lindholm, 53.
identity appears to be boundless – limited only by one’s ability to buy and consume those commodities that can stand in for, or represent, oneself.

As Lindholm notes, Baudrillard (and others) have argued that this has led to a cultural state in which reality itself has now been objectified to the point where lived, factual experience can no longer be distinguished from its own signs and symbols. The compelling sensual experiences (‘hyperreality’) offered by media such as magazines, movies, television, and advertisements have become “the most powerful reference available today”. So much so, that when asked how she felt after having won $125,000 on pre-taped reality television show, *The Bachelor Pad: Season II*, contestant Holly Durst answered by saying: “It just doesn’t seem real. I don’t think it will until I watch it on TV.” The contradictory effect of hyperreal media has been to create a mass desire for “the really real”, or the actually authentic and producers now make efforts to convince buyers that what they are selling is “more natural, more located in history, or more pure, or more real” than any of the other products available. By consequence, really real products work to legitimize the value of consumer’s objectified identities. We can, yet again, see how authenticity is actually bound up with imitation, replication, and appropriation as they are perpetuated in a commodity exchange system. But beginning in the mid-twentieth century, this relationship became even more complex as the avant-garde began to disseminate their

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89 Ibid.
90 Holly Durst, “Season Finale”, *The Bachelor Pad: Season II*, narrated by Chris Harrison, CityTV television, September 12, 2011.
91 Lindholm, 55.
92 Ibid, 56.
disillusionment with commodification and individuals began to seek, once more, some “deeper truth” beyond the accumulation of possessions.\(^93\)

Lindholm argues that even after the creative sector had “entered the realm of aesthetic irony by embracing postmodern parody, pastiche, and artificiality” the majority of everyday consumers still maintained a belief in personal authenticity.\(^94\) However, this belief was not of the blind faith variety. Rather, consumers were becoming more and more aware of manufacturing and advertising strategies so that, today, production is understood as a manipulated process and “the objective world is regarded with unparalleled uncertainty” but, I would add, also of a new, infinite, number of possible authenticities.\(^95\) After all, consumption is now, in large part, a system of searching for those commodities that appear to us (as individuals) to be an extension of our most really real selves. I would stress again that although this type of pursuit of authenticity is “characteristic of late modernity everywhere” it is also wholly differentiated depending on factors such as social class and geographic context.\(^96\)

2.1.3 Authenticity via Reproduction: Intersections Between the Arts

Since reproduction is at the heart of appropriation, it would follow that appropriation is a binary opponent of aura. How then, is it possible that the auratic value of an artwork such as Tom Thompson’s *The Jack Pine* (1916-17) has only increased since its reproduction in books and

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\(^{93}\) Ibid.
\(^{94}\) Ibid, 57.
\(^{95}\) Ibid.
\(^{96}\) Ibid, 58.
magazines, on consumer products, as forgeries and duplicates, etc. [Figs 1-4]. I would suggest that in many instances today, it is the abundance of reproductions and their consequent availability that *increases* the authentic value of the original text. Consider the way in which the proliferation of images of a celebrity contribute to their rise to fame – whether they be images representing the celebrity at work (on the big screen, on stage, at an awards show, in a televised interview) or going about their daily life (as in the tabloid photographs that capture celebrities outside their homes and on the streets of urban centres). As an individual’s image is replicated in and through the various media sources available, so too does the aura of their persona build and, in turn, the more their ‘star power’ valuation increases. In the same manner, the value of a text (especially an artwork) increases with its ability to be recognized, and reproduction can be understood as a tool for constructing this kind of ‘fame-value’.

Eventually, traces of the celebrity’s physical remnants – non-reproducible elements like autographs, personal appearances, street photographs, and one-on-one personal interviews – become highly sought-after proofs of the celebrity’s (ordinary) authentic personage. They represent the everydayness of the celebrity and that aspect of their ‘real self’ that exists in combination with, yet also as an essence of, their public persona. Likewise, viewers also visit museums and galleries expressly for the purpose of viewing works like *The Jack Pine* in person. To be physically close to the original version of an artwork that one has viewed countless times in reproduced version is a thrilling experience. This experience authenticates both the original and the reproduced versions of work in the actualization of its’ material reality inside the viewer’s reality.
Erin Meyers contends that this blurring of the private/public (authentic/inauthentic) is actually the most essential factor in the maintenance of star power.\footnote{Erin Meyers, “Can You Handle My Truth?: Authenticity and the Celebrity Star Image,” \textit{The Journal of Popular Culture} Vol. 42, No. 5 (2009): 892.} In the mid-twentieth century, theorists such as Theodor Adorno and Max Horkheimer, Jean Baudrillard, or Guy Debord, insisted that celebrities were not real persons but just commodities without substance, used to manipulate the consciousness of a malleable public. Contrary to this, Meyers has argued that a celebrity persona is actually “a site of tension and ambiguity in which an active audience has the space to make meaning of their world by accepting or rejecting the social values embodied by a celebrity image.”\footnote{Ibid, 891.} From this view, intimate, behind-the-scenes type glimpses of a celebrity’s ‘true’ character emphasize notions of an authentic person who, in the end, is just like an average person.\footnote{Ibid, 892.} A star is both a highly constructed auratic figure in their professional lives and, at the same time, desired by the public for being an authentic, real person. Meyers refers to this as an “illusion of intimacy”, and suggests that this is what gives rise to the perception of a stars’ authenticity.\footnote{Ibid, 895.} The power factor arises in the fact that once a celebrity is perceived as authentic, so also do the values and ideologies that s/he symbolize become more real and culturally resonant.\footnote{Ibid.}

Even more specifically, speaking about the production of authenticity in rock and pop music, David Tetzlaff points out that the live performances of a pop musician such as Justin Bieber, Madonna, etc. tend to be well rehearsed, heavily produced ‘shows’, that can be (and are) repeated on various stages in different cities night after night. However, where Simon Frith and

\begin{footnotesize}
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\footnote{Ibid, 891.}
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other cultural theorists have widely argued that this lack of spontaneity is a sign of inauthentic, “banal, furtive, playfulness”, Tetzlaff counters that, in fact, “the realness of a show is reaffirmed, not denied, by its repetition.”\textsuperscript{102} At a pop concert, for instance, authenticity is produced in tandem to the “presence of effort” – Justin Bieber’s authenticity is “confirmed by the fact that he is willing to do it again…for us.”\textsuperscript{103} Tetzlaff contends that the presence of repetition should actually be understood as “symbolic of identity, commitment, shared value.”\textsuperscript{104}

Similarly, because The Jack Pine has been promoted as a ubiquitous Canadian image, its fame has made it approachable, understandable, and, perhaps most importantly, accessible in both meaning and reproduction. The aesthetic elements of The Jack Pine are easy to read – although painted with an impressionistic hand, the figure of a tree in a landscape is easy to discern. It uses a visual language that we are accustomed to reading in our everyday lives, as opposed to the abstract and conceptual dialect found in something like Julie Andreyev’s interactive video installation, *glisten) HIVE* (2010), which, like The Jack Pine, also addresses notions of human interaction with the natural world [Fig. 5]. In this sense, we can relate more easily to The Jack Pine – most Canadians probably even have some memory of an equivalent landscape scene viewed while on a camping trip, hiking excursion, or simply travelling between one urban centre to another.

At the same time, in order to maintain authenticity, it is crucial that a celebrity not appear to desire fame, or to desire to be reproduced through representation. A star’s fame must appear like a natural consequence of their natural ingenuity, talent, or class-based birthright (as in the

\textsuperscript{103} Ibid.
\textsuperscript{104} Ibid.
case of pop-socialites like Paris Hilton or Kim Kardashian). Media and cultural theorist Rebecca Williams has noted that viewers of the reality television game show Big Brother UK demanded that contestants avoid appearing too covetous of winning.\textsuperscript{105} Throughout her research on this popular British program, Williams found that for audience members, the “presence of housemates who wished to pursue celebrity occupations (e.g. glamour modeling) clearly countered the assumption that housemates were ‘just like’ the viewers and the potential for identification was limited when contestants failed to appear ‘authentic’.”\textsuperscript{106} The audience reacted “unfavourably” towards contestants whose game playing was overt and their presence on the show “substantially detracted from [the viewer’s] enjoyment”.\textsuperscript{107} The favored players were those who seemed unchanged at the end of the season – those who remained ‘ordinary’ and ‘true-to-themselves’.\textsuperscript{108}

It seems as though it is necessary that “once [individuals] decide to sacrifice [their] privacy in order to become a “reality” celebrity, [they] should behave as if [they aren’t] at all interested in celebrity”.\textsuperscript{109} This kind of paradoxical balancing act is actually quite characteristic of authenticity itself. In the art world, the equivalent paradox would be the traditional poor, tortured artist-genius myth – wherein it is commonly held that the truly gifted and authentic artists are those who have to suffer physically, emotionally, and financially for their work. The same myth also exists in certain rock and pop music communities where it is closely associated with what Tetzlaff calls the “Romantic idea of the rocker as artiste”.\textsuperscript{110} Simon Frith has attributed this

\textsuperscript{106} Ibid, 219.
\textsuperscript{107} Ibid.
\textsuperscript{108} Ibid, 218.
\textsuperscript{109} Mark Andrejevic as quoted in Williams, 219.
\textsuperscript{110} Tetzlaff, 98.
Romance to the development of “blues purism” and its association with art school students in Britain, and to the rise of folk music as popularized by Bob Dylan in 1960s America.\textsuperscript{111} He notes that blues and folk differed from ‘ordinary’ popular music because they claimed (and still claim) to be based in “the ‘real’ world of politics and personal feeling”, and to give “honest testimony to the conditions in the communities from which they sprang.”\textsuperscript{112} Frith claims that folk and blues forever inflected pop music production with “moralism…faking an emotion became judged as a crime; performers were judged for their openness and sincerity; fans expected to come to know musicians as real people.”\textsuperscript{113} Tetzlaff points out that this view implies that authenticity is not, in fact, located in the text/ music at all, but rather “in the character of the artist…it is the authenticity of the musicians that guarantees that the music itself will remain authentic.”\textsuperscript{114}

This is also closely tied to the concept of the ‘sell-out’, which dictates that real art produced by real artists somehow manages to magically transcend the marketplace. Frith, and others, have argued that the most distinguishable aspect between authentic and inauthentic music is that the latter appears to be primarily motivated by ‘commercial’ interests, while the former appears motivated by a benevolent, art-for-art’s-sake commitment to the music itself.\textsuperscript{115} Tetzlaff, however, argues that this is too simplistic. Instead, he notes that most music fans/consumers realize that all music is a commodity, but that what determines one musician’s authenticity from another’s is really more about “what sort of \textit{sign} is presented by the performer’s relation to the

\textsuperscript{111} Simon Frith as summarized in Tetzlaff, 98.
\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
\textsuperscript{114} Tetzlaff, 99.
\textsuperscript{115} Frith as summarized in Tetzlaff, 97.
Tetzlaff prefers a model of authenticity that is based in the consumer rather than the producer. Here, authenticity is constructed according to the “meta-textual social and cultural meaning” located in the consumer’s class, race, gender, etc. Above all else, authenticity is about whether or not the fans can meaningfully place the performer’s sign as a “representative of [their] referent community.” Tetzlaff notes that even those deliberately self-reflexive musicians who have attempted to deny the notion of authentic creative autonomy, critique the aura of artwork, or shun the Romance, are reified as signs of the ‘auteur Genius’.

A similar irony exists in the realm of visual art production as well. For instance, a recent Tate traveling exhibition titled, Pop Life: Art in a Material World (shown at the National Gallery of Canada in 2010), contained several galleries worth of Pop Art-style works from the 1980s and 1990s. One gallery in particular, contained six signature works by American artist Jeff Koons including several pieces from his Made in Heaven series (1990-91) – a multi-media self-portrait project by Koons, ‘co-starring’ the infamous Hungarian-born porn star and Italian parliamentarian Ilona Staller (aka La Ciccolina). Koons claims he was first captivated by Staller’s “beauty and innocence” as a politician and media figure, and had a sense that her total public acceptance of her sexuality made her “the eternal virgin.” In one photograph from the series, Koons posed himself and Staller together in a faux advertisement photograph announcing an as yet unmade

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116 Tetzlaff, 111.
117 Ibid.
118 Ibid.
119 Tetzlaff cites David Bowie as an example of a self-reflexive artist whose “posturing” is generally understood by fans as “proof that he was an artiste.” Ibid, 104.
film called, *Made in Heaven* [Fig. 6]. The photograph was taken in Rome and featured a dark aquatic backdrop that had previously been used in Staller’s pornography work. In the catalogue accompanying the “Pop Life” show, Scott Rothkopf describes the advertisement in this way:

Dressed in skimpy lingerie and silver heels, [Staller] reclines on a fake boulder, her head thrown back in ecstasy or alarm. Clutching her lithe body, Koons stares out at the camera and, he seems to imagine, his legions of adoring fans. Originally erected as a billboard in downtown Manhattan, the ‘ad’ represented a particularly brazen form of self-promotion (and even self-portraiture)…Koons casts himself as a bonafide pop star and claims his proper place in the network of publicity and mass attention that many artists had long coveted while pretending to scorn. If not quite in heaven, Koons was literally and figuratively borne on high.

This photograph became the catalyst for what would become “both a media blitz and a body of work” cultivated by Koons for the next two years. Essentially, the product advertised in this image was *Koons himself*. In his subsequent work, Koons transformed his physique into that of a movie star (by enduring a strict diet and exercise regime), married Staller in a large-scale publicized event, and sought high-profile media coverage in number of glossy magazines. Koons deliberately cultivated fame and ‘marketed’ himself as an art-star celebrity, but because it was so exaggerated (an obvious performance), and because fame and commodification were also the primary subject-matter of his work, his authenticity as an artist withstood any criticism of the type launched at television or music celebrities attempting to construct the same type of attention for themselves. In the *Pop Life* exhibition catalogue, Catherine Wood points out yet another Koons’ authenticity paradox by stating that his “complicity with the market, with advertising imagery,

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121 Rothkopf, 41.
122 Ibid.
123 Ibid.
with spectacle culture in general, makes for work that rubs abrasively against the conventions of modernism…about what constitutes fine art”. Koons’ own visible *disavowal* of authenticity in favour of constructed artificiality may be the very quality that *substantiates* his artwork as genuine and authentic.

Of course, as the catalogue made clear, Koons’ work had been preceded twenty years earlier by Andy Warhol’s own ‘fifteen-minutes of fame’ – an artist whose career was made by producing copies of copies. Not coincidentally, the pop artists of the 1980s and 1990s were working concurrently to the 1970s and 1980s *Pictures* Generation artists who were equally media-savvy, albeit armed with more skepticism and less spectacle-driven aesthetic principles. Since then, most art historians have been less inclined to assume any transcendental, auratic quality in artistic production. Rather, the marketplace is now a key factor for establishing context and meaning in a work and it is generally accepted, even encouraged, for artists to ‘sell’ themselves and their work through networking, publications, personal websites, exhibition materials, and various other marketing strategies.

### 2.1.4 Hierarchy in Authenticity: Class Constructions

According to Lindholm’s research, wealthy elite North American consumers prefer to distinguish themselves as such by collecting ‘high-end’ items such as art, precious artefacts, or brand name haute couture. On the other hand, less wealthy North Americans are known for

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collecting cheap commemorative items, objects of pop culture (like comics, books, and toys), and common kitsch items of Americana or Canadiana (which often carry ‘genuine limited edition’ seals) – and the rarer, more unusual, or more handmade the item, the more authentic it is considered by the owner/collector, regardless of monetary or production value.¹²⁵

Thomas Frank has argued that authenticity is, in fact, now primarily constituted by class divisions themselves: “Class is about what one drives and where one shops and how one prays, and only secondarily about the work one does or the income one makes.”¹²⁶ This does not mean that lower classes are necessarily less or more authentic than the elite classes, but that each class maintains its own version of what is appropriately authentic and members of each particular class tend to perpetuate these authenticities with enough minor variances that there is always “something new, something cool, something different and more desirable to be purchased”.¹²⁷

Today, consumption by the most dominant group of buyers world-wide (whom journalist David Brooks has termed the ‘bohemian bourgeoisie [bobos]’) is largely motivated by complex and conflicting determinations of what is authentic.¹²⁸

Lindholm has outlined a number of these conflicting factors, which I will summarize here in eight points.¹²⁹ First of all, the authenticity of an object for bobos is contingent on the degree to which it appears to have a hand-made quality (slight imperfections acquired in hand-made products are generally more favoured than objects that are more obviously mass-produced). In the

¹²⁵ Lindholm, 64.
¹²⁶ Thomas Frank as quoted in Lindholm, 64.
¹²⁷ Lindholm, 64.
¹²⁸ David Brooks as quoted in Lindholm, 59.
¹²⁹ The following eight factors are drawn from Lindholm (although the examples as well as their analogies to artistic production are my own) 58-63.
art world, this would translate as the way in which each print in a series usually carries the authenticating signature made by the literal hand of the artist her/himself.

Secondly, those objects that have a proven historicity or that seem to have been produced in the past are valued as more authentic than contemporary objects. Again, older artworks, as well as artworks whose artist is no longer living do, for the most part, still hold much larger valuation rates than contemporary works.

Thirdly, items that are (or appear to be) custom made or one-of-a-kind are considered a genuine display of one’s authentic taste and wealth. Hence, the limiting and numbering of print series works, followed by the destruction of the etched plate, woodblock, stone, etc.

Fourthly, objects that can be distinguished only by their expensive designer or specialty high-end brand-name are more authentic than the same (cheaply) mass-produced objects. For instance, an expensive white Calvin Klein t-shirt is more prized than a cheap white Haines t-shirt. Even if their physical differences are miniscule, they can still be identified by those in-the-know. In a similar vein, work by an artist like Jeff Koons is worth considerably more dollars than that of a lesser-known artist, or even than that of commercial artist.

Fifthly, the location of an item’s production can determine its authenticity; a restaurant in Bangkok serves a more authentic-seeming Pad Thai than one situated on Toronto’s Yonge Street. A pair of moccasins bought directly from a First Nations artisan on a reservation seems more authentic than a pair bought from a tourist information centre.

Sixth: a product with ‘buzz’ is more authentic than a product that has been ‘hyped’ since hype is the over-saturated, commercialized version of the more grass-roots, cutting-edge buzz. Sometimes it is the case that a ‘newly discovered’ artist can gain more sympathy from the art
world in comparison to an artist who has already established themselves economically and critically, like Koons.

Seventh: distinction of almost any kind is recognized as a quality indicating uniqueness and, therefore, is respected for being a more authentic realization of an object or individual which/who is less distinct. An artist who can demonstrate a characteristic or trademark style in their oeuvre tends to be more easily identifiable and this gives them a certain authority, or ownership over said style.

Finally, if an item is perceived as, or marketed as, having been produced under the rubric of a defined set of values or beliefs, it is more likely to be viewed as sincere. For example, a cup of coffee made from fair-trade beans from a local coffee-shop might be considered more authentic than its inauthentic regularly traded counterpart bought at the supermarket, like Folgers. Likewise, Ed Burtynsky’s critical and popular fame rose after he began to concede an association with environmental activism in regards to his large-scale photographs of landscapes such as the Alberta oil sands. We can see then, that there is a relativistic aspect to authenticity. It is dependent on the interactions and relationships between factors such as the eight listed above and these, in turn, are also manifested according to specific political and cultural contexts.

Just as many of these factors are dependent upon wealth and class, they are also highly subject to the “direct and immediate” emotional response of the consumer.\textsuperscript{130} Philosopher Alasdair MacIntyre has described this as consequential of a characteristically twentieth and twenty-first century ‘emotivism’, or “the doctrine that all evaluative judgments and more specifically all moral judgments are \textit{nothing but} expressions of preference, expressions of attitude

\textsuperscript{130} Lindholm, 58.
or feeling, insofar as they are moral or evaluative in character.”\textsuperscript{131} In fact, when it comes to authenticity, it is totally irrelevant whether an object is ‘really’ what the consumer perceives it to be or not. As long as one can identify something akin to a reflection of ones’ own identity and values in an object or artwork, the more likely it is that it will maintain a link to some satisfying (albeit mythical) reality.

That said, Lindholm and MacIntyre’s arguments tend to lean a bit too far into the relativist. I would like to make it clear that there still exists a large degree of cultural consensus regarding what is authentic and what is not. It is, for instance, much easier for a contemporary artist to win public funding, critical attention, or even exhibition opportunities if they have \textit{already shown} work or received grants in the past since this demonstrates to curators and jurists that their work has already been legitimated by other arts professionals.

Again, although this kind of materialist value has been known in previous centuries, its reiteration in late-capitalism is unusual in the way in which it is “forever wedded to a dialectic between authenticity and imitation.”\textsuperscript{132} Here, authenticity is something that is openly \textit{pursued} (by both consumers and producers/marketers) rather than mysteriously \textit{imbued} (by more traditional or hegemonic determinations like the Church, the State, or traditional institutions). If authenticity is as constructed as this suggests, then surely we can also understand appropriation, together with all of its related iterations (such as mimicry, imitation, etc.) according to a similar pluralism.

\textsuperscript{131} Alasdair MacIntyre as quoted in Lindholm, 57.
\textsuperscript{132} Miles Orvell as quoted in Lindholm, 58.
2.1.5 Authenticity by Appropriated Association: Intersections between the Arts

Reproducing a text – particularly a fine art text – that has come to be accepted (by general cultural consensus) as authentic, may also work to increase the authenticity of the (re)producer or appropriator. Take, for example, Alexander Lee McQueen’s Fall/Winter 2010 collection – the sixteen finished looks that were shown during Paris Fashion week in March, 2010, just one month after his suicide. Specifically, this collection – the theme of which was *Angels and Demons* – made use of images culled from early modern art sources [Fig. 7]. Draped and cut on the stand by the designer himself, the garments predominantly draw from the Byzantine and early Renaissance period, and use materials such as metal jacquards, brocade, satin and silk, which are a reflection of the rich material goods of the upper class during the early modern era.  

McQueen’s appropriation of paintings into garments was at times also quite literal. On one single bolt of fabric, McQueen replicated the right and left wings of fifteenth-century German artist Stephan Lochner’s *Altarpiece of the Patron Saints of Cologne* – including the gilded wood frame – which he then constructed into a dress [Figs. 8-9]. The wing images depict the patron saints of Cologne: on the left is St. Ursula, on the right wing is St. Gereon – both of which are reproduced on the textile of the dress. In another dress from the same collection, McQueen

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134 Amanda Morhart and Riva Symko, “There are no Rules: Alexander McQueen’s Fall/Winter 2010 Collection as Pastiche,” (paper presented at the Universities Art Association of Canada (UAAC) Annual Conference, University of Guelph, Guelph, Ontario, 2010).
used choice parts from three different paintings by Hieronymous Bosch – *Garden of Earthly Delights* (1504), *Temptation of St. Anthony* (1495), and *Last Judgement* (1476) – and re-assembled them in his garment [Figs. 10-16].

In other cases, McQueen took a more indirect approach to his allusions to early modern visual culture. The structure of the garments themselves, and the styling of the collection’s runway show recalled the clothing worn in images such as Hans Memling’s *Moreel Family triptych*, where the fashion for hair plucked up to the crown of the head was in vogue, as well as the gold brocade gowns popular with the upper class [Fig. 17-18]. The textile work on two more *Angels and Demons* outfits were related to actual historical imagery, such as the gold lions of the coronation mantle of the 12th century king Roger II of Sicily. Still other dresses were reminiscent of the long flowing white gown, and the flower-print gown worn by Botticelli’s *Spring and Nymph in La Primavera*. McQueen also looked to the seventeenth century master carver Gringling Gibbons in designing the hand-carved shoes that accompanied the collection.

The reception of this collection in popular media such as blogs, news outlets, and magazines, was full of praise and esteem for McQueen’s final collection. So much so, in fact, the clothes were (and still are) often revered as cultural objects of great importance. This is evident, for example in a July 2010 Vogue editorial featuring several looks from the collection [Fig. 19]. In these images the garments are explicitly likened back to the precious museum art objects they reference, as can be seen in the shipping crates, from which the carefully packed art emerges. Not unlike the transportation of museum pieces, these objects are arriving for our viewership and

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135 Ibid.
136 Ibid.
137 Ibid.
138 Ibid.
consumption. Also like museum artifacts, the Fall/Winter 2010 designs were not, in the end, for sale. With no retail plans for the collection anytime in the near future the house of McQueen has instead – allegedly – been entertaining accession offers and bids from a few of the world’s major museum institutions. To borrow terminology from Roland Barthes, it is clear that in this collection, the ‘vestimentary code’ is signifying ‘high art’ more literally than even fashion of the haute couture variety usually tends to connote (no doubt, partially reinforced by Lee McQueen’s untimely death).

Art and design historian Bonnie English has traced the history of the relationship between fashion and the museum as one that developed concurrent to the democratization of commerce in the late nineteenth-century. Many critics and writers have determined that it was the rise of the department store, specifically, which significantly reduced the “gap” between art and the commercial sector. The nineteenth-century department store was what French fiction writer, Èmile Zola described as “the cathedral of modern business”, whose display of valuable objects shared a museum-like concern for order and visual appeal. Where the museum was almost solely in the domain of the aristocratic elite, the department store display had mass appeal with the “illusion” of aristocracy. English argues that, as a consequence, the museum artifact “was aesthetically reduced to the same level as the consumer object.” Now, middle-class and popular culture was also on display, and this signaled the beginning of the bringing together, or

140 Ibid, 15.
141 Èmile Zola as quoted in English, 15.
142 English, 18.
143 Ibid, 15.
“democratization”, of high and low culture, which would later be taken up by the twentieth-century avant-gardes.\textsuperscript{144}

Other economic factors including the development of industrial production and manufacturing techniques also contributed to this democratization, but the integration of ‘art and life’ afforded by fashion and design meant that both artists and designers were now influenced by commerce in a way that would directly affect their ‘products’.\textsuperscript{145} As English explains, the “merchandising spectacle” and the drastic increase in consumerism “paralleled the development of anti-elitist practices in the fine arts and prefigured the development of a symbiotic relationship between fashion, culture and art.”\textsuperscript{146} However, contemporary markets still call for the production of both extremely expensive, limited, and haute-couturier items \textit{as well as} reduced-price, ready-to-wear, mass-produced reproductions. Furthermore, both haute-couture, and street-wear heavily influence each other, just as visual art and fashion continue to draw from one another.\textsuperscript{147}

In \textit{British Fashion Design: Rag Trade or Image Industry} (1998), Angela McRobbie scrutinizes the careers of emerging British fashion designers from their art school graduation to their entry into the industry – starting up their own labels and/or working at apprenticeships for established fashion houses. Indeed, she found that in the 1980s and 1990s, most young designers (including McQueen, who obtained a Master’s degree at Central Saint Martins College of Art and Design) were beginning their careers with a formal fine art school education, and as a result of

\begin{flushleft}\footnotesize\textsuperscript{144} Ibid, 18-19. \\
\textsuperscript{145} Ibid, 20. \\
\textsuperscript{146} Ibid, 27. \\
\textsuperscript{147} English recalls designer, Coco Chanel’s Cubist designs, Sonia Delaunay’s collaboration with Dadaist artist, Tristan Tzara, Varvara Stepanova and Liubov Popova’s Constructivist designs, Elsa Schiaparelli’s Surrealist ‘anti-fashions’, Balenciaga’s Surrealist designs, and Viktor & Rolf’s neo-dadism as key examples of the close association between fashion and visual art in the twentieth-century.\end{flushleft}
their status as “legitimating agencies” art schools have played a key role in shaping fashion design over the past three decades.\textsuperscript{148} McRobbie noticed that at the end of the 1980s, “what emerged was a relatively new phenomenon, the fashion designer as \textit{auteur}, as an artist in his or her own right” and this paved the way for fashion to gain status “as a kind of fine art practice in the way it [had] sought for so long.”\textsuperscript{149}

McRobbie notes that for most postmodern theorists, such as Pierre Bourdieu, or Fredric Jameson, the ‘language of art’ adopted by the fashion industry is explained as having a contradictory, twofold function: “First, it provides the necessary distance from the vulgarity of cash and commerce and, second, it acts as a strategy of taste and distinction within the field of cash and commerce.”\textsuperscript{150} In other words, it is born out of a desire to prove authenticity. But McRobbie herself suggests that this point of view relies on the traditional modernist hierarchy between ‘high’ and ‘low’ divisions of creative and commercial production, and reinforces the notion that all of culture has been ‘flattened’ or ‘deadened’ by this democratization.\textsuperscript{151} Instead, she proposes that the appropriation of ‘high’ or ‘fine’ art rhetoric in fashion design is motivated less by a desire to appear authentic and more by a culture-wide ‘opening-out’ or ‘popularization’.\textsuperscript{152} However, this opening-out is, as yet, still unresolved. There are still divisions within the fashion industry itself, which perpetuate barriers between ‘high fashion’, ‘haute couture’, and off-the-rack, mass-manufactured, ‘street-wear’. McRobbie herself notes the way in which art and design schools impose their own “disciplinary vocabulary” (of fine art) on students.

\textsuperscript{148} Angela McRobbie, \textit{British Fashion Design: Rag Trade or Image Industry} (London: Routledge, 1998), 8.
\textsuperscript{149} Ibid, 9.
\textsuperscript{150} Ibid, 106.
\textsuperscript{151} Ibid.
\textsuperscript{152} Ibid.
in order to distance themselves from the so-called “rag-trade” of multi-national, sweat-shop clothing manufacturing.\(^{153}\)

There is an undulating intertextual play on the presence and meanings of function, commerce, and art object in McQueen’s last collection that exist in a sophisticated push-and-pull, physically embodying the twentieth-century break-down between high and low art; culture and consumption. In what seems like an antithetical statement next to the severe and reflective tone of his Fall/Winter 2010 collection, McQueen himself once stated that, “at the end of the day fashion is not to be taken too seriously. It’s not like you’re going to cure cancer or AIDS, it’s just clothes…there to be worn.”\(^{154}\) Although McQueen insisted on this point throughout the interview, he also explained his appropriation of Bosch’s imagery as a reflection of the “lack of morals in fashion.”\(^{155}\) Whereas Bosch tended to draw a line between right and wrong (between ‘angels and demons’), McQueen saw fashion as a demon (“it doesn’t do anything!”) passing itself off as an angel – as an untouchable art-form. And so he not only touches Bosch, he \textit{reuses} him.

Despite McQueen’s protestations to the contrary, there is something about his use of pre-modern sources that demands taking the collection seriously. That is, as ‘serious art’ itself. As English notes, “many artists have turned to fashion as a ‘living’ art form and have applied artistic methodologies to fabric rather than canvas or clay,” just as contemporary visual artists as varied as such as emerging Canadian artist, Valerie Lamontagne, and established Dutch artistic duo, Viktor & Rolf have approached fashion design from an artistic point of view.\(^{156}\) In fact, “fashion

\(^{153}\) Ibid, 9.
\(^{154}\) Alexander McQueen as quoted in \textit{FTV Presents: The Incredible Life and Tragic Death of Alexander McQueen} (Episode 2417, February 13\textsuperscript{th} 2010).
\(^{155}\) Ibid.
\(^{156}\) English, 43.
as art is a theme that has been embraced by numerous curators and museum directors alike, and addressed in major fashion exhibitions over the past twenty years.”

I am not, here, interested in debating the merits of fashion as a high-art form, but rather, with the specific nuances of authenticity involved in direct appropriation of the one for the purposes of the other. In the case of McQueen, it can be argued that his use of art historical references legitimizes his own status as an ‘artist’. It authenticates his designs as objects of reverence, worthy of meditation and preservation.

This was reinforced when, just over a year after McQueen’s death, The Costume Institute organized a massive retrospective of his work at the Metropolitan Museum of Art in New York (May 4th – August 7th, 2011). Featuring almost one hundred looks and seventy accessories drawn primarily from the Alexander McQueen Archive in London, the Givenchy Archive in Paris, and various private collections, the exhibition purported to be a comprehensive display of both signature designs and lesser-known custom pieces spanning McQueen’s nineteen-year career.

The exhibition was divided into a series of six thematic rooms referencing the historicity and psychology of McQueen’s “romantic” body of work, with titles such as “Romantic Primitivism”, and “The Romantic Mind”. Its’ Baroque-style chiaroscuro lighting, faceless and headless platinum-coloured mannequins, and spectacular state-of-the-art display arrangements expedited the notion of McQueen as a high-art master – a recently-lived legend – worthy of an emotional reverence intensified by the exhibition itself. The “Romantic Gothic and Cabinet of

157 Ibid.
159 Ibid.
Curiosities” room literally reconstructed a nineteenth-century cabinet of curiosities in which was displayed a selection of paraphernalia produced by McQueen in collaboration with a number of accessory designers (like Shaun Leane and Philip Treacy). Here, various jewelry, headpieces, shoes, and corsets were visually likened to the torture devices, bones, relics, and talismans collected as precious artifacts by the wealthy colonial elite of the past. In fact, the highly emotional quality was a reflection of McQueen’s runway shows, which were known for being heavily theatrical and overwhelmingly affecting. Canadian fashion journalist, Jeanne Becker once recalled how McQueen could often leave his audience visibly weeping as they exited his shows.

Promotional material for the exhibition noted how “McQueen’s fashions often referenced the exaggerated silhouettes of the 1840s, 1880s, 1890s, and 1950s, but his technical ingenuity always imbued his designers with an innovative sensibility that kept him at the vanguard.” In what might seem like a strange contradiction to McQueen’s own deliberate quotations of the past, fashion writers and critics have, throughout his career, repeatedly heralded his work as “one of a kind”, “unique”, “awe-inspiring creations unlike anything before”, “at the forefront of fashion innovation”, and “the epitome of originality in the fashion world”. Yet, in McQueen’s own words, “everything’s been done before. It’s just the way you do it.”

160 Ibid.
161 Jeanne Becker, narrator, CTV television, FTV Presents: The Incredible Life and Tragic Death of Alexander McQueen (episode 2417, February 13th 2010).
162 Metropolitan Museum of Art.
163 These quotes were culled from a variety of newspaper and magazine sources shortly after the runway presentation of McQueen’s last collection, but they also reflect the kinds of reviews he consistently received throughout his career.
164 Alexander McQueen as quoted on FTV.
In fact, these words from McQueen resonate with a Heideggerian sense of what authentic artistic production might look like. As I explained earlier in this chapter, Guignon argues that Heidegger’s conception of authenticity can be summed up as “a matter of how we live rather than what we do” – an uncanny echoing of McQueen’s own thoughts about appropriation and design.\textsuperscript{165} From this point of view, appropriation and originality have little to do with whether a design (or an artwork, for that matter) is authentic. Rather, the authenticity-factor in McQueen’s designs lie more in their ability to express something significant about our historical context, in their capacity for emotional resonance, and, perhaps most importantly, by the fact that they are inseparably bound to the social and cultural structures from which they arise.

2.1.6 Authenticity as Labour: Socially Constructed Mimicry

The examples I have examined thus far are intended to illustrate the same underlying theory of authenticity: that aura is a socially constituted quality, not one that is somehow innate to the text itself, and it is perpetuated according to the cultural values of particular groups. Richard A. Peterson lists a variety of research examples (from Bordeaux wine marketing to tourism destinations) that also demonstrate authenticity as a polemical concept. He insists: “authenticity is a claim that is made by or for someone, thing, or performance and either accepted or rejected by relevant others.”\textsuperscript{166} For instance, many North American aboriginal tribes use a Sacred Pipe for personal, familial, and/or ceremonial rites of spirituality. They believe that when the two parts of

\textsuperscript{165} Heidegger as summarized by Guignon: 286.
the pipe (a tobacco bowl and a stem) are joined together, it becomes a living being with energies that can help to focus the consciousness of the user.\textsuperscript{167} The pipe represents one of the highest forms of Native spirituality and is always kept by a designated pipe carrier (usually a Native Elder or Traditional Teacher) who has earned the right to translate the various aspects of the pipe ceremony for others.\textsuperscript{168} In this way, it could be said that the Sacred Pipe has an auratic quality for those Native individuals for whom it is known in this traditional context. But for individuals outside of this tradition, the Sacred Pipe is little more than a smoking pipe (in fact, it is even commonly misunderstood as a ‘peace pipe’ by non-natives). The collectively established character of aura, as it determines authenticity, is not only limited to spiritual or religious texts either.

Peterson also notes that constructing authenticity has not been a strictly contemporary pursuit either:

As the authors anthologized by Hobsbawm and Ranger (1983) show, similar large-scale efforts to fabricate authenticity took place in the 19th century. See, in particular Trever-Roper’s (1983) chapter on the invention of traditional Scottish clan tartans by a Quaker Yorkshire coal miner owner. In a similar vein Anderson (1983) shows how the idealized ideas of democratization in the West were accepted by 19th and 20th century non-Western nation-builders as the model for creating democracy…Halbwachs (1992) has used the term ‘collective memory’ in exploring the reinterpretation of past people or events to harmonise [sic] them with current political needs and cultural understandings. See also Portelli (1991) on the misremembering of the dates of several political murders to fit the contemporary view of the downfall of the radical Left in post-World War Italy, Kammen (1991) on the gradual transformation of the idea of the United States, Sewell (1996) on

\textsuperscript{167} Nicholas Breeze Wood, “Do you feel you are drawn to work with the Sacred Pipe?” \textit{Sacred Hoop}, Issue 31 (2000): 20.
\textsuperscript{168} Ibid.
the creation of the storming of the Bastille as the first event in the French Revolution, and Fine (2001) on the reputations of some of the US’s less illustrious leaders of the past.\textsuperscript{169}

For Peterson, authenticity is “a kind of play” where individuals try to manage the impressions of others by taking on roles and conducting themselves in ways that are as consistently in line with the collective understanding of authenticity as possible.\textsuperscript{170} Visual artist, Brendan Fernandes explores notions of authenticity as performance, such as these, as they are manifested by both dominant and subordinate cultures.

Fernandes’ appropriation of common Western ideals related to so-called ‘authentic’ African safari tourism questions the entire concept of authenticity as the stable and cohesive entity we tend to assume it is. Instead, his work allows us to ask if appropriation signals a lack of originality or only a shift in our conception of originality. In \textit{Foe} (video, 2008), Fernandes – a Goan-Kenyan who has lived most of his life in Canada, having left Kenya at a young age – hires an acting coach to teach him the ‘accents’ of his various cultural backgrounds. The video moves between a half-length view of Fernandes attempting to read from a text in accent, to close-up shots of his mouth as he carries out various vocal and oral exercises as instructed by his coach – even stretching out the sides of his mouth with his fingers in order to try and achieve the desired sounds of an authentic dialect. In the background, the viewer can hear Fernandes’ coach correcting his (many) mistakes making it clear that the task is a difficult one for Fernandes. In some ways, he is learning to master the authenticity of his own cultural heritage, while acknowledging the impossibility of establishing any kind of ‘really authentic’ (in the fundamental sense of the word, meaning ‘pure’) African identity. Here, Fernandes is literally \textit{performing}

\textsuperscript{169} Ibid, 1085.
\textsuperscript{170} Ibid, 1086.
authenticity and it is not an easy task. In fact, authenticity requires effort and labour, or what Peterson calls “authenticity work”.  

Peterson argues that there are a number of forms of authenticity work. Ethnic/cultural identity of the sort emphasized by Fernandes in *Foe* is a type of work that requires an ascribed group membership. The evaluation of authenticity in this case is actually perceived to be of an essentialist nature whereby an individual or a group cannot really be seen to undergo “training” or “pass qualifying tests” to earn the right to represent themselves as part of the group (as Fernandes tries to do). But in fact, authenticity work of this kind is “elastic” and there are a number of different ways that it can be performed for membership including claiming an association with older, already established members (similar to the way that McQueen associated himself with Bosch) or immersing oneself in what appears to be the authentic experiences, or everyday rituals of the group (such as Fernandes performing a Kenyan dialect).

A year after *Foe* was filmed, Fernandes produced a sequel called *Performing Foe* (video, 2009), in which he takes on the role of teacher and instructs a group of students on enunciating and speaking in his various cultural voices as learned from his own coach. In the second video, Fernandes performs like a conductor, standing in front of his students who are arranged like a choir, reciting a series of sounds over and over until they become indistinguishable in repetition. Here, mimicry is the pedagogy of the authentic experience – Fernandes appropriates the signatures of his ethnicities in performance and passes them on to the ‘next generation’ (so to speak) of mimics, aka authentic cultural ambassadors.

171 Ibid.  
172 Ibid.  
173 Ibid, 1087.
2.1.7 The Myth of Originality: Visual Art after Modernism

As I mentioned earlier, common, traditional views of originality assume that there is an underlying ‘origin’ containing the concrete, truthful essence to every individual or text. Yet the work of Koons and, similarly, the 1970s and 1980s *Pictures* artists, and even Andy Warhol might be said to have contained more of an existentialist view of originality. These artists deliberately critiqued the notion of any ‘original’ essence by directly reusing recognizably unoriginal source material. For instance, for her work *Sons and Lovers* (1976-77) *Pictures* artist Sherrie Levine reproduced the familiar silhouettes of Presidents George Washington, Abraham Lincoln, and John Kennedy found on common American coins, together with silhouettes from wig advertisements as fluorescent tempera drawings on graph paper. Similarly, Warhol literally cut and pasted newspaper and magazine imagery using his now characteristic, multi-coloured screen-printing technique. The work of these artists explicitly expressed (in appropriated forms) the social and art historical structures from which it arose, openly revealing its own configurations and “clear-sightedly owning up to” the potential of its authenticity. Again, I would argue that the work of these artists can be understood parallel to Heidegger’s premise that authenticity is manifested “through one’s worldly expressions…the configurations of possibilities that have been taken over from the public world”, because it is a more easily rectified for contemporary, postmodern articulations of multiplicity.

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174 Heidegger as summarized by Guignon: 285.
Similarly, Rosalind Krauss addressed the concept of originality specifically as it applies to artwork in her 1985 essay, “The Originality of the Avant-Garde”. She described the notion of the ‘copy’ – the inauthentic – as the long-repressed underside of a modernism that encouraged itself to perpetuate a “cult of originality” 175 She argued that much of the ‘avant-garde’ art of the 1970s and 1980s (such as that of the *Pictures* artists) had turned from ‘repression’ to ‘play’ and suggested that this work could “demythologize…aesthetic purity and freedom” and that they “watch[ed] it splintering into endless replication.” 176 However, according to Krauss, earlier avant-gardes such as Kazimir Malevich, Piet Mondrian, Fernand Léger, Pablo Picasso, Kurt Schwitters, Joseph Cornell, and Jasper Johns still conceived of a type of originality that, more than simply rejecting the past or inventing new formal practices, sought out a “literal origin…safe from contamination by tradition because it possesses a kind of originary naiveté.” 177

For Krauss, originality was an assumption that had emerged from the inevitable properties of repetition and recurrence, after all, representation itself was (and still is) a process of repeating. 178 Proportion, the pictorial field, plane geometry, perceptual transfer, the surface of the canvas, etc. are all fundamental terms of empirical and semiological instance on which the whole structure of an artwork is built, and these terms are already present in the experience of the artist who engages in “repeated acts of self-imitation.” 179 For example, in Krauss’s words, “the grid that signifies the pictorial surface, by representing it, only succeeds in locating the signifier of

176 Ibid, 170.
178 Ibid, 158.
another, prior system of grids, which have beyond them, yet another, even earlier system.”

However, in any “aesthetic economy”, repetition is valorized and reduplication is discredited so that modernism and the avant-garde engage in a paradoxical discourse based on an “originality/repetition doublet”.  

Of serious interest to the 1970s and 1980s Pictures artists (as well as their curators, and art critics of the time – such as Krauss, Douglas Crimp, and David A. Mellor), were the writings and reactions of their contemporary, Jean Baudrillard. Baudrillard described what he saw around him as a new state of culture “after the orgy”. The “orgy” was the entirety of modernity and its various liberations (political liberation, sexual, women’s, children’s, etc.). So Baudrillard’s contemporary state of postmodernism was life lived “in the indefinite reproduction of ideas, phantasms, images, dreams” of these liberations. It was a state of indefinite simulation where the whole of our environment would now be understood as a circulation of signs. Instead of the “triumphant simulation” imagined by modernists such as Charles Baudelaire, Baudrillard argued that we now existed in a “repetitive simulation” that continuously replayed art’s disappearance: “each day we relive the disappearance of art in the repetition of its various forms (abstract or figurative, it doesn’t matter)”.

180 Ibid, 161-162.
181 Ibid, 162.
182 In fact, many affiliates of postmodern Appropriation Art viewed Baudrillard’s ideas as an au courant version of Guy Debord’s arguments from the 1950s.
184 Ibid, 183.
185 Ibid.
186 Ibid, 184.
Nevertheless, instead of conceding (like Debord before him) that simulation is an irreversible element and that we would now be forever at the mercy of our own absolute banality ("in a stage of permanent nihilism...facing a senseless repetition of all the forms of our culture"), Baudrillard preferred to think that there was still an art to simulation itself – and that repetition and appropriation carries within itself almost endless possibilities of meaning and openness.\textsuperscript{187} He argued for a new form of iconoclasm, which he thought should consist of manufacturing a profusion of images for which there would no longer be any originals. In this “absence of originality we may recover some of these ritual forms, but certainly they will not be the same as those existing before the age of aesthetics."\textsuperscript{188} He insisted that postmodern forms were beyond aesthetics just as modernist liberations had led us beyond the notions of truth and fiction, or good and evil.\textsuperscript{189} Heidegger’s terms of originality also cast off ideals of truthfulness as a representation of a natural essence in favour of truthfulness as it occurs in human relations and social structures.\textsuperscript{190} In other words, according to Baudrillard and Heidegger, we may conclude that ‘origin’ and ‘originality’ really only exist in tangible action, not in any thing itself.

At the end of “The Myth of Originality”, Krauss posed the question, “what would it look like not to repress the concept of the copy?” To answer it, she reflected on the pirated prints of Levine, which deconstructed the notions of origin and originality in what Krauss called a “postmodern schism”.\textsuperscript{191} The artist who acts as “someone who makes copies of copies” must be viewed as breaking from modernist and avant-garde traditions and establishing a historical divide

\textsuperscript{187} Ibid, 187.
\textsuperscript{188} Ibid, 189.
\textsuperscript{189} Ibid.
\textsuperscript{190} Heidegger as summarized in Guignon: 285.
\textsuperscript{191} Krauss, 170.
predicated on the liquidation and demythologizing of the fictitious condition of originality.\textsuperscript{192} Yet, in the field of art history, and in contemporary visual art, the conversation about authenticity almost always both begins and ends at Benjamin. It is generally assumed that the myth of authenticity has been resolved (particularly in academic discourse). And yet twenty-nine years later, in praxis, the myth still seems to persist. Originality and authenticity may not be the cultural anchors they once were in the visual arts, but they still perform the function of differentiating value between texts/experiences. Furthermore, even though within the visual arts, theoretical conceptions of the break-down between ‘high’ and ‘low’ culture are now explicitly stated on a regular basis – by more inclusionary exhibition and curatorial practices, as well as in critical writing itself – the fact is that the view from without still generally tends to consider the visual arts (understood more as fine arts) as the highest, most authentic form of creative expression. It is for the status of ‘fine art’, which all of the other arts still hold ambition. Fashion, in particular, has benefitted greatly from what Angela McRobbie has called “the new culture of creativity” that has emerged, and “the aura of art has moved beyond the fine arts to embrace cultural fields previously seen as ‘lesser arts’.”\textsuperscript{193}

In a general way, appropriation is considered antithetical to authenticity whereby authentic commodities are given high economic and cultural values, and commodities that incorporate elements of appropriation are given lower economic and cultural values. In traditionally perceived terms (i.e. in Modernist terms): authenticity is good; appropriation is bad. But postmodern/contemporary pluralism complicates this notion by creating variables in the

\textsuperscript{192} Ibid, 170.
\textsuperscript{193} Angela McRobbie, \textit{British Fashion Design: Rag Trade or Image Industry} (London: Routledge, 1998), 115.
To rephrase my earlier point, today there seems to exist what we might describe as an invisible ‘scale’ of authenticity whose indicator pendulum swings backwards and forwards relative to the commodity’s production, and the consumer’s time and place. A commodity is never wholly authentic or wholly inauthentic. Instead, it is ranked as more authentic or less authentic in comparison to other commodities and in relationship to its context. Similarly, certain instances of appropriation are of more value or less value than other instances. For example, the value of a text that contains appropriated elements may be contingent on the degree to which it appears to also have a quality of uniqueness – a text that rephrases or reinterprets its appropriated elements is generally considered more favourable (more ‘artistic’) than a simple imitation. Moreover, the further away an appropriated text appears to be from its source, the closer it comes to being considered unique. From this we can see that there is, in fact, an aspect of relativity to appropriation – but it is intrinsically tied to its authenticity value. So authenticity and appropriation are both oppositional and dependent. Ordinary authenticity is a process subject to a constant negotiation between external factors, absent of any one, single binding cultural rule.

Understood in Heideggerian terms, this negotiation is reminiscent of a perpetual ‘movedness’ in the “circular relationship” between social and cultural factors.\textsuperscript{194} Guignon explains what Heidegger meant by this movement: “Being human, we are ‘coming from somewhere’ in the sense that we are always engaged in projects and commitments concerning what we hope to accomplish in our lives…In this way, my ‘existing’ manifests and defines the structure of human temporality.”\textsuperscript{195} Meanings – whether it be the meaning of being/existence, or

\textsuperscript{194} Heidegger as summarized in Guignon: 283.
\textsuperscript{195} Ibid.
the meaning of texts and experiences – are constructed and reconstructed over time according to changing contexts:

On the one hand, my possible projects and goals are made possible by what has come to matter to me in the dealings with life’s affairs. On the other hand, the eventualities that arise constantly compel me to reassess and revise my understanding of the projects I am undertaking, thereby revising my sense of what my life is all about. To be human is to live in the tension between thrownness and projection.196

Understood in another way, the authenticity of any being, experience, or text is determined intertextually – according to the changing relationships of external factors over time.

2.2 Intertextuality

2.2.1 Intertextuality and Mimesis: Naturally Occurring Appropriation

Simon Dentith points out that the forms of repetition and appropriation referred to by critics and theorists such as Fredric Jameson and Jean Baudrillard were not unique to twentieth-century postmodernism. He argues, instead, that it is actually how the “normal processes of linguistic interaction proceed.”197 To this end, he follows Russian linguist, V. N. Volosinov’s contention that language always comes to each speaker from another – imitated and transformed along the way.198 Here, “all utterances are part of a chain, and as they pass through that chain they

196 Ibid.
198 Ibid, 3.
acquire particular valuations and intonation” so that, in some ways it might seem that “we are all condemned to [appropriation], for we can do no more than parrot another’s word as it comes to be our turn to speak it.”¹⁹⁹ But Dentith goes on to insist (like Volosinov before him, and similar to Heidegger) that we are more than simple parrots since we all use language to our own necessity – we make it our own.²⁰⁰ All language involves a degree of imitation, yes, but individuals also bestow a particular inflection to that imitation as we adapt it to every occasion.²⁰¹

Benjamin also understood that repetition was a natural cultural force. For him, our “gift for seeing similarity is nothing but a rudiment of the once powerful compulsion to become similar to behave mimetically”.²⁰² For instance, children play at imitating each other and those around them (their parents, their teachers, their doctors, etc.), or even try to imitate planes, trains, or animals in their play at navigating the world around them.²⁰³ Benjamin also understood that “neither mimetic powers nor mimetic objects remain the same in the course of thousands of years” but, instead, they change over the course of history.²⁰⁴ Perhaps nowhere is this more literally demonstrated than in his own epic and unfinished Arcades Project. Begun in 1927 but remaining unpublished until 1982 (posthumously), Benjamin’s Arcades Project is primarily constructed as a collage of quotations appropriated from an array of previously published sources and supplemented with his own commentary on the history of mid-nineteenth-century French capitalism. Patrick Greany has argued that the central thesis of the Arcades Project is as much

¹⁹⁹ Ibid.
²⁰⁰ Ibid, 4.
²⁰¹ Ibid.
²⁰³ Ibid.
²⁰⁴ Ibid.
about its own methodology – that is; quotation – as it is about the subjects therein.

Decontextualized as they are in the Arcades Project, it seems certain that Benjamin was uninterested in comparing his source’s pasts to his own present or future, or even in reliving the historical circumstances of those sources. Rather, Benjamin seems to mimic the past in the service of repurposing it for his present. Greany describes Benjamin’s assembling of quotations as “a way of reading” historical sources that counters the homogenization of “historicism” as a continued progression towards authentically original thoughts and ideas.  

Instead, the quotations that compose the Arcades Project make explicit the fact that “possibilities [lie] buried in the past.” Thus, there is great potential for the mimetic properties of quotation to present us with the opportunity to engage with history in the hope of repeating “that past’s unrealized futures.”

Dentith describes the phenomenon in which all texts “situate themselves in relation to texts that precede them, and are in turn alluded to or repudiated by texts that follow” as a process of ‘intertextuality.’ For him, intertextuality includes a conscious allusion, or quotation, as well as a “dense web of allusion” from which stem less conscious allusions as well (such as catch phrases, slang, jargon, clichés, etc.). Appropriation in all of its various manifestations (imitation, spoof, collage/montage, pastiche, parody, etc.) is, thus, merely representative of an everyday cultural practice of intertextuality. With this in mind, I will here reflect on the way that intertextuality is, like authenticity, a theoretical cousin to appropriation. But where common

206 Ibid, 7.
207 Ibid, x.
208 Benjamin (1999), 5.
209 Ibid.
authenticity is seemingly diametric to appropriation, intertextuality exists as much more of an operational tandem to and for appropriation.

Julia Kristeva is widely credited with first bringing the concept of ‘intertextuality’ into the realm of critical and theoretical discourse in the 1960s and 1970s with her combination of Saussurean and Bakhtinian theories of language and literature. Kristeva’s work was produced during a “transitional period” in literary and cultural theory – that is, the transition from structuralism to post-structuralism. As such, intertextuality was employed by poststructuralist theorists and critics to undermine conceptions that perpetuated the illusion of stable meaning and objective interpretation. As John Frow has recounted, Kristeva (and other poststructuralists, including Barthes) used the idea of intertextuality specifically to delineate how “culture is structured as a complex network of codes with heterogeneous and dispersed forms of textual realization.” This is, as Ulrike H. Meinhof and Jonathan Smith have noted, a far more complex understanding of how texts, textual producers, and consumers interact than the “superficial and somewhat obvious observation that all texts contain traces of other texts”. Especially since this conception of intertextuality has also been employed as a mirror of society and human relations. Most recently, Graham Allen has found intertextuality particularly useful to demonstrate the “relationality, interconnectedness and interdependence” of contemporary

211 Ibid. Other theorists on ‘intertextuality’ working around the same time-period as Kristeva include: Mikhail Bakhtin, Roland Barthes, Umberto Eco.
214 Allen, 5.
For him, intertextuality “stands at the centre” of contemporary theoretical notions of meaning, authorship, and reading – which are “resistant to ingrained notions of originality, uniqueness, singularity and autonomy.” Thus, an intertextual reading of any text – as demonstrated by the Arcades Project – promotes a non-linear, non-hierarchical experience that, like appropriation, appears in opposition to traditional, linear constructions of authenticity.

2.2.2 Digital Textuality and Appropriation: The Emergence of Malleability

Although the myth of authenticity and originality still pervades everyday life and popular culture – though not to the ‘absolute’ extent it may have once done, and perhaps with a more skeptical collective attitude – the proliferation of non-linear intertextual experiences have exploded since the development of ‘digital textuality’. Allen describes this new form of textuality as exponentially more “flexible, manipulative, and – given the appropriate hardware and software – accessible.” He notes that where Kristeva, Barthes, the 1970s and 80s Pictures artists, et. al. assailed traditional ideas about a text’s privileged isolation, individuality, and authority, digital textuality appears to actualize their critiques: “Barthes’s treatment of literary books becomes obvious, inevitable and even ‘natural’ when dealing with hypertext [and other digital]”

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215 Ibid.
216 Ibid, 6.
217 Allen, 194.
systems.” For example, online digital systems not only permit, but encourage users to “branch off” from the primary text into “intertextual pathways” in a way that obliterates textual linearity:

we no longer read from beginning to end as if meaning were a matter of one word in a text following another. The fact that a text’s significance depends upon a host of other texts is made an integral part of the reading experience of such hypertext systems and as a consequence the disturbance that intertextuality brings to notions of a text’s ‘inside’ and ‘outside’ is made manifest by hypertextual readings.  

Similarly, Marko Juvan agrees that the presence of digital texts has moved intertextuality “from a field in which the term refers only to theoretical speculations” into a “materially perceptible, everyday experience.” He refers to this as a ‘general intertextuality’ constitutive of an ever-pervasive “cultural constellation of texts and discourses”, which can be employed beyond the creative or aesthetic spheres in order to analyze the various “semantic interdependencies” that occur within power relations, and within or between institutions, cultures, and societies.

However, Juvan also links intertextuality to a multitude of more ‘traditional’ notions and phenomena including genres, formulas of speech, clichés, allegories, allusions, paraphrases, translations, etc. Not coincidentally, all of these exhibit an element of appropriation, and I will heretofore understand intertextuality as a product, consequence, result, or currency of any and all of these phenomena. However, it is worth noting that Juvan cautions that these phenomena can also be conceived of as, themselves, genres situated under a broader field of intertextuality and,

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218 Ibid. Bracketed text added by author.
219 Ibid, 196.
220 Marko Juvan, History and Poetics of Intertextuality, as translated by Timothy Pogacar (West Lafayette, Indiana: Purdue University Press, 2008), 1.
221 Ibid, 46.
therefore, “the question is open as to whether the concept of intertextuality is...simply a rechristening of known things and old ideas, such as imitation, citation, and parody”.223

My own configuration of intertextuality as a product of appropriation is intended to allow me to argue – in the following chapters – for the creative and critical agency of appropriative forms. As such, I am following Kristeva’s own conception of the term as a way to describe the “dynamic, transformative, sociohistorical and relational” aspects of language as it is inscribed in the reader/viewer/audience, and as it exists as an activity.224 Certainly appropriation and its subsequent intertextual activities have existed for centuries, and appropriation may even be an intrinsic aspect of the mimetic construction of language itself. But Juvan insists that it is important also to note that the “meaning of intertextuality” and appropriation “must be researched in the context of a paradigm shift: it is incumbent upon us to ask how and to what extent the comprehension of text, literature, subject, reality, and tradition has in fact changed after the idea of intertextuality had been introduced”.225 Thus, in historiographic terms, intertextuality became a product of appropriation only after the beginning of the breakdown of authenticity and after Roland Barthes’s “death of the author”.226

Barthes’s declaration on the function of authorship described literary texts as the products of a manipulated series of codes passed between members of a culture. Certainly these codes – which make up language itself – seem derivative since they appear in the text as “a tissue of

223 Ibid, 41–42.
224 Juvan on Kristeva, 42.
225 Ibid, 43.
quotations drawn from the innumerable centres of cultures.”227 However, as Greany points out, the appropriation of culturally constructed mimetic codes hardly constitutes the end of authorship in a literal sense.228 In fact, the appropriative constitution of mimetic codes is simultaneously antagonistic and consonant with authorship because these pre-existing codes are required for authorship to function in the first place.

For Greany, appropriation “takes away and endows meaning as it places texts in new contexts.”229 He suggests taking up Michel Foucault’s call “to imagine a society in which there would be no author function but, instead, another ‘system of constraint’.”230 For Greany, quotation “may be just such a system of constraint”.231 I would further that perhaps even appropriation writ large could be this system of constraint. Even understanding appropriation as the intertextual relationship between texts, rather than as a destruction of the author, means registering the ability of a text “to be quoted again and again, each time with a different meaning.”232

2.2.3 Passages in the Inters: Separation and Dependency

I would like to propose that intertextuality be understood as both a product of appropriation, as well as a method of analysis. As I described above, an intertextual

227 Barthes, 146.
228 Greany, 1-2.
229 Ibid, 3.
230 Foucault as summarized and quoted in Greany, 15.
231 Greany, 15.
232 Ibid, 5.

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reading/analysis encourages the reader/viewer/consumer to draw from history and context, to
acknowledge the mimetic quality of the text, and to discover the appropriated elements by
jumping back and forth between texts. At the same time, an ‘interstitial’ analysis – as encouraged
by Foucault in his essay, “What is an Author?” – asks the consumer to linger in that space
between texts. Here, the opposition of textual form (in the broadest sense of form) is no longer
perceived as diametric, but as imbricated and interlaced. The layers of quoted texts in the Arcades
Project, for instance, encourage the reader to linger more than to compare or contrast or decipher.
Certainly, intertextuality and interstitiality are, themselves, concurrent methods (and both can also
be understood as products of appropriation). Furthermore, an intertextual analysis may well lead
to an examination of the interstitial space produced by two (or more) texts, and vice versa.

The term, ‘interstice’ is most commonly employed in religious contexts – where it is
often used in reference to a specific period of spiritual reflection occurring between rites, or even
to the space between heaven and hell, as well as in science – where it denotes a particularly
empty space between various compounds in the construction of fixed matter. At times, it has also
been used in literary and critical theory to indicate the ambiguous space existing between two, or
more, related parts.

However, in “In the Interstices of Sculpture and Poetry: Sewing and Basting”, Claudine
Armand uses ‘interstice’ to draw attention to “the tenuous space” that exists between creative

233 Michel Foucault, “What is an Author?” Language, Counter-Memory, Practice: Selected Essays and
Interviews, edited by Donald F. Bouchard, translated by Donald F. Bouchard and Sherry Simon (New
York: Cornell University Press, 1977). In this essay, Foucault advocated for a literary criticism that paid
“particular attention to those things registered in the interstices of the text, its gaps and absences…those
empty spaces that have been masked by omission or concealed by a false and misleading plentitude.” 135.
mediums as “both a space of connection and disjunction, unity and separateness.” Specifically, Armand is interested in analyzing the poetic work of Barbara Chase-Riboud as deliberately breaking down boundaries between genres and mediums in order to incorporate the reader/viewer in what becomes “an art of passages and interaction”. She argues that it is at precisely the points between the mediums incorporated in Chase-Riboud’s work that meaning is at its most significant. Armand is, here, borrowing from both Barthes’s conception of the ‘text’ as a loose textile, and Jacques Derrida’s likening of writing/producing text to “basting” – whereby the text is only lightly sutured together, and able, at any moment, to come apart. With this metaphor, the space between basted stitches becomes a relevant component of the text’s overall construction:

> The word “interstice” suggests images of separation, of gaps and cracks between things, but can also be interpreted as a structuring space that brings heterogeneous elements together. It is a space where things take shape, slip through, and where meaning is produced. It is also an empty space, a gap or void that signals depth and can be construed as the signifier of absence and difference as distinction and différence, in the Derridean sense of the term, implying that separateness and distinction are co-dependent and shifting.

Armand’s focus on the dual functioning of interstitial spaces is interesting in that it acknowledges the dichotomous separation of texts as well as the simultaneous dependency between texts. What this means in terms of appropriation then, is that the interstice between appropriated texts, or elements, is the point at which intersecting historical components and

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235 Ibid, 997.
236 Ibid, 981.
237 Ibid.
contexts are both separated and conjoined; or distinguished and blended. Opening the interstices produced by appropriation in this way also means that appropriation has the higher-level capacity to re-conceptualize the nature of binary oppositions altogether.

This is reminiscent of what, in 1985, Gilles Deleuze similarly termed a “method of BETWEEN” 238. Specifically, Deleuze explained filmmaker Jean-Luc Godard’s use of cinematic montage as a ‘method of BETWEEN’, and argued that the significant aspect of montage was not the “association or attraction of [Godard’s chosen] images.” 239 Deleuze insisted, “What counts is on the contrary the interstice between images, between two images…The fissure has become primary, and as such grows larger.” 240 Watching a Godard film was, for Deleuze, an active experience as long as the BETWEEN remained indiscernible and irresolute – as an either/or, or as an “AND, ‘this and then that’.” 241

This breakdown of oppositions might also be applied beyond Deleuze’s preferred method of aesthetic production to encompass the whole of human relations. For instance, in Speaking About Godard, Kaja Silverman points out that ‘betweenness’ can also imply an “interval” among (seeming) oppositions. 242 According to Silverman:

> Everyone occupies this position; to be human is to reside within the interval. That does not mean to mediate between contraries until they can no longer be distinguished from one another. Rather, it means to have the possibility of “coming from” the black and “going toward” the white…every human subject

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239 Ibid, 179. Bracketed text added by author.
241 Ibid, 180.
dramatizes the *continuity* between those distinct categories, and so definitively undoes the binary between them…Because we are “between”, transferral is possible.243

Here, Silverman is stating explicitly what is actually only *implied* by a metaphorical reading of Deleuze’s description of Godardian montage and which, in postmodern terms, has come to be characterized as the multi-perspectival micro-relations that have, to a degree, replaced modernity’s exclusive macrocosmic point of view.

It is with this characterization of postmodern culture in mind that Nicolas Bourriaud described contemporary (late-twentieth, early twenty-first century) artwork as “social interstice”.244 In his view, art itself occupies the space between intertexts by producing “linkage” and “generating bond” that is, today, less about imposing an encounter on the consumer and more about “tightening the space of relations” between texts.245

Bourriaud follows Karl Marx’s conception of interstice as a space that both fits harmoniously into the overall existing social and economic context whilst, at the same time, suggesting alternatives and remaining aloof in practice.246 Bourriaud’s conception is a more literal interpretation of interstice than I have in mind to use for this project. However, it does point towards the potential that resides in the blankness of the interstice and which, perhaps, also resides in the blankness of any undefined, malleable, seemingly infinite passages of open space.

243 Ibid.
245 Ibid, 15.
246 Ibid, 16. Bourriaud is explicitly following Marx, but there are also echoes of Michel De Certeau’s theory of ‘tactics’ in Bourriaud’s operational model of art as interstice. See: Michel De Certeau, *The Practice of Everyday Life*, translated by Steven F. Rendall (Los Angeles: University of California Press), 1984.
In the next chapter, it is my intention to demonstrate that the interstices produced by appropriations leave behind open spaces.

Figure 1: Tom Thomson, *The Jack Pine*, 1916-1917

Figure 2: Panya Clark Espinol Design, *The Jack Pine Remembered*, 2003
Figure 3: A collection of porcelain mugs by Makintosh Trading, 2011

Figure 4: Canada Post postage stamp, 1967

Figure 5: Julie Andreyev, *glisten)* HIVE, 2010 (video installation)
Figure 6: Jeff Koons, *Made in Heaven*, 1990-1991

Figure 7: Alexander McQueen, *Angels and Demons*, Fall/Winter collection, 2010

Figure 8: Stephen Lochner, *Altarpiece of the Patron Saints of Cologne* (sometimes also: *Adoration of the Magi*), circa. 1410-1450, altarpiece triptych painting, Cologne Cathedral
Figures 9a-9c: Alexander McQueen, dress and dress details from *Angels and Demons*, Fall/Winter collection, 2010

Figure 10: Alexander McQueen, dress from *Angels and Demons*, Fall/Winter collection, 2010

Figure 11: Hieronymous Bosch, *Garden of Earthly Delights*, 1504, Oil-on-wood panels, Museo del Prado, Madrid
Figure 12: Hieronymous Bosch, *Temptation of St. Anthony*, 1495, oil on panel, National Museum of Ancient Art, Lisbon, Portugal

Figure 13: Hieronymous Bosch, *Last Judgment*, 1476, oil on wood, Academy of Fine Arts, Vienna

Figure 14: (from left to right) detail of Alexander McQueen, *Angels and Demons*, 2010
Figure 15: detail of Hieronymous Bosch, *Temptation of St. Anthony*, 1495

Figure 16: detail of Hieronymous Bosch, *Garden of Earthly Delights*, 1504

Figure 17-17b: Alexander McQueen, dresses from *Angels and Demons*, Fall/Winter collection, 2010
Figure 18: Hans Memling, detail of *Moreel Family Triptych*, 1484, oil on wood, Groeninge Museum, Bruges

Figure 19: Annie Liebovitz for *Vogue*, magazine editorial, July, 2010
Chapter 3
The Pastiche Effect – Form and Content in Appropriation

3.1 The Effect of Form

3.1.1 Postmodernism: The Rhetoric of Pictures

As David Evans suggests in the introduction to the survey-style anthology of abridged writings on *Appropriation* (2009), in the visual arts appropriation has most often been considered a significant aspect of *The Anti-Aesthetic*, *Art After Modernism*, and/or *Postmodernism* – all of which, as Evans points out, are themselves “titles of highly influential anthologies from the mid-1980s”. It was in that decade that the term ‘appropriation’ was first applied as both an adjective describing a particular method and/or medium of artistic production, and as a noun (sometimes even capitalized as ‘Appropriation Art’ or the ‘Appropriation Artists’) denoting a particular group of artists exhibiting in, and promoted by, a particular network of galleries in a particular historical period of time.

The culmination of the origins of this particularly is most often traced to the 1977 exhibition, *Pictures*, curated by Douglas Crimp at the Artists Space in New York City. In Crimp’s

words, *Pictures* meant to explore what he observed as the everyday experience of culture at the time, and its subsequent artistic practices, as being “governed by pictures, pictures in newspapers and magazines, on television and in the cinema.”\(^{248}\) To this end, he brought together five artists (Troy Brauntuch, Jack Goldstein, Sherrie Levine, Robert Longo, and Philip Smith) whose work demonstrated what Crimp viewed as “a renewed impulse to make pictures of recognizable things”.\(^{249}\) For instance, Robert Longo’s *The American Soldier* (1977) isolated the figure of a man depicted at the moment in which he is being shot from behind, as taken from a Rainer Werner Fassbinder film still. Longo’s version reworks the figure into a two-dimensional aluminum relief painted in life-like tones with slick enamel paint [Fig. 20]. As it happens, the film still was itself a reproduction Longo had culled from a recent issue of *Village Voice* and, in turn, Fassbinder had based his own image of the man on characters from American gangster movies. *The American Soldier* was at least a third-hand iteration of an image enjoying repeated circulation through appropriation – a familiar and identifiable picture placed into a new or unfamiliar context. The familiarity gives the viewer a point from which to begin constructing her/his own narrative and context, thereby potentially continuing the appropriation infinitely.

Methodologically and aesthetically speaking appropriation, during that particular period of the late 1970s and 1980s, was described by critics and curators such as Crimp as “processes of quotation, excerptation, framing and staging that constitute the strategies of...uncovering strata of representation,”\(^{250}\) by Cheryl Bernstein (aka Carol Duncan) as “lived experience relived.”\(^{251}\) by


\(^{249}\) Ibid, 18.

Benjamin Buchloh as “a promise of transformation,”252 by Mark Cheetham as “memory work,”253 by Hal Foster as “a recoding of commodity signs,”254 by Craig Owens as an ‘allegorical impulse,’255 and by Elizabeth Sussman as an “endgame play…[in] an attempt to undercut a situation…[of] infinitely reproducible product[s].”256 By and large, appropriation was largely considered anti-modern, or part of a postmodern reaction against early twentieth-century modernism (as espoused by Clement Greenberg), and traditional concepts of authenticity and authorship. As Evans relates, many of these critics were steeped in a theoretical pedigree that most prominently included the writings of Roland Barthes, Jean Baudrillard, Walter Benjamin, and Michel Foucault among others.257 These earlier twentieth-century theorists all held in common, a preoccupation with identifying and breaking-down the dominant, interrelated cultural hierarchies of ‘author’, ‘reality’, and ‘authenticity’ as they appear to us through representative images.

For Crimp, the impulse to appropriate existing and recognizable imagery by the artists exhibited in his Pictures show was the practical extension of a concern with the structure of representation itself, and its hold over our ability to decipher the world around us. He accorded

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257 Evans, 13-14.
that artworks, images, and pictures do not “achieve signification in relation to what is represented, but in relation to other representations.” As such, the work shown in *Pictures* was thought to have demonstrated a “return” to representation, but not as the more ubiquitously understood traditional realist notion of representation, nor as the late-Modernist iteration of form-referential or transcendental representation, but as “representation as such…representation freed from the tyranny of the represented.”

By appropriating “the available images in the culture around them”, Crimp believed the *Pictures* artists were able to “subvert” the context and the source from which they were appropriated. What was really being “freed” then, was *meaning*, more so than representation. The artwork made by the *Pictures* artists, were experiments in bringing Barthes’ “death of the author” concept into tangible evidence. These works represented the emergence of the active viewer, the viewer who wielded the power not only to complete the image per se, but who also sustained the ability to manipulate and reformulate the image by altering its context, or simply through the act of personal perspective alone. For instance, of Longo’s *The American Soldier* – frozen in mid-air, back arched with the impact of the bullet – we might ask into the fate of the shot man. But with no answer forthcoming – no tidy narrative ‘ending’ to the missing film from which it was sourced – we must create our own explanation. Furthermore, some have even suggested that Longo’s figure is not even dying but, rather, dancing – an excellent example of

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258 Crimp (1977), 19.
259 Ibid.
Barthes’ theory of ‘multiplicities’ of meanings wherein meaning can only be “disentangled, nothing deciphered.”

The *Pictures* exhibition itself only featured five artists. However, it is often used as the anchoring point in describing the practices and politics of what was actually a complex network of a “loosely knit group” of emerging artists during this period, among them: John Baldessari, Barbara Kruger, Louise Lawler, Richard Prince, and Cindy Sherman. These artists certainly never addressed themselves as a cohesive unit. Nor is it productive to consider them as a ‘movement’ in the now out-dated art historical terms of a series of progressive developments in High Culture, whereby they would be constructed categorically as either rejecters or followers of Minimalism and Conceptualism in the capitalized sense. Nevertheless, in the true spirit of hyperbolized popular art-writing they have been, and continue to be, referred to as “the last movement in contemporary art to date”.

Granted, perhaps it is easy to see why, considering the seemingly tidy habit this network had of exhibiting frequently together (in galleries such as Artists Space, Metro Pictures, and Sonnabend), of maintaining a common interest in media culture, and of having been bestowed their own capitalized title by the popular and critical press of the time: ‘The Pictures Generation’. Furthermore, a number of exhibitions revolving around the theme of appropriative practices shortly after the *Pictures* show – such as *Art About Art* (Whitney Museum of American Art, New York, 1978), *Image Scavengers: Photography* and *Image Scavengers: Painting* (Institute of

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262 Ibid.
264 Ibid. Eklund is here following Ann Goldstein’s argument that the Pictures group was the last movement in art from her essay, “In the Company of Others,” in Helen Molesworth, ed., *Louise Lawler: Twice Untitled and Other Pictures (looking back)*, exh. cat. (Cambridge, Mass.: MIT Press, 2006), 133.
Contemporary Art, University of Pennsylvania, both 1982), Style Inform: Mannerism (Vancouver
Art Gallery, 1982), Endgame: Reference and Simulation in Recent Painting and Sculpture
(Institute of Contemporary Art, Boston, 1986), etc. – as good as cemented the period as the
historical moment in the emergence of appropriation as a medium of practice unto itself.

The work of the artists represented in these exhibitions instigated critical writing and
discussions about notions of forgery and the ‘fake’ – a long-time problem to which the visual art
market has been particularly susceptible. In 1973, art historian Carol Duncan penned an article
titled “The Fake as More” under the secret pseudonym, Cheryl Bernstein – a fictitious critic
Duncan had created as a parody, but whose work was thought to be authentic. The article
reviewed an exhibition of exact reproductions of Frank Stella paintings by an artist named Hank
Herron. Both the exhibition and the artist were fabricated by Duncan who argued (as Bernstein)
that, despite their identical forms, Herron’s work “nevertheless introduces new content and a new
concept.” Despite the phony premise, or perhaps even reinforced by it, Bernstein observes an
important aspect at work in the appropriated works of Herron: a “double orientation between past
and present”. For Bernstein, this double orientation signaled an important shift into an era more
concerned with establishing its relationship to the past than asserting that most precious and
lucrative of conditions – originality.

The select American network of Pictures Generation artists were by no means the only
artists engaging in appropriative practices as a critical means of reinforcing the disintegration of
modernist ideologies. In Remembering Postmodernism: Trends in Recent Canadian Art (1991),
Mark Cheetham chronicled a number of Canadian visual artists whose work made specific and

265 Cheryl Bernstein (aka Carol Duncan), 42.
266 Ibid.
267 Ibid, 45.
explicit reference to its own art-historical past. He points out that early twentieth-century modern art practices intentionally sought a pure, static form by “transcending” all images of the past. But postmodern artists used previously existing images in the service of a “mnemonic reconstruction” that actually created, or reinforced, “pastness and history”. For Cheetham, explicit ‘memory’ was an intrinsic component of the appropriations found in the artwork of the 1970s and 1980s. Coming as it did, during and after Barthes, Foucault, et. al. had delegitimized the authority of the ‘author’ (/artist), this memory positioned the viewer and her/his context as a temporary “locus of meaning, creative inspiration, and action”. In other words, just as the meaning of an image changes over time, so too does its appropriation call attention to this fact, and disrupt “the normally linear mnemonics of time.” Cheetham was adamant that “we can put memory to work…Postmodern art acknowledges and accepts the challenge of tradition, however ironically: the history of representation cannot be escaped, but it can be both exploited and commented upon critically” – especially through appropriative means.

In March, 1982, the Vancouver Art Gallery opened Mannerism: A Theory of Culture, an exhibition that expanded on Italian critic, Achille Bonito Oliva’s 1976 notion of ‘mannerism’; or, the deliberately oblique distance constructed by an artist and her/his inspiration, or source material. Curator Jo-Anne Birnie Danzker defined ‘mannerism’ as “the self-conscious utilization of existing popular-culture, mass-media and artistic forms by artists, with the intent of providing a description and/or critique of those forms, towards the development of a theory of culture and/or

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268 Cheetham, 26.
269 Ibid, 18-19.
270 Ibid, 71.
271 Ibid, 39.
272 Ibid, 129.
artistic practice.” This means that the ‘manner’ art shown in the exhibition was “in the manner of...an existing popular-culture, mass-media or artistic form.” Just as Crimp provided a disclaimer for his Pictures exhibition, Birnie Danzker was careful to note that her own exhibition was not intended to represent a cohesive ‘movement’ with any explicitly united political agenda, per se. Rather, Manner encouraged a “comparison” of the methodological practices of the eleven Canadian, American, and European artists represented therein. According to Birnie Danzker, many contemporary artistic practices, including all of those represented in the exhibition, were “committed to a subversive refusal of both established and stereotypic codes operating within the popular – and elite – culture, within the mass-media, and certainly within the art-world.” Consequential to this belligerence, was an “elevated” status for “the plagiarist”, whose “critique is implied not expressed.” The elusive nature of both the artwork and the exhibition itself was, perhaps, made all the more confusing by the variety of art historical, and theoretical understandings of ‘mannerism’. Indeed, Birnie Danzker’s attempt to define a language with which to articulate the – largely appropriative – conditions she was witnessing at the time were symptomatic of a generation attempting both to distinguish themselves from previous generations, and critically represent the current state-of-affairs.

For example, in 1983 art critic and then Senior Editor of Art in America Hal Foster edited an anthology of writing titled, The Anti-Aesthetic: Essays on Postmodern Culture. The book

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275 Ibid.
277 Ibid.
278 Ibid, 14.
contained writings by art critics (Douglas Crimp, Craig Owens), art historians (Rosalind Krauss), literary theorists (Fredric Jameson, Edward Said, Gregory Ulmer), and social theorists (Jean Baudrillard, Jürgen Habermas) wrestling with the concept of the postmodern as descriptive of their contemporary culture. This book was by no means the first, nor was it the last, collection of musings on the topic of postmodernism. Neither was it in any way intended as a comprehensive canon of the subject. Nor were the essays encompassed therein necessarily remarkable in their theses and arguments. However, drawing as it did on a small, yet varietal of sometimes competing interests and arguments, *The Anti-Aesthetic* is demonstrative of a period in which art critics, art historians, and artists were turning to literary and cultural theory to help explain and contextualize the art production they were witnessing and partaking of as exhibiting signs of a ‘postmodern’ phenomenon.

3.1.2 The ‘Postmodern’ Debate: Fredric Jameson vs. Linda Hutcheon

The remainder of this chapter and the next are predicated on the terminology established by the competing theoretical characterizations of ‘postmodernism’ as described by Fredric Jameson and Linda Hutcheon. However, this will not be an uncritical predication. As I will explain further shortly, my intention is not to continue Jameson and Hutcheon’s problematic

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totalizing contextual generalizations of Western culture post-circa-1960. Rather, I am more interested in closely examining their opposing views on the specific relationship of appropriation to history. My choice of these two theorists, in particular, is not an arbitrary one. It is based on their already well-established, and widely debated rhetoric on the subject. Where other theorists on the postmodern have certainly addressed the topic of appropriation, none have come close to making it as central a component of their analysis as Jameson and Hutcheon have. For instance, both Jean Francois Lyotard and Jürgen Habermas have discussed the recurrence and repetition of cultural forms, but from a more strictly aesthetic point of view – limited to artistic, architectural, and literary types of production. Jameson and Hutcheon, on the other hand, understand appropriation both as an aesthetic manifestation and as a key facet of culture itself. To do so, they both adopted two different manifestations of appropriation – ‘pastiche’ and ‘parody’, respectively – as descriptive terms for their dichotomous understandings of postmodernity itself.

 Appropriately enough for a project examining appropriation I, myself, will be borrowing, and altering, Jameson’s conception of late-capitalist ‘pastiche’ and, in Chapter 4, Hutcheon’s exposition of postmodern ‘parody’. These will serve as my primary paratextual evidence in situating the status of appropriation as it was left after the 1980s. After all, both Jameson and Hutcheon began writing on the topic at precisely around the time when the Pictures artists were garnering the most attention.

 Even if Jameson and Hutcheon, themselves both literary critics, never explicitly stated a direct connection to this group or their work (although many of the examples Hutcheon draws from are clearly drawn from the Pictures ‘scene’, and she is a collaborative author on Mark Cheetham’s Remembering Postmodernism – having composed the Afterword, titled “Postmodernism’s Ironic Paradoxes: Politics and Art”), we should still understand their analyses
accordingly. Whether they were un/inspired by *Pictures* or not, their attitudes are representative of the theoretical, and critical reception of the time. That said, I would like to distance myself from some of the underlying modernist assumptions that have haunted Jameson and Hutcheon’s *postmodernism* in order to maintain the basis for a less dogmatic understanding of history as a fluctuating and multivalent construction (of the type argued for in Chapter 2 of this thesis).

Furthermore, my analysis will be concerned with characterizing aspects of contemporary Western society more openly than a term like ‘postmodern’ can do – hence, my use of the more neutral term, ‘contemporary’ throughout this project, unless specifically referring to the tradition of postmodern theory itself (as established by Lyotard, Habermas, Jameson, Hutcheon, et. al.).

John N. Duvall has similarly attempted to negotiate a position between Jameson and Hutcheon despite their polarization. And he has also noted that to do so, it is necessary to acknowledge the ways that both theorists invest themselves in “certain forms of modernism” that “render problematic their very desire to articulate the postmodern difference.” For example, Jameson argues from a point of view that positions the postmodern narrative as ahistorical (and politically dangerous), and that our collective playing with appropriated forms (pastiched forms) has led to a state of historical degradation. 

Hutcheon, on the other hand (and in a direct rebuttal to Jameson), asserts that postmodernism is still historical and still critical precisely because it self-referentializes history (through the critique that is enabled by parodic forms). Despite their respective investment in modernist assumptions, Duvall also argues that both Jameson and

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281 Ibid.

282 Ibid.

283 Ibid.
Hutcheon’s differing perspectives are still extremely useful to us: Jameson’s – for his focus on consumer response to appropriated images, and Hutcheon’s – for her articulation of the possibility for critical intention in the process of production. For Duvall, Jameson and Hutcheon are actually two voices “describing different cultural phenomena”. For Duvall, Jameson and Hutcheon are actually two voices “describing different cultural phenomena”.

Jameson’s “cultural phenomena” are drawn largely from popular cinema and architecture. In “Postmodernism and Consumer Society” (1985), he mentions films like 1981’s *Body Heat*, which he argued could have been a “distant remake” of *The Postman Always Rings Twice* (1946), or *Double Indemnity* (1944) for its “allusive and elusive plagiarism of older plots”. For Jameson, *Body Heat* is not “reinventing a picture of the past” as it might have existed in the “lived totality” of the 1940s films from which it draws. Rather, it “seeks to reawaken a sense of the past associated with those objects [films]” from which it draws by “reinventing the feel and shape” of those earlier films just enough that we viewers might be able to experience a kind of vague association with it. What Jameson is describing here is a film whose formal characteristics are more akin to the tradition of pastiche, where the “cultural phenomena” that Hutcheon describes are coming from the tradition of parody.

Hutcheon begins her analysis by using mainly literary examples, such as the “traditional ridiculing parody” of Robert Nye’s *Faust* (1980) to Goethe’s *Faust* (1806). But she quickly expands on this traditional definition and begins to include examples like Picasso’s *Massacres en Corée* (1950), which she argues should be understood as a parody of Manet’s *L’Exécution de

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284 Duvall, 20.
285 Ibid.
286 Jameson, 9.
287 Ibid, 8.
288 Ibid.
289 Hutcheon, 64.
Maximilien (1867) which was, in turn, a parody of Goya’s Tres de Mayo (1808). Both of the latter are devoid of the mocking tone usually associated with parody, but for Hutcheon, parody can be anything that exhibits a kind of “repetition with difference”.

I would suggest that although Jameson and Hutcheon’s arguments are based on differing traditions, their open and loose definitions of both pastiche and parody are remarkably similar and, in fact, are really more concerned with appropriation at large than with their chosen genres. As such, it can seem as though they are attempting to adopt the parameters of a postmodernism (or at the very least, an un-modernism) that aims to account for less rigidly enforced hierarchical positions.

Duvall points out that even though Jameson characterizes himself as a “relatively enthusiastic consumer of postmodernism”, his alliances actually lie with a lost modernist Utopian project committed to the Marxist liberation narrative – the end of class-based society. Furthermore, Duvall also notes that even as Jameson “announces the death of modernism, and hence of its critical distance and emancipatory hopes, he re-inscribes those same modernist hopes in his own writing practice.” For example, where Jameson describes a postmodern aesthetics of pastiche (and also, as it happens, ‘schizophrenia’), he fails to “articulate a politics that responds…[to his] diagnoses.” Hutcheon, on the other hand, describes a postmodern politics, but, as Duvall also notes, these “do not always reconcile with her postmodern poetics.”

For Duvall, Hutcheon’s replacement of an “either/or” logic with a “both/and” logic (one in which she promotes ideas of aesthetic playfulness over strictures of absolute truth) may want to

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290 Ibid, 65.
291 Ibid.
292 Jameson as quoted in Duvall, 3.
293 Duvall, 7.
294 Ibid, 8.
295 Ibid.
transcend the “essentializing foils” of modernism but, in reality, its binary model is more reminiscent of a poststructuralist “archeology of modernity.” Moreover, in Hutcheon’s view, postmodern cultural production has only a limited range of forms – those that contain an innate and ironic historiography – as, she argues, parody does. I would concur with Duvall that in applying this premise, she “casts her net rather widely” – attempting to include forms that are not really ironic, nor historiographic. In limiting her conception of postmodern forms to those that contain parodic references to the past, Hutcheon “conflates postmodernism with a technique of avant-garde modernism.”

In the end, and at odds to their objectives, both Jameson and Hutcheon owe the crux of their explanations to modernism: “Jameson’s to the Adornian tradition and Hutcheon’s to the tradition of the avant-garde.” Could this, perhaps, account for why they chose their respective forms of appropriation? It could be argued that the common formulation of pastiche has more in common with Adornian modernism, just as parody has with the avant-garde. Although it is clear that both are forms/types of appropriation, what, precisely, is the difference between a pastiche and a parody and how do these differences articulate themselves to appropriation in general?

Lastly, and most pertinently to this thesis, what kinds of implications are carried by the proliferation of forms of appropriation like pastiche and parody in the twenty-first century? Duvall agrees that Jameson and Hutcheon’s focus on consumer/producer relationships to appropriated form is “a useful starting point for thinking about contemporary representation.”

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296 Andreas Huyssen as quoted in Duvall, 9.
297 Duvall, 10.
299 Ibid, 1.
300 Ibid, 20.
Particularly, I would add, in considering the relationship of this form both to consumers and to the larger cultural environment. For instance, why does Jameson condemn all contemporary pastiche as “blank” representations of history and insist that images removed from their original context lose their meaning and, with it, any political significance?301

3.1.3 Reifying History: Appropriation in Lieu of ‘Real’

In *Postmodernism, or, The Cultural Logic of Late Capitalism* (1991), Jameson argued that history has undergone a “paralysis…enfeeblement and repression”, so that in today’s postmodern culture we no longer experience history as a description of the past.302 As such, contemporary historicity is “neither a representation of the past nor a representation of the future”.303 Since history itself now encompasses more of our relationship to the present, historicity (meaning the analysis or representation of history) requires a “distance from immediacy”, or, an acknowledgement of our historical perspective.304 Jameson argued that our newly affected (ie. expressed), self-conscious ability to “organize and live time historically” has created a cultural situation in which, “we draw back from our immersion in the here and now…and grasp it as a kind of thing – not merely a ‘present’ but a present that can be dated and called the eighties or the fifties.”305 The result, he noted, is our inability to focus the present as a

302 Ibid, 284.
303 Ibid.
304 Ibid.
305 Ibid.
real, lived, concrete articulation of time. For him, postmodernism could be characterized as an ahistorical period of history, where experience is now a series of “isolated, disconnected, discontinuous material signifiers which fail to link up into a coherent sequence” – a process that, in his later article, “Postmodernism and Consumer Society”, he likened to a ‘schizophrenic experience’.

Here, all of culture is now a symbolic representation of, and participant in, a “single great collective story” experienced solely through material production. And the form that this material production takes is – according to Jameson – pastiche. Pastiche emerges, then, as the by-product of a society that once contained a historical sensibility but which experienced a transformation into one that can only aestheticize and depoliticize certain transferable aspects of history (an ashistorical sensibility). In Jameson’s analysis, pastiche affectively erases history by breaking down the temporality between the lived praxis of history and its decontextualized representation. From this view instead of inventing new, unique, authentic artworks and materials, the contemporary artist simply rearranges signifiers of the past, quoting fragments of what is already around them, and combining and recombining these fragments in pastiche. Pastiche, in this regard, is a schizophrenic means for arranging, understanding, and living within the progression of time as history. The caveat to this theory, of course, is that it is firmly based in a modernist conception of originality and authenticity.

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309 Ibid, 114.
311 Ibid.
Jameson again seems unable to shake his own modernist prejudices when he blames pastiche on the amalgamation of high and low art within mass culture – a fact that he says has culminated in the impossibility for “stylistic innovation”, and he laments that:

all that is left is to imitate dead styles, to speak through the masks and with the voices of the styles [of the past]. But this means that contemporary or postmodern art is going to be about art itself in a new kind of way; even more, it means that one of its essential messages will involve the necessary failure of art and the aesthetic, the failure of the new, the imprisonment in the past.\(^{312}\)

It is necessary to note here, that Jameson’s understanding of pastiche stems from Baudrillard’s characterizations of contemporary life as ‘hyperreal’, where all of capitalist culture should now be understood as having been transformed into an objectified force, and where everyday life has been reduced to a series of ‘simulations’ – non-events that, from eating breakfast to watching the evening news, are distanced from the (so-called) ‘real’ experience of the individual.\(^{313}\) Baudrillard suggests this distance is a result of a condition of existence in which the real has become more ‘real’ than real – where authenticity and truth have been replaced by substituents.\(^{314}\) In this condition, society lives “in an indefinite reproduction of ideas, phantasms, images, dreams long since behind us, and yet which we must reproduce in a sort of fatal indifference.”\(^{315}\) This, argues Baudrillard, is what has caused our state of simulation and, in this state, even the copy of the real can no longer be identified as such. Though again, as I explained

\(^{312}\) Ibid, 115-116.


\(^{314}\) Ibid, 8.

in Chapter 2, this notion of realness has roots in culturally *constructed* conceptions of authenticity more than in any actual, or tangible realness.

Nevertheless, for Jameson, this simulated condition of culture indicates “the death of the subject…the end of individualism” and unique mannerisms or distinguishing features are almost impossible to identify, because we can no longer assume the existence of any common ‘language’ from which to separate these features.316 There is no linguistic norm that arranges our signifieds and signifiers into familiar colloquialisms because society has become fragmented to the point where each separate group has learned to speak only their own “private code or idiolect”.317 Indeed, there is a rejection of structure, order, and continuity in pastiche, in favour of disorder, chaos, discontinuity, and unpredictability – but this is resonant of the multiperspectival sensibility caused by the break-down of modernist hierarchies and, I would argue contrary to Jameson, that this is not something to mourn. I would prefer to understand pastiche as a reflection of the multiple interpretations, dynamic variations, and emerging potential for identities left available to the contemporary consumer/viewer after the restrictive constraints of modernism. Nevertheless, despite Jameson’s nostalgic cynicisms, I still believe there is value to some of his characterizations of pastiche as bearing particularly interesting significance in the contemporary system of exchange.

317 Jameson argues that it is at this moment that “pastiche appears and parody becomes impossible” since, as I will examine more closely in Chapter 3, parody requires a certain amount of consensus, as well as pre-acquired historical knowledge, for it to be understood as parody (as humorous/critical). Ibid.
3.1.4 Reified Appropriations: Self-Reflexive History

Central to Jameson’s theory – and the portion of it which is most interesting to this current project – is the notion that all cultural production is intrinsically linked to our historical moment of late capitalism, where all forms of social life are mediated through our consumer society and economic order. For instance, today it is now widely accepted among academics that an artwork does not exist as an autonomous object separated from consumption processes and that it does not transcend the marketplace. In fact, it participates in commodity culture. Not only can an artwork be bought and sold as a commodity on the market, it also acts as a cultural and historical commodity when placed in public and private institutions such as galleries and museums. In this way, artwork retains both monetary and cultural/historical value within the sphere of commodification.

Jameson consolidates the ideas of ‘reification’ and ‘rationalization’ in order to extend their application into a discussion about aesthetic style and production. For him, reification is similar to:

the analytical dismantling of the various traditional or ‘natural’ unities (social groups, institutions, human relationships, forms of authority, activities of a cultural and ideological as well as of a productive nature) into their component parts with a view toward their “Taylorization,” that is, their reorganization into more efficient systems which function according to an instrumental, or binary, means/ends logic.\footnote{Jameson, 1981, 227.}

\footnote{Ibid, 113.}
This is derived from Marx’s concept of ‘Versachlichung’ (thingification), which – as I explained in Chapter 2 – refers to the strategic division of lived experience into a set of neutral abstractions, in order to remove impediments to commerce. Jameson’s understanding of reification includes the entire social formation in a process where capitalism is able to consolidate its position by discarding ways of life that prove to be irrelevant to the production and consumption of goods. From this perspective, commodification has resulted in the transformation of human experience into a product and art manifests component parts (signs and signifiers) only in so far as these parts can be exchanged.

For this reason, Jameson argues that cultural production “can no longer look directly out of its eyes at the real world for any referent” and instead, “traces its mental images of the world on its confining walls”. In other words, our contemporary relationship to history is actually due to the process of reification – this is what prevents us from being immersed in the present. Today, the ‘present’ is a thing, an objectifiable entity that can be consciously identified according to how it will be placed in history. In other words, reification has created a heightened sense of self-reflexivity that is now built into all cultural artifacts (such as artworks) then “defused and recuperated as a form of praxis.”

Jameson argues that in its replications and reproductions, postmodern art also reinforces the logic of consumption found in late capitalism.

Behind Jameson’s analyses of pastiche lies the assumption that reification is no longer a mere side-effect of capitalism’s mode of production: it is the fundamental dynamic behind

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320 Jameson, 1983, 118.
production. With this in mind, I would argue that forms of appropriation, such as pastiche, are not necessarily a postmodern or contemporary phenomenon. Rather, over the past three or four decades, our cultural capacity for recognizing the occurrence of appropriations has increased and, with it, our ability to self-consciously identify history as a construction. I would also suggest that this is partially a result of the fact that our tolerance for appropriation has swollen in tandem with our shifting relationship to authenticity. The presence of pastiche in contemporary visual arts is only symptomatic of the way it has penetrated our larger late capitalist context as well. That said, ‘pastiche’ is an interesting form of appropriation considering its varied – and mostly negatively connoted – history in creative production.

3.1.5 Pasticcio, Pastiche: A Brief History

As literary theorist Ingeborg Hoesterey has pointed out, there is remarkably little research pertaining to ‘pastiche’ in any of the arts fields (visual arts, music, film, literature) even though the term itself has carried a relatively fixed conventional significance for several hundred years. In art historical discourse, it has denoted either an applied stylistic formal tool or a ‘genre mineur’ from which to practice – but one that remains distinctly within the realms of ‘low art’ style and practice, not one to which any amount of serious contemplation or scholarship would be devoted. I would argue, however, that Jameson’s use of the term pastiche in a broader, more

323 Ibid.
324 Ingeborg, Hoesterey, Pastiche: Cultural Memory in Art, Film, Literature (Bloomington: Indiana University Press, 2001), 1.
325 Ibid.
culturally applicable manner has necessitated a new understanding appropriate for the arts – with certain reservations.

In fact, it is no longer seems relevant to discuss pastiche merely in stylistic terms. It has been complicated by its’ presence in the ‘high art’ work of the 1970s and 80s Pictures artists, by the break-down of the modernist notion of the ‘autonomous’, authentic object, and with the emergence of a distinctly twentieth and twenty-first century ‘reification’. The examination of pastiche throughout the remainder of this section of Chapter 3 will act like an expanded version of one of Raymond Williams’ Keywords (1976).326 Williams’ interest in vocabulary was more contextual than linguistic. He specifically chose words that have, over time, moved in and out of various specializations and subsequently acquired a sophistication of meaning. Where Williams was motivated by a desire to trace the meanings of words for the purposes of developing a kind of undulating record, so too will this chapter trace an historical record of a word (pastiche) for the purposes of understanding both our current use of the term, its relevance within our larger cultural context, and its potential as a means of articulating our contemporary ideology regarding appropriation.

As Hoesterey explains, in the sixteenth and seventeenth centuries, a thriving market for Renaissance art in Italy led to the fraudulent, yet prolific, production of imitations of High Renaissance masters by so-called average, unskilled painters and sculptors.327 These works often combined diverse elements, techniques, images, and styles from several different original paintings and sculptures with the intention of feigning enough authenticity to be sold as the actual

326 Raymond Williams, Keywords: A Vocabulary of Culture and Society (London: Fontana, 1976).
327 Hoesterey, 2.
work of a master. These convincing forgeries gained themselves the negative, metaphoric title of ‘pasticcio’ – referencing an Italian pâté of various ingredients (meat, vegetables, eggs, etc.). While the gastro version was, no doubt, delicious, according to Hoesterey, the term pasticcio was used in relation to art in a derogatory manner – implying a hodgepodge, a mess, a confusion, a bad work. It delineated a genre of artworks composed using various styles and techniques and resulting in questionable quality and taste with fraudulent intention.

At the same time, the practice of imitative copying was (and still is) used as a formal art training technique in certain academic contexts. Known as ‘selection theory’, artists would borrow and interpret specific formal aspects (such as light, colour, subject composition, etc.) from previous master painters and sculptors in the hopes of arriving at an ideal depiction of the subject. Hoesterey uses the example of Tintoretto, who reportedly aimed to “paint like Titian and to design like Michelangelo”, and who was especially noted for his ability in mixing Michelangelo’s linearity with Titian’s colour. In Christ Before Pilate, 1566-67 [Fig. 21], Tintoretto’s bold brushwork, glowing colours, sudden lights and shadows, and compositional structure compare with Titian’s Madonna with Members of the Pesaro Family, 1526 [Fig. 22]. On the other hand, the emotionalism of the flickering, unreal light, and the ghostly Christ, pencil-slim and motionless recall Michelangelo’s agitated sculptural figures. In fact, Tintoretto studied

328 Ibid.
329 Ibid, 1.
330 Ibid.
331 Ibid.
332 Ibid, 2.
333 Ibid.
335 Ibid.
Michelangelo’s works closely, often directly sketching from them in order to incorporate the figures into his paintings later as exemplified by *Reclining Figure of Day, after Michelangelo*, n.d., which was sketched by Tintoretto while visiting Michelangelo’s, *Tomb of the Medici’s*, 1524-34 [Figs. 23-24].

However, most producers of pastiche were not motivated intellectually in the way that Tintoretto was. Rather, pastichers such as seventeenth-century Italian copyist Sassoferrato were noted more for their lucrative efficiency in formal appropriation. Sassoferrato, in particular, specialized in religious art – Raphaelesque Madonnas that he sold to a large body of “indiscriminate” clients and patrons [Figs. 25-26]. Art historian Francis Russell has explained that Sassoferrato’s Raphaels played both a social and aesthetic role in history as they were “meticulously painted icons for those whom circumstance debarred from possession of originals and yet who wished to own religious images of a recognizably traditional cast.” Works such as Tintoretto’s were discussed as ‘pasticci’ and where the pasticcio of Sassoferrato (who was known as a *pasticciere* more than as an artist) were considered deceptive and spurious. A well produced pasticci earned its painter a significant amount of respect in achievement. In other words, pasticci and pasticcio indicated a marked difference between ‘high art’ and ‘low art’ practices. Interestingly, Hoesterey has uncovered mid-seventeenth century documentation that seems to reveal a fluctuating attitude with regards to the lower art pasticcio:

336 Ibid.
337 Hoesterey, 2.
338 Ibid, 3.
339 Ibid.
340 Francis Russell as quoted in Hoesterey, 3.
341 Ibid.
342 Hoesterey, 3.
We can further document the admiration for counterfeit paintings and sculptures through a statement made by Filippo Baldinucci, the seventeenth-century critic who continued Vasari’s biographical enterprise: “...It was said that he [Baldinucci does not name a specific artist] was a pasticciere of paintings; but those with good taste and free of passion never had any inhibition about acquiring his pasticci”. A century later, the Encyclopédie [1765] offers a more laudatory comment on the talent of the pasticcio artist: “One needs to have a genius very similar to that of the painter one wants to copy for the work to be taken as being this painter’s”. 343

Apparently reaction to pasticcio was as complicated in Renaissance Italy as it was at the time of the 1970s and 1980s Pictures artists, who simultaneously earned both admiration and disgust. Even in Jameson’s writings, it is sometimes difficult to reconcile his cynical tone with his stated appreciation and obvious fascination with pastiched films and other cultural products. This response harkens back to the complex system of authenticity production in a way that reveals, yet again, our conflicted desire for truth, but need for individualized interpretation.

Hoesterey follows the history of pasticcio to the musical arts where, beginning in the seventeenth-century, its connotation similarly fluctuated between high praise and harsh criticism. 344 In music, pasticcio emerged as a genre identifying certain commercially successful arias that had been reassembled for lowbrow, traveling operatic works and passed off as new pieces. 345 Since the construction of a musical pasticcio depended on a balance between the impresario, the singers, and the musical director – who all had to agree on the selection and arrangement of the work – the pasticcio structures themselves remain a favored part of operatic

343 Ibid.
344 Ibid, 8.
345 Ibid.
composition.\textsuperscript{346} Even today, musicologists “use the term ‘cento’ as a synonym for “pasticcio’ when they describe a libretto that has several producers of text and/or diverse textual sources”.\textsuperscript{347} Musicologists have adopted this word from literature, where a ‘cento’ is a type of poem constructed as an arrangement of passages borrowed entirely from other literary works.

As reported by Hoesterey, it was sometime later during the seventeenth-century that the concept of pasticcio spread to France where it acquired the linguistic derivative that has become known as ‘pastiche’.\textsuperscript{348} It was here that pastiche first came to be understood in literary criticism, primarily in the writing of theoretician, Jean-Francois Marmontel, who insisted that while a pasticher could never “truly assimilate to the greatness of a writer, to penetrate his soul and his genius”, he could be commended for seeing fit to produce an “homage” or for wanting to “write in the master’s genre”.\textsuperscript{349} Marmontel believed that a pastiche could never move beyond the external physical features of the original work – reflecting the notion of that irreproducible and elusive aura that Benjamin described two centuries later. In light of its previously negative reputation, Marmontel’s assessment of pastiche is actually a fairly positive one. However, with the assent of ideas about artistic autonomy in the eighteenth-century and the cementating of ideas about originality and authenticity in the nineteenth-century, the pastiche experienced another depreciation on artistic grounds.\textsuperscript{350}

\textsuperscript{346} Ibid.
\textsuperscript{347} Ibid, 9.
\textsuperscript{348} Ibid, 5.
\textsuperscript{349} Jean-Francois Marmontel as quoted in Hoesterey, 7.
\textsuperscript{350} Hoesterey, 82, 8.
In the twentieth-century many theorists, including the Frankfurt School scholar, Theodor W. Adorno, condemned the pastiche as a copy resulting from “slavishly followed norms”. Adorno – a contemporary of Clement Greenberg-ian modernism – expressed distaste for art that “no longer knows other norms than those which form in the logic of their own movement, and which fill a consciousness that respects them, reproduces them, and changes them again”. For Adorno, art holds an innate truth content and aesthetic specificity separate from it social or exchange value. Despite these contextual compromises, he argued that the artwork maintains an exalted status as a fetish and this allows it to “strive to escape the confines of universal practice” and to function as “anticipation of a nobler condition”. Adorno understood artworks to be limitless in their monadic capacity and separated from the empirical and physical world by a “resoluteness of distance”. In this view, art is essentially non-historical in the sense of any external association, and the continuity of an artwork is a result of its ability to act as an “unconscious schemata of the world’s transformation”. In other words, Adorno was interested in cultivating an autonomous and authentic experience of art, and for him, pastiche was simply not a pure enough form, not free enough from history or context, for such an experience to flourish.

351 Ibid. 82.
352 Theodor W. Adorno as quoted in Hoesterey, 82
354 Ibid, 177-180.
355 Ibid, 177.
356 Adorno’s perspective represents the dominant one of the time, but Hoesterey has discovered the two-volume Anthologie du Pastiche edited by Léon Deffoux and Pierre Dufay published in France in 1926. Inside, Deffoux and Dufay argue that “pastiche is superior to parody and caricature because its subtlety does not rely on coarse effects. A nuance is enough to differentiate the pastiche from the original”. Hoesterey suggests they may have had in mind, works by writers like Marcel Proust. Hoestrey (summarizing Deffoux and Dufay), 81.
As I mentioned above, traditionally, art history has viewed pastiche simply as a conventional working tool. It is generally assumed that “an artist who self-consciously borrows from another may be a pasticher, but he or she is merely a beginning practitioner of the fine arts emulating an admired master chosen from the tradition”. In fact, Hoesterey reflects that the very system of art production “is characterized by an intertextuality of seeing and innovation, as a creative transformation of the archive.” Take, for instance, something like the ‘venus tradition’ – Giorgione’s *Sleeping Venus* (c. 1510), Titian’s *Venus of Urbino* (1538), Goya’s *The Nude Maya* (c. 1800), Manet’s *Olympia* (1863), Ingres’ *Odalisque* (1814), Kirchner’s *Reclining Nude With Pipe* (1909-10), Orlan’s *la grande odalisque* (1968) – in which artists adopt a common motif or icon executed by their predecessors and experiment with the formal conventions to make it their own. Even though this kind of “inspiration and influence” has always been a traditional component of art production, most art historians have avoided discussing it as anything more than a formal technique. But although pastiche still, for the most part, garners negative reactions from art historians as well as literary and cultural critics, it has also been used as a more neutral description of formal techniques embodying the “modification for transference” of one work or medium to another.

In 1971, Dutch literary scholar, Leif Ludwig Albertsen distinguished pastiche as a work that combines and recombines both the form and the content from several different works without

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357 Hoesterey, 18.
358 Ibid.
359 Ibid.
any intention of forgery.\textsuperscript{361} He was mainly interested in differentiating pastiche from parody, which he saw as an imitation of the form of a work, but with a change to its content (namely – the addition of a comedic element).\textsuperscript{362} Where, for Albertsen, pastiche describes the assembly of a number of elements in a neutral practice (one that is neither critical nor comic), parody’s appropriation is incongruous with the original text in a comic way that both emphasizes the original, and removes itself from the original.\textsuperscript{363} Albertsen stressed that pastiche is more about “reviving things from the past for the pasticheur’s age” and he ascertained the presence of sympathy for the borrowed elements.\textsuperscript{364} He also argued for a dissociation of pastiche from negative terms like ‘counterfeit’, and defended it for its positive potential as a relational technique.\textsuperscript{365} Indeed, contemporary pastiche has been used in many imaginative rather than wholly derivative ways.

\subsection*{3.1.6 In Defence of Pastiche: Historicity}

One account that takes a positive view of pastiche is Vincent B. Leitch’s 1996 chapter, “Postmodern Painting and Pastiche: The Plate Pieces of Julian Schnabel”, in Postmodernism: Local Effects, Global Flows. For Leitch, the plate pieces of Julian Schnabel offer an opportunity to examine both the formal and contextual aspects of contemporary pastiche. Although not officially included in such exhibitions as Pictures, Julian Schnabel’s work is methodologically

\textsuperscript{361} Albertsen as summarized in Rose, 73.
\textsuperscript{362} Ibid, 75.
\textsuperscript{363} Ibid.
\textsuperscript{364} Ibid.
\textsuperscript{365} Ibid, 75.
comparable to the work of many of the 1970s and 1980s appropriation artists. Certainly Schnabel was, at that time, most known as an abstract figurative painter – as opposed to a manipulator of images in the vein of the more literally cut and pasted popular culture reproductions of the Pictures artists. But, as Leitch points out, Schnabel’s mixing of painting styles, iconography, and symbolism, together with his addition of collaged bits of found materials constitute pastiched assemblages. The dramatic brushwork, emotive colouring, and lush encrusted texture of pieces such as Vita (1983) can definitely evoke associations with impressionism, fauvism, expressionism, and abstract expressionism [Fig. 27]. Yet, these allusions do not illicit parodic laughter, nor are they simply an exercise in some technical virtues of the past. Leitch suggests that Schnabel’s appropriations are of the type that, “reinscribe tradition in productive and enabling ways” – they are distinctly historicist, but neither of a sentimental nor cynical variety of historicism.

This is a direct refutation of Hal Foster, who argues that pastiche works (such as Schnabel’s) are “deprived not only of specific context but also of historical sense: husked down to so many emblems, they are reproduced in the form of partial simulacra”. Specifically, Foster argues against particular forms of pastiche artworks – ones that could be considered more commercially available – such as, painting. At the same time, Foster visibly supports and promotes the appropriationist work of Pictures-generation artists such as Louise Lawler and Sherrie Levine (as well as other artists whose primary medium is photography and video

installation). Leitch insists that Foster’s position is sentimentalist, based as it is upon a “nostalgic vanguardist aesthetic” where history is viewed as “a set of self-evident recoverable events and facts, slighting history’s problematic discursivity and narrativity as well as its liability to conflicts of interpretation.”

Perhaps it is also true that the bulk of Foster’s writing on the topic was situated in a period (the 1980s) in which the rejection of certain forms of artwork (painting, especially) was viewed as a reaction against modernist history in favour of those forms associated more with avant-garde history (photography and video). Leitch believes that arguments such as Foster’s jump too immediately from lived history, or authentic documented history, straight to fictitious simulacra, when instead we should be more open to interpretations and disseminations of history as well. Like Duvall who later criticized Jameson and Hutcheon, Leitch contends that Foster was unknowingly held captive to his own “nostalgia…for avant-garde modernism” and that this had predisposed him against the likes of appropriation-based artworks.

Foster categorically denounces all pastiche as containing “reified” pieces of history – in its characteristic amalgamation of period signs – and believes that this has led to an inability to situate historical references. For him (and also for Jameson) pastiche threatens to disintegrate both history and style completely, because of the way it indiscriminately mixes historical codes. Again, it must be stated that Foster is specifically speaking about pastiches that appeared more visibly attached to certain modernist traditions. In Recodings: Art, Spectacle, Cultural Politics (1985), he denounced Schnabel’s artwork for appearing to “confect masterpieces…simulate the timeless virtues of Great Art – a simulation that usually comes with masterpiece trappings: huge

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370 Lietch, 105.
371 Ibid, 106.
372 Ibid, 96.
373 Foster as quoted in Leitch, 105.
canvas, heavy frame, grant style, very heavy thematics.” For Foster this work, however ironic it may be, is still too closely related to its appropriated historical sources for it to be critical enough. He juxtaposes it directly with the “multimedia image spectacles” of artist Laurie Anderson – which are not, according to Foster, pastiche. Foster argues that Anderson “uses the art-historical or pop-cultural cliché against itself…to render cultural meanings ambiguous, indeterminate.”

Leitch, on the other hand, views pastiche, including the painted pastiches of Schnabel, as “a progressive profanation of auratic art” – distinctly critical and more liberated from, than resigned to, its’ historical traditions. For instance, the implosion of forms found in pastiche has permitted artists like Schnabel and Anderson to renounce, deconstruct, and subvert traditionally defined boundaries between high and low art, artist and viewer, and medium and media, by reviving the past and revaluing its many contextual manifestations. Pastiche permits multiple “hybridizations, transformations, and graftings”, drawing attention to nostalgic indulgence by questioning the nature (production and consumption) of historical discourses themselves.

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375 Ibid, 132.
376 Leitch, 107.
377 Ibid.
378 Ibid, 106.
3.2 The Affect of Content

3.2.1 Sober Laughter: Pastiche as Humourless

One of the points that most of the (few) authors on the subject of pastiche have in common, is that they all tend to agree that pastiche is humourless. In fact, this seems to be one of the primary ways that pastiche is usually distinguished from its closely related cousin, parody (as I mentioned above in relation to Albertsen, and which I will discuss further in Chapter 4). For instance, Jameson suggests that both parody and pastiche can be defined as “the imitation of a peculiar or unique style, the wearing of a stylistic mask”.\(^{379}\) However, he also defines pastiche in direct opposition to parody, that is, pastiche is a parody “without the satirical impulse, without laughter…blank parody”.\(^{380}\) Jameson, like Albertsen, contends that pastiche is a neutral practice of mimicry and that it exists in the absence of the norms on which parody relies.\(^{381}\)

Take for example, British television comedian Sacha Baron Cohen’s portrayal of his Borat character in the movie, *Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan* (2006). The film follows the fictional Kazakhstani character, Borat, in his travels across the United States as he commits cultural solecisms and exposes some American ones. Throughout, there exists a great tension between the on-screen real-life people who Borat encounters on his journey, Borat himself, and the film’s audience. It is impossible to identify exactly what Cohen is mimicking in this film or to distinguish between the so-called ‘real’

\(^{380}\) Ibid.
\(^{381}\) Ibid.
idiosyncrasies of his Borat character and the sources from which they are drawn (himself as Cohen, Kazakhstani culture, American stereotypes). In fact, the lines here are so unclear that, according to one anecdotal story, the organizers of the 2006 Academy Awards did not even know whether to expect Cohen or Borat to arrive at the taping of their televised ceremony in order to collect his award for Best Screenplay. There is an agitation felt by the viewer who has to sift through Cohen’s layered appropriations and offensive imitations to identify and absorb the sophisticated critique of Cohen’s pastiche. Tension yes; funny-ha-ha it is not. This tension may elicit laughter from the cinema-going viewers, but it is an exposed and strained laughter – the uncomfortable, sober laughter of pastiche.

While Jameson’s theoretical schematic goes on to imply that, today, all forms of imitation should now be understood as pastiche – effectively suggesting that parody is no longer possible – Richard Dyer has argued that it can be useful to maintain a distinction between pastiche and parody beyond simply semantic, or formal reasons. He argues that in certain instances, analysis of a particular work may warrant understanding it as a pastiche in order to make “intellectual and affective sense” of it. On these occasions, it may not make sense to define the work as a parody.

To illustrate his point, Dyer outlines some of the more obvious elements that make it easy to identify a parody as a parody. First of all, parodies are usually “mercilessly precise in their mimicry”. For example, Repossessed (1990, directed by Bob Logan), and Scary Movie (2000, directed by Keenan Ivory Wayans) parody the horror movie genre, but they do so by reusing plots

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383 Ibid, 41.
from certain specific older (serious) horror movies: Repossessed is a parodic remake of The Exorcist (1973), while Scary Movie parody’s both Scream (1992) and I Know What You Did Last Summer (1997).³⁸⁴

Repossessed presents itself as a ‘sequel’ to The Exorcist – catching up with the character of the possessed child from The Exorcist several years later (played in both instances by Linda Blair). In the faux-sequel, the devil has repossessed the character’s soul through her television set, and the priest who originally performed her exorcism (played in The Exorcist by Max von Sydow, and in Repossessed by Leslie Nielson) reluctantly agrees to a “rematch” with the devil. Although the story is a slightly revised version of the target text, the allusions to the latter are obvious. Repossessed reuses a number of the particularly recognizable (and grotesque) motifs from the original movie including the infamous green projectile vomit event and the head-spinning trick, as a way to reinforce the target of its spoof. It employs many of the quintessential tactics usually found in parodies in order to poke fun at The Exorcist: nonsensical joke gags, overstated and exaggerated appropriations, intentional misrepresentation and overly literal representations of the target.

The humour in Repossessed is purposeful, conspicuous, and easily discernible. In fact, there’s little question that the sequel is aiming to ridicule the original. Even the soundtrack accompanying Repossessed is a gag – from the upbeat 1980s-style dance theme-song, which would otherwise be totally inappropriate in a horror-movie sequel, to an appropriated version of

³⁸⁴ At this point, I am consciously introducing a ‘control factor’ – the horror spoof/horror movie genres – into my discussion in order to provide a means through which to keep my comparative analysis consistent.
INXS’s popular “Devil Inside” song remade as “Chasing the Devil” played during a scene in which the priest is literally chasing the devil through a studio warehouse.

Similarly, the opening scene of *Scary Movie* is a direct and humorous appropriation of the opening scene of *Scream*: a young blonde woman named “Casey” – who is played in *Scream*, by Drew Barrymore (the character is named “Drew” in *Scary Movie* and played by Carmen Electra) – is home alone and receives a phone-call. It is a wrong number but the caller convinces her to stay on the line and talk to him. They discuss what she is doing (making popcorn) and what her plan for the night is (to watch a scary movie) and they share their lists of favorite scary movies, but the conversation intensifies as the caller becomes more threatening, and soon it becomes clear the voice on the phone is actually calling from inside the same house. The ensuing chase scene, true to horror movie format, ends with the slaying of the Barrymore character, and the rest of the movie proceeds to unravel the identity of her masked killer using typical horror movie conventions like multiple deaths, gore, and plot twists.

The *Scary Movie* version recreates the action of this first scene but with exaggerated ridiculousness – the stove-top popcorn swells to medicine-ball size, the phone call is filled with sexual innuendos, the killer is a bumbling idiot (trying, at one point, to hide himself under an area rug), and the “Drew (Barrymore)” character is played as an overly stereotypical bimbo (choosing to defend herself with a banana instead of a nearby machete). This second version uses enough signifiers from the first version to make the connection between the two movies crystal clear: the set is almost identical, the action and plot follow relatively the same trajectory, and the dialogue is, at times, even paraphrased. But the hyperbolized absurdity, elaborate caricatures, and comedic tropes of *Scary Movie* highlight the horror tropes used in the *Scream* version in a way that also criticizes *Scream*’s use of the same tropes. As Dyer notes, the “use of inappropriateness” is a
common way for parody to assert itself as a critical counterpart to its target text, and _Scary Movie_ is full of intentionally inappropriate racial references, sexual allusions, fart jokes, plot digressions, and self-referentiality.\(^3\)\(^8\)\(^5\) _Repossessed_ also pushes the jokes towards inappropriateness – playing on blatant Catholic stereotypes such as priestly celibacy and strict, sadistic nuns.

These gags get “pushed to a point of lunacy” when the criticisms become outright literal.\(^3\)\(^8\)\(^6\) At the climax to _Scary Movie_, one of the principle characters defends his nonsensical action by arguing, “Did _Scream_ have a plot?! No! Did _I Know What You Did Last Summer_ make any sense?! I don’t think so!”\(^3\)\(^8\)\(^7\) This meta-reference technique is also used in _Repossessed_. When the priest asks the devil to “prove to me that you’re real”, the devil responds by saying, “how about if I make the film break” and, indeed, this is followed by a pretend “break” in the movie itself as the scene goes out of focus and the picture momentarily bleeds together.\(^3\)\(^8\)\(^8\) A parody is often adamant about wanting the viewer to _know_ that it is a parody. Pointing out its own medium both reinforces the parodists own medium and calls attention to the medium of its target text as well. In this case, _The Exorcist, Scream_, and _I Know What You Did Last Summer_ are all horror genre films and their respective parodies call attention to the fact that they are all working within established conventions of artistic production.

Since the original _Scream_ was actually produced as a parody of the horror genre in its own right, _Scary Movie_ acts like a critique of the _Scream_ movie itself, the genre of horror, and the genre of parody as well. It could be argued that this technique of parodying a parody actually has more in common with the layered intertextuality of a pastiche and, in fact, _Scary Movie_ is often

\(^3\)\(^8\)\(^5\) Ibid.
\(^3\)\(^8\)\(^6\) Ibid, 42.
\(^3\)\(^8\)\(^7\) _Scary Movie_, directed by Keenan Ivory Wayans (2000, Alliance Atlantis), DVD.
\(^3\)\(^8\)\(^8\) _Repossessed_, directed by Bob Logan (1990, New Line Cinema), VHS.
described by critics and reviewers as a pastiche. On a similar note, *Repossessed* makes use of a number of different film, television, and pop culture references in addition to *The Exorcist* (such as *Star Wars*, *The Love Boat*, or the ‘product placement’ phenomenon). Borrowing from a number of sources is characteristic of pastiche, but the outright preposterous comedy of both *Scary Movie* and *Repossessed* lend them more to the categorization of parody. Particularly when factoring in Jameson’s (and others’) insistence that pastiche is sans humour. Nevertheless, it is possible to discuss a particular text as both a parody and a pastiche, depending on which effects one is analyzing.

3.2.2 Pastiche in the Interstice: Through the Lens of a *Psycho*

Gus Van Sant’s *Psycho* (1998) and Quentin Tarantino’s *Death Proof* (2007) take on more of what Dyer has identified as “non-parodic” imitative characteristics that move them significantly closer to pastiche than *Repossessed*, or *Scary Movie*. Van Sant’s *Psycho* is a remake of Alfred Hitchcock’s *Psycho* (1960). Hitchcock’s film was adapted from Robert Bloch’s 1959 novel that, in turn, was based on the crimes of Wisconsin serial killer, Ed Gein. What we have here, are three distinct and deliberate layers of appropriation – and as each layer is added, so

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389 Section 3.2.2 begins with a discussion of Van Sant’s film almost exclusively, but will return to Tarantino subsequently. The choice of these two particular examples is twofold: first of all, I am attempting to remain as close as possible to a ‘control factor’ in this chapter – that is, the horror movie genre. Secondly, both of these films were produced in significantly different periods of time (late 1990s and late 2000s, respectively). This fact will serve to help me set up the historical trajectory that I will argue for in the last section of this chapter. Ibid, 43.
also does an intertextual reading/interpretation become more complex. What is particularly relevant about Van Sant’s film in relation to a discussion about pastiche, is that it is an almost frame-by-frame remake of Hitchcock’s version. Despite having been pressed by interviewers on a number of occasions, Van Sant has remained relatively evasive in explaining the motivations behind his remake, having suggested a myriad of reasons, many of which seem deliberately contradictory or improbable. Nevertheless, amongst these reasons is that he was simply interested in duplicating certain Hitchcockian aesthetic elements such as the pacing of the film and the character relationships (in the way a painter might study a Master), and that he wanted “to experience what Hitchcock saw when he looked through the viewfinder” – which, as Vincent Lobrutto has pointed out, even when understood metaphorically, still seems like a toungue in cheek explanation considering that Hitchcock relied on storyboarding techniques and “rarely looked through a lens” himself. At the same time, Van Sant has also suggested that his reasons for the remake were inspired by Hitchcock’s die-hard fan base, saying he wished “to poke the Psychophiles in the eye by creating new shots that were intercut with the original images” – a fact that did, no doubt, irritate the purists amongst them. This hints at parodic intentions and, while this could certainly be one reading/aspect of Van Sant’s Psycho, somehow to understand it as a parody enough to characterize it solely as such – or even to describe it as such – feels unsatisfactory.

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390 Indeed, ‘intertextuality’ seems like a particularly apt term here because, as Graham Allen has pointed out, “it foregrounds notions of relationality, interconnectedness and interdependence” between texts. An ‘intertextual reading’ is one that relies on Barthes’ “figure of the web, the weave, the garment (text) written from the threads of the ‘already written’” and implies that every text has meaning only in relation to other texts: Graham Allen, Intertextuality (New York: Routledge, Second Edition, 2011), 5.

391 Vincent Lobrutto, Gus Van Sant: His Own Private Cinema (Santa Barbara, California, 2010), 77.

392 Ibid.
As Vera Dika points out, “the audience’s awareness engenders an almost unavoidable comparison between the two imagistic and narrative texts.”\textsuperscript{393} So much so, that when one watches Van Sant’s \textit{Psycho},

the original is always present in one’s memory, or better still, in one’s ‘mind’s eye’. Although some critics have described the experience of viewing remade films in our contemporary period as having the effect of a palimpsest…what occurs in \textit{Psycho} is more like a double exposure because of its strong visual component.\textsuperscript{394}

Although most critics refer to Van Sant’s film as a shot-by-shot remake, there are actually a few significant changes and differences between it and the Hitchcock original. For one thing, Van Sant filmed his \textit{Psycho} on colour stock and, in fact, colour is used with great significance throughout the course of the movie. For instance, in the opening title sequence of Hitchcock’s version, thick black lines run back and forth through a white background, but Van Sant replaced the running lines with green ones – which some have interpreted as symbolic of the colour of illness and death in a kind of foreshadowing of the events to come.\textsuperscript{395} In a similar use of symbolism, Van Sant has the title character, Marion Crane (played in this version by Anne Heche), wear a hot pink dress throughout the second scene – the same shade of pink adopted by gay rights activists in the late 1970s in an act of solidarity and remembrance of the Nazi prisoners who had been made to wear a pink triangle badge on their clothing in order to identify them as homosexual.\textsuperscript{396}

\textsuperscript{393} Vera Dika, \textit{Recycled Culture in Contemporary Art and Film: The Uses of Nostalgia} (Cambridge, UK: Cambridge University Press, 2003), 211.
\textsuperscript{394} Ibid.
\textsuperscript{395} Lobrutto, 77.
\textsuperscript{396} Ibid.
In fact, many of Van Sant’s other movies are known for including themes of homosexuality from a sympathetic and activist perspective intended to help make LGBT rights, issues, and individuals more visible in Hollywood (My Own Private Idaho (1991), Elephant (2003), Milk (2008), etc.). At the time of Van Sant’s filming, Heche was involved in a high-profile romantic relationship with comedian Ellen DeGeneres – and Lobrutto argues that casting an openly gay actress in the lead role of his film was one of the ways that Van Sant could connect his politics to his own position as an openly gay filmmaker.\(^\text{397}\) In this instance, Marion Crane’s pink dress seems to move out of the narrative of the film itself and point to Heche’s celebrity reputation.

There are a few more examples of this kind of self-referentiality, as well as cross-referentiality throughout both of the Psychos. For example, both Van Sant and Hitchcock enjoyed engineering their own appearances into their films. In the first Psycho film Hitchcock inserts himself into an early scene as a cowboy-hatted passer-by outside of Marion’s office. In the second Psycho, Van Sant puts himself in the same scene, talking to a man who looks like Hitchcock.\(^\text{398}\) Here, Van Sant seems to be making literal the metaphoric ‘historical conversation’ happening between the two films but, as is the case with each film’s respective productions, the conversation is one-sided – Van Sant can only comment and respond to his own interpretation of what he sees as Hitchcock’s perspective. Likewise, Van Sant also puts a bird on the windowsill of his opening scene, which acts both as a foreshadowing of the fact that Marion Crane’s killer, Norman collects stuffed birds, as well as to Hitchcock’s classic 1963 film, The Birds which was loosely based on a Daphne du Maurier novelette (a remake of which is in development at the time

\(^{397}\) Ibid, 78.
\(^{398}\) Lobrutto.
of this writing).\footnote{Ibid, 78-79.} Vera Dika has referred to these narrative disruptions as a “pop” that works to “totally dismantle the film’s ability to signify a fictive world”.\footnote{Dika, 214.} Rather, “the viewer has been presented with the image itself and has been made to compare its material surface to the original, not as parody, but to reveal its status as an image.”\footnote{Ibid, 215.}

Van Sant’s version of Psycho also converses intertextually with other appropriations of Hitchcock – direct or indirect. For example, Cindy Sherman’s series of Untitled Film Stills (1977-80) – a series of staged photographs in which she borrowed the black and white, high-contrast lighting, costume styling, and suggestive narrative composition of movie still from the 1950s and 1960s.\footnote{Cindy Sherman was a member of the Pictures generation of artists.} The photographs act like unconventional self-portraits in which Sherman inserts her own image into the historical framework of 1960s filmmaking in a way that recalls its style and subject matter, as well as Sherman’s own late-1970s relationship to it. Sherman always worked with pre-existing image-tropes and critics of the time noted that her work had a tendency to be elusive – the photographs themselves could be understood as both an homage to film noir, or as a criticism of their depiction of women. It is now generally accepted that Sherman was working from a feminist perspective, using photography as a tool to point out the North American media’s long-standing role in constructing, depicting, and perpetuating certain social stereotypes about women (especially as sexualized and victimized objects of consumption). But in fact, Sherman’s appropriation is such an uncanny imitation that any of the photographs from her series could easily be mistaken for an actual Hitchcock film still. Untitled Film Still #14 (1978) is strikingly reminiscent of the actress Janet Leigh playing the title character, Marion Crane, in an actual film.
still from the 1960 *Psycho* – the urban street scene, the short blonde hair, tense and disturbed facial expressions, a sense of seeing only a fragmentary glimpse into a larger story/narrative, the black and white ‘film stock’ [Figs. 28-29]. Furthermore, today’s viewer can also recognize Anne Heche’s later appropriation of the [both] character[s] in Sherman’s photograph as well [Fig. 30]. The contemporary viewer/audience reads all of the references and dialogues together in any of the single representations.

Although, like a parody, both Sherman’s *Film Stills* and Van Sant’s *Psycho* might be close to what they imitate, there is no real hint of outright humour or parody in either version. In fact, they may even be *too* close to their target to be parody. They seem to more closely depict what Dyer has described as pastiche’s ability to “bring out the form and convention in the mediation of subject matter”. 403 Van Sant’s *Psycho*, in particular, seeks to “harness the energy…and thus in effect affirm” the form and content of Hitchcock’s *Psycho*. 404 It calls attention to the form of imitation itself and, in the process, also to its own appropriation. At the same time, the second version of *Psycho* disaffirms the appropriative element of the first version. That is, the 1960s audience would have been more keenly aware of both the real-life, publicized crimes of Ed Gein, and the du Maurier novelette than the 1998 audience – who, in turn, would have been more aware of the film as a Hitchcock remake. Understanding the appropriation in the second film as a pastiche allows us to express what seems to be an actual *consciousness* of itself as both an historical artifact, and *as* an appropriation (parody feigns/pretends ignorance of its obvious appropriations in order to intensify the humour). Where Hitchcock’s appropriation is based on the desire to recreate an actual event in an imagined (even specatularized) way in order

403 Dyer, 44.
404 Ibid.
to cause an emotional reaction, Van Sant’s appropriation would rather “make evident the particularity of the means”.

Aside from Van Sant’s major change in producing the second *Psycho* in colour, the rest of the differences between the films are fairly minor. Van Sant worked with Hitchcock’s original scenarist, Joseph Stefano, to cut lines, update the props, costumes, landscapes, and price-points for certain on-screen transactions, and to make the character’s relationships more believable for a 1990s audience. Even so, there are still some ‘retro’-feeling elements to Van Sant’s version that actually recall the 1960s. Heche’s above mentioned pink dress, for instance, is a 1960s-style shift dress, her hair is styled in a pixie-cut (made famous by 1960s British fashion model, Twiggy), and her makeup has an early 1960s ‘feel’ in its colour and application. Van Sant’s film functions very much as a copy but, at the same time, it is also a new work in and of itself.

Hitchcock’s *Psycho* is often referred to as a classic American psychological thriller (in which the characters battle both physical enemies and their own troubled states of mind) as well as one of the models for subsequent splatter and gore films. Popular in its time, it has been considered by critics like Vincent Lobrutto, to be indicative of “the explosive and mind-expanding 1960s” and as a “harbinger of the American New Wave” – which generally tended to engage with the social and political context of their era by experimenting with style, editing, and narrative effects. In regards to the latter characteristic, Hitchcock’s *Psycho* generated a large degree of controversy – audiences were unused to having the title character (in this case, Marion

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405 Ibid.
406 Lobrutto, 77.
407 Dika, 212.
408 Ibid, 75.
409 Ibid, 76.
Crane as played by well-known Hollywood actress, Janet Leigh) killed off early in the film’s
narrative progression, just as the audience became attached to her, and in a particularly brutal and
gruesome manner.\textsuperscript{410} As Lobrutto points out, because of the nature of the two different time
periods, Van Sant had significantly more leeway with regards to the degree of depictions of sex
and violence allowed by censors than Hitchcock did.\textsuperscript{411} That said, Hitchcock still managed to
break certain graphic content barriers with \textit{Psycho}. For example, during the movie’s infamous
shower murder scene, Marion Crane’s full nudity is implied, even if Hitchcock only depicted a
small amount of (black and white) blood in the drain, and the stabbing sounds are muted.

In the 1998 version, Van Sant obviously worked within the bounds of what were now the
more lenient standards allowed by his own times but chose instead to keep the scene almost
identical, save that the blood was now in colour and the sounds were augmented. Dika argues that
this literalized reproduction “ultimately corrupts the film’s ability to communicate meaning and
feeling” – the grotesque shock value of the shower scene or the “sinful passions” of Marion’s
love affair are lost on a contemporary audience.\textsuperscript{412} Furthermore, the Janet Leigh version of
Marion was deliberately cast for her voluptuous body to be “made visible to the camera as an
object of desire for the male gaze…[but]…Heche’s persona complicates this dynamic.”\textsuperscript{413}
According to Dika, because of Heche’s unapologetic off-screen sexual preference, her image
onscreen in \textit{Psycho} is “less available to the male viewer, and fantasy access to her body is
diminished, even distanced. We are instead left with the surface of the image”\textsuperscript{414} Thus, audiences

\textsuperscript{410} Ibid.
\textsuperscript{411} Ibid, 77.
\textsuperscript{412} Dika, 214.
\textsuperscript{413} Ibid.
\textsuperscript{414} Ibid.
of the second *Psycho* are faced with the “semiological surface” of the film – or what Dika has called the “skin” of the work, which can be “peeled away to expose a whole new presence.”  

The result is an experiential materiality akin to the ‘flattening effect’ described by Jameson.

In fact, Jameson and Dika agree on the fact that pastiche exhibits flatness in a way that other forms of appropriation (like parody) do not. Both also argue that this flatness is constituted as emotionless and as a lack of fictive reality consequential of its explicit historicity. However, as my next example will illustrate, characterizing this flatness as constitutive of a lack of affect relies too heavily on the modernist assumption that “formal distancing”, like the reflective historicism of *Psycho*, necessarily results in “emotional distance.”  

This is precisely the attitude that has trivialized pastiche in the first place.

Actually, this flatness is more closely related to the openness of the text and I would agree with Dyer that, “self-consciousness and emotional expression can co-exist”.  

Furthermore, would it not be more effective to allow ‘pastiche’ to remain as malleable a term as possible in regards to aesthetic form in order to allow it to be used to examine a variety of effects existing through and between texts – in, as Foucault would say, the interstice? In fact, Foucault suggested that “perhaps the time has come to study not only the expressive value and formal transformations” of a text, but also “the modifications and variations…of modes of circulation, valorization, attribution, and appropriation.”

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415 Ibid, 212.
416 Dyer, 168.
417 Ibid, 4.
3.2.3 Emotional Affect: *Death Proof*

Quentin Tarantino’s *Death Proof* is a pastiche that is full of emotion and yet also full of fictive referentiality in the pastiche sense. The film, which is actually one half of a *Grindhouse* double feature also comprised of Robert Rodriguez’s *Planet Terror*, has been described as a fusion between two (almost) separate films: “the first part of the film being largely a horror movie and the last part an action movie”.\(^{419}\) Both halves contain combinations of genres like horror (slasher), action, car-chase, road-trip, and (the genre most often neglected by *Death Proof* reviewers) ‘chick flick’. The title, ‘*Grindhouse*’, refers to theatres that once specialized in showing multiple-feature, low-quality B-movies, usually of the sensationalist exploitation variety and mainly relying on sex, violence, gore, and special effects. While Tarantino and Rodriguez are both self-professed admirers of exploitation films, *Death Proof* is not really an out-and-out homage, or even remake as much as it is an acknowledgement and reworking of certain conventions or a non-contextual study of some of the common aspects of the grindhouse genres.

*Death Proof* takes place in two separate locations – the first half of the film in Texas, the second half moving to Tennessee – each culminating in two crash sequences, with two significantly different outcomes. The first half of the film follows a group of four “frivolous, dope-smoking, drinking, and somewhat sexually naïve young women” as they are simultaneously

followed by psychopathic ‘slasher’ character, Stuntman Mike (played by Kurt Russell). This half ends with a violent late-night highway collision between Stuntman Mike’s ‘death proof’ vehicle and the young women’s car – as repeated four times from four different angles: “Slow motion as the vehicles collide. Slow motion as the bodies of Mike’s victims tear apart in repeated collisions of metal, rubber, bone, flesh.”

The effect is graphic and horrible, as well as thrilling and climactic – certainly more emotive than the shower-scene in Van Sant’s Psycho, where viewers already knew what to expect thanks to the well-circulated infamy of the Hitchcock version. Certainly the Death Proof audience is expecting carnage as well – at least in as much as anyone knowingly going to see a film that has billed itself as a grindhouse movie would. The difference is that Tarantino draws out the first forty-five minutes of the film with long, slow-paced scenes of ‘girl-talk’ between the main female characters. This builds up suspense and tension in a way that amplifies the inevitable climax.

Even though, as critics have pointed out, the overall narrative or “storytelling” aspect of Death Proof is fairly simplified, the high-contrast juxtaposition of the characters – such as the light, playful, so-called ‘innocence’ of the ‘girls’ versus the dark, sinister, dirtiness of Stuntman Mike – work to intensify the emotional impact of the collision and chase scenes.

One of the primary subjects of Death Proof is the dichotomous fusion of pain and pleasure inherent in sadomasochism as a means to address the simultaneous thrill and horror present in the ‘slasher’ genre itself. Both Aaron Barlow and Aaron C. Anderson have, in separate critical texts, argued that this is manifested most intensely in the character of Stuntman Mike:

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420 Aaron Barlow, Quentin Tarantino: Life at the Extremes (Santa Barbara, California: Praeger, 2010), 124.
421 Anderson, 13.
“whose initials are appropriate for a man who likes to harm others while he is harming himself, though less severely”. Stuntman Mike demonstrates his dual desires to inflict pain (masochism) and the desire to have pain inflicted (sadism). This is seen during the first major collision of the film, as he drives his own car headlong into the car carrying three of the six female leads: Jungle Julia, Butterfly, Lanna-Frank, and Shanna. Here, Stuntman Mike ends up suffering his own set of injuries: “a broken nose, a broken collarbone, and a shattered left index finger.”

But the most salient example of ‘emotionalism’ comes toward the end of the second part of the film as another trio of women turn the tables and begin their own violent revenge on the slasher. As Anderson explains, “Tarantino encourages the audience to laugh, to become sadists themselves”. By this point in the film, Stuntman Mike is such a vile and despicable character that most viewers would be hard pressed not to cheer on Kim when she shoots him in the arm, or to whoop in delight as he screeches in agony – “Oh why!?” – while having to cleanse his own wound with alcohol. By implicating the slasher audience in this way, by calling them out on their own desire for gore, so to speak, Tarantino is subtly pointing out the medium of Death Proof and, in particular, its status as a genre-film. Here, self-consciousness is being used as a means to emotion.

Like Van Sant, Tarantino goes out of his way to make reference to the ‘filmness’ of the film itself. So much so, that Barlow refers to it as “a movie about movies…a chance for the director and his audience to explore aspects of the lower reaches of his industry with the broader

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422 Barlow, 125-126.
423 Anderson, 19.
424 Ibid, 19.
425 Death Proof, directed by Quentin Tarantino (2007, Alliance Atlantis), DVD.
purpose of examining the value in and values of filmmaking.”

For instance, where the group of women in the first half of the film are depicted as entitled, arrogant, and “not nearly as aware of the rest of the world as they think they are”, the women in the second part of the film “know exactly what they are talking about and exactly what they are doing.” Barlow notes how these traits are reinforced in the casting: two of the women in the first group are played entirely by the children of well-known, highly lauded Hollywood actors, and the second trio is led by stunt specialist, Zoë Bell, who plays herself. Clearly, “this second group of “girls” is meant to represent the “real thing” on all levels; these are not women to be messed with carelessly.” Ultimately, this foreshadows their final revenge-filled triumph over Stuntman Mike as they move “from victimhood to ‘Final Girl’ status” – a convention that Tarantino borrows from the slasher genre.

Although a female assailant would have been “unthinkable” in Hitchcock’s time, Tarantino is making reference to those slasher films that were made “on the fringes of his field” in which the lead female role often played an active part in turning the tables on the killer. In ‘final-girl’ sub-genre films, the protagonist was actually most often endowed with both a ‘feminine’ sexuality (at once sexually active and sexually reluctant), and aggressive ‘male’ survival instincts, which freed the character from traditional cultural notions of sexual

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426 Barlow, 123.
427 Ibid, 124.
428 Jungle Julia is played by Sidney Poitier’s daughter, Sydney, and Cheryl Ladd’s daughter Jordan plays Shanna, Ibid.
429 Ibid, 125.
430 Ibid, 129.
431 Ibid, 132.
difference. Barlow suggests that in choosing specifically to appropriate the final-girl sub-genre, Tarantino is pointing out that preconceived, outside notions about slasher films are only a reflection of the way that mainstream Western society has sought to maintain traditional gender roles. In reality, “women have always been tough, both in literature and in real life.” Once again, Tarantino is implicating his audience and playing on what he knows of their assumptions in order to further the impact of his own plot. He knows that we, the audience, are expecting all of the women to die in Death Proof, and that the impact will be twice as grotesque when the female characters turn out to be just as ruthless in their violence as Stuntman Mike. Dyer explains this kind of build-up of historical awareness as more than just an “added extra” in the film. Rather, it is “constitutive of the affects they aim for.” In this way, Tarantino’s pastiching of the final-girl trope involves “hearing and producing a version of the referent informed by the expectations and frameworks of understanding available”. He relies on a certain set of established cultural values to convey emotion. Yet, at the same time, pastiche enables him to create an awareness of those values in order to intensify the emotion.

Death Proof is packed with referentialism: references to the genres from which Tarantino is borrowing, references to specific films both visually and directly in the dialogue (particularly Vanishing Point (1971) and Dirty Mary, Crazy Larry (1974), and references to the medium of film itself with, for example, frequent ‘cuts’ mimicking the scratched and worn surfaces of well-
worn, low-quality grindhouse prints. Indeed, *Death Proof* embraces itself as a fiction/movie but, more so than Van Sant’s *Psycho*, it does so while maintaining a strong sense of fictive reality at the same time. For one thing, Tarantino refused to use computer-generated-imagery (CGI), or even editorial montage, which means that everything on screen in this film has actually ‘happened’ in real-time in one way or another, as opposed to being edited in after filming. This is all the more impressive in light of Bell’s long stunt scene towards the end of the movie. The result, as Barlow explains, is a film whose production methodology has contributed directly to the affect on both its aesthetic and its narrative:

> Today this strikes most film viewers as irrelevant; the ontology of the objects portrayed in a movie interest them not at all. It remains important to the filmmaker such as Tarantino, however, for in the making, the ontology does have an impact. When “fix it later” is no option, closer attention is paid to the mise-en-scène and the precision of the acting and the action…This means every detail needs to be there…As in all of Tarantino’s films, there’s an element of nostalgia in *Death Proof*, though it does not dominate the film and runs deeper than a cultish fascination with those genres subsumed in the technological tsunami of the 1990s.

Of course there is illusion present in *Death Proof* but, unlike Van Sant’s *Psycho*, where the illusion is twice-removed by the fact of its close relationship not to reality but to another fictive illusion, *Death Proof* has been literally conjured out of reality itself.

> On the one hand, the posters and DVD cover art for *Death Proof* harkens back to the illustrated grindhouse theatre posters of the 1960s/1970s, but like Van Sant, Tarantino situates his film in present-day 2007 by freely including cell phones and text messages in a way that

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438 Anderson, 14.
439 Barlow, 135.
441 André Bazin as quoted in Barlow, 135.
recontextualizes the actual historic components of the films from which it draws [Fig. 31]. The multi-million dollar budgets of *Death Proof* and *Planet Terror* belie the low-budget context of the early grindhouse movies just like the romance of the “open-road speed-freak freedom of the early 1970s” has all but vanished from the present-day popular consciousness. Just as in Van Sant’s *Psycho*, *Death Proof*’s fusion of the past, the present, and the nostalgic-present puts the passage of time front-and-centre in the consciousness of the film. Jameson would argue that this is consequential of our contemporary inability to grasp time, our loss of temporality, or our reified experience of time. However, I would argue, concurrent to Dyer, for the complete opposite: that pastiche allows us to “know ourselves affectively as historical beings.”

### 3.3 Form and the Broader Context

#### 3.3.1 Historical Malleability: Pastiche as a Playground

One of the most interesting dimensions of watching Van Sant’s *Psycho* is trying to figure out what is going on with each scene and each character in relation to the previous film and what that means for each of the films as a whole. Van Sant’s *Psycho* changes the meaning of the previous *Psycho*’s in a way that, until recently, we would have only thought possible through backwards time-travel. The ability to rewrite history, the way that both Van Sant and Tarantino

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442 Anderson, 14.
443 Ibid, 15.
444 Dyer, 180.
do, is indicative not of some cultural loss of historicity, nor even of a superficial nostalgic longing. Rather, it is due to our full-blown cultural revelation of the malleability of history running concurrent to our contemporary revelation of authenticity as a constructed conceptual entity. While watching Van Sant’s version of Psycho, or Tarantino’s version of the slasher film in Death Proof, it is almost impossible not to re-view Hitchcock’s Psycho or Russ Meyer’s Faster, Pussycat! Kill! Kill! (1965) in a different way. Here, the intertextual exchange is simply an ongoing backwards-looking conversation with no fixed historical address. Neither is our experience of Psycho as mediated through Psycho necessarily a reified one then, since this implies an emptying out of meaning when, actually, there is a satiation of meaning – in both the pastiche text and the appropriated historical texts.

Perhaps the most valuable characteristic of pastiche lies in its ability to play with the wider possibilities of truth, and more multivalent forms of knowledge. For Dyer, this (once again) distinguishes it from other forms of appropriation:

Parody implies a sure position outside of that to which it refers, one of secure judgement and knowledge. [Pastiche] is more inside the problem of judgement and knowledge, more ready to acknowledge that it doesn’t have all the answers, doesn’t know exactly what to think…parody is theoretically distinct from pastiche chiefly because it minds being inexorably implicated in that from which it seeks to distance itself and that is why it is so hysterical – so angry, so mocking, so unkind – about it.  

In this way, pastiche occupies a “middle ground” both in the interstice between its appropriated texts, and in the attitude to which it approaches these appropriated texts. As such, pastiche texts can be read both as critical and as homage, and/or both at the same time. It is neither identical nor

\[445 \text{ Dyer, 46-47 (italicized emphasis, my own).} \]

\[446 \text{ Ibid, 47.} \]
distinct from its appropriated sources, nor is it “subsumed by nor aloof from” them. Dyer describes this as the “social and sociable” qualities of pastiche. It is ‘social’ because it acquiesces to the fact that it exists within an already established framework of meaning: “it acknowledges itself as being in the realm of the already said.” It is ‘sociable’ because it accepts the possibilities afforded in imitation and in being imitated “without seeing this as a significant and anxiety-producing loss of autonomy.” It has no fixed or stable perspective of its own and, at the same time, it also unfixes and destabilizes those perspectives that we may have once considered to be so.

An academic friend and colleague of mine – a self-professed “fan” of pop singer, Lady Gaga – recently expressed her utter disappointment and distaste for Gaga’s recently released You and I video, vehemently arguing that “it doesn’t make any sense! It’s all over the place!” Pastiche refuses to tell the viewer what it is thinking and, as a consequence, it can be a frustrating form to interpret when what we desire are specific, concrete meanings or critical positions since there remains within most of us, remnants of the modernist thinker. Even though contemporary cultural values since the 1990s have been shifting towards non-linear, non-universalist frameworks of thought, on a day-to-day basis we still abide by many of these kinds of modernist principles in order to organize our quotidian experiences – but with self-awareness. Pastiche articulates both sides. It reveals “the limits and potentialities” of our cultural constructions, but it does so “not through intellectual reflection on it but by conveying it affectively…it can enable us to know

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447 Ibid, 179.
448 Ibid.
449 Ibid.
450 Ibid.
ourselves affectively as historical beings.” Approaching You and I as a pastiche provides us with an interesting point from which to begin figuring it out or, as the case may be, in allowing it to remain puzzling. There is even a kind of playful freedom in accepting You and I as a playground for intertextuality and multiplicity. Similarly, even A. B. Walkley, writing as far back as 1921, conceived of pastiche as a play with history: “Occasional fragments of authentic text will be recognized at a glance. ‘These things are but Toyes.’”

3.3.2 Paratextual and Contextual Trajectories: Becoming Active

This open playfulness is as true of 1980s appropriation art (such as the work of Levine), as it is of the intermediate appropriations of the 1990s (Van Sant), and of contemporary forms of pastiche appropriation (Lady Gaga). In fact, in terms of the textual elements of pastiche (what Dyer calls the “markers of pasticheness in the pastiche itself”) as well as the immediate contextual elements of pastiche (specifically, its effects/affects), not much has really changed since the 1980s. The greatest marker of difference between the two historical trajectories lies in the paratextual; that is, the reception and, I would argue, gradual acceptance of pastiche and appropriation both by the larger public and within theoretical and critical discourse. Naturally, this is constituent of the larger, less immediate contextual peripheries – the changed historical, technological, political, and social contexts.

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451 Ibid, 180.
453 Dyer, 48.
Technological reproductions of works of art (or texts of any kind) have been available since the invention of the printing press in 1440 but, over the last two decades, digital technologies have presented us with new forms of reproduction. There is increasing debate and theorization over the positive and negative consequences that computer technologies have had on our everyday lives (from the social to the psychological, and from the cultural to the global). However, what is clear is that these technologies have afforded a more flexible, manipulative, and (with certain provisions) accessible connection to texts of a seemingly infinite variety.

In an environment of videos, DVDs, iPhones, tablets, internet access, gaming consoles, HD television, Kindles, etc., the textual images and narratives that we engage with come to us in a plethora of media and in a range of situations. The ease with which our everyday technological capabilities now enable us to adapt, alter, and transpose texts from one form to another has both contributed to, and been a consequence of, a shift in our perception of the social and cultural role of meaning-making (as a whole) and artistic production (in particular). Graham Allen argues that in an environment like this, “a new outlook regarding the social and cultural role of art opens up and the intertextual nature of all texts is foregrounded”. In fact, many of the new digitally-based systems of representation appear to embody the critiques of theorists like Dyer, Kristeva, and Barthes in the way they break-down traditional notions of authenticity and authority:

For those who write on this new form of textuality, poststructuralist and Postmodern theory seems to be merely that, a theory directed towards an object, books, which appear to resist notions of relationality, difference and intertextuality. What to

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454 Allen, 208.
455 Ibid.
many might seem counterintuitive in Barthes’s treatment of literary books becomes obvious, inevitable and even ‘natural’ when dealing with hypertext systems.\footnote{Ibid, 194.}

Allen is here referring to ‘hypertext systems’ as an on-screen structure formed out of blocks of text joined by electronic links.\footnote{Ibid.} The audience/viewer/reader/user has the ability to access any or all of the connective links, on, for instance, a computer screen, through browser menus that display networks of related links. The Google Art Project, for instance, allows online users to virtually explore the gallery halls of (at last count) three-hundred and forty-five collections of museums and galleries from around the world. The panorama-style tour lets users pick and choose where in the museum they want to go, and to zoom-in to view artworks in much the same way as they would if they were actually walking through the galleries themselves. The difference between walking through the real-time gallery space, and scrolling through the online gallery space, however, is that a user can also have any number of other browsers open on their screen simultaneous to the Art Project. This can include links to additional information about the artworks they are viewing, critical writing about the works, historical commentary about the period from which the work is identified, images of any number of other reproductions and representations of the same work, or even links to totally unrelated subject matter.

Or at least seemingly unrelated, in the traditional ontological sense. In the hypertext sense, everything is potentially related depending on the individualized narrative created by the user. Hypertext systems are but one example of the way that digital technology has made explicit the “death of the author” that Barthes declared in 1967, along with traditional concepts of linear authorial/producer authority.
This type of ‘interactivity’ recalls, in a broad sense, the same open play with meaning that, as I argued above, is also present in pastiche. Luis O. Arata defines interactivity as “active interrelations between players and mediums” and notes that this feature, which dominates today’s digital media, has a long history in the creative sphere – he mentions literary texts from the *I Ching*, to Julio Cortazar’s *Hopscotch*, to *Popol Vuh* (the ancient Mayan book of creation). He argues that what the influx of new digital technology has contributed is a widening of interest beyond just the text created, towards a “participation in a process of playing out a multitude of interactions.” The development of more user-friendly digital interfaces, online navigational flexibility, and personalized search engines has meant that the user/viewer/individual has become prioritized over the text, and chance has been prioritized over determinism.

Arata likens hypertextual interactivity to Jean Piaget’s understanding of play as a type of adaptive action involving “a combination of imitation and play…When imitating, we accommodate ourselves to the outside model. But in play we undo the world, so to speak, and assimilate it to our preferences. Adaptation is reached through a balancing of these processes.” I would further this to argue that the same can be said about appropriation. Appropriation – like play – contains an element of imitation that allows the producer to speak in a language that will be understood, but it also adapts this language according to the producer’s desires, which in turn, can be adapted again according to the consumer’s desires – and so on and so on.

Today’s hypertextual digital technologies allow almost anyone with internet access to construct their own narrative journey through already existing blocks of texts, but it also allows

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460 Jean Piaget as summarized in Arata, 220.
them to save, download, cut & paste, and image-capture these texts. From there, anyone who has access to relatively cheap text manipulation software (like Photoshop, Adobe Suite, ImageMagick, etc.) can appropriate found texts in an infinite number of ways for an infinite number of different reasons.

Lawrence Lessig interprets digital manipulation phenomena of this ilk by making an analogy between RO (Read/Only) computer files and RW (Read/Write) computer files. RO files can be likened to mass-media and analogue technologies, and they maintain a separation between producers and consumers/users. But digital RW culture allows both consumers/users and producers to change the medial text between them. In fact, this has changed the nature of the relationship between the producer/consumer and consumer/producer as well as culture at large. We have come to accept that any text made available in the public realm (online or otherwise) has the potential to be pastiched, parodied, or otherwise appropriated. We even expect it. Appropriation is an overt and recognized part of our everyday communication system where, in the past, it may have remained more concealed, unacknowledged, and less available interactively.

It is to this cultural/societal attitude shift that I refer when I argue that the primary difference between 1980s appropriation art and contemporary appropriation lies in the paratextual, as it is defined by the broader cultural, historical, and technological context.

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462 Ibid.
3.3.3 Remix Aesthetics: Extending the End Point

Over the past decade, there has been a significant amount of scholarly research dedicated to the art of the ‘remix’ – particularly in the field of popular music studies. Indeed, it was the popularization of the electronic music remix that precipitated and molded much of the current discussion over the decline in traditional notions of authenticity, as defined by shifting consumer/user participation models, and the ethics therein. Just as appropriation has existed in the visual arts for centuries, so has it also played a role in musical history.\(^{463}\) The concept of the electronic ‘remix’ as we know it today is largely attributed to mid-1970s encounters between Jamaican dub DJs and American disco DJs living in the Bronx, such as DJ Kool Herc and DJ Grandmaster Flash.\(^{464}\) Eventually resulting in the “birth” of hip-hop, the merging of these two genres relied on the techniques of ‘cutting’ (“alternating between duplicate copies of the same record”) and ‘scratching’ (“manually moving the vinyl record beneath the turntable needle”), which gave rise to some of the first vinyl-recorded ‘extended mixes’.\(^{465}\)

In the 1980s, electronic ‘new wave’ bands like Depeche Mode, New Order, and Cabaret Voltaire, experimented in creating more involved and complex mixes. Later in the decade, dance music was popularized by a new form of remix that replaced traditional instruments in favour of completely sampled tracks of the ‘house’ music varietals by DJ collectives like Crystal Method, Daft Punk, Underworld.\(^{466}\) In the mid-1990s, a massive increase in personal home computers and

\(^{463}\) As, for instance, in the form of the ‘cento’ as explained in Section 3.1.2 of this chapter.
\(^{465}\) Ibid.
\(^{466}\) Ibid.
audio software saw the invention of the ‘mash-up’, which is “an unsolicited, unofficial and often legally dubious remix created by editing two or more recordings together”.467 Although many critics have attempted to define taxonomic distinctions between remix types (see note), for the purposes of understanding the relevance of the remix in light of more general forms of appropriation in contemporary culture, I would prefer to adopt Vito Campanelli’s more open perspective on the subject.468

For Campanelli, the remix is “an irreversible process of hybridization – of sources, materials, subjectivities and media…as a metaphor for the generalized amalgamation and digitalization of culture.”469 He posits a convincing argument for understanding the remix in relation to all domains of human action not just specifically to music:

consider mimetic theory, which reminds us that both biological and social evolution takes place by means of minor variations, and then through repetition…Evolution requires us to mix the elements of culture according to our needs. As Anthony Giddens might state: one uses the past to build the future. Remix, then, is hardly a new phenomenon: it is a practice that has made art, science, and many other intellectual fields possible.470

467 Ibid.
468 See Eduardo Navas’ three forms of remix: ‘extended’ (an original song lengthened by the addition of a long instrumental section), the ‘selective’ (when elements are added or removed from an original song), and the ‘reflexive’ (a remix that “allegorizes and extends the aesthetic of sampling, where the remixed version challenges the aura of the original and claims autonomy”). As Campanelli notes, Navas’ conception of the ‘remix’ assumes that it is always possible to identify the presence of original material in a remix. This also assumes a necessity in the listener’s ability to distinguish the original material in order for a meaningful experience of the work. I disagree with both assumptions in favour of the belief that all consumers are endowed with the interpretative capacity for meaning regardless of the work itself. Navas as quoted in Campanelli, 187.
469 Ibid, 190.
470 Campanelli, 192.
However, he goes on to affirm my own position that today’s society exhibits signs of appropriative cultural habits which, to use Campenelli’s terminology, can be described as a ‘remix culture,’ more than any previous period, for three reasons:

the massive spreading of post-production tools that allow the sampling of sources; and the Web’s exponential multiplication of sources that one can access at virtually anytime and from anywhere…[thirdly] the present culture, in which media objects are remixed even as they are received, is distinguished by the ubiquity of the remix.  

In this way, the active consumer/producer exchange afforded by the remix can be viewed as the hypertext made manifest aesthetically. Indeed, Campanelli argues that contemporary aesthetics are predicated on a “continuum” of appropriation whereby the remix is more than just one medium/material option – it is a ‘new cultural default’. As I have been reinforcing throughout my discussion, this means the remix sensibility extends beyond just digital aesthetics as well.

Art critic and curator Nicolas Bourriaud made the connection between electronic remixing technologies and the visual arts in Postproduction (2002). He examines the formal properties of the body of artwork from a selection of international contemporary artists and concludes that each of them work from pre-existing materials in a method of ‘postproduction’ reminiscent of the remix. He notes:

472 This is contrary to Fredric Jameson’s belief that the proliferation of appropriative media in contemporary culture (for him, ‘schizophrenic pastiche culture’) is evidence of a reified producer/consumer exchange, which solely favours the producer. Ibid, 196.
473 Bourriaud borrows the technical term ‘postproduction’ from “the audiovisual vocabulary used in television, film, and video. It refers to the set of processes applied to recorded material: montage, the inclusion of other visual or audio sources, subtitling, voice-overs, and special effects.” Nicolas Bourriaud, Postproduction: Culture as Screenplay: How Art Reprograms the World (Translation. New York: Lukas & 154
Since the early nineties, an ever increasing number of artworks have been created on the basis of preexisting works; more and more artists interpret, reproduce, re-exhibit, or use works made by others or available cultural products. This art of postproduction seems to respond to the proliferating chaos of global culture in the information age, which is characterized by an increase in the supply of works and the art world's annexation of forms ignored or disdained until now. These artists who insert their own work into that of others contribute to the eradication of the traditional distinction between production and consumption, creation and copy, readymade and original work. The material they manipulate is no longer primary. It is no longer a matter of elaborating a form on the basis of a raw material but working with objects that are already in circulation on the cultural market, which is to say, objects already informed by other objects. Notions of originality (being at the origin of) and even of creation (making something from nothing) are slowly blurred in this new cultural landscape marked by the twin figures of the DJ and the programmer, both of whom have the task of selecting cultural objects and inserting them into new contexts.

Like Campanelli, Bourriaud attributes the use of appropriated materials to accessible and near-infinite re-sources and he also notes a shift between producers and consumers. Furthermore, Bourriaud insists that the pervasiveness of appropriative techniques in contemporary visual art is to the point where it is both constitutive of new artistic practices, as well as indicative of a culture moving closer and closer to a collective ideal of what, for him, can be characterized as ‘sharing’. Campanelli himself aligns his thesis: “that contemporary forms, knowledge, creative acts and social formations are all temporary configurations of an endless flow of data,” with Bourriaud’s: “The artwork is no longer an end point but a simple moment in an infinite chain of contributions.”

Sternberg, 2002), 4.
474 Ibid, 6.
475 Ibid, 5.
476 Bourriaud as quoted in Campanelli, 201.
3.3.4 Semionautic Practices: Visual Artist as DJ, and Audience as Producer

Bourriaud equates the activities of DJs, online Web users, and contemporary visual artists with a “configuration of knowledge…characterized by the invention of paths through culture.” He refers to them as ‘semionauts’ forging paths through signs and references from culture and it is here that “the artwork functions as the temporary terminal of a network of interconnected elements.” Indeed, this seems manifest literally in the work of artists like, Jillian Mcdonald, whose performance-based events reflect the deeply entrenched audience involvement and sense of ‘fan’ ownership that characterizes the horror-film genre.

_Zombies in Condoland_, which was performed at Nuit Blanche Festival in Toronto (2008), was composed of a series of night actions mimicking the on-set production of a horror movie. Prior to the event, Mcdonald developed a website to solicit participants whom she encouraged to come out to the event ‘in character.’ The website provided instructional videos on how to act like a zombie, including make-up and costume tips, and suggested that participants might transform themselves en route – referencing a strategy that Mcdonald herself had employed in a previous performance on the New York City subway, called _Horror Make-up_ (2006). Although the Toronto performance directly referred to that city’s recent “appetite for gentrification”, as well as to a local film project by George Romero, Mcdonald’s primary intention was to integrate her art into the ordinary activities of daily life in a way that invited viewers to become

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477 Bourriaud, 18.
478 Ibid.
participants/users. Building on the popularity of zombie walks and fan expos, Mcdonald both ‘sampled’ from the existing horror milieu and constructed a hypertextual situation where participants could construct their own character and narrative. She took the hypertextual even further with *Horror Stories* (2010) – an interactive web project that asked visitors to share stories about their fears, which were then digitally combined with film clips and images to create personalized mini-horror films to accompany their stories. Even though every mini-film produced by *Horror Stories* was based from what Bourriaud has described as a “script that the artist projects onto culture”, the framework is such that it can “project new possible scripts, endlessly.”

As the semionaut, Mcdonald “imagines the links, the likely relations between disparate sites”, the participant/user adds their own samples, and the digital sampling technology then processes the component parts in a continuous cycle of possible activity.

Our conceptions of appropriated forms have shifted over the past four decades and they continue to do so. No longer tied to the hierarchies of authenticity, and enabled by digital technologies, appropriation speaks to our desire to communicate intertextually. It attempts to get beyond our new, non-modernist conceptions about individuality by allowing us to have more of a voice – one that can speak back through history to the author. Maybe the author is not so much even dead (in the Barthian sense), as simply busily engaged in a roundtable.

In terms of contemporary artistic borrowing practices, appropriation as an opponent of authenticity is no longer the subject of the artwork in the same way that it was in the appropriation art of the 1980s – the breakdown of authenticity and challenge to institutionalized

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480 Bourriaud, 18.
481 Ibid.
historical authority is not the central component of the work. At the very least, it is not the interesting component of the work. But it is still referential. Today it is a more common technique, or practice, because we are more accustomed to seeing and reading appropriated forms – even if we cannot or do not always read it as appropriated. We’re less inclined to believe, for instance, that our artists are wholly original in the way we might once have believed them to be. We are more accepting of their/our imitative nature.

How then, do we negotiate the ethics of appropriation in relation to this openness? How about in relation to this new producer/consumer consumer/producer model? For instance, how would we understand recent events like the Navajo Nation ordering American corporate retail chain Urban Outfitters to cease and desist use of the Navajo name on their product labels (October, 2011)? What, precisely, are the politics of appropriation?

Figure 20: Robert Longo, *The American Soldier*, 1977, Enamel on cast aluminum, 28 x 16 x 5”, collection of Metro Pictures Gallery
Figure 21: Jacopo Tintoretto, *Christ Before Pilate*, 1566-67, wall painting, Scuola di San Rocco, Venice

Figure 22: Titian, *Madonna with Members of the Pesaro Family*, 1526, oil on canvas, Santa Maria Gloriosa dei Frari, Venice
Figure 23: Jacopo Tintoretto, *Reclining Figure of Day, after Michelangelo (recto)*, 1519-94, black and white chalk on blue paper, The Metropolitan Museum of Art, New York

Figure 24: Michelangelo, *Tomb of Giuliano de’ Medici*, 1524-34, marble, New Sacristy, S. Lorenzo, Florence
Figure 25: Sassoferrato, *The Virgin and Child*, c. 1640-1685, oil on canvas, The Wallace Collection, London, UK

Figure 26: Raphael, *Madonna and Child (Madonna Conestabile)*, 1483-1520, tempera on canvas (transferred from panel), The State Hermitage Museum, St. Petersburg, Russia
Figure 27: Julian Schnabel, *Vita*, 1983, oil and bondo with plates on wood

Figure 28: Cindy Sherman, *Untitled Film Still #21*, 1978, gelatin silver print, Museums of Modern Art, New York

Figure 29: Film still featuring Janet Leigh as Marion Crane from Alfred Hitchcock’s *Psycho*, 1960
Figure 30: Film still featuring Anne Heche as Marion Crane from Gus Van Sant’s *Psycho*, 1998

Figure 31: Poster for Quentin Tarantino’s *Death Proof*, 2007, motion picture
Chapter 4
The Politics of Contemporary Appropriation – Tricksters and Cultural Appropriation

4.1 The Politics of Creative Criticism

4.1.1 Possibilities for Criticality in Appropriation: Double-Coded Parody

The beginning of this chapter will continue the previous chapter’s analysis of the formal aspects of appropriation. But where Chapter Three used Jameson’s term – pastiche, Chapter Four will do so by adopting certain aspects of Linda Hutcheon’s A Theory of Parody (1985). The continued consideration of form in this chapter is primarily in order to demonstrate its relationship to context and to ask if and how the form and content of appropriation works to foreground the contemporary politics of appropriation.

In The Postmodern Turn (1997), Steven Best and Douglas Kellner identify the emergence of four forms of ‘postmodern politics’ that have arisen over the course of the six decades following modernism (circa. 1960+). The first form is a kind of ‘anti-politics’, which denies any potential for individual agency, and rejects the possibility of cultural, economic, or social change due to the “inertia and indifference” of a masses under siege of spectacle (as described by Jean Baudrillard, Guy Debord, etc.).482 The second also discounts global utopian transformations.

Instead, this ‘tactical politics’ concentrates on identifying and enabling “a politics of modifications at the local level designed to enhance individual freedom” (as proposed by Michel Foucault, Francois Lyotard, Michel De Certeau, etc.).\textsuperscript{483} Thirdly, ‘contingency and plurality politics’ wavers between modern and postmodern ideals by embracing possibilities for radical social change – as exemplified by social movements like Feminism, The Human Rights Movement, etc. However, this form of politics rejects universal essentialisms in favour of difference (Ernesto Laclau, Chantal Mouffe, etc.).\textsuperscript{484} Lastly ‘identity politics’, which Best and Kellner characterize as the “most dominant form of politics today”, often contains “radical aspirations” but usually “falls short of advancing systemic change”.\textsuperscript{485} For the most part, this form of politics turns away “from general social, political, and economic issues and toward concerns with culture and personal identity” (Michel Foucault, etc.).\textsuperscript{486}

Over the course of this chapter, I will be considering certain forms of appropriation most closely associated with a mixture of identity and tactical politics. More precisely, the appropriation I will be looking at is often used to reveal the socially and historically constructed marginalization and oppression of individuals whose apperception of self has been significantly constructed through their identification with a particular group. However, although these individuals may desire more equal status through large-scale social change, the appropriations themselves actually tend to favour the tempered aspirations that come with the local/micro-level adaptations espoused by forms of tactical politics. As a result, change to actual, lived existence

\textsuperscript{483} Ibid, 272.
\textsuperscript{484} Ibid, 272-273.
\textsuperscript{485} Ibid, 273.
\textsuperscript{486} Ibid, 274.

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and social sensibility tends to be a slow, gradual process compared with radical revolutionary change.

Almost all of the examples that I use in this chapter place the personal identity of the artist as primary to the subject matter, or meaning of the artwork. This identity is then made to represent, or stand for, the artist’s larger cultural community in a way that demonstrates the heart of how “the personal is always political”.\footnote{A now-popular phrase first coined by Carol Hanisch. Carol Hanisch, “The Personal is Political”, \textit{Notes from the Second Year: Women’s Liberation}, edited by Shulamith Firestone (New York: Radical Feminism, 1970), pp. 76-77.} I made the choice to focus on identity in this chapter for three reasons. First of all, it was a logistical method of narrowing down examples from an almost infinite number of choices. Secondly, my own research (along with that of many of the critics and historians quoted in this chapter) recognizes a notably prolific amount of this type of tactical-identity appropriation in First Nations creative production – so much so that it may even be characterized as a ‘contemporary tradition’ of production amongst this cultural community – with even deeper roots in the First Nations historical tradition of the Trickster. Thirdly, while the tactical deployment of identity in the production of artwork pushes the idea of the personal as political to the foreground, it also helps to reinforce the claim that the politics of appropriation is a double-coded and often contradictory one that is based, above all, on the \textit{for and by whom} of its historical and contemporary context. As Best and Kellner point out, there is no one single articulation for contemporary politics. Instead, politics are now revealed to us as “a conflicting set of positions that emerge from the ambiguities of social change and multiple theoretical perspectives”.\footnote{Best and Kellner, 271.}
With the same intention as Jameson, that is: to define postmodernism as both a historical period and lived reality characterized by particular forms of appropriative praxis, but with a more optimistic viewpoint, Linda Hutcheon – like Jameson – argued that certain forms of twentieth-century appropriation such as ‘parody’ (which she placed in opposition to Jameson’s pastiche) could be distinguished from ancient and modern forms by its de-naturalizing historical referentiality.489 Similar to Vincent B. Leitch who argues for the historical consciousness of pastiche, Hutcheon also makes a claim that all parody contains a historiographic component foregrounding its constructed nature. According to Hutcheon, this draws attention to the politics of representation that are inherent to appropriation.490 Like other theorists of her time (as well as many of the artists who were practicing in the 1980s), Hutcheon was most interested in placing contemporary parody within the realm of that branch of postmodern discourse that was most concerned with demystifying the place of the author and desacralizing the idea of an original text. Where Jameson viewed this as parasitic and derivative, for Hutcheon, parody offered a “controlled activation of the past” that demanded the reader/viewer accede the influence of their own context in the meaning of the text.491 This perspective continues to maintain that postmodern parody was/is, indeed, a form of appropriation but it was/is an extended form of appropriation, which always carries a critical distance.

Hutcheon argued that postmodern parody contains a “double-coded” politics because it “both legitimates and subverts that which it parodies”.492 For Hutcheon, all parody can be said to

490 Ibid.
492 Hutcheon, 2002 [1989], 97.
contain an “ironic trans-contextualization”, which imbues it with the ability to create new
syntheses out of and between historical texts.\footnote{Hutcheon, 1985, 12/20.} This ironic element is what I defined according to
more generalized terms in Chapter Three as an exaggerated mocking or comedic tone. Hutcheon
prefers to use the term ‘ironic effect’ rather than ‘comedic effect’, or ‘ridiculing effect’ because it
reveals the self-referential nature of appropriation more explicitly. Hutcheon’s insistence on
‘ironic’ over ‘comic’ is particularly useful since, much like pastiche, not all parody is necessarily

funny-haha, or simply funny for the sake of being funny. Many of the parodic texts I will examine
in this chapter, for instance, have quite serious criticisms to make of their target texts.

As I will demonstrate, these criticisms are oftentimes born out of the parodist’s rightful
anger and frustration with the inequality they themselves suffer due to centuries of colonial
cultural oppression. According to Hutcheon, “the pragmatic function of irony…is one of
signaling evaluation, most frequently of a pejorative nature.”\footnote{Ibid, 51.} Thus, defining the element of
humour in parody as specifically ironic demonstrates how this “more serious function of parody
has the potential to allow for a wider pragmatic range besides ridicule”.\footnote{Ibid, 53.} With this definition, it
becomes even easier to see the connection between Hutcheon’s ‘ironic parody’ and Jameson’s
‘blank parody’ (or pastiche). So much so, that when reading the two side by side, it becomes clear
that the type of appropriation they were discussing is one and the same although they disagreed
on the consequential function of it.\footnote{Hutcheon also distinguishes her definition of parody from ‘satire’, which she defines as “even more
pejoratively or negatively coded” than parody. From this view, irony, parody and satire exist as interrelated,
perpetually shifting parts of a whole range of semantic ‘ethos’. Ibid, 55.}

\footnote{493 Hutcheon, 1985, 12/20.}
\footnote{494 Ibid, 53.}
\footnote{495 Ibid, 51.}
\footnote{496 Hutcheon also distinguishes her definition of parody from ‘satire’, which she defines as “even more pejoratively or negatively coded” than parody. From this view, irony, parody and satire exist as interrelated, perpetually shifting parts of a whole range of semantic ‘ethos’. Ibid, 55.}
For Hutcheon, it is the specific effect of ironic intonation in parody that accounts for the resonance of distance and difference between the parodic text and its target. It is in this way, she argues, that parody always works to foreground its own politics of representation:

…postmodern parody does not disregard the context of the past representations it cites, but uses irony to acknowledge the fact that we are inevitably separated from that past today – by time and by the subsequent history of those representations. There is continuum, but there is also ironic difference, difference induced by that very history…Irony makes these intertextual references into something more than simply academic play or some infinite regress into textuality: what is called to our attention is the entire representational process.

Indeed, parody de-naturalizes representation, but it does so through representation. It is, in part, the very existence of this paradox that makes the viewer/consumer aware of the process of de-naturalization.

Hutcheon admits that the presence of self-referential historicity is not, in and of itself, wholly unique to contemporary appropriation – she cites the self-conscious critical involvement of the audience in Shakespere’s history plays as an example. However, since the avant-gardes of the late-nineteenth and early twentieth centuries, artists have been using a variety of means to challenge and expose the institutionalized systems of power behind representation so that today, they can no longer be ignored. Hutcheon argues, and I would agree, that contemporary producers and consumers are more aware of their own ideological positions than ever before. This focus on the “context of enunciation” has foregrounded “the way we talk and write within

497 Ibid, 15.
499 Ibid, 94.
501 Ibid.
certain social, historical, and institutional (and thus political and economic) frameworks."^{502}

However, it is somewhat naïve to assume, like Hutcheon, that it then follows that all appropriation is necessarily critical of its ideological position, or even that it is critical of any ideology that might be imposed upon it from without.

Although it is useful for me to note that advocates for forms of appropriation like parody, such as Hutcheon, have championed it as a form of criticism and as a catalyst for inventing new modes of expression, I do not necessarily mean to align myself entirely with their essentialist-leaning position. On the other hand, nor do I intend to align myself with those critics I have noted earlier – that is, those who outright dismiss appropriation as a superficial mockery, trapped in its own intertextual dialogue. As I alluded to in my discussion of pastiche, I believe that any work of appropriation can be viewed as either critical or non-critical, and both critical and non-critical at the same time. This means that the relevant question to ask is not: is the work critical? Rather, we should ask: for whom, and how does the work function as critical? This requires examining each instance of appropriation individually, or examining selected groupings of appropriations on a micro-level. It also means acknowledging and considering the position of both the creator/producer and the viewer/consumer in relation to the process of communication as it is enacted through representation.

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^{502} Ibid, 184.
4.1.2 Producer/Consumer, and Encoder/Decoder Interaction: Thirza Cuthand’s *Through the Looking Glass*

One aspect of Hutcheon’s *A Theory of Parody* that is still particularly helpful is the way that she understood it in relation to the process of communication, or what she referred to as the “*énonciation* or the contextualized production and reception of parodic texts.”\(^{503}\) In this case, her particular emphasis on enunciation was a reaction to the post-Barthian emphasis on the role of the reader/consumer – as opposed to the more traditional prioritizing of the ‘Romantic creator’. She believed that the de-emphasis on creation amongst academics and critics of her time (1980s) had led to an outright analytic suppression of the producer.\(^{504}\) In schematic terms, the pendulum, it seems, had swung from the extreme producer/encoder side of the spectrum straight over to the extreme consumer/decoder side of the spectrum.\(^{505}\)

Hutcheon used the formal and pragmatic aspects of parody to call for a revaluation of the producer or, at the very least, of the “inferred encoder and encoding process,” meaning the producer *as imagined* by the consumer.\(^{506}\) After all, she argued, in contemporary creative production the producer still occupied a position of authority however imagined this authority might be.\(^{507}\) Forms of creative appropriation – such as parody – demonstrated for Hutcheon “a need to look again at the interactive powers involved in [both] the production and reception of

\(^{503}\) Hutcheon adapts the notion of ‘*énonciation*’ from Wolfgang Karrer’s formal categorizations of parody (1977), and Jay Schleusener’s argument that “texts can be understood only when set against the conventional backgrounds from which they emerge; and…the same texts paradoxically contribute to the backgrounds that determine their meanings” (1980). Hutcheon, 1985, 24.

\(^{504}\) Ibid, 85.

\(^{505}\) Ibid, 84.

\(^{506}\) Ibid, 85.

\(^{507}\) Ibid.
texts.**508 Indeed, parody seems to set up an interesting situation in which the producer is both a consumer (of the original text) and a producer (of the appropriative parodic text). Moreover, the consumer of the parodied text is also a potential producer, and so on and so forth. However, parody also appears to favour the producer’s ability to control the intertextual, associatively-grouped system of words as they appear in the consumer’s mind.509

To illustrate, I will briefly examine Thirza Cuthand’s *Through the Looking Glass* (1999). This short video borrows its form, characters, and narrative from Lewis Carroll’s novel of the same title in what can most definitely be read as a deliberate critique on negative/stereotypical images of mixed identity (in Cuthand’s case – Cree and Scots). In *Through*, Cuthand plays a parodic version of Carroll’s Alice – costumed in Alice’s ubiquitous blue frock, white apron, and striped stockings – who dissolves through her mirror to encounter two new characters on the other side: a White Queen (representing the White half of Métis), and a Red Queen (representing the Native half of Métis). Just as Carroll’s Alice endures an assortment of wise-cracking pranksters in Wonderland, so too must a “half-breed Alice” try to decipher the racial riddling of the two Queens in an attempt to distinguish and empower her own sexual and ethnic individuality. There is not one distinct subject or text here that Cuthand is targeting. She composes, instead, a dialogue for the three characters that summarizes common stereotypical views of Métis identity in particular, and colonialism in general.

The critique of these stereotypes is set up through the absurdity of her fairytale appropriation, which is guided by her voice-over narration (“I know they’re talking nonsense and

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508 Ibid. 509 Ibid, 23.
it’s foolish to get confused by them”). The two Queens are ridiculous: their ‘colours’
exaggerated, their costumes over-the-top, and their claims so unsubstantiated that the stereotypes
over which they argue become, in turn, ridiculous, exaggerated, and more and more
unsubstantiated. The humour constructs and directs Cuthand’s criticism. However, the critical
aspect relies on the viewers’ ability to recognize the target – including all of the nuances and
connotative meanings present in the original sign. From this point of view, *Through*, like other
parodies, is actually a pretty presumptuous piece of work. It assumes we know the narrative of
Alice in Wonderland, and it assumes our relationship to it as an English (colonial) childhood
fairy-tale. With parody, it is also assumed that anyone who does not “get” the parody is
“somehow faulty” – just like anyone who cannot read the appropriative elements in a pastiche is
somehow ignorant or ill informed. Hutcheon writes that “parody is frequently accused of being
an elitist form of discourse” because it can only be realized as the ‘double-voiced’ parody that it
is if the viewer/consumer meets “certain requisite conditions, such as ability or training.”

However, it seems a bit like missing the point to charge all parody/appropriation in this
way particularly in light of my current example. Indeed, *Through* relies on a “certain
institutionalized set of values – both aesthetic (generic) and social (ideological)” in order to be
understood as Cuthand intended it to be. But considering Cuthand’s position as a marginalized
producer (she identifies herself as a “queer, Cree, bipolar video artist”) situated in a hegemonic
system (the colonially constructed art institution), her parody is less elitist than the values of the
intended audience to whom she is directing it – even the segment of the audience who might not

510 Cuthand, Thirza, *Through the Looking Glass*, 1999, DVD.
511 Hutcheon, 1985, 23.
512 Ibid, 95.
513 Ibid, 95.
“get” it.514 Since Cuthand inserts herself directly into the parody, in this particular case, she makes her role as the producer along with her ‘subject-position,’ totally explicit. In fact, her subject-position in Through actually plays a large part in constructing the ironic intonation of the parody in the first place. The so-called elitism in parody is only a valid rebuff if the subject-position of both the producer and consumer is the same. Since they rarely are, it may be more useful to consider the appropriative element of parody (the borrowing of institutionalized codes) as a legitimate tactic of co-optation, or even critical commentary.

Even though Hutcheon’s conception of the enunciative context includes both production and consumption, she also insists that “parody teaches that dualisms are not enough…it is more a matter of inferring the activities of an encoding agent.”515 As a solution, Hutcheon suggests looking to the ‘extratextual’ activities of the encoder, which would include, for instance, factoring in the subject-position of the producer.516 I would add that if that is the case, then it is just as necessary to consider the extratextual activities of the decoder as well.

To reiterate this point in more generalized theoretical terms: the signs of the target text are first ‘decoded’ by the parodist, then ‘encoded’ – or re-offered in a ‘distorted’/changed form, for a second decoder (the consumer) – whose expectations for the signs of the original work may also be “played upon and evoked and then transformed by the parodist” as another part of the parody.517 For Margaret A. Rose (whose descriptions of parody I introduced in Chapter Three), the audience who has already decoded the signs of the original text will have the advantage of

515 Hutcheon, 86.
516 Ibid.
comparing it to its new parodic form. Most of the traditional criticisms of parody have argued that “unless the prototype is familiar to us a parody is nothing,” but for Rose, the audience who is less familiar with the signs of the original text will be familiarized with them through the parody even after it has been altered. For instance, someone who has seen one of the cinematic adaptations of Carroll’s *Through the Looking Glass* but has not read the book, has still experienced the book albeit in an abstract and indirect way. This more poststructuralist point of view emphasizes the consumer over the producer in much the same way that Richard Dyer and Vito Campenelli favour a theoretical framework malleable enough to allow for multiple possibilities and meanings in any appropriation. In this way, it is once again possible to carve out an important niche to examine the processes and meanings that happen in the interstice and intermedials of texts.

Rose names four distinct kinds of reader/consumer reactions to a parodied text that are generalized enough to account for these interstices and intermedials. I have found that these types are also useful (with slight adaptations) for applying to the reception of other forms of appropriation as well:

The reader does not recognise [sic] the presence of parody [/appropriation], or understand the signals created in it, because he or she does not recognize TW2, the parodied text [/appropriated text], as a quotation from another work, but reads it only as a part of TW1.

For example, this type of reader/consumer may, or may not view Cuthand’s parody of Alice as humorous, but they would most definitely have a literal understanding of the events and

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518 Ibid.
519 Ibid, 40.
520 In the following set of block-formatted quotes, I have added the bracketed adaptations to the quoted material myself. Ibid, 41-42.
characters found in the video as the allegorical aspects would no longer translate through the imagery, dialogue, and narrative. In the second type of reaction:

The reader recognises [sic] the presence of two (or more) text-worlds, but does not comprehend the parodistic [or otherwise] intention of the author or the objective parodic relationship between the two (or more) texts. He or she may believe, for instance, that the author is unintentionally misquoting. One other reason for this reaction may be that readers do not notice the signals of parody [or other device] because their sympathy for a parodied text [/appropriated text] is so strong that their assumptions about it have not been affected by the parody [appropriation].

In keeping with our example, a humourless reading of Cuthand’s appropriation is also most likely to have the effect of a literal understanding – perhaps as an inaccurate adaptation of Carroll’s book, or perhaps as an extension (sequel) to the original book.

This third reaction is possibly the most emotionally inflected of the four:

The friend to the parodied [/appropriated] text recognises [sic] its place in the parody [/appropriation] as a target of the latter and feels both themselves and the parodied text [/appropriated text] and its author to be the targets of satire [/misrepresentation].

Here, the reader/consumer already has strong enough ties to the original text that its parody is taken personally. Perhaps the audience disagrees with Cuthand’s interpretation, or perhaps the audience feels Cuthand’s criticism is leveled directly at themselves – which, may not be altogether untrue since Cuthand’s ‘target’, in the broadest sense, is colonial patriarchy and the cultures and individuals responsible for perpetuating it. Here, the intended critical aspect of the parody is communicated, even if it does not convince the consumer of its argument.

521 Ibid.
522 Ibid.
Finally:

The reader recognises [sic] the parody [/appropriation] from the comic [or otherwise] discrepancy, or comic [or otherwise] incongruity, between TW1 and TW2 and enjoys the recognition of the hidden irony of this construction (and the way in which the parody has both borrowed from and renewed the parodied work) as well as any satire against or humour about the parodied text [/appropriated text] and the reader sympathetic to it. This might also be regarded as an ‘ideal’ reader reaction to a parody [/appropriation].

In all four of the reactions listed above, the reader/consumer maintains their ability to extract meaning out of the appropriated text with or without knowing it as an appropriation. Rose describes the final type as ‘ideal’, but only insofar as that it carries the highest likelihood for satisfying both the producer and the consumer based on the original intention of the producer. We might also term this scenario the most ‘ideal’ outcome of any communication process – the message is successfully constructed, successfully transmitted, and successfully received. But in an ideal scenario such as this, the message must also remain totally undisputed and unchanged between the sender and the receiver. This, of course, renders the ideal highly unlikely in actual praxis. Since meaning can never be guaranteed by the producer, anytime we communicate a message we inevitably also put our message at risk.

The closeness between the appropriated form (Cuthand’s version of Through the Looking Glass, for instance) and the appropriated text (Carroll’s Through the Looking Glass) – whereby the latter is preserved by the former – is a contradictory yet necessary feature as it also allows the parody to “outlive the demise of the parodied work.” Since the appropriation carries part of the original text within it, some continued form of existence for the original is thus ensured. This

523 Ibid.
524 Ibid, 52.
longevity is what advocates for the critical potential of parody have often used to argue for its capacity as a form of subversion since it calls attention to problematic cultural conventions while exposing these conventions through its very method.

4.1.3 Agency and the Trickster Shift: Kent Monkman’s Miss Chief and Carl Beam’s Self-Portrait as John Wayne, Probably

Any analysis that favours the producer of a text, such as Hutcheon’s theory, also tends to favour the potential for a text’s critical agency. At this point I am still not willing to argue for a generalization about the form and content of appropriation with relation to its politics (criticality). Rather, I am interested in considering for whom and how appropriation can offer itself as a vehicle for agency or how it might be, in Hutcheon’s words, “endowed with the power to renew”. As such, I would like to use the remainder of this chapter to construct a postcolonial analysis of a selection of First Nations artists/producers from the past three decades who, like Cuthand, have been using various forms of appropriation in their work with the definite intention of being critical, and exercising agency.

The ubiquity of Disney films like Pocahontas (1995), cigar store Indians, retro Wild West shows, moccasin-style popular shoe trends, and new-age philosophies promote colonial conceptions of ‘Indianness’ that still persist as the dominant characterization of aboriginal

525 Granted, part of Hutcheon’s determined insistence on the agency afforded by parody/appropriation is because she is directly refuting Jameson’s view of it as non-critical and depthless.

526 Hutcheon, 1985, 115.

Most of these popular images of Native people harken back to nineteenth-century written accounts, paintings, newsprint illustrations, and photographs made by colonial explorers and settling European artists and photographers. Andrea N. Walsh notes that this imagery tended either to document aboriginal peoples and culture as ‘disappearing’, or to depict aboriginal peoples as both homogenous with one another and ‘different’ from Europeans.\footnote{Walsh, 37.} These non-Native representations of Native peoples were produced in the service of the larger colonial project – particularly in order to further the nineteenth-century European narrative/myth of conquest, economic expansion, and assimilation.\footnote{Ibid, 39.} Walsh points specifically to the photographs of Edward S. Curtis and the paintings of Emily Carr, Frederick Verner, and Paul Kane as some of the most widely circulated and historically cited examples of this imagery.\footnote{Ibid, 37.}
Ruth B. Phillips has pointed out that until recently, Native artists themselves have been virtually shut out from the fine art sector due to economic and racial barriers. Any creative production that has been acknowledged has been done so largely on the basis that classifies it as primitive, folk, or naïve art. This is perhaps made most glaring by the fact that, until 1983, the National Gallery of Canada (NGC) had left the acquisition and exhibiting of First Nations cultural production almost entirely to the Canadian Museum of History (née Canadian Museum of Civilization, née National Museum of Man). In 1983, the NGC amended their acquisition policy to include “representative examples of contemporary Inuit and Indian art.” As Diana Nemiroff points out in one of three curatorial essays published in the catalogue accompanying the exhibition, Land, Spirit, Power: First Nations at the National Gallery of Canada, this policy change was part of larger political/contextual shift that had been

…spurred by changes within and without: on the one hand, native activism had helped to politicize the native artist, bringing questions of identity, both individual and collective, to the fore; on the other hand, a definitive shift from modernism to postmodernism, and with it the breaking down of institutional canons, an emphasis on pluralism, and an interest in exploring questions of difference, had weakened the ethnocentrism of the art establishment.

In fact, Land, Spirit, Power was itself one of a series of exhibitions organized by the NGC which aimed to emphasize cultural identity from a politically aware point of view. Land, Spirit, Power was itself one of a series of exhibitions organized by the NGC which aimed to emphasize cultural identity from a politically aware point of view. Land, Spirit, Power was itself one of a series of exhibitions organized by the NGC which aimed to emphasize cultural identity from a politically aware point of view.

532 Phillips, 103.
533 Ibid. Phillips proposes that contemporary Native art actually be understood under the rubric of ‘visual culture’, which erases boundaries between ‘traditional’ and ‘fine’ arts, is more inclusive of otherwise segregated cultures, and incorporates a range of visual representations including photography, film, video, painting, installation, performance, popular media, and so on. I would argue that the same could be said of the term ‘cultural production’, which I would prefer to use in this case, because it has closer verisimilitude with my discussions regarding cultural appropriation later in this chapter.
534 As quoted in Nemiroff, 17.
Spirit, Power was unique in the fact that it was the first international exhibition of contemporary First Nations art at the NGC. Running concurrent at was then called the Canadian Museum of Civilization was, Fluffs and Feathers: An Exhibit on the Symbols of Indianness organized by the Woodland Cultural Centre. Curated by Deborah Doxtator, Fluffs and Feathers offered a First Nations perspective on aboriginal stereotypes as they have been perpetuated through history by displaying a cacophony of souvenirs, Hollywood movies, clothing and fashion items, toys, games, figurines, and other everyday objects culled from as far back as the seventeenth-century.

Allan J. Ryan, identifies four overlapping themes that have recurred in First Nations visual production since the 1970s: “the reformulation of self-identity, the revision of history from a Native perspective, the contesting of symbols of authority and control, and the addressing of global issues or placing of local concerns in a global context.” He offers a fifth component to traverse all of these themes: the complex problem of self-representation, a task that has involved the re-presentation of images of Natives that have circulated in popular media and public consciousness for the last century. Ryan argues that since the 1970s Native artists have been exhibiting a strong capacity for using appropriation coupled with ironic humour in order to “combat ignorance and imagine other ways of being human.” This has recently been reinforced by a number of large-scale survey exhibitions of contemporary art by persons of aboriginal descent launched in Canada – including The World Upside Down/Le monde à l’envers (Walter Phillips Gallery at The Banff Centre, 2007), Beat Nation: Hip Hop as Indigenous Culture

536 Fluffs and Feathers was originally mounted in 1988 at the Woodland Cultural Centre and subsequently restaged as a nationally touring exhibition over the following five years.
537 Ryan: 59.
538 Ibid.
(Vancouver Art Gallery, 2012, based on a 2008 initiative of Grunt Gallery), and Sakahàn: International Indigenous Art (National Gallery of Canada, 2013). The number of appropriative works in each of these exhibitions is so significant as to have warranted particular mention in the respective curatorial statements. In the catalogue for The World Upside Down, Richard William Hill refers to these appropriations as “mimicry and inversion”.

For instance, one of the contemporary visual artists represented in Sakahàn, Kent Monkman (who identifies himself as being of Cree ancestry) has produced a large body of painting, film/video, performance, and installation that looks back to a variety of historical sources with the direct intention of disputing and amending colonial narratives of art and history in precisely the way that Ryan describes. Monkman’s ongoing series of paintings, in particular, is based on visual references that he has sourced directly from many of the aforementioned nineteenth-century imagery. These works are hybrid versions of some of the most highly recognizable landscape and genre paintings from the turn of the century. For instance, with Charged Particles in Motion (2007), Monkman directly re-creates the landscape of Albert Bierstadt’s, Yosemite Winter Scene (1872), adding to the foreground an altered version of the central figures from Paul Kane’s Winter Travelling With Dogsled (1849-50) [Figs. 32-34]. The landscape colour, treatment, and composition are nearly identical between Monkman and Bierstadt. With this work, Monkman is borrowing some of the traditional landscape ‘sublime’ in order to set the viewer up for the liberties he takes with Kane’s figures at the bottom of the work: overturning a nude variation of Kane’s trapper-character into a snow-bank is a scantily-clad image of Monkman’s own flamboyant alter-ego, Miss Chief who, in turn, is shown making off

with Kane’s sled-dogs. Monkman’s variation of the figures are re-presented in a way that prods at
the romanticized, ‘quaint’, single-gendered, and racist mythology carried both within, and
paratextually to, the originals.

Although Monkman uses acrylic in the construction of these canvases, he executes them
with such precise and consistent technical proficiency as to belie them the look of traditional,
museum-quality, historical oil paintings. This technique makes it easy for the viewer to place
Monkman’s paintings alongside those ‘actual’ historical works. In fact, aesthetically speaking,
they fit quite nicely – particularly wearing their heavy, antique-style, gilded frames, which is as
Monkman often dresses his canvases during exhibitions. Viewing them this way only reinforces
the multiplicity of historical narratives that exist in tandem to the one, dominant colonial story
that has been most commonly told in our collective North American consciousness.

Certainly Monkman is contributing to the re-writing of history as we have come to know
it precisely in the ‘new tradition’ that Ryan has identified. However, some writers and critics
have remarked that describing this type of work as parodic is not entirely satisfactory. Hence,
one recurring critical method for characterizing this type of ironically humourous re-presentation
in Native artwork has been to describe it, as Ryan does, in relation to the ‘Trickster’.

According to most common anthropological, literary, and art historical interpretations,
the Trickster (also known in Canada as Glooskap, Nanaboojoh, Weesakejak, Napi, Raven, Hare,

541 It can also be said that Monkman’s paintings – which he began in 2000 – owe a great deal in style and
method to Jim Logan’s re-paintings of Classical works in the 1990s.
542 See, for instance, Cory Gross’s 2010 review of Monkman’s Glenbow Museum exhibition, in which
Gross insists that Monkman’s paintings should not be viewed as “mere parodies”, or even as “mere
Romances of a Bygone Age, blog, (Thursday May 13, 2010), accessed June 8, 2012,

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and Coyote) is a traditional Native North American comic spirit animal – “half hero, half fool” – who plays crafty tricks that undermine the general rules of behavior in a tribe. Although the accounts of the Trickster vary from tribe to tribe, s/he is generally both respected as a “risk-taker, rule-breaker, and boundary tester, and creator transformer”, but also abhorred for being a social outcast possessed of less honourable traits like “gluttony, deception, narcissism, cruelty, and wanton sexuality”.  

Aboriginal (Anishinaabe) writer Gerald Vizenor disputes these mythic, anthropomorphic versions of the Trickster as eroding its tropic, semiotic functions and reinforcing Western preoccupations with origins. For Vizenor, this simply legitimizes colonial notions of universality, hierarchy, and ‘Indianness’. Instead, Vizenor describes the Trickster as a “comic holotrope: the whole figuration; an unbroken interior landscape that beams various points of view in temporal reveries” – playing with meaning in a language game. He argues that a semiotic analysis of the Trickster reveals more than theories of social science: “a ‘semiotic trickster’ is a healer and comic liberator…not an artifact or real victim in oral summaries…but a communal sign in imagination”.

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543 Ibid, 6.  
544 Ibid.  
546 Ibid.  
547 Gerald Vizenor, The Trickster of Liberty: Tribal Heirs to a Wild Baronage (Minneapolis: University of Minnesota Press, 1988), x.  
548 Vizenor as quoted in Smith, 516.
Artwork that evokes the Trickster can be seen as interceding in the semiotic realm where signifiers and signifieds are disrupted. This forces the viewer to “consider how interpretations and ‘readings’ of the world are ceaselessly influenced by issues related to colonial representation and power and how meaning and significance can mutate when conventional categories of perception shift.” Viewers looking through the disrupted lens of the Trickster shift are constantly aware that they are an active part of a non-linear construction of meaning. Anishinaabe-descended artist Carl Beam coined the term ‘Trickster shift’ to denote a serious playfulness, whose purpose is to shift the power and control of a viewers predetermined perspective by “imagining and imaging alternative viewpoints” to some original text. In this way, the intention of a trickster shift is similar to parody’s intention to unbalance and reformulate a target text, just as the Trickster’s playfulness is reminiscent of pastiche’s play on/with appropriated forms.

Where Monkmann paints himself in the guise of an alter-ego, Beam similarly plays with his own body/figure, in the service of character creation. In *Self-Portrait as John Wayne, Probably* (etching, 1990), Beam photo-transferred a childhood image of himself striking a signature John Wayne pose – an allusion to the 1960s wild west movie actor who was known for executing skillful gun-fighting against the ‘enemy’ Indians on a fictional American frontier [Fig. 35]. He positioned the photo above four smaller photo-transfer images: another young Beam

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549 Carlton Smith, 516.
550 Ibid.
551 Ibid, 520.
552 Ryan, 1999, 5.
553 Carl Beam is often credited with being one of the first aboriginal artists to begin practicing in a ‘contemporary’, Trickster-laden style – no doubt due to the fact that he was, indeed, the first First Nations artist to have work collected by the National Gallery of Canada’s Contemporary Collection. However, as Ryan points out, there were many First Nations artists before him who were taking similar approaches.
posed with his classmates, a ‘grown-up’ Beam wearing his black cowboy hat, Beam as the character of ‘Necroman’, and Beam as an Apache Mountain Spirit Dancer. The combination of histories in *Self-Portrait* is as prominent a subject matter as his rendering of selves. For the *Land, Spirit, Power* exhibition catalogue, Nemiroff described Beam’s body of work as “a landscape in which the conventional framework of space and time collapses as images from the past and present, near and far, are juxtaposed.”554 Similarly, in the catalogue of a more recent retrospective on Beam’s work, Greg A. Hill writes that Beam’s art “transcends time” in a way that can “collapse past, present and future within the conceptual space of a work’s surface.”555 Whether parody or pastiche, both Monkman and Beam are most definitively tricksters.

The Trickster shift in *Self-Portrait* lies in this interplay of historical signs connoting cowboys and Indians and the struggling depiction of Beam’s own Native identity (“probably?”) in the genre of the ‘self-portrait’.556 “At that time”, says Beam of his childhood,

People may say, “He knows now that he didn’t know who he was when he was five years old.” But at that time, you didn’t see any positive images of Indians doing anything. I didn’t want to be the guy getting shot off the horse, dragged through the fucking mud. You had to choose one or the other.557

Where Beam’s childhood pose may have been an imitation of his hero at the time, his appropriation of the imitative image years later was a Trickster gesture aimed at destabilizing the

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554 Nemiroff, 17.
556 Ryan, 1999, 41.
557 Carl Beam as quoted in Ryan, 1999, 41. Hill notes that Beam’s recurring use of photo-transfered celebrity images is similar to Andy Warhol’s silkscreen prints, and his politicization of the ‘self’ through ‘assemblage’ has drawn comparisons to the work of Robert Rauschenberg. Hill, 15.

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John-Wayne-as-hero myth and, in the process, shifting existing conceptions about the process of Native identity construction in a white world.

Vizenor illustrates the Trickster as a contemporary strategy for ‘survivance’ – whereby the Trickster challenges the notion of identity (‘Indianness’) as a fixed determination. Beam’s John Wayne pose does not ‘survive’ as the representation of an easily defined historical character – at least not in the way that critics of parody might have us believe that appropriation endures the target text. Instead, the character’s identity has been changed and, along with it, Beam’s own identity undergoes an ongoing, active, process of survivance. Similarly, Monkman’s Miss Chief leaves behind a Trapper who is now forever upended – altered – from his original position in Kane’s painting. That is, the position that carries its own mythic narrative of peaceful, rightful colonial land settlement. Simply put, Beam’s John Wayne posturing now forever haunts its predecessor, just as seeing Monkman’s view of the colonial landscape makes it difficult to look at the Kane and Bierstadts versions in the same way again.

The Native Trickster tradition has primarily been passed down through generations in the form of oral stories, mythologies, and histories. As Carlton Smith points out, this places the Trickster in direct opposition to the written colonial histories of the West that have served as oppressive and destructive corollaries of indigenous cultures (for instance, the ‘invention’ of what it means to be ‘Indian’). While within such written histories Natives have been fixed as a static sign in a narrative of decline and disappearance, the spoken narratives of Native peoples have

asserted “the power of orality…to voice new forms of liberation.”\textsuperscript{560} Smith parallels the oral Trickster tradition with Michel de Certeau’s theory of the “Native voice” as potentially disrupting the written history of the West.\textsuperscript{561} The production of history in the Western context has been predicated on repressing and omitting the Native voice (the voice of the ‘other’) precisely because it contrasts and destabilizes the “continuity of signs” manufactured by the written, colonial “archive” of history.\textsuperscript{562} Therefore, even once Trickster narratives and methods have been materially embodied, as in the mythological stories of Vizenor, or the parodic visual art of Cuthand, Monkmann, Beam, and others, it still retains its historical effect as a cultural antagonism.

For Religious Studies analyst Lawrence E. Sullivan, the Trickster embodies a “process of ironic imagination. His dynamism of composition mocks, shatters and re-forms the overly clear structures of the world and the overly-smooth images of the mind…In him the double-sidedness of reality reveals itself.”\textsuperscript{563} Ryan furthers this by arguing that the presence of an ironic imagination in the Trickster (and in contemporary Native artistic practice) should be understood as part of what aboriginal artists and authors have themselves characterized as a greater Native cultural sensibility.\textsuperscript{564} It is a sensibility that has developed in reaction to oppressive hegemonic ideologies and has been adopted as a complex tool of survival.\textsuperscript{565} Tricksterism does not exist in only one space but fluctuates between oppositional systems.\textsuperscript{566} Thus, the Trickster occupies a realm of liminality – both materially and non-materially – manipulating a target discourse without

\textsuperscript{560} Ibid, 527.
\textsuperscript{561} Michel de Certeau as quoted in Smith, 527. See also; Michel de Certeau, \textit{The Writing of History} (New York: Columbia University Press, 1988)
\textsuperscript{562} Ibid.
\textsuperscript{563} Lawrence Sullivan as quoted in Ryan, 8.
\textsuperscript{564} Ryan, 1999, 8.
\textsuperscript{565} Ibid.
\textsuperscript{566} Jalalzai, 27.
which it would no longer function or be necessary. \(^{567}\) Like Hutcheon argues for parody, Vizenor argues that the Trickster shift aims to renew and resist from within an already existing dominant semiotic structure:

> It is the attitude of the characters which gives it the mythic verism and that attitude is comic...It is something that is alive...the way time is handled and resolved, the tension in time, and the sense of comedy or spirit through imagination and a collective sense that people prevail and survive, get along, get by. They’re not at war with the environment, they’re not rising above, and there are no subtle references to manifest destiny [and] monotheistic superiority. All of that’s very subtle, but it’s there and I think you can find it and I think we can focus on it and I think we can make a theory of it. \(^{568}\)

The theory Vizenor speaks of would be an articulation of what is already a well-established praxis within the Native context, in which parodic appropriation is used to frame issues of identity in the face of colonial history. As Lucy Lippard has written, this type of production works in a “decentralized realm” where “subversion, humour, aesthetic power and other tactics that subtly undermine [the dominant culture] may continue to be the most effective means of changing the ruling minds.” \(^{569}\)

### 4.1.4 Double-Sided Reality Revisited: Lori Blondeau’s *Cosmosquaw*

Ryan has also suggested that Hutcheon’s concept of parody might be useful for understanding the theoretical and technical processes of the Trickster practices adopted by Native

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\(^{567}\) Ibid.

\(^{568}\) Gerald Vizenor as quoted in Ryan, 5.

For Ryan, Hutcheon’s emphasis on “ironic inversion” as a marker of “difference” – where imitation is less a formulation of similarity than it is a marker of dissimilarity – is particularly relevant. For instance, Lori Blondeau’s Cosmosquaw performance character (1996-present) is not intended to assimilate Native women into popular representations of beauty in the dominant culture. Rather, it points out the exclusivity of these representations by noting the differences between representations of Native women and (primarily) white women.

_Cosmosquaw_ – a Native woman who “loves to drink, gamble, and wear feather boas” – personifies the racist stereotypes that Blondeau seeks to break down by “taking on the hegemonic white aesthetics of contemporary media culture, [and] grafting her own body onto iconic images of white pin-up girls” [Fig. 36]. In one instance, Blondeau built a light-box that pictures _Cosmosquaw_ on the cover of the fictional _Cosmosquaw_ magazine as a parody on the contemporary women’s fashion magazine, _Cosmopolitan_. The parodied version of the magazine includes such subtitle headings as, “10 easy makeup tips for a killer Bingoface!” This faux-magazine mock-up imitates media depictions of women but the overly recognizable tropes (overt sexuality, heavy makeup, etc.) are exaggerated by the fact that the subject is Blondeau herself – blatantly appropriating the (mis)representation of Native women to her own critical ends. At the same time, Blondeau projects these misrepresentations onto the mold of a well consumed popular text in an action that both questions the implicit claims of the original (are all women white in the way that _Cosmopolitan_ might have us believe?) and laughs at the absurdity of her own portrayal.

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570 Ryan, 1999, 23.
571 Hutcheon as summarized in Ryan, 1999, 23.
There is, as Rose has noted, a dislocation in works like this, where the original context is contrasted with a new and foreign context. In other words, where the viewer is expecting to see the image of a seductive, well-coifed white woman, they get instead, a Native woman wearing a red evening gown, pushing her breasts up and pursing her lips in an overly-seductive pose for the camera. The quotation has been distorted. The irony and humour here is typical of parody, but the “incongruous juxtaposition” of texts that Rose notes is typical of any kind of appropriation. In parody, as with Tricksterism, the viewer’s expectations are taken advantage of before these expectations are revealed and altered. Since the target texts are so obviously referenced, the parody of the Cosmosquaw also explicitly acknowledges its own method. This acknowledgement is either not as present, or it remains hidden in more traditional types of critiques. Even more interesting, is that Comosquaw also explicitly shrugs off, even laughs at, its own paradox: the fact that its method actually relies on the same stereotypes it belies.

The ambivalence of Tricksterism/parody towards its target involves a mixture of sympathy and criticism, while it also functions to expand the original work into something new. For Rose, the comedy in parody “can laugh both at and with its target” and this is precisely because of the way in which the structure of the parody is, in large part, constructed by the original text. While it is most widely believed that parody derives from a desire to mock with contempt, there is also a certain regard for the use-value of the target text, which connotes a kind of cautious esteem on the part of the parodist. It is understandable, for example, that Blondeau chose to appropriate Cosmopolitan since it holds a significant amount of power in signage.

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573 Rose, 21.
574 Ibid, 29.
575 Ibid, 51.
Furthermore, Blondeau herself admits that she and her girlfriends are casual readers of the magazine themselves, and that part of the motivation for *Cosmosquaw* was a desire to see more of ‘herself’ (or images more closely resembling herself as a Native woman) reflected in the pages of *Cosmopolitan*.\(^{576}\) *Cosmopolitan*’s signifiers both contribute to, and participate in, an already strictly defined set of cultural mores, which gives it a certain authority and that lends itself to the parody of *Cosmosquaw*.

Arnold Krupat’s analysis of traditional versus contemporary manifestations of the Trickster is useful for understanding the apparent contradiction of a technique that “is at one and the same time a boundary-breaker but also an important boundary-maker; a destroyer of order and an institutor of order”.\(^ {577}\) Krupat points out that the “twofold function” of the Trickster has been presented as a “baffling” puzzle by most Western scholars, but traditional Native societies actually embraced and celebrated it.\(^ {578}\) For him, dualities in traditional Native American thought are represented as *difference*, where in Western ways of thinking, these same dualities tend to be predicated on *opposition*.\(^ {579}\) He writes:

> the traditional philosophy of an oral culture constructs its pairings not in *oppositional* but, rather, in *conjunctural* or *complementary* fashion, and it conducts its philosophical and pedagogical work of thinking through difference and duality not by means of an abstract, analytical discourse, but, rather, by means of highly concrete narratives.\(^ {580}\)

\(^{576}\) Lori Blondeau, public lecture, February 10\(^{th}\) 2007, Agnes Etherington Art Centre, Kingston, Ontario.


\(^{578}\) Ibid.

\(^{579}\) Krupat acknowledges that categories such as ‘Native American thought’ or ‘Western thought’ can be problematic and notes that he uses such generalizations in order to examine why the double-nature of the Trickster may seem troublesome in Western theoretical and critical analysis.

\(^{580}\) Ibid, 13.
In traditional Native thought, categorical dualities such as light-dark, earth-sky, order-chaos are not presumed to necessarily occupy an “antagonistic relationship of supremacy” as much as they are seen to provide “balance and complementarity”.\textsuperscript{581} Krupat, Ryan, Sullivan, Lippard, and many others have observed this relational perspective in the social, material, aesthetic, and conceptual organizations of Native peoples, where the Trickster is but one manifestation of an “autogenously dialectical” system of thought – which exhibits “a commitment to complementarity and multiple meanings”.\textsuperscript{582} In other words, Krupat believes that traditional Western thought is still characterized by an either/or mode of thought that can make the both/and logic of traditional Native thought seem unfamiliar, sometimes even threatening, to the Western consumer.\textsuperscript{583} I would add (in accordance with what I have noted in previous chapters) that this either/or sensibility is now commonly associated with modernist Western thought in particular. As I have been arguing throughout this thesis, Western thought has been experiencing a transition from an either/or to a both/and mode of thinking since, at least, the 1970s. I propose that we understand the double-voiced (actually, multiple-voiced) nature of the Trickster as a successful embodiment of seemingly opposing characteristics. In fact, the overlapping and interdependent traits of the Trickster allow us to imagine a way of explaining the inherent paradox of parody as a creative visualization of the multiple-voiced nature of reality itself.\textsuperscript{584}

As M. M. Bahktin has espoused, parody must re-create the original text as an “authentic whole” that respects its possession of an internal logic capable of “revealing its own world

\textsuperscript{581} Daniel Justice as quoted in Krupat, 13.
\textsuperscript{582} Krupat, 25.
\textsuperscript{583} Ibid.
\textsuperscript{584} Ibid.
inextricably bound up” with the parodied world. In the case of contemporary First Nations’ Trickster artworks, the appropriative gesture has functioned to successfully expose the politics of representation. Specifically, the ways in which gender and ethnicity are manipulated in hegemonic systems of authority. The Tricksters have worked to de-naturalize established colonial representations of ‘Indianness’ by making intertextual references between pre-existing images and ideologies from a creative and, in this case, marginalized perspective. At the same time, the Trickster also reveals something about the politics of appropriation. That is, that it is a both/and politics – one that can both challenge and reinforce at the same time.

4.2 The Politics of Cultural Appropriation

4.2.1 Critical Oscillation: A Tribe Called Red

What Simon Dentith has referred to as parody’s capacity to “oscillate into and out of” a critical attitude can be seen in the work of contemporary DJ trio, A Tribe Called Red (ATCR). This self-identified First Nations group (made up of Ian Campeau a.k.a. DJ NDN, Bear Witness, and Dan General, a.k.a. DJ Shub) developed an electronic dance music/dub-step sub-genre called, ‘powwow-step’ that combines high-pitched aboriginal cries and pow wow music, with reggae-style dub/hip-hop beats. ATCR have consciously chosen to limit their appropriations of First Nations music to that of traditional pow wow dance tunes – refusing to use anything that

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community Elders would deem sacred or spiritual such as ‘honour’ or ‘grand entry’ songs – in order to maintain “respect for the tradition”. The group explains their choice in layering vocal/drum music over dubstep beats and tempos as a result of the fact that it struck them as “the sound of the time”, marking the mixing of the two genres as a reflection of their cultural traditions fused with their contemporary urban experience.

The group was first inspired by their desire to create a community of urban aboriginal peoples to combat the isolation they felt as Native individuals:

> There’s a long history of aboriginal people in urban communities, obviously, in North America. But if you’re an aboriginal person in an urban community who doesn’t fit the stereotype – you’re not on the street or walking around in buckskin and feathers – all of a sudden you become invisible and you’re just kind of living like everybody else.

The idea of unity is also reflected in their mixing of specific songs from tribes spread throughout geographical regions across North America. In an online video interview produced by Guillaume Decouflet, DJ NDN explains that pow wow dance music is one of the aspects of Native culture that is common across tribal divides, even if each geographic area tends to have its own recognizable inflection or style. The goal of reaching as broad an aboriginal audience as possible is reflected in the name of the group which, according to Bear Witness, came from “trying to find a term that would represent all the aboriginal people of the Americas…there is a


588 Bear Witness as quoted in Mistry.

lot of difference between aboriginal communities…red was something everybody could identify with." At the same time, the name is also an appropriation of American hip-hop group, A Tribe Called Quest, which also happens to signal the heavily appropriative nature of ATCR’s sonorial and visual style (but more on that briefly).

To accompany the group’s live performances, Witness constructs digital videos for each remix/song, which have been described as visual “mashup[s] of aboriginal stereotypes, from William Shatner in a feather headdress to the ‘80s cartoon staple *Brave Starr*” Drawing from his own collection of DVDs and VHS tapes Witness cuts, edits, and draws overtop of a variety of pop culture and media sources depicting stereotypical and racist images of aboriginal peoples. By “flipping” these images into an entirely new context, he aims to “go beyond the one-dimensional racist stereotype” to reclaim popular racist imagery using a method similar to that used by Carl Beam. Also similar to Beam is ATCR’s personal connection to these images. In the interview with Decouflet, Witness, DJ NDN, and DJ Shad recount an earlier conversation where the three of them discovered a shared childhood memory/idealization of the Indian scout character named, Billy, in the movie *Predator* (1987). Even though Billy (played by Cherokee and Seminole Nations actor, Sonny Landham), embodied presumptuously White ideas of ‘Indianness’, the ATCR DJs had all experienced a close association with the character: “I figured that’s what Indians were *supposed* to look like!” “I just felt like I could identify with him”.

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590 Bear Witness as quoted in Mistry.
591 Many of these videos also exist separate from the live performances as online music videos for each of ATCR’s individual EP singles. Kinos-Goodin.
592 Bear Witness as quoted in Decouflet.
593 Decouflet.
594 DJ NDN as quoted in Decouflet.
595 Bear Witness as quoted in Decouflet.
Although some music writers have referred to this re-use of imagery as reappropriation (in reference to the cultural appropriations of the pop culture imagery used by ATCR), Witness prefers to call it “an active decolonization”. He argues that his videos reinterpret the images “as something positive” and that this use “takes the negative power out of them; they cease to become an affront.” Witness notes that this type of reclamation happens often amongst aboriginal peoples – pointing out the Chicago Blackhawks cap worn by DJ NDN in the Decouflet interview as a typical example. Here, the Blackhawks cap moves from being another representation of colonial ‘cultural theft’ (in this case, an image of the ‘warrior indian’ as adapted by a hockey franchise for their own means), to a symbol used by the marginalized culture as a mark of distinction and ownership. Similarly, the music of ATCR also reclaims the music industry’s ubiquitous use of sampled aboriginal cries, such as those employed by Kanye West in his song, Power (2010), which ATCR promptly re-sampled for their own track, Indigenous Power (2011).

In this case, the power relation (metaphorically, but also literally considering the title of the respective songs) shifts backwards and forwards, oscillating between the two groups of artists, the communities they each represent, as well as their consumers – who are subsequently implicated in the process/relationship through their individual constructions of meaning. Interestingly, ATCR deliberately removed any traces of West’s rapping from their own version of the song, choosing exclusively to reappropriate the aboriginal voices as West had sampled and

596 Bear Witness as quoted in Mistry.
597 Ibid.
598 This also recalls the LGBT community’s reclamation of terms like ‘fag’ and ‘queer’; the feminist reappropriation of ‘bitch’ and ‘slut’ (Slut Walks); the Underground Railways use of ‘lawn jockeys’ to guide the journeys of escaping slaves; etc.
altered them for Power. In this way, ATCR are engaged in an act of reappropriating only what they view as *rightfully belonging to them* in the first place – an act which appears to be in-keeping with Witness’s argument for ‘active decolonization’. Their name, on the other hand, indicates a different oscillation of ATCR’s appropriation/power relation.

“A Tribe Called Red” is a recognizable variation on the name, “A Tribe Called Quest” (Quest), who were an American hip hop group known for their positive-minded, Afrocentric lyrics, and their fusion of jazz, electronic, and rap styles. As a part of the Native Tongues Posse – a collective of 1980s/90s hip hop artists that also included De La Soul, and Jungle Brothers – Quest openly addressed a range of socially conscious topics related to Black peoples in America such as spirituality, modern living, race, sex, and politics. They also sampled heavily from a variety of sources, which Tricia Rose explains as typical of hip hop artist’s attempt to “negotiate new economic and technological conditions as well as new patterns of race, class, and gender oppression in urban America”. Sampling, and even hip hop itself, is considered by many critics and academics to be rooted in the goals and aesthetics of the Black Arts Movement of the 1960s. For example, Marvin J. Gladney outlines three distinct areas that he argues demonstrate an ideological progression from the Black Arts Movement to hip hop:

(1) the elements of anger and rage in the cultural production of Afrikan American art in the two movements being studied, (2) the ideological need for the establishment of independent Black institutions and business outlets such as schools and publishing and recording companies, and (3) the development of a "Black Aesthetic" as a yardstick to measure the value of Black art.  

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599 Kinos-Goodin.  
601 Ibid.
In fact, many critics have been keen to consider the proliferation of sampling and musical remixing as evidence of a corresponding development of a critical perspective, and critical agency for society at large.\textsuperscript{602} Vito Campanelli acknowledges that while critically conscious work can and does exist in any cultural field, it is impossible to extend this to ‘remix culture’ in general.\textsuperscript{603} Indeed, in many instances, remixing has offered “a meaningful opportunity” for consumers to become producers, and for DJs to reinterpret material with pre-existing cultural value.\textsuperscript{604} However, he goes on to note that this neglects the fact that “the unfathomable amount of material [available] almost forces human subjects to remix”, and there is not really any criticality towards the selection and arrangement of the texts we are inundated with on an everyday level.\textsuperscript{605} Rather, “these are mere routines” where texts are more often “selected [and (re)arranged] solely for their aesthetic surface”.\textsuperscript{606} Campanelli also points out – and this is relevant both to everyday remixing as well as remixing with deliberate critical intent (like ATCR) – that most sampling and remixing machines do so \textit{automatically}, even if the input is sourced by humans.\textsuperscript{607}

Presumably ATCR feels a certain amount of camaraderie with both the musical style, political position, and creative activism of their namesake and, as such, their appropriation of Quest’s name is most likely intended to act as an homage or as an alignment. At the same time, “A Tribe Called Quest” does not \textit{belong} to ATCR, at least not in the way that aboriginal pow wow music might be said to belong to them. The power relation here, is more reminiscent of

\textsuperscript{602} For instance, Vito Campanelli refers specifically to Eduardo Navas’ view of “remix practices as a means of correcting ‘false-consciousness’”. Navas as summarized in Campanelli, 198.
\textsuperscript{603} Campanelli, 198.
\textsuperscript{604} Ibid.
\textsuperscript{605} Ibid [bracketed text is mine].
\textsuperscript{606} Ibid [bracketed text is mine].
\textsuperscript{607} Ibid.
Alexander McQueen’s use of Bosch, or Lori Blondeau’s use of *Cosmopolitan* – wherein the act of appropriation is motivated by a desire to expand and reinterpret the ‘power of signage’ in the original text to the (re)producer’s own ends. In other words, I am identifying an important distinction here between two kinds of power relations common to appropriation: that of *reclaiming power* by (re)appropriating something that might already belong to you, and that of *adopting the sign power* of an appropriated text. From this, however, it would be too easy to simply deduce that the appropriations of ATCR are somewhat hypocritical since, on the one hand, their own reclamations of aboriginal texts come from a place that criticizes cultural appropriation. But on the other hand ATCR are, themselves, appropriating what might be said to ‘belong’ to Black American culture. I would instead offer that the appropriations in the work of ATCR are indicative of the way Western thought relies on binary oppositions. In considering appropriation from the position of the Trickster, that is, by accepting duality as a marker of difference (rather than opposition) in creative action, or the oscillating nature of power relations, the complexity inherent to the inner workings of cultural exchange itself is revealed.

During their interview with Decouflet, ATCR reflected on the rise in popularity of Native-style headdresses and war-paint in ‘hipster’ fashion over the past few years. While DJ NDN and DJ Shad roll their eyes and dismiss the fads as evidence of the insensitive “ignorance” they encounter on a daily basis, Witness approaches this kind of cultural appropriation as an opportunity for criticality:

> For a long time I was, like, what the fuck?! What happened in the past twenty years? When did this become okay? Because we’ve done a lot of work to make this not okay! So it was just blowing my mind and making me really angry for a long time. But as our thing has started to grow, as A Tribe Called Red has started to spread, and as electric pow wow – the music we’re making – has started to get a lot of attention, *from those same*
people, we can’t deny that the people who are out there wearing headdresses are listening to our music now!...So all the war-paint and headdresses and crass cultural appropriation that’s going on right now – that’s a crack in the door, the ignorance that is going on is actually a way in. Now we can say ‘that’s the fake stuff that you’re going after, well this is the real thing.’

Witness goes on to relate that the group often encounters men and women, both in person at their shows, and in online messages, who are openly willing to admit that ATCR made them stop and reconsider their own participation in fashion, music, visual art, and popular trends that borrow from the cultural traditions of ‘others’. In fact, there is an accepted view amongst most academics and culture writers that cultural objects, styles, ideas, or other elements should not be used by anyone other than the ‘inside’ members of the society from which these properties originated, and that to do so is a blatant act of insensitivity, disrespect, and possibly even racism. Witness’s reaction to hipster appropriations of the signs and styles of aboriginal peoples’ objects as wrongful, is indicative of the prevalent view that cultural appropriation is morally suspect, particularly when it occurs in the context of unequal power relations.

Any dialogue about cultural appropriation should be understood in relation to the historical context of the colonial appropriation of land. There is no question that the European colonial appropriation of land from aboriginal peoples across the globe has resulted in their oppression and mistreatment. The negative effects of this land appropriation are still in ample evidence today – as recently demonstrated in Canada, for example, by the well-publicized abhorrent living conditions faced by the Mushkego/Omushkego James Bay Cree in the northern Attawapiskat First Nation.

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608 Bear Witness as quoted in Decouflet.
With that in mind, the remainder of the examples in this chapter will primarily be limited to examples of appropriation that have either been culled from Canadian indigenous cultures by non-indigenous Canadians, or Canadian indigenous and non-indigenous artists whose work directly calls to mind issues of cultural appropriation.

4.2.2 Misrepresentation and the Reification of Insignia: The Hipster Headdress and Jordan Bennett’s Pressure Flips

In terms of causing harm, cultural appropriation can either be an act of theft (wherein something is taken/appropriated from members of one culture by another), which has both legal and moral consequences, or it can negatively affect the inside members of a culture in economic, educational, or psychological ways, or in other ways such as hindering the abilities of insiders to preserve their culture. I will address the idea of cultural appropriation as theft further in the Chapter 5, but first I will consider how cultural appropriation might negatively harm inside members of a culture in other, often less perceptible ways.

As I stated at the beginning of this chapter, there are many instances in which cultural appropriation has led to a ubiquity of cultural stereotypes. One need only look so far as the erroneous misrepresentation of Natives in Hollywood films like Pocohontas, Dances with Wolves, etc. to see romanticized, simplistic, and historically inaccurate versions of the ‘noble savage’, the ‘Indian princess’, or the ‘Native warrior’. These depictions have, in turn, resulted in various kinds of discrimination in sectors such as employment and education, as well as bullying and violent abuses. Since it is often deceptively ‘truthful’ in its representation, ubiquitous cultural misrepresentations created by appropriation can even creep insidiously into the culture itself. It
can, for instance, become the lens through which inside members of the culture view themselves and their culture – as in my earlier example of when members of ATCR found themselves believing that they should aim to be more like that of Billy in *Predator*. This can cause troubling forms of confusion and distortion within the culture itself, or it can lead to an erosion of distinctive cultural values and practices. In the same way, cultural appropriation can have damaging effects in its capacity to create a popular, albeit false, understanding of a particular culture. Any kind of culturally-related content that is reproduced on a mass scale – such as representations of the Cigar Store Indian, for instance – runs the risk of becoming nothing more than a ‘kitsch’ interpretation of a culture. It also has the potential to lead to the reification of meaningful content in important cultural signs, and that this might also have harmful consequences.

Consider the ‘hipster headdress’ fashion trend that Witness takes particular issue with. Towards the end of 2007, popular (non-aboriginal) indie-rock musicians like MGMT, Bat For Lashes, and Juliette and the Licks began sporting home-made, and (non-aboriginal produced) feather-embossed leather headbands and war paint markings on their album covers, promotional material, and during their live stage. In these instances, the headdresses and war paint were not appropriated as an intentional reference to, or comment on, their traditional customary uses, nor were they intended to directly address any particular Native group either. Rather, they were appropriated for their ability to evoke a kind of imagery reminiscent of ephemera, spirituality, natural earthiness, and primitiveness. They worked to produce a recognizable and readable ‘look’ or ‘image’ for these artists, which corresponded to the sounds of their music itself – from MGMT’s ‘primitive’ electronic dance beats, to Bat for Lashes’ quaint, ephemeral, spirit-animal inspired power-ballads, to the loud, ‘warrior-like’ rock & roll of Juliette and the Licks. Almost
immediately, the headdresses and war paint became an accessory fad – particularly amongst the
trendy, middle-class, party-going group of ‘anti-style’ twenty-somethings known as ‘hipsters’.

But the trend has also caught on in the mainstream, and fashion magazines like *Vogue, Lucky,*
*Glamour,* and *GRAZIA* have all published editorials and advertorials featuring feather
headdresses, war paint, and other Native-looking motifs within the past two years. An
astonishingly large selection of these products are now also readily available through multi-
national retail corporations such as American Apparel, Urban Outfitters, and PixieMarket.com. In
short, the headdresses and war-paint that continue to be popular accessories amongst hipsters to
date are reified derivations of the ones used for traditional ceremonial purposes in aboriginal
cultures.

Elizabeth Burns Coleman refers to aboriginal peoples’ art and artistic ceremonial objects,
such as headdresses and war paint, as the “insignia” of Native culture. For her, insignia act
much like any ordinary symbol might, but unlike other symbols, insignia are intrinsically tied to
identity. She explains that insignia have:

potential to stand in the place of the word ‘I’ in written and
implied performatives. Insignia, like the word ‘I’ are referential
and appear to be indexical. However, an insignia is indexical not
by being autographic or according to some other rule of self-
reference, but by rules that link the particular mark or sign with
the user in a relation of authority…The source of the authority
for the use of an insignia cannot be discovered by introspection,

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609 There are numerous available online sources photo-documenting the hipster appropriation of Native
content and imagery from both a critical and non-critical perspective. See, for instance: Joe Mande,
“Someone call the headdress police,” *Look at That Fucking Hipster,* blog (November 17th, 2009),
610 Elizabeth Burns Coleman, *Aboriginal Art, Identity, and Appropriation* (Aldershot, England: Ashgate,
2005), 54.
but must be discovered empirically by reference to social norms.\footnote{Ibid, 58-59.}

According to Coleman, the appropriation of insignia is also an appropriation of identity.\footnote{Ibid, 59.} She also argues that all individuals require insignia in order to demonstrate “who one is and how one fits into society” and it would follow that if members of a culture were to lose their insignia they would no longer be able to identify themselves as a part of that culture.\footnote{Ibid.} For Coleman, cultural content appropriation – of the kind engaged in by hipsters who wear headdresses and war paint – strips a culture of its insignia/identity in a harmful way because “it destabilises [sic] collective entities and consistent appropriation might be understood as a kind of erosion of social structure, potentially leading to its destruction.”\footnote{Ibid, 113.} Coleman contends that without insignia, aboriginal persons would be unable to engage in the customs (marriages, burials, initiation rites, etc.) that determine their way of life as a collective, structured, entity.\footnote{Ibid, 117-118.} For this reason, Coleman insists that cultural appropriation harms aboriginal persons and is, therefore, “not morally neutral”.\footnote{Ibid, 59.} Later in her text, Coleman notes that aboriginal people can and do recognize fraudulent insignia amongst themselves and that “the appropriation of insignia by outsiders does not appear to pose a significant threat to the continuance of aboriginal societies” themselves.\footnote{Ibid, 126.} However, the implication of Coleman’s larger argument about protecting the sanctity of insignia, is that the \textit{appropriation} of insignia makes it more difficult for
aboriginal persons to act publicly as a group in the sense of *interacting with the broader society.*

I would further Coleman’s point here by referring back to the hipster headdress. It is possible that as the headdress becomes more and more fashionable and as it takes on various modifications, derivations, and iterations (such as feather earrings, leather headbands, etc.), it becomes less and less a sign of Native culture (an insignia of Native culture), and becomes more and more of a general aesthetic sign – one simply signifying an early twenty-first century popular fashion motif. This idea is reinforced by Witness’s experience of encountering hipsters who, before hearing ATCR, had not considered the headdress as a Native insignia in the first place. Coleman means to contend that a culture needs their insignia in order to identify themselves to outsiders as a coherent group. If their insignia no longer identifies them as a people to outsiders, this could “potentially” lead to the destruction of the culture as a “collective entity.” In other words, the problem lies not in the ability of insiders to identify fraudulent insignia, but in outsiders’ ability to so.

Jordan Bennett, an interdisciplinary visual artist of Mi’kmaq descent, addressed insignia appropriation in his one-time performance piece, *Pressure Flips* (2011). However, as I will explain, this performance also reveals the complexity involved in the claiming of insignia and the borrowing of cultural content. Wearing a pair of moccasins, hand-made by a Mi’kmaq elder, Bennett attempted to land twelve consecutive hours of ‘pressure flips’ (a skateboarding jump trick) inside the confines of a small gallery space (Modern Fuel Artist-Run Centre in Kingston,

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618 Ibid, 59.
619 Ibid.
Ontario). Here, the moccasins stood symbolically for any of the many traditional aboriginal artifacts that have been mass-manufactured and redistributed by non-aboriginals as trendy tourist and fashion items for outsider consumption. Skateboarders usually only attempt pressure flips while wearing hard-soled shoes as the nature of the jump requires the boarder to start and finish the jump with their feet on the sharp edges of the skateboard. So Bennett’s use of moccasins is, in this case, both an intentionally ridiculous misrepresentation and a physically painful decontextualization.

For Bennett, the mass-manufacturing of moccasins by outsiders is misrepresentative of their original Native cultural production and aesthetic value. That is, as a carefully crafted, personalized construction by a trained insider artisan. The use of moccasins in Pressure Flips can be understood as an exaggeration of the reified versions of mass-produced moccasins from the perspective of a Mi’kmaq individual, who sees outsider use of moccasins as a bizarre decontextualization. By wearing the moccasins for a task totally inappropriate to their physical nature, Bennett also literally suffers for this appropriation in a way that might be understood as analogous to the suffering he believes his culture has experienced.

Pressure Flips was originally performed in conjunction with the Aboriginal Performance Art Festival, “Acting Out, Claiming Space”, organized by the Aboriginal Curatorial Collective. The curators asked participating artists to use their performances to respond to the question, what constitutes an ‘indigenous space”? As such, the project aimed to explore how indigenous peoples situate themselves against certain environments – like home or reserve communities, urban
spaces, traditional or spiritual realms, and political or historical locales. For the same performance, Bennett also had his skateboard custom printed with a traditional aboriginal motif in an emblematic gesture of identification. This kind of “claiming” is particularly interesting considering that Bennett is drawing from a sport with strong California surfer roots – a segment of the population that has also been marginalized and misrepresented by the mainstream. The indigenous space is, here, both stamped onto the back of Bennett’s skateboard in a visible declaration of ownership (insignia), but also injuriously trampled upon. Pressure Flips reveals cultural appropriation for what it really is: a complex, threefold site of resistance, self-determination, and agency, and a site of misrepresentation and pain.

4.2.3 Inter-Cultural Exchange and Active Manipulation: NACA, VANOC, and Foucault’s Matrix

Perhaps it is true that cultures overlap and intersect in a variety of ways. As Craig Latrell explains, “We tend to think of ‘intercultural transfer’ or ‘artistic borrowing’ primarily as a one-way phenomenon, something done ‘by’ the West ‘to’ other cultures”, in praxis, the act of borrowing is actually more of a dialogue than a monologue. For Latrell, “other cultures are not just passive receivers [or victims] of Western ideas and images [or theft], but active manipulators

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621 Ibid.

of such influences”. While this may be true on the theoretical surface, the presence of unequal power relations in real, lived context renders the intercultural transfer argument nearly negligible.

For instance, during a public panel round-table titled, “Cultural Brokering: Inuit Cultural Production and Identity Projects” at Queen’s University in 2011, Inuit artist and art historian Theresie Tungilik discussed the relationship between the Nunavut Arts and Crafts Association (NACA) and the 2010 Vancouver Olympic Committee (VANOC). Unveiled in 2005, the official logo adopted by VANOC for the 2010 Olympics featured a stylized rendering of a traditional Inuit inuksuk designed by non-Inuit designer, Gonzalo Alatorre for Rivera Design Group. Almost immediately, the logo provoked a small degree of criticism by some who considered it a culturally insensitive appropriation that decontextualized and disrespected the traditional purpose of inuksuit. Some of these critics argued that the logo misrepresented both Vancouver First Nations (since inuksuit are indigenous to Northern First Nations). Others argued that it also misrepresented the ‘authentic’, practical uses of inuksuit as stone navigational landmarkers for hunters. For two and a half years following the logo’s unveiling and subsequent criticism, the Nunavut Development Corporation (NDC) pursued talks with VANOC to find a way to involve the Territory more directly in the planning and activities of the Games. In 2008, a deal was reached whereby VANOC agreed to extend their official souvenir license to include thousands of soapstone inuksuit, which were to be hand crafted by experienced Nunavut artists from about

623 Ibid, 46. Bracketed text added by author.
fourteen communities across the North. At the time, the hope was that the commission would stimulate local art production and economic growth in the short-term, as well as create an interest in Inuit art collection nationally and internationally.

During the panel discussion, Tungilik (who is herself a resident of Rankin Inlet, Nunavut, and a frequent contributor and administrator of NACA) spoke favourably of the VANOC-NDC deal. She related how the commissioned NACA artists were able to exercise both their creative freedom and their technical skill while, at the same time, taking full advantage of the extra funds to reinvest back into their practices for studio spaces, materials, equipment, and extended marketing. Tungilik confirmed that the Olympics did instigate the predicted boost in over-all Inuit art production, sparked by the demand created by new buyers. She stressed that NACA was now focused on developing measures to sustain this new production level over the long term. In this situation, Inuit artists took on the localized “active manipulation” of intercultural borrowing that Latrell speaks of in a way that demonstrates “non-Western artists knowingly and self-consciously reinventing Western influences in novel, sophisticated” and mutually beneficial ways that are both “politically and artistically motivated.”

That said, Richard Hill counters that First Nations peoples have never really had much choice in cooperating with, adapting to, or manipulating the existing imperialist appropriations and interferences:

626 Ibid.
627 Ibid.
628 Theresie Tungilik, “Cultural Brokering: Inuit Cultural Production and Identity Project,” panel discussion hosted by the Queen’s Art Department at Agnes Etherington Art Centre, Kingston, Ontario, February 7, 2011.
629 Latrell, 46.
Anyone with an historical perspective on First Nations culture will be aware that we didn’t so much appropriate White culture, as had it shoved down our throats. The ‘give and take’ between cultures Whites like to talk about has been a matter of us giving and them taking.\textsuperscript{630}

In fact, Hill is indirectly addressing writers such as Latrell, Nicholas Thomas, and others, who have recently taken a perspective that might, on the surface, appear to illustrate an equitable exchange thesis.

Latrell describes Thomas’ examination of settler colonies in the book, \textit{Possessions} (1999) as an example of academic scholarship analyzing cultural production “through local responses [like the VANOC-NDC agreement] rather than sociological abstractions.”\textsuperscript{631} In his study, Thomas proposes the idea that “neither uncritical celebration nor categorical condemnation is a sufficient appraisal” of any kind of artwork, including those containing elements we might describe as cultural appropriations.\textsuperscript{632} This is a direct refutation of Edward Said’s influential book, \textit{Orientalism} (1978), whose highly anti-imperialistic perspective, like Hill’s, depicts the “traffic” of culture as an irrevocably one-way model of pillage and victimization.\textsuperscript{633} From his more localized research view-point, Thomas, like Latrell (and others), argue that early indigenous peoples and early settlers engaged in an interplay of cultures.\textsuperscript{634} He insists that analyses such as Said’s are too simplistic, leave too much out, and over-emphasize the political motivations in creative exchange. \textit{However}, unlike Latrell he also cautions against a complete movement from one-sided exploitation toward a dogmatic view of two-sided exchange:

\textsuperscript{630} Hill, 56.
\textsuperscript{632} Ibid, 7.
\textsuperscript{634} Thomas, 8. Ruth B. Philips has also published extensively on the topic of intercultural exchanges.
Nothing would be gained if we were to begin by assuming that white art was merely an instrument of domination, a uniform ideological apparatus that sustained colonialism’s material appropriations. Art is not an instrument but an arena – one in which art works, critical discourse, institutions and markets are often uncomfortable with each other’s claims…I do not say that colonialism has been a two-way street if that implies a zone of reciprocal flows and equal exchange. But the metaphor is not so bad if we imagine unruly drivers, self-defeating manoeuvres, and energetic collisions. For colonialism has been, above all, a theatre of contradiction; it has been both destructive and fertile, both violent and creative.  

Any understanding which views intercultural exchanges, borrowings, and appropriations as a discourse exclusive to traditional, simplistic conceptions of power relations is an ineffectual one. Michel Foucault’s more complex model of power as indicative of the “reciprocal essence” in the nature of relationships between Western and non-Western cultural producers engaged in transferring creativities. Foucault suggests that power is really all embracing, and that every individual is a source of power and that it exists in every relation. Here, subjection, subservience, silence, or the state, the law, and other institutions, do not signify a lack of power so much as different “terminal forms” of it. As such, Foucault defines power as a “multiplicity of force relations”. This is contrary to the way that power is commonly characterized as repressive, one-sided, and incapable of doing anything more than preventing what it dominates from doing anything either. In Western society power takes the form of laws that demand obedience and Foucault suggests that we have a vested interest in thinking of power as

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635 Thomas, 49.  
636 Ibid, 54.  
638 Ibid.  
639 Ibid.  
640 Ibid, 85.
This way, we see power as something that acts upon us, meaning that we also see ourselves as distinct from this power and free to resist it. This is similar to the way in which modernist thought argued that creative meaning is constructed solely by the producer in a way that characterizes the consumer as passive. For Foucault, if we can acknowledge that power (or meaning) manifests itself not just in domination, but also in resistance, we would no longer be able to think of ourselves as free, independent beings.

To this end, Foucault insisted that resistance is also a part of every power relationship, not external to it (“where there is power there is resistance”). Here, power is deployed by various “manoeuvres, tactics, techniques, functionings” that not only invests the marginalized (or seemingly ‘powerless’) with agency, but is also transmitted by and through the marginalized. This means that all power relations are inscribed with a “plurality of resistances”, which produce “transitory points of resistance…fracturing unities and effecting regroupings, furrowing across individuals themselves, cutting them up and remolding them”. Although he does not state it explicitly, I would argue that the process of appropriation is a tactical part of Foucault’s strategic model of power. He argues, in line with traditional Trickster narratives, that “there is no binary and all-encompassing opposition…no such duality” between powerful and powerless that can account for “the local oppositions…that bring about redistributions, realignments, homogenizations, serial arrangements, and convergences of the force relations.” To be clear,

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641 Ibid.
642 Ibid.
643 Ibid.
644 Ibid, 94.
645 Smart, 77.
646 Foucault, 96.
647 Ibid, 94.
this is not to say that appropriation is solely a tactic of the powerless, but that it also exists as a ‘mobile’ mechanism in strategies of power. Furthermore, “Power, insofar as it is permanent, repetitious, inert, and self-reproducing, is simply the over-all effect that emerges from all of these mobilities.” Power, like communication, is unfixed and reproduced from one moment to the next. As Foucault writes:

> The “distributions of power” and the “appropriations of knowledge” never represent only instantaneous slices taken from processes involving, for example, a cumulative reinforcement of the strongest factor, or a reversal of relationship, or again, a simultaneous increase of two terms. Relations of power-knowledge are not static forms of distribution, they are “matrices of transformations.”

In other words, appropriations – creative or otherwise – perform as a part of this matrix. With their intertextual dialogues, and their interstitial pockets, they produce perpetually shifting connections between the powerful and the powerless. However, in the end, they “can only be understood in the density of the interpersonal and intertextual relations in which [they] intervene.” The functions of appropriation are widely variable making it “impossible to specify any single social or cultural direction” just as it is impossible to specify any single manifestation of power that is imposed or granted from beyond the realm of social relations.

Indeed, while Foucault’s matrixial conception of power delineates an exchange system, it also accounts for the possibility of *uneven* distributions of power, or a *disequilibrium* in the

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648 Ibid, 93.
651 Ibid.
transfer of power, commodity, or cultural exchange. We might even say that by Foucault’s configuration, the agreement between VANOC and NDC was reached somewhere between consent and coercion – perhaps even as coerced consent or, at the very least, reluctant consent.

After all, the image of the inukshuk was going to be used as the VANOC logo with or without the approval of the NDC or other Inuit First Nations groups. It was primarily because of the NDC’s decision to react to the appropriated inukshuk image as an advantageous opportunity to push for development that the VANOC-NDC souvenir agreement was even brought to the table. In some power relationships, the available choices are negligible and, according to Foucault, are exercised more out of a necessity to conform or assimilate than out of a ‘pure’, rational, or complete desire to consent.

4.2.4 A Contemporary Model of Cultural Appropriation: Transculturation and a Multi-Coded Politics

In “From Cultural Exchange to Transculturation”, Richard A. Rogers notes that in today’s political, economic, and social climate, “cultural appropriation is a central process.” He follows the view shared by Bakhtin, Benjamin, Kristeva, and others who have suggested that “appropriations do not simply occur between cultures [or individuals], constituting their

653 Ibid.
relationships, but that such appropriative relations and intersections constitute the cultures themselves.”\textsuperscript{656} As such, he refers to the emerging critical concept of ‘transculturation’.

Transculturation refers to a contemporary rhetorical perspective, which assumes that cultural elements are “created through appropriations from and by multiple cultures such that identification of a single originating culture is problematic.”\textsuperscript{657} In this way, transculturation posits that cultural forms are constantly undergoing “circular appropriations” between multiple cultures, and that the result is actually a mélange/pastiche/bricolage of “cultural hybrids”.\textsuperscript{658} Rogers suggests:

Transculturation and hybridity are as inescapable as cultural appropriation itself – an “always already” condition of contemporary culture…[Transcultural] calls not only for an updating of the understanding of contemporary cultural dynamics but also for a radical reconceptualization of culture itself: as conjunctural, relational, or dialogic; as constituted by, not merely engaged in, appropriative relations; and as an ongoing process of absorption and transformation rather than static configurations of practices.\textsuperscript{659}

Transcultural discourse can account for a multiplicity of cultures, cultural elements, and cultural appropriations, but can “also retain the implications of unequal power, of cultural dominance, and exploitation.”\textsuperscript{660} This model theorizes cultural appropriation under conditions of (post)colonial inequities, digital exchanges, and economies of reification. Like its very subject, transculturation offers the possibility of a complex, hybridized politics with multiple sympathies.

\textsuperscript{656} Ibid.
\textsuperscript{657} Ibid, 491.
\textsuperscript{658} Ibid. A Tribe Called Red’s appropriation of African American hip-hop music is an explicit example of transcultural hybridization.
\textsuperscript{659} Ibid, 495.
\textsuperscript{660} Ibid, 493.
At the beginning of this chapter, I enlisted Linda Hutcheon’s terminology in order to begin my discussion about the politics of appropriation. To reiterate, Hutcheon argues that parody contains a double-coded politics in its simultaneous endorsement and subversion of a historical/target text.\textsuperscript{661} I would add to this assessment by arguing that – with few exceptions – this is also true of other forms of appropriation. However, appropriation is not only double-coded, but also multi-coded. In short, my findings throughout this chapter have demonstrated that any analysis regarding the politics of appropriation must, above all, consider who is doing the appropriating and from whom the text is appropriated. As I have shown, there is also a double-coded set of politics depending on whether an appropriation is made by a dominant community of individuals, or by a marginalized community of individuals. With appropriation, the identity of the artist/producer functions to situate the meaning of the artwork/appropriation within larger political and cultural discourses. In other words, the politics of appropriation, much like politics writ large, is not an equal one. From this view, not just anyone can take, borrow, remix, or appropriate from just anywhere without cultural affects and effects, or even, as I shall demonstrate in the next chapter, legal consequences.

\textsuperscript{661} Hutcheon, 2002 [1989], 97.
Figure 32: Kent Monkman, *Charged Particles in Motion*, acrylic on canvas, 2007, RBC Bank Collection

Figure 33: Albert Bierstadt, *Yosemite Winter Scene*, oil on canvas, 1872, Berkley Art Museum, California
Figure 34: Paul Kane, *Winter Travelling With Dogsled*, oil on canvas, 1849-50, Royal Ontario Museum

Figure 35: Carl Beam, *Self-Portrait as John Wayne, Probably*, etching, 1990, Art Gallery of Ontario
Figure 36: Lori Blondeau, *Cosmosquaw*, Duratrans backlit photograph, 1996, John Cook Collection
Chapter 5
Towards Authorizing Appropriation – Copyright Discourse

5.1 An Interdisciplinary Copyright Criticism

5.1.1 Appropriation vs. Copyright: Law is Made

So far, this thesis has argued for an intertextual, hypertextual, and transcultural model for understanding and accepting the practice of appropriation in contemporary visual and media arts as an inherent component of Western communication systems. Over the course of this fifth chapter, I will use this model as a backdrop to consider the ways that appropriative practices have been challenging some of our long-standing Western cultural institutions over the past decade. In particular, I will be focusing on that institution with which appropriation has recently had the most direct and conspicuous effect: intellectual and cultural property law.

Copyright is now positioned at the centre of a cultural transposition that is currently seeing the emergence of new sensibilities towards creators and users and a subsequent economic attempt to negotiate and appease both the still-existing modernist attitudes, and the still-emerging postmodernist attitudes towards creators and users. In this sense, copyright law is one of the most noticeably effecting, and effected institutions in a postmodern paradigm shift from products and authors to process and creators. As a result, conventional notions of property are reaching their ultimate limit in the form of highly restrictive conglomerate monopolies while simultaneously breaking down altogether in the form of appropriation-based sharing as diverse as Napster to the
Creative Commons. As Meredith L. McGill observes, “contemporary courts are caught between an understanding of intellectual property as a matter of individual rights, and an awareness of the many interests that converge on an object of intellectual property.” The theoretical basis and culturally embedded practice of appropriation reveals precarious contradictions between our legally-sanctified belief in property and the intangibility of ownership. When it comes to appropriation, ownership is as illusionary as it is elusive.

Although it is common for us to think of copyright law as imposing its parameters on our practices and dictating the terms of our production, the law itself actually exists in a mutually-effecting, inter-relationship with culture. Paul K. Saint-Amour explains:

But for all that law shapes works of culture, it is itself, quintessentially, a work shaped; indeed, one could say that nothing is more “made” than law. So during a period when copyright was vastly expanding what could be protected as “writing”, thereby exhibiting its own capacity to be rewritten, we should not be surprised to find modernists engaging vigorously with the law as a made, rather than as a given, thing.

Saint-Amour considers this relationship in a way that frames changing copyright legislation as having had an almost central influence on creative producers throughout history:

Some – predominantly writers and composers – became conversant enough with intellectual property law to circumvent or design around its constraints on their creativity. Others attempted through legal actions to enlist copyright, along with neighboring regimes such as unfair competition and the nascent right of publicity, in safeguarding the integrity of their works and maximizing those works’ status and profitability.


\[663\] Saint-Amour, 6.

\[664\] Ibid.
Even though Saint-Amour points out some of the micro-cosmic ways in which creative producers have used copyright law to their individual and creative benefit, it is slightly grievous to err too far to the side of depicting copyright law as something that is (or something that \textit{should be}) wholly governmentally imposed or top-down regulated.

Laura J. Murray and Samuel E. Trosow introduce their “Citizen’s Guide” to Canadian copyright law by emphasizing that “Law is not a thing, but a process based on a set of social relationships.”\textsuperscript{665} Certainly copyright law develops according to changing and amended legislations, but also through a series of legal precedents that are set on a case-by-case basis.\textsuperscript{666} Both of these processes are, in turn, a result of the customs practiced by ordinary citizens in everyday life.\textsuperscript{667} As Murray and Trosow point out, this malleable aspect of law provides opportunities for individuals to exercise agency over its determinations.\textsuperscript{668} To some extent, it is up to us as creative producers, academics, and consumers to determine what our collective cultural sensibility will be in relation to appropriation. This attitude will, in turn, set the parameters for how generous or how greedy copyright law will become in the future. This perspective is repeated over and over by many academic and legal scholars (mainly in Canada), including Meera Nair who stresses the complex relationship between society and law. As Nair puts it: “law is a medium that structures, and is structured by, the cultural inclinations of the society in which it exists.”\textsuperscript{669} As I will discuss in Section 5.1 of this chapter, the history of copyright, from the eighteenth-century until today, coincides with a romanticization of the

\textsuperscript{666} Ibid.
\textsuperscript{667} Ibid.
\textsuperscript{668} Ibid.
‘author’, a technologization of production, and an entrenchment of capitalist economic values. Alternative legal structures such as the Creative Commons and the open-source movement are predicated on the postmodern reversal of some of these historical trajectories in line with many of the revelations posited by post-structuralist critiques of the author and originality. But, as I will explain further next, this reversal is complicated by the extent to which our individual and creative identities are connected to the ‘things’ we create.

5.1.2 Copyright History by Literary Studies: Uncovering the Myths

Academic criticism, the work of the Pictures artists of the 1970s and 1980s, recent practices in a variety of creative fields, and the ensuing three decades worth of technological development have increased the discussions regarding copyright in critical, legal, and popular discourse. With regards to the first – academic criticism – the discussions have been most vocal in the fields of literary criticism, communications and media-based fields, and legal studies. Closely related as it is to the production, dissemination, and analysis of creative, text-based materials (such as books, graphic novels, magazines, etc.), literary criticism has been able to offer a valuable point of view in regard to the historical context and cultural effects of copyright from the position of producers as well as consumers. Copyright analysis in literary criticism has been noticeably inter-disciplinary with a number of studies forged between experts in English

670 Scholars in literary criticism who have published views on contemporary copyright legislation, theory, and history include Carla Hesse, Meredith L. McGill, Laura J. Murray, George L. Parker, Mark Rose, Paul K. Saint-Amour, and Martha Woodmansee. In particular, see Laura J. Murray, “Escaping from the Pirates: History, Literary Criticism, and American Copyright”, in American Literary History, Vol. 16, no. 4 (Winter 2004), pp. 719-727.
Literature, and practicing legal professionals and scholars. In “Escaping from the Pirates: History, Literary Criticism, and American Copyright,” Laura J. Murray reflects on the fact that much of this collaboration has resulted in an annexation of fundamental theories of authorship and originality by of proprietary rights and individual freedoms of creativity. Although this type of inter-disciplinary union of thought is still new to late twentieth and early twenty-first century legal thinking, it has thus far already proven useful in two regards. First of all, it has provided law practitioners with a contextual framework for the processes of creative production and the attendant issues of genius and creativity with which to weed out myth from reality when it comes to commenting on legal legislation and their subsequent interpretations on a case-by-case basis. Secondly, the various theoretical methodologies on which literary criticism is most often based have been an effective tool for the examination of copyright legislation as it is both lived and constructed in the cultural field in such a way that non-legal scholars are now able to interpret copyright implications for interested parties (producers and consumers) from a variety of fields – including literature, popular music, film, fashion, and the visual arts. The subsequent studies have provided a means for understanding the underlying political assumptions on which ideas of copyright have been shaped.

For instance, Murray points specifically to the historical literary studies on copyright done by Mark Rose (Authors and Owners, 1994) and Meredith L. McGill (“The Matter of the Text: Commerce, Print Culture, and the Authority of the State in American Copyright Law”,

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671 Most notable are works such as Laura J. Murray (Department of English, Queen’s University) and Samuel E. Trosow’s (Law and Information and Media Studies, Western University) Canadian Copyright: A Citizen’s Guide, and the collection of interdisciplinary essays on copyright in Modernism & Copyright, edited by Paul K. Saint-Amour (Department of English, University of Pennsylvania).

Rose’s book and McGill’s article offer contrasting views on the historical development of copyright law as it pertained to the book trade. Rose argued that some of the first proprietary claims made over authorship were linked to a particular eighteenth century British liberal economic context that was reliant on a concurrently advancing doctrine of originality. This, in turn, followed a liberal rule of law such as that espoused by eighteenth century philosopher John Locke. In Rose’s view, the eighteenth century “question of literary property was essentially a commercial struggle, a battle between two groups of booksellers” (London-based booksellers versus booksellers based in other parts of the British empire – especially those in Scotland), both of whom were looking to protect the future of gains they had begun to make by capitalizing on recent mechanical advances in the printing press. A compelling finding in Rose’s study is the fact that authorial copyrights were actually first pushed-for by booksellers, not by authors. This push was further propagated by Locke’s modern philosophical figuration of ‘personhood’ as a naturally bestowed proprietary right, which included any physical outcome of the labour performed by this person’s body and/or hands. Rose remarks briefly on the fact that although there is documentation that Locke “was concerned in some fashion with authorial rights”, there is more solid evidence to suggest that overall Locke “thought of literary property as a bookseller’s affair.”


Ibid, 3-4.

Ibid, 5.


Rose, 33.
As Rose points out (and which Murray accentuates in her own discussion of Rose), this observation here repeats Michel Foucault’s 1984 contention that the endeavor towards originality was prioritized during the same historical moment in which property rights emerged. This emergence and prioritization of the individual is, in turn, specifically linked to commercial, rather than creative, interests. Thus, both the axiom of originality and the principle of copyright are bound in what appears to be an inextricable historic and economic binary favouring corporate-based capital growth (an idea I will return to in Section 5.2 of this chapter).

McGill, on the other hand, uses the nineteenth century case of Wheaton v. Peters 1834 (US) to expand on the point that the concepts of originality and authorship were never congruent with, but were actually antithetical to changes in production and economy. Where in Britain booksellers and liberal copyright advocates like Locke were concerned with extending the rights of the property holder, the American developments leaned more towards a republican “circumscription of individual rights” in favour of free circulation to benefit the rest of the state. McGill points out that to the minds of eighteenth century American republican lawmakers, the act of mechanically printing a text for dissemination also “implie[d] immediate, universal diffusion”. In this sense, McGill interprets the development of American copyright laws favouring dissemination over restriction as “the sign and guarantor of liberty.”

In both Britain and America, copyright legislation was linked to technology and economy, but each

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678 Rose, 1. See also: Murray (2004), 719-720.
680 Ibid, 22.
682 Ibid.
country’s iteration of copyright reflected a differing – even opposing – cultural perspective and economic circumstance.

Understood together, the analysis of Rose and McGill counter the common assumption that copyright’s history was formed from only one common political view (usually considered to be liberal). In her subsequent book McGill, like Rose, also went on to suggest that the “conditions of publication make themselves felt at the level of literary form”; referring not only to the existence of emerging technologies and adapting economies, but also implying that copyright laws regarding the production and dissemination of texts also influence both the creation of the text, as well as the content of the text itself.\(^{683}\) For instance, McGill examines the way that looser copyright controls in antebellum America, together with the way in which Edgar Allen Poe’s poetry and tales were published, impacted his career as an author. McGill even demonstrates a “creative engagement” between Poe and the reprinted British texts he himself consumed, as well as between Poe’s own works and the structures of reprint technology.\(^{684}\)

As Murray summarizes, McGill’s book claims that differences between UK and US copyright’s influence on the proliferation of the eighteenth century book market in the United States “not only constrained American authors, as they often complained…but also provided the conditions for the possibility of American literature”.\(^{685}\) McGill argues that it was the desires of the readers who drove the market for affordable, ‘Americanized’ literary content not publishers and not the authors themselves.\(^{686}\) This historical argument, as Murray points out in her review of McGill’s book, runs counter to the underlying assumptions upon which the most dominant

\(^{683}\) McGill as quoted in Murray (2004), 723.
\(^{686}\) McGill, 2.
contemporary theories of copyright are based. That is, those theories upon which the individual creative rights and freedoms of the author/artist are argued to be protected by restrictions on circulation, which are generally argued for today by large corporations (including the music industry publishing corporations) as well as by the World Intellectual Property organization, the World Trade Organization, the European Union, etc. McGill briefly connects her historical discussion to contemporary extensions of American copyright terms and restrictions and suggests they “continue to represent corporate interests that necessarily exceed the grasp of the individual in whose name they are held.”

Since the high-profile December 7th 1999 lawsuit filed against Napster (two pioneering music-centred online peer-to-peer file sharing services) by the Recording Industry Association of America (RIAA), alarming reports of “overzealous copyright enforcement” have become ubiquitous. Literary theorist and digital humanities professor Stephen Voyce summarizes some of the many well-documented headlines in this way:

music companies sue twelve-year-olds for file sharing; academics face threats of litigation for publishing research on copy-protection schemes; corporations use copyright law to thwart parody and criticism; the Walt Disney Company successfully lobbies for copyright extensions on characters it had, ironically, appropriated from the public domain; while lawyers for Margaret Mitchell’s estate blocks the publication of an author’s retelling of Gone With the Wind (1939 novel) from a slave’s point of view (a novel clearly titled The Wind Done Gone.)

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687 Murray, 723.
688 Ibid, 723-724.
689 McGill, 11.
Voyce describes a current copyright climate that is becoming more and more constraining as corporate interests pressure governments and global institutions for increasingly stricter controls and longer extensions. At this point, artists belonging to every creative domain – from design to the visual arts to music to literature to fashion – have been faced with legal pressures from large and small corporate interests alike. One example is a recent case involving a visual artist Shepard Fairey vs. Associated Press (2009).

In this case, the Associated Press sued street artist Shepard Fairey for credit and monetary compensation in what they argued was copyright infringement of a photographic image of Barack Obama taken by Mannie Garcia on assignment for the Associated Press at the National Press Club in Washington in April 2006. Fairey appropriated the photograph adding red, white, and blue pop-art style tonal variations and the caption, ‘HOPE’ underneath. The image was subsequently adopted by Obama’s election campaign, circulated and distributed widely. Fairey himself sold copies of the image in various physical and digital forms. The appropriated version of the image was deemed such an important political, social, and cultural symbol that the Smithsonian Institution even acquired a version for the National Portrait Gallery in 2009. As Shelly Rosenfeld has noted, the non-profit Associated Press business model is based on “the licensing of news content and news photos to others, especially when a photo is to be used for a commercial purpose, or at least, the advertising for a political candidate”.

Although the case was eventually settled out of court, Rosenfeld argues that “the law should not allow an artist such as Fairey to avoid obtaining permission, giving credit, and paying for use of a photo from a news

agency”.

But this simplifies the notion of what a “commercial purpose” is since, in effect, no artistic material ever circulates ‘above’ the commercial realm. Furthermore, many practicing visual artists might consider Rosenfeld’s arguments a disturbing attack on their right to ‘fair use’ not to mention free speech and visual news commentary. Rosenfeld states that “fair use is of great importance as a counterbalance to copyright protection to allow for others to build upon the creativity of others, copyright law must also offer protections to creators in order to motivate their ability to create.” Again, this is an over-simplification on Rosenfeld’s part of what a “creator” is since in this case both the Associated Press and Shepard Fairey could legitimately be defined as creators.

Voyce also mentions the “threats” received by graphic designer Andrew Stafford from the estate of Marcel Duchamp in regard to Stafford’s online resource, understandingDuchamp.com. This interactive, educational website contains a comprehensive historical timeline of Duchamp’s career, including image reproductions of many of his works, descriptive curatorial commentary, and biographical anecdotes. Voyce points out the obvious irony in a situation where the work of the inventor of the ‘readymade’ (and painter of the mustache onto a reproduction of the Mona Lisa) has become a threatening proprietary enterprise in and of itself.

Without going into a detailed history of copyright such as that of Rose’s or McGill’s studies, Voyce briefly outlines all of the major reforms enacted by the United States Congress

693 Ibid.
694 Ibid, 371.
695 Voyce, 410. As of this writing, there is no readily available, reliable documentation regarding precisely what these “threats” entailed, and/or whether this included any definitive legal action against Stafford, although this seems to be implied in Voyce’s recounting of the situation.
696 Ibid.
over the past 220 years and his assessment indicates “a rapid acceleration of term extensions” from the 1770s until 1998. Similar expansions and extensions have characterized the copyright reforms enacted by the British Parliament over the same time-span. Furthermore, Voyce argues that the establishment of international institutions such as the World International Property Organization (WIPO) – an unelected specialized agency of the United Nations – demonstrates a “push” to coordinate global copyright standards. WIPO currently purports to represent global interests through the promotion of “innovation and creativity for the economic, social and cultural development of all countries”. But in practice, WIPO tends to reveal more concern for protecting the economic and political interests of the most powerful countries in the world, especially the United States. According to some, this may actually prove its greatest downfall as a rising number of countries – Canada among them – have ceased to be able to agree on, or abide by WIPO’s guidelines and regulations as they formulate and establish domestic property policies.

The bulk of copyright reforms have occurred during the late twentieth and twenty-first centuries and Voyce argues that none of the changes made are in keeping with the original purpose of copyright. That is: “a policy balancing several interests…readers, authors, and publishers. As a state granted privilege to encourage innovation, copyright was ultimately

697 Ibid, 414.
698 Ibid, 412.
To his detriment, Voyce adopts the common assumption that early lawmakers in both Britain and America were “principally” motivated by a desire to cease commercial monopolies in the book industry in order to preserve a public domain for learning and advancement. This assumption, as McGill deconstructed, is based on a mythologized understanding of the actual, lived realities of eighteenth century copyright history, which was both influenced by, and influenced a number of players (authors, sellers, lawmakers, and the public) in a variety of complex and interwoven ways. Indeed, many of the influences and influenced include creative practitioners and practices, but also economic policies, colonial and political nationalisms, as well as growing individual and social notions about property that were, in themselves, tied to emerging concepts of authorship and originality.

Despite Voyce’s simplistic and mythologized reading of copyright history, his article goes on to consider a useful alternative model for considering present copyright schemes. His academic interest in the analysis of avant-garde poetry leads him to combine Michael Hardt and Antonio Negri’s call for an “open-source society”, with a literary concern for authorship and intertextuality in order to advance the idea of an ‘open source poetics’. Based on a “decentralized and nonproprietary model of shared cultural codes, networks of dissemination, and collaborative authorship”, Voyce cites a number of contemporary writers and artists whose work might exemplify an open-source poetics. Among them are a number of flarf and conceptual poets whose practice assembles a variety of “poetic material taken from the public domain;” examples include Rachel Zolf’s multiauthored poem, *The Tolerance Project*, and Christian Bök’s *Xenotext*.

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701 Voyce following Siva Vaidhyanathan, and “echoing” Thomas Jefferson, 412-12.
702 Ibid, 413.
703 Michael Hardt and Antonio Negri as quoted in Voyce, 407.
experiment – which sought a biological method for bacterium to store and ‘coauthor’ poetry.  

Voyce also registers the fact that this kind of creative production is not unique to the present, but also appeared “among a litany” of modernist and avant-garde practices as well – many of which paralle the examples and arguments I have already described in the previous chapters of this dissertation.

Voyce links these artists to the software developers associated with what has become the free software and open source movements begun in the 1980s. Programmers like Richard Stallman and Linus Torvalds adopted a model of using and re-circulating shared source codes (GNU’s), which instigated “a voluntary, collaborative, and decentralized model of peer production” with the ability to sustain itself next to the more dominant proprietary market-based model. As Voyce points out, the products produced through this model proved extremely effective and reliable with at least seventy percent of today’s software now running on servers that were actualized through open source software (including google.com and cnn.com). Again, many of the principles at the root of an open source philosophy recall Lawrence Lessig’s vision of an RW (Read/Write) culture, and Vito Campanelli’s description of contemporary web aesthetics. However, while Lessig and Campanelli’s terms describe a cultural condition or sensibility, open sourcing refers specifically to a type of copyrighting practice or, rather, copyleft, known as the General Public License (GNU GPL).

The GNU GPL “allows users of a program to freely appropriate, modify, and distribute GNU-protected code, with the caveat that users must also make the code freely available to others

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704 Voyce, 407-408.
705 Ibid, 408.
706 Ibid, 416.
707 Ibid.
708 See: Chapter 3, Subsection 3.2 of this dissertation.
under the same licensing scheme.” Voyce identifies artistic-focused organizations such as the Poetic Research Bureau (PRB), Information as Material (IAM), UbuWeb, and the Organization for Transformative Works (OTW) as engaging in, and promoting a similar copyleft agenda, operating under a licensing philosophy parallel to the GNU GPL. Copyleft licensing practices such as these are born from an aesthetic motivation, but as Voyce notes, they are also inherently political because of the provocations they pose to actual intellectual property policies. In other words, making appropriative art – whether in a conscious or unconscious manner – has, today, become a politically charged activity that challenges intellectual property legislations. For this reason, Voyce understands open source poetic practices as giving historical avant-garde principles a “renewed purpose.” He follows Renate Poggioli’s definition of the avant-garde – a movement defined “against something or someone” – and correlates it to the politics of open source poetics. Ultimately, Voyce urges us to consider the community-based nature of “agonistic” encounters between the early twentieth-century avant-garde and modern culture as the key to perpetuating an open source poetics in contemporary culture.

Voyce and Murray both mention Siva Vaidhyanathan’s Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity (2001) as another example of a study in which copyright is considered in relation to its history – but this time by a cultural historian and media scholar. However, as Murray notes, Vaidyanathan’s central argument – like

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709 Voyce, 416.
710 Ibid, 418.
711 Ibid, 420.
712 Ibid, 427.
713 Renate Poggioli as quoted in Voyce, 427.
714 Voyce, 427-428.
Voyce’s – is actually “very much with the present and future.”\textsuperscript{715} Like Voyce, Vaidyanathan maintains the popularly held belief that American “Copyright was created as a policy that balanced the interests of authors, publishers, and readers” and that it was “not intended to be a restrictive property right.”\textsuperscript{716} This allows him to describe the first American copyright laws as though they were based on a \emph{balanced} ideal of “American habits of political thought”.\textsuperscript{717} For him, it was the introduction of more European-style protections for intellectual property (advocated for by authors such as Mark Twain at the beginning of the twentieth century) that led to the development of “statutes, treaties, and copyright cases” that “seemed to favor the interests of established authors and producers over those of readers, researchers, and future creators.”\textsuperscript{718}

Indeed, Vaidyanathan uses Mark Twain’s outspoken emphasis on the importance of property rights over the rights of the public domain as a “parallel” to the “disturbing trends” in American copyright policy that have developed over the course of the past century.\textsuperscript{719} Whether the original forms of eighteenth century copyright legislations were \emph{intended} by some of its first proponents to encourage innovation, and while nineteenth century legislation may have attempted to balance proprietary interests (John Locke, Edgar Allen Poe, Thomas Jefferson, Mark Twain, etc.), McGill’s book demonstrates that it has largely failed in that objective – both historically and in the present day. Even though a complete and demythologized sense of the original purpose of copyright as well as the ramifications of the recent acceleration in its legislation are as of now still being debated, a growing number of artists, critics, and academics – including all of those I

\textsuperscript{715} Murray, 724.
\textsuperscript{717} Ibid, 20-21.
\textsuperscript{718} Ibid, 22.
\textsuperscript{719} Ibid, 80.
If we can leave aside both Voyce and Vaidyanathan’s overly optimistic historical premise, what they are ultimately calling for is a re-examination and re-application of what they imagine to be earlier (eighteenth and nineteenth century), less restrictive American copyright regulations. Vaidyanathan, in particular, uses his historical point-of-view as a means of arguing for “thin” copyright reforms in the future.\textsuperscript{721} By this he means reforms that would result in legislation “just strong enough to encourage and reward aspiring artists, writers, musicians, and entrepreneurs, yet porous enough to allow full and rich democratic speech and the free flow of information.”\textsuperscript{722} In other words, reforms more in line with “American culture, with its African American and American oral traditions and anti-authoritarian predispositions”.\textsuperscript{723} As Murray alludes, Vaidyanathan’s project is flawed in a number of ways, but it remains worth mentioning in this dissertation because it exemplifies a political position towards copyright legislation reform that is held by an overwhelming number of scholars engaged in contemporary communications and media-based research; that is, a position situated strongly in a politics favouring individual and micro-cosmic community-based creative rights over macro-cosmic, state-led, and corporate-influenced policy-making.

\textsuperscript{720} Lessig, 267.  
\textsuperscript{721} Ibid, 5.  
\textsuperscript{722} Ibid.  
\textsuperscript{723} Ibid.
5.1.3 Copyright Reform by Communication and Media Studies: Conglomerate Influences on Copyright Law

Many of the authors and inventors I will discuss over the following pages have proposed alternative models for conceiving of intellectual property. Granted, the majority of them tend to substantiate these models in relation to the mythologized history of copyright espoused by Voyce and Vaidhyanathan – the same history that McGill attempts to dispell. While the proposals are extremely valuable in and of themselves, I would suggest distancing these models from their historical justifications. Instead, it may be wiser to encourage a reading of history, such as McGill’s, as evidence that the complexity of politics, economy, culture, property, and creation is beyond the capabilities of current copyright controls, which has served as the motivation for many of these models.

The majority of communication and media studies commentary on the topic of copyright currently tends to argue for intensive counter-reforms that would loosen strictures on the potential for creative producers (authors, artists, musicians, designers, etc.) to appropriate existing, circulating materials. The fundamental basis for most of these proposed reforms is a critical, even repugnant, attitude towards copyright monopolies controlled by large-scale corporate conglomerates (Disney, Sony, Mattel, Walmart, the ‘Big Three’ music labels etc.) whose interests lie in their own profit mongering more than in creation and ideas for the sake of advancing society as a whole.

Vito Campanelli, for instance, argues: “A major reason for the inadequacy of present legislation is the fact that copyright was instantiated in an age in which digital media did not
exist.” This argument holds that “(almost) only commercial publishers” held the finite ability to publish material prior to the internet and that today’s growing number of amateur desktop publishers have “profoundly altered” the nature of publishing to the point where current copyright legislation can no longer regulate all forms of publication the way it once did. However, this view only accounts for a narrow definition of ‘publishing’ in the very ‘professional’, commercial, and incorporated sense. It does not account for the long history of pre-digital amateur publishing venues such as the independent press, zines, bootlegs and mix-tapes, artist books, exhibitions, performances and happenings, artist-run-centres, etc. Campanelli’s examples, which include pharmaceutical companies, EMI Music, and Microsoft indicate a particular type of large-scale, multinational, commercially successful corporate interest that, indeed, it is difficult to have much sympathy for in terms of copyrights as their agendas generally assume the nature of protections for economic profit interests.

However, if current copyright law is inadequate for the protection and regulation of amateur digital publishing because of the way that the legal system, in general, tends to favour deep-pocketed corporate commercial sellers over the free expressions of smaller-budget creative producers, then it has also always been inadequate in accounting for amateur publishing for precisely the same reasons. That is, copyright has never really protected creative producers, but rather the commercial interests of ‘sellers’ of creative materials – a point which Campanelli submits to in an endnote. Like McGill and Murray, I would deem an historical reading of booksellers influence on the first developments of copyright laws more important than an endnote. It is necessary that the actual history of copyright be placed at the forefront of the

725 Ibid, 214.
discourse if we are to move beyond the commonly circulated myth that copyright has always had creative producers at its heart – especially since this myth is so often thrown up by *sellers* in defence of their own litigations against competing creative producers.

That said, writers such as Campanelli are correct in their criticisms of copyright’s favouring of *sellers* when it comes to monetary earnings. This particular assumption has been backed up by empirical studies such as those found in economist, Ruth Towse’s *Creativity, Incentive, and Reward: An Economic Analysis of Copyright and Culture in the Information Age* (2001). Towse’s research pursues the question of whether or not copyright truly functions to provide economic “incentives and rewards” for creative production. In one particular case study, Towse examined performers copyright earnings (from royalties) in the music industry and analyzed them in relation to the earnings of their publishers based on data collected in the United Kingdom, Denmark, and Sweden. Towse summarizes her findings as such:

> …despite high aggregate earnings from copyright in the music industry, the vast majority of musicians earn relatively little from specific copyright and performers’ rights. The large sums of royalty income that copyright law enables to be collected goes mainly to the publishers (music publishers and record companies) and to a small minority of high earning performers and writers. These are persons who can defend their own interests in the market place by virtue of their bargaining power and ability to hire advisers (managers, lawyers and accountants) to control their own affairs by contractual arrangements.⁷²⁶

Towse cautions it does not necessarily follow that copyright presents no benefits to creators. She notes: “Property rights must clearly be defined and enforceable for markets to work” since they underlie the current economic logic for “transactions in the cultural

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industries”. She also notes that the internet has afforded a stronger possibility for creators to publish/sell their own work. In such instances, authors retain all incomes related to copyright earnings without splitting them with an intermediary publisher, but also pays all the costs associated with the publication (including marketing and distribution), as well as single-handedly having to “bear all risk” in the market. In cases of independent publishing, it would appear that copyright might “increase earnings through statutory means” for these individual creators. But Towse points out that copyright law has also “assisted” in the globalization of a variety of cultural industries worldwide (creative as well as technological), which has encouraged corporate conglomeration. Thus, in today’s conditions: “copyright law has, intentionally, enabled musicians to earn a royalty from recording, but in doing it has unintentionally created economic conditions which keep the amount they can obtain from it low by fostering the growth of firms and thereby reducing performers’ bargaining power.”

Today, most communications and media scholars seem to agree with Towse that the arguments to strengthen and extend copyright law are coming from conglomerates who are “adopting the rhetoric of upholding the law by opposing theft and illegal behaviour” under the false pretense of protecting the creators they represent. This argument is particularly potent in the realm of popular music, which is rife with critical commentary of ‘the Big Three’ conglomerate music enterprises: Universal Music Group, Sony Music Entertainment, and Warner Music Group. This is actually a remarkable step forward considering how less than fifteen years

727 Ibid, 126-127.
728 Ibid, 118-120.
729 Ibid, 162.
730 Ibid, 163.
731 Ibid.
732 Ibid.
ago, issues about technology’s influence on musical ‘authenticity’ were still the most widely debated in the field. The 2001 litigation brought against Napster by a group of American record labels (A&M vs. Napster), together with the rise in popularity of digital mash-up (re)recordings spurned by DJ Danger Mouse’s *The Grey Album*, caused a large number of academics, artists, and consumers to start advocating for the legitimacy of appropriative creative practices, and the importance of user freedoms.

For instance, in the first chapter of the second edition of their introductory survey text, *Music and Copyright*, Simon Frith and Lee Marshall describe how, as early as only four decades ago, the ‘music industry’ had been understood as a common business venture – manufacturing and distributing musical commodities for sale to consumers. But by the 1980s, the same industry had gained a reputation for “‘exploiting’ musical properties as baskets of rights.” They argue that copyright is “more important than any other concept in making sense of the variety of social practices that make up ‘the music industry’” because it “provides the framework for every business decision in the industry.” The very nature of the music industry’s primary purpose of publishing, producing, and managing rights means that lawyers are employed in its everyday affairs, and “the courts are routinely involved in adjudicating music industry disputes (rather

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735 Ibid.
more so than in other businesses). For Frith and Marshall, the “ceaseless lobbying” for more stringent copyright changes engaged in by music companies is clearly reflected in today’s laws – an alarming revelation, echoed by many on the copy-left who are concerned both with maintaining creator freedoms, and with preserving the dignity of the system of law itself.

More specifically, music scholars Nicholas Cook, Joanna Demers, Peter Jenner, and Peter Tschmuck have reflected on the fact that historical and contemporary developments in copyright law lobbied for by conglomerates were responses to concurrent inventions in technology. For instance, Peter Jenner describes how conglomerates have used copyright as a way to “extract money” and to stall the expansion of potential competing business models created by new technologies. Nicholas Cook concurs, and he adds that although the mythology surrounding copyright holds that its original purpose “was to protect the interests of creators…its more direct purpose was to protect the investment made by publishers, who need to rely on a period of sales in order to recoup the initial expenses” of mechanical and technological processes in book and music production – such as of typesetting, engraving, musical recording, and distribution.

For instance, Cook recounts how, in 2005, music industry conglomerates united under the moniker, British Phonographic Institute (BPI), argued that a ninety-five year copyright term would be a reasonable extension in order to allow creators to recover their costs. However, as the Gowers Review of Intellectual Property (an independent review established by the British Treasury in 2006) – to whom the BPI argument was addressed – pointed out, the most up-to-date

737 Ibid, 14.
740 British Phonographic Institute as summarized in Cook, 609.
economic evidence actually indicates “the optimal length of copyright is at most seven years”. Nevertheless, seven years later, a European Union directive has increased copyright terms from fifty years after release to seventy years. In the US, copyright terms are now the life of the author plus seventy years, and/or ninety-five years from publication for works published 1964–1977; twenty-eight (if copyright not renewed), or ninety-five years from publication for works published 1923–1963. In Canada, copyright terms currently stand at fifty years plus the life of the author. Again, the Gowers Report figures indicate that after fifty years, most performers’ are unlikely to benefit financially from copyright terms. However, for record companies, it means an added fifty years to their investment, which in Cook’s view, equals a “windfall”.

Considering that the Gowers Report indicated the business cycle for albums ranges from only a few months for pop singles, to the seven year maximum for Classical records, it is unlikely that BPI’s motivations for seeking extended copyright terms are strictly economic. Cook explains the conglomerate motivation for seeking extended copyright terms are also based on their stated desire to protect the moral rights of creators. The moral rights protected include “derogatory treatment of the work which amounts to a distortion or mutilation or is otherwise prejudicial to the honour or reputation of the author”. For instance, in Snow v. Eaton Centre (Canada, 1982), visual artist, Michael Snow successfully claimed that his professional reputation had been sullied when the Eaton Centre in Toronto adorned the 60-piece permanent sculpture of flying Canada geese, which it had commissioned from Snow, with red Christmas ribbons.

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742 This directive is yet to be ratified by the UK Parliament.
743 Cook, 609.
745 The UK Intellectual Property Office as quoted in Cook, 612.
746 As recounted in Murray and Trosow, 65.
Snow argued that the ribbons damaged the integrity of his otherwise naturalistic installation and, although the Eaton Centre held all the economic copyright to the piece, Snow’s moral right trumped the Eaton Centre’s ability to infringe on what the court viewed as Snow’s creative honour.

Interestingly, moral rights can only be held by creators and their heirs and cannot be claimed by sellers or corporations in contract with the author’s work. Furthermore, American copyright law does not recognize moral rights – with a few exceptions for visual artists under the Visual Artists Rights Act (1990). Nevertheless, Cook notes that international conglomerates (including American established enterprises) now regularly conflate economic rights with securing moral rights. A number of conglomerates now take aggressive legal action against creators who appropriate aspects of their products in a way that the company deems too critical or contrary to its brand image. For example, the Disney Corporation has become notorious for ruthless legal action against any unlicensed appropriations of their property. In 1992, Disney refused to allow visual artist Dennis Oppenheim to display or exhibit his sculpture, *Virus* (1988) – composed of thirty-four fiberglass casts of Mickey Mouse and Donald Duck speared and skewered with bronze rods, resembling a large-scale children’s mobile or jungle-gym. *Virus* was explained as a criticism of Disney’s commercial monopoly over childhood, and was reportedly intended to “contrast an ominous disease with childhood innocence”.

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747 The Visual Artists Rights Act, sect. 106A of the U.S. Copyright Act, allows a visual artist the right to claim authorship, to prevent the use of their name on any work they did not create, or which has been distorted in a modified in such a way as it sullies the creator’s reputation, and the right to prevent distortion or modification in a way that sullies the creator’s reputation. From: Robert J. Sherman, “The Visual Artists Rights Act of 1990: American Artists Burned Again”, 17 Cardozo Law Review 373 (December 1995).

748 Cook, 612.

sculpture so threatening it refused to even negotiate a licensing agreement to Oppenheim. This, despite the historical fact that Disney’s first version of Mickey Mouse on film was appropriated by the company from Buster Keaton’s title character in his 1928 Steamboat Bill, Jr. silent film.  

On the other hand, many commentators have noted that Disney has sold licenses to artists such as Keith Haring, Roy Lichtenstein, and Andy Warhol. The professional reputation and financial comfort of these artists allowed them to purchase licenses from Disney. In Brand Name Bullies: The Quest to Own and Control Culture (2005), David Bollier recounts how one of Warhol’s early image appropriations ended up in a lawsuit that fundamentally altered the way Warhol approached his art-making. In 1964, Warhol presented his series of Flowers paintings at an exhibition with the Leo Castelli gallery. Different from Warhol’s previous work, which was based on mass media and commercial images, the Flowers series appropriated and manipulated photographs of hibiscus flowers by Patricia Caulfield published in an issue of Modern Photography magazine in the same year. Caulfield filed a suit that was settled out-of-court for a sum of $6000 plus royalties. As Warhol’s associate Ron Feldman reflected, the lawsuit “shook him up. He always assumed that he was able to just take images and transform them into

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752 David Bollier, *Brand Name Bullies: The Quest to Own and Control Culture* (Hoboken, New Jersey: John Wiley & Sons, Inc., 2005), 49.


754 Bollier, 49.
art because he’s an artist and could get away with that.” After that, Warhol “would discuss the artistic, legal, and economic ramifications” of all his source imagery with his legal, business, and gallery colleagues before embarking on any appropriations. The task of obtaining licenses and rights for his work became a “time-consuming and difficult” task for Warhol’s team (and they were not always successful).

Bollier describes Warhol’s negotiations with the Disney Company for use of their trademarked Mickey Mouse image as Warhol’s “biggest coup”. After a series of terms were negotiated, including a caveat preventing Warhol from producing a “sexual or denigrating version of Mickey”, Disney recognized that a ‘Warhol Mickey’ would assert their “cultural preeminence while giving Mickey a hip, stylized dimension.” They agreed to give up fifty percent of their interest in Mickey Mouse in order to share the rights to Warhol’s Mickeys. Nevertheless, the law still appears to prevent the reproduction of images of Warhol’s Mickeys by third-party owners such as the Tate Collection (UK), whose 1982 screenprint of Warhol’s Mickey Mouse is not displayed on their website because, “copyright restrictions prevent us from showing this artwork here.”

It is not only conglomerates that are abusing copyright law. Smaller corporations have also begun to follow the unfortunate lead taken by companies such as Disney in threatening and pursuing legal action against creators who appropriate from them. In April 2013, luxury

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755 Ron Feldman as quoted in Bollier, 49.
756 Ibid.
757 See Bollier’s description of Warhol’s failed attempt to obtain the rights to use images of Quaker Oats’ Aunt Jemima, or Coca-Cola’s Santa Claus in Bollier, 50-52.
758 Ibid, 52.
759 Ibid, 53.
760 Ibid.
streetwear and skateboard brand, Supreme, filed a 10-million dollar lawsuit against smaller, rival company, Married to the Mob (MTTM) for appropriating its trademarked logo into a *Supreme Bitch* design for t-shirts and other apparel [Figs 37-38]. MTTM has been manufacturing and distributing the *Supreme Bitch* design as a t-shirt since 2004. As MTTM founder/CEO, and *Supreme Bitch* designer, Leah McSweeney explained on the MTTM website, the design’s conception “has always been to make fun of the misogynistic vibe of Supreme and the boys who wear it.”

Ironically, Supreme’s owner James Jebbia originally approved MTTM’s use of the *Supreme Bitch* design and even carried the t-shirt in two of his own retail outlets. As *New York Magazine* reported, even if it was intended as a parodic gesture, *Supreme Bitch* proved a mutually beneficial criticism for both MTTM and Supreme as it was quickly circulated widely by other major retailers such as Urban Outfitters, and visibly donned by celebrities such as pop singer, Rihanna: “As Supreme’s fortunes multiplied, so did Supreme Bitch.” But two months after MTTM filed a trademark application for *Supreme Bitch* in 2013, Supreme launched their lawsuit. Although Supreme maintains that their lawsuit is motivated by protections for their economic interests, McSweeney argues that Supreme is, in fact, attempting to “silence” her ability to expand her satire of its products. In a second ironic twist, the Supreme logo itself – printed using the Futura Bold Italic font in white over a rectangular red text bar is, itself, a blatant appropriation of visual artist Barbara Kruger’s ongoing series of pseudo-advertisements (in the

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764 McSweeney.
form of billboards, street signs, shopping bags, and other ‘products’) first begun in 1979 [Fig. 39]. When asked for a statement on the case by online Complex magazine, Kruger responded with heavy criticism for Supreme in an email in which she wrote: “What a ridiculous clusterfuck of totally uncool jokers. I make my work about this kind of sadly foolish farce. I’m waiting for all of them to sue me for copyright infringement.”765

As Kembrew McLeod and Rudolf Kuenzli have succinctly pointed out, conglomerates are “often more than happy to let artists and consumers promote their properties, but only if they do not cross the line from free promotion into substantial criticism.”766 Morality itself is not the basis of a company’s motivation in litigating against criticism. Rather, criticism can become dangerous to a company’s economic viability in the form of lost profits from a market of consumers who acknowledge criticisms via company product/service boycotts, etc. Cook warns that the conflation of moral and economic rights by conglomerates, and the subsequent confusion of the two all the way up to the level of government-sponsored organizations such as the IPO, has resulted in a “harmonized” understanding of profits and morals.767

5.1.4 The Ethics of Fair Use and Fair Dealing: Exercising the Right to Collaborate

One key limitation to copyright intended to protect creators from a monopoly over speech is the doctrine of ‘fair use’ (US), or ‘fair dealing’ (Canada) – which, in Canada, covers eight

766 McLeod and Kuenzli, 14-15.
767 Cook, 612.
explicit exceptions: research, private study, news reporting, criticism, review, education, satire, and parody.  

However, many media and communications scholars, copyright historians, and lawyers have shown that the doctrine is inhibited by the expensive and risky nature of defending oneself against deep-pocketed corporations. Furthermore, Murray and Trosow demonstrate that fair use in the United States has “been constrained by a markedly conservative judicial attitude that places a heavy emphasis on the economic interests of corporate owners at the expense of other fair use factors” by citing a number of recent cases whose outcomes reveal just such an economic bias.

Lessig has been well-quoted as arguing that fair use is actually useless: “Fair use isn’t freedom, it only means you have the right to hire a lawyer to fight for your right to create – *fuck* fair use. We want *free* use.”

Certainly the fair use provision was never intended as a “free pass” for claiming open and uninhibited appropriation but rather to, as McLeod and Kuenzli explain, “make sure copyright and the First Amendment can peacefully coexist.” In most cases, however, it has proven considerably less costly and less risky for creators to simply settle on a private agreement out of court, or to cease and desist altogether.

Campenelli describes this current state of copyright and creative appropriation as “relativist.” In response, he proposes an interesting ethical model (“remix ethics”) for considering appropriation in a way that speaks to the disjunction between creator and conglomerate interests. He proceeds from the question of whether or not it is “appropriate to

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768 The latter three provisions (education, satire, and parody) were added to the previous five with Bill C-11: An Act to amend the Copyright Act, by Royal Assent on June 29, 2012 by the Canadian Parliament. These provisions have yet to be enacted or challenged in court.
769 See: Campanelli, Geist, Lessig, McLeod and Kuenzli, Murray and Trosow, Trowse, and Vaidhynaathan, among others.
770 Murray and Trosow, 76.
771 Lawrence Lessig as quoted in McLeod and Kuenzli, 16.
772 McLeod and Kuenzli, 16.
773 Campanelli, 216.
conceive of a limit, beyond which remix becomes less legitimate?” For Campanelli, the question is, yet again, “intrinsically connected” to our conception of the ‘author’ as a tangible, unique subject. But if we were to understand ‘authorship’ as a network of creators who “activate a context that requires the cooperation of others” then we can begin to establish a more “commonsense” approach to the morality of creation rights – one that continues to put deliberate distance between itself and current copyrights. He asks us to imagine a “subjective ethics”, whose relativism “can be qualified by the ‘recognition of peers’”. This model would be “modulated by the judgment of those people who share values, references, aesthetic canons or other qualities”. Based on a system of crediting sources in an “informal” way, a subjective remix ethics resembles a community-based, led, and regulated moral vision that might allow for a larger variety of practices, politics, and subjectivities than universal copyrights. Campanelli suggests that this community (which is, essentially, the remix community) could “live peacefully” beside communities that adhere to a different set of values (traditional modernist communities, or conglomerate communities).

However, Campanelli’s argument is flawed in at least three ways. First of all, he bases his model on the contention that “the primary need of anyone who gives life to a creative act is the recognition of their own community”. This is a modernist and Romantic conception in itself. It describes an imaginary realm of creation, untouched by commercial motivation or interest – not to mention completely disregards non-conglomerate, professional creators and

774 Ibid, 212.
775 Ibid.
776 Ibid, 213.
777 Ibid, 216.
778 Ibid.
779 Ibid.
artists. Furthermore, the notion that societies who adhere to oppositionary ethics can “live peacefully” beside one another is both naively utopian, and historically apocryphal in the extreme. Particularly if those societies adhere to the same economic structure, and rely on one another for resource exchange. Finally, Campanelli’s understanding of “behavioral rules” is not really any different than what he describes as the “norms enforced through sanctions,” which compose current copyright law.

Canadian scholar Meera Nair offers a different archetype for interpreting an ethics of creativity and copyright. Her model considers how ‘periphery’ communities, such as the remix community spoken for by Campanelli, are actually both fundamental to, and already engaged in, the ongoing construction of law. Nair’s “Copyright and Ethics – An Innisian Exploration” (2009) applies Harold Innis’s ideas concerning individual liberty to copyright law in an attempt to “soothe digitally-invoked angst” regarding producer and consumer rights. Innisian ethics are predicated on a conscious conception of civility contingent on a respect for cultural diversity. For him, creativity itself was dependent on this mutual respect and even the “means by which we mediate between our differing traditions” offers opportunity for the kinds of collaboration Innis felt would maintain a creative and libertarian society.

In Innisian sentiment, individuals stand “ahead of the Empire”, meaning, the rights of individuals must come before the rights of the public domain. But Nair observes a rapidly growing “belief that copyright is a grant of absolute control”, and cautions that if this

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780 Meera Nair, like Campanelli, hails from a Communications background but her perspectives often sympathize with some of the more practical arguments put forth by legal scholars (which I will address in the next section of this chapter).
782 Ibid, 30.
783 Ibid, 35.
mythologized understanding is allowed to continue, copyright will become “an empire unto itself.” For Nair, any call to abolish fair dealing in Canada is a foolish one because as a “site of intersection between civil and common law protection” it remains one of the few keys to protecting individual creative effort. She argues, consistent with Innis, that individuals (and hence society) only reach full capacity as community members if they are offered the ability to fully exploit their creative expression.

In Nair’s view, fair dealing represents “the ethical duty shared by all creators, past, present, and future” to exercise the right to collaboration and borrowing. She acknowledges, as Innis did, that “complete use of the law is determined by the relative strengths of interested parties”. Indeed, her argument is more about shifting our understanding of moral rights on a wide cultural scale, than it is with what often appears to be the more urgent practicalities of fighting conglomerate copyright monopoly. However, she makes an extremely interesting proposition about how we might begin to shift the emphasis on the author to an emphasis on the creative process. Nair suggests that creators themselves must begin to engage “a measure of humility” that is more acknowledging of the fact that “creativity is founded upon transformation.” In Nair’s reading, fair dealing must to be allowed to thrive. However, it must be allowed to thrive in such a way that it “reminds each creator of the debt they carry; a debt that can only be paid forward. Fair dealing is in fact, a fair duty.”

What may, at first, appear to be a conservative defense for a failing doctrine is, in fact, a radical call to expand the provisions of fair dealing in Canada. For instance, in the 2009

784 Ibid.
785 Ibid.
786 Ibid.
787 Ibid, 33.
788 Ibid, 35.
consultations between the Association of Universities and Colleges of Canada (AUCC) and the House of Commons on Bill C-11, the Copyright Modernization Act, Nair broke rank with the AUCC, as well as many of her own student union colleagues, in their request for an amendment to provide special exception to educational institutions (along with their registered students, staff, and faculty) to copy publicly available works on the internet.\textsuperscript{789} Nair countered this amendment on the grounds that copying material from the internet is already a legitimate activity through fair dealing. Adding a special educational exemption would put the right of non-educational users to copy from the internet at risk because “To request amendment to the law to engage in legitimate activity concedes infringement where none has happened.”\textsuperscript{790} In Nair’s view, educational institutions and the organizations that represent them (including the AUCC) have an ethical obligation to uphold existing fair dealing/fair use provisions, rather than contribute to their erosion by creating exceptions.\textsuperscript{791} Furthermore, she laments that the education institutions represented by AUCC missed an opportunity to begin to teach students and instructors about their ‘fair duty’ in appropriation by sheltering themselves behind the exemption.\textsuperscript{792}

5.1.5 Legal Studies and Practice: Creative Commons and Proprietary Ideologies

It is important to note once more that Murray, Rose, McGill, and Saint-Amour are first and foremost historical literary critics and that Campanelli, Cook, McLeod and Kuenzli, and Nair

\textsuperscript{790} Ibid.
\textsuperscript{791} Ibid. Unfortunately, Canadian institutions may have missed their opportunity to uphold fair dealing/use as the version of Bill C-11, which was passed in June 2012, did include educational exceptions.
\textsuperscript{792} Nair, “Copyright and Ethics”, 35-36.
come from a communications and media theory background. Scholars in these diverse, yet relatively politically united fields, have recently been inclined to argue for the rights of creators to borrow, reuse, and appropriate existing materials in the name of furthering creative evolution. But what of legal experts themselves?

Currently, there largely appears to be consensus between literary, communications and media, and legal studies for allowing full access to individual creative freedoms and a common understanding between all these fields that this is simply a natural extension of the appropriative nature of the creative process itself. The recent arguments from some of the most cited legal scholars specializing in the practice of North American copyright law – Michael Geist (in Canada), and Lawrence Lessig (in America) – have certainly adopted some of the critical concerns of literary and communications and media theory. For example, both Geist and Lessig have repeatedly considered the subject positions and subsequent varying interests of producers versus consumers, whilst at the same time, acknowledging that the positions of producers and consumers are also interchangeable.

Although academic writers in the legal field have been far less likely to adopt a comprehensive historical and theoretical model of inquiry as definitively as critics from the Humanities have, both have certainly adopted a politically active critique. Most of the commentary by legal specialists contains analysis of the processes, articulations, and praxis of legal ruling and legislation itself, on a case-by-case basis.

For example, like Saint-Amour’s book, Matthew Rimmer’s *Digital Copyright and the Consumer Revolution: Hands off My iPod* (2007) takes a close reading of the *Sonny Bono Copyright Term Extension Act* 1998 (US) as well as the *Digital Millennium Copyright Act* 1998 (US) and various proposals for their reform, in order to examine the challenges posed to
constitutional policy development in light of technological development.\textsuperscript{793} He also describes the similarities, differences, and international legal implications between the United States and Australia by comparing cases such as \textit{Universal Music Australia Pty Ltd v. Sharman License Holdings Ltd (Kazaa) 2005} (Australia), and \textit{Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd. 2005} (US) – both of which involved litigation against transnational peer-to-peer file sharing networks.\textsuperscript{794}

Rimmer’s study includes further descriptions of various legal policy developments involving technological protection measures (TPMs), internet search engines (such as Google), and subscriber privacy rights, as well as the rise in alternative copyright charters such as Creative Commons. All of these allow him to explain the complex nature of real-life copyright legal “battles” as a direct result of the emergence of digital trends.\textsuperscript{795} Unlike Saint-Amour’s volume of essays, Rimmer’s book is fairly indicative of the way in which legal scholars of copyright tend not to stray too far from the material of litigation and policy itself preferring to trace the history of copyright law through exemplary cases.\textsuperscript{796} For Rimmer, these cases raised alarm amongst a variety of legal, policy, creative, and consumer groups/intellectuals, prompting the emergence of a “consumer revolution against copyright laws” aimed at protecting the freedoms of users.\textsuperscript{797} This ‘revolution’ has included a number of consumer proposals for copyright reforms including the

\begin{itemize}
  \item\textsuperscript{793} Matthew Rimmer, \textit{Digital Copyright and the Consumer Revolution: Hands off My iPod} (Northampton, MA: Edward Elgar Publishing Ltd.), 2007, p 15.
  \item\textsuperscript{794} Ibid.
  \item\textsuperscript{795} Ibid, 11.
  \item\textsuperscript{796} The authors in Saint-Amour’s \textit{Modernity and Copyright} also engage in case study analysis, but their focus is mainly on the creative materials and producers themselves as in Robert Spoo’s “Ezra Pound, Legislator: Perpetual Copyright and Unfair Competition with the Dead”, Peter Decherney’s “Gag Orders: Comedy, Chaplin, and Copyright”, Oliver Gerland’s “Modernism and the Emergence of the Right of Publicity: From \textit{Hedda Gabler} to Lucy, Lady Duff-Gordon”, Joseph R. Slaughter’s “It’s Good to Be Primitive”: African Allusion and the Modernist Fetish of Authenticity”, etc.
  \item\textsuperscript{797} Rimmer, 296.
\end{itemize}
Consumer Electronics Association’s Declaration of Innovation Independence, William Fisher III’s artist distribution compensation tax, Neil Weinstock Netanel’s non-commercial use levy on file-sharing, and Lawrence Lessig’s Creative Commons.798

Rimmer traces the origins of the Creative Commons to unsuccessful challenges to the constitutionality of the *Sonny Bono Act* by individuals like electronic publisher, Eric Eldred in *Eldred v. Ashcroft*, 537 US 186 (2003). During this case, Eldred, who was represented by Lawrence Lessig, argued the copyright extensions outlined by the *Sonny Bono Act* were a violation of an author’s abilities to promote science and the arts because it allowed Congress to bestow unlimited periods of copyright protection, that the *Sonny Bono Act* did not adequately provide balance between freedom of speech and copyright interests as outlined by the First Amendment, and that the *Sonny Bono Act* violates the doctrine of public trust – which requires a public benefit for the transfer of public property to private enterprises.799 Although Eldred’s case was unsuccessful, with the Supreme Court ruling upholding the *Sonny Bono Act* as constitutional, the process instigated a plan to build a Creative Commons.

Lessig himself recounts how “Early on, [Eldred] asked me whether there was a way that we could translate the energy that was building around his case into something positive. Not an attack on copyright, but a way of using copyright to support, in effect, the public domain.”800 To this end, the Creative Commons (CC) established itself as a non-profit corporation (now headquartered in San Francisco, with seventy-five international affiliate commons, including Creative Commons Canada), which aims to “build a layer of reasonable copyright on top of the

798 Ibid, 301.
extremes that now reign.” This is achieved through three “simple” expressions, which do not require the expertise of a lawyer to use: 1) a set of free legal licenses that creators can attach to their works with a 2) human-readable description, and a 3) machine-readable tag to allow computers to identify sharable content. There are six types of CC licences that a creator might choose from. The first – Attribution – allows users to appropriate and alter the material as long as they credit the creator from whom they are appropriating. Attribution No-Derivatives – allows for material to be distributed whole, without alteration, as long as credit is given to the creator. Attribution-NonCommercial-ShareAlike – allows users to appropriate and alter material as long as they credit the creator and license the altered material under the same terms. Attribution-Share-Alike is similar to the latter license, but this license also permits appropriation for commercial purposes. Attribution-NonCommercial allows for appropriation and alteration as long as the material is attributed to the creator, but the appropriation must remain non-commercial. However, the user does not have to license their derivative work on the same terms. Finally, the most restrictive license is the Attribution-NonCommercial-NoDerivatives, which only permits attributed distribution of a work, not for its appropriation.

Every CC license includes one identical clause, which can be read as a legal and theoretical endeavor to preserve the statute of fair use: “Nothing in this license is intended to reduce, limit, or restrict any rights arising from fair use, first sale or other limitations on the exclusive rights of the copyright owner under copyright law or other applicable laws.” In fact, this clause is indicative of the CC’s aim to “enable freedoms that go beyond traditional fair use”

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802 Ibid, 282-283.
804 Creative Commons as quoted in Rimmer, 262.
by emphasizing the significance of a shared, or “common” public domain above proprietary interests. Rimmer notes that the CC also draws on the share-based systems established by ‘open content’ development, as well as ‘intellectual property conservancies’ – which operate as a “public sanctuary” for important intellectual and creative materials. In so doing, the CC can also be understood as an explicit political gesture aimed, not only at convincing legislators to construct a free public domain, but also at building “a movement of consumers and producers of content…who help build the public domain and, by their work, demonstrate the importance of the public domain to other creativity.”

The goals of the CC seem to be in line with Nair’s call for a more ethically obligated and informed producer/consumer relationship focused on fair use/duty. Indeed, use of the content on her own Fair Duty website is permitted under a CC Attribution-NonCommercial Canada license. Lessig argues that material marked by the CC logo permits a set of freedoms that go beyond the freedoms protected by fair use/dealing statutes. Because the CC offers creators a “range of freedoms beyond the default of copyright law” in such a way that builds “a layer of content, governed by a layer of reasonable copyright law, that others can build upon”, the content and material itself constitutes the rebuilding of a public domain. In other words, the CC is expanding rights in the opposite direction to which conglomerates have been pushing, which has been to restrict fair use/dealing by over-protective seller rights.

The CC is not an anti-copyright alternative because it purports to operate within the framework of a copyright ideology that balances creator and user rights. Nor does CC actually do

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805 Lessig, Free Culture, 283 (italicized emphasis added)
806 Rimmer, 262.
807 Lessig, Free Culture, 283-284.
808 Ibid, 283.
809 Ibid.
any lobbying for changes to copyright law (although, as critics have noted, many of its board members do publicly advocate for reform in other capacities). Lessig has even denied that the CC is about changing the law at all. Rather, he repeatedly describes the actions of CC as being about finding a way to “make existing copyright work more efficiently for people who want to waive some of their rights while retaining others.” Nevertheless, CC does aspire to retaliate against the increasingly confining legal terms dominating society today. But even positioned as it is as a “voice of reason and moderation in an otherwise polarized political debate”, it has its critics from both the copyright and the copy-left sides of the debate.

Perhaps it is somewhat obvious that the CC would garner criticism from copyright owners and collecting societies who worry that it “promotes a weakening of copyright in policy and in law, especially by making the claim that copyright restricts the flow of ideas.” As Rimmer relates, former Microsoft chairman Bill Gates once even referred to CC as “modern-day sort of communists” – a label that Lessig refuted in favour of ‘commonists’. Despite Lessig’s conviction, Gates’s accusation was echoed by Stephen Manes in Forbes magazine, who insisted that Lessig’s interests are not really on the side of “true” creators: “His assault on copyright largely helps a ragtag bunch of gleaners who claim that copying is “creativity” because they can’t create anything without directly reusing copyrighted material”.

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810 Robert Levine, Free Ride: How Digital Parasites are Destroying the Culture of Business, and how the Culture Business can Fight Back (New York: Doubleday), 2011, 104.
811 Lessig as quoted in Levine, 104.
812 Rimmer, 261.
813 Ibid.
814 Michael Fraser (Chief Executive Officer of the copyright Agency Limited in Australia) as quoted in Rimmer, 264.
815 Bill Gates and Lawrence Lessig as quoted in Rimmer, 265.
For Manes, the CC creates economic instability by increasing the risk of financial investment in creative works. According to this line of reasoning, exclusive copyrights to material means that producers and sellers can invest “tens of millions of dollars in the certainty that a competing version won’t jeopardize that investment.” Manes adds that copyright also “puts the creator in the driver’s seat” by ensuring that they retain the ability to “decide how their work can be used or adapted”. Manes argued that “Lessig’s proposals might well help the big media he claims to detest by offering them the chance to poach material they once would have had to pay for.” On the other hand, some critics have argued that CC’s licenses do not fully protect creators precisely because they are too much in the interests of CC’s collaborators – file-sharing, image distribution, and software developers such as Google, Filkr, and even Microsoft. Despite Gates’s own initial criticisms, in 2006, together with CC, Microsoft released a license-selection software add-in for their Office suite, which once installed, allows users to easily insert their choice of CC license to their material using a simple drop-down menu tool.

To many on the copyleft, the collaboration between CC and Microsoft represented a threat to the free production, distribution, and appropriation of material. This was largely because the two corporations were viewed as having competing ideologies. Where CC’s ideology embodies freedoms through, for instance, the promotion of open-source tools (such as Linux software), Microsoft’s own software has been historically closed, hence embodying a more conglomerate-typical ideology of proprietorship. In the words of Open Democracy editor, Becky

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817 Ibid.
818 Ibid.
820 Rimmer, 269.
821 Ibid.
Hogge, “Every movement needs an enemy, and for the free software movement that enemy is Microsoft.” For Hogge, the collaboration “chilled” much of the copyleft’s enthusiasm for a Creative Commons “movement”, but acknowledges that it was this very enthusiasm that engaged Microsoft’s interest in the first place. She also astutely notes that the very nature of the free tools provided by CC means that it cannot “pick and choose who uses its licences along ideological grounds…As the popularity of the licences grows, they are sure to be embraced by organizations [sic.] that are less than attractive to the early adopters.”

That said, others on the copyleft (including lawyers and academics) have criticized CC for being unable to deliver on its theoretical and political principles since the beginning. Some have argued that the CC is fundamentally flawed in its reliance on existing copyright principles, worrying that this will only lead to a strengthening of proprietary values in society. In “What Contracts Can’t Do: The Limits of Private Ordering in Facilitating a Creative Commons” (2005), legal scholar, Niva Elkin-Koren found that in today’s climate of expanding copyright terms, a proprietary rights-based commons such as the CC actually “reinforces the property discourse as a conceptual framework and a regulatory scheme for creative works.” She argues that “simply making copyright user-friendly, will not necessarily promote access to creative works” and can, instead, reinforce culturally imposed proprietary barriers to material. Before CC, licensing was a complicated and expensive process and most individuals who posted work online or otherwise

823 Ibid.
824 Ibid.
825 Niva Elkin-Koren as summarized in Rimmer.
827 Ibid.
freely distributed their creative material “never bothered” to engage in it, nor did they expect to obtain any financial benefit from sharing. But CC has equipped individuals with the knowledge and tools to exercise their proprietary rights. In turn, this may have bolstered the idea that creative and informational works are simply commodities, and Elkin-Koren warns that:

Once we realize that everything we write, draw, or play could be licensed, we may start conceiving of our own self-expressions as commodities. Our email correspondence, a picture we took of a newsworthy event, and commentary we posted online are all subject to exclusive rights. They all may be viewed as separate, identifiable pieces which are subject to exclusion. We may think of our writings as economic assets, and view our own expression as chips to be traded, rather than ideas to be shared. Reliance on property rights may weaken the dialogic virtue of information that is a key to individuals’ participation in the creation of culture.

From this view, the conceptual basis of a property-based commons system inherently fails to “capture” the complexity of information exchange. I would agree that although CC educates and promotes the notion that all material comes from other material, and that the creative process is, ultimately, an appropriative one, it still perpetuates the idea that individuals own their appropriations.

Lessig is candid about the fact that CC has never intended to eliminate proprietary ideologies from culture (in the way that Stallman’s Free Software Foundation has). Rather, the CC is meant to act as “a buttress” between ‘free culture’ and conglomerate-controlled

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828 Ibid, 400.
829 Ibid.
830 Ibid, 399.
831 Ibid.
832 Rimmer, 266.

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restrictions. Furthermore, Lessig caveat his definition of ‘free culture’ as materials “that can be used freely at least for some important purposes.” And so, the brand of freedoms that CC promotes are freedoms that are (ironically) un-freely tied to the ability to declare that ownership. In terms of intellectual property, real freedom is not holding onto material, real freedom is giving this freedom up for unrestricted use by others. As Elkin-Koren states, “Exchanging ideas is not a transaction” – or at least, it should not be reduced to mere transaction in the name of continued creative exchange, production, and circulation.

CC licenses have always primarily been intended as an infrastructure to be used by individual creators to control the distribution and appropriation of their rights. Indeed, this provides individuals who have previously been inhibited by the complication and expense of the current copyright regime a means for continued creation. Capacitating an infrastructure that is so focused on individual creation in this way also runs the risk of reemphasizing a romantic, centralized role for the author. However, as Elkin-Koren points out, while “the CC licensing scheme is designed to promote self-interest”, it simultaneously facilitates community building by “encouraging collaboration among creators.” In this way, the CC behaves much more like a network than copyright-propre can. Elkin-Koren describes the CC as a “social movement” with a legal strategy. She understands the CC as “a form of political activism” representing itself as an iteration of the popular mind-set. As such, it has aimed to engage as broad, diverse, and international a population as possible. On the one hand, this means it is “a truly dynamic

833 Lessig as quoted in Rimmer, 266.
834 Ibid.
835 Elkin-Koren, 399.
836 Ibid, 387.
837 Ibid, 378.
838 Ibid, 388.
movement, consisting of many distinct players". On the other hand, it also means that the CC grapples with articulating the conflicting goals of a variety of scattered political, economic, and cultural communities. Elkin-Koren believes this is part of the reason that the CC movement lacks a coherent ideological vision for today’s information society, which she refers to as CC’s “ideological fuzziness”. She argues that, while this type of fuzziness often strengthens the unifying efforts of a social movement, “it could be detrimental to one with a proactive agenda” such as the CC.

Indeed, the CC has been criticized for relying too heavily on a political and economic neoliberalism that has overshadowed any radical reform. As Rimmer recounts, to critics like Benjamin Mako Hill, Alex Boswell, and David Berry and Giles Moss and even Richard Stallman (the GNU-PL founder, mentioned earlier), the CC’s licenses are too accommodating to creators seeking protections for their material. As Hill discovered, “3/4 of CC-licensed works prohibit commercial use”. This is confirmed by Boswell’s findings “that most of the creative commons content is not actually reuseable at all” – despite Lessig’s ambitions for stockpiling a free commons. For these analysts, the CC is indicative only of a “simulacrum of a commons” whose interests lean, like the status quo, too far in favour of the creator-as-seller and not accommodating enough of the consumer-as-creator. From these perspectives, the CC appears more as a symbolic alternative to copyright than as a significant copyright regime-changer.

In his article, “Culture War” (2005) lawyer and academic Dan Hunter has determined that

839 Ibid.
840 Ibid, 390.
841 Ibid.
842 Rimmer, 268-269.
843 Benjamin Mako Hill, and Alex Boswell as quoted, respectively, in Rimmer, 268.
844 Ibid.
845 Rimmer, 269.
Gates’s description of the CC as a “communist” organization, together with other characterizations of the CC movement as ‘Marxist,’ is misleading. He agrees that recent copyright expansion legislation has had the effect of producing a dynamic variety of counter-protest, and adds that the conflict between the two sides has resulted in what he terms a ‘culture war’ whose nature can be likened to that of a Marxist class struggle:

Karl Marx and Friedrich Engels's Communist Manifesto foretold the end of private property and the inevitable rise of a workers’ paradise. Though this failed as a political movement, there are extraordinary parallels between Communist ideology and the current war over the creation of cultural content. In fact, I argue that the various battles of the culture war can best be understood as elements of a Marxist class struggle...[Marx’s] philosophy reacted against the concentration of power in the hands of capital that came about as a consequence of the industrial age. Now, as the information age progresses, we see the same concentration of power through the dominant property form of our era, that is, intellectual property. The laissez-faire capitalists of the gilded age have their direct descendants in intellectual property-based industries like media, software, pharmaceuticals, and the like.  

In Hunter’s particular iteration of a culture war what is at odds is not conflicting political views (as, he notes, in the American ‘culture war’ between the right and left wings), but rather the ownership and regulation of culture itself. And in the contemporary moment, just as in Marx’s late nineteenth-century moment, the war is between “the haves and the have-nots” – which, in the current period as was the case one hundred and twenty-five years ago, are the large conglomerate capital interests and the social interests of individual creators.

However, Hunter establishes that the genuine Marxist revolution is happening in areas such as open source content creation and digital dissemination, not amidst the enthusiastic

847 Ibid, 1116.
848 Ibid.
activism of groups like the CC. Critics such as Stephen Manes, organizations like the Ayn Rand Institute, and conglomerate property owner, Paramount Pictures have “accused” Lessig and the CC of Marxist radicalism in order “to paint the intellectual property reformers as both dangerous and willfully ignorant.” But Hunter emphasizes that Lessig himself has vehemently denied such categorization, preferring instead to repeatedly state how the CC is neither a rejection of physical property, nor a challenge to capitalism itself. Since the CC movement does not reject the notion of private property, and does not involve the instigation of a civil uprising to induce the changes they are seeking, Hunter refers to it as a form of ‘Marxist-Lessigism’ – an attempt to affirm mild controls on the expansion of property in order to ensure against an uprising of the underclass. According to Hunter, and against the better judgement of conglomerates themselves, without the imposition of property limits the market risks implosion and the have-class (bourgeoisie) hazard their own have-not (proletarian) revolt against increasingly oppressive conditions. Marxist-Lessigist reforms are simply “a brake” placed on ever-expanding property allowances by “providing some social welfare balance” which, far from being revolutionarily Marxist, is simply “capitalism, but with a social conscience.”

For Hunter, the Marxist revolution is actually occurring quietly out of the reform movement spotlight in the arena of open-source development: “Unlike the copyright reform movement, the open source movement genuinely involves the transfer of the means of cultural

849 Ibid, 1105.
850 Ibid, 1117.
851 Lawrence Lessig as summarized in Hunter, 1117.
852 Hunter, 1118.
853 Ibid.
854 Ibid, 1121.
and creative production from capital to the worker.”

Hunter cites open-source computer software like Linux, the South Korean newspaper Ohmynews (which has no reporters of its own, relying completely on reader contributions), Wikipedia, the Distributed Proofreader’s Project, and the hyper-linked network of individual bloggers on the world-wide-web as examples of a social movement with revolutionary effects. These types of open-source schemes have proven that the incentive for production does not need to be economic, nor does it rely on the accumulation of property – both of which happen to be the classic arguments for intellectual property. Capital investment no longer appears to be necessary for the continued production of creative innovation. The freer, less capital motivated movement of intellectual and creative content within the open-source domain signals a “paradigm shift” in the traditionally economic approach to the distribution and production of intellectual material. Hunter contends that the revolutionary aspect of the open-source movement lies in the fact that it places “the means of creative production back in the hands of the people, not in the hands of those with capital. No longer will the creative worker be alienated from her work product by the control that capital exerts.”

The recent transparency of the relationship between creation and appropriation is revolutionizing the very concept of property itself.

What I have described as the ‘historical copyright myth’ – that is; that the fundamental and historical principle of property legislation is to protect creators – has contributed to the commonly held belief amongst interested parties from all sides of the copyright discussion, and from a variety of cultural, economic, academic, political, legal, and popular spheres, that current

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855 Ibid, 1127.
856 Ibid.
857 Ibid, 1129.
858 Ibid, 1129.
859 Ibid.
laws are “inadequate” or “outdated” and that this is categorically due to digital capabilities developed and adopted en masse within the last four decades. I would clarify that digital technology itself is not, in fact, responsible for rendering copyright laws problematic. Rather, digital technology has widened the opportunity for consumers to become producers and this has, in turn, both expanded and threatened economic opportunities both for individuals as well as corporations. Or, to put it another way, digital technology has emerged parallel to, yet faster than, that cultural redressing of the concept of ‘author’ and ‘reader’ first described in the 1960s by theorists like Barthes (“Death of the Author”, 1968) and Foucault (“What is an Author?”, 1969).

The copyright discussion needs to be reframed in such a way as the actuality of intellectual property legislation is made visible and understood for what it really is: protections for (what are now disputed) economic interests. Not for what it is not: protections for (what are now disputed) creative producers. Correctly, Campanelli points out that most of the copyleft criticism about copyright, together with alternative copyright models such as the CC, are in themselves still “intrinsically connected to the principle of authorship”. The theoretical basis of which lies in literary criticism but whose concept was first challenged by creative praxis itself – through the likes of Jorge Luis Borges, James Joyce, Dada, etc. These historical challenges, as well as those produced by the open-source movement, have thrown the Western democratic idea of property itself into question – including our inherent assumptions about its rightfulness, its connection to our individual identities, its economic significance, and our ability to fairly govern all of its dynamic trajectories.

860 For creative producers, they are problematic in being unable to protect their rights to copy and appropriate existing intellectual material. For sellers, copyright laws no longer adequately protect their monopoly over the economic benefits of intellectual property.
861 Campanelli, 212.
But what of marginalized groups, such as aboriginal communities, whose ‘authorship’ and ‘ownership’ over material has today become a necessary component of both their cultural identity as unified peoples fighting back against centuries of colonial expansion, and crucial to the continued perpetuation of their culture as a whole?

5.2 Protecting Indigenous Claims

5.2.1 Perpetuating the ‘Romantic Individual’ and the ‘Essential Other’: Liz Magor and Norval Morrisseau

In *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*, Rosemary J. Coombe advises that issues regarding property rights – particularly cultural property rights – “cannot be separated from issues of spirituality, political determination, and aboriginal title to traditional lands.” She goes on to argue that copyright and trademark legislation “fail to

862 Ibid, 232. Coombe is an interdisciplinary academic, whose research includes anthropology, law, and communications and media studies. *The Cultural Life of Intellectual Properties*, like this dissertation, is a study whose methodology brings together a number of theoretical perspectives from an array of disciplines. Coombes’ book was reviewed by Joost Smiers as recently as 2010. In this review, Smiers contends that
reflect the full dimensions of Native aspirations and impose colonial juridical categories on postcolonial struggles in a fashion that reenacts the cultural violence of colonization. Native peoples and non-Native peoples alike are more aware than ever of the need for First Nations to assert and protect their cultural knowledges against ongoing misrepresentation, exploitation, and oppression. Furthermore, it is becoming increasingly apparent that these assertions and protections must be formally recognized, and practically respected by individuals and governments internationally in order to continue on the path towards ending the patterns of violence described by Coombe. Hence, the question that I will address over the next few pages is: how might a multi-coded politics and transcultural perspective of appropriation be applied when it comes to the legal rights of a cultural group, particularly considering the depth to which property, as I will demonstrate, is entwined with identity?

Although in the West it is generally assumed that intellectual property laws are based on universal principles of authorship and ownership, they are actually only limited expressions of one logic – that of the nineteenth-century European art-culture system. As such, the language, terms, and explicit/implicit content contained therein do not always adequately articulate the perspectives, interests, and principles of other cultural systems. Coombe follows James Clifford’s exposition of the “art-culture system” as a Western classification model developed within “the context of global colonialism and imperialism as a means of categorizing arts and cultural

Coombe’s arguments are just as significant and valuable today as they were upon their initial publication in 1998. Smiers review suggests that Coombe’s work stretches beyond just anthropological or legal concerns, and that it also pertains to the interests of scholars working in a variety of disciplines. “Review Essay”, International Journal of Cultural Policy (Vol. 16, No. 1, February 2010).

863 Coombe, 232.
864 James Clifford in Coombe, 219.
goods”. All of the advantages in this system are held by those individuals and groups which adhere to a structure that is based on two primary tenets, as outlined by Clifford: the (mythical) narrative of the artist-as-genius who produces ‘authentic masterpieces’, and the perpetuation of ‘authentic artifacts’ produced by “cultures imagined as collectivities” in the service of an imagined “human creative ability that transcends the limitations of time and place to speak to us about the ‘human’ condition”. \textsuperscript{866}

Coombe points out that the two domains of the European art-culture system are “mirrored” in our legal protections mandates. Here, masterpieces are protected by intellectual property laws (such as copyright), which “were developed to protect the expressive works of authors and artists…in the service of promoting universal progress in the arts and sciences.”\textsuperscript{867} Intellectual property is seen to embody the “imprint of the author’s personality” and expresses a distinct singularity – “that which is one man’s alone.”\textsuperscript{868} On the other hand, artifacts are protected by cultural property laws, which guard “the material works (objects of artistic, archaeological, ethnological, or historical interest) of culture” as representative of a collective identity.\textsuperscript{869} Following Coombe, it is my intention, over the next few pages, to continue to demonstrate that the theoretical and historical foundations of intellectual property law are based upon ‘Romantic Individualism’, and the foundations of cultural property protections are based on views that essentialize certain cultures as ‘Other’. \textsuperscript{870}

\textsuperscript{865} Ibid, 216.
\textsuperscript{866} Ibid, 218.
\textsuperscript{867} Coombe, 219.
\textsuperscript{868} Ibid, 220.
\textsuperscript{869} Ibid.
\textsuperscript{870} Ibid.
As Coombe describes, intellectual property laws have been designed under the assumption that the works they protect fully embody “the unique personality of their individual authors.”\textsuperscript{871} From this perspective, the “expressive component” (or, in Benjamin’s terminology, the ‘aura’) of the original work is so deeply embedded in the concept of the ‘original’, that “even a reproduction or imitation of it is deemed a form of theft.”\textsuperscript{872} In other words, it is really the “mental labor – as opposed to the manual labor or mechanical activity” that the creator is permitted to claim ownership to.\textsuperscript{873} More than simply the physical manifestation of the object produced, in legal terms, the creator owns \textit{the incorporeal expression itself}.\textsuperscript{874} However, this can only remain a plausible praxis for as long as it is believed that a work can embody “the imprint of the author’s personality” as it is derived from the Romantic ideology of creativity-from-virtuosity.\textsuperscript{875}

As I outlined in Chapter 2, the notion that an artwork’s authenticity is always carried by its aura has been thrown into question and critique since circa post-structuralism. As a result, these questions and criticisms have cast doubt on certain fundamental aspects of traditional property rights arguments. In light of my earlier arguments against authenticity and originality as it pertains to appropriation (and as Coombe also summarizes) it is worth pointing out that critical legal theorists have \textit{also} argued extensively against Romantic notions of “subjectivity, cultural agency, freedom of speech, and creativity”.\textsuperscript{876} In the world of property rights, these anti-Romantic sentiments have often been motivated by a desire to lend context to the debate. Coombe

\textsuperscript{871} Ibid, 219.
\textsuperscript{872} Ibid.
\textsuperscript{873} Ibid.
\textsuperscript{874} Ibid.
\textsuperscript{875} Ibid, 220.
\textsuperscript{876} Ibid, 212.
demonstrates that within public rhetoric about cultural appropriation, for instance, individuals who claim an ardent and forceful spot for artists/authors/creators also tend to align themselves on the side of freedom of creativity and multiculturalism in order to position their side of the debate as a moral stance against all forms of censorship. These ‘romantic individualists’, as I will refer to them, are also the most likely to reference historical instances of ‘masterful’ appropriation: “if cultural appropriation had never been permitted, Puccini could never have written La Boheme, Verdi’s Aida would never have been performed, we would never have thrilled to Laurence Olivier in Hamlet and we would have been denied the music of Anna and the king of Siam.”

However, these contemporary Romantics have tended to ignore the reality of the balance of power in Western society. Coombe suggests that their worldview is based on a global society in which everyone is implicitly equal in their capacity to write or be written about, to speak or be spoken for. Such a position purports to be apolitical, but manages only to be ahistorical and blind to relations of power. It ignores the very real social lines along which representation has been delineated and the difficulties faced by certain social groups to represent themselves and speak on their own behalf. It is, for example, inconceivable that a vehicle could be marketed as “a wandering jew”, but North Americans rarely bat an eyelash when a Jeep Cherokee passes them on the road or an advertisement for a Pontiac® automobile flashes across their television screens. More people may know Onedia® as a brand of silverware than as the name of a people and a nation.

877 Ibid, 213.
878 Bill Driedger as quoted in Coombe, 211 (originally published as a Letter to the Editor, Globe and Mail, 28 March 1992 at D7).
879 Coombe, 212.
880 Ibid.
Coombe rightly goes on to point out how it is usually the case that outsider creators who desire to maintain their ability to appropriate the expressions of cultural groups to which they do not belong are actually more interested in their own personal relationship to these expressions. They are motivated more by the inspiration these expressions provide them with for their own work than in reflecting the actual, lived realities and histories from which these expressions were brought into public circulation in the first place.  

Liz Magor’s series of photographs displayed at the 1990 Canadian Biennial at the National Gallery of Canada is a good example [Figs 40-41]. Titled, Field Work (1989), the photos were reprinted images of herself and her countercultural group of friends originally taken in the late 1960s – early 1970s. The pictures depict long-haired youths dressed in leather vests, headbands with feathers, and sporting moccasins. They are shown lounging on raw-cotton blankets, canoeing, cooking outdoors, and generally partaking of the ‘wild’, communal bush life that had characterized the nature-based, ‘folk/hippie’ lifestyle of the period. The individual photographs in Field Work were labeled with the titles of photographs from Edward S. Curtis’s infamous The North American Indian Series (1900-1930), which claimed to “document” the traditional life of Native American cultures before that way of life “disappeared” [Fig. 42]. For Magor, the connection between the two photographic series’ was intended to be entirely personal:

I wasn’t so much thinking of Native culture as I was thinking of my culture and it’s kind of repetitive and continual romance of native culture. So I felt that I was more reporting on a condition than I was inhabiting that condition or being caught in that condition… The things I was seeing in [my] pictures twenty years later seemed so strange to me because what I saw was

881 Ibid, 244.
almost ‘exotic’. My peers who were all students mostly, in their late teens/early twenties, had this odd appearance of non-urban, non-western cultures – kind of a mixture of sort of South Asian, Eastern – I don’t know – Buddhist, Hindu mixed up with some North American aboriginal, mixed up slightly with what we imagine the first settlers looked like…I was actually looking at my own culture and examining a folly or a flaw or an oddity in my own culture that I think is my business, that is my story basically – these were my friends, this was my generation, this was my culture.  

Magor had intended *Field Work* to function as a critique of the way that 1960s youth had mimicked First Nations values in order to further their own countercultural rejection of industry and capitalism. But instead, Magor herself received heavy criticism for the very same thing. Even if the personal relationship between an outsider (like Magor) and an insider’s expression are real and valid, to claim them as a rightful public freedom ignores the rightful private freedoms of the cultures from which they came. In this instance, Magor’s series of photographs – both as they existed in the 1960s and as they existed when she exhibited them twenty years later – circumvented the violent aspects of Colonial history, with or without the reference to Curtis. In this way, *Field Work* is an example of how, according to Coombe, “Once again the Romantic author claims the expressive power to represent cultural others in the name of a heritage universalized as Culture.”

The theoretical and historical basis of property law accedes to, and conserves this right to authorial expression for creators, but there is no equivalent copyright for cultural expressions themselves. For example, where the incorporeal aspects of Magor’s photographs are legally copyrighted, the cultural signifiers appropriated by her and her friends in the 1960s are not.

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884 Coombe, 245.
Instead, First Nations peoples would only be permitted to make legal proprietary claims on the actual physical headpieces, leather clothing, moccasins, or canoes shown in the pictures – and even then, only if they were deemed “original objects or authentic artifacts”. This reveals the interesting, and unfortunately one-sided, power relations present in a legal structure that places divisions between intellectual property and cultural property: “authors with intellect are distinguished from cultures with property.” Or, spoken another way, the West does extend propriety to ‘Others’, but it is “limited to objects of property, not to forms of expression. The full authority of authorship, however, [is] confined to the Western world.”

During the development of the nineteenth-century European art-culture system, “the appreciation and interpretation of tribal objects” took place “within a modern system of objects which confers value on certain things and withholds it from others.” Coombe follows Clifford’s argument that this became the basis for the broader workings of categorically valuing the objects that were being collected by European explorers in the imperialist colonial project. Where European artist-geniuses were creating masterpieces, the objects collected by European explorers were ‘artifacts’ that were made to stand as authentic representations of the distinctive Cultures (capital ‘C’) that they were encountering (/conquering) on their travels. It was believed that these artifacts embody the “voice” of a “unified and singular” ‘people’, with the ability to speak for all of the colonized Cultures at once.

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885 Ibid, 225.
886 Ibid, 243.
887 Ibid, 225.
888 Clifford as quoted in Coombe, 217-218.
889 Coombe, 218.
890 Ibid.
891 Ibid, 213.
This narrow understanding of the workings of a culture presupposes an essentialism that ignores the realities of history and exchange. Instead, it prefers to position collective groups of individuals as different, or ‘Other’ – and in the nineteenth century it was done specifically in the name of religious, racial, and nationalistic ambitions. For this reason, even today, objects are only considered authentic artifacts if, as Coombe notes, they are located “in an untouched, pristine state that bespeaks a timeless essence in a particular cultural tradition” and without exhibiting “any traces of that culture’s contact with other cultures.”\textsuperscript{892} More importantly, and perhaps most ironically, Coombe makes a point of noting that, at one time, artifacts could not even bear any inscriptions that might expose the process of colonialism by which these objects entered Western markets in the first place.\textsuperscript{893}

Some cultural property has the ability to “transcend” the status of artifact if, through a variety of circumstances, the object is “elevated and recognized as art.”\textsuperscript{894} In these cases, the artifact is “essentially defined” as a masterpiece, their creators are considered “great artists”, and the “discourse of connoisseurship reigns…personal names make their appearance, i.e. art has signature.”\textsuperscript{895} For instance, Anishinaabe artist, Norval Morrisseau (Copper Thunderbird) became one of the most well-known painters in Canada and abroad after being “discovered” by Toronto-based commercial art-dealer Jack Pollock while on a trip across Northern Ontario in 1960-62.\textsuperscript{896} Pollock admits that he had not anticipated meeting any artists of interest while he was there since, in his words, “my own formal art education and my special interest in contemporary Canadian art

\textsuperscript{892} Ibid, 218.
\textsuperscript{893} Ibid. By ‘markets’ here, I am referring both to the commercial exchange market, as well as to the market of collecting and exhibiting proffered by the museum system.
\textsuperscript{894} Ibid, 218.
\textsuperscript{895} Clifford as quoted in Coombe, 219.
\textsuperscript{896} Jack Pollock, “A Personal Note”, \textit{The Art of Norval Morrisseau}, ed. by Lister Sinclair and Jack Pollock (Toronto: Methuen, 1979), 17.
led me to expect [artists] who made [a] living by turning out and selling decorated wigwams and canoes for the unsophisticated tourist market.\textsuperscript{897} He goes on, however, to recall his encounter with “a tall Indian” who, having heard of Pollock’s arrival in Beardmore, sought him out with the intention of showing his artwork:

As he shyly unrolled the pictures he had brought with him, the simple images leapt from the paper – loons, gulls, bear and beaver vied with spirit creatures – all executed with the sure hand of confidence. The black outlines of the drawings contained the colors of the woodlands – ochres, umbers and siennas. The images were flat, skeletal and economical. They had a unique sense of space. Composition was effortless and flowing. For me it was a moment of pure excitement and exhilaration.\textsuperscript{898}

It is clear from Pollock’s description that Morisseau’s artwork was in the realm of the masterpiece right from the start of their introduction into the Western market. In fact, it was the Native look and content of Morisseau’s images, in combination with their Western-style medium and delivery that made them so appealing to Pollock in the first place. For Pollock, Morisseau’s paintings were markedly demarcated from more everyday anthropological objects, like “decorated wigwams and canoes”.\textsuperscript{899} Shortly following their initial meeting, the Cultural impact of Morisseau’s paintings was soon reinforced for Pollock by Morisseau’s lifestyle:

His home was a makeshift shack erected on the garbage dump just outside town. Crates, logs, and old tin Coca-Cola signs had created one large room, which was half exposed to the sky. Under the tall pine tree which dominated the open space sat his daughter, Victoria, playing with a tattered doll while chipmunks scurried about her. Norval’s wife, Harriet, shy and speaking almost no English, was cooking supper on an open fire outside the structure. No electricity, no water, no toilet facilities, this was

\textsuperscript{897} Ibid.
\textsuperscript{898} Ibid.
\textsuperscript{899} Ibid.
indeed the resting place of a nomad. Against a sheltered wall stood a plain table piled high with paper, bark and paints.900

Morriseau’s Native identity (including his status as a self-anointed Shaman), and his poverty, later became key tools with which both Pollock and Morrisseau would extensively brand and promote his artwork to the larger public. No doubt, both men were well aware that Morrisseau’s ‘Nativeness’ and his poverty would also be key factors in allowing his artwork to “escape the ahistorical location of the ‘tribal’ as defined by colonialism, and enter into what Coombe describes as the ‘universal’ history, where artifacts “become part of a ‘human’ cultural heritage” as defined by master artist-geniuses (in the Romantic tradition).901 This romanticism was frequently made explicit by Morrisseau’s subsequent dealers, curators, and supporters. In one 1979 printed retrospective publication of Morrisseau’s work, Lister Sinclair writes:

Norval Morrisseau is a romantic artist, easy to approach, hard to come close to...Morriseau is a romantic artist in the tradition of Baudelaire and Rimbaud, pushing his body, his consciousness, his experiences to the furthest limits of possibility, and then one inch more...Morriseau is a romantic artist in the tradition of Berlioz, Liszt, and Wagner. He breaks down categories...The work is an icon for contemplation and for exegesis. It justifies the myth that justifies the images...He talks willingly enough through some of his masks, and turns his own work into an ironic Rorschach test, showing the sensibility that produced it. Morrisseau is a romantic artist who risks his artistic life every time he enters one of these potentially destructive episodes...Finally, Morrisseau is a romantic artist in that his work is an endless process, and one which he wishes us to share with him.902

Where Sinclair’s thoughts explicitly categorize Morrisseau as a romantic artist “in the tradition of” canonical Western masters, they also implicitly rely on the idea that Morrisseau and

901 Coombe, 219.

280
his artwork can be separated from (transcend) the actual, lived context in which they are produced
and in which they circulate. The ‘universal history’ of art that justifies Morrisseau as a genius is
actually just as ahistorical as the artifacts (“wigwams and canoes”) collected by the West.

Today’s cultural property laws still exhibit the residual effects of romantic individualism
and cultural essentialism. In fact, it can even be said that the legal structure supporting a
European art-culture system can only really allow for a narrow range of expressions and
interpretations. 903 For Coombe, “denying” the social, political, and cultural conditions from which
creative activity emerges has, too often, only resulted in “expropriation and censorship in the
name of property.” 904 A growing number of legal scholars, including Murray and Trosow, have
pointed out that many “Aboriginal ideas about cultural property function as a powerful critique of
certain elements of copyright thinking.” 905 Coombe agrees that many of the legal claims made by
“non-Western others to objects and representations may well force these Western [legal]
categories under new forms of scrutiny.” 906 Coombe, along with Murray and Trosow, and others,
recommend looking towards the views of First Nations people in the hopes of expanding “the
borders of the legal imagination.” 907

903 Coombe, 226.
904 Ibid.
905 Laura J. Murray and Samuel E. Trosow, Canadian Copyright: A Citizen’s Guide (Toronto: Between the
Lines, 2007), 190.
907 P. Macklem as quoted in Coombe, 229.
5.2.2 From Abstract Principles to Claims ‘In Context’: Urban Outfitters vs. The Navajo Nation

In an interview with Laura J. Murray, Greg Young-Ing (Chair, Indigenous Peoples’ Caucus, Creators’ Rights Alliance, Vancouver), reminds us that there “are hundreds of indigenous nations in the Americas, and every one of those nations has customary laws that regulate how their knowledge is used and accessed.”\(^{908}\) Much has been discussed and written about the over-arching distinctions between customary First Nations proprietary practices and the Western legal system by both Aboriginals and non-Aboriginals. Namely, the ways in which Aboriginal traditions downplay the creativity and genius of individuals over collectively inherited knowledges, community responsibility, and the privileges of custodianship.\(^{909}\) For example, many First Nations laws feature a ‘tradition-bearer’ as opposed to a creator – a person whose “responsibility” it is to “transmit what has been entrusted to her or him to the right people in the right way and at the right time.”\(^{910}\) For this reason, Coombe notes that most First Nations claims against cultural appropriation are not made “as possessive individuals”, nor are they made for the protection of some (fictional) nationalist “ahistorical collective essence”.\(^{911}\) Rather, indigenous peoples across the globe who have been fighting for special rights to their cultural property for the past few decades have been doing so “in the name of living, changing, creative peoples engaged in very concrete contemporary political struggles.”\(^{912}\) However, the Western legal

\(^{908}\) Greg Young-Ing as quoted in Murray and Trosow, 190.
\(^{909}\) This is a huge generalization, but it is one that is made over and over again within the discourse by both Aboriginals and non-Aboriginals. Murray and Trosow, 188 (also see: Coombe, 228-229).
\(^{910}\) Murray and Trosow, 188.
\(^{911}\) Coombe, 228.
\(^{912}\) Ibid.
system is ill equipped to handle these claims under current conditions and so First Nations people have been forced to try and adapt to a legal framework that does not actually recognize the cultural rights they are struggling to protect.\footnote{Ibid.} Often, this struggle has had, and continues to have, polarizing results.

For instance, in his 1998 article “Can Culture Be Copyrighted?”, Michael F. Brown critiques a 1993 United Nations commissioned report on cultural and intellectual property protections. The report stated that “each indigenous community must retain permanent control over all elements of its own heritage…all of those things which international law regards as the creative production of human thought and craftsmanship”.\footnote{Erica-Irene Daes, \textit{Study on the protection of the cultural and intellectual property of indigenous peoples.} New York: United Nations Economic and Social Council, Commission on Human Rights, as quoted in Michael F. Brown, “Can Culture be Copyrighted?” \textit{Current Anthropology} Vol. 39, No. 2 (April 1998), 197.} For Brown, claims such as these, which appeal for the extension of all aboriginal intellectual property rights to include concepts, ideas, thoughts, and knowledge are “blind to the free-speech implications of their proposals”, steeped in “a polemical romanticism”, and absent of “sober reflection.”\footnote{Here, Brown is actually referring to that larger pole of discourse between “anthropologists, legal scholars, and indigenous activists”, which sways towards (and, no doubt, influenced) the same conclusions as those complied by the United Nations report in the late 1990s. Brown, 199.} In his view, advocates for the expansion of intellectual property rights for First Nations peoples have failed to realistically consider what the broader ramifications might be if one Cultural group were granted “novel forms of cultural protection” over others.\footnote{Ibid, 195.} Specifically, Brown argues that “an inherent, permanent right of cultural ownership” would actually serve corporate interests more than marginalized indigenous peoples. Hopes that radically extended property laws might be restricted
to particular indigenous cultural groups through “regimes of special rights” are, in Brown’s words, “extremely naïve.”

Brown points out that expanded cultural property laws would place the legal system, together with “governmental or quasi-governmental agencies” in the position of having to more specifically define “who is a native person and exactly what qualifies as indigenous knowledge”. Brown suggests this would lead to “a situation that one would be hard-pressed to see as beneficial for ethnic minorities.” Furthermore, policy of this kind would inevitably create a tumult of legal actions benefitting “only the largest corporate interests, for whom legal fees are simply a routine cost of doing business”. Brown’s skepticism towards legal codifications against cultural appropriation appears to me to be, above all, motivated by doubts about abstract ideological solutions for deeply-rooted, complex social conflicts.

Coombe agrees that the arguments for “proprietary exclusivity” come at “the expense of broader principles of public policy”, especially coming, as they do, at a time when “the public domain is increasingly endangered by the overreaching of industry interests” – represented, again, by the actions of conglomerates like Disney, the Big Three music companies, and Urban Outfitters (as I will describe shortly). However, she points out that current legal practice does not actually extend intellectual property to include the copyright of cultural ideas. Rather, most indigenous claims are made under patent and trademark laws, which do not provide “absolute

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917 Ibid, 204.
918 Ibid.
919 Ibid.
920 Ibid.
921 Rosemary J. Coombe writing in the “Comments” section of Brown, 1998 (included by Current Anthropology journal editors), 207.
922 Ibid.
rights of exclusion.” Nevertheless, Coombe sympathizes with individuals and groups who endorse expanding intellectual property as an “ideological vehicle” with which to articulate other issues. Since the current legal, political, and social climate clearly favours some groups over others, she suggests that perhaps indigenous peoples who use “the idiom of property…may simply be taking the initial and necessary step of insisting upon a leveling of the playing field before working out the details of particular contractual arrangements.” As such, she counters that Brown’s argument for freedom of speech must first be tempered by more equal conditions of negotiation.

Coombe proposes a compromise in the debate that emphasizes “the political positionings” of the individuals making the claims, while also acknowledging that property is, in praxis:

more dynamic than its ideological deployment might suggest; it is constituted of flexible nexi of multiple and negotiable relationships between persons and things that continually shift to accommodate historical recognitions of prior inequities and current social needs.

Above all, Coombe insists that Western society’s dependence on the inherited sensibilities of intellectual property law is no longer appropriate to the postcolonial struggles of present-day

923 In actuality, domains like patents and trademarks are “premised on a social bargain”, and although they do award special privilege to particular holders, they also come with certain responsibilities in order to be utilized publicly. Ibid.
924 Ibid, 208.
925 Ibid, 207-208.
politics, and that the dialogue must reflect new concerns.\textsuperscript{926} As such, she proposes understanding property laws “in context”.\textsuperscript{927}

By an ‘in-context’ approach to formulating new intellectual property frameworks, Coombe means to explicitly centralize dialogic references to the dynamic, lived reality of First Nations (and other marginalized) peoples. It would require enacting and practicing what Coombe broadly defines as an “ethics of appropriation”.\textsuperscript{928} In line with Nair’s conception for ethically-responsible practices of copyright, Coombe’s ethics of appropriation would “attend to the specificity of the historical circumstances” as they emerge in particular political, social, and commercial situations. By paying special “sensitivity to the nuances” of each case in each situation, a copyright system regulated by an ethics of cultural appropriation, specifically, could avoid perpetuating three currently problematic copyright characteristics: universal scales of principle, individuals as equals, and the reification of capital-C-Culture(s) as complete totalities.\textsuperscript{929}

Consider this in practice in relation to recent claims made by the Navajo Nation against the multi-national American retail chain, Urban Outfitters. In October 2011, a cease-and-desist letter was sent to Urban Outfitters on behalf of the Navajo Nation, asking the company to pull any and all of their stock labeled, or advertised as, ‘Navajo’. This stock included – among over twenty

\textsuperscript{926} Ibid.
\textsuperscript{928} Ibid, 230.
\textsuperscript{929} Coombe’s ‘in context’ proposal is, as she states, following the approach laid out by philosophical pragmatism, feminism, and critical race theory previously established by thinkers such as Martha Minow (Law), Elizabeth Spelman (Philosophy), and Cornell West (Civil Rights Theory). Coombe admits that some contextualist approaches may, indeed, appeal to “more abstract moral or political theory to justify their approaches” (such as advocated for freedom of speech, authorship/ownership, censorship, etc.). However, she intends ‘context’ to imply a \textit{challenge} to those abstract claims that fail to “bespeak the exclusions” preserved by their principles – such as unequal power relations, historical violence, etc. Ibid.
other items: a printed men’s t-shirt labeled as a “Navajo Nation Crew Pullover”, a “Leather Navaho Cuff Bracelet”, “Navajo Feather Earrings”, a “Navajo Hipster Panty”, and a “Navajo Print Fabric Wrapped Flask”. At issue, was Urban Outfitter’s use of the trademarked Navajo name to describe and identify its’ wares. Having had no association with the products in question, the Navajo Nation contends that this labeling falsely suggests the products were made by members of the Navajo Nation in clear violation of the federal Indian Arts and Crafts Act, which makes it illegal to sell items in a way that makes them appear as though they were produced by American Indians if they were not.930

Since Urban Outfitters neither responded, nor changed the branding of their products, the Navajo Nation filed a lawsuit further alleging that, in addition to trademark infringement, and Indian Arts and Crafts Act violations, Urban Outfitters was also engaging in unfair competition, false advertising, and violation of commercial practices law. Although the court dismissed the Navajo Nation’s claim that the products – particularly the flask – were “derogatory, scandalous, and contrary to the Navajo Nation’s principles”, which has “long banned the sale and consumption of alcohol within its borders”, the case has been allowed to continue.931 Although this is strictly a trademark case based on Urban Outfitter’s use of the Navajo name, imagine for a moment if the Navajo Nation could also file suit against Urban Outfitter’s for appropriating what has come to signify their cultural aesthetic in the way that Coombe, Burns Coleman, and other cultural property proponents have argued for.

The beaded jewelry, hacienda bags, and colourful abstract patterns long associated with the Navajo Nation would be off limits for non-Navajo individuals or corporations to use or re-use for commercial or creative purposes on the basis that these ‘insignia’ can only represent the oppressed Navajo cultural identity. Coombe supposes that an in-context, case-by-case analysis might consider a single individual’s appropriation of the Navajo Nation’s aesthetic for non-commercial purposes even if it demonstrated possible derogatory intangible damage to the Navajo cultural heritage fairly leniently. At the same time, Coombe’s in-context approach might consider Urban Outfitter’s retailing of a similar product as damaging because of the seemingly vapid insensitivity believed to be present in wide-scale distribution of commercially mass-manufactured products.

Though Coombe and others have suggested that an in-context ethics of appropriation might help to reduce the proprietary reach of conglomerate interests such as Urban Outfitters by shifting the balance of power, in the end we must be aware that it extends this reach in favour of cultural organizations like the Navajo Nation. What, for instance, of individuals who appropriate aspects of the Navajo insignia aesthetic for means of criticism? Would the Navajo Nation be able to claim ownership over appropriations they feel are damaging to their reputation in the same way that Disney currently does? This approach, similar as it is to Campanelli’s subjectivist remix ethics, is problematic in the way it perpetuates a modernist Romantic favouring of non-commercial interests – especially since the Navajo Nation’s trademark interests, and the instigation of the American Indian Arts and Crafts Act, are based on protecting the commercial economic interests of aboriginal Nations. Nor is an in-context approach really much different from the way copyright law currently operates except that it would grant special consideration to the marginalization of particular cultural groups.
Coombe insists that although context-specific property law might constitute “a preliminary recognition of proprietary claims” it is unlikely that these claims would be granted exclusive possession so much as “bundles of multiple rights and relationships.” Brown is supportive of Coombe’s attempt to formulate an approach that might lead to the creation of “basic mechanisms” for native peoples to benefit economically from their intellectual and cultural knowledges. However, he rebuts that it would be “extremely naïve” to expect that Coombe’s proposed bundles of special, extended rights would remain confined to indigenous populations.

In the practice of copyright law, extended rights granted to one group or individual always sets the tone, and theoretical precedent for other realms of the law. As Brown points out, legally-binding arguments for extending copyrights in any domain of cultural production are precisely the circumstances that large-scale corporate industries are waiting to pounce on and take advantage of. Even a conditional extension of cultural property claims to include all forms of cultural property, or even ‘insignia’ items – as argued for by Burns Coleman – would still only privilege the more socially established, and/or governmentally recognized sovereign cultural groups such as the Navajo Nation over unrecognized cultural communities like the Chickahominy tribe. It would also serve the interests of more economically developed and economically integrated cultural communities such as maritime Mi’kmaq First Nations, over economically struggling cultural communities like the more isolated northern Attawapiskat First Nation.

Furthermore, an in-context approach does not consider the larger ramifications of perpetuating intellectual ideas and cultural materials as property. As Brown assesses, expanding

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933 Brown, 204.
934 Ibid.
intellectual property law to “define ideas as property” in the way that cultural property advocates have been doing over the past ten years, appears out-of-sync with the contemporary endeavor of creators (artists) and users (the public) to secure “free access to information in the face of growing corporate domination of knowledge”. 935 It is also discordant with many indigenous practices of custodianship and stewardship, rather than property. Despite her suggestions for compromise, Coombe doubts that the romantic colonizing discourse from which copyright and property delineations are derived is actually suitable for protecting materials that “Native peoples view as integrally and relationally joined”. 936 Where the romantic European cultural sensibility might be said to be predicated on divisions, Native cultural attitudes are embedded in notions of sharing:

The law rips asunder what First Nations people view as integrally related, freezing into categories what Native peoples find flowing in relationship that do not separate texts from ongoing creative production, or ongoing creativity from social relationships, or social relationships from people’s relationship to an ecological landscape that binds past and future generations in relations of spiritual significance. 937 In Coombe’s view, an in-context approach would consider this more conciliatory view of appropriation in such a way that allows Native peoples to exercise self-determination over their cultural heritage in such a way that continues to leave room for ongoing relationships. 938

Burns Coleman, who does not believe that in-context derived bundles of rights go far enough to protect Native cultures, has responded to this argument by countering that custodianship is not, in fact, incompatible with property rights. 939 For instance, Burns Coleman

935 Ibid.
936 Coombe, 209.
937 Ibid, 229.
938 Ibid, 231.
939 Burns Coleman, 145.
has found that although within many Native customs, custodians of cultural materials “do not necessarily own the symbols they protect, they have rights…in relation to the symbol’s use”.940 Many of these rights include ownership, guardian, and managerial rights and even though they may not be “exactly the same” as the rights found in European copyright systems, “certainly the same type of patterns may be found.”941 Coombe and Burns Coleman agree that extending cultural property rights by way of providing alternative protections in the form of bundles of rights (Coombe), or in considering cultural property in terms of insignia (Burns Coleman) would not equate to the granting of exclusive rights of control.

However, this is a weakening point in the face of historical and contemporary expansions of ever-more exclusionary and restrictive permissions. We cannot be blind to historical evidence suggesting that the granting of property protections actually appears to have resulted in a maniacal claim to property from all facets of society: from conglomerates, to individuals, to cultural groups. In actuality, the perpetuation of relationships can more easily be accomplished through the expansion of the public domain.

5.2.3 The Court of Public Sympathy: Inter-cultural Communication and the Public Domain

Indeed, Brown admits that the public domain has had a hand in the continued colonization of Native peoples – as seen, for instance, in Urban Outfitter’s continued retailing of

940 Ibid.
941 Ibid.
products inspired by aboriginal cultural objects (minus the Navajo name).\textsuperscript{942} Yet as Coombe and Burns Coleman both concur, the public domain “also offers resources that [native peoples] regularly appropriate for their own cultural redefinition and political advancement.”\textsuperscript{943} In order to avoid a relativist ethics, it is necessary to consider all calls for exceptional circumstances according to their potential effects in the larger context. Today, it is more imperative to unite under the mechanism of which we all \textit{indisputably} already take part – that is, the public domain. As Brown states, its “survival is of vital significance to us all.”\textsuperscript{944}

Urban Outfitter’s appropriation of the Navajo Nation’s trademark and insignia caused a significantly vocal backlash from other, non-Navajo aboriginal groups and individuals in the form of public statements of solidarity and online forum discussions even before the cease and desist letter was sent. For instance, Adrienne Keene, who has been writing the blog \textit{Native Appropriations} since 2010 trolled the Urban Outfitters online shopping website and collected a total of twenty-four images of products bearing the Navajo name, fifteen products labeled as ‘tribal’, two products described as ‘Indian’, and two products categorized as ‘Cherokee’. She reproduced a selection of them in a blog post titled, “Urban Outfitters is Obsessed with Navajos”, where she patiently described why she believed the products were dishonoring to the Navajo Nation’s own designs.\textsuperscript{945} In the same blog entry, Keene also described the Urban Outfitters site as detrimental in its conflation of Navajo peoples with ‘generic indians’, thereby further perpetuating the erasure of tribal distinction within Native American culture as a whole.

\textsuperscript{942} Brown, 205.
\textsuperscript{943} Ibid.
\textsuperscript{944} Ibid, 206.
Keene ended her post with a mention of the Navajo Nation’s cease and desist letter, and the story was picked up by the Arizona Republic Online, and Jessica R. Metcalfe’s Beyond Buckskin website. As well, Sasha Houston Brown included a link to Keene’s article on her own Racialicious blog post entry, titled, “An Open Letter to Urban Outfitters on Columbus Day”. Houston Brown’s letter was subsequently picked up by hundreds of online sources, including mainstream media outlets like ABCNews.com, the Associated Press, CNN.com, Jezebel, New York Magazine, and WashingtonPost.com. This eventually lead to the October 2011 online petition, “Glen T. Senk, CEO: Remove the ‘Navajo’ Collection from Stores!” at Change.org, which received 16,604 signatures. To date, Houston Brown’s open letter continues to be cited by both aboriginal and mainstream media as the Navajo Nation v. Urban Outfitters lawsuit continues. By October 19 2011, Urban Outfitters replaced the term “Navajo” with “Printed” on the majority of the contested products.

The significant amount of the coverage on this story has focused on describing the context surrounding the Navajo Nation’s grievances with Urban Outfitters rather than on the details of the lawsuit itself. Granted, it is the presence of the lawsuit that has, perhaps, sparked mainstream media interest in the subject in the first place, but it is the conversation about the issue itself, and the discussions about the treatment of marginalized cultures that has proven the most valuable in constructing a dialogue about appropriation that has actually favoured the

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948 Young.
949 Ibid.
interests of the marginalized group. It was Urban Outfitters’ appropriation of the Navajo name
and aesthetic that sparked an interest in the nature of cultural insignia in the first place. It is the
intertextual dialogue resulting from the appropriation of cultural artifacts that has given artists
like Jordan Bennett, and A Tribe Called Red the opportunity to bring awareness to aboriginal
issues of oppression. It should not be a question of what, or from whom, we should be allowed to
appropriate. Rather, the questions lie in our use of these appropriations, including the inter-
cultural communication that appropriation facilitates.

Brown points to alternative models for the ethical handling of cultural property that are
not restricted to the realm of law the way Coombe and Burns Coleman’s models are. He cites the
awareness and responsibility taken on by museums and archives for protecting public property,
while “remaining responsive to the concerns of groups who claim an interest in them”, and the
“joint stewardship” model of compromise developed by Karen J. Warren and Donald Tuzin
(1995).950 I would add the recent attempt to forge a relationship between the World Intellectual
Property Organization, the Indigenous Peoples Caucus, and the United Nations Permanent Forum
on Indigenous Issues, which has negotiated the establishment of voting participation for
indigenous peoples at the intergovernmental committee level of the United Nations. Or, more
simply, the banning of native-style headdresses at the 2014 Bass Coast Music and Arts Festival in
Merritt, British Columbia by festival organizers as a sign of respect for the indigenous territory on
which the Festival takes place.951 As Brown observes, “Widespread public sympathy gives native

950 Brown, 205.
951 CBC News, “Bass Coast festival headdress ban ruffles feathers and sparks debate”, CBCnews.ca, July
peoples considerable influence in the court of world opinion, and this can be used to pressure corporations into complying with basic ethical standards.\textsuperscript{952}

![Supreme logo, 1994](image1)

**Figure 37: Supreme logo, 1994**

![Married to the Mob, Supreme Bitch t-shirt, 2004](image2)

**Figure 38: Married to the Mob, Supreme Bitch t-shirt, 2004**

\textsuperscript{952} Ibid, 205.

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Figure 39: Barbara Kruger, *Untitled (I Shop Therefore I am)*, 1987, photographic silkscreen on vinyl, Mary Boone Gallery, New York

Figure 40: Liz Magor, from *Field Work*, 1989, 10 silver gelatin prints, Catriona Jeffries Gallery, Vancouver
Figure 41: Liz Magor, from Field Work, 1989, 10 silver gelatin prints, Catriona Jeffries Gallery, Vancouver

Chapter 6
Strengthening Appropriation – Creative Production & Interests of the ‘Self’

6.1 Fetishizing the ‘Self’

6.1.1 Re-emergence and Transformation: A Marxist Reading of John Locke’s Principles of Copyright

This sixth and final chapter formulates a new way of thinking about creative appropriation by considering it in relation to the constructed ‘self’ of the creator, and the way in which this ‘self’ is extended to the created work. The very notion of thinking about a creative work as an adjunct of the creator her/himself calls to mind those fetishization principles most closely tied to capitalist economies. As I stated in the previous chapter, these economies are the sites in which regulations protecting the economic interests of sellers (copyright legislations) have manifested most acutely.

Indeed, there is a commonality between copyright law and the commodity fetish principle in that both concern themselves with the continued (re)circulation of materials. Many legal theorists have demonstrated that rights-based theories of the type fundamental to copyright are subcomponent of a ‘natural law’ approach to property expounded by philosophers like John Locke (1690). ‘Natural law’ held that:

To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and
dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.  

For Locke, property was also ‘natural’ in the sense that it results from what he believed to be the ‘natural’, fundamental state of labour:

The labour of his body, and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature hath provided, and left it in, he hath mixed his labour with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it, that excludes the common right of other men: for this labour being the unquestionable property of the labourer, no man but he can have a right to what that is once joined to, at least where there is enough, and as good, left in common for others.

However, Locke outlined two limitations on the natural right to appropriate from the common state (or, the ‘commons’). First of all, he argued that materials should never be appropriated en masse – enough must be left for others to appropriate as needed. Secondly, ownership loses justification if the amount appropriated exceeds the individual’s ability to use it. As it happens, Locke also opposed perpetual terms on copyright, and believed authors should only maintain “control of their own work…for a limited time.” After all, to hold copyright on materials in perpetuity means that these materials are removed from the ‘natural’ cycle of reproduction and

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954 Ibid, ch. V, sect. 27.
955 Ibid, ch. V, sects. 31-36.
956 Ibid.
consumption that Marx held to be central to the maintenance of capital circulation in any exchange-based economy (even that of Locke’s seventeenth century economic context).

Almost two centuries after Locke, Marx also acknowledged the need for materials to exist in a state of “perpetual re-emergence”.\footnote{Karl Marx, \textit{Capital: A Critique of Political Economy} [1885], Vol. 2, trans. by David Fernbach (New York: Penguin Books, 1990), 427.}\footnote{Ibid.}\footnote{Ibid.}\footnote{Locke, ch. 5, sect. 33.}\footnote{Marx, 428.} Locke and Marx both emphasized that this re-emergence depends on the material being transformed during the circulation process.\footnote{Ibid.} Production is, for Marx, a process of “constant repetition” and its sustenance is based on a continued condition for “transformations”.\footnote{Ibid.} Or, to use Locke’s terminology, “appropriation”.\footnote{Ibid.} Marx goes on to confirm that transformations occur at each stage of the circulation process and involve: “both productive consumption (the immediate production process) together with the changes of form that mediate it (which considered in their material aspect are exchanges), and individual consumption, with the changes of form or exchanges which mediate this.”\footnote{Marx, 428.} Herein lies the first of two contradictory aspects of copyright law’s subsistence in the contemporary economy. That is – by its very nature, copyright encourages the removal of materials from the circulation process, and \textit{inhibits} re-emergence. Yet, at the same time, copyright \textit{permits} transformation via ‘fair use’ (US) and ‘fair dealing’ (Canada) guidelines.

Granted, Marx’s analysis described the circulation of tangible (physical) materials, whereas copyright largely protects the circulation and transformation of intellectual materials. Nevertheless, I believe Marx’s principle of re-emergence and transformation applies to creative intellectual materials in much the same way. In fact, in his unfinished manuscript for \textit{Grundrisse}...
Nature builds no machines, no locomotives, railways, electric telegraphs, self-acting mules etc. These are products of human industry; natural material transformed into organs of the human will over nature, or of human participation in nature. They are organs of the human brain, created by the human hand; the power of knowledge, objectified. The development of fixed capital indicates to what degree general social knowledge has become a direct force of production, and to what degree, hence, the conditions of the process of social life itself have come under the control of the general intellect and been transformed in accordance with it. To what degree the powers of social production have been produced, not only in the form of knowledge, but also as immediate organs of social practice, of the real life process.\textsuperscript{963}

This is supported by Johan Söderberg’s summary of contemporary Marxist theory’s call to reassess classical Marxism’s rejection of intellectual capital in favour of recognizing the centrality of information as both a resource and a commodity in late capitalism.\textsuperscript{964} Söderberg follows Christopher May’s argument that when understood as a commodity, the non-physical, intangible nature of information poses a second contradiction inherent to intellectual protections in today’s exchange system. That is, the difference “between the low to non-existent marginal cost of [digital] reproduction of knowledge and its treatment as scarce property.”\textsuperscript{965} According to May and supported by Söderberg, treating information as “scarce” in the same way as tangible

\textsuperscript{963} Karl Marx, \textit{Grundrisse der Kritik der Politischen Ökonomie [1858]}.  
\textsuperscript{964} Johan Söderberg, “Copyleft vs. Copyright: A Marxist Critique”, \textit{First Monday}, vol. 7, no. 3 (March 2002), at Internet: http://firstmonday.org/index, accessed May 28 2013. On the issue of information as a, exchangeable resource and commodity in and of itself, Söderberg’s summary includes reference to Christopher May, Nick Dyer-Withorford, and Dan Shiller among others. Söderberg follows their lead in order to explain that today’s capitalist society has replaced human-performed labour with machine/technology-performed labour and this technology has, in turn, become a form of capital into itself.\textsuperscript{965} Christopher May as quoted in Söderberg.
materials serves the economic interests of those who can limit its re-emergence...through copyright.\textsuperscript{966}

It is partially through the process of transformation that a tangible or intangible object/idea \textit{appears} to be “endowed with individual life” – its own irreproducible, unique, and scarce quality.\textsuperscript{967} In fact, Dan Hunter expounds copyright law as a distinct example of Marxist commodity fetishism.\textsuperscript{968} Indeed, with copyright, value is rendered in the material itself, not in the output of labour performed by the creator during the (re)production of the material. Copyright also emphasizes a material’s ‘exchange value’ over its ‘use-value’, which eliminates the social aspects constituted within the creation of the material and, as Hunter points out, Marx believed this “deleted the worker’s contribution.”\textsuperscript{969} As Hunter contends, commodity fetishism exacerbates the idea that creators are entitled to the \textit{entire} value of the capital/property/material they hold the rights to because it perpetuates the idea that any surplus value is intrinsic to the capital itself.\textsuperscript{970} In actual fact, Marx himself was aware that “each individual capital forms only a fraction of the total social capital, so to speak, just as each individual capitalist is no more than an element of the capitalist class.”\textsuperscript{971}

With the latter argument, Marx expanded his own theory of commodity fetishism by constituting the process of re-emergence as another instance of socially-based relations in the system of exchange. However, this principle is largely ignored by creators who request surplus fees for any additional distribution of ‘their’ material beyond initial purchasing fees. For instance,

\begin{footnotesize}
\textsuperscript{966} Söderberg.
\textsuperscript{967} Marx [1885] 1990, 427.
\textsuperscript{968} Hunter, 1123.
\textsuperscript{969} Ibid, 1124.
\textsuperscript{970} Ibid.
\textsuperscript{971} Marx [1885] 1990, 427.
\end{footnotesize}
Canada’s Bill C-60, An Act to Amend the Copyright Act (1988) determined that every time a visual artwork is exhibited, its creator would now be entitled to a royalty even if the work and/or its copyrights had previously been sold to a third-party exhibitor such as a museum or gallery. Since the establishment of this Exhibition Right (unique to Canada), the Canadian Artists’ Representation/Le Front des Artistes Canadiens (CARFAC) and the Regroupement des Artistes en Arts Visuels du Québec (RAAV), have also sought to establish retroactive copyright fees for all works by Canadian artists displayed or owned by the National Gallery of Canada (including images reproduced on the NGC’s website, and supplementary exhibition materials). In response, the Canadian Museums Association (CMA) pushed for a reconsideration of the amendment during 2011 governmental consultations over a proposed Canadian Copyright Modernization Act (originally tabled as Bill C-32, but passed in 2012 as Bill C-11). In the CMA’s view, the Exhibition Right has not been working to provide artists with the significant income it was intended to, it has limited the ability of museums to display material in their permanent collections, and retroactively granting rights would jeopardize the existence of artworks currently in the public domain as well as the status of the public domain itself.972

The principles of copyright, particularly as they have been exercised in the Exhibition Act, actually hinder the circulation of materials. This is not to bury or extinguish the all-too-real issue that contemporary artists face in seeking economic means in which to support themselves and their practices. But it is indicative that the current tenor of copyright rhetoric from an unfortunately significant number creative sympathizers – such as CARFAC – follows the same arguments used by conglomerates like Disney and the ‘Big Three’ record companies. They

reinforce the illusion of copyright’s ‘natural’ ability to encourage and protect individual creative agency, even though this ‘agency’ is actually only protected if circulation is allowed to prosper through appropriation. An argument, policy, or practice that emphasizes appropriation instead, also emphasizes labour-value – which, ironically, is what CARFAC’s mandate actually purports to do. However, by advocating for limits on circulation and appropriation, CARFAC has (I would think, unwittingly) both emphasized exchange-value, and limited creative labour itself.

6.1.2 Biopolitical Term Extensions: The Lives of Creative Materials

As I summarized in Section 5.1, most recent literature on contemporary copyright does link the redefinition of the romantic ‘author’ to contemporary copyright concerns. But it usually only does so in order to illustrate how intellectual property legislation relies on a modernist conception of creation and does not consider enough how this conception has also been perpetuated by late capitalist economic politics.

Paul K. Saint-Amour’s edited collection of interdisciplinary essays, Modernism & Copyright (2011), examines the ways in which copyright law shaped the aesthetic, cultural, and lived realities of modernism – including the lived realities of contemporary economic
In the introduction to his collection, Saint-Amour uses Michel Foucault’s definition of ‘biopolitics’ to consider the length of terms and extensions on copyrighted materials as passed in the Sonny Bono Copyright Term Extension Act on October 27, 1998. The Bono Act allowed for a copyright period of ninety-five years, which Saint-Amour argues “effectively cut modernism in half at its wonder year, partitioning it into a freely accessible early modernism and a heavily protected late one.” If, as Saint-Amour suggests, Foucault’s biopolitics delineates a history characterized by the gradual imposition of social and political life onto the body and life of the individual (beginning in the seventeenth century), then a biopolitics of copyright describes how individuals have come to be understood as subjects who “can be compelled to live and create in particular ways through the regulation of the fields and systems it shares with its population.” What legislation such as the Bono Act does is turn the material creation (the creative work itself) of the biopoliticized individual into “a property form endowed with the lineaments of a life form” by attributing it a living cycle, or living term. As Saint-Amour points

974 The Copyright Term Extension Act (CTEA) of 1998 extended the period of copyright on all authored materials in the United States. Prior to this, the Copyright Act of 1976 had stated that copyright would last for the life of the author plus 50 years, or 75 years for a work of ‘corporate authorship’ (also known as a ‘work-for-hire’, whereby the copyright holder is an employer of the producer). The CTEA extended these terms to life of the author plus 70 years and for works of corporate authorship to 120 years after creation, or 95 years after publication, whichever endpoint is earlier. Copyright protection for works published prior to January 1, 1978, was increased by 20 years to a total of 95 years from their publication date. Ibid, 2.
976 Ibid.
out, the end of a material’s protected copyright term is a moment when “power ceases to recognize it, a privacy from power called, only a little paradoxically, the public domain.”

Again, as I explained in relation to certain aboriginal traditions of communal knowledge, the concept of a public domain separated from the private realm is highly biased towards a Western mode of organizing society. Saint-Amour’s biopolitical historical reading of copyright reveals at least two more socio-cultural biases in term-extension laws. First of all, advocates for the original set of postmortem copyright extensions in the 1976 Copyright Act were largely propelled by a “heteronormative model of futurity” that sought to “bequeath a patrimony” to the offspring of creative producers. Even today, this model still perpetuates a cultural attitude of “reproductive futurism”.

Secondly, long-term biopolitical copyright is also prejudiced towards those individuals from a particular socioeconomic status “who will need it least – ie. highly educated, economically secure people living in politically and environmentally stable communities.” Since life expectancy is shorter in lesser economically and/or industrially developed countries and communities, the copyright terms for producers from those areas are necessarily shorter than those from more developed states. Saint-Amour rightly points out that the kinds of biased priorities and presuppositions found in a biopolitically-defined copyright law opens it up for a variety of critiques beyond the more ubiquitous ‘creation versus protection’ debate.

977 Ibid.
978 Ibid, 28-29.
979 Lee Edelman as quoted in Saint-Amour, 29: ‘Reproductive futurism’ refers to “the inability to conceive of a future without the figure of the Child…come to embody for us the telos of the social order and come to be seen as the one for whom that order is held in perpetual trust.”
980 Saint-Amour, 30.
Saint-Amour briefly refers to the fact that this “biologization” of intellectual property has already been discussed in popular and scholarly literature but only by way of patent laws for biologic materials (the reproduction of genetic codes).\(^{981}\) These recent patent laws have been described as indicative of a “new phase in the propertization of life”\(^ {982}\). To reiterate; in this phase, property can still be ‘owned’ after death, and as the extension of copyright terms over creative materials has demonstrated, this is similarly the case for non-organic creative materials. As Saint-Amour notes, most studies have aligned this phase of propertization in the creative fields with a “romantic individualism” that equates “intellectual property estates with an artist’s legacy, privacy, and integrity”\(^ {983}\). He alludes to a kind of life-after-death belief that is perpetuated by extended terms:

The more that postmortem copyright acts as a surrogate for the authorial organism, the more intellectual property becomes a receptacle for fantasies of transcending that organism’s mortal condition. Because copyright likes to linger in the graveyard, it entertains a dream fostered by that place: the dream of eternal life, or at least of an eternally visited tomb. The crucial point here is that one of copyright’s most powerful affective externalities – its quasi-religious role of protecting, commemorating, and even conferring a kind of immortality upon creative individuals – is not incidental to the law’s regulatory and demographic logic but is the result of that logic.\(^ {984}\)

I would add that, while perhaps biopolitical copyright can be metaphorically linked to a “quasi-religious” zealously, it is more practically a sign of late capitalism. Specifically, the late

\(^{981}\) Ibid, 24.
\(^{982}\) Ibid.
\(^{983}\) Ibid, 28.
\(^{984}\) Ibid.
capitalist proclivity for the intensive production and accumulation of goods. Not to mention the important link that has now been cemented between consumed property and aspects of individual identity such as class, aesthetic taste, and social strata. In fact, re-thinking the romantic notion of the ‘author’ by examining the author as property in and of it/themself (that is, as a commodity) – once more reveals that copyright fundamentally protects property, not creativity.

6.1.3 The ‘Commodity Self’ and the Copyrighted ‘Author’: Letting go of Immortality in the Creative Work

The Encyclopedia of Identity (2010) by SAGE Publications Inc. includes an entry written by Jennifer Way for ‘commodity self’ – a term first coined in 1988 by Stuart Ewen in reference to what he observed as a new relationship between commodities (material objects carrying economic exchange value) and individuals. For Ewen, individuals living in Fordist North America during and after the 1920s began to recognize and form their sense of identity through the commodities they consumed. This process of commodity-based identity formation has gradually intensified over the past five decades until today, when our sense of self is almost inseparable from the objects and services we buy.

Many of visual artist Colette Urban’s performances, which in a sense began with the opening of a second-hand junk store on Queen Street West in Toronto in the 1970s, have found

means to illustrate variations on identities as they are (re)formed by objects of consumption – particularly those related to female/feminine identities. For instance, the junk store’s collection of found and traded things (clothing, trinkets, furniture) functioned as a catalyst in the interchange of identities between herself and her ‘customers’ (usually other artists, or art-seeking viewers).

Later, Urban fastened many of these collected objects onto a full bodysuit she wore for a performance titled, *Consumer Cyclone* (first performed at selected shopping malls throughout Montreal, Quebec City, and Windsor in 1993). A literal manifestation of the commodity self writ-humorous, *Cyclone* was constructed out of “wigs…heating pads, hair dryers, and hair curlers, all the necessary beauty accoutrements”, which both increased her physical presence, and dragged heavily behind her.987 As Tanya Mars recalled, the costume transformed Urban’s body into “an extension” of consumer culture itself, where both her body, and the commodities attached to the costume “blend[ed] to become an object, a living, breathing entity”.988 From this point of view, *Consumer Cyclone* appears as a literal, physical instance of the commodity self described by Ewen. But he also described more intangible, yet still very real, very lived aspects of the term as well – such as social, cultural, and economic instances.

For Ewen, the emergence of the commodity self was a direct result of advertising’s ubiquitous extension into everyday life, and its concurrent promises of “freedom” and American “nationalism” for consumers.989 Way’s *Encyclopedia* entry reflects how Ewen’s concept of the

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988 Mars, 39. Brackets added by author.
989 Ewen, 30. Ewen places late nineteenth and twentieth-century American industrialization and commerce at the centre of his study. For him, the notion that individual progress and distinction can be obtained through consumption is the foundation of the ‘American Dream’, and even American democracy itself, 59.
commodity self has been expanded on over the past two decades. Late-capitalist individuals find their own value and meaning in the commodities they consume “by using them to establish, clarify, or change their identities and to communicate their identities as individuals and members of groups affiliated by ethnicity, nationality, region, religion, gender, sexuality, and generation.”

Recall again for example, how the members of A Tribe Called Red wear the baseball caps, hockey jerseys, and other merchandise of sports teams whose names and logos are appropriated from North American Indian cultures (Cleveland Indians, Chicago Blackhawks, etc.) to signify their own aboriginal ethnicity. Similarly, Christians might purchase and wear gold crucifixion necklaces, business professionals connect to one another through Blackberry mobile devices, and eco-conscious citizens drive hybrid vehicles. Actually, the notion that an individual’s social and economic relations are representative of commodity exchange to such a degree that the value of an object is believed to be an intrinsic part of itself was originally explained by Marx’s theory of commodity fetishism. The theory of the commodity self continues the trajectory supplied by Marx to explain that an accumulated tally and assessment of an individual’s commodities is now also considered intrinsic to that person’s value in a social, cultural, and economic sense.

Way’s entry interprets the implication of the commodified self through Georg Simmel’s dark portrayal of the late-capitalist individual as “a mere cog in an enormous organization of things”, destitute of humanistic qualities such as “progress, spirituality, and value” in favour of “a

991 Isaak Illich Rubin explained that “The theory of fetishism is, per se, the basis of Marx's entire economic system, and, in particular, of his theory of value.” Essays on Marx's Theory of Value, (Montreal: Black Rose Books, 1990) 5.
purely objective life."992 Way understands the commodity self as engendering “the reduction of what once was appreciated for its utility and heterogeneity to something that can be exchanged commercially and is less unique and perhaps also culturally and socially prized less”.993 Way’s emphasis on “less unique” late-capitalist commodities once again demonstrates how appropriation has been implicated in an overall devaluation of contemporary culture in relation to history. This echoes the blame that Fredric Jameson placed on pastiche and what he might call a reification of the self. However, I would here like to apply a slightly more neutral use of the theory of the commodity self to illustrate the presence of a reification of the author/artist/creative producer within the principle of copyright.

The commodity self as a designation implies an individual and cultural awareness that we are, at the very least, mediated by the accumulation of the products we consume. This is an important update to what is generally over-emphasized as Marx’s contention that nineteenth-century commodity social life relations were “secret”, or hidden from general consciousness under a “mysterious”, “fantastic”, “social hieroglyph” of human-agency over production.994 As Duncan Kennedy argues in his third of four essays on “The Role of Law in Economic Thought: Essays on the Fetishism of Commodities” (1985), Marx was most concerned with revealing that individuals (from both the ruled proletariat, and the ruling bourgeois classes) tend to assume that the processes of production and distribution are “naturally” determined via the intrinsic values of

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992 Georg Simmel as quoted in Way.
993 Way.
commodities. This would mean that all production is determined by top-down forces of production. But according to Kennedy, Marx believed (and digital distribution has shown) that in actuality:

the people as a whole could make the decisions in any number of other ways than that represented by the commodity system. Moreover, with the commodity system itself there is nothing inevitable or natural about the outcome...It is important to keep in mind that commodity fetishism exists in this particular [Marx’s nineteenth century] environment, because people are often tempted to think it has to do with the exploitation of the worker....whereas in fact it is a “petty bourgeois” rather than a proletarian phenomenon. It has to do with the perception of the economy “naturally” held by people who own the means of production...  

As I explained in Chapter 2, in the contemporary environment of the commodity self, identity is a controlled and conscious construction that happens through commodity exchange. Albeit one that is still most often perceived as resulting from an individual’s seemingly naturally-born place, or naturally-fought achievement in the socio-economic hierarchy. Furthermore, the commodity self is very much oriented towards the commoditization of self, whereas commodity fetishism is sustained in things. As Way confirms, “commodity fetishism means that instead of appreciating commodities based on the people who contribute their resources and labor to making them and for their intended use, primarily, we value commodities for their economic significance in the marketplace.” However, as a biopolitical reading of copyright extensions demonstrates, today our commodity selves are valued and appreciated – just solely for their ability to produce

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996 Ibid.
economic significance through creativity and intellectual thought, if not for their contribution to
the physical labour force.

As an impetus for making the connection between biopolitics and copyright, Saint-
Amour briefly alludes to Michel Foucault’s article, “What Is an Author?” (1969). In it, Foucault
reveals the extent to which traditional modern Western culture had assumed the notion that an
author’s work/oeuvre guaranteed immortality for the writer through an “enigmatic excess”, which
he likens to religious transcendentalism.997 Even at the time of Foucault’s writing, an ‘author’
could still very much be distinguished from a mere ‘signer’, a ‘guarantor’, an ‘editor’ – so-called
ordinary people whose written (or, as the case may be, visual) ‘work’ has not necessarily been
culturally vetted for “homogeneity, filiation, authentication… reciprocal explication, or
concomitant utilization.”998 However, as I’ve repeated throughout this dissertation, the
hierarchical modernist conception of producers and consumers occupying distinct and separated
realms has also thrown any fixed notion of the author into flux. Foucault argues that after
poststructuralism, the concept of the author has “metamorphosed” so that, today, “the writing
subject cancels out the signs of his particular individuality” – meaning; the author has now been
decentred from the meaning of the work.999 I would add that the author has now been decentred
from the circulation and perpetuity of the work as well as it travels and transforms from one
author or DJ or visual artist or user to the next.

However, copyright – based as it is in modernist ideals – still attempts to maintain the
centrality of the author as a guise for protecting the profit interests of the seller. In fact, the

998 Ibid, 144.
999 Ibid, 141-142.
perpetuation of the institution of copyright demonstrates how, despite the best efforts of poststructuralism to reduce the power of the author and grant privilege to the reader, there still remains a culturally fetishized illusion holding that an author’s ‘self’ persists in the text. This ‘self’ is still more important than any other aspect of the text. This is part commodity self, and part commodity fetish. Commodity self in the way that the self of the author is extended into the product of her/his physical or intellectual labour – albeit reversed in that the product/commodity takes on the life of the author as opposed to the vice versa imagined in the orthodox sense of the term. Which actually moves it towards commodity fetishism – whereby the commodity is imbued with a life of its own, but in the case of an authored creative work, it takes on the life of the author’s self.

An author/creator’s name is more than simply a categorical designate. Following Foucault, under a modernist rubric a name also signifies the ideas, style of thought, objects of contemplation, methodology, works, and status associated with that name. Discourses such as these are “objects of appropriation”, or forms of property. But, according to Foucault, materials like books or artworks were only given real authors if the subject matter of the material was ‘transgressive’ enough to warrant punishment, or when an author was needed to shoulder the blame. In other words, the concept of property, and the “strict rules concerning author’s rights, author-publisher relations, rights of reproduction, and related matters” (aka copyright) came from locating authorship in an individual.

1000 Ibid, 144.
1001 Ibid, 145.
1002 Ibid.
1003 Ibid.
Historically speaking, the metamorphosis of discourse from an action to a product also had the effect of guaranteeing certain “benefits of ownership” (monetary profits, fame/notoriety, etc.) to any individual deemed an author. Foucault explains that the consequence of this is that it is the very concept of the ‘author’ that imposes limitations on the “proliferation of significations within a world where one is thrifty not only with one’s resources and riches but also with one’s discourses and their significations.” This is, for him, deplorable because it limits the “discursive instaurations” paramount for the modification, expansion, development, and advancement of thought and ideas. So serious had the limitations become by the time of Foucault’s writing in 1969, in fact, that Foucault even urged us to “entirely reverse the traditional idea of the author.”

Although we have come to believe that the author, by producing work, also infinitely broadens the scope of knowledge, in fact, the opposite is true. The concept of the author has become the force by which we resist change. As saturated as it is with our own selfness, the author has become the excuse we use to protect our own identities. Or, in Foucault’s words, the author is “the ideological figure by which one marks the manner in which we fear the proliferation of meaning.” Similarly, the commodity self has an interest in maintaining a status quo that benefits its own accumulation of resources, capital, and identity.

Understood this way, the ‘author’ is a kind of cultural repression mechanism at the service of capitalist institutions such as copyright. In a moment of transgressive ‘uncanniness’ the

1004 Ibid.
1005 Ibid, 151.
1006 Ibid, 150.
1007 Ibid, 151.
1008 Ibid.
author reveals when an individual or society recognizes the appropriation of something familiar (ie. themselves) in an authored material and experiences a kind of terror at the possibility of losing one’s self to this appropriation. This is reflective of Freud’s delineation of the ‘uncanny’ as “something familiar and old – established in the mind that has been estranged only by the process of repression.”¹⁰⁰⁹ In Freud’s definition, the uncanny is something that should have remained concealed but which has nonetheless been revealed and so creates an uneasiness or instability – something that Foucault might have deemed worth penalizing. One type of uncanny experience identified by Freud particularly pertinent to my present topic of the commodity self is the ‘double’ – an individual person, entity, or even material that “possesses knowledge, feeling and experience in common” with another individual.¹⁰¹⁰ The presence of a double bewilders the self (or, in psychoanalytic terminology; the ‘ego’) – born as it is from ‘primary narcissism’, and even threatens the ability of the ego to differentiate from the external world.¹⁰¹¹

Freud notes that at one time, the double was actually “an insurance against destruction to the ego” because of its ability to duplicate, repeat, and extend the life of the other.¹⁰¹² However, now the double is more likely to “awaken an uncanny feeling”; a “vision of terror” that “forces upon us the idea of something fateful and unescapable” and crushes our “illusion of Free Will.”¹⁰¹³ For instance, if some thing or material that an author creates is doubled, appropriated for another use, or reproduced in a new context, it becomes more and more difficult to control its significations. Since that same thing or material was constructed as an extension of the author’s

¹⁰¹⁰ Ibid, 9.
¹⁰¹¹ Ibid, 9-10.
¹⁰¹² Ibid, 9.
¹⁰¹³ Ibid, 10-11.
perceived self (ego), any loss of control over its circulation also means a loss of control over the self/ego. From this it follows that copyright provides an extended illusion of control over the self/ego of the author. It is easy to see, then, why authors (including writers, visual artists, musicians, etc.) are hesitant to completely let go of copyright for reasons beyond a simple profit motive: the author’s identity; the very sense-of-self with which the author mediates their material and social environment, is embodied in the thing or material the author believes they have produced/created, but which they have actually appropriated. Protecting ones creative work, means protecting oneself, even if this means denying the very process by which one’s own creation was produced.

6.1.4 ‘Commodity Narcissism’ in a State of Fetishized Creation: The Tumblr-Pinterest Periphery

Robert Cluley and Stephen Dunne make a particularly compelling connection between commodity fetishism and the means of denial by way of Freud’s concept of narcissism, which they build upon to offer their own theory of commodity narcissism. Cluley and Dunne develop this idea in order to offer a way to begin to explain why consumers consume as if they did not know that their consumption “may be detrimental to their physical and psychological health, that it might harm the environment, perpetuate sweatshop labour, and so on.”

1014 The ‘as if’

1014 Robert Cluley and Stephen Dunne, “From Commodity Fetishism to Commodity Narcissism”, Marketing Theory, 12(3) (2012), 253. As Cluley and Dunne explain, the ‘as if’ phenomena of contemporary consumption has previously been identified, discussed, and critiqued by marketing theorists interested in considering the presence and/or absence of consumer sovereignty in order to propose new methods for encouraging enlightened and ethical consumption habits.
phenomena is a result of our inability to move beyond our commodity fetishism: our tendency to mistake the objects of our consumption as “self-sustained and self-sustaining” materials unto themselves, rather than as a result of human-imbued labour.\textsuperscript{1015}

Just as the role of all production is concealed in capitalist society so too is the process of creative production either romanticized or concealed or, as Cluley and Dunne put it: “Commodity fetishists do not concern themselves with the journey a commodity takes to a marketplace.”\textsuperscript{1016} This is most evident in popular online image distribution networks like Tumblr and Pinterest, where users re-post images culled from a variety of sources. Overwhelmingly, these images are reposted sans labeling, crediting, or citation, and without any indication of the original source or the source from which the user themselves obtained the image. The result is a peripheral repository of context-less material floating through a digital aether-space. The image material accumulated on Tumblr and Pinterest is tethered only to each individual user’s personalized, fetishistic, and highly aesthetically motivated relationship to it.

However, as Cluley and Dunne advise, the recognition of labour by individual consumers is not enough to overcome commodity fetishism because of the extent to which it has been naturalized by the social conditions of production.\textsuperscript{1017} As they reiterate, Marx warned that commodity fetishism would not be overcome until the processes of production “becomes production by freely associated men [sic], and stands under conscious and planned control.”\textsuperscript{1018} This means altering the social relationship between production and consumers, not simply

\textsuperscript{1015} Ibid, 253.
\textsuperscript{1016} Ibid, 254.
\textsuperscript{1017} Ibid.
\textsuperscript{1018} Marx as quoted in Cluley and Dunne, 254.
understanding these relations. Preventing us from any alterations, however, is our “recourse into increasingly convincing forms of denial and disavowal for self-protection and justification.” We continue to deny the processes of production because we are not really able to face the consequences of our actions if it means that the commodities we want would become unjustifiable.

Cluley and Dunne link this denial (which provides us with the ability to consume as if we did not understand the conditions of production) to Freud’s argument that fetishism is a conscious “refusal to know.” Cluley and Dunne explain that, in the psychoanalytic sense, a fetish helps an individual to make sense of the trauma and anxiety resulting from the confusion that comes when contradictory processes are simultaneously operative. Of course, Freud believed that we are driven to make sense of the world through our desires not through our experiences and, as such, individuals are ‘self-contradictory entities’ in themselves. Knowledge itself is not enough for us to explain incompatible presences. However, our as if (denial) function allows us to “preserve our hopes for what we wish” and to navigate any discrepancies that might arise between our desires and our knowledge. Copyright mythology is one iteration of this denial. We desire both to use material insipidly and freely, and to protect material steadfastly and restrictively. Ignoring the author’s ‘modus appropriation-i’ allows us to maintain proprietary interests over the material we produce in order to benefit economically and

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1019 Cluley and Dunne, 255.
1020 Ibid.
1021 Ibid.
1022 Ibid, 256.
1023 Ibid.
1024 Ibid, 257.
1025 Ibid.
socially for as long as the law will allow. The naturalization of copyright law functions both as the vehicle through which we excuse ourselves from acknowledging that production is inherently appropriative, as well as the apparatus through which we can demonize anyone who does.

Freudian fetishism is a “normal and healthy” psychological mechanism for negotiating the external world and its social relations. But for Marx, fetishism is a condition of commodity culture that prevents individuals from fully engaging in social relations between each other. Cluley and Dunne formulate a reconciliation of the competing perspectives of Freud and Marx by considering them in relation to Freud’s concurrent theory of commodity consumption as an example of ‘narcissism’. The primary repository of desire for a narcissist is their self, although this often consists of ‘attaching’ their desire for self onto external objects.

For instance, Tumblr and Pinterest images manipulate the outside world onto the narcissistic user’s fetishistic relationship to the images they have posted. A user ‘looks’ at their personalized Tumblr feed as a collection of objects of desire in the literal sense, but also in the psychological sense of looking at their desires as a manifestation of their self. Narcissism is the projection of an idealized self that is partially constructed by “being able to think oneself better than others.” An idealized self that takes a “sadistic pleasure” in consuming in order to satisfy our own needs at the expense of “depriving and harming” others. Cluley and Dunne emphasize that Freud developed his notion of narcissism explicitly in tandem to commodity consumption. Although psychological narcissism is chiefly considered a “socially unacceptable” disorder, and is predominantly inhibited, Freud reveals that narcissism is a “socially acceptable form of

1026 Ibid, 258.
1027 Freud as summarized by Cluley and Dunne, 258.
1028 Freud as quoted in Cluley and Dunne, 260.
expression” when it comes to consumption.  

A copyright, for example, permits the holder to satisfy their desires for economic benefit and creative recognition while, at the same time, depriving others of doing the same.

A narcissist’s primary motivation is their self-desire, even when their motivation may appear to be externalized. The public, ‘shared’ nature of Tumblr and Pinterest pages belie their self-interested decontextualization. No one is really expected to make any connective sense out of the fetishized sources on any user’s Tumblr or Pinterest page except for the user her/himself. The fetishization of images (including images of artwork and commodities) on these sites is but one example of the perpetuation of commodity narcissism. A similar manifestation can be found in other forms of creative production, including visual art production. There is no longer one single narrative, or strand of meaning in an artwork. Today, the multi-centric, multi-perspectival postmodern viewer (or reader) finishes the text. The fragmentation of Tumblr and Pinterest feeds are the product of an active readership, engaged with images and texts in such a highly customized way as to have produced entirely new meanings for the objects of their consumption. These are depoliticized denotative meanings to be sure – the images and texts of the average Tumblr or Pinterest page no longer have any relationship to their own history, or to the connotative meanings of their past. Without citation, these objects are not a whole lot more than the narcissistic consumables of a user’s ego. But this is less a reason to heed the call to copyright arms in the name of historical preservation than it is to encourage cited quotation in the name of archival recording.

1029 Cluley and Dunne reiterate Freud’s observation that parents often project their own unfilled desires onto their children: “Parents buy things for their children not just to please their children but also to please themselves.” 259.
Citing is significantly different than copyrighting. Citing implies an active interest in the infinite recirculation and intertextual history of material, where copyrighting denotes an inactive, restrictive end-point for the dissemination of material. Citation is what politicizes the activity of remixing. It exposes the social relations of production as appropriative while building rich, hypertextual pathways of interpretation. While citation permits use and re-use, it also deflects the self-idealization of commodity narcissism. Providing sources is an exercise in externalizing the self from the materials of one’s consumption. It is a connection between one’s self and commodity, but it also projects the consumed material back into the system of circulation and recirculation in a gesture that both acknowledges and permits its use and re-use by others.

It could be said that the late-capitalist commodity self/narcissist emerged almost as a kind of Lacanian ‘mirror stage’, wherein our cultural ‘mirror image’ seemed to emerge on the threshold of the material world.\textsuperscript{1030} If the primary function of the mirror stage is to “establish a relation between the [individual] and its reality” in order to create a sense of wholeness, then surely the material world must factor into its completion.\textsuperscript{1031} Indeed, at the level of the individual, the commodity narcissist is the \textit{product} of a mirror stage by which an individual creator recognizes her/himself as an ‘I’ in the objects of their environment and possession. This identity appears as an externalized ‘Gestalt’ which,

symbolizes the mental permanence of the \textit{I} at the same time as it prefigures its alienating destination; it is still pregnant with the correspondences that unite the \textit{I} with the statue in which man projects himself, with the phantoms that dominate him, or with

\textsuperscript{1031} Lacan, 36.
the automaton in which, in an ambiguous relation, the world of his own making tends to find completion.\textsuperscript{1032}

The materials accumulated by an individual in the form of property, which are then appropriated by a creative process, act as the “statue” onto which the individual’s self is projected. The relationship between self and material effects, therefore, ensures the individual’s extension into both immediate reality, and history.\textsuperscript{1033} It could be said then, that in order to separate our selves from the materials around us, or from the materials that we appropriate, it is crucial for us as individuals, followed by culture itself, to break out of the state in which the mirror stage has left us. Or, at the very least, recognizing how the operations of a late-capitalist, property-based economic system is dependent upon an externalization of the self – however uncanny it may be.

This conscious reversal of the mirror stage can be likened to Foucault’s imagining of what an authorless society would look like:

\begin{quote}
I think that, as our society changes, at the very moment when it is in the process of changing, the author function will disappear, and in such a manner that fiction and its polysemous texts will once again function according to another mode, but still within a system of constraint – one that will no longer be the author but will have to be determined or, perhaps, experienced.\textsuperscript{1034}
\end{quote}

The system of constraint spoken of above by Foucault in 1979, could very well be understood as manifesting itself within the current open-source movement. It could also be inferred in the gradual examination and (re)acceptance of the appropriative nature of culture that has been occurring over the past seven decades, and which has been accelerated over the past ten years.

\textsuperscript{1032} Ibid, 34-35.
\textsuperscript{1033} Ibid, 36.
\textsuperscript{1034} Foucault, 159.
It is possible that we are currently undergoing a cultural shift in attitude about what it means to be an ‘author’, what creative work entails, and who ‘owns’ that work. As we hover at the cusp of moving towards a more generous, intermutual-resource based economy, and a more visibly community-centered but individually experienced society, we are faced with determining the future of a series of complex and dichotomous cultural institutions – copyright being one. If we are vigilant, we can ensure that any future copyright legislation (or emancipation) will follow and support that shift rather than the economic interests of those who benefit the most from eighteenth-century proprietary attitudes; that is, sellers – especially sellers at the level of the conglomerate multi-national. However, this will mean relaxing our fetishization of commodities by slowly disconnecting our selves from our things and loosening our own narcissistic proprietary grip on accumulated goods (beginning with intellectual goods), in favour of sharing and transforming materials (beginning with intellectual materials).
Epilogue

As I stated in Chapter 1, appropriation as a scholarly topic of debate has come in and out of academic fashion over the course of the last three decades. Although after the mid-1990s many may have assumed that the discussion was over, the static nature of political, cultural, and economic contexts ensures that few discussions are ever really final. As Jennifer Daryl Slack stated,

Thinking with articulation is a way to comprehend the power of a concept, the work it performs, its reality, without being seduced into accepting it as an absolute truth or as an unchanging essence. Thinking with articulation also encourages a certain distance that permits a reading of the force field, set of relations, or context within which a world takes shape and within which (sometimes against which) we give it shape. 1035

The challenge, therefore, is to continue to re-articulate the act, form, content, and politics of appropriation as constituted in particular historic latitudes, by particularly implicated parties – certain groups of individuals, or interested organizations and institutions.

But Slack also makes “a plea” for articulation’s relevance, asking scholars to use the methodology in ways that lead

to what matters most in the sociocultural conjuncture: the work of politics and power in the structure and experience of life, to the tendencies, trajectories, and affects within which the world is given shape. When found wanting, we ought to have at least understood the conjuncture well enough to begin to suggest ways

of rearticulating or reorganizing contingent articulations in ways that might change the world for the better.\textsuperscript{1036}

To this end, the following last few pages of this dissertation make note of some issues and topics related to appropriation that require future articulation.

As digital technologies continue to develop in breadth and scope, users/consumers of these technologies find more and more sophisticated ways of interacting with and adapting these technologies. In turn, the legislations regulating the intellectual properties circulated by and through these technologies continue to be challenged by users, creative producers, and corporations alike. Indeed, legislators have been working steadily, and with some urgency, to react to, and address some of these challenges – as exemplified by the tabling and passing of Bill C-11, The Copyright Modernization Act, in 2012 (cited in Chapter 5 of this thesis). But this hardly signals any end to the work, nor to the debate, on copyright itself. Less than a month prior to the time of this writing, for instance, the Canadian Government made headlines in their consideration of a new copyright exemption for political advertising. As Michael Geist summarized shortly thereafter, this sparked a flurry of commentary alleging “fascism, censorship, expropriation, and more.”\textsuperscript{1037} However, as Geist goes on to note, these criticisms actually bear almost no relationship to reality. The truth is that the government and the broadcasters both agree that the current law already permits use without authorization… it is important to emphasize again that fair dealing under copyright already

\textsuperscript{1036} Ibid, 229.

\textsuperscript{1037} Michael Geist, “Broadcaster Copyright Misuse and Collusion?: Why Criticism Over the Government’s Political Ad Copyright Exception May Be Pointed in the Wrong Direction”, \textit{Michael Geist} (blog), online: http://www.michaelgeist.ca/2014/10/broadcaster-copyright-misuse-collusion-criticism-governments-political-ad-copyright-exemption-may-pointed-wrong-direction/, October 14, 2014, accessed November 11, 2014.

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permits use of many broadcaster clips without the need for further permission.\textsuperscript{1038}

The proposed exemption would create what Geist refers to as an “inequitable policy of creating two tiers of rights for political speech” whereby political actors (political parties, politicians, candidates, etc.) would be the only benefactors.\textsuperscript{1039}

That said, Geist admits there are also other issues at play behind the headlines. He, along with Ariel Katz, have speculated that the proposed exemption may actually have been the Government’s reaction to “an agreement between the major electronic media organizations not to broadcast political ads that contain audio or video content appearing to come from news services owned by CBC/Radio Canada, CTV/Bellmedia, Global/Shaw, or City/Rogers.”\textsuperscript{1040} As Geist and Katz point out, this type of conspiratorial agreement between the top four major Canadian public broadcasters, if exercised, would be in direct violation of section 45 of the \textit{Competition Act}, which “makes it a criminal offence [for] two or more competitors or potential competitors [to] conspire, agree or arrange to fix prices, allocate customers or markets, or restrict output of a product.”\textsuperscript{1041}

Either way, this situation exemplifies yet another instance in which copyright has been inappropriately and misguided used to protect the interest of a corporation (in this case, the government) over the public interest, and/or over the interests of individuals. It leaves the door open for further research into alternative modes, practices, and structures for both protecting and

\begin{itemize}
\item[\textsuperscript{1038}] Ibid.
\item[\textsuperscript{1039}] Ibid.
\item[\textsuperscript{1041}] The Competition Bureau as quoted in Katz.
\end{itemize}
permitting the circulation of intellectual property. Are there ways in which the economic interests of corporations can be sustained without constraining the rights of individuals? Should there, ultimately, be limits to the economic interest of corporations in the broader concern for the public interest? If copyright is to remain with us for the time being, what kinds of assurances need to be reinforced in the terms of fair dealing to prevent copyright over-restriction and/or misuse?

Moving forward, there is opportunity, here, for scholars from a variety of disciplines to collaborate directly with parliamentarians, lawmakers, and creative producers themselves.

Legal studies aside, in terms of future art historical studies related to the topic of appropriation, questions remain regarding the status of museum and gallery institutions in the face of disintegrating hierarchies of authenticity and originality. What, for instance, will this disintegration mean to the collection and preservation of ‘real’, ‘authentic’ material artifacts? Especially in considering the proliferation of newly emerging platforms for museum and gallery collections – as represented most acutely by the Google Art Project (GAP), which I mention briefly in Chapter 3. Since it first launched in 2011, the GAP has been providing high-resolution images of artworks as provided by the particular collecting institution in which it is housed. Users have the ability to search the GAP via specific artwork, via individual artist, or via specialized collection/institution. In some cases it is even possible for users to digitally walk/pan through the halls of certain institution’s public galleries, such as the Musée d’Orsay in Paris, browsing the artworks displayed in some of the permanent exhibits.

The most notable feature of GAP, of course, is the fact that users of GAP are offered a greater accessibility to collections they may not otherwise have the ability to view, let alone to

1042 See: https://www.google.com/culturalinstitute/project/art-project
view *instantaneously*, and from the comfort of their own homes, offices, classrooms, etc. But is the GAP simply a digital, visual extension of the traditional museum and gallery? Do platforms such as the GAP only reinforce, in digital format, existing hierarchies between institutions? For instance, the current iteration of GAP certainly tends to favour those large, international collecting institutions whose focus is traditional, historical artworks over smaller, lower budget, non-collecting institutions like artist-run centres, or other institutions whose mandates focuses on a rotating selection of contemporary artworks.

On the one hand, it could be argued that the GAP represents the more RW (Read/Write) style of experience described by Lawrence Lessig (and referred to in Chapter 3 of this thesis) in a variety of ways. For instance, users can zoom in to view the details of a particular artwork much more closely than would ever be permitted, or even possible, in the physical space of the exhibit. They may save and organize their own personal selection of artworks into a personal user-gallery, or they may even cut and paste images of the exhibits or artworks for use on other platforms.

On the other hand, the RW experience offered on the GAP appears to be so deeply rooted in the traditional RO (Read/Only) aesthetic format still offered at the physical site of most of today’s museums and galleries, that it is hard to imagine any significant blow to our culturally entrenched ideas about authenticity. How do platforms such as the GAP both challenge and reinforce our ideas about the nature of museums and galleries as authorities on the subject of authentic creative works? How does the closeness, or the distance, afforded by digital platforms challenge or reinforce romantic and surface ideas about artworks and their creators/authors?

Finally, if we are to imagine the end of copyright – as I believe this thesis asks us to – it is also our responsibility to begin to imagine new or alternative ways for individual creative producers/artists to make a living. Certainly, some ‘alternative’ fee-based compensation models
already exist specific to artists including, in Canada, the CARR/CARFAC Exhibition Fee Schedule, and the CAROC/CARFAC Artist’s Professional Fees Schedule, as well as the newly founded W.A.G.E. Certification program in the United States. Although, in Canada, most reputable museums and galleries already abide by the voluntary CARR/CARFAC fee schedules, the amounts earned by artists are still not enough to support oneself and sometimes barely cover the costs associated with exhibiting, let alone with production. Furthermore, these fees are, for the most part, still based on compensating the material rendering of a product.

This is not just an issue involving or about copyright since, as I stated in Chapter 5, the majority of individual artists do not actually benefit enough financially from copyright royalty fees to make a living wage solely in this way either. Rather, it is a broader social issue involving our general cultural (under)valuing of the creative fields, a lack of governmental and corporate investment in the creative fields, and the proliferation of romantic ‘starving artist’ mythologies. Instead, it is time to begin to formulate new or alternative means for creative producers to be compensated as professionals for the time, materials, knowledge, and effort required to produce an artwork. In other words, how might artists be compensated for their labour in addition to (or instead of) being paid only for the finished material product and the exhibition copyrights thereof? How might governments, corporations, and institutions be engaged in the development of these new or alternative means? And what by which entities should these means be regulated in order to ensure the benefits lie with creative producers themselves?
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