

no more potlucks

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EDITORIAL

Copie. Copy.

This is such a fascinating concept--the copy-- isn't it?

Think about it. There's the act of copying that is defined by reproducing, duplicating, or in some way replicating something that already exists. But copy is also a noun, the product or object of the action, the act of copying.

That the act and the consequence/product have the same name only hints at the philosophical weirdness of "copy".

Copy what? Copy how? Copy who?

Copy an original, cover a song, print a photo, photocopy a chapter, multiply cells, replicate a document, (re)represent, imitate, mime, reproduce, etc... Are we constantly copying?

Isn't everything we do online an act of copying? Copy & paste. Download. Save a new version. Copy. Copy. Copy. But what exactly are we copying? Binary bits? Information? Conditions? Ideas? Structures? Actions? Habits?

Do we copy what's normal? What's right?

Two incredibly rich articles in this fourth issue of NMP, by Yasmin Nair and by Laura J. Murray, are in dialogue around discussions of family structure and the conditions of reproduction: what does the straight family model reveal about the so-called original? And, what does the queer copy invoke?

Drawing parallels between reproductive technologies and issue of reproduction more broadly, Murray leads us through the complicated labyrinth of copy law in Canada.

Nair considers the consequences of the struggles for the acceptance of gay marriage in the US, and what it reveals of a culture fixated on "copying" straight culture.

Alexandra Juhasz and Jane Anderson also consider the copy – what the fake means and what the limits of authenticity and of visibility may be.

Juhasz writes "the queer copy marks and thus unsettles binaries of stable being, knowing, and showing and inserts a question, joke, or angry exclamation where once only certainty held firm."

What of disbelief in the age of the ubiquitous copy?

What about frauds, forgeries and fakes? What about knockoffs and counterfeits? They are copies too.

Why do we need to know what is real? What does it reveal about us? What does it say about our past and our relationship to history, to knowledge production, to archives?

How does the visibility afforded by mass copying and the proliferation of media more generally come to affect communities in different ways?

To this, Jane Anderson puts into question the way copyright is seeped in liberal individual-

ism, including the ways in which rationalities of ownership and authorship are upheld in copyright law. Anderson's questioning is around the marginalization of indigenous people within the archive.

Bernie Bankrupt's "Lesbian Concentrate" is a welcome reflection on lesbian music herstory. Part of *Lesbians on Ecstasy*, Bernie Bankrupt reveals the thinking behind the band's concept as borrowing and adapting songs from the lesbian musical canon. A lot of so-called tampering goes into a copy, especially when cover song becomes dance remix.

Prized filmmaker, Dana Inkster talks to Dayna McLeod about her diverse practice, life on the prairies, identity, and fucking. All things complicated. All things messy. A perfect match for the theme of "copy", Inkster's *Redux* is proudly featured on the site.

For the cover, Pierre Dalpé seemed like the obvious choice. With his duplicitous heart revealed, Dalpé thwarts the idea of authenticity, and of representation in photography. His *personae* series is a beautiful and eerie look into the possibilities and limitations of twinning.

As part of a series of incredibly well-researched and thought-provoking articles, NMP contributor Nicholas Little explores the current realities of the suffering of sex workers at the hands of the police and media.

Elisha Lim - another incredible comic, each time more insightful.

Stay tuned: our September 2009 theme is "fixate" and our November 2009 theme is "crux". Got ideas? Write us. And don't forget to sub-

scribe online, and get yourself a copy of the magazine while you are it.

Remember to comment a lot (contributors still love that) and as always, dear readers, we are committed to bringing forward a defiant and eye-catching magazine bimonthly.

Mél Hogan

GETTING MESSY & COMPLICATED WITH DANA INKSTER

Dana Inkster | Dayna McLeod

Dana Inkster is an Alberta-based media artist and cultural producer whose projects range from beautiful, intense experimental videos to gripping, insightful documentaries. I spoke with Dana about her diverse practice, life on the prairies, the multiplicity of identity and experiencing the messy and the complicated, and how that translates into her work.

Redux 1, the video featured here, will be available online on NMP until July 8, 2009. After July 8, you can see it via YouTube [here](#).

How does your “art practice experiment with the bounds of cultural representation and our expectations of narrative” as you state in your artist statement on your website?

What I most engage in primarily is that whole notion of experimenting with expectations of narrative. It’s about my background in terms of critical thinking and being a political studies major for my undergraduate degree, and realizing that media persuades. Forever we get fed these very traditional stories and we can expect how these stories are going to go and what it means and what it means about our cul-

ture and our community and who gets to author those stories. That's all well and good in terms of having codes for understanding our culture, but

quite fit. There was always a twist at the end so the expectation of the narrative when I get to write the stories, I try to work in that twist so that it

cause I like a good story, but I like a good twist on the end.

You use a lot of traditional conventional narrative



I often found, as much as I enjoyed stories growing up and at all ages, in movies, I always felt that my experience never

kind of shifts expectations of what the narrative is going to be. But also paying respect to the tradition of storytelling be-

structures within your work. Where do you situate yourself as an artist in relation to your audience

and yourself as the storyteller? What is your perspective?

I use traditional conventions of narrative as a shared language. I don't want people to get lazy about what they expect out of stories, so on one level I feel it's my job to complicate what a story is, what a message is. But also to play off of that shared language to kind of disarm people, to participate in a story that they might not otherwise care about. In terms of the identity stuff, it's pretty fluid and I can't quite extricate the multiple identities that I have, that I'm continuing to gather. But definitely in terms of standing on the outside looking in, it began with race for me because I've been black longer than I've been a dyke. But when I came out and embraced a queer identity, it fit. It fit with my perspectives of the outside looking in but still wanting to articulate myself and demonstrate what my experience is. And now I've got this other weird twist of geography- I'm adding to the list of identity. It's blowing my mind that I live in this small town.

In Lethbridge, Alberta!

And I haven't quite embraced that as an identity but again, its

kind of this twist of the expectation of the stories that come out of small town Alberta. Being in Alberta, I don't actually feel, like at all, that I'm home. But it helped me to realize that I've never really felt that. So, might as well be on Mars and just get on with things, acknowledge that I'm on Mars.

Is that what it's like there?

Well, yes and no. I think by moving here, it did a couple things. It helped me to think about my own prejudices with regard to expecting intolerance from people and, god-damned it, as a good Central Canadian girl, I've been expecting a lot of red-neck activity and it's just not happening, and I have all of these zingers that I haven't been able to use.

Like what? Can you give us some examples?

Well, in terms of the zingers, the desire to have a confrontation with someone, not wanting to back down from confrontation. Because that was a big part of my life living in Montreal and growing up in Ottawa. There was always this confrontation around racism so I thought that if I'm going to the belly of the beast, I'm going to be well equipped to defend myself and

no one's picking on me. So it's strange on that level. And also when we moved here, I embraced that I have to just be myself regardless of my location. It was interesting too- a lot of people would say, "Oh I could never live there because of XYZ," and I was one of those people, it included Alberta. It's like, "Oh! I'm still very queer, and if I can make it here, I can make it anywhere." That was an unexpected experience in this last move.

It's interesting what you're saying about confronting your own prejudices about Alberta and assuming that you'll be harassed for being black, for being queer, for being a woman, and that you're ready for it, you're tough for it. In terms of adding to the list of your collected identities, I wanted to ask you about the "Mommy identity", because this has come up in discussions I've had with other artists, like Toronto performance artist Jess Dobkin where they are suddenly pigeon-holed or dismissed or labeled as a Mommy Artist, which just seems to further fracture feminist identity- you're making "Womyn's Work", you're making "Queer

Work”, which seems to function as a not-so-subtle way to assign audience, alliance and/or affiliation, but ultimately ghettoize these types of practices.

I’ve had various moments, it’s been over a decade now where I’m feeling that if someone is asking me to fill a commission or speak or pitch a new project, there’s that expectation that it has to do with identity. And it comes up over and over again, and at different moments it changes all of the time. At different moments,

I make my peace with it because it’s like, well, if you want to play according to those rules, okay, let’s play. But then I definitely have had my moments where it’s like, ‘how come nobody asked me to make that documentary about trucks? Why can’t I do the benign food show, why does it always need to be charged with this message about my cultural experience?’ but then at the same time, when I say it out loud, it’s like, ‘fuck! My cultural experience is underrepresented so I might as well step up and explore it.’

It’s a rich landscape that I’m still excavating and even right now in “The ‘Bridge”, as I call it, I’ve

been thinking about and trying to rage against the degree to which my practice is getting mainstreamed, and actually desexualized. It has a little bit to do with not only the success of making that NFB (National Film Board) documentary, 24 Days in Brooks but also taking on this university job in a university town.

There’s a lot of work that I make that I just don’t show to my students because this is the Bible belt. So I’ve been trying to balance that and continue to nurture my practice in a way that remains sexualized. Like I said for a long long time that the work I make is ostensibly about fucking and mending the broken heart, even though I don’t visually represent fucking, but that’s how I think of it. So it’s interesting to hear about other artists being pigeonholed as Mommy Artists because I’ve thought about that. Can I still make work about fucking and be a Mommy? I’m intrigued by it. It’s exciting to see what I’ll come up with, with all of these kinds of uncomfortable audience possibilities. I’ll figure it out. There’s room to figure it out here, which is nice.

What is the difference between experimental video art and broadcast televi-

sion documentaries in your practice? How do you approach these types of projects?

I love it because it’s kind of schizophrenic. And also, the mainstream, it’s about knowing what the rules are really, really well so you can break them. That’s how I see it. And I like marketing. I like working on the marketing of features and all of those mainstream production kinds of things because, if nothing else, it helps me go, ‘I thought so.’ Knowing the secrets behind how our media gets generated and the lack of criticality.

Can you give us an example of a function or a standard that you’ve re-appropriated or dismantled and reassembled?

When I was doing marketing, it is very basic conversations about demographics and selling things to people. Selling ideas to people. Selling things to people that they don’t necessarily want or need. But it’s a very mainstream practice to market mainstream media content. I enjoy it because it’s like, ‘oh, that was pretty straight forward.’ It’s like a formula and it works all of the time. And, it’s insightful. It makes me feel like

I have a bit of an inside scoop about production, distribution and exhibition and I like that. So the interesting part is, I've had people ask me what I do for a living and that changes to my contentment ever other year. I will always make work. I always feel like I'm going to make art forever. And my experimental practice is my own. So that's the luxury. I'll do what I have to do to pay the bills or continue conversations with the communities with which I live, but that often is about a lot of mainstream stuff and I just have this great fortune of telling these experimental strange stories and they travel.

They have this ripple effect but I don't have to be so canny about what I'm trying to say, or if there's a message, or who I'm trying to reach. I just make this work and fortunately, people express some interest. But I will always have that. So the experimental practice is not going anywhere, it's the mainstream practice that pays the bills that everybody knows.

Is that how you see 24 Days in Brooks?

Yes. That was a mainstream foray, but one that's close to my heart. My background is political studies, that's my under-

graduate degree and the reason I fell in love with that whole world was because of the power of media to shape communities and people's lives, and weaned on NFB documentaries so I'm quite proud to be a part of that library, but at the same time, I brought my black, queer, feminist self to that process, a very institutionalized process that moves quite difficultly in some ways.

Do you mean politically? Internal politics in a national institution?

I mean like having conversations about who is the audience and what they are expecting—what story are they expecting and there were times where I wanted to tell a story that maybe wasn't expected and I had to fight for that. And it wasn't anything radical. I think how my experimental practice does affect, or 'impinge upon', as my mother would say, how I tell all stories. I don't want to just do it the way people are expecting the story to be told, and at times, the producers were bored with me trying to do that. That was painful, at moments.

And in the end, did you get to tell the story that you wanted to?

Yes and no. I mean, with that film, the truth of the matter is, I got a green light from the NFB to tell a story that had nothing to do with labour. It was all about people migrating from Africa to very white prairie Alberta, and I just wanted to investigate their experience of this placement. So I got this green light and then 3 days into my on-the-ground research in Brooks, the strike broke out. So I was going back to my producers begging, 'Can I still just tell my small little story?' and they're like, 'No way'. So that's why it turned into the labour story. The production all the way along was about me trying to hold on for dear life to the actual personal story of the people that I met versus this very traditional, power to the people, labour story.

I know nothing about labour, but at the same time, the reason I embraced the labour side of the story is that I thought that this was my opportunity to make a documentary about trucks. So I embraced that opportunity and still tried to be the heart and the spirit of the original story that I wanted to tell. But it was a tug of war, there were a lot of moments where the producers were like, 'we want this to be old school labour, Norma Rae but with

black people', and I thought that there was a twist in there that could be told.

You've talked about producers expectations, mainstream demographic predictions. In regards to your experimental practice, what are the expectations of that audience? Is that important to you?

It's so interesting that you would bring this up, because I just had an exchange with the commissioning coordinator for a series of Pride videos.

The curator of this project wanted to have conversations about me meeting the expectations of Pride parties. And so just a few hours ago, I was, 'well, this is a Canada Council funded project from my point of view- their expectations, they will hopefully just go with the flow.' I can't make a piece that... when it's art-based,

I have no interest in those questions, and that's what I ended up saying to the curator. This is not the place, in my mind, to be concerned with that at all because that is what TV is for, that's what advertising is for.

Art is very different, to my mind.

Can you talk more about how your practice is about fucking and mending the heart? Does this have to do with homophobia? LGBTQ-IA identity politics?

I mean the whole notion of fucking as it relates to my practice; I use that word because it's the most appropriate because it's really about emotional violence that we put ourselves through or we put others through and it's not necessarily slash and burn, but there's a certain violence to it that people survive.

When I say fucking, it's kind of the emotional violence that we put ourselves through but also because we're drawn somehow viscerally to a sexual experience that might be love based or might not be love based, but fucking! You know what I mean. In that notion of the complication that was really what I came out into. It's this permission to be all messy and complicated and you know, gorgeous in terms of a queer life- it was all of those things.

I try to make work that is all of those complicated and messy, but sweet things.

Can you walk us through the entirety of the Art of Autobiography?

There's the original documentary, and how did the 2 experimental projects come out of that project?

The *Art of Autobiography* actually was a documentary project that I started with the National Film Board in 2000. It was under another working title and they were helping me develop it and that totally fell apart and I walked away from the producers because they were so fixated on this story of my biological mother's sexual assault. And I had just met the woman, too. They were like, 'okay, this is the story to tell', and I was you know, I'm not going to put this 65 year old woman through your sensational, bad, documentary ringer. So I just walked away and dealt with their lawyers sending threatening letters that they owned this story and that I had better not make a documentary. It was ridiculous. So I have a love/hate thing with the NFB, between the marketing job I had there and that experience, and then 24 Days in Brooks. So I just worked away on a whole bunch of other things and got funding to make it on my own.

Again, the Canada Council for the Arts, the CALQ (Conseil des arts et lettres du Québec) helped me to do that.

I made this longer piece that was a broadcast hour because I still wanted to explore that for a whole lot of reasons. So I finished it and it had it's screening at Sundance, which I didn't attend, which was another interesting foray when I said I wasn't going to my screening, they were scandalized that I would not accept that invitation and spend \$7000 to go. But it was done and it was great and it was fun and I felt better. It helped me kind of navigate this new relationship I had with my biological Mom.

"what are you talking about?" So I wanted to include as many voices including my own in that story.

How did that work, examining yourself as subject while directing the project? How were you about to navigate both of those roles?

It was really wonderful, I mean the people that came forward to share their stories on that night, they were just so ready to be part of the process, so I was able to take away, cause the treatment I had written

story, but also what came out of Dusty's that night. Kind of like using archival material and then weaving it all together.

Autobiography is a form of self-portraiture.

Has this work helped you in a quest for identity?

I guess it has. I think for me, the work, it's just an utterance.

If I could write better poetry I would. But I can't so I'll just use a video camera. And so it's just something I do. And in terms



And you interviewed other adoptees for the project?

Yes, 6 others. I didn't want the focus after that NFB thing to be about me and my story. I wanted to kind of level the playing field a little bit. Because I find with adoption, like race, like queer- I find that people often will go, "oh, well my cousin is adopted", and so they know what the experience is like and half of the time, I'd be like,

was very much about my own family. And I was so lucky to have these other people, these 6 other people to come forward to tell their stories, so I could chip away at my navel gazing and include their voices so that I could just be molded into the fabric. The whole story did start with just my story and luckily, these other people were generous enough to add their stories to the mix. So I was able to treat not only my personal

of *The Art of Autobiography*, I was commenting on my own penchant for it. But also to say that it's available to all of us. The beauty of being adopted is that you can make up your own story. No one's going to chime in and go, "Oh no, that's not how it is!" But for myself, that definitely changes all of the time, depending on what moment I look at and what kind of mood I'm in, which is great. It's a never ending resource

of perspectives and I think that, the segue to the Reduxes is that I finished the larger piece but then I was looking at it and it was done and out in the world, but I thought it doesn't quite speak to certain kinds of things that I want it to speak to. It seemed to get a little too, mainstream and quiet in its representation of my experience. So that's why I gave myself permission to go out and make those Reduxes, cutting up bits and making them weirder because I felt no inclination to speak to anyone else's expectations and with



the longer more mainstream piece, I did. With the experimental stuff, not so much. I could just say what actually, I felt spoke to the darkness a little bit. It's great- I feel like any work that I own, I can go back and change it whenever I want. And I've been compelled to do that and I think the Reduxes are a bit of that.

I think that's a good point to make too, for people

who are outside of production, that somebody else can actually own your project, that the bigger the production gets, the farther away it can potentially get from the creator.

24 Days in Brooks? I have to buy copies if I want one.

Can you talk about Redux 1? The narrative about the mirror really makes me want to talk about "The Gaze" and all that that implies.



Well I find that fantastic. I love that. For me, that's where things start getting interesting because in a lot of the experimental work that I make, I put them under this umbrella called, Agenda Sketches. And Redux 1 is a sketch. I knew that I wanted to take excerpts from the longer, larger work of *The Art of Autobiography* and that's a story that I just find hilarious and heartbreaking. If it were someone else, I'd be like,

'oh you poor girl!' but instead I go, 'oh shit. That's me.' I just thought it was very funny. But in the video process, I knew that I wanted to start with the audio and take that out but the visual composition was all very sketch based. The beauty of sitting in front of the computer with all of those bells and whistles that you can get in your editing software. So none of it was planned out. It was shot with the kind help of the lovely and talented Annie Martin in our little house in Lethbridge, and it was for a show at the University of Lethbridge that I



was just invited to be part of, and so I made it specifically for that. I wouldn't have made it if it hadn't been for that small show.

Why did you have someone else tell the story? Can you talk about 3rd person versus 1st person narrative?

That's an audio clip from *The Art of Autobiography*. And the reflection you see in the eye-

balls is actually a clip also from *The Art of Autobiography*. So Annie shot the close-up, I set up the camera and she hit record, but it was always my intention to take not only that audio clip, but also that visual clip that one sees in the longer piece. And in terms of 3rd person narrative, that had a lot to do with the production of *The Art of Autobiography*. I was trying to get my birth mother to participate. She's a lovely woman, and it just wasn't her bag. It kind of shifted how I represented her experience or her voice. So I hired Kathy Imre who was also in *Welcome to Africville* to play the role of my birth mother in the shadows. So with her voice, I'd written that script based on bits of letters from my birth mother, conversations that we had had. So in terms of choosing the 3rd person to tell that story, it fit into *The Art of Autobiography* so I could make clear that I had come out to my biological mother and she was fine with that more or less and she just embraced it with a loving heart, and I think that anecdote kind of sums up that part of our relationship to suggest that it is quite loving and accepting, even though we don't know each other that well. So that's how it turned into the 3rd person to tell the story. It was really just about trying to

include her voice in *The Art of Autobiography*, a lot of creative choices about how to do that. I just think of that story, and really and truly, get thrown back to being in that bar. It was definitely a night to remember.

Dana Inkster is an Alberta-based media artist and cultural producer. The range of works that she has written and directed span a variety of genres, from experimental video art to broadcast television documentaries, and selections have been screened and acquired in all continents. Dana is currently teaching at the University of Lethbridge in the New Media department.

THE INCREASINGLY UNPRODUCTIVE FAKE

Alexandra Juhasz

In 1995, my then girlfriend, Cheryl Dunye, copied David Holzman's *Diary* (Jim McBride, 1967) itself a copy of the ubiquitous heartfelt autobiographical experimental films of the sixties. Knowing nothing at all about making indie narratives, I gallantly proposed to produce Cheryl's *Watermelon Woman* in exchange for her pledge to follow me to my new job in Claremont California I also ended up being cast as someone sort of like myself, one of the film's fake characters, a closeted white woman film director, Martha Page, who we modeled after Dorothy Arzner.

In my more real life as a media scholar, I then wrote about the productive and powerful possibilities of the fake documentary for making and unmaking identity, history, and truth, a project of particular resonance, I thought at the time, for feminists, queers, people of color, and others left unseen by the truth of documentary. In the introduction to the book of essays, *F is for Phony: Fake Documentary and Truth's Undoing* that I co-edited with Jesse Lerner, I wrote the following strong claims for the efficacy of the self-evident copy:

We took up fake documentary form in The Watermelon Woman to make many related claims about history: history is untrue, true history is irretrievable, and fake histories can be real. Dunye (both as director of The Watermelon Woman and as doppelganger character in the film, the African-American lesbian, "Cheryl," who is making a documentary film) knows that before she came along, African-Americans, women, and lesbians did make films—in and out of Hollywood. She also knows that their presence, unrecorded and unstudied, passed quickly out of history becoming unavailable even as she craves ancestors to authorize and situate her voice. So, Dunye fakes the history of a formida-

ble forerunner, Fae “*The Watermelon Woman*” Richards, so that she can tell a story that she, Cheryl, needs to know, one that is close to true, and yet also faked, and therefore at once beyond but also linked to reality and all that the real authorizes and disguises.

Dunye establishes that identity and history, the stuff of life and its images, becomes most authentic and empowering when mediated through technologies of preservation and display. In *The Watermelon Woman*, black lesbian (film) history and identity are simultaneously embedded in and distanced from disciplinary systems like a mainstream body of texts and textual practices that ignore or create them, and this particular film, *The Watermelon Woman*, that records and shows fake images of black lesbians’ all-too-real experience.

To do so, Dunye and Cheryl must mimic and at the same time mine the tools, institutions, forms and technologies of history making. She mocks and also assumes the position of one authorized to remember, represent, and have history. Unmaking (and taking up) documentary authority allows Dunye to unmask institutionally sanctioned disremembering in the form of protective archivists who disallow Cheryl access to their records, misogynist collectors uninterested in unearthing documents by women, or black community members who forget their forays with whites. And yet the result in *The Watermelon Woman* is not a morass of misinformation, with identity and history left undone and unmade. Marlon Fuentes reminds us that the gaps and ellipses of history are “just as important as the objects we have in our hands.” The intangible is not inarticulate: it speaks in an unauthorized, untranslated tongue understood by some. In *The Watermelon Woman*, Fae

speaks to Cheryl in a voice both expressive and inconclusive. And Cheryl can hear her. This is enough to empower Cheryl, at film’s end, to conclude, “I am a black lesbian filmmaker and I have a lot to say.” She learns a truth that she needs from the lie that she made which is Fa(k)e.

Dunye and Cheryl’s simultaneous avowal and disavowal of the real marks *The Watermelon Woman* as a productive fake. An (unstable) identity is created, a community (of skeptics) is built, and an (unresolved) political statement about black lesbian history and identity is articulated. The desire to say and hear something true through words and images that are fragmentary and even fake is the multiple project of the productive fake documentary.

For the purposes of this contribution to No More Potlucks, I could easily re-name such self-aware faking (or copying) a queering strategy (really, no potlucks, ever?! you’re not serious, are you? They’re actually kinda fun, and it’s the only place left to get a good devilled egg!) The queer copy marks and thus unsettles binaries of stable being, knowing, and showing and inserts a question, joke, or angry exclamation where once only certainty held firm.

In much more recent writing, I argue that the language of fake documentary has become the dominant vernacular of YouTube, and therefore, this once queer strategy has become toothless, or unqueer, or straight. Whatever. The ironic wedge, sometimes also known as camp, which long and well served the under-served of the modern and post-modern by allowing for a critique of the norm by using its very discourses of power against it, is now the discourse of power. I wrote:

Barack Obama, heralded by *The Washington Post*, no less, as our first “YouTube President,” announced the commencement of weekly broadcasts of his presidency’s “fire-side chats” on-line and on YouTube. While the tone, form, and message of these networked national addresses are decidedly serious, presidential even, the viewer needs also to be savvy enough to get the joke, to intuit the wink, the implied aside to a history of worn out presidents, tired fires, and cornball communications. His move, like most on YouTube, uses the irony of the copy: a regal black American taking up the hot-spot, filling the oft-segregated head-shot, a new kind of president-talk produced through documentary’s oldest, most eloquent sobriety, fireside-hot, only to be elegantly plopped into his society’s silliest spot. Incongruity-free? Naïve? I’d say not.

Obama’s YouTube jam goes like this: the serious usual marks the funny, but in his version, get this: the serious is... the serious. Really. YouTube is all irony, all the time, and our YouTube President wittily plays it against itself. Sincerely folks, on YouTube, who came first, Tina Fey or Sarah Palin? I think you know the answer. On YouTube, what gets watched more: Obama’s fire-side chats, Obama Girl, Obama on Ellen, or Obama via Will.i.am? Yes we can. Irony-free? No we can’t.

Which leads me, naturally, to “The History of LOLcats” This video was suggested to me by Julie, via HASTAC where I penned an internet request for people’s favorite fake docs on YouTube. Julie’s brief bio reads that she’s a “PhD student in Modern Culture and Media at Brown.” She explained her recommendation to me thus: “no hidden gems here, but I assume you’ve seen the History of LOLcats? it’s a G4 network proj-

ect, but clearly perfect for YouTube meme-osphere. I think it fits the first part of your definition of productive fake docs in its sendup of the hypernationalist Ken Burns formula, although given its adoption of civil rights discourse its politics is perhaps dubious. I’m not so certain it “links and unlinks power to the act of recording the visible world and to the documentary record produced” -- although perhaps I myself am understanding “recording the visible world” too strictly in terms of the real.” I responded: “That is a great fake and funny doc, so thanks, but not productive, as you also suggest. However, it effectively raises for me one of my central concerns in this project, namely: how are the register, affect, or meanings created by the fake doc approach is different from those produced by “real” LOLcats. I am currently considering that the distancing, ironic, self-referential voice of fake docs IS the voice of YouTube. Any thoughts? Alex.”

Our exchange marks the surprising truth that LOLcats, like Barack Obama, are a central cultural dividing line. Do you actually find them cute—ooooh how precious, so sweet n furry—or, like me, would you posit that they enable a sarcastic viewing position: a calculated posture of slightly mean-spirited looking-down upon that other YouTuber who thinks they’re unimaginably adorable?

However, it is not this cutting critical distance, but rather its holding within itself its own sappy reverse, its soft-spot for cuteness, that is the structure definitive of this (and I would argue most other) YouTube staples: a common contemporary viewing position that negates the edge of ironic distance through a same-time self-indulgence in what once might have been the contradictory binaries upon which tradition-

al irony depended: innocent and knowing, cute and repulsive, naïve and cognizant.

While in earlier considerations of fake documentaries I found the multiplicity of viewing modalities to enable the possibility of critical knowledge, it is now my contention that YouTube has so escalated our culture's intense indulgence in ways ironic that it has actually become impossible, if not simply downright unpopular, to see the difference between sincerity and satire. We can't. As a result we inhabit a new structure of viewing that is neither sharp nor critical; rather, we now see muddled and confused, albeit funny. So, fan that I am of Obama, yes we can, and hater (or secret admirer) that I may be of LOLcats, I suggest that there are real perils for a visual culture (and the real it is or will be) where irony becomes so dominant as to be invisible. Irony, and the fake documentary that often packages it, has served long and well as a modernist distancing device, sometimes productively enabling a structure for radical critique. As YouTube makes this style omnipresent, however, its function changes, its edges soften, the firm ground of the resolute double deconstructs beneath our feet. We are in ironic free-fall.

We plunge into a viewing posture of disbelief, uncertainty, and cynicism about everything on YouTube, about watching it, about believing. We were primed early by LonelyGirl 15. But in YouTube's brief history, she quickly led to Fred. Believe it or not, Fred is currently the most subscribed site of all time where teens and even younger watch a teenage boy pretend to be a younger boy who leads a life eerily similar and also far removed from his own, one caught at once with user-generated simplicity but also with his voice sped up to mark his manipula-

tion, as of course, do his many lies about everything from his imprisoned murderer father to his inexplicably mannish mother. Of course, on YouTube, Fred leads to Fred pretenders, boys playing versions of children younger squeaker and stranger than themselves or Fred, but enough like Fred to still be seeking some of his popularity (the unproductive self-promotion of video art narcissism, more on this later), begging their viewers to "subscribe to me," relying upon YouTube's signature mix of authenticity with its same time childlike undoing and very self-aware unknowing to ratchet up more hits. In "Fred's Worst Nightmare," Aaron "worries" about how Fred is setting a bad example for 6 year olds (like the him he is pretending to be).

Here, as it true across YouTube, fake innocence which imitates ignorance is key. Take, for example, lesbian singer/songwriter Gretchen Phillips' performance, as well as her fan's, in "Tribute Album! pt. 1 - The Birth of an Idea." The videos takes up formal practices once used to signal authenticity due to an assumed association with non-professional or committed production. But the components of this contemporary style are now highly practiced even when rendered by real non-professionals, and they include: a direct to camera address, a flat affectless performance style, performers who naively and often offensively says what they "really" believe because they are pretending to be innocently unaware of the power of the camera and the cruelty and/or stupidity of their recorded words, which is as often as not aimed at themselves as acts of self-exposure or self-ridicule, this being a stupid kind of un-understanding.

Of course, the reverse is an un-self-aware rendering of these very same stylistics, as can be seen in HIV Fake Documentary. The video re-

lays AIDS facts as unselfconsciously accurate, harkening back to a lost time of truth, and the real or fake documentaries that could hold it, and therefore complicit in an outdated project of providing life-saving knowledge. Unlike almost everything on YouTube, it takes itself seriously: its bad acting and sound, its lack of props and sets, all charmingly produced by real-world kids, serving to verify the innocent aims of its youth producers, but just as easily used as fodder for the very self-same mocked effects in “A Special Election PSA”: their desk made from a box as well, their bad-eyebrows, their shooting against a wall, marking “HIV Fake Documentary’s” reverse, now a joke logic that might also save someone’s life, that is, if they could unpack the double meanings, triple entendres, and jokes leading nowhere before the election comes to pass and it’s time to vote no, or is that yes? While these three queer fake docs, on Prop 8 and AIDS respectively, direct their fakery towards the vague possibility of an anchor, a set of potentially concrete practices of voting or changing sexual behavior, that would require an audience who views outside the pose of innocuous innocent ironic distance. And who outside of Kansas wouldn’t take up this hyper-vigilant reflexive position when viewing on-line media?

Take, for example, my 9 year old son’s most recent video, Ham Sandwich. Raised on YouTube, and not because his Mom is a YouTube scholar, Gabe’s humour is so deadpan, so ironic, it’s almost unbearable to believe it is performed by one so sweet and truly naïve. Ironic and innocent all at once, Gabe’s “Ham Sandwich” is an actual documentary of himself eating the titular delicacy in real time, just as it is a bona fide art video engaged in documenting the process and duration of his mastication. It is also

a joke about flashy YouTube videos where too much happens, while at the same time mimicking video blogs where people are really boring even when they attempt to be interesting. Ham sandwiches from and into the mouths of babes weaned at the tit of YouTube. It feels good, nearly hegemonic, I’d say, to be in on his joke whose punch line is multiple if not uncertain, whose point is to be about nothing other than the fun of the form (and the sandwich, I suppose).

Gabe’s video aside, I believe that so much campy copying has contributed to an unanticipated and deep cultural re-programming in the ups and downs, wheres and hows, of the self-aware-bogus. The wry aside of the fake documentary, its knowing wink and smug satire, has become a dominant way of seeing. This burgeoning vernacular of feigned veracity, and an audience trained and dying to see it, has been cemented on YouTube. However, in its ubiquity, I believe that the humdrum fake doc has lost its productive bite. And this is because the very function of irony has changed. Once, there was a modernist gap between the thing and its perverse double, an in-between space of clarity in which to create a humorous or serious distance or dissonance that allowed the artist and viewer the chance to speak and see critically. Now, the sobriety of documentary and its drunken foil are indistinguishable—no, the same thing—allowing no room for certainty or clarity, what I will call the anchor or solid ground required for productivity (or criticality), and instead offering up merely a gummy vantage point from which to observe messy, mixed-up messages of vague, if giddy unknowing.

In our day-to-day media landscape, where everyone is as smart as the documentary scholar and understands that there is no difference

between the fake or true documentary, their distinction becomes unnecessary because both have succeeded in uncovering each other's formative lies, just as both have failed at getting us closer to what we once thought we really wanted: "real" depictions of our lives as we live them. Our once innocent audiences are sophisticated enough to recognize the interchangeability of the doc and the fake doc, now knowing neither to be true. They move between the thing and its reverse with as much grace as does my son: documentary, art video, YouTube joke, sandwich gag. No gap to mind. "It's not rocket science," says the stewardess in Jetblue's prize-winning mockumentary-style advertisement.

But it is my current understanding, that in its ubiquity, the fake documentary can no longer allow us to occasionally and triumphantly see more clearly (as it once might), to be productive. Its estrangement qualities now flattened or doubled out, what results on YouTube is a sarcastic, ironic tone and style, for fake maker and viewer, who now wryly understand only and always that all that is left is to laugh, or perhaps to guess.

that is left is to be real. Really real. I mean it. No More Potlucks!

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To view some of Juhasz's older films for free, click on www.snagfilms.com and search under Juhasz.

20 NMP We no longer believe that we can know: what someone means, what someone believes, what someone is trying to say, what we might do.

To be productively queer was never simply to copy and mock, even marked with a funny or flouncy flourish or a some serious realness, it was always to do so with an actual change in mind. And all this is to say, in conclusion, something simple, sad, and maybe even hard to hear: that perhaps the self-conscious, self-aware, self-evident copy-with-a-twist is no longer queer at all, no longer productive, and all

DUMP GAY MARRIAGE NOW

Yasmin Nair

The popular and populist history of gays in the United States goes something like this: In the beginning, gay people were horribly oppressed. Then came change in the 1970s, where gays like the men in the Village People were able to live openly and had a lot of sex. Then, in the 1980s, many gay people died of AIDS, and that taught them that gay sex is bad. The gays that were left began to realise the importance of stable, monogamous relationships and began to agitate for marriage. Soon, in the very near future, with the help of supportive, married straight people—and the help of President Obama—gays will gain marriage rights in all 50 states, and they will then be as good as everyone else.

This is, of course, a reductionist version of gay history, but it's also the version of gay (not queer) history that plays out in today's mainstream media representations of the fight for gay marriage, an issue that is now seen as the alpha and the omega of gay rights in the United States. On May 26, 2009, the California Supreme Court ruled that Proposition 8 would stand, thus upholding a ban on gay marriages; it also ruled that the 18,000 or so marriages that had already taken place would not be invalidated. The decision released a wave of anger in the mainstream pro-gay marriage community. A month later, the Obama administration's response to the *Smelt* suit seeking to invalidate the Defense of Marriage Act (DOMA) brought forth yet another set of petulant tirades and much dramatic rhetoric about "betrayal" by Obama.

An outsider might think that both Proposition 8 and the DOMA case are symptomatic of a widespread wave of unrest among gays and lesbians across the land, who will now take to the streets



GAY
MARRIAGE
WILL CURE
AIDS

if need be in their relentless quest for gay marriage. The outsider might also think that this is what every queer in the United States wants: the right to marry. But, in fact, both instances have exposed the fact that the fight for marriage is a drain on the political, economic, and emotional resources of a community that never really wanted gay marriage to begin with. Rather than see the Prop 8 and DOMA debacles as symptoms of a renewed need to fight for gay marriage, I suggest that this is the time to dump gay marriage and return to the real issues that concern us, as queers who are faced with the multiple forms and challenges of inequality in a neoliberal world.

Gay marriage, as framed in the United States, is the ultimate neoliberal fantasy, in that it allows for a politics of the personal to masquerade as a necessity for policy change. In the process, it serves to distract us from the very real issues facing millions of U.S. citizens and residents. For instance, a primary argument for gay marriage has been that it would allow gays and lesbians to acquire health care and other benefits via their spouses. But this claim ignores the fact that the United States is the only Western nation that does not provide health care to its citizens, and that approximately 50 million Americans are without health care. The ability to marry would not help the millions of gays and lesbians without health care in the first place.

As law professor Nancy Polikoff points out in her comprehensive book, *Beyond (Straight and Gay) Marriage: Valuing All Families under the Law*, the United States is unique in the way that it draws such sharp distinctions between the married and the unmarried. Countries like the Netherlands and Canada do treat gay and straight relationships equally in that they per-

mit marriage, but what's often ignored by U.S. gay marriage activists is the fact that these countries also treat married and unmarried people in equal ways. In other words, in Canada, you can be unmarried and still have health care and, in various instances, you can name a person who is not your romantic partner as the beneficiary of your estate. In the United States, however, your marital status is, increasingly, what determines your legal status as well as your legitimacy as a subject of the state.

Nowhere is this more apparent than in the treatment accorded to single mothers on welfare. Following the egregiously named "Welfare Reform" package of 1996, poor women in particular have been subject to the kind of state intervention in their lives that would be held as unconstitutional if exerted on any other segment of society. With the collusion of the Religious Right, single mothers are required to undergo marriage counselling in an effort to get them to marry the fathers of their children. The stigma against unmarried people swirls around in U.S. culture at large, with an overwhelming array of messages in the media about single people as desperate, lonely souls who need to find their lifemates if they are ever to be considered as human beings. It is no coincidence that such a widespread deligitimisation of single people comes at a time when fewer people in the United States are getting married—currently, less than 50% of U.S. citizens are married. Divorce rates are higher than ever among those who do get married, sparking great anxiety on the part of the Right.

While the gay and lesbian community is widely seen as a liberal/progressive one, its rhetoric around marriage often mirrors the discourse of the Right on the need for marriage as a stabilis-

ing force. Gay marriage activists have taken to deploying the strategies of the Right in asserting that marriage is necessary to cure a host of ills, for instance even going so far as to claim that not having marriage increases the social stigma faced by the children of gay couples. But surely we live in an age where the children of unmarried straight people are not considered “bastards,” and are not disallowed from inheriting property or from receiving parental and state support because their parents were not married. In such claims to moral standards, gay marriage advocacy hearkens back to the conservatism of the 1950s and earlier eras. It’s this conservatism that allows for a blinkered distraction from the other, and more pressing, issues that face queers who are not, after all, immune from the ravages of the world. Or, as Mattilda Bernstein Sycamore puts it, “The spectacle around gay marriage draws attention away from critical issues—like ending U.S. wars on Iraq and Afghanistan, stopping massive Immigration and Customs Enforcement (ICE) raids across the country, and challenging the never-ending assault on anyone living outside of conventional norms.” In this way, gay marriage, in framing, reinforces the kind of social conservatism that’s essential to maintaining the myth of the United States as the ultimate arbiter of the value of the subjects over which it claims to hold dominion: whether they be Iraqis, Afghans, or those whose sexual lives do not fall into the patterns the “normal,” monogamous, two-parent household.

As a result of its growing conservatism, the gay marriage movement is gaining support from mainstream media and a range of politicians, including prominent Republicans. This is not an indication of the liberalisation of the United States (inasmuch as we can consider liberalism

desirable, which it is not), but its increasing conservatism. At the same time, the vast resources invested in gay marriage also mean a depletion of resources that could go to issues that affect queers on other levels of the state’s interaction and imprisonment of their bodies. At a recent queer anarchist conference, I met with activists Liam Michaud-O’Grady and Ashley Fortier, from the Montreal-based Prisoner Correspondence Project. Their group helps to establishing links between queer prisoners and queers on the outside, with a long-term mentality. I also met with Michael Upton, a graduate researcher at the University of Manchester, whose multi-nation work analyzes and critiques the intellectual property rights issues that surround the global AIDS pharmaceutical industry.

Both projects reminded me that queer activism, while still flourishing and sustained, is muted or silenced in the cacophony around gay marriage. Yet, in the 1970s, prisoner solidarity was a key part of the gay movement. In the 1980s, the wholesale critique of BigPharma was integral to the mandate of queer activist groups like ACT UP. A Chicago attorney who specialises in working with gay groups in countries where embattled queers need the support of international activists to resist the harassment they face told me of his conversations with funders who said, bluntly, that they were only interested in funding gay marriage initiatives. In Connecticut, the gay marriage group Love Makes a Family decided to disband when gay marriage became legal in that state. But surely there is more to gay rights than marriage, and surely a group that could, presumably, corral the kind of economic and social capital that LMF had access to could continue to think of directing its energy to the issues of, say, queers in prison. Instead, it chose to disband. As Nancy Polikoff wrote in

a Bilerico post: “The folding of this Connecticut group confirms my fears that marriage is the end point for many people and that achieving justice for the same-sex couples who don’t marry and for all the gay men and lesbians, and their children, who are not partnered is not on the agenda.”

Contrary to what the gay mainstream and the press have decided, gay marriage is not the movement. Marriage should never have been our goal to begin with, since, at best, the goal of marriage is a symbolic and sentimental one. Over the last number of decades, gays and lesbians have in fact forged interesting and productive social networks outside of marriage. But with the recent publicity, few in the United States now remember when domestic partnerships were actually seen as a sexy, desirable and viable alternative for those who didn’t want to marry. In Massachusetts, and now in Connecticut, for example, several employers have begun to disavow domestic partnerships for all with the simple logic that now that everyone can get married, everyone should, if they want health care and other benefits. Such decisions have raised nary a whisper of protest among the gay marriage group. Today, if any major organization is asked: if civil unions or domestic partnerships could be crafted so that they provided exactly the same benefits as marriage, would you accept them? The answer is usually a resounding no. The goal of marriage has become an end unto itself.

The point, to borrow from Polikoff, should be to make marriage less necessary, not to allow it to become an integral part of access to rights as basic as health care and custody of children. The intense personalisation of gay marriage as an emotional cause (i.e. as something that

should matter because of the grief it causes your gay neighbour), is just another way to rationalise and increase the relentless privatisation of everyday life, another way to absolve the state of its responsibility to its subjects. Increasingly, I hear from straight friends that they are being compelled to marry because they are afraid that their unemployed/underemployed partners might be left vulnerable without their health care. All of this is depleting energy from the fight for universal health care. The United States is the only Western nation that does not provide health care. That, and not the fact that we don’t have gay marriage, should be something that shames us all.

As we quibble about marriage, it’s easy to forget that a rise in poverty and the lack of health care means that large segments of society are already denied their rights to decent education, housing, and a sense of security about their well-being.

As for the argument that some proponents make about marriage being the only way to have your love recognized—really? If your love can’t abide not being recognized by the state, perhaps it’s time to consider that you might have bigger problems than simply getting a piece of paper to validate your relationship.

As for the famous line about the 1000+ benefits that can only come through marriage—what about those who are excluded from these benefits simply because they’re not married? And here’s the basic question: why should marriage guarantee any benefits that aren’t available to those who don’t want to marry? Why build up the power of the state to coerce people into marital relationships that they don’t want, just so that they can get the basics like healthcare?

Marriage has, for too long now, been held up as the only solution to a host of problems, including the lack of health care. The fight for gay marriage, in granting that institution so much importance, is slowly eroding the possibility that the rest of the population might get rights and benefits without marrying each other. The fight over gay marriage has emerged as a progressive cause that all progressive straights should join when, in fact, it's a deeply conservative movement that strips our movement of any imagination. Instead of asking for one way to grant rights and benefits, we ought to be advocating for a multiplicity of options.

Let's dump marriage now.

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Image credit: Ryan Conrad

** This article was sparked by Yasmin's Bilerico post, "Prop 8 Is A Distraction, or: NOW Can We Dump Gay Marriage As A Cause?"*

(COLONIAL) ARCHIVES & (COPYRIGHT) LAW

Jane Anderson

I was told that the room was full.

A sample of the photographic collection held in the archive had just been shown on the screen hanging from the ceiling. Soft murmurs filled the void of silence that existed during the display. As the screen was folded away, a junior staff member fumbled over the equipment being set up to play a sample of the sound-recordings also held within the archive. In a corner a small and distinct group of people were sitting and growing increasingly uneasy. The meeting of parties identified through the intentionally vague term 'relevant stakeholders' had been convened to discuss the opportunities that might come from making the collection more accessible to the public. I have heard that not everyone in the room was comfortable with the trajectory of this kind of discussion.

The photographs and the sound recordings that were played have different meanings depending upon perspective. To many in the room they were (only) historical documents recording moments in time – but they also

represent a form of study

a way to measure stages of humanity

an index

for classification

for charting progress

for documenting difference

The desire for increased circulation says much about the status and the authority of the archive in the contemporary present. Perhaps this cultural material contains (unknown) knowledge

that benefit future generations. Who can tell? All archived material presents ongoing opportunities for study, examination and meaning making. Just as a text exists because there is a reader to give it meaning – so an archive exists because there is a user to give it meaning.

I have heard for the small group in the corner of the room, the photographs had a very specific history and conjured a range of emotions. As descendents of the people captured in the frames, the ‘subjects’ of the photographs, they knew only too well the circumstances that led to their existence –

they were not collected freely

there were no permissions

there were no discussions about future use

there were no rights

The proposals for further circulation form part of a colonial continuum. The traffic in the images, in the recordings, continues. Copyright law upholds rationalities of ownership and authorship (of liberal individualism) within the archive and these continue to marginalise indigenous people. This is because according to the copyright law that, regardless of country or jurisdiction, governs all works within an archive, as the ‘subjects’, the ‘informants’, indigenous people are not recognised as having legal rights as ‘authors’, ‘artists’ or ‘owners’. Simply, and literally, they did not ‘make’ the photograph or recording. The paradigms of colonial control have ongoing legacies in archives where indigenous people still have to mount arguments for why they also have rights to access, to copy and to control material that documents and records their lives and cultures in intimate detail.

Indigenous people who are and have been the subjects within the archive have different concerns about access and copying to those of the ‘public’.

The colonial collecting endeavour was not innocent. It had intent, it had effects and it has remaining consequences. In the films, in the sound-recordings, in the manuscripts the (native) informants are nameless. The precise detail recording the name of the author and/or of the owner of the collection emphasises this namelessness and illustrates where the power to name resides. Naming functions as means of exclusion. Automatically these are also stark reminders of who has legal rights and who doesn’t.

It is hard to ignore the obvious power relations woven through these kinds of collections. It is hard to ignore their modern politics. It is hard to ignore the instrumentality of law in producing and enforcing boundaries of control.



There remains the limit case of certain fundamentally oral testimonies, even when written in pain, whose being placed in archives raises a question, to the point of soliciting a veritable crisis concerning testimony.[1]

I am an intellectual property scholar. I am an activist. I believe that to counter a discourse one needs first to be aware of the complexities and messiness that make the discourse in the first place. I sit in meetings in different countries answering the same questions. What is intellectual property? What is copyright? For whom does it matter? Who legally owns the hundreds of thousands of photographs, sound-recordings, films and manuscripts that document indigenous people, indigenous people's lives and indigenous people's knowledge? What rights do indigenous people have to these materials? What are the ethical responsibilities that archives, libraries and museums have to these collections? What is the public domain? What is creative commons? Whose public? Whose commons? How can indigenous issues be heard, incorporated and treated as legitimate? Is this a human rights issue?

To these I add my own questions.

How can we account for the increased power of the intellectual property discourse? What are its emergent moments in legislation, in institutions, in politics? What are its conditions of possibility? Is there a counter-narrative for intellectual property? What is intellectual property law's other? Where does the desire and drive for ownership over ideas and knowledge, that intellectual property fulfils, come from? To what extent does talking about and explaining intellectual property law actually create the condi-

tions for it to perpetuate itself? Does talking about and explaining intellectual property actually reinscribe the dominance of the discourse into the very sites where resistance is trying to be created?

I have fewer answers to these. Intellectual property is a paradox.



The colonial archive was about knowledge and the colonial knowledge that the archive produced was more powerful than the colonial state ever was. The colonial documentation project encoded a certain anxiety that rule was always dependent upon knowledge, even as it performed that rule through the gathering and application of knowledge.[2]

Law is foundational to archives, yet remains surprisingly hidden. It is present in all facets of the archive, for a more traditional archive this ranges from ownership of the land that allows the structure itself to exist, to the enabling legislation, to the agreements securing the acquisition of material. Increasingly copyright law holds a primary role for an archive – it governs access and use of the works that determine the archive’s existence. An archive, in return, upholds and endorses the authority and the legitimacy of copyright law.

Law is the unspoken universal.

The importance of the site of the archive within society is always expanding. It serves history. It serves memory. It serves the problematic of representations of the past. The more documents that are created, the more the need for sites to hold them, store them, order them, manage them, and the more there is a need for archives. Archives can be internally messy, haphazard and incomplete but they always hold material of indeterminate value. (Indeterminate because we cannot fully predict the future significance of some documents over others.) Law is the archon of the archive. It establishes relationships between subjects, users, owners, and

authors, and these reach beyond the archive and influence social relationships and affect emergent social orders.[3] There are intimate and dependent relationships between archives and legal authority.

If we are to trace the etymology of the word archive, as Jacques Derrida did at the opening of *Archive Fever*, relationships of power, control and legal authority are explicit.

The meaning of archive, its only meaning, comes to it from the Greek arkeion: initially a house, a domicile, an address, the residence of the superior magistrates, the archons, those who commanded. The citizens who thus held and signified political power were considered to possess the right to make or to represent the law... The archons are first of all the documents guardians... Entrusted to such archons, these documents in effect speak the law: they recall the law and call on or impose the law.[4]

In colonial archives the uneasy relationship between the author and the archive is most explicit. This is partly because while it may be unclear what an author is actually an author of, the figure of the author remains, and with it an authority and a form of control over the document, the representation. There are multiple relationships of ownership with an archive. There will always be an author or an artist who, unless otherwise negotiated, has an automatic legal entitlement to determine the ways in which the work will be used and accessed. There could also be a different owner. This would be the person or persons who purchased the work once it was made by the author/artist. This owner does not have copyright rights (as these are particular to the author/artist), but rather rights to the work as property proper. This owner may have donated, loaned perpetually or gifted works as a collection to an archive. Depending upon

which of these has occurred, the archive itself will have certain ownership rights. Sometimes archives own all their collections. Sometimes they own very little and manage it according to the requests and guidelines of the author and/or owner. In almost all contexts the people who are depicted or represented in photographs, sound-recordings, films have no rights of ownership as they are neither authors/artists nor owners of the property. In terms of copying, accessing and circulating material, it is the author who retains the most significant control over the work.

*The authority of the author
is there matched by the control of
the archon, the official custodian
of truth.[5]*



Intellectual property is a term that often generates confusion. The potential for literal interpretation and the capacity for everybody who thinks to have some kind of intellectual property of their own only increases the problem. Intellectual property is actually an umbrella term used to cover specific laws that are loosely united in their efforts to manage the relationships between an idea and the tangible expression of that idea (a book, a photograph, a sound-recording, a design on fabric, an invention). There is no specific intellectual property law named as such. Rather, independent laws of copyright, patents, designs, trademarks, trade-secrets, confidential information together constitute the 'laws of intellectual property'. They are grouped under this term 'intellectual property' because they are seen to share some dimension of the problematic of determining legally recognised and justifiable rights in the expression of ideas and treating this expression as some kind of 'property'.

These specific laws evolved slowly and haphazardly from the late seventeenth century and were in response to cultural, political, social and economic shifts that occurred throughout this period. There are early references to the phrase 'intellectual property' in France in the 1820s and in a specific case in the US in the 1840s but this was certainly not a widely cited or utilised description.[6] It is really only in the 1970s that the phrase begins its movement into popular usage. This is initiated through its institutionalisation (and naming) within the international agency The World Intellectual Property Organization. Prior to this, copyright or patents or designs were the terms used in popular discourse and were not necessarily understood as connected because they functioned differently and had different foci. While they evolved

separately they do share important historical moments that helped constitute their development in legislation. These were in response to specific problems about what exactly the property was, how it could be identified, how it could be measured, how loss could be recognised and compensated, what labour the individual exerted to 'make' a work and generally how a right to something that was intangible could be justified.[7]

For new ideas of property to be developed, law needed to create new categories for identifying this special kind of property. For copyright law, the two most important categories that were developed were authorship and originality. The making of the category of the author within copyright law, and by implication within society begins most clearly with the literary property cases in Great Britain in the seventeenth century. Yet it was ostensibly relations between booksellers and publishers that pushed the law to consider the category of the author, for ironically, in the literary property debates, authors were noticeably absent.[8] priority of the law Nevertheless law became deeply involved in constructing how this subject (the author) was to be understood before the law and consequently within society.

In the early histories of copyright law, attention was given to explaining why protecting the author's private property rights in the text was not the priority of the law.[9] This focus was because it was assumed that the law was relatively disinterested in the changing social status of the 'author'. The prevailing philosophical movement of Romanticism in the eighteenth and nineteenth centuries however, meant that law did become concerned and quite instructive in the modern formation of the notion and

identity of the 'author'. While certainly it is accurate to suggest that the figure of the author was not a primary concern for the law, it was inevitably an effect of the law. By this I mean, that because of the multiplicity of factors influencing law and its relationship with the legal idea of the 'author', an inevitable byproduct was the transference of characteristics identifying the 'author' within law to the wider society. The focus on questions of literary property in law could not help but be influenced by romantic assertions of 'natural rights': subsequently effecting how the concept of the author as an individual, as a genius and also as a legal entity was seen before law as the agent determining status and authority within society.

Defining the category of the 'author' was the means for establishing the legitimacy of property in a 'work.' As Foucault has highlighted, the rise of the author in western liberal societies was intrinsically tied to the relationship between the text and a system of property relations.[10] In authorising such property relations, law necessarily affected the functionality of the subject named as the 'author'. Foucault's interest was in the operation of what he calls the 'author-function'. Importantly, the first of the four general characteristics that Foucault identifies as marking the author-function is how it is "linked to the juridical and institutionalized system that encompasses, determines and articulates the universes of discourses." [11] Whilst Foucault was never particularly interested in the internal mechanics and operation of law, and at times discussing it in ways that ignore and underplay the fluid power relations that make law a fundamental mechanism of governing, in this essay he does recognize the instructive relationship between the emergence of an entity named as an author, and the legal and institutional net-

works that uphold and endorse that same entity.[12]

The 1774 case *Donaldson v Becket*[13] is where law begins to negotiate the categories of authorship and originality and these are used to identify specific kinds of legally protected works. As Mark Rose has explored, the case is significant because it marks the emergence of the author as a proprietor.[14] Rather than assuming the author as an already existing category of law, this case shows that there was no automatic connection between authors and texts. There were a range of cultural and legal conditions that were required before the notion of an author could be established. For example, “before the modern author could come into being there had to exist a market for books to sustain a commercial system of cultural products.”[15] Moreover, “the concept of an author as an originator of a literary text, rather than a reproducer of traditional truths” had to be realised in society, before it could be actualised.[16] The notion of the author was also influenced by cultural specificities where writing and recording were understood as necessary processes of civilization, progress and individuation.[17] In contrast, traditional truths were seen to circulate much more prolifically in oral cultures that were identified as ‘communal’. This in part speaks to the dilemma of indigenous authorship as indigenous people are still largely constructed as reproducing traditional truths albeit within an alternative paradigm of ‘community’ to that relied upon by intellectual property law.

Law was certainly responsive to the cultural influence of possessive liberalism in shaping the notion of an author. Nevertheless there were other ruptures and discontinuities that also facilitated the production of the author and the

category of authorship before the law.[18] It is these multiple vectors that help configure the notion of authorship in the abstract, where the ‘author’ as an individuated subject, becomes known to law only through its abstraction. In this way authorship also becomes a legal category in its own right that can measure and identify a legally protected ‘work’. The rise of modern authorship exposes the complexity of the law and the difficulty in locating a specific period where the law was seen to arrive at a particular definition of the author in relation to a text. In its abstraction authorship becomes a self-justifying concept that averts attention away from the problem of boundaries within copyright law. In conjunction with the new economic logic of the law developing in the same period as these cases, authorship provides a useful (if not also self-fulfilling) category through which identification of legitimate, legally identified and defensible works can be made.



Until the early 1990s when Aboriginal people such as myself started documenting our communities in film, there was an estimated six thousand hours of material created about our communities, of which perhaps ten hours actually involved some Aboriginal input. It is the same with the images that were taken to document our communities in missions, in Settlements and in camps – they are not the images that we would have chosen to represent ourselves.[19]

Imagine that a community in Kimberleys in northern Australia wants their own archive. A shipping container, that has been discarded by a passing truck company, seems like a useful object to be re-purposed. Imagine that members of the community have grown tired of having to travel for several days in order to see any documentation about the community. They have grown tired of people turning up with documents and information that they didn't know existed. They have grown tired of being told their own history by non-indigenous people with greater access to archives in metropolitan centres. They have grown frustrated at not being able to control the circulation of the knowledge held within documents that they have not been given time to assess; that they do not own.

Imagine that it is hot and dry and dusty; that inside the container the air moves slowly – thick, heavy. An electrical chord snakes its way through the backyards of the outlying houses and attaches to a power board that plugs into the slow rotating fan and the two computers.

There are three people busy at work in the con-

tainer. Denise is uploading some footage of a recent ceremony. A few relatives from the city have flown in and did some of the recording. There is a lot of laughter as everyone in the container pokes fun at how they look in the recording. There is excitement that for the first time people from the community are recording their own representations of community life and ceremonies for this archive. They are in control of this process. This new part of the archive will be separate from the one that contains the older material recorded by anthropologists and ethnographers who have been in and out of the community for nearly one hundred years. Imagine that as the documents from the colonial archive are returned to the local sites from where they were produced, and new recordings are being made, different frameworks of control, access and meaning are becoming possible and being established.

Some of the staff from the archive in Perth where much of the older material comes from are also arriving to provide some training and to help get the local archive up and running. A few unanticipated problems are emerging. Very few in the community are literate so reading the instructions on the computer for setting up the digital archive is presenting a few difficulties. Immediate decisions need to be made about how to make access to the archive less dependent upon written commands. While data files of photos and films are being transferred, the accompanying information recording author, collector, the date of creation is not being copied despite the archivists best requests. There is little attention to the cataloguing and classifying logics that the city archive is used to. Imagine instead that those gathered around the screen to look at the photos are identifying the individuals, families and clans who are in

the recordings. It is these names that are now being shouted out as Paul, a teacher at the small school, writes them down.

Imagine that in this context, the community has an opportunity to make new rules about recording, about copying, about access to cultural knowledges that are appropriate to this locale, to this site. With so few in the community literate, the images and sound recordings have much more immediate accessibility and significance. It is copies of films and photographs that the community most wants to put in their archive. Maybe in the future there will be an evolutionary desire for written texts, but at the moment the image is the primary conveyer of meaning.

Gladys is an Elder in the community. She has been laughing with all the others, but now something is clearly bothering her. She starts speaking softly about a collection of materials relating to her family that she knows is in an archive in London –

Gladys names the archive

the location

the anthropologist

the dates (sixty years earlier that he was there)

Gladys has never travelled outside the community

never seen the materials she speaks of

We talk about how we might approach the institution involved and try and negotiate the return of the materials, negotiate getting some copies.

Gladys knows that she has no legal rights to this material. She has been through this before. But it is something else that is bothering her. She asks what do we do, what do we do now? With that mob? And she gestures out the door. Gladys is referring to the four or five researchers, sociologists, anthropologists, historians, health workers, government officials, reporters, that come into the community each week collecting new data, asking more questions, taking photos, shooting new footage, and then leaving. The problem continues. The legacy of the colonial collecting practice endures. Indigenous people are still not the owners or authors of the films or sound recordings that document and record cultural stories, community life, or more recently genetic data collected for medical research, unless specific contractual agreements have been made and agreed to by all parties. In many remote locations where basic service delivery is a challenge, adequate legal advice that gives enough information to help people make informed decisions is hard to find. While it is not immediately likely that the law will be changed to accommodate historical biases and exclusions, I suggest to Gladys that the community could create a framework that privileges local rules and laws about knowledge and control of knowledge, and that this could be made in such a way as to govern the conduct and behaviour of researchers when they are in the community. Together we sit in silence while we each contemplate the implications of this kind of approach. Then Gladys gets up, smiles and nods.

No part of this artwork may be viewed without the prior consent of the artist other than in the manner the artist intended including this condition being imposed upon the subsequent purchaser.

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[7] This emergence is traced more fully in J. Anderson, *Law, Knowledge, Culture: The Production of Indignous Knowledge in Intellectual Property Law* Edward Elgar Press: United Kingdom 2009.

[8] Whilst the author was the focal point of the literary property debates, they were argued between the different booksellers. The figure of the author provided both sides with a vehicle to mobilise arguments.

[9] J. McKeough, K. Bowrey and P. Griffith, *Intellectual Property: Commentary and Materials* (third edition) The Law Book Company: Sydney 2002 at 17.

[10] M. Foucault, "What is an Author?" in Rabinow, P. (ed), *The Foucault Reader: an introduction to Foucault's thought* Penguin Books: London, 1984.

[11] *Ibid.* , at 162.

[12] Certainly a concept of law and legal power features in Foucault's work on prisons, on power, on governing and on technologies of the self but this is more in relation to the specific sites he is interested in examining, and the inevitable interventions of law within them. He does not give law, as a specific discursive regime, full and developed attention. The most interesting discussion about the instrumentality of law, and its emergence as a specific discourse generating significant relationships between truth, power and authority are found in M. Foucault (ed), *I Pierre Rivière, having slaughtered my mother, my sister and my brother...: A Case of Parricide in the 19th Century* University of Nebraska Press: Lincoln and Nebraska 1975 and M. Foucault, 'Two Lectures' in Gordon, C (ed), *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, Pantheon Press: New York 1980.

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[15] *Ibid.* , at 29.

[16] *Ibid.* , at 29. Emphasis mine.

[17] S. Wright, *International Human Rights, Decolonisation and Globalisation: Becoming Human* Routledge: London and New York, 2001 at 99.

[18] Most obviously these include significant economic and political changes. Also see M. Woodmansee, "The Genius and Copyright: Economic and Legal Conditions of the Emergence of the Author" (1984) 17 *Eighteenth Century Studies* 425.

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REPRODUCTIVE TECHNOLOGIES: FLESH, PAINT, TEXT

Laura J. Murray

What is reproduction?

Easy question. It's 'The Kiss' or 'The Scream' on a dorm room wall. It's a pile of photocopies or a hard drive full of downloaded songs. It's Coach bags for twenty bucks cash spread out on the sidewalk. It's the embarrassing photo instantly embedded in millions of cellphones. It's madly splitting bacteria buzzing around like little bumper cars in TV stock footage. It's Octomom, Mormons, and lesbian moms with turkey basters.

In other words, reproduction tends to be thought of as copying and proliferation: oh my God, there are more of them! And as such it has become the focus of massive economic and social anxiety.

But reproduction often isn't replication. It often isn't straightforward, and it often isn't one to one.

Although my focus here will be copyright, I want to look at human reproduction first. What gets copied? Not the mother: a fat flamboyant tuba player might bring into the world a silent boney boy who finds happiness in a Tim Horton's uniform. Not the father: an angry dark-haired stamp collector might have a blithe and buxom tightrope-walker for a daughter. Even back in the day when people emerged out of the ribs or head of one source, it wasn't duplication: Adam's companion was, notoriously, different from him. Ever since that bright idea, the necessity of two sets of chromosomes means that even before social influences or other mysteries of circumstance come into play, there is no one original to reproduce. Still, we tend to look for the copy: 'the same laugh' or the 'identical nose.' If replication of a person is impossible

beyond such isolated traits, it remains an ideal, or sometimes a nightmare. 'He's just like his father.' 'I'm becoming my mother.'

In those instances, of course, we're often speaking of reproduction of character, not appearance. That connects to a sense in which human reproduction may work a little better as a term. Think of the Busy Busy World of Richard Scarry, in which nuclear families of chubby clothed animals reproduce social and economic roles from generation to generation. In fifty years, we sense, the constellation of farmers, typists, and lumbermill operators will be the same—each one functionally equivalent to his or her predecessor. They'll probably be wearing the same Peter Pan collars and Tyrolean hats, too. This isn't copying of individuals, but it's reproduction as Althusser sees it: the reproduction of the conditions of production.

This scenario turns out to be something of a fantasy too.

Instead of running the local grocery store or ferry, Huckle and his friends probably went to the city and became middle managers or actors. They may not even have had kids. Their counterparts in less affluent countries ran out of arable land and became factory workers. Busytown is by now either a megalopolis, or a moribund village. We seem to continue to reproduce capitalism, but the specific community and 'family' spaces and values that Althusser thought essential to it are refracting into multitudes of variations. In terms of culture and population alike, reproduction as proliferation has changed the very texture of life. Where there were a thousand, now there are a million; where there were a million, now there are a billion. The world is not the same. No individual

may be the copy of another, but we're all resource-guzzling homo sapiens and there are more of us now than ever.

There's yet another sense of human reproduction we might entertain, and it's the first one in the Oxford English Dictionary: "the action or process of forming, creating or bringing into existence again." Making a human, again. What repeats in this sense of the term is the labour, the input—not the result. A fertilized egg is not a baby, and certainly not an adult. Getting a being to drinking age takes months of carrying, then labour and delivery, and then years more of feeding, caring, guiding. Making another human is... quite a production.

Thus a term presented in health class as scientific and neutral turns out to be slippery, ideological, perplexing. The moment of origin turns out to be only one of many sites of reproduction which is, insofar as it happens at all, a protracted process with many agents. New reproductive technologies aren't at the root of the complexity, but they do intensify it. Now that conception and childbearing have become separable events, the contribution of surrogate mothers and adoptive parents to the maturation of a child is hotly debated in kitchens and courtrooms. The old debates over birth control and abortion are still with us (what do we do about accidental reproduction?), but we're getting embroiled in new questions too (what do we do about managed reproduction?). Does parenthood arise from DNA, from gestation, or from nurture? If there are several people involved, are they all parents? Should government regulate or pay for fertility treatment for those unable to conceive without it, and under what conditions? Is there anything wrong with cloning, and if so, what? In making reproduction

possible for some who could not do it before, new technologies also make reproduction, in all the senses sketched above, into a policy and philosophical quagmire of unprecedented proportions.

Speaking of quagmires, we might now turn to reproduction of another kind, which seems to be causing almost as much panic and perplexity: reproduction of print, images, sound waves, and binary code. In this realm too, new technologies have at once made reproduction possible for those to whom it was previously inaccessible, and reanimated reams of questions about how and if that reproduction should be regulated. Does authorship arise from ideas, from the creative process, or from publication? If there are several people involved, are they all authors? Should government regulate or pay for the arts for those without the means to pursue them, and under what conditions? With digital technologies, where we have the possibility of perfect multiple copies, cloning seems an apt metaphor for downloading. Is there anything wrong with downloading, and if so, what? And implicated in all these questions, our starting point, what is reproduction anyway?

It is certainly not novel to note the parallels between these realms of creativity. Since ancient times, artistic and intellectual process has been imagined in terms of fertility, conception, gestation, and labour, and authors have fretted about their work wandering unchaperoned in the big bad world. Plato (or rather Socrates, in Plato's dialogue Phaedrus) contended that the problem with writing is that it 'doesn't know how to address the right people, and not address the wrong. And when it is ill-treated and unfairly abused it always needs its parent to come to its help, being unable to defend or

help itself.' Since the eighteenth century, the parent-child metaphor has been used to make authors' rights into a 'motherhood' issue. Or a fatherhood issue: in 1710 Daniel Defoe declared a book to be 'the Child of [the Author's] Inventions, the Brat of his Brain... 'tis as much his own, as his Wife and children are his own.' As this example shows, the metaphor may be deeply felt but it does not always sit very comfortably. If your book is your baby, why do you claim the right to sell it? If your book is your baby, are there other parents? If your book is your baby, does it really follow that you can or want to protect it and control it for ever and a day? Babies of the breathing fleshy kind don't put up with that for long. Like all metaphors, this one is a useful thinking tool when we push past convention up against its limits or contentious dimensions.

So I want to keep the echoes between human and textual reproduction in the air as I examine a particularly difficult copyright question: namely, how do you know a reproduction if you see one? A longstanding version of this question comes up in infringement cases: if two songs are similar, evidence that the second composer has heard (or is likely to have heard) the first song is necessary to nail a finding of infringement. Similarity between the songs may after all be coincidence rather than reproduction. The need to prove 'access' is analogous to paternity cases in the pre-DNA-testing age. (Your honour, my client can prove that he was in Biarritz the whole month of May while Mme. X has admitted she was in Newport!)

But lately, we have moved into much more abstruse cases where the connection between the materials is undisputed, but the fact of reproduction is under question nonetheless. I'm

going to discuss two Canadian Supreme Court cases: *Théberge v. Galerie d'Art du Petit Champlain* (2002) and *Robertson v. Thomson* (2006). The *Théberge* case was a dispute between a painter, Claude Théberge, and a gallery he had licensed to make and sell posters and post-cards of his works. The gallery used a chemical process to transfer ink from posters to a canvas backing. These 'paintings' sold, of course, for a much higher price than the posters, and yet Théberge was only paid at the rate he had negotiated for the posters. In the *Robertson* case, a freelance writer sued the *Globe & Mail* newspaper for reproducing her articles in digital databases without payment or permission. Both cases split the Court: *Théberge* lost 3-4, and *Robertson* won 5-4. At issue in both was whether reproduction had in fact taken place, and the split decisions indicate the difficulty of determining what might appear to be a mere matter of fact.

Section 3 of the Canadian Copyright Act gives the owner of a copyright the 'sole right' to 'reproduce the work or any substantial part thereof in any material form whatever.' So in *Théberge*, the court had to decide if the fake canvases constituted reproduction of the posters. Justice Binnie, writing for the majority, said no:

When Raphaël's Madonna di Foligno was lifted for preservation purposes from its original canvas in 1799 under the direction of the chemist Berthollet and fixed to a new canvas, the resulting work was considered to be no less an original Raphaël. Similarly, when the frescoes of Pompeii were restored by replacement of the underlying plaster, the result was not classified as a 'reproduction', even though the old plaster was a constituent physical element of the original frescoes... These examples may

be more spectacular than the humble swap of substrates of a paper poster, but the principle is the same and applies equally to authorized copies as well as to the original artistic work. In neither case is there reproduction within the meaning of the Act. (para 38)

Ultimately, Binnie holds that 'this is a case of literal physical, mechanical transfer in which no multiplication (metaphorical or otherwise) takes place' (para 47): ergo, no reproduction.

But for Justice Gonthier, writing for the dissent, reproduction happens when a new material object is produced to carry and deliver the intellectual property:

The work is, so to speak, the physical outcome of the creative process. Fixation of the work in a medium is a condition sine qua non of the production of a work. Therefore, 'producing' a work refers to the initial materialization and 'reproducing' it refers to any subsequent material fixation that is modelled (in the causal sense) on its first fixation. (para 145)

Gonthier challenges Binnie's 'multiplication' requirement:

It does not matter that the process which produces a new materialization eliminates another; all that matters is that a new act of fixation occurs. Therefore, what we must count in order to determine whether a work has been reproduced is not the total number of copies of the work in existence after the rematerialization, but the number of materializations that occurred over time. (para 149)

Invoking the principle of technological neutrality and the Copyright Act's goals of allowing au-

thors to benefit from their work, Gonthier concludes that authors ought to have the right to authorize or refuse such transformation, which amounts to a re-making of their work.

Binnie's conclusion that the poster wasn't copied but rather transferred is compelling. One object remained one object. When we look at it from Théberge's point of view, however, the failure to find reproduction seems rather myopic or sneaky. Returning to the discussion of human reproduction, we might note that multiplication isn't necessarily its result: if we reproduce ourselves one for one or two for two, there is no net increase in population. Once we die, the child takes our place, in a sense, as the fake canvas stands in the poster's place, and is in this sense a reproduction. Gonthier's language of materialization also matches dictionary definitions and echoes human reproduction in the 'making, again' sense. That conceptualization could lead to two divergent findings. One could say that if the gallery made a new thing with its own initiative and resources, without violating the contract, they ought to reap the reward—which was Binnie's path. Or one might muse that if we grant that birth parents, or egg, sperm, or embryo donors, have to give permission in order for their progeny to be transferred to other families or placentas, surely the change of substrate for Théberge's paintings might lie within his sphere. On this line of thought, the labour arranged by the gallery ought not to nullify Théberge's role and rights as creator. Without him, they would have nothing. All in all, the question of reproduction doesn't seem to me quite as open-and-shut as Binnie contends.

As a critic by trade, I'm always impressed and often moved by the inescapable end of judgmentally thinking: having to make a decision, within very specific constraints. Having more luxury

to pursue possibilities and questions, I wonder if we could distinguish between the right to change medium, or to make works identical in appearance and purpose to the original, for commercial purposes (as in this case), and the right to make works derivative of or differently purposed than the original (as in parody or collage). Maybe we want to vest the right to mere change of medium, or identical or competing works, in the author, but leave the right to altered works to the public. Maybe 'identicalness' or 'equivalence' is the better way of framing an author's right than reproduction. It seems to me that Binnie denies the existence of reproduction here—and he is forced to by the wording of the statute—in order to protect users' and consumers' rights. As he (in)famously says, 'Once an authorized copy of a work is sold to a member of the public, it is generally for the purchaser, not the author, to determine what happens to it' (para 31). Yes, but it doesn't seem right to me that one artist should have to be cheated in order that the rights of other artists and consumers be preserved. Can't we come up with more nuanced categories to describe the problem? I do see some general resonance with custody/family law cases. Parenthood is a primal experience and private matter, and yet there are times when the good of the child or the society outweighs a parent's judgment, or lack thereof. Recently, courts have had to consider all sorts of new forms of human reproduction, and allot rights and responsibility accordingly. Some of these cases have been decided with more wisdom than others, and I wouldn't want to press the analogies too specifically, but courts are starting to acknowledge the fact of multiple parents with varying rights, whereas the Copyright Act is still stuck on one creator, one child, one set of rights.

Well, not always. In the Robertson case, the Court was dealing with a peculiarity of Canadian copyright law: two, layered, copyrights in collective works. The freelance author of a given newspaper article owns copyright in her work. She licenses the newspaper to publish it, but beyond that, she continues to hold the reproduction rights. The newspaper owns copyright in the whole ‘compilation’ or ‘collective work’ that is the newspaper. It owns, therefore, the reproduction rights to that whole—but not to all individual parts. So the question for the court was, in converting its papers into digital database form, was the Globe infringing the freelancer’s reproduction right? Was it reproducing the newspaper, or only its constituent parts? The majority held that the newspaper was not reproduced. The databases, they said, or at least the ones that allowed for searching of individual articles and never really presented a day’s issue of a paper as such, weren’t copies of the paper, but rather compendia of several different papers (the Globe is only one of the papers included in CPI.Q and Infotrack databases). The databases were new works, and as such, reproduced individual articles and infringed the freelancers’ copyright.

Here, Abella is referring to the standard for ‘originality’ in Canadian law as clarified in *CCH v. LSUC* (2004). In that case, Justice MacLachlan isolated ‘skill and judgment’ as the required criteria for originality. We can identify a reproduction, the reasoning goes, by identifying whether skill and judgment are reproduced. Skill and judgment are manifested in the selection and editing of the content of a paper, and are therefore surely reproduced, Abella said, no matter what the searching mechanism or context of the database. It follows from this position that the Globe is reproducing itself, and not infringing on the freelancers’ copyright.

The majority essentially stated that ‘if it doesn’t look like a newspaper, it isn’t a newspaper.’ This is a common impulse in our moment of breast-beating over the impending death of the medium, and reifying definitions such as the Concise Oxford’s ‘a printed publication, typically issued daily or weekly, containing news, articles, and advertisements,’ or McMaster University Library’s ‘printed on newsprint and issued daily or weekly; contains news, editorials, commentary, advertising, general interest items’ would seem to support it. But surely newspaperness lies as much in compilation and combination as it does in print or dailiness. I agree with Abella on this. The interlocking of the freelancer’s and newspaper’s originality is very deep. Articles are solicited or accepted based on a vision of the paper’s overall ‘image’ and market; they would not likely have existed in that form had it not been for that outlet. I deeply feel the dissent’s concern about the integrity of the public record, and the risks of digital vandalism if the papers simply choose to excise freelance articles from databases, as they did following a similar U.S. case, *Tasini v. New York Times* (para 71-72). Nonetheless, I don’t think the dissent’s

44 The minority, however, represented by Justice NMP Abella, argued that the majority’s emphasis on whether the paper looked like or was arranged like a physical newspaper was incorrect:

In determining... whether a work like a newspaper, or ‘any substantial part thereof’, has been reproduced, what will be determinative is the extent to which the item said to be a reproduction contains within it, in qualitative rather than quantitative terms, a substantial part of the skill and judgment exercised by the creator of the work. (para 81)

denial that individual articles were reproduced makes any sense.

As in the *Théberge* case, in *Robertson* we have a creator without access to revenue from new transformations or incarnations. And once again, the treatment of reproduction does not seem adequate. The majority's thinking on reproduction is wrong, but the outcome seems right; surely if freelancers were paid in the first place, they ought to get a share of benefit from re-mediations of their work. The dissent had it right on the nature of reproduction of a compilation, but took a perverse position on reproduction of individual articles and thereby denied freelancers any rights in new media. But the law provides for a layering of rights: why did the judges feel they had to choose? Both the newspaper and its components are reproduced. the newspaper and the freelancer are 'parents.' In denying the "both/and" possibility, this case stands as something of an emblem for a problem that runs throughout copyright, of how to acknowledge the imbrication of individual and collective creativity.

In 2001, Jessica Litman proposed that "reproduction is no longer an appropriate way to measure infringement." The *Théberge* and *Robertson* cases illuminate the possibility that copying is not always infringement, and that maybe infringement is not always copying. In less idiosyncratic cases concerning downloading and piracy, 'watermarking' and other software can track replication of digital files, but to determine appropriate practice and accommodate fair dealing or fair use, we also need to understand cultural and social functions of circulation and reinvention. Similarly, there is ever increasing reason to observe that genetic reproduction is not sufficient, on its own, to

define parenthood. DNA testing answers only one dimension of the parenthood question, and we have to use human judgment to consider the social, emotional, and philosophical dimensions. It could be said, then, that reproduction just doesn't work as a core concept for these decisions. But I think that if we acknowledge how uncertain, protracted, and collective reproduction often is, it can be just the right thing to focus on.

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SEX WORKER REHABILITATED IN OUTDOOR CAGE. LATER DIED ALONE.

Nicholas Little



Police in Dayton, Ohio want to establish the city's first-ever rehabilitation home for gay men in response to the problem of frequent re-arrests (ie. gay men who continue to try and meet each other for sexual intimacy despite the threat of jail time for doing so). The idea comes in the wake of a spike in HIV-infected gay men arrested by officers in 2008. Police learned of this increase in HIV infections because gay men are subject to mandatory HIV tests while incarcerated for homosexuality. "Many of these men are having sex with each other because they are addicted to drugs," the Dayton Police Chief said. "We need to get them into an environment where they see the benefits of being clean. It's a problem that has to be addressed because homosexuality affects the entire community. There is a quality of life issue here, along with the general welfare of citizens in areas where homosexuality is a problem."

Having gay sex was an illegal act in many places not that long ago. In many more places, it still is to this day. For many of us, the fictional news story above would have been entirely believable a few decades back. For many more of us, it is a lived reality today.

With that in mind, I'd like to share with you an example of how sex workers are suffering the very same police and media targeting the world over today, in 2009. Media coverage of HIV contributes to the way that most of us—shamefully—accept this targeting as an unfortunate inevitability, if not a regrettable necessity.



In a March 14, 2009 story entitled Dayton police think safe house might deter prostitution, Ohio's Dayton Daily News reported that, in response to frequent re-arrests (ie. sex workers who continue to try to earn a living despite the threat of jail time for doing so), "police want to establish the city's first-ever rehabilitation home for prostitutes". Rehabilitation home, their words.

Lt. Brian Johns is spearheading discussions with nonprofit centers and leaders of safe houses from other cities to try to come up with funding and the necessary social services to operate the home. The idea comes in the wake of a spike in HIV-infected prostitutes arrested by officers in 2008. Twelve prostitutes arrested last year, including two men, were HIV positive, up from less than a handful in 2007 and 2006, according to police. Johns said it's the largest jump he's seen in his 10 years.

Chief Richard Biehl explains:

Many of these women are prostituting because they are addicted to drugs and need the money. We need to get them into an environment where they see the benefits of being clean. ...It's a problem that has to be addressed because prostitution affects the entire community. There is a quality of life issue here, along with the general welfare of citizens in areas where prostitution is a problem.

Sloppy journalism and pulled-it-out-of-my-ass police policy that is in no way grounded in scientific evidence sort of go hand in hand, so I'm not going to waste time calling out the Dayton Daily News for trading in their journalistic responsibilities for a chance to be the local police mouthpiece. It would be notable only if the Day-

ton Daily didn't go along with the cops' can't-be-won "war on drugs" / "war on sex" agenda.

What does surprise and trouble me, however, is when I can't distinguish between the Dayton Daily News' coverage of this story and the coverage by respected HIV news sources that pride themselves on championing evidence-based approaches to HIV prevention.

Kaiser Health News is a service of the Kaiser Family Foundation, a non-partisan, non-profit, private operating foundation dedicated to producing and communicating the best possible information, research and analysis on health issues.

Those are their own words, straight from the KHN website. What I won't quote directly, however, is their coverage of the proposed Dayton hooker reform school, which they ran under the title Dayton, Ohio Police Officers Arrest Increasing Number of HIV-Positive Sex Workers. I won't quote it because there's no need to -- it's simply a condensed version of the Dayton Daily News' own story. No critique, no context or background, no epidemiological stats to verify the cops' claims. Just a straight reprint: copy; paste.

For those of you who aren't data dorks like me sitting at home on a sunny weekend prowling HIV research blogs, let me put this in context. On March 17, Pope Benedict XVI pronounced, "You can't resolve [the HIV epidemic] with the distribution of condoms. On the contrary, it increases the problem." Kaiser ran a story about it the next day and spent the entire first paragraph directly transcribing such papal wisdom.

Six subsequent paragraphs, however, were spent dismantling this garbage.

I turn to news sources like KHN because I can depend on them to render scientific data accessible to laypersons like me in a language I can understand. They aim to strip the stigma from news stories about HIV and gay men or African nations or intravenous drug users and, instead, put it in a sociological context reflective of emerging prevention developments and epidemiological trends.

Yet such endeavours to present unbiased information proves insurmountable even for Kaiser Health News when sex workers are the subject. If KHN dared to run the fictitious story at the top of this article without any critique of the assumptions held therein, they'd be skewered by gay men. They could never get away with it. But then, they'd never try to in the first place.

So why do they when it comes to sex workers?
.....

When I want the soft news that presents the human face to Kaiser's hard news, one source I often go to is POZ magazine. POZ presents itself as a voice of people living with HIV/AIDS. Their coverage tends to speak to and for HIV+ individuals as a way to counteract the invisibility of the PHA perspective in mainstream media.

But, under the heading HIV Leads Dayton, Ohio to Consider Rehab Home for Sex Workers, POZ magazine merely condenses the Dayton Daily News' story even further. Again: no critique, no background information to help the reader interpret the story, no epi-stats to verify the claim of ballooning HIV rates among Dayton prostitutes. Just a reduced reprint: copy; paste.

Let's be entirely clear about what we, the readers, are being presented with then:

1) The Dayton Police Department is the kind of organisation that deems it an efficient use of taxpayers' money for the police to disguise themselves as clients, pick up street-based sex workers (the same ones they claim are victims in need of saving) and then arrest them and press criminal charges so that they can force them into rehabilitation centres to reform the addiction that they claim (without evidence) is at the root of sex workers' occupational choices. You can read all of that in the original Dayton Daily News story, or you can just go to the Dayton Police Department website (something I doubt either the Kaiser or POZ journalists did) and read for yourself:

The Dayton Police Department regularly conducts decoy operations to disrupt prostitution activity in the city of Dayton. To help further deter prostitution activity, the names of individuals arrested for soliciting for prostitution are regularly run in the Dayton Daily News and on the City of Dayton's government access television channel.

2) Said Police Department runs one of their routine prostitution street sweeps, arrests women engaged in transactional sex, forces them to take HIV tests and then decides that, in addition to publishing the names of the people arrested, they may as well also announce their cumulative HIV stats too. Any half-wit who puts the two lists together, therefore, has a handy list of Dayton's recently diagnosed. It's confidentiality, Ohio style

3) The Dayton Daily News, obviously no great champion of sex worker rights if they're an ac-

tive part of the cops' "name and shame" outing operation -- receives the Police Department's media release and publishes great swaths of it unadulterated.

4) Both the Kaiser Foundation and POZ magazine pick up the story but run it with nothing added; rather, they opt to omit the only sex worker voice included in the entire media copy-and-paste chain, a small anecdote at the start of the Dayton Daily story of how it might feel for a sex worker to be duped by a cop posing as a client. (Though admittedly, the empathy has to be supplied entirely by the reader...)

5) There is a fifth step here. It is the step of silence. The silencing of sex workers in (un-surprisingly) mainstream and (shockingly) HIV-specific media. The silence in the minds of readers -- who can't be expected to inherently know about the lives of sex workers, about HIV transmission data, about tactics used by cops to target the poor -- and who rely on media as one means to fill in those blanks. And how only baseless assumptions are left to fill in those blanks if the media fail to do their job of providing factual information.

And there is also sixth step. The step of un-silencing, wherein sex workers like me write some kind of critical commentary and seek some sort of net-based medium through which to distribute it, hoping that it might reach other sex workers and slowly build a critical mass. A critical mass like that of gay men, immigrants from countries where HIV is endemic or intravenous drug users, whereby we demand that our voice be included in the story of HIV, the story of police brutality, the story of the criminaliza-

tion of any marginalized minority whose personal identity or behaviours frighten the majority. The sixth step in this process --exhausting, lead-footed and costly--is the rewriting of history, the assertion of agency, the demand for justice, the insistence that the truth be told.

In her essay *Forget Victimisation: Granting Agency to Migrants* (recently republished by **No More Potlucks**), Laura Agustín writes:

There is a growing tendency to victimise poor people, weak people, uneducated people and migrant people. The trend, which began as a way of drawing attention to specific forms of violence committed against women, has now become a way of describing everyone on the lower rungs of power. Routinely, supporters position them as victims in order to claim rights for them, but this move also turns them into victims, and victims need help, need saving-- which gives a primary role to supporters.

It also gives faux-legitimacy to Dayton Police Chief Richard Biehl's proposed rehabilitation home for sex workers and, to jail cells, even. Whatever it takes to save the helpless or, as Biehl puts it, "to get them into an environment where they see the benefits of being clean."

I won't waste time writing evidence-based critiques that Kaiser Health News and POZ magazine should have written themselves if they deemed the Dayton rehabilitation home story fit for printing. I won't waste time asking how HIV news organizations could miss the subtext here of non-consensual HIV testing forced upon arrested women. I won't waste time wondering how HIV news organizations could fail to

report on the laughable stats cited by the Dayton cops: “Twelve prostitutes arrested last year, including two men, were HIV positive, up from less than a handful in 2007 and 2006...” (Since when did we start measuring HIV transmission rates in handfuls?!) I won’t waste time dismantling the dangerously simplistic suggestion that addictions develop due to the lack of “an environment where one can see the benefits of being clean.” And I won’t waste time pointing out that if Toronto police still conducted raids on gay bath houses, as they so recently did, of the men they arrested there, 24% would be HIV+ and who knows how many would be drunk or high on drugs. Would that then be grounds to force homosexuals into rehabilitation centres to keep them from doing harm to both themselves and the community at large?

It’s enough to say that while mainstream media revel in abetting the police agenda to render sex workers as hapless scapegoats, we are in serious trouble when our own alternative media outlets get in on the act.

side were 42°C. Department guidelines call for prisoners to be confined outdoors for no more than two hours, but Powell had been in the cell for almost twice that long when, at 2:40pm, she collapsed. A half hour later, Powell was taken to hospital. At 11:15pm, Powell was alone when doctors decided to remove her from life support. She was pronounced dead at 12:42am, June 24. No family members could be found to be with her in the hospital before she died and, at the time of publication, corrections officials were still searching for a next of kin.

In summary, then: addicted to substances, living with mental illness, exchanging sex for money, arrested, imprisoned, killed by the state. It’s rehabilitation, Arizona style.

The Arizona Republic ran the story under the innocuous headline: “Inmate found dead at AZ prison.” It should have read: “Sex worker rehabilitated in outdoor cage. Later died alone.”

Nicholas Little is an Anglo-Albertan who decamped to Montreal sometime in the late nineties “to learn French and be gay”. He now lives in Ottawa, Ontario, where he is an HIV outreach worker in bathhouses, bars and online chat rooms. In 2008 Nicholas helped found POWER (Prostitutes of Ottawa-Gatineau Work Educate and Resist), an organization of current and former sex workers advocating for recognition of their labour, Charter and human rights. In September 2008, POWER organised the first ever rally for sex worker rights on Parliament Hill. You can follow Nicholas’ blog at <http://ickaprick.blogspot.com>

50 And what of it?

NMP

On June 24 2009, 48-year-old Marcia Powell died while serving a 27 month sentence for prostitution in an Arizona prison. Powell had a history of both chaotic substance use and mental illness and was scheduled to be transferred to a psychiatric unit—another rehabilitation centre, of sorts.

At 11:00am on June 23, Powell was placed in an outdoor, uncovered chain-link holding cell while awaiting her transfer. Temperatures out-

BUTCH 47

Elisha Lim

Elisha came out so late. When she was 26 she dumped her fiance and moved to Berlin, which started a sharp learning curve including lesbian squat houses, queer trailer parks, transgender pride parades and an Ethical Slut reading group. She has since played in Drag King circuits from Berlin to Jerusalem, illustrated for queer zines in London and Vienna and proudly promotes a queer-people-of-colour weekly party in Toronto called Fresh to Def. She draws a comic strip called 100 Butches which has been featured in queer magazines in Australia, England, Austria and the U.S. and will be published as a book in April 2010. You can check out more of her beautiful comics here:

<http://www.qpoccomics.blogspot.com/>

goldless butches

numberfortyseven ♡

My friend Susan told me a story.

"I'm not a goldstar: I was closeted for a long time and I dated a lot of boys. So when I did manage to find myself on a date with a girl, I was kind of clumsy about it. It was like escaping from the zoo. I would think to myself, yes, hello, you're a lesbian. Give me the Lesbian Experience. Everything you do is Lesbianic. Give me Lesbian insight into your Lesbian mind."

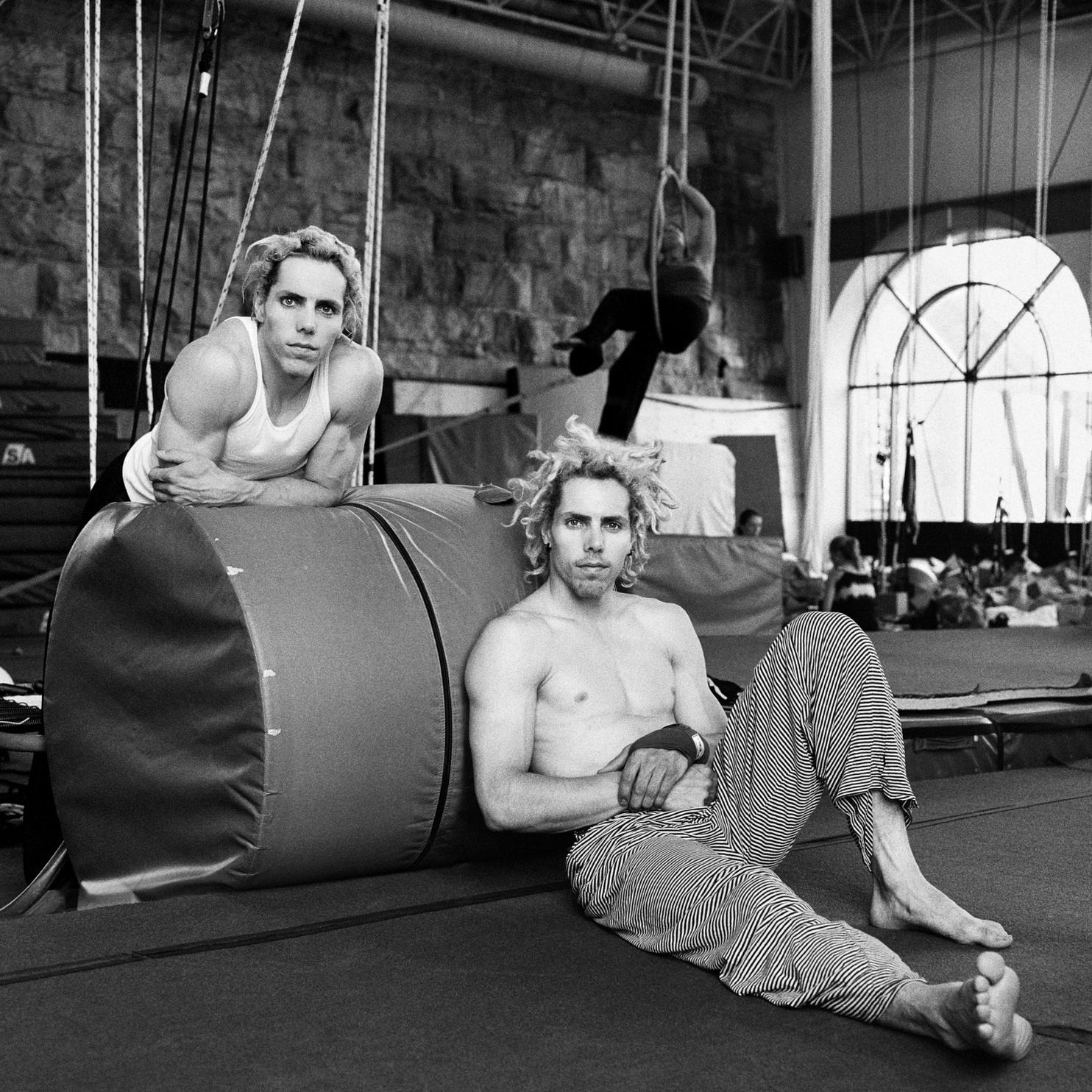
"I'm sure that's why Chance and I had such a short lived relationship. I was kind of in love with her, but I treated her like a forensic subject. I was so self-consciously trying to be "gay". I think I even used to imitate her. She took me to see Hedwig and the Angry Inch. You can imagine my face. It was like Queer School!

"I would usually just sit there in speechless scrutiny, and she would usually just scowl restlessly and say, "I need a cigarette."

"We didn't get along very well. It took her a while to lose me, but she managed. But you know, I think that underneath all of the inhibitions there was actually something tender between us. I think there was something that she even loved about me, which made her as patient as she could be.

"I was surprised when she turned up at my going-away party later that year. She was wearing a t-shirt that she'd privately made when we'd started to date. I was blown away when she sat down, and across her chest it said "God Bless Susan." "





PIERRE DALPÉ'S DUPLICITOUS HEART

Pierre Dalpé | NMP

Capitalizing on the multiplicity of an individual's personality and the many selves housed within all of us, Pierre Dalpé approaches each of his subjects with a duplicitous heart: he twins his subjects within the frame to expose the construction of identity while questioning the authenticity of the photographic image. Interested in the process of transformation, Dalpé collaborates with his subjects to express different facets of their personalities. Through this partnership, he is able to coax out identities that lay just below the surface, blurring the boundaries of who is real and who is not, producing family portraits derived from a single subject. Capturing two and sometimes three personas, Dalpé manipulates these portraits in a digital environment, placing them side-by-side within his frame to expose the construct of "truth" in documentary photography. By playing with era, gender, costuming, setting, subtle theatrics, poses, and appearance, Dalpé constructs images that both take advantage of these superficial elements for their formal qualities, and question their authenticity for the viewer, ultimately challenging his audience with the very elements that make up his photographs. The simultaneously historic and timeless quality of his images further adds an aura of nostalgia to the viewer's experience, authenticating the image through its masquerading historical context.[1]

With a career over a decade old, Dalpé answers questions about his history, practice and approach via email.

What is your personal history in relationship to photography? How did you get started? What first inspired you to pick up a camera?

As a kid I lived that cliché of, "does that book have any pictures in it? No? Then I don't want to read it". Imagery was the first language I related to, words came later. My background and upbringing was very French-Canadian, but my schooling was in English, and I grew up watching American television; game shows, com-



edies, news, talk shows and documentaries. Whether it was moving images, stills, or the world around me, I spent a lot of time observing, watching and ingesting.

I'm a pop-culture junky, and I'm still constantly pouring over images in magazines, books, and now the Internet. In terms of choosing photography as a creative outlet, I was probably influenced by my father who always had either a movie-camera or still-camera pointed at me and my siblings, documenting all the key Kodak Moments of our lives.

I've always loved portraits. The first type of photography which really spoke to me was photo-journalistic imagery and discovering the "decisive moment". I started studying this type of work at the Dawson Institute of Photography. It was also at Dawson that I started realizing that I didn't want to become a commercial photographer, and so that's why I eventually went to Concordia.

I knew I wanted to be influenced more by the arts.

What does your practice look like? How do you approach a project? What are you interested in, what do

you look for, where does the work come from?

My work is heavily influenced by a documentary aesthetic. My entire body of work revolves around this aesthetic, paralleled with photographing subjects in their own environments. I've always been captivated by documentary imagery. Whether it is in films or photography, I'm attracted to real stories, real people. I guess the twist to that statement is that the people I photograph are often performers; people who like playing with/in make-believe or fantasy worlds. I'm interested in what I refer to as, "performance culture" and what is referred to in academia as performance studies or theatre anthropology.

I've always been fascinated by actors and performers. People who use clothing, disguise, costume, masquerade and their bodies as not only the tools of their craft, but their mode of expression.

In my practice, I feel like I'm either participating in people's fantasy worlds vicariously with photo projects like Wigstock, Backstage, or Clothes Minded, or that I'm creating or staging a type of make-believe world with the collaboration

of my subjects in projects like Personae. This creates an interesting dichotomy; some of my work adheres to a traditional documentary aesthetic, yet with Personae I'm actually playing and subverting the traditional rules and notions of documentary.

In terms of my approach to projects, the projects that came about at Concordia all evolved in a somewhat organic way- a chain reaction of one series leading to another. From Personae onwards, the process has usually involved more research and experimentation. My process in general tends to be a bit slow. I think about and research things a lot before embarking on the production of any project. I always have a good number of project ideas floating around in my head at any given moment.

On a technical note, I try to work with available light as much as possible. I've never been a big fan of using a flash. With the Nightclub series for example, I photographed with available light to capture the portrait-instance in such a way as to imbue the image with the atmosphere that permeated the actual scene, something which flash photography can never render possible.





CALIFORNIA
77

EVERLAST

Can you talk specifically about your different projects? What you were interested in when you started, and how that approach has perhaps changed?

While doing my BFA at Concordia, I started a before and after series called, Clothes Minded. At the time, I was still going out to clubs quite regularly and a lot of my friends and I were experimenting and playing with drag. In 1990 I started photographing my friends (and friends of friends) in and out of drag; before and after shots which I presented as diptychs. In the years leading up to this body of work I had been looking at a lot of classic portraiture and I wanted my portraits to have some of this sense of grandeur.

Until then, I had never really come across images of drag queens or kings posing with a strong, confident stance. Images of drag up to this point too often showed the subject as some kind of freak to be studied like a scientific specimen, so my intention was to show my subjects as strong people. It was interesting to hear the comments from some of my supposedly free-thinking peers (and some professors) at Concordia. Most people were

cool with the subject matter, but with others, I had to defend my work a lot. I was accused of treating my subjects as freaks when in fact I had the complete opposite intentions. I soon realized that their comments had nothing to do with me and everything to do with their own issues concerning drag and everything that represents. My perspective was that firstly, I knew my subjects as friends, and secondly, I was photographing them because I admired them, not because I wanted to study them.

I was also starting to read a lot of queer theory, and my film studies and photography professors were opening my eyes to photographers like Cindy Sherman, Diane Arbus, Lisette Model, Brassai, André Kertész, Robert Frank, and others. My before and after shots were influenced by the aesthetics of Lisette Model and Diane Arbus (especially their approach to environmental portrait and documentary), while my Backstage/Nightclub images were influenced by Brassai, who documented the burgeoning gay and lesbian nightlife scene of Paris in the 1920's and 30's.

After graduating from Concordia I continued my Clothes Minded and Backstage series

and in 1992, I began documenting Wigstock; a once-a-year, all-day drag festival in New York City. I made a pilgrimage to this festival annually until 1995. It was great! There was real eye candy, or camera-candy, if you will. Photographing at Wigstock gave me the same kind of excitement I was getting from doing my Backstage images. I really love being in such a charged atmosphere, where photographic possibilities are unfolding all around me in every second.

How did the Personae series start? What is this project about?

Clothes Minded laid the groundwork for the identity play I ended up taking to another level with Personae. When I was working on Clothes Minded, I kept thinking about how interesting it would be to show more than one of my subjects' before and after alter egos within the same image. So while at Concordia, I started doing rudimentary tests using image collages and trying to blend them together by retouching them the old fashioned way (with a fine brush and ink), then rephotographing the final collage to produce a final image. But this looked like crap. I knew that the only way I could cre-



ate these images and make them look realistic would be to use a relatively new software (in 1991), Photoshop. So I taught myself Photoshop and in 1997, I started producing Personae. My first images from this series were inspired by and referenced imagery made by photographers whose work I admired and acted as homages to these photographers. Initial photographs in the Personae series continued and expanded my interest in gender-bending, disguise and a pronounced theatricality that I explored in Clothes Minded. As the work evolved, the images started to reflect my own vision, and identity play became more subtle.

For example, I simply started twinning people, stripping away disguise paraphernalia. I find this subtlety lends a more intriguing and unsettling sense to some of the images. In recent years I've added real twins to the series, leaving the viewer to question everything that they're looking at in the image.

I have also recently started working in colour within the series after years of working in B&W. I'm finding that working in colour, thinking in colour, is an interesting challenge, and I like the results. Personae is an

on-going project that I plan to keep adding to it as I work on other projects.

What is your interest in multiple aspects of identity?

After graduating from Concordia I continued my Clothes Minded series and I also continued reading about gender and identity, with a particular interest in their relationship to disguise and costuming. I started noticing in myself and others that depending on what one is wearing, one projects and acts completely differently. I started observing how clothing like uniforms, costumes, make-up and accessories have the ability to bring out such different sides to people. Depending on your apparel, you can find yourself channeling archetypes or modes of expression that you yourself might not even realize were inside of you. I came to the conclusion that identity isn't this one-sided façade that sums us up, but instead is fluid and malleable and can encompass an enumerable amount of potential expressions that we may chose, or chose not to project. It was interesting because not only was I filling my brain up with all of this theory, but it was being acted out for me and my camera every time

I did a portrait session with my subject(s). When Clothes Minded was exhibited as part of the gallery installation, I incorporated quotes from the literature I was reading. For example, a quote by Esther Newton: " Masculinity and femininity are like two dialects of the same language. Though we all understand both, most of us 'speak' only one".

When I started producing Personae, everything I had been thinking about, reading about and experiencing while making Clothes Minded came together like pieces of a puzzle.

How do gender and sexuality factor in your work?

The first images I started producing had to do with gender-bending. When I started making this work, I really got a charge (and still do) out of seeing men and women taking the piss out of what was considered to be traditional gender roles. Androgyny was a major concept in the 80's, but I find it really only exploded into the mainstream media in the early 90's. I was attracted to the whole idea of androgyny; the ambiguity and blending of the sexes, but I was also attracted to the polar opposite ends of



the gender spectrum as well: what is it that makes us male and/or female, or neither? I think my attraction to this subject matter, and my attraction to role models who were pushing these boundaries also had to do with my need to explore and push the boundaries of my own sexual identity. I've always been quite shy by nature, and there's this repressed alter ego in me who always wanted to be a performer. I was in a milieu of performers, I was interested in documenting the people around me, so photographing these strong, sexually aware, expressive, extroverts I was hanging out with helped me come out of my own sexual shell. A lot of my drive to produce my work comes from my desire and pleasure of living vicariously through the subjects I photograph. This aspect is especially true with my Backstage or Wigstock images, but also just as true with Personae. I really appreciate the strength of the women and men who are looking directly into my lens; their empowerment and confidence inspires me.

How do you collaborate with your subjects? What is this relationship like?

I've always been interested in working with people. I'm usual-

ly approaching people in whom I see an ability to give me what I'm looking for, photographically speaking. I like to draw things out of people as much as I like them to bring their own energy and ideas to the overall mise-en-scene of the image. One important thing I'm looking to pull off with Personae is to collaborate with my subject(s) and construct a mise-en-scene which, in the end, will hopefully appear to be a spontaneous moment.

Most of the time I'm working with subjects who I know, and who I've seen perform; people who have revealed their alter egos to me in some way or another. Sometimes I'll post an ad and end up working with a complete stranger. This process can be interesting in that it has the ability to take my image/idea in a completely different and unexpected direction. As a photographer, I'm looking to capture an important or decisive instant in a person's life.

How do you take a photograph? What is the process? What do you shoot with, how much time is spent in post-production? How do you know when the work is done?

What do you look for?

With Personae, for example, I approach the creation of my image the same way a director might approach creating a scene for a film. Once I've scouted and chosen my location, I usually like to meet with my subject(s) and go over what the different looks will be, with both of us deciding on elements such as clothing, make-up, etc.

This is where most of the collaboration happens; with us discussing more specifically what the mise-en-scene will be, and what the character motivation will be. I flag a lot of image samples in magazines and keep photo samples I find on the Internet. I find it helps to show the subject a sample image to describe the mood I'm looking for, the facial expression, potential poses, composition, etc. Once on location, I select the vantage point from where I want to take the image and then I don't move the camera from that place. I have the subject move from one side of the frame to the other, disguised as their different alter egos. When the image relies on sunlight, I try to move things along as quickly as possible so that the light changes as little as possible. Otherwise, if it's an indoor set-up, I'm setting up tungsten lights, and using

more of a film-set type of lighting set-up. The Personae series is all shot with a medium format camera, which produces a square 6x6cm negative. I'm still a big fan of film. I find film gives much better colour, resolution and tonal range. Digital isn't there yet, but it's getting close. So I shoot on film, then I scan the negative, then I create my composite from my digital files. At this point I'm only half-way there! Now comes the post-production, Photoshop retouching stage which, depending on many different factors, can take anywhere from about 6 hours to 12 hours (not usually in one sitting). Ideally, I like to re-visit the composite over a period of a few days. Some of the retouching can be very labor intensive, requiring precision and patience. In terms of knowing when an image is finished, I want the images to look realistic and believable, but there's only so much you can do to the image in terms of retouching. At a certain point, you just know that the work is done. Then, for exhibition, the digital image file is printed (using Lambda laser technology) onto photographic paper lending the final output a traditional photographic look.

How have your interests evolved over your career

as an artist? What are you working on now?

When I first left Concordia my mind was full of politics and theory, and that was the driving force behind my work at that time. I slowly moved away from this way of working to a more intuitive process, being influenced more by pure imagery as opposed to theory and concepts. I find lately that I'm back to scouring the pop culture world for inspiration and ideas. I'm also at a point in my career where I'm ready to explore all of these ideas that I've been pushing aside over the years. I feel like I got a little too caught up in recent years, with the idea of producing work which will be fundable with grants. That's fine, and I'm definitely going to pursue grant funding, but there are a lot of different types of projects which I now feel ready to explore and I've decided not to hold myself back any more. For example, I've always been attracted to charged, homoerotic imagery in relation to portraiture, so I will be experimenting with ideas related to this over the summer. A lot of my ideas revolve around pushing the boundaries of portraiture while still involving elements of disguise and costuming. I also want to get back to a

mind-set of experimentation. I find with photography, because it's so technical, you can get caught up with wanting to master certain techniques and control things too much. This can have a stagnating effect and I'm looking to throw a little more caution into the wind in the coming months. I also have some studio set-up images I'd like to experiment with in the fall. I feel like I'm in full-on production mode right now, exploring new ideas, and it's feeling good.

Footnotes:

[1] McLeod, Dayna, 2005. "Pierre Dalpé: Personae", exhibition essay, Galerie Observatoire 4, Montréal, PQ.

Pierre Dalpé is a Montreal-based artist whose work is a fusion of traditional and digital photography. Dalpé received a Bachelor of Fine Arts in Film Studies and Photography from Concordia University in 1993, and his photographs have been published and exhibited in Canada, the United States and Russia. Dalpé has participated in Artist in Residence programs at the Banff Centre for the Arts in Banff, Alberta and at the Klondike Institute of Art and Culture in Dawson City, Yukon. He has received grants from both the Conseil des arts et des lettres du Québec and the Canada Council for the Arts for his series Personae. <http://pierredalpe.com/>

LESBIAN CONCENTRATE

Bernie Bankrupt

Lesbian Concentrate, a Lesbiananthology of 13 Songs and Poems, 100% Undiluted is rumoured to be the first album ever released with the word 'lesbian' in the title. Olivia Records released this compilation album in 1977 as a protest to Anita Bryant's homophobic "Save the children" campaign in the 1970s. It features the work of over 20 women artists and various performance genres such as solo folk music, spoken word, blues, funk, Balkan chanting and poetry. Released on vinyl only, the album includes extensive liner notes with details about each song and a printed gatefold insert listing lesbian resources around North America. The liner notes also include photos of all of the artists involved. It includes popular songs such as, "Leaping Lesbians" and "Women Loving Women," as well as a spoken word piece entitled, "The Subject of Lesbianism." It was representative of lesbian culture of the time – including popular artists and themes that were central to political debates. The main recording engineer was a woman, Sandy Stone, which was unusual for the time and indicative of the woman-centered production context.

We Know You Know

I'm in a band called Lesbians On Ecstasy and we decided that we had to dive into this, the lesbo-est of all lesbo albums for source material for our second album. Our first album used lesbian anthems (Melissa, kd, indigo girls...you know the list) and made dancefloor bangers out of them. For the second album, we really wanted to dig deeper into the lesbian vault and work with material that none of us were familiar with. In walks *Lesbian Concentrate*. The rest is herstory. The resulting album, *We Know You Know*, features 8 tracks inspired by *Lesbian Concentrate*.

Yo, look around you: the track

The process of mining *Lesbian Concentrate* for source material started with intensive listening sessions. In those sessions we try to find bits that pop! – either lyrics, a snippet of melody or a signature sonic element. One song that jumped out immediately is “Gay and Proud.” It went on to become the LOE track “Sisters in the Struggle,” and the first single on the album. I will take this opportunity to describe the song in detail, including information about the source material, instrumentation, engineering and mixing.

The list of source material for each LOE song is long and varied. For “Sisters,” there are two principal sources and several others that provided smaller sampled bits. The chorus lyrics (and main theme) are from the song “Gay and Proud,” which was written by Debbie Lempke and appears on *Lesbian Concentrate* as performed by the Berkley Women’s Music Collective. The last four lines of Lempke’s song became the chorus. The original lyrics are:

*We women been waiting all our lives
For our sisters to be our lovers
Hey look around you now*

Ain’t you glad we finally found each other?

The feel of the original is upbeat, featuring a single voice performing the verses and a chorus of women’s voices joining in for the refrain. Piano, guitar and bass are the only instruments. The above lines are from the final refrain, when all instrumentation drops out and the vocals are left a capella. It was a combination of placement, emphasis and the lyrics themselves that attracted me to this section. I was intrigued by the meaning in the words. Obviously the ‘sister’ is referring to a fellow feminist, spawning the name for the LOE track, “Sisters in the Struggle.” But I also like the potential misuse of the word ‘sister,’ which could be biological (and pervy), and the potential mis-use of the word ‘lover’ – obviously sexual, but which I also interpreted to mean a conspirator or ally.

In order for this section to be usable for a new track, it needed to be altered. First we manipulated the cadence and timing, taking the upbeat tempo and slowing it down to half time. We took out the “we women,” as the new timing requires less syllables. Those two lines became the chorus of the new song. The second half (hey,

look around you) does not appear until later. The chorus for the new track is sung by a small group of women. It begins in unison and splits into harmonies and eventually a canon by the end of the track. The choral vocal quality is reminiscent of the Olivia Records style, but the instrumentation contrasts the comfortable folky sound. The arrangement mimics typical dance music, with spoken delivery in the verse and inspirational melody in the chorus. However, as a contrast to most dance music, the delivery of the chorus is rough and folky and not sung in a diva style.

Like many *Lesbians On Ecstasy* songs, a key element in this track is the bass. Bass is central to dance music, often embodied in the kick drum, or through low frequency synth sounds that carry a driving beat. During the verses, Veronique plays the bass-line from the Tittsworth (Baltimore club DJ) track, “Eastern Motors.” [1]

As the song progressed, it became more and more dramatic. Instead of shying away, we looked to exploit the uplifting tone of the original song by introducing more lyrics that contributed to the anthemic feel. Right after the second chorus, there is a drop to the first sec-

tion of the bridge with the additional lyrics:

*I've been lonely without you, you
my sisters, my sisters
I've been, like, waiting to see you
You my sisters, my sisters
Hand in hand in hand*

The song then returns to the lyrics from "Gay and Proud," changing 'hey' for 'yo' and 'aren't you glad' for 'its awesome.'

Cover vs Remix (aka 'the ju-diths')

There has been some academic discussion about the production style of Lesbians on Ecstasy. Judith Halberstam talks about the way that the sincerity of the band can 'queer' the idea of a cover song in her paper, "Keeping Time with the Lesbians On Ecstasy" (1993). In response to that paper, Judith Peraino retaliated with, "Listening to Gender, A response to Judith Halberstam" (2004), suggesting that our cover songs are in fact ironic.

The two papers take opposing stances on the intention of our 'cover' songs, pivoting upon that question of sincerity vs. parody. Both authors make excellent observations about our music; however, neither author



considers the possibility that the term 'cover' is not accurate for our songs.

There are several reasons why the word 'cover' doesn't fully describe our musical practice. A cover song is a new rendition of a previously recorded song. One of the central reasons that this is not a description of our practice is that we never refer to only one song. The general guideline of our production has been to take lyrical content from women's music sources and musical content from a plethora of sources, a practice akin to sampling, but without the technological practice that is normally associated with that word. I'll refer to it as 'performative sampling.' While sampling is certainly a contested term, it usually refers to using chopped up bits of audio from previously recorded songs, editing them together to create a new track. While we use the philosophy behind this practice, we re-perform all the sampled material ourselves. Therefore, we are only sampling the idea of the sampled portion of the song, or the written score that represents the portion of the sampled song, and not the recorded song itself. While the borrowed musical content might be slightly harder to identify than the lyrical content, it certainly

plays an equally large a role in our songs. Perhaps using these two different sources places our practice somewhere more in the realm of the mash-up – taking two different songs and mixing them together to make a new (and usually unlikely) song [2]. There are elements of mash-up in what we do, yet that term does not account for the fact that we use little bits of lots of songs to write new songs altogether [3].

Our songwriting practice is ambiguous and not true to any one form; it also differs from song to song. It is impossible for us to respond to the demand to create a dialogue between the 'original' song that we reference and the 'cover' that we create. Impossible because it relies on the idea of two distinct songs, two objects that have a one-to-one relationship with each other. Our songs are much more open-minded than that model imagines. Each song has a long list of partners in its creation – we could say that the songs are in more of a polyamorous relation with their predecessors, rather than a monogamous, faithful relationship to the original. These songs have various arrangements with different partners – no heteronormative remix standards can be applied.

Another well known Judith, the Butler one, discusses gender in terms of the original and the copy. But our songs are not, as Butler says, "a copy without an original." They are, indeed, a copy with an original, but it is not an authentic copy. Butler's quote refers to gender, but I will use it here to refer to our music and the ways in which her analysis of the queer subversion of gender categories can be used to understand our own queer subversion of the musical categories within which we work. In this case, the original is known – it is a song that existed in the past, and continues to exist, although many people may not know of its origin. Whether that song can be considered original asks a different question. Copyright and intellectual property laws declare a song to be original if and when the artist declares it to be so. Copyright mostly protects the lyrics of a song and the associated melody. Instrumentation, unique 'sound' and recording style do not fit within the realm of copyright, which means that many 'original' songs incorporate elements of existing songs without compromising their claim to originality. So already we can take issue with the idea of a purely original song upon which we would be basing our purely derivative copy.



In this case, it could be said that this original that we are copying has elements of the copy within it from the very outset. Is it possible to pinpoint the first 'womyn's music' artist? Probably not. The narratives of this musical period tell the stories of the first artist to be wildly successful (Cris Williamson with *The Changer and the Changed*), but that is not to be confused with stories of the first artists working within this genre. Their musical styles were typically consistent with popular music of the time, with subversive elements included through the lyrical content. Yet while it can be tempting to try to locate the originator of an idea or a sound or a movement, what might be more exciting is discovering links and layers between moments of time. By sampling past feminist voices, we are creating community with those artists. In the same way that some people have discussed the idea of temporal drag, this can be seen as temporal collaboration with lesbian artists from the past. We work to create dialogue with the past through sampling.

Similar to the way that Olivia used music to create community and reinforce their political ideals, LOE has created community – although one tied more

closely to ideas of queer theory than second wave feminism. From the initial involvement with the StudioXX community to collaborations and interactions with queer artists, activists and groups across North America and Europe, LOE has functioned as a musical project and an organizational strategy. The Lesbian Concentrate remake project was the excuse and vehicle for research into early lesbian feminist music. The resulting songs, videos and artwork have been used to form community and facilitate discussions about early women's music and second wave feminism in our network of collaborators, friends and fans. While the band began as a purely fun-time project, it piqued my own interest in lesbian music and womyn's music from the past. I wanted to know more about independent feminist musicians and labels and ways that those histories were intersecting with my life.

Ambiguous. Kinda Like Bisexuals

To position this in relation to the theorization of Lesbians On Ecstasy as a cover band, two different standpoints have been presented as possibilities. The first is that our 'cover' versions are sincere tributes to the

original artists to whom we are referring. The second possible interpretation is that our songs are ironic parodies mocking the sincerity of the original artists. Both of these positions can be defended through interviews given by the band, and the material itself. The reality is somewhere in between these two polarized options – not only are both of these positions equally valid, but they are equally accurate. In interviews, we give contradictory accounts of our process all the time. We lie. Sometimes we tell the truth. But perhaps the very ambiguity that arises from this grey area makes the project richer for discussion. This ambiguity is possibly the queerest part of the whole thing. The right to be in-between, to change our minds and identities, to take the piss, to be sincere, is how we can look at the queerness of the project.

To attempt to answer whether our songs are sincere or a parody would be futile and counter-productive. Embracing this ambiguity is also not an attempt to avoid answering difficult questions about our intentions, it is in fact at the very heart of what we are doing. Within each song is an idea – a narrative idea and a musical motif. Considering solely the narrative

or lyrical element, there are certainly some songs that are firmly tongue-in-cheek or ironic, but when combined with the musical element, that narrative element changes its character. Within each song there are moments of humour and irony, as well as sincerity and sometimes sadness. While we aren't immune to the kitschy aspect of making lesbo-feminist-techno-electro, there is a deeper motivation to the overall project. This motivation could best be described as a kind of nostalgia or even romanticization of feminism itself.

These days, it could appear that making music with any kind of overt political agenda is simply outdated. However, the simple act of researching Olivia and creating the remakes could be seen as an act of creating community across time. In addition, the collaborative process of Lesbians On Ecstasy has permitted this research to open up discussion about second wave feminism in contemporary queer communities. Perhaps then, the socially transformative potential of music lies in these types of collaborations and discussions, through action, over time and with fun.

Footnotes

[1] I refer to this track as the Tittsworth track because it was through his release that I heard it for the first time, but his track is a remix of the jingle for a car dealership in Baltimore called Eastern Motors. I'm sure that their jingle is based on an old soul or funk track, but I'm not sure what it is.

[2] Like Enya with Yo Majesty or 50 Cent with Nine Inch Nails

[3] There are many musical forms that I could reference here – musique concrete, plunder music, themes and variations, found footage but there is no singular term that can be used to accurately describe the totality of our practice.

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Discography

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Bernie Bankrupt is a member of Lesbians On Ecstasy, Dykes on Crack and Boyfriend. She also owns a small dep in Montreal and has an unusual obsession with small white dogs. She is no longer vegetarian. Lesbians On Ecstasy is Fruity Frankie on vox, Jackie the Jackhammer on octapad and Véronique Mystique on monster bass. They work collaboratively.

no more potlucks