

STANFORD
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Review

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"And the walls come
a-tumblin' down":

MUSIC IN THE AGE OF POSTDISCIPLINARITY

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CRITICAL LEGAL STUDIES AND POPULAR MUSIC STUDIES

FOUCAULT ARGUED THAT THE IDEA OF THE AUTHOR (and, with it, of authenticity) is a fundamentally discursive practice, and this is certainly so in popular music.¹ But within that discourse are rooted also fundamental notions of power; authorship and copyright (and, along with those, authenticity) are part of that power structure. As Raush notes about the origins of copyright law, "copyright was intertwined with political censorship laws,"² effectively fixing not only who owned the rights to copy a work but who could and could not publish it.

The vestiges of that origin are still with us. Copyright is still a form of censorship, if only insofar as copyright owners determine the uses to which a work is put. Frith³ and Jones⁴ identify copyright in popular music as control, and establish technological change as a driving force behind shifts in the interpretation of copyright laws and exploitation of copyrights. However, it is more technique than a technology that is at loggerheads with copyright law (an argument frequently made in reference to digital sampling and recording). The ability to use a machine for a particular purpose is not what creates difficulty vis à vis copyright; it is that technology calls into question exploitation itself. On the one hand, the structures built by copyright law continue to maintain that free expression of ideas is of paramount importance, implicitly (at least) exhibiting a modernist view of "progress." But it is the ideas that are supposed to be free; their expression can be copyrighted. This dualism is artificially constructed and difficult to maintain, for, on the other hand, the techniques embedded in audio technology are an instrument of expression that at once commodifies and mass (re)produces *both* ideas *and* expression. Put another way, exploitation in the marketplace is acceptable and taken for granted, within the legal, economic, and social systems surrounding popular

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music practice as those have been constituted commercially. But artistic exploitation, which is perhaps what sampling is at heart, is unacceptable to copyright holders. Such exploitation forces a wedge between the dual meanings of property/propriety (the dual interpretations of "work") to be discussed later in this essay and exposes the idea/expression duality. The contradictions between commerce and art, at the fore in popular music to begin with, are embodied in the establishment and exploitation of copyright and need to be examined critically as they are embodied within the technology used in service of copyright's exploitation.

Popular music studies lack a framework for understanding popular music practice in such a way as to be able to account for authorship and authenticity as multifaceted constructs arising from the interstices between musicmaking, music-owning, and music-hearing. (A particular challenge to popular music studies is to perform the kind of "genealogy" that Foucault seeks of literary property in terms of popular music.⁵) To borrow from Bettig,⁶ the creative subject is constituted socially in popular music as regards popular music's consumption and constituted legally as regards popular music's production. As regards the study of popular music, the creative subject appears to be constituted according to discursive boundaries of a study. The creative subject is situated differently depending on whether a study is musicologically or sociologically grounded, whether it is the study of text or context. It is rarely understood as a discursive practice. Consequently, popular music studies often assume the immutability of copyright and proceed to understand popular music practice as it is shaped by copyright law and concomitant restrictions, reinforcing Gagnier's claim that deconstruction may be "ultimately a conservative practice."⁷ Analysis of censorship struggles has been less occupied with analysis of the law and more occupied with analysis of social and economic implications arising from censorship attempts.

Popular music is made to be reproducible, not merely technologically, but socially (via discourse, dance, and other means of interaction), and its mode of existence lies in reproducibility. And it is reproduction and playback, rather than recording, as is often claimed, that is problematic for copyright owners. Popular music scholars themselves seem to subscribe to a Romantic notion of authorship, if only because it is the legal consequences of infringement that are most visible and thus other conceptions of copyright (as censor, "structuring" structure, etc.) are less easy to see. Or, perhaps, they mythologize authorship by embedding it in performance. It is as if popular music studies implicitly and uncritically subscribes to the notion of authenticity, officially decrying infringement because it tramples the rights of "authors," mapping genealogies of music that seek to resurrect its "true" origins, and (missing from consideration the social construction of the author in the context of popular music and in the very work of popular music scholars.

THESE ISSUES HAVE BEEN ADDRESSED BY CRITICAL LEGAL scholars using literary criticism and literary theories on legal dis-

suit. In particular, literary criticism has engaged questions of authorship and authenticity in recent years by historicizing the "author" and "authorship" and understanding the resultant ties to the structure of legal systems of copyright. Indeed, in literary studies authenticity (in particular the rise of a discourse of "originality" and the "new" or "unique") is often problematized by way of authorship. For instance, Jaszi has argued that "'authorship' has been continually revived and redeployed, sometimes under very unusual circumstances, in debates about . . . copyright."⁸ Jaszi claims that authorship is "a culturally, politically, economically, and socially constructed category rather than a real or natural one,"⁹ an idea particularly appropriate to popular music studies since it can be claimed that authorship and authenticity are likewise constructed in popular music yet made to seem natural as part of the creative "work" of musicmaking.

Along with theoretical interventions into the concepts of "authorship" and the "author," critical legal studies (CLS) is often predicated on the history of publishing and the concomitant economic and legal environments of publishing. Such connections tell much about the way copyright has come to be thought of in the music industry and provide several avenues for CLS to engage popular music studies.

First, authorship is bound up with ownership. The roots of property law, and even the roots of the word "property" itself, are derived from the Latin *proprius*, meaning "one's own." Literary property is dependent on the idea of "real" property, which itself derives from *proprius*. Not coincidentally, the word "propriety" is derived from the same root. Ownership and use are conjoined, a point that is particularly important in the popular music industry. As Rose claims, "the distinguishing characteristic of the modern author . . . is that he is a proprietor."¹⁰ To play further on language, it should be considered that there are (at least) two meanings to the term "work." In one instance it refers to that which is copyright, the author's "work." In another instance it refers to that which is "worked," processed, effected, exploited. These twinned meanings confuse popular music copyright, especially insofar as copyrights in the music industry are not perceived as protection so much as commodities to be bought, sold, and exploited by way of licensing agreements, publishing, airplay, and other royalty arrangements.

A strain is placed on literary definitions of property when they are applied to popular music, since such definitions are historically linked to "real" property. In popular music, it is difficult to define what the "real" property is, as each attempt to fix the definition brings contradictions. Written notation is not the same as performance; sound, though it can be recorded, is evanescent, and so on. Moreover, the property that is exploited takes the form of the "song" but can be exploited in many ways independent of the song's structure, sound, and written form.

Second, the development of copyright is inextricably bound to Jaszi's "metamorphoses of 'authorship,'" a claim important to the study of popular music as it problematizes the notion of a "songwriter." Jaszi argues that "it is not coincidental that . . . the articulation of many doctrinal structures that dominate copyright

today¹² arose during the heyday of Romanticism, a time when authorship was used to signify "an extreme assertion of the self and the value of individual experience,"¹³ a claim mirrored in the discourse of authenticity in popular music. As Bloomfield puts it,

The illusion of the availability of the singer as artist is spelled out . . . as an ideology of authenticity. It is a discourse that takes over key elements of Romanticism to structure the listener's common sense into a (naïve-) realist (proto) theory of song production and consumption.¹⁴

Bloomfield historically situates the songwriter and identifies the Romantic era as the moment of formation of modern ideas about the song by way of preoccupation with self-consciousness and subjectivity.

Third, as Eisenstein argues in *The Printing Press as an Agent of Change*, reproduction moves the work from the artist's studio to the printer or publisher.¹⁵ As a result, it is the publisher who gains a vested interest in the work. It is important not to elide what Bettig identifies as "the separate interests of authors and publishers."¹⁶ This is a particularly fertile area for the study of legal structures and institutions in the music industry, because determination of Bettig's "creative subject" (upon whom are conferred the rights of ownership) is a political struggle—and an understudied area. In film studies and literary studies, Bettig notes, such work has been under way.¹⁷ The exploitation of novelists and screenwriters has been examined as it engages issues of copyright and control and is amenable to forms of literary criticism. Such work has only recently begun in popular music, but there is a long way to go.¹⁸

Romanticism's work on authorship can form a basis for much theoretical work in popular music studies, especially his exploration of the "author function." The popular music industry clings obstinately to the author, as do fans and scholars.

COPYRIGHT IN POPULAR MUSIC HAS TRADITIONALLY BEEN discursively positioned as an author's legal protection against the copying and pirating of music. But in practice, copyright is the primary means for record companies and music publishers, who usually own the copyrights to songs, to insure income during periods of low sales (since copyright is tied to a variety of royalty mechanisms that are not directly related to sales), and to control the manufacture and distribution of recordings. This is particularly important since the music industry has come to rely less on sales of recordings as a means of generating income for several reasons. First, the audience for popular music is an older audience and thus less prone to impulse buying. Second, it is an audience with less discretionary income.¹⁹ And third, synergistic arrangements within integrated media companies provide for easy exploitation of rights.²⁰

Shifting technologies have forced concomitant shifts in the ontological status of music and sound. Copyright law for sound recordings has not easily followed those shifts. Musical notation first externalized musical memory. However, written notation is not a medium of hearing but of sight. Writing can be considered a

means of fixing sound by converting it to sight.²¹ But musical notes on a page represent music, not sound; that is, the sound will be variable according to the instrument, articulation, and the like, chosen by the person who makes heard what is written. Evan Eisenberg writes:

Perfect preservation is a matter not simply of technology, but of ontology as well. A defect of preservation is a defect of reification, and this is the trouble with clefts and quavers. They aren't music; they just represent it. The music itself is sound.²²

Audio recording presents a means of notating, of fixing, sound. Cutler writes:

[Recording] "remembered" actual performances; more importantly, it could equally well "remember" any sound that could be made, whatever its source. Thus, through the medium of recording, all sound became capable of musical organization and therefore the proper matter of music creation.²³

One can then determine some connections between authenticity and authorship within the framework of Romanticism. Popular music since the 1960s can be considered as carrying on Romantic ideals, placing emphasis on instincts and feelings, de-emphasizing the intellect, exalting individualism, naturalism and simplicity. If writing music divides the composer and performer, then, as Cutler argues, recording enables the (potential) "reunification" of composer and performer. "We may there locate the musician's desire to record, since one is able to perform one's own composition. Eisenberg put it well:

What are the causes of this impulse to create records? . . . Marks on paper can be misinterpreted. . . . When the composer is the performer, what the recording records is nothing less than the composer's intentions . . .²⁴

As a result, we have a connection to Romanticism by way of establishing that a recording is "one's own" work, and a connection to copyright as recording enables the commodification of what is "one's own." In this light, it is necessary to do for musical copyright what Jaszi, Rose, Woodmansee and others have done for literary copyright: critically dissect its evolution.

The United States government has provided a means of copyrighting music since passage of the Copyright Act of 1909. In 1972, an amendment to the Copyright Act provided for copyrighting of "sound recordings." Four years later, the 1976 Copyright Act provided copyright protection for both published and unpublished sound recordings. The 1976 Copyright Act defines sound recordings as:

works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects,

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such as disks, tapes, or other phonorecords, in which they are embodied.²²

Consequently it is not only music but sound that is copyrighted, a conjuncture that points up the evolution of popular music's publication. It is necessary, especially in an age of sampling and digital reproduction, to protect and exploit not only the music but also the sound. The principal mediation (publication) of popular music is not by means of written notation but by means of reproduction of recordings, that is, publication of sound. Thus, traditional musical ideas that base the concept of authenticity on performance are misdirected in popular music. It isn't what one writes, it is how one sounds that is of most importance in popular music. Consequently, sound recording copyright is critical in popular music, as it lays claim to ownership not only of music but of sound. This point is crucial for understanding the controversies arising from digital audio sampling.

That point is also particularly important because it makes clear that copyright leads to income from sources other than just musical performance of copyright works. Indeed, the music industry derives income from several sources. In no particular order, these are: royalties from the sale of recordings, royalties from music used in recordings, royalties from the performance of recorded music, sampling of copyrighted recordings, and performance rights in recordings. Each form is based on the ownership of copyright in music and sound recordings.

In some ways, this arrangement is pernicious. The industry is moving away from royalties from the sale of recordings as a primary source of income and toward exploitation of rights as a stable source of income.²⁶ Through this process, the idea of the author or star is more strongly invoked; as a result, one sees artists like Madonna or Michael Jackson setting up micro-organizations that mirror the royalty-exploitation structures in the industry but now have the artist's imprimatur. It becomes necessary to do so for marketing purposes, because Romanticism is most strongly evident among mass media audiences in the conversations fans have about stars' likes and dislikes, about feeling, soul, inspiration, and originality. It is audiences who care passionately about authors, who seek confirmation that individuals are expressing their own thoughts and feelings through their chosen medium.

Put another way, there needs to be a way of fixing a work's creative existence. As Martha Woodmansee put it, "as creative production becomes more corporate, collective, and collaborative, the law invokes the Romantic author all the more insistently."²⁷ It is necessary to have an author to lend credibility and authenticity to a work, and that is why image creation and maintenance are of paramount importance in the entertainment industries. How does one market an "authorless" creation? The author is, of course, still necessary in economic terms, because without an author it is hard to lay claim to copyright.

This is particularly important to attend to, since artists with recording contracts are frequently viewed by the law as employees of the record company and/or music publisher with whom they are

signed, and thus their creative output falls in the legal category of a "work-for-hire," essentially giving over rights in an employee's work to the record company and/or publisher that acts as employer. The creative subject therefore is not only constituted within the legal structures of the industry but becomes the "property" of the record company and/or music publisher. The owner of the rights in such cases has interest in establishing artists not as employees but as what Jaszi terms the "Romantic 'author-genius'"²⁸ before the audience, to exploit its interest in rights ownership to the fullest. A similar situation occurred in the eighteenth century according to Mark Rose, who claims that London booksellers invented the "author" to boost sales.²⁹

ROSE'S ANALYSIS MAKES FOR A CLOSE LINK BETWEEN the "author" and the star system, a link made even stronger by Richard Sennett in a discussion of the rise of personality in the nineteenth century:

The . . . relationship between performer and text was embodied in Franz Liszt's famous remark, "The concert is—myself." The specific actions of the artist, the note or musical line beautifully shaped, were now thought the product of an artistic personality rather than a highly skilled worker.³⁰

The clearest cases illustrating the points made by Rose and Sennett and the intricate web of relations between authorship, copyright, and authenticity involve Vanilla Ice and Milli Vanilli. Vanilla Ice, a white rapper, achieved a number-one album and number-one single in 1990, overshadowing MC Hammer and other black rappers who had been in the charts. Ice's single, "Ice Ice Baby," sampled from a collaboration between the group Queen and David Bowie (not James Brown, P-Diddy or other artists black rappers often sample), caused many critics to denounce Vanilla Ice as a pretender, as inauthentic.

But what was more troubling to the audience was that Vanilla Ice's background as constructed by his record company didn't check out. SBK Records wrote in press releases, and Ice himself claimed in interviews, that he was from the same Miami neighborhood as 2 Live Crew's Luther Campbell. The intent was to provide some sort of "back-up" to a white rapper whose credibility was sure to be questioned. Journalists subsequently discovered Ice was a middle class kid from Dallas. The industry was nevertheless elated, because, as *Billboard* reported,

The numbers generated by this latest "black music in a white wrapper" opened a wide window of opportunity for white artists and music industry entrepreneurs entertaining platinum aspirations.³¹

The industry's reaction unsubtly exposes the motivations for classic Marxist alienation: taking something as essentially human as one's biography and commodifying it for potential profit.

Similarly, Milli Vanilli, who were stripped of a Grammy Award when it became public knowledge that they were lip-synching to

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Capen, present an example of what Christopher Martin has called "an enduring romanticism for the artist as the authentic author of his/her music."³² The matter came to a legal climax in a Chicago court when a class-action lawsuit filed by two dozen plaintiffs was settled. The plaintiffs claimed to represent:

*All persons in the United States who, prior to November 27, 1990, purchased . . . or received by gift, any of the following: any recordings by the entertainment group Milli Vanilli, any tickets to a Milli Vanilli concert, or any merchandise . . . bearing the words "Milli Vanilli" . . .*³³

Interestingly, Milli Vanilli are here defined as an "entertainment group," and not as musicians, performers, or composers, to signify their inauthentic position (entertainment as opposed to art) within popular music. Even more interesting is the fact that the suit includes purchase of items other than recordings. This signifies a denunciation not only of the music but of the inauthentic author constructed as Milli Vanilli.

Moreover, the defendants in the suit were not only the lip-synching duo of Pilatus and Morvan, but also managers, producers, and record companies. In the suit, it is stated that "BMG/Arista (Records), among other other persons," were to blame for the misrepresentation of Milli Vanilli's concerts and recordings. BMG/Arista were the only ones to deny wrongdoing, but they are the ones holding copyright in the material commodities associated with Milli Vanilli (music, T-shirts, and so on). There is no mention of the creation of Milli Vanilli concerts and recordings, no mention of production decisions, staging, and so on. Therefore, it is the representation of authorship that is the crux of the issue, the claim (however implicitly made) that Pilatus and Morvan sang on recordings and at concerts, and not authorship itself.

To illustrate the connections to copyright and its practical use in the music industry, the clearest case is that of California-based musical group Negativland. In 1991 they released a recording titled "U2," essentially a parody of the group U2 that makes use of digital samples from Casey Kasem and a disco rendition of U2's "I Still Haven't Found What I'm Looking For." The recording, on SST Records, an independent record company, sported a cover with the logo "U2" prominently displayed. Within weeks of the album's release, U2's record company, Island, brought suit against Negativland and SST and succeeded in having SST and Negativland remove the recording from circulation and pay \$25,000 plus half the wholesale proceeds from copies of the recording that were sold and not returned.

The Negativland case is important for several reasons. First, it points up the degree to which control and copyright are intertwined in the service of constructing authorship. For Island, copyright translates directly to exploitation, as this excerpt from its suit against Negativland makes plain:

[Island has] the exclusive rights to publish and administer the copyrights in U2's musical compositions. [Island is] exclusively entitled to use the band's well-

*known name and mark "U2" in connection with the exploitation of those rights.*³⁴

This assertion is a clear illustration of Gaines' indictment of Foucault's author-function as "not the convergence of meaning but the point of entitlement."³⁵ This is true not only in the heretofore practical terms mentioned but as regards the audience's conception as to who has the "right" to interpret a work's meaning. The audience typically seeks interpretation from a designated author, someone "entitled" to make claims about a work's meaning and origin.

Second, the Negativland case does not primarily and directly involve claims of copyright infringement of music. Instead, it claims deceptive use of packaging intended to boost sales of Negativland's recording. Island's suit does claim that about a minute's worth of U2's version of "I Still Haven't Found What I'm Looking For" is sampled within Negativland's recording. However, the problem for Island has less to do with infringement and more to do with Negativland's recording being "replete with expletives, curses and scatological language . . . (as result of which U2's) image will be tarnished."³⁶

Third, Island's lawsuit was instigated without U2's knowledge, an indication of the degree to which entitlement is taken. One of the members of U2, "ambushed" in an interview by members of Negativland, put U2's position thus:

*[Island] felt that . . . in a pure business sense, nothing about art . . . their attitude was "Well, look, OK, we're not gonna look for damages but we, we're not about to swallow our own legal costs." I think we would have reacted in a different way, but the lawsuit was not our lawsuit. Although we have some influence, we weren't in a position to tell Island Records what to do.*³⁷

The record company is protecting its rights, wherever and however those rights may be acquired (through direct purchase or through work-for-hire).

Fourth, the ironic twist to the whole matter is that U2 themselves employed many of the same techniques as Negativland during their Zoo TV and Zooropa concert performances, sampling audio and video from broadcast satellites.

THE ABOVE EXAMPLES ILLUSTRATE PARTICULAR CASES that highlight the tensions involved in music copyright issues and those issues' relations to authorship and authenticity. They are hardly the only ones. But it is significant that even ones like these, publicized as they have been, go generally unexamined in most popular music scholarship. Perhaps this is because scholars have generally focused on production and consumption of popular music without accounting for the bounded, over determined assumptions about creativity and the music business. One reason for that focus is that in popular music prior to rock 'n' roll it was interpretation of songs and not songwriting (i.e. authorship) that engaged the attention of scholars and fans (though the industry's

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attention was elsewhere, particularly on song "mills" like Tin Pan Alley³⁸). Copyright exploitation may have lent force to that focus, insofar as sales of sheet music were a major source of income for the music industry before the rock era. The star system had not evolved to a point where authorship "counted" to establish sales, and indeed it was generally not until the Beatles earned a reputation as songwriters and folk music established devotion to the songwriter that authorship, identity, and the star system merged in popular music.

The subsequent rock era has been characterized by what Simon Frith has called

the rock auteur, (who may be writer, singer, instrumentalist, band, record producer, or even engineer) [who] creates the music For many fans it was this sense of individual creation that first distinguished rock from other forms of mass music.³⁹

However, it is only a "sense of individual creation" that is at play in popular music. As noted earlier, it is at least as difficult to define the rock auteur as it is to define the auteur in film, for, as Frith continues,

All musical texts are, in fact, social products Rock's claims as art are based not on the cultural form itself but on the achievements of a handful of disparate individuals—artists despite their means of cultural production.⁴⁰

Frith's words alluringly beg comparison to the idea of the author as a discursive invention. The traditional understanding of copyright mystifies the "author-function," because copyright in popular music rarely serves to protect an "author's" rights. As Thomas Sliceter points out in an analysis of BMI's and ASCAP's struggles with the NAB in the 1940s,

[C]opyright's role is less formal and more like a functional standard; copyright acts as a general bureaucratic guideline, signifying the general goals of the system (capitalist profitability and expansion) to those inside it. The specific implementation of those goals depends less on boundary-setting than on bureaucratic arrangements that keep the system running, even if boundaries are allowed to grow quite blurry in the process. The question of who in the final instance authored a broadcast song, or more importantly who owes whom what for it, is often left open, but this is unproblematic as long as the general goals of the system are served and as long as the industries involved are profitable, expanding, and relatively stable.⁴¹

Reliance in popular music studies on Romantic notions of authorship obscures better understanding of digital sampling and industry responses to its use, and slides by the question of how artistic and legal decisions are linked in some instances and not others.

Yet something more is at stake for the study of popular music. Demand for authenticity in popular music is a particularly false request, because such a demand is made with the assumption that music exists in some pure form. Frith's suggestion is closer to the mark:

The flaw . . . is the suggestion that music is the starting point of the industrial process—the raw material over which everyone fights—when it is, in fact, the final product. The "industrialization of music" can't be understood as something that happens to music but describes a process in which music itself is made—a process, that is, which fuses (and confuses) capital, technical, and musical arguments.⁴²

It is, I believe, primarily the technical that, by organizing sound, organizes our thinking about authenticity.⁴³ The reproduction of sound incorporates signifying structures associated with the interpretation of authenticity. Put another way, popular recordings bear the stamp of their creators (throughout the collaborative process). They bring an "immediacy," as Frith calls it. He writes that "what a performer could sell . . . was his or her unique approach to songs."⁴⁴ Frith locates the essence of the approach in the human voice, particularly after the advent of electrical recording in the early part of the twentieth century. Indeed, if we understand voice here to mean an expressive sound, we can apply Barthes' use of the term *signifiance*, the "grain of the voice," as a means of identification by way of sound.⁴⁵ Consequently, Frith's use of the term "approach" can be supplanted with the word "sound." Recording allowed the degree of control over sound necessary to achieve such expression. More importantly, recording enabled these personal, expressive qualities to be mass mediated, and it thus enabled mediation of authorship.

For many rock fans, *signifiance* is translated as the idea of "feeling," and it is at the heart of experiencing rock music. But it will take some hard work before popular music scholars can discover how fans determine who is real and who is fake, what competing definitions of "feeling" are, and how those definitions constitute discursive and ideological practices in the consumption of popular music (and constitute determinants of authorship and authenticity).

Apart from *signifiance*, the claim to authorship as a signal of authenticity in popular music has increasingly turned toward claims to control. Dick Hebdige makes this point clearly:

When looking at Two Tone [Records], the point to remember is not that it was, as some rock and reggae purists have suggested, a "media-created hype" (less "authentic" than the original 1960s ska movement) . . . what's important about Two Tone is that Jerry Dammers realised that when dealing with the popular music industry, the important issues for the artist have less to do with staying "honest" and "authentic" and refusing to "sell out" than with grabbing and retaining control of the product at every stage and in all its forms.⁴⁶

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Hebdige is less concerned with what is and is not authentic than with *who* is responsible for the creative activity. Yet this is not a return to *auteur* theory, at least insofar as it demonstrates not *artistic* control but *commercial* control (perhaps a consequence of digital recording/reproduction rendering music as information, as something inherently controllable and commodifiable). As in the Negativland/U2 case, analyses of copyright and its deployment in the popular music industry can tell much about control and the legal structures that establish boundaries enforcing relations between artists, record labels, recording studios, broadcast outlets, music publishers, and distributors.

Frith's reformulation of the pop aesthetic is a necessary step for popular music studies. He asks scholars to consider "how music works to construct a people, a culture, an aesthetic . . . (how) it creates our understanding of what popularity is."¹ The goal, then, should be to discover what sources *outside* music musicians, fans, critics, and so on, go to in search of establishing authenticity and credibility. Though this may simply be further removing us from the issue at hand, or substituting one constructed text for another, it is important to recognize the whole range of influences working within popular music generally, and the music industry specifically, that are organized for the creation and maintenance of credibility and authenticity. One example of this process may be a band's performance of "cover" versions of songs as close to the original as possible, or from an "accepted" canon of songs, to establish credibility before they themselves have any hits. Likewise, live performance in and of itself may be a means for a musical group to establish credibility as musicians and performers. It is particularly interesting to note instances, such as Vanilla Ice's recordings, or Public Enemy raps, that make use of sampling as a means of importing authenticity. Such quoting establishes a connection that builds authenticity, a kind of italicizing that identifies the author, *by means of* authorship, as it undoes it.²

NOTES

- 1 Michel Foucault, "What Is an Author?" *Textual Strategies: Perspectives in Post-Structuralist Criticism*, ed. Josue Harari (Ithaca, New York: Cornell University Press, 1979).
- 2 M. Eban Kashi, *The Electronic Media and the Transformation of Law* (New York: Oxford University Press, 1989) 174.
- 3 Simon Frith, "The Industrialization of Music," *Music For Pleasure* (New York: Routledge, 1998).
- 4 Steve Jones, "Ban(ned) in the USA: Popular Music and Censorship," *Journal of Communication Inquiry* 15.1 (Winter 1991).
- 5 Foucault, "What is an Author?" 117.
- 6 Ronald Betteg, "Critical Perspectives on the History and Philosophy of Copyright," *Critical Studies in Mass Communication* 9.2 (June 1992).
- 7 Regina Gayler, "Liberalism, C.S. & Cultural Studies," *Stanford Humanities Review* 1.2/3 (Fall 1990), 78.
- 8 Peter Jaszi, "Toward a Theory of Copyright: The Metamorphoses of 'Authorship,'" *Duke Law Journal* (1991): 457.
- 9 Jaszi, "Metamorphoses" 459.
- 10 Mark Rose, "The Author as Proprietor: Donaldson v. Becket and the Genealogy of Modern Authorship," *Representations* 23 (1988): 54.
- 11 Jaszi, "Metamorphoses."
- 12 Jaszi, "Metamorphoses" 456.
- 13 Jaszi, "Metamorphoses" 455.
- 14 Terry Bloomfield, "Resisting Songs: Negative Dialectics in Pop," *Popular Music* 12.1 (January 1993): 17.
- 15 Elizabeth J. Eisenstein, *The Printing Press as an Agent of Change: Commu-*

nications and Cultural Transformations in Early Modern Europe (Cambridge and New York: Cambridge University Press, 1979).

- 16 Betteg, "Critical Perspectives" 149.
- 17 See Richard Fine, *Hollywood and the Profession of Authorship, 1928-1940* (Ann Arbor, Michigan: UMI Research Press, 1985).
- 18 See particularly the forthcoming volume *Music and Copyright*, ed. Simon Frith (Edinburgh: Edinburgh University Press, forthcoming).
- 19 Sal Manna, "For Les Bider, Success is Measured by More Than the Bottom Line," *BMI Music World* (Summer 1993). Also see *Words, Music, and Dollars*, Report of the Special Senate Committee on Mass Media (Ottawa, Ontario: Information Canada).
- 20 Joseph Turow, *Media Systems in Society* (White Plains, New York: Longman, 1992).
- 21 Walter Ong, *Orality and Literacy* (London: Methuen, 1982).
- 22 Evan Eisenberg, *The Recording Angel* (New York: McGraw-Hill, 1987) 13.
- 23 Chris Cudde, *File Under Popular* (London: November Books, 1986) 95.
- 24 Eisenberg, *Recording Angel* 129.
- 25 All references to U.S. copyright law are based on the 1976 Copyright Act of the United States of America 17 USC 101 and subsequent Congressional revisions.
- 26 Particularly since such exploitation is less at the mercy of market forces and more in the control of vertically integrated media that can initiate co-operative activities to enhance such exploitation.
- 27 Martha Woodmansee, "On the Author Effect: Recovering Collectivity," *Cardozo Arts & Entertainment Law Journal* 10.2 (1992): 292.
- 28 Peter Jaszi, "On the Author Effect: Contemporary Copyright and Collective Creativity," *Cardozo Arts & Entertainment Law Journal* 10.2 (1992): 297.
- 29 Rose, "The Author as Proprietor."
- 30 Richard Sennett, *The Fall of Public Man* (New York: Vintage, 1978) 199.
- 31 Deborah Russell, "White Rap Starting to Find Its Way," *Billboard*, 28 Sep. 1991: 1.
- 32 Christopher Martin, "Blame it on Milli Vanilli: Authorship, Authenticity, and Style in Postmodern Rock and Roll," 1992 (unpublished manuscript) 16. Martin not only provides an excellent analysis of the cultural debate surrounding Milli Vanilli but also situates the debate historically in popular music.
- 33 Siegel *et al.* v. Pitaras *et al.*, 90 CH 11439 (Cook County Illinois Cir. 1991).
- 34 Island v. SST *et al.*, CV 91-4785AAH (C.D. Cal. 1991).
- 35 June Gaines, *Contested Culture* (Chapel Hill, North Carolina: University of North Carolina Press, 1991) 33. It is useful to extend the notion of "entitlement" to the audience. In the 1970s and 1980s the music industry fought unsuccessfully against home taping, the practice of copying prerecorded music to cassettes and other media. In studies of consumer taping behavior, it was overlooked that many consumers felt "entitled" to copy music once they bought it. For a good study of consumers and home taping, see U.S. Congress Office of Technology Assessment, *Copyright and Home Copying* (Washington, DC: U.S. Government Printing Office, 1989).
- 36 Island v. SST *et al.*
- 37 Mark Hosler, Don Joyce, and R.U. Sirius, "U2 Can Sue a Sample Simon," *Mondo* 20/08 (1992): 58.
- 38 Excellent histories of Lin Pan Alley and the Brill Building have been written. See David Ewin, *The Life and Death of Tin Pan Alley* (New York: Funk and Wagnalls, 1964); Charles Hart, *Vesterdays: Popular Song in America* (New York: Norton, 1979); John Shepherd, *Tin Pan Alley* (London: Routledge, 1982).
- 39 Simon Frith, *Sound Effects* (New York: Pantheon, 1981) 53.
- 40 Frith, *Sound Effects* 53-54.
- 41 Thomas Streeter, "Broadcast Copyright and the Bureaucratization of Property," *Cardozo Arts & Entertainment Law Journal* 10.2 (1992): 580-81. The ideology Streeter describes leads to claims such as the one by Les Bider (see Manna, "For Les Bider,"), CEO of Warner/Chappell Music, who believes that instead of helping set up a copyright system in emerging markets, he is "educating them about the concept of paying for music."
- 42 Frith, "Industrialization" 53-54.
- 43 Steve Jones, *Rock Formation: Music, Technology and Mass Communication* (Newbury Park, California: Sage Publications, Inc., 1992).
- 44 Frith, *Sound Effects* 16-17.
- 45 Roland Barthes, *Image, Music, Text* (New York: Hill and Wang, 1977).
- 46 Dick Hebdige, *Cut 'n' Mix* (London: Methuen & Co., Ltd., 1987) 197.
- 47 Simon Frith, "Towards an Aesthetic of Popular Music," 1985 (unpublished manuscript) 6.
- 48 Joseph F. Loewenstein, "Italic Italics and the Genetics of Authorship," *Journal of Medieval and Renaissance Studies* 20.2 (Fall 1990).

;; *- Mode: LISP; Syntax: Common-lisp *-

;;

;; Score for "Three Dreams"

;;

;;

;; First noisy ramp (from cymbals)

;;

(dream (:to (castles "rampl.snd"))

(let* ((cut-soundfile (percussion "turkish-cymbal-1"))

(lb-rf (make-path '((10 -10)(0 -5)(-10 10))))

(rb-rf (make-path '((-10 -10)(0 -5)(5 0)(-8 14)))))

(partial-cuts 0 8 :sound-start 0.1 :sound-end 0.4

:srt-func '(0 0.4 14 0.4056 100 0)

:amp-func '(0 0 10 0.05 70 0.1 90 1 95 1 100 0)

:partials '(0.075 0.09)

:coincidence 0.5

:path (mirror-path lb-rf))

(partial-cuts 0 8 :sound-start 0.1 :sound-end 0.4

:srt-func '(0 0.4 15 0.40567 100 0.06)

:amp-func '(0 0 10 0.05 70 0.1 90 1 95 1 100 0)

:partials '(0.077 0.1 0.1025)

:coincidence 0.3

:path (mirror-path rb-rf))

(partial-cuts 7.41 8 :sound-start 0.1 :sound-end 0.7

:srt-func '(0 0.66 60 0.33 100 0.707)

:amp-func '(0 0 10 0.05 50 0.1 70 1 75 1 100 0)

:partials '(0.165 0.2 0.21)

:coincidence 0.8

:path (rotate-path rb-rf 95))

(partial-cuts 7.4 8 :sound-start 0.1 :sound-end 0.7

:srt-func '(0 0.66 60 0.333 100 0.7075)

:amp-func '(0 0 10 0.05 50 0.1 70 1 75 1 100 0)

:partials '(0.165 0.21 0.24)

:coincidence 0.91

:path (rotate-path lb-rf 95))))