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The Pixel as Property

David Schnitman

The Pixel as Property is an examination of graphic design as a mode of production and its relations to three subjects: copyright, representation and ownership. My major research project in the Graphic Design program at OCAD U involved the investigation of these three topics through the activity of graphic design production. The first subject, copyright, was the catalyst for most of my formal work over the year.

As a property relation, copyright is unique because it is treated as a default. As soon as a work is created and fixed in a tangible form it is automatically copyrighted. The ubiquity of copyright, as a status that is frequently overlooked or taken for granted, warrants greater scrutiny and attention.

Pushing Pixels

In this software sketch users can move around a title, image and piece of body copy in order to create a simple composition. Once they are satisfied with their design, they can reveal a line that traces their mouses actions. These lines serve as indexes of digital labour and design process.

In 1710, the Statute of Anne was the first statute of copyright in Great Britain to vest copyright in the author rather than the publisher.¹ This moved publishing power from an exclusive guild of printers to the authors and the printers licensed to publish their work. Today the situation is more complex: contemporary copyright laws apply to texts, music, fine art, graphics, sculpture, performance, dance, architectural works and so on.

The increased scope of copyright comes with new challenges. The treatment of artistic work as property creates the possibility for intellectual property conflicts, wherein authors, classes and institutions challenge one another over infringements or improper use.² The consequence of these legal conflicts and the threat of legal action is a “permission culture” in which approval and explicit leases are required to make any sort of derivative work.³

Implicit among the demands of a permission culture is the condition that if creators cannot get the rights to use existing works, they risk punishment for works of visual criticism. Even though fair use laws (known as fair dealing in Canada) make legal exception for copyrighted work to be used for a number of specific purposes—including commentary, criticism, parody, journalism, and research—the terms of fair use are imprecise.

In 1968, Milton Glaser and Lee Savage created *Mickey Mouse in Vietnam* for an event protesting the war in Indochina. The one-minute film depicts the Disney icon joining the US military, travelling by boat to Vietnam, and being shot and killed immediately upon arrival. The film can be taken as a criticism of US imperialism, or how the horrors of war affect youth. Talk of lawsuit by Disney emerged, but no legal action was taken. No money was made from the film, and presumably the company did not want to take a political position on the conflict.⁴

Appropriation as an artistic method has been cemented in the art world for over a century. Yet we should acknowledge the fact that these appropriation-based artworks were likely created in violation of past and present copyright laws. For example, Betye Saar’s work, *The Liberation of Aunt Jemima*, which challenged the racism of stereotyped African-American figures in advertising, could well have incurred legal action from Quaker Oats. In another case, a group of underground cartoonists known as the Air Pirates incurred serious legal punishment from Disney after creating parody comics of Mickey Mouse. The Pirates argued that their comics were fair use, while Disney alleged copyright infringement. Along with *Mickey Mouse in Vietnam*, these

cases show the variability of fair use protections in relation to artistic work. One could argue that a lack of more critical art and design practices are a byproduct of this variability.

The resolution of intellectual property conflicts within the legal system is based on the liberal conceptions of property and freedom.⁵ In challenging copyright we also challenge the liberal conceptions of freedom and private property.⁶ Simply put, the liberal notion of freedom is one wherein each individual can act as they please so long as they do not harm others directly. Meanwhile the liberal notion of property suggests that if we invest our labour into something, the outcome becomes our property. Combining these two notions gives us a picture of copyright as outlined by its proponents. Creators have freedom to do with their work as they please, and copyright is there to provide legal protection and monetary incentive.

Forfeiting Canada's Public Domain

This data visualization poster maps a timeline of Canada's public domain. Lines begin with the death of an author and end once their work enters the public domain. Canada's involvement in the Trans Pacific Partnership comes with pressure to increase our copyright term from life plus 50 years to life plus 70 years. This visualization highlights the potential 20-year gap that would be created in Canada's public domain, and the creators we would lose access to (including but not limited to): Gabrielle Roy, Marshall McLuhan, Marcel Duchamp, Roland Barthes, Vladimir Nabokov, Hannah Arendt and others.

Individuals' having legal and monetary protection of their work is justifiable, but it can lead to dangerous scenarios for our creative culture. In my data visualization poster *Forfeiting Canada's Public Domain* I mapped the potential 20-year increase to Canada's copyright term that is threatening our country's public domain. Canada's involvement in trade negotiations through the Trans Pacific Partnership (TPP) comes with pressure from other nations to increase Canada's copyright term to match their own.⁷ (*Author's note: As of October 5th 2015, after 5 years of negotiations, the twelve Pacific Rim countries involved in the TPP have come to an agreement. Although the deal has been signed, the exact terms of the agreement have been kept secret. According a leaked version of the final TPP text released by Wikileaks, Canada's copyright term has been extended to life plus 70 years [QQ.G.6].⁸ As detailed in my poster, we are now entering a 20 year gap our public domain. The works of hundreds of well known authors will not enter the public domain for decades.*) A similar scenario became reality in the United States, when the 1997 Copyright Term Extension Act, derisively known as the 'Mickey Mouse Protection Act', extended the American copyright term to life plus 70 years. In the United States, no new works will enter the public domain from 1997 to 2017.⁹ If the Canadian copyright term is similarly lengthened, the consequence will be that the works of dead creators will be delayed by an additional 20 years before passing into the public domain. According to the operating logic of copyright, this term extension will further incentivize dead creators to create additional works.

Algorithmic Poster Generator

Users can input text, select typefaces, choose background elements and include imagery. The caveat is that they cannot interact with the poster directly, but can only move around a series of sliders to customize the outcomes. The user's dependence on the content and interface—defined by the software—calls attention to the designer's reliance on existing content to produce their own intellectual property.

If the products of our labour become our property, then contemporary forms of design labour (working on software on computers) create a new property relation. A property relation wherein a series of mouse movements and keyboard presses results in property.

If we were to interpret graphic design production from a Marxist perspective, we would define it as a form of immaterial labour.¹⁰ Immaterial labour constitutes a mode of production wherein

the outcome of labour cannot be exhausted, but conversely gains prevalence with increased consumption (i.e. recognition or viewership). We can define many modes of cultural production as forms of immaterial labour, including video editing, fashion design, and writing. The unique and noteworthy characteristic of this form of labour is that the worker includes her own subjectivity and creativity in the end product: the worker's aesthetic judgments become part of the commodity produced.

Copyright captures this subjectivity and makes the outcome property as soon as it is fixed in tangible media. Yet this concept of ownership in relation to graphic design is perplexing when we consider that graphic designers work primarily with existing content.¹¹ The designer is responsible for using the photography, typefaces, and text created by others and claiming that they own the rearranged outcome. We might better situate graphic design as an activity of translation rather than authorship *sui generis*.¹² Considered as such, how can graphic design navigate towards a more critical set of relations?

In his essay, 'Author as Producer,' Walter Benjamin remarks that in order for art forms to achieve autonomy against 'the brutal heteronomies of economic chaos,' artists must control the tools of creative production.¹³ Given the current conditions of design practice, this would mean that designers must gain control over the primary tool of contemporary design production: the computer. If the primary tool of contemporary design production is the computer, then designers must take control over design software through coding practices to achieve a more critical dimension within their discipline. The final component of my thesis project was a piece of design software created in Processing that uses a Kinect motion camera. The tool allows participants to design using gesture. Users move around type and image with their hands, draw lines by outstretching their arms, and so on. A pixelated representation of the user is included in the scene, making the labour of the designer explicitly part of the tool's function.

As anthropologist Timothy Taylor remarks, 'the existence of objects, such as saucepans, not just allows actions but suggests them. The ability of objects to suggest things this way has allowed the development of special features of objects and special types of objects, where the function is more to suggest than to deliver.'¹⁴ The suggested function of my design software is one of purposeful and intentional copyright violation. Section 30.71 of Canada's Copyright Act states that 'it is not an infringement of copyright to make a reproduction of a work or other subject-matter if ... the reproduction forms an essential part of a technological process,' and 'the reproduction exists only for the duration of the technological process.'¹⁵ In short, processes that do not result in a fixed tangible outcome—created with a tool in which nothing is ever saved—cannot be copyrighted. Using this definition as a framework for a new method of design production untethered from the scrutiny of permission culture, we suggest the user violate copyright by working within a space of complete representational freedom. Design content and design activity become visually inextricable, and design becomes a performance activity witnessed by an audience and practiced in dimensional space.

My intent was for my body of work to make evident problems of representation, ownership and copyright as they intersect with design production. The affirmation of copyright creates a permission culture in which the freedom of representation is constrained. Deterred by the threat of legal action, those who work with representations are prevented from achieving their full critical potential. But if we treat design as an active process rather than a series of designed outcomes, we challenge copyright and create a space of representational freedom away from the demands of permission culture. Suggesting an alternative design tool comes with the suggestion of an alternative design practice: a more self-reflective and critical discipline open to new possibilities.

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Mickey also has an interesting connection to labour, as his design is centred around Fordist models of production. Mickey's face and body are drawn entirely out of circles, while his hand only has three fingers. 'Financially, not having an extra finger in each of 45,000 drawings that make up a six and one half minute short has saved the Studio millions.'—Walt Disney
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