

well, including occupational and organizational norms, aesthetic and social conventions, technological change, and the law.

A Reflection Theory of Culture

It has become commonplace to suggest that popular culture serves as a mirror that, as a society, we hold up to see our own reflection as illuminated in our songs and soap operas, our movies and myths. We imagine that the heroic characters of great American novels—Huck and Jim from Mark Twain's *The Adventures of Huckleberry Finn*, Captain Ahab from Herman Melville's *Moby-Dick*, Dean Moriarty from Jack Kerouac's *On the Road*—reflect our frontier individualism and rugged fearlessness. We see our iconoclasm and revolutionary spirit in classic films such as *Rebel Without a Cause* (1955) and *One Flew Over the Cuckoo's Nest* (1975), and also in sci-fi epics like *Star Wars* (1977). This same national rebelliousness and pride can be read into the poetry of Walt Whitman, the folksongs of Woody Guthrie and Pete Seeger, and the rock 'n roll of Chuck Berry, Elvis Presley, and Bob Dylan. As Americans we know and accept these truths, just as we embrace baseball, Cracker Jack, hot dogs, roasted turkey, and apple pie as quintessential to our very being, our national soul.

Or do we? Upon a second look, the synchronicity between our popular culture and social order seems to slip. After all, pop culture is a complicated organism, more than simply a sponge that easily absorbs the multiple realities that make up a national way of life. (If only it were so easy—then every American novel would be as revelatory as those penned by Twain or Melville, just as every pop song would be as important as Bob Dylan's "Blowin' in the Wind" or "Like a Rolling Stone.") As we have discussed in earlier chapters, popular culture is the product of collective work coordinated among innumerable creators and support personnel, often under the auspices of a profit-seeking multinational company. If our novels and music are reflections of the cultural zeitgeist, they are also reflections of other sociological realities. Let us briefly discuss three such realities: the *technological constraints* under which popular culture is manufactured and performed; the *organizational apparatus* that structures how it is promoted and sold; and the *legal system* that regulates the entire process. In doing so, we can see not only how popular culture reflects society and the social order but how it reflects the *cultural production process itself*.

Let's work backward: first, how exactly does popular culture reflect its surrounding legal context? To take just one example, changes in copyright law have an enormous impact on the content of popular culture. In fact, Wendy Griswold (1981), a sociology professor at Northwestern University, argues that the distinctiveness of the so-called "American" frontier character that emerged in nineteenth-century novels like *The Adventures of Huckleberry Finn* and *Moby-Dick* can be attributed in large part to the specific quirks of American copyright law. For most of the nineteenth century, U.S. publishers recognized the copyright of American authors yet refused to pay royalties to British and European writers. Since these publishers passed the savings along to consumers, novels by foreign authors were considerably less expensive than books penned by American writers.

(For example, by 1884 the average and domestic book price was \$1.04, respectively, and this was successful in what was an unfair market, where there were therefore no characters and substantially fewer British and European writers like Charles Dickens or Flaubert—thus, the distinctive "American" frontier from Melville's *Moby-Dick* to Twain's *A Connecticut Yankee in King Arthur's Court*.)

How do we account for these differences in copyright law, or some essential way of life? The progress passed the Act that finally provided protections to the first time, differences between can novels raise some character unique to American and persistently cultures brought nearly undisturbed incentive to European and longer the same and the American

A more of popular culture recorded in Public Enemy critical acclaim of all time, 1990s. Both of pop music packed with

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(For example, between 1876 and 1884 the average prices for imported and domestic books were \$0.64 and \$1.04, respectively.) To compete successfully in what had become an unfair market, American authors were therefore forced to create characters and plots that differed substantially from those found in British and European novels by writers like Charles Dickens and Gustave Flaubert—thus giving birth to distinctive “American” title characters from Melville’s *The Confidence-Man* to Twain’s *A Connecticut Yankee in King Arthur’s Court*.

How do we know that these differences were a response to copyright law and not born out of some essential American ideology or way of life? Because in 1891 Congress passed the Platt-Simmonds Act that finally extended copyright protections to foreign authors for the first time, and after this, the differences between British and American novels radically declined? While some characterizations and themes unique to American literature obviously persist, notably those concerning race, the convergence of national book cultures brought about by the transformation of U.S. copyright law is otherwise nearly undisputable. As Griswold observes, “The American authors had greater incentive to deviate from the norm, to write on nontraditional themes that European authors had not effectively monopolized. After 1891, there was no longer the same incentive for deviation, the novelistic imperatives took over, and the American authors swung into line with everyone else” (p. 760).

A more recent example of how changes in copyright law impact the content of popular culture can be found in two very special rap albums: *Paul’s Boutique*, recorded in 1989 by the rock-rap fusion group the Beastie Boys, and the 1990 Public Enemy album *Fear of a Black Planet*. Both of these records enjoy enormous critical acclaim: *Time* included *Paul’s Boutique* on its list of the 100 greatest albums of all time, while *Spin* rated *Fear of a Black Planet* the second-best album of the 1990s. Both albums offer a sonic soundscape practically unmatched in the history of rap music, in part because of the sheer number of music and film samples used within each of their tracks. *Fear of a Black Planet* alone samples at least



E.W. Kemble
1864

What role did American copyright law play in the creation of cultural icons such as Huck Finn?



Public Enemy performing in the late 1980s. Why do most albums have far fewer samples than Public Enemy's classic *Fear of a Black Planet*?

two per song. Why? The answer lies in a highly influential judicial court case: *Grand Upright Music, Limited v. Warner Bros. Records Inc.*, in which the U.S. District Court for the Southern District of New York granted an injunction against Warner Bros., finding that the label had illegally released a recording by rapper Biz Markie that sampled the 1972 Gilbert O'Sullivan song "Alone Again (Naturally)" without first acquiring permission from the copyright owners. This ruling ultimately transformed hip-hop forever by discouraging music producers from oversampling copyrighted recordings, because while permissions were never guaranteed and were often prohibitively expensive, the threat of exposure to potential lawsuits from injured parties had now reached new heights. And guess when this court case was decided? That's right—in 1991, shortly after the release of *Paul's Boutique* and *Fear of a Black Planet*. Those two albums were among the last albums recorded by major labels (Capitol and Def Jam/Columbia, respectively) before *Grand Upright Music* changed the music industry irrevocably, perhaps forever. Today such adventures in sampling require digging into the public domain for available recordings or else releasing CDs and digital files featuring mash-ups and remixes as illegal bootlegs available online, as artists like Danger Mouse and Girl Talk have done. (The *New York Times Magazine* columnist Rob Walker [2008c] calls Girl Talk's copyright-flouting music "a lawsuit waiting to happen.")

These examples illustrate how popular culture reflects the specific legal system that regulates its production. Let us now move on to our next concern: how does popular culture reflect the organizational apparatus that structures the way music, film, books, and television programs are promoted and sold? For instance, of the thousands of music recordings released every year, only a

90 classic recordings, including those by James Brown, George Clinton, the Temptations, Eric Clapton, Grandmaster Flash, and Sly & the Family Stone. Meanwhile, *Paul's Boutique* features over one hundred samples from the Beatles, Jimi Hendrix, Curtis Mayfield, Isaac Hayes, Pink Floyd, Led Zeppelin, the Ramones, the Sugarhill Gang, and, interestingly enough, Public Enemy.

Of course, plenty of contemporary hip-hop CDs rely on sophisticated sampling techniques, but still, it is rare for an artist or producer to employ nearly as many samples as these two albums do; most usually include no more than one or

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Obviously, a pop cultural landscape marked by the convergence of content across media platforms, the active participation of audiences that coproduce their own entertainment experiences, and the harnessing of collective intelligence as a resource for creativity and innovation suggests an exciting future for online media and the digital age. Still, at least two general caveats are in order. First, cultural convergence across platforms can drive the production of media content in rather insidious ways. If serious journalists are expected to generate entertaining news stories that easily travel from print to television to the Internet, less flashy issues of critical substance may not get the coverage they deserve. Likewise, the increased duties among reporters who are increasingly required to find and incorporate digital photography, streaming video, and interactive graphics into their stories may find they have less time to do the actual newsgathering necessary for producing high-quality investigative journalism (Klinenberg 2005). As Hollywood studios seek out computer-animated film projects that can be seamlessly translated into online role-playing games and fully loaded DVD box sets, perhaps fewer art-house movies, costume dramas, or war documentaries will receive adequate financing.

Second, the rising participatory culture in which American consumers coproduce their own media experiences will require fundamental changes in our nation's outdated approach to intellectual property and copyright law. Currently, intellectual property law and the litigious impulses of a consolidated media industry with unlimited financial resources and political influence prevent cultural innovators from borrowing corporate-controlled images and reproductions, even for seemingly "fair use" purposes. Merely the *threat* of litigation restricts many contemporary artists who choose self-censorship over sinking into debt to fight off lawsuits from multinational giants like Sony, Time Warner, Viacom, and Disney, even winnable ones. In such cases, what is *technically* considered fair use by legal definition and thus protected by statute can hardly be acknowledged as permissible in any real or *practical* sense.

In his spirited manifesto *Free Culture*, Stanford law professor Lawrence Lessig (2005) warns that the rise of new media technologies only exacerbates this problem by choking the options of consumers and creators. According to current copyright law, it is within one's rights as the purchaser of a compact disc, paperback novel, or newspaper to lend it to multiple friends, sell it to a secondhand shop, or give it a third and fourth listen or read oneself, as these activities constitute fair use. In a digitized format, however, doing any of these things with a cultural object under copyright protection can technically be considered illegal, since using even a fragment of a digitized text (such as a downloaded photograph or an excerpt from an electronically published book or journal article) almost always involves making a new electronic copy of the material in question. In fact, in certain cases each use can constitute an entirely separate alleged offense, as Jesse Jordan, a freshman at Rensselaer Polytechnic Institute, learned the hard way when he modified a preexisting search engine built for his school's network, allowing students to access one another's publicly available computer files, including those containing music. The following year the

Recording Industry Association of America (RIAA) sued Jordan for "willfully" violating copyright law and demanded statutory damages of \$150,000 per infringement. RIAA alleged that each use of a music file constituted a separate infringement and cited more than 100 individual acts of illegality. According to RIAA, Jordan owed \$15 million in damages (Lessig 2005, pp. 48–51).

While the recording industry claims that it no longer targets individuals who use peer-to-peer software to download music illegally, cases such as Jordan's illustrate the profiteering behavior of the culture industries in the digital age. Although the rise of new media promises cultural creators the autonomy to produce innovative or critical artworks that sample or borrow from preexisting pop cultural films, television shows, recordings, or brands, in many instances it can be infuriatingly challenging to procure permission to use logos, cartoon characters, and other kinds of corporate-controlled intellectual property. While digital technologies may allow for an unprecedented abuse of preexisting copyright law—as the proliferation of mash-ups on YouTube clearly demonstrates—the tools provided by Web-based search engines like Google and Yahoo! allow major media companies to efficiently monitor the Internet landscape and identify violators for harassment and legal action, a practice seemingly driven

by spite as much as by greed. As Naomi Klein (2002, p. 178) argues in *No Logo*, even in the wake of the digital age "the underlying message [from the media industries] is that culture is something that happens to you. You buy it at the Virgin Megastore or Toys 'R' Us and rent it at Blockbuster Video. It is not something in which you participate, or to which you have the right to respond."

But as Lessig reminds us, the health of any democratic society requires that its cultural products and ideas be available for unfettered distribution, commentary, and eventual innovation and appropriation to ensure their rejuvenation and evolution over time. After all, the availability of unprotected cultural objects contributed to the richness of twentieth-century American popular culture, from Walt Disney's appropriation of classic fairy tales to the modern rise of free open-source software like Linux. Just as we place limitations on the extension of patents in order to promote scientific progress, the fecundity of our cultural landscape requires similar guarantees. As students and scholars of media and popular culture as well as devoted fans, we should demand nothing less.



College students are not the only consumers being sued by the RIAA. Jammie Thomas, a mother of four from Minnesota, was taken to trial by the recording industry for sharing 1,702 songs online.

