

Dynamic Fair Dealing: Creating Canadian Culture Online

A volume to be edited by Rosemary J. Coombe (Canada Research Chair in Law, Communication and Culture, York University) and Darren Wershler-Henry (Communication Studies, Wilfrid Laurier University)

Summary

It has become commonplace to assert that networked digital technologies provide significant tools and unique opportunities for democratically transforming Canadian cultural life. The critical rejoinder to this commonplace -- that the progressive possibilities of such technologies are not inherent, but shaped by their social regulation -- is underdeveloped, but is nevertheless gaining ground. What remains to be explored are the complex, contingent and shifting relationships characteristic of the space *between* digital cultural creation and regimes of social regulation – the process of “dealing” itself. The dynamic practice of dealing and negotiations around its fairness shapes the forms that culture can and will take in Canada for the near future. In the context of the immediate prospect of changes to Canadian copyright law, this project takes on a particular degree of relevance and urgency.

In this volume, approximately twenty scholars and artists across disciplines and genres will explore the relations between intellectual property laws, technology and code, institutional practices, and obstacles to mobility that mediate the cultural worlds Canadians can imagine and explore as educators, researchers and creators. The essays will place particular emphasis on practices of *dynamic fair dealing* – emergent approaches to the creation, circulation and management of digital cultural objects that challenge and/or present alternatives to traditional paradigms of intellectual property and cultural policy.

Background

Despite the capacity for collaborative creation that digital technology affords, and the commitment of all levels of government to use this capacity to make Canadian cultural content more accessible, intellectual property laws in Canada pose unnecessarily punitive prospects for potential liability. This constant threat exerts a chilling effect on Canadian cultural exchange, without adequately serving the needs of either Canadian creators or those of the cultural industries. This problem has become especially clear in the library and education sectors, where unknown proprietary claims often serve to prevent valuable historical and cultural content from becoming available for research and study. Economic and technological barriers, moreover, have restricted the ability of many in the arts and

non-profit sectors from placing materials online, even when the legal issues have been resolved.

If we really want to encourage user-focused, dialogic, pluralist and polyvocal forms of cultural practice in digital environments, we are faced with several immediate tasks. We must explore the limits of existing practices and develop new forms of knowledge, new practices and new techniques that articulate the rights of creators and users of cultural content. We must also insist upon the protection and elaboration of a robust and vibrant public domain. In order to accomplish these tasks, we will need to assert the importance of fair dealing – not as a limited default category in which any digitization of material is a reproduction and thus an infringement, but as the affirmative practice in which we engage when we actively encounter and transform cultural content online. Moreover, we need to find ways of using such practices to drive cultural policy reform.

One of the tasks of this anthology is to provide significant grassroots case studies and empirical evidence of successful cultural practices, alternative models, and open content strategies in order to inform and educate critics, policy-makers and custodians of cultural content, by way of example rather than abstract theory or polemic. Our approach is explicitly micro-political and focused on building progressive cultural policy from the bottom up. This is especially important in a Canadian context, where the borders between artists, academics, audiences and arts administrators are particularly permeable, and individuals act in all of these capacities simultaneously or by turns. Rather than accept shouting matches between consumers and industry as the norm, this anthology will explore the possibilities of new forms which redefine interests in the very activities of circulation, use, modification, attribution, criticism, review, and reporting – fair dealing, in short – that digital technology enables and that online communications invite. The addition of the adjective “dynamic” emphasizes that fair dealing is a dialogic, performative, ongoing activity. Artists and cultural creators, as performers *par excellence*, can and should participate in that dialogue with all of the zeal and ingenuity that they bring to their work itself.

The editors have been engaged in creating a research and development network for Artmob, a CFI-funded arts content management system and cultural policy initiative housed at York University. The explicit goal of Artmob is to investigate the stakes in the development of large, user-centred online archives of cultural material. The project takes into account the concerns of Canadian users and rights-holders working with digital media objects in the cultural sector, addresses the specificities of the Canadian legal and cultural environment, and makes technological resources and opportunities available to Canadian arts and cultural groups that are normally outside their reach. Through Artmob, the editors have been sharing knowledge and facilitating technology transfer between members of the arts community, programmers and developers, and academics with expertise in digital culture, law and policy. With this volume, the editors wish to publicize their efforts, welcome new participants in these conversations, and acknowledge other creative initiatives in Canada that are attempting to harness the dynamism of digital technology for democratic, pluralist and multicultural objectives.

Canadian law reform is rapidly accelerating with far too little public input and very little empirical evidence to inform the direction of policy development. Artists, librarians, writers, publishers, students, scholars, historians, activists and citizens need to have their interests considered, their practices documented and their aspirations voiced. Social and technological innovations that meet these diverse needs should be shared – their prospects and their limits explored so they can be improved and more widely disseminated. Our ultimate goal is to foster the creation of knowledge, practices and innovations that will contribute to the creation of a dynamic and interactive Canadian cultural heritage in new media environments.

Invitation

We invite contributors to articulate how their own (scholarly, administrative, creative, interactive) practices or those of their current objects of study might fit into this volume. Our focus is not necessarily on Canadian cultural content *per se* but on the specific policy issues that arise out of managing of digital content in a Canadian context. How do the particularities of Canadian intellectual property laws, educational and cultural institutions, corporations, media forms, creators' collectives, granting bodies, geographic locales, technologies, traditions and audience expectations create problems or shape opportunities for more open approaches to the use of digital culture?

Papers should be short (12-15 pages double spaced/3000-3750 words, plus a list of Works Cited) and focused, drawing their conclusions from particular cases, practices and examples. We ask that authors use endnotes rather than footnotes and format their list of Works Cited according to Chicago style. Word (.doc, *not* .docx), RTF and PDF are all acceptable formats.

Please send questions, suggestions, and draft papers electronically to:

rcoombe@yorku.ca and/or darren@alienated.net by September 1, 2008

Suggested Table of Contents

I. A Manifesto for Dynamic Fair Dealing Online

Editorial Introduction

II. The Canadian Copyright Context

- 1. Legal History and Contemporary Tensions**
- 2. Where and What is the Canadian Public Domain?**
- 3. Open Source Networks and Movements**
- 4. A Cultural Commons? Licensing and its Limitations**
- 5. Pedagogy and Diversity**

III. Mediations

- 1. Digital Publishing**
- 2. Managing Knowledge**
- 3. Poetics**
- 4. Performance**
- 5. Mobility**
- 6. Creating in the Virtual**
- 7. Sampling and Sound**
- 8. Documenting Pasts and Visualizing Futures**

IV. Policy Futures

[This final section will be written as a series of reflections after the other pieces are in draft form.]