

## ***Reflections on the Amen Break: A Continued History, an Unsettled Ethics***

It is not uncommon, when engaged in a conversation about copying, appropriation and remixing, that I hear the terms “copyright infringement” and “plagiarism” used interchangeably. This happens especially in educational settings, though any context is perhaps understandable given that, despite artists’ increased awareness of intellectual property issues over the last decade, “plagiarism” as an idea still seems hazy—simultaneously bygone yet ever-present.<sup>1</sup> Its “old school” connotation somehow replaced by copyright’s digital “tech now.” And although related, copyright infringement and plagiarism are significantly different concepts. Simply put, while copyright infringement is a legal violation, plagiarism is better understood in terms of ethical misconduct. One can plagiarize without necessarily infringing a copyright. For instance, suppose a scheming dramatist copies a Shakespeare play, hoping to pass it off as an original work. As all of Shakespeare’s plays are in the public domain, no copyrights will be infringed, yet most would regard the copyist disparagingly as an unoriginal and unethical thief—taking something creative and attempting to take credit for it without the due effort or responsibility to its historical significance. Conversely, cartoonists the Air Pirates were found guilty of infringing Disney’s copyrights in 1978, though clearly the adult comic books

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<sup>1</sup> A recent example of the crossover between rhetorics of copyright infringement and plagiarism involves the school essay evaluation service Turnitin (<http://www.turnitin.com>), which scans student work to catch and deter copying. The company hosts an “educational” web site (<http://www.plagiarism.org>) that, in this author’s estimation, problematically conflates issues of plagiarism with those surrounding intellectual property. Ironically, a group of students sued Turnitin, claiming copyright infringement due to the company’s for-profit use of students’ original work. Turnitin prevailed.

in question parodied rather than plagiarized Mickey and Minnie Mouse's perceived wholesomeness.<sup>2</sup>

At their most elemental, what both plagiarism and copyright infringement share is the common act of copying. Over the next several pages, my intention is to identify the slippages that occur between ethical and legal categorization in the cultural life of intellectual property. As a case study, I will use the *Amen Break*, a six second drum beat that continues to be copied, involving instances of copyright infringement, and perhaps even a little plagiarism. Indeed, as copying, especially using digital tools, has become such a naturalized aspect of communication, it is not always clear when boundaries are probed, let alone transgressed. I hope that my story-within-a story inspires the reader to examine his or her own participation in the (re)production of culture through the everyday act of copying.

### **Can I Get An Amen?**

In December 2004 I completed a sound art installation entitled *Can I Get An Amen?*. The work consists of a seventeen-minute spoken word recording (I supplied the voiceover) cut to an acetate record—in DJ jargon a “dub plate”—which plays on a standard Technics SL-1200MK2 turntable. The record can be played on a stereo pair of loudspeakers or through headphones. In addition to the audio component, the installation also includes: a color, life-size photo reproduction of The Winstons' 1969 7" single *Color Him Father*; registration documents showing that Richard Spencer, front man for The Winstons, holds

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<sup>2</sup> See *Walt Disney Productions v. Air Pirates* (1978), [http://scholar.google.com.mx/scholar\\_case?case=12985824547460808287&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholarr&sa=X&ei=l0MIUsv7I4jZ2AWTn4HwCw&ved=0CCgQgAMoADAA](http://scholar.google.com.mx/scholar_case?case=12985824547460808287&hl=en&as_sdt=2&as_vis=1&oi=scholarr&sa=X&ei=l0MIUsv7I4jZ2AWTn4HwCw&ved=0CCgQgAMoADAA). See also Bob Levin, *The Pirates and the Mouse: Disney's War Against the Counterculture* (Seattle, WA: Fantagraphics Books, 2003).

the copyrights in both Color Him Father, and its B-side, Amen, Brother; and finally, a printout of the contents of stock audio company Zero G's *Jungle Warfare* breakbeat sample collection, which contains several *Amen Break* loops (unlicensed from The Winstons). All of these materials are mounted on a wall next to the turntable. Their significance is explained throughout the course of my narration in the spoken word recording.<sup>3</sup> I have described

*Can I Get An Amen?* as:

An audio project that unfolds a critical perspective of perhaps the most sampled drum beat in the history of recorded music, the “Amen Break.” It begins with ‘60s soul band The Winstons and their pop instrumental track Amen, Brother, and traces the transformation of the song’s drum solo from its original context as part of a B-side vinyl single into its use as a key aural ingredient in contemporary, sample and collage-based remix culture. The work attempts to bring into scrutiny the techno-utopian notion that “information wants to be free”—it questions this freedom’s effectiveness as a democratizing agent. This as well as other issues are foregrounded through a history of the Amen Break and its peculiar relationship to current copyright law.<sup>4</sup>

My project thus serves as an audio essay that unpacks the history-making journey of one particular drum beat recording through the early postmodern formation of both art and cultural property law.

I hesitate to dwell too much on the content of *Can I Get An Amen?*; the project is readily available online and I encourage the reader to spend time with it there.<sup>5</sup> Here I’d like to focus on the project’s journey through the cultural landscape—to the ways in which the work spread and transformed in the ensuing years. After its exhibition at a university

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<sup>3</sup> *Can I Get An Amen?* can be found on my web site, <http://www.nkhstudio.com>.

<sup>4</sup> *Ibid.*

<sup>5</sup> The recording is also available on YouTube, <http://www.youtube.com/watch?v=5SaFTm2bcac>.

art gallery in the spring of 2005, I posted a description and documentation of *Can I Get An Amen?* on my personal web site. Like many artists with online portfolios, my intention was to give potential curators a sense of the conceptual and practical aspects of the project. The project page still includes a Quicktime video of the record playing in its entirety, which makes for a rather boring visual experience. However, since the emphasis of the project was its audio component, the minimalist video reinforced the importance of the sound. My primary desire was to present an audio work within the visual logic of an art exhibition.

I've always considered the online version of *Can I Get An Amen?* as a poor substitute for its analog, gallery specific superior. Yet its existence on the web is precisely what catapulted it from a project I made while pursuing my graduate studies into one of the first instances of the "mini documentary" genre now so prevalent on the Internet.<sup>6</sup> As a direct result of YouTube user mobieus32 "appropriating" the Quicktime file from my site and uploading it to the popular social video site, *Can I Get An Amen?* amassed more than 88,000 views within a year.<sup>7</sup> A short time later, The Winstons' publisher, Holly Bee Music, Inc., contacted me after viewing the YouTube upload, having had no idea of the cultural significance of the *Amen* drum loop.<sup>8</sup> Family relatives of the original band members also reached out to me. Over time, *Can I Get An Amen?* was featured on several music, culture, and intellectual property law websites and radio shows, including the BBC's *Radio 1*, which dedicated an entire program and DJ mix in honor of the

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<sup>6</sup> By "mini documentary" I am referring to five- to ten-minute, semi-amateur video and audio productions made possible by cheaper and more accessible media technologies. With video capabilities present in most phones now, barely a day goes by without a new mini documentary going viral. For another early example, see *The Story of Stuff*, <http://www.storyofstuff.org/movies-all/story-of-stuff/>.

<sup>7</sup> Mobieus32 was the online alias of Landon Proctor, who has since retired the name. Correspondence with Landon Proctor, November 24, 2012.

<sup>8</sup> I initially feared Holly Bee Music would begin legal proceedings against me (for copyright infringement). But the opposite was the case; Holly Bee thanked me for bringing Amen sampling to its attention and wanted to know how they might be able to recover potential lost licensing revenues. I replied that I was not a lawyer, but that I wished them luck in their pursuits. Telephone conversation with Johnny Moses of Holly Bee Music, August 9, 2007.

*Amen Break*.<sup>9</sup> Several electronic music producers, including Wax Tailor and Skrillex, sampled the project for use in their hip hop and dance music remixes.<sup>10</sup> As of August 2013, the YouTube version of *Can I Get An Amen?* had amassed over 4.3 million views.<sup>11</sup>

It's important to note that mobieus32 never asked for my permission to post *Can I Get An Amen?* to YouTube, nor did I ever grant it. I learned of its existence only after a friend told me he had seen the work there. I was surprised by the upload, but excited to see it being shared. I also realized there wasn't much I could do to stop its circulation short of sending a takedown message to YouTube and removing the Quicktime version from my own website. And I didn't want that; it was important to me that my project, an analysis of the *Amen Break*, traverse the same cultural path that the original sample had: one that required unregulated copying and distribution. "Information wants to be free," as the cliché goes. The online existence of *Can I Get An Amen?*—its form—matched its content.

### **Amen and Seven Seconds of Fire**

While perusing the user comments on the YouTube page in late December 2011, I noticed several viewers were referred to the project through an article published by The Economist. Intrigued by what a reputable, highbrow politics and economics journal might have to say about contemporary music sampling, I discovered that it published a story, both in print and online, about the history of the *Amen Break*. The story was remarkably

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<sup>9</sup> See <http://www.bbc.co.uk/programmes/b011nyd1>. I was interviewed for the segment along with several other musicians and cultural critics. Ironically, the webcast is no longer available for listening, most likely due to intellectual property issues.

<sup>10</sup> See <http://www.youtube.com/watch?v=BOjFd4qqp3Y> and [http://www.youtube.com/watch?v=HuwNw\\_fVFUY&list=FLKNmY2QCp1ucL6TJ0zqeauG&index=19](http://www.youtube.com/watch?v=HuwNw_fVFUY&list=FLKNmY2QCp1ucL6TJ0zqeauG&index=19).

<sup>11</sup> This was in addition to the several times the "original" work was exhibited in gallery and museum settings (i.e., within the institution of art). One of the aspects of the project that continues to interest me is its travel from "high" to "low" culture and back again.

similar to my own—too similar, in my opinion.<sup>12</sup> For the first time since conceiving *Can I Get An Amen?*, it seemed I had been copied *inappropriately*. But I didn't feel as though I had been infringed as much as plagiarized. Compelled to write The Economist's editors, below is the letter I sent, which explains my ethical dilemma:

December 26, 2011

Dear Sir or Madame,

This letter is in response to *The Economist* article “Seven seconds of fire,” dated December 17th, as well as its corresponding Prospero blog entry, “Just a sample” (<http://www.economist.com/node/21540676>) from December 15th. I would first like to commend the editors at *The Economist* for putting into print such an important topic. The history of the “Amen break” is recounted in a lively and elaborate tone evoking the excitement all those drum loop permutations have delivered to our ears over the years. More significantly, a whole new group of people (i.e., subscribers) who might not have otherwise known are now aware of an important subculture and its development. Yet the story wasn’t entirely new to me; you see, I authored a project, *Can I Get An Amen?* (<http://www.youtube.com/watch?v=5SaFTm2bcac>) that told an almost identical story, also in December of 2004.

Now, my project and *The Economist* articles do share some differences. “Seven seconds of fire” contains more specifics (e.g., technical details, quotations) than *Can I Get An Amen?* Likewise, my essay ultimately seeks to raise important copyright issues surrounding not only the Amen break but also cultural production in general, while *The Economist* text just briefly mentions the ownership aspects of the now infamous drum solo. And *The Economist* names G.C. Coleman as the original drummer, while I did not (regrettably, researching in 2003 I was not able to confirm with absolute certainty that Coleman played the drums for the Winstons).

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<sup>12</sup> “Seven Seconds of Fire,” *The Economist*, last modified December 17, 2011, <http://www.economist.com/node/21541707>.

After accounting for these differences, however, there are simply too many similarities between the works leading me to conclude that it is practically impossible the editors at *The Economist*—and indeed, their anonymity only adds another layer of complexity—could not have heard *Can I Get An Amen?* I am certain they used it, without citation, as a primary source.<sup>13</sup> Not only is the narrative arc of their story largely the same as my own, they also mirror certain structural elements. For example, the editors write of the nostalgia for the Amen break, as I did. They also ask the question “Why was the Amen so popular?” And offered an analysis based on its formal qualities, as I did. Four of the illustrating songs they posted to the Prospero blog for readers to hear are examples I also used (when there are literally thousands of Amen tracks from which the editors could have chosen to showcase). Finally, at the level of sentence comparison, in 2004 I wrote “It’s been used so much, I might argue it’s now entered into the collective audio unconscious,” while The Economist wrote in 2011 “Coleman’s seven-second break had entered the collective aural unconscious of a generation of young Britons.” I will leave this coincidence for readers to decipher.

And indeed some of them already have. In the days following the publication of “Seven seconds of fire,” these are just some of the reader comments posted on The Economist website:

The excellent story caused me to further research the Amen Break. I was amazed to find immediately a twenty minute very informative lecture on YouTube from 2004 about the subject that nearly follows point by point the author's article. It appears the author may have borrowed—or “sampled”—quite a bit from the video.

And:

“I liked this article so I wanted to learn more about the “Amen Break” and I came across the twenty min [sic] YouTube video that others mention. It appears the author is doing

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<sup>13</sup> *The Economist* maintains a policy of editorial anonymity. See [http://www.economist.com/help/about-us#About\\_Economistcom](http://www.economist.com/help/about-us#About_Economistcom).

the same thing with the material that s/he articulates is happening with this drum riff. Art imitating life? I expect more from The Economist.”<sup>14</sup>

Further, from the comments on the project’s YouTube page:

If you are here due to The Economist, ask yourself if The Economist author basically copied this video for his article...unless it is one and the same person...because the content of the article is exactly the same.

And: “Brilliant video, and yes, The Economist article is completely biting this.”<sup>15</sup>

Now, this puts me in a peculiar situation. I want to be clear that this letter is not some sort of “cease and desist” threat. Writing such a letter would be hypocritical of me, especially given the nature and content of *Can I Get An Amen?* It would also be a violation of my belief and respect for the copyleft movement. Over the last several years, dozens of writers, musicians (including some pretty famous DJs), and students have all contacted me, kindly asking permission to quote/appropriate/remix my work, and I have always (and will always) allowed for it. I am also aware that there are people who will sample my work without my knowing, and there is little I can do about that.

But I do want to distinguish legal from ethical issues here, just as there is a difference between copyright infringement and plagiarism (although I am less interested in whether The Economist is committing either the former or the latter). There is a (now doubled) irony involving anonymous writers at The Economist, who are telling a tale about the largely forgotten band The Winstons and their unrecognized impact on legions of mostly anonymous music producers, by taking portions of another writer’s work and not crediting that writer. In other words, The Economist is ultimately reproducing the very dynamic thing it seeks to critically illuminate. Is this intentional on the editors’ part? Some sort of postmodernist sleight of hand, a cunning wink to their more savvy readers? Or plain sloppy journalism? It’s especially strange that the editors would use audio

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<sup>14</sup> Comments taken from users “Otto von Kronq” and “y7JUMZwGiq,” respectively, who posted responses to *The Economist* article online.

<sup>15</sup> Comments taken from users “davidhelvadjian” and “myoest,” respectively, who posted to the YouTube page.

examples culled from YouTube videos, which further link to my video, making it easy for curious readers to stumble onto my work and consequently exposing the problem I am detailing here. Given the stalwart reputation The Economist has maintained for so long now, I call upon its editors to do the right thing and give credit where credit is due.

Sincerely yours,

Nate Harrison

Within a few days, Tom Nuttall, deputy/online Europe editor and author of The Economist piece, responded to my letter. While admitting that he had encountered *Can I Get An Amen?* online before writing his article, he also stated that he had grown up in London—ground-zero of the Amen/jungle scene—and was long aware of the break’s sampling and significance. Primarily, Mr. Nuttall answered that he and I both had touched upon the general narrative of the *Amen*, as any proper history should have. And while my work centered on intellectual property issues, The Economist piece focused around cultural aspects. I’m not sure I agree with Nuttal’s assessment, but, to his credit, he updated the piece online to include a reference to my project, writing, “As a general principle, I think that it is courteous for writers to acknowledge an outstanding and original contribution and so I have linked to it.”<sup>16</sup> I was satisfied with this reply.

### **Amen (So be it)**

I hope that my letter to The Economist will not be interpreted here as an egotistical gesture, as if my history of the *Amen Break* is the history. It certainly is not. I encourage readers to look up Mr. Nuttall’s piece, compare it to my work, and decide for themselves what sorts of ethical lines, if any, were crossed. As I wrote above, I not only tolerate but also appreciate the ways in which awareness and use of both the original drum loop as well as my meditation on it have circulated. But the interaction with The Economist did give me pause, causing me to

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<sup>16</sup> Correspondence with Tom Nuttall, January 3, 2012.

reevaluate my attitude towards sampling, appropriation, infringement and plagiarism. And while I remain a committed “copyleftist,” I also believe that along with copying comes a responsibility to source material. Such responsibility goes beyond proper citations, or credits; it even goes beyond remix culture in its myriad manifestations. As the simple act of copying increasingly becomes first nature across global demographics, it’s all the more crucial that what I have previously called a “semiotic integrity” to source material is maintained.<sup>17</sup> Context is important. If it ceases to matter, then we are left with what Jean Baudrillard and Frederic Jameson referred to, so many years ago during the emergence of media appropriation, as simulation and pastiche—conditions that attenuate critical thinking in the service of constructing pseudo-history.<sup>18</sup>

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<sup>17</sup> Nate Harison, “In Fair Use, Freedom Does Not Equal Progress,” *Antenna*, June 14, 2013, <http://blog.commarts.wisc.edu/2013/06/14/in-fair-use-freedom-does-not-equal-progress/>.