

composition I do and the kind a classical composer does. This is evidenced by the fact that I can neither read nor write music, and I can't play any instruments really well, either. You can't imagine a situation prior to this where anyone like me could have been a composer. It couldn't have happened. How could I do it without tape and without technology?

One thing I said about the traditional composer was that he worked with a finite set of possibilities; that is, he knew what an orchestra was composed of, and what those things sounded like, within a range. If you carry on the painting analogy, it's like he was working with a palette, with a number of colors which were and weren't mixable. Of course, you can mix clarinets and strings to get different sounds, but you're still dealing with a range that extends from here to here. It's nothing like the range of sounds that's possible once electronics enter the picture. The composer was also dealing with a finite set of relationships *between* sounds; the instruments are only so loud, and that's what you're dealing with, unless you stick one out in a field and one up close to your ear. It was out of the question that he could use something, for example, as the Beach Boys once did—making the sound of someone chewing celery the loudest thing on a track.

Of course, everyone is constrained in one way or another, and you work within your constraints. It doesn't mean that suddenly the world is open, and we're going to do much *better* music, because we're not constrained in certain ways. We're going to do *different* music because we're not constrained in certain ways—we operate under a different set of constraints [...]

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### ***Bettered by the Borrower: The Ethics of Musical Debt***

JOHN OSWALD

Since the early 1980s, Canadian multi-media artist John Oswald (1953– ) has played saxophone in the free improvising trio CCMC and recorded with improvisers Henry Kaiser, Jim O'Rourke, John Zorn, and others. Yet he is best known for his practice of "plunderphonics": the sampling and radical re-editing of pop recordings. Inspired by the cut-up methods of William S. Burroughs and James Tenney's 1961 sampling composition *Collage #1* ("Blue Suede"), Oswald began experimenting with musical cut-ups in the early 1970s and issuing these cut-up compositions on cassette via his own Mystery Tapes label. In 1989, Oswald released the CD *Plunderphonics*, which presented inventive and humorous remixes of recordings by Dolly Parton, Michael Jackson, Bing Crosby, The Beatles, Glenn Gould, Public Enemy, James Brown, and others. The cover featured a collaged photo of Michael Jackson as a nude woman. Though the CD was given away for free and all the samples were fully credited, Oswald was threatened with a lawsuit by the Canadian Recording Industry Association for infringing the copyrights of their clients CBS Records and Michael Jackson. He was forced to destroy all remaining copies of the CD and was prohibited from distributing or reproducing it. Oswald continued to make legal plunderphonics compositions, filling commissions by Hal Willner, the Berlin Opera, the Kronos Quartet, the Grateful Dead, and others. In 2002, the Sealand label released the 69 *Plunderphonics 96* box set, which included the original *Plunderphonics* CD and a number of Oswald's other plunderphonics experiments. In this article, written shortly before the release of the *Plunderphonics* CD, Oswald meditates on the nature of music in the age of analog and digital reproduction.

Musical instruments produce sounds. Composers produce music. Musical instruments reproduce music. Tape recorders, radios, disc players, etc., reproduce sound. A device such as a wind-up music box produces sound and reproduces

music. A phonograph in the hands of a "HipHop/scratch" artist who plays a record like an electronic washboard with a phonographic needle as a plectrum, produces sounds which are unique and *not* reproduced—the record player becomes a musical instrument. When tape recorders, basically designed for documentation and reproduction, became available in the '40s, a few individuals, like Pierre Schaeffer in France, began transforming the recordings, distorting them into something new, producing music through them as if the tape recorders were magnetic violins. Even earlier, composer John Cage was specifying the use of radios and phonographs as musical instruments.

Quite often the sounds found emanating from phonographic and radio musical instruments have some prior ownership. These previous creators (including those who give credit to a divine source) have copyright: a charter of control over the commercial and moral implications of reproduction. But some sources continue to maintain a "finders-keepers" ethic.

### The Right of Copy

In 1976, ninety-nine years after Edison went into the record business, the U.S. Copyright Act was revised to protect sound recordings for the first time. Before this, only written music was considered eligible for protection. Forms of music that were not intelligible to the human eye were deemed ineligible. The traditional attitude was that recordings were not artistic creations, but "mere uses or applications of creative works in the form of physical objects." For instance, Charles Ives' *Symphony No. 3* was published and copyrighted in 1947 by Arrow Music Press Inc. That the copyright was assigned to the publisher instead of the composer was the result of Ives' disdain for copyright in relation to his own work, and his desire to have his music distributed as widely as possible. He at first self-published and distributed volumes of his music free of charge. In the postscripts of *114 Songs* he refers to the possessor as the *gentle borrower*.

Later in his life Ives did allow for commercial publication, but always assigned royalties to other composers. Ives admired the philosophy of Ralph Waldo Emerson who, in his essay "Quotation and Originality," said, "What you owe to me—you will vary the phrase—but I shall still recognize my thought. But what you say from the same idea, will have to me also the expected unexpectedness which belongs to every new work of Nature."

The real headache for the writers of copyright has been the new electronic contrivances, including digital samplers of sound and their accountant cousins, computers. The electronic brain business is cultivating, by grace of its relative youth, pioneering creativity and a corresponding conniving ingenuity, "the intimate cultural secretions of electronic, biological, and written communicative media."

### "Blank Tape is Derivative, Nothing of Itself"<sup>2</sup>

While the popular intrigue of computer theft has inspired cinematic and paperback thrillers, the robbery of music is restricted to elementary poaching and blundering innocence. The plots are trivial. The Disney cable channel accuses Sony of conspiring with consumers to let them make unauthorized Mickey mice by taping TV broadcasts on videocassette.

The dubbing-in-the-privacy-of-your-own-home controversy is actually the tip of a hot iceberg of rudimentary creativity. After decades of being the passive recipients of music in packages, listeners now have the means to assemble their own choices, to separate pleasures from the filler. They are dubbing a variety of sounds from around the world, or at least from the breadth of their record collections, making compilations of a diversity unavailable from the music industry, with its circumscribed policy of only supplying the common denominator.

Former Beatle George Harrison was found guilty of an indiscretion in choosing a vaguely familiar sequence of pitches. He was nailed in court for subconsciously plagiarizing the 1962 tune "He's So Fine" by the Chiffons in his song "My Sweet Lord" (1970).

Yet the Beatles are an interesting case of reciprocity between fair use and the amassing of possession and wealth. "We were the biggest nickers in town. Plagiarists extraordinaire," says Paul McCartney.<sup>3</sup> He owns one of the world's most extensive song catalogs, including a couple of state anthems. John Lennon incorporated collage technique into pieces like "Revolution #9," which contains dozens of looped unauthorized fragments taped from radio and television broadcasts.

### The Commerce of Noise

The precarious commodity in music today is no longer the tune. A fan can recognize a hit from a ten-millisecond burst. One studio-spawned mass-market recording firm called the Art of Noise strings atonal arrays of timbres along an always inevitable beat—the melody is often retrofitted.

Singers with *original* material aren't studying Bruce Springsteen's melodic contours; they're trying to *sound* just like him. And sonic impersonation is quite legal. While performing rights organizations continue to farm for proceeds to tunesters and poeticians, those who are really shaping the music—the rhythmists, timbralists and mixologists under various monikers—have rarely been given compositional credit.

I found this comment on PAN, a musicians' computer network bulletin board, during a forum in January '86:

Various DX7 programmers have told me that they "bury" useless data in their sounds so that they can prove ownership later. Sometimes the data is obvious, like weird keyboard scalings on inaudible operators, and sometimes it's not, like the nonsense characters (I seem to recall someone once thought they were Kanji) in a program name. Of course, any pirate worth his salt would find all these things and change them. . . . Synth programmers are skilled craftspeople, just like violin makers, so if they go to the trouble of making new and wonderful sounds that other people can use, they should be compensated for their efforts. Unfortunately it's not as easy as just selling the damn violin.

### The Cross-Referencing Blues

Musical language has an extensive repertoire of punctuation devices but nothing equivalent to literature's " " quotation marks. Jazz musicians do not wiggle two fingers of each hand in the air, as lecturers sometimes do, when cross-referencing



during their extemporizations, as on most instruments this would present some technical difficulties.

Without a quotation system, well-intended correspondences cannot be distinguished from plagiarism and fraud. But anyway, the quoting of notes is but a small and not significant portion of common appropriation.

Am I underestimating the value of melody writing? Well, I expect that before long we'll have marketable expert tune-writing software which will be able to generate the banalities of catchy permutations of the diatonic scale in endless arrays of tuneable tunes, from which a not-necessarily-affluent songwriter can choose; with perhaps a built-in checking lexicon of used-up tunes which would advise Beatie George not to make the same blunder again.

In his speculative story *Melancholy Elephants*,<sup>4</sup> Spider Robinson writes about the pros and cons of rigorous copyright. The setting is half a century from now. The story centers on one person's opposition to a bill which would extend copyright to perpetuity. In Robinson's future, composition is already difficult, as most works are being deemed derivative by the copyright office. The Harrison case is cited as an important precedent:

Artists have been deluding themselves for centuries with the notion that they create. In fact they do nothing of the sort. They discover. Inherent in the nature of reality are a number of combinations of musical tones that will be perceived as pleasing by a human central nervous system. For millennia we have been discovering them, implicit in the universe—and telling ourselves that we “created” them.

### Hands-On Listening

Sounding utensils, from the erh-hu to the Emulator, have traditionally provided such a potential for varied expression that they have not in themselves been considered musical manifestations. This is contrary to the great popularity of generic instrumental music (“The Many Moods of 101 Strings,” “Piano for Lovers,” “The Trucker’s DX-7,” etc.), not to mention instruments which play themselves, the most pervasive example in recent years being preprogrammed rhythm boxes. Such devices, as found in lounge acts and organ consoles, are direct kin to the juke box: push a button and out comes music. J.S. Bach pointed out that with any instrument “all one has to do is hit the right notes at the right time and the thing plays itself.” The distinction between sound producers and sound reproducers is easily blurred, and has been a conceivable area of musical pursuit at least since John Cage’s use of radios in the Forties.

Just as sound producing and sound reproducing technology become more interactive, listeners are once again, if not invited, nonetheless encroaching upon creative territory. This prerogative has been largely forgotten in recent decades: gone are the days of lively renditions on the parlor piano.

Computers can take the expertise out of amateur music-making. A current *music-minus-one* program retards tempos and searches for the most ubiquitous chords to support the wanderings of a novice player. Some audio equipment geared for the consumer inadvertently offers interactive possibilities. But manufacturers have discouraged compatibility between their amateur and pro equipment.

Passivity is still the dominant demographic. Thus the atrophied microphone inputs which have now all but disappeared from premium stereo cassette decks.

### Starting From Scratch

As a listener my own preference is the option to experiment. My listening system has a mixer instead of the one-choice-only function of a receiver; an infinitely variable-speed turntable, filters, reverse capability, and a pair of ears.

An active listener might speed up a piece of music in order to more clearly perceive its macrostructure, or slow it down to hear articulation and detail more precisely. One might trace “the motifs of the Indian raga Darbari over Senegalese drumming recorded in Paris and a background mosaic of frozen moments from an exotic Hollywood orchestration of the 1950s, a sonic texture like a ‘Mona Lisa’ which, in close-up, reveals itself to be made up of tiny reproductions of the Taj Mahal.”<sup>5</sup>

During World War II concurrent with Cage’s re-establishing the percussive status of the piano, Trinidadians were discovering that discarded oil barrels could be cheap, available alternatives to their traditional percussion instruments which were, because of the socially invigorating potential, banned. The steel drum eventually became a national asset. Meanwhile, back in the States, *scratch* and *dub* have, in the eighties, percolated through the black American ghettos, for perhaps similar reasons. Within an environmentally imposed limited repertoire of possessions a portable disco may have a folk music potential exceeding that of the guitar. Pawned and ripped-off electronics are usually not accompanied by users’ guides with consumer warnings like “this blaster is a passive reproducer.” Any performance potential found in an appliance is often exploited.

Referring to DJ Francis Grasso at the Salvation Club in New York in the mid-seventies, Albert Goldman writes in *Disco* that “Grasso invented the technique of ‘slipcueing’: holding the disc with his thumb whilst the turntable whirled beneath, insulated by a felt pad. He’d locate with an earphone the best spot to make the splice then release the next side precisely on the beat... His tour de force was playing two records simultaneously for as long as two minutes at a stretch. He would super the drum break of ‘I’m a Man’ over the orgasmic moans of Led Zeppelin’s ‘Whole Lotta Love’ to make a powerfully erotic mix... that anticipated the formula of bass drum beats and love cries... now one of the clichés of the disco mix.”<sup>6</sup>

Thus the sound of music conveyed with a new authority over the airwaves is dubbed, embellished and manipulated in kind.

### Aural Wilderness

The reuse of existing recorded materials is not restricted to the street and the esoteric. The single guitar chord occurring infrequently on Herbie Hancock’s hit arrangement “Rockit” was not struck by an in-studio union guitarist but was sampled directly from an old Led Zeppelin record. Similarly, Michael Jackson unwittingly turns up on Hancock’s followup clone “Hard Rock.” Now that keyboardists are getting instruments with the button for this appropriation built in, they’re going to push it, easier than reconstructing the ideal sound from oscillation one. These

players are used to fingertip replication, as in the case of the organ that had the titles of the songs from which the timbres were derived printed on the stops.<sup>7</sup>

Charles Ives composed in an era in which much of music existed in the public domain. Public domain is now legally defined, although it maintains a distance from the present which varies from country to country. In order to follow Ives' model we would be restricted to using the same oldies which in his time were current. Nonetheless, music in the public domain can become very popular, perhaps in part because, as *This Business of Music*<sup>8</sup> puts it, "The public domain is like a vast national park without a guard to stop wanton looting, without a guide for the lost traveler, and in fact, without clearly defined roads or even borders to stop the helpless visitor from being sued for trespass by private abutting owners."

Professional developers of the musical landscape know and lobby for the loopholes in copyright. On the other hand, many artistic endeavors would benefit creatively from a state of music without fences, but where, as in scholarship, acknowledgement is insisted upon.

### The Medium is Magnetic

Piracy or plagiarism of a work occur, according to Milton, "if it is not bettered by the borrower." Stravinsky added the right of possession to Milton's distinction when he said, "A good composer does not imitate; he steals." An example of this better borrowing is Jim Tenney's "Collage 1" (1961), in which Elvis Presley's hit record "Blue Suede Shoes" (itself borrowed from Carl Perkins) is transformed by means of multi-speed tape recordings and razorblade.

Tenney took an everyday music and allowed us to hear it differently. At the same time, all that was inherently Elvis radically influenced our perception of Jim's piece.

*Fair use* and *fair dealing* are respectively the American and the Canadian terms for instances in which appropriation without permission might be considered legal. Quoting extracts of music for pedagogical, illustrative and critical purposes has been upheld as legal fair use. So has borrowing for the purpose of parody. Fair dealing assumes use which does not interfere with the economic viability of the initial work.

In addition to economic rights, an artist can claim certain moral rights to a work. Elvis' estate can claim the same rights, including the right to privacy, and the right to protection of "the special significance of sounds peculiar to a particular artist, the uniqueness of which might be harmed by inferior unauthorized recordings which might tend to confuse the public about an artist's abilities."

My observation is that Tenney's "Blue Suede" fulfills Milton's stipulation; is supported by Stravinsky's aphorism; and does not contravene Elvis' morality.

### Hitting Back the Parade

The property metaphor used to illustrate an artist's rights is difficult to pursue through publication and mass dissemination. The Hit Parade publicly promenades the aural floats of pop. As curious tourists, should we not be able to take our own snapshots ("tiny reproductions of the Taj Mahal") rather than be restricted to the official souvenir postcards and programs?

All popular music is (as is all folk music by definition) essentially, if not legally, existing in a public domain. Listening to pop music isn't a matter of choice. Asked-for or not, we're bombarded by it. In its most insidious state, filtered to an incessant bassline, it seeps through apartment walls and out of the heads of Walkpeople. Although people in general are making more noise than ever before, fewer people are making more of the total noise; specifically, in music, those with megawatt PAs, triple-platinum sales, and heavy rotation. Difficult to ignore, pointlessly redundant to imitate: how does one not become a passive recipient?

As oceanographer Bob Ballard of the Deep Emergence Laboratory described their plan to apprehend the Titanic once it had been located at the bottom of the Atlantic, "You pound the hell out of it with every imaging system you have."

### NOTES

1. This is Chris Cutler's poignant phrase, from *File Under Popular* (New York: Autonomedia, 1993), which also includes a good analysis of attempted definitions of popular music: "There can be no such thing as a finished or definitive piece of music. At most there could be said to be 'matrices' or 'fields.' Consequently there is also no element of personal property, though there is of course individual contribution." (p. 26).

2. David Horowitz of Warner Communications quoted in "The War Against Home Taping," *Rolling Stone* (Sept. 16, 1982): 62.

3. Quoted in *Musician* (February 1985), p. 62.

4. From Spider Robinson, *Melancholy Elephants* (New York: Penguin Books, 1984).

5. Quoted from Jon Hassell's essay "Magic Realism" [liner notes to *Aka-Darbari-Java* (*Magic Realism*), Editions EG EEGCD-31—Eds.], this passage refers in an evocative way to some appropriations and transformations in Hassell's recordings. In some cases this type of use obscures the identity of the original and at other times the sources are recognizable.

6. [Albert Goldman, *Disco* (New York: Hawthorn Books, 1978), 115.—Eds.]

7. I have been unable to relocate the reference to this device which had, for example, a "96 Tears" stop. According to one source it may have been only a one-off mockup in ads for the Roland Juno 60 synthesizer.

8. Sidney Schemel and William Krasilovsky, *This Business of Music*, 5th ed. (New York: Watson-Guption, 1985).