Proceedings from the Launch of e-artexte:

# Open Access Digital Repository for Documents in Visual Arts in Canada

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## SYNOPSIS

In keeping with the world's leading research libraries and universities, Artexte has developed e-artexte.ca, an open access digital repository for documents in visual arts. The new service was inaugurated during a discussion panel at Artexte on February 9, 2013. Artexte developed the e-artexte self-archiving repository as a way to address the needs of museums, galleries, artist-run centres and other publishers/authors of critical texts in the visual arts community who are looking for ways to make their publications more widely accessible. On the occasion of this important launch event, Artexte hosted a discussion panel on how open access publishing and self-archiving can improve access to fine arts research in Canada. The discussion panel included presentations by distinguished speakers on the topic of open access and the fine arts. The launch of e-artexte also included a focused workshop that provided an overview of its research capabilities.

Darren Wershler is a prolific author on topics related to digital media, copyright, and cultural policy. He is currently an Assistant Professor and Research Chair in Media and Contemporary Literature (Tier 2) at Concordia University. He holds a PhD in English from York University. While he was senior editor at Coach House Press, it became the first Canadian literary press to publish simultaneous full-text editions online and in print. Drawing on his experience in co-editing the forthcoming book, *Dynamic Fair Dealing: Creating Canadian Culture Online* (University of Toronto Press), he discusses how the inevitable ambiguities inherent in the process of fair dealing can be problematic to copyright holders, audiences, and publishers alike. He explores these challenges and suggests ways of dealing with them.

John Latour speaks from the point of view of an artist and information professional working in the fine arts. He holds a BFA in Studio Art from University of Ottawa and two master's degrees: an MLIS from McGill University and an MA in Art History from Concordia University. In addition to solo exhibitions of Mr. Latour's work held in Ontario and Quebec, he has participated in group exhibits in Canada and abroad. Mr. Latour's presentation explores open access as it relates to artistic production in the book form.

Corina MacDonald, Project Manager for e-artexte, gives the final presentation at the e-artexte launch. She holds an MLIS degree from McGill University and has worked extensively on digital content projects with members of the arts community, including artists, online magazines, galleries, and museums. Her presentation is a demonstration of e-artexte's functionality and policies.

# THE NECESSARY MESS OF FAIR DEALING

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Building digital repositories is a complex and time-consuming proposition. This short, informal paper concerns one aspect of that process—the part that happens after all the planning and programming and building and curation, when you try and come to terms with the people who actually made the material in your repository over the inclusion of their materials in the container you've just built.

In a word, I'm talking about "dealing." In the context of Canadian copyright law, the term "fair dealing" has specific meanings to do with what is and is not considered acceptable use of copyrighted cultural works. (In the USA, we'd be discussing "fair use.") Fair dealing is necessarily *messy* in a way that can make it unpalatable to all involved: copyright holders, audiences who want to make use of works in various ways, publishers, and even to cultural institutions and the courts. The problem is that each party in a given transaction thinks their position is logical and self-evident. In reality, this is almost never true, as such issues are always relative. Never underestimate people's weird and irrational investments in the digital versions of their treasured objects.

## FEELING AS DEALING

So what's the solution? My argument is that there isn't one... and that that's a good and necessary state. We need to emphasize that like any other kind of dealing, fair dealing can be hard work that begins from two frequently unique and incompatible positions. Attempts to eliminate the ambiguities that make fair dealing messy only exacerbate the problem, creating an even bigger mess for all concerned. There is no one-size-fits-all approach, nor is there a technical fix for it. This is a social problem, and it requires a social solution.

However, there *are* things we can do to ameliorate the situation.

One of the most successful ways to tackle the Gordian knot of fair dealing is through affective labour, which Hardt and Negri define as the labour of "human contact and interaction." The products of affective labour are social networks and forms of community. The problem is that because it deals with emotions and interpersonal relationships, affective labour is so easy to discount as to make it nearly invisible.[1] For those accustomed to thinking in terms of hardware and software, affective labour can be difficult to identify, to explain, and even to perform, without developing the requisite skills.

Nevertheless, learning to use affective labour as part of your repository-building skill set beats the alternatives, which tend towards either excluding the digital object in question, or escalating the situation to the point where lawyers are involved. And once there are lawyers in the picture, your neatly contained moment of dealing becomes... a lot like trying to control giant, incredibly destructive fighting robots with cheap video game controllers from the 1970s: it can only end in misery. Direct appeals to creators and users via personal rather than official channels is a saner and, I argue, more effective approach.

[1] Michael Hardt and Antonio Negri, *Empire* (Cambridge: Harvard University Press, 2000), 292–93.

## CONTEXT

My remarks here draw on personal experience over most of the last decade as the co-Principal Investigator of a large CFI-, ORF- and SSHRC-funded research project called Artmob. This project was housed at York University in Toronto, and was conceived and launched by myself and Dr. Rosemary Coombe, the Canada Research Chair in Law, Communication and Culture. Artmob was a multi-sectoral online initiative involving scholars, artists, and arts groups from across the continent. Its purpose was to build large, accessible online archives of publicly licensed Canadian art, and to foreground the policy reform issues that this process raises for Canadian copyright and intellectual property laws.

Over the duration of my involvement (2002-2010), Artmob successfully launched or helped to augment or host several such repositories, including bpNichol.ca (a site about Governor General's Award-winning poet bpNichol), fredwah.ca (about Governor General's Award-winning poet and Canadian Poet Laureate Fred Wah), thescream.ca (the online presence of the Scream literary festival in Toronto), moderndrama.ca (a site about Canadian Carnival traditions), and even Ubuweb.com (the world's largest and oldest repository of the writing, audio and video work of the historical and contemporary avant-garde).

In addition to the archives themselves, Artmob produced a substantial amount of published research, which culminated with the release of *Dynamic Fair Dealing*, a massive critical anthology from the University of Toronto Press in Fall 2013.[2] Moreover, the content management system that we used (a modified version of Drupal) is available for testing as a public beta, and will be available for general use in the near future.

Every step of this project, from start to finish, required affective labour for it to succeed.

[2] Rosemary Coombe, Darren Wershler, Martin Zeilinger, eds., *Dynamic Fair Dealing* (Toronto:University of Toronto Press, 2013).

## WHAT IS AFFECTIVE LABOUR?

There are a lot of synonyms for affective labour, and you'll immediately develop a better sense of what it is as I mention a few of them: hand-holding, social-engineering, cat-herding.

Affective labour involves the production and management of peoples' emotions and expectations. It's traditionally been the provenance of women, which is one reason that it's been ignored and undervalued.[3]

Budgets and cost projections never include affective labour, and it is rarely planned for in any meaningful way. It's particularly invisible in tech circles (where engineers and programmers like to pretend for as long as possible that users don't really exist), but it's the duct tape that holds together the entire enterprise of building just about anything. Any project that has a component that faces a public or a community of some sort depends utterly on affective labour for its success. The more complex those publics or communities are, the more affective labour is required.

One reason that affective labour is an important concept when thinking about digital repositories is that their creators never know who's going to be looking at them, or what the reactions of the various audiences will be. Because digital repositories are a relatively new phenomenon, the expectations of both creators and audiences are often unrealistic, and even distorted. If you're one of the people behind a digital repository, you have to manage audience expectations and find ways of dealing with the notoriously fickle and vituperative reactions of people to materials they encounter online. You also have to find a way to publicly acknowledge praise and constructive criticism.

There are no magical technological solutions for affective labour problems. Affective labour is conducted by people, with people, and for people. It can involve social media, but make no mistake: *you* will be doing the work and

[3] Hardt and Negri, *Empire,* 292-93.

you'll frequently be doing it face-to-face. Moreover, you'll almost always be doing it off the clock and at home.

The stories I could tell about Artmob and affective labour are endless, and occasionally pretty entertaining. Given space constraints and professional discretion, though, I'm going to concentrate on outlining some of the difficult bits at the very beginning and the very end of such projects, and on some of the parts in the middle, where our contributors actually managed to weather the difficult parts of affective labour with a great degree of aplomb.

## DEALING WITH *IT* SUPPORT

Dealing is part of every human transaction where there's some sort of power imbalance, which is to say, all of them. But in the context of assembling a digital repository, the first time *fair* dealing becomes an issue is often when you start dealing with IT departments... in particular, university IT departments.

The interests of IT departments frequently don't align with those of scholars. IT departments are fundamentally conservative in that they want to keep things working, and accommodating the weird requests of faculty and student researchers almost always involves problems for them. If artists are going to be involved with your project, the potential for massive cultural clashes will always be right around the corner, as artists will always be pushing the boundaries of the possible.

In 1990, I had to spend six months fighting for a UNIX account because no one in York IT could understand why a doctoral student in English literature needed email, FTP, Gopher and Telnet access, never mind support. The situation is obviously different now, but the basic suspicion held by IT people for arts and humanities computing projects remains. Frequently,

there will be no formal policy to deal with what you want to do, which means that your work often becomes a test case (though you'd be very, very lucky if anyone ever remembered, much less recorded for posterity, results that actually tilted in your favour).

Over the duration of long-term projects housed in universities and similar institutions, the personnel will change, and, barring any formal written policy, you'll have to deal with different responses to the same reoccurring problems. Again, if you want to keep your development projects within the bounds of the university, the only real solution is your willingness to have the same conversations with the new people in the same jobs.

## EDITING AND FAIR DEALING

If you're a scholar creating a digital repository as part of your research, fair dealing doesn't stop once you have your repository built and your digital objects in place. Communicating your research results creates further issues and requires different kinds of dealing.

Most sorts of publishing (other than self-publishing) require contracts. The problem is that the internal policies of most presses interested in publishing work about digital repositories lags far behind where it should be. Their contracts were developed for a world of print, and don't take into account many aspects of the contemporary publishing environment. The result is an unfortunate and probably avoidable culture clash between presses and the very people they want to publish. Usually, the difficulties come to a head over contracts.

Interestingly, both copyright minimalists and copyright maximalists often have problems with traditional university press contracts.

Many authors now want the right to place the material that will appear in a book in institutional repositories, professional portals like Adademia.edu, or on personal blogs. Presses almost always want exclusive rights to what they've published, at least in the medium term, but the reality of writing in a networked milieu is that, barring extraordinary measures to keep everything under wraps until after your book appears, at least some of your material will be public before it's "officially" published, whether by accident or by design. The stances of presses in response to such requests are incredibly uneven, and I expect they will remain so for the duration of my academic career. This means that each interaction with a press or publisher will require authors interested in having portions of their work publicly available online to have the same sorts of conversations over and over. Establishing precedents, and being able to convince your editors and publishers that these precedents are not a threat (while not endangering your own publication), takes time and effort. In the end, though, such acts of affective labour are examples of enlightened self-interest, because they also benefit other authors who may approach the press afterward with similar concerns.

Just as presses want to claim rights that public opinion suggests should not be theirs, they are also becoming increasingly leery of the new responsibilities for protecting and supporting their authors in a networked digital milieu. Even authors in favour of strong contractual copyright provisions become upset over things like a press disclaiming responsibility for supporting authors in the event of anything ranging from libel lawsuits to the clearance of images. The upshot for the editor/repository manager is that they'll have to spend a lot of time on phonecalls and emails, not to mention the late-night worrying sessions.

## ARTISTS AS AFFECTIVE INNOVATORS

It's not all hard slogging, though. One of the things you discover when you work regularly with artists is that they have the imagination (some might say, the temerity) to try things that simply wouldn't occur to people who always look for fixes on technical or policy levels. I'm going to briefly describe the ways that two artists we worked with on Artmob—Justin Stephenson and Kenneth Goldsmith—used affective labour effectively in aid of their respective online projects. (Both of them have also written about their practice in *Dynamic Fair Dealing*, if you want to pursue the topic further.)

### Justin Stephenson

A professional moving-image designer and filmmaker, Justin Stephenson is the Senior Creative Director at Trace Pictures in Toronto. In addition to his professional work, he also does performances involving live music and video composition, and produces programmed interactive animations. For over a decade, Justin has been working on a live action and animated film that draws its visual vocabulary from the poetry and drawings of the late bpNichol.

Dealing with artists' estates is a common problem for creators, and it usually goes poorly. The Joyce estate and Zukofsky estate are examples where the descendants, engaged in various modernist practices of permutation and re-combination, develop a legal stance antithetical to the very work from which they derive a living; relations with anyone seeking to deal fairly with the work of their illustrious ancestors are infamous for going poorly. But in the case of Stephenson's encounter with Nichol's estate, the opposite was true. When he wanted to work with Nichol's material, Stephenson simply asked Ellie Nichol (the poet's widow) nicely. The result was that Stephenson was basically given free run of Nichol's oeuvre. Stephenson was also involved in the design of the bpNichol.ca portal on Artmob, and the cover of *The Alphabet Game*, the selected works of bpNichol that I co-edited with Lori Emerson.[4]

[4] bp Nichol, *The Alphabet Game: A bpNichol Reader* (Toronto: Coach House Books, 2007).

In his essay in *Dynamic Fair Dealing,* Stephenson argues that between the formal securing of licenses and the conscious practice of infringement, there is a "third way"—a way based on respectful deliberations with creators (or their estates) about the intentions, desires, and perspectives of the original author, as well as those of the creator seeking to reuse the material. The term we've developed for this is "direct dealing," but in essence it's the affective labour involved in simply talking to creators (or their families) rather than official intermediaries (agents, lawyers, editors, etc.). Direct dealing is easily facilitated by digital technology, and can be highly effective in enabling consensual, fair access to protected cultural expressions. Unfortunately, Stephenson laments, such negotiations remain largely invisible to the institutions that manage copyright and forge cultural policy for Canadians.

At the opposite end of the spectrum of approaches—yet similar in some curious ways—is Kenneth Goldsmith.

## Kenneth Goldsmith: The Robin Hood of the Avant-Garde

Founder of the conceptual writing movement, Kenneth Goldsmith is also an essayist, radio DJ, provocateur, and the proprietor of Ubuweb (ubu.com), the largest repository of historical avant-garde materials on the Internet since the mid-1990s. Ubuweb will be familiar to many people reading this, but for the uninitiated, the salient point is that Ubuweb posts material online without *ever* asking for permission.[5]

Nevertheless, Ubuweb keeps this material available thanks to Goldsmith's strenuous efforts to argue for the fairness of his "dealing" on a case-by-case basis, personally negotiating permissions with all creators and rights-holders who send him cease-and-desist notices. Goldsmith is charismatic enough that he is usually able to convince (often initially enraged) rights-holders that it is in their best interest to leave their materials in the archive, especially when the materials in question are nowhere else available. This is, of course, where the affective labour comes in: on top of the thousands of hours of

[5] From the Ubuweb FAQ: What is your policy concerning posting copyrighted material? If it's out of print, we feel it's fair game. Or if something is in print, yet absurdly priced or insanely hard to procure, we'll take a chance on it. But if it's in print and available to all, we won't touch it. The last thing we'd want to do is to take the meager amount of money out of the pockets of those releasing generally poorly-selling materials of the avant-garde. UbuWeb functions as a distribution center for hard-to-find, out-of-print and obscure materials, transferred digitally to the web. Our scanning, say, an historical concrete poem in no way detracts from the physical value of that object in the real world; in fact, it probably enhances it. Either way, we don't care: Ebay is full of wonderful physical artifacts, most of them worth a lot of money.

Should something return to print, we will remove it from our site immediately. Also, should an artist find their material posted on UbuWeb without permission and wants it removed, please let us know. However, most of the time, we find artists are thrilled to find their work cared for and displayed in a sympathetic context. As always, we welcome more work from existing artists on site.

Let's face it, if we had to get permission from everyone on UbuWeb, there would be no UbuWeb.

ubu.com/resources/faq.html#6

scanning, recording, processing, coding, posting, and editing (all volunteer), Goldsmith has spent an enormous amount of time simply talking to people about the merits of having their work available in its entirety on the Web.

In an essay in *Dynamic Fair Dealing* titled "The Robin Hood of the Avant Garde," Goldsmith argues that "Radical works deserve radical distribution." This is an extreme position; nevertheless, it is one end of the spectrum of practices that constitute dynamic "dealing" with respect to copyright protected objects in digital environments. Not everyone could or should try it, and it would likely not be possible to launch something like Ubuweb in today's legal and policy environment. Part of the reason it survives is that it has been around almost as long as popular access to the Web itself, and many artists, academics, journalists, writers, and musicians have come to rely on it as a crucial resource for their work.

## A BRIEF THOUGHT BY WAY OF CONCLUSION

There is *much* more to say on this subject. I've really only had time to point out that affective labour is the fuel that powers the engine of cultural dealing, and that fair dealing, like any other kind of dealing, can be difficult and uncertain. Nevertheless, there's no real alternative. If we abrogate the difficulties involved in this aspect of the construction of digital cultural repositories, there won't be anything to deposit.