INTELLECTUAL PROPERTY AND COPYRIGHTING THE PAST

I am sitting in a colloquium on Open Knowledge and Social Research Networks at Stanford Humanities Center. On the agenda – more of the issues that I summarized the other day in another colloquium at Stanford. [Link]

1. how does open knowledge work with digital technology in academic institutions?
2. how does collaboration at a distance work?

Lawrence Lessig is talking about intellectual property in a digital age. The topic is coming up a lot in this blog. John Unsworth (in Illinois) is talking about collaboration and community.

Lawrence Lessig@Stanford Humanities Center – 18 October 9.50 am

Recently I have commmented on Jennifer Wallace writing a book that, in my reading, didn't properly acknowledge previous work on her topic of the archaeological imagination [Link] [Link] There was a piece of mine that stressed the positive features of fakes – because they challenge notions of authenticity that in turn lie behind the notions of property and ownership of the past that justify the trade and collection of illicit antiquities [Link]

More broadly I regularly celebrate cultural remixing – reworking the past. Using Rick Prelinger's media archives to create new movies, whatever … [Link] I am particularly critical of notions of cultural identity that is conceived as something you can possess and own – heritage, for example [Link]

Lawrence Lessig's case for a Creative Commons can help us work through some of the issues in the friction between authorship and originality (I thought/wrote this and it is mine) and the way ideas live on in their resuse.

We are in trouble with copyright and intellectual property. It started when copyright law changed in 1978, along with modes of reproduction. Copyright used to be an opt-in system, where an author or publisher would opt to have a work subject

to copyright and, on average, copyright lasted only 16 years. There was an enormous amount of material in the public domain. Now all works are subject to copyright of at least 95 years. At the same time the cost and ease of copying has tumbled. Where once printing and publication needed presses and publishing houses, now the means to copy any cultural work, rework and author and then publish electronically is available to anyone with 1500 dollars or less for a computer and only a little expertise.

This unleashes the potential of extraordinary cultural creativity. But intellectual property brokers are working their hardest to stifle it – because they conflate creativity with individual property. They see digital copying and reuse as the same thing and an equal threat to revenue.

Since copyright became something applied to every work, and since digital reproduction has become so easy and cheap, the legal project of Digital Rights Management has become one of making cultural remix illegal and impossible. Use anyone else's work in your own and you have to track down every copyright holder. The burden of clearance is considerable and and the chance of success minimal. The recent movie Tarnation took the Cannes Film Festival by storm and surprise – it cost 218 dollars to make. Cost of tracking copyrights and permissions for background music – 400,000 dollars. Steal a CD from a Virgin Megastore and it's a misdemeanor carrying maybe a 1000 dollar fine. Share the same CD over the net and you could get sued for 1.5 million dollars of copyright infringement.

Lessig, like me, begins with the premise that knowledge and culture are remix. Reworking stuff. Life is remix. Creativity always builds on the past – taking stuff and reworking it. Creativity is not about individual genius producing something to be owned – something that somehow expresses their inner being or soul.

This is Lessig's creative commons – we need to be able to reuse and rework a cultural commons – work in the public domain.

This is not necessarily incompatible with copyright and intellectual property – we can, and should, recognize individual creativity, agency (as Sepp Gumbrecht is now saying), contibutions and work. Copyright needs to be understood however in a limited way – as precisely control over copies. Not control of access or reuse, but control of making and distributing copies.

So when someone doesn't cite other people's work that has a real bearing on theirs, the issue is not that they are copying and infringing intellectual property (though they may be). Citation is actually about sharing. Tracks and links are what matter because remix is what intellectual creativity is about (and security and understanding). This is where citation fits. Not as some sacrosanct institution of academe, but because citation should be seen as part of particular kinds of open, active and democratic knowledge communities. Citation is not a matter of origins (where ideas come from and so who owns them), but of genealogy – tracking relationships that do not carry any authorization of ownership.

It applies to remains of the past – they do not stand on their own but need connections with context, past and present. Data are site specific.

I have been at pains to make this point for archaeology. Just recently Kris Hirst at about.archaeology picked up on an article in Current Anthropology – George Nicholas and Kelly Bannister on copyrighting the past. – [Link] – for those with a subscription to the journal.

The question raised in this article is – Who owns the past and knowledge produced of it? Of course the past may potentially be of value – antique and collectable works of art, cultural tourism, heritage and the rest. The authors want the past to be owned collectively and knowledge to be produced collaboratively rather than owned exclusively by particular agencies. The past needs to be in the public domain. But actually, it isn't.

Their argument reads well and clearly has relevance to archaeologies that deal with competing claims on the past – when native American groups, for example, dispute science's claim on exclusive knowledge of the past, and ownership of data or remains.

But we do need some caution – collaboration and community are not self-evident givens. An archaeological team may be working together, but I have experiences of many projects where division of labor (into specialized tasks that don't affect each other) and strong hierarchical management work against collaboration. An academic community may well appear exclusive and guarded to outsiders. What it all hinges on is an ethics and politics of community building.

To get back to intellectual property. We should first disconnect it from

creativity. We do better to associate cultural creativity with richness and vitality of connection, reference, linkage – remix. In this light think of an archaeological fake.

Now maybe I don't want a fake because the genuine article has more market value. A real piece of history to possess. Well, there are ways that you might take care to ensure you get what you want. There is, of course, more to the value of an archaeological artifact than market value. My line is that the authenticity and aura of an item is to do with the story of its life, where it came from, who was associated with it, hwhat happened to it, how it came to be where it is now. These stories, contexts, bits of information make things fascinating and valuable. They may, or may not have anything to do with whether the item is a forgery. And some forgeries are far more interesting than some originals.

It comes down to desire – What kind of things do we value? I suggest that those with fascinating stories and connections, fake or not, are of far more value than those simply with the right date and provenance. [Link]