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Remixing Authorship

Copyright and Capital in Hollywood's New Media Age

A dissertation submitted in partial satisfaction of the

requirements for the degree Doctor of Philosophy

in Anthropology

by

Hadi Nicholas Deeb

2014

ABSTRACT OF THE DISSERTATION

Remixing Authorship

Copyright and Capital in Hollywood's New Media Age

by

Hadi Nicholas Deeb

Doctor of Philosophy in Anthropology

University of California, Los Angeles, 2014

Professor Elinor Ochs, Chair

The explosion in new media technologies and how people use them has ruptured a longstanding

model of authorship and ownership behind intellectual property (IP) laws and norms. New

media make creating, manipulating, and circulating information much faster, easier, and cheaper.

The romantic author entitled to own her expressions of creative genius is being reimagined as a

remix author who always borrows, collaborates, and has partial claims over cultural products.

Scholars in various fields have used this development to reconsider what authorship is and how it

relates to ownership. My approach employs empirically, locally grounded linguistic

anthropological methods that have not been applied before to this topic. My aim is to uncover

what motivates authorship as a communicative activity that has social value, as evidenced by its

link to ownership. I conducted fieldwork among professional storytellers, lawyers, and

marketers in Hollywood, an influential industry that relies heavily on copyright, the branch of IP

law that regulates the circulation of creative expression. I investigated how people who see remix authorship as both a challenge and an opportunity talk *about* authorship and, in doing so, talk *as* authorship. Framing my study in practice theory terms, I analyzed the micro-semiotic and macro-social aspects of that discourse in contexts such as courtroom litigation, professional gatherings, and story production. I argue that authorship and ownership are mutually defining practices driven by a productive tension between the chronological pursuit of authentic experience and a horizontal goal of idealized authenticity. Striving to achieve authenticity is socially mediated, and often occurs through cultural products, including entertainment commodities. For a long time, romantic authorship ideology tailored authenticity to its own terms, mitigating the tension and supporting the modern IP regime. Spurred by new media, remix authorship ideology pries open that loop. More broadly, people constantly remix the nexus of what authenticity, authorship, and ownership mean. My findings further remix authorship theory in order to think beyond the superficial divergence of IP law and social practices; specify the social and institutional consequences of linguistic authorship, including how it can lead to paradigmatic transformation; and describe an experiential motivation behind that practice.

The dissertation of Hadi Nicholas Deeb is approved.

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CHAPTER 1: Remixing Authorship

I. Introduction.

In February 2012, members of Transmedia L.A. (TLA) decided to produce a transmedia story, specifically, a kind of participatory story in the genre of an alternate reality game (ARG), to be called "The Miracle Mile Paradox" (MMP) and set physically in the eponymous Los Angeles neighborhood as well as online. I joined them. In order to raise funds for MMP needed to buy supplies, rent online and offline space, and so forth, we posted an appeal on Kickstarter.com. As with similar crowdfunding sites, people who seek funds for projects on Kickstarter post descriptions and solicit donations. The MMP producers decided to include a video in which the central character of the ARG, Rexford (Rex) Higgs, appeals for money to help him construct the machine outlined in mysterious patents and blueprints he has just discovered in a battered tin box at a building site in the Miracle Mile.

We filmed the video at one of the main producers' homes, using a professional actor, script, and equipment, and taking most of a day to do it. After shooting an exterior shot, in which Rex reenacts finding the tin box, two of us finished tidying up the backyard while the others moved inside to film interior scenes in Rex's study. My companion was another of the main producers.

As we packed equipment and collected the dust and dirt and concrete, brick, and plastic debris meant to re-create the building site, she mused aloud about a dilemma. To appeal to sponsors with the video would spark curiosity and enthusiasm about the story better than a dry description. But it also brought Rex out of the game and into our reality. The crossing risked

contaminating the storyworld with its architects' fingerprints. Her fear was that people visiting the Kickstarter webpage would be "confused."

At first, I understood her to mean simply that they would not mentally toggle—at least, not fast enough to capture their interest and help—between the character's appeal for funding from inside the game's plot and the fact that the solicited money was actually needed by the producers, not by this fictional guy with a fantastical plea for assistance. On reflection, however, I realized that anxiety about that superficial confusion pointed to something deeper about the kind of storytelling project we were trying to create. The premise of an alternate reality meant our reality of designing the ARG overlapped the players' different reality of experiencing it, with further layers such as our experience animating characters that interacted with players inside the story-game. What truly facilitated the overlap in time, space, and medium are technological tools and social habits that make it possible to create a historically and socially rich and rather normal alternate reality through internet ethereality alongside offline components. ARGs breach, then reconfigure, the theatrical fourth wall (invisible and unveiled at curtain's rise) that traditionally separates players and audience. The breach and reconfiguration are neither accidental nor mere tokens of expertly performed rule violation within the traditional framework of author and audience.

Rather, ARGs are one of a variety of storytelling practices that have proliferated from technological affordances to redefine not only the relationship between author and audience but also the meaning of authorship. In an ARG, that redefinition includes the cardinal imperative to maintain the boundary between what occurs inside the game and what occurs outside it despite their spatiotemporal juxtaposition and overlap. The Miracle Mile Paradox's success depended on the producers claiming but also disclaiming authorship in the appropriate way, while inviting

the audience to participate as co-authors, also in the appropriate way. Put differently, success depended on selling them (on) our project while disclaiming a traditional right of exclusive ownership over it. What my interlocutor's concern pointed to was that bringing Rex into our world and, indeed, into the heart of the behind-the-scenes production, violated the cardinal rule, with great risk and potential great reward.

The rest of the MMP story will be the topic of a later chapter, as will terminological controversy over "transmedia" and other names for emerging modes of storytelling, but the vignette just described illustrates the major theme of this study. That theme is encapsulated by the notion of *remix authorship*. Remix is the repurposing or reuse of an existing expression in a new context. It was coined, or at least popularized, by late 1960s and 1970s disco and hip-hop disc jockeys as a more expansive version of the practice of sampling (Navas 2012), or incorporating bits of an existing piece into a new one. More recently, it has been adapted—remixed—into other contexts and broadened to mean all sorts of repurposing activity, including in jurisprudential discussions of the implications of remix for intellectual property (IP) law.[1] The phrase, "remix authorship," has been used in a book about the impact of digital technology on educational institutions in order to describe the process of producing that book itself, and, in particular, the collaborative participation of many individuals (in addition to the named authors) in commenting on its draft iterations through an online forum that was more inclusive and more continuous than the typical editorial sequence (Davidson and Goldberg 2010:7).

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[1] Overlapping terms include do-it-yourself and mashup. There is also modding, as in modifying, which applies to remixing software (especially video games) and sometimes hardware, and vidding, which is remixing of motion pictures or music videos. See Hill 2007; Postigo 2007; Ulaby 2009.

I use remix authorship to encompass three meanings: its definition as an activity and a corresponding ideology; its methodological resonance, alluded to by Davidson and Goldberg; and its further resonance in theorizing authorship. In the narrowest and most specific sense, I use remix authorship as a label for an emergent ideology that counters the long dominant one of romantic authorship.[2] Whereas the latter envisions the author as an individual, inspired creative genius, there is no such origination criterion in remix authorship. What seems to coalesce in one moment of authorship rests on a continuum of endless borrowing or collaboration.

Crucially, these opposing visions take shape fully only when ownership is added to the equation. The shape of the bond between authorship and ownership is historical, not natural, but is nonetheless very strong, and I will contend that its strength belies a generic theoretical bond between authorship and ownership regardless of its particular ideological shape in any historical moment. For a long time, the dominant view has tied romantic authorship to a belief that the author is entitled to absolute ownership of her authored work. This framework of authorship–ownership girds the modern IP regime, which is both a legal institution and a longstanding social norm. This bond is the essence of copyright law, which governs so-called creative expression and is the branch of IP this study investigates, as well as of copyright's sibling, patent law, which regulates authorship–ownership with respect to natural discoveries and scientific inventions. For centuries, copyright law has more or less steadily assigned ever more extensive, expansive, and exclusive property rights automatically to those deemed authors based on romantic criteria.

By contrast, remix authorship is much more ambivalent and undetermined with respect to ownership because it is ambiguous at best about identifying authors and attributing specific

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[2] For my purposes, an "ideology" is a set of beliefs and practices, or a way of looking at the world, that assumes its own truth and crowds out alternatives. See Woolard 1998 for a disquisition on the term.

authoring acts or components of authored works to individual authors. The development of the MMP story-game displayed this uncertainty. It was a deliberate intervention to help bring forth a new, remix-oriented kind of storytelling. This objective was explicit in its producers' plans and discussions. It also is implicit in my interlocutor's concern to tread carefully in fiddling with a core feature of this new mode, at least as it pertains to the ARG genre. I analyze how those producers and other participants in the broader debate talk *about* authorship, typically with some version of romantic or remix authorship—and usually both contrastively—in the foreground or background of that talk.

The potentially transformative pressure generated by the clash between the two authorship ideologies is the focus of this study. The key instigator has been new media, which I define as the assimilation of electronic technology and the tools to use it into everyday practices of cultural production and communication. By making it possible to create, manipulate, and circulate information more easily, cheaply, and rapidly than ever, new media have catalyzed remix authorship and undermined romantic authorship.

The rise of remix has led numerous legal scholars and other commentators to discuss the resulting policymaking and juridical "copyright wars" (e.g., Litman 2006a), often portraying a legal battle between corporate Goliaths who own the copyright to vast amounts of their employees' work and citizen Davids who engage in small-time authorship and appropriation (Eckersley 2004). Although inspired similarly by the precipitous fissuring of the regime, I adopt a different approach that attends to the doctrinal and legal historical literature but also employs methods from linguistic and sociocultural anthropology. I follow the discourse of people like the MMP producers who see themselves as innovators and outsiders embracing the disruption as an opportunity to rediscover, reform, or revolutionize what authorship means, without surrendering

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all the symbolic or economic benefits of ownership. My fieldwork beginning in 2011 has focused on this community as part of the wider one of professional storytellers and their lawyer and marketer auxiliaries who work in what is popularly called "Hollywood," a dually geographic and symbolic label for an epicenter of the entertainment industry in the city of Los Angeles and the surrounding region. The symbiosis of romantic authorship and robust property rights underpins Hollywood's modes of winning artistic prestige and commercial profit. The industry therefore has felt the turbulence caused by new media and remix authorship keenly. Examining the community's self-conscious discourse about what its members describe as paradigmatic change affords insights into the role of authorship in organizing the IP regime. I found those insights especially in the discourse of those members of the community who consider the change to be both a challenge and an opportunity. This discourse stretched across varied contexts such as the production of MMP, courtroom litigation, and the intra-communal circulation of knowledge in meetings and other forums.

At the same time, discourse analysis of how people talk about authorship also means analyzing their talk *as* authorship. To produce MMP through activities such as making the Kickstarter video was also to author a set of beliefs and ideas about professional storytelling as well as (occasionally explicit) claims to prestige and profit organized around those beliefs and ideas. An example of such authoring is my friend's expression of the risk involved in temporarily dissolving the boundary between alternate reality and actual reality. She put words to the fact that doing so was remixing the commitment to a version of the (itself still nascent) remix authorship ideology. Her remark-in-context exemplifies how the notion of remix authorship resonates beyond its definition as an ideology and characterizes a methodological approach emic to a situation such as the MMP Kickstarter filming.

That kind of data informs an etic methodology that involves relating the layers of talk about authorship and talk as authorship to each other in the analysis. It is the continual, remixing engagement across those layers in the data that builds a scale between the micro level of communicative acts and a macro level of social organization that includes cultural pattern, economic system, and legal institution. Studying the scalar connection during a moment of turbulence in the meaning of authorship and its relationship to ownership evinces the final way in which remix authorship resonates, that is, in the opportunity to retheorize authorship while reexamining its relevance to three areas of broader significance.

The first is IP law, principally copyright law but potentially patent law as well, which often works in combination with copyright and suffers from similar contemporary confusion (Biagioli and Galison 2011). I employ empirically, locally grounded anthropological methods that either have not, or have not in this way, been applied previously to the study of copyright law and the increasingly pressing questions raised by the cultural rupture in its elemental premise, authorship. In fact, although culture is a notoriously thorny concept, especially for anthropologists, one prominent anthropological definition of culture as "the field of signs and practices in which human beings construct and represent themselves and others" (Comaroff and Comaroff 1992:27) coincides strikingly with copyright's purported blanket remit over the production and circulation of humans' creative expression.

Thus, while my conclusions apply most directly to Hollywood as an industry, they also apply more broadly to the cultural setting of the United States it belongs to and influences. They also may apply to the European societies that initially bequeathed the existing authorship–ownership model and maintain their own versions of it, as well as to other societies around the world that received and often have remixed it. Indeed, there is a contest over a spreading "global

hierarchy of value" (Herzfeld 2004) that encompasses IP and other domains through a web of treaties, corporate practices, trade in consumer goods, and the circulation of discourse. Some observers view Hollywood's role in this struggle as restrictive and anti-democratic (Gillespie 2007; Lessig 2006), not to mention sluggish even for the corporate world: "Hollywood vs. Silicon Valley," as one put it (Magid 2012). They point, for example, to the major studios' promotion of the widely vilified Stop Online Piracy Act and Protect IP Act bills in the U.S. Congress in 2012 (Magid 2012) and their behind-the-scenes involvement in secretive multilateral negotiations over an Anti-Counterfeiting Treaty and Trans-Pacific Partnership (Yu 2011). But Hollywood is neither monolithic nor necessarily atavistic, as the storytellers at the heart of this study illustrate; nor is this particular hierarchy of value settled. I explore its contestation in a community negotiating the boundary between insider and outsider, trouble and opportunity, tradition and change. I suggest that existing critiques of copyright law and reform proposals from within legal academia usually do not inquire deeply enough into what makes authorship socially valuable, and how that value is constructed and negotiated.

The second area is linguistic anthropology, which would benefit from recovering a role for ownership as authorship's symbiotic partner. On the one hand, I rely indispensably on the discipline's existing formulations. In particular, Bakhtin (1986) and Goffman (1981) developed notions of authorship in terms of communicative acts that contradict the romantic standard and emphasize collaborative aspects. Their ideas inform the analysis of both talk about authorship and talk as authorship. On the other hand, Bakhtin railed so hard against romantic authorship that he risks naturalizing its "co–" quality, while Goffman narrowed authorship to one of numerous, distributed functional speaking roles within a given, contained interaction. Their

successors have continued to use authorship in the same ways, often taken it for granted as a relatively uncontested background structure of communication, and moved on to other concepts.

I draw on the institutional significance of authorship in the legal sphere, including its bond to property as a major mechanism of social organization, in order to relate the situational, communicative aspect of authorship to the larger social claims that small acts of authorship always implicate. There is a genealogical reason to do so; Bakhtin and Goffman developed their critiques from within an intellectual history shared with the sociolegal model, as their metaphoric borrowing from it betrays. Returning to the same heritage ethnographically supplies an additional, empirical reason based on my findings and other anthropological research on property.

For example, when my MMP colleague expressed caution about the Kickstarter video, she inhabited an authorial role in Goffman's sense of selecting words to convey a stance and achieve a certain "footing" in the immediate context of her interaction with me. And her comment was not out of the blue but was, like herself, embedded in a larger, Bakhtinian dialogue that included our immediate one as well as the one our group was having that day, the one our larger group was having over the months of planning, and so forth all the way up to the debate over romantic versus remix authorship. Those qualities of her talk as authorship also intervened in that debate by making claims, that is, by talking about authorship. Those claims were not merely metaphorically proprietary but actually proprietary because they staked a position concerning the allocation of capital based on a regime of authorship. The two layers worked together in what she said.

The third and final area is social theory and, in particular, how macro-social transformation may occur. I adopt a practice theory framework. Practice theory rather

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accurately captures how the traditional model of authorship works as a "structuring structure" (Bourdieu 1990:53) that has come to organize habitual dispositions toward the production and circulation of communicative expressions in the U.S. and elsewhere. That picture includes the inhabitance of roles such as author and audience and the commoditization of those expressions as Hollywood stories. Practice theory similarly supplies an outline of how that structure governs Hollywood's professional "field of cultural production" (Bourdieu 1993) and the pursuit of various kinds of capital within it.

Yet, perhaps owing in part to some practice theorists' assumptions about what language is and does, it is more common for linguistic anthropologists to use elements of practice theory to explain communicative practices than to use language to explain practice theory (see Hanks 2005b for a partial review). I do both through close linguistic analysis of a discourse that enacts authorship in the course of self-consciously talking about authorship. Tracing this double-layered, or pragmatic and "metapragmatic" (Silverstein 1981:3), communicative activity at a moment of turmoil elucidates how a discourse can be a vehicle for the enactment of structure while also harboring transformative potential. In other words, I examine this "ideological" (Silverstein 1979; Kroskrity 2004) function of language use as a principal component of the "structure of the conjuncture" (Sahlins 1981:35) of traditional and emerging meanings of authorship.

In sum, it is precisely because the particular discourse studied is a discourse of authorship, and because authorship is a principal element of communication, that my analysis demonstrates something more general about how people create and transform social meaning. Going up in scale, the insights gained by closely analyzing talk about authorship as being also talk as authorship eventually extend and transfer to discourses other than one about the topic of

"authorship" and domains of social practice other than IP law. Going down in scale, ownership is a useful concept in explaining communicative organization. The intersubjectivity signified by co– requires a bounded, subjective counterpart that allows participants in an interaction to organize themselves in relation to one another in the first place.

Thus inspired by the remix authorship motif, I ask a twofold research question. First, what does the social discourse concerning this turmoil reveal about (changing) beliefs toward the framework of authorship-as-ownership that underpins IP law and parallel social norms? Second, what does the contingency attested by potential change imply for legal and anthropological theories of authorship that are themselves historically rooted in that framework?

My answer is that authorship and ownership are functions of a quest for authenticity. I understand authenticity to mean the most natural, unmediated, or essential way to be, and will elaborate on this existential usage in Chapter 7. Crucially, my view is agnostic as to what exactly constitutes an authentic state or experience. Romantic authorship ideology defines authenticity (rather tautologically) in terms of individualistic self-expression from author to audience, while remix ideology reaches for something more collective and less anchored. When describing these respective beliefs, I may refer to authenticity in their terms. But from my own, analytic perspective, the specific content of authenticity, while important for understanding the particulars of contesting authorship on the ground, is a secondary characteristic. Authenticity is most interesting because it is a variable—its variability being evident in the contest—that plays a key role in motivating authorship as something people do and about which they have ideas.

This role comes about by virtue of authenticity's temporality, which consists of a complicated, socially mediated pursuit of authentic experience and a horizontal goal of idealized authentic experience. Striving to make those two aspects converge delineates the stakes of

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authorship and ownership. It motivates talk about authorship and ownership that unfolds through talk as authorship and ownership in both micro- and macro-contexts of social interaction.

Authorship and ownership thus should be viewed as practices rather than isolated acts or separate statuses joined together in a sociolegal regime. To author is to make proprietary kinds of claims, and to own is to make communicative kinds of claims. To engage in either is to engage in both in pursuit of authentic social relationships.

I argue, therefore, that authorship and ownership are mutually defining practices driven by a productive tension between the pursuit and goal of authenticity. Emerging with modernity, romantic authorship ideology tailored authenticity to its terms, which mitigated this tension. For a long time, the relative stability of a widely accepted path to authenticity reciprocally buttressed romantic ideology. Spurred by new media, remix authorship ideology pries open that loop. The broader remix authorship theme is that people are always remixing the nexus of what authenticity, authorship, and ownership mean.

One concrete way that this process unfolds is through cultural products such as works of art. To return to the MMP vignette, two intersecting objectives are revealed in the desire to produce an innovative story, using a newish financing technique that somewhat parallels the collaboration and technology of the story production, and in opposition to the conventional model of robust industrial IP. One was to win capital, both reputational and pecuniary—though, in the case of MMP, not for profit. The other was to make something that would resonate as authentic, to be evidenced by how potential donors and, later, the ARG-playing community and professional peers engaged with MMP's producers through the story-game. The Kickstarter appeal and accompanying video were one piece and stage in pursuing those objectives. In filming the video, we worked toward capital gain. The concern for authenticity motivated that

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work and surfaced right in the middle of the activity through my colleague's expression of caution.

The interplay of the quest for authenticity and the practice of authorship applies equally to Hollywood as an industry. IP organizes a complete framework for the struggle over capital by pouring romantic authorship into "properties" out of which commodity units are packaged and sold. That framework depends on substantial social agreement that the romantic vision of the relationship among author, authored work, and audience best actualizes authentic experience. "Properties" is the industry term for its products. The language of properties is used to struggle over capital in innumerable daily interactions by demarcating attitudes and actions toward properties as either authentic or inauthentic based on their relative conformity to romantic ideology. Those interactions are also iterations in a long historical struggle over the meaning of authenticity shaped through evolving practices of authorship and ownership, including ones that produced a language of properties that seemed authentic.

New media have placed pressure on those established expectations about authenticity surrounding commoditized storytelling (among other cultural products). This pressure makes trouble for the authorship–ownership edifice erected on one definition of authenticity. That trouble is fruitful for inquiry into the meaning of authorship because it exposes the edifice as a contingent, ideological, and fluid structure. That is not to naturalize remix authorship ideology or its immutable, ahistorical idealizations of authenticity instead.
It is the struggle itself that is interesting for social scientific inquiry. The narrower sense of remix authorship as an emergent ideology causes turmoil that makes for an exciting ethnographic venture, while the broader spirit of remix authorship helps guide this story of authenticity and authorship, language and law, practical durability and social transformation.

II. <u>Outline of the Remaining Chapters</u>.

Chapter 2 traces how authorship came to have a modern, romantic meaning associated with exclusive ownership. It then describes how new media inspired remix ideas that challenge that regime. Historians have shown that authorship has always been something people do and believe under the conditions in which they live. That history provides perspective on the contemporary turmoil as an object of ethnographic inquiry.

Chapter 3 reviews literature that relates to my topic. Legal scholars have reexamined authorship and copyright in light of new media. Sociocultural anthropologists, scholars of media, and linguistic anthropologists have written about authorship as a fragmented and collaborative activity grounded in social circumstances and very often, arguably always, related to ideas about ownership. Although they provide an invaluable foundation, these treatments stop short of investigating what constitutes authorship and gives it social value at a more fundamental level. Some do connect authorship to authenticity, but typically in the specific form of romantic authorship. Chapter 4 explains the methods I used to collect and analyze ethnographic data for my different approach.

Chapter 5 introduces the theoretical framework I use to explore how authorship, ownership, and authenticity are constructed communicatively into social norms and legal rules. It reviews main elements of practice theory and proposes authorship as a general habitus of communicative activity that takes particular, ideological forms such as romantic authorship or remix authorship. It then describes language use as practice, relying primarily on linguistic anthropological theory developed from Peirce's notion of semiotic indexicality. This chapter

underpins the scalar aspect of authorship from micro-linguistic interactions to macro-social structures.

With that background in place, Chapter 6 models my argument that authorship and ownership are mutually defining practices driven by a productive tension between the pursuit and goal of authenticity. Chapter 7 elucidates my understanding of authenticity as driven by a temporal tension of human experience. Chapter 8 maps my model to Hollywood as a field of cultural production governed by a regime of authorship–ownership that has been destabilized by new media and remix authorship.

The next three chapters granularly analyze data from different settings. Chapter 9 looks at a court proceeding in a copyright case in which social controversy about a film's "realness" spilled into a legal dispute about original authorship as the basis of copyright. Chapter 10 investigates the intra-communal discourse of professional storytellers in formal, public settings where they gather to talk about changes in the storytelling craft and entertainment industry. Chapter 11 elaborates on the production of the Miracle Mile Paradox alternate reality game discussed in the introduction to the study.

Those three chapters focus on how people talk about authorship, but the examples are also examples of talk as authorship. They move toward less explicitness in the talk *about* authorship, from lawyerly discourse about a storytelling dispute, to storytellers talking about storytelling, to storytellers producing storytelling. Accordingly, the dimension of talk *as* authorship becomes inversely more apparent. Chapter 12 takes up that end of the spectrum to show how talk as authorship is a way of doing authorship in a general or universal sense, regardless of what people talk about.

Chapter 13 concludes the study. It takes a wider perspective on the implications of remixing authorship for linguistic anthropology, sociocultural anthropology, and law, and for how we might better understand contemporary shifts in the enactment of subjectivity through communication.

CHAPTER 2: A History of Authorship

Creative expression is an elusive concept in copyright law. The chief U.S. statute extends copyright protection to "original works of authorship fixed in any tangible medium of expression" (17 U.S.C. §102). It does not define original, work, or authorship. Nor do any of the three principal international treaties that govern copyright, which protect "the rights of the author" to her "production" (U.S. Department of State 2010).[3] In a definition that will be taken up in more detail in Chapter 9, the U.S. Supreme Court has specified that originality is the "sine qua non" of copyright and means "independently created"—that is, not copied from a preexisting work—and "possess[ing] at least some minimal degree of creativity" (*Feist Publications v. Rural Telephone Service Co.,* 499 U.S. 340, 345 [1991]). The U.S. statute does define fixation to mean "sufficiently permanent or stable" as to allow some kind of communication "for a period of more than transitory duration" (17 U.S.C. §101). And it lists examples of copyrightable works, such as a literary work, a motion picture, a musical composition, or a musical recording.[4]

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[3] The three are the Berne Convention for the protection of literary and artistic works, which is an updated nineteenth-century pact originating in Europe that the U.S. joined in 1989; the World Intellectual Property Organization (WIPO) copyright treaty; and the copyright provisions of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, which largely incorporate the WIPO treaty. See http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html#P85_10661; http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html#P45_2379; http://www.wto.org/english/tratop_e/trips_e/t_agm3_e.htm, all accessed March 14, 2011.

[4] In this rubric, a written composition and a sound recording are two distinct kinds of mediated expression of the same underlying idea, so that a composer and a recording artist may each have her own kind of copyright in a song.

The elusiveness of statutory and jurisprudential definitions reflects the law's implicit adoption of a common folk theory of creative expression as something humans make and put out into the world.[5] More precisely, this theory associates creativity with the uniqueness and spontaneity that the Supreme Court's *Feist* decision invoked. And it associates expression with individuality, so that an author (or group of authors working together) is the "sole creator of unique 'works'" (Woodmansee 1994:15). Fixation is perhaps less crucial to this folk theory than to the law, which needs a relatively concrete object to regulate, although it may also be true that the more identifiable an expression is as a bounded work of art such as a book or musical score, the more readily people will envision it having an author.

Evidence of that linkage lies in the disruption new media cause to it. This disruption starts with new media's technological aspects, namely, digital programming on electronic devices. (Or "computers," if understood to include not only mainframes, desktops, and laptops, but also mobile telephones, electronic tablets, even some appliances and wristwatches, and so forth.) This technology makes it possible to create, manipulate, and circulate information more quickly, cheaply, and widely than ever before (see Manovich 2001). A vivid example is the work of Gregg Gillis, whose stage name is Girl Talk. He gained fame as a "remix artist" by "sampling," or taking pieces of, existing songs and aggregating them into a single "mashup" song. Sampling is an old practice, but Girl Talk makes songs that consist entirely of samples, and samples other music in massive quantities. His fifth album, *All Day* (2010), consists of 372

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[5] Creative expression can be further clarified in contrast to discoveries or innovations concerning the natural world, which the law again follows folk theory in categorizing separately under copyright's sibling law of patents. They can overlap. For example, blueprints or designs are copyrightable expressions that also represent an underlying patentable device.

samples.[6] Even more important than the technological aspects of such activity are the social aspects of new media they shape. Girl Talk proudly advertises that his music is "blatantly appropriated" and releases it through the record label, "Illegal Art." He thus has positioned himself as an especially vocal mutineer against the traditional meaning of authorship, and in turn has attracted vocal support from a leading copyright scholar and critic.

Girl Talk's irreverence also helps pinpoint why authorship is problematic. In this conflict, what constitutes authorship is one hand clapping; the other is the idea of ownership. The main U.S. copyright statute protects an author against "infringement" by someone else upon the author's exclusive right to reproduce, adapt, or publicly distribute, perform, or display her work (17 U.S.C. §106). That clause refers to the "owner" of the copyright. Thus, the right has social consequences, and problems can occur, when a non-owner engages in one of those acts of social circulation. The law reasons toward ownership in a more sophisticated way than it does toward authorship. But its justifications for ownership converge similarly with folk theories of entitlement that rest ultimately on a symbiosis with beliefs about authorship.

The law's incorporation of social assumptions and new media's challenge of those assumptions point to authorship's qualities as a historical phenomenon. The meaning of authorship has consolidated over several centuries but it has never been entirely uniform or uncontested.

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[6] See http://illegal-art.net/girltalk/, accessed February 12, 2013.

I. <u>The Rise of Romantic Authorship and the Modern Regime</u>.

Authorship emerged as a modern institution linked to ownership amid broader transformations in European society that began to take shape during the Renaissance. The following is a century-by-century sketch that highlights the accumulation of various factors into the IP regime's contemporary form. The scholars cited do not always pinpoint the inception of a factor to the same precise moment. A number also observe that how the factors played out varies in detail according to genre, such as a learned treatise versus a theater play and, later, fictional literature and audiovisual recordings. Nevertheless, there are core commonalities that solidified the meaning of authorship into a social and legal norm in the United States over the long run.

Debates over authorship are ancient. Goldstein (2003:30) reports that "the Roman poet Martial inveighed against the unauthorized recitation of his works as *plagium*—kidnapping— leaving no doubt about his idea of the bond that ties an author to his work." An array of factors configured authorship in a distinctly modern way, however.

Hints appeared in the fifteenth and sixteenth centuries, when individual artists could win increasing fame and fortune because of technologies of reproduction, notably the printing press (Goldstein 2003). At the same time, those technologies ironically facilitated copying by other people. This tension began to imbue the author with attributes of ownership. For example, Dürer's colophon to a 1511 edition of his woodcut prints sharply warned would-be "thieves" (Pon 2004:39).

Dürer's admonition includes notice that he holds an exclusive privilege granted by the Holy Roman Emperor. Rulers extended these early monopolies to printers, not authors, and did so as a way of exerting control over information as the nation-state replaced feudalism

(Eisenstein 1983).[7] In England, members of the Stationers Guild established in 1557 received a publishing monopoly on the condition of "rigorous self-censorship" (Jaszi and Woodmansee 1994:6). The monopoly arrangement eventually spawned "pirates"—called by that name then, as so-called "digital pirates" are with respect to new media today (Johns 2009)—who flouted it to profit from market demand. The rise of modern state power was thus linked to the rise of personal authorship and its feature of proprietary control, as well as outlaw activity that was illicit because it interfered in a contractual relationship between state and subject.

Secularization was another factor that contributed to the personalization of authorship in the sixteenth and seventeenth centuries. Enlightenment thinkers transferred, or at least extended, divine authority represented by God's utterance of the biblical word to human will purposefully exerted in the world. Despite fierce disagreement over the nature of human subjectivity, both Hobbes (1996), who had a lasting impact on natural law theory and positivist Anglo-American jurisprudence (Coyle 2003),[8] and Descartes (1996), his even more broadly influential interlocutor, called this human actor an "author." Like other factors, this philosophical development unfolded in a broader context. As early as the late sixteenth century, a lawyer made

[7] Biagioli (2006:1142) describes a similar "push toward the figure of the author" in nascent patent law during the Venetian Renaissance. Rulers granted luminaries of the scientific revolution privileges in exchange for control over inventions with military potential. Biagioli is clear that Renaissance princes cared only for the utility of the invention and not for its ideational attributes or their ascription to the individual inventor on some personal basis. In this, proto-patent again seems somewhat similar to proto-copyright insofar as governments were motivated by security issues and dealt with authors as artisans rather than as artists (see Woodmansee 1984, cited below in this chapter's main text).

[8] Positivism takes the somewhat flatly descriptive view that the law is what it is, depending on the existing assortment of statutes, judicial decisions, etc., and their actual interpretation, rather than what it ought to be according to some philosophical perspective (Hart 1961).

the analogy of human author to divine author explicit during a court case that alleged illicit copying before the Paris Parlement (Pfister 2010). Notably, that lawyer still represented the printer who brought the suit, not the writer.

Thus, the transformation in authorship during this early modern period occurred slowly and under assorted political-economic and other conditions. For example, the guild system for printing perpetuated a pre-modern notion of the individual author as a "craftsman" who served to shape and circulate information well into the eighteenth century, and in "unstable" coexistence with authorship's gradual endowment with spontaneously creative, "original genius" (Woodmansee 1984:426–427). Conversely, the guild's control of printing created incipient tensions of ownership that contributed to the system's mutation into a more modern corporate form and ironically promoted the eventual transfer of ownership from its members to individual authors. The printing press made each copy of a written text valuable as a market commodity while vastly expanding both supply and demand. Technical control of the press soon became less valuable than control of the copies (Feather 1994).

As Feather observes, this shift created new pecuniary value in both copies and their initial content, which ultimately facilitated a realignment of authorship and ownership. On the one hand, unlicensed printers had an incentive to make and sell copies of licensed printers' works. Crown licensees then brought these pirates into the fold by granting them profit shares, thereby undermining the licensing limitations of their own guild monopolies. On the other hand, the regulatory regime's focus on policing the commoditized copies ironically created value in the content that went into a set of copies. Somewhat like the famous legend of the original Coca-Cola recipe locked in a vault, that content imbued each copy with an "essential uniqueness" (Feather 1994:207). Although the regulatory regime still focused on the "integrity of the copies

themselves" (Feather 1994:208), that integrity implicitly rested on the copies' source. Living

authors were that source with respect to the growing number of brand-new manuscripts. By

paying authors for the initial text, printers affirmed that authors had some kind of property

interest in it. Both Continental and English laws also sometimes required an author's consent

before publication, signaling a concern for some kind of moral claim, albeit still rationalized as a

censorious bulwark against libel, sedition, and blasphemy (Rose 1994). An as-yet "dimly

perceived" (Feather 1994:208) authorial right of ownership percolated toward the surface.

It breached the surface in the eighteenth century in England and then the new United

States. At the century's advent, the 1710 Statute of Anne was a legal landmark that ostensibly

continued printers' ownership of copy but also limited the monopoly's duration and established

authors as the initial (and reversionary) right holders (Bently and Ginsburg 2010; Rose 1994).

At its close, the (English) Literary Copyright Act of 1814 affirmed what had become routinely

accepted decades earlier: both that an author retained for life some proprietary interest in his

work as its creator, and also the new economic view that he could freely assign that right by

contract to a publisher (Bently and Ginsburg 2010; Feather 1994). The U.S. Constitution that

came into effect in 1789 mandated Congress "to promote the Progress of Science and useful

Arts, by securing for limited Times to Authors and Inventors the exclusive right to their

respective Writings and Discoveries" (U.S. Const., art. I, §1(8)). Congress quickly exercised that

authority through a 1790 statute that presaged the two aforementioned features of the 1814

English one (1 Statutes at Large 124).

These individualistic features of creativity and autonomy describe an author who is a

liberal citizen. Locke (1960), the great theorist of liberalism, may have drafted the arguments

that persuaded Parliament to allow the printers guild monopoly to lapse in 1694, leading

eventually to the reforms of the 1710 statute (Patry 1994). Analogy from Locke's theory of property rights based on an individual's use of land or labor on it remains a touchstone of U.S. IP policy (Damstedt 2003; Shiffrin 2001).

The early nineteenth century ushered in two further developments that solidified the modern regime: romanticism and capitalism. Romanticism's crucial, twofold contribution was to "minimize the element of craftsmanship…in favor of the element of inspiration" in writing, and to "internalize the source of that inspiration" as "emanating not from outside or above, but from within the writer himself" (Woodmansee 1984:427).[9] The result was a metaphysical transmutation, the effects of which on social attitudes and copyright law are difficult to overstate. The "cult of the romantic author" (Burk 2007:605) is the linchpin of copyright. As Burk, one of its present-day legal critics, explains:

> The logic of copyright, the logic of *expression*, however, is indeed quite different [from "the logic of science"]. It effectively assumes that originality, the touchstone for copyrightable subject matter, stands outside the causal order of the universe. It is part of the romantic view. A considerable body of scholarship has now explored the myth of the "romantic author," a sort of fictional, solitary genius from whose fevered brow original expression springs full-blown, like Athena from the head of Zeus. This authorial caricature, drawn from a nineteenth century vision of creation, continues to animate copyright law with the assumption that creative expression originates from an isolated creator. [Burk 2007:604]

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[9] Woodmansee places the emergence of this ideal earlier than some other scholars, in the seventeenth century, and sees its artisanal predecessor persisting concurrently for longer, into the eighteenth.

In the U.S., a court assessing copyright claims is "not so much systematically hostile to works that do not fit the individualistic model of Romantic 'authorship' as it is uncomprehending of them" (Jaszi 1994:38).

During the same period, capitalism finally wedded authorship and ownership, cementing the transformation of authorship's ancient theology of "decisive origination" (Williams 1977:192) into a capitalist doctrine of exclusive property rights against the world (so as to exchange at arm's-length with it). Once again, the philosophical or aesthetic aspect emerged hand-in-hand with political and economic ones. Capitalism placed control of the technical means of all sorts of production in the hands of the bourgeoisie, including artistic production, which thereafter occurred under different economic arrangements than in preceding eras (Williams 1981).

That same class was central to the reconstruction of European (and U.S.) society along a public–private divide (Habermas 1989). New forms of cultural production like the novel reproduced this divide symbolically and materially. The novelist expressed her private self into the public world as a romantic author. Fully modern copyright law regulated that expression as a market commodity in line with the broader legal apparatus of the market economy. Dickens' famous crusade for copyright protection in the U.S. is one illustration of this fusion (Allingham 2001).

In place by the mid-nineteenth century, the fully modern regime can be taken to mean one in which authorship became abstract, that is, generalized as a type and anticipatory of token variations of that type (see Sherman and Bently 1999). Authorship could categorically embrace proliferating new forms or packages of cultural expression. This abstraction was grounded both socially and legally. Socially, it consisted of the quality of original genius and its proprietary

entitlements, which expanded to cover many kinds of cultural production. Legally, it consisted of copyright law's explicit predication on that quality. The regime's historical seams were erased by mythologizing this kind of authorship retroactively as the natural source of copyright, when in fact intellectual and doctrinal construction of a "general right of ownership" called this authorship into being (Bracha 2008:190). Bracha calls this construct "completely new," but it can also be viewed as an especially effective ideological consolidation of some of the preexisting strands of authorship into modern authorship–ownership.

In addition, whereas scholars usually emphasize this abstract detachment of authorship from its sources in social activity, the internalization of authorship also nestled ownership deep within the individual subject. Ownership was naturalized almost beyond the reach even of other modern, liberal theories like Locke's requirement that labor or productivity justify proprietorship. For example, despite the hand-in-hand pressures of industrialization and an ideology of freedom of contract, U.S. judges did not accept work-for-hire transfers of copyright from artist to employer until the early twentieth century because it separated the actual author from ownership (Fisk 2001).

Industrialization and free market ideology did exert enormous pressure in favor of modern copyright, however. In the U.S., a larger industrial sector included a growing volume of information-based arts and technologies and political factions to protect the new interests (Fisher 1999). Fisher identifies a discursive conversion in the legal profession around this time as well. Instead of a pejorative "monopoly," IP became "property," enjoying property's heady status in nineteenth-century capitalist ideology.

The modern interpretation of authorship–ownership relies on three principal ideological justifications that consolidated earlier ideas. The first is a Hegelian or Kantian "moral right"

inherent to the dignity of the author as a person (Carter 1990). The second is the Lockean use or labor theory discussed above. The third is a social bargain rationale. Society grants an author a temporary monopoly as an incentive to expend the effort to express ideas and circulate them, because otherwise the easy reproduction of those expressions without compensation would dissuade authors from making the (or as much) investment (see Litman 2001). Scholars and judges commonly point to the U.S. Constitution as the exemplar of this last justification, with its Congressional mandate, quoted earlier, "to promote the progress of science and useful arts" (Fisher 2001).

Scholars sometimes highlight a divergence between the Continental emphasis on moral rights and the Anglo-American emphasis on the other, economics-oriented theories (Kwall 2010). But they often overlap in theme and practice (see Hansmann and Santilli 1997; Shiffrin 2007). This overlap precedes the modern regime. When the Renaissance painter, Titian, applied for a Venetian "privilege," or monopoly, he cited both an interest in capturing the fruit of his labor and also moral standards of honesty and fraud (Witcombe 2004:xxvii). In one of the first English cases to see a writer as litigant, rather than a printer, Alexander Pope asserted both moral and economic claims (see Rose 1994). Rose identifies the decision in that case as a turning point in the expansion of literary and then other kinds of copyright because the court deemed immaterial the nature of the object, which in that instance was Pope's correspondence. It thus set the stage for the nineteenth century abstraction of copyright. More recently, some U.S. scholars have been skeptical that authors create works because of pecuniary incentives from the state, or that courts decide cases based on incentive effects rather than more conventional property law

principles (Balganesh 2008; Lemley 2004).[10] Personhood interests of dignity and prestige enter the U.S. debate (Cherensky 1993) and seem present even in economic debates about the utility of extending copyright expiration dates (see Liebowitz and Margolis 2005), especially because the author's lifetime is often one of the key dates under discussion.

In addition to longstanding overlap among the justifications, successive waves of globalization have spurred convergence. Many countries signed the Berne Convention in the late nineteenth century. The U.S. acceded to it in 1989.[11] Subsequent negotiations through the World Trade Organization and other multilateral and bilateral treaties have further smoothed out some differences.

Hollywood thus entered a fully modern scene as sound recordings and motion pictures emerged at the end of the nineteenth century. The entertainment industry became a driving force in the copyright regime's expansion to these additional forms of cultural production and its extension of conceptual aspects such as the duration of the monopoly (Decherney 2012). For a long time, copyright, in turn, helped Hollywood overcome a tension. The high principles of romantic authorship sit uneasily alongside industrial mass production of authored commodities (Creeber and Martin 2009). In the 1930s, Walter Benjamin (1968) famously rued the "age of mechanical reproduction." He argued that the reproduction of an original work of art, especially on a mass scale, destroys a person's specific, contextualized experience of the original, and with

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[10] Copyright's defenders respond that the incentive theory makes a smaller claim than its critics suppose. It does not posit profit incentives as a cause of creation, but rather as a motivation to invest in creation in a way that results in socially useful products (Hart 2011).

[11] See note 3. Samuelson (2006a), however, observes that it would be a mistake to surmise that the U.S. is always converging toward European standards. U.S. IP policy remains strongly influenced by economic theories of IP and nationally specific constitutional interpretation.

it the original's authentic "aura." Paradoxically, the expansion of modern copyright on the basis of mass reproduction may have acted as a bulwark against the idea of licit copying by a non-author and thus "as a powerful countervailing force against the demystification of art" (Tehranian 2009:1401).

In that paradoxical sense, the modern regime's heyday enhanced and culminated the irony initiated by the printing press whereby both copies and original content harbored value for authorship. The monopoly privilege of copyright produced "artificial scarcity" (Patry 2011:1), and therefore value, at precisely the point where content and copy intersect. Hollywood's business model thrived on that artificial scarcity. Companies recouped substantial production costs by charging high prices (relative to what they could have without the monopoly) and restricting the volume of transactions. They even charged multiple times for the same content, for example, by releasing it sequentially in different formats, such as the "windows" model of releasing the same motion picture sequentially in theatre, then on premium TV, basic cable, network, and home recording. The ideology of authorship–ownership supported this system and naturalized it. Patry lists a number of ways that new media change the equation: lower barriers to entry, lower costs of production and distribution, market integration, and profit potential from a relatively larger volume of relatively small transactions compared to traditional films, books, and records. By the 1990s, new media had spilled far enough beyond the confines of government laboratories and major research institutions to spur predictions of a looming shift in the authorship–ownership paradigm.

II. <u>Paradigm Lost</u>.

In Chapter 1, I defined new media as the assimilation of electronic technology and the tools to use it into everyday practices of cultural production and communication.[12] The technology is digital code that commands electronic devices to produce images and sound (and perhaps other sensory stimuli one day) (see Dorney and Friedland 1990; Thurlow et al. 2004). Electronic means a device controls the flow of positively and negatively charged energy across electrons, which are the subatomic particles from which "electricity" is derived. The core of the device is a physical circuit of wires and switches that effect change in the charge. These changes are effected through sets of commands, which are either pre-programmed into the device or result from immediate human intervention on another component of the device such as a keyboard. Typically, these commands are written in a software code or language, which the device is programmed to translate into a so-called machine language that causes the circuit to act. Commands thus result in unseen computing activities like storing information as well as the images and sound presented to human perception at the "user interface," such as a screen or speaker.

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[12] "New media" is a controversial term among scholars because it has been used to describe many different, sometimes overlapping things, usually technological qualities. The controversy itself makes the term a productive one to use (Chapter 10 describes how it came up at a professional storytellers' meeting as a cautionary tale). It also is the simplest and most recognizable term to capture both the technological and social aspects of the definition supplied here. More important than what is new and why in terms of the technology itself is what its social consequences may be (see Chun 2006).

An electronic system can be analog or digital, but new media are associated with digital technology because of the difference in how information is processed.[13] Analog devices are "continuous" in that they convert a physical attribute of whatever they are used for into a proportional electrical signal. Cassettes and film usually work with analog devices, so that wavelengths, for example, are encoded magnetically on the cassette tape and converted back to sound as the tape runs through the machine past circuits called heads. Digital, by contrast, means the electronic changes are signaled through a binary system of 1's and 0's that correspond to lower or higher levels of energy (measured by voltage). Digital devices encode the same kinds of things as analog devices, but package information in "discrete" units. This detachment from proportionality to the underlying attributes makes it possible to manipulate those attributes as they are encoded, for example, to eliminate static noise. It also means that digitally encoded information packets can be cut up and reorganized.[14]

What makes these devices—or computers, to use the contemporary definition of a term that once applied to human operators—into "culture machines" is that this technological "simulation" of information affords human "participation" (Lunenfeld 2007:2–4). For example, a person using a computer anywhere with an internet connection can call up a "miniaturized" and "aetherized" (Lunenfeld 2007:4) version of Da Vinci's *Mona Lisa*, the original of which is a physical painting about the size of a movie poster that hangs in the Louvre Museum in Paris. With any number of software programs, she can send the image to friends, perhaps with an

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[13] See Proakis and Salehi (2007) for more detail.

[14] This characteristic can be seen when a computer "buffers" streaming video. The digital information does not come linearly but in non-sequential packets that must be reassembled at the point of playback.

annotation or even having manipulated the portrait to add, subtract, or change elements, including animation and sound to make the smiling woman appear to talk.

People have used traditional media and analog technology to manipulate representations of the *Mona Lisa* in works of art and consumer kitsch for a long time. What makes new media new in terms of the intersection of technology and social practice is that the numerical representation of information (digital binary code) makes it possible to vary, automate, and modulate (or mix and match) that information more easily, cheaply, and quickly than ever before (Manovich 2001). This capability facilitates things such as Girl Talk's leap of scale from traditional music sampling, discussed at the beginning of this chapter.

 In addition, both the *Mona Lisa* and Girl Talk examples illustrate that new media are not divorced from traditional media. On the contrary, new media incorporate books, films, paintings, and so forth in huge volume. The technological attributes of new media make possible the large-scale network known as the internet (as well as smaller intranets), which allows that volume to be archived, retrieved, altered, and shared (Gane and Beer 2008).

This meld of technology and social practice, especially when scaled through networks, affects authorship in a basic way, namely, that:

> the computer's ability to break a work down into digital fragments and to recombine these fragments with bits and pieces from other works and databases means that an author who commits his work to a digital database exposes it irretrievably to a potentially indeterminate degree of sampling, rearrangement, and recombination. [Goldstein 2003:24]

Even where authorship was already collaborative, individuals now have more flexibility to enter and exit online information databases, across large distances from one another, and at different

times, all without losing much continuity (see Boyd et al. 2010; Davis and Brewer 1997; Cherny 1999; Murray 2000). Individuals also have more flexibility to interact anonymously or pseudonymously, including through the use of digitally produced avatars (Boellstorff 2008; Danet 2001; Rheingold 2002). At the hypothetical extreme, Goldstein predicts the replacement of human authorship by artificial intelligence.[15]

Scholars of media and of law see in these possibilities a disruption of both the creativity and control aspects of modern authorship. Just as modern authorship had antecedents that eventually coalesced into a tight-knit ideology of intellectual property, the trend toward that ideology's disruption predates new media in artistic as well as in philosophical and even legal critiques of authorship. The artistic front may have opened first. The peak of modernist principles invited surrealist and other attacks around the early twentieth century (Ricardo 2009). These forays presaged the eventual replacement of the formal structures of modernism in favor of those of "cyberculture" (Ricardo 2009:3).[16] Modernism binds personal expression to the specificity of its medium. A photograph captures a scene according to a particular combination

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[15]Already, computers conduct many automatic operations on information in the background where the user never sees them (Sundén 2003). This submerged bulk of the computing iceberg has raised questions about a computer owner's liability for inadvertent copyright infringement during those processes (Lichtman 2000, 2009).

[16] Cyberculture is a contested term, although more often in terms of its implications rather than what it refers to. It derives from "cyberspace," coined by the science fiction writer, William Gibson (1982, 1984). Cyberspace is "the conceptual space where words, human relationships, data, wealth, and power are manifested by people using CMC [computer-mediated communications] technology" (Rheingold 1993; see also Turkle 1995). Cyberculture is human activity in that space. See also Silver 2000 for a review of cyberculture's various invocations. A slightly broader definition would approximate this study's definition of new media by including cultural activities that occur not exclusively in the representational world of electronic media but also between it and the physical or otherwise mediated spaces of social interaction.

of technical qualities and compositional principles. A film unspools according to a combination of technical qualities and narrative expectations. By contrast, cyberculture invites collage, or "frenetic co-fusing toward bastardisation" through "ubiquitous…appropriation and remediation" (Ricardo 2009:3).[17] Collage is expression of the information database, with its own generic formalism that is associated with freewheeling modularity and disregardful of modernism's compartmental boundaries as to both author and artwork.

As the twentieth century advanced, philosophical critiques that detached the robust subject from expression and control over its interpretation laid intellectual groundwork for this practical fragmentation of authorship (Creeber and Martin 2009). Among those critiques, two lastingly influential essays appeared in the 1960s, both of which aimed explicitly to deconstruct the ideal romantic author. In 1967, Roland Barthes (1977) wrote the "Death of the Author." His immediate target was the "New Criticism" school, which rejected the interjection of authorial voice into literary texts but allowed for authorial biography to inform its interpretation (see Wimsatt 1954). Barthes contended that this position merely reinforced the romantic ideal. He

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[17] An early coinage of the term, remediation, was by researchers seeking to ground special education in Vygotsky's "socio-historical" approach to psychological development. Cole and Griffin (1983:70) defined remediation as "a shift in the way that mediating devices regulate coordination with the environment." Scholars of media use "remediation" to mean the repurposing of existing media content in new media content (and sometimes form) (Lunenfeld 2007). It builds on McLuhan's (1964) sweeping analysis, which contained the famous aphorism, "the medium is the message"—which other scholars sometimes discuss in conjunction with Vygotsky's work (see, for example, Ivic 1994; Jones and Hafner 2012:2). Among other things, McLuhan described and embraced a separation of media form and content, which anticipated the collage approach in new media. Remediation is now most closely associated with its eponymous usage in Bolter and Grusin's (2001) description of new media, which is discussed in connection with authenticity in Chapter 4.

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historicized that ideal as the ideological product of "English empiricism, French rationalism and the personal faith of the Renaissance" (143). Strip away this ideology of personality, he claimed, and "writing is the destruction of every voice, every point of origin" (142). This seemingly paradoxical claim derives from a view of language as a "ready-formed," "immense dictionary" (146–147), which the author merely channels as a "scriptor" (145). Language and its literary products "refuse to fix meaning" (147). Thus, an author can neither commit original expression nor control the meaning of an expression, and therefore also has no claim to own it.

In 1969, Michel Foucault (2003) delivered a lecture that asked, "What Is an Author?" Like Barthes, he described language as a web in which meaning constantly loops back on itself. Writing, then, is the "interplay of signs arranged less according to its signified content than according to the very nature of the signifier" (378). Like Barthes' analysis, this statement elevates language's closed, self-reproducing system—"the nature of the signifier"—and loosens the fixedness of meaning by demoting "signified content." Like Barthes' scriptor, the writer necessarily engages with this system on its terms, and so "the writing subject cancels out the signs of his particular individuality" (378).

Foucault took a somewhat different historical perspective from Barthes in leaving open whether this self-erasure of the author is an ironic culmination of modernity rather than a timeless fact of linguistic structure. But he agreed that the romantic author arose historically, in Foucault's view as an antidote to the Enlightenment's erosion of divinely ordained personal authority. This antidote, which Foucault called the "author function" (390), was a necessary proxy in the absence of an adequate "theory of the work" (379) that could otherwise define the boundaries of a linguistic work as a social object that exists in a particular context of space and time. Language has proved too infinite and elusive for such a theory to take hold. The result is

that the work acquires a sacred aura of "transcendental anonymity" (380),[18] while the "author function" persists as the locus of juridical, political, and economic power.

They unite in modern copyright, although Foucault does not use that term. Language's aura rubs off on people who embody the author function, which "is a certain functional principle by which, in our culture, one limits, excludes, and chooses; in short, by which one impedes the free circulation, the free manipulation, the free composition, decomposition, and recomposition of fiction" (390). Capitalism organizes this relationship into patterns of commodity production and consumption and an imagined hierarchy of originality and authenticity over copy.

Barthes, Foucault, and others became sources for legal scholars who began criticizing modern copyright rules in the 1980s and 1990s (Boyle 1988; Jaszi 1994; Fukumoto 1997). Those legal scholars, in turn, gained traction and became sources for others when new media made romantic authorship's shortcomings seem empirically evident (see Mitchell 2005). Even earlier, however, and contemporaneously with Barthes and Foucault, some legal scholars were already excavating authorship's history and deploying it to criticize the modern regime's continuing entrenchment despite rapidly changing technological and social realities. In 1966, Benjamin Kaplan, a prominent copyright jurist, argued that "when copyright has gone wrong in recent times, it has been by taking itself too seriously, by foolish assumptions about the amount of originality open to man as an artificer, by sanctimonious pretensions about the iniquities of imitation" (1967:78, quoted in Johnson 2007:699). He viewed the "cult of originality" and maximalist ideas about property as going hand-in-glove. Curing the law of the former would

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[18] Compare Benjamin's lament of the loss of art's authentic aura, described earlier. Foucault's dismissive talk of transcendence chides that kind of romantic attachment to supposedly unique artworks. Foucault's critique of authorship thus connects to the aesthetic of collage and cyberculture. These issues will return in the discussion of Hollywood's commodities as authentic (or inauthentic) in Chapter 8.

help "abate feelings of proprietorship" and change attitudes toward copyright (Kaplan 1966:850; see also Saint-Amour 2003). He even predicted that computers would impel this shift, promoting collaboration and automatic processes and rendering the strictest copyright laws not only obstructive but also obsolete. Kaplan rowed against the tide, but had some influence on policy and then on the resurgent critique of copyright in the late twentieth century (Jaszi 1994).

In 1970, Stephen Breyer, then a law professor and now a member of the U.S. Supreme Court, published an essay that took aim at the three rationales that underpin modern copyright: moral rights, Lockean property rights, and economic incentives (discussed above). Still widely cited, the piece challenges the belief that copyright is the most effective or efficient way to protect what is valuable in authorship. It suggests that traditional contract and tort law are more precise and more flexible means of vindicating copyright's moral rights and Lockean property rights rationales.

More damningly, Breyer exposes the economic incentive rationale that underpins U.S. copyright policy as a justification that, at least in practice, maximizes IP owners' monopolistic profits, rather than one that maximizes market efficiency. In other words, more naturalistic or moralistic property rationales lurk in the rules. Breyer's immediate target was a pending Congressional bill that would continue the trend of extending copyright duration, a trend that indeed continued for several more decades despite his efforts. But this kind of critical analysis of economic arguments fits within a current of dissent from the mainstream "economic analysis of law" (see Kennedy and Michelman 1980) and a more specific dissent with respect to IP law that emerged as the copyright wars intensified with the early wave of new media at the turn of the century (see Boyle 2000). Breyer even applied his analysis, which had centered on book publishing, to then-nascent copyright proposals concerning then-nascent computer technology.

With that technology and its uses now widespread, more recent critiques have made the case that authors under new media conditions benefit from the resulting lower barriers to market entry even though subsequent monopoly pricing may also be reduced (Bell 2008; cf. Van Houweling 2005). In a more general way, these kinds of arguments add to a sense of flexibility of authorship, rather than rigidity, that new media have inspired in many scholars of both aesthetics and law.

Thus, rather than create a suddenly new problem for modern authorship–ownership, new media brought latent challenges to the foreground socially and legally, not least by appearing to fulfill some of the prophecies. By the 1990s, the spreading technological affordances inspired a famous prediction that a new media era will be one of "wine without bottles" (Barlow 1994). New media allow people to drink and spill and share information (the wine) independently of its conventional packaged forms (the bottles). The metaphor captures how new media slip through copyright's regulatory net by eluding conventional, relatively easily policed forms of fixation in a tangible medium of expression.

The proliferation of new media now drives even greater divergence between society and law, partly because law lags (Depoorter 2009), and partly because copyright's most strident advocates press for even stricter controls. On the one hand, more and more people take advantage of electronic technology every day. The U.S. Census Bureau reports a nationwide internet usage rate of more than eighty percent as of 2010 (U.S. Census Bureau 2012). A 2012 United Nations report found that approximately one-third of individuals worldwide use the internet, with the fastest rates of increase (from still the lowest bases) and sharpest declines in

cost occurring in developing countries (International Telecommunications Union 2012).[19] Many of these people use this technology to produce, share, and consume other people's copyrighted information in unlicensed ways. They may or may not know when these activities infringe someone else's IP, and they may or may not care. The ordinariness is the most remarkable development.

On the other hand, many IP owners do know and care and have exerted political and legal muscle to strengthen the regime and infringers' liability. Both U.S. domestic laws and international treaties are becoming stricter, despite the setback to the Stop Online Piracy Act and Protect IP Act in early 2012. These laws often work together with broader efforts to regulate social activities on the internet (Lessig 2006). The Recording Industry Association of America famously closed down the popular early music file-sharing website, Napster, with a federal lawsuit (*A&M Records, Inc. v. Napster, Inc*., 239 F.3d 1004 [2001]). It continues to pursue hefty monetary damages from individuals who share music files without license (Walsh 2010). The Motion Picture Association of America (MPAA) appointed the former four-term U.S. Senator and erstwhile presidential candidate, Christopher Dodd, as its leader in 2011, as the organization accelerated its efforts against unlicensed downloads of copyrighted material.[20] Long considered

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[19] Ginsburg (2008) cautions not only that attention and assumptions about new media in academic and policy literature are skewed toward developed country populations (and perhaps elites within them) who can spend the time, money, and leisure on the technologies, but also that recognition of the imbalance is also often skewed by positing a "digital divide" that papers over complex practices within developing countries. Although what divide exists has changed rapidly even in the few short years since she issued that admonition, it is well taken; this study happens to "study up" (Nader 1972) or "study sideways" (Ortner 2010) in order to understand one piece of one key node of this enormous global cultural disruption.

[20] See www.mpaa.org, accessed February 22, 2013.

futile, recent quantitative research indicates that the crackdown may have turned a corner in reducing unlicensed downloads and increasing paid purchases and rentals through authorized websites (Sweeting 2013).

To hear echoes of earlier centuries would not be surprising. As Mark Twain supposedly said, history does not repeat itself, but it does rhyme.[21] Intellectual, technological, political, economic, and artistic factors once again conspire to modify the meaning of authorship and perhaps radically transform it. And a media industry is once again at the center of "a second Gutenberg shift" (Kelly 2008). As Kelly observes, Hollywood long withstood assaults against its IP because the labor and capital costs of filmmaking production were much greater than those of filmmaking consumption, and in much greater disproportion even than print or other media commodities. New media have instigated a dramatic reversal by eroding this "user asymmetry."

An example of the reversal's industrial scale is recording technology. Beginning with the popularization of cassette machines in the 1980s, but taking off exponentially with online digital software programs in recent years (see Litman 2006b), technology manufacturers have given consumers tools to store, copy, transfer, and manipulate almost any entertainment industry product (including by skipping the commercials that fund television and online video programming). Entertainment companies have sued both the consumers and manufacturers for copyright infringement, resulting in several landmark IP cases concerning videocassette

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[21] Twain apparently did write more Santayana-esquely, "It is not worthwhile to try to keep history from repeating itself, for man's character will always make the preventing of the repetitions impossible" (DeVoto 1940:66–67; see also Cannon 2012). Twain's rigorous oversight of his own authorship rights during his lifetime makes the apocryphum comically ironic. See http://www.volokh.com/posts/1108756279.shtml, accessed January 29, 2014.

recorders (VCRs),[22] digital file-sharing (such as the Napster case cited above),[23] and digital video recording (DVR).[24]

These lawsuits have required courts to choose between the airtight rhetoric of modern authorship–ownership and a more fluid framework that amounts to a series of limited social licenses with echoes of pre-modern arrangements: a circumscribed monopoly privilege for entertainment producers; shelter under copyright's "fair use" exception for individuals to do more than passively consume entertainment products; and latitude for technology producers to avoid "secondary liability" when those consumers use the technology to violate entertainment copyright (Jaszi 2011; Samuelson 2006b). Exemplifying the paradigmatic confusion caused by new media, major judicial decisions have become more frequent, while failing to provide uniform guidance that resolves the legal meaning of authorship–ownership.

The costs and benefits, and the winners and losers, are not always easily identified, in any event. The recurrent fear that new media will destroy profits and entire business models has not been vindicated, at least not as predicted. Many observers claim that television and film have survived despite recording and editing technology, and perhaps thrived because of them (see Masnick 2009). They hold up the music industry's aggressive prosecution of copyright around the turn of the millennium as a contributory cause of its decline and perennial crisis and a cautionary tale for motion picture businesses (see Rastiaula and Sprigman 2012).

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[22] *Sony Corp. of America v. Universal City Studio, Inc.* (464 U.S. 417 [1984]).

[23] *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 [2001]; *MGM Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 [2005].

[24] *Cartoon Network, LP v. CSC Holdings, Inc.*, 536 F.3d 121 (2d Cir.) [2008]. See also Gardner (2013) on an ongoing case concerning DVRs that skip advertisements completely (rather than fast-forwarding through them).

In addition, even within the entertainment industry, the interests at stake are more complicated than a simple division between copyright "expansionists" winning on the legal front and "anarchists" able to evade controls (Eckersley 2004:91). The wide range of attitudes toward copyright law and norms, uses of those rules, and practical constraints upon those uses cut across tidy groupings of artist, corporation, or consumer (Zimmerman 2007). Some artists depend on copyright norms or enforceability to make a living,[25] while some well-established stars and sub-industries profit from embracing consumers' transgressions of copyright (Tehranian 2003). A common refrain at my study's field sites was that even the biggest Hollywood companies are looking eagerly for ways to accommodate new media expectations. And, as professional storytellers or aspiring ones, those participants who are not part of the industry establishment or are frustrated with its aggressive copyright posture nonetheless remain invested in maintaining some kind of bond between authorship and ownership. Meanwhile, the pressures that instigated the conflict are only intensifying with the accelerated evolution of the variety and volume of new media technological tools as well as how people use and expect to be able to use them.

In sum, romantic authorship-as-ownership developed historically into a powerful modern regime to govern communicative expression. A variety of intellectual, technological, political,

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[25] The apparent prominence of corporations, rather than individuals, at the forefront of copyright prosecutions and political lobbying may be largely a function of the regulatory framework. Besides being able to sustain political campaigns, large corporations are more likely to have the money and experience to comply with rules like the registration prerequisite to collecting monetary damages for infringement (Netanel 2008). (Copyright is automatic upon expression of a work, but the ability to enforce it requires timely registration with the U.S. Copyright Office, for a fee. (17 U.S.C. §411). The precise rule varies according to when a work is created because Congress has periodically overhauled the copyright system and does not necessarily apply new rules retroactively to existing works. The last major overhaul took effect in 1978.)

economic, and artistic factors arced and twisted for hundreds of years from the Renaissance to

the nineteenth century. Only toward the end of that period did authorship–ownership congeal as

a hegemonic (and not uniform) norm and law of intellectual property. New media have

reinvigorated alternative or dissenting ideas about authorship that diverge from the traditional

view, and collectively can be called remix authorship ideology. Reviewing the history of

authorship underscores that it was made, and perhaps now is being remade.

CHAPTER 3: Literature Review

As the preceding chapter indicates, the pressure new media place on the modern framework of authorship has invigorated research by scholars of law, anthropology, and media studies. This literature informs my practice-oriented approach but also leaves a gap by not bringing authorship and ownership into dialogue early enough and by largely accepting the romantic connotation of authenticity at face value.

I. <u>Legal Scholarship on Copyright and New Media</u>.

Legal scholarship, much of it historical analysis cited in the preceding chapter, has demonstrated that authorship does not have a natural meaning but developed a modern ideological one under specific conditions. In addition, legal scholars have relied on that excavation to reconsider authorship as the automatic precondition of copyright ownership in light of new media conditions. At the same time, however, they usually still take authorship as a cultural given, while ascribing it more transient and collaborative characteristics than the romantic ideal. Ownership remains a separate and subsequent status to be conferred by law. The various justifications of the IP regime are adjusted to fit authorship's revised characteristics. This approach risks renaturalizing authorship and ownership. Arguably, it has contributed to a degree of stagnation in proposing reforms that can move policy past the era of copyright wars.

New media have inspired legal scholars to reenlist earlier critiques, including from literary and philosophical sources, against an "origin myth" (Silbey 2008:319) of the romantic author. Echoing the artistic notion of collage or the technological database, some describe

authorship as always borrowing the "raw materials" (Litman 1990:1011) of preexisting cultural

background or engaging in "creative play" (Cohen 2007:1179) within the affordances of that

background. Focusing more on the social side of collage and database, others depict authorship

as irreducibly collaborative (Burk 2007; Craig 2007; Hughes 1999; Tehranian 2005).

Legal scholars critical of the copyright regime have seized upon remix to characterize

this fragmented, transient authorship in opposition to existing doctrine. They explicitly associate

"remix culture" (Lessig 2008b) with new media and connect it to disruptive implications for the

regime of romantic authorship. For Lessig, remix culture represents a reawakening from

twentieth century consumerism and its false dichotomy of "writers" and "readers." Primordially,

remix culture "is the basic human condition" (Tushnet 2010a:2).

New media similarly have revitalized a pre-nineteenth century view that an ownership

monopoly is an aberration tolerable only as far as necessary to achieve a policy goal, rather than

a vindication of a good or natural order. Furthermore, the economics of new media expose

hidden political and moral biases that prejudice the supposed arithmetic of the incentivizing

monopoly (Boyle 2000; Patry 2010). In addition, new media remind scholars that intellectual

property is not identical to the older kinds of property from which it was analogized. New media

magnify IP's comparatively greater nonrivalrous quality (Shiffrin 2001). A perfectly rivalrous

good is exhausted by one person's consumption, like food. A perfectly nonrivalrous good

remains available for others, like sunshine. More like sunshine than food, expressions of

intellectual work can be reproduced and circulated with relative ease. The copyright monopoly

is designed to impede that easiness, and instantiates the idea of author-as-owner in doing so.

New media make it easier again by diminishing copyright's apparent effectiveness, leading to

questions about its configuration or even relevance.

Just as authorship and ownership are two sides of the IP coin, remix has a discursive counterpart in "piracy." Similarly to how remix captures the fragmentation of authorship, piracy, or the contest over piracy, captures the fragmentation of ownership, including questioning whether property is the right legal framework to govern intellectual products at all. To begin with, the analogy from highway to seaway robbery to media theft has been popular for a long time (for example, see the discussion about the English printers guild in Chapter 2). Its widespread invocation at a turning point in the political economy of printing echoes today in ubiquitous talk about "online piracy" and "digital piracy." While remix speaks primarily to a contest over the creative quality of authorship, piracy speaks to a contest over the control aspect, which translates into normative or legal ownership. Although piracy has more negative connotations than remix, piracy, too, has its defenders. Some, like the creators of the well-known (to some, infamous) file-sharing website, piratebay.se, are explicitly "anti-copyright." Others argue that copyright has become so expansive that it traps innocuous activities that happen to "quote" others' work, like YouTube videos of a child dancing to a popular band's song (Lessig 2008a). These defenders merge piracy with remix as laudable cultural expression under an unjust regime.

This literature helpfully extends the deconstruction of spontaneous individual authorship toward the reconstruction of socially grounded authorship. It also relates the designation of ownership to social considerations rather than only individualistic ones. One illustration is the rethinking of copyright's rationales to bring the author's social interlocutors into the picture. Some scholars counterbalance authors' moral rights to expression with the audience's (Drassinower 2003). Similarly, others argue that the incentivized social bargain is premised as much on the audience's interest in access as the author's in control (Litman 2011). From a

Lockean perspective on value creation through use or labor, others observe that overly strict copyright laws may encourage wasteful appropriation from the original commons (Shiffrin 2001).

At the same time, however, the legal literature usually retreats to a view of authorship as a status on which the law confers (or from which it withholds) ownership status. For "pragmatic" reasons that echo Foucault's author function, "we are unwilling to discard" the "idea of creativity, individuality, ability" located in the author as "the source of the words, notes, actions, and images that she creates" (Craig 2007:267). The practicality at issue stems from a more general dependence of U.S. jurisprudence on a robust subject who has precisely the same traits of creativity and autonomy as the romantic author (see Schlag 1991). The law operates on and through such subjects. Like the traditional regime, IP critique finds those subjects as authors in the social world and (re)organizes their relationships as owners or non-owners in the legal one.

Thus, for example, remix replaces romanticism as a naturalistic definition of authorship. Legal scholars use new media to "operationalize" (Kelty 2004:548) culture in order to reverse the artificial accretions of copyright law in favor of natural modes of expression.[26] Essentializing terminology, evident in phrases cited above such as "remix culture" and remix as the "basic human condition," suggests a move no less ideological than the one that led to the idea of intellectual "property" in the first place. Legal scholars are sensitive to the rhetorical power of modern copyright ideology as an instrument of politics and policy (see Reyman 2010 for a

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[26] This viewpoint perhaps gestures toward the collage-like, repurposing notion of bricolage as a characteristic mode of cultural psychology made influential by Lévi-Strauss (1962a) and applied to discursive principles by Derrida (1978).

discussion in Foucauldian terms). While reconfiguring that rhetoric may be a suitable doctrinal objective, doing so invites equal scrutiny.

Furthermore, even putting to one side the vivid rhetoric of remix and piracy, the thrust of legal IP critique harbors a contradiction, or at least a core ambiguity, that is traceable to the imprint of the robust legal subject. To take one example, romantic authorship is turned on its head, so that "transformation is the essence of the authorship process" (Litman 1990:1010). Yet, as Litman continues, through transformation, "an author, be she writer, composer, or sculptor, seeks to communicate her own expression of the world." Litman argues that the originality requirement behind modern authorship–ownership is incompatible with the "strong version" of her argument, namely, that "all authorship is the product of astigmatic repackaging of others' expression" (1010). As a music scholar puts it, "Remix is meta—always unoriginal" (Navas 2012:4).[27]

But Litman contends that practical issues of claim demarcation render originality incompatible even with the "hardly controversial" proposition that "all works of authorship, even the most creative, include some elements adapted from raw material that the author first encountered in someone else's works" (1990:1010–1011). Her particular solution is to expand the public domain of non-copyrighted or copyright-expired works, so as to "permit authors to avoid the harsh light of a genuine search for provenance, and thus maintain the illusion that their works are indeed their own creations" (1011). That solution leaves intact the theoretical problem that combining vestigial attributes of romantic authorship with remix authorship shrouds the

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[27] Navas explicitly takes the legal use of the remix metaphor back into music criticism in just one example of the cross-pollination occurring during the contemporary intellectual foment.

value of authorship in "illusion." Such maneuvers may work as a doctrinal matter, but not as a social scientific explanation of the underlying stakes.[28]

Moreover, the example just discussed points to a more general practical problem evident also in other reform proposals. Like the public domain proposal, they would expand areas already carved out of copyright's scope. For example, works might be more quickly deemed transformative (and therefore essentially new), rather than derivative (essentially copied), leading to a more fragmented distribution of authorship and ownership claims over pieces or phases of a work (Tehranian 2005). Or the safe harbor exemptions of fair use might be widened as long as such use still does not interfere directly with commercial profitability (Tushnet 2008). These solutions carve authorship and ownership into finer slices. But they do not solve the problem of identifying the origin and terminus of competing property claims based on given subject positions of author versus author. Although not a new problem,[29] new media exacerbate it. It

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[28] Price and Pollack (1994) observe that lawyerly and literary analysis have different hermeneutical approaches to authorship. In particular, the former face pragmatic pressure both to make specific decisions and create generally applicable categories for decision-making, as well as carry the commitment to the liberal subject cited in the text above.

[29] The challenge precedes the involvement of new media. A 2013 discussion among IP law professors on an email listserv debated a confusing principle stated in a 1989 judicial order in a case alleging infringement by the makers of the 1985 film, *Rocky IV* (Stallone). The principle is that the non-infringing, original portion of an otherwise infringing derivative work would fall into the public domain. Some of the listserv participants, however, observed that the case also implied that the infringer's own original work could still be copyrighted, while still others argued that it would be impossible to extricate new from derivative material when the former depended for meaning on its relationship to the latter. This debate, especially the last argumentative position, encapsulates indexicality, the semiotic principle discussed in Chapter 5 that explains how authorship and ownership are inextricably bound together.

may be intractable, at least under the current legal framework. For now, at least, actual laws are going in the opposite direction of these proposals, toward greater entrenchment of the modern copyright regime.

To summarize, new media have reinvigorated legal critiques of modern copyright. This resurgent literature provides insights into authorship and ownership as socially grounded activities. But it also then retreats to a vision of authorship and ownership as individually derived statuses joined together in the regulatory regime. Going further down the path of social grounding can illuminate the sources of value—especially social authenticity—that bind authorship and ownership into a framework of sociolegal organization.

My approach is not radically different from some recent legal scholarship on this topic. For example, Cohen (2012) draws primarily on science and technology studies to move beyond the law's constrained version of liberal subjectivity and uncover a deeper understanding of what is at stake for the "networked self" in a new media age. Her aim is to pay "attention to patterns of everyday experience within the emerging networked society" (26). She argues that authorial creativity is always "decentered" and situated "within the social, cultural, material, and spatial realities that shape and constrain it" (81). Her solution to the brittle clash between modern copyright and those everyday experiences is to preserve copyright's role in economic regulation, but redirect it away from a false dichotomy between the interests of individual authors and society at large, and toward a balance between the social need to distribute the benefits of cultural production and the social desirability of fostering the "mobility" of creative "play" (102–104). Leaving aside the (admittedly still somewhat vague) policy recommendations, Cohen's book is driven by theory rather than empirics and ranges more widely than my study. But they are compatible in methodological orientation.

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Even closer is Silbey's (2011) interview-based investigation of how various kinds of authors and their lawyers and business managers talk about their everyday experience of creativity and the IP regime. She, too, is interested in how these individuals imagine authorship and ownership prior to their coalescence in abstract doctrine or as a particular person's specific IP concern. At the same time, her study is more directly concerned than mine with how those imaginings translate into behavioral engagements with formal IP law.

In addition, Silbey conducted structured interviews and analyzed the narratives they generated. Her "data is based on what is reported, and thus this study is foremost a project about popular consciousness about creative and innovative processes and its relationship to IP law" (2011:2099). She identifies tropes and metaphors that interviewees express across the interviews. Linguistic anthropologists would interrogate interview data on more levels of linguistic structure and meaning-making, but Silbey's keen rhetorical analysis nonetheless produces findings that resonate with this study's as well as with Cohen's. These findings include the value that interviewees place on creative play, their multiple motivations for working creatively, and their strong but varied (across person and context) opinions on what the law is and does.[30] They also display complicated attitudes toward property, on the one hand applying metaphors of land or tangible goods to their intellectual products, and, on the other hand, eschewing absolutist possessory interests in it.

Approaches like Cohen's and Silbey's also resonate with more targeted critiques of the ownership side of the equation. With respect to the rhetoric of property, Boyle (1997) has

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[30] See also Oliar and Sprigman's (2008) interview-based study of professional comedians' attitudes toward joke appropriation and IP law. They found similar fluidity of opinion, in contrast to the more compartmentalized or absolute views that IP doctrine usually imputes to authors. Methodologically, their study is aimed principally at reporting interview comments as a check against doctrine.

argued that a more accurate analogy from Anglo-American law's primordial category of real property (land) to intellectual property would render IP fragmentary, partial, and susceptible to regulation, rather than absolute. Patry (2010) reiterates this point with specific reference to the economic and other everyday changes wrought by new media. All of these analyses fit with a semiotic perspective that the supposedly abstract qualities of a modern market are as morally inflected as any other arrangement (Keane 2008). IP is a prime example of this modern abstraction as well as its historical contingency.

There therefore exists a bridge from some legal treatments to my practice-oriented, anthropological approach. But I bring critiques of authorship and ownership into dialogue with one another at an even earlier point, in order to obtain a deeper understanding of the social meaning and value vested in ownership of authored expressions.

II. Sociocultural Anthropology and Media Studies.

Anthropologists and other scholars of media have shown that authorship is not as discrete or individualistic as romantic ideology holds. One angle has been to demonstrate that consumers are not passive even when it comes to traditional mass media. "Active audiences" bring their own interpretive positions and frameworks to their experience of media products (Askew 2002; Morley 1993). This insight has old roots in literary criticism and builds on earlier media studies analyses about advertising and other kinds of messaging,[31] but it also grounds this kind of audience participation in the richness of particular ethnographic contexts (see Abu-Lughod 2005;

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[31] See Chapter 2, including note 17 citing McLuhan.

Bishara 2008; Larkin 2008). This perspective parallels legal scholars' elevation of audience interests in the copyright system, cited in the preceding section.

Another parallel is how new media have inspired rethought of audience involvement in creating and circulating information beyond audience response, interpretation, or reinterpretation. For example, people who play multi-player online video games influence game developers' choices during product development, provide feedback on glitches or desired modifications post-launch, collaborate with one another within the game world during regular play, and often play the game in ways unanticipated by the developers (and sometimes "hack" the software and rewrite it to allow new uses) (Malaby 2009; Taylor 2006). The frequent replacement of "audience" with computer "user" or gaming "user" suggests this more proactive participatory stance (Banks 2013). "Player" also regains from older cultural domains its connotation of pleasurable, collaborative remix under relatively loose affordances (Ardévol et al. 2010; compare Cohen 2012, cited in the preceding section). Although without naturalizing remix polemically as some legal scholars do, Strathern (2005) somewhat similarly compares emergent new media co-authorship to an older storytelling tradition in Papua New Guinea that also requires a high degree of audience co-authorship because the lead storyteller deliberately supplies incomplete information to be filled in verbally or contemplatively by listeners.

The argument for this fragmented and collaborative authorship goes even further. One of the most influential examinations of new media in recent years describes a "participatory culture" (Jenkins 2006:3), in which, "rather than talking about media producers and consumers as occupying separate roles, we might now see them as participants who interact with each other according to a new set of rules that none of us fully understands." Partially echoing the "wine without bottles" metaphor, Jenkins proposes that a "convergence" of free-flowing content,

industrial reconfiguration of media, and audience's "migratory behavior" (2) in search of information is reworking cognitive and social habits and expectations. An anthropologist of media argues similarly that new media influence a wide range of social activities and conventions, as when wedding parties dance free-spiritedly down the aisle to a favorite pop song instead of marching to traditional music because it became popular to record and upload online these instantiations of that particular cultural "meme" (Bird 2010).

These perspectives on authorship as fragmented and collaborative ground authorship socially without the same disciplinary constraint of a commitment to a robust subject as legal scholars face. Yet these studies, too, typically keep the individual as the unit of authorship. They redistribute authorship among multiple individuals. So do those who push back against the idea of authorship as pure collage, reintroducing at least a "token" "use value" (Gray 2013) of the author who has authority over a media product and autonomy to create it. Although they set the stage to explore the tension between professional storytellers' commitment to their own role as authors and their commitment to the audience's full participation, these studies are less interrogative of what authorship itself consists of beyond adding more voices. In addition, those who explore how new media may shape the constitution of those voices emphasize the standpoint of the audience or user. This study looks instead at how those who occupy the traditional producer role envision thorough audience participation in authorship, which illuminates an additional angle on what ground-floor activities of authorial collaboration (and competition) look like on the ground.[32]

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[32] Compare Dornfeld's (1998) examination of public television production, during which producers think about the audience as the producers make the shows.

A slightly more indirect way in which anthropologists, anthropologically minded legal scholars, and some media scholars have revisited authorship is by pointing out various ways in which IP law itself generates paradoxes of remix and piracy. A central tension is that copyright and other forms of IP "enable the reproduction and repetition of cultural forms as ever the same marks of authorial proprietorship, while paradoxically prohibiting and inviting their interpretive appropriation in the service of other interests and alternative agendas" (Coombe 1998:6). As many of the legal scholars cited earlier also have observed, piracy from one perspective may be creative inventiveness from another (see Meurer and Coombe 2009).

Meurer and Coombe note that new media exacerbate the tension because its techniques and ethic of collage, sampling, and do-it-yourself encourage "lifting" in the dual sense of appropriation and decontextualization. The act of production and circulation is thus unmoored from clear starting points of who authored or owned or altered or took information, which confuses legal and normative battle lines. One dimension in which this tension unfolds is within a work, as in the question of who owns property when transactions with real-world economic value—the sale of a virtual game weapon, for instance—occur inside a video game that players are supposed to have some degree of autonomy to shape (Taylor 2006).

Remix and piracy also meet in the question of transformation of works that so preoccupies legal scholars of copyright. Fan fiction is probably the biggest issue in this regard. Fan fiction occurs when someone takes existing characters or other story elements and creates new relationships and plots (Bird 2010). Fan fiction is a huge area of cultural production and research on its own and is beyond the scope of my study.[33] But, while it, too, focuses on the

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[33] It also differs in its focus on audience reappropriation of published work, whereas I follow professional storytellers and their ambivalent attitudes toward *ex ante* audience participation.

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audience standpoint, it highlights the challenge of demarcating authorship not only as among individuals, but also in relation to ownership. One example is the erotic novel trilogy, *Fifty Shades of Grey* (James), which began as fan fiction of the immensely popular *Twilight* (Meyer) series (Boog 2012), and has become very commercially valuable intellectual property in its own stead, to the benefit of the *Fifty Shades* author. New media played a key role in making its fan fiction incarnation popular, as well as in marking the transition to a separate property. The author initiated the fan fiction on a general site for such works with clear depictions of the *Twilight* characters, then transferred it to her own proprietary site once she changed the characters and parts of the story to *Fifty Shades*.

The relation of remix to piracy also plays out on a broader, cross-cultural scale. Philip (2005:205) borrows Foucault's "author function" to posit a "pirate function" as a "key component in the shaping of early twenty-first-century law." Those with power but most to lose from the fragmentation of authorship conjure the pirate in order to stifle that fragmentation legally and normatively. Furthermore, Philip accuses many supposed copyright critics inside the U.S., including Lessig, the great champion of piracy-as-remix (cited frequently in this chapter and Chapter 2), of inconsistent and perhaps nationalist or racist application that delegitimates as piracy precisely those kinds of activities in which non-U.S., especially Asian, actors engage.

Philip's critique echoes in the analysis of "cultural property." The modern intellectual property regime does not recognize forms of authorship that are not based on the romantic ideal, and therefore denies them ownership. One result is to expose vast amounts of cultural production that is done collaboratively and inter-generationally—ritual song, for example—to appropriation by individuals who can frame their own actions in IP terms (Carpenter et al. 2009; Riley 2005). Carpenter et al. (2010) observe that the author of the *Twilight* series and her

licensees now have IP rights to much of the cultural property of the Quileute Tribe because she defined and commodified it by writing Quileute characters, places, history, and customs into her novels ("sampling" it, in essence).

Coming full circle, the irony shows up in the discursive rhetoric of a community responsible for disseminating the technological affordances of new media, namely, software engineers. They work through the meaning of "free" as applied to "free software" in self-conscious search of a classically liberal solution to the clash between modern IP and new media developments (Coleman 2009). They compare and combine similes of free "as in beer" and free "as in speech."[34] The beer analogy suggests de-commoditization of information; from a software hacker perspective, a sort of noble piracy. The speech analogy invokes a deeply ingrained political principle corresponding to remix. This debate is more than rhetorical musing and produces moral stances that the community has employed in political action (Kelty 2008; Leach 2009). Free software becomes a simile in its own right, as in Lessig's "free culture" (2004) polemic for liberation from a commodity system of IP that restricts personal expression.

To summarize, anthropological and media scholarship parallels legal scholarship in describing a fragmented, collaborative quality of authorship as well as how new media expose tensions inherent in the modern IP regime. But the anthropological and media scholarship also more richly grounds authorship in its contexts of use rather than taking it as a cultural given. Part of this grounding includes the role that variable and mutable ideas about ownership play in defining authorship. A corollary is that ownership, like authorship, is a relational concept rather

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[34] Video gamers may engage in a similar discourse about "ownership," which Newon is currently investigating (personal communication, March 8, 2013).

than an absolute one, collaborative as well as exclusionary depending on its social context (Strathern 2011).

The last point is another on which the anthropological and legal literatures can be read together. One irony of the modern regime's intolerance of alternatives is that many of those alternatives include frameworks of possession that could in fact support a relational property regime (Aragon and Leach 2008; Geismar 2005; Myers 2005; Noble 2007; Riley 2000). Strathern (2005:15) identifies the possibility of works being "original and derivative at the same time" in societies that configure authorial and proprietary interests in different ways. It is only the absolutism of authorship and ownership in the modern regime that excludes these alternatives, even though the modern regime itself is absolutist only because of ideological insistence. Much of legal scholars' criticism of copyright is aimed at reasserting the professional legal view of property as a "bundle of rights" (a commonly used phrase), any number of which may be subject to others' claims or government imposition in the name of social objectives (Boyle 1997; Patry 2010).

Others point out that even Anglo-American law has existing, fundamental principles that may compete with modern copyright, such as the free speech necessary to engage civically (Balkin 2004; compare Tien 2000 for an interpretation of speech-acts as romantically authored expressions of citizenship) or the fundamental rights ("substantive due process") that protect citizens' autonomy (Rothman 2010). These arguments begin to reveal that the discourse of IP is not merely full of analogies to language or metaphors of language, but also produces and reproduces an actual, non-analogical connection between language use and social organization. In this light, the analogies are themselves examples of that actual connection insofar as they are efforts to influence it embedded in the discourse of IP. For example, the rhetorical assumption

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that code as in technology and code as in law are translational equivalents has specific

argumentative and policy consequences (Gillespie 2007).

At the same time, the anthropological and media studies leave at least two gaps. One is

that they focus empirically on, and problematize, ownership to a much greater extent than

authorship, and therefore re-theorize ownership but not really authorship.[35] The other is that none

of the existing literature analyzes in great detail linguistic structure and language use as the

communicative vehicle for contests over IP and as a non-analogical partner of social

organization in the construction of meaning.

III. <u>The Author as a Role in Linguistic Anthropology</u>.

For their part, linguistic anthropologists may have gone too far in the direction of

considering authorship as fragmented and collaborative. Three main models are inspired by

Bakhtin, Goffman, and Garfinkel, respectively. Bakhtin often writes of the author as a person,

but this subjectivity is heavily qualified by his core idea of dialogue. At one point, he defines

"an author" as "a creator of the given utterance whose position it expresses" (1984:184).[36] This

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[35] This focus may reflect the tendency of anthropologists to objectify and instrumentalize legal concepts such as

property, and of legal scholars to do the same to anthropological concepts such as culture (see Riles 2004).

Authorship is pushed to the background twice: first, because legal scholars take it as a cultural given (whether as the

romantic ideal or remix) and apply it to its legal consequence of ownership, and, second, because anthropologists

take property as the problem of inquiry (an apparent frame of social organization) and subsume authorship into it.

[36] Bakhtin (1986:73) defines utterance as a "unit of speech communication," which means a piece of language

defined by the arrangement of speaker and addressee around it. It can be as concise or lengthy as necessary to

constitute a recognizable dialogic relationship, and utterances can overlap or nest within one another. An utterance

definition already harbors ambivalence about authorial subjectivity—the creator—by introducing a possibly competing source, the position. He continues that, "of the real author, as he exists outside the utterance, we can know absolutely nothing at all."

This author bears some similarity to Foucault's later formulation of the author function, in that for Bakhtin it is the "utterance" that "receives an author" (1984:184). An utterance is "discourse," and discourse is language use beyond the "logically and semantically referential relationships" of abstract linguistic structure. Meaning resides in discourse as always having this "extralinguistic" or "metalinguistic" "dialogic relationship" between utterances. Anyone called an author serves to make dialogic interaction possible by "embodying" a position or source of expression, but true authorship depends on the relationship between utterances and can have diverse forms, including being "the product of a collective effort" or "created by the successive efforts of generations." Authorship can be fragmented within a seemingly singular work or expression, as Bakhtin (1984:6) writes of Dostoevsky's novels containing "a plurality of [authorial] consciousnesses." Authorship also extends across the dialogic relationships that connect expressions and interpretations of expressions across space and time (or "chronotopically," see Bakhtin 1981:252).

What matters, therefore, is not the person called the author but how she "voices" (e.g., 1981:325) utterances in ways that set up dialogic relationships. For this reason, "the word…is performed outside the author, and it cannot be introjected into the author" (1986:121–122). But the author remains more than the transcendental fiction she becomes for Foucault. The author-

thus really can be identified only by analyzing language using Bakhtin's framework. But the term is commonly used by scholars to mean an identifiable unit of language as used in social context. That definition is sufficiently precise to maintain consistency in using the term or citing to its usage beyond specific discussion of Bakhtin's work.

as-embodiment still produces utterances aimed at eliciting "responsive understanding" (68)—that is, a dialogic reaction—from an addressee, such as another character inside a story, the audience of a work, or a conversational interlocutor. Even if none is present, to author an utterance is still to aim toward responsive understanding from a "superaddressee" (126) or ideal representation of an addressee.

Goffman, too, emphasizes the fragmentation of the author and the collaborative nature of authorship. But he does so by dividing the production of language during linguistic interaction (the analytic role of speaker) into three parts. The author is "someone who has selected the sentiments that are being expressed and the words in which they are encoded" (1981:144). This role is distinct from both the principal, or "someone whose position is established by the words that are spoken," and the animator, or "sounding box" or "body engaged in acoustic activity" or "individual active in the role of utterance production." Duranti (1997) gives the basic example of the White House press secretary animating a speech authored by staff and delivered in the name of the President.

From one angle, Goffman's stripped-down author thus largely retains the characteristics of the romantic, modern author in terms of creativity and control, at least within an encounter. But from another angle, this author may not be the ultimate or original source of what is expressed or the one who expresses it in social context. Or this individual author may be fragmented herself, consisting of a technical author who projects a social author through the other speaking roles, for example, by selecting how she will animate the pronoun, "I," to position her knowledge or moral stance in a particular way relative to a situation or other people.

Linguistic anthropologists often combine these two models. Irvine (1996) makes a theoretical case for doing so. She argues for mutual shaping between Bakhtin's dialogic

structure and Goffman's participant roles. Participants in an interaction project the past, present, or future interactions that stand in dialogic relation to it. This projection, in turn, defines and fragments their immediate roles by framing how they understand the immediate talk and their respective positions within it.

Linguistic anthropologists also often combine Bakhtin and Goffman with conversation analysis, developed from Goffman's insights as well as Garfinkel's (1967) ethnomethodology.[37] Although he does not write about authorship as such, Garfinkel similarly undermines subject-centered production of language in favor of intersubjectivity and context. For participants in a social situation to formulate a "recognizably rational account" of what is happening depends on their being able to assemble "bits and pieces" of information from the "'repertoires' of whosoever might be consulted via the common work of conversations" (17). People share the work of creating context and, with it, meaning (Schegloff 1992). Although not the same as Bakhtin's dialogism, both Goffman's (1981) "participation framework" of roles and the ethnomethodological approach also retain the author while redistributing her attributes. In addition, where Bakhtin supplied the superaddressee ideal in order to account for the ineluctably social quality of even the most singularly authored utterance, both Goffman and Garfinkel take the multi-person situation as the primary unit of linguistic analysis, so that the social significance of language use depends on "cooperative effort by a number of participants" (Duranti 1997:316; see also Duranti 1986a).

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[37] Schegloff (1988) famously critiques Goffman for predicating interaction on primary structures of ritual form and individual psychology rather than an irreducibly social unfolding *in situ*. But even that critique is framed as a debt to, and dialogue with, Goffman. While acknowledging that dispute, Heritage has more recently claimed Goffman as a key, even main, progenitor of conversation analysis (Heritage and Clayman 2014).

Innumerable linguistic anthropological studies use these models. Some apply them to new media contexts, almost always wholly online ones.[38] Duranti (1986b) enlists conversation analysis to examine email greetings. Jacobson (1996) transfers a range of linguistic anthropological ideas to online settings where participants must use different kinds of cues to distinguish contextual information than is available in face-to-face interaction. Reed (2005) discusses something like Bakhtin's dialogism in terms of how blogs position their writers, audiences, and the texts themselves as agentive actors in different and varying ways. The contributors to Thurlow and Mroczek 2011 discuss various ways in which co-participation and voicing produce knowledge, establish hierarchy, form identities, and display style in text messaging, video gaming, and other areas. Danet (2001) adds a linguistic dimension to the consideration of cyberspace as an arena of play. Thus far, linguistic anthropologists do not appear, however, to have turned their findings from new media back onto their theory and models. Axel (2006) criticizes the discipline for an ideological bias in favor of face-to-face interaction that impairs ethnography of these other modes.

To summarize, this trio of approaches to authorship as communicative activity parallels the legal, sociocultural anthropological, and media studies literatures insofar as all posit authorship as more fragmented and collaborative than the romantic ideal allows. But the linguistic anthropological models go farther in analyzing that fragmentation and collaboration as qualities of authorship rather than individual authors. They thus provide a way to connect the

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[38] More common is literature on new media language use that addresses ideologies about correct or standard language and its subversion (e.g., Baron 2008; Herring 2008; Jones and Schieffelin 2009; Thurlow 2003). (The notion of language ideologies is defined in Chapter 5.) Some discusses how the alteration of time and space relative to face-to-face interaction affords new ways of participating together collaboratively.

linguistic, communicative characteristics of the concept of authorship to what people do as authors in social contexts.

At the same time, authorship has become almost entirely a tool in linguistic anthropological research. Often, it has been supplanted by the application and elaboration of the sophisticated frameworks of voicing, participant roles, or conversational sequencing. Fragmentation and collaboration have become axiomatic, subsumed into rich descriptions of how language use and social structure or action ground each other. This dissolution of authorship loses some explanatory purchase as to precisely how co-constructed authorship connects to social differentiation. It also begs the question of whether or not it has become an ideological concept. Refocusing on authorship itself as an analytic problem allows inquiry into both its constitution and its social function as communicative activity.

One way to do so is through authorship's symbiosis with ownership. The two concepts have been treated together for a long time. One of the early articulators of modernity, Hobbes (1996:112), made an analogy between property and authorship, writing in *Leviathan*:

> And he that owneth his words and actions, is the author….For that which in speaking of goods and possessions is called an Owner…speaking of actions, is called an Author. And as the Right of possession, is called Dominion; so the Right of doing an Action, is called Authority.

Although Hobbes was focused on different persons' political and legal roles, the analogy is one of the early transfers of divine authorship to secular, human situations with broader implications. Hobbes (1996:112) distinguished between the author-as-owner and the "actor" whose "words and actions [are] Owned by those whom they represent." This distinction is a legal one between an agent and a principal. Although the terminology does not overlap precisely, Goffman

borrows from this heritage for his tripartite speaker. His definition of principal includes a

parenthetical, "in the legalistic sense" (1981:144). He employs metaphors of "rights" and

obligations and of "policing" the participatory boundaries of an interaction (135).

Furthermore, Goffman's notion of "footing" is a metaphor of real property (land) claims.

Footing is the basis for his investigation of speaking roles, including authorship. Footing refers

to when an interactional "participant's alignment, or set, or stance, or posture, or projected self is

somehow at issue" (Goffman 1981:128). In the vignette he uses to introduce the concept, in

which Richard Nixon tries to wrong-foot Helen Thomas with a comment about women in pants

suits, Goffman writes that "implied, structurally," in such a comment "is that women must ever

be ready to change ground, or, rather, have the ground changed for her, by virtue of being subject

to becoming momentarily an object" rather than a participant—landless, one might say.

Moreover, Bakhtin even more directly continues a Hobbesian analogy. In one passage,

he writes that:

> Everything that is said, expressed, is located outside the "soul" of the speaker and does
>
> not belong only to him. The word cannot be assigned to a single speaker. The author
>
> (speaker) has his own inalienable right to the word, but the listener also has his rights,
>
> and those whose voices are heard in the word before the author comes upon it have their
>
> rights (after all, there are no words that belong to no one). [1986:121–122]

Although cross-linguistic translation may be misleading when it comes to phrases like "belong

to," "inalienable right," and "comes upon it," one of Bakhtin's preeminent translators into

English, while discussing the challenges of translation, makes the point that Bakhtin himself

emphasized the boundaries necessary for dialogism on any level (Emerson 1984:xxxii; compare

Heidegger's 1971 reflections on the boundaries that make dialogue possible). Thus, although

Bakhtin argues explicitly against a metaphor of authorship as subjective ownership in an absolute sense, he embraces implicitly a metaphor of authorship as intersubjective ownership in a relative sense. The latter is much closer to professional lawyers' understanding of property as a bundle of rights subject to others' claims, rather than absolute dominion.

I argue that the analogy or metaphor of authorship to ownership in fact exposes an actual, non-analogical connection between them. Set within a long historical intertwinement of creativity and control, to write of the author as owner like Hobbes does or against authorship as ownership like Bakhtin does is to concede some conceptual link or commonality between them. Furthermore, studies of authorship as a component of linguistic communication and authorship as artistic expression are linked historically. For example, legal historians have observed that only in the nineteenth century did the modern model finally erase a more fluid notion of authorship as a communicative activity (Rose 1994), in which the author was a conduit of knowledge but also a more active participant than Barthes' "scriptor." One might think of a medieval monk transcribing a treatise and annotating it with commentary or tangential musings. Bringing the specific concept of authorship back to the center of the linguistic model illuminates its linkage to social organization running all the way from semiotic to social theory. Doing so puts analysis on firmer ground to explain things like how authorship and ownership fuse non-analogically in modern authorship ideology, as well as how critics of copyright tease apart that fusion to distinguish, Goffman-esquely, between the act of expression, the source of expression, and the ultimate beneficiary of expression.

IV. <u>Authenticity Tied to Authorship</u>.

Bound up in the question of authorship is one of authenticity. Authenticity is perhaps

starkest in the romantic ideal because that ideal nestles creativity and control deep within a

robust subject and has a continuing influence on the most common connotation of authenticity.

But authenticity remains a defining criterion of authorship in critiques of that ideal as well. It is

more implicit in legal and anthropological deconstructions, whether they keep authorship within

the subject or seek authenticity in authorial fragmentation and collaboration. It is more explicit

in media scholarship that addresses whether new media fundamentally alter subjective

experience. The long shadow cast by authenticity throughout the literature on authorship

provides support for my argument that the pursuit of authenticity is a pivotal factor in the mutual

construction of authorship and ownership through communicative practice. At the same time, I

tease apart authenticity and authorship, defining authenticity (in Chapter 7) in a way that makes

it an analytic variable rather than already conflated with specific ideas about what authorship is.

A starting point for the convergence of a particular connotation of authenticity with

modern authorship ideology is the transfer of authorship from God to human. The language—

and, specifically, the terminology—of modern social theory and philosophy highlights the

endurance of this source. In his analysis of artistic (chiefly literary) production, Bourdieu

launches a lengthy and biting critique of Sartre's (1956) existentialist masterpiece, *Being and

Nothingness*, and, in particular Sartre's analysis of the novelist, Gustave Flaubert, in which

Sartre seeks to distill being as pure ego, or "absolute responsibility" (Sartre 1956:710) or being

"unified in the world" (717). Sartre, Bourdieu contends:

introduces this sort of conceptual monster that is the autodestructive notion of 'original project', a free and conscious act of autocreation by which the creator assigns himself his life's project. With the founding myth of the belief in the uncreated 'creator' (which is to the notion of habitus what the Book of Genesis is to the theory of evolution), Sartre inscribes in the origin of each human existence a sort of free and conscious act of autodetermination, an original project without original which encompasses all subsequent acts in the inaugural choice of a pure freedom. [1995:188]

Bourdieu's objection is that Sartre recapitulates the ideology of modern authorship, in which "God is dead, but the uncreated creator has taken his place" (189). Whether or not one agrees with Bourdieu's criticism as a philosophical matter, it crystallizes analytically the infusion of the human author with the divine attributes of "autocreation" and "autodetermination."

In this transfer, authorship slid from being manifest expression of the authenticity of God—"the word"—to being social expression of the authenticity of a human. Pfau (1994:135) credits Hegel with turning authorship into a moral problem as the relationship between "inward authenticity of a 'conscience'" (or "I") and "pragmatic construction and affirmation of social and ideological authority" (or "we"). In order to master this problem and be an authentic author rather than a mere "scribbling writer" required a person to rely no longer on accurate transcription of the divine word, but instead on aesthetic skill in "gaining" or "demanding attention" (Ross 1994:231). Creativity and control merged in this romantic author.

In that merger, authenticity and authorship likewise conflated. Authenticity mediated authorship by defining its mission. Authorship mediated authenticity by expressing it. Taylor (2005:602) credits Mill with expressing this romanticism in liberal terms as personal autonomy that "celebrates creative self-authorship and encourages the development of those virtues (such

as integrity and authenticity) that support it."[39] This formulation endures, evidenced by Taylor's choice of terminology and that of other contemporary theorists such as the ultra-liberal (in a classical sense) Raz, who writes, "An autonomous person is (part) author of his own life" (1986:706) and has the "capacity" to self-direct.

The bond between authorship and authenticity survived the commoditization of authorship through intellectual property. It even survived industrialization of cultural production, despite the tension between high romanticism and market capitalism that led to Benjamin's lament for the authentic aura. For example, Silbey's interviewees express outrage about "reputational harm or interference with long-held project plans" (2011:2121) when someone infringes their copyright. They also claim distance from commoditization: "Thus, it seems, interviewees seek a way to express the value of their work outside the market, which for many seems quixotic or mysterious" (2120). But they do not disclaim proprietary interests. Rather, whereas market pricing mechanisms seem disconnected from the artistic labor invested, quasi-artisanal analogies to craftsmanship of tangible property are frequently invoked. Silbey concludes that the incentive rationale of IP does not motivate authors, "and all that matters is that what was taken was 'mine'" (2122). This "possessive impulse" (2122) demonstrates at least the continuing grip of autocreative and autodeterminative authenticity on authorship ideology.

New media have inspired rethinking of this bond. Some of the literature, mostly from media studies, more or less explicitly addresses how new media affect authentic experience and, by more or less direct extension, authentic authorship. This literature is ambiguous as to the role of authenticity. For some researchers, new media provide a new pathway for authentic self-

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[39] Taylor also proposes that Kant's "doctrine of virtue" similarly includes a notion of creative self-authorship.

authorship. Authenticity tends to be implicit and built in to the conceptualization of authorship that continues the inherited modern meaning. Hull and Katz preface an analysis of how:

> adults and youth in one Bay Area community used the powerful multiple-media, multiple-modality literacy of digital storytelling to articulate pivotal moments in their lives and to reflect on life trajectories. Their stories speak to how conceptions of self have much to do with how and why learn; the desire to acquire new skills and knowledge is inextricably linked to who we want to be as people. [2006:43][40]

The researchers therefore explore "participants' processes of authoring multimedia, multimodal autobiographical narratives" (43) and write of their youth subjects' "developing sense of agency" (61), how they "authored themselves" (68), and how they learned to "construct and assume authority" (55) (see also Davis and Weinshenker 2012 for a similar account).

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[40] Hull and Katz use multimedia and multimodal to mean the same thing. Lauer (2009) asserts that they do mean the same thing, and that multimedia is more of a business or popular term focused on deliverable or usable products, while multimodal is more of an academic term focused on design and process. The shared meaning is the employment of more than one technology of mediation. The difference is that modes "can be understood as ways of representing information" and "include words, sounds, still and moving images, animation and color" (227). Media are "'the tools and material resources' used to produce and disseminate texts" (quoting Kress and Van Leeuwen 2001) and "include books, radio, television, computers, paint brush and canvas, and human voices" (227). That said, however, Hollywood professionals often refer to Lauer's modes as media (mainly text, images, and sound, or one greater degree of concreteness as print, video, and audio), and to her media as "platforms." Some—industry lawyers, in particular—even more precisely delineated platforms as specific kinds of brands of "delivery mechanism." For example, Netflix would be a platform for delivering online streaming video (through a device such as a Blu-ray player and television set). To the extent relevant, I adopt the latter approach and consider the way information is made communicable to be media, and the method of communication as a platform or delivery mechanism.

For others, new media illuminate and encourage a return to authentic co-authorship. Authenticity retains the sense of originality through a transfer to authorship as originally or essentially collaborative. Miller's (2008) textbook on digital storytelling begins with a part on "new technologies, new creative opportunities" that roots the new participatory culture of new media in the most ancient storytelling traditions. After describing ancient Greek drama and Dogon rituals in West Africa, Miller observes that:

> Odd though it may seem, the rituals performed by the Dogons and ancient Greeks have a great deal in common with modern day digital storytelling. After all, they involve the use of avatars; they are a form of role-play; participants interact with each other and work toward accomplishing a particular goal; and they play out scenes that have life and death significance. [2008:8]

Miller goes on to draw a distinction with "classical" storytelling: "To me, these ritual reenactments are a far more intriguing model of interactivity than that of the old campfire stories" (8). Although they often embrace the campfire analogy as equally participatory, members of the professional storytelling community I followed similarly trace the authenticity of new media storytelling practices to an ancient lineage from which modern authorship deviated (Chapter 10 describes their narratives in more detail).

Another ambiguity in this literature is whether or not the changes wrought by new media fundamentally alter authenticity or merely redirect it temporarily. Because authenticity has long been bound to ideas about author and audience as subjects, a fundamental alteration would mean that authorship itself is changing. A redirection would involve superficial cultural changes, but the underlying system of authorship as authentic creativity and control would remain intact.

Fragmentation and collaboration, as well as remix, would not really change what authorship means.

For those with the first perspective, the shift from cohesive, temporally linear modern art to modular collage randomizes experience or renders it discontinuous. This difference occurs at both a technological and an experiential level. By definition, digital electronics sample data, repackaging information for transmission in ways that do not match the proportional correlation between a recorded piece of media and its reproduction that characterizes analog modes.

In addition, people read text and graphics differently on a computer screen than in a book. Both allow linear and non-linear reading, but traditional texts default to the former, while computers default to the latter with their network of windows, hyperlinks (that lead to more windows), and three-dimensional representations on the screen (Aarseth 1997).

From this perspective, the result is that electronic technology suffuses social and psychological engagement with the world (Turkle 1984). Much of that suffusion is linguistic or semiotic. Insisting that new media require attention to the "complex transactions between bodies and texts as well as between different forms of media," or "intermediation" (Hayles 2005:7), Hayles asserts that "digital code assumes new importance as the lingua franca of nature" (8) because it mediates experiences differently from speech or text, which she associates with Saussure and Derrida, respectively. Mind, body, technology, and culture co-evolve.

This integration of technology with subjectivity and social engagement disrupts the vague bond of originality that binds authenticity and authorship together. Often, scholars impart a wistful or rueful tone in describing how "the electronic semiotically constitutes a system of simulation—a system that constitutes 'copies' lacking an 'original' origin" (Sobchack 2000:150). Sobchack's primary topic is how this "representation-in-itself" (150) disorients the

(film) audience. But it implicates the author and the author's relationship to the audience. Echoing Benjamin, Mitchell (1992) seeks to explain why, for example, the public is outraged by the apparent manipulation of photographs. He argues that the photograph—an epitomic modern art—depends on authenticity conditions, especially the expectation that the technical act of image "capture" (14) relates to the specific space and time portrayed. By contrast, digital imaging is a constant process or performance; any image captured is just one moment among infinite possible permutations, so those conditions cannot be satisfied. Photographic manipulation seems morally illicit when the manipulation violates the expectations of image capture (as opposed to manipulations that more comfortably fit within expectations, such as unavoidable chemical processing or even things like tinting choices). As long as it was an exceptional violation, it stood out and could be artistic in its own way, a fact leveraged by Surrealists and other twentieth-century artists. Once it becomes the norm through new media, however, manipulation violates a system of romantic authenticity that implicates the author and the author's relationship with the audience. Digital technology goes hand-in-hand with a postmodern condition.

These media studies analyses echo in legal scholarship. A leading scholar of copyright and authorship suggests that new media move authorship into a "postmodern" era that is "beginning to seep into copyright theory and jurisprudence" (Jaszi 2011:413). Emergent cultural attitudes are less deferential to authoritative interpretation, grand narratives, compartmentalization of artistic genres, and stable values. In other words, these attitudes herald an imminent "move away from modernist author worship" (420). Jaszi illustrates the shift with two legal cases involving the artist, Jeff Koons. In 1992, he lost a copyright infringement claim based on his incorporation of other artists' material. In 2006, he won a similar case in the same

court. These bookends represent a transfer of authenticity—through its legal proxy of originality—from the romantic to the remixing author.

Jaszi also discusses some of the major court decisions that protected the use of VCRs, then DVRs (cited in Chapter 2). He argues that the protection of consumer videotape recording broke the grand narrative of copyright law that "concentrates authority in the copyright owner" (422). Granting the user control erodes the fusion of creativity and control that establishes authentic romantic authorship. The fusion was dissolved entirely in a judicial opinion protecting the use of DVRs, which Jaszi describes as displaying a "postmodern appreciation and understanding of the instability and contingency of information objects" in a world of "short-lived information phenomena" (423). He quotes the opinion where it discusses the fleetingness of any single unit of electronic binary code captured in discrete packages and reassembled, leaving the judges at a loss to find any copy of the original information that lasted long enough in time to constitute infringement. Thus, "data flow may escape [copyright regulation's] web of control" (423). By their technological nature, in this view, new media deny original authorial control. By extension, they thwart modern authentic authorship in favor of remix or bricolage. The paradigm of authorship defined in terms of expectations or habits about authentic cultural production and experience is changing.

For others, however, the core content of authenticity is not so much at stake. Rather, authenticity varies over time as a function of how seamlessly media seem to afford experience. New media may shift attitudes toward mediated information, but only as yet another iteration of a cycle of "remediation" (Bolter and Grusin 2001) according to which each novel media technology induces temporary self-consciousness about those attitudes before settling into

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routine like preceding technology.[41] A novel media technology inspires hopes that it will be the vehicle to break through the accretions of older forms of media that, their own novelty having worn off, seem to stand between an individual and "immediacy" (24), or non-mediated "pure" experience, which Bolter and Grusin equate with authenticity (54, 70). Yet the novel form's promise comes through "hypermediacy" (34), or the conspicuous interposition of the form into the experience precisely because of its novelty. Hypermediacy promises immediacy, which, ironically, it can approximate only by remediating existing, habituated forms (otherwise, it seems too jarring). For example, video games become progressively more like films in order to deliver a more authentic experience.

Insofar as the remediation hypothesis covers the same historical period and cultural geography as I have addressed in these chapters, peak moments of remediation—as with new media in recent years—seem to coincide with the assertion and testing of the bond of authorship and authenticity. This intensity makes it seem like paradigmatic change, and the remediation hypothesis could be read to support a significant rupture. But it may also mean that new media alter the bond at the margin. Certain remixing and piracy practices may be normalized. Yet, new media will eventually be absorbed as just another mode of mediation until the next thing comes along to inspire the quest for authenticity. New media, like any media, are "historical subjects" that are "less points of epistemic rupture than they are socially embedded sites (with the ongoing negotiation of meaning as such)" (Gitelman 2006:6).

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[41] Bolter and Grusin's argument echoes Heidegger's (1962:68–69) distinction between technology that is "ready-to-hand," or reflexively used, and that which is "present-at-hand," or noticeable. The remediation cycle further echoes Heidegger's (1977:5) elaboration that "technology is a way of revealing." The complexity of modern technology (based on Enlightenment science and afterwards), in particular, confronts a human as an "enframing" (9) of possibilities that requires her engagement to figure out what truths of experience it might reveal.

To summarize, authenticity has long been associated with authorship. Specifically, modern authorship not only is defined as individual creativity and control but gains value from the association of those attributes with a definition of authenticity that is often taken for granted. Yet other definitions of authenticity also exist, which, in turn, lend value to competing definitions of authorship. As they do with authorship itself, new media introduce ambiguity and tension to the definition and value of authenticity. The ambiguities lurk even in anthropological treatments in which authenticity is not typically an overt question. It remains a pivotal one behind inquiries into how new media mediate participatory culture, cultural property, social and psychological development (Boellstorff 2008; Horst 2009; Ito 2010; Karaganis 2007), and cultural ideologies (Gershon 2010; her book concerns the impact of social media on norms of how to communicate the formation and dissolution of sexual relationships).

I take the ubiquitous intertwinement of authenticity and authorship in the existing literature as an impetus to investigate their relationship further, including how the alignment of creativity and control as a measure of value implicates ownership, too. I blend the media studies emphasis on authenticity in cultural production with a less subject-centric, and more intersubjective, anthropological stance toward the construction of authentic experience. What characteristics of authenticity make it a scaffold on which authorship and ownership are co-constructed as a social regime through social activity?

That question raises another underexplored one: what are the linguistic qualities of that co-construction? Other than some interview data, the existing literature does not contain much linguistic data on the discourse of authenticity. In addition, linguistic analyses of authenticity rely heavily, if not exclusively, on a notion of language as semiotic representation adapted from formal linguistics. For example, Hayles relies explicitly on Saussure and Derrida for theories of

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speech and writing, respectively, that contrast with the new, digital code. Mitchell ties the photograph's authenticity to its reliability as a representation of a real scene, and contrasts the impossibly ephemeral quality of digital information.

The famous aphorism—affirmed officially (U.S. Copyright Office 2012)—that copyright protects expressions, not ideas, lends itself to this representational view of language. Copyright scholars who are also linguists use that view to explain the bond between information and representation (Dinwoodie 2010). Some liken expression of a copyrightable work to a speech act and infringement as infelicitous and therefore morally wrong (Stallberg 2008). Others extend the view that language works through selection and recombination of units to explain the expression of ideas (Durant 2010), which could support either a romantic or a remix view.

Non-linguist legal scholars who debate the underlying purpose of copyright law in terms of preserving expressions' "stabilizing meaning" (Hughes 1999:928) or the "stability of cultural hieroglyphics" (Tehranian 2005:151) betray a similar commitment to language as representational. Vindicating control over meaning through control over expressions benefits the powerful but also could help subaltern groups otherwise stymied in their ability to make "tangible interventions into the world of meaning" by "physically rewriting culture" (Tushnet 2010b:902). One proposal is to protect ownership in a work to the extent its meaning is "multivalent," or open to interpretation, rather than "monovalent," or subject to only one interpretation, like a mathematical equation (Burk 2007:606).[42] My contrasting approach is to look for the authenticity of authored meaning in its indexes, which is in many ways the linguistic equivalent of social grounding.

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[42] Burk concedes that the multivalent category is large because "no two members of an audience…will receive or understand the artist's expression in quite the same way."

To summarize, especially in light of new media, legal, anthropological, and media studies literature on authorship, including its relationship to ownership and to authenticity, largely denaturalize the modern regime. They posit authorship as more fragmented, collaborative, or continually repurposing than the romantic ideal allows. At the same time, some scholars risk naturalizing remix authorship ideology instead. More generally, these literatures stop short of analyzing how authorship (as well as ownership and authenticity) is constructed and deployed on the ground. I employ ethnographic methods to study that ground among a community of practice in Hollywood for whom authorship, ownership, and authenticity matter tremendously and are in tremendous flux.

CHAPTER 4: Methods

I.   <u>Data Collection</u>.

I have conducted fieldwork since 2011. I began preliminary research that involved collecting publicly available documents and attending some events open to the public in February 2011. I began working with human participants in December 2011 and the most intensive period of fieldwork occurred during the year to December 2012. My physical field site is a variety of Hollywood-related venues throughout Los Angeles. I also collected data online that was not necessarily posted by or circulated solely among people located in Los Angeles.

The two principal methods of data collection were document gathering and participant-observation (see Bernard 2006). Sometimes, these methods overlapped, in part because documents were distributed at events, but more importantly, because so much of the work done by study participants is online, including much of the work in which I collaborated for the Wyrdcon conference in June 2012 and for the Miracle Mile Paradox. Participant-observation varied in kind. At some events, I was only an audience member, especially in court, although I sometimes had informal conversations with other audience members at the margins of the proceedings. At others, different phases of the event coincided with more or less participation versus observation, such as scheduled networking breaks. Occasionally, a formal presentation involved the entire audience in a collective activity, as happened at the Storyworld conference in October 2012 when a group speaking about an educational initiative had the audience play a series of games to demonstrate some points about how collaboration and information flow work together. At Wyrdcon, I was an audience member for some talks, while participating in its

organization in other respects. Transmedia L.A. meetings, or "meetups," are informal

socializing events that include a more formal component when an invited speaker has the floor.

And I participated actively in producing the MMP.

Because my research question asks about discourse concerning a turmoil in ideas and

beliefs about authorship and ownership, the "multi-sited" (Marcus 1995a) approach described

above is appropriate in order to "follow the conflict" (110) between romantic and remix

authorship. That conflict sometimes narrows to a specific dispute between two parties, but is

mostly a more diffuse and graded one, although not as diffuse as "the unorganized practices of

various, unrelated users of copyrighted works, many of whom probably know next to nothing

about copyright law" (Lee 2008:1460) that often lead to key developments in copyright. Many

members of the community I studied occupy an intermediate position. Almost all have some

sophistication about copyright and a focused relationship to authorship and ownership because

they use and confront the social and legal constraints daily. Some are experts, usually either in

the social or the legal sphere. That bifurcation translated to one rough division between field

sites populated mostly by lawyers, who tend to emphasize the conventional framework but

recognize pressures on it, and those populated mostly by storytellers, who tend to recognize the

conventional framework but emphasize pressures on it. This division facilitated tacking back

and forth between ways of thinking and talking about the principal ideas and their current

instability.

In addition, multi-sited research was necessary because study participants work in a

multi-sited way. Document collection helps trace how information and commentary circulate

through a community of practice and illuminate how its members themselves "imagine"

(Anderson 1983) that community when they do not all regularly interact, especially face-to-face.

Members of modern professional communities also display ideological commitments to how profession-specific written texts are produced and circulated (Riles 1998). For example, Chapter 9 addresses how innovative filmmaking that deliberately tested artistic commitments about "realness" was taken up in a legal setting where different commitments to evidence applied.

This study also joins recent developments in anthropological methodology aimed at researching offline political economies that are "augmented by networked reality" (Fish 2011:17), such as following research participants through blogs, Twitter, and Facebook or, conversely, attending to media devices and circulation as part of everyday practices (Bird 2003; Jones and Schieffelin 2009). "Augmented" may be too mild; these professionals often work online or mobilely solo as much as together with others. To study new media is to recognize that the internet is part of everyday social practice, which means treating data from online sources as integral rather than adjunct to practice (see Rogers 2013). Finding ways to account for emerging practices methodologically is especially important in linguistic anthropology because of its traditional reliance on face-to-face interaction for its models of language use and communication (see Axel 2006).

I recorded data in both written and audio form (see Duranti 1997). I could simply collect many existing written documents, whether in hard copy, or by printing them, or by taking "screencap" snapshots of my computer screen. I purchased the official transcript of the proceeding at issue in Chapter 9 from the court reporter for a fee, and compared it to my own notes. I also took notes at the other events I attended. Recording was prohibited at all court proceedings I attended (as are photographs even of the outside of federal courthouses). Some conference organizers video or audio recorded and posted proceedings, as did TLA organizers sometimes. I also audio recorded many of these events.

Sometimes, event organizers expressly prohibited recording, or a speaker annotated her comments to request confidentiality. Invariably, the reason given for these admonitions was to allow a speaker to communicate candidly with the audience while protecting her from repercussions for mentioning sensitive IP or commenting on a business relationship with a third party. Although the embargos mildly constrained data collection, their value outweighed the inconvenience because they highlighted a characteristic of this community with theoretical and methodological implications. Hollywood is an intensely social and intensely secretive industry (see Ortner 2010).

Study participants sometimes echoed the common wisdom in Hollywood that who you know—or who others think you know—can be even more important than what you produce. An entertainment lawyer told me that she knew she had arrived professionally when people she had never met started telling her acquaintances how great she was. At a Transmedia L.A. meetup, managers of a newly launched production company that has a novel business model incorporating new media to screen, fund, and develop projects distinguished their approach as an unusual one that focuses on content rather than relationships. One said, "The biggest thing in Hollywood is, 'Oh, I don't know anyone.'…We're gonna fund you because we read your script, not because we know you."

Not saying no to someone's face is a corollary habit. At the University of Southern California (USC) IP Institute program for lawyers, an IP plaintiffs' lawyer echoed a double-edge of authenticity I describe in Chapter 8. He remarked, "In this town, everyone knows a friend or a friend of a friend who's an agent, so there are other ways to get into that [project pitch] room without signing the [release] agreement if you're creative….And signing an agreement with

somebody is not cool and hip," so even people whose policies require pre-releases from infringement claims may not always request them in order to avoid seeming uncool.

Together with having and using information about story-properties (nondisclosure agreements are an industry obsession), these relationship webs sustain a significant amount of value exchange regardless of eventual commoditization. The result is reminiscent of Myers' discovery about the social significance of hiding or sharing cigarettes during his fieldwork among Pintupi Australians (see Chapter 6).

One of the ways that new media may destabilize the power structure is by affecting the interlaced value of interpersonal networks and story-properties, not least by altering what a story-property consists of in the first place. Entertainment products are important, but in some sense are incidental tokens in a logic of practice in which who and what you know are more important to winning profit and status. The embargoes elegantly nurtured this mode of value creation while altering its contours and creating new bonds over shared secrets.

Methodologically, being caught up in these embargos illustrated the traction of "interface ethnography" (Ortner 2010:213), or "doing participant observation in the border areas where the closed community or organization or institution interfaces with the public." People in Hollywood are adept at creating these interfaces for members of their own and other sub-communities. That instrumentalism requires methodological caution about the extent to which hidden information is actually revealed, although how people play that game can itself be revealing (Caldwell 2004). From a linguistic anthropological perspective, the latter upside can provide fertile research ground, because any social interaction is already an "information game—a potentially infinite cycle of concealment, discovery, false revelation, and rediscovery" (Goffman 1959:8).

Furthermore, what is offered in public sometimes is professionally intimate. The storytellers at the center of this study, in particular, are "para-ethnographers" (Holmes and Marcus 2005), self-consciously reflective and experimental about their own approaches to knowledge in a way not dissimilar to anthropologists. This parallel afforded the opportunity to "study sideways" (Ortner 2010:213) and in some respects join in with those in the community whose curiosity from a somewhat peripheral vantage point echoed mine (compare Ortner 2010:218 for the point that access for research of this kind requires participants who find it interesting for instrumental or intellectual reasons).[43]

The written data I collected served as background information, discourse data, and sometimes both. They include approximately one hundred fifty journalism articles. Most appeared in entertainment industry trade papers such as *The Hollywood Reporter* and *The Daily Variety*. I began systematically scanning those two papers, in particular, for relevant articles in early 2011. Other articles appeared in general interest local, national, and international media, such as the *Los Angeles Times*, the *Wall Street Journal*, and the British Broadcasting Corporation. I came across them in the course of perusing the news and occasionally conducted a topical search on an online search engine. Separately, I also surveyed the appearance of "authentic" or "authenticity" in *The Daily Variety* in one hundred articles, as discussed in Chapter 7.

Other publications include dozens of works of legal scholarship on IP, many of which were cited in previous chapters. I identified them in the typical research fashion of expert recommendations, library research, and checking bibliographies for additional relevant works.

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[43] I also have a law degree and law practice experience, which sometimes opened conversational doors with industry lawyers, although not doors to non-public information for many of the same reasons discussed in Ortner's article.

I also obtained the plaintiffs' complaint, defendants' answer, motions in support of and opposition to summary judgment, judge's order, and official court reporter transcript with respect to the copyright infringement case discussed in Chapter 9.

In addition, I collected economic statistics, legal documents, and reports from publications of agencies of the U.S. government and international bodies and, occasionally, private organizations. I did so as needed to answer questions such as how many people the entertainment industry employs. I also visited government and academic websites to see statutory language (especially the U.S. federal copyright statute) and how entities such as the U.S. Copyright Office interpreted it.

Other websites I visited include several dozen blogs, social media postings, and other individually or corporately maintained pages on my research topic. The individuals were mostly storytellers but also included practicing lawyers, legal scholars, and marketers. The organizations include groups such as Transmedia L.A., the MPAA, and the Producers Guild of America (PGA). It is difficult to quantify the number because I often came across them or looked them up *ad hoc* upon hearing about one from a study participant or in order to read something such as the PGA's definition of transmedia. Furthermore, I often followed hyperlinks to additional websites, similarly to the snowball method of finding individual contacts (see Bernard 2006), doing which added color concerning interpersonal connections and status positions within this dispersed community. I also joined a listserv on which law professors discussed IP issues on a daily basis.

Other written texts I collected include presentation materials circulated at conferences; some people made their slides available or handed out material to supplement their spoken remarks. In addition, for Wyrdcon, I was responsible for a blog in which I researched and wrote

seven posts about then-current transmedia projects around the world. The Miracle Mile Paradox project introduced in Chapter 1 also generated various kinds of documents, mostly hosted online, as part of the production process as well as in terms of story content. I describe them in more detail in Chapter 11.

With respect to data not already in written form, during courtroom proceedings, I took notes on participants' spoken language as well as on some other aspects of their embodied communication, such as eye gaze and gesture (see Goodwin and Goodwin 2004). I also took note of the courtroom layout and qualitative characteristics such as participants' style of dress and the general tone or atmosphere. Excluding several I attended as preliminary investigations of field site viability and several failed attempts owing to moved or canceled hearings, these proceedings include the summary judgment motion in the copyright infringement case already mentioned, which lasted approximately thirty minutes; approximately two and half hours of testimony over two days in an "idea theft" trial; and five claim construction or "Markman" hearings in patent disputes, which lasted anywhere from five minutes to one and a half hours. All took place in the federal courthouse in downtown Los Angeles except for one Markman hearing in federal court in Pasadena (east of Los Angeles) and one in federal court in Santa Ana (in Orange County south of Los Angeles).

I collected similar kinds of data at conferences, in addition to making informal headcounts and gathering professional profiles of some of the people I spoke to as well as of conference speakers where available through conference materials or online. Conferences typically convened a particular subset of professionals, such as lawyers, technology experts, or storytellers. There was often overlap among groups, except that legal conferences seemed to be the most homogeneous. Conferences generally were open to the public, often with a fee to

attend. Some were as brief as an hour or two. Others extended over several days. I attended

eleven conferences in person. In addition to taking notes, I recorded thirty-three hours of audio.

I also attended six conferences or "webinars" online, five by telephone and one by watching it

streamed live on my computer. I spent thirty to sixty minutes at each, observed rather than

participated (some had brief question-and-answer periods when other attendees participated), and

did not record. In addition, I attended six TLA meetups in person. These Monday evening

gatherings are organized loosely like conferences in terms of mixing informal socializing with

formal presentations. They usually last approximately ninety minutes. I took notes but did not

record audio. TLA posts video of some meetups, however, which I reviewed when I wanted to

confirm or expand upon my notes and, especially, for close analysis of one of the examples in

Chapter 10. I also attended one other, unrelated industry mixer for an hour, where I did not

record.

Finally, I had numerous informal conversations. Some occurred unexpectedly, but not

surprisingly in light of Hollywood's dominance in Los Angeles. Some were embedded in other

fieldwork events such as conferences or gatherings. One turned into a semistructured interview

(see Bernard 2006), at which point I recorded audio for one hour. I also asked the interviewee to

map Hollywood for me however he wanted on a piece of notebook paper, the result of which is

included as a figure in Chapter 12.

II. Data Analysis.

  A. Participation Framework.

        I analyzed the data using three principal linguistic anthropological lenses, as well as

practice theory. The first lens is participation framework. Participation framework refers to an

aggregation. In a social gathering, or interaction, when one person utters something, she and all

other members of the gathering each have a "participation status" (Goffman 1981:137), or "the

relation of any one such member to this utterance." This analytic stance illuminates ways that

"an utterance…opens up an array of structurally differentiated possibilities" (137) for the

construction of meaning, beyond a single line from speaker to recipient and beyond a single layer

of self-consciously produced meaning. One of Goffman's major contributions in this respect

was to divide the speaker role into author, animator, and principal. The participation framework,

then, is the "total configuration of such statuses at any given time" (Duranti 1997:297).

        Examining the participation framework of an interaction puts flesh on semiotics via the

people who enact it. The participation framework is the arena of footing, which is "another way

of talking about indexing" (Duranti 1997:296). Indexing refers to a sign relationship that is

"contiguous" (Duranti 1997: 207) rather than symbolic or analogical; an index points to

something. I will develop the importance of indexicality to the scale from semiotic acts to social

organization in the next chapter.

        Furthermore, a participation framework always unfolds within a social context that

"massively constrains" the theoretically possible range of participant statuses (Hanks 1996:167).

Cultural and situational expectations flexibly delimit the scope, extent, and preferences

according to which the knowledge and judgment that indexes index are produced

communicatively (see Ochs 1996; Schegloff 2006). The framework thus reciprocally delimits a

communicative event, including its generic qualities, as discussed just below with respect to the

second lens of data analysis.

In addition, where empirics allow, participation framework analysis coincides with

conversation analysis within a communicative event (see Clayman and Gill 2004 for a summary

of conversation analysis; Schegloff 2007 for a longer "primer"). Goodwin (1990:10) makes this

connection through her concept of "participant framework," which harnesses participants and

their specific roles to the structure of the communicative activity at hand. Participants' linguistic

acts create indexes, and do so in relation to preceding and subsequent utterances (Garfinkel

1967; Schegloff 1990, 1992). Each new pragmatic–metapragmatic unit that arrives on the scene

shapes interpretive possibilities of what came before and what comes after, and is shaped by

them. People co-construct meaning as they take conversational turns, including in systematic

ways, often in systematic ways that speak to a range of epistemological issues, such as

comprehension, knowledge, judgment, affect, and alignment (such as solidarity or opposition).

For example, a graduate student who presented a case study to a TLA meetup observed

that trying too hard to sell a product—the "hard sell," as I heard several people call it—might

"stain" the audience's experience. He drew quotation marks in the air with his fingers as he said

"stain." That gesture indicated that he was not necessarily the principal or even the author of that

assessment, in Goffman's terms, but merely the animator giving it voice. In parallel Bakhtinian

terms, quoting others is a common form of "reported speech" (Volosinov 1986) that signals a

voice other than the actual speaker's. Although the speaker conveyed this distance partly by

speaking the word with a slight emphasis, the gesture confirms his intent (see Goodwin 2007 on

the use of bodies and environmental resources as grammatical resources). He thereby told his audience that he was speaking as a scholar and analyst. The move is particularly interesting because he had already been identified, and self-identified, as a student of a leading scholar and herald of the new modes of storytelling. In addition, the meetup was being held in a university space courtesy of that scholar's good offices, and attendees largely self-selected as proponents of the new modes. Those contextual aspects create a certain presumption of a shared stance toward storytelling, which might lead to additional presumptions about the relationship between storytelling and marketing. The speaker's seemingly small gesture pushes back against that intimacy to remind his audience that he stands before them as a scholarly analyst.

As that example suggests, institutional settings further pattern what people say and how they say it (see Heritage and Clayman 2011 on talk in institutions). Even if turn-taking is not clearly evident, and one speaker predominates for a long time as in a formal speech, it still matters who the "ratified" (Goffman 1981:9) audience is. Subtler forms of participation than long verbal utterances sometimes help define an interaction, such as clapping, exclaiming, or responding ritually en masse (see, e.g., Heritage and Greatbatch 1986 on generating applause through rhetorical devices in political speechmaking). Finally, the qualities of new media affect interactions such as those that went into producing and playing the Miracle Mile Paradox in ways that necessitate expanding the concept of participation framework.

B. <u>Genre</u>.

The second lens is genre. Genre refers to the relationship between the social work done by a stretch of discourse, on the one hand, and, on the other hand, the integrated bundle of what

is said, how it is said stylistically, and its linguistic structural composition (Bakhtin 1986; Bauman 2004). Genres are often identified in terms of categories defined by "formal characteristics traditionally recognized" (Hymes 1974a:61) by folk or analytic convention. Hymes lists examples such as "poem, myth, tale, proverb, riddle," and so forth. But the categories are after-the-fact labels. In practice, a genre is highly contextualized according to the relationship between its social effect and its linguistic characteristics (for example, see Hymes 1974b:352 on genre's relation to "key," or the "attitude or spirit in which the act occurs").

For analytic purposes, therefore, it is important to assess how the elements of genre build toward that relationship from within a communicative event.[44] Genre emerges from the bundles of indexes that structure a communicative event, and give form to them. Indexes frame genres, subjecting them to constant, context-dependent reformulation in the course of signaling, accomplishing, or varying habitual social actions (Hanks 1996). Conversely, genres frame indexes, providing rule-of-thumb consistency to indexical packages across time (see Hanks 2000). Genres "provide a way of limiting the descriptive load placed on" participant roles (Hanks 1996:197), for example, specifying the context in which a speaker speaks as a particular kind of participant.

Thus, in addition, the intertextual connections between genres may be their most significant quality (Bauman and Briggs 1990). By maximizing or minimizing the similarities and differences between genres that may characterize an event, people create distinctions of hierarchy, inclusion or exclusion, and other markers of social differentiation—in other words,

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[44] A genre does not equate to the event in which it is employed. Hymes 1974a:61 gives the example of a sermon, which typically is delivered during a religious service, but can be employed in other situations, including ironically (ironic usage being another way in which genre relates to key, among other contextual aspects).

they struggle for power (Briggs and Bauman 1992). This employment of genre can build geometrically to project across events. An example from the preceding chapter is the debate among legal scholars about whether free speech doctrine, classical speech-act theory, or linguistic structuralism should govern copyrightable expression. The arguments draw upon generic categories in which ideas about language's social use are closely associated with particular linguistic configurations: negative liberty to participate democratically in the public sphere, positive liberty to commit personal acts through language, and artistic versus mathematical expression, respectively. As for authorship in practice, new media erode the generic power of traditional genres. For example, conventional advertisements are recognizable as such from contextualization cues (black screen fades, volume adjustments, billboard space) that separate them from entertainment content. They are also recognizable because the marketing objective is connected in generic ways to the pitch, sometimes as forthrightly as "Drink Coca-Cola." New media blur the line between advertising and entertainment. A recent campaign for Mike & Ike candy deliberately enlists social media and a culture of public squabbles to tell a "true story" about the entirely fictional characters falling out (Newman 2012). It also includes a supposed movie trailer, which reverses movie previews' conventional use of advertising content and fills content into advertising instead.

C. <u>Narrative</u>.

The third lens is narrative. Narrative is ubiquitous across human societies, domains of life, and levels of language (Ochs 2004), and is also, therefore, to some extent a collaborative activity in almost all instances (see Garro and Mattingly 2000). Narrative is the use of language

to impose logical order on troublesome, or expectation-rending, experiences (Bruner 1991; Capps and Ochs 1995).[45] The drive to explain or resolve the disruption pertains in story genres, such as fictional literature (Propp 1968) and narratives of personal experience (Ochs and Capps 2001), as well as (and often concurrently with) narratives that are future-oriented plans (Stein and Trabasso 1981). At the same time, narratives remain flexible as they unfold because they harbor opportunities for "sideshadowing, a way of understanding and representing the plurality of possibilities" (Morson 1994:117) before a narrative conclusion imposes coherence. These opportunities may reside within a narrator's words, deliberately or not, or they may be built into the collaborative or situational setting of the narration, as happens when competing accounts intersect in disputation.[46]

Narrative thus is a fundamental mode of setting a goal of authenticity and pursuing it, and therefore also reproduces the tension between those two aspects. According to Ochs and Capps (2001:17), "stable narratives that lack authenticity are ultimately vulnerable to conscious or unconscious resistance; alternatively, authentic narratives that promote possibility and relativity may render one unable to choose among possible courses of action or diverse ways of thinking about life experience." Although their phrasing seems to identify authenticity with only the openness aspect, the "dialectic" or "pull" they associate with this tension reflects the dichotomy

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[45] This definition excludes genres that some might classify as narrative, such as accounts that relate past events without a mechanism to explain their occurrence.

[46] In his ethnography of property disputes taken to Hopi Tribal Court, Richland (2008:118–119) proposes a model of courtroom narratives in which contested narratives within the context of a particular proceeding share a "recursive link" with a "macrosociological narrative sequence that instantiates Hopi tribal law as a (re)ordering force of authority and power in Hopi social life." The recursivity "perpetuates a naturalizing dialectic of authority and legitimacy." In other words, open-endedness and coherence mutually afford each other in this sociolegal context.

within authenticity. Indeed, elsewhere, they (Ochs and Capps 1997) describe authenticity as a narrator's personal credibility achieved by publicly claiming a truth and having the claim socially validated—a description that encompasses both poles of authenticity. Narrative thus gives experiential form to the tension between those poles. The drive to achieve a coherent explanation or resolution aims for the authentic goal, but, ironically, threatens to foreclose avenues through which to pursue it. The openness of narration gives breathing room for the pursuit of authenticity, but, ironically, perpetuates the linguistic and cognitive mediation that forestalls attainment of the goal.

Furthermore, narrative also channels the temporality from which that tension stems. Linguistically, a narrative has at least one "temporal juncture" (Labov 1972:361), or place where two clauses are ordered temporally in a semantically meaningful way, that is, one "affords the possible occurrence of" the other (Ochs 2004:271). Changing the order will also change the meaning. These junctures afford "plot," or the "intelligible whole that governs a succession of events in a story" (Ricoeur 1981:167). Narrative thus links causality with temporality; it "extracts a configuration from a succession" (Ricoeur 1984:66).

Causal logic depends on both the pursuit and goal qualities of temporality that lie behind authenticity. On the one hand, "reckoning with time" (Ricoeur 1980:173) through narrative "levels off" to a veneer of ordinary chronology that provides at least an "illusion" of sequentiality to an account. On the other hand, the narration of existential experience as "time to" or "time for" drives toward a unified sense of inhabited time.   These two kinds of time work together but remain distinct. By definition, they cannot merge before a narrative reaches completion. Ricoeur (1981:180), for example, criticized Propp for reducing chronological time to causal logic by postulating predestined sequences of heroic problem-solving. The result is

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coherence in terms of unified time, but such coherence solidifies only after the fact of a narrative, if and when the goal is attained. While a narrative still unfolds—which is always, for a lived narrative—the causal significance of its chronological elements remains open to mediation, in service of making sense of the lived experience. The means to make sense comes from the goal-state where time is experienced as a unified whole, which supplies a present narrative with the "mutually conditioning" (Ricoeur 1988:171) link between a "space of [past] experience" and a "horizon of [future] expectation" (Kosseleck 2004:260). But, as the contingency of "expectation" suggests (Ricoeur 1988:213), unified time does not fully stabilize a narrative until some theoretical endpoint beyond the horizon.[47]

This tension informs the analysis of narrative as well as the theory of authenticity that I will discuss in further detail in Chapter 7. In an example I will bring up again later, a panelist at a conference praised live action role playing (LARP) gamers—players who take on a fictional role in a fantasy world—for the intense emotional connection they make with the characters they play. He commented, "If we can somehow tap into that," then Hollywood storytelling would vastly improve. The remark projected from a space of experience to a horizon of expectation. Similarly, my interviewee contrasted a past in which producers of mass media had consumers' trust "naturally" with a future in which they must "earn our trust." He shifted in a grammatically observable way from recollection to anticipation in order to describe how new media disturb the

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[47] The distinction between the practical function of unified time and its pure ideal recalls the Kantian starting point for this study's framework of authenticity (see Chapter 7). The latter is a foil that makes it possible for the former to be useful in human engagement with authenticity. Ricoeur wrote with Kant (and other German philosophers) in mind, and distinguished the utopian kind of expectation from expectation or hope as a practical instrument of the human quest (see Savage 2013:214).

meaning of authenticity (see Ochs 1994 on this widespread narrative tendency to project temporality).

D. <u>Practice</u>.

I situate my application of these linguistic anthropological lenses in practice theory, which supplies a sociocultural framework for understanding the data. Participation framework analysis illuminates roles, goals, authority, and other facets that add up to efforts at position-taking on a field of production, whether with respect to immediate cultural products at hand or through talk about those products. Genre analysis helps frame how people talk about authorship practice under generic pressure from new media, as well as how their talk maneuvers intertextually amid that pressure to leverage power in terms of authenticity. Genre analysis also uncovers how people's talk as authorship occurs according to generic conventions of a courtroom, meeting, or story production, some of which are also under remix pressure. The generic dimension of talk as authorship adds further intertextuality to how talk about authorship reproduces or renegotiates authentic value. Narrative analysis reveals how people employ genre in a goal-oriented way to construct, negotiate, and project positions. Together, these three lenses plot the context of specific communicative events. From there, I employ more granular units of microlinguistic analysis, such as deixis, the verbal and adverbial grammar of time, metaphor, and assessments.[48] In the other direction, these linguistic resources become communicative avenues

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[48] Much of my detailed linguistic analysis in subsequent chapters focuses on how deixis and the grammar of time work together. Deixis exemplifies indexicality because deictic words gain meaning only through context. Personal pronouns and adverbs of place (here, there), object (this, that), and time (now, then) are examples. Tense, aspect, and mood are all time-related functions of verbs and sometimes of adverbs or certain other constructions. Tense

for using—and often themselves directly become—"resources" in Sewell's (1992:9) practice theory sense of things that "can be used to enhance or maintain power" when deployed against a structural field. Resources can be objects, human knowledge and attributes, or structures that crystallize in a particular setting, such as a copyright norm brought to bear during a legal proceeding. People use resources in their efforts to take positions on a field. In addition to being products, commodities, and works of art, Hollywood stories are linguistically constructed resources. So, too, are linguistically expressed ideas about the storytellers themselves and the storytelling profession. In the next chapter, I make the case for this scalar continuity between linguistic theory and sociocultural theory.

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refers to when acts or events occur relative to the time of utterance, as in the –ed suffix that denotes the past. Aspect relates periods of time to each other and refers to whether acts or events are completed or continuing, as in the "have been doing" past progressive construction that denotes past initiation and present continuation. Mood or modality refers to whether acts or events are constrained by obligation, capability, or necessity, as in the "must," "should," and "can" verb auxiliaries. This grammatical system can overlap with deixis, as in the adverb of time, "when."

CHAPTER 5: Authorship as Practice

I. <u>Authorship as Practice</u>.

The goal of an analysis that employs practice theory is:

to try to understand something the people did or do or believe, by trying to locate the

point of reference in social practice from which the beliefs or actions emerge. This is not

just a question of locating the actor's point of view, although that is a part of it. It is a

question of seeking the configuration of cultural forms, social relations, and historical

processes that move people to act in ways that produce the effects in question. [Ortner

1989:12]

My research questions are well suited to this kind of analysis. Authorship is an influential point

of reference for a framework of beliefs and actions evident in laws, institutional arrangements

such as guilds or markets, and individual efforts and statements by artists and others. Modern

authorship is configured as ownership in ways that pattern social relations through IP and its

underlying social norms. This configuration developed historically through uneven processes.

Various factors moved individuals, groups, or institutions to act in ways that deliberately or

unintentionally produced a sequence of historical effects culminating in modern authorship.

New media—themselves products of historical processes that intersect the processes of

authorship—introduce new factors and revitalize preexisting dissensions, moving people to try to

reinforce, reform, or revolutionize the existing, dominant cultural configuration of authorship.

According to this approach, "any form of human action or interaction [is] an instance of

'practice' insofar as the analyst recognize[s] it as reverberating with features of asymmetry,

inequality, domination, and the like in its particular historical and cultural setting" (Ortner 1989:11–12). There are two relational axes to consider in that definition.

The first axis is that practice is "action considered in relation to structure" (Ortner 1989:12). Action as used here is equivalent to practice, and in the most general and basic sense amounts to "everything everybody does" (Ortner 1984:127, 155). Social structure connotes the synchronous (contemporaneous) organization of social life (see Sahlins 1981).[49]

But the crux of these terms lies in the relation between structure and practice. That relation consists of a "dialectic of social structures and structured, structuring dispositions" (Bourdieu 1990:41). These dispositions generate sets of actions that become practices because the dispositions form individual thought, inform experience, and guide activity in a habitual way as a "habitus" (Bourdieu 1990:52). Thus, structure is not an abstract constellation. Rather, it is always already "doubly practiced: it is both lived in, in the sense of being a public world of ordered forms, and embodied, in the sense of being an enduring framework of dispositions that are stamped on actors' beings." (Ortner 1989:14). For its part, "practice emerges from structure, reproduces structure, and has the capacity to transform structure" (Ortner 1989:14).

As the embodied locus of this dialectic, habitus is "durable" and "transposable" across the varied situations of an actor's life (Bourdieu 1990:53).[50] It is neither mechanistic nor willful,

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[49] Like other practice theorists, Sahlins reviews this connotation in order to critique its devaluation of diachronic (non-contemporaneous) human activity and that activity's mutual influence on structure.

[50] Bourdieu emphasizes embodiment almost like a behavioral imprint. As Hanks (2005b), among others, observes, other scholars sometimes contrast this emphasis to a more cognitive one, although Bourdieu himself employed his terms broadly and flexibly according to his object of analysis. Other researchers, in turn, have adapted his formulation further. I understand habitus to include mental representations of the world and physically embodied action in it. Linguistic data may seem to privilege the mental, but the physical is always present from the production

although it does not entirely exclude a degree of mechanistic or willful action in a particular

instance. A habitus functions as a set of "principles which generate and organize practices and

representations that can be objectively adapted to their outcomes without presupposing a

conscious aiming at ends or an express mastery of the operations necessary in order to attain

them" (53). This merged duality as, first, a source of rules that, second, govern activity is what

makes these dispositions both "structured structures" and "structuring structures," respectively.

Conversely, these structural qualities unfold through practice and are in that sense reliant on

human action for their expression and exertion in a particular context. This mutuality with

structure gives practice a logic independent of purely subjective or objective causes of action.

This axis explains the durability of romantic authorship and its vision of authenticity as a habitus

people by and large reproduced through innumerable acts that took it for granted for a long time.

The second axis in considering the notion of practice runs between power and diachrony

(non-contemporaneousness). Practice occurs in historical contexts characterized by asymmetric

power. Struggles over that asymmetry incubate the possibility of change, including historical

transformation.

Power asymmetries provide the grist of practice by instigating conflict, while also

situating that conflict within a "specific historic regime of power" that "shapes subjectivity"

(Ortner 2006:14). Power is "the way in which relations of force are deployed and given concrete

expression" (Foucault 1994:208). Foucault describes power's "exercise through a net-like

organization" (214) that pervades all while alighting nowhere. Ortner's (2006:7) practice theory

approach takes power relations to be "strongly controlling but never complete or total" and looks

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of speech or writing to non-verbal aspects of communication to the situational or institutional frameworks in which

communication occurs.

more granularly at "the mix, and the relations between elements" in a power dynamic. For example, an act of resistance against powers-that-be by a relatively powerless person may vindicate a feeling of defiance yet incur simultaneous institutional consequences that perpetuate the existing power structure. Or, owing to a known or unperceived shift in underlying conditions, such an act may trigger a bouleversement. Or, as Ortner observes, people on both sides of a power dynamic informed by domination and resistance may feel ambivalently about its costs versus benefits, so that the habitual reproduction of the dynamic changes more incrementally or complexly, if at all. New media technologies have disrupted the modern IP regime's power structure, leading to innumerable acts of remix authorship that result in many different outcomes ranging from criminal justice crackdowns to case-by-case concessions to the rise of newly, if still precariously, powerful individuals and organizations.

When change does follow, it can escalate from scattered, individual occurrences to a large-scale "event" that transforms structure and practice. As a technical term in this context:

> a historical event…is (1) a ramified sequence of occurrences that (2) is recognized as notable by contemporaries, and that (3) results in a durable transformation of structures.
> [Sewell 2005:228]

Ramified means the occurrences reinforce one another, gaining a certain momentum.

The history of authorship outlined in Chapter 2 can be viewed through this lens of two intersecting axes, that is, a dialectic between structure and practice under specific conditions fraught with power asymmetries. For example, there was no clean break from feudal to modern authorship. Actors such as the Renaissance artists, English printers, princely licensing authorities, and various philosophers worked under and enacted their political and religious conditions. These kinds of conditions, as both structures and practical habits, help explain things

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that seem confusing or paradoxical from a modern standpoint, such as the Paris Parlement's legal ruling that reconciled the "spiritual" quality of authorship with denial of an exclusive privilege (Pfister 2010:124)—although just such ideas have resurfaced with challenges to the modern regime.

At the same time, struggles to control authorship contributed to change. Over a centuries-long arc, the contributing factors of change converged windingly on modern authorship. Within that arc, some moments evince Sewell's criteria for a transformative event. Starkest is the commonly cited revolution triggered by printing press technology.[51] It unsettled power dynamics between state and subject, producer and consumer, and producer and producer. Its wide adoption spurred ramified sequences of occurrences, notable to contemporaries, and which resulted in a durable transformation of the structure of authorship. For example, the English printers guild began on feudalistic license from a state that was already modernizing past feudalism. The guild fought a vocal, public war against printing "pirates," only to be overtaken by Lockean authors and market forces partly because of the guild's own tactics.

Although a more thorough application of practice theory to this long historical timeline and its diverse factors would have to solidify the case, Bourdieu (1995; see also 1993) did make a related one in his targeted examination of modern French literary production. He focused on the processes that establish, perpetuate, or reconfigure aesthetic and economic distinctions and so give shape to the structure of the literary "field of cultural production" (77) and struggles within it. I return to his discussion in Chapter 8 to describe the community of Hollywood storytellers.

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[51] Economic historians have long considered technological innovation a key to transformation. As Marx (1976:286) observed, "It is not what is made but how, and by what instruments of labour, that distinguishes different economic epochs."

For now, a brief description of the properties of a field helps explain what an exploration of the meaning of authorship aims to illuminate, and how authorship (and ownership) is a practice.

A field, such as that of literary production in Bourdieu's study, includes "a network of objective relations (of domination or subordination, of complementarity or antagonism, etc.)" (Bourdieu 1995:231). These relations exist between "positions" that become relative to one another on the basis of various aesthetic and economic distinctions. Examples (not specifically his) of positions are high versus low art or a journal of literary criticism versus a popular general interest magazine. A specific product such as an adventure novel manifests the relations as the result of an act of "position-taking" (perhaps, commercially profitable, low art).[52]

Because those relations harbor asymmetries, position-taking, although heavily conditioned, is not wholly predetermined. Rather, it generates a "space of possibles" (233). That space is the site of struggle over the prestige and profit that flow from the distinctions. To win prestige and profit is to have "symbolic capital" (260) and "economic capital" (142), respectively, which translates into having power because each type of capital conditions how the space of possibles will unfold next. A "radical transformation" (234) of the field may occur when a sufficient exertion of power disrupts the relations. That exertion can alter the coinage of capital, as "when a new literary or artistic group imposes itself on the field" (234) through a fruitful "intersection" between its "subversive interests" and "the expectations of a section of the public (internal [other producers] and external [consumers])." New position-takings are elevated and old ones downgraded. The proudly defiant stance toward romantic authorship taken by the

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[52] The network of relations is multi-layered. The adventure novel, for example, may exhibit a certain complementarity between its commercial profitability and lack of artistic prestige, thereby occupying a "dominant" position nested within a "dominated" one, insofar as economic value dominates artistic value in the overall field while high prestige dominates low prestige as between forms of art.

remix musician, Girl Talk, coincides with a burgeoning shift in expectations by a section of the public that includes other musicians for whom sampling, if not pure remix, is a time-honored tradition; consumers who share a remix ideology; and elite backers such as the prominent legal scholar and copyright critic, Lawrence Lessig.

These elements of a field comprise the organizational framework for a sphere of social activity, or "game" (Bourdieu 1995:13). In order for the game to happen, the actors share an "illusio" (227), that is, a commitment to its rules, including contest and the possibility of change. The illusio is not will or delusion. It flows from and through habitus: "This interested participation in the game is established in the conjunctural relationship between a habitus and a field…it *is* precisely this relationship" (227). What is established is, in fact, practice, or the practical enactment of the structuring of habitus according to the field's arrangement, on the one hand, and the "perpetuation or subversion" (234) of the field through the practical enactment of habitus within a space of possibles, on the other hand.

Participants in Hollywood play the entertainment industry game according to what for a long time was a rather stable illusio of romantic authorship whereby they competed on the basis of romantically delimited authenticity enforceable through copyright. Most of their competitive moves perpetuate the field even if they change the prestige or profitability of particular position-takings. The sudden explosion of remix authorship ideology expands the space of possibles, makes subversion more common, and may be leading to more radical alteration of the field itself.

Thus, viewed in terms of this theoretical framework, beliefs about romantic authorship-as-ownership comprise a habitus structured by a regime of authorship-as-ownership and enacted upon it through practices. The authorship-as-ownership structure takes shape as a field of

relational properties that all turn on how exactly authorship relates to ownership. Catalyzed by new media, remix authorship alters those relations.

The link between authorship and ownership, therefore, represents a general type of habitus, which has particular tokens such as romantic (modern) authorship or remix authorship. The general habitus applies in a wide range of fields of cultural production. At a minimum, that range encompasses fields in which authorship is associated in some way with human activity of creative expression and its control. But I propose an even more general theoretical role for authorship–ownership as a habitus of communicative practice. Because habitus merges structure and practice, practicing authorship is also practicing ownership and vice versa.

The specific configuration of authorship and ownership under the modern regime represents a token incarnation of the habitus. This particular habitus exists in relation to the configuration of the relevant fields of production under specific historical conditions. As a historical moment, this habitus is an entrenched illusio through which a particular kind of authorship and ownership are practiced.

New media highlight and enhance cracks in the illusio. New media may bring about its transformation as they alter power dynamics of authorship–ownership's specific network of relational properties under the modern regime. For example, new media reduce the asymmetry of production costs of motion pictures (see Chapter 2). Meanwhile, consumers increasingly accept or desire new standards of production quality and format in motion pictures. One result is that position-takings through digital video and online distribution are no longer high cost, low art positions relative to analog film and theatrical release. These factors on the production side combine with consumers' remix-informed expectations to access what they want to watch when they want to and for free, which has been facilitated by the technological capability to bypass

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payment for content. A corresponding shift is visible in the position associated with major film studio output. Production and marketing costs are skyrocketing, as are movie ticket prices (Block 2011). Studios increasingly gamble on action-laced, internationally marketable, sequel-friendly movies that mine their existing copyrights, with successes outnumbered by failures and therefore bearing high and volatile risk-to-reward ratios (Davidson 2012). Whether or not this trend represents a move into high-cost high art or decline into high-cost low art—in other words, the precise lines of distinction in this field of production—is hotly debated, all, or at least in large part, because of the challenge posed by new media.

Authorship (with ownership) as a type of habitus, tokens of that type, and mutable can be further elaborated in the context of the history of authorship already discussed. As a habitus, authorship has structural and practical aspects. On the structure side, authorship is a "cultural schema" (Ortner 1989:61) that encodes a macro-narrative about how the world is and structures how people "enact (culturally typical) relations and symbols" such as IP rights (starting with its most recognizable symbols such as "©"). This macro-narrative applies in society, which gives rise to the legal form of authorship. Structure as schema or code is compatible with a leading IP jurist's discussion of code as including formal statutory and judge-made law and the broader "architecture" of both "legal texts" and a "way of life," which "structures and constrains social and legal power" (Lessig 2006:4)—if one adds that code also reproduces and perpetuates that power.

On the practice side of habitus, authorship exemplifies how:

the habitus—embodied history, internalized as a second nature and forgotten as history—is the active presence of the whole past of which it is the product. As such, it is what

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gives practices their relative autonomy with respect to external determinations of the

immediate present. [Bourdieu 1990:56]

The relatively high degree of continuity in what authorship meant even as it was reconfigured displays the structured flexibility of habitus in action. For example, a connection between authorship and ownership preceded modernity in ideas about divine authority, plagiaristic theft, piracy, and payment for manuscript.

That connection tightened into the particular habitus of modern authorship through the migration of the romantic ideal into the soul of the individual author as a liberal, propertied subject. This habitus existed in relation to the arrangement of value in relevant fields of production. For example, copied information had high value as authoritative information in the pre-modern era and retained it, seemingly paradoxically, even as the gatekeepers of that authority changed from monks selective of worthy script, to printers under crown license, to romantic authors holding copyright or to corporate employers of such authors.

This token habitus may have entrenched so deeply among judges, lawyers, producers, and consumers because it is constructed as a typology. As a modern institution, it accommodates an apparent diversity of things and ways to author and own within the abstraction of market liberalism. This flexibility helped naturalize modern authorship and largely erase competing possibilities from historical memory.[53]

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[53] A striking parallel exists between Smith's (1976:456) "invisible hand," by which "every individual" is "led to promote an end which was no part of his intention" and habitus's general characteristic of "spontaneity without consciousness or will" (Bourdieu 1990:56). The modern regime of authorship, and perhaps other modern institutions structured around a similar marriage of individual autonomy and private property, co-opts and celebrates that spontaneity as a bedrock principle.

In the process, authorship and ownership became statuses associated (only) with subjective attributes or acts. From my practice theory perspective, this association is an ideological substitution of the particular for the general. As Bourdieu wrote in his study of modern French literary production, "The producer of the value of the work is not the artist but the field of production as a universe of belief which produces the value of the work of art as a fetish by producing the belief in the creative power of the artist" (1992:229).[54] Modern authorship mistakes the romantic author to be the producer of value through her creative expression, which initiates relational questions of ownership. But this author is really a symptom of how the structural relation of authorship to ownership plays out in terms of the aesthetic and economic distinctions that organize the modern field of production. The audience or any other role, such as adjudicator of IP claims, is likewise symptomatic.

Methodologically, dislodging authorship from its ascription to a specific kind of actor makes it possible to examine authorship (and ownership) as a practice. It allows scope to examine authorship as the practice of a community rather than only those internally designated as authors or slotted into counterpart roles such as audience. This broader scope can encompass the kinds of collaborative authorship that new media bring to the foreground. Even more importantly, this scope provides a basis for reevaluating the characteristics of authorship by grounding them in the play between habitus and field rather than in an author-as-subject *a priori*.

Part of that re-grounding includes moving beyond a view of authorship as only or even principally an ideological problem. At the beginning of the new media era, a leading historian of

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[54] This statement partly echoes Foucault's notion of the author function, but Bourdieu situates that function in the dynamic between habitus and field. Compare the earlier discussion in the main text of Foucault's definition of power and Ortner's situation of power in specific relations.

authorship wrote that "the hold of authorship on the American legal imagination shows no signs of abating" (Jaszi and Woodmansee 1994:10). The statement is an accurate description insofar as she meant specifically modern authorship, and might have included its hold on social imagination as well. But it is also incomplete insofar as it may be the case that authorship, on the most general level, always has a hold as part of the dispositional beliefs that comprise habitus.

Similarly, as discussed in Chapter 3, a number of legal scholars whom new media have inspired to critique modern authorship have replaced the romantic definition of authorship as spontaneous genius with one of remix authorship as the constant repurposing of existing expression. Many statements in my data corpus make a similar claim about the true meaning of authorship. The revised definition therefore is accurate insofar as it contributes to an empirical description of the emerging remix authorship habitus under new media conditions, not least because both scholars and study participants act under those conditions. The revised definition may even inform a description of the general authorship habitus. But generalizing the revised definition from the specific conditions of its production risks naturalizing it as an ideology and compromising its explanatory power. The question is how those beliefs about authorship unfold in practice, in relation to a field. Doing so permits assessment of potential change to those beliefs without discarding general insights about authorship, including the fact that it becomes imbued with ideology in practice.

In fact, just as modern authorship came into being as a particular incarnation of the general habitus, it may be transforming again under pressure from new media. Reviewing Sewell's criteria of a transformative event, the first is a ramified sequence of occurrences. One is underway with respect to new media. It may be too soon to identify the core connected dots, but

there are candidates among diffuse trends such as internet penetration rates and usage habits as well as among discrete mini-events such as the legal travails of the Napster, piratebay, and megaupload file-sharing websites.

The second criterion is that these occurrences be notable among contemporaries. It, too, is evident. Both the trade and general press are filled with stories about how authorship and ownership are changing, even if those terms are not always used explicitly. Journalists and bloggers write constantly about perceived threats from beyond the remit of domestic law and the prominence of IP issues in international negotiations intended to mitigate those threats. Writers on entertainment and technology issues also obsess over whether or not new media are supplanting traditional mass media. That theme has also underpinned a slew of Los Angeles- and New York-based conferences that have sprung up in recent years and also has become a major part of older gatherings such as Comic-Con in San Diego and SXSW (South by Southwest) in Austin. Growing numbers of legal scholars focus on IP policy and judicial trends, while law schools have instituted or expanded many IP law programs in recent years. The surprisingly large, sudden, and effective campaigns against the SOPA and PIPA legislation speak to civic awareness of the issues as well.

The third criterion is ramification into a durable transformation of structure. Whether or not new media will help transform the meaning of authorship as a structure and practice remains an open question. Many observers believe it already has. Statistics and scholarship indicate the extent to which new media have become ordinary (see Chapters 2 and 3). What this seemingly permanent change in technological affordance and social practice means for authorship is the open question that presents an opportunity to see practice, power, and change unfold

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contemporaneously, that is, to investigate the "structure of the conjuncture" (Sahlins 1981:35) where traditional and emerging meanings of authorship meet.

For an ethnographic discourse analysis, the second criterion—that contemporaries note the signs of change—harbors the pregnant potential of this moment. Members of Hollywood's professional storytelling community talk a lot about changes to authorship these days. This commentary is part of their practice of authorship not simply because it displays beliefs (or, more precisely, is a display of belief) but also because the displays occur in situations that are part of everyday communal practices reliant upon the meaning of authorship for the production of value and its distribution to the profession, its members, and their work products. What people in this community say about authorship relates to a field of production through which their own professional identities and products are produced along with the social value of authorship.

This discourse also includes how people in this community say things about authorship, which makes it talk *as* authorship, too. This discourse pragmatics is part of the community's practice of authorship as well because it is a mode through which the authorship habitus is enacted. It comprises practical action of a linguistic, communicative kind.

If these two aspects of the discourse seem to collapse together, it is because they are linked as a matter of linguistic structure. When someone says, "authorship is the spontaneous expression of individual genius," she is saying something about the topic of authorship by saying those words in a particular manner in a particular context. Usually, this connection is subtler. In any event, the enactment of the authorship habitus lies linguistically in that connection, reflecting the dialectic between structure and practice in micro-linguistic form and mobilizing that dialectic through language use. The combination of what is said and how displays the shared commitment to the rules of the game as well as ruptures in that commonality during a period of potential

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transformation. During such a period, enactment of the authorship habitus reveals that habitus in both its particular and general forms. Talking about authorship as a discursive object in order to define and control it is also doing authorship according to a general pattern of communication. Put another way, talking about authorship reveals something about the particular romantic or remix habitus, and is also talk as authorship according to a general practice that can be analyzed as such. Examining these layers together shows how the particular is constructed through the general, and how the general is shaped into the particular.

II. <u>Language Use as Practice</u>.

That examination requires clarifying the connection between language use and practice. Practice theorists sometimes have applied their framework to language, while, more often, linguistic anthropologists have employed elements of practice theory to explain communicative activities. I borrow from both directions, but also move in another to integrate an aspect of linguistic theory with practice theory as mutually explanatory. Doing so builds the scale from communicative act to social practice.

There are two ways in which language use is practice. One is as a vehicle through which value is marked and distributed as habitus and field conjoin. This mode will be taken up in more detail in connection with terminological debates that contest insider and outsider status and similar distinctions in Chapter 10. Although useful, it also objectifies language as a sociological phenomenon in a way that has led to apparent, but unnecessary, conflict between practice theory and linguistic anthropological approaches.

Clarifying the actual harmony between them points to the other mode of language use as practice, that is, as part of the fabric woven of structural inculcation and habitual enactment. I draw on and deepen some ways that linguistic anthropologists have already made a connection between habitus and the elements of semiotic interpretation. I elucidate that connection specifically at the level of language use by means of the formal (structural and functional) link between pragmatics and metapragmatics. Pragmatics basically means how people use language. Metapragmatics means rules for how people use language. The link scales up to what are called language ideologies, which refers to how language use is always partial and selective with respect to meaning and therefore reflects and reproduces social distinctions. This mode of language use as practice facilitates analyzing the combination of what people say about authorship (the metapragmatics of the discourse) and how they say it (the pragmatics of the discourse).

To begin with, practice theorists have sometimes examined language use as a vehicle through which value—stored in symbolic, economic, or other kinds of "capital"—is marked and distributed as habitus and field conjoin. For example, in the context of linguistic standardization, specifically of French across France, Bourdieu (1991:51) argued that language use could be understood in terms of the "impalpable inculcation" of a shared habitus. The key to standard French becoming "legitimate" language at the expense of regional or villain languages is not so much conscious implementation (which also occurred) as gradual, continual orientation toward the standard form through processes of "symbolic domination" (50). This adjustment of disposition under conditions of symbolic domination is not smooth, however. Rather, it involves constant "competitive struggle" (64). Those for whom the standard language is already beneficial in terms of opportunities to secure wealth and prestige might dispute some of its

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qualities (Bourdieu gives the example of writers versus grammarians). But they do so within boundaries that reinforce its perceived superiority to non-standard alternatives. Discussion or deployment of "distinguished" language always entails an implicit opposition to "vulgar" language (60).[55] Those who lack such "linguistic capital" (57) orient toward the legitimacy of the standard by their efforts to acquire and deploy it, thereby replicating the stigmatization of the non-standard. Recalling the discussion of power above, one might add that even their resistance can replicate symbolic domination.

Thus, the ideological marks of privilege borne by a standard language arise from its practicality as an instrument of symbolic domination. Language use, to Bourdieu, is a sociological phenomenon rather than a linguistic one. By this opposition, he means to challenge a view of language as an abstract, neutral system that is often associated with structural or formal linguistics (and present in a face value or strong version reading of Barthes' and Foucault's essays on authorship). Bourdieu's grounding of language use as a habitus enacted under specific social conditions is a useful bridge to linguistic anthropological theory and methods, despite some apparent obstacles that seem to owe more to cross-disciplinary misunderstanding than substantive contradiction.

The main obstacle seems to be different points of reference with respect to linguistic structure. As indicated in the preceding paragraph, practice theorists often take linguistic structure to mean something like a code that works upon or through human actors as language use, and argue against that definition in favor of something more integrated with social action. Linguistic anthropologists, however, do not see linguistic structure or language use as mere code.

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[55] Bourdieu here may echo Derrida's (1974:67) notion of the "trace," "an always already there" absence that shadows the manifest presence of a piece of language.

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There exists room not only for compatibility but even identity between the two approaches, linguistic anthropologists' own objectifications of practice theory also notwithstanding.

This fusion is the second mode of language use as practice, that is, as part of the fabric woven of structural inculcation and habitual enactment. Just as structure is integrated with practice, language is code, but "a code for representing experience" (Duranti 2011b:30), so that "by linguistically encoding human experience, speakers submit to particular ways of categorizing and conceptualizing the world." Therefore, "utterances not only describe the world, or, rather, the experience of it, but also act upon the world, affecting our experience and the experience of others" (Duranti 2009a:63). From a linguistic anthropological perspective on language use as richly semiotic, ethnographically grounded, and never neutral, this duality of language as code and act constitutes language as habitus.[56] For example, producing a Hollywood story under the modern IP regime is a practical act of authorship done under a code of romantic authorship. Both the act and the code are linguistic in content and in communicative function and effect. An obstacle to theoretical compatibility only apparently exists, and, to the contrary, practice theory and linguistic anthropological theory go hand-in-hand.

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[56] Duranti (2011) observes that thinking of language in terms of habituation precedes practice theory's influence on linguistic anthropology, entering directly from phenomenology and Malinowski's ethnographic research and developed by Sapir and Whorf in the early twentieth century. (The strong and weak versions of the so-called Sapir-Whorf hypothesis of linguistic relativity, which correspond to determinism and something looser, respectively—see Lucy 1996—echo the debate over habitus as mechanistic or susceptible to variation and change.) In categorizing linguistic anthropological approaches, Duranti includes the influence of Bourdieu under the category of language as code as distinct from language as a form of social organization (the latter of which includes Wittgensteinian and other discussions of language as a social act). Unlike those who see incompatibility with practice theorists' terms, however, Duranti's is a more heuristic distinction because he otherwise speaks of language's code and act properties as species of a shared "higher-order ontological commitment…to language as a non-neutral medium" (29).

One reason for the apparent obstacle is that practice theorists typically associate linguistic theory with Saussure and his successors in the discipline of formal linguistics such as Chomsky. They present that theory as an inadequate description of language use and an inaccurate model for analogy to social practice. Summing up both of these critiques, Bourdieu (1991:33) writes that:

> the entire destiny of modern linguistics is in fact determined by Saussure's inaugural act through which he separates the 'external' elements of linguistics from the 'internal' elements, and by reserving the title of linguistics for the latter, excludes from it all the investigations which establish a relationship between language and anthropology.

For Bourdieu (1990:31), Saussure's privileging of the abstract properties of language (*langue*) over its spoken enlistment (*parole*) is the original sin of social science, a "complete reversal" that distorts analysis of human experience and action, and therefore of practice. Giddens (1984:32) elaborates that distilling langue from parole encourages a "'retreat into the code' whence it is difficult or impossible to re-emerge into the world of activity and event." Instead of Saussure's "semiotic" theory of language as a "field of signs, the grids of meaning" that order social structures through patterns of differentiation, Giddens favors a Wittgensteinian "semantic" theory of language that recognizes the "relational character of the codes that generate meaning to be located in the ordering of social practices, in the very capacity to 'go on' in the multiplicity of contexts of social activity" (32). Signs are not "given properties of speaking and writing" but "recursively grounded in the communication of meaning" (31).

Similarly, Sewell lists phonology, morphology, syntax, and semantics as the elements of linguistic structure, which "are aggregated into meaningful utterances or texts in accord with the discursive structures of rhetoric, narrative, metaphor, and logic" (1992:23). These structures

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"underlie…the immense preponderance of all [social] structures." Yet, as such, all they really can do is "confirm the speaker's membership in a linguistic community and reinforce the schemas that make the generation of grammatical sentences possible." Echoing Bourdieu's claim that language use is a sociological phenomenon in his analysis of standard French, language "serves as a medium for all kinds of enactments of power relations, but…it is as close as we are likely to get to a neutral medium of exchange." Sewell then cautions against "the widespread tendency to use linguistic structures as a paradigm for structures in general."

From a linguistic anthropological perspective, however, Saussure's supposed failure is a straw man argument, even if accurate (see Hasan 1999 for an argument that Bourdieu mischaracterizes Saussure in the first place). Linguistic anthropologists have long relied on a richer definition of language built to a large extent on Peirce's (e.g., 1955) theory of semiotics, which forms part of a larger theory of pragmatics. Kockelman (2007) and Mertz (2007b) both identify the difference between Saussure's approach and Peirce's as one based on a dual sign–object relation and a tripartite sign–object–interpretant relation, respectively. These contrasting analyses of linguistic structure lead to contrasting analyses of language use as between a code of meaning that is subsequently deployed, on the one hand, and the dependence of meaning on the context of use, on the other hand.[57] Interpretant, indexicality, and metapragmatics are all, in essence, core ways of talking about the guiding principle of linguistic anthropology that language is always composed integrally of what people say, how they say it, and the context in which it is said, with the corollary that people both create and assume the context as they say something. It is this idea that links linguistic to sociocultural anthropology.

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[57] Another framework to explain this difference would be Bakhtin's dialogism, discussed in several other chapters.

In fact, Kockelman, in proposing a theory of agency, identifies the third component beyond sign and object—the interpretant—as the specific point of connection between Peirce's semiotics of meaning and Bourdieu's habitus. For Peirce, meaning depends on how the relation between a sign and its object corresponds to, or aligns with, the relation between an "interpretant" and the object. The interpretant is a formal element in this framework, but can be simplified for practical purposes as usually a person or, more precisely, what she does to interpret the semiotics of the situation—at one point, Peirce (1991:183) uses the phrase, "cognition produced in the mind." Kockelman (2007:378) gives the example of someone shouting, "Ouch!", which is a sign (the verbal exclamation) pointing to an object (pain). Its meaning requires an interpretant who stands in relation to the object: if she can hear the exclamation, she will get the meaning that the person cried out from an immediate injury; if she cannot or she is not present, the meaning is lost.[58]

The same structure unfolds when, for example, the U.S. copyright statute says that copyright subsists in original works of authorship. That definition is a sign that points to a set of references as its object, in particular, the phrase, "original works of authorship." To have meaning, those references require an interpretant who stands in relation to them, that is, has some understanding of them that she can apply, such as romantic authorship ideology—just as the person who understands "ouch!" as the cry of an injured person applies some previously acquired cultural understanding of how English speakers often express pain.

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[58] Goffman (1978) makes a similar point by describing an inverse situation. People often engage in solitary "self-talk," thereby occupying the role of both "speaker" and "hearer" (787–788). In such a situation, a single person plays multiple roles and, Goffman maintains, it would be a mistake to consider self-talk nonsensical or pathological. In other words, this division of labor supplies an interpretant and therefore meaning. Compare Bakhtin's superaddressee (see Chapter 3).

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Interpretants act along a spectrum of awareness ranging from embodied reactions to conscious acts to deliberate acts. Kockelman notes that Peirce categorized any particular interpretive act, such as an elevation in heart rate, with a "slightly more abstract double, known as an ultimate interpretant" (2007:378). Along the lines of genre to species, the ultimate interpretant is a "disposition" for the interpretant to act according to one of the spectral possibilities, for example, a particular person's disposition to react to some class of signs through a strong autonomous nervous response. The ultimate interpretant is not any actual interpretation but "is evinced only in a pattern of behavior (as the exercise of that disposition)" (378). Citing Bourdieu, "ultimate interpretants are therefore a very precise way of accounting for a habitus, which, in some sense, is just an ensemble of ultimate interpretants as embodied in an individual and as distributed among members of a community" (Kockelman 2007:379).

This richer semiotic theory of language can be applied directly to Bourdieu's own analysis of language use. For example, in the study of French standardization, Bourdieu (1991:51) identifies the symbolically important difference between the standard French "uvular 'r'" (produced through voiced friction of the tongue just before the throat) and the non-standard "rolled 'r'" (produced through voiced friction of the tongue against the alveolar ridge behind the front teeth). This distinction is an example of "indirect indexing" (Ochs 1992).

Indexicality is a core type of semiotic correspondence between sign–object and interpretant–object that produces meaning. In terms of social action, it may be *the* core type, because indexicality means "pointing to" and binds the interpretation of meaning to the context of use (Hanks 2001).[59] When Kockelman's hypothetical subject shouts, "Ouch!", that verbal

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[59] Indexes' counterparts in Peirce's system, namely, icons and symbols, depend on social convention and therefore socialization, but not necessarily on immediate context, although it is also true that sign relations very often consist

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sign is an index that points to pain, which the interpretant understands by observing the "pointing to" or indexicality of the shout to the pain. When a French speaker pronounces "r" with his uvula, he directly indexes the legitimacy of standard French and indirectly indexes his own status as a "legitimate speaker." Given the co-existence of the non-standard, rolled form, which indexes opposite, "dominated" meanings, the pronunciation enacts a social distinction between classes of people through the semiotic distinction of indexicality. When people acting as interpretants consistently perform and respond to this dual distinction, they enact a habitus of symbolic domination through language.

This theoretical symbiosis is not confined to phonology or any other feature of grammar. Indexicality more generally explains the "secret code" of language's symbolic power, the "modalities of practices, the ways of looking, sitting, standing, keeping silent, or even of speaking…full of injunctions that are powerful and hard to resist precisely because they are silent and insidious, insistent and insinuating" (Bourdieu 1991:51). Albeit in the slightly different context of addressing psychological anthropologists, Ochs (2012:149) could have been making a case for this identity between practice theory and the rich semiotic theory of language use when writing that, "In advocating that language be considered…as not only symbolic and separated from the world but also indexically part of the world, I am petitioning to view ordinary enactments of language as modes of experiencing the world." Her plea is very similar to Bourdieu's criticism of Saussure in that both integrate language *ex ante* with examinations of the subjective and intersubjective qualities of being human. I will go into intersubjectivity in more detail when I discuss authenticity in Chapter 7. Intersubjectivity is of fundamental importance to

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of combinations. Peirce (1991:252) gives the example of Robinson Crusoe finding a footprint in the sand, which he knows to be symbolic of the "idea of a man" and an index "that some creature was on his island."

a social, or anthropological, perspective because it concerns "the possibility of human interaction and human understanding" (Duranti 2010:11–13). Duranti proposes that intersubjectivity emerges along a "gradient" of experiential dimensions: natural, sensory, cultural, social, pragmatic, and linguistic. Indexicality fits in as a core element of the linguistic dimension, and thus connects to the dimension of practice and all the others, with which both are imbricated. In this way, "beyond doing things, enactments of language are experienced as they are produced and as they are perceived" (Ochs 2012:149), much as practice and structure work together in habitus.

For example, the longtime equation between romantic authorship and its version of authenticity suppressed the legitimacy of many remix activities that people engaged in before the current new media tumult. That domination also enabled groups such as the Surrealists to leverage contrarianism through early collage culture during modernism's heyday. Today, when an artist, Pogo, remixes Disney films into music videos, his act directly indexes the legitimacy— measured as authenticity—of remix authorship ideology and indirectly indexes his status as an authentic (remix) author. Conversely, he indexes the inauthenticity of romantic authorship ideology and Disney's ownership-based claim based on it.[60] The Walt Disney Company, which disagrees (it is one of six members of the MPAA), reportedly threatened to sue for copyright infringement, although as if to prove how convoluted the indexes of authorship ideology have become, Disney also reportedly hired Pogo to make copyrightable work for it under a short-term

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[60] See, for example, "Wishery" (2010), based on Snow White and the Seven Dwarves (Hand 1937), at http://www.youtube.com/watch?v=qs1bG6BIYlo, accessed February 1, 2014.

contract that required him to remove his remixes from the internet temporarily without either party relinquishing its long-term position on their legality or social legitimacy.[61]

Thus, there is no conflict—quite the contrary—between the unfolding game of the structure–practice dialectic and the unfolding construction of social order through situated language use. Removing the straw man of Saussurean linguistics clears the main obstacle. Some residual differences resolve into similarity instead. For example, Giddens' definitions of semantic and semiotic have roughly reversed connotations in linguistic anthropology. Linguistic anthropologists often position their own arguments against folk biases that view semantic reference as the primary, encoded source of linguistic meaning (see Duranti 2009b; Silverstein 1979). Semiotics connotes the richer, Peircean, Wittgensteinian, and other approaches that complement studying language use ethnographically (see Duranti 1997). Hanks (2005b) identifies specific examples in Bourdieu's own work that display an implicit indebtedness to this semiotics. The terminology can be aligned on the basis of the shared interest in what Giddens calls the recursive grounding of language in the communication of meaning. Semiotics will serve that purpose for me, with semantics reserved for the referential or symbolic function of language.

The actual shared interest in the rich semiotics of language use also resolves another apparent conflict between practice theory and linguistic anthropology, at the level where linguistic structure meets communicative activity. Bourdieu (1991:376n.13) argues against analyzing the "social uses of language" with the "abstract notion of the 'situation.'" He (1990) specifically criticizes ethnomethodology, which has become one of the pillars of linguistic anthropological research by way of the idea that people co-construct cultural meaning through

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[61] See http://remixcultures.blogspot.com/2011/03/alice-continued-disney-and-pogo.html, accessed February 1, 2014.

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the many micro-contextual aspects of an unfolding communicative interaction (see Garfinkel 1967; Heritage 1984b; see also Chapter 3). Ethnomethodology, along with other modes of linguistic anthropological epistemology (see Duranti 2010), rests on phenomenological philosophy. Bourdieu (1990:24–25) criticizes both as "objectivism" that performs a "pernicious alteration" on "practical knowledge" by imposing "objective regularities" from the analyst's point of view—which is the same criticism he makes of Saussure.

This conflict may be overstated for two reasons, however. First, the overlap exceeds the difference. Bourdieu has been criticized for misstating the extent to which his approach diverges from alternative anthropological and sociological ones because he borrows extensively from a common source in phenomenology (Throop and Murphy 2002). Bourdieu's (2002:209) own direct response to this criticism was that he intended neither to "rephrase" nor to "refute" the approaches he discussed, but rather to "integrate" them.

Further evidence that overlap exceeds difference is that Bourdieu's own charges have been leveled back at practice theory from a linguistic anthropological perspective that equally overstates the case. Sidnell's (2005) thesis of "practical epistemology" begins with discussions of work by Bourdieu, Sahlins, and Ortner. While claiming to draw on their work, Sidnell also criticizes each for discounting "intelligent capacities," misconstruing those capacities as proxies for theoretically feeble "calculative rationality," and therefore abstracting instead to an "occult" theory of agency, respectively (6–15).[62] Reversing Bourdieu's critique of the situation as a unit of analysis, Sidnell offers a combination of ethnomethodology and Goffman's interactional

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[62] These criticisms are specific forms of a common, more general impression of practice theory as "overly deterministic" (Throop and Murphy 2002:198), despite practice theorists' consistent efforts to account for variability and change.

approach as a corrective. In addition to grounding rules in social action rather than abstract

representational structures, "'practical' should, then, also be understood as pointing to the

ordinary and pervasive orientations and concerns of the people whose epistemology and

knowledge is being studied" (16). Knowledge is organized socially, situationally specific, and

shaped by participants' orientations *in situ*.

Yet Sidnell's description overstates the contrast with traditional practice theory and sets

up a straw man that parallels the Saussurean one.[63] It may be that Bourdieu, in particular,

sometimes emphasizes the bodily inscription of habitus in terms that can seem to render human

activity automatic. But there is room in both practice theory and linguistic anthropology for

habitual patterns of social activity to include mental representations of the world, physical

embodiments within it, and use of its material objects (compare the list at Duranti 2011b:35).

Bourdieu adapts his own concepts and terminology according to the context of analysis (Hanks

2005b), which, rather than inconsistency, may indicate methodological compatibility with the

flexible approach Sidnell advocates.

Furthermore, practice theorists are concerned with how structure and practice work

together under specific conditions of power asymmetry, and how people leverage variability

within habitus or its relation to a field of production in order to reproduce and alter structures.

Whereas Sidnell claims that practice theory reduces intelligent capacity to calculative rationality,

Sewell in fact proposes that sufficient evidence of the potential for "acting creatively" (1992:20)

despite the durability of habitus comes from Goffman's (e.g., 1959) demonstration that "all

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[63] Sidnell calls attention to the fact that the three classical statements of practice theory on which he focuses were

published between 1976 and 1984. Although they remain classics, even if his description is accurate, practice

theory froze in time no more than linguistic anthropology has.

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members of society employ complex repertoires of interaction skills to control and sustain ongoing social relations" (Sewell 1992:20). Ordinary encounters afford opportunities to use those repertoires in ways that include "small transformative actions," such as saving face after a breach of social expectations during an encounter. Despite Sewell's failure to see that Goffman is using a richly semiotic theory of linguistic structure, his gesture to Goffman shows how the ostensible divergence between approaches like Bourdieu's and Sidnell's is really a convergent concern with the enactment of practical knowledge. The same is true when Giddens (1984:68-73) embraces Goffman's insights without seeing them as being about linguistic structure.

Moreover, the accusation that practice theory posits an abstract actor with occult qualities is too crude a characterization. Ortner (1989:198) argues for a "loosely structured" actor "prepared—but no more than that—to find most of his or her culture intelligible and meaningful, but who does not necessarily find all parts of it equally meaningful in all times and places." The actor has a "cultural repertoire" that affords a "capacity to find meaning, in more than a [rationally] manipulative way." This conceptualization is compatible with Sidnell's proposed alternative of family resemblance borrowed from Wittgenstein. It is also compatible with the explications of both Kockelman and Ochs at the level of semiotic structure and linguistic enactment. The flexibility across these perspectives helps account for contemporary complication such as the uneasy dance between Disney and Pogo. It also helps explain why historical, superseded configurations of authorship ideology such as the one advocated in the Paris Parlement can seem bizarre from a present-day vantage point.

The second and final reason that the conflict over situational analysis is overstated arises from Bourdieu's substitutes for it with respect to language use. One of these substitutes is to bypass language, such that habitus is inculcated through "the most apparently insignificant

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aspects of the things, situations and practices of everyday life," "without passing through language and consciousness" (1991:51). In that passage, "language" seems to be shorthand for his interpretation of the Saussurean code that exists independently of human action. As already shown, however, the point of commonality between habitus and language comes much earlier within semiotic structure. Language use therefore can occur on any number of levels of awareness on the part its user, especially when it comes to habitual language use (see Kroskrity 1998).[64]

Another of Bourdieu's substitutes is to shift the objectification of language use from the situation to a higher level of generality in order to classify it as a sociological phenomenon that can be analyzed in terms of practice. This is the move he makes to perform the analysis of French standardization, for example. This move relies on a metaphor of interlocking markets, in which "linguistic exchange—a relation of communication between a sender and a receiver, based on enciphering and deciphering, and therefore on the implementation of a code or a generative competence" (1991:66) is the vehicle for trade in economic or symbolic capital. Although Bourdieu is otherwise sharply critical of linguistic structure as code or competence, he uses it here to make language a tool of social practice.

Once again, however, this send-and-receive model of encoding and decoding language is oddly two-dimensional from a linguistic anthropological perspective on the rich semiotics of communicative activity (see, e.g., Goodwin and Goodwin 2004). Language-as-instrument has its place in specific circumstances but does not capture language use more generally, including as

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[64] Kroskrity borrows Giddens' (1984) distinction between "practical consciousness" and "discursive consciousness" to describe the fluidity of awareness that people can bring to the habitual enactment of language and efforts to reproduce or alter it.

practice theorists seek to describe it. A "situation" of interactional co-presence among participants (see Goffman 1966) may be a locus of action for the deployment of language as capital as well as a locus of linguistically mediated action interconnected to the broader play of habitus in a field (see Hanks 2005a). One of my aims is to bring closer together the linguistic anthropological emphasis on co-construction through language use and the social boundaries that something like Bourdieu's metaphor of linguistic market exchange seeks to capture.

> Hanks provides a starting point for doing so with his admonition that:
>
> practice is not merely another term for what people do understood in isolation from what they say or think they do. Rather, a practice approach to language focuses precisely on the relations between verbal action, linguistic and other semiotic systems, and the commonsense ideas that speakers have about language and the social world of which it is a part. [Hanks 2005a:191]

His objective is to explore deixis, a sort of ideal type of indexicality.[65] But he also implicitly points to a more basic way in which practice and indexicality unite. What people do and what they say they do refer to pragmatics and metapragmatics, respectively. The relationship between them is one of ordering indexicality, that is, of constituting meaning. There are many ways that this relationship between what people do and how it is ordered works, but the general

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[65] Deixis is akin to an ideal type of indexicality because the meaning of deictics such as "I," "you," "here," and "there," while they have an extremely abstract referential meaning, really depend completely on what they point to in a particular context. Hanks uses deixis to show how indexicality can do something in an immediate context and simultaneously relate to a wider, habitual kind of action.

relationship pervades language and accounts for the selectivity that produces social distinction when people make and interpret signs (Silverstein 1993).[66]

For example, to roll one's "r"'s in French is to perform this relationship, even unawares, and to perform both aspects of it. The act of a rolled pronunciation by itself is phonological physics, and the belief that a rolled pronunciation indexes social subordination is ephemeral without action. Together, and embedded in the field of language production, however, they enact a habitual language ideology.

I concluded my description of authorship as habitus in the first half of this chapter by observing that when someone says something about authorship she is also saying those words in a particular manner in a particular context. I proposed that the enactment of the authorship habitus—as well as the potential for a change in habitus—lies linguistically in the connection between those layers. The relationship between metapragmatics and pragmatics is that connection. The language ideologies to which it gives rise knit together talk about authorship and talk as authorship in a way that makes it possible to examine the authorship habitus under potentially transformative pressure.

To elaborate, indexicality, as discussed earlier, is like the molecular structure of habitus. Indexicality is how meaning is produced in an actual social context as someone initiates and another someone (the interpretant) assesses how a sign "points to" its object. The indexing either

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[66] Silverstein emphasizes that this connection between practice and indexicality is actual, not metaphorical; it is not a linguistic model transposed to social action but the way in which language use is social practice (see especially page 34). He cites to Bourdieu for one way to understand practice. I rely on Silverstein's analysis, but also seeks to elaborate upon his passing reference to "sociocultural praxis," broadly understood, and to do so by focusing more specifically on practice theory's notion of habitus as it relates to the "metapragmatic–pragmatics nexus" (34) that governs indexicality.

"presupposes something about its context-of-occurrence, or entails ['creates'] something about its context-of-occurrence" (Silverstein 1993:36).[67] In terms of the people who produce and interpret meaning, the presupposition or entailment is what people do with language, or pragmatics.[68] Pragmatics can convey social meaning, as when shouting "ouch!" indexes pain (see Urban 2006 for the example of the performance of crying during a ritual lament). At other times, pragmatics works with semantics, or what people say with language. The semantic—or symbolic or referential—relationship between the sign and its object still depends on its indexical, pragmatic qualities in order to have any kind of productive social meaning. For example, "ouch!" is a widely understood conventional symbol for pain, but it only means something socially if coupled with its indexical dimension. Similarly, the referential clause, "original works of authorship," in the copyright statute only means something socially if the person reading it presupposes its index to a question of romantic authorship, because remix authorship does not have an originality criterion.   Indeed, romantic ideology has been so dominant that the statutory provision effectively entailed romantic authorship as the operative context of copyright law until recently.

Furthermore, to mean something socially, such an indexical grouping requires the "cohesive structure" supplied by metapragmatics (Silverstein 1993:36). Metapragmatics is often

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[67] An example of presupposition is "this dog," which presupposes that an interpretant has some independent basis for connecting "this" to "dog," for example, can see the dog or the dog was just mentioned in an ongoing story (Silverstein 1981:7). An example of entailment is "Mr. Smith," where the "Mr." creates a context of formal politeness or deference (Silverstein 1981:7).

[68] Silverstein (1993:53) describes this process as "for the formulator: entextualization; for the analyzer: giving an interpretive account." The analyzer here can be either another participant in a social interaction (that is, the interpretant) or an outside observer.

simplified as "talk about talk" (Gumperz 1995) or commentary on language, as when a parent instructs a child that swear words are bad words or a French teacher instructs a student that "r" is correctly pronounced near the throat.[69] Beneath that gloss, the semiotic principle is that "metapragmatic function serves to regiment indexicals into interpretable event(s) of such-and-such type that the use of language in interaction constitutes (consists of)" (Silverstein 1993:37).

Metapragmatics may be relatively obvious or more discreet. A parent scolding a child who swears or an instructor correcting a pupil's pronunciation enacts "denotationally explicit" (Silverstein 1993:39) metapragmatics because it comments on the superficially apparent pragmatics of swearing or pronouncing. When a person who hears another shout, "Ouch!", reacts with a sympathetic "are you ok?", the metapragmatic regimentation that socially aligns the index of shout to pain with the index of sympathy to ouch is more subtle because it is based on unspoken, previously socialized habits as to how such an interaction should go. The "ouch!" by itself harbors even subtler metapragmatics, because the immediate, contextual index of pain that it creates already rests on a presupposition that shouting "ouch!" will establish the ensuing interaction with an interlocutor as a particular kind of interaction centered on attending to injury.

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[69] I recall a French language teacher (and native speaker) expressing surprise that a student's good command of French came with a hint of a Marseilles accent, especially in the "r"'s. Implied is that a skilled non-native will adopt a standard Parisian accent through classroom socialization, rather than a symbolically subordinate regional one. A more classic illustration of metapragmatics is as follows:

> To give those rules, or talk about them, is to engage in "meta-pragmatic" discourse, we should say. So the statement, "In our society, when a proper religious or judiciary functionary so empowered sincerely utters to a man and woman, 'I pronounce you husband and wife,' the latter are married," is a metapragmatic utterance describing the effective use of this formula. Whether or not it is a correct statement is, of course, not at issue; it is in any case intended as a description of some pragmatic meaning relation. [Silverstein 1981:3–4]

According to its most common normative function, the shout solicits sympathy or aid.[70] The

copyright statute's assumption that "original works of authorship" has self-evident meaning lies

on the subtler end of the spectrum. It takes for granted that everyone is working under the

expectations of romantic authorship ideology.

Thus, metapragmatics is pervasive. It is always already part of pragmatic indexing. This

mutuality is a "dialectic" that constitutes "the social institutional level of semiotic processes

operating in societal realtime" (Silverstein 1993:54). Pragmatics continually projects potential

meaning through presupposition or entailment, and metapragmatics continually regiments that

potential coherently or, if there is a breach of expectation, incoherently until worked out. In fact,

pragmatics continually projects potential meaning through both presupposition and entailment

because it always presupposes that the pragmatic act is contextually "appropriate" and also

entails that the deployment be contextually "effective" (though it may misfire) (Silverstein

2003:196). This dual projection invokes metapragmatic regimentation, and metapragmatics

obliges by "mediating between" presupposition and entailment. If "ouch!" elicits "are you ok?",

the shout has presupposed its appropriateness and entailed its effectiveness with respect to a

metapragmatic order of social attention to injury. If "original works of authorship" effectively

circumscribes an infringement dispute within romantic limits, the people involved in the case

have presupposed its appropriateness and entailed its effectiveness with respect to a

metapragmatic order of social governance of circulated expression.

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[70] Thus, this kind of "implicit" metapragmatics is itself indexical, or an "indexical signaling of something about

indexical signaling" (Silverstein 1993:47.) Silverstein includes Gumperz's (1982:131) notion of "contextualization

cues" in this category. "Ouch!" serves as such a cue insofar as it attunes participants that their ensuing interaction

will center on attending to injury.

That outcome demonstrates furthermore that the dialectic of pragmatics and

metapragmatics is "ideological" (Silverstein 1979). To produce meaning is to select a specific

outcome for what is, as a matter of ideal structure, blank-slate or meaningless indexicality.[71]

Because of the dialectic, every indexical act is selective and so language use is "ideological 'all

the way down'" (Silverstein 1998:126)—and all the way up to the constitution and reflection of

social order. Ideological in this sense is broader than its frequent connotation in sociocultural

theory or other disciplines and has no necessarily pejorative connotation (Woolard 1998).[72]

Ideology is also a flexible concept that does not depend on awareness, effectiveness, or

uniformity (Kroskrity 2004). Rather, as a domain of language use, language ideologies are a

"ubiquitous set of diverse beliefs, however implicit or explicit they may be, used by speakers of

all types as models for constructing linguistic evaluations and engaging in communicative

activity" (Kroskrity 2004:497).

Language ideologies describe indexical selection and chain outward from the micro-

linguistic to the macro-social (Silverstein 2003). When a pragmatic act invokes metapragmatic

order, that order comprises another level of indexical meaning, which relates back to down to the

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[71] Silverstein refers to the selection as "function$_1$" of language because it corresponds to how people think of

language use as a goal-directed tool, and to the structure as "function$_2$" of language because it corresponds to the

semiotic properties prior to their endowment with the specific understandings that comprise function$_1$.

[72] Woolard discusses the many social scientific meanings of ideology, and the "great divide" between "neutral and

negative values of the term" (7). The broadest definition of ideology she offers is "signifying practices that

constitute social subjects" (8), which matches the description supplied in the text this footnote accompanies. She

also, however, notes that even that flat definition implicates questions of power. Power, as has already been

discussed, is the grist of struggle in practice theory. Thus, the analytic concept of language ideologies continues the

fit between a rich semiotic theory of language and practice theory.

first level (and chains up to yet another). If the "ouch!" that indexes subjective pain elicits an

intersubjective indexical of "are you ok?", the result is a metapragmatic order consisting of a

social norm in the form of a language ideology. The norm has its own indexical pattern. To

respond with "are you ok?" indexes solidarity, while to respond with unconcern or further

infliction of pain indexes pathology (normatively speaking). Through indirect indexing, the

choice of response quickly can invoke its own metapragmatic order of good person or bad

person. The apothegmatic phrase, "good Samaritan," represents this order.[73] So-called Good

Samaritan laws that immunize aid-giving passers-by from liability if they inadvertently

contribute to an existing injury reproduce the ideology as well as belie its ideological quality,

because state legislatures pass these laws in moral abhorrence at the dispassion of the traditional

Anglo-American common law rule that no aid is required but, if given, can trigger liability.

"Pirate"—to pirate and to be a pirate—does something similar in the copyright debate, as does its

substitution by the seemingly more neutral term, remix, by critics of the existing order.

　　Language ideologies thus scale up as rationalizations that link language use and culture.

The semiotic patterning of the pragmatic–metapragmatic dialectic that creates language

ideologies corresponds to the practice–structure dialectic of habitus.[74] Bourdieu's "secret codes"

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[73] In the Bible's New Testament (Luke 10:29–37), Jesus responds to a question about the imperative to "love thy

neighbor" with a parable in which two Judeans ignore an injured traveler but a Samaritan passer-by helps him.

Jesus thus criticizes prejudice against Samaritans as bad people and advises compassion for all, although the folk

label for the parable, "good Samaritan," is semantically ambiguous as to whether all Samaritans have the potential to

be "good" or whether this one was an exception.

[74] Hanks 2005b lists a number of key works in language ideologies research as examples of Bourdieu-style language

games, distinction, and symbolic power. As I have indicated, I seek to to elucidate in more detail the theoretical

foundation for such compatible applications.

that produce the legitimacy of standard French can be read as instances of this patterning (see Silverstein 2003:216–220 for a discussion of the indexical order of language standardization using Labov's and Gumperz's data). At first, the rolled and uvular "r"'s index two different regional varieties of French. In combination with power differentials between regions, the different pronunciations implicitly invoke a metapragmatic order of hierarchy. The dialectic between pronunciation and hierarchy indexes two different statuses, low and high, which together invoke a further metapragmatic order of legitimacy. The dialectic between hierarchy and legitimacy constitutes symbolic domination, reproduced continually by both dominant speakers and subordinate ones. Semiotic regimentation and social distinction go hand-in-hand and, more than that, are the same thing.

The ironies of cultural property reflect a similar process of distinction. Despite its otherwise flexible abstraction, the modern IP regime privileges some cultural forms of authorship and devalues others to the point of denying that they count as authorship because they cannot be owned per romantic criteria. This distinction correlates highly with power differentials between communities within states and geopolitically. It also creates the possibility of resistance through subversion and local redefinition of IP. The same pattern occurs between romantic and remix authorship beyond the typically cited cases of ethnically defined communities.

This basic identity between the dialectics of pragmatic–metapragmatic and practice–structure has a further dimension that concerns the struggle for power and potential transformation. This dimension is a sliding scale of awareness, which can include deliberate manipulation of a language ideology, Bourdieu's notion of action without consciousness or will, or partial kinds of awareness in between. Partial, disjointed awareness may be typical. Giddens

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(1984:4–8) distinguishes between "practical consciousness" and "discursive consciousness."[75] Practical consciousness refers to the "routine," "reflexive monitoring" of "the ongoing flow of social life." Discursive consciousness refers to "rationalization of action" or "being able to put things into words" (45). But Giddens cautions that "the line between discursive and practical consciousness is fluctuating and permeable, both in the experience of the individual agent and as regards comparisons between actors in different contexts of social activity" (4). Many permutations may result, for example, an actor may state a reason for doing something that does not correspond completely to how she actually did it.

Adapting Giddens' terms to language ideologies, Kroskrity (2004:505; see also 1998) posits "a correlational relationship between high levels of discursive consciousness and active, salient contestation of ideologies and, by contrast, the correlation of practical consciousness with relatively unchallenged, highly naturalized, and definitively dominant ideologies." People tend to contest language ideologies that lend themselves to overt rationalization for reasons to do with grammatical accessibility (Silverstein 1981), cultural relevance, or circumstantial saliency.

For example, it is probably rare to talk about how asking "are you ok?" when you hear "ouch!" makes one a good person.[76] But adding a sensitive variable such as race or ethnicity

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[75] He also distinguishes both from "unconscious motivation," which is the deep psychological "potential for action" based on things like wants that may "supply overall plans…within which a range of conduct is enacted" but do not otherwise enter into a course of action except in unusual cases of a "break with the routine" that brings them to the surface.

[76] Socializing children may seem the most evident case and it is probably not a coincidence that illustrative examples of metapragmatics often imagine a parent or teacher instructing a child explicitly about how to speak (for example, "Say 'please'"). But doing so is not a universal practice of child socialization, in any event (Schieffelin and Ochs 1986).

brings that ideology into focus (see Irvine and Gal 2000:37). An Armenian-American man interviewed as part of an ethnographic study of the Boston diaspora recounted how his father, a survivor of the genocide that destroyed the Armenian community living under Ottoman control, "hates the Turks as an abstraction….He would say we should kill all the Turks" (Deeb n.d.). The man reported further, however, that, when asked what he would do if he saw a car hit a Turkish pedestrian on a local street, his father would say, "I'll call the hospital." The story was related to illustrate the complexity of ethnic identity in terms of the presumably simpler moral code of aid to injured strangers.

The same principle explains Bourdieu's point that symbolic domination in a regime of language standardization can generate intense competition between two elite factions such as writers and grammarians but much less between elites and non-elites— unless something like regional accent becomes a locally salient index of capital (see Johnstone et al. 2006 on how markers of "Pittsburghese" morphed from immigrant accent to lower socioeconomic class to regional pride). But disjunction or incongruity within a dominant language ideology can also bubble up to contestation and change, as when a new literary group fruitfully meets changing audience expectations and alters the language ideological bases for valuing one literary form over another. The same applies writ large at the boundary of the field itself when proponents of a new authorship mode such as remix join with audience expectations to alter the existing romantic basis for valuing authorship.

This sliding scale rests on how the awareness dimension is harbored within semiotic structure. A completely routinized, practically conscious enactment of a language ideology— distilled, reflexive habitus—is pure experience. Pure experience is iconic of the sign–object relation it enacts (Urban 2006). Routinely pronouncing the uvular "r" is in this sense an icon of

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legitimate French; it represents and *is* legitimate French. At the other extreme, discursively conscious contests occur over knowledge. Knowledge is the product of learned sign–object symbols. Arguing over the proper pronunciation of French is in this sense a symbolic matter. What connects experience and knowledge are the indexes that settle meaning into deep ideology or raise it toward surface contestation (compare Haviland 1996 on how marital dispute resolution in Tzotzil consists of indexical patterns within the interaction that organize the semantic content toward iconical representation of Zinacanteco marital ideology).

At the level of language use, this chain from iconic experience through indexicality to symbolic knowledge generates a direct correspondence between awareness and explicitness. The more explicit the metapragmatic regimentation, the more aware people tend to be of the ideological quality of its object and the more they may contest that object with discursive consciousness. The less explicit the regimentation, the less aware people tend to be of the object's ideological quality and the less bestirred from practical consciousness.

Symbolic knowledge, expressed in semantics, lends itself most readily to explicit regimentation (Silverstein 1993). The referential quality of nouns, for example, makes them "more available for folk awareness and possible folk theorizing" (Kroskrity 2004:506) than pragmatic assumptions (see Silverstein 1981). The pragmatic sequence of "ouch!" and "are you ok?" may be habitual, unremarked, and difficult to explain without translating the indexes into a causal chain of semantic facts from injury to pain to concern, whereas the semantic introduction of an ethnic variable (Samaritan, Turk) may trigger surface rationalization very easily. But there is no hard-and-fast rule. Pragmatic pronunciation of "r" may be habitual, unremarked, and difficult to explain, unless it is objectified within a broader pragmatic context such as classroom instruction, in which case it becomes highly explicit and explainable, at least as a didactic matter.

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People often talk with awareness about authorship, authenticity, and IP when they are made explicit topics of discourse, for example, in court or during a meeting among storytellers to discuss their profession. They may talk about proxies for those ideas without displaying awareness of the underlying idea, as when they discuss the legal criterion of original expression that stems from authenticity but is not framed directly as such. Talk as authorship tends to be less available to awareness in the moment, for example, while producing a story like the Miracle Mile Paradox—unless something unusual like deliberately crossing the boundary between actual reality and fictional alternate reality to make a fundraising video brings it to the surface.

The result is a tendency to reduce meaning to symbolic knowledge when people talk about something with explicit topical awareness, and a corollary failure to recognize the experiential enactment of ideology involved in talking. Hence a narrator's assumption that reporting that a man would call the hospital upon seeing an injured "enemy" will transparently contradict the man's confessed hatred of the enemy. The good Samaritan ideology of the man in the story is a statement of fact, but for the story to have its intended meaning the listener must understand the ideology, which is an inference the narrator presupposes in the narration (cf. Urban 2006:90 on racist language ideologies as constituting metapragmatic inference of a semantic object). It may in fact be very difficult cognitively to focus on multiple semiotic layers at a time during language use (cf. Duranti 2009c, 2011a; Throop 2003).[77] This limitation helps

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[77] Throop brings into the anthropology of experience William James' notion of the "focal and fringe elements of awareness" (228) and Husserl's subsequent elaboration on the "forward and backward facing 'horizons' of awareness" (230). This concern with the scope of attention is part of a broader concern with intentionality, understood as the "aboutness" or "directed toward something" quality of consciousness (see Duranti 2006:36), which Duranti develops from Husserl and other phenomenologists to explain things like habituation through language socialization and habituation to language ideologies or styles of speaking.

explain how a vociferous argument over French linguistics can center easily on phonetic aesthetics or the bounds of literary license, reproducing symbolic domination without ever addressing it.

The limitation also helps explain how disjunctions or incongruities at the semiotic level can serve as raw material for contestation and potential transformation when they coincide with power asymmetries. People may comment rather frequently on the symbolic domination indexed by standard versus non-standard accent in the context of talking about class, region, or ethnicity, which call attention to the indexes by reframing them in terms of comparatively accessible points of discursive and social reference. The Peircean semiotic structure moves into the domain of language ideologies and, more broadly, of discourse as practice. Bundles of indexicality structure a communicative event, which can be understood "as an achievement, that is, as the collective [linguistic] activity of individual social actors whose final product (viz. the resulting 'text' or speech event) is qualitatively different from the sum of its parts (viz. individual utterances by individual speakers)" (Duranti 1986a:239).[78] People create meaning across communicative events by projecting how they are alike or dissimilar, which both establishes typologies of events actually connected across space and time and affords typological comparison of events (Silverstein 2005). Silverstein calls the former "interdiscursivity" and the

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[78] Duranti's definition is broad enough to encompass similar, but not identical, formulations. For example, his parenthetical draws together text and speech event. Silverstein (1993:35) uses "text" as a unit" laid down in discursive practice (with an indexical or pragmatic dimension) that is organized (effectively regimented or metapragmatically dominated) according to what kind or type it is at every moment construable as." Hymes is most closely associated with "speech event," which he defines as "activities, or aspects of activities, that are directly governed by rules or norms for the use of speech" (1972:56). Rules or norms for the use of speech is close to the pragmatic–metapragmatic dialectic.

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latter, "intertextuality," following Kristeva's (1986) coinage, which in turn built on Bakhtin's (1981) insistence that the meaning of any piece of language large or small always lies in its "dialogue" with other pieces of language.

Interdiscursivity provides continuity of practice, while intertextuality supplies the potential for power struggle. To typologize communicative events as alike or dissimilar is to (try to) exert power (Briggs and Bauman 1992). Actors with goals exert that power by "locating, extracting, and interpreting" (Briggs 1993b:388) sets of communicative events, or discourses. The parable of the good Samaritan comprises a series of such acts, which include Jesus turning a disciple's question about Jewish law into a moral allegory set in contemporary ethno-political context; the documentation (and many translations) of that interaction, which is the only filter through which its existence or accuracy is evidenced; the essentialization of the parable as dogma of an ostensibly new, Christian morality through Paul's epistles later in the New Testament and countless subsequent clerical writings and sermons; and the terminological abbreviation of "good Samaritan" as an aphoristic phrase in folk parlance eventually adopted to support legislative tampering with an old common law rule. Throughout, there is continuous interdiscursive projection of historical continuity, but each generic transformation also involves the exertion of intertextual power to change other people's habits.

A similar pattern can be observed in the difference between licensing a copyrighted work for adaptation to other media forms and remixing the work. Buying the option to make a movie from an existing book carries forward interdiscursively the expressed content of the book and the property rights that attach to that content. The narrative is transferred to another medium with revisions, but is left basically intact along with the romantic authorship behind the narrative. Both are commonly held out to be so: "based on the best-selling book by so-and-so." There still

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exists room for intertextual contestation. The book's author and the movie's producers may

dispute plot or payment. The audience may prefer the story in one genre over another, resulting

in a gain or loss of capital for an author. But even those disputes contest the transfer of value

from one romantic author to another.

By contrast, remixing a work is an act of collage and is intertextual from the start, even if

it results in a new narrative. Pogo's remixes of Disney films into music videos make a larger

break and provide a different kind of experience from an adaptation. The audience for his work

may recognize or become curious about the Disney film. But the audience also is likely to

ascribe indexes of authorship to Pogo in a way that either credits him as a romantic author

without licensed transfer (creating a conflict within the modern regime) or treats his remix

authorship as valuable in non-romantic terms (potentially transforming the regime).

These "metadiscursive practices" (Briggs 1993b:388) repeat on a social or historical scale

the metapragmatic regimentation of the semiotic scale. Communicative events thus can scale up

to historical events in Sewell's sense of the term. Hanks provides an example that synthesizes

Bourdieu and Bakhtin. He combines Bourdieu's attention to "the diachronic processes of

discourse production, of the action-centric perspective of language users, and of the partial,

open-ended realization of discourse forms in communicative practice" with Bakhtin's

"nonreductive approach to verbal form," in which "speech genres are seen as both the outcome

of historically specific acts, and themselves among the constituting dimensions in terms of which

action is possible" (2000:136–137).

Hanks applies this synthesis to an analysis of official documents written by Mayan

representatives of the Spanish crown in early colonial Mexico. The new facts of local colonial

arrangements and Mayan literacy in Spanish brought Spanish and Mayan institutional habituses

of governance into contact—much like the arrival of Captain Cook in Hawai'i that prompted Sahlins's phrase, "structure of the conjuncture." The resulting documents exhibit the "tangible influence" of "pragmatic processes that link individual works to dominant power structures" (2000:146). These processes "combined and merged Maya representations with those of the Spanish, producing new blends and ambivalent types of linguistic expression" (158). For example, the Mayan nobles-turned-officials used Mayan poetics to engage Spanish religious and political expectations, thereby also shaping the subsequent structure of local Spanish governance ordered through the documents. The Mayan officials' "texts mobilize…aspects of the local habitus in order to regiment their own reception" (158).

There is another way to look at Hanks's analysis that brings together all the pieces of practice theory and language use as practice discussed thus far. By engaging in authorship as a general habitus, the Mayan officials constructed a new particular habitus of local authority under the pressure of a paradigmatic power shift, and in turn shaped the general habitus into the new, hybridized form of that authority. Something similar is happening today in the clash between romantic and remix ideologies as particular habituses of authorship that betoken a general habitus of authorship. Through practicing that general habitus, people engage in the contest and try to shape what authorship means into one or another preferred, particular ideological form.

CHAPTER 6: Retheorizing Authorship

I can now elaborate my argument that authorship and ownership are mutually defining practices driven by a productive tension between the pursuit and goal of authenticity. I define authorship as the staking of a claim to social position in the quest for authenticity. Claim-staking is proprietary and accomplished through communicative acts. An act of authorship sets in motion pragmatic indexes, ordered metapragmatically by claim-staking. Claiming seeks to bound the claimant (who need not be the one actually animating the claim in Goffman's sense) in some respect vis-à-vis other people, that is, to establish position. Position is always a relative determination based on economic, aesthetic, or other criteria of distinction.

I define ownership as having an authorship claim ratified by other people. To own is therefore communicative because it is recognition of a communicative, proprietary claim and also because ratification occurs through additional acts of authorship by other people. Acts that ratify or reject authorship claims are themselves both proprietary and communicative and stake additional claims.

I.   A Model of Authorship as a General Habitus of Communicative Activity.

The diagrams in Figure 6 model this bond of authorship and ownership across the scale from micro-linguistic indexicality to macro-social organization. The first diagram summarizes how language use is practice (Figure 6.1). Starting with the top row, the possibility of meaning is created semiotically through the indexical linkage of sign–object–interpretant. This

indexicality constitutes pragmatics of language use, composed of social production and interpretation of signs (hence the top bracket), as in the conversation, "Ouch!"—"are you okay?"

6.1 Summary of Language Use as Practice

Indexicality	Language Use	Social Effect	Example
sign → object interpretant ↗	Pragmatics	Production	"ouch!"
		Interpretation	"are you ok?"
metasign → sign	Metapragmatics	Regimentation	solidarity
interdiscursivity & intertextuality	Language Ideologies	Habitus	moral reflex

Meaning is actually produced because a metasign–sign relationship is already at work through the selectivity inherent in indexes. The metasign is the organizing aspect. It is notional, but also evidenced in actual language use by the "denotational text laid down in 'giving the meaning' or 'specifying the appropriateness/effectiveness of using' a sign" (Silverstein 1993:42). This selectivity constitutes metapragmatics of language use and the regimentation of social meaning (hence the middle bracket between interpretation and regimentation). In the hypothetical conversation, the regimentation is one of solidarity: "are you ok?" is an appropriate response to "ouch!" if one wishes to convey solidarity with a person who signals injury.

If this pattern repeats, or is retold, or is compared across speech events, the resulting interdiscursivity and intertextuality can sediment a language ideology about this type of this encounter. The reproduction of the language ideology is the enactment of habitus, for example, as a moral reflex of solidarity with an injured interlocutor (hence the bottom bracket between regimentation and habitus). The ideology and the habitus need not be total. For example, the

moral reflex might be proven in the breach if the response to "ouch!" is to strike the injured

individual or ignore the plea. Or the moral reflex might be altered if the response is to introduce

and habituate an additional indexical relationship that changes the social equation, for example,

indoctrinating children impressed into combat with desensitization rituals that require them to

inflict pain on others.

The second diagram illustrates authorship–ownership as a general habitus of

communicative activity (Figure 6.2). It magnifies the key drivers from the first diagram and lays

them out in a left-to-right cascade. The crux of meaning production is the dialectic between

pragmatics and metapragmatics, which gathers together the components of indexicality (sign–

object–interpretant) and selectively regiments them. The first rightward arrow points to this

gathering in the pragmatics, which always dialectically entails metapragmatics.

6.2 Authorship–Ownership as a General Habitus of Communication
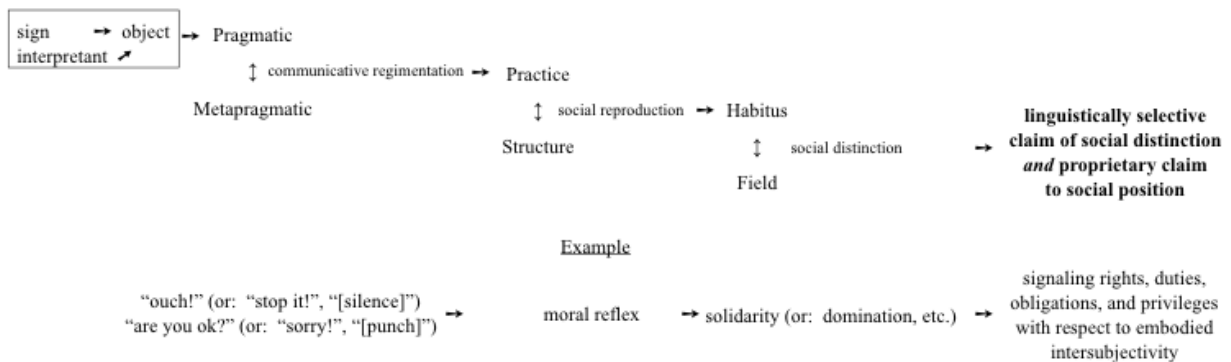
Because regimentation and reproduction constitute another order of dialectic—the

language ideology, whereby regimentation depends on a reproducible pattern, and reproduction

depends on a regimented pattern—the linguistic and social dialectics enact each other. Saying

"ouch!" projects a habitus, and is the projection of it. Taking just one direction and following

the cascade in the diagram, however, pragmatics–metapragmatics is (or "does") practice–

structure. As long as language use (in the broadest semiotic sense) is an empirical component of

the social enactment of habitus, the pragmatics–metapragmatics dialectic is part of that

enactment. The second rightward arrow points to practice because, as enactment, language use

is practical action. But structure is already in play as well because practice and structure are

always bound together. The dialectic between structure and practice, which constitutes habitus,

patterns meaning through continual social reproduction.

The third rightward arrow thus shows the merger of practice and structure in habitus.

The enactment of habitus always occurs in relation to a field, in a dialectic that reproduces and

sometimes reorganizes social distinctions that ultimately establish and rely on power

asymmetries. Thus, from left to right, language use enacted through pragmatics–metapragmatics

and enacting habitus leads to distinctions such as ones of domination or solidarity.

As long as language use is part of an analysis, the diagram could also be read from right

to left because the enactment of habitus in relation to a field that produces social distinctions is

also the reproduction of structure and practice that manifests through indexicality. Authorship in

all its fragmentation, co-construction, and intertextuality encompasses this bi-directionality. I

have shown the cascade from left to right to highlight what happens from the moment of some

authoring act.

The final rightward arrow points to a bold-text summary of the result of this authorship,

namely, a linguistically selective claim of social distinction. This claim is also a proprietary

claim to social position. This proprietary component is not an analogy or metaphor. Rather, it is

part of the overall structure. Authorship is the enactment side of things, stepping down along the

upper parts of the dialectics from pragmatics to practice to habitus. Ownership is the order side,

stepping down along the lower parts of the dialectics from metapragmatics to structure to field. The distinction is blurred from the start because both are necessary for the production and perpetuation of meaning, and neither means anything without the other.

For example (shown in the diagram), in a conversation that goes, "ouch!"—"are you ok?", reproducing a moral reflex of solidarity, these utterances are authored in a way that selects solidarity by claiming a proprietary relation with respect to the embodied intersubjectivity between the interlocutors. That relation is proprietary because it involves claims—in this case, mutually recognized ones—of a right to occupy a certain space and a duty not to impair that occupation. It could be analogized to a situation of trespass, but the analogy would be merely illustrative.

The proprietary relation also exists independently of this example, which involves actual physical occupation of space. For example, the consistent production of a uvular "r" claims a social position. It is not necessarily a physical position, although it is embodied in terms of speech production and probably translates into claims upon superior real estate and tangible goods. It is a social position, in Bourdieu's sense of a distinguishing relation. The claim is position-taking, in that it seeks a specific manifestation or array of distinction. The claim may be made by a person, and is intersubjective in social effect, but is a non-subjective structural feature, a claim upon a relation. Property parallels authorship in this decentering of the subject.

This perspective adapts some elements from existing linguistic anthropological models of authorship, as well as sociocultural anthropological and legal models of ownership, but merges authorship and ownership in a distinct way. With respect to authorship, Goffman's, Garfinkel's (only implicit), and Bakhtin's usages speak to limited aspects of authorship. Goffman's authorship as a speaking role is part of what it means to practice authorship. Footing is even

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closer because it starts to include the ownership aspect. But authorship is not limited to the interactional specificity of either the speaking role or footing. I also ground authorship more directly in semiotic principle and how it scales to social organization.[79]

This ground and scale are close to Garfinkel's ethnomethodological program despite his silence as to "authorship." That program rests on indexicality, a term he employs to connote context-dependence in a similar, if not definitely identical, way to linguistic anthropologists (see, for example, Garfinkel 1967:4–5). Indexicality is key to understanding a situation because if you can identify how actors within the situation make and interpret indexes, you have identified simultaneously how they rationalize indexes and thereby create meaning and accomplish action; Garfinkel refers to "the rational accountability of practical actions as an ongoing, practical accomplishment" (4). This double layer echoes the pragmatics–metapragmatics dialectic.

Conversation analysts, who adopted ethnomethodology as their framework, demonstrate this internal regimentation of language use in the sequential organization of turn-taking in talk (see Schegloff 2007). This internal logic can reveal general patterns: "Each thing is locally produced and naturally accountable in displayed distinctive interaffiliations of details endogenously interior to and therein exhibiting of their coherence, and their certainty, these being details as of their generality" (Garfinkel 2002:247).

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[79] My contention that this definition is both broader and more specific than Goffman's accords to some extent with Kockelman's (2007:379–380 n.5) criticism that Goffman's tripartite speakership mistakes folk theories of accountability (who voices, who selects, and who is responsible) for semiotic rigor. He contends that Goffman makes this error by relying on a Saussurean system of sign and object, which ultimately supports only the animator and author roles, rather than a Peircean one of sign, object, and interpretant. Authorship in Goffman's sense may occur within an encounter, but is neither the outcome of semiotic principles nor the extent of authorial possibility. At the same time, however, Goffman's authorship is not incompatible with a semiotically derived definition.

From a linguistic anthropological standpoint, these patterns display language ideologies and, specifically, language ideologies about how language use works. Translating to my terms, at the highest level of generality, it can be said that the conversational production of a turn in a sequence is an act of authorship, pregnant with a proprietary claim. A conversation analyst examines the next turn (telescopically within the longer conversation) for a habitual or surprising point of contact with the first in order to identify how they produce meaning together. To me, that turn is another act of authorship that either ratifies the first turn's claim of ownership (resulting in agreement or alignment) or contests it.

My definition is also broader than Bakhtin's usage of authorship, but it is close to his notion of dialogue, in which the author takes part. Bakhtin (1984:182) juxtaposes "purely linguistic criteria," by which he appears to mean something like the abstract structure of *langue*, with "dialogic relationships," which he claims "are the subject of metalinguistics." Dialogism comes very close to indexicality here. Dialogue is where meaning resides and always consists of "pointing to" relationships among "utterances" or pieces of language. He elaborates that:

> Dialogic relationships are reducible neither to logical relationships nor to relationships oriented semantically toward their referential object, relationships in and of themselves devoid of any dialogic element. They must clothe themselves in discourse, become utterances, become the positions of various subjects expressed in discourse, in order that dialogic relationships might arise among them. [183]

Thus, as might be said also of language as indexical, "language lives only in the dialogic interaction of those who make use of it" (183). Dialogism adds a similar element as Peirce's interpretant: "a dialogic approach is possible toward any signifying part of an utterance…perceived not as the impersonal word of language but as a sign of someone else's

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semantic position, as the representative of another person's utterance" (184). And elsewhere, Bakhtin (1986:125) writes, "There can be no dialogic relations among language units…..The whole utterance is…a unit of speech communication that has not mere formal definition, but contextual meaning (that is, integrated meaning that relates to value—to truth, beauty, and so forth—and requires a responsive understanding, one that includes evaluation)."[80]

Thus, dialogue is relational, and includes both a coming together and a boundary. Similarly, as defined here, authorship and ownership together connect and bound social positions. Bakhtin's and Bourdieu's notions of position are not far apart, and my model draws them closer together by uniting the authored utterance with the social regulation accomplished through ownership.

In fact, Bakhtin's insistence that "the word" cannot be owned by any author disclaims a specific kind of property relation—exclusive ownership—but in doing so posits some kind of property relation with respect to "the word" as what is at stake communicatively. Anthropologists have a similar perspective on actual property objects being in an important sense incidental to what they accomplish in terms of social relations. Property is created by virtue of relational claims. One principal way of establishing those claims is through exchange (Mauss 1990).[81] Exchange is a way of "rendering values transactable" (Strathern 2004:87).[82] Exchange

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[80] See also Gurdin 1994 and Petrilli 2012:127–156 for the overlap between Peirce and Bakhtin.

[81] Mauss described specifically gift exchange, rather than contractual exchange, but the lasting insight in fact has been that, at least within communities where people encounter one another repeatedly, even (perhaps especially) a gift creates a powerful reciprocal obligation between giver and receiver.

[82] Strathern's use of transaction is not the same as the interests-based formulation that gave rise to "transactionalism" (see Barth 1966), although it is in some ways an effort to rework and reclaim transactions as events that afford social communion despite (or through) difference.

even renders relations transactable, if one follows Keane's observation that market systems semiotically organize moral claims.[83]

For example, Myers (1989) describes an incident from his fieldwork in Australia. A Pintupi informant advised Myers to hide his cigarettes in his socks before they joined a group of Pintupi men in conversation. The advice was given so that Myers would avoid getting angry because others' freewheeling fingers would violate his own dispositional expectations, and would avoid incurring the other men's anger if he overtly refused to share freely according to their dispositional expectations. The cigarette as property is just a sign that "represents an opportunity…to constitute [all] sorts of values" (16–17). From a communicative standpoint, the real value at stake comes in not "saying no to someone's face" (17) in that situation.

Such an encounter, and Myers' analysis of it, reveals ownership as a practice and, furthermore, a practice of authorship. The encounter, or the pre-interactional warning by the informant, could be analyzed productively in terms of footing, accountability, or dialogue. But the lens of authorship–ownership as habitus illuminates the fusion of the communicative and social stakes. As stated earlier, that fusion is not dependent on the presence of the cigarettes as a property object, or on analogizing from the cigarettes to the intersubjective stakes. The inverse is true: the cigarettes as property turn out to be devices that reveal the proprietary quality embedded in the communicative activity. In that light, a property "transaction is an event" (Strathern 2004:87). If language use is involved, as it almost always is, the event is a speech event (see note 78 above). And it is potentially a transformational event, a moment of possibles.

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[83] This integration is another reason why language use is not merely an instrument of practice as in Bourdieu's analysis of linguistic markets but an incorporated part of practice.

This relational, socially and communicatively grounded significance of property extends beyond transactions to other characteristics of proprietary relations and beyond the anthropological perspective to a legal one. Most prominent is the right to exclude others from land or goods or IP infringement. As discussed in Chapter 3, such a right is absolute only in folk theory. Legal professionals think of property as a bundle of rights. A bundle of rights implies relativity among them. Relativity implies more complicated relations between the rightholder and others than mere exclusion. For example, a right against trespass may be limited by a public easement of crossing.

Furthermore, one of the most influential U.S. jurists advanced that professional understanding by arguing that rights are always relational as between people (Hohfeld 1913). A right against trespass is not a right about land but a right against another person, who has a corresponding duty not to trespass. Similarly, a privilege of easement constrains a landholder to having no right to stop it (see Singer 1982).

This legal perspective, which is more flexible than the absolutist folk ideology of property, is very much like the anthropological one. It motivates critiques of IP from within legal academia, not only with respect to absolutism as an anomaly but also with respect to how the lines of property are drawn when it comes to things such as transformative remix or cultural property. If authorship is problematized along with ownership rather than taken as a cultural given, those concerns and the ideology they criticize can be assessed in terms of the co-construction of authorship and ownership.

II. A Model of Romantic Authorship as a Dominant, Particular Habitus of Authorship.

My model allows just such an assessment. In addition to authorship–ownership modeled above as a general habitus of authorship, authorship–ownership can be a particular habitus of romantic authorship, remix authorship, or any other kind of authorship. Romantic, or modern, authorship as represented by copyright is a language ideology. It draws social distinctions and allocates capital in a particular way. Crucially, it defines authorship and ownership and the relationship between them in a restricted way, making it seem as if the romantic ideal is the definition of authorship and ownership.

This referential or semantic restriction can be modeled as a particular habitus, as in the diagram in Figure 6.3. This diagram represents the language ideological substitution of the particular habitus of modern authorship for the general habitus of authorship proposed in the previous diagram. This overall substitution occurs through a series of substitutions along the cascade.

6.3 Modern (Romantic) Authorship as a Particular Habitus

"author(ship)" → Pragmatic
↕
Metapragmatic

regimented toward subjective creativity and control → Practice
↕
Structure

1st substitution of particular for general

reproduced as subjective author–owner → Habitus
↕
Field

2nd substitution of particular for general

distinguished as subjective authorship–ownership
↕

3rd substitution of particular for general

naturalization of "author(ship)" as subjectively creative and controlling act and attribute

Example

"Copyright protection subsists in original works of authorship"

As part of the ideological "erasure" (Irvine and Gal 2000:38) of authorship's historical diversity, the modern regime assumes and essentializes the romantic meaning of authorship, with its connotation of creativity and control nestled deep within the robust subject. Rather than any indexical combination of sign–object–interpretant being the ingredient of an act of authorship, only "authorship," understood romantically, counts.

This semantic assumption is expressed through pragmatic language use. For example, the main U.S. copyright statute encapsulates the assumption in the assertion, "Copyright protection subsists in original works of authorship." Original and authorship are both undefined in the statute, while judicial interpretation circles back to social assumptions about creativity and control.

The metapragmatic regimentation that always co-occurs with pragmatic use restricts the indexes of pragmatic use to the assumed semantic meaning of authorship. This restriction happens because the metapragmatics involved is the "special case" (Silverstein 1993:43) of "metasemantics," which "pragmatically presupposes" a bond between semantics and its pragmatic deployment. The statutory sentence is a declaration about "copyright protection" that assumes the meaning of "original works of authorship" in its predicate. Original authorship defines copyright protection, but nothing defines original authorship. In other words, the way the sentence talks about authorship presupposes its obvious or transparent meaning. These metasemantics are a kind of metapragmatics because they regiment how to talk about authorship. That is, in the modern regime, and evidenced by the grammatical construction of the statutory

sentence, it is appropriate to talk about authorship as if it bears the meaning of the romantic ideal transparently.[84]

This restriction is a first substitution of the particular habitus of modern authorship for the general habitus of communication. It accomplishes the general authorial act of proprietary claim-making, but it limits claims about authorship to one assumed semantic meaning. Authorship as used in a sentence such as the statutory one presupposes and entails only the romantic meaning. Ownership, or the social ratification of the claim, is predicated on that assumed meaning. That is, "copyright protection" is predicated grammatically on "original works of authorship," with sociolegal consequence.

This substitution suppresses discursive consciousness about authorship, even though it appears to be a topic of explicit metapragmatics, because it really is only "weakly" explicit (Silverstein 1993:45). The meaning of authorship is buried in the process of talking about it, causing a failure to recognize its ideological quality. It becomes a language ideological term of practical consciousness and of experience rather than knowledge. In fact, the suppression only enhances the tendency to reduce meaning to symbolic knowledge when meaning does surface to discursive consciousness, by making it appear that talking about authorship epistemically invokes the romantic ideal.

That is, talking about authorship as if it means only the romantic ideal becomes habitual. Talking about authorship that way becomes a widespread, hegemonic practice. It also becomes a

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[84] This example is representative. If the statute went on to unpack the phrase, "original works of authorship," the analysis might go differently. The point is that the statute empirically does not, and neither does the hegemonic discourse of modern authorship. Part of that hegemony is the continuing grip of the romantic assumption on how many critics of modern authorship continue to talk about it, especially its identification with subjectivity, as well as on how Goffman and Bakhtin write in opposition to the modern bond of authorship and ownership.

structure that reproduces this restricted meaning of authorship whenever people talk about authorship.

This reproduction is a second substitution of the particular habitus of modern authorship for the general habitus of communication. It flows from the first substitution because of the language ideological connection between communicative regimentation and social reproduction. Because the linguistic meaning of authorship is restricted to subjective creativity and control, the social enactment of that meaning projects it onto a restricted class of persons—authors— believed to act with that subjectivity or bear its attributes.

This projection of romantic meaning accomplishes the general habitus of authorship in terms of reproducing a social code, but it naturalizes this particular code as the only form of authorship. In fact, enacting this habitus also embodies it, leading to linguistic models against which Goffman and Bakhtin, not to mention their linguistic anthropologist heirs, strived in trying to decenter authorship from the subject. Just as occurs on the semiotic level, the practically conscious experience of enacting authorship under particular ideological conditions is conflated with discursively conscious knowledge about what authorship is.

Accordingly, the authors who both enact and benefit from this disposition become owners.[85] For example, the statutory definition of "copyright owner" states that the term, "with

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[85] Modern authorship is very expansive about entitlement to one's expressions. Copyright law protects even the most casual scribble or online blurt, although collecting damages for infringement is another matter (statutorily determined damages require pre-registration of the work with the U.S. Copyright Office) (see 17 U.S.C. §412). The social norm or folk ideology is even broader. People often believe they even own their ideas or verbal expression of them, which is legally untrue except limitedly in jurisdictions such as California that have separate "idea theft" laws to cover implied contracts to pay for ideas (a law born of the loose ways of the entertainment industry) (see *Grosso v. Miramax Film*, 383 F.3d 965 [2004]; *Desny v. Wilder*, 46 Cal.2d 715 [1956]).

respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular copyright" (17 U.S.C. §101). The exclusive rights receive copyright protection, which, as previously discussed, is predicated on original authorship. To author is to own automatically. Contrast my proposed model of the general habitus of authorship, in which to author is to stake a proprietary claim, and to own requires social ratification of that claim through additional, intersubjective acts of authorship.

Given this particular habitus's automatic fusion of romantic authorship with ownership rights, however, the result is social distinction delineated in terms of the authorship–ownership of an individual subject as against all others in a field of cultural production. This result is the third substitution. Instead of the many possible configurations that the general habitus of authorship allows, this rigid demarcation organizes position-taking in the field, along with the allocation of capital and outlook for competition, in exactly the way Bourdieu describes for literary production.

The outcome of these cumulative substitutions is the naturalization of the author-as-owner and authorship-as-ownership in modern terms. This naturalization closes the semantic loop and assures the perpetuation of this particular habitus. The many scholarly sources cited thus far illuminate how this naturalization coalesced in the first place. A detailed linguistic reconstruction of primary sources would enrich them. Another way to investigate how a particular habitus of authorship becomes entrenched, however, is to look at the current moment of new media pressure upon the meaning the authorship, which has brought that meaning to the surface of discursively conscious contestation.

III. <u>A Model of Remix Authorship as an Emergent, Particular Habitus of Authorship</u>.

The diagram in Figure 6.4 illustrates the contemporary moment of potential

transformation from romantic to remix authorship as the particular hegemonic habitus. The

anxiety and excitement caused by new media have brought the meaning of authorship to

discursive consciousness. In other words, authorship is no longer simultaneously experienced

iconically as the romantic ideal and known symbolically to be that ideal. Instead, the novel, or at

least the newly widespread and eye-opening, experience of authorship under new media

conditions has put the epistemic meaning of authorship in question. The language ideology of

romantic authorship is no longer hegemonic.

6.4 Remix Authorship as a (Potential) Particular Habitus
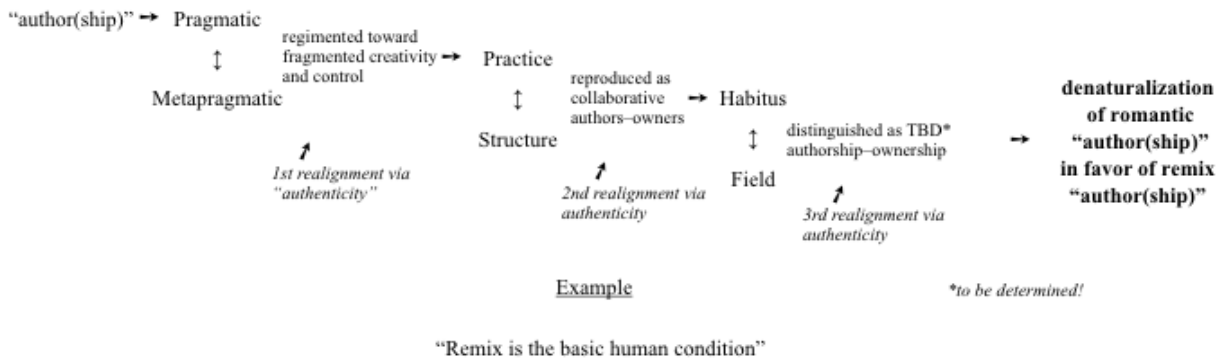
Linguistically, although still very much in flux, a strong discursive current is changing

how people talk about authorship. This current metapragmatically detaches authorship from

romantic indexes and reattaches it to remix indexes. This realignment can be seen in the claim

that "remix is the basic human condition" (Tushnet 2010a:2).[86] In this sentence, the verb "is"

creates an identity: remix is predicated on, and defined by, the noun phrase complement, "the

basic human condition."

This defining phrase is a statement about authenticity. "Basic" especially coupled with

human condition, means fundamental or primordial. "Human condition" is a well-known phrase

from philosophy, art, and social science that is used to say something fundamental about the

lived circumstances of the species.[87] The definite article, "the," indicates singularity, rather than

there being multiple basic human conditions. This connotation of authenticity differs from the

autocreative, autodeterminative one associated with romantic authorship. But one need agree

only that authenticity always carries some sense of primordial, pure value to understand the

thrust of the assertion to be the equation of remix with authenticity and therefore of essential

value.

The invocation of authenticity thus serves as a metapragmatic device. It does the work of

detaching authorship from its romantic indexes and reattaching it to remix. It dictates an

appropriate pragmatic use of authorship to index remix. In the sentence quoted, the "is" gives

authenticity this instrumentality. In contrast to the weakly explicit talk about the semantics of

authorship in the hitherto hegemonic habitus, which suppressed awareness of its ideological

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[86] I quoted and discussed this statement by a prominent copyright scholar in Chapter 3. As with the sentence from
the U.S. copyright statute used in Figure 6.3, Tushnet's statement is merely illustrative but also exemplary of how
the advocates of remix authorship talk.

[87] The Oxford English Dictionary traces the phrase's origins to the sixteenth or seventeenth century. See
http://public.oed.com/the-oed-today/recent-updates-to-the-oed/previous-updates/march-2009-update/, accessed April
26, 2013. It gained popularity in the twentieth century as the title of works by Malraux (1933) and Arendt (1958),
among others.

quality, talking about authorship by talking about authenticity raises awareness of its ideological quality. This relatively "strong" (Silverstein 1993:45) explicitness merges the semantic target, which is authorship, with the metapragmatic form, which is application of a metric of authentic value. In these indexical circumstances, meaning depends on the (pragmatic) combination of metapragmatics and semantics. In the quoted sentence, "is" identifies "remix" with a kind of ultimate authentic value as "the basic human condition." It is a more explicit assertion than the copyright statute that assumes a romantic meaning of original implicitly.

The legal scholar who wrote the sentence used it to project a social structure of necessarily collaborative authors and owners. Several sentences later, she wrote, "the remix does not allow us the illusion that we are dealing only with an individual—self-produced and independent" (Tushnet 2010a:3). Her argument is also a practical act at the emergent edge of a new disposition about authorship, or an intervention in the language ideology of authorship. It is not a clean break but a reach for something new. Although academic literature self-presents in the romantic mode of individual genius, this article implicitly acknowledges the challenge of thinking about authorship in a revolutionary way. Her very next sentence is, "This is reassuring for some people while discomfiting for others" (3).

This projection of a new habitus is the second realignment via authenticity. Instead of the "illusion" of autocreative, autodeterminative authenticity, there is the basic human condition of contemporaneous or chronological collaboration. Authoring no longer leads automatically to owning. This remix model substitutes this particular habitus of authorship for the romantic model. The remix model is not the general habitus of authorship I proposed earlier; to author by remix is not to make a proprietary claim that may or may not be ratified by others' authoring acts.

In fact, it is unclear what position-taking in a field of cultural production a remix habitus entails. The third realignment via authenticity, which is a realignment of the distinctions demarcated by authorship and ownership, is yet to be determined. Proposals for legal reform err on the side of subjectivity, but at the cost of some contradiction with remix ideology. There has been no complete substitution of a remix habitus for a romantic one. The latter has been denaturalized to a large extent, but the present moment remains one of flux at the level of discursive consciousness.

This flux puts into question existing power relations and harbors potential for radical transformation in the form of the particular habitus of authorship that has been hegemonic for centuries. The modern regime of authorship–ownership and its specific allocations of capital depend on the stability of the linguistic and social dialectics that produce it. In semiotic terms, this stability is achieved through "reflexive calibration" (Silverstein 1993:49) between how people author and what they believe authorship is. This calibration is the restriction discussed above that naturalizes, or takes for granted, the language ideology of romantic authorship as a substitute for the general habitus of authorship. The romantic ideal is perpetuated through practical consciousness. Thus, the copyright statute can state superficially that copyright protection subsists in original works of authorship.

When authorship does become a topic of explicit folk analysis under the hegemonic modern regime, it is marked off as a special category of communication based on subjective creativity and control ("nomically" calibrated, in Silverstein's terms), which preserves its autocreative, autodeterminative aura. This boundary-marking displaces attention onto apparent contests that, in fact, merely reproduce the modern habitus and distinctions such as the symbolic domination and claims to prestige and profit granted to those deemed author–owners over those

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excluded from that category. This displacement "suppresses attempts to play with" (Briggs 1993a:202) the boundary between the modern definition of authorship and what else it might mean. It enhances the stability of the modern regime by solidifying its configuration of the dialectic between habitus and field. Thus, lawyers can inform clients that merely having an idea, and even having an idea that is "stolen," is not enough to satisfy the precise requirements of IP law as opposed to social and moral norms.

New media, by contrast, catalyze "boundary play" (Briggs 1993a:202) with respect to that question. Authorship becomes an even more explicit topic of folk analysis, not talked about in merely a taken-for-granted way, but problematized as something to talk about ("reportively" calibrated, in Silverstein's terms). This shift in semiotic stance disrupts the various dialectics that sustain the modern form of the authorship habitus. That disruption occurs through realignment in how people talk about authorship as a function of authenticity. Thus, "is the basic condition" reports "remix" as an allegedly primordial, but newly rediscovered, definition of authorship.

Figure 6.5 illustrates how the potential realignment of the particular habitus of authorship from romantic to remix can be generalized back to the model of authorship as a general habitus. This figure reproduces the general model and adds in bold, capitalized, italicized text the places where the cascading dialectics that co-construct authorship–ownership depend upon the pursuit of authenticity.

6.5 Authorship–Ownership as a General Habitus of Communication

– with Authenticity Factor

```
┌─────────────────┐
│ sign   → object │→ Pragmatic
│ interpretant ↗  │
└─────────────────┘
                    ↕ communicative regimentation → Practice

       Metapragmatic                      ↕ social reproduction → Habitus

                    ↗                 Structure                ↕ social distinction → linguistically selective
              PURSUIT OF                          ↗                                    claim of social distinction
              AUTHENTICITY                   PURSUIT OF        Field           ↗        and proprietary claim
                                             AUTHENTICITY             PURSUIT OF        to social position
                                                                      AUTHENTICITY

                                       Example

                                                                                        signaling rights, duties,
       "ouch!" (or: "stop it!", "[silence]")                                            obligations, and privileges
       "are you ok?" (or: "sorry!", "[punch]")  →   moral reflex  → solidarity (or: domination, etc.)  →   with respect to embodied
                                                                                        intersubjectivity
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In tension with the horizonal goal of authenticity, that pursuit drives authorship and ownership as practices that generate continually shifting alignments and conflicts in a field of production.

CHAPTER 7: Authenticity

I. <u>Authenticity as an Intersubjective Pursuit and Goal</u>.

I understand authenticity to mean the most natural, unmediated, or essential subjective way to be. But this definition is notional and must be qualified immediately in two ways that provide its real substance. First, authenticity is the goal of a reflective quest, whether or not achieved or even achievable. Second, the pursuit of that goal often, perhaps always, involves social relationships.

This definition relies on philosophical literature, triangulated with what study participants expressed as a professional goal of artistic authenticity and what they commented on metalinguistically as the meaning of authenticity. My aim thus is not to specify an ontological meaning of authenticity, which scholars, artists, and others debate in infinite degrees of distinction and overlap. Rather, I wish to characterize a widespread epistemological approach to authenticity, which includes the approach taken by both the people I studied in their practice of authorship and scholars who study what makes authorship meaningful. Widespread may mean universal. I think it does because my description of a driving tension generated between pursuit and goal that motivates authorship and ownership practices is a structural account, even if authenticity is more cognitively or discursively salient in some local contexts than others.

A. Pursuit and Goal.

The first qualification identified above frames authenticity as an ideal goal and its

practical pursuit. A starting point is Kant's effort to secularize morality by endowing the human

subject with the ability to reason and autonomy to do so. Drawing in part on ancient sources, he

stresses the relationship between a valuable goal of self-knowledge and the continuous reflective

effort necessary to achieve it. For example, he illustrates his critical program with commentary

on "the doctrine of wisdom" (Kant 1997:91), writing, in part, that:

> To determine this idea practically—that is, sufficiently for the maxims of our rational
>
> conduct—is the doctrine of wisdom, and this in turn, as a science, is philosophy in the
>
> sense in which the word was understood by the ancients, for whom it was a direction to
>
> the concept in which the highest good was to be placed and to the conduct by which it
>
> was to be acquired. [1997:91]

In such passages, Kant sets forth a methodology in which "philosophy, as well as wisdom, would

itself always remain an ideal, which objectively is represented completely only in reason alone,

whereas subjectively, for a person, it is only the goal of his unceasing endeavours" (91).

This framework introduces authenticity in concept, if not terminology, by recalling but

redrawing the Aristotelian distinction between pure and practical rationality or knowledge.[88] By

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[88] Aristotle (e.g., 1985:149–152) distinguished between, but also bound together, an eternal, inductively accessible

rationality that is scientific, epistemic, or natural, and a procedural, deductively accessible rationality of predicative

logic that connects desire with outcome through deliberation, decision, and action. Kant (2006:93–94, 123–124) cut

perpendicularly into this dichotomy by rejecting the detachedness from human activity of "pure" reason and the

independence from principle of "practical" reason, but in the end Kant preserved a duality between ontic-moral

stipulating an ontological commitment to ideal knowledge, Kant simultaneously establishes a distinct practical commitment to pursuit of the ideal. It thus becomes possible to engage authenticity subjectively. Put another way, authenticity and subjectivity depend upon each other in a distinctly non-Cartesian way. Kant was writing against Descartes' division of the subjective self from the objective world. Descartes, whose profound introspective turn posited the robust subject that was an intellectual precursor of the modern author, thereby initiated the famous, abiding "Cartesian doubt" (Arendt 1958:273) about truth and its modes of manifestation because of the boundary between that subject and the objective world.[89] Kant sought to reunite them by giving the mission of pursuit to the subject acting in the world.

Defining that pursuit in relation to a Platonic ideal of pure reason created a foil for subsequent efforts to describe the subjective endeavor. For example, Husserl absorbed the Kantian ideal of reason—the path to wisdom—into subjective experience. Taking both Kant and Descartes seriously, Husserl argued that the only basis for knowledge is the subjectively grounded extension of attention to the perceived world ("intentionality").[90] For both physical and mental phenomena, "the descriptive character of the phenomena, as experienced by us, alone furnishes our criterion" of epistemological perception (Husserl 2001b:338). Therefore, reason is

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rationality ("universality of principles") and predicative rationality ("a principle of explanation…according to laws of experience").

[89] See, for example, Meditations III, §§20, 30, 31 (Descartes 1996).

[90] Intentionality was coined by Husserl's teacher Brentano (2009), or, rather, revived by him from its usage in medieval philosophy to mean "mental" "direction toward an object" and to capture the argument that "every mental phenomenon includes something as object within itself" (68). Husserl (2001a:144, 171) retained the notion of directedness but discarded the implication that objects exist only in the mind in favor of saying that objects are experienced only in the mind. See also Siewert (2002).

always bound to subjective experience, so that any conceptualization of what might be called authenticity is always a goal that must be pursued through experience (see Nenon 2003:68–69). That is not to say that the ideal is merely derivative of experience. Rather, the "straightforward intuitions" of "sensuous" understanding establish the capacity for "pure categorial understanding" and its "purely categorial forms" that can be generated subsequently without dependence on the experience of an object (Husserl 2001b:306–311). Hence, access to the "pure laws of authentic thinking, the laws, that is, of categorial intuitions in virtue of their purely categorial forms" (311) comes in the first place through acts of experience.

Writing both from and against Husserl, Heidegger made engagement with authenticity a central concern. He (1962:349) propounded "resoluteness" of decisive will as true autonomy that reflects authentic "Being [Sein]." To be authentic is for Being to be "something of its own" (Heidegger 1962:68). More precisely, authenticity is a "mode" of Being in which a "human entity" ("Dasein") can "'choose' itself and win itself" or "lose itself and never win itself" or even "only 'seem' to do so" (68). What matters is the quest. By contrast, inauthenticity is also a mode of Being, but one that is distracted from the quest. The very possibility of human existence as an entity in the world rests on the authentic (or inauthentic) potential of Dasein to understand Being (27; see also Carman 2008:xiv). Thus, in addition, authentic Being is tied to a goal. It "projects itself not upon any random possibilities which just lie closest, but upon that uttermost possibility which lies ahead of every factical potentiality-for-Being" (349).

Hollywood participants talk about authenticity in a way that empirically validates this philosophical approach. Most often, this talk consisted of making sure the audience feels that the narrative of a media product provides an authentic experience. "Experience" was ubiquitously used. In a survey of one hundred articles in *The Daily Variety* that mentioned "authentic" or

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authenticity," fifty of which appeared between May 1992 and May 1993 (the earliest available online, and toward the beginning of the new media explosion) and fifty of which appeared between December 2011 and December 2012, approximately sixty percent used the term to describe the dramatic capture or conveyance of (a good or bad) experience.[91]

Instead of "authentic," the people I followed often substituted organic, natural, intuitive, immersive, or compelling. Although with different emphases, all of these synonyms for authentic evoke the convergence of the authentic goal and its pursuit, especially when coupled with experience. "Participatory" was frequently included to emphasize a contrast with traditional mass media, although in many of my fieldwork situations, audience collaboration was already assumed (and folded into terms such as "immersive"); the difficult question was the appropriate kind and degree of that participation. Providing an authentic experience was the storytellers' overriding concern artistically and the perceived source of maximum commercial viability of their products.

For example, panelists at the third annual Wyrdcon conference held in summer 2012 at a hotel in Orange County (south of Los Angeles) talked this way. One panel addressed live action role-playing games, or LARPing.[92] In LARPing, players assume the identity of a fictional

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[91] Only two of the hundred uses corresponded to "nominal" authenticity (Dutton 2003). Nominal authenticity applies, for instance, to confirmation that an excavated objected truly is ten thousand years old, or an asserted masterpiece truly is done by that master's hand, or, in the case of one of the *Variety* articles, that musical blues have cultural authenticity. Fourteen articles were non-functional for present purposes in that they referred to the name of a company, evidentiary authentication in a courtroom, or someone's personal attributes or character—although all of these tangents indicate that even nominal authenticity touches upon experiential authenticity.

[92] Further information can be obtained on the website of the peer-reviewed journal dedicated to role-playing (LARPing and other kinds), at http://journalofroleplaying.org/, accessed May 1, 2013.

character in a storyworld (or fictional universe) and embody that character physically (as opposed to virtually in a video game). The game is played using the space of the physical world. LARPing is one of the progenitors of new media storytelling because of its collaborative, immersive, and open-ended qualities. New media storytellers will sometimes proudly mention their background in LARPing or its antecedents, especially the role-playing board game, *Dungeons & Dragons* (Hasbro). Having arisen in the 1970s and 1980s (undoubtedly with older origins), LARPing has enjoyed a renaissance alongside new media and often as one component of a new media storyworld. The panelists, in any event, spoke to new media storytelling more broadly than just LARPing.

One panelist, a longtime film industry professional and archivist who now follows and writes about the branch of new media storytelling called transmedia, expressed the aspect of authentic experience as a subjective pursuit and, impliedly, a goal. He talked about:

> what I believe true [transmedia] must do and that is give the audience member a way to
> engage in a meaningful way, bring the audience into it and having a portal for that
> experience to be meaningful.

He added, "Interactivity to me is the core of experience and by interactivity I mean I'm not the person who made it but I get to participate in it." Another panelist, who is a branding executive, emphasized that accomplishing that goal requires calibrating the various aspects of storytelling infrastructure—its narrative elements, media technology, delivery platform, and in the case of LARPing, game mechanics—to "come together organically."

A third panelist is one of the most prominent members of this community, partly because he founded a successful company that works with major studios on blockbuster projects, partly because he is a skilled and frequent speaker at conferences, and partly because he has a

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reputation for generosity in giving advice (which I heard from several participants and saw him doing in conference hallways). He pointed to his own roots as a LARPer and those of the audience to explain their advantage over entertainment industry incumbents, saying:

> What Hollywood and the interactive entertainment industry [i.e., mostly video gaming] are missing, though, and what you guys have are the intense moment where your character and you make a connection and experience an emotional high unlike anything I have experienced….If we can somehow tap into that and make it come to life.

In other words, fully inhabiting a character role allows someone to pursue authenticity in a phenomenologically intentional way, and even to achieve the goal of authenticity during emotionally intense moments—which are experienced alongside compatriots equally committed to the story.

In addition, though less often, this talk consisted of explicitly metalinguistic commentary on the meaning of authenticity. For example, during the second annual Storyworld conference held in a hotel in the geographical heart of Hollywood in October 2012, a speaker invoked Kant, Husserl, and Heidegger, as well as the more recent field of cognitive psychology, in order to "set some ground rules" about the increasingly popular term, "experience design." New media storytellers often pitch themselves as experience designers rather than something more conventional like writer or filmmaker. The speaker paraphrased Heidegger for the proposition that "artwork becomes an object of lived experience, and in this way art comes to count as an expression of human life." He then explained that good experience design presents the audience with a "rabbit hole" that leads them toward discovery. This discovery comes as "the audience extends its consciousness to this thing we created," so that "it's the audience's intentionality that

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creates the meaning" of the storytelling experience. Thus, the process of discovery, or the

pursuit of authenticity, reaches toward meaning as the goal of authenticity.

B. Intersubjectivity.

The pursuit of authenticity usually, if not always, involves social relationships. More

specifically, the pursuit of authenticity is mediated intersubjectively. For Husserl (1999:109–

128), there is "mediacy of intentionality" such that a subject processes information as experience

through the recognition ("making 'co-present'") that other people exist (are "there too") and are

similar subjects processing information. This "awakening" permits a "pairing" of the subject's

"original" or "presented" ego with this recognition of the other's "appresented" ego. This

texturing of perspective affords a sort of toggling between intentional positions that provides

access to the objective world.

Authenticity thus relies to some extent on intersubjectivity. Some of Husserl's

successors contended that intersubjectivity is the irreducible precondition that affords

subjectivity and objectivity (Schutz 1967). In that vein, Gadamer (2000) argued that Heidegger

should have framed the pursuit of authenticity as fundamentally dependent upon a continuous,

intersubjective dialogue rather than individualized effort.[93]

At a minimum, insofar as humanity is a social species, "the possibility of human

interaction and human understanding" evokes the presence of others or is presupposed by the

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[93] Intersubjectivity is not absent from Heidegger's argument, but Sartre (1943:332), for example, characterizes

Heidegger's sense of being with another with the naval metaphor of "mute existence in common of one member of

the crew with his fellows."

presence of artifacts (Duranti 2010:11). The Husserlian process of reason becomes a "dialogue based on a shared search for common goals and common interests" (Nenon 2003:69)—the pursuit of authenticity. Following a Husserlian methodology, Habermas (1989) begins with a "lifeworld" in which the subject is embedded, and which defines the limits of intentional subjectivity. He (1984) expressly premises the possibility of a meaningful, reasoned existence on the lifeworld constraints placed equally upon all members of a community, and under which they examine the lifeworld together.

As Duranti (2010:4) cautions, this mutuality among subjects is not limited to shared understanding. Rather, it means a shared search for understanding. To maintain or at least approach authenticity, relationships must be based on reciprocal concern for one another's quest, attuned to an interlocutor's standpoint and unmarred by interfering acts or ulterior motives. This kind of empathy (Kohut 1971) or "love" (Lear 1990) echoes in psychoanalytic theory that is less explicitly concerned with authenticity than some of the phenomenologists cited thus far, but shares some intellectual roots with it.

Study participants talked about this aspect of authenticity, too. The Wyrdcon panelist who talked about the emotional high of LARPing noted the intersubjective roots of this kind of experience. While confessing, "I got my transmedia principles from LARPs," he immediately elaborated that authentic new media storytelling "comes from traditional things like role-playing, like talking"—in other words, from being together with other people in a world.

In addition, the Storyworld speaker who invoked phenomenology and psychology observed the centrality of intersubjective mediation to experience design. Storytellers create much more than the audience will ever know about—character histories, plot backgrounds, and so forth—but the "first key" of experience design is that the "audience is at the center of it all."

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The storyteller works toward giving audience members the ability to "intuit" the meaning of the story through what is accessible to them. More broadly, for all involved, "we are wired as people to exchange things with each other as meaningful experiences."

This usage spilled over to legal and business considerations as well. Lawyers and executives employed the term, "authenticated," to distinguish paying subscribers from freeloaders. That usage describes the legitimacy of a user experience. Some also discussed the artistic and legal perils of melding fictionalized storylines with celebrities' self-identified social media activities, such as "tweet" messages on Twitter.com, in terms of consumers' expectations of authenticity. Intersubjective mediation of authentic experience can become startlingly intimate with new media. One lawyer who drafts entertainment contracts remarked that professional talent must often now agree in advance that users will be able to create some of their own content incorporating the talent's image, voice, or activities from the initial product.

Finally, study participants often spoke of authenticity according to the entire framework of goal, pursuit, and sociality. For example, at the Storyworld conference, a "media and technology strategist" for a large corporation implicitly chained together authenticity as an existential goal, a personal endeavor, and an interpersonal project. Admitting that it remains hard to gauge "audience experience," she continued, "We don't know how to measure fun, but we do know how to measure what intrinsically motivates people," namely, "autonomy," the "ability to feel like they're in control, or agency," and "finally, do they have some sense of relatedness, that they're connected to other people."

The framework of authenticity as a goal that is pursued through a socially mediated, reflective quest makes authenticity part of the fundamental inquiry into the subjective–objective distinction on which social theory rests. With respect to my topic, authenticity becomes the key

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variable in the discourse of authorship. Specifically, authenticity supplies value to the practice of authorship (and ownership), delineating the stakes and becoming a motivator of collaboration and contestation.

For that reason, the pursuit of authenticity appears at key junctures in my model of the general habitus of authorship shown in Figure 6.5 at the end of the previous chapter: the points where communicative regimentation, social reproduction, and social distinction occur simultaneously through acts of authorship–ownership. More particular definitions of authenticity correspond to the particular habituses of romantic or remix authorship. For example, authenticity historically came to have a meaning associated with the same robust subjectivity that characterizes modern authorship. One source of that convergence was the narrowing of the Kantian framework toward specific, practical accounts of authenticity as subjective autonomy (see Philipse 1998:264).[94] For example, Kierkegaard (1985:50) turned the duality of goal and pursuit toward existentialism with his interpretation of faith as a lonely struggle to understand and implement divine will in the face of social norms and thereby achieve true "greatness" (see also Rae 2010 for the argument that Kierkegaard's religious ethic was concerned with a reflective quest rather than obedience).

Nietzsche (1997:4, 1999:55, 2009:72) agreed that social norms unjustifiably constrained people but rejected a turn toward faith in favor of artistry as the authentic goal and self-expression through artistry as its pursuit (see Nietzsche's 1997:4 criticism that Kantian principles

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[94] Compare Pellauer's (1992:xii–xiii) claim that, for example, Sartre continues a Heideggerian, in contrast to a Kantian, theme of concern with how "everyday existence can be 'authentic.'" Even if Kant could be described as being more concerned with a simultaneously more abstract universalism and its narrower particular application, it seems that Kant nonetheless is the one who set up the problem of authenticity as one of practical knowledge for later philosophers.

are "heteronomously" corrupted by dependence on social morals; Philipse 1998:265).[95] He thus

closed the loop on authenticity and subjectivity as co-functions that determine truth. Heidegger's

modification of the Kantian or Husserlian framework built equally on Nietzsche's work.

Heidegger saw "Being as its ownmost possibility" (1962:68).

One road from this combination led to the subsequent existentialism of Sartre, with its

questing, self-vindicating subject. Although Heidegger opposed thinking of the Dasein "entity"

as a Cartesian self or subject moving in and against the objective world (see Munday 2009), his

approach, which nearly dissolves the objective world into subjective experience, raises the

question of how a human being can engage practically with the authenticity on which existence

itself depends. Sartre (1992:479–482) bent Heidegger's emphasis on the pursuit of authenticity

toward equating "pure autonomy" with "pure, authentic reflection." The "reflected-upon

project" of the self as a force of will produces "an unveiling of freedom." The "pre-reflective"

(Rae 2011:36) desire for what might be called transcendental authenticity—apotheosis to the

authentic ideal and with it annihilation of the self that desired it—is the source of existential

anxiety or alienation (see also Sartre 1992:37),[96] the imperfect solution to which is the

"perpetually reflective recreation" (Rae 2011:38) of the self in pursuit of autonomy as

authenticity. This solution through redirection is what Bourdieu criticized as Sartre's transfer of

divine characteristics to the tautologically autocreative, autodeterminative human subject (see

Chapter 3).

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[95] Nietzsche uses a German word translated as "truthfulness" that approximates authenticity (see Golomb 2002:68).

[96] In borrowing from Heidegger, Sartre (1943:128) also criticizes him for his "anxiety to establish an ontological

foundation for an Ethics with which he claims not to be concerned, as also to reconcile his humanism with the

religious sense of the transcendent."

This solution thus also is how a subjectively oriented authenticity attaches to modern authorship. The Kantian and Cartesian distinctions about subjectivity re-converge.[97] Extreme neoclassical liberalism conflates autonomy and authenticity, for example, in Raz's (1986:204) double sense of autonomy as requiring, first, that a person be "author of his own life" and, second, "if conditions of autonomous life obtain." Authoring one's life captures the pursuit of authenticity, while the requirement of fertile conditions evokes authenticity as a goal and simultaneously implies that social constraints can either inhibit or promote its pursuit.

That implication, however, suggests that even the case for extreme subjectivity includes a social component, albeit framed as interference more often than not. Personal idiosyncrasy colors the universalist quest to decant authenticity "antagonistically" (Ferrara 1998:55) from the interfering sediments of social and material life. Furthermore, even if the quest had an opposite goal, or what Ferrara terms "integrative authenticity," it would be a narrower kind of authenticity than the general condition of intersubjective mediation, in which the recognition of other subjects affirms co-presence and triggers the possibilities of the quest.

Another road from Heidegger leads away from this robust subjectivity and toward a combination of Foucauldian deconstructionism and the primordially fragmented and collaborative authorship that defines remix (see Dreyfus 2004 regarding Heidegger's influence on Foucault). For example, Butler (2004:2) sources the self "in a sociality that has no single author (and that radically contests the notion of authorship itself)." The possibility of subjective

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[97] They also converge with empiricism (Hume 1975) and its utilitarian (Mill 1975) progeny—both being bulwarks of liberalism—insofar as those schools posit subjective sensory perception as the primordial source of knowledge. Kant's acknowledgment that Hume instigated Kant's own endeavors supports the claim that the Kantian framework supplies the broadest epistemological stance toward authenticity, regardless of divergent claims about the nature of authenticity and regardless of the accuracy of any particular such claim.

emancipation—of authentic achievement—exists, and comes from knowledge that the "I" exists, by virtue of a range of discursive positions that are "fully embedded organizing principles of material practices and institutional arrangements, those matrices of power and discourse that produce me as a viable 'subject'" (Butler 1992:9). Only perpetual engagement of one's subjective intentionality with the surrounding discourses can create and sustain a notion of the self as author, which does not mean such a notion is false. As citations to Foucault or "postmodernism" in some of the legal critiques of copyright suggest, this characterization accords with the ethic of remix as both derivative and creative.

Thus, just as romantic authorship and remix authorship ideologies are particular versions of a more general model of authorship, each of those ideologies has a corresponding vision of authenticity that is a particular version of authenticity's general structure as a horizonal goal and its intersubjectively mediated pursuit. Furthermore, this framework goes beyond equating authenticity with immediacy, as the remediation theory does. Immediacy may attract as the authentic goal, but from any subjective standpoint, both immediacy and hypermediacy—the entire cycle of remediation—are part of the authentic quest.

Moreover, this framework accommodates the ambiguity whereby it is unclear whether new media fundamentally alter authentic authorship or merely redirect it. The Storyworld speaker who enlisted phenomenology argued that the idea that the universe is "filtered through our minds" lost out to Cartesian duality in the twentieth century but was "winning now" because of new media. The internet brought about the "age of wonder that they anticipated" in earlier times because people now experience an intangible world that makes it both possible and obvious that meaning derives from extending consciousness rather than from preexisting objective relations. Such statements probably suggest an ontological commitment to authenticity

that parallels the remix return to mythic or campfire storytelling. If so, they essentialize authenticity as much as the modern habitus does. It is ideologically remixed. If, however, authenticity had meant one thing in the era of hegemonic modern authorship, but had now changed to mean something else, authenticity becomes a flexible, discursively grounded, and analytically productive variable. It is methodologically and theoretically remixed.

II. The Temporal Tension within Authenticity.

That is, most of all, my approach accounts for a tension of temporality harbored within authenticity. That tension drives people to strive for authenticity and so harbors the potential for both naturalization and transformation of an authorship habitus. The driving motivation stems from a paradox of temporal experience.

To begin with, the paradox derives from a more general quality of experience. For Husserl, to perceive something requires it to have both an "intuitively present" (Zahavi 2003:96) profile and an "absent profile." The former is the thing as perceived, and is "embedded in a horizon of absence" (97). The absent profile is all the various other things that relate to the perceived thing, such as its context and its potentiality. What is absent informs the categorial understanding that permits authentic thinking in Husserl's formulation, which I earlier connected to the goal aspect of authenticity as a horizonal ideal. The duality of presence and absence both links and divides them.

Because authenticity is itself a primary concern of subjective experience, it exhibits this duality. The present profile corresponds to the pursuit of authenticity, which engages things available to perception. The absent profile corresponds to the goal of authenticity, which is

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always both imminent and out of reach. They go together, so that authenticity is a structure of horizon.

The horizon creates a temporal paradox. Its extreme manifestation is the tragedy of existence that a human subject is compelled to strive for being, but to achieve being is to cease to be (Sartre 1956:208).[98] During the striving, on the one hand, and recalling that even the horizonal goal of authenticity is still a matter of subjective experience rather than a Platonic externality, the goal coincides with a human experience of what might be called unified time. A subject experiences time not as segregated sequential moments but as gathered up into a single, yet ever-changing "now" from which the past recedes to one horizon and the future is anticipated on another (Husserl 1991:26-7; Merleau-Ponty 2005:477-81). Past, present, and future unite in the project of being (Heidegger 1962:373-4, 407), and therefore of authenticity.

On the other hand, the pursuit of authenticity coincides with chronological temporality. As thinking subjects, people come to conceptualize time as passing by in this way. This mode is prominent ideologically in Western philosophy, science, and everyday practices (see Heidegger 1962:381–2; Merleau-Ponty 2005:479). It may be less prominent in other cultural contexts. For example, Balinese dialectically employ overlapping calendars and a generalized system of "person-definitions" (Geertz 1973:389) such as titles to categorize social relationships abstractly and thereby "minimize" the relativity of experiences such as "present consociate intimacy," "past

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[98] His formulation in this particular passage is, "Death is the final arrest of Temporality by the making-past of the whole system, or if you prefer, by the recapture of the human Totality by the In-itself [objective being]." As he cautions elsewhere (139–140), this finality need not be transcendence from the perspective of the striving subject. Rather, the subject who strives for being wants to achieve it as a self-conscious subject. Just because the goal of authenticity is always on the horizon does not mean that it is not pursued sincerely—which is why goal and pursuit are inextricably linked.

contemplation," and "future anticipation" (391). Yet, as practice theorists have pointed out, even a cultural framework as thoroughly abstract and therefore temporally quiescent as that must have ways to account for the sequential movement of time to have both history (see Sewell 2005:182–185) and everyday practice (see the discussion of power asymmetry, diachrony, and practice in Chapter 5).

Indeed, in accordance with the paradox of the horizon, these two kinds of temporality work together. For striving subjects, to achieve unmediated existence would include escaping the march of chronological time in favor of unified time. But to pursue authenticity is to live through the chronological time that constantly mediates experience. Merleau-Ponty's (2005:487) metaphor for the experience of unified time is to watch the landscape recede from a moving train's window—which also invokes the sequential movement of chronological time.

People habitually mistake these two kinds of temporality to be mutually exclusive. They mistrust the experience of unified time to be objective like clockwork, but also mistrust the experience of chronological time to be objective like Einsteinian space-time.[99] Thinking about time can lead to the philosophical mistake of taking what is perceived as "self-evident truth" to conceal an objective "absolute truth" (Merleau-Ponty 2005:47). But when people practice temporality, as opposed to think about it (see Bourdieu 1990:53), they employ unified time as a way to engage chronologically.

In addition, they do so intersubjectively. As Geertz wrote of the Balinese system that aims to de-temporalize social relationships:

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[99] Compare Sewell's (2005:259) contention that "historical events are spatial as well as temporal processes. Temporal nearness and distance factor into experience along with spatial constraints.

The close and immediate interdependency between conceptions of person, time, and

conduct which has been proposed in this essay is, so I would argue, a general

phenomenon, even if the particular Balinese form of it is peculiar to a degree, because

such an interdependency is inherent in the way in which human experience is organized,

a necessary effect of the conditions under which human life is led. [1973:408]

As a matter of everyday practice, managing the relation between chronological and unified time

is key. For Bourdieu (1990:105–107), the relative success or failure in timing social acts

determines the margin for maneuver within *habitus* that creates a consociational feeling of

voluntarism. Timing social acts corresponds to what this study calls chronology, while the sense

of freely willed social action is an expression of unified time. This situational timing lends itself

to the in-the-moment sense of doing something together in the world that characterizes any

interaction, which can feel stabilizing or disruptive.

Temporal management also projects inward subjectively and outward historically.

Giddens draws a line connecting subjectivity to history through intersubjectivity, writing that:

Theorizing the self means formulating a conception of motivation…and relating

motivation to the connections between unconscious and conscious qualities of the agent.

[1984:36]

As I discussed in Chapter 5, by motivation, he means the typically unconscious desires that set

the broad parameters for potential action, which then occurs on a level of either discursive or

practical consciousness. He continues that:

The self cannot be understood outside "history" – "history" meaning in this case the

temporality of human practices, expressed in the mutual interpolation of the three

dimensions I have distinguished.

Those dimensions are everyday experience, organism life span, and institutional duration. They are Giddens' explicit attempt to pin the "ineffable character" of time that Heidegger investigated to social existence. The interpolation of these dimensions of routine daily life, progression toward death, and "supra-individual *durée*" thus harbors the tension between chronological and unified time, and does so because of the intersubjective conditions of sociality. His next paragraph draws upon the mutuality of temporality and intersubjectivity, stating that:

> I earlier introduced the notion of co-presence, with specific reference to social integration. The study of interaction in circumstances of co-presence is one of the basic components of the "bracketing" of time-space that is both condition and outcome of human social association. "Systemness" here is achieved largely through the routine reflexive monitoring of conduct anchored in practical consciousness. Relations in conditions of co-presence consist of what Goffman has aptly called encounters, fading away across time and space.

Thus, to interact intersubjectively is to engage in temporal management, stepping out of a larger structural temporality and projecting back into it. Conversely, temporality manifests through intersubjective interactions. It reaches the subjective level through the habitual routines of practical consciousness exercised in social action that, ultimately, mutually conditions subjective motivation.

Giddens' praise of Goffman opportunely brings in the centrality of language use to this nexus of intersubjectivity and temporality. Language use makes patent the chronological, mediating aspect of any social encounter, notwithstanding ideologies of linguistic transparency that wish it away (see Bauman and Briggs 2003 on the Enlightenment nascence of a still-powerful ideology of transparency). Language use also makes possible the pursuit of temporal

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unity as the state of truth, however (see Husserl 2001a:223–224 concerning subjective and objective expression).

Thus, for example, "a constant challenge has been bridging the gap between the notions of language as code and language as action…partly due to the inability to fully appreciate the ethical dimensions of temporality in human interaction" (Duranti 2009a:64). That assessment parallels Bourdieu's pinpoint of the core temporality of social practice, and also encompasses the temporal tension that inhabits any linguistic interaction. To use language socially is to employ chronology. Most apparently, "in conversation, there is always an earlier and a later" (Hanks 1996:169).

But language use also invokes unified time. Schegloff (1992) illustrates this point with his commentary on "third position repair," which is the opportunity for a speaker to correct miscomprehension an interlocutor has expressed as to an initial statement by the speaker. As an opportunity for repair, or alignment, this chronologically emergent moment coincides with the opportunity to achieve intersubjective understanding, which alights on the plane of unified time. This duality is apparent in Schegloff's conclusion that this "device for the management and defense of intersubjectivity is of a piece with the organization of the activity in which it operates—ordinary conversation" (1340).

The scope of this linguistic factor goes beyond micro-sequenced conversation. Philips (1989), for example, describes the simultaneously cherished and denigrated "Indian time" that governs an annual Native American gathering in an essay on the branch of study called the "ethnography of communication." At this gathering, "when" something will happen depends on a combination of subjective, intersubjective, and ritual rules (this trilogy shares a scalar quality with Giddens' tripartite "history"). Chronology and unified time work together, causing both

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frustration and harmony—notably, at the precise intersection of two contradictory cultural schemas of time. To ask someone when something will happen, and to get an answer, employs language to court the tension between the two kinds of time. For its part, time thus is a core structural component of the sociality involved in the social gathering.

Moments of instability reveal this intersubjective employment of dual temporality. A grand historical example is French revolutionaries' self-conscious interpretation of the taking of the Bastille not as disorderly but as a restoration of past liberties and happiness (Sewell 2005:229, 239). That interpretation required them both to organize the Estates-General and the assault on the prison as a significant chronology and also to connect that chronology into a meaningful moral and political project. A similar pattern is occurring today with respect to the self-conscious reinterpretation of authorship as the organizing principle of Hollywood production. The focus of that discourse is the industry's products, which to begin with are works of art.

III. <u>The Tension Channeled through Works of Art</u>.

I noted earlier that cultural artifacts are one avenue of the social pursuit of authenticity. Works of art are one class of such artifacts. They therefore harbor the temporal paradox and simultaneously afford the pursuit of authenticity and undermine its attainability.

The meaning of a text, work of art, or other cultural object arises from the "productive activity" (Gadamer 1989:296) of both its author and its audience. Tolstoy (1899:40) declared that art is "one of the conditions of human life" and, as such, "one of the means of intercourse between man and man." Thus, "every work of art causes the receiver to enter into a certain kind

of relationship both with him who produced, or is producing, the art, and with all those who, simultaneously, previously, or subsequently, receive the same artistic impression" (41). Bakhtin's dialogism, itself developed from his study of literature, sounds in that tenet.

Even those who emphasize individualism in the quest for authenticity highlight the significance of art in a way that can lead toward the irreducibility of the social element. Nietzsche (2003:82) mused about a "work of art, where it appears without an artist." Heidegger (1987) interpreted Nietzsche to mean that aesthetic perfection derives its value independently from the person who nonetheless strives to produce it on the way to authentic transfiguration. The ideal work of art thus represents something like Kant's pure reason or knowledge, which the striving human subject pursues on her quest for authenticity.

In deconstructing the romantic author, Foucault (2003:380) also reined in Nietzsche's idea from its "transcendental" worship of art to make the case that author, artwork, and, by extension, audience are all constructed from networks of historical circumstance and relative power (see also Rabinow 1997 on Foucault's acknowledgment of Nietzsche as an intellectual influence). Agamben (2004:613) expressly equates Nietzsche's work of art without the artist with Foucault's aim to describe the goal of "a philosophical life, a good and beautiful life" through this release of the self into the social conditions of the world in which people actually live. Nietzsche's own note concludes his thought with the phrase, "The world as a work of art that gives birth to itself." For the subject living in the world, an individual work of art becomes an "object of knowledge" (Merleau-Ponty 1963:143), salient to experience because it imposes on (or poses to) the subject's perception a discrete representation of the world.

Works of art thus harbor potentiality for both the pursuit of authenticity and the ideal of authenticity. They become conduits for the temporal tension embedded within that duality. As

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works of art, entertainment products do, too. An example is the idea–expression dichotomy in copyright doctrine, whereby the law protects only expressions and not ideas. This doctrine also illustrates how the temporal tension becomes a problem of power and therefore of struggle on the field of production.

Phenomenologically, the perceptual gaze itself is always limited by the principle of the horizon (see Merleau-Ponty 2005:80). The hand that expresses the gazed-at object is likewise limited in its capture of the ideal. The same is true of other means and products of expression. To pursue authenticity through the pragmatic act of expressing ideas is to use mediating expression to pursue an ideal. Furthermore, therefore, the pursuit through expression is a chronological endeavor undertaken to attain the goal of having expressed a temporally unified idea.

Moreover, this duality replicates in the most explicit social terms when an infringement dispute arises. A struggle ensues over chronologically produced, mediating expressions. But the struggle also embroils adjudicators in making "artistic value judgments" (Cohen 1990) based on the "metaphysical" (Jones 1990) idea. For example, in one famous case, an artist sued Columbia Pictures, claiming that a movie poster for the film, *Moscow on the Hudson* (Mazursky 1987), infringed his copyright on a cover illustration for *The New Yorker* magazine (*Steinberg v. Columbia Pictures Industries, Inc.*, 663 F. Supp. 796, S.D.N.Y. [1987]). The illustration captured Manhattanites' supposedly myopic westward gaze, with Ninth and Tenth Avenues being rather detailed, a nondescript wilderness marked by a few place names beyond the Hudson River's western bank, and dimly perceived masses labeled as China, Japan, and Russia beyond the Pacific Ocean. The movie poster shows an eastward view from New Jersey, with Manhattan rising in detail on the eastern bank of the Hudson, and major landmarks of London, Paris, Rome,

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and Moscow sketched beyond the Atlantic Ocean. The court found that the two works were "substantially identical," not only with respect to that overall depiction but also with respect to the buildings drawn in detail, the capitalized, handwritten place names on each map, and the font used for the magazine and movie titles.

In applying a test of "substantial similarity," the judge carefully noted the idea–expression dichotomy. The defendant's liability lay not in using the same idea of an "egocentrically myopic perspective" on the world, but in the strong "stylistic" parallel in how that idea was expressed in print. The movie poster interposed itself in the magazine illustrator's relationship with his audience through his work. It also deceived the audience as to the filmmakers' authorial subjectivity. This interference occurred in the area of chronological experience through which the various artists, audiences, and legal professionals pursued authenticity, as in the stylistic elements drawn, perceived, and evaluated. But the interference spoke to the goal of authenticity, as in the artistic statement about world perspective and the judicial effort to preserve it legally. That goal is one that sounds in the unified time of personal, intellectual, moral, and so forth experience.[100]

The *Moscow on the Hudson* copyright case thus involved an intersubjective dilemma of authenticity driven by the temporal tension, set upon a field of practice, and constituted through language. Language includes both the works of art as linguistic objects and also the judicial opinion as language about them.

The interpretive challenges posed by a conventional copyright case like that one, which was relatively straightforward as a problem of romantic authorship, have been pushed to a higher

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[100] Even if one were to disagree with the judge's ruling, that opposite conclusion would still be arrived at because of the same motivation.

order by the emergence of remix authorship. One judge wrote relatively early on of the perils of adapting the borrowed, but relatively settled, terminology of literature to electronic technologies in copyright infringement cases (Newman 1998). Even more than he anticipated, the instability caused by new media is a historical moment when the paradox of authenticity has come to the surface and brought the temporal tension with it.

The consequences extend beyond the courtroom and across the entire field of production. Copyright can be seen as a primary mode of regulating the temporal experience of entertainment commodities. For example, under the modern regime, Hollywood producers have long determined the distribution schedule of entertainment products in precise fashion. Films roll out sequentially to cinemas, physical home recordings, and a television waterfall from fee-based on-demand through premium and basic cable to free broadcast. Each format relies on copyright enforceability to prevent mass piracy. By controlling the chronological availability of the products, producers seek to enhance audience's experience of the products in terms of unified time. Marketing strategies aim to create the appropriate alignment by timing hype to coincide with premieres or emphasizing various kinds of exclusivity. Perhaps most famously, Disney periodically advertises that its popular films are either being sent to its "vault" indefinitely or being re-released temporarily from it.

The remix attitude, or its piracy corollary based on the same collage culture of access and manipulability, has eroded this business model. Many people are no longer deterred by moral opprobrium against piracy. New media have vastly improved the quality and availability of pirated copies. Film rollouts are only one example. The failed battles to stop home recording on cassettes and digital video recording devices continue against newer technologies, probably with equal futility.

Consumers' refusal to wait for what they want, so-called "on-demand" culture, is a remix aesthetic of experience. Many consumers no longer buy into the larger narrative of the consumption experience in which producers wrap specific narrative products. Producers of television are now trying to figure out how to profit from viewers' tendency to use a "second screen" device (usually a mobile phone) simultaneously while watching programs. The Nielsen rating system on which television advertising fees depend was updated in 2011 to include ratings for programs viewed online (Friedman 2012), with similar efforts to measure viewership on non-traditional devices such as tablets and on non-traditional platforms such as Amazon and Netflix begun in 2013 (Block 2013). A 2013 Nielsen study asserted that increased Twitter activity about a show translates into higher ratings (Szalai 2013). A Los Angeles Times article in October 2013 profiled Julie Plec, the showrunner of two popular supernatural-themed young adult romance shows on the CW network, noting her adroitness in securing "hefty numbers when it comes to increasingly important social media" (Villarreal 2013). Even when they do not necessarily participate in authoring a main product—although fan fiction should not be discounted—audiences are using new media to remix their temporal experience of favorite entertainment products by altering when and how they consume them.

In fact, viewed in terms of temporality, how is a function of when. By defying rules on how one can use a copyrighted product, audiences signal to producers their expectations about authentic value as experienced through a work of art. As part of social practice, these activities do not simply work upon authored, owned products, but author proprietary claims of their own to those products.

This temporally inflected conflict places tremendous pressure on the modern regime's attempt to harmonize its internal contradictions. The earliest modern copyrights lasted a few

years. The arrangement aimed to balance elements of intersubjective authenticity that took into account the ascendant romantic ideology as well as liberal ideas about individualism, social contract, and market economics. Balance would mean falling in the range of unified time as an experiential goal of authenticity, so that approximating or achieving balance would align that experience with the chronological pursuit of authenticity governed by rules such as duration.

The steady extension of copyright so that it now often lasts for a full lifetime after the author's death is not inherently illogical. But frustration with that extension reflects a sense of misalignment with expectations about how the modern audience connects with the modern author. One of the ways that enduring social structures transform is when people "respond to, and resolve (from their point of view) the central contradictions of culture" (Ortner 1989:60). Remix ideas call out the misalignment and promise a new arrangement. What that may be remains unclear. It may be rather radical upheaval to the timing of copyright, such as allowing remix or piracy immediately in many instances, even for commercial purposes, and seeking to profit from ownership through that release of control. That rabbit hole is one that some Hollywood storytellers have jumped down.

For them and auxiliary professionals, the disruption new media cause to authenticity becomes something to work through together in practice by bringing unified time to bear on a chronologically experienced dilemma, and by enlisting chronological time to pursue an experientially unified goal. The next chapter addresses how the tension between these two temporalities acts both to stabilize the field of production and potentially to transform it, depending on how expectations concerning authenticity align.

CHAPTER 8: The Production of Authorship

The tension within temporality is productive. It provides impetus to try to turn the sands of chronological time into pristine pearls. In Hollywood, this effort takes the form of producing entertainment commodities with a view to providing authentic experience. When the pursuit and goal of authenticity seem to align, people who occupy positions, and their position-taking through products, win capital. This alignment can be inertial. For a long time, the ideological conflation of romantic authorship with its version of authenticity directed capital toward people who had or could obtain capital under the modern IP regime. The modern regime established an expectation about the legitimate meaning of authenticity and how to attain it. Remix authorship ideology disrupts the expectation because it envisions a different way to align the pursuit and goal of authenticity. It therefore challenges the power structure of the industry's field of cultural production.

By cultural production, I mean humans making things susceptible to sensory perception and therefore to being objects of social relations. The connection between sensory perception and social relations follows Kant's (2006:33–37) "defenses of sensibility," in particular, that "sense perceptions (empirical representations accompanied by consciousness)" are distinct from and precede the cognitive ordering that leads to "understanding." From understanding comes the possibility of anthropological inquiry, according to which "experiences are appearances united according to laws of understanding"—and are social inasmuch as anthropology is a social science. As a practical matter, a cultural product includes obviously material objects, such as books, as well as things that are technically material but more intangible, such as a spoken narrative, and also the in-between quality of electronic media. My usage coincides more or less

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with the folk meaning of creative expression that leads to copyright law. But I also aim to neutralize or "mark the break with the charismatic ideology of 'creator'" (Bourdieu 1995:215) that undergirds that sociolegal framework. The phrases cultural production, cultural producers, and cultural products encompass Bourdieu's insistence that what is made, who makes it, how it is made, and its value are all bound up together and grounded in specific sociological conditions—of which the ideology of the romantic creator is just one configuration.

I.   Hollywood Storytelling as a Field of Cultural Production.

   A. Modern (Traditional) Hollywood.

        Hollywood is both a geographical and an iconic center of the "culture industry" (Adorno and Horkheimer 2002), a compound noun that aptly captures both the material aspects and also the social influence of Los Angeles-based production of entertainment commodities. Hollywood itself is a neighborhood within the city that remains home to one major film studio and a number of smaller production and other offices. Many, but not all, of the major studios are based in a neighborhood to the north called Studio City, or its neighboring municipality of Burbank. But the industry in general is as spread out as the sprawling Los Angeles metropolitan region, with clusters to the northeast of Los Angeles proper in the cities of Pasadena and Glendale (which hosts Disney's theme park Imagineering arm), to the Woodland Hills area in L.A.'s northwest (where affordable space accommodates offices and production facilities), to pockets running west from Beverly Hills through Century City (talent agencies and law firms) to Santa Monica and Venice on the oceanfront (satellite offices and smaller production companies).

As for culture, Hollywood perhaps is most often associated with films, which still retain prominence in popular culture and the news.[101] Television, however, accounts for half of the time spent on leisure in the United States,[102] while enjoying a new "golden age" that many observers find both superior in quality to cinematic offerings and, not coincidentally, reflective of troubled times in the U.S. (Reese 2013). The authored works Hollywood produces also include books, comics, graphic novels, video games, musical and other sound recordings, radio, and live performances.

This bounty is delivered through television sets, computers, smaller portable devices, and physical venues such as cinemas and performance theaters, and extends to theme parks and merchandising. But Hollywood's influential cultural producers have less control over circulation. Among the reasons are historical ones such as the U.S. Supreme Court antitrust ruling that forced studios to divest their cinema holdings (*United States v. Paramount Pictures, Inc.*, 334 U.S. 131 [1948]). More recent developments in which new media are implicated are also responsible, such as the contrasting industrial cultures of Hollywood content producers and Silicon Valley platform producers that have instigated a "California Civil War" over IP and other legal issues (Sydell 2012). At the University of Southern California (USC) IP Institute conference in 2012, a prominent copyright litigator and author of a leading copyright casebook made the very Californian joke, "I don't know if you felt it but we had an earthquake on January

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[101] International relations and trade is one such area. A perennial story is China's quota for foreign films along with its government's censorship rules and the indirect influence that its non-native English speakers have on screenwriting and plots (Abrams 2012). Another is so-called cultural protectionism; France and Italy reportedly threatened to derail a comprehensive new Euro-American trade treaty if it did not retain protections for their domestic film industries from a wave of Hollywood imports (Guttenberg and Barbieri 2013).

[102] See http://www.bls.gov/news.release/atus.nr0.htm, accessed April 4, 2011.

nineteenth." He was referring to the uproar over the SOPA and PIPA Congressional bills to strengthen IP protections, which, he said, were "sponsored by Hollywood, opposed by Silicon Valley, surely the great rift in this great state of ours."

As an industry—"the industry," in everyday Hollywood parlance—motion pictures (film and television) also dominate. But revenues in sectors increasingly integrated with Hollywood production, in particular video games, have spiked in recent years (Deleon 2009; Entertainment Software Association 2012:10).[103] A 2006 study by the federal Bureau of Labor Statistics (BLS) calculated that 15.6% of U.S. workers in the "creative arts" or "creative industries" were based in Los Angeles, more than anywhere else in the country (Dolfman et al. 2007:23).[104] Notably, the report (borrowing from a British government task force) defines a "creative industry" as one involving "activities which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through generation and exploitation of intellectual property" (23)—in other words, a copyright-reliant industry.

How many people Hollywood employs, as well as its economic heft, depends on how they are counted. For example, the BLS category for the "motion picture and sound recording industries" counts 104,410 workers as of 2012, but itemizes only "actors," "audio and video equipment technicians," "cashiers," "motion picture projectionists," and "producers and directors."[105] The 2006 BLS report tallied 185,000 arts workers in Los Angeles, of whom almost 60% worked in motion pictures (26). They earned $4.2 billion in wages, or 10% of wages

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[103] According to a site dedicated to helping game developers find jobs, Los Angeles is the second-most fertile city in terms of development studios, after San Francisco. See http://gamejobhunter.com, accessed July 25, 2013.

[104] The other hub is New York, which in some respects overlaps with Hollywood because of the bi-coastal activities of corporations and individuals in the entertainment industry.

[105] http://www.bls.gov/iag/tgs/iag512.htm, accessed July 25, 2013.

earned in the local economy. Caldwell's (2008:7) ethnography of "production culture" in the entertainment industry cites an estimate of 250,000 "directly employed" in southern California. The Motion Picture Association of America (MPAA), which represents the six major studios, claims that the industry "supports" 1.4 million jobs nationwide, generating $104 billion in significantly above-average wages in 2011 (MPAA 2013).

Statistics on the industry's overall contribution to gross domestic product (GDP) used to be difficult to find. A 2011 U.S. Bureau of Economic Analysis survey reported value added of $131.2 billion in 2010, but the expansive category includes performing arts, spectator sports, museums, "related activities," amusements, gambling, and recreation (Gilmore et al. 2011). In summer 2013, the bureau revised its GDP methodology according to new international standards. The revisions include specifying as investment the expenditures made for "entertainment, literary, and artistic originals," among other kinds of IP. These items used to be classified as intermediate production inputs rather than assets.[106] The change increases overall GDP, and will result in recalculations of GDP from 1929 onwards. The agency reports a 2012 GDP contribution for this sector as $74.3 billion. Methodology matters. Siwek (2009) reports almost one trillion dollars of U.S. GDP annually come from copyright-reliant industries as a whole, some significant proportion of which probably can be attributed to Hollywood.[107]

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[106] http://www.bea.gov, accessed August 10, 2013.

[107] Copyright critics estimate that activities exempt from copyright restrictions under statutory protections for "fair use" generate $4.7 trillion in direct revenue and $2.2 trillion in value added, as well as employ 17 million people (see Rogers and Szamasszegi 2010). If accurate, these numbers could be read to mean either that copyright reliance is holding back growth, or that copyright is the instigating kernel of a vastly underreported contribution to the economy.

Another way to consider the human component is by occupation and industry role. The six major studios and studio-networks employ legions of white-collar and blue-collar workers in a corporate structure, alongside smaller companies that also make and distribute entertainment commodities. Many production companies are small shingles set up by individuals or partners to do the work of initiating projects, financing them, and shepherding them to completion. Small businesses provide technical and ancillary goods and services. Individual "talent" such as actors, writers, animation artists, and directors are hired per project, sometimes on a long-term basis (in-house animators, for example), and sometimes in-between (staff writers on seasonally renewed or cancelled shows, for example, or talent who secure multi-project or time-limited development deals). Each talent group has its own collective bargaining and standard-setting "guild." Other workers, many also unionized, perform the myriad of skilled tasks required to produce entertainment commodities, from building sets to moving equipment to camera- and sound-work to catering (see Caldwell 2008 for a study of some of these groups), as well as unskilled work. Agents, managers, and lawyers represent talent in finding work, negotiating contracts, and disputes, typically in exchange for a fixed percentage of client earnings. Corporate employers have in-house lawyers on salary and retain law firms on hourly or other fee arrangements. Marketing professionals, too, may work for talent or for corporations, in-house or in standalone companies, sometimes rolled into an agency.

As just indicated, copyright is the industrial linchpin, and has been for more than a century. Its local imprint includes a 2008 Los Angeles ordinance that made digital piracy a nuisance, allowing city officials to close establishments where it occurred (Kravets 2008) and binding the law of real property to the law of intellectual property in a non-metaphorical way. Copyright's weight is felt in the IP-heavy docket of the Central District of California, which is

the federal judicial region that encompasses Los Angeles and leads some to call L.A. the "intellectual property capital of the world" (Iafolla 2008). Its importance to Hollywood projects nationally and globally, for instance, in the 2011 appointment of former longtime Connecticut Senator and erstwhile presidential candidate Christopher Dodd to head the MPAA from its main headquarters in Washington, D.C.[108]

The MPAA and its recording industry counterpart, the Recording Industry Association of America, lobby hard for stringent IP protections in domestic legislation and international treaties.

Modern copyright shapes a triangle of art, commerce, and law in various practical ways. For example, it scales romantic authorship to an industrial level through arrangements such as the umbrella contract between the Writers Guild of America and the studios. Under the "work for hire" principle, the employers own the copyright in the work product in exchange for minutely negotiated minimum scale payments, as well as royalties (economic capital, and called residuals in some sub-industries) and attribution credits (symbolic capital) (see Fisk 2006, 2010).[109]

Copyright similarly influences the form of Hollywood's authored products and the corporate structures and individual expertise attached to them. It compartmentalizes projects according to "silos" in which the principal focus is a particular product form, such as a film, television show, or printed work. Each is a separate category of copyrightable work with commercial potential: author a book, own rights to it, sell copies of it. The structure encourages this format-specific production and, sometimes, secondary adaptation to another one through copyright licensing. Individual and corporate specialization follows accordingly.

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[108] See http://www.mpaa.org/about/ceo, accessed July 25, 2013.

[109] The contract is available at http://www.wga.org, accessed July 25, 2013.

To take a third example, copyright drives the industry's financial metrics and therefore its business model. Commercial profits depend either on outright commodity sales meant to be one-time transfers or on versions of a limited copyright license, whether ticket sales that grant a viewing window, ratings that aggregate viewership during a window for advertisers, subscriptions that aggregate access to a bundle of viewing windows.[110] Systems exist to track each of these avenues, such as cash register receipts, box-office receipts, the Nielsen television rating system, and licensing fees paid by television networks.

These material and technological aspects of media production connect to the products' symbolic significance as works of art. Within the industry, for example, the industrial logic of copyright that couples romantic authorship with work-for-hire directs the most lucrative material benefits to employers and certain categories of "creative" workers, who struggle over that piece of the pie (Stahl 2009). "Technical" workers, whose labor may be equally indispensable to production, can stake claims only to a smaller piece, and even those with collective bargaining power cannot claim the range of privileges to which creative workers can aspire, such as premiums over minimum scale wages or residual payments for reuse after the actual labor is performed.

In addition, with respect to broader society, the industry's sensitivity to copyright is not merely a direct function of its reliance on selling commoditized informational content, but also of the products' status as cultural objects of authorship. As Hall (1973) observed, the capital investments and skilled labor required to produce and circulate information on an industrial scale

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[110] Film professionals use the term, "window," slightly differently to define the order and duration between distributions in different formats. For example, a movie is released in cinemas, and then some time later on home video as well as to premium (subscription) television, then cable, then broadcast.

are interdependent with how that content is received and interpreted. Large film studios spend

massively on pre-release marketing consistently in excess of box office revenues to mitigate the

commercial risk of costly films by courting immediate consumer favor that can translate into a

long tail of profitability (Epstein 2005). Conversely, those with lower budgets and profit

expectations turn smaller marketing campaigns into statements of artistic risk that may garner

greater prestige (see Gerbrandt 2010).

The larger point beyond these examples is that Hollywood traditionally operates

according to a particular IP regime that exemplifies the modern authorship habitus. Viewed

from within, material and symbolic aspects of this culture industry intertwine as people struggle

over economic and symbolic capital, according to a logic of that habitus that plays out in

Hollywood as a field of cultural production. Following Bourdieu's framework (see also Chapter

5), individuals or groups occupy "positions" that correspond to the possession of capital or a

claim upon its distribution (Bourdieu 1993:30). A specific product or work, such as a film,

reflects a "position-taking" on the field, a move to improve or defend one's position upon it (30).

Importantly, these position-takings are commoditized, linking romantic authorship to industrial

capitalism in the work that manifests the position-taking. Because everything on the field stands

in relation to everything else, each move triggers a shift in the field's overall constellation,

although some moves are more consequential than others for the structure of the field as a whole

(32). This interconnectedness means that value resides in what people believe the worth of a

work or a kind of work to be, always in relation to other works or kinds of work (32).

Modern authorship directs that belief into a "hierarchy of recognition" (Bourdieu

1993:37) according to which greater value attaches to position-takings that correspond to

romantic authorship. As Bourdieu (1993:76) writes with respect to the similar field of literary

production, the field itself creates symbolic capital and does so by making the individual "author" the "apparent producer" of the work. The classic Hollywood example is the prestige ascribed to a film director as its single-handed "auteur," reflected in the common screen credit, "A film by [X]."

That "autonomous" hierarchy is embedded in another, "heteronomous" hierarchy of "success" governed by the power associated with economic capital. As the legal institutionalization of modern authorship, copyright allows owners to secure value through the marketability of their works as commodities. Both corporations and individuals from the talent strata therefore expend vast resources both on defending copyright claims and also on expanding and protecting brands to serve as easy, desirable reference points for consumers.

In one important respect, these two kinds of claim are in conflict within the field, which drives the struggle over capital for those equipped to join it. The "generative principle of judgments" (Bourdieu 1993:82) opposes commercial to non-commercial interests, so that disavowing commerciality is a principal way to claim symbolic capital, or prestige (78). For example, one of the most common laments heard in Hollywood today is that escalating costs and a precarious financing model have driven the film industry to sell out and seek "tent pole" blockbusters with maximum global marketability and strong potential for sequels and franchising partnerships (read: star-driven, action-packed, dialogue-light, and unoriginal), at the expense of high-quality narratives (e.g., Harris 2011). The self-consciously "restricted production" (Bourdieu 1993:58) of the independent, or "indie," sub-industry whose filmmakers position themselves as "not Hollywood" (Ortner 2013) gain traction against this mass production, while harboring further shades of the commercial–non-commercial conflict within the indie world.

At the same time, however, profit and prestige are co-dependent. Symbolic capital is, in the end, "misrecognized" economic capital or a "credit" that can be converted to economic capital later (Bourdieu 1993:75)—as aphorized by the folk wisdom that great artists are appreciated only after death. And carefully deployed economic capital can support investments in prestige (convertible back to economic capital). Two years after Disney bought Pixar, a much smaller and newer animation studio with a string of critically acclaimed films considered risky yet which garnered commercial success, stock markets rewarded the parent company for assiduously overcoming a history in which "mutual respect was scarce" between their respective cultures of "drones" and "spoiled brats" (Barnes 2008).

The mutuality points to the fact that the twists and turns of positions and position-taking congeal when viewed from without, at the boundary of the field. The IP regime merely appears to oppose the symbolic power of artistic genius to the economic power of commercialism. In fact, its core presupposition is that authorship and ownership go hand-in-hand. Copyright avowedly protects the commercialization of genius. The field of production is set within a field of power within a field of class relations (Bourdieu 1993:37). The apparent struggle occurs among "fractions" of the "dominant" class, which in present respect means those able to make copyright claims, as opposed to those considered technical laborers. The work-for-hire fragmentation of authorship and ownership that fuels a major theme of struggle within Hollywood also cocoons it. Cultural producers endowed with the symbolic capital of authorship and therefore symbolic power, such as film directors or television writers, can leverage it against employers to win economic capital. Companies with great economic power, such as studios, use it to acquire the symbolic capital necessary to sustain or increase their economic capital. Viewed from this greater distance, position-taking that results in discrete dichotomies such as

blockbusters versus indie films or broadcast television versus premium cable congeal. As a whole, the field and its beneficiaries rely on a symbiosis of economic and symbolic capital predicated on modern authorship.

   B. <u>New Media's Impact on the Field</u>.

   The habits and expectations that come with new media exert pressure on that field as a whole. The modern regime sustains its capital structure by regulating the flow—Bourdieu (1984:230) calls it the "objective orchestration of supply and demand"—between the internal sphere of producers' struggle over capital and the external sphere of consumers' norms and tastes. The principal mechanism is overt marketing of mass-produced commodities from silos of copyrightable formats, which supports the acquisition of economic capital while also providing the foil for disavowal by both producers and consumers committed (if temporarily) to symbolic gain. That dichotomy links to various other, mutually reinforcing "homologous" (232) oppositions within both the field of production and the world of consumer preference. Thus, a position-taking pair such as blockbuster versus indie resonates economically and symbolically for both filmmakers and consumers, and does so because of the modern authorship–ownership habitus (this orchestration is an example of the dialectic between habitus and field discussed in Chapter 5).

   The potential that new media harbor to change that habitus to a remix one also carries potential for radical change to Hollywood production. Such radical transformation requires alignment of internal changes to production, especially access, with external changes, that is, the bond between a new group of producers and their "socially homologous" (Bourdieu 1993:55)

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consumer counterparts. Technological accessibility, collage aesthetics, and participatory culture together provide the ingredients for that challenge to the viability of the existing structure. They alter the material and symbolic aspects of production and consumption, as well as the relation between them (see Ginsburg et al. 2002 on new technology as an impetus for such change; Klinenberg and Benzecry 2005 on how digital technology, specifically, alters cultural products).

Cheap, easy, and quick uploading of high-quality, self-made videos, often with numerous sound and special effects, is one example. Such videos approximate cinematic conventions in some respects but also set new standards of length, production style, camerawork, narrative style, and so forth. The next chapter is devoted to analyzing a copyright case involving a film whose makers leveraged such changes to produce an independent film, resulting in both social and legal controversy precisely because of precariousness of filmmaking authenticity under these conditions of change. For their part, the most avant-garde storytellers I followed hardly talked about conventional motion pictures or television except in historical terms. They instead spoke more readily about content produced directly for the internet, which they see as much more creatively open-ended, not to mention more easily distributed.

Another example that many storytellers talked about is the proliferation of media devices, which alter every aspect of media production and consumption. A 2013 study of studies estimated that it would be the first year in which U.S. adults spent more time with "digital media," comprising online and "non-voice mobile" activities, than watching television sets (see Hu 2013). Much of that time, however, is spent watching television shows and film, so that time spent with Hollywood entertainment is increasing overall.

The industry is trying to figure out how to adapt. For example, at the annual Hollywood IT Summit held at Pepperdine University in Malibu in March 2012, an audience member at a

panel of in-house technology officers asked whether changes in the industry were being driven by business or technology considerations. Despite their own emphasis on technology throughout the preceding panel discussion, the consensus was that business issues drove change—"and," the moderator added, "the business is reacting to what's happening in Silicon Valley." Similarly, a major studio executive interviewed on-stage in lieu of delivering a keynote speech was asked how to coordinate entertainment and technology. She responded with extreme diplomacy, beginning with a gesture of geographical bridge-building: "You know, I spend a lot of my time up north," meaning the San Francisco Bay Area and Silicon Valley. She downplayed any clash of industries with hyperbole and euphemisms, which only highlighted the tension. The technology companies are "doing amazing things," and coordination is a "balancing act" based on "mutual respect." That is, the technology companies respect the "quality of programming we create, the value of our library [that is, IP holdings]," while the entertainment industry has "appreciation for the types of devices they make."

The Hollywood IT Summit and other gatherings such as Digital Hollywood themselves signal the impact of new media on the local geography of the culture industry. So, too, does the rise of "Silicon Beach," which refers to a slew of hundreds of startup companies modeled on Silicon Valley ventures (see Chang 2013 for more on the term). Mostly internet-oriented and often media-focused, they seemed to spring up first in Santa Monica but exist throughout the city.

On the consumer side, during the casual networking lunch break at the Hollywood IT Summit, an information technology entrepreneur engaged me in a conversation about "intuitive" devices. Making new devices intuitive—which means, somewhat oxymoronically, easy to adapt to—is a primary objective of device makers. My lunchtime interlocutor marveled to me about

how his family uses new technology, specifically, the iPad, made by a company closely

associated with intuitive devices in recent years, Apple Inc. He, the technology specialist in the

family, thought, "Who could use this?" when it debuted because its lack of a keyboard seemed so

unwieldy. Conforming to generational stereotype, his 18-year-old daughter used it nonstop for

two months, before tiring of it. The big surprise was his wife, who uses it for everything social

and administrative, "goes to bed with the iPad, wakes up with it." In this account, the device

holds different symbolic value and material utility for each family member. In addition, those

differences filter through the notion of intuitiveness, which is a technology-speak proxy for

authenticity.

The proliferation of devices also points to one of three main responses that the

Hollywood establishment has had to new media. It can be glossed as, if you can't beat 'em, join

'em. The 2011 merger between studio giant NBCUniversal and cable behemoth Comcast was in

large part an attempt to fend off and perhaps capitalize on the explosion in illicit or semi-licit

transfers and downloading of content (see Arango and Stelter 2011). The effort to accommodate

collage culture may have begun paying off in 2013 as the accumulating "digital pennies"

received in payment for less valuable, more fragmented, but also more frequent transactions

achieved industrial scale (The Economist 2013a). On the flipside, some profess to welcome new

cultural attitudes. In 2013, National Public Radio (2013) reported that an industry insider close

to the Home Box Office (HBO) channel's wildly popular series, *Game of Thrones*, said that its

producers were unfazed by rampant piracy because it "really helps the show's cultural buzz" and

"makes HBO the center of a cultural conversation about illegal downloading, about streaming content, about the production of content and distribution of content."[111]

A more common, though related, response has been to embrace new media in a bear hug. Corporate titles and trade journal rankings for new media executives have appeared. In a similar vein, in 2000, the Television Academy initiated a new Emmy category for Interactive Media. In 2013, it added a second award in that category and expanded the original one in order to accommodate a "new degree of maturity and breadth" to new media production.[112] In one category, "content beyond passive, linear television viewing will be considered, including programming and features that provide access to additional information, extend plots or characters into the interactive realm, create cross-platform environments, or contain elements facilitating individual or community participation and interaction."

Another effort to embrace new media addresses one of the most sensitive issues in contemporary Hollywood. The explosion in avenues for both producing and consuming video undermines the advertising-based revenue model on which most television producers rely. Even when advertising can be transferred to these new avenues, measuring the ratings that set advertising fees becomes vastly more complicated compared to tracking scheduled transmissions to a known fraction of living-room television sets. In 2013, a leading industry trade paper reported that the new head of advertising sales at NBCUniversal was hired with "a mandate to

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[111] HBO is owned by the media giant, Time Warner Inc. HBO is a subscription channel, so it relies on monthly fees paid directly by consumers through their cable or satellite providers, rather than on advertising. But ratings, and the "eyeballs" they count, still matter because, as its president of programming told the annual Daily Variety Television Summit in February 2012 (held in the heart of the actual Hollywood neighborhood of Los Angeles), HBO has turnover of as much as 25% of subscribers every fiscal quarter.

[112] http://www.emmys.tv/interactive, accessed July 30, 2013.

break down long-established silos and unite the company's sales efforts across networks and platforms," as well as help solve this "measurement crisis" in TV where "measurement is lagging considerably behind consumer behavior" (Guthrie 2013b). The same paper noted that a "digital insurgency is accelerating at the second annual 'newfront'" (Guthrie 2013a), a play on the traditional "upfront" season each spring when networks gather in New York to pitch their fall lineups to advertising sponsors. The challenge for the newfront remains that "the shift in ad dollars from network to digital will be incremental" because of a relative "lack of scale, dearth of quality and no accepted currency [meaning something like a Nielsen rating]" (Guthrie 2013a).

Best known outside Hollywood is the third, sometimes concurrent, response, which has been to use offense as the best defense. One tactic has been aggressive litigation against individual consumers who appropriate copyrighted material without license. The U.S. Supreme Court has let stand judgments of hundreds of thousands of dollars against people who download multiple songs (Kravets 2013), although whether such verdicts have the desired *in terrorem* effect on the public as a whole remains unclear. Another tactic is to pursue sites that serve as staging-grounds for appropriation, as in the Napster case. A third is the inverse of corporate mega-mergers, namely, billion-dollar litigation between content producers and internet companies. Most famously, Viacom (which owns CBS, among other entertainment mainstays), sued Google, alleging that the latter knowingly abetted tens of thousands of instances of infringement by people who uploaded video to its YouTube subsidiary (07 Civ. 2103, S.D.N.Y. 2010).

In addition, Hollywood's aggressive lobbying for stringent copyright protection took a bizarre twist just after the 2012 national election. A Congressional Republican study committee issued, then quickly retracted, a surprising report proposing major reforms to loosen copyright

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strictures. Numerous commentators interpreted the distribution as a salvo against Hollywood for many of its A-listers' Democratic Party fundraising and campaigning, and the retraction as a testament to the strength of the Hollywood lobby for strict copyright rules (Gardner 2012; Masnick 2012).

These various responses all attempt to stabilize the existing field of production by absorbing the transformative potential of new media. The effect is to treat new media as a production niche within the broader industrial landscape, having the economic cake of mass production and eating the symbolic value of cutting-edge restricted production, too, in a magnified echo of what happened as the television and other entertainment oligopolies of the mid-twentieth century collapsed and reinvented themselves several decades ago (see Curtin 1996).

C. The Barbarians at the Gates.

That attitude contrasts sharply with the stance of the principal group of people I studied. My fieldwork followed portions of the discourse of some members of traditional Hollywood, including the entertainment law and copyright bars and film and television executives, writers, and marketers. But my data collection centered on professional or aspiring storytellers. Some of them started out in large entertainment companies, and some still work for them. More commonly, however, they are small-scale entrepreneurs or aspiring ones who develop their own projects or contract for development or consulting work.

I did not collect statistics on race or gender. The community seems to reflect the oft-heard opinion that racial and ethnic minorities are underrepresented in Hollywood. Women

seemed to be more equally represented, and I observed rising visibility of women in leadership roles over the course of my fieldwork, including in planning formal conferences as well as in the Transmedia L.A. (TLA) monthly and ad hoc "meetup" group that serves as a semi-formal venue for networking, speakers, and idea exchange.

According to its website (http://transmediala.org), Transmedia L.A. began in December 2009 as a "collection of storytelling professionals" to "bring together people in the greater Los Angeles area interested in the evolving forms of storytelling." When welcoming people to its meetings, its founder often cited inspiration by a New York-based group. The organization's structure has become more formal since then, moving from a motivated, but loosely structured, trio of leaders to a set of officers with specific titles and roles.

The group's active membership grew dramatically during the fieldwork period. The first meeting I attended in December 2011 took place in the backroom event space of a downtown restaurant, with about 20 people in attendance. The group soon moved to a larger space at the University of Southern California Annenberg School of Communication, where Henry Jenkins now teaches, and meetings regularly attracted 75 or so people. Within months it moved again to accommodate approximately 100 attendees in a ballroom-size room in a huge bar just south of the neighborhood called Hollywood, fittingly enough. In addition to that crowd of regulars and occasional attendees, TLA's online forum lists over 1,000 members overall.

Some of these members do not live in Los Angeles. In addition to New York and a few other U.S. cities, sister groups exist around the world, including Brazil, France, Germany, and multiple ones in the United Kingdom and Canada. Opportunities for face-to-face meetings in Los Angeles occur with increasing frequency through the proliferation of conferences dedicated to emergent modes of storytelling.

The community interested in those modes and which organizes and attends those conferences goes beyond TLA membership. The conferences attract hundreds of attendees. Some are brief, and therefore largely local, affairs that last for less than a day. Others span several days, and sometimes bookend other conferences. Some are broadly geared toward storytelling as an enterprise, while others emphasize specific interests such as live-action role-playing games or particular genres, although crossover appeal is generally assured by the community's ecumenical attitude. Some are free or relatively inexpensive, especially those held at universities. Others, often those held in hotels, can cost hundreds of dollars for registration alone. In addition, outside the scope of physical fieldwork but ever-present in the communal geography are conferences elsewhere, especially enormous gatherings such as Comic-Con and SXSW, attendance at which requires both financial resources and, for some events, an invitation.

The everyday way this community keeps in touch, however, is the internet. In addition to TLA's online presence, numerous members have their own or company websites and blogs, social media sites, and Twitter accounts. They also organize event-specific social media networking, for example, TLA members tweet about events during SXSW using specially themed, playful hashtags (Twitter's word-based mode of indexing conversations or topics) they plan in advance or grow spontaneously. In this communicative arena as well, TLA and its members constitute only a fraction of the crisscrossing networks dedicated to emergent storytelling.

The community is generationally diverse, although casual observation of attendees at various events indicates a skew towards people in their 30s and 40s. It has become common in public discourse to talk about a younger generation, so-called "digital natives" (Prensky 2001) born in the late 1980s or later who have fingertip facility with new media, in contrast to people

who had to learn how after growing up in a more analog time. The Hollywood trade press often repeats the distinction, as did various study participants. For example, at the pre-conference workshop described earlier, discussion turned to bolstering new media studies in higher education. A professor of media studies at a local college exclaimed that his students do not see the need for the course he was trying to institute because, unlike him, they have not experienced the transformation and take it for granted. Similarly, on a teleconference concerning new media game shows, an executive who talked about the "organic, viral" implementation of social media initiatives remarked that they are easy to launch because the younger generations are "already doing it."

But I heard people make the more nuanced observation that new media has been shepherded by members of "Generation X," born between the late 1960s and early 1980s (see Ulrich 2003 on the popularization of the term). Many of the leaders of the emergent storytelling community, in particular, belong to Generation X. In addition to the games just mentioned and gamebooks,[113] which opened the door to participatory culture, they also very frequently invoke specific Hollywood influences such as George Lucas and Jim Henson. During Generation X's childhood and adolescence, both men pioneered franchises (*Star Wars* and the various "Muppet" incarnations, respectively) that went far beyond a specific media form and encompass almost infinite worlds across many genres and platforms.

Notably, Generation X also leads indie film production in opposition to Hollywood's most blatant mass production (Ortner 2013). Ortner situates that development amid the cultural

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[113] The most famous gamebook is probably the Choose Your Own Adventure series published by Bantam. One study participant, however, also remarked that their predetermined, finite structure—a reader chooses between alternatives, but there are limited branches and conclusions to the story—left him wanting a more participatory experience as a child and spurred him to attempt it as a storyteller.

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and economic rip current that has dragged down that generation in the wake of the postwar economic and baby boom. The indie scene expresses that shock of slippage among a fraction of the dominant class, and might be characterized partly as a search for a new authenticity. The emergent storytellers in my study share some of that background, which seemed to be expressed most often as frustration or disgust with the establishment's grip on capital and obstinacy toward alternative perspectives. At the same time, they expressed much more optimism than Ortner found among independent filmmakers, buoyed by a conviction that they ride the wave of the future. They talk as if they are on the cusp of a breakthrough and, often, as if talking it into fruition.

The theme that unites this diverse group is this revolutionary outlook, which derives from their holistic ethos of storytelling. The discreteness of each story product is ephemeral, and, ideally, tangential to its place in an infinite, "evergreen" storyworld.[114] The product merely provides a point of entry for participatory experience. To think of production in terms of silos and niches therefore has it backward from the start. This outlook does not depend strictly on new media, but new media afford its realization. The Storyworld speaker who invoked phenomenology (see Chapter 7) exclaimed that "it's the internet" that has breathed life into the intangible world of experience that earlier generations dreamed about, whether the cybernetic

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[114] The term, "evergreen," may have a longer or more standard history of usage in Hollywood. I first heard it used in a 2012 conference speech by Jeff Gomez, founder of Starlight Runner Entertainment and one of the leading lights of this community. This holism is a major reason why, despite in some respects challenging the decidedly modern regime with fragmentary remix culture, this community cannot be called postmodern. Historical perspective seems to identify that term increasingly with an earlier time, specifically, the 1970s and 1980s, when the baby boomers came of age (see, e.g., Marcus 1995b). The ethos of the contemporary storytelling generation is quite different, allowing for the probability that, through cultural sedimentation, we are all to some extent postmodern now.

imaginary of the 1950s or even earlier visions. He proclaimed, "We are living in the age of wonder that they anticipated."

This community within Hollywood therefore expresses frustration at the industry establishment's compartmentalization of storytelling. Their resistance is one reason why I use the umbrella term, storytellers, or, with respect to cultural production, producers, to describe the community as a whole, rather than identifying a title-specific group. The community consists of people who may formally introduce themselves as writers, filmmakers, marketers, educators, researchers, producers, or simply enthusiasts, but equally often will demur, qualify, or use holistic alternatives such as experience designer.

They narrate their own biographies similarly. Speaking in a semi-formal setting to a group of like-minded storytellers in August 2012, an entrepreneur in the field described his start in 2001 at a network television show. The show's producers told him, "You can have that internet thing." He turned that afterthought into a participatory experience for fans, learning the lesson to "be interactive and work with your audience because your audience will take you down the road and where you need to go." Audience enthusiasm spurred him to take things to the next level, begging to integrate the website with the filmed program and to work with the actors and writers. Finally, a spike in viewership got the producers' attention and "liberated" the website team to do actual "stories" that expanded the show's world, rather than mere add-on web content. Nonetheless, he moved abroad to found his own company far enough away from Hollywood to escape its mindset (before returning to do business). At other times, my study participants frequently expressed disappointment that Hollywood still thinks in terms of silo and niche, and set themselves in opposition to that framework.

The complement to this new attitude toward authorship is frustration with existing ideas about ownership. During a workshop before the Transmedia, Hollywood 3 conference held at the University of Southern California in spring 2012, a writer/producer who lives on the East Coast used the metaphor of "getting the audience to come up on stage and jam with you" to describe the new, remix authorship. But, he cautioned, "participatory media is going to be dead in its tracks because of IP issues." His pessimism came from a conversation he had earlier in the day with a member of the entertainment law section of the American Bar Association.

A producer with a media psychology degree then vented, "The IP thing just gets to me. They don't understand that fans using their content is building awareness." The lack of measurement and monetization based on it means the "big guns don't care." To an audible groan from someone else at the table, she mentioned that companies "thirst for sentiment analysis," a way of measuring audience's affective reaction to emergent modes of storytelling; in other words, a way to convert a measurement of symbolic capital into one of economic capital.

At a panel during the Wyrdcon conference, another producer who had a quite insider career in Hollywood before turning to this avant-garde, said flatly, "Financiers don't want to see a multimedia project." Another Wyrdcon panelist who specializes in branding repeatedly struck the note of financing limitations, noting, for example, that the typical $500,000 leeway before a project requires senior approval is nowhere near sufficient to launch a truly multimedia, multiplatform story experience.

The changes in attitude toward authorship and toward ownership combine into a potentially radical alteration of the field of production because together, they challenge the IP regime's particular way of unifying authorship and ownership under the modern ideology. As observed in the preceding chapter, that challenge exploits the regime's own contradictions.

Modern copyright harbors a glaring contradiction, or perhaps better, elision. Romantic authorship celebrates the genius of ideas. But copyright protects only expressions (see Boyle 1996 for an intellectual history of efforts to resolve the contradiction in legal thought). The simplest example is wholesale appropriation. It is prosecutable at law, but does nothing to alter the ideas contained within the appropriated work (except, and perhaps crucially, insofar as its circulatory usage is a sign of social authenticity). To take another example, what people pay for above the break-even or market-efficient price of a commodity is a premium for a brand name, which depends on symbolic capital but not the property protection of copyright (the separate law of trademark may protect a brand from fraudulent interference in the authenticity the brand represents between producer and consumer).

Rather, copyright ownership protects the entertainment commodity's economic value. Wholesale appropriation and brand familiarity may even increase the symbolic value when they are not straitened by copyright, as suggested by the study participant's comment about building awareness through fans' use of content. The gap is papered over by industrial capitalism, policy pragmatism such as the fair use safe harbor, or the doctrinal idea–expression dichotomy.

The idea–expression dichotomy is meant to restrict copyright to the point where the economic value of authorship becomes realizable. Depending on which of the three main rationales for copyright is invoked, the dichotomy is meant to shield the "marketplace of ideas" (Samuels 1989:408) from the monopolistic aberration that is copyright, minimize valueless privatization of ideas from the intellectual commons (Shiffrin 2001), or protect non-authors' moral rights of expressive thought (Drassinower 2003). In practice, however, it often forces judges and juries to make "metaphysical" distinctions (Jones 1990) between robustly individualistic, conflicting claims of authorship in order to settle property boundaries. A sort of

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property function arises alongside the author function, so that ownership is a rationalization of what actually exists as a vast, diffuse network of power flows.

The resulting folk ideology absolutism of both authorship and ownership nonetheless has sustained the field of production precisely because it simultaneously supports a social structure and creates structural inequalities that feed the power struggle. IP organizes a complete framework for the struggle over capital by pouring romantic authorship into "properties" out of which commodity units are packaged and sold. The result is a "regime of value" (Appadurai 1986:4) in which exchange occurs under a specific set of political structures and conditions. The loop is closed: entertainment commodities are marketable for economic value because they represent the symbolic value of authorship, and authorship is recognized by its expression in commodities. Even exceptions prove the rule.

For example, in Chapter 3, I cited a discussion of how the modern artist, Jeff Koons, lost a copyright infringement lawsuit in 1992 based on his intentional incorporation of another artist's material. The system "worked" because the legal verdict and resulting economic damages against Koons arguably elevated his avant-garde status with a signature style (he continued his work and even lost subsequent cases on similar grounds).

Even if he had won, the dispute itself would make possible these kinds of capital allocations and convertibility. Years later, in 2006, Koons filed an infringement suit against businesses that made dog-balloon bookends he claimed resembled his dog-balloon statues, the largest versions of which sold for thousands of dollars and graced several major museums (Taylor 2011). Copyright scholars seemed surprised by the "silly" attempt to claim copyright in such a common carnival form of expression, and confused as to whether the by-then mature artist was seriously trying to protect his capital or making another avant-garde statement "pointing out

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how absurd copyright law can be" (Raustiala and Sprigman 2011). Some treated the case as an example of the failure of the idea–expression dichotomy to protect authors from rampant over-interpretation of copyright protection. From the perspective of the modern habitus of authorship, however, either interpretation illustrates its effectiveness at supplying grist through its own contradiction.

That contradiction is what the emergent storytellers find grating and seek to change. Remix authorship suggests that there may be a way around the existing structure that is more radical than tolerating the contradiction and benefiting from its exploitation. These storytellers not only see consumers' attitudes toward authorship and new media practices as opportunities, but express affinity with those attitudes. They seek to align this bond with still-nascent internal access to transform the existing field of production from one based on modern authorship to one based on remix authorship.

Given a relatively stable field of production, cultural producers with symbolic capital but little economic power may seek (often fraught) alliances with non-producers who are members of the dominated classes, using the latter strategically to "subvert" the existing order (Bourdieu 1993:44). With the destabilization caused by new media, rather than a dominated class, these storytellers ally with a large segment of consumers who, through everyday practices and periodic organized campaigns such as the anti-PIPA and –SOPA ructions, satisfy at least some of Bourdieu's criteria of a "political vanguard" to march alongside the artistic avant-garde. Because a fraction of consumers are themselves now cultural producers in this field and enjoy a moment of cresting symbolic power—celebrated as remixers, decried as pirates—if the storytellers can supply products that meet the consumers' expectations, they may be able to achieve the highly autonomous mode of "production-for-producers" (Bourdieu 1993:46). More

than one person in my study referred to a business model of pyramid or triangular shape that first targets "hard-core" fans who will be exacting but potentially missionizing patrons, before intermediately motivated groups and the mass audience.

At the same time, what makes this community especially interesting is that its members still seek economic capital openly, and do not eschew profit (there is also a not-for-profit side to the movement, which adds another dimension to claims on profit and prestige). Bourdieu (1993:40) writes that "a heretical break with the prevailing artistic tradition proves its claim to authenticity by its disinterestedness" in profit. That seems true of this community in the sense of breaking the grip of modernly fused authorship–ownership on this field. But it is not true in the sense that the revolutionaries still express an interest in commercial gain. In fact, it may be that a radical transformation in a field of production requires more than an insurgency within the dominant habitus, and instead a major structural change of it. Or, it may be that the modern IP regime is so successful in excluding alternatives that the normal struggle at the boundary of this field (Bourdieu 1993:42) requires the extra catalysis and momentum of something like new media.

This somewhat conservative revolution therefore is not a complete break (compare Bourdieu 1993:58), but an effort to replace the existing authorship–ownership regime with an alternative configuration. The emergent group of storytellers disavows the particular mode of securing economic capital that depends on romantic authorship's symbolic capital, but not the possibility of securing economic capital through remix authorship. They look for a pragmatic solution. Like the indie filmmakers, for example, these storytellers oppose the old mode of mass production. But unlike the indie producers, they do not devalue mass production. They ally with an audience whose disposition is already saturated with new media rather than establishing a

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clearer alliance between "high art" and an obvious political underclass. The difficulty in stating what the solution for this field of production would be is that, unlike remix or similar well-developed tropes of alternative authorship, the parallel for ownership remains elusive or pregnant in the potential for transformation—which in turn requires ongoing pragmatic engagement with what remix authorship itself really means. At a Transmedia L.A. meetup, a speaker who had worked well within the establishment as well as on smaller, riskier ventures was challenged by an audience member about the business model for the latter beyond securing funds from "angel investors" who believed in their potential. She confessed to uncertainty in that respect, but insisted that "emerging models were in place" and "on the cusp," leaving her "optimistic, today, anyway."

Riding that cusp of unsettled authorship and ownership practices carries a double-edged risk. The storytellers may become trapped in a niche of the existing field, which their strenuous protestations suggest is a constant, keen concern. Or they may fail to redraw existing lines of social distinction. The community was stunned in late 2012 by the sudden collapse of Fourth Wall Studios, which had been one of the most successful examples of a transmedia company and had both symbolic and economic capital in spades. Founded by storytellers who had worked on pioneering projects in this area at the turn of the millennium, the company in 2011 secured millions of investment dollars from the wealthiest billionaire in Los Angeles (Fritz 2012). It also won an Emmy award for interactive television programming. In late 2012, however, the investor axed almost the entire creative staff, choosing instead to continue developing the firm's proprietary media technology platform for other purposes. TLA devoted its December 2012 meeting to a question-and-answer session with the founders, who were still mourning "the studio

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of the future" in which participatory culture was both the cultural product and the production culture.

The clearly reeling Fourth Wall chiefs reiterated their belief to an equally shocked audience that, "From a business perspective, this is 1914. There's been an incredible technological revolution" equivalent to D.W. Griffith's and others' decoding of the "grammar of film" as opposed to merely recording stage plays onto celluloid, which spurred the rise of big film studios within months. That is "where we see the business opportunity today." And it lies with the internet, which "is a printing press, it's a movie camera, it's a new way of telling stories….So you're going to have to find the grammar that *it* likes and that way that *it* likes to tell stories" (the italics correspond to pronounced emphasis by the speaker).

II. <u>Authenticity As the Driver of Struggle and Change in Hollywood</u>.

The speaker's comments point toward a search for authenticity through artwork by a community neither on the inside nor quite on the outside. They are a dominated fraction of the dominant class seeking to identify, and identify themselves with, a shift in authenticity because therein lies symbolic capital. They also hope to convert that symbolic capital into economic capital and power.

But this effort goes beyond the struggle of autonomously guided authors against heteronomously dominant owners (Bourdieu 1993:41), because the shift in authenticity at hand alters the relation of those poles to each other. Success would mean replacing the modern authorship–ownership habitus that governs this field with a viable remix one, and therefore

transforming the field as well through the dialectic between habitus and field. That transformation pivots on a realignment of the authentic pursuit and goal.

In other words, the present "struggle to impose the legitimate definition of literary or artistic production" (Bourdieu 1993:64) is a struggle to define authenticity in its capacity as a "legitimation principle." So far, through remix authorship, this community has a strong sense of the "specific principle of legitimacy" or recognition of producers for producers under the autonomous principle (symbolic power) (50). They continually reinforce remix convictions amongst themselves as artists. Doing so also allies them with a growing audience and its bestowal of "popular legitimacy." They have not yet cracked the "bourgeois legitimacy" that still confers economic power in Hollywood.

The struggle unfolds through the striving for authenticity founded on the tension between chronological and unified time. As the vehicles of position-takings in the struggle for capital, entertainment products are also objects through which to pursue social authenticity, which is the source of value for that capital. The storytelling community talks about entertainment products in ways that support this characterization.

The temporal dimension of the changing expectations at stake was encapsulated in a fieldwork interview with a content producer and consultant who has worked on numerous new media projects for corporate clients, bringing the new mode of storytelling into the traditional Hollywood structure of production. He explained the shift from being a passive audience willing to consume what producers sell to being a more participatory audience that expects a new relationship with producers. Speaking as both a fan and a professional, he exclaimed:

> And it's like, dammit, we used to be inspired, we used to dare to dream and to use the
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> screen big and small to show the spectrum of human possibilities, you know. I used to be

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able to sit and watch something for two hours and know everything I could be and everything horrible I could become. That's what storytelling was to me. It isn't that now. I think the business because of new media, because we know so much more about it now, because it's accessible, the veil's been lifted, and because of that they are, they've been put in an interesting position to earn our trust instead of just get it naturally because of what they do for a living.

The first sentence of this excerpt casts back to a pre-new media past when Hollywood was a conduit to authenticity through the inspiration of human potential. "We" seems to encompass both producers and consumers who dreamed together. The second sentence narrows perspective to "I" as audience, who consumed Hollywood products to channel the authenticity of what "I could be" and "could become."

The interviewee then contrasts that past ("was") with the present ("isn't now") in the third and fourth sentences. In the fifth sentence, he shifts from this descriptive narrative to a more explicitly analytic stance with "I think," in order to identify the cause of that change. Employing the classic rhetorical device of triple repetition, he identifies the reason as "because of new media," "because we know so much more about it [the storytelling business]," and "because it's accessible." The result of this greater audience involvement is that "the veil's been lifted," so that "they"—speaking of Hollywood professionals in the third person again now— must "earn our trust"—that is, the audience's—rather than rely on the authority of their professional status to win customers.

This producer's invocation of trust, the lifted veil, and changes in the audience's epistemological experience of media products point to the dissolution of a longstanding boundary between author and audience. It is the boundary structured by modern authorship and

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the concomitant IP regime, and which structures the art–commerce–law triangle of the field. The boundary represented by the movie or television screen used to align the pursuit and goal of authenticity according to romantic ideology. New media inspire the boundary's potential dissolution through the effort to realign the goal and pursuit of authenticity according to a remix framework. In this way, new media cause, expose, or exacerbate contradiction within the authorship–ownership regime. In my interviewee's telling, the contrast between the narrative temporal experience under romantic authorship and the collage temporal experience under remix authorship becomes a historical experience of rupture, and maybe repair, in the quest for authenticity.

A. The Double Edges of the Quest for Authenticity.

Yet, the paradox of authenticity means that the effort to reorient the quest ironically involves the continual reintroduction of a boundary through necessarily mediating activities in order to preserve the possibility of attaining the unmediated goal. Contradiction, and therefore struggle, persists because of this tension of authenticity and temporality that goes all the way down. It may be possible to attain authentic experience through an entertainment product, but perhaps the most shattering revelation of remix is the unstable, ephemeral quality of that achievement.

The productivity of the tension as an impetus to struggle can be illustrated further by a series of double edges that plagues the effort because of the paradox. A place to start is the art of storytelling. The Storyworld speaker who expounded a phenomenological theory of storytelling as intersubjective experience contended that storytelling is "trying to trick this," by which he

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meant channel the desire for direct interpersonal relationships into story characters as "surrogates for bonding as meaningful experience." The new, immersive, participatory mode of storytelling invites the audience even further in almost as (and sometimes plainly as) characters themselves. At a Wyrdcon panel, a branding expert who advocates this mode averred that people in this community all "feel the need for the audience to be part of the narrative."

As a result, the storyteller cannot rely on a clear, preset boundary that demarcates the storyworld, and must work to construct and maintain a boundary in order to maintain that world's functionality. One of the Storyworld speakers was Damon Lindelof, a co-creator of the groundbreaking ABC drama, *LOST*, which included a host of additional story platforms and participatory events beyond the weekly television hour. He observed that, "during *LOST*, I had to be the unreliable narrator at times" in order to avoid giving away information about the content or process of the story. He went on, "I cannot tell them [the audience] the truth because they do not want the truth." He drew on Orson Welles and P.T. Barnum as storytellers who played expertly on audience mistrust to convert it into an immersive experience.

His comments also evoke the moral dilemma of the "mask of deception" (Dillon 1974:221) that Nietzsche thought an inevitable result of the circumscribed perspective on the world that any individual has. Deception paradoxically complements authenticity, because "authenticity requires self-disclosure, but disclosure—either to oneself or others—is the unfolding of perspective views" (221). Thus, "we wear masks because we must." In his anthropological assessment, Mauss (1985:14) echoed that conclusion, but traced the modern European "notion of the person" as a distinct individual to a primordially social derivation that hearkens to the Roman word for mask. Evolving from ritual practices involving masks, eventually to be a person was to wear a mask and to do so was an irreducible, "basic fact of law."

Similarly, Goffman (1974:504) asserted the "intrinsically theatrical" quality of linguistic interaction necessary to accomplish an intersubjective connection. People habitually "have to engage in something that is a dramatization" in order to "provide evidence of the fairness or unfairness" or "other grounds of sympathy, approval, exoneration, understanding, or amusement" by which interlocutors can "show some kind of audience appreciation" about the situation (503).

The delicacy of maintaining necessary, appropriate boundaries is a common theme of self-conscious reflection among this community, one even of frustration on the part of authors who nonetheless vociferously propound participatory storytelling and remix authorship. One solution they adopt is Nietzsche's Gordian one of "being honest about being honest" (Dillon 1974:222), at least when safely outside the storyworld space. Chapter 11 highlights storytellers' vigilance against the proclivity of hardcore fans to "hack" into the hidden scaffolding as they together test where to draw the boundary that will realign the goal and pursuit of authenticity.

A similar double edge appears as art spills into commerce. In particular, marketing exemplifies the struggle for legitimacy through entertainment products. Hollywood traditionally markets its commodities aggressively. It also used to draw a clear boundary between the entertainment commodity and the advertising or marketing. It was "cold," as a branding expert put it.

That boundary has blurred—"adding passion," in the branding expert's words—partly as a result of technological innovations that allow viewers to access content without seeing the advertisements, and partly as a result of the concomitant cultural expectation that entertainment content can be everywhere. In-show product placement has been one response, often depicting characters using a sponsor's product in the course of the plot. Another is "guerrilla marketing,"

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which borrows from the role-playing universe to embed advertising in the real world as if it and

the fictional world of the marketed product were part of the real world. This tactic is commonly

used for films directed by Neil Blomkamp, for example, painting bus stop benches with signs

forbidding aliens to sit at them to advertise the science fiction metaphor for racial segregation,

District 9 (2009), or advertising homes for sale on a luxury world orbiting Earth and biological

enhancement drinks for the class warfare metaphor, *Elysium* (2013). Naturalistic marketing was

also involved in generating controversy over the film I discuss in Chapter 9.

Members of the emergent storytelling community are wary about these tactics. The

traditional "hard sell" faces the obstacle of changing cultural expectations. People often said, in

so many words, that a new media habitus directs the affordances of authenticity away from

blatant marketing. In a published interview, an editor of *Wired* magazine who has profiled the

rise of new media storytelling directly opposed the hard sell to the "aura" that Benjamin used to

index authenticity, saying that:

> The hard sell approach is going to be increasingly counterproductive. People who
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> complain that some of these [new media storytelling] campaigns don't put enough
>
> emphasis on the selling points of the product are really missing the point. Brand
>
> advertising for a long time I don't think has really been about selling points anyway. It's
>
> been about creating an aura and an image. [Rose 2011]

Yet the hard sell at least is overt. The other modes are tricky because they risk seeming

deceitful in a way that destroys rather than enhances the participatory experience. At the same

time, people in the community accept them if done in a way that does not interrupt the

seamlessness of the participatory experience or seem sneaky, which often amounts to the same

thing because a good experience means the marketing enhances authenticity rather than detract

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from it. In fact, one of the early transmedia companies, 42Entertainment, based in Pasadena, helped pioneer a wider strategy of content-based marketing with alternate reality game (ARG) campaigns such as *I Love Bees* in 2004, which helped launch the video game Halo 2 (Microsoft); *Year Zero* for the 2007 Nine Inch Nails album of the same name; and *Why So Serious?* for the 2008 Batman franchise film, *The Dark Knight* (Nolan 2008). As the name suggests, an ARG is a form of live-action gaming in which players do not adopt fictional personae, while fictional elements are infused into the real world, both online and offline. ARGs have been so successful that study participants sometimes complained that they have become stale and the only kind of new media storytelling that Hollywood understands; in other words, they have lost symbolic value by virtue of their commercial success. They nonetheless remain a mainstay.

Product placement is even trickier because it inserts a third party product into the relationship between the author and audience. Some efforts cast the advertised products as coming from within the story, rather than third parties. At the Hollywood IT Summit, an executive for the Fox network mentioned the launch of a mobile app for one of the Fx cable channel's shows, *Sons of Anarchy*, that allows viewers to buy merchandise while watching the show, "including authentic items worn by the characters themselves."

It remains more typical that a marketed product involves "the object entering the world" of the story, as a doctoral student working with Jenkins said in opening his presentation to the TLA group about a case study. Yet, "selling objects to people in a commercial way might possibly 'stain' a transmedia experience." He physically traced exaggerated quotation marks in the air as he said, "stain." The gesture both highlights the metaphorical contamination and also marks the speaker's ambivalence toward the attitude about contamination that he is reporting. Using a similar metaphor, one of the Fourth Wall Studios founders quoted above responded to an

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audience question about advertisers by saying that he "hates" product integration because "people just feel dirty and used. Why don't you just be up front about what you're trying to sell me." Of course, coming full circle, the hard sell can be the trickiest of all because it interferes with the participatory experience by definition.

Legal considerations further complicate the tension between artistic and commercial concerns. By keeping the author and audience roles separate, the boundary maintained under traditional marketing techniques also distinguished their respective legal statuses as owner–seller and purchaser. Laws beyond copyright indicate the depth of cultural norms that once preserved that boundary. An in-house lawyer at a major network told me over dinner one evening that one obstacle to embracing new media techniques is that federal law still stringently restricts the use of actual products in television programming; watch a mealtime scene closely and, absent a special arrangement, people will be eating cereal from generically, fictionally labeled boxes. Our dinner companion, a lawyer who works in a non-entertainment industry, likened it to a big brother policy purporting to protect consumers from moral corruption. Her reaction echoes what my interviewee cited above said about embracing the division between producer and consumer as a preservation of authenticity in a pre-new media era, as well as its archaism in the present day.

Furthermore, changing expectations raise not only remix possibilities, but also piracy concerns. At the mid-winter meeting of the Copyright Society of the USA, a gathering of practicing attorneys held at a Beverly Hills hotel in February 2012, two music lawyers (also brothers) celebrated how "new media and new technologies have opened up possibilities for musicians and publishers to make more money." Attending to the many ways that a song can be adapted and rearranged more easily than ever can open up new royalty streams and enhance

publicity. At the same time, however, they cautioned that "new media licenses" for consumer purchases of music should address how users can "interact with" the music, for example, is it subject to "user generated content" and is it "totally portable" across platforms for playing it. Lawyers may want to consider a "linear only" clause that restricts the consumer from manipulating the music in a non-linear fashion, that is, remixing it.

Clauses of that type are double-edged, however, when a producer wants the audience to participate. The presenter who talked about the commercial stain on experience described a complicated instance. His presentation was a case study on Hatsune Miku (Crypton Future Media), a Japanese pop star who is entirely a digital avatar. Supposed to be an android, her voice is synthesized (computer generation based on samples from a human voice), her image is projected holographically at live concerts, and she has an internet (and television commercial) presence. The product is owned and sold by a corporation, but its exemplary new media qualities invite fan remixing, which created a tension early on.

As the presenter observed, the software for synthesizing the voice is proprietary, "which kind of conflicts with something I'll say later" about collaboration. Fan began uploading remix videos "quote unquote illegally" to YouTube, which the owners had taken down until they realized their value in promoting the product. Fans also thumbed their nose at the crackdown by creating videos that portrayed Hatsune Miku as a copyright activist. Their "copyleft, anti-copyright" demands for an "open source culture" resulted in a "not quite copyright process" compromise. Fans now have a Creative Commons license to remix the product as they please as long as it is for non-commercial uses and they provide attribution.[115] They also retain the right to require attribution from others for the works they create.

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[115] http://crypton.co.jp, accessed August 2, 2013. See also http://creativecommons.org, accessed August 2, 2013.

The presenter saw the compromise as a way for both parties to "not get hung up in these copyright agreements but still get money from them." He indicated that fans, some of whom had become quite productive in remixing the character, also could contract with the owners for a commercial license that would share revenues as long as the remixes abided by certain policy restrictions on content (such as some kinds of sexual explicitness). The threat of legal interference with authenticity almost derailed this "ecosystem," however. When an audience member asked, "How manipulated can it [all this unobstructed participation] be," the presenter responded that it was "a crucial question, actually," and remarked that a Japanese industry self-regulating body had to intervene in order to sort out the copyright licensing that governed profit distribution because of the volume of remixed fan material.

The entertainment and copyright bar has such complexities squarely in sight. At the University of Southern California IP Institute conference, held in a Beverly Hills hotel in March 2012, a practicing lawyer on a panel about "monetizing social media" agreed that the "holy grail" is "buzz" for an entertainment product, in contrast to other consumer commodities. Social media is a "magic wand" that places a company "at every water cooler in the world simultaneously." It "channels the power of buzz so that your audience is doing your job for you…it's like the ultimate form of jujitsu." He then cautioned, "But there are all sorts of pitfalls…because you're giving up a certain amount of control." The recurrent theme of the panel would be "keeping control as a brand owner versus encouraging UGC [user generated content]." The challenge for lawyers is how to walk that line. A panelist gave an example in which a large company sent a Twitter user a cease and desist letter. The firestorm of negative reaction damaged the company's reputation for authenticity as people talked about "how uncool they were, give the guy a break."

Ubiquitous "terms of use" provisions were another, commonly cited example. A lawyer for a major studio averred, "I've seen UGC not just for marketing purposes but sometimes as a substitute for creative processes" by the professionals themselves. Using promotional campaigns that invite fans to submit the next plot development for a story can backfire if it does not treat them adequately as a co-author (symbolically and economically); in court, it "becomes a David vs. Goliath story." Terms of use by nature also intermediate collaboration. The lawyer joked nervously about the litany of content restrictions placed upon the very audience invited to contribute refreshing ideas. Terms of use licenses already by definition interpose between an IP owner and the audience. Using such licenses to manipulate or inhibit collaboration threatens the reciprocity needed for an authentic relationship.

The absence of a contract presents its own challenges. A Wyrdcon panelist, who had a career as an intermediary in establishment Hollywood before switching to produce content, described a ubiquitous "legal hurdle." "It's scary in Hollywood when it touches any IP because there are copyright issues and royalty issues." Giving the example of wanting to incorporate interaction with fans on a Twitter feed into a long-running television show, he continued, the "scary part is bringing that narrative back into the show." Trying to do so attracts the corporate lawyers' attention.

A few minutes later, a co-panelist who has been very successful in developing transmedia by working for or partnering with major studios enthused about the intersubjective emotional high that these storytellers are able to achieve (I earlier quoted his remark about LARPers inhabiting their characters). He, too, qualified his enthusiasm, saying "I know there are a lot of legal hurdles and stuff." An audience member then asked a question about UGC. Fans want to participate, storytellers allow it, "Then I get this email, wait a minute, your character did what I

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suggested, don't I get a piece of it?" The panelist opined that such scenarios will eventually

resolve according to a "model in formation" with clear guidelines of who owns pieces of

contributions and how they are compensated, including for "fan labor," whether with money or

admission to the storytelling team. (Some efforts already exist, such as HitRecord, founded by

the Hollywood actor, Joseph Gordon-Leavitt, and billed as an "open collaborative production

company" that takes a profit share and distributes remaining ones to contributors. See

www.hitrecord.org.[116])

Another audience member asked a similar question about how to overcome Hollywood

resistance to allowing audience participation in large-scale properties because of the substantial

IP value at risk. The branding expert and moderator talked about "community co-creation." The

former averred that "sometimes our fans are better curators of our worlds than creators." Despite

legal obstacles, revenue-sharing or other avenues might open the door, but it will not become

"mainstream" until resolution of the "legal battles" to define standard terms. Even in the new

world of participatory storytelling, sometimes storytellers must choose between a personal goal

of a "loved story" and the monetization (profit-making) opportunities that participatory culture

might bring.

In an online discussion, IP law professors voiced a similar concern about the advent of

Amazon Kindle Worlds,[117] a fan labor initiative that seems to exemplify what one of the

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[116] Accessed August 23, 2013.

[117] A slightly different permutation exists in the video game world. Some gamers create YouTube videos showing them playing portions of video games. Some collect advertising revenues from posting the videos on their own YouTube channels. The Nintendo Corporation has asserted the exclusive right to sell such advertisements—that is, on other people's channels—and collect revenue on them (Kohler 2013). The company thus would skim off the economic value built out of the gamers' symbolic capital.

Wyrdcon participants expressed as, "You're not just building a storyworld, you're building a marketplace, with a wall around that marketplace." The internet giant has secured licenses from holders of a number of entertainment properties, such as the CW channel's hit television series and fan-fiction favorite, *The Vampire Diaries*. The licenses draw fans into the licensing system, allowing them to write fiction based on those properties and publish them through Amazon's Kindle division of electronic printed material. They would be paid for their work, although they would have to abide by content restrictions and forfeit claims to profit from any breakout hits, which fan fiction sometimes spawns (I discussed the example of *Fifty Shades of Grey* in Chapter 3). This corporate effort to embrace new media within the existing field of production raised questions of the "ethics of monetization," according to one comment.

Those questions arise because merely introducing the model could disrupt the balanced contradictions of the modern IP regime. Paradoxically, the significant restrictions that regime places on what can be said through authorized uses of copyright material also generates a whole range of things that become protected fair use precisely because they are not authorized. Although the consensus seemed to be that neither Amazon nor the content owners could prevent unlicensed fan fiction from continuing under the fair use protections of copyright law, there remained concern that Kindle Worlds would encourage a "permission culture" rather than what people have done freely until now, representing a normative shift back toward the conservative modern model. At a minimum, it would privilege its modes of control, "against which we define authenticity and autonomy," over other parts of the "wider ecosystem" of fan practice.

This dialogue draws together the mutation of the capital structure of the field and the role of authenticity in it. One scholar expressed concern about the impact of the licensing regime on the "autonomy and authenticity of the fan ecosphere." Ironically, that autonomy and authenticity

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are predicated on "free" labor by fans whose efforts add economic value to entertainment products even as the fans who produce it actually pay for the privilege by buying initial products, paying for internet and website access, and so forth (De Kosnik 2013). That is, once again, the modern regime juxtaposes its economic and symbolic aspects, keeping them apart but adjunct and masking their co-dependence as opposition in order to preserve the distinction between them that sustains the structure. If fans who remix become work-for-hire authors, what happens to their symbolic power based on the coin of remix authenticity and its hidden contribution to economic power?

B. The Remix Effort To Realign Authenticity and Reconfigure the Field.

Conversely, what might economic power look like if remixers succeed in reconfiguring the field? The media psychologist cited above for her frustration at conventional IP strictures also remarked that people used to be wary of transmedia and now "are anxious for it." They identify with something in the emerging modes of storytelling. She acknowledged the challenge of figuring out how to help people "who have built their careers around producing a product that doesn't" satisfy that desire, especially when they fear losing their jobs, and how to teach them to turn that hesitation into excitement instead.

As might be expected, trailblazers in answering the question often work under the autonomous principle rather than from the center of Hollywood. In a well-known instance, Nina Paley, whose art is primarily cartoon and animation, was thwarted in her effort to secure music and other copyright licenses for an animated take on an Indian epic. She then incorporated the obstacle into her work, garnering recognition by publicizing the problem, making her film

anyway, licensing her project to others under a Creative Commons copyright alternative, and eventually placing it entirely in the public domain (free for anyone to use in any way, under caveat that incorporated portions may be subject to third parties' copyright claims). On her website, Paley declared that, although "conventional wisdom urges me to demand payment for every use of the film….The only real security I have is trusting you, trusting culture, and trusting freedom."[118] As for "how I'll get money from all this," she appealed to "new models [that] are emerging," while confessing that "we're still making this up as we go along."

Paley's actions occurred squarely amidst the field's instability caused by vying romantic and remix ideologies, and her website stakes a position at the conjunction of cultural production and circulation. At this nexus, through her film and her commentary on it, she simultaneously rejected one model of authorship–ownership and claimed another, albeit a nascent one. But more generally than these overt claims about authorship and ownership, her acts themselves authored a novel proprietary claim to social position (and capital) for herself, and invited its ratification from others. She thus enacted a general habitus of authorship in the course of propounding a particular, remix habitus of authorship. The pivot was the same historical realignment of authenticity that my interviewee evoked by talking about lifting the veil of the screen. Paley's call upon trust, especially, signaled her claim in the moral terms of intersubjective authenticity, not least by transitioning from an appeal between "I" and "you" into a "we" who "go along" in the quest together.

This pattern pertains at each level of the cascade in my model of authorship proposed in the preceding chapter. A dialectic of pragmatics and metapragmatics resides in the indexical shift to an inclusive "we" who "are making up," in the ongoing, present progressive, "this" entire

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[118] See http://www.sitasingstheblues.com/, accessed August 2, 2013.

new framework of authorship and ownership as we "go along" the social frontier.[119] Semiotically, the statement pragmatically authors a collective endeavor and metapragmatically stakes a possessory claim to the undiscovered land for the like-minded "we." This description is not mere metaphor. It expresses an actual vision of authorship and an actual property claim, although the latter remains vaguely defined. It also expresses a non-analogical communicative link between authorship and ownership. It speaks as and for a particular kind of authoring "we" in order to establish a particular kind of proprietary interest in capital resources, and, conversely, claims those resources in a particular way in order to establish a particular kind of authoring voice.

Furthermore, the instability captured by the semiotic dialectic repeats in the other two. First, in the general habitus of authorship, the dialectic between practice and structure usually involves social reproduction. But Paley's manifesto breaks from the insulated, nomic calibration of the dominant language ideology of modern authorship to play at the boundary with reportively calibrated talk about authorship and ownership as explicit topics of folk analysis. She intervenes in the power struggle at the boundary with a high degree of discursive consciousness about the desire for remix authorship and some complementary kind of ownership. In her language use, the practice of IP becomes a symbolic object of knowledge and therefore susceptible to change: making this up as we go along. Because practice and structure are linked dialectically, structure is opened to change as well, encapsulated by the deictic "this," which points to an incipient alternative IP regime ("new models are emerging").

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[119] The use of "along" in her phrase implies an unspoken noun following the word, so that along functions in its capacity as a preposition, and the noun as a place relative to the preposition. "We go along" thus strongly implies a positional claim by its grammar.

Second, this disruption to the dominant language ideology of authorship therefore signals a potential transformation in the dialectic between habitus and field with respect to the particular configuration of authorship and ownership. The new, emerging models being made up will lead to a remix authorship on a remixed field. At the same time, Paley's reach for a new way to play the game of social distinction also enacts the more general habitus of vying for social distinction through authorial acts that claims position. Her language authors a new vision of authorship.

Moreover, each of these dialectics turns on the pursuit of authenticity. The equation of "trusting you, trusting culture, trusting freedom" with "real security" speaks to authenticity. To have real security—or to wish for it with the colloquial usage of "real" as a qualifier of truth-value—suggests something like the goal of authenticity through their overlapping connotation of bodily or psychological integrity. To be trusting you, culture, and freedom is a gerund clause. It is both noun and verb. As a noun phrase made equivalent to real security through "is," it is a noun, a state of being that speaks to the goal aspect of authenticity. Within the phrase, "trusting you," trusting is a verb that indicates progressive activity, and speaks to the pursuit of authenticity.

More subtly, "we're still making this up as we go along" also turns on authenticity, specifically, uncertainty about authenticity as it is realigned. This phrase brings closer to the surface the risk that accompanies such boundary play. It enacts the temporal tension within authenticity by invoking a goal of authenticity with words of forging ahead through the mediating pitfalls of various legal and social factors. The two "we" pronouns in the sentence initiate two separate noun phrases connected by the conjunction, "as." "As" creates a common temporal plane that directs the sentence as a whole toward the pursuit of a new kind of authenticity—a historical realignment. But the two phrases within the sentence are otherwise not

temporally synchronized. "Are still making up" contains a present progressive verb phrase that indicates unresolved activity. "Go along" is a present simple verb phrase that indicates forward motion. The chronological pursuit of authenticity is not perfectly steady within the chronological progression of time. Therefore, the goal of authenticity, or what it would mean to redefine the field in terms of remix authorship–ownership, remains vague. This uncertainty does not preclude striving to bring the goal and pursuit into clarity together, however. On the contrary, cumulatively, these linguistic elements index an intersubjectively significant project and its past-influenced, future-oriented, presently uncertain progression.

This talk about authenticity drives Paley's talk about authorship and ownership precisely because it is less visible on the surface. It lies more in the indexical, experiential dimension of Paley's text, whether in proxies for authenticity such as trust; the use of deictic pronouns; euphemisms for the pursuit such as go along; or non-semantic features such as the present progressive idiom making up, bifurcated by a "this" that points toward the horizon. In addition, the high degree of agency claimed through the acting "we" deflects attention from authenticity as a force.

For that very reason, authenticity is freed to be a force that frames and drives the struggle over authorship and ownership. It recalibrates nomically, substituting the ideology of primordial collaboration for that of spontaneous genius, thereby providing the impetus to struggle for something new. Sometimes, authenticity becomes a more explicit topic of discussion and serves as a more semantically explicit object of symbolic knowledge, pushing aspects of how authenticity was talked about to practical consciousness. More generally, authenticity takes on the character of metapragmatics with a capital M, regimenting talk about authorship and

ownership toward a particular habitus even as they all remain elements of a general habitus beneath the ideological surface.

Like those who negotiate the double edges of remix, Paley occupies a space of possibles caused by the disruption to expectations about authenticity. The practices of these social actors are driven by the existential temporal tension within authenticity, expressed communicatively and projected historically as people try to redefine authenticity in remix terms and realign its pursuit and goal accordingly. Catalyzed by the eventfulness of new media, these practices destabilize the balance of power asymmetries that shaped both struggle and capital allocation coherently under the modern regime. The contradictions within the modern regime that facilitated and contained struggle within its bounds become fodder for transformation, which comes with its own contradictions that drive the ongoing quest for authenticity. In Hollywood, this destabilization occurs largely through intersubjective engagement over entertainment products, which the modern regime commoditizes. As the manifestations of position-takings, these products are linguistic products; they channel talk about the field of production; and they inspire more abstract, explicit commentary about authenticity, authorship, and ownership. Through talk centered on them, an emergent ideology and habitus may repattern the field of production according to remix and its coalescing vision of authorship, ownership, and authenticity. That talk is both talk about authorship and talk as authorship. It negotiates a particular habitus of authorship through the enactment of a general habitus of authorship.

CHAPTER 9: Copy*Catfish*

This chapter explores the themes raised thus far through close examination of a summary judgment (SJ) proceeding in a copyright infringement case, *Threshold Media Corp. v. Relativity Media, LLC* (CV-10-9318-DMG, C.D. Cal. 2010)—or, the *Catfish* case. *Catfish* (Joost and Schulman 2010) is a film thoroughly saturated with new media characteristics. When the film premiered, this saturation prompted a cultural controversy about whether or not it was "real," that is, an unscripted depiction of events unfolding in the protagonist's life or a movie scripted cleverly to seem that way. The controversy speaks to the dilemma of changing expectations about authenticity. When a record company that holds the copyright on a song used in the film sued its makers and distributors in federal court in Los Angeles, the controversy became a legal one. The legal dispute centered on copyright law's criterion of original expression, specifically, whether or not the use of the song was transformative or derivative. Legal discourse translated authenticity's realness proxy into an originality one.

On the one hand, the case thus resembles traditional infringement ones just as the controversy resembles innumerable artistic ones. On the other hand, the novelty of the film's new media saturation caused the judge and lawyers to struggle with the same questions as critics and the audience. The film's exemplification of new media that push the boundaries of cultural expectations also pushed the boundaries of doctrinal expectations, bringing the fundamental motivation of authenticity that underlies authorship norms to the surface. The chapter details how with data collected principally from courtroom observation and the court reporter's official transcript.

As an illustration of my main argument in this study, my analysis of the proceeding shows that the legal actors did not apply the originality criterion straightforwardly to claims of authorship in order to ascertain ownership, as the doctrinal standard and even legal critiques based on fragmentary authorship suppose. Rather, like participants in the social controversy who framed ideas about authorship by debating the film's realness, participants in the legal case constructed authorship as they tackled the question of originality. Similarly, just as the filmmakers' claims to social position were bound up with the realness debate, claims to legal ownership were bound up with the originality debate despite the institutional pressure to state ownership arguments as summary conclusions. Ideas about authorship and ownership emerged together through the contest over authenticity in the course of this professional practice.

I.   The Film.

  A. "Reality Thriller".

By all accounts, the "biggest noise" at the 2010 Sundance Film Festival surrounded the premiere of *Catfish* (Renninger 2010). (Spoiler alert: a synopsis follows.) Twenty-something New Yorkers Henry Joost and Ariel Schulman filmed Schulman's brother, Yaniv (Nev), as he fell in love with a young Michigander named Megan Faccio.[120] It began when Nev struck up a friendship with Abby Pierce, Megan's eight-year-old half-sister, on the social media website,

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[120] For a longer written synopsis, see Ekberg (2010). In addition, the ABC News (2010) program, "20/20," aired a lengthy segment that includes both a summary of the film and interviews with the filmmakers, Angela Wesselman, and the woman whose image she used (without authorization) as Megan's.

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MySpace. Abby painted one of Nev's photographs she had seen published in print and sent her painting to him. Impressed by her skill, Nev sent her more photos. Among the paintings he received in return was one of Abby's beautiful mother, Angela Pierce, whom Nev also befriended online. Ariel and Henry began filming Nev's side of the friendship with the gifted Abby.

As happens through social media sites, Nev then befriended Abby's older half-sister, Megan, a dancer, singer, and photographer, this time through Facebook. A romantic relationship ignited and smoldered entirely online and by telephone. Nev began making plans to meet Megan and her family in person in Colorado, where he decided to move for work.

The first glitch arose when Megan sent Nev a digital file of her singing a cover version of Jimmy Driftwood's (1958) classic folk song, "Tennessee Stud." When he searched for the song online, Nev found that Megan's version sounded identical to another cover version. She explained that covers often emulate the original (eliding her secondary emulation of another cover). His suspicions aroused nonetheless, Nev revisited other recordings Megan had sent him, concentrating on "All Downhill from Here," written by Amy Kuney and Timothy Meyers (2008). The use of "All Downhill from Here" in the film triggered the lawsuit discussed in this chapter.

Convinced that Megan and her family had deceived him, or even that an unknown party had invented those people, Nev planned to break things off. But Ariel and Henry persuaded him to pursue matters—and remain on camera. They traveled to Megan's Michigan horse farm, but found only an empty property. They passed through the town where Abby and Angela lived, noting the empty gallery that supposedly displayed Abby's paintings and arriving finally at Angela's house.

They found Angela Wesselman: far less glamorous than in the ostensible portrait of Angela Pierce, married, and mother to two developmentally challenged sons, a decidedly inartistic Abby, and no other daughter, whether named Megan or otherwise. Angela, it turned out, had conducted the entire affair on her own, from impersonating Abby as a painter to fabricating Megan's voice and persona to appropriating other people's images and recordings as stand-ins for Megan and her online universe of friends. It falls to Angela's otherwise detached husband to explain that fishermen throw catfish into codfish tanks to nip at their fins and keep them agile—much like Angela did to Nev, and the filmmakers did to their audience in their self-styled "reality thriller."[121]

The film's impact as such derives from being thoroughly a new media construct from plot to style to overt message. For most of the film, the emotional core of the drama unfolds through Nev's online relationships, whether affinity with Abby and Angela or romance with Megan. Key twists then occur through a shift to the physical, offline world, which therefore stands out. The first, expository act of the film begins with a montage of new media artifacts from the story and arguably ends when Nev decides to send Megan a postcard through the postal service. The switch to physical media is remarked upon within the film and in subsequent synopses as an unusual step given the previous nature of their relationship.

Similarly, the film's suspenseful climax, also glimpsed fleetingly in its preview trailers, occurs as Nev and his companions reach the abandoned rural farm in the dead of night, which presents a stark contrast with the electronic illumination of hyper-modern new media. This metaphoric unmasking of character through plot is heightened, first, by their physical fear of

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[121] The phrase can be found in the description of the film written by Universal Pictures, which released the film, and posted on imdb.com (formerly known as the Internet Movie Database), accessed May 30, 2013.

whom they might encounter (they even send their existing footage to an editor in advance in case someone kills them), and then by the anticipation of revelation when they finally knock on Angela's door in town.

Furthermore, strictly handheld camerawork advances the plot and enhances the naturalism of Nev's online life. The trio asserts (in the 20/20 interview, for example) that it was their normal practice to record one another's everyday lives even before making *Catfish*. The practice epitomizes new media in its confluence of technological and cultural shifts from the use of media to provide "information about reality" to the merger of "information as reality" (Borgmann 1999:2). This practice is also associated with an erosion of the gatekeeping authority various institutions traditionally held to organize and legitimize cultural information (Meurer and Coombe 2009; see The Economist 2013b for an example concerning "citizen journalism"). For that reason, it is also associated in popular culture with younger generations considered adept and comfortable with omnipresent technology for capturing and sharing virtually anything, as opposed to recording as a special activity for special moments.[122] In *Catfish*, Ariel and Henry could simply focus that practice on Nev's online relationships once the interesting visual media exchanges with Abby commenced, and then resist stopping when Nev's initial suspicions about Megan gave him cold feet.

Moreover, already rolling handheld cameras and the intimate, first-person (and non-omniscient) perspective they provide make the audience feel as if they join up with Nev's life in progress and follow its unfolding from his standpoint. This technique gained prominence with

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[122] Bird (2010) argues that new media influence a wide range of social activities and conventions, including the most traditional, as in the recent trend of wedding parties dancing free-spiritedly down the aisle to a favorite pop song instead of marching to traditional music because it became a popular trend to record and upload online individualized permutations of this cultural "meme."

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the "found footage" horror movie, *The Blair Witch Project* (Myrick and Sánchez 1999), which

new media scholars and professionals very often cite as a cultural landmark (Askwith 2006–

2007)—as did numerous study participants. *Blair Witch* was fictional, but it fooled many people

when it premiered through its unbroken conceit that three campers filmed themselves making a

documentary about the eponymous legend, fell victim to it, and left behind their recording to be

found and shared with the world. What made *Blair Witch* culturally significant was its seamless

integration of emerging technologies and social practices across the boundary between

production and plot. It felt realistic, and real, that the characters would have access to small

handheld cameras and employ them this way. This realism extended to a "guerrilla" marketing

campaign that eschewed conventional (and costly) advertising in favor of missing persons

notices, a website about the Blair Witch and the filmmaker-characters, and other tactics that

maintained the artifice.

Although audiences were long familiar with this kind of merger by the time *Catfish* came

out, its makers seem to have leveraged that familiarity to go a step farther. Whereas *Blair Witch*

and various successors used new media to enhance the naturalism of an essentially offline story,

Catfish employs the handheld element as a conduit into the ordinariness of Nev's largely online

lifestyle as a young American man in the mid-2000s.

Finally, the film's packaging extends these narrative elements to invite the audience to

reflect on new media's implications for real-life relationships in light of Nev's experience. This

invitation is explicit. As the Sundance festival website describes it:

> Catfish centers on a riveting mystery that is completely a product of our times, where
>
> social networking, mobile devices, and electronic communication so often replace face-

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to-face personal contact. Henry Joost and Ariel Schulman's grounded documentary is a remarkable and powerful story of grace within a labyrinth of online intrigue.[123]

The filmmakers articulated a similar message in the 20/20 interview. The movie's official website puts it most bluntly: "How well do you know your Facebook friends?"[124] On the movie poster, another, sly tagline urges viewers, "Don't let anyone tell you what it is." The ambiguous referent of "it"—the film's narrative, or the film itself—may be an admonition to guard against spoilers as well as an appeal to a common American trope of youthful independence and exploration. The ambiguity merges the story with the filmmaking, which together reinforce the cautionary moral message. The message appears alongside the rough drawing of a red catfish overlaid with an oversized, pixilated arrow-shaped computer cursor that entices the filmgoer to "click" imaginarily on the fish and fall down the new media rabbit hole.

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[123] http://sundance.bside.com/2010/films/catfish_sundance2010, accessed December 17, 2012. The link appears to have expired, but the text is widely available and quoted as coming from the official Sundance promotional materials. See, e.g., http://movies.theunion.com/movies/91872/Catfish, accessed May 30, 2013.

[124] http://www.iamrogue.com/catfish, accessed May 30, 2013.

B. <u>Realness Controversy—Blurring Genre</u>.[125]

This total saturation of the film with new media characteristics generated social anxiety

about the filmmakers as authors. The movie trailer for *Catfish* includes three title cards

interspersed with still shots from the film, which read, in order: "Not Based on a True Story";

"Not Inspired by True Events"; "Just True."[126] The film's entry on imdb.com, a popular

encyclopedic repository of information on motion pictures, lists it as a "documentary."[127] Joost

and the Schulmans have always insisted that they merely filmed real events, with very minor re-

creations required for technical reasons, such as computer screen close-ups of Nev's exchanges

with Megan (Kohn 2010).

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[125] The methodological facet of remix authorship comes through in the controversy over genre provoked by the

film's novelty. Methodological remix resonates in anthropology with Geertz's (1983) discussion of the "blurred

genres" that accompanied the "refiguration of social thought" when social scientists turned away from functional

scientism and toward relational inquiry that juxtaposed the "untidy" (21) ways that elements of social life fit

together. Geertz wrote that this "interpretive turn" (23) was "not just another redrawing of the cultural map…but an

alteration of the principles of mapping" (20).   That image echoes in my argument about the emic methodology of

remix being an effort to transform the field of production, not merely compete according to its romantic framework.

In addition, notably, the metaphor of the game was one of three (along with drama and text) that Geertz assessed

(and opened to critique) as typical of the new approach. In my discussion of the Miracle Mile Paradox alternate

reality game, my own methodology identifies how the remix-oriented story-game collapses the metaphor into actual

practice on the field of production (see Chapters 10 and 12; also, the very first vignette in this study introduced the

Miracle Mile Paradox).

[126] http://www.iamrogue.com/catfish, accessed May 30, 2013.

[127] Accessed May 30, 2013.

But others' suspicions that it is, in fact, fictional—or "scripted," in entertainment industry jargon—have become perhaps the best-known thing about the movie. The audience began questioning the story's veracity as soon as the lights came up at the Sundance premiere. During a widely reported, lively exchange during the discussion period that followed the screening, an audience member challenged the filmmakers, stating, "I don't think it's a documentary" (Buchanan 2010).

These doubts seized upon the perfusion of new media characteristics that produces the naturalistic, documentary feel in the first place. For example, in an online posting, a self-described documentary filmmaker expressed disbelief that the filmmakers managed to capture every significant plot development on camera, especially while holding down other jobs (Hutcheson 2010). In addition, like other sleuths who picked at specific elements, he singled out Nev's and Megan's online chat transcripts about "her" songs as technically impossible to have occurred as they appeared in the movie—although, as noted above, the filmmakers acknowledge minor edits. These details would regain prominence when the copyright lawyers began parsing what happened through a legal lens.

The skepticism about the film's genre points to a disruption of expectations caused by its new media saturation. Documentary and scripted are shorthand terms to describe contrasting sets of predictable characteristics that allow the audience to orient themselves toward the film and, more importantly, toward the filmmaker. Audiences understand that filmmakers construct the narratives of both documentary and scripted movies. But they expect documentaries to be "made from natural material" (Grierson 1976:19), or convey events from the "actual historical world" (Nichols 2010:69), in contrast to scripted fiction.

In addition, they may rely on shared stylistic or compositional conventions and techniques to vindicate the expectation. For example, documentaries often assemble voiceover narration, on-camera interviews, preexisting footage, and re-creations, while scripted movies usually emphasize continuous on-camera action and dialogue. These sets of "highly fluid, but, in most cases, still perceptible" (Nichols 2010:xi) cues establish each genre in terms of what might be called the dialogic configuration or participation framework between the filmmaker and audience. Thus:

> The idea of a documentary voice indicates how we gain a sense that the film addresses us as socially situated viewers and speaks about our common world. Style in fiction gives us a sense of how a director constructs a distinct world that we enter into without being addressed directly. Instead of feeling addressed by a voice, a fiction typically unfolds on its own: as viewers we overlook and overhear what happens. [Nichols 2010:69]

Yet, the genres are not easily distinguished in theory or practice. Recalling the definition of genre from Chapter 4, the term refers to the social work done by a stretch of discourse, on the one hand, and, on the other hand, the integrated bundle of what is said, how it is said stylistically, and its linguistic structural composition. With respect to the work they do and what they say, both documentary and scripted film can have very similar messaging and content, that is, what they convey about the human condition. Documentary "gives a sense of what we understand reality itself to have been, of what it is now, or of what it may become" (Nichols 2001:2). Fictional films "give a sense of what we wish, or fear, reality itself might be or become" (1).

The distinction is fine, and rife with overlap and ambiguity, for example, between "understanding" and "wishing," and between what reality "has been" and what it "might be." Foreshadowing some of the grammatical analysis I perform below, "has been" is in the past

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tense, with progressive aspect, meaning that it occurred in the past and continues in the present. "Might be" is in the present tense, modally qualified with uncertainty. They thus overlap in the present tense. Furthermore, in Nichols' definitions, both genres merge into the future of what reality "may/might become." Notably, this future-looking orientation following verb phrases of reality past and present suggests the unified time of the authentic horizon to which both documentary and scripted filmmaking aspire.

In addition, filmmakers blur the lines of style and structure all the time, and demonstrate their artistry in doing so. For example, in *The Shawshank Redemption* (Darabont 1994), the narration by Morgan Freeman's character paints a light true-story veneer onto the tale set in a 1940s state prison. Other elements suggest the film is fiction, which it never really pretends not to be. But films such as *Blair Witch* go much further in creating generic ambiguity.

Instead, the crux of the generic distinction is a sliver of reality ostensibly captured uniquely by documentary: what actually happened in a chronological past. Drawing this fine line reflects the "internecine strife" (De Certeau 1986:200) between history and fiction in which history is said to have an exclusive claim over reality. That claim rests on a "double displacement" that contrasts truth with error and reality with falsity. The transitive quality of this displacement contrasts reality with error and pairs reality with truth (and error with falsity).

Even this narrow ground is problematic because fictional storytelling can claim to say something real about historical events, giving them experiential significance in terms of unified time, as the sub-genre of historical fiction attests. And the same tactics of displacement can be used to support one fictional mode against another. Ortner (2013:5) notes that, according to the "value system" of independent filmmaking, establishment Hollywood "is seen as presenting false

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pictures of reality, as 'telling lies,' while independent film sees itself as trying to tell the truth, to represent reality 'as it really is.'"

Yet, despite the practice of distinguishing fact and fiction this way being "logically questionable, it works, and it fools people. Consequently, fiction is deported to the land of the unreal" (De Certeau 1986:201). What actually happened concerning Nev would become an important issue in the copyright case, although not without ambiguity on precisely the point of what kind and degree of narrative manipulation enhances or compromises the representation of reality.

Before then, what actually happened fueled a parallel cultural controversy over the film.[128] The issue was not simply that *Catfish* employs genre-blurring techniques, but that it sustains generic ambiguity through its saturation as a new media product. For example, the makers of *Blair Witch* do not maintain its veracity and, more importantly, its "found footage" aspect ironically distances the makers from all of its supposedly true elements and gives them a sort of third-party plausible deniability—a distance through the reporting voice—even in the true-story marketing materials. The illusion was finite.

By contrast, *Catfish* deliberately shows no such seams. It is by and about the same people, who use it to send a message about their lives to the audience, all through an integrated use of new media. It conforms to neither a documentary nor a scripted telling of events because the telling of Nev's story merges with how it is told through new media to create a sense of realness, leaving no visible markers for distinguishing genre. It is thus this thorough saturation by new media that makes *Catfish* violate cultural expectations of the film-viewing experience.

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[128] Legal settings, of course, are cultural ones. The shorthand distinction of culture or society from law employed here is merely for simplicity's sake to mark what are clearly separate, though closely related, discursive settings.

This seamlessness makes *Catfish* exemplary of remix as an ethic and as an emic methodology, despite its packaging as a conventional romantically authored commodity. Its blurring of fiction and non-fiction "speculates in the unknown" (Corrigan and Glazov-Corrigan:37) in the way that Bakhtin claimed the literary novel does. Bakhtin ascribed that trait to the novel perhaps uniquely, but Bakhtin also wrote in the heyday of the novel as the epitome of romantic authorship ideology. His argument—a component of the theory of dialogism as infinite co-authorship—rests in large part on multiple voicing in a novel. Specifically, it rests on the room for inconclusive speculation opened by the layered "interference" between the novelist's voice reporting those of characters and the characters' voices reported by that of the novelist (Volosinov 1986:136–137; see also d'Alessandro Behr 2005:275).[129] *Catfish* plays with the same kind of ambiguity between its makers' voices as documentarians and as characters, but does so through seamless new media construction in the contemporary context of a remix ideology emerging against the romantic one.

Its seamlessness therefore is also what stirred debate. According to the filmmakers, they were not making a typical documentary, that is, assembling a narrative of events from various sources, but simply filming unfolding events. Some critics found this innovation to align with their own real-life experience and adjusted their film-viewing expectations accordingly. While discussing the controversy, one concluded, "*Catfish* actually feels like a natural product of media sharing culture" (Longworth 2010).

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[129] One example he provides is irony. A character may seem to speak sincerely while the novelist layers on an ironic tone, giving the reader an ambiguity to consider with respect to the utterance's message.

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But skeptics questioned whether the plots of real life are so smooth. The skeptical documentary filmmaker cited earlier reported that his impression while watching the movie was confirmed upon further investigation, writing that:

> Throughout the entire film it all felt fake to me, but after the movie was over and talking with my other film critic friends they were all baffled how I could think it was fake. That got me to thinking… "maybe it is real?!" but then logic sat [sic] in and I realized that all of this is based on the internet, so I will just do the research myself. [Hutcheson 2010]

He then used new media to investigate the realness of this new media product.

Joost, one of *Catfish*'s trio of filmmakers, recognized this challenge in a print interview, asserting, "None of the scenes were staged. People are responding to how the story is so streamlined like a narrative film" (Kohn 2010). Narrative film in this sentence can be understood to mean scripted fiction. To be streamlined like fiction is to follow that genre's typically continuous dramatic arc. Real life is not streamlined, especially as captured on film—except that now, under new media conditions, a confluence of everyday habits and unexpected developments may afford a streamlined depiction. Narrative traditions of depicting events merge with a collage culture of living them.

Joost was arguing that new media make it possible, and normal, to present a real-life narrative in a way that blends and repurposes the conventions of documentary and fiction in a new, and a more real, way. *Catfish* is in some respects a conventional film, but it also exemplifies a cultural shift by portraying its makers as members of the audience-turned-author who turned cameras on themselves as an ordinary practice of everyday life (undoubtedly aided by being members of the digital native generation). *Catfish* takes advantage of changing cultural expectations to improvise generically (compare the cross-cultural, inter-generic "improvisation"

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of Mayan officials writing Spanish colonial documents in Hanks 2000:103, 158). Indeed, there now exists a verb, to catfish, meaning to fool another person in the way Angela fooled Nev.[130] Not everyone accepted this generic merger, and skeptics challenged the film's realness accordingly.

The opposing reactions both point to how *Catfish*'s intervention in film-going expectations cuts to an underlying, fundamental concern with social authenticity and the disruption new media cause to it. In the pre-new media era, a film review in the entertainment industry trade journal, *The Daily Variety*, could remind sophisticates in an off-hand parenthetical that, obviously, "(authenticity and naturalism can get in the way of dramatic progress)" (Scott 1993). In the era heralded by *Blair Witch*, the situation began to reverse. In *Catfish*, through the plot, style, and messaging elements of the film, the audience has apparently total access to unvarnished life as actually lived by Nev, his brother, and their friend. The film significantly erodes the theatrical "fourth wall" between performer and audience, promoting a vision of authentic participatory culture despite being a traditional film commodity.[131]

Accordingly, the controversy over the realness of the film was a proxy for whether or not the filmmakers were for real. Like Myers' cigarettes and like other story products, *Catfish* as a work of art is a token in a logic of practice that involves both author and audience. Capital allocation turns on this link between tokens of position-taking and position on the field.

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[130] It is now commonly used in various media. It also has an entry in the Urban Dictionary. See www.urbandictionary.com, accessed August 29, 2013.

[131] These opposing visions of authenticity echo what my interviewee said about audiences having once been inspired by sitting in front of the screen to watch what Hollywood delivered versus now needing to see behind the veil.

Specifically, the film projects (a claim about) what happened, and happens, in this new media era, and in doing so projects a relationship between author and audience. It is an instance of storytelling that aims to be history and, therefore, real, and so:

> has a pragmatic efficacy. In pretending to recount the real, it manufactures it. It is performative. It renders believable what it says, and it generates appropriate action. In making believers, it produces an active-body of practitioners….The bewitching voices of the narration transform, reorient, and regulate the space of social relations." [De Certeau 2000:43][132]

The ambiguity between reflecting and creating realness in storytelling practice takes the generic ambiguity of the story product and turns it into a social ambiguity concerning the storytellers. That last ambiguity makes realness a question of authenticity that surfaces to discursive consciousness amid the changing ideas inspired by new media.

Thus, if one believes the filmmakers' claim, the realness of the complex of plot, style, and message establishes the authenticity of the film as an artifact, and therefore of their filmmaking, and, ultimately, of themselves as filmmakers in intersubjective relation to the audience. If one believes the film does not show what happened, that "falseness" makes the filmmakers unreal, or inauthentic. This question of the filmmakers' authenticity vis-à-vis their audience was pinpointed—and metaphorically valuated—by the 20/20 interviewer, who asked point-blank, "Here's the sixty-four thousand dollar question the critics want to know: is it all a hoax?"

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[132] De Certeau's forceful language and frequent criticism of scholars should not distract from his larger point that this tendency is one of "everyday historiography" (42).

What links that question across the story, storytelling, and storytellers is a replication of the temporal tension that drives authenticity. In *Catfish*, chronological time and unified time merge in a novel way, or they fail to. Because a narrative has the "ability to present, within discourse itself, specific marks that distinguish it from the 'statement' of things narrated," the two layers together result in the combined "time of the act of narrating and the time of the things narrated" (Ricoeur 1985:5). That is, there are points that link a narrated plot to how it is narrated, which together convey a message about the human condition. These points are exactly the ones that *Catfish* connected in an unexpected way through plot, style, and message. They extend from inside the film (where there is a time of things narrated) to the film as the social interface between author and audience (in the time of the act of narrating).

Those layers either align or misalign. They align if the chronological and unified nexus within the narrated plot resonates with the chronological and unified nexus within the filmmakers' narrative activity. In that case, the audience experience of what happens to Nev inside the story will accord with the audience experience of what the filmmakers communicate. *Catfish* will illuminate truth about a new media world and provide catharsis. The layers misalign if there seems to be discordance between them, leaving the audience to feel that the filmmakers deceived them just as Angela deceived Nev within the plot.

Both praiseful and negative reviews of *Catfish* often hinged on whether the reviewer experienced it as aligned with his expectations about authenticity or not. For example, one skeptic averred that:

But when you tell a story that's about false identity and self-delusion and the shape-shifting magic of the modern media—a story that strongly evokes both real-life hoaxes

and works of fiction—and you do not command the boundaries of your story with

confidence, you can't be shocked when people think you're bullshitting. [O'Hehir 2010]

This assessment begins with a clear statement of what the film is "about" that addresses the

imbricated layers of plot ("false identity"), style ("self-delusion," which speaks to how the

filmmakers proceeded), and message ("the shape-shifting magic" of new media). It then adds

the subtler question of what the film itself is through its ambiguous "evocation" of both hoaxes

and fiction. Finally, these comments are framed in a dialogue between "you" and the speaker's

implied "I," which is simultaneously general as between author and audience and specific as

between the *Catfish* filmmakers and this critic. When you tell a story and you fail to command

its boundaries—boundaries that are defined by the intersection of chronological and unified

time—you can't be shocked by ensuing controversy about how it is experienced.

The thread through all the elements of that reviewer's commentary is authenticity, from

the clear inauthenticity within the plot, to the more ambiguous authenticity of the film itself, to

the thorny problem of authenticity between the filmmakers and audience, where the social stakes

lie. Another skeptical reviewer connected these dots with a very specific reference to the new

media characteristics, objecting that:

> I don't buy it at all…If the filmmakers didn't think that was strange [e.g., that Angela
>
> looks younger than her supposed daughter in the online photos], then they're truly
>
> gullible bumpkins. And that's the thing: They're not. They're smart tech-heads who
>
> tote iPhones, brandish expensive handheld cameras, show off their American Apparel
>
> underwear, and have hundreds of friends on Facebook. [Buchanan 2010]

The plot failed to synchronize chronological and unified time across the boundary from the work

of art to its social context. The filmmakers' own cutting-edge new media savvy became

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evidence against their ostensible naïveté inside the story, creating a catch-22 given how central their gullibility is to the whole enterprise's authenticity.

Even those disposed to accept *Catfish* as a documentary gravitated to the same core problem. One reviewer mused, "If it's so simple to convincingly fake a life online, how do we know that any of this movie is *really* real?" (Longworth 2010). She rationalized an answer that aligns the possible deceptiveness of the filmmakers with the certain deceptiveness of Angela within the story in order to draw a larger lesson about social authenticity. Thus, on the one hand, the reviewer admitted the possibility that Ariel Schulman's indignation at being challenged by the Sundance audience might be because:

> he's just acting the part of a filmmaker taking offense at the suggestion that he and his brother faked a life-changing experience in order to make a movie about the blurriness of contemporary reality.

But, on the other hand, she continued:

> It's probably counterproductive to worry about which possibility is closer to the truth, being that *Catfish* takes the very mutability of truth as its primary subject. In that sense, the film transcends the obvious, easy indictment of the "so close, yet so distant!" paradox of social networking to explore something much more ... uh, real. For all the modern technological mutations that made it possible, at the core of *Catfish* is the age-old pain and confusion that comes from suddenly becoming aware that someone you love isn't the person they presented themselves to be. It's just an all-digital cover version of an old analog tune.

For this critic, watching the film afforded an authentic experience of new media's threat to authenticity. That threat is both new in experiential form and old in timeless substance, so that

the film taps into the tension strung between the pursuit and goal of authenticity. The temporality of what was narrated and of the narration merged to send a message about contemporary reality. At a time when internet-based social media networks are a major cause of social anxiety (Christakis and Fowler 2009), *Catfish* rings true for some people, all the more so if its makers themselves contribute to that anxiety. For this portion of the audience, the filmmakers' violation of expectations about how such a narrative should unfold on screen resonates with a central dilemma of authenticity in contemporary life.

To summarize, *Catfish*'s saturation with new media characteristics induced a cultural struggle to define the film's genre that reflected new media's disruption to ideas about authenticity, especially in the relationship between author and audience. That struggle was driven by the temporal tension within authenticity, which linked debate about the film itself to debate about how it was made and who made it in a series of narrative layers. The struggle unfolded on the Hollywood field of cultural production, where the trio of filmmakers sought symbolic and economic capital through an innovative position-taking.

As predicted by the theory of genre I have used, the struggle to delineate genre thus became the locus of a power struggle, which unfolded discursively through the indexicality of authenticity, framed as a question of "realness." One dimension of the power struggle concerns whether or not the *Catfish* filmmakers should be accorded capital. It can be seen in the various reviewers' quotations above, such as the documentary filmmaker's dismissal of the film because he disbelieved it to be a documentary, and another critic's embrace of the generic ambiguity as reflective of a valuable contribution to understanding a new permutation of an age-old experience.

Another dimension of the power struggle is the symbolic capital the filmmakers gained by mere fact of the controversy. It has been converted into economic capital. Nev Schulman now hosts a *Catfish* television series on the MTV channel in which he helps others determine whether or not they have been catfished.

A third dimension emerged when the record company that holds the copyright on "All Downhill from Here" sued the film's producers and distributors for infringement. The generic distinction between documentary and scripted film was overlaid with a generic distinction between artistic discourse and legal discourse. The struggle for power and capital allocation shifted to a formal institutional arena where the imposition of a legal frame onto an artistic one would necessarily result in determinations of authorship and ownership that had immediate pecuniary consequences and less immediate, less certain reputational ones.

II. The Copyright Infringement Lawsuit.

This shift was not a mere taking up of an object of cultural discourse (the film) as an object of legal discourse. It was not neatly excised from one context and reconsidered afresh in another. Rather, the film was taken up by a legal genre of discourse on grounds established by the cultural controversy over genre. On the one hand, the "independence, or pragmatic transcendence, of this set of utterances—what makes it a transferable object—is what gives it a sense of 'textuality'" (Irvine 1996:157) as a discursive object. Irvine was describing a genre of wedding poem in Wolof; a film constitutes a seemingly even more bounded set of utterances amenable to objectification. On the other hand, however, "But if so, it is a textuality that

presupposes the conversational moments it purports to transcend." The cultural debate conditions the legal one, even when it seems incidental to the narrow allegation in the lawsuit.

This organic connection is important because it embeds the legal encounter within the cultural one. It makes possible the intertextual exertion of power through legal discourse and its outcomes. It also conditions legal discourse on intertextual links to cultural discourse. The judge and lawyers did not simply apply the law to the film as a cultural object, but reproduced the cultural controversy as they constructed a legal meaning about the film. The generic conflict reappeared within legal discourse to shape the framework of the law's application. The legal professionals engaged in the debate about authenticity, thereby constructing authorship and ownership rather than merely identifying authorship and assigning ownership.

A. Infringement and Original Expression.

The hook for doing so is the criterion that copyright protection applies only to original expression. U.S. copyright law associates romantic authorship with a particular connotation of authenticity. It also associates romantic authorship with the legal criterion of originality that makes an expression copyrightable. As a result, authenticity and originality become associated. Originality becomes a proxy for authenticity in legal discourse.

This ideological transitivity tames, though it does not eliminate, the problem of having legal actors make artistic value judgments. The temporal dichotomy that drives authenticity is reflected in the components of the legal test of originality. Independent creation evaluates

chronological sequence from the standpoint of a putative author.[133] A modicum of creativity encapsulates unified time as an experiential bond between the genius author and her audience—including legal audiences, as described in the analysis of the case involving the *Moscow on the Hudson* poster and the *New Yorker* cartoon in Chapter 7. Copyright disputes become safety valves that stabilize the modern habitus.

The disruption to expectations about authenticity caused by new media carries over to disrupt the conventional way of talking about originality, while originality remains the proxy for authenticity in copyright discourse. The continuity can be seen in critiques of the existing copyright regime that substitute remix authorship for romantic authorship and naturalize remix through slogans of free culture, participatory culture, and remix culture, while proposing more flexible interpretations of legal ownership within the existing regime to accommodate remix. New aesthetic values of collage weld to legal determinations concerning liability.

As I argued in earlier chapters, however, what new media really highlight is the contingency of any particular ideological correlation between authorship and authenticity, and therefore also between authorship and originality. *Catfish* illustrates new media's effect by bringing it to the foreground of a legal case in which the judge and lawyers could not straightforwardly apply a legal lens to relatively settled ideas about the film's artistic qualities. *Catfish*'s novelty also extends further to show that the judge and lawyers worked through the social ambiguity about the film's realness in order to fashion a legal lens. In other words, the case unfolded at the frontier of both cultural and doctrinal expectations.

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[133] It is not pure chronology because an author could still independently replicate a preexisting expression if he had no knowledge of it. Darwin and Wallace famously arrived at similar conclusions about evolution at almost exactly the same time (various factors forestalled any IP dispute between them when it came to expressing the ideas in publication).

B. <u>The Legal Dispute</u>.

The social controversy over *Catfish*'s realness became a legal one when the record company that owns "All Downhill from Here" sued the film directors (Ariel Schulman and Henry Joost), distributors, and producers for copyright infringement. As noted earlier, Nev grew suspicious about Megan (the fictitious daughter fabricated by Angela) upon listening to that song and one other that were supposedly hers. Important scenes show Nev and his companions beginning to realize that something is amiss while listening to portions of the song as actually recorded by its co-writer.

The plaintiffs filed the lawsuit on December 3, 2010 in the Central District of California, a trial-level federal court. Copyright cases are federal cases. Because Congress has express Constitutional authority to regulate copyright, it could, and did, exercise another express authority to do so to the exclusion of state law under the doctrine of preemption (17 U.S.C. §301(a)). The Central District of California encompasses five counties around the Los Angeles metropolitan region and with them the highest population of any district in the country. It also has a heavy IP docket. Legal conferences that include or focus on IP are frequent in Los Angeles, and speakers often include judges from the Central District and the Ninth Circuit Court of Appeals that is the higher court that supervises that and other districts in the western United States.

After the plaintiffs filed their complaint specifying the alleged infringement and desired remedy, the defendants submitted a formal answer. The court required the parties to attempt mediation and settlement. Meanwhile, however, they also began collecting evidence. They deposed or obtained affidavits (sworn statements) from experts or individuals knowledgeable

about the events in question. And they sought information believed to be in the other side's possession.

On November 15, 2011, the defendants filed a motion for summary judgment. SJ presents an opportunity to dispose of a case without the added expense and uncertainty of trial. A judge will award summary judgment if she determines that there exists no "genuine dispute of any material fact" that warrants a trial on the evidence (Fed. R. Civ. Proc. 56(a)). The lawyers therefore compete to frame the dispute in terms that place it inside or outside the scope of liability. SJ is thus a fruitful setting to observe contests over meaning during litigation because it is like a concentrated mini-trial among legal professionals translating between society and law as they formulate and test theories of the case.

The legal dispute centered on the alleged unauthorized incorporation into *Catfish* of the song, "All Downhill from Here." A musical recording qualifies for copyright protection under the federal statute (a separate copyright may exist in the musical composition, that is, the written score and lyrics). Furthermore, the filmmakers did not claim to have written or recorded the song. The central issue was whether they simply incorporated portions of the song without permission, or instead incorporated them under an exception to the copyright monopoly.

That incorporation of the song is akin to sampling, discussed in Chapter 1 as a time-honored musical practice—and source of copyright disputes—taken to a new level by remixers. *Catfish* is not another song that samples "All Downhill from Here," but it does repurpose "All Downhill from Here." The song is not simply part of the film soundtrack. In fact, an infringement allegation that the song was played over the end credits of the film was included in the lawsuit but not litigated in this SJ motion. Rather, the song was part of the film's plot. The audience hears it because, and as, the characters introduce and investigate it through new media.

It was this particular, novel use of the song that challenged the application of copyright doctrine because of changing expectations about how people use music. This remix of the song supported the claim of realness for the film. Or this piracy of the song damaged that claim. Put another way, sampling the song changed its temporality, breaking open the alignment between chronological time and unified time contained within the whole song as a standalone work of art, and fusing bits of the song's temporality to the film's temporality. The outcome could be experienced as authentic or inauthentic.

The specific infringement allegation thus connects the cultural controversy and the legal dispute. How the song was used is tied to the interpretation of the film's realness, which is a question of authenticity. Furthermore, in its incorporation of the song, *Catfish* aligns or misaligns the two kinds of time that drive the temporal tension at the core of authenticity. The incorporation is tested as a question of legal originality.

Applying the test turned on a distinction between "derivative" use and "transformative" use. On the one hand, the incorporation may have been "derivative." A derivative work infringes because it borrows too much—the law often requires very little—from an original. A derivative use is neither independently created nor even minimally creative. In terms of authenticity, it is parasitic upon the integrated chronological and unified time that the original work harbors for intersubjective experience. In short, it is a copy.

On the other hand, copyright has an exception for "fair use." Fair use rests on a policy decision to grant educational, journalistic, and social commentary activities wider latitude to use copyrighted material without liability (17 U.S.C. §107). It has a four-factor test, one of which concerns the "purpose and character of the use," and includes whether or not they are commercial.

The Supreme Court has determined that this factor relates to how transformative the appropriative use is (*Campbell v. Acuff Rose Music*, 510 U.S. 569 [1994]). Transformative means the new work "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message"—precisely what new media afford in unprecedented ways or render inchoate, depending on one's perspective. A finding of transformation increases the likelihood that the new work falls under fair use protection. In terms of authenticity, a transformative work enlists chronological ("adds something new") and unified time ("further purpose or different character") together to produce a new intersubjective experience ("meaning"). Whereas a derivative work is unoriginal by definition, a transformative work often is deemed effectively original in its own right.

The summary judgment papers filed by each side before the proceeding follow the path from a cultural dispute over genre and realness to a legal one over incorporation of the song and originality. They recapitulate the question of authenticity, and do so as one of the alignment or misalignment between chronological and unified time in the filmmakers' actions.

The difference between derivative and transformative came to lie in whether the filmmakers scripted use of the song into their film or chanced upon it in the course of recording real life. In their brief supporting the motion, the filmmakers' lawyers characterized *Catfish* as a "documentary motion picture" (MSJ 1).[134] Under a subheading titled, "Is It Real or Fake?", the plaintiffs' lawyers countered that:

> Whether the story in the film is real or fake remains disputed. The movie is filmed in documentary style, but the actors find themselves in overly serendipitous situations and

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[134] "MSJ" refers to the defendants' motion for summary judgment in the case, filed on December 16, 2011, and retrieved from the federal court system's official website, www. pacer.gov, accessed June 24, 2013.

critical elements are missing from the film all of which casts doubt on the film's "reality" aspect....The film was not advertised as a documentary or as a Michael Moore-type social commentary, but as a "reality thriller." [RSJ][135]

The plaintiffs acknowledge a mere documentary "style" and challenge the "'reality' aspect" (let alone unadulterated reality) of a basically scripted film.

This distinction only superficially depends on whether or not *Catfish* is a documentary, just as the social controversy only initially depends on film genre. Documentarians are not categorically exempt from copyright law. They may, however, succeed with a claim of transformation if they happen to include a copyrighted work in the course of filming naturally occurring events (Aufderheide and Jaszi 2007).

Thus, beneath the disagreement about genre was a more legally substantive dispute. The defense papers argued that "the fragments of *Downhill* used in *Catfish* are themselves subjects of real life events documented in the Scene [the scene in which Nev realizes Angela's deception while listening to fragments of "All Downhill from Here"]" (MSJ 2). Furthermore, they claimed that the filmmakers exercised restraint in playing only four fragments of various versions of the song even though in reality the trio listened to the full versions repeatedly as they debated whether or not Megan (Angela's fabricated daughter) had truly recorded them (MSJ 4–5). Accordingly, the use was fair, especially because it was transformative, and therefore original in its own right (MSJ 9–11). They aver that:

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[135] "RSJ" refers to the plaintiffs' memorandum in opposition to the motion for summary judgment in the case, filed on December 16, 2011, and retrieved from the federal court system's official website, www. pacer.gov, accessed June 24, 2013.

the use of *Downhill* in the Scene is quintessentially transformative, because the

Filmmakers added completely original and new expression to create one of the most

powerful sequences in *Catfish.* [MSJ 11]

The defendants' lawyers further contrasted the film's "realistic audio-visual depiction,"
including the "natural sounds" of the song, "to show the real life events that occurred," on the
one hand, to the song itself as an "artfully crafted, non-literal audio only work," on the other
(MSJ 12). In the film, the song represents an "unchosen, diagetic [sic] element that occurs
within documented real life events in the Scene, while the Works [the original versions of the
song] are carefully constructed," meaning the songwriters crafted them deliberately (MSJ 12). In
effect, they argued that the filmmakers judiciously sampled the song in the service of remixing it
into an authentic portrayal of reality, and they left intact the song's own authenticity as an
independent work of art.

By contrast, the plaintiffs' memorandum contends that "the Song is ever-present in the
scene in a continuum, rather than appearing in distinct separated fragments" (RSJ 5). It counts
two minutes of use of the song, including the entire chorus, which constitute the "entire focus of
the scene." So "there can be no doubt that the sole purpose of *Catfish* was to entertain" (RSJ
14). The marketing of *Catfish* as a "reality thriller" establishes that purpose because "to 'thrill'
is necessarily to entertain (as opposed to educate)" (RSJ 14).

For the plaintiffs, evidence that "indicates the film was a ruse" (RSJ 3) includes
statements by Nev in film outtakes, the purported existence of an unmentioned girlfriend though
he was portrayed as single, and the filmmakers' "admitting to editing and re-creating portions of
this scene" (RSJ 3, 6). Thus, "the filmmakers 'made a creative decision to put [the song] into the
film'" (RSJ 5). This particular song "ever-so-conveniently foreshadows a suspenseful and

dramatic turning point in the film's plot" (RSJ 1). The title alone signals that things are "all downhill from here" after Nev's discovery of Angela's deception. Therefore, because no change was made to the song itself, no commentary was offered on the song itself, and no difference existed between the film and song in terms of their common, basic purpose of entertainment, then the "intrinsic entertainment value" of the film made it a derivative, infringing work (RSJ 15–17). In other words, the filmmakers tried to piggyback on the song's authenticity, which is an inauthentic move in the romantic habitus.

In addition, the lawyers honed in on the film's reinforced layers of new media characteristics to link the cultural and legal frames together in terms of authenticity. For the defendants' side, "Because *Catfish*'s personal story reflects both comment and criticism on some of the most compelling issues of our time—the intersection of digital communications and social media on human relationships—it falls squarely within the scope of works protected by fair use" (MSJ 14). The plot and message combine with the style, including how the song is incorporated, to protect them from liability.

For the plaintiffs' lawyers, however, the opposite is true: "Defendants advance a borderline-absurd argument that *Catfish* reflects comment and criticism on social networking…, by claiming their work as a whole constitutes commentary" (RSJ 13). Just as viewers split over the film's realness based on evidence that cut across plot, style, and message, the opposing lawyers did, too. Plaintiffs' counsel observed, "Public controversy about the authenticity of the film has been widespread" (RSJ 3) and continued, "It is ironic that the public perception of the film now mirrors its lot based on fakery and deception" (RSJ 4). The filmmakers' attempt to align the authenticity of the plot and the authenticity of the film production backfired.

The legal dispute thus turned on competing interpretations of the social controversy, because the legal conclusion for each side depended on a description of facts built from one or the other perspective on that controversy. Those facts represent interpretations of authentic experience. If the new media characteristics of the film are convincingly authentic as to its actuality—that is, according to new expectations about authenticity—then the film was "real" and not scripted. If the film was not scripted, then neither the time of the story being narrated nor the time of the narrating act was premeditated. The incorporation of the song was not creative in the romantic sense at first blush, but it was sufficiently transformative to pass as legally original precisely because it exhibits a new kind of authentic authorship. The defendants themselves are for real legally because they are for real socially.

If, however, the new media characteristics of the film are not convincingly authentic, then the film was scripted. If the film was scripted, then the time of the story being narrated and the time of the narrating act do not coincide. The film itself was creative in the Romantic sense, but its incorporation of the song was derivative and legally unoriginal. The defendants' social inauthenticity replicates as legal liability.

C. Courtroom Talk.

The summary judgment proceeding took place before Judge Dolly M. Gee in the federal courthouse in downtown Los Angeles on January 13, 2012. The courthouse was built between 1937 and 1940 and exhibits the ascetic modernism that dominated public architecture at the
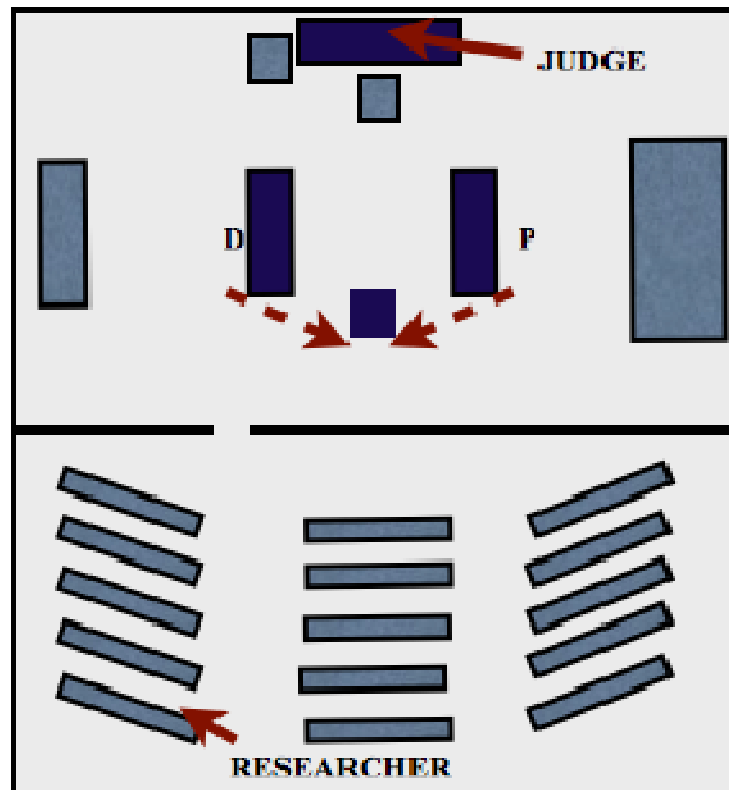
time.[136] Judge Gee's high-ceilinged courtroom is paneled with light-colored wood against

blocks of white stone. During the proceeding, she sat on a raised dais at one end of the room

(Figure 9.1). Staff sat below and in front of her. Defendants' counsel and plaintiffs' counsel

(three of the latter) occupied long tables arranged perpendicularly to her dais and facing each

other.

Whichever lawyer ("D"efendants' counsel or "P"laintiffs' counsel) had the floor spoke at

a podium between the tables and directly facing the judge. No clients appeared to be present.

The few observers sat in wooden pews behind the low fence that separates the gallery from the

space in which the speakers interacted. The session lasted approximately thirty minutes. No

time limit appeared to exist. The judge did initiate the proceeding's end, but seemed to do so

only after the discussion had essentially exhausted the issues. The defendants' lawyer conversed

with the judge briefly, then the plaintiffs' lawyer took most of the session, then the defendants'

lawyer had a brief turn again. The time breakdown between them was not predetermined. The

judge called on the plaintiffs' lawyer after the defendants' lawyer stated that his papers

adequately briefed the issues and he did not wish to spend the court's time redundantly. The

judge also asked the plaintiffs' lawyer if he had any additional points to raise before recalling the

defendants' lawyer. To win their motion, the defendants had to convince the judge that fair use

was an inevitable conclusion, while the plaintiffs only had to sow doubt.

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[136] For historical information, see

http://www.gsa.gov/portal/ext/html/site/hb/category/25431/actionParameter/exploreByBuilding/buildingId/705,

accessed June 21, 2013.

9.1 Courtroom Layout for *Catfish* Summary Judgment Hearing

The court papers set forth each side's arguments, but analyzing the face-to-face conversation reveals the thinking together or co-construction of meaning that people do as they interact in real time (see Chapter 4). Participants enter a conversation with certain expectations based on experience. The extent to which they are shared expectations influences how the conversation unfolds, but even more important is the immediate context of turn-by-turn talk. Each turn that one person takes in a conversation draws upon those expectations but also upon the preceding turn(s), and shapes what another person does in the next turn.

Institutional settings tailor ordinary conversation by assigning participants roles with different goals; loosely or tightly scripting the words and ways participants speak; and

establishing expectations as to what successful execution of the shared task will accomplish (Heritage and Clayman 2011). Specific institutional patterns pertain to various kinds of courtroom interaction, including witness questioning (Atkinson and Drew 1979; Goodwin 1994; Matoesian 2001), arraignment and plea bargaining (Philips 1987), self-representation in small claims court (Conley and O'Barr 1990), and appellate oral arguments (Deeb 2013).

These patterns are generic, sometimes multiply so. The intersection of genre and participation framework in the conversational structure is a locus of power struggle. Witness questioning, for example, forces together legal and non-legal genres of narrative and argumentation, which can result in both distortion of non-lawyers' understandings of events (Scheppele 1988) and unexpected reformulations of legal understandings into non-legal folk theories (Conley and O'Barr 2005; Merry 1990). At the micro-macro linguistic interface, an everyday speech genre such as asking questions can be transformed into a legal genre for controlling actors' scope to narrate or argue at all (Philips 1987).

In addition to exposing in granular detail how legal interpretation filters ordinary understandings of the world, this literature also shows that aspects of the social world, including organizational categories such as gender (Hirsch 1998), are both reproduced and reshaped in legal settings. Language, which mediates this process, is not "some sort of tool or medium that is entirely at the actor's disposal" (Ng 2009:6) in legal settings (see also Duranti 2011b for theoretical background on language as a non-neutral medium). Rather, language and culture (including institutional culture) intersect through participants' communicative acts in a given encounter, patterning but not predetermining its trajectory.

This intersection unfolds through indexicality. Legal discourse epitomizes the continual change in indexical meaning as context changes, because legal discourse is designed to leverage

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the resulting ambiguities. Argumentation builds reasoned chains, on the one hand and, on the other hand, continually revisits the links in the chains, at least until a judge or jury issues a final judgment (Kevelson 1990; Richland 2008). To stylize an example, one lawyer may build from a witness description of "smoke blowing" to "where there's smoke, there's fire" to guilt of arson. An adversary may cross-examine the witness about the "blowing smoke," moving the adjective before the noun to evoke an opposite idiomatic expression for insubstantial claims.

This principle played out in the *Catfish* proceeding not only as the selection and characterization of facts about the film through a legal lens, but also the construction of the legal lens out of the raw material of discourse about the facts. The participants drew upon the indexicality of realness and, by proxy, social authenticity, to establish competing indexical frameworks for legal originality.

The *Catfish* dispute showcased the process because the question of fair use is a "mixed question of law and fact" (OSJ 10).[137] Although no testimony or material evidence was introduced directly in court, the lawyers presented versions of the facts. The judge asked questions to clarify the facts as well as how the lawyers thought they fit with the legal standard governing fair use. She also proposed her own interpretations, thinly disguised as questions. Having this institutional function and participation framework, the summary judgment proceeding fit generically between a trial and appellate proceeding, with a discursively conscious focus on both characterizing and interpreting what happened—and, in the process, constructing it, too.

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[137] "OSJ" refers to Judge Gee's amended order granting summary judgment in the case, entered on March 19, 2013, and retrieved from the federal court system's official website, www. pacer.gov, accessed June 24, 2013.

III. <u>Conversational Data and Analysis</u>.

The judge lawyers talked about authorship and ownership with discursively conscious metapragmatics. The intertextual dimension of formal dispute resolution required legal talk about a social dispute. In a copyright case, that dispute involves authorship and ownership. The case presented a problem within the particular habitus of romantic authorship, but also at its boundary where an alternative remix habitus looms.

I walk through three examples excerpted from the official court reporter's transcript of the proceeding. Within the participation framework described above, the judge and lawyers together produced layers of narrative that represent the imposition of the legal genre of SJ argumentation on the cultural controversy. Three narrative times emerged in these accounts: first, that of the plot events of Nev's story; second, that of the filmmakers' actions in producing the film; and, third, that of the evidentiary standards to be applied in court. The first two layers existed in the cultural controversy and underpinned opposing views on the film's realness. The third adds the legal lens.

All of the participants wove these strands into interpretive accounts by revisiting the controversy about realness and converting it into terms of legal originality. Each participant produced a unique account, however. Thus, the collaborative, competitive effort to interpret the dispute constructed various meanings of authorship and ownership through the unfolding talk.

To begin with, the conversation, like the papers, centered immediately on the bond between realness and originality. The defendants' lawyer began by reaffirming that the film is "quintessentially transformative" because the song is "inherent in the film (TSJ 4).[138] Asked if

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[138] "TSJ" refers to the official court reporter's transcript, which I purchased from her according to normal practice.

there was any "pre-discussion before the filming" about using the song, the lawyer declared that the film is "an accurate depiction of real life events that happened to real people" (TSJ 5).

Similarly, the judge's first question to the plaintiffs' lawyer concerned transformation. He responded that "it's really undisputed that the film was not advertised as either" a documentary or a biography (TSJ 8), linking the legal standard to the genre umbrella that stands for the film's realness. The judge skirted this conclusion: "All right. This is called a reality thriller" (TSJ 9). The lawyer again drew the connection, arguing, "The filmmakers didn't know what they were doing at the beginning. It didn't really turn into a film until some later point. So they didn't set out to make it a reality thriller" (TSJ 9). In other words, insofar as the filmmakers did simply turn on the cameras, the result was artistically inchoate—not even a film at all—until they began planning things. Pressed to agree that "there are no facts to indicate that it was scripted" (TSJ 9), he stated flatly, "I disagree."

The following three examples excerpted from the official transcript begin in non-contiguous sequence at that point, after the judge clarified that her question was not about pre-planning of the film as a whole but of the particular segments that contain the song. Two notes are necessary concerning the transcript. First, transcription of spoken language is always an interpretive act in both the written recordation and the presentation of the talk (Ochs 1979). The official transcript is a "naturalized" (Bucholtz 2000:1464) one. The court reporter's task was to conform what participants said to standard written English as closely as possible.

One consequence is the loss of semiotically significant aspects of communication unaccounted for by the standard, including non-vocal uses of the body; vocal pitch and intonation; overlaps between speakers' turns at talk; and silences, pauses, and hesitations. Talk is rendered much smoother and semantically linear than it is in actuality.

I "denaturalize" the transcript, in Bucholtz's phrase, in a few places in the excerpts below. Doing so emphasizes aspects that bear upon the analytic point being made. At the same time, the effort is selective because my handwritten notetaking (computers were forbidden in the courtroom) was constrained by what I perceived to be significant as it occurred and could capture as the participants continued relentlessly in conversation. The reporter herself was constrained by the same principle, although she had advantages of technology and skill. She even asked me if I had any corrections to offer, for example, if she had misheard a name, misunderstood a reference, or made a typographical error. In other proceedings, I sometimes heard reporters interrupt lawyers or witnesses in order to ask them to slow down their speech, and judges sometimes intervened, explaining the legal importance of an "accurate" transcript (see Bucholtz 2000 on the "politics" of transcription in legal settings, in particular).

In fact, this license to interrupt reveals the reporter as a special kind of participant during the interaction. More than a "ratified" hearer, in Goffman's (1981:9) terms, unlike the audience in the gallery she is a sort of obligatory hearer with the authority to speak when the purpose behind that obligation is compromised. Where a reporter does interrupt a speaker, this role may have consequences for a conversational trajectory. But even where she does not, as in the *Catfish* proceeding, this role has a consequence in her written product. It became clear during data analysis that the reporter's naturalization of the transcript included devices that correlated to my analysis, especially paragraph breaks, commas, and dashes to set apart certain phrases within a speaker's turn. In a few places, therefore, the transcript provided validating metapragmatic information. They are mentioned where applicable in the following analysis.

The second note concerning the transcript is the related, but simpler, point that line numbers in the excerpts correspond to the official transcript page and line numbers, so that 10.09

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means page 10, line 9. Each page has 25 lines, so that Line 10.25 is contiguous with Line 11.01, for example. Paragraph breaks within the same speaker's turn therefore also follow the transcript. A minor modification is in the speaker titles. "Att" indicates the plaintiffs' attorney is speaking, whereas the official transcript uses his name. All three lengthy excerpts are from the plaintiffs' attorney's time, which was much longer than the defendants' attorney and more fraught with interpretive complications.[139] "Jud" indicates the judge is speaking, whereas the official transcript calls her "The Court." This modification was made purely to assist readers in identifying the participants by role rather than by more obscure references.

The analysis of Example 1 centers on how the judge and the plaintiffs' lawyer constructed what "happened" in terms of originality, by invoking authenticity, and dependently on attitudes toward realness. It highlights their focus on the narrow differentiator of historicity between documentary and scripted film. They intertwined narratives of the film's plot (the time of the story narrated), the filmmakers' actions (the time of the narrating act), and the courtroom proceeding (a third layer, the time of legal interpretation) through various grammatical features.

Example 1

10.09   ATT: My understanding is, is that the song

10.10   was sent a couple of days before the film - - before the scene

10.11   was actually shot. And the way the scene was put together,

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[139] That complexity may reflect the complicated "burden shifting" that occurs in SJ. The judge must determine whether there exists a genuine dispute of material fact. At different points, one party may bear the burden of presenting adequate evidence on that score. If it does, the burden to rebut may then shift to the other party. Although it did not come up during the proceeding, and was not explicitly linked to the outcome in the eventual order, it is possible that the judge felt that the defendants met their initial burden and pressed the plaintiffs to counter it, which required a more complicated inquiry.

10.12   and some of this is from some of the outtakes, is that they

10.13   talked about it in a way to construct it together with the

10.14   "Tennessee Stud" song, because the "Tennessee Stud" song was

10.15   sent first.

10.16   You also see - - there's evidence in the

10.17   record about how they went back, and they edited those scenes

10.18   and they added portions to the scenes to - - I don't know - -

10.19   enhance the scenes somehow by adding the graphics and other

10.20   things to overlay in the scene.

10.21   So it's not, they just turned the camera on,

10.22   and that's what happened.

10.23   JUD: But is there any dispute that there

10.24   was any preconceived idea that they were going to use this

10.25   particular song? Or is it - - do you have any evidence that

11.01   Angela was in cahoots with them when they decided to use this

11.02   song, or did it just actually just happen to be that song

11.03   that she sent?

11.04   ATT: It apparently just happened to be that

11.05   song that was sent, but I don't think that that is the test

11.06   for transformative use, in terms of what the character of the

11.07   use is, what the purpose of the use is.

In the first paragraph of Example 1 (Lines 10.09–10.15), the plaintiffs' attorney describes

a sequence of events in which Angela (pretending to be Megan) sent Nev the recording of "All

Downhill from Here" before the filmmakers filmed the scene in which Nev listens to it and grows suspicious. The lawyer uses three different noun–verb formulations to distinguish among the plot, filming, and court. First, he pairs inanimate objects with a passive past tense that establishes a timeline between the plot events and the filming events: the song was sent; the scene was shot; the scene was put together; the (other) song was sent. In addition, he uses adverbs to arrange the sequence of the songs being sent—he mentioned "Tennessee Stud" last but indicates it was sent "first"—and of both songs being sent "before" the scene was filmed. The meaningful order becomes: "Tennessee Stud" was sent; "All Downhill from Here" was sent; the scene was shot and put together (these last two are apparently interchangeable descriptions, because he refers to ascertaining how it was put together from outtakes, which would have been included in what was shot).

Second, still within the first paragraph, the attorney pairs the filmmakers with an active past tense to assert that "they talked." Within that past action is a present tense infinitive, "to construct," which projects a future orientation from the talking, implying that they planned. Furthermore, this characterization is the predicate in the sentence that shifts from the scene "was shot" to the more connotatively creative or manipulative "was put together." Moreover, he identifies the fact that "Tennessee Stud" was sent first as what induces ("because") the filmmakers to undertake this manipulation. Given the sequence in the film, they had to have manipulated the songs because the facts prove a different reality. The combined effect so far establishes a filmmaking sequence that interrupts and even reverses what filming unfolding events would show. In this lawyer's account, "Tennessee Stud" came first, then "All Downhill from Here," then—instead of the scenes merely being shot, or even merely being put together— the filmmakers as proactive agents planned how to use those songs together.

Finally, also within the first paragraph, the lawyer couches this argument with present-tense indexes to evidential knowledge. He begins with "my understanding is." "My," like pronouns generally, is a deictic term. Its meaning depends wholly on context (Hanks 2005a). In this instance, it is the "I" who speaks in relation to the information conveyed and the audience. "My" understanding qualifies the subsequent narrative of case events by tying it to a personal perspective.

Introducing oneself into the argument with "my" might seem to contradict legal ideologies of objectivity and of the lawyer as a representative rather than a principal. The shift to personal pronoun deixis is one from author–animator to principal–author, in Goffman's terms. But that personalization is an effect of "the relationship between the immediate utterance event and these implicated dialogues" (Irvine 1996:140), meaning, in this case, the intertextuality between the legal proceeding and the cultural controversy. According to Irvine, that kind of intertextuality gives rise to the fragmentation of participant roles.

It also serves a function. The shift to personal pronoun deixis projects generic intertextuality through the narrative at precisely the point where the narrative moves from past events (the artistic question) to present evidence (the legal one). It is therefore the point where the lawyer exerts the power of legal interpretation upon what happened. Conversely, the legal conversation can occur as such only because of the implicated cultural dialogue. The lawyer plays the role of principal in making that connection.

The legal conversation also occurs as such only because of other implicated legal dialogues that produce a generalized evidentiary genre. Several lines later, the attorney uses another kind of deixis, "this," to make a more objective claim that his narrative comes from material evidence in the record (the outtakes). Moving from "my" to "this" is a kind of deictic

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"slippage" (Irvine 1996:143) that reveals the multiple, "superimposed" deictic fields at work as the participant in this particular interaction adopts different roles intertextually to reinforce his evidentiary narrative.

Notably, he inserts the "this is" clause into the sentence that connects "was put together" to "they talked." The court reporter apparently heard a shift from time within past events to time within the courtroom, because she inserted commas setting apart the present-tense clause containing the evidentiary argument that "some of this is from the outtakes." The three narrative layers thus combine in one sentence.

In addition, as deictics, both "my" and "this" are "inherently metapragmatic" (Silverstein 1993:39). Because they are context-dependent, they always regiment something about their context of expression. Saying "my" establishes one perspective to the exclusion of a number of others. Saying "this" delineates a domain of possible references. The deictics in this instance fuse with the "denotationally explicit" (Silverstein 1993:39) metapragmatics of the topic at hand. "My" and "this" arrange the context in a certain way, and that context is the topic of what happened when *Catfish* was made. The deictics thus serve as linguistic "evidentials" (Jakobson 1971:135) that link the narrative times of the plot events and the filmmakers' actions to the narrative time of the courtroom, which concerns legal evidence. They do so by nomically calibrating (see Silverstein 1993:53) talk about what happened to talk in the courtroom, "authorizing" the latter to interpret to the former. This juxtaposition creates the intertextual interface through layers of narrative that open the cultural controversy about realness to legal talk about realness on the way to translating realness into originality.

This first paragraph of Example 1 thus exemplifies the thrust of this section's analysis. The lawyer interweaves the evidential time of the courtroom with the time of the filmed events

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and the time of the filmmakers' actions in a way that contradicts the defendants' basis for the film's realness. He uses numerous syntactic and pragmatic features of grammar to do so, including verb tense, active and passive voice, causality, and deixis, as well as semantics.

In the second paragraph (Lines 10.16–10.20), the lawyer tightens the braid. The court reporter's insertion of a paragraph break suggests that she heard, or upon subsequent review understood, the lawyer to be doing something additional that corresponds to his utterance of "also" in the first line of this paragraph.

"You also see" places the judge (and hypothetical jury) in the position of observing facts, shifting deictically from the advocate's perspective in "my understanding" to the decision-maker's perspective. Because "you" in English can range beyond a specific addressee, this shift also broadens the objectivity of the evidentiary claim. Similarly, "there is evidence" invokes objectivity and is an even more direct, robust declarative than "some of this is from" was in the first paragraph. It is also qualified by the prepositional phrase, "in the record," which points to a preexisting legal compilation of what happened rather than a non-legal description. The reporter seems to have understood those two evidentiary framing devices as overlaid because she placed a long dash (two hyphens) between them, indicating simultaneity or correction of the thought expressed. Personal perspective and objective perspective on the evidence thus fuse.

Within that evidentiary frame, the lawyer describes the filmmakers' past actions, when "they went." After they filmed the scene, they went "back" into it and "edited" and "added" to it. That intervention contradicts the defendants' claim that the filmed events and filmmakers' actions overlapped. Furthermore, they did so "to enhance" the film, another present-tense construction within the past action that suggests purposeful or at least consequential manipulation.

Moreover, the interjection of epistemic uncertainty, "I don't know," may be a search for the most appropriate word. But the one he chose, "enhance," may be well chosen because it ascribes a measure of creativity to the filmmakers somewhere between derivative and transformative. It calls to mind an attempt to be creative that falls short of originality.

In any event, merely returning to the present-tense time of the courtroom proceeding at precisely that moment calls attention to the filmmakers' manipulation of the song. Epistemic phrases embed an evidential function within a modal one that speaks to the degree of certainty, and are often more important pragmatically than with respect to the semantic information about knowledge status they convey (Karkkainen 2003). "I don't know" inserts the evidential narrative surgically at precisely the point where the narrative of the filmmakers' actions takes an important turn. This temporal intersection is marked by dashes in the transcript. Disclaiming certainty but drawing the ear back to the courtroom present suggests that the filmmakers fail under even a lax legal standard.

The third paragraph (Lines 10.21–10.22) makes explicit that this characterization undermines the defendants' realness claim. Conjoining argument and conclusion with "So," the lawyer anticipates and negates the defendants' claims for purposes of the legal outcome with a present-tense declarative, "it's not." He then articulates the defendants' position in active past tense, "they just turned" the camera. "Just" closes any gap between the filmed events and filmmakers' actions, which crystallizes the defendants' argument but also raises the bar for it because any deviation would be suspect. Through the conjunction "and," the lawyer moves from the filmmakers' actions to their supposed parallel in the filmed events, "that's what happened." The phrase is ambiguous. It may mean the filmed events are what happened, or that turning on the camera is what happened. In the abstract, the ambiguity reinforces the defendants' claim that

fuses those two narrative times into realness. But based on his preceding talk, he seems to challenge only the filmmakers' actions. He drives a wedge ("it's not") between the filmmakers as active agents ("they turned on") and the evidentially marked ("that's") events ("what happened").

The judge's next question (Lines 10.23–11.03) brings both alternatives into the open in a way that both helps and hinders the plaintiffs. She signals this alternative approach by starting with the contrastive conjunction, "but." She then shifts through time. She moves from the "is" of the dispute to the "was" of a possibly "preconceived idea" to "were going." "Were going" is in the past progressive, a combination of grammatical tense and aspect (see Comrie 1976) that adds context to "preconceived" and situates the listener within its narrative trajectory by projecting from a (past) decision to a future (but still within the past) action "to use" the song. In the past of what happened, did the filmmakers make a prospective decision to do something? So far, the judge seems interested in the same "what happened" as the plaintiffs' lawyer, that is, whether or not the filmmakers simply turned on the camera.

But the judge introduces competing alternatives to answer that question. She begins to offer an alternative to preconceived manipulation with "or is it," which introduces the alternative with a present-tense evidential phrase. Before articulating that alternative, she corrects her earlier interrogative of "is there" to the more precise "do you have": "do you have any evidence that Angela was in cahoots with them when they decided to use this song." The reporter marks this self-interruption by the judge with dashes. Whereas the lawyers tended to shift from pronominal deictics to more abstract ones, the judge shifts from a simple declarative to a narrower, pronominally conditioned evidential. They want to present their arguments as objective evidence. By contrast, what she needs to know is whether or not the lawyer before her

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can produce legally admissible evidence to support his argument. Having narrowed that

evidentiary ground, the judge clarifies this first alternative by employing the adverb "when" to

create an aspectual relationship within the past. At the moment when the filmmakers "decided"

to use the song, "was" Angela already conspiring with them?   This grammar closely parallels

the "was" and "were going" of her initial question.

Having accomplished that clarification, the judge repeats the "or" and, this time, stays in

the past to ask directly about what happened, asking the alternative of "did it just happen to be"

that Angela sent the song and the filmmakers used it. Here, the judge abandons the evidential

present-tense, which might suggest that she is already convinced.

More importantly, the subtle adjustment from "what happened" in the lawyer's statement

to "happened to be" in the judge's question captures an idiomatic nuance between actual

occurrence and coincidental occurrence. By framing the ambiguity this way, the judge implies

that either the filmmaker and Angela colluded in advance, or she sent the song unbidden and the

filmmakers just used it. The judge never makes that distinction explicitly, but the deictic "they"

in her first sentence "slips" or "blends" (Irvine 1996:143) to encompass Angela, raising the bar

on the extent of planning that would contradict the claim of realness. That is, the judge is

looking for the attorney to show not merely that the filmmakers acted wrongly, but that Angela

conspired with them in those bad acts.

The lawyer reacts against the higher bar (Lines 11.04–11.07) by repeating the judge's

idiom of coincidence, which signals alignment or agreement with her, but, first, downgrading its

qualifier of "actually" to the more uncertain "apparently" and, second, altering the active "she

sent" back to his own initial phrasing, "was sent," which suggests more passive, natural

occurrence (see Goodwin 1990:91 on "format tying, or reuse of the material in prior talk permits

a subsequent speaker to build a reciprocal encounter that is precisely shaped to the talk that is being opposed"; Deeb 2013 on format tying in courtroom talk). He then uses the contrastive conjunction, "but," to argue against collusion as a legal requirement for infringement. He does so in the present tense, using an epistemic framing device, "I don't think," to introduce the originality criterion: "that is the test for transformative use." He thus rejects the judge's interpretation of how realness translates into originality, while mitigating any overt disagreement with her.

In Example 1, both the attorney and the judge reconstructed past events that speak to the realness controversy—represented by alignment or nonalignment between the depicted events and the filmmakers' actions—in order to formulate present narratives about legal originality. The latter depend on the former. The legal interaction, shaped according to a particular institutional participation framework, converted authenticity from a topic of artistic genre to one of legal genre.

This intertextuality occurred through three competing theories that emerged from layered narratives to frame the legal standard in terms of the events' authenticity. First, the defendants had claimed that the narrative of depicted events and the narrative of the filmmakers' actions overlap precisely because the latter piggybacks on the former. The realness of their action transformed the song, and therefore was legally original. In terms of the temporal driver of authenticity, there is no daylight between the chronology of the plot and the chronology of the filmmaking. Rather, they reinforce each other to produce the unification across plot, style, and message that made the film authentic.

Second, in Example 1, the plaintiffs argue that the narrative of depicted events and the narrative of the filmmakers' actions are distinct because the filmmakers intervened to make a

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story out of the fact that the song was sent. The intervention is unreal by the filmmakers' own standard, and fails to satisfy the alternative criterion of traditional romantic authorship because its insufficiently creative use of the song is derivative. In other words, by manipulating the chronology of the plot events, the filmmakers destroyed the possibility of gathering up what happened and what they did into an experience of unified time.

Finally, the judge implies that planning to receive the song may be unreal, inauthentic, and unoriginal, but manipulating the song they happened to receive is not. A preconceived plan would undermine the eventual experience of unified time by starting with a corrupt chronology. But taking advantage of chronological events to produce an experience of unified time would be acceptable.

In working through the question of authenticity, the participants also constructed the authorship of the film. From the defendants' point of view, the authenticity of their actions made them authors both artistically and legally. They may not have scripted fiction or documented history according to conventional genres. But they used new media practices to author a new media story that straddled romantic and remix expectations.

From the plaintiffs' perspective, the filmmakers scripted fiction. Whatever claim they might have to be authors of the film, they had no authorial right to use the song. In this view, the filmmakers are romantic authors who overreached.

In the alternative suggested by the judge, the filmmakers are authors even if—or perhaps because—they performed more scripting than they claim, but as long as they did not co-author the script with Angela. In a sense, this standard is an even stricter one of romantic authorship. But it also permits wider latitude for excepted remix than the plaintiffs' version.

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These three theories crystallized further as constructions of ownership, too. This process is less evident than the construction of authorship because authorship is more explicitly a topic of copyright metapragmatics. Ownership is a legal conclusion, so participants often invoked it summarily rather than working it over. Nonetheless, the same talk that generated competing meanings of authorship generated competing meanings of ownership.

For example, shortly after Example 1, the judge employed the "happened to be" formulation in a classic legal rhetorical device, the hypothetical scenario: "It happened to be that song. It could have been any song" (TSJ 12:16–17). "Could" adds the grammatical feature of mood or modality to verb tense and aspect (see Palmer 2001). Mood or modality refers to whether acts or events are constrained by obligation, capability, or necessity, as in the "must," should," and "can" verb auxiliaries (English relies primarily on these kinds of verb to express modality, but many other syntactic or pragmatic features can do so as well). In this instance, "could" expresses the modality of possibility and, more specifically, an alternative possibility during the disputed events in the past. "Could have been any song" creates subjunctivity within the past narratives of plot events and filmmaking events.

In that subjunctive space across narrative layers, the implication of "could" supports the judge's previous suggestion that, absent an advance plan to use "All Downhill from Here," the filmmakers did not infringe. It also divorces the question of the film's originality from the song's ownership. The implication is that it does not matter that the record company owns the song. The filmmakers acted in a legitimate authorial way with the song that came their way.

The plaintiffs' lawyer resists by again replicating the judge's phrasing as if to agree, but in fact fleshing out the hypothetical with a ready alternative in order to disagree: "And it could have been 'Tennessee Stud'" (TSJ 12:18–19). Why, therefore, specifically select his clients'

song instead, if not for an ostensibly creative, but actually derivative, purpose? By naming a specific alternate, the lawyer reintroduces the question of ownership and an injured proprietor.

Similarly, during his rebuttal argument minutes later, the defendants' attorney also resisted the hypothetical possibility, but to affirm the smooth overlap between the depicted events and his clients' actions:

> This is not a case where the defendants could have chosen 'Tennessee Stud.' They chose 'Downhill.' And because that was the song that had been sent by Angela. [TSJ 24:01–03]

"This is not" excludes from the present legal consideration the possibility that the filmmakers "could have chosen" any song. In the second sentence, "they chose" might seem to risk implying the kind of creativity the plaintiffs charge, but raising the stakes with that verb increases the impact of the lawyer's causal ("because") conclusion in the subsequent sentence: "All Downhill from Here" "had been sent" prior to the so-called choice, predetermining it. "Had been sent" employs both the passive tense, indicating the natural flow of depicted events, and the past perfect aspect, indicating completion prior to "chose." This language of temporality protects the filmmakers' utter reliance on this particular song for the film's authenticity while avoiding liability for unoriginality. Whereas the judge sidelined the question of ownership with a generalization, it is crucial to the defendants' own claims of ownership over the *Catfish* story that they used a specific song.

The judge's hypothetical scenario thus motivates both lawyers to insist on a partially overlapping version of realness. Both parties' claims about legal originality depend on actual use of the song, but in contrasting ways with respect to the film's realness as a function of its authenticity. Authorship and ownership both turn on the interpretation. This reliance on the

realness claim to construct the legal frame narrows and sharpens in Example 2, as the participants focused on what exactly the filmmakers "edited" in order to incorporate the song.

For more than a page of transcript, the plaintiffs' attorney tries to understand what the judge means by asking him to agree that "what they did with the song was not edited" (TSJ 13.22–23), and the judge draws a distinction between "what happened as these individuals were trying to figure out" the recording and the recording "get[ting] edited as well" (TSJ 14.18–20). The lawyer insists that the filmmakers both selected portions of the song and also shot, cut, and arranged scenes of the film.

The speakers' misalignment is evident in a couple of ways. For example, at one point the judge asked, "Was it edited?" Her pitch fell sharply on the first word and rose sharply on the second. This fall–rise prosody may indicate uncertainty (compare Ladd 1981 on hedging with tag questions; Ward and Hirschberg 1985 on conveying uncertainty through fall–rise intonation in declarative sentences). The pitch rose sharply again on the final syllable of "edited," which accentuated an interrogative convention common among speakers of standard English (see Cruttenden 1986).

Furthermore, there is reason to suspect that this exaggerated prosody is both a question and a challenge. The institutional format already presupposes that lawyers have information and judges seek it. This presupposition about "epistemic status" may outweigh any "epistemic stance" conveyed by prosody or the interrogative syntax (see Heritage 2012:3). The judge may not merely be seeking information from the plaintiffs' lawyer about what the defendants did, but challenging the plaintiffs' lawyer's access to that evidence.

In addition, the subsequent talk until the start of Example 2 included overlap between the judge's and lawyer's turns at talk. The transcript does not show the overlap (it is recorded in my

notes), but it does show three places where a speaker's turn stops mid-phrase with a dash mark. Two cases may have been trailing off by the speaker, but one of those seems more likely to have been because of interruption by the interlocutor. The third case seems clearly to be an interruption. The larger point is that, although overlap does not necessarily mean interruption or a breakdown in communication, it is rare compared to the volume of talk in which speakers take adjacent turns (Jefferson 1986; Schegloff 2000). As Schegloff emphasizes, overlap is not a conversational pathology, but it does instigate attempts to resolve it. In this instance, the overlap and prosody pragmatics reinforce the analysis that these interlocutors engaged in semantic confusion and, behind it, disagreement about the word "edit."

At the start of the Example 2 excerpt, misalignment continues as to the distinction between editing the song and editing the film. What the judge is trying to determine is whether the filmmakers listened to the whole or much of the song, but then showed only bits of that activity in the film, or whether instead the filmmakers listened only to short segments of the song and showed that entire activity in the film. That framework is not transparently evident in Example 2 or what precedes it in the transcript. But close examination of those pages confirms that interpretation of the judge's objective, as does an exchange between the judge and the defendants' lawyer several minutes after Example 2. She asks him about "the editing of the song, itself" (TSJ 24.11–12). He, like his counterpart in Example 2, expresses confusion about her meaning. She clarifies that she means "editing to the film with respect to that portion that played the song" (TSJ 24.18–19). Finally, it becomes clear that by "editing of the song" she means that "in reality they listened to it longer, and so they cut it down for the film" (TSJ 24.25–25.01).

Example 2

15.07 JUD: All right. So, there weren't any

15.08   edits in that regard. So, they didn't have a longer portion

15.09   of the song in reality, but then for the movie, they edited

15.10   it to a shorter amount.

15.11 ATT: I guess we're having a disconnect in

15.12   the meaning of "edit." The song --

15.13 JUD: In other words, it's a reality movie.

15.14   So, they're just filming these guys talking to each other.

15.15   And did they edit so that - -

15.16   Was there every a point in time in reality

15.17   where the song was played either in toto or for a longer

15.18   period of time than what is shown in the movie?

15.19 ATT: Yes.

15.20 JUD: And then they edited it down for the

15.21   movie.

15.22 ATT: That's correct.

15.23 JUD: So, they didn't manipulate the song.

15.24 ATT: That's correct.

15.25 JUD: It wasn't just simply a filming of

16.01   what actually - -

16.02 ATT: Right. It's not that they turned the

16.03   camera on and they just let it run and the audience gets to

16.04   see the entire portion of it. That's correct.

Likewise, during the earlier dialogue with the plaintiffs' lawyer in Example 2, Lines

15.07–15.10, the judge suggests that editing would mean that the filmmakers started with a lot of

the song "in reality" and then shortened it for the film. That definition is compatible with the

lawyer's position in Example 1, which was that the filmmakers attempted to do something

creative with the song for purposes of the film. But the judge negates that possibility flatly

("weren't" and "didn't"), without even converting it to the interrogative form that institutional

convention mandates.

She makes the argument with two rhetorical devices, starting with "All right," which

signals preparation to close a stretch of conversation (Jefferson 1984; Schegloff 2000).[140]

Indeed, this "All right" (or "alright") interrupts the lawyer mid-sentence when he clearly meant

to keep speaking because he had just said "as well as." The judge has obtained the information

she sought in order to close this argumentative stretch.

Accordingly, she introduces her next two sentences with the conclusive conjunction,

"So." The first sentence rejects the existence of edits, using the "to be" verb that all participants

had been using to signal evidentiary statements, but placing it in the past tense ("weren't"),

which makes it factually descriptive of the filmmakers' actions rather than legally interpretive of

them. The second sentence confirms that she is talking about what "they" did or, rather, "didn't"

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[140] It may also serve a more refined function in some institutional settings. In an abstract for a conference

presentation, Soudi (2009) argues that doctors use "alright" to take charge of patient interactions by acknowledging

what patients have said but preempting further patient contribution because the doctor is going to disagree. Judge

Gee may have been doing something similar, especially because she interrupts the lawyer and because the remainder

of her turn states that there were no edits "in that regard," meaning in regard to the portion of his preceding turn that

she allowed him to complete (and not the portion she preempted).

do. They didn't edit the length of the song to alter what they started with "in reality" to what they used "for the movie." As she said "longer," the judge rolled her hand in front of her like a wave that progressed horizontally. As she said "shorter," the judge swept her hand briefly with one swipe. The rolling motion physically enacted the unfolding nature of "in reality," while the swipe embodied the cut of an edit. With these words and movement, the judge rejected the possibility that the filmmakers diverged from realness by manipulating the song for purposes of the film.

In Lines 15.11–15.12, the lawyer does not directly contradict the judge's conclusion, but instead returns to the ambiguity of "edit" to signal non-affiliation with what she said. He does so by moving away from the past tense that she used to describe the narrative time of what the filmmakers did. He adopts the present tense of the narrative time of legal evidence. He uses pronominal deictics and epistemic markers of the kind seen in Example 1. But he downgrades their certainty, which mitigates the directness of any confrontation with the judge. For example, "I guess" is not as strong as "I know" would be. Similarly, "disconnect" is a euphemism for disagreement.

In Lines 15.13–15.18, the judge continues to try to close this segment of argumentation. She interrupts the lawyer to rephrase ("in other words") her conclusion, which is a present-tense declarative that "it's a reality movie." With another use of the concluding conjunction, "So," she voices the defendants' argument that realness means "they're just filming these guys talking to each other." Notably, in this instance she transfers the time of the filmmakers' actions from the past tense to the present progressive ("are filming"). The effect is to place the legal actors in the same narrative flow as the filmmakers. The result is to conflate the time of the filmmakers'

actions with the time of evidence interpretation, validating the claim that the filmmakers indeed simply recorded unfolding events.

The judge then clarifies her question on that basis. She returns to the past tense with "did they edit." She then self-corrects from this agentive, active form of what the filmmakers did to the passive form of what happened to the song ("was played"). In Example 1, the lawyer had used the difference between passive and active to establish a disjuncture between the plot events and filmmakers' actions.

Here, in Example 2, the judge's shift does something similar but to a different end. The disjuncture is set up by the phrase, "in reality" and the shift back to the present-tense evidential, "is shown." A disjuncture would exist if a "point in time" exists where the plot events involved a complete or lengthy playback of the song, because the filmmakers' action resulted in a film with only shorter pieces of the song. But, while the plaintiffs' lawyer used this disjuncture to argue that the filmmakers attempted a creative manipulation of their song, the judge uses it to argue that the filmmakers would have been unfaithful to their own claim of realness.

This distinction becomes evident in the subsequent turns. In Line 15.19, the lawyer at first agrees with the statement of disjuncture contained in the judge's question. In lines 15.20–15.21, the judge returns to the active form to confirm that what happened to the song was something the filmmakers did—namely, they "edited" it. The disjuncture occurred by their act. In Line 15.22, the lawyer continues to agree.

In Line 15.23, the divergence between the judge's and lawyer's positions begins to emerge, even though the lawyer continues to express agreement with the judge's propositions. The judge's proposal—restated with another "So" introduction—consists of both "they didn't manipulate the song" (active form) and "it wasn't just simply a filming of what actually

[happened]" (passive form). Together, these assertions require both straightforward appropriation of the song and some kind of premeditation. Although the judge's use of negatives ("didn't" and "weren't") can be confusing, these requirements thread the same needle as what she suggested in Example 1. If the filmmakers incorporated a song that came their way, they would not have infringed. If they planned to obtain a song and incorporate it, they would have.

What really matters to the judge, therefore, is the second requirement. Editing down the song is not problematic if it was not preconceived. The judge has already covered this ground in the preceding lines. Even though she seems to negate the claim that the filmmakers' simply filmed events, which she had stated affirmatively in Line 15.14, she has not contradicted herself. The earlier description was voiced from the defendants' perspective. The judge was proposing an account that would challenge the plaintiffs' attorney to prove otherwise. The later statement summarizes events from the plaintiffs' perspective. The judge was inviting the plaintiffs' attorney to confirm the judge's understanding of the plaintiffs' position.

The first requirement, some more drastic kind of manipulation of the song itself, is a red herring, a fact effectively stipulated not to be true. If, by manipulation, the judge means editing down, then she has just stated it occurred and received confirmation. To immediately negate it makes no sense. If she means some more drastic manipulation, no one has yet suggested there was any.

But the plaintiffs' attorney focuses on that first requirement of manipulation. For him, not manipulating the song is evidence of straightforward appropriation that is derivative. The judge's grammatical negation of manipulating the song becomes a legal affirmation of infringement.

He does not even let the judge finish stating the second requirement before interrupting her. In Lines 16.02–16.04, he elaborates the second requirement to agree that the filmmakers did not turn the camera on and show the whole song. The extent to which he coopts the judge's turn is evident in his repetition of language from Example 1. In Example 1, Lines 10.21–10.22, the attorney had said, "So it's not, they just turned the camera on, and that's what happened." In Example 2, the judge has been about to complete "what actually" with a word, very possibly "happened" because the two of them have been using that phrase frequently. The attorney then repeats his own phrase, "It's not that they turned the camera on." He thus performs a blended kind of format tying in which he takes over the judge's voice, converting her passive construction ("it wasn't") into his active one ("they turned") to confirm the disjuncture between plot events and the filmmakers' actions.

Furthermore, for the plaintiffs, it would not matter if the filmmakers had shown the whole song in the film. If anything, it would cement their liability. The plaintiffs consistently played up the amount of the song that appears in the film, while the defendants minimized it. Showing more of the song would potentially counteract infringement only if the film were a documentary, a possibility the plaintiffs' lawyer consistently rejected. In that case, conceivably, letting the camera run so the audience can see the whole song might not be derivative. But the plaintiffs' attorney rejected that possibility because he rejected the documentary claim. In a gesture that may confirm that possibility's remoteness, he stretched his left arm off to the side, palm opened upward, as he spoke Line 16.02, and held it there until after he finished the sentence.

Finally, the participants consider the matter closed because after Line 16.04, the lawyer takes a one-second pause within his turn before changing the agenda to a different topic (use of the song in promotional materials). The reporter notes this shift with a paragraph break. This

closure leaves two different interpretations on the table, masked by the tokens of agreement in the attorneys' series of responses.

Similarly to Example 1, the question of editing generates a rubric of three legal lenses, each of which depends on a presupposition about the realness claim. Together, the participants constructed not only various analyses of the case, but understandings of the originality criterion, by articulating a vision about the film's claims to authenticity. If you believe the film is real—meaning, again, that the narrative times of the depicted events and the filmmakers' actions coincide—then editing down what happened is more likely transformative because doing so simply clarifies and highlight's Nev's real-life drama. That is the defendants' position.

If, however, you believe the film is not real because of a disjunction between those two narrative times, then editing is derivative because it merely transfers bits of the song to another creative format. That is the plaintiffs' position.

The third alternative is to cast the filmmakers' actions as more manipulative than they claim but nevertheless not planned. As the judge put it one of her questions, "what they did with the song was not edited or discussed beforehand" (TSJ 13.22–13.23), where the aspectual adverb, "beforehand," specifies what otherwise would be a suspect temporal disjunction between depicted events and filmmaking activity. The implication is that only that kind of disjunction would be a creative attempt to excerpt the song and potentially derivative, while mere after-the-fact editing of truly lived events may be transformative. In each version, the "point in time" when editing may have occurred becomes the locus of potential convergence or divergence between chronological time and unified time caused by editing, depending on how the different layers of narrative time align.

In addition, through these articulations of authenticity, the participants constructed authorship. The defendants minimize the creative component of editing to efface their romantic authorship and promote a vision of the filmmakers as collagists of life. The plaintiffs maximize the creative component of editing to assert the filmmakers' failure of romantic authorship. The judge adheres to her strict standard of romantic authorship by positing an active degree of creative editing on the part of the filmmakers. But the same strictness suggests that the filmmakers may not have been so romantically authorial as to preconceive a fiction based on "All Downhill from Here." Whether paradoxically or extremely logically, if their actions were true to their self-image as remixers, then they may fall within the safe harbor of transformation provided by the modern regime.

Example 3 brings the reliance on authenticity even further to the conversational surface as participants focused on the issue lurking within all of the above alternatives. The defendants threaded *Catfish*'s claimed realness of plot and style through its purported message about new media in order to fit the film within the social commentary safe harbor provided by the transformative fair use test. The plaintiffs alleged that the film was scripted for entertainment purposes in order to foreclose that option. The judge asked questions that steered between them. The Example 3 excerpt picks up after the plaintiffs' attorney has stated that the transformative use leeway for social commentary applies to "teaching use" or "historical matter."

Example 3

17.13   JUD: How about the telling of a story?

17.14   ATT: The telling of a story has not been

17.15   recognized under Section 107 as a use that fits under the

17.16   transformative use. It has to give something where, if it

17.17   was a story of how JFK got shot, then that's a story, because

17.18   it gives - - it's something that's going to be given to the

17.19   the public so they can learn about something.

17.20 JUD: Well, I don't mean a fictional story,

17.21   but I'm talking about - - here defendants are saying that this

17.22   is a story in the sense that it talks about people who, I

17.23   suppose, believe too easily what they see or hear on the

17.24   Internet. And then the tale, I guess, unfolds and the

17.25   surprising thing about what unfolds is that all that they've

18.01   been told is false.

18.02 ATT: The problem with that story is it is a

18.03   fictional story, because there is evidence in the record that

18.04   the person who was interested in Angela, thinking it was

18.05   Megan, actually had a girlfriend named Katie Bergstrom during

18.06   this entire time.

. . .

18.17   So, it's not a story that this guy was

18.18   completely duped as to what was happening. He - - it's almost

18.19   like he wanted to act like he was duped even though he had

18.20   this relationship with another woman.

18.21   So, in that respect, it's not the telling of

18.22   a true story that would fit into these other scenarios that

18.23   are protected - -

In Line 17.13, the judge asks whether a "story" could fall within the safe harbor. In Lines 17.14–17.19, the attorney responds that "the telling of a story" "has not been recognized"—implying, by courts—as a transformative use within the statute. The story must "give"—repeated several times—something additional "to the public." This response occurs entirely within the present tense that the participants have been using to talk about evidence; "has not been recognized" is in present tense, but its aspect is perfect, indicating it originated in the past.

In addition, despite some false starts and tense shifts, the lawyer's second sentence exhibits the basic construct of subject, verb, direct object, and indirect object. That grammar encapsulates the modern framework of social authenticity through works of art, in which the author expresses something to the audience. Under that framework, to be transformative, and therefore original and truly authentic, a story that borrows material from elsewhere must include something that allows audience members to have a specific kind of experience in which they "learn about something." The lawyer offers the example of the Kennedy assassination, recalling the historicity criterion that is the ostensibly unique generic characteristic of documentary. In that case, a story could be transformative. Indeed, "that's a story," period, so that any story with relevance to this legal issue is conflated with a genre of potentially transformative use (echoing the plaintiffs' dismissal of *Catfish* in their papers as not even a film at all absent creative planning; see Section III.).

In Lines 17.20–18.01, the judge resists this appropriation of the story category for a narrow set of historically based works. She begins with a discourse marker, "Well," that signals disagreement (Clayman 2002). She then clarifies her epistemic stance ("I don't mean") to encompass a broader genre than "fictional story" within the applicable evidentiary framework.

She continues the personalized evidential with "I'm talking about," but switches abruptly to another deictic, "here"—noted with a dash by the court reporter—to describe objectively the defendants' argument. She reports the defendants' argument, so that in place of "I'm talking about," "the defendants are saying," in the present progressive voice of making the argument. That argument is that the story in question is an everyday, biographical or autobiographical narrative. It includes a message of gullibility about new media. In stating the message, which is no longer a relatively neutral description but includes a core aspect of the defendants' argument, the judge inserts an epistemic qualifier to distance herself personally from the claim she is reporting: "I suppose." She does something parallel with "I guess" in the following sentence as she describes how the story unfolds with the "surprising" deception, uttered with an audible emphasis on the plosive consonant, "p," in "surprising" that indexes Nev's shock upon seeing Angela. The judge thus reports the integration of plot and message that lies at the center of the defendants' claim to realness, but she also distances herself from making that claim directly.

In Lines 18.02–18.06 and 18.17–18.23, the attorney counters that *Catfish* is, in fact, a fictional story because of evidence that Nev portrayed himself inauthentically, deceiving the audience about his real-life girlfriend in order to depict his romance with Megan. (The ellipsis in the excerpt marks lines omitted because the attorney goes on a slight procedural tangent concerning the admission of evidence about the alleged girlfriend.) In Lines 18.02–18.06, he places the "problem"—the narrative trouble—precisely at the juncture of the time of plot events and the time of the filmmakers' actions. Attacking that juncture was his strategy in the previous excerpts as well. This problem compromises the story's realness, making it a fictional story in the present tense of evidence: "it is a fictional story."

Furthermore, that problem exists "because there is evidence" that Nev had a girlfriend the whole time. The story could not be real, in the sense of authentic, because he "actually" was with Katie Bergstrom. To specify the internal contradiction, the lawyer returns to the past tense of what happened. The person (Nev) who "was interested" in Angela, "thinking" in the past progressive that she was Megan, simultaneously "had" a girlfriend. The preposition, "during," serves an aspectual function by creating the simultaneity. It links "had" to "this entire time."

In Lines 18.17–18.23, the lawyer uses the concluding conjunction, "So," twice to drive home the point about film genre. Whatever the fair use potential of a contemporary biography, "it's not" the story about being "duped" it claims to be. *Catfish* is deceptive about the supposed deception. Similarly to his previous usage, the lawyer starts with "was duped" in the passive construction of a plot that "was happening" in the past progressive. He then shifts to "he wanted" in the active construction of the filmmakers' actions.

With a self-correction of "it's almost" that mitigates the case-busting accusation he is about to level, the lawyer contends that Nev "wanted to act like he was duped." In other words, he wore too many masks at once to be authentic. As the lawyer said, "he wanted," he held out his left arm and opened his palm upward. This gesture most likely is a "beat gesture" (McNeill 1992:15), which "reveals the speaker's conception of the narrative discourse as a whole." A beat gesture "indexes the word it accompanies as being significant…for its discourse-pragmatic content." Nev wanting to pretend is the crux of the plaintiffs' case. It makes Nev a would-be romantic author and destroys the realness on which the defendants' rely. Thus, "in that respect"—the one that matters—"it's not the telling of a true story." It does not "fit into" the categorical protections of fair or transformative use.

To reiterate a point made earlier, the categorical problem of derivative versus transformative is not simply one of genre. The lawyer would have been hard-pressed to insist that a story about the Kennedy assassination be composed strictly of real-time footage to qualify as a documentary. Fictionality does not destroy fair use. Rather, the problem with the allegedly fictional quality of *Catfish* follows from the filmmakers' inauthenticity, producing un-realness. According to the expectations the filmmakers' themselves created, their actions and the depicted events do not coincide narratively. Therefore, the new media message rings hollow and cannot amount to social commentary.

The defendants' counsel reached the opposite conclusion several minutes later. Asked by the judge whether the existence of an alleged real-life girlfriend entitled the plaintiffs to the benefit of the doubt that the film was contrived "for dramatic effect" (TSJ 25.24–25.25), the lawyer's response was not to deny her existence but to deny her relevance:

> That has absolutely nothing to do with this movie, Your Honor. I mean, the - - what you
>
> see is what actually happened. There was a nine-month interchange of Facebook
>
> messages with Yaniv Schulman and Angela. [TSJ 26.01–05]

In other words, the film is real on its own terms. By that criterion, in an absolute sense, *Catfish* is real because it is non-fiction and authentically portrays "what actually happened," notably the social relationships at stake in the plot, style, and message. The events in the film include "some very intimate conversations which are all, you know, very true. They're all true. Nothing is scripted in the movie" (TSJ 26.16–17). The narrative unity of the depicted events and the filmmakers' actions make the film real. Therefore, the film is protected as social commentary:

> in the sense that there has been a lot of commentary and criticism with respect to how
>
> digital communications and social media have effects on human relationships, and this

nonfiction film falls right with that preamble [of the relevant statutory clause]. [TSJ 25.16–25.20]

As was true in Examples 1 and 2, the judge takes a third route. Her questions to the plaintiffs' lawyer inquired about a cautionary tale that may be "not fictional" but also not as real as the defendants maintained. Furthermore, her questions to the defendants' lawyer spoke of degree rather than absoluteness, and possible daylight between the film's plot and style, on the one hand, and its message, on the other hand. For example, she asked about "evidence that this is more of a fictionalized story than one might think from the advertising" (TSJ 25.11–25.13).

Also paralleling the previous examples, the participants constructed a meaning of authorship as they debated authenticity. The defendants' attorney insisted on Nev's authority to remix his life as art, maintaining authenticity of realness through the film without contradiction to what was not on film. The plaintiffs' attorney insisted on that contradiction as an index of failed romantic authorship. Nev and his filmmaking partners were authors of scripted fiction who must pay the consequence of derivative use of the song. The judge again found a third way. The filmmakers were romantic authors, but might enjoy the safe harbor of transformative use that effectively made them remixers.

Finally, as in Example 1, the participants also constructed a meaning of ownership during this talk. The defendants' attorney finds an exception to absolute copyright ownership in the statutory preamble, which lists the criticism and comment functions that he cites. He does not even reach the criteria of transformative use, although he has to elsewhere because the legal framework requires it. But his underlying stance is that the legal conclusion is predicated on the realness of the film, and the realness of the film establishes its makers' proprietary claim as a prior one rather than a defensive exception. There was no creativity in the conventional sense

that would require an investigation of the fair use criteria. The filmmakers have their own claim to own what happened.

The plaintiffs' lawyer relies extensively on the limitations of the fair use clause to emphasize the lack of any applicable exception ("scenarios that are protected") to the absolute proprietary right. He, too, predicates his argument on the realness (or, rather, unrealness) of the film as the basis for its derivativeness. He reaches the ownership conclusion of unoriginality through his contest with the judge over generic characteristics that speak to realness. The potential, secondary right of reappropriation depends on the underlying authenticity.

True to form, the judge's alternative hews to the doctrinal logic. An authentic authorial claim may justify reappropriation and create a new ownership interest. Ownership turns on whether the filmmakers adhered convincingly to their own claim to realness.

To summarize, close analysis of the language participants actually used to debate this summary judgment motion reveals that, beyond applying a legal framework to interpret the disputed facts, they collaborated and competed to construct the legal framework that would apply in the first place. The saturation of *Catfish* with new media characteristics complicated expectations about social authenticity conveyed through art, generating a controversy around its "realness" discussed superficially as the difference between a documentary and a scripted film but also encompassing the deeper question of authenticity. The cinematic format lent itself especially well to the pursuit of authenticity through narrative. Given *Catfish*'s plot, style, and message, the question of realness depended on whether or not one viewed the narrative time of the depicted events and the narrative time of the filmmakers' actions as coinciding or not, and whether they together speak to lived experience in the contemporary world.

The controversy disrupted the smooth translation of authenticity into the legal criterion of originality under copyright law because the film's claim to authenticity diverges from the traditional romantic ideal that has long underpinned dominant cultural and legal ideologies. The legal professionals therefore reproduced the controversy with great visibility in their arguments and questions as they sought to define the appropriate criterion. Their talk about what "happened" reproduced the debate over the alignment of narrative times, and added the narrative time of evidentiary sufficiency that framed the debate inside the courtroom. Their talk about whether or not the filmmakers "edited" the work presupposed various interpretations of the film's realness as prerequisites for legal evaluation. And their talk about the applicability of the social commentary safe harbor depended upon interpreting the fictional or non-fictional nature of the film, which, in turn, depended upon interpreting its authenticity. The consistent pattern across the data and participants is reliance upon social interpretation to even formulate a legal one.

Having thus channeled authenticity from a cultural to a legal setting, the legal actors used it to construct competing accounts of what authorship and ownership mean. Each participant braided the layers of narrative together in a different way, resulting in respective visions of remix authorship, romantic authorship, and romantic authorship with exceptions. Those definitions corresponded to competing ideas about what constitutes authorship: a prior claim through remix-like activities, a prior claim through romantic authorship, or a prior claim through romantic authorship from which some remix activity might be excepted.

My analysis of this case demonstrates my argument that authorship and ownership are mutually defined through constant negotiation of the underlying value of authenticity. Rather than identifying authorship in culture and ascribing ownership at law, which is the logic of both

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existing doctrine and critiques of it, authorship and ownership emerge together, mediated by authenticity. The participants worked in reverse of the conventional understanding. They worked through the same question of authenticity that underlies authorship for the broader public, constructing the legal lens of originality through which to filter authorship in the course of filtering it. This description goes further than most critiques of traditional copyright, which denaturalize romantic originality into remix or something similar, but retain, and even further reify, the notion of authorship as a pre-legal "found" object of culture.

IV. <u>Conclusion</u>.

In the data presented in this chapter, authorship and ownership were topics of cultural, then legal, debate. Linguistically, they were objects of discursively conscious metapragmatics. The most overt talk was about authenticity through its proxies of realness and originality. Talk was less overt about authorship and ownership as such because they are taken for granted within the modern habitus. At the same time, however, the emergence of a competing remix habitus marks changing, though not entirely changed, expectations, bringing authorship and ownership closer to the discursive surface than they might otherwise be.

Specifically, the *Catfish* case brings to the surface the competition that occurs within the romantic habitus as people stake claims to social position (authoring) and seek ratification of them (owning). In addition, because the competition now includes new media factors that push its boundaries, that competition spills over to become one between the modern habitus and remix habitus. Thus, the defendants' lawyers frame their clients' actions according to remix ideology, which would require legal reform to fully vindicate. The case is not just about sampling a

musical work because it rests on a more fundamental inquiry into non-romantic beliefs and practices that resulted in the song's incorporation. By contrast, for the plaintiffs' lawyers, it is a simple sampling case, and the filmmakers' actions amount to piracy that should be suppressed according to romantic ideology. For her part, the judge stabilizes the modern habitus, resolving a contradiction within it. Following the safe harbor—or safety valve—provided by the law, she articulates a romantic standard but allows that the filmmakers' actions might fit within an existing remix exception to it.

In fact, on March 19, 2013, Judge Gee issued an order granting summary judgment to the defendants on all of the copyright infringement claims at issue in the motion. Their legal victory comes at a certain cultural price, or catch-22, that highlights the non-transparency of translation between the two spheres. At first blush, the translation simply reflects the catch-22. As a critic quoted earlier observed, the filmmakers self-inflicted a paradox of authenticity whereby their new media sophistication afforded the film's impact, which depended on their new media naïveté. The judge captured this paradox as it translates into legal originality. She wrote that alternative ways to incorporate "All Downhill from Here" into *Catfish*, such as a reenactment with different music or an interview with Nev describing the events would:

> artificially impinge on the creative process. They would force the filmmakers to sacrifice the film's verisimilitude, its drama, or both. The descriptive term "reality thriller" would no longer apply. [OSJ 23]

At the same time, however, the legal paradox does not correlate precisely to the social paradox because the latter lies farther down the road of disruption to the romantic framework, while the law lags, as it often does. The social controversy unfolded amid frankly unsettled expectations triggered by new media. The legal controversy unfolded still in terms of the

traditional originality criterion. The attribution of sufficient creativity to achieve that kind of de facto originality undermines the film's basis for authenticity in unadulterated realness. For this particular film, in order to produce what the judge rephrased as the "thrilling depiction of reality" (OSJ 20), the "creative process" sufficient to attain the transformative use safe harbor requires "verisimilitude," or the abnegation of the romantic qualities that creativity traditionally implies for real artistry. Hence the defendants' lawyer walking a fine line between insisting on the film's non-romantic authenticity and its legal originality by speaking about both an "unchosen diegetic element" and "they chose [but only in a predestined sense]."

This catch-22 exposes the instability of the authorship habitus and also leads to three concluding observations. First, it exposes to analysis the links across the cascading dialectics in my model of authorship, from indexicality to practice to habitus. The participants used indexical language to co-construct the gap that results in the catch-22. They collaboratively produced a legal narrative interwoven with narratives of the depicted events and filmmakers' actions in order to produce competing accounts of authenticity that became competing accounts of originality. Indexical variation reflected and enacted the imprecisely overlapping practices and dispositions participants brought to bear. For example, the invocation of "verisimilitude" in the quotation above recalls that the judge's framing of why the film's realness may matter never overlapped perfectly with the defendants'. The judge's order notes carefully that:

> Whether certain members of the general public doubt that the events depicted in the film are real is irrelevant. To create a genuine issue of material fact, Plaintiff must point to evidence that controverts Defendant's sworn statements that the scene in question depicts real-life events. Plaintiff does not do so. [OSJ 20]

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In other words, the judge relied not exactly on the film as real, which was an article of faith for the defendants' case, but as if it were real. She neutralized, without negating, the significance of the film's realness as a cultural object that challenges the truth-values of artistic communication, in order to squeeze it through the traditional translational framework of the originality criterion.

Second, the catch-22 points to the double-edges that plague a habitus of authorship in transition, and which I discussed in detail in Chapter 8. The filmmakers walked a line concerning whether or not they established the appropriate artistic boundaries to be authentic, whether or not they oversold their authenticity, and whether or not they tripped a legal wire with respect to licensed use. The double-edge will become prominent in the following chapters as a central concern of new media storytellers.

Finally, the catch-22 illustrates the intertextual, rather than transparent, way in which the cultural controversy transposed to the legal setting through a combination of participation framework, genre, and narrative. The roughness of intertextuality creates parallelism without identity. In particular, each of those three aspects was about authorship and was authorship. For example, format tying through the participation framework was a key way to propel the arguments forward. It was also a key way to establish intersubjectivity between the interlocutors. Generic intertextuality brought law to bear upon the artistic issue. As noted in the description of Example 1, it also invoked other, legal dialogues about persuasiveness of evidence and other rules and norms. The participants constructed narratives about what happened, what the filmmakers did, and what the evidence proved. In so doing, they also authored narratives about lawyering and judging. This additional layer turned on authenticity, and included the pursuit of ratification into ownership. The study's penultimate chapter, Chapter 12, will revisit

the *Catfish* data to explore the courtroom interaction itself as the practice of a general habitus of authorship.

CHAPTER 10: Intimate Intrafaces

I. <u>Transmedia: Terminology as Capital</u>.

  A. <u>"Transmedia"</u>.

      One great challenge of the altering field of Hollywood production is how to describe new

modes and values and contrast them with traditional ones. More than a matter of referential

clarity, both what people say about storytelling and how they say it indexes their (positional) and

their products' (reflective of position-taking) capital worth, or the prestige and profit that others

will recognize as legitimate. With the field under potentially transformative pressure, efforts to

control the indexes often become discursively conscious. This aspect of struggle in the space of

possibles between the modern and remix habituses of authorship constitutes intertextual

maneuvering between generic forms of stories and storytelling. Those maneuvers are framed in

terms of authenticity.

      A prime example is the search for effective terminology. The most prominent term in

question is "transmedia." Transmedia is a holistic approach to storytelling that envisions, ex

ante, multiple plots delivered through multiple media across multiple platforms or interfaces.

Any particular combination of plot, medium, and platform that results in an actualized story adds

value to the storyworld with which it integrates, while the storyworld exists independently of the

actualization of any particular storyline. Transmedia storytellers and their audiences embrace

fragmentation and slivered revelations as enhancing an immersive, participatory experience the

arc and boundaries of which are not fully dictated in advance. These characteristics make

transmedia more or less coextensive with the emergent storytelling practices described so far in this study. At the same time, the qualification of "more or less" signals the term's unsettled definition and undetermined place in the field of production, even among storytellers inclined to embrace its ethos.

The term was coined in 1991 by Marsha Kinder, a critical studies and comparative literature professor at USC (Kinder 1991). She used it as part of a compound noun, "transmedia intertextuality" (1), that expressly draws upon Bakhtin's dialogism for its latter component. She used the term to talk about phenomena such as the Teenage Mutant Ninja Turtle (Mirage Studios) franchise of comic books, television shows, movies, video games, and so forth. In the "Turtle network" (3) of "ultimate sliding signifiers who transgress every important border," fans are encouraged to define themselves as "voracious consumers" who devour, incorporate, and transform the media just as the turtles already do with their Renaissance painter names and ninja skills. By sliding signifiers, Kinder means deictics (she specifies I, you, here, and there, and her term recalls Jakobson's term, shifters), and thereby extreme indexical flexibility running through media content, distribution, and consumption. From the start, therefore, the notion of transmedia described a new kind of media practice based on indexicality, albeit in the more symbolist framework of Kinder's own disciplinary background.

Transmedia gained traction when Henry Jenkins, then at MIT, adopted it to describe the emerging approach to storytelling that new media facilitates. People talking about new media storytelling ubiquitously cite his 2007 definition. Subsequently expanded, its core remains that:

> Transmedia storytelling represents a process where integral elements of a fiction get
> dispersed systematically across multiple delivery channels for the purpose of creating a

unified and coordinated entertainment experience. Ideally, each medium makes it own

unique contribution to the unfolding of the story.

For example (not Jenkins'), a book might tell the story of a princess and a rival queen. A graphic

novel might follow the adventures of the princess's godmother, perhaps during a preceding era.

A series of short films might describe wars elsewhere in the kingdom. Fans might play roles in a

video game set within its borders, or tweet with the princess. In Chapter 8, among other

examples, I mentioned *Star Wars* as a transmedia franchise members of this community often

cite as one of the first (predating the term itself), and the *Why So Serious?* marketing campaign

for Nolan's *Batman* films as another they often bring up as an illustration of how a conventional

Hollywood product was turned into a transmedia world (and taken across the boundary between

content and advertising).[141]

Transmedia began as an outsider term with respect to Hollywood. In earlier chapters, I

gave examples of storytellers' talk about having prepared for transmedia through fringe or

subaltern pastimes of the 1970s, 80s, and 90s. I also gave examples of transmedia's adoption by

groups seeking to gain traction in Hollywood, such as Transmedia L.A., boutique marketing and

production companies, and organizers of conferences such as Transmedia, Hollywood, which

Jenkins (now at the University of Southern California (USC)) co-hosts with Denise Mann, a

professor at the University of California, Los Angeles who also teaches a transmedia course for

the producers program masters degree track of its Theater, Film and Television School. The

involvement of these academic institutions points to the foothold that transmedia has gained in

recent years (Transmedia, Hollywood held its fourth annual conference in spring 2013).

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[141] Transmedia is no longer limited to fictional storytelling, but applied also to documentary filmmaking and

journalism (e.g., Costa 2012; Tryon 2011).

Another step toward establishment recognition occurred in 2010. The Producers Guild of America (PGA), one of the Hollywood talent unions, recognized the generic novelty of transmedia storytelling by creating a specific credit for transmedia producer. The PGA definition requires that:

> A Transmedia Narrative project or franchise must consist of three (or more) narrative storylines existing within the same fictional universe on any of the following platforms: Film, Television, Short Film, Broadband, Publishing, Comics, Animation, Mobile, Special Venues, DVD/Blu-ray/CD-ROM, Narrative Commercial and Marketing rollouts, and other technologies that may or may not currently exist. These narrative extensions are NOT the same as repurposing material from one platform to be cut or repurposed to different platforms.[142]

The PGA definition merges the traditional platform silos (what Jenkins called delivery channels) with Jenkins' notion of storytelling across them. The PGA definition is slightly more constrained, speaking of "narrative storylines existing within the same fictional universe" rather than more proactively "creating a unified and coordinated entertainment experience." But it does emphasize that transmedia is not mere cross-platform adaptation—often called "multimedia"—which is a key distinction of transmedia for study participants as well.

Another distinction is that transmedia is not the same as new media. According to my definition of new media as a social practice that incorporates electronic technologies, there exists substantial overlap between the two. Transmedia is largely a subset practice of new media, but transmedia conceivably can exist without electronic technology. Similarly, in the common connotation of new media as consisting solely of its technological element, transmedia adds a

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[142] http://www.producersguild.org/?page=coc_nm, accessed September 10, 2013.

practical component that extends beyond merely using multiple media and platforms to create and distribute content.

Thus, new media afford two indispensable characteristics of transmedia: nonlinearity and audience participation. Both characteristics distinguish—though not always neatly—transmedia generically from Hollywood products made in accordance with the modern authorship regime. Combining both characteristics, the flyer for a spring 2013 USC workshop called "The Quick-Start Guide to Transmedia Storytelling" exclaimed that attendees would learn how to "break through the static and linear constraints of traditional entertainment and develop stories that burst with interactivity!"[143]

Nonlinearity is implicit in the concept of the infinite storyworld. True to the collage-like quality of new media, narrative content can unfold discontinuously with respect to its physicality and temporality; a piece in one form at one time, a few more pieces from a different part of the storyworld simultaneously in different forms at a later time, and so on. After a Transmedia L.A. meetup one evening, I walked toward the parking lot with another attendee. At some point, the subject of Pottermore came up.   Pottermore was the long-anticipated website launched in 2011 by J.K. Rowling, the author of the extremely successful *Harry Potter* novels (the website is www.pottermore.com). After adaptation to equally successful films by the Warner Brothers studio, the *Harry Potter* franchise had become a transmedia one, with a theme park and other platforms. Pottermore had been launched on a beta, or test-run, basis, and my conversational companion was a beta tester. No one knew what to expect from Pottermore. She commented disapprovingly that she found the site "very linear," probably because Rowling—famously

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[143] http://cinema.usc.edu/events/event.cfm?id=13322, accessed March 1, 2013.

protective of her copyright—was trying so hard to control it, that is, control the extent of participation and remix.

For its part, participation is less inherent to the transmedia structure, but is inseparable from its ethos. Technically, a transmedia production could be made entirely in the traditional Hollywood way. The PGA definition suggests as much, requiring only that each silo include non-duplicative content. But transmedia proponents insist that true transmedia has the audience "getting to steer the boat" to some degree, even if only interpretively, as one of transmedia's most commercially and prestigiously successful entrepreneurs said at Wyrdcon. He was talking about audience involvement in the ABC television series, *LOST*, which in most respects was a conventional television program but expanded to include transmedia aspects both during the regular programming season and bridging seasons.

In a similar example, at Storyworld, a transmedia producer who has had success in conventional television commented on his most well-known show, which incorporated transmedia branches. In a moderated interview, he praised the network and studio for having "a real mandate to figure out how to get into the digital space." There existed a "wild wild West mentality that we had to really throw stuff at the wall and see what would stick. It was a "really collaborative" production atmosphere. The moderator added, "and collaborative with the audience." The interviewee agreed, asserting that it was the first time a show "opened up the kimono and let the fans in to see behind the scenes." He cautioned, however, that audience involvement depends on "the appetite of the people spending the money and what they want," meaning advertisers or other sources of finance. He continued, "I don't know that it's heading in a more interactive direction for more traditional platforms like network television." Participation is desirable ethically but not given practically.

Both nonlinearity and participation unite in the "open matrix" structure of transmedia storyworlds, to use a phrase that the Wyrdcon panelist cited two paragraphs earlier employed to describe one of his own ventures. The moderator had asked about the difference between story and storyworld in transmedia, that is, what transmedia adds to the traditional form of the single medium narrative. The panelist provoked audience laughter by describing "players in my games" who resisted the path he had set out, disputed the appropriate path among themselves, and ended up going in multiple paths he had not anticipated. Because transmedia storytellers rarely have the time to specify every detail of the storyworld, he added, the key is to focus on characters and "generate out in a fractal way from the odyssey the character is taking."

A similar comment was made at Storyworld by a panelist who had been the showrunner (basically, the overall captain) of a successful network television program with transmedia aspects, including graphic novels and online content. He remarked that "years of making series TV has really taught me to be organic in my storytelling." The audience wants to believe that the writers have it all thought out ahead of time but doing so is impossible because "the world dishes out obstacles constantly." If you are a writer or creator, "you're like a heat seeking missile. You're just constantly trying to go where it leads you."

For transmedia believers, therefore, the embrace of new media technology, collage aesthetics, and participatory culture contrasts transmedia storytelling with business as usual. There is a generational element to the perceived shift. The Wyrdcon panelist opined, "We're starting to see the people who make these kinds of games come of age in Hollywood," gaining the authority and other means to normalize transmedia.

The transmedia ethos also fits the remix approach to authorship. The PGA definition is instructive. At first blush, it contrasts transmedia with mere "repurposing," a word otherwise

associated with remix. But the PGA is an establishment organization invested in protecting its members' traditional modes of claiming capital in complex balance with the other moving parts of the industrial structure. Like many other institutions, it has moved conservatively in acknowledging transmedia. By contrast, what most study participants seek is the flexibility of the open matrix, or remix across the traditional boundary between author and audience. They would agree that repurposing that constitutes adaptation from one form to another is not transmedia. They also would insist that any content be open in principle to reappropriation and repurposing in service of exploring the storyworld.

B. <u>Revolution or Rediscovery?</u>

This self-definition through opposition includes an ambiguity as to whether transmedia is a revolution in storytelling or a rediscovery of it. The continual stance of opposition to established modes of cultural production casts transmedia as revolutionary. As the Storyworld speaker who invoked phenomenology declared, "this is revolutionizing the world." At a Transmedia L.A. meetup, two members told me during casual conversation that people in Hollywood do not really understand the "phenomenal" opportunities that exist to produce "real" transmedia, rather than "silly little extras" such as small add-on games. The outlook extends to visions of the business model. At the same meetup, a producer of a romance genre transmedia franchise told me it was impossible to secure funding without "proof of concept," but even with it insiders in the industry just do not understand that she can earn profits for them because multiple revenues spread the higher risk associated with transmedia's novelty. At another meetup, the managers of the new production company quoted in Chapter 4 emphasized that they

were building transmedia into the screening, funding, and production process, in contrast with established (though rather recently upstart) companies such as Amazon.

Similarly, during a webinar (an online seminar, or conference call with a moderated panel and question-and-answer session) hosted by Transmedia L.A. in 2012, one of the founders of a company that developed storytelling management software said, "We're looking towards a future where storytelling is across any platform and Conductrr is there to help you with that storytelling." He added, "We're recognizing that the world is changing." Through cloud-based computing, Conductrr aims to help storytellers combine "narrative, gaming, and social media." The webinar moderator, who had founded Transmedia L.A. several years earlier, later averred that transformation is occurring not only through technology, but "changes in consumers as well. The consumers are changing how they choose to interact or not interact" with different technologies and platforms." In other words, new media practices are new practices.

Sometimes, the revolution is described in broader historical terms. At Storyworld, a speaker who works at Disney's theme park Imagineering division talked about an "evolution in narrative" going all the way back to the tribe campfire. In that primordial state, "narrative had a structure, form." Theater changed it by changing the relationship between author and audience with a dedicated troupe, larger audience, and multiple characters. Books changed it again with the inner monologue and exposition. Movies did so once again with the visual element, and television with its episodic rhythm and pace. Games brought more engagement, a "lean forward" mode and the rise of the "participant versus audience spectator." Today, transmedia creates "different relationships of boundless story" and a "different relationship of authors of story systems and audiences."

At the same time, however, that kind of genealogy also situates transmedia in a long tradition of storytelling. The same speaker grouped Walt Disney with the science fiction writers Ray Bradbury, Arthur C. Clarke, and Isaac Asimov as storytellers who "understood that story told across boundaries was even more powerful" than story told in one medium. As he showed a slide displaying the graphic, "Walt crossed boundaries," he described Disneyland as "arguably the first transmedia experience" because it "brought story into the real world." Although he happened to be a Disney employee, it was common among other study participants to mention Walt Disney as one of the modern pioneers of transmedia.

Others reach back even farther to cast transmedia as another iteration of an old practice. Chapter 3 cited a textbook that pointed to ancient Greek and West African storytelling practices. On the second day of Storyworld, a video game developer based in Montreal defined transmedia on a slide as "a storytelling world building technique, that results in a coordinated multi-platform brand. Each platform is a stand alone narrative endeavor connected to the universe." The word "crossmedia" was also on the slide, with a line striking it out. The definition and the rejection of crossmedia (similar to multimedia) are standard ones. The speaker then declared that "transmedia is not reinventing storytelling….It's a technique. Storytelling has not changed since the grandfathers around the campfire." New technology just allows contemporary storytellers to expand interpersonal connections in the experience.

Religious practices are another purported transmedia lineage. A speaker at a Transmedia L.A. meetup whose autobiographical statements I quoted in an earlier chapter also stated that "transmedia storytelling has been around since two hundred years before Christ. The church was transmedia storytelling." Similarly, in a collection of essays on "spreadable media" spearheaded by Jenkins, a scholar of transmedia described the Bible as transmedia (Johnson 2013).

The ambiguity between revolution and rediscovery is not necessarily an incompatibility. Echoing the interviewee who described mass media as having provided authentic experiences in his childhood but giving way to more participatory ones now, the scholar who called the Bible transmedia argues that:

> neither transmedia entertainment nor convergence point to the end of industrial models of cultural production in favor of some new social media; instead, the transmedia storytelling of convergence offers an opportunity to see how spreadable media extend, reorient, and reimagine existing historical trajectories in the industrial production and consumption of culture. [Johnson 2013]

What is new is "our recognition of it as such" in scholarship, journalism, and industrial discourse. A new attitude "can help articulate a longer history of production and consumption from socialized exchange of culture." This argument contains both aspects of the ambiguity. Transmedia opens a new perspective on what has been true of cultural production all along despite the accretions of the modern regime and its industrial framework. Transmedia is innovative because of its archaeological insights, which also means that it does not break completely with the modern regime.

This ambiguity echoes the one outlined in the media studies literature review in Chapter 3 and, like it, turns on authenticity. For its advocates, transmedia represents contemporary authenticity. At the pre-conference workshop I attended, a media psychologist and studio content producer commented on the significance of media consumption in personal identity formation, opining that people "identify with something in transmedia." A graduate student had remarked earlier that one reason a definition of transmedia had proved difficult to pin down was that "transmedia itself is at the heart of a nexus of trends" in contemporary culture. Another

media psychologist and marketing executive added later that humans are "tribal" and want to spark "emotion and connectivity," which desires transmedia helps to fulfill. Trends versus tribal instincts reproduces the ambiguity of transmedia as a revolution in storytelling, rediscovery of it, or sign of changing times.

C. <u>Anxiety about Authenticity</u>.

The ambiguity's significance is that it is symptomatic of an anxious struggle over authenticity as the source of capital in the field on which transmedia proponents wish to impose themselves. The temporal tension that drives authenticity is evident in how transmedia is framed. The revolutionary vision of transmedia enlists its novel qualities to pursue a horizonal goal, hoping to align the chronological and unified temporalities that drive authenticity. The burden on this vision is how to articulate what lies on the horizon.

The ancient campfire motif is more complicatedly illustrative of the rediscovery way of thinking about authenticity. It, too, harbors the temporal tension at the core of authenticity. It evokes primordial culture, which lends the cachet of timelessness (or, rather, unified time). Transmedia can channel that touchstone effectively by pursuing its attributes—"back to the future,"[144] as it were.[145] The risk is allowing transmedia's historically novel qualities to interfere rather than facilitate. A Storyworld panelist, who is otherwise a proponent of technological aides to storytelling, nonetheless averred that good storytelling "transcends just having technology."

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[144] The phrase is the title of a well-known film (Zemeckis 1985).

[145] Compare Foley's 2012 argument that oral traditions and the internet are kindred, while written text was an aberration in how people think and communicate.

For him, it "ultimately comes down to…you could sit all around a fire and he could tell that story and you would be riveted on the edge of your seat." After five to seven thousand years of human culture, "we still remember the power of the narrative that we as a people heard around the campfire" and "respond instinctively no matter who we are to the template" of hero, villain, and so forth. Yet that description of the desire for authenticity could apply to mass produced media as well, which is why the textbook author quoted in Chapter 3 preferred the analogy to ancient Greek and West African ritual enactments over campfire storytelling. In her assessment, those rituals are a better touchstone of participatory, interactive, and boundary-crossing narrative events. Like the revolutionary outlook, the rediscovery one bears a burden of a vague horizon. It begs the question of what special claim transmedia has to providing authenticity and what value it therefore adds on the field of production.

The anxiety is expressed in intra-communal controversy about the term. For example, in an online summary of a Transmedia L.A. meetup, a member reported that the organizers had "asked for a show of hands on who wanted a quick intro to 'Transmedia 101'" (Nelson 2013). Expressing surprise at how many hands went up, "even a few amongst the veteran meetup members," he joked, "Probably looking to start a definition cage match. Ha!"

Similarly, one Storyworld speaker signaled a widespread defensive ambivalence by listing substitute terminology with a disclaimer, saying, "transmedia storytelling, interactive storytelling, pervasive storytelling," and adding, "whatever you want to call it." Another conference speaker at Storyworld who is a video game developer asked, only somewhat rhetorically, "What is transmedia?" He answered, "It's kind of like people are afraid of using the word sometimes." And added, "Sometimes, it's wrongly used." During his own talk, the speaker from Imagineering asked the audience, "By the way, who loves the term, 'transmedia?'"

Many in the audience laughed and someone blew raspberries. The speaker responded, "Yeah, me, too, we can have a conversation about that later." At lunchtime, about fifty or sixty people from eight different transmedia groups worldwide gathered in a ballroom. These groups were Transmedia L.A. and sister groups from New York, Toronto, San Francisco, Vancouver, London, Brazil, and Germany / Europe. Tellingly, the New York group had recently changed its name from Transmedia NYC to StoryCode. Alluding to the morning's events, a speaker said, "I have a confession to make, I love the word transmedia." Many in the audience cheered.

Two common features of the quotations above are jokes coupled with laughter and pride joined with embarrassment. Some examples include both mixed together. Conversationally, jokes coupled with laughter often signal both intimacy and illicitness (Jefferson 1984, 1987). The data contain evidence that these attributes apply. The writer of the Transmedia L.A. report "accuses" his fellow members of instigating metaphoric violence, then supplies his own laughter—"Ha!"—in partial mitigation. One of the Storyworld speakers used the word, "love," provoking both laughter and the blown raspberries sign of good-natured contempt.

Further support for that interpretation lies in the coupling of pride with embarrassment. "Embarrassment as pride" (Herzfeld 1996) is an ideological strategy, a subversive stance toward dominant ideology. By marking their debate about transmedia with this apparent paradox, community members express solidarity against an uncomprehending establishment despite their own internal disagreements (see also Herzfeld 1997 on the social cohesion developed through this kind of "cultural intimacy"). They simultaneously acknowledge that transmedia is a problematic term because of those disagreements and the ambiguities that lie behind them. To speak of people being "afraid" to use the term (while asserting there is in fact a right and wrong way to use it), or to "confess" to loving it, are stark examples. Slightly more subtle ones are

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concealing it in a list of "whatever" other words one might choose and pretending to shelve discussion of loving or hating the term to a "conversation about that later."

Thus, this self-consciousness about the label exposes language ideological production and contestation, including disagreement about transmedia's direction and transformational potential. Is it still fresh or already stale? Is it still new or has it matured? Is it creatively disruptive or has it been coopted? At the workshop before Transmedia, Hollywood 3, participants extensively debated the terminology that would best demonstrate emerging storytelling's worth to industry insiders who were not experts in the new ways. They focused especially on transmedia. Some expressed hesitation to rally to that term if it will only fall away, perhaps even "just become 'media,'" in the words of an in-house researcher at a software corporation who had described his job as teaching people who are "reluctant" and "resistant" to emerging media production modes. A filmmaking student from a southeastern university commented that people in Hollywood felt "threatened" by the term, transmedia, itself because they think it will "eclipse 'media,'" that is, become a new, natural, encompassing standard.

One participant, an author and producer, warned that "we're gonna get screwed" in academia and business if the terminology is not worked out because it will become meaningless. A professor at a southeastern university agreed that it is an issue of "legacy all over again," just as ten years prior there had been a struggle to define "digital media." It ended up rigidifying in a simplistic way on the popular online encyclopedia, Wikipedia (www.wikipedia.org). Or terms that seemed forward-looking in the 1990s were stretched and distorted to cover so much ground that the innovators repudiated them even as the establishment embraced them, causing resentment and misunderstanding that still lingered. The author and producer offered the cautionary tale that he had "fought this battle twice," with both the word, "Internet," and the

phrase, "World Wide Web." He emphasized that it was "absolutely critically important to have an elevator pitch" to the people in top positions in the entertainment industry. Furthermore, terminological confusion "runs the risk of advertising agencies and marketing departments corrupting the term."

A challenge is that standardization runs counter to the holistic ethos of transmedia. When the graduate student quoted above said that transmedia is at the heart of a nexus of trends, he added that such organic centrality helped explain why it was so difficult to define transmedia. Practical barriers exist as well. Another corporate in-house researcher said that it is "hard to articulate what transmedia is in the corporate, academic, and civilian world." Using examples to define it is not possible because non-disclosure agreements preclude specific descriptions. So when he says, "transmedia," people give him blank stares. Because of this catch-22, "it's still a fringe thing."

In these debates, the question of transmedia's authenticity is bound up with its value as linguistic capital. Proportionately to more traditional Hollywood production, transmedia remains an outsider term associated with an outsider group. That sentiment, as well as the impetus to change it, was expressed by one of the Transmedia L.A. co-founders at a meetup. He welcomed new members and explained that the group was initiated in 2009 because a bunch of like-minded storytellers were "tired of trying to explain to people what they do." Transmedia producers are trying to seize the initiative. At another meetup, a member described a project to capitalize on the large number of domed cinemas in Los Angeles by turning them into transmedia experiences as a "way to engage local communities." He went on, because "studios are just sitting on their assets." He emphasized the first syllable of "assets," paused dramatically, elicited audience laughter, and finished the word, linking the euphemism of indolence to the lexicon of capital.

In more general terms, these debates occur along the artistic, commercial, and legal double edges identified in Chapter 8. These double edges have in common the dilemma of control. The terminological uncertainty displays the slipperiness of authenticity. It, in turn, points to the problem of how to assert control sufficient to accomplish successful, transformational position-taking as authors when the ethic that motivates the insurrection rests on relinquishing the traditional understanding of authorial control. The Transmedia L.A. speaker who had initiated an early transmedia project as part of a network television show and then moved on entrepreneurially, put it succinctly: "Don't fuck up the mothership." The mothership is the story and story platform at the center of the project. Others used the term as well, and spoke of it protectively, too, and this speaker made the whole statement as if it quoting a common industry adage. He explained that it is part of running a benevolent dictatorship, which means managing the internal production dynamics of marketing and storytelling. It also implicates the external dynamics of the producers' relationship with the audience.

II. Performance as Practice.

A. Characteristics of Performance.

As evidenced by many of the examples throughout my discussion so far, discourse about the dilemma goes beyond the terminological debate and the capital value of a word such as transmedia. It also includes ways of talking about emerging storytelling practices, that is, language use as a practical engagement of the dilemma and therefore a mode of struggle for capital. While contrasting transmedia with traditional storytelling is a discursively conscious

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effort to manage storytelling genre as an object of symbolic knowledge, talking about stories, storytellers, and storytelling is also a practically conscious activity whereby members of the community perform a genre of folk historiography that advocates and anticipates a storytelling revolution and their collective role in it. This performative activity generates another layer of generic intertextuality between these narrative performances and their narrative objects. During these performances, speakers (with their audiences) talk into being changes in the meaning of authorship, ownership, and authenticity. Together, they negotiate communal coalescence around a new, remix-oriented habitus of authorship that contrasts—though not quite diametrically—with the romantic one.

Performance in this context can be defined "as a display of communicative virtuosity, highlighting the way in which the act of discursive production is accomplished, above and beyond the additional multiple functions the communicative act may serve" (Bauman 2004:9). The performance itself is bounded as a text and, therefore, gains traction as a meaningful communicative activity through its intertextual connections to those other functions, such as the provision of semantic information, and other settings.

Performances are by nature interactional. More precisely, a performance genre and a participation framework mutually condition or specify each other and so together "regiment…a space of possibilities" (Hanks 1996:197)—in other words, the specific moments when contingency emerges on the field. As suggested by the examples in the preceding section involving laughter, there exists a participation framework that structures these interactions and gives them meaning even when the audience does less speaking than in ordinary conversation.

Speaking to other members of the storytelling community in formal settings has generic qualities. "Formal," in this context, follows Irvine's (1979) checklist. Compared to ordinary or

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informal communicative events, formal ones include the existence of extra structural rules for the code function of language, greater consistency with context in selecting among pragmatic options, specified positional identities for participants, and a central situational focus (compare the attributes of talk in institutions identified in Chapter 9). Importantly, these characteristics do not imply rigidity. They merely shape an interaction with generic characteristics.

The conferences, meetups, and other gatherings of the community in public settings have those attributes. Some shape the events according to general characteristics of meetings in many U.S. and other contexts. For example, they typically occur in a large room at a venue such as a hotel where, in between periods of more fluid interaction, audiences gather in chairs arranged in rows or around tables and attend to podiums or stages occupied by an individual lecturer, interviewer and interviewee, or panel of speakers. Often, speakers have slide or audiovisual presentations.

Formality produces certain generic characteristics that relate to the participation framework as well. The participants who are designated to speak as individual lecturers, interviewees, or panelists perform a particular kind of speaking that Goffman (1981:237) called "fresh talk." This more or less—depending on how much self-aware thought precedes its verbalization—spontaneous production of speech characterizes ordinary conversation. These primary speakers in formal settings may simulate it (lecturers may more overtly perform prepared speeches, but doing so was not typical of the events I attended, where there exists an almost strenuous effort to display informality and spontaneity). But they also do produce fresh talk within topical, turn-taking, politeness, kinship displays, licensed kinds of breach (making "insider" jokes, for example), or other rules of the setting. In doing so, they follow the typical quality of fresh talk that it unites the principal, author, and animator in the speaker. That is, these

speakers speak for themselves, as themselves, except when they mark their utterances otherwise with devices such as disclaimers (as sometimes happened to avoid imputing statements to corporate employers) or reported speech (such as when the TLA meetup speaker physically traced quotation marks in the air as he said "'stain' transmedia"). They self-present as members of the community sharing personal knowledge and beliefs.

When the talk on stage involved interviewers or moderators, these individuals performed a different role. Sometimes, they participated as if they, too, were primary speakers. Most often, however, they performed a version of what Goffman (1981:234) labeled "announcing." Specifically, through somewhat more simulated fresh talk, they created a "three-way" framework among themselves, the primary speakers, and the audience. Their role was to mediate the sharing of knowledge and beliefs. Thus, although they were not the primary speakers within the event, they influenced what those speakers said and how they said it by setting and changing topical agendas, framing question to elicit particular kinds of alignment or agreement in speakers' responses, and so forth.

Sessions also often included designated question-and-answer periods that gave the audience a formal speaking role. Occasionally, a speaker involved the audience in a directed participatory activity. At Storyworld, a group of speakers explained their educational program based on new modes of storytelling by having the audience play various games included in the model. Otherwise, the audience participated as "ratified" (Goffman 1981:9) listeners. This role by itself is significant because it gives the primary speakers or moderators a "foil" for providing and mediating information. In addition, the audience's subtler forms of participation than long verbal utterances could shape the interaction, such as by clapping, exclaiming, or responding ritually en masse (see, e.g., Heritage and Greatbatch 1986 for an analysis of the generation of

applause through rhetorical devices in political speechmaking). The responses to culturally intimate jokes about transmedia described earlier are an example.

B. Ambient Intimacy.

This participation framework also has characteristics that may be more specific to this community's practice. One such characteristic is the transmedia quality of these gatherings themselves. This characteristic is one of the ways that this community of practice builds and acknowledges itself, combining face-to-face interaction with mediated interaction and creating the spaces open to interface ethnography. The ethos that guides their storytelling suffuses their professional culture, sometimes spilling from one to the other. For example, some Transmedia L.A. members host a LARP (live-action role-playing game) each year at the SXSW conference in Austin. The twist is that it is played entirely on Twitter, which is also a primary method of staying in touch and keeping up at the massive conference. In recent years, the game has been styled on *Star Wars* and on *Game of Thrones* (Martin 1996), in a tribute to storytellers who have created expansive storyworlds.

The community also engages in new media practices as part of its professional disposition outside of the production of content, and as part of intra-professional communication. For example, at the main event of the Transmedia, Hollywood conference (as opposed to the pre-conference workshop I have mentioned several times), the organizer announced that they would be using an application (computer program) called "Backchannel" to manage the question-and-answer periods. Audience members could log in to the application and send in their questions, which would be displayed on a screen for all to see and to be addressed by panelists at the

appropriate time. This arrangement had an explicit function with respect to the participation framework. As the organizer said, "If you're shy, you can ask your question on Backchannel, or you can take advantage of your presence in the room to ask it in person." From this dichotomy could arise any number of interactionally significant details, such as semantics that might only be uttered anonymously, or claiming status by identifying oneself in person.

New media have an additional, inverse effect on shaping community practice. At a Transmedia L.A. meetup, someone expressed excitement about an upcoming conference being held in Los Angeles because it would bring fellow travelers from around the world. He borrowed a phrase, "ambient intimacy" (Reichelt 2007), which was coined to capture the floods of social media content with a positive connotation rather than an alienating one. He explained himself to mean that transmedia proponents are in constant, but scattered contact through the internet. Conferences afford an opportunity to interact in person. In this adaptation, ambient intimacy encompasses both the social media quality of its original coinage and also the interpersonal atmosphere of physical proximity.

One implication is that these gatherings are public but also intimate. They are not secret, except when recording and reporting embargoes are imposed (which is unusual). But they entail a degree of closeness that partly mimics the Hollywood patterns of personal relationships. In this case, they are relationships in the making, which helps explain their openness. The community is growing, generally welcoming, and its hierarchies and credentials are not firmly established.

C. Intimate Intrafaces.

Rather than interfaces, these spaces might be termed intrafaces. The primary audience seems always to be the storytelling community itself. This quality exhibits a community-specific "politics" (Kroskrity 2009:49) of "generic regimentation" (Bauman 2004:8). Performance in formal settings may not be an explicit ideological focus within the community in the way it is for the Tewa storytellers Kroskrity discusses and others, although I may simply (ideologically) fail to see it as explicit because both I and the community are disposed to experience this kind of event as ordinary. In reality, the frequent, consistently patterned events nonetheless index an ideology according to which these performances matter to both individual and communal position-taking on the field of cultural production. As Bauman might predict, the seeming looseness is itself an ideological display of openness in challenge to the Hollywood establishment, even as the aim is to supplant it in part through frequent repetition—the continual implication of past and future dialogues—of these formal events. The two poles of consistency and casualness give rise to the practice of the intimate intraface, by which this community pursues authenticity intersubjectively through public performances about professional storytelling that simultaneously are quasi-professional storytelling.

The intimate intraface links the participation framework to the genre of formal performance in a context-specific way. Any performance—in actuality, any social self-presentation—has a subjective aspect according to which the performer tacks between "cynicism and sincerity" (Goffman 1959:21) about his own performance. In the context of historicizing and forecasting the storytelling profession, performance is a way of creating self-belief, with the disciplining, ever-present risk of collapse into cynicism. That tacking back and forth is the

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calibration of a mask, that is, of authenticity, and connects the subjective aspect to an intersubjective one. The individual performer "may attempt to induce the audience to judge him and the situation in a particular way" (Goffman 1959:21), extending the dichotomy of cynicism and sincerity to this intersubjective production of meaning, especially the working out of authenticity.

Narrative enters the picture by knitting the performance genre to the genre of storytelling as a topic within this participation framework. Practically conscious pursuit of authenticity in the performance of narratives about stories, storytellers, and storytelling (the experience in the moment) intersects with discursively conscious pursuit of authenticity in the topic of stories, storytellers, and storytelling (the knowledge under discussion). Storytellers speaking with their own community narrate a folk historiography that advocates and anticipates a professional and industrial transformation.

These narratives are meant to have "efficacy" (Kroskrity 2009:46), exerted through the intertextual link between the performed narrative and its cultural context. Efficacy is an ideological goal. In this case, it is an ideology that embraces and seeks to harness the troublesomeness of new media that is central to the cultural context. As with narrating the terminology of transmedia, more broadly narrating the changing professional world is a way to reassess the criteria of capital allocation in the Hollywood field of production. The intertextual link—and ideological efficacy—is established by narrowing the gap between the performances as storytellers-telling-stories and the topic of stories, storytelling, and storytellers. Performances according to the framework of the intimate intraface index the new ethos about storytelling. There exists a "performance correlate" (Kroskrity 1985:196) between how they talk *about* stories (form) and *how* they talk about stories (performance). The correlation is oriented toward

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catalyzing the power to transform Hollywood: to perform themselves as new, authentic entertainers during performances about new, authentic entertainment, and thereby change both the field and their place on it.

Some of this indexing is done through the incorporation of new media in the performances. Some of it is done by the attitude of openness to people, ideas, and possibilities. And some of it is done in the talking into being of their shared vision. That talk does not necessarily calibrate the token emergent performances to type in an iconic way (compare Kroskrity 2009:49 on expectations about Tewa storytelling performances). It is not poetic in any obvious way. But it does calibrate them to type in an indexical way concerning authenticity, authorship, and ownership that is aimed at securing the efficaciousness of transmedia and its kindred in the industrial and professional world of storytelling.

A key way is by harnessing the "diachronic dimensions of performance" (Hanks 1996:197). Hanks specifies the preparatory conditions that make the performance possible as a text, and such conditions are relevant. Even seemingly mundane aspects of the events are part of building a community of practice. For example, at one conference, apart from the formal panels, there was an ongoing theme across the introductory and in-between sorts of remarks made by the chief organizer and veterans of the community from the podium. From their comments, it could be gleaned that there had been some hiccups in planning the conference. The organizer alluded to her late-hour enlistment, and others praised her for pulling things together. This organizer is also a storyteller with her own products, who also participates in other conferences. Exposing the infrastructural snafus of a relatively new annual event to the public in this way helped bond this community together in terms of its nascent status, and helped establish the organizer's credentials as an emerging leader.

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Another diachronic dimension is also important, It stems from the connection between temporality and authenticity established through intersubjectivity. This dimension makes these events that are spaces of possibles into intertextually and interdiscursively significant ones. These events construct a historical temporality of a communal ideology and struggle to change the field. It is driven by the autobiographical temporality displayed in intersubjective performances by speakers. And it is accomplished through the semiotic temporality of what they say, not only as unfolding talk but also in specific grammatical and pragmatic features of it. It is through these layers of temporality that story, storyteller, and storytelling become resources for practical action, and genre, participation framework, and narrative cumulate to effectuate it.

III. <u>Three Performances of the Double Edge of Authenticity</u>.

Each of the following three examples highlights the artistic, commercial, and legal double edges of authenticity, respectively. In Chapter 8, I detailed these complementary facets of a dilemma that arises from new media's complication of the driving tension between chronological and unified time. The complication is that new media induce efforts to realign the pursuit and goal of authenticity according to remix authorship instead of romantic authorship. In industrial practice through entertainment products, these efforts entail the double edges, such as the need to deceive the audience in order to grant it participatory access, the risk of marketing too overtly or too covertly, and the imposition of legal requirements that both facilitate and interrupt audience co-authorship.

A. The Edge of the Campfire.

Example 1 is from a presentation that Suzanne Stefanac gave to Transmedia L.A. on June 5, 2012. The organization posted the video publicly online.[146] Stefanac's professional profile on LinkedIn describes her as a "consultant—interactive media strategy, writing, production, analysis."[147] She has had a long career in journalism, book writing, and television about new media issues. Her connection to TLA comes from her years as director the American Film Institute's (AFI) Digital Content Lab, where one of TLA's active members is a senior executive.

Stefanac spoke for approximately twenty minutes before a question-and-answer period began. She remarked in the beginning that her computer failed to sync properly with the large television screen behind her. That fact is relevant both because it will explain some of her comments in the excerpt further below and also because it may help explain the structure of her presentation. That structure consists of three main parts in which she wove together autobiography and history.

To summarize the key narrative points of this performance, Stefanac introduced a potential problem of storytelling authenticity caused by new media. The participatory qualities of remix authorship threaten the reigning standard of authenticity—quite specifically, "integrity," which I intepret as the integration of the chronological pursuit of authenticity and the unified temporal experience of authenticity that romantic authorship ideology postulates as residing in the narrative commodity. She reformulated that problem as one that does not pertain to new

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[146] http://www.livestream.com/transmediala/video?clipId=pla_0f070eee-f1c9-4ed7-81e9-4317f11693d9, accessed September 18, 2013.

[147] http://www.linkedin.com/in/suzannestefanac, accessed September 18, 2013.

media or remix per se, but only to a failure to keep up with change. That failure is the risk

behind the artistic double edge that requires storytellers to rethink how they align pursuit and

goal. New media and remix authorship are the current, and not final, endpoint in a long history

of continuous technological innovation and constant intersubjective striving for authenticity

through storytelling. She returned to the interpersonal scale to remind her audience, in so many

words, that they must engage the temporal tension, pursue authenticity, and manage the double

edge if they are to keep up with history. Throughout, she affiliated herself personally with her

audience through her grammar and by calibrating her performance as another iteration of her

argument. She even united performance and argument in a campfire motif that captured her

vision of authenticity as both timeless and restless.

1. Introducing the Potential Trouble.

Stefanac began with an autobiographical component to her narrative. This part of her

talk lasted approximately two minutes. She established her social or presentational identity by

referring by name and with gratitude to her AFI colleague who is the TLA member. She then

characterized her work at AFI as having "a resonance with what's happening today" in

transmedia even though "we didn't have that word for it back then." These comments all

situated her as both less and more expert than her audience because her career preceded and

perhaps anticipated the development of transmedia. That threading of expertise created a niche

for her to make her upcoming historical argument about transmedia in an authoritative but

modest style.

Stefanac concluded this first part of her talk by laying the topical foundation of her argument. On the one hand, she said, "I have a very long and checkered career," but, on the other hand, it has been "very focused on storytelling at pretty much every point." This specification prepared for the key theme of her narrative. She said:

One question that people come to ask me about quite regularly is, um, do I think that all of these, um, cross-platform plays and the, um, all the user- the fan engagement, is this going to somehow hurt the integrity of narrative, um, that, can we still tell a story from beginning to end and not have it somehow lose its oomph, lose the beauty of it. And I laugh.

Stefanac segmented her delivery of the theme into "informational phrases" (Gumperz and Berenz 1993:100) separated by various kinds of pragmatic "boundary markers." For example, the first line from "One question" to "um" is an informational "pre-sequence" (Schegloff 2007:28–29) that sets up a report of what people come to ask her.[148] "Um," along with other non-lexical vocalizations, is one of many boundary markers Stefanac consistently uses. Others are clicks or smacks of the tongue or lips, audible inhales and exhales, conjunctions, pauses, and marked rises or falls in pitch. Several of these markers preceded her utterance of "One question," creating bookends for the pre-sequence. These devices, whether employed with self-

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[148] Schegloff discusses various types of such "preliminaries" to the standard two-person, two-turn adjacency pair in conversation. In this case, Stefanac is not preparing to deliver her turn of the pair in anticipation of an interlocutor's. But she is preparing to narrate a conversation in which she reports both others' and her own turns, and then to continue a conversation with her audience, all according to the formal rules of this kind of performance and supplying her particular performance with a momentum adapted from that of ordinary conversation. She adopts a particular style of "recipient design" (Sacks et al. 1974:727) that modifies the basic structure of ordinary conversation in order to engage her co-present audience through her performance.

awareness or not (and most often they are not), are not haphazard but part of the systematic structure of meaning-making through conversational interaction. Appendix A at the end of this study walks through a transcript of this and other portions of Stefanac's narrative that I made according to conversation analysis conventions, in order to show in granular detail how she used such common conversational elements to build her particular narrative style, structure, and content.

Those narrative qualities in Stefanac's statement quoted just above can be segmented as follows, beginning with the pre-sequence:

One question that people come to ask me about quite regularly is

Do I think

That all of these cross-platform plays and all the user- the fan engagement

Is this going to somehow hurt the integrity of narrative

That can we still tell a story from beginning to end

And not have it somehow lose its oomph, lose the beauty of it

And I laugh

This segmentation facilitated shifts in voice, in Bakhtin's terms, or disaggregation of the speaker role, in Goffman's, despite Stefanac being the only person actually talking during this part of her performance. The thematic question foreshadowed by the pre-sequence becomes something that other people ask Stefanac. My indentation of "do I think" indicates this syntactic nesting within the pre-sequence. Specifically, they ask her for a personal, evidential account: "do I think (that)." Framing the theme as a question conditions the troubling event around which

narratives are organized as merely a potential trouble, and one for which Stefanac is not responsible as a Goffmanian prinicipal (she merely animates it).

Framing the report as a question also introduces complexity that speaks to the double edge of authentic storytelling. Questions are rhetorically powerful because they demand answers (see Hayano 2013 for a review of conversation analysis literatre on question design). By reporting what other people ask her, Stefanac presupposes that she will answer within that report, and heightens expectations for her own audience that they will hear that answer. In addition, all of her formulations of the question format are "polar" ones that call for a yes or no response and "prefer" the affirmative one (Pomerantz and Heritage 2013:213; see also Sacks 1992): "do I think," "is this," and "can we." As the schematic of the informational phrases indicates, "do I think" is the main question that branches into the other two. "Is this going to somehow hurt" anticipates a response from Stefanac that remix authorship and transmedia are a bad thing. But "can we still tell a story" reverses that presumption.[149] These layers track Stefanac's forthcoming argument that new media are risky and represent a challenge but also an opportunity with respect to authentic storytelling. She signaled that complexity immediately with the ambiguity of her reported response, "And I laugh," which opens the performance to a lengthy subsequent disquisition rather than discharging her argument immediately with a simple yes or no.

There is even more nuance to this voicing. Who authors the question in Goffman's terms is ambiguous. It may be the other people whom Stefanac voices, or it may be Stefanac herself because she says "do I think" rather than "do you think." Either way the question is phrased, the

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[149] There is additional complexity because "and not have it lose" seems to reverse it back with the negative polarity of "not," but that word is preceded by "and" such that it parallels and reinforces "can we still tell a story."

pronoun calls for a personal expression of belief. But blurring or laminating the pronouns signals that Stefanac may be accepting some personal ownership of the content of the question, which she is about to report.

She then specified that content, which is the potential trouble. I indented it further to show how it nests within the question phrase syntactically through "that": "do I think that all of these." She listed some remix authorship practices as examples of "all of these" troubling developments. She then reframed the reported question from the personal evidential of "do I think" to the more objective, "is this," much like some of the courtroom participants did in Chapter 9. Whether or not that adjustment distances her from personal assessment of the potential trouble, it at least casts that trouble as a possible fact requiring attention. She stated the potential trouble to be the damage caused to stories'—narrative products'—"integrity" by new media storytelling practices. Integrity serves here as a proxy for authenticity. By speaking of the integrity of narrative without a definite or indefinite article before "narrative," Stefanac maintained the fact-finding tone with respect to a categorical problem. That grand abstraction also foreshadowed a sweeping review of 100,000 years of cultural development she conducted later in her performance.

Stefanac then looped back to introduce a second, parallel "that" clause that restates the harm not in terms of theoretical abstraction but as a more specific, practical impediment. That impediment is the threat to temporal alignment, or the alignment between chronologically "tell[ing] a story from beginning to end" and preserving its unified, experientially meaningful

"oomph" and "beauty." That alignment is the crux of integrity for narrative-based romantic authorship, in contrast to the collage-like quality of remix authorship.[150]

The threat to the alignment is apparent in Stefanac's grammar of time, in particular, "still." That adverb serves an aspectual function in tempering the mood of possibility when Stefanac asked, "can we still tell a story" according to romantic convention. Furthermore, by returning to a personal pronoun with "we," Stefanac scaled the potential trouble down from an abstract historical level to the contemporary moment and its personal implications for herself and her audience as professional storytellers.

Stefanac's embodied movements also signaled the threat (Appendix A contains additional detailed analysis of her gestures and embodied movements). She shook her head to the left, once abruptly and a second time more gently, when she said "lose" the oomph, or the goal of authenticity. Lateral movement of the head is a "kinesic" "locution" (Kendon 1972:194) typically coterminous with a verbal locution. Although it often means negation among English speakers in the U.S., it more subtly can mean "intensification" (McClave 2000:861) or something "out of the ordinary" (M.H. Goodwin 1980:308). Being out of the ordinary plus a tinge of negation can equal "unbelievable" (McClave 2000:861; see also Goodwin's example on 308, in which the speaker actually utters, "unbelievable"). Stefanac's head shake on this terrible word, "lose," fits this description. She warns of a danger, which may be real but also, in her view, perhaps exaggerated or at least not inevitable.

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[150] Just how crucial that temporal alignment has been to romantic authorship may help explain why Stefanac claims that campfire storytelling has been narrative in this way, while other transmedia proponents claim that campfire storytelling was a transmedia forerunner. The dominant ideology of what narrative is seeps into even the insurrectionary stance.

Indeed, Stefanac then foreshadowed the resolution to the trouble by reporting her own, habitual, and as-yet ambiguous response: "And I laugh." She spoke the last word with a "smiley voice" (Hepburn and Bolden 2013:65).[151] Jefferson (2004b:30) included a symbol for "repressed laughter" in her list of transcription symbols. The literature is not clear on what qualifies as smiley voice. In this case, the evidence is Stefanac's intonation, which rises and falls as she stretches out the vowel. Intonation, including that particular pattern, can be a way of providing an assessment in conversation (compare Smith and Jucker's 2002:165 analysis of "well"; see also Pomerantz 1984 on conversational assessments in general). To laugh is to react in a way that provides an assessment. Smiley voice recreates the assessment in the course of reporting it. Atypical pitch over elongated pronunciation can also convey affect in assessments (Goodwin and Goodwin 2000), which may be what the rise and fall achieve in this case. Further support for this analysis comes from Hepburn and Bolden's indication that for Jefferson, repressed laughter was a way of acknowledging but not joining in. What appears to be happening with Stefanac is that, in reporting her own laughter, she refrains from actually reproducing it but still partly mimes it. This intermediate embodiment at the metapragmatic intersection or calibration between the reported speech and the performance speech encapsulates what I identified earlier as the efficacy of these storytellers' performances. Her report of laughter expressed a view on remix authorship as non-threatening, while her smiley voice performed that view, calling it into being at the intimate intraface of this communal activity.

The nested structure has an additional narrative dimension that calibrates Stefanac's commentary on new media and authorship to the intersubjectivity of her performance. Highly

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[151] Smiley voice can often be heard in the voiceover narrative of radio or television announcements and advertisements, presumably an acquired skill meant to color the narrative with uplifting or exciting affect.

"tellable" (Capps and Ochs 2001:130) personal narratives include an "unexpected event" that sets up the trouble and attempts to resolve it. This excerpt has two. In reporting the question that contains the topical trouble, she says that people "come" to ask her about it, quite regularly. This verb creates an image of Stefanac going about her business and other people interrupting her, which is unexpected at least in the sense of each new person being a new interruption to routine. Within the report of the content of the trouble, she asks whether "this" development in new media practice "is going" to cause trouble. The people who come to her ask her to predict where this unsettling development is headed, in other words, to forecast regarding its unexpectedness. Stefanac then reports her simultaneous reaction both to people coming to ask her a question and also to the content of the question: "And I laugh." The schematic shows this merged response by unindenting it to align with her initial pre-sequencing utterance that contains "come to ask me." "And I laugh" indexes Stefanac's effort to resolve the trouble. This dimension of her narrative adds to the efficacy of her performative calibration. The explicit reported sequence of "people come to ask me…and I laugh" calibrates to the implicit performed sequence in which people become the immediate Transmedia L.A. audience and Stefanac performs (reports and mimics) her response of laughter. The stage is set for the next seventeen minutes she spent explaining why she laughs at this question.

2. <u>Resolving—or Dissolving—the Trouble</u>.

Stefanac pivoted from reported speech that concluded with "and I laugh" to direct address of her audience with "and I'll tell you what." The latter phrase is an evidential colloquialism and serves as another pre-sequence. It is reproduced below at the same unindented

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level as the first pre-sequence and "and I laugh." (Appendix A also covers these lines in greater detail.)

    And I'll tell you what

        The reason I laugh

            And this is where the slides would start now

            [Stefanac and audience overlap laughter]

            You have a fire crackling here video of a fire

        Ever since we first sat around campfires

          we've wanted to tell each other stories

            we've wanted to tell stories

            and be told stories

        I believe that it's absolutely innate

This pivot thus brings along the narrative elements set up by the initial report of potential trouble into the face-to-face interaction with her audience. The "what" is "the reason I laugh," indented to show that it is nested syntactically within direct address ("I'll tell you") as a report of her generic response to the supposed threat of new media.

Before providing the reason, Stefanac made an aside to apologize for the technological failure in syncing her computer to the large display monitor behind her. The three italicized lines in the schematic indicate this apparent digression, although in fact it occasioned intraface intimacy that ended up integrating with her argument.   As Stefanac said, "slides would start," she took in a breath, said, "now," and exhaled slightly while smiling. This exhale was the first of a series of "'breathy' laugh particles" (Heritage and Robinson 2006:60) on her part. While she was still completing the first one, several members of the audience laughed audibly (that is, with

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vocalization), "hahaha," overlapping with the rest of her series of laugh particles, rising in volume, and prompting her own burst of "ha" and a joke about a video of a crackling fire on the blank screen behind her.

This part of the interaction established intimacy in two ways. Conversationally, Stefanac had just apologized for a failure (compare Jefferson 1987, who discusses the introduction of lexically illicit talk in similar situations). Interactionally, that failure was to deliver on her plan in accordance with the customary expectations of this kind of formal performance. Speakers in many other kinds of formal setting also might apologize for such a failure, but there is a strong expectation of audiovisual media among this community; numerous talks I attended were driven by such media even more than by a speaker's words. By apologizing and initiating this laughter, Stefanac turned the failure into an opportunity for further intersubjective bonding. What might have been a breach of performance expectation resulting in "disaffiliation" (Jefferson et 1987:60) from her audience turned into one of affiliation.

Even more intriguing is the additional overlap with her talk. She had just been talking about laughing in response to the question about new media's threat. More intriguing still, her joke about a crackling fire conjured in the room the very foundation of intersubjective authenticity through storytelling that she proceeded to relate in historical terms.

That is, after her aside about the slides, Stefanac proceeded to give the reason why she laughed at the question about new media's threat: "Ever since we first sat around campfires, we've wanted to tell each other stories." She reiterated the sociality of storytelling by breaking it into components. People want both to tell and to be told stories (which, at that level of generality could mean according to a romantic framework, a remix one, or some other). Stefanac shifted to an emphatically personal evidential, "I believe," to declare that this desire is "absolutely innate."

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Thus, the reason she scoffs at the supposed threat of new media is that they actually fulfill an innate desire that evolved with the advent of very old technology, fire, and its deployment in service of intersubjectivity as a campfire around which to gather. The campfire motif resolves the potential trouble caused by new media or, rather, dissolves it in the reclamation of primordial authenticity.

She developed that motif by walking through a "timeline" of highlights of cultural history. Her apology for the slideshow failure suggests that this long, detailed list was originally integrated with a linear visual presentation. In her talk, Stefanac expounded upon some of those highlights in extraordinary detail, for example, speaking at length about the shape of the earliest found carved flutes. Coming after her evocation of the campfire but before she tied it explicitly to contemporary experience, the history served as a "slowly disclosed setting" (Ochs and Capps 2001:135) that justifies embracing new media practices as authentic. Her march included the following "punctuated points in history that really tell me something about how to think about today":

- 100,000 years ago: the first, "beautiful" tools beyond the handaxe, and the beginnings of language and music, all of which changed human circumstances dramatically;

- 50,000 years ago: further development of language as symbolic thought, along with creative expression such as the "porn" of "Venus" figurines and depictions of cats, as well as hybrid human–lion drawings, which might be the first instance of "cosplay" [costume play, a subset of live action roleplaying], and the "first remixes," animation, and 3D technologies in cave paintings;

- 21,000–10,000 years ago: a "horrible ice age" that "slowed things down a little";

- [unspecified date, but references to Sumerian civilization]: the creation of cuneiform writing, followed by the epic of Gilgamesh, which was the first story, a "great story" with the main archetypes of the heroic narrative, and was eventually written down, which was both a good and a bad thing;

- 2,500 years ago: Socrates' disdain for writing as a medium that "stunted the free exchange of ideas";

- 2,000 years ago: Caesar mandated an imperial daily journal, which was the first periodical;

- 500 years ago: Gutenberg turned the new technology of movable type into a game-changer that allowed much greater exchange of ideas than manuscripts limited to a few elites;

- 100 years ago: Edison turned the new technology of the movie camera into a game-changer by making it mass producible and establishing the first film studio, leading to the spread of a format in which we "mess with time" in unprecedented ways; and

- 50 years ago: television changed how people consumed audiovisual media, drawing them out of the social experience of "the exchange of storytelling" in cinemas and into individualized, personalized experience in living rooms,

culminating in her conclusion, which is that "we're just as transfixed by a great story today as we were back then." Transmedia represents both continuity with the deep past and revolution. People have always debated new platforms and media, as Socrates did with respect to writing. And people have always found ways to integrate new technologies with social practices and

create new widespread habits, as the unnamed prehistoric ancestors as well as Gutenberg and Edison did.[152]

Through this long evidential exegesis, the audience learned that the reason Stefanac laughs at the question about new media's threat to storytelling integrity is that the more things change, the more they stay the same. Her autobiographical assertion of both more and less expertise than the transmedia storytellers in the audience dovetails with her historical argument that transmedia does not fundamentally change the bases of authentic storytelling, but neither does it fail to be authentic. People will inevitably debate its authenticity.

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[152] At the very end of her talk, Stefanac returned to these points and to the timeline. She read from her notes some statistics "partly because the numbers are so- I'm just bowled over." They included the very large and increasing amount of time that U.S. residents spend watching television on television sets, the exponential growth of YouTube, and the precipitous rise of Facebook and Twitter. Her main statistic, however, was that people are using two screens at the same time: the traditional television set and either a phone or a tablet. Once again, many people dismissed this technologically possible practice as an unlikely one, and were proved wrong as people adopted it. Stefanac also referred to what would have been her last slide. Its depiction of the 100,000-year timeline highlighted the compressed amount of time required for each technological development to be accompanied by changes in practice. Showing that historical acceleration scaled back down from the leisurely, abstract question of authenticity over a long term when temporal alignment works itself out for storytelling in general, to the pressing risks that face this particular audience at this particular moment in time when temporal misalignment is dangerous to their professional prospects.

3.   <u>Articulating the Real Challenge—the Double Edge of Authenticity</u>.

Stefanac made clear her view, however, that the historical fluidity of authenticity does not countenance present complacency. Professional storytellers cannot ignore the double edge of artistic control over their products. They must either accept and harness participatory culture or risk losing their position. But embracing new modes also does not mean abandoning what motivates them authentically as authors or declaring open season on all authored products or all aspects of authorship.

Thus, the risk for professional storytellers is to fail to account for new modes as people absorb them into everyday practice and, consequently, to find themselves "left in the dust," as Stefanac put it. This admonition conditions the future of authorship on how storytellers handle the tension between chronological and unified time, especially with respect to how they reimagine, or fail to, the relationship between authorship and ownership by working through the double edge of controlling the storyworld. This portion, too, is transcribed and discussed in further detail in Appendix A.

This presentation of the real challenge begins with Stefanac's affirmation, quoted above, of the eternal power of a "great" story to "transfix." The chronological development of new media is compatible with the power to transfix, a word that means to bestill with wonder and perfectly captures the goal of authenticity as the experience of unified time. Thus, Stefanac states outright, "this is the whole reason I don't believe that there's any danger to a great storyline." The subtle shift from "story" to "storyline" asserts that the internal temporality of a narrative product remains intact, allowing for authentic experience through the product as a work of art. The "proliferation"—a chronological development—of the "threads and tendrils" of

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immersive, participatory practices enhances the experiential goal of authentic storytelling. Stefanac employed lists of proxies for this goal, namely, three nouns, "heft," "rhythm," and "charm," and three adjectives, "poignant," "deeper," and "interesting" (see Jefferson 1991 and Heritage and Greatbatch 1986 on three-part lists as rhetorical strategy). With extreme affect marked by the repeated and loud utterance of the phrase, "I love," she gave the example of the transmedia (a mobile app) and fan fiction aspects of *Game of Thrones*,[153] and reiterated that "none of that is in any way endangering the great storyline."

Having affirmed new media's compatibility with authenticity, Stefanac then articulated the risk to the professionals by adopting the storytellers' perspective as historical actors and employing an inclusive pronoun that grouped herself with her audience:

We're entering a new time where

    If we don't

        not only allow those

        but find ways

            to trigger them

            and to make it more fun

                for ourselves as creators

                and for everyone who's viewing them

    We'll get left in the dust

This part of her narrative puts professional storytellers within the temporal tension of authenticity as historical agents. "We are entering" is a chronological movement in the present

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[153] *Game of Thrones* came up earlier in this chapter as an inspiration for Transmedia L.A. members' Twitter game at SXSW, and in Chapter 8 as an unusual example of traditional Hollywood embracing piracy.

progressive. "A new time where" is a place on the temporal horizon in which professional storytellers may (continue to) attain or approximate the goal of authentic experience, but also may fail.

Stefanac emphasized the risk by formulating a subjunctive problem of inaction, "if we don't," and raising the stakes so that storytellers must "allow" new modes. The gatekeeping role of allowing or disallowing narrows this "we" to the professional community who have greater, albeit precarious, control over storytelling production compared to the "we" of all humanity who remain transfixed by a great story (the subsequent reference to "ourselves as creators" confirms that Stefanac is speaking of a narrower "we" in these lines). This "preconstruction of future experience" (Ochs 1994:108) expresses what Stefanac sees as the true potential trouble in the narrative of these storytellers' professional lives, a horizonal blip that requires attention through the chronological activity of present-day striving in order to avoid becoming trapped in an obsolete past. She prescribed this requirement by calling for storytellers proactively to "find ways"—to strive—to "trigger" new modes and make the experience "more fun"—another proxy for authentic—for both author and audience. Whether with deliberate irony or not, her use of the romantic terminology of "creators" and everyone else who "views" the products highlights the need to hustle out of that mindset and into a new one or else "we'll get left in the dust."

Stefanac offered a specific contemporary example of what awaits the rigidly romantic creator: the acclaimed television show, *Mad Men* on the AMC channel. She was more circumspect about this example than about *Game of Thrones*. She introduced *Mad Men* as an "exception" to the need to trigger more participatory storytelling. She reported that its creator, showrunner, and lead writer, Matthew Wiener, "really hates all this stuff, he doesn't want anything to do with it, he's against it, you know, he just wants to tell his damn story." Wiener

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has a reputation for maintaining tight control and secrecy with respect to the content of the show (Toby 2013). Stefanac portrayed him as a typically romantic author opposed to remix or other kinds of audience collaboration. She gave him a pass because "he tells a great story" but said "all this stuff is gonna grow up anyway," through fan fiction, for example. This qualified praise reflects her performance's setting at the intimate intraface. In keeping with Hollywood's sensitivity concerning interpersonal relationships and reputation, she avoids criticizing a powerful player overtly, while she nonetheless critiques his reported attitude in line with the revolutionary stance of her immediate audience.

In addition, the *Mad Men* example implicitly layers the commercial double edge onto the artistic one. *Mad Men* is well-known for its nostalgic and profitable use of product placement to lend authenticity to its depiction of the 1960s (Vilensky 2009). Stefanac spoke of "all these people pretending to be Don Draper," the show's main character, as a sort of embodied fan fiction. The show is famous for this inspiration to dress and even act like the characters and led to a cross-promotional deal with the fashion retailer, Banana Republic. A cultural resonance seems to have meshed the audience's remix desires with the creator's romantic control over the show itself.

Stefanac's final example added the legal double edge as well. Without finishing her last sentence about *Mad Men*, she transitioned to the "warning" on a Sumerian tablet inscribed with the epic of Gilgamesh—which, in her earlier timeline, she had called the first story and one that both gained and lost something by being codified in writing. She brought it up "just in case you thought that the protection of intellectual property is a new idea." She read an English translation of the colophon with dramatic flair, animating the wrath of the gods that the scribe invoked against anyone who tampered with the tablet. The imprecation might anachronistically

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be labeled the scribe's legal terms of use, although its colorful language perhaps smoothes the double edge by heightening rather than dampening subsequent experience of the story it guards.

The audience laughed along with her at the graphic curses in another calibration of her argument through reported speech (animating the Sumerian text) that she performed (authoring a narrative about storytelling) before a group of other authors. It is an even tighter calibration than her reported speech in the very beginning of her lecture because she directly quotes the tablet, and at length. Stefanac performs within her performance, merging her present voice with a past one to illustrate the historical significance of the immediate future danger confronting her audience. Someone called out, "That's what my lawyer said," provoking even louder laughter and prompting Stefanac to say, "So you know what I mean." The Gilgamesh preface is not transparently about modern IP, but Stefanac's audience understood her cautionary tale asserting equivalence between their situation and a defunct civilization. Forcefully avowing a robust bond between creative authorship and controlling ownership will not protect it against being ground to dust by the innate desire for a more remixed kind of storytelling experience.

B. The Edge in Business.

Example 2 brings forward the commercial double edge. It is from the first panel of Transmedia, Hollywood 3, held in an auditorium at the University of Southern California near downtown Los Angeles on April 6, 2012. The panel was entitled, "Realigned Work Worlds: Hollywood/Silicon Valley/Madison Avenue." The title alone evoked the intersection of art, technology, and commerce and their realignment by new media practices. The formal structure of the panel was a moderated discussion. The moderator was Denise Mann, the UCLA professor

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and transmedia leader described earlier. Panelists included four individuals with substantial industry experience and success, that is, relative insiders marked also as innovators by their inclusion in the panel. The moderator and panelists sat on the stage of the auditorium in armchairs, using handheld microphones. This arrangement projected informality and intimacy despite the otherwise formal structure of the conference. Approximately 200-250 people sat in the audience. They appeared to range in age from late teens to upper-middle age.

The proceeding was filmed in professional style with three cameras capturing different angles, echoing the conference's institutional auspices under the media schools of USC and UCLA. The panel also included a lot of audiovisual material. Mann or her aides apparently had put together the presentations based on the various panelists' work. She used the videos to help introduce the panelists as well as to direct the conversation. This use of media, too, was typical of the formal conferences organized by Hollywood producers or scholars of Hollywood production.

Mann introduced the panel as being about Madison Avenue and Silicon Valley "encroaching on Hollywood's turf," that is, the turf of entertainment content creators. Themes throughout the panel included that communal, geographical distinction; whether or not this encroachment affected authenticity, a word used many times by the speakers; and whether the perception depended on generational differences, especially with respect to the hard sell and innovative, risky attempts to sell more subtly. Thus, the panel discussion often centered on the double edge in marketing, whereby selling too hard risks alienating an audience that expects to be more collaboratively authorial, and selling too subtly risks being perceived as contaminating the authenticity of the participatory experience.

1. <u>Taking Stances toward Authenticity</u>.

The moderator and panelists each took a stance or multiple stances with respect to managing the marketing double edge. A stance is the "taking up [of] a position with respect to the form or the content of one's utterance" (Jaffe 2009:3). Some ways they took these stances were through deictically constructed evidentials such as "I think" or "I feel," as well as through assessments, which include the referential content of adjectives such as "beautiful" as well as how they were used in context to describe specific products. They also engaged in footing maneuvers, mostly directed at one another and sometimes at broader targets such as the major Hollywood studios collectively.

This stance-taking thus was an important part of the narrative performance. A central tension in narrative is the one between coherence, or ordering the narrated events, and authenticity, or imparting the experiential quality of the narrated events. In particular, "striking a balance between coherence and authenticity is a hallmark of dynamic co-tellings of experience" (Ochs and Capps 2001:283). Co-narration produces "only partially overlapping narratives," leaving space for different co-tellers as well as an audience to locate the balance for themselves. The stance-taking in Example 2 constitutes both the narrating and the narrative as the five speakers co-told an as-yet unfinished story about this new, marketing-oriented story production. Their partially overlapping accounts created a space of possibles in which they discoursed about the double edge as a problem of authenticity in a changing world that requires a new alignment between the unfolding pursuit of authenticity and its achievement as a goal.

In particular, they negotiated positions and commented on specific examples of position-taking with respect to the blend of entertainment content with branding facilitated by new media

and aimed at meeting remix expectations. The stance-taking conveyed nuanced attitudes toward the double edge of this frontier. The hard sell of traditional marketing is not necessarily inauthentic to some of these panelists if it can be appreciated for what it is. And too soft a sell might betray inauthenticity. For example, the moderator introduced the motif of a "shiny object" to describe new media fusions of marketing and content. The term harbors ambiguity as between a precious jewel and a trifling bauble. She expressed personal ambivalence that these efforts are appealing but also slightly suspect, as if pulling the wool over consumers' eyes. The trick of managing the double edge remains to align marketing appropriately to the kind of authorship expectations that fit the situation, whether those expectations are romantic or remix or some combination of both. Doing so turns on what constitutes authentic experience, which is a fluid target these days.

Accordingly, although the panelists did not talk explicitly about authorship and ownership, this marketing focus is crucial to the industrial infrastructure of the authorship regime. To bring branding into content is to disrupt the modern model at two points simultaneously. It breaks open the work of art as something delivered from an author to an audience by inserting a third party with motives that may or may not coincide with the intersubjective connection between the romantic author and the audience. It thus threatens the entertainment industry's traditional source of symbolic capital. And it diverts a major source of economic capital for mass production of those works into blended, often participatory or otherwise remix-oriented, ones.

In addition, marketing makes ownership a more concrete issue than when considering the artistic aspect alone. Marketing-oriented content blurs the line of ownership between the traditional content producers and the advertisers, a tension noted by several of the panelists. The

audience is sensitive to that line. Hating a bad advertisement that appears next to a favorite story

is one thing; hating a story because of poorly integrated advertising is another, as is hating a

brand because of poor storytelling. Furthermore, bringing the audience into the production of

marketing-oriented content raises questions about its own ownership stake—sometimes a

material one, as discussed with the example of the completely digital Japanese pop singer in

Chapter 8. Against all of this disruption, the hope for proponents is to achieve a scalable new

model based more on remix, immersion, and participation.

2.   The Ambiguity of Shiny Objects.

Example 2 is taken from an approximately eleven-minute discussion that began with a

question from the moderator and ended with her explicitly changing the topic. Video of the

panel is available online.[154] My transcript is broken into five parts. First, the moderator's

question framed the narrative in terms of the double edge and, specifically, of a potentially

deceptive cooptation of art by marketing as the lines between them blur. Then, each of the four

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[154] http://www.transmedia.tft.ucla.edu/2012/04/transmedia-hollywood-3-video-re-cap/, accessed September 23,

2013. The example begins approximately one hour, twenty minutes, and thirty seconds into the video. The panel

was not that long; the time stamp starts with Mann's opening remarks to the entire conference. But because the

discussion of this question was nonetheless quite long, I transcribed it to conform to standard English writing

conventions, including omission of non-standard tokens such as "ums" and self-repairing truncation. It remains

syntactically and semantically close to what the speakers said; all of them spoke in standard English as well as with

greater formality than ordinary conversation according to the conventions of the setting. In addition, for the most

part they did not overlap in their talk (one prominent exception, an interjected joke, is included in the transcript).

panelists constructed a different narrative of authenticity in response. Key stance-taking phrases are marked in bold in the transcript.

Example 2

Mann (moderator):

(1) This may sound **too flip**,

(2) but **I kind of appreciated** that the projects that we showed with **yours** [addressing panelist Levin] were what they were. Klondike bar and other products and yet you're doing content that's- **engages fans** in sort of a quick **engagement with the brand**, with the characters and the ideas and short comedy [alludes to a similar "model" that will be discussed on a later panel].

(3) What **interests me** about some of the more **high-end** stuff that we saw—the Canon "Life in a Still" and "Life in a Day" [panelist Hunter's project]—is it almost **feels** like,

(4) **"**Look at the **shiny object** over here. **We**'re not taking **your** information. This is not a branding opportunity. This is, I mean, this is not a-**"**

(5) It's almost like the entertainment, the **shiny object is distracting you** from the fact that this is selling goods and a product and making **you comfortable** with having YouTube [panelist Hunter's company], in this case, a **part of your life**. And same with maybe the "Parisian Love" project [also panelist Hunter's].

(6) There's pernicious sides to Google, but **oh, my God**, they have **beautiful branding**. **I mean**, the "Parisian Love," the "Johnny Cash Project," the "Wilderness Downtown," these are **spectacularly beautiful objec- shiny objects**.

(7) And is it part of a **goodwill** gesture of **naturalizing** our relationship to these big

    organizations, do you think? **Do any of you think?**

The transcript divides the moderator's question in Part 1 into seven segments. In

segment (1), she forecasts taking a stance that may be problematic towards either the panelists or

someone else in terms of footing by characterizing her own forthcoming talk as possibly "too

flip."

In segment (2), she takes the first of two contrasting stances toward two different

panelists and their respective works. This first stance is not the one that may be too flip. Rather,

the moderator expresses approbation from the beginning with "I kind of appreciated." "Kind of"

can be understood less as a mitigation of the appreciation than as another forecast of a

contrasting stance she is going to take later on. What she appreciated were "projects," or specific

results of position-taking, that correspond to one of the panelists ("yours"), Jordan Levin.[155] She

explains that she appreciated Levin's projects because they "engage fans" or afford fans

"engagement with the brand." "Engage" is a word commonly used among this community as a

proxy for the intersubjective pursuit of authenticity. These projects, in other words, successfully

negotiate the double edge because they make marketing-oriented content engaging.

In segment (3), the moderator develops a contrasting assessment with respect to projects

that are not the "quick" engagement of Levin's work but more involved and "high-end." Rather

than inducing forthright appreciation, these projects have a quality that "interests me." Once

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[155] The moderator is not visible on the video at this point. But it is clear that she directly addresses this single

panelist both because of her subsequent reference to the Klondike project and because he is visible on the video,

looking at her and nodding while she speaks. Two other panelists are visible in the video. They, too, look at the

moderator in the beginning, but as she continues with greater specificity, they look away repeatedly, less engaged

with gaze and attention than Levin.

again, she specifies the projects, or results of position-takings, that she has in mind by referencing work for Canon in conjunction with YouTube, where another panelist, Lee Hunter, works. She begins to make an affective assessment of what it "feels like" to watch these projects.

Segment (4) is a continuation of segment (3) but has the distinct characteristic of being reported speech that voices the high-end projects' producers. Instead of stating her own feelings, the moderator animates these producers, disguising and delaying responsibility for the assessment the report contains. She positions herself with the audience as recipient of the report's imperative. The producers ("We") command a general "you" ("your") to look at a "shiny object" that dangles in a place ("here").

In segment (5), "here" turns out to be a place for "distracting" the general audience of "you." Having attempted to continue the reported speech with self-corrections, the moderator reverts to her own voice. She repeats the metaphor of the "shiny object," defining it as the entertainment content. In the hands of marketers, high-end content is not the central experience but a way to lull "you" into being "comfortable" with the corporation as "part of your life." Rather than a unified, authentic experience, experience is fragmented into a superficial, "shiny object" over "here" and the disguised "fact" that it is a marketing ruse embedded in everyday life. These projects are cut by the double edge. The moderator does mitigate this assessment by qualifying the evidential "It is" in the beginning of segment (5) as "almost like." Segment (5) is thus where the moderator's prediction of her own stance as "too flip" becomes salient.

In segment (6), the moderator rebalances her assessment. The shiny objects become more substantially authentic. She utters a highly affective idiom, "oh, my God" before praising Google's branding as "beautiful." Google owns YouTube, which is behind the specific projects

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she has called shiny objects. The preface to this high praise acknowledges "pernicious" sides to

Google, which distance the moderator from appearing to align herself with the technology giant

as a whole. Instead, she pinpoints its beautiful branding. This precision recalls the panel's

organizing theme of the tense intersection among Silicon Valley and Hollywood (and Madison

Avenue). It also seems to evoke broader discourses, such as those of privacy, which also came

up during the panel. The moderator takes a personal ("I mean"), careful stance only in favor of

the "spectacularly beautiful shiny objects" that the company produces. To be spectacularly

beautiful is to go a long way toward achieving authenticity, if by nothing else than by sheer

beauty, which closely approximates authenticity if not is authenticity.

In segment (7), the consequence of the moderator's shift from rather harshly assessing

high-end shiny objects to praising them becomes clear as she formulates a question to the panel.

Is the production of beautiful shiny objects an effort—an intersubjectively authentic, "goodwill"

effort—to achieve authenticity in "our" intersubjective "relationship" with them? That

authenticity would result from "naturalizing," a progressive verb form that encapsulates both the

chronological pursuit of authenticity and its potential outcome as the unified experience of a

natural, unmediated state. Do shiny objects succeed in negotiating the double edge? The

moderator asks the question to "you" and self-corrects to "any of you," inviting a response from

all four of them. They oblige in turn.

3. <u>Aligning Remix Authenticity in Shiny Objects</u>.

The first panelist to take up the question is the person who works at YouTube and makes

the shiny objects.

Hunter (panelist):

(1) **For me**, it **feels really natural**, the way **we** do it.

(2) And the reason why it comes off as looking like a **shiny thing** is because that's **so much more interesting**.

(3) So **I**- put it another way, if I want to get you to **feel good** about the YouTube brand, I can go out and spend fifty million bucks on billboards all over major centers. Or I can spend a fraction of that on doing something like "Life in a Day." "Life in a Day" is more of an **experiment**, but **ultimately**, **I think** it is **much more worthy and valuable** way to do it if we crack it right and get the right talent involved and create **something big and shiny** out of it. In terms of those two trade-offs, **I tend** to default towards the **shiny thing** because it's **boring** to go and get billboards

(4) and as **we were saying** before, like, this **intersection between marketing and content is is- it's- they're together now**, in **my mind**, at least.

(5) So, when it comes to this idea of, **"**Look at the **shiny thing** over here and oh, by the way, aren't we **great**?", yeah, that's literally the way it works.

(6) But **I don't want** to make **us feel** like **we're disingenuous** about that or trying to **trick you** into anything around that. **We** always try and be really **transparent** in the way that we do it and hopefully that **feels genuine** to the people who look at it. And I'm- **I'm very very very sensitive** to trying to be **too overt** in that message. [Gives an example from "Life in the Day" of "holding back" the manufacturing corporation partner from "flogging TVs," and YouTube's self-restraint in allowing the director

creative control so as to avoid edits that would be "**too overt**" and therefore

"**disingenuous**" and "**trying to flog you something**."]

Mann (moderator): Okay.

In segment (1) of his turn, this panelist adopts a personal stance toward what he will say, with "For me." That stance is the experiential assessment that the way "we" at YouTube do high-end marketing-oriented content "feels" "really natural," or authentic. "Natural" is in an instance of format tying (see Chapter 9). The moderator had asked whether producers' efforts naturalize the author–audience relationship according to a new kind of marketing, using a progressive verb form, "naturalizing." The panelist responds that it already feels "natural," an adjective that describes the experiential state.

In segment (2), he explains why that naturalness seems to make the end product a "shiny thing," adopting (and very slightly adapting) the moderator's metaphor. He thus reverses the causality in the moderator's question, which had gone from producing a shiny object to naturalizing a relationship. For the panelist, the product provides a natural experience, and happens to be a shiny thing because to be a shiny thing is "so much more interesting." The format tying extends from words to the broader concept of the naturalness of shiny things. In fact, this assessment as "interesting" parallels the moderator's turn in another way as well. The moderator had started talking about shiny objects by saying what "interests me" about them. For the panelist, to be a shiny object is interesting not because it is distracting but because it is more authentic than the alternative.

Segment (3) provides the comparison to the alternative, which is traditional, hard-sell billboard advertising. He states the objective of marketing, which is to make the general "you" "feel good about" his brand, that is, experience an affiliation with it. One option is the billboard

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route, which costs a lot of money. The other, cheaper option is a marketing-oriented content project, such as the one for Canon that the moderator had grouped among the shiny objects. This latter option is an "experiment," a chronological pursuit of authenticity on the field of production that seeks capital from a new kind of position-taking. It may or may not succeed, but the panelist's stance ("I think") is that it will win that capital by being "much more worthy and valuable." This outcome will be the achievement of the goal of authenticity in the "ultimately" unified time of a good experience.

Furthermore, that outcome will result because the project is "big and shiny." Shiny objects are not distractions but are the real deal. "I tend" to choose the "shiny thing" because the billboard is "boring"—left in the dust, as the speaker from Example 1 might say.

In segment (4), this panelist summarizes his argument, which is that marketing and content have merged. The shiny object is both, rather than being a distraction over "here" from the "fact" of the infiltration of life by branding. He prefaces this argument as something the panel had been saying collectively, and closes it as a personal stance.

In segment (5), the panelist explains why this new state of affairs makes the double edge a moot point. He replicates the moderator's use of reported speech containing an evidential imperative, "Look." Other than his substitution of "thing" for "object" once again, he repeats her reported speech verbatim: "Look at the shiny thing over her." In the rest of the report, he elides the moderator's voiced disclaimer that "this it not branding" into a self-assessment, "aren't we great?", that is predicated on the idea of the shiny object not being pure branding but also great content. The point of absorbing branding into content is to display a claim to symbolic capital. The panelist concedes that this reported stance is "literally" how the new state of affairs is.

In segment (6), he insists again that the literal description does not imply inauthenticity. The fusion of branding with content is authentic. On behalf of his company ("us"), he rejects ("I don't want") any attribution of inauthentic ("disingenuous") intentions ("feel")—in the sense of both self-aware intent and phenomenological intention—toward the audience ("trick you"). YouTube ("we") pursues intersubjective authenticity ("transparency"), with the aim of providing a work of art that "feels genuine" to the audience. The double edge may persist as a risk, but the panelist asserts a highly affective—"very very very sensitive"—awareness that the subtlety achieved by fusing branding and content must not be oversold. To be "too overt" in the new way of doing things would only revert to the hard sell in an era when the hard sell is no longer authentic. The panelist concludes his turn, which the moderator recognizes by saying, "Okay."

4. Authentic Shiny Objects Can Be Romantic or Remix.

The next panelist to answer the moderator's question argued that the traditional hard sell and the new mode of blending each has its place if done authentically according to its own terms, that is, within the expectations of romantic or remix authorship, respectively.

Example 2, Part 3

Nick Childs (panelist):

(1) I'll jump in very quickly **I mean**, **I think**, and again, **I'm not trying** to be **disingenuous**, either, that there's bad advertising out there. **I personally believe** that people don't hate advertising, they hate bad advertising or advertising they don't want to see.

(2) But **I know** a lot of people, my father-in-law, for instance, says he- said he hated ads but he likes ads for Apple and he likes ads for, I think, BMW, so the stuff that he likes, he likes to be advertised against.

(3) Canon's an **interesting** example. **I fundamentally believe** Canon was a **delicate, smart** way to get at advertising for them. **I don't like** their brand ads at all compared to what we were trying to do,

(4) which was to **tell a filmmaking audience**, "Here's how **you** can be using these kind of cameras **in a collaborative way** to do something **pretty cool**."

Levin (panelist): You don't like that cad, Ashton Kutcher, taking pictures and the ladies loving him?

Childs resumes:

(5) **I think** that that's **hardcore, hard-hitting**, to Lee's [Hunter's; previous speaker's] point, put your billboards up, and we're trying to do something slightly different. **I think** it's **all about the shiny object**,

 (6) it's all about the way in which you do it, and it's gotta be, **I keep using** the word and **I don't mean** to overuse it, but it's **gotta be authentic**, the audience has to believe in it. The struggle we had is to convince our clients **what their real authentic brand is about**, you know. They wante- they think it's something completely different than we strategically think it is.

In segment (1), this panelist immediately takes a stance that aligns with the previous speaker's by repeating a term that speaker employed at the end of his turn, "disingenuous." This new speaker, however, uses that word not to mean the potential failure of authenticity in merging branding and content by producers, but to mean the potential failure of authenticity on his part as

a speaker in this forum to convey truth about the double edge. Thus, "I'm not trying to be disingenuous" in saying that "there's bad advertising," that is, the hard sell fails, because what "I personally believe" is that the hard sell works when it provides an experience that is not either intrinsically "bad" or falls short intersubjectively. In segment (2), he offers a specific example as evidence about which "I know" from personal family experience.

In segment (3), he returns to the example of Canon that the moderator and previous panelist had both discussed. The current speaker also does projects with Canon, so there is an elision whereby he takes it up as an example of his own company's position-taking, even though the previous speakers had been talking about a different Canon project. Like the moderator, he offers an ambiguous assessment with "interesting." The ambiguity makes sense because he follows it with two contrasting examples related to Canon, one good, one bad. Referring obliquely to one of the shiny object projects, he expresses a strong stance ("I fundamentally believe") in favor of the "delicate, smart" way they approached branding through it. He expresses the opposite ("I don't like") with respect to their conventional advertising. It becomes clear that he is talking about a shiny object project that his company produced when he explicitly compares the conventional advertising to what "we were trying to do."

In segment (4), he elaborates on what they were trying to do through reported speech. The producers of the branded content sought to tell a specific, filmmaking audience (an audience of authors) how to use Canon cameras "in a collaborative way" to do something "pretty cool." In other words, they aligned the new kind of marketing with the new authorship model, mutually reinforcing the symbolic capital of both.

At this point, another panelist interjects with a joke about Canon's conventional advertising on television, which stars a handsome actor, Ashton Kutcher, using the camera to

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take pictures in settings heavily populated by pretty women. Others on stage and in the audience laugh during the joke. The joke thus serves as its own stance-taking of this community as a whole in opposition to the hard sell, or at least to "bad" or inauthentic executions of it. (The joke works even if someone present likes the commercial. It only requires understanding the social positioning expressed by the joke.)

In segment (5), the panelist resumes his talk by using the reference to the Kutcher ad as an example of the "hardcore, hard-hitting" hard sell. He connects it to the billboard form of the hard sell the previous speaker invoked. Now, despite having left room for the hard sell to be acceptable, he aligns himself with the speaker who talked about billboards versus shiny objects. Like him, this speaker "thinks" it's "all about the shiny object."

In segment (6), he qualifies that it is all about the shiny object as long as "you do it" correctly, meaning it's "gotta be authentic." The audience must "believe in it" as they do any other storytelling product. So, too, must the brand owner. The marketer's job is to convince the brand owner "what their real authentic brand is about" so that it can become part of a work of art that connects the owner to the audience in an intersubjectively authentic way.

5. <u>Authentic Striving as the Storytellers' Purview—Making Shiny Objects</u>.

A third panelist took the floor as soon as the last one ended. He is the one who made the joke about the Canon commercial, as well as the one whom the moderator praised for producing "quick" stories rather than shiny objects.

Levin (panelist):

(1) I mean, **honestly**, what these guys do is **fantastic**. I mean, fantastic. I think it's better than anything we're doing. I'm not a sycophant usually. I'm usually pretty arrogant at times. But I mean it's fanta- I mean, **I love** what they do.

(2) It's rare- it's not- it's the tip of the iceberg. **I hope to God** it goes in that direction.

(3) But there's a bit of a generation gap in the advertising business **I think**. **I think** there are still people at the top of it who wonder, "What, what is this?" They know something's going on, but they- they aren't, to use an oft-repeated word, they're not digital natives. This is all new, they're having to learn it. They're protecting the status quo, they're going to retire in three to five years. **I think** there's going to be a big turnover that happens.

(4) But they're metrics driven, and **the proof** of that is that advertisers that bitched for years that they were held hostage to a system that forced them to spend more for less in the form of traditional thirty-second spots or print advertising. Technology finally empowered them to work around the system, and what did they do in the last five years or so, especially while the economy was going bad, there was this really disruptive moment? They didn't jump in. With rare exceptions, they didn't jump in. What they want is, they want to know exactly how many people are going to see what I do. [He describes the funding model based on that metrics-driven approach rather than direct financing of content.]

(5) **That speaks volumes to me** about what the intent is there and where their comfort

level and how much risk they want to take. They're not, they're not willing to take

the risk that I think some players in Silicon Valley take.

(6) And this community, as much as **we may bitch and moan** about the big media

conglomerates, they take risks. They understand that at some point, you're spending

some money, something's gonna work, something's not going to work, you can't

manage the risk down to zero, that great content is catching lightning in a bottle. You

never know when you're going to get the right cast with the right story with the right

moment in time. So Sony, Fox, those companies still take risks in and around content

that I think the advertising community and a lot of the less inspired technology

community really isn't willing to take in any sort of mass or scaled way that matches

what Hollywood does.

Earlier, this panelist had drawn a distinction between "this side of the panel" and the

other side. It was not clear how he grouped the panelists, but he was making a point that, despite

the apparent convergence of Hollywood, Silicon Valley, and Madison Avenue through new

media practices, there remains an "inherent tension" among their cultures that results in "tenuous

partnership" in which "not everyone's interests are completely and wholly aligned." That

sentiment continues in his long turn transcribed above. In segment (1), he praises the two

members of the panel who produce the shiny objects and had just spoken (the fourth member is

primarily an academic). This effusive praise extends for numerous sentences, in which he adopts

a stance as a "sycophant" toward them, made all the more admiring by its contrast with his usual

"arrogant" attitude.

In segment (2), he cautions that his co-panelists' fantastic work is "rare." With a highly affective idiom, "I hope to God," he invokes a desired alignment between chronological and unified times in their efforts. As the "tip of the iceberg," those efforts may "go in that direction," that is, further toward the authentic merger of branding and content in fantastic stories.

In segment (3), he reveals that his assessment is hesitant because of a "generation gap" in the advertising business. The stance in this segment is qualified three times by "I think," which indicates some degree of mitigation with respect to the characterization of an older generation as out of touch with newer developments. This mitigation may reflect the power that generation still has—it is not only an older generation but "people at the top" who "are protecting the status quo"—and a reluctance to call them all dinosaurs outright. Like previous speakers, he employs reported speech, in this case, to voice the advertising establishment's incomprehension of new media practices. Only when they retire and leave the field will "a big turnover" occur.

In the meantime, in segment (4), the panelist describes those advertisers' "metrics driven" approach. As explained in Chapter 8, one of the principal complaints of the emerging community of storytellers is that entertainment industry insiders rely on traditional quantitative measures that either discount remix practices or count them as a threat. That view is propelled by the advertisers, who, ultimately, provide the funding for much of entertainment content production. For this speaker, the evidential "proof" of the metrics driven attitude is that the advertisers failed to seize a technological opportunity to revise it. That failure is one degree of misalignment between Madison Avenue, Silicon Valley, and Hollywood.

In segment (5), the panelist provides his assessment of this failure. It ("that," referring back to the failure) "speaks volumes to me" about intent, comfort level, and risk profile. He contrasts Madison Avenue with Silicon Valley in the last respect.

In segment (6), he further contrasts Madison Avenue with Hollywood, where the most established companies remain risk takers with respect to producing content. Even traditional Hollywood understands something about authorship that the advertisers do not, nor do members of the "less inspired technology community." The cultural conflict between them is older than new media's advent. The willingness to take risks echoes the axiom that the story is the mothership repeated by transmedia storytellers as well as traditional ones. Implied is that the producers of shiny objects have not necessarily struck upon a new truth about the ultimate goal of authentic storytelling, but have found a new formula for pursuing it, even one that may harness new media practices to circumvent ancient impediments to achieving that goal.

6. <u>Judging Authenticity as the Audience's Purview—Preferring Shiny Objects</u>.

The remaining panelist is an academic, rather than a producer. Her response to the question reflects that difference.

<u>Example 2, Part 5</u>

Jennifer Holt (panelist):

(1) I also **I just want** to add, I find **good** branding **inspirational** in the sense that anything that can make me forget for a second as a really somewhat **paranoid** or **cynical viewer**,

(2) anything that can make me forget I'm **being sold** something and **fall in love** with the art of the ad or of the piece, I find that **really inspirational**

(3) and useful as ways to think about how to instill those values into longer-form content.

(4) So I'm not- I'm really **not hostile** at all to **great** branding. And I also **don't care** about the product, like, what it is. I kind of **come around** to that afterwards.

(5) And **I feel** like a lot of the **changing** strategies that **you guys** are embracing are also coming from a need to **advance beyond** the **hostility of the audience** to something like product placement—or product integration as it was done- renamed, even though it was kind of the same thing—and audiences, I feel, are pretty hostile to that in some ways, or if it's done **poorly**, and so the strategies that use- that you have both **been developing seem to me** to be **really responsive** to the savviness of audiences.

(6) And—can I ask a question?

Mann (moderator): Please.

Holt resumes:

(7) So, do you see that, do you see what you're doing as being responsive to the audiences, or how much do you see the audiences playing into that?

In segment (1), this panelist expresses a personal stance toward branded content. Like an earlier speaker, she makes a distinction between "good" and bad branding, rather than an immediate categorical distinction between traditional and new media approaches. Her assessment is that good branding is "inspirational" or authentic insofar as it overcomes the "paranoia" and "cynicism" that separates her as a "viewer" in the audience intersubjectively from the author.

In segment (2), she specifies the criterion of inspiration, which is to erase a feeling of "being sold," or the hard sell. To "fall in love" with the ad as a work of "art" is "really inspirational" in a way that recalls Benjamin's description of the aura of authenticity. Good and

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bad branding start to take shape as the subtle versus the hard sell, which suggests that the new kind of advertising is in fact a more authentic way to proceed than conventional advertising.

In segment (3), the panelist extends her criterion to apply to non-branded stories, or the typical entertainment story products ("longer-form content"). Inspirational branding that overcomes the hurdle of the hard sell has capital value such that it can be used to reconsider the production of regular story products. This stance echoes that of the earlier panelist who described the new marketing-oriented content as already "natural."

In segment (4), the panelist crystallizes her argument into an abstract principle. She is "not hostile" to "great branding," regardless of the actual product or content. She goes further than any other panelist in emphasizing the efficacy of branding itself in taking positions on the field of production.

In segment (5), the panelist shifts from a stance toward branded content in general to one toward her co-panelists. Still speaking in terms of her personal opinion ("I feel" and "seems to me"), she directly addresses the two producers of shiny objects ("you guys"). She articulates both the pursuit and goal of authenticity in temporal terms. On the one hand, through their production "strategies," those producers are "changing"; they "advance beyond"; and they "have been developing." On the other hand, these strategies are "really responsive" to the audience. This alignment overcomes the double edge in marketing, exemplified by audience "hostility" to advertising-infused content that is too much of a hard sell. Her example is "product placement," such as having a character use a particular kind of car in a scene. She also notes that the superficial attempt to replace "placement" with the more authentic-seeming "integration" failed to fool audiences. She returns to her principal category of good versus bad efforts to qualify the failure of product placement as not absolute but contingent upon its "poor" execution. Executing

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it has become very difficult, however, given the "savviness" of audiences; hence the shiny objects that represent a new kind of strategy that makes fuller use of new media practices.

In segment (6), drawing implicitly upon her status as an academic like the moderator, she seeks permission to ask a question of her fellow panelists, to which the moderator acquiesces. In segment (7), the panelist turns her argument about responsive strategies into a question. The panelist who works for YouTube responds with a programmatic statement of remix authorship, saying that:

> From a marketing perspective, it's a two-way conversation. We don't broadcast, we're a conversation. So having the audience feel like they're part of what we do, which is obviously completely within what happened with "Life in a Day," the audience is the content, is critical. We don't broadcast out in a one-way fashion, it's not in the DNA of YouTube and increasingly in the DNA of the Web.

The collaborative, "two-way conversation" of new media practices has replaced the "broadcast" model of mass media in the very genetic material of the internet as a principal vehicle of social interaction. The moderator then closes this discussion, saying, "I actually want to turn the conversation slightly differently."

C. <u>The Edge of the Law</u>.

The narrative performance in Example 3 zeroes in on the legal aspect of the double edge involved in talking about the transformation of authorship on the basis of authenticity. The central problem in this narrative is how to engage fans authentically without threatening them with legal action or endangering the version of authenticity protected by IP ownership. For

professional storytellers, this problem is one of capital to be won and protected on a field of production where the authenticity that supplies capital is changing in meaning and remix-oriented audiences already have a measure of authorial power. The narrator's attempt at resolution is to forecast harmony between the modern and remix authorship habituses, which may or may not be workable in the end. She builds up to this forecast by constructing temporality that projects toward both an intersubjective relationship with her audience of fellow storytellers and also a historical view concerning transmedia. Similarly to speakers in the previous examples, therefore, these layers constitute a performance of folk historiography at the intimate intraface.

The example comes from the very last session of Storyworld, on its third day. Like most of the main sessions, that one was held in a large ballroom of a hotel in the heart of Hollywood. The panelists sat at a table on a dais, with the moderator at a podium next to them. Microphones rested on the table.

The audience sat at round tables throughout the room. There were approximately 150-200 people. Throughout the conference, based on name tags, business cards, introductions, or other comments, I observed that audience members included people who described themselves as, among other things, storytellers, experience designers, marketers (or brand consultants), academics (especially media psychologists), educators (especially from the growing area of non-profit transmedia), sometimes writers, and sometimes simply interested participants. During this particular panel, at one point, the moderator described Storyworld as a "tribal gathering" and asked whether the group was growing or whether everyone in the community was already in the room. Almost half of the audience members raised their hands as new participants.

The panel was entitled, "The Way Forward." The brochure description of the panel states that:

> entertainment industry innovators will discuss how new modes of collaboration, strategy, architecture and strategic robust story will not only extend the scale and scope of your storyworld franchise, but will possible change the structure, focus and operations of your approach to storytelling. This will be an informal, but moderated, discussion that explores the possibilities for the future of transmedia and multi-platform storytelling and what those at the cutting edge are forecasting.[156]

That description talks about transmedia and associates it with remix authorship. It declares a structural transformation in storytelling practice. It sets forth formal rules of the interaction and performance. It invokes both the intersubjective temporality of that interaction as a loosely moderated discussion and the temporality of the topic as one of "change" and the "future," which temporalities are united in the additional temporality of the unfolding, progressive "forecasting" of the anticipated discussion. And it identifies the speakers by a correspondingly unfolding, progressive position on the field, namely, as "entertainment industry innovators…at the cutting edge."

The panelists indeed worked for, or had worked on projects for, very well established industry companies and also had transmedia credentials based on academic as well as artistically and commercially successful projects. The narrative that constitutes Example 3 was performed by Kathy Franklin. According to her LinkedIn profile, Franklin spent a number of years at Disney before co-founding a 'brand and franchise building" consultancy.[157] In 2011, James

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[156] http://www.storyworldconference.com/ehome/33551/schedule/?&, accessed September 20, 2013.

[157] http://www.linkedin.com/in/kathyfranklin90, accessed September 20, 2013.

Cameron appointed her "president of franchise development" at his company. Cameron is one of Hollywood's most famous directors. *Avatar* (2009) holds the all-time box office gross receipt record, edging out another film directed by Cameron, *Titanic* (1997).[158] Cameron hired Franklin to work on the three approved *Avatar* sequels and their penumbra (Lang 2011).

The first *Avatar* movie included a transmedia component in its marketing campaign, produced by Starlight Runner Entertainment, a company led by one of the most successful transmedia proponents and entrepreneurs, Jeff Gomez, who is a frequent speaker at these conferences and spoken of as a mentor by many people. In a 2010 print interview with the Producers Guild of America, Gomez (2010) asserted that "transmedia doesn't replace marketing, it is infused into it, turning marketers into storytellers who are helping to enrich and expand the franchise." He acknowledged one of the principal challenges that motivate the terminological debate described in the first part of this chapter, stating:

> perhaps the greater challenge in the case of *Avatar*, was the same challenge we faced with many of the studios a couple of years back: transmedia was an unknown term in Hollywood, and its value proposition had yet to be proven.

He described what a true transmedia vision for *Avatar* would have been, expounding that:

> although there was some good content, we would love to have seen a fully realized transmedia campaign that slowly opened the world up to the excitement of Pandora months before the release of the film. It could have been followed by an array of rich content that continued to invite millions to participate in and nurture the ongoing mythos in the months and years between the first and second *Avatar* films.

He lamented, "But such was not to be," before expressing optimism that, "Then again, we're

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[158] http://boxofficemojo.com/alltime/world/, accessed September 20, 2013.

fairly early in the life of the franchise, and there will certainly be more opportunities for *Avatar*

from a transmedia perspective in the near future."

Gomez thus articulated major axes of this moment of uncertainty, in particular, the

perceived capital imbalance resulting from the existing power structure and the perceived

ideological shortcoming of the existing authorship habitus. Nonetheless, the makers of *Avatar*

demonstrated interest in transmedia both by embracing it to some extent during filmmaking and

by sending a top executive, Franklin, to Storyworld.

Example 3 is Franklin's answer to the first question posed to the panel by the moderator.

The moderator asked each panelist to introduce himself or herself "by identifying some trend or

something that you've spotted that you're passionate about and what you're doing right now that

illustrates that trend." The question thus directly engaged the advertised topic of industry

innovators' forecasts. He answered the question himself, followed by another panelist. Then

Franklin spoke. She introduced herself, noted that she was a last-minute substitution "and

therefore totally unprepared, but, u- u," at which point Example 3 begins.[159]

1. <u>A Problem of Property</u>.

I have divided the transcript of Example 3 into three parts that correspond to how

Franklin narrated temporality, starting with her explanation of the problem in Lines 1–5.

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[159] I transcribed the example from an audio recording I made from a seat in the audience. I omit the panoply of

conversation analytic markings, but note approximately ten of them in salient places during my discussion. See

Appendix A for a citation to and list of conversation analysis transcription conventions.

01   In terms of trends that we're seeing from where we're sitting looking at

02   *Avatar*, I think that, um, there's been a really interesting move toward

03   fan empowerment in that fans are creating really interesting things and

04   we are trying to figure out how to clear the legal pathways for what

05   fans do to be okay.

Franklin spoke from a position on the field commensurate with *Avatar* as a product of a particular position-taking by her company. She expressed a desire for greater authorial collaboration with fans, while acknowledging that Hollywood's traditional response has been to wield the modern authorship regime against remixers. She thus situated herself and her company in a transitional space between those two particular habituses of authorship somewhat similarly to the artist, Nina Paley, discussed in Chapter 8.

Franklin, however, approached that space from the direction of the establishment and as part of the fraction of it willing to embrace (and capitalize on) transformation. She establishes this positionality in Line 1, where the pronoun "we" almost certainly means that she speaks on behalf of her company (as opposed to the audience or humankind). The moderator asked her to identify a trend based on her perspective. She identifies one that "we're seeing from where we're sitting looking at *Avatar*."

"We" is complemented by a series of verbs in the present tense with progressive aspect: "are seeing," "are sitting, "[are] looking." They indicate current, ongoing activity and provide a narrative setting. They supply a temporality to the semantics of the verbs themselves that corresponds to her position as a witness to "trends," a word she emphasizes, probably in recollection of the semantic core of the moderator's question several turns earlier in the

conversation. She reports on what she and her colleagues see, from the position in which they sit, as they commit the act of looking. She thus lays the evidential foundation for the opinion she is about to impart.

That opinion concerns the role of intellectual property (IP) law in regulating the field and the potential for transformation. Shifting to a personal evidential with "I think," she funnels toward the source of trouble in her narrative by first identifying what "has been a really interesting move toward fan empowerment" in Lines 2–3. "Has been" is a present perfect verb that indicates something that began in the past and has continued to the present. In other words, from where she sits as part of a romantic authorship team, remix practices that began somewhere else have intercepted them.

Those practices are problematic. "Really interesting" is a highly ambiguous and euphemistic qualifier of "fan empowerment," or the audience as authors, which is a troubling development for the modern regime.[160] Indeed, fans "are creating," acting as remix authors (perhaps with their own romantic creativity) in the present progressive alongside the traditional romantic authors. These acts of self-empowerment change the power dynamics on the field of production. What is "really interesting" are the "things" fans create, or what they make through remix position-takings on that field. The chronology of fans' authorial pursuit of a new kind of authenticity intersects with what used to be a stable romantic vision of authenticity, potentially causing trouble.

In Line 4, however, Franklin contours the trouble. The problem is not exactly fans remixing authorship, but that their activities clash with the ownership component of the modern

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[160] Her elongation of the vowel in "fan" may emphasize the trouble word or may mark fans as a new class of authors and social actors on the authorial scene—or both.

regime. She affirms her company's efforts to resolve this problem by helping fans in a shared

quest for authenticity. Thus, "we are trying," in the present progressive, "to figure out how to

clear," in a series of infinitives connected by an adverb that together project forward in time, "the

legal pathways," or the obstacle of IP law. The goal, the "for what" or the what for, is for fan

remix, or what "fans do" in their new habitual practices, "to be okay." To be okay is to occupy a

good state, that is, to attain or at least be able to pursue a goal of authentic experience with clear

legal pathways.

2.   Seeking Compatibility between Property and Remix.

In Lines 6–10, Franklin elaborates upon the trouble by explaining what is wrong with

how it has been handled up until now, and expressing a desire to retain romantic ownership

while accommodating remix authorship.

Example 3, Part 2

06   It has been incredibly difficult in the past to engage fans because they're

07   very worried that if they let you know what they are doing, you will come

08   after them with lawyers and beat them with the lawyer stick. We are trying

09   to figure out how to create a playing field where people can be creative

10   and can be innovative yet still not endanger our ownership of our IP.

In Line 6, she confesses, "It has been incredibly difficult in the past to engage fans."

Once again, a present perfect form of to be sets a trajectory from the past into the present. This

time, it indicates the historical and ongoing, "incredibly difficult" challenge of sharing the quest

for authenticity with the audience, that is, "to engage fans" intersubjectively.[161] Implicit is that

engaging fans means accommodating their remix proclivities; whether they once acted like a

romantic audience is now beside the point. Franklin is beginning to project out of the past with

that implication as well as with her phrase, "in the past," which opens a little space to locate the

difficulty in the (very recent) past and anticipate improvement from the present day forward even

if the trouble persists at the exact present moment of her narrative.

Line 6, into Lines 7 and 8, begins to reveal the cause of this obstacle to intersubjective

engagement, which is "because they [fans] are very worried" by a subjunctive possibility or

probability. That possibility is that "if they let you [producers] know what they are doing" in the

present progressive of their new media practice, then "you [producers] will come after them with

lawyers," expressed in a future tense constructed with an auxiliary of modal certainty, "will." So

far, therefore, there exists a temporal projection from the trouble that starts in the past and

continues into the present, and will continue into the future as long as this clash persists between

remix practice and copyright ideology. She acknowledges aggressive deployment of IP law as a

principal cause of the disruption to a social quest for authenticity by employing a violent, if

perhaps also humorous, metaphor of "beating [fans] with the lawyer stick." It makes vivid the

material consequentiality of the ownership side of the equation.

Furthermore, the fans are marked as "they" and the producers as "you." These pronouns

describe a context-dependent relationship between groups of persons, in contrast to the nouns

used in the first part of the example. At the same time, the pronouns are generic, which shifts

Franklin's narrative from being specifically about the *Avatar* franchise and toward her

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[161] Her pitch rises sharply on the first syllable of "difficult," which is the word that conveys her assessment of

trouble.

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professional commonality with her audience. Franklin is no longer speaking in terms of an exclusive "we" on whom she reports to this audience. "You" does not quite yet mean the direct addressees who make up the audience. But it takes on the function in English of a generic addressee, similar to the less-used "one." This pivot from "we" to "you" articulates the trouble in terms that embrace the professional storytelling community as a whole, and starts to knit Franklin's reportive style to another kind of intersubjective engagement, the one between her and her audience as they collectively face the trouble and pursue an authentic resolution.

At the end of Line 8, into Line 9, Franklin reiterates her report, as a member of the *Avatar* team, that "we are trying to figure out how to" solve the problem.[162] As before, that formulation projects from the present progressive to the future. But this time, instead of saying "how to clear legal pathways," she says "how to create." Clearing legal pathways is something the producers could do on their own. Creating a playing field—like her talk of power, another direct parallel to practice theory terms—involves both legal ownership and artistic authorship. The substitution links her and her colleagues' efforts to fans' efforts, which she had described earlier as "creating." A further semantic link occurs at the end of Line 9, where she describes the desired outcome of these efforts "to create" as a playing field where people can be "creative." Rather than a clash between romantic and remix authorship, they can meld semantically.

At the end of Line 9 and beginning of Line 10, Franklin envisions that on this new playing field, fans "can be creative and can be innovative," that is, remix. "Can be" conveys modal possibility. If the effort to turn clash into confluence succeeds, the result will be that fans—in fact, "people" in general—can enact a remix authorship habitus without fear.

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[162] This time, she stresses "how" and elongates its vowel, which emphasizes the adverb concerning the manner of efforts at resolution.

Line 10 ends by latching that artistic concern to the legal one: "yet still not endanger our ownership of our IP." The trick is to afford remix authorship without eliminating the bedrock of romantic authorship, which is the IP-regulated link between authorship and ownership.[163] This fusion occurs in Franklin's talk through the conjunction of "people can be" with "not endanger." The conjoining phrase, "yet still," supplies an aspect that holds the creativity and innovation to the same moment as not endangering ownership. The modality of possibility must not impinge the present tense status of IP ownership.

3. Forecasting Resolution and Reunion.

The last component of Franklin's narrative observes that the present moment is a transitional one and professes optimism that it will result in a transformation that harmonizes remix authorship and the modern regime.

Example 3, Part 3

11   And this is a complicated place to be but there are a lot of very smart

12   people working on it, so I have faith that when we're at Storyworld

13   three years from now, we will have a much better approach to how to do

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[163] Franklin's intonation provides a clue that she is balancing creative possibility with retained legal rights. Her pitch curves upward noticeably on the last syllable of "creative" and the second letter of "IP." This parallel curvature links them in an assessment that signals the clash between remix and copyright but also the potential for harmony rather than a power struggle. This interpretation is supported by the fact that Franklin does not otherwise end her declarative phrases with the pitch rise sometimes called "uptalk" (Gorman 1993), a style among some speech communities in the U.S. of ending declaratives with rising intonation rather than the more common pattern of continuing or falling intonation.

14   this, to how to engage people.

The basic setting of Franklin's narrative is clear from the panel description: the state of professional storytelling under conditions of new media. But Franklin identifies the field of production's transitional quality in Line 11 with a metaphor of space or location. Because of the tension between remix and copyright ideologies, "this is a complicated place to be." The temporality constructed in preceding lines turns out to have been "slow disclosure" (Ochs and Capps 2001:135) of the most salient aspect of the narrative setting, introduced and conjoined to those preceding lines by "and" plus the present tense, objective evidential, "this is." The copula, "to be," confirms that the complicated place is inhabited existentially by everyone with a stake in this issue.

From that place, Franklin launches her final iteration of efforts to resolve the trouble. In Lines 11–12, she contradicts the complication with "but," identifies a host of "very smart people," and claims they "are working" in the present progressive "on it," that is, on the problem of existential complication. Another conjunction, "so," introduces a personal evidential in the present tense: "I have faith." "Faith," which Franklin stresses, orients toward the future. In the complement to that evidential that carries into Line 13, she clarifies that future. She uses an adverb of time, "when," to situate herself and her audience in a future "when we are at Storyworld." She uses a preposition tethered to a temporal deictic, "from now," to further specify that future as "three years from now."

In Lines 13–14, that near-term optimism is rounded out with a statement about what exactly will be resolved by then. Storytellers "will have" at least a better way to handle the trouble, that is, "a much better approach." Like "will come" and "will beat," "will have" is a basic future tense construction that employs a modal auxiliary of certainty, "will." Although

Franklin does not predict complete resolution, the noun, "approach," characterizes what we will have in that future. "Approach" also connotes projection, so that the improved future will involve continued, onward striving to unite all stakeholders in the quest for authenticity. That theme continues with her repeated utterance of "how" to describe the manner of resolution. We will have a much better approach to "how to do this,"[164] or work toward harmonization, which she specifies the second time as "how to engage people," which indexes the intersubjective pursuit of authenticity, if not quite necessarily attaining the authentic goal of a new harmony of authorship and ownership ideologies.

Finally, Franklin's conclusion at last knits together her narrative about changing authorship to her relationship with the audience. Resolution will be at hand "when we're at Storyworld three years from now." In earlier lines, "we" had referred to the *Avatar* producers. In Line 7, the pivot from "we" to a generic "you" that encompasses the community of professional storytellers had begun to tie Franklin to her audience together as members of that community facing the problem together. This pivot seems to carry over to her return to "we" in Line 12. It now means Franklin plus her audience, because they are the people actually attending Storyworld at that moment and might return in three years. Therefore, the "we" in Line 13, in which she predicts that "we will have a much better idea," now seems to include the entire storytelling profession. Even if these final two "we's" still mean only her company, she commits to return to Storyworld for further engagement with the community, resolution in hand. And that resolution relates to everyone and relates them to one another: the *Avatar* producers, "people" in general, and the professional storytelling community represented by Franklin's audience. Her

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[164] She may utter "to do" with smiley voice, indicating an assessment tied to the basic English verb for committing an act.

performance about authorship becomes a moment in effectuating a transformation in beliefs about authorship.[165]

IV. <u>Conclusion</u>.

This chapter explored how members of the storytelling community talk in the formal, but intimate, settings in which they frequently gather as part of their everyday professional activity. Like the legal professionals who parsed *Catfish*, these storytellers talked about and during instability of the authorship habitus. The instability colors the very terms of discourse, as illustrated by the debate over the capital worth of the word, "transmedia." The instability also becomes a topic of, and a target for resolution by, storytellers' performances in the intimate intrafaces where the community gathers.

Also like the *Catfish* data, the data in this chapter center on the artistic, commercial, and legal double edges that plague a habitus of authorship in transition. But the storytellers must confront the double edges more immediately than the legal professionals because striving for authenticity in authorship is their everyday, explicit professional concern. They claim collective authority to help redefine authorship when they gather to report and confer on this challenge, whereas the lawyers sought to determine ownership and ended up revisiting authorship because of *Catfish*'s novelty. And, though the storytellers often point to story products as examples, their

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[165] Franklin's narrative concludes with a clean break. There is a one-second silence when neither Franklin nor anyone else speaks. Sacks (1992:497) used "gap" to describe silences between speakers' turns, when no one clearly holds the floor or uses a pause to help construct a turn. The moderator then said, "Great. There's a trend," formally concluding Franklin's turn in terms of the panel's interactional format.

commentary is concerned ultimately with storytellers and storytelling as a craft, in contrast to the lawyers' primary concern with the attributes of a specific product (albeit ultimately inseparable from what they thought the filmmakers' motives were). In addition, the speakers in this chapter aim more at transforming the regime or at least accommodating its transformation, rather than stabilizing it.

This more explicit engagement with the flux of contemporary authorship is reflected in the performative efficacy marked by the intertextual calibration between the speakers' narrations and narratives. The folk historiography calls into being a new vision of authentic authorship, or a realigned vision of how to pursue and attain authenticity through authorship. This convergence displays greater practical consciousness in doing authorship than the more distanced perspective of jurisprudential commentary.

That is, while their talk, like that in the courtroom, cascades down the dialectics in my model of authorship, these speakers constructed their narratives through indexical bundles packaged into a genre of performance amid author peers. The same could be said of the judge and lawyers, and I will make that case in Chapter 12 when I elaborate on a general habitus of authorship distinct from a particular habitus governed by romantic or remix ideology and regardless of the topic of discourse. My point here is simply that these shades of difference between the two sets of data make it easier to begin seeing that argument. The performance data is more obviously talk *as* authorship as well as talk about authorship. They do not quite meld yet because I analyzed performances in settings apart from the actual authoring of stories. The next chapter addresses just such an instance of story production.

CHAPTER 11: "The Miracle Mile Paradox"

I began this study with a vignette about the double edge of embracing remix drawn from my participation in making The Miracle Mile Paradox (MMP), an alternate reality game (ARG) produced by members of Transmedia L.A. The risk rested on the boundary between juxtaposed actual and alternate realities in the story-game. That boundary informs the central theme of this chapter, which describes MMP as an instance of this community's integration of new media into its emergent practices of cultural production.

MMP was an ARG played across various online forums such as Facebook, Twitter, and fictional blogs and websites, as well as offline in the Miracle Mile neighborhood of Los Angeles located west of downtown and south of Hollywood. The TLA team wrote the story, created and animated characters inside the game, and contoured its trajectory. But the game's progress also required audience participation, in particular, to break into the files of a fictional corporation within the gameworld and uncover clues.

A large part of MMP's success turned on maintaining the boundary between the reality of the regular world (out-of-game) and the alternate reality of the storyworld (in-game). Whereas the controversy over the realness of *Catfish* in Chapter 5 was about how authentically the film collapsed the distinction between life and art, maintaining the boundary between those two realities or dimensions was crucial to the authenticity of the MMP experience. The situation out-of-game reflected the modern author–audience relationship. MMP's producers needed to control the story's infrastructure and moving parts, so that the audience could participate as immersively as possible in-game. In-game, the producers faded to the background, engaging within the storyworld only in character, with the audience taking the apparent lead in authoring the

unfolding experience. The in-game authenticity for the audience as co-authors depended on the

hidden, but not unknown, existence of the producers as conventional authors. Furthermore, this

arrangement rested on a precise and delicate allocation of ownership entitlements to manipulate

aspects of the story. In particular, the audience was supposed to "hack" the story at certain

points in-game, and never to hack behind the scenes out-of-game.

Thus, MMP's production is another example of how new ideas about authorship and

ownership are emerging through new media-inspired storytelling practices, and how those ideas

turn on interpreting the value of authenticity. The challenge of boundary maintenance

exemplifies the artistic double edge discussed in preceding chapters.

I. <u>ARG Storytelling as a New Kind of Narrative Chronotope</u>.

In an alternate reality game, a player enters and participates in the storyworld as herself,

rather than taking on a different identity as in a role-playing game. As the name indicates, what

changes are the characteristics of the world, whether in small but important ways that tweak

regular reality or more drastically within the constraints of the physical world and lesser

restrictions of the online world. The feature of playing yourself is a significant point of

continuity with both the romantic configuration of conventional storytelling—one might think of

all the tales in which a reader falls into the pages of a book—and also the immersive goals of

transmedia storytelling.

In fact, ARGs have been a mainstay in the brief history of contemporary transmedia

storytelling. Chapter 8 listed a few examples of ARGs that accompanied film or music album

launches, in the context of the marketing double edge of trying to draw consumers into a

participatory experience without compromising authenticity through salesmanship. ARGs need not be tied to marketing, nor very tightly controlled, however. Some transmedia storytellers have tired of ARGs. The success of ARGs as adjuncts to conventional story products risks compartmentalizing ARGs to secondary status and transmedia to ARGs, in contravention of the transmedia ethos. Appreciation of ARGs and "exhaustion" with them featured prominently at Storyworld, in particular.

The creation of an alternate reality for the storyworld of an ARG can be approached theoretically through Bakhtin's (1981) notion of the chronotope, which he coined from the Greek for time (chronos) and space (topos). The chronotope fits into Bakhtin's framework, in which authorship extends across the dialogic relationships that connect expressions and interpretations across time and space.

The chronotope can be further elaborated to mean the connected representation of time and space particular to a given genre of language, and how that configuration or series of configurations extends to represent ideologies associated with the genre—or, one might say, dispositions toward it. For example, the time and space of voice or character, or the audiences' relationship to the text or to the author, are all organized differently in a novel than a film or a political speech or any other recognizable genre. That organizational specificity of time and space makes the genre recognizable. And that recognition comes from habituation to what the genre is associated with as a social resource.

To listen to a political speech is to engage in one chronotopically specific activity as orator and audience, bound to yet another chronotopically specific activity, the events in the oration, in a specific way. (There exists a point of convergence here with Ricoeur's layers of the time of narration and the time of things narrated that framed the *Catfish* discussion.) To read a

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novel is to engage in a very different chronotope bound to yet another, events in the novel, in their own specific way. Each complex has a particular potential or force as a social resource, as supported by Habermas's argument that the novel emerged alongside the idea of the romantic author and the bourgeois division of the public and private spheres (see Chapter 2).[166] One question begged by transmedia, including the particular genre of ARGs, is whether a new kind of chronotope of authorship is emerging through an innovative recombination of authoring and what is authored, which is another way to understand Jenkins' term, "convergence," in his argument for a new "convergence culture" (see Chapter 3).

In an ARG, in particular, the juxtaposition of realities that are bound together reflects a specific chronotopic intertextuality. On the one hand, in regular, non-story reality, often called "out-of-game," the ARG's producers and its players occupy a chronotope in which they each have a rather conventional role as author and audience, respectively. The audience might conceivably be brought on board very early on as co-authors. But the principal attribute of the chronotope remains that it is the time and space of setting the rules of the alternate reality.

On the other hand, in that alternate, storyworld reality, or "in-game," the modern authorial role vanishes and the remix one expands to fill the entire chronotope. The ARG's producers cannot be seen to act as such. At most—though not insignificantly—they might animate characters within the alternate reality. The players become central actors, moving the story along. They may even change the story, either within the flexibility predetermined by rules

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[166] Another example would appear to be Leary's (2010) thesis that the face-to-face, verbal interactions of members of the Punch Brotherhood (grown out of earlier oral, social traditions) shaped the nineteenth-century political print culture exemplified by *Punch* magazine.

set in regular reality or, as often happens, across the chronotopic boundary through indirect negotiation with the ARG's producers who monitor and adjust the game from regular reality.

The boundary is critically important as both a bond and a divider, in other words, intertextually. The boundary defines the ARG as a genre and the associated participation framework for social action. In addressing the "question of boundaries" (Hanks 1996:166) opened by the range of empirical situations in which people co-participate without being physically co-present, or co-participate through roles more complicated than obvious co-present ones, Hanks ties the participation framework to its generic, intertextual setting. He identifies three layers of linkage: co-present simultaneity, diachronic relations to other interactions; and embedding of multiple roles within the same participant act. [167]

The juxtaposition of realities in ARGs adds another layer, or configures the spatiotemporal linkage in another way. The two realities have a diachronic relation insofar as the alternate reality is conceived and initiated through preceding action in regular reality, as people react in one reality to events in the other as the ARG unfolds, and as regular reality closes the alternate reality at the end of the game and the alternate reality enters the archaeological record of regular reality for future uses such as evaluation during the kinds of performances described in the preceding chapter.

The two realities also progress simultaneously, but in distinct "frame spaces" (Goffman 1981:230). For the game to work, producers and players must abide the division between out-of-game and in-game. One licensed way to cross between it is for producers to animate, in

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[167] Compare the discussion of intertextuality in Chapter 9 when the *Catfish* controversy moved from the social arena to a legal one. Similar layers apply, but in a different arrangement because of the thicker boundary between the social and legal arenas compared to the unified arena of the ARG.

Goffman's terms, the avatars of characters who inhabit the alternate reality. This voicing is an example of Hanks's embedding layer. In this arrangement, the out-of-game producers are the principals of the avatars' utterances, while the in-game characters are the authors.

This kind of avatar animation recalls at least one historical precedent from the era before new media. Powell (2012:4) describes the "fictional stand-ins," or "eidolons," of eighteenth-century periodicalists. The "neutral," "'ideal' professional authors" voiced in the pages of the periodicals were personalities distinct from their animators outside those pages.[168] Powell notes the temptation to think of the relation between the periodicalist and the voiced author as that of the "Romantic, 'modern' one [notion of identity] in which a fixed self always waits beneath the mask." For the periodicalists, the roles were much more distinct, much as that between principal and author is for the ARG producer who animates an avatar.

At the same time, this kind of avatar animation differs from the closest contemporary example, which is role-playing video games. In those games, players usually inhabit the character represented by the avatar and temporarily leave behind their own out-of-game personas. The game aspect of ARGs can be misleading in this respect. They are fundamentally a mode of storytelling, rather than gaming. The same might be said of ever more narratively complicated role-playing video games.[169] Participatory media involve dissolving that distinction (see Darley 2000:151 on the convergence of cinematic narrative and video game playing).

But a distinction remains in the function of the boundary. Many role-playing games have crossing points between the out-of-game and in-game worlds, for instance, allowing players to leverage economic activity on one side toward profit and consumption on the other. Similarly,

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[168] The proliferation of "cloaked" websites (Daniels 2009) may represent a new media reincarnation.

[169] For more on game studies and theorizing, see Malaby (2006, 2007).

players often attempt "end runs" (Taylor 2006:131) around in-game rules that game designers

fear harm the "integrity" of the game, much as players often try to peek behind the curtain of

ARG production. In both cases, what might be gained or lost by doing so concerns the

authenticity of the experience.

In the case of ARGs, however, the goal of such illicit border crossing is less about

instrumental shortcutting than about seeing how things work in the parallel, out-of-game reality

where the producers maintain real-time, juxtaposed involvement in the story while players play.

In other words, players are tempted to collapse the intertextual gap that defines the producers'

versus players' participant roles, extending across the divide their new power of in-game co-

authorship and their new expectation of the lifted veil.

The chronotopic structure of the ARG thus instantiates a version of the artistic double

edge discussed in preceding chapters. Story producers are vigilant about the relation between the

in-game stage and backstage operations. They police the distribution of participant roles across

the boundary between realities. They manage boundary crossing through rules about the masks

assigned to those roles. Deception is intrinsic and essential to the authenticity of the story as a

vehicle for the dual relationship between author and audience out-of-game and as co-authors in-

game. Players face the double edge in their own way, accepting the necessity of the boundary

and of deception but also chafing against its restrictions on the participatory ethic they have been

invited to join.

At a Storyworld panel entitled, "The Mystery of Authorship," panelists repeatedly

emphasized the need to engage, immerse, involve, and give control to audiences. Yet one also

lamented how "we lost control of the story" in a particular project when a player betrayed a

character she was meant to shield from sinister in-game forces. While he, as a producer, said, "I

really regret that we didn't get to tell the beautifully crafted story we had prepared," another panelist, who had played the ARG, offered that, "from the other side, from the players' perspective, we loved it" because the players "felt we had control."

When speaking about his own experience as a producer on another project, that latter panelist remarked that players had hacked (infiltrated) the producers' computers. Realizing they could not stop such activity, the producers figured out how "to give the illusion" of hacking and "feed their baser instincts."

Yet another panelist advised that much depends on how authors handle such situations as they arise. He gave the example of a LARP set in 1929. A player playing a zombie triggered an unplanned "gunfight" that resulted in too many players dying too soon in-game. To bring them back into the story, the zombie revived others with a tune. According to the panelist, the players still talk about that "magical moment," but it remains a "tragedy" to the producers. Their expectations diverged as to what an authentic experience connecting them through this novel storytelling art form would be.

The same theme emerged frequently in storytellers' comments at other events, often expressed with a tone of resigned frustration. The panelist whose player betrayed a character went further. With perhaps a touch of hyperbole, he acknowledged instances of "awesome players" but added, "Most players are assholes, they really are, and they go out of their way to destroy your story and destroy your game." In an ARG where four players refused to go along with a fictional SWAT team raid, acting tough instead, the actors playing the SWAT officers beat one of them up; he turned out to have been a plant for just such a contingency. Anticipation of players' remixing tendencies led the producers to reinforce the deception required to navigate the double edge.

The theme also preoccupied MMP's producers; I discuss hacking below. The vignette that introduced this chapter provided another angle on the same dilemma. The risk of bringing Rex out-of-game for the funding campaign was a risk of damaging the delicate chronotopic framework of genre and participation, implicating as well the narrative dimension because it recontextualized Rex's story.

In fact, the content of the video itself crossed the boundary. Made to recall the silent film era that forms part of the MMP backstory, the video includes a title card, "Meet Rexford Higgs," that voices the producers. Figure 11.1 shows a screen capture image of the card. The video also portrays Rex reenacting his discovery of the tin box, with "reenactment" marked in the corner of the screen during that scene, as shown in Figure 11.2. Rex, however, also speaks directly to the camera, asking potential sponsors for money to help him, as depicted in Figures 11.3 and 11.4. In the video and in the broader act of using Rex for the funding campaign, the producers crossed the boundary in a risky way. The normal role distribution is for the producers to animate Rex, who is an author in relation to whom they are principals. By bringing him to the Kickstarter phase, he became a principal and animator as well, risking the confusion my colleague feared in the vignette. Later, the same video was folded back into the game as an appeal by Rex for funds to build the machine described in the documents he found. As it happened, the Kickstarter campaign was successful. Funding came primarily from within the transmedia community (Rougeau 2012), which seems to reflect the nascent status of transmedia on the field of production. The revolutionaries must support one another in the absence of a mass market and in the face of establishment ignorance or hostility. With funding secured, MMP got underway.

Meet Rexford Higgs.

11.2 MMP Kickstarter Video (2)

re-enactment of event

11.3 MMP Kickstarter Video (3)

11.4 MMP Kickstarter Video (4)

II. "The Miracle Mile Paradox".

MMP was both made and set in the geographical center of Los Angeles.[170] Designed to be both a hands-on educational experiment for the group and a fully functional transmedia story, MMP also tested the potential transformation of the Hollywood culture industry through its amalgamation of the offline and online worlds that new media blend. In other words, it was a methodological experiment in remix for its producers.

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[170] A slide presentation with additional details about MMP, prepared by one of its principal organizers, is available at http://www.slideshare.net/aprilarrglington/the-miracle-mile-paradox-arg-case-study, accessed October 4, 2013.

A. <u>MMP Production and Play</u>.

In February 2012, at the TLA monthly meetup, three members of TLA solicited member participation in the Miracle Mile Paradox as an educational exercise for the group and a test of transmedia possibilities.[171] (The "Paradox" element of the title came later.) The project was designed from the start to be not-for-profit. It would, however, try to integrate businesses in the Miracle Mile district as locations in the offline scavenger hunt, in order to see whether increased foot traffic might boost sales or foster greater awareness of the neighborhood amenities and feel. It also was designed to have a live experience component in Los Angeles as well as an online one in which people elsewhere could participate. The organizers divided the project into development components or modules so that TLA members could be part of whatever and however much they wished. The three organizers initially divided their own spheres into "story producer," "experience designer" (later changed to "experience producer," a professionalizing alteration in light of Hollywood's system and terminology for allocating capital) and "marketing manager" (later changed to "line producer"). They solicited anyone with interest or experience in any relevant component of ARGs, such as writers, marketers, puzzle makers, or graphic and website designers.

The transmedia ethos and the chronotopic structure of ARGs were also evident from that first meeting. One of the trio enthused that, speaking from her experience having run an ARG the previous year:

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[171] Video is available at http://www.livestream.com/transmediala/video?clipId=pla_14b218b8-8909-427c-aa41-b2cd38d008e9&utm_source=lslibrary&utm_medium=ui-thumb, accessed October 3, 2013.

It's the coolest thing ever, because you literally get- your audience is participating with

the characters you created, and it's unlike any other medium. If you're a filmmaker, or,

you know, you're coming from a world where the medium is very static. When you run

something like an ARG or a LARP, you're getting instantaneous feedback from the

audience. And it's really interesting.

At the February meetup, the organizers also sketched the initial story concept and its

motivations. The story was set on Wilshire Boulevard between La Brea and Fairfax avenues.

The stretch encompasses a westward extension of Wilshire from downtown begun in the 1920s

and known for its many art deco buildings as well as for the La Brea tar pits that contain the

remains of trapped ice age animals. These elements were built into the "mythology" of the

MMP story.

The central character is Rex Higgs, the "collector of obsolete machines and archaic

technology" who was enlisted for the Kickstarter video described in this chapter's introductory

vignette. Rex also runs a blog about his finds from rummaging through antique sales. The

documents in the tin box he stumbled upon at the building site contain unfiled patents signed by

a J.H. Winthrop.

Although Rex does not know it at the time, J.H. Winthrop was an inventor and

experimenter who lived in the Miracle Mile in the early 1930s, shortly after the invention of

commercial television. Tinkering with the new technology, he created a machine called a time

switch that could "see glimpses of the past and future." Winthrop disappeared when he went to

the file the patent.

The third main character is an "evil corporation," Agent Intellect Corp. (AIC). The

"private, hushed multinational" has a knack for making money, even during the Great

Depression. Finally, there is Cassandra, who lives in the present day. Like her mythological namesake, she knows the truth but no one heeds her because she is a "crazy hippy you see on the street handing out flyers" to "bring down AIC."

As noted earlier, the story would have a "physical element," namely, a scavenger hunt in the neighborhood. It would also have online elements centered on Rex's blog, AIC's website, and various social media outlets. A weekly puzzle would structure the game's progress, leading to weekly break-ins against AIC's website. The ARG would be in development until Memorial Day (end of May) weekend, launching then for a fourteen-week run over the summer. During that season, it might attract more foot traffic from both locals and tourists, helping fulfill the goal of incorporating local businesses and neighborhood history into the story.

This outline already contained four intertwined elements that are serendipitously related to this study's themes, although not entirely coincidental. One is the intellectual property issue at the center of Rex's discovery, in this case, patent, not copyright. Another is temporality, including both a twist on chronological direction embedded in the time switch marvel and that twist's implication of unified time if the mystery of Winthrop's disappearance and Cassandra's foreboding is solved. The third is the Hollywood connection, beginning with Winthrop's piggybacking on the then-novel technology of television. These elements cut across the story to the storytellers and the storytelling profession as MMP developed into a new media experiment about authorship and ownership in Hollywood.

The fourth, which is what makes the first three not entirely coincidental, is the construction of the ARG story as a mystery adventure. The players would begin knowing very little about Rex and only a small amount about Winthrop, AIC, and Cassandra that Rex revealed from his initial investigations. The players would have to piece together the rest of the story,

helping Rex after he gets into trouble with AIC. The mystery adventure is a very common way to structure ARGs, which, as noted earlier, are very common genres of transmedia storytelling. The mystery adventure is conducive to audience participation and to the double edge that accompanies it. These three elements—spoiler alert—came together at the finale in the person of Jane Winthrop, J.H.'s daughter and a silent film actor turned recluse, who delivers a message through the rebuilt time machine about the resolution to her father's fate.

Eventually, the working group that produced MMP settled to about twenty people with varying levels of involvement, including me. Over the course of the spring, we developed MMP in preparation for its Memorial Day weekend launch. The production phase reproduced the transmedia approach to storytelling, enlisting new media in a collaborative process that engaged the MMP storyworld from multiple points at once through a combination of online and offline activities.

To begin work, the group met in person in a rented conference room at a building in the Miracle Mile neighborhood set up for startups that need physical space but cannot pay for or do not have use for permanent office space. This venue linked us to both the setting of MMP and transmedia production culture. The initial meeting reintroduced the MMP story concept and some of the tools to be used in developing it.

Smaller groups occasionally met in person at other times. The Kickstarter video filming described in the introductory vignette is one example. It had to be done through physical co-participation because of the talent and equipment involved. Others included scouting for sites to use in the scavenger hunt, "beta testing" (trying out pre-launch) the hunt, and staging Cassandra-inspired protests of AIC on a street corner in the Miracle Mile to promote the upcoming ARG

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launch. These activities also had to be done through physical co-participation insofar as they anticipated the offline component of the ARG.

Much of the work, however, was done online, collaboratively but not through physical co-presence or simultaneously, in keeping with new media practices. Two forums, in particular, organized the work. One was a Facebook page. Facebook was immediately accessible because it is simple to create a new group on it, and generally familiar because it has so many users already. Once the organizers established the group's Facebook identity, those of us who were already on Facebook for other reasons could join it easily. Facebook also allows for uploading documents or photographs and commenting on them, so that the story concept outline or photographs from scouting the Miracle Mile could be shared and discussed. Facebook's layout of chronologically organized conversational threads also facilitated both timely calls to action and ongoing discussion. Figure 11.5 shows one such thread. One of the main organizers succeeded in building the mechanical television that would become the time switch from a kit. She shared the news and a photograph of a test of the machine, requested assistance in further testing it for software compatibility, and received kudos from other members.

The second principal online tool was Trello.com. A forum on Trello works as a series of digital index cards nested in super- and sub-categories. The cards can be edited and moved around. Conversational threads can occur within cards as well as in a general window. In order to control the volume of information, members of the Trello group can choose which categories to associate with, and other members can see who else is associated with a particular category, so that the puzzle makers, for instance, can coordinate among themselves. A calendar with different levels of task urgency or immediacy can also be made, and completed tasks marked as such.

Figure 11.6 shows the nesting feature. "Overview" was one of the principal Trello

Categories. If one clicked on the Overview category, it would bring up the page shown, with

additional categories such as Characters, Storylines, and others that are not shown in the figure

(the image truncates the actual screen). Within Characters, one could click on the Rexford Higgs

card to get a description and find tools for further discussing the character. Because Rex and a

few other characters were major parts of the ARG, they each also had their own page at the same

category level as Overview.

11.6 Nested Trello Cards
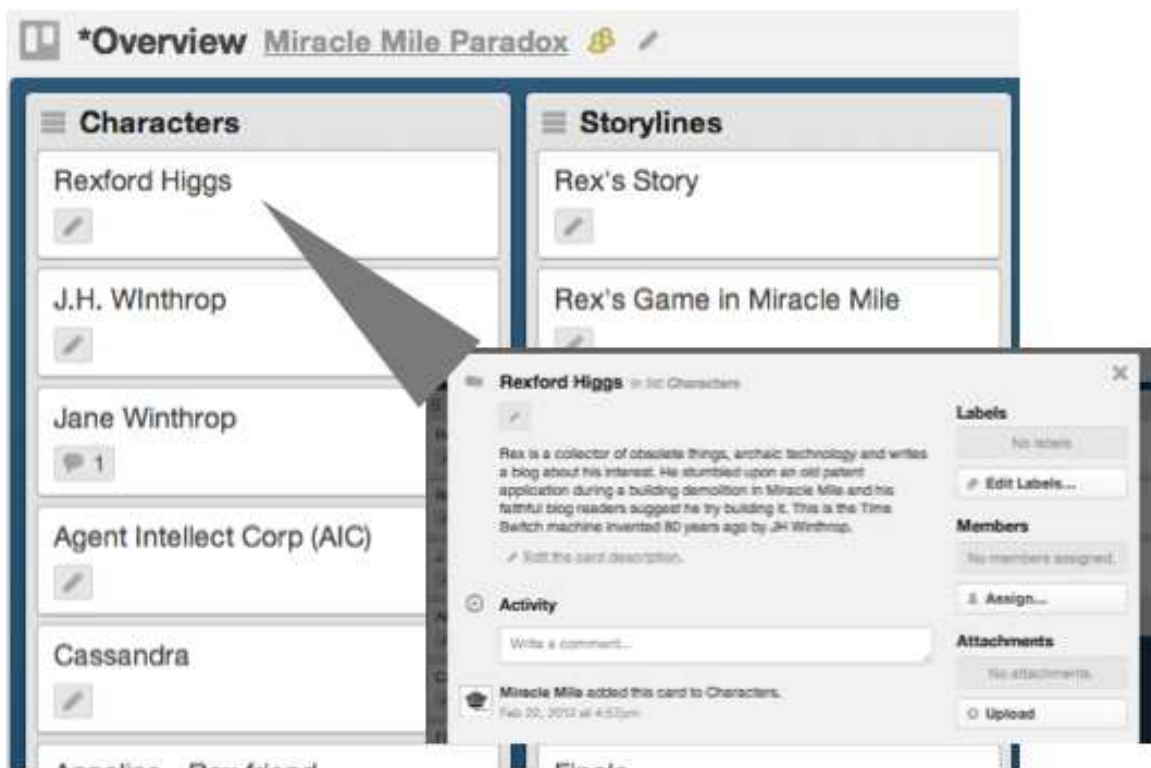
Figure 11.7 shows the Rex Higgs page. The lists within it include his Enchanting and

Obsoletus blog, which would be a major online site for the game play; Rex & Friends, which

lists his main character allies in the game (the thumbnail photos represent TLA members who

took primary responsibility for each character, and thus animated the characters' in-game

avatars); Time Switch Device, which related to the machine shown in Figure 11.5 built from the

patents Rex found in the tin box; and Videos, which includes the Kickstarter video and another

one in which Rex is beaten as his investigations come too close to Agent Intellect Corp.'s secret.

Each card in each list could be clicked to lead to further descriptions, threads, photographs, and

other information. For example, under the Enchanting and Obsoletus list, the Various obsolete

machines card could be clicked and would reveal a host of images and comments on them

researched from archives of machines built in the late nineteenth and early twentieth centuries.

One of the thumbnail photos on the card is my photograph because I helped collect that research.

The images would be used to populate Rex's blog about his hobby and provide it with a sense of

history and personality—of relatable authenticity as the expression of a human being's life

experience—beyond the immediate plot of the time switch mystery.

11.7 Rex Higgs Trello Main Page
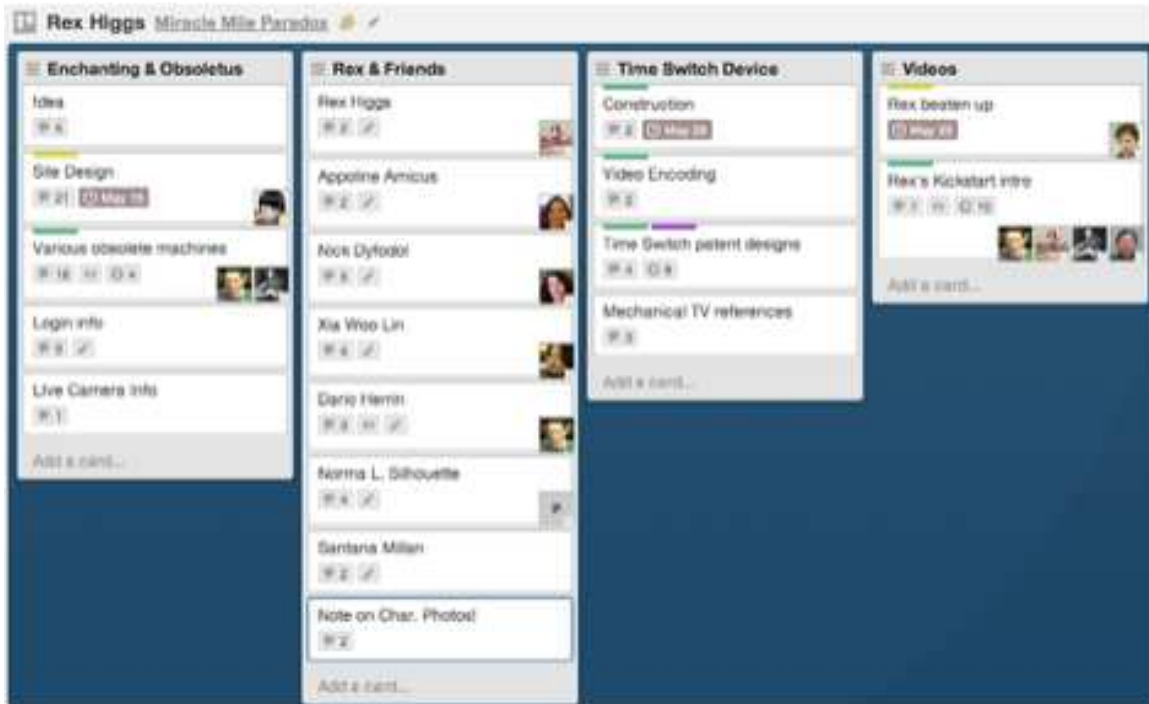
The production of MMP thus followed a particular chronotopic arrangement of genre and

participation that accorded with the characteristic attitude toward professional storytelling held

by transmedia storytellers and their likeminded peers. In one sense, this out-of-game chronotope

reflected the conventions of modern authorship. The producers created and controlled

everything at this stage. In another sense, however, the process was more fragmented,

collaborative, and open to remix than the traditional romantic ideal envisions. New media

afforded and enhanced that permutation.

The transition toward remix gained true momentum, however, where the production

chronotope intersected with that of the ARG as a story product. New media shaped the

transitional space, or boundary area, itself. The producers created a standalone website for

MMP.[172] Figure 11.8 shows its main page. The site is predominantly out-of-game. It describes

the producers, lists credits for people who worked on production, acknowledges donors, and

links to press coverage. It even has a Behind the Scenes section. But the link adjacent to it is a

How to Play section that walks people through the ARG. It thus serves as a portal to the in-game

reality from a space that otherwise explicitly describes the infrastructure of the out-of-game

reality (as opposed to placing the how to play portal on a completely separate website). It creates

the conditions for players to participate in the role of co-author even as it lists traditional

authorial credits for the producers. To visit the website is to face both realities at the same time.

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[172] http://miraclemileparadox.com/, accessed October 4, 2013.

11.8 MMP Website

Other areas within the larger boundary space were created by the players on Facebook, on an ARG forum called unfiction,[173] and on a "wiki" on WikiSpaces.[174] Wikis are how-it-works websites where people unpack the details of almost anything imaginable. These forums

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[173] http://forums.unfiction.com/forums/viewtopic.php?t=34355, accessed October 4, 2013.

[174] http://miraclemileparadox.wikispaces.com/, accessed October 4, 2013.

were simultaneously out-of-game and in-game places for players to share information and collaborate. They were out-of-game in the sense that players brought information from MMP to these forums in order to discuss it. They were in-game in the sense that players were participating in MMP by discussing that information. Creating and using these forums was an act of remix authorship on the production side, or in the production chronotope. This act blurred the boundary between out-of-game and in-game.

There is evidence that both producers and players recognized the blurring. The producing team was told about the unfiction forum and warned that reading what players posted to it was okay, and could be helpful in identifying sticking points or other problems that could be solved behind the scenes. But direct engagement with fans on unfiction was not okay.

The same was true of the players' Facebook page. One of the organizers posted on the producers' Facebook page that the players had created their own, an entirely new media-based chronotopic intersection. The producers' conversational thread resulted in express advice that monitoring was okay, but interference was not, and, especially, interacting with the players in character—that is, as if in-game but voicing out-of-game things—would be an egregious breach. One of the group called this rule the "ARG Prime Directive."

The players themselves took their wiki private, placing it behind a password-protected wall. Their stated reason was that AIC employees might conduct a web search for their own names and find the wiki because the players would be talking about AIC employees by name as they solved the puzzles and broke into AIC's files. Superficially, hiding the wiki made no sense because the AIC employees were all fictional characters. But the move was a sophisticated engagement of the chronotopic boundary in two ways. It shielded the players from the producers' out-of-game monitoring. And it did so by protecting the integrity of the in-game

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world, compartmentalizing the wiki as the players' out-of-game forum and keeping it out of places such as web search engines where regular and alternate reality overlapped.

The MMP website, the wiki, and the Facebook page were all ways of facilitating participation in the ARG. That participation took place both offline and online and converged at the finale. Offline may be imprecise; the team used the term, "live experience," and the scavenger hunt involved receiving messages through a mobile phone. To start, players had to find Rex's business card. The producers planted the cards at businesses around the Miracle Mile, mailed some, and left some hints online about where to find them. A player who got the card called the number on it and received a text message from Rex, who had gone into hiding after his beating. Figure 11.9 shows the text.

11.9 Text from Rex

When the player responded to the instruction in the initial text, she received further instructions to proceed to a landmark in the Miracle Mile and solve a puzzle (or solve a puzzle to find a landmark). Figure 11.10 shows the sequence for a clue about a date on one of the lampposts in an outdoor installation at the Los Angeles County Museum of Art. (The time stamps at the top of the image should be disregarded. They merely indicate when the screen image was captured subsequent to the actual activity of the scavenger hunt.)

11.10 Clue from Rex

The clues progressed down the Miracle Mile, as shown in the map in Figure 11.11, which was posted on the Foursquare social media website.[175]

11.11 Scavenger Hunt Locations

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[175] https://foursquare.com/aprilarrg/list/the-miracle-mile-paradox-arg, accessed October 4, 2013. Figure 11.11 is a screen capture from the MMP website, where the organizers posted the news of being on Foursquare.

Successful completion of all the clues led to a room in an art deco building, a key to the room, and, inside, it the reconstructed time switch, shown in Figure 11.12. Pressing buttons on the machine delivered a static-laden transmission from Jane Winthrop, the daughter of the time switch's inventor, appealing for help against AIC and delivering a final coded clue.

11.12 Time Switch

Shortly afterwards, players received the threatening text message from AIC shown in Figure 11.13.

11.13 AIC Message

The live experience dovetailed with the online component through Jane's coded transmission. After successfully building a time switch based on the files in the tin box he recovered, he finds Jane's message and succeeds in decoding a portion of it and posting it on his blog with help from friends who are also pre-written characters in the game. Figure 11.14 shows the blog mainpage.

11.14 Rex's Blog

Rex and friends who are also pre-written characters in the game ascertain that the time switch only works within the Miracle Mile. AIC sends Rex a cease and desist letter, and he also receives a threatening voice mail. Fearing for his safety and hoping to enlist help, he sets clues to lead others to the time switch's location in the Miracle Mile—that is, the scavenger hunt clues. At that time, he is physically assaulted, which sends him into hiding.

Still seeking assistance from others, he gets word to his friends that Jane's transmission is cut into more than a dozen coded pieces that will come through on successive weeks. With his friends' help, he gets them onto his blog. Figure 11.15 shows one of those posts.

11.15 Transmission Segment
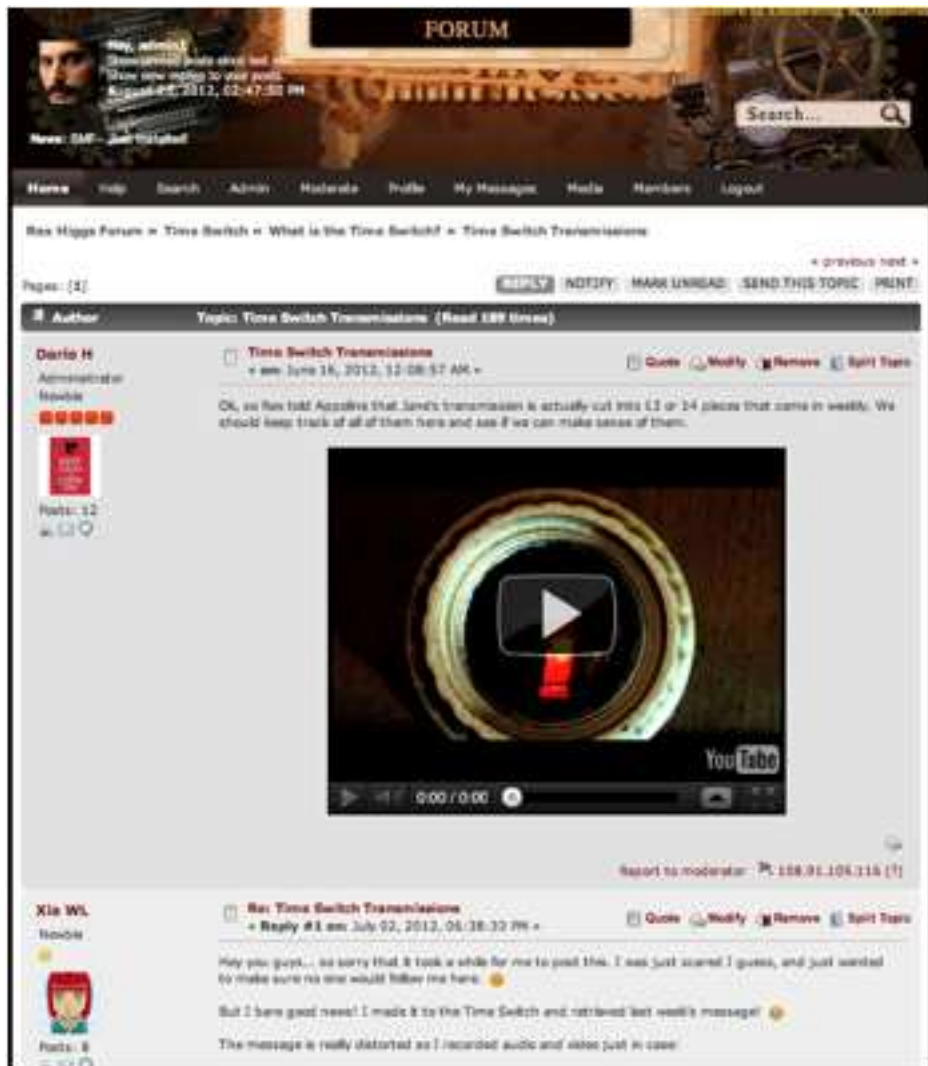
Collecting and deciphering them revealed to players much of the backstory on what Rex had found and why it was so dangerous. They discussed their findings on the sites previously mentioned, as well fully in-game on a forum on Rex's blog. Figure 11.16 shows one of those threads on the blog.

11.16 Discussing the Transmission

Meanwhile, Rex's friends communicated with one another and the players in other

forums, as well, including social media sites. Figure 11.17 shows part of the Twitter feed of

Dario Herrin, Rex's most technologically proficient friend. These accounts were not devoted

only to Rex's problems. The characters were given fleshed out lives as much as possible in order

to increase their authenticity as personalities within the game. In fact, one of the producers used

the opportunity to animate a character in order to introduce a discussion of mental health issues

through the transmedia story. She subsequently wrote about that embedded discussion in her

own transmedia blog.[176]

11.17 Dario's Twitter Feed

The character in question was not one of Rex's friends. Rather, in addition to uncovering

the story through Jane's and Rex's messages, there was a second line of discovery for players

that went through the nefarious company, AIC. AIC's employees also had their own social

media presence, which is where the mental health subplot unfolded. Figure 11.18 shows the

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[176] http://storify.com/Nedra/lauralee-simcoe, accessed October 6, 2013.

Storify page of that character (on the left) and the Twitter feed of another AIC employee (on the right).

11.18 AIC Employee Social Media Pages
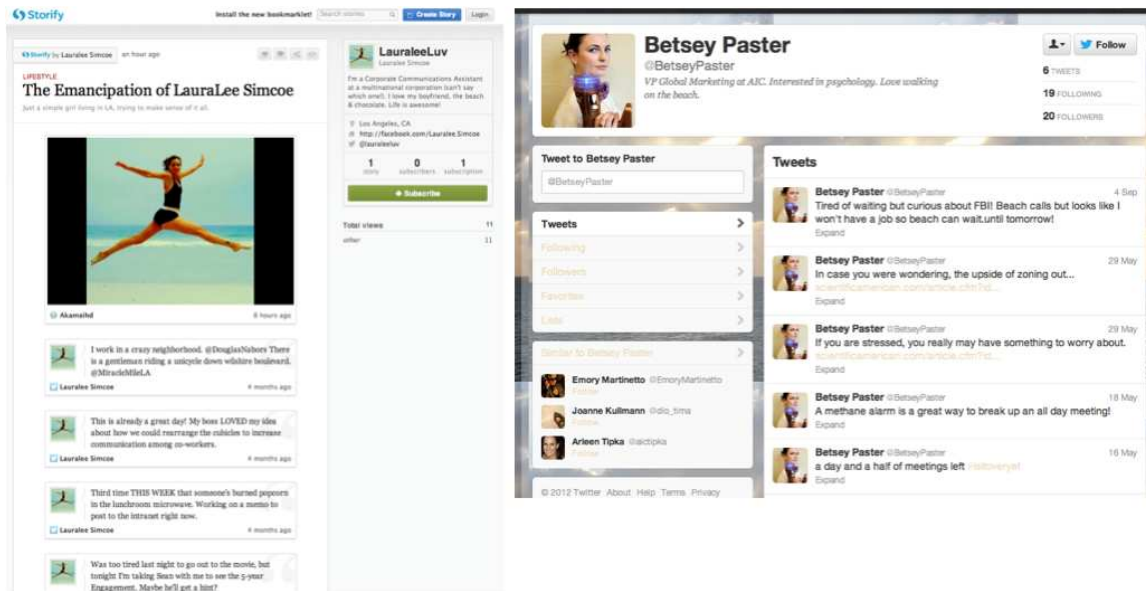
With respect to the MMP story itself, AIC and its employees provided another set of challenges for players. Players infiltrated, or "hacked," the AIC website using employee usernames and passwords obtained through the information gained helping Rex as well as through hints planted by the elusive Cassandra. Figure 11.19 shows the AIC website.
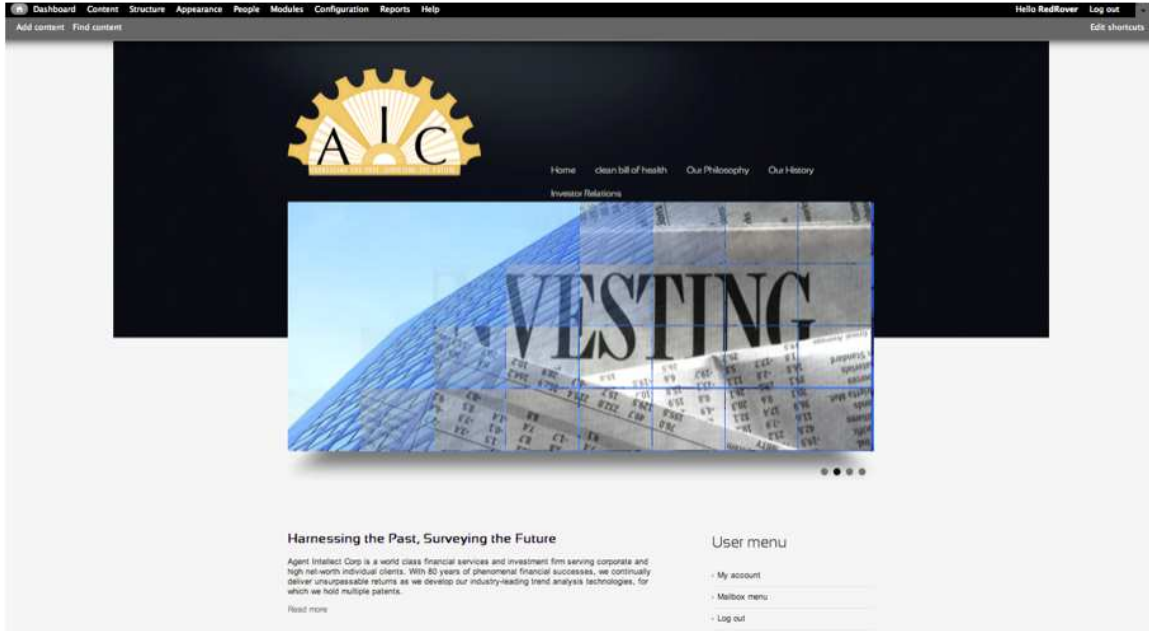
Once inside, they found many kinds of files in the employees' email folders. Some were archival documents relating to the company's founder, Alcazar Kliburn, the father of its current chief executive officer. It turned out that Kliburn had learned of Winthrop's time switch invention, approached him about buying it, and, rebuffed, murdered Winthrop and stole the machine. Other documents related to AIC's past business activities and present plans. Through them, players learned that the time switch only operated in proximity to methane gas fields, which explained the significance of the Miracle Mile because of the La Brea tar pits. It also explained the locations of AIC's other global offices.

These business documents also hinted at what the time switch could do, and how AIC used it. By offering glimpses of past and future events, especially the latter, it afforded AIC advance knowledge of events. It traded on that knowledge to secure windfall profits by moving ahead of events and sometimes by catalyzing or even causing catastrophic ones. Figure 11.20

shows a few of these documents, which were designed to fit their descriptions by looking like contemporary emails or being physically aged to imitate papers from the 1930s.

11.20 AIC Documents (1)

Another group of documents confirmed the connection between AIC and its new enemies. As Rex's time switch built from the tin box blueprints became operational and he began receiving Jane's segmented transmission, that new machine started to interfere with AIC's device. Figure 11.21 shows internal emails discussing the problem.

RE: Transmission Interruptions

Submitted by Erinn Eilertson on Tue, 05/29/2012 - 20:56

TO: Thaddeus Westland

The device is experiencing interference. Readings are becoming inaccurate because of the broken and unreliable data from the transmissions that we are receiving. An exact location of the source of the interference needs to be located as soon as possible. Otherwise the interference could become permanent and continuously affect our ability to conduct business. The search for the interference should be focused within the energy field, which it's at least 2.5 miles in radius.

Erinn Eilerston
Data Architect
Agent Intellect Corp.

Some of AIC's internal communications also noticed the increased protest activities of Cassandra. She ramped up her efforts, tweeting, posting on Facebook, calling for demonstrations at AIC headquarters in the Miracle Mile, and leaking AIC documents. Figure 11.22 shows some of Cassandra's activities.

Eventually, between the video transmissions and the hacks of AIC, players arrived near the whole truth. A finale was staged in the Miracle Mile. Rex finally came out of hiding. He revealed a final secret. Before disappearing, he had received a handwritten letter from Jane Winthrop, written in 1932 but held for delivery until now. Jane explained that her transmission had affected the space-time continuum, advised him to keep the location of the time switch secret, regretted that he might come to harm because of her actions, and suggested he recruit allies to get through it all. Thus, Jane spoke from the past into Rex's present so that he would arrange the players' future, aligning chronological and unified time within the ARG story and, through the finale, turning it into an authentic storytelling experience for the players vis-à-vis the producers.

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At the finale, too, AIC was exposed to social opprobrium and legal action. A fictional newspaper within the game covered the event. Figure 11.23 shows the article. Its tone was one of hints and allegations. The effect was to enhance the bond between the in-game and out-of-game chronotopes. The players now knew the whole in-game truth as well as the out-of-game secrets that made it possible. The device of a journalist's detached, cautious review of the in-game conclusion cemented the players' status as co-authors and co-owners of MMP. It did so by creating an outsider status—a sort of out-of-game readership—applicable to those who had not journeyed toward the truth alongside Rex and Cassandra. In fact, Cassandra was revealed to be not an individual but a movement, of which the players became a part by virtue of their participation. Thus, the juxtaposed chronotopes merged in an experiential sense, enhancing the intersubjective bond of authenticity between the producers and players, while this last device subtly preserved the boundary between regular and alternate reality.

MMP has had an afterlife in the community, specifically, in the intimate intrafaces that were the subject of the preceding chapter. One of the principal organizers presented it as a case study at Storyworld and has been interviewed numerous times. Artefacts from MMP have been displayed at conferences in Los Angeles, Toronto, and elsewhere. Other members of the community have blogged about it, often cross-linking to one another. ARGNet, a website devoted to ARGs, published an article about MMP that was later republished by Wired, a well-established magazine dedicated to new media (Anderson 2012).

B. <u>Hacking as the Intertextual Pursuit of Authenticity</u>.

One of the main activities that MMP players engaged in was to infiltrate, or hack into, AIC's internal email system. They were supposed to do so. But some players also tried to hack the ARG's behind-the-scenes technological infrastructure and steal a march on the progress of the story narrative. These two kinds of hacking, licit and illicit, exemplify striving for authenticity in authorship and, especially, the inherent tension in the ARG framework between juxtaposed romantic and remix modes of striving.

1. <u>Licit and Illicit Connotations of Hacking</u>.

A brief etymology and history of hacking is helpful to relate what happened in MMP to the common connotation of computer hacking, but also distinguish storytelling hacking from computer hacking. To begin with, hacking has morally ambiguous indexicality. The Oxford English Dictionary (OED) (2013) traces the transitive verb, "to hack," to Germanic roots in the late middle ages. Its principal definition is "to cut with heavy blows in an irregular or random fashion; to cut notches or nicks in; to mangle or mutilate by jagged cuts." This early meaning applied to acts such as hacking trees. It is unclear whether or not it indexed judgments about hacking versus other ways to chop, but the OED's list of descriptors such as "irregular, "random," mangle," "mutilate," and "jagged" at least indexes deformation. The OED also lists "to hack" as an intransitive verb with a similar definition. In contemporary usage in the United States, the pejorative edge can be softened to mean "try" or "attempt."

Both the transitive and intransitive verb entries have a line for the emergence in the early 1980s, in the United States, of "to hack" with respect to computers. These definitions are more clearly negative: "to gain unauthorized access to (computer files, etc., or information held in one" and "to break into a computer system by hacking."

The OED also lists nouns forms. "Hacking" is one, which derives from another, "hack," meaning the blow delivered.[177] The latter appeared with the original verb, whereas the OED traces hacking to computer-related discourse in the United States around the 1970s, slightly earlier than the computer-related use of the verb form. A third noun is "hacker," which appeared by the seventeenth century and could mean either the person or the implement delivering the blows.

The hacker entry is the most ambiguous. The definition is split into two with respect to modern-day computer-related usage. A hacker is "a person with an enthusiasm for programming or using computers as an end in itself" or a "person who uses his skill with computers to try to gain unauthorized access to computer files or networks." The former hearkens somewhat to the contemporary meaning of "to hack" as "to try" more than the latter, which has a more clearly negative connotation.

The distinction is salient to hackers themselves. In his history of hackers, Levy (2010) notes that the term "hack" was used to mean a prank by students at the Massachusetts Institute of Technology (MIT) since its early days. This history fills in a gap between manual and computer labor in the OED definition. By the late 1950s, a MIT club devoted to building a technologically elaborate model railroad adopted the term as one of "serious respect" for an engineering

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[177] According to the OED, the noun form, "hack," applied to a person as an unskilled or for-hire "common drudge," is an abbreviation of "hackney," as in a hackney horse, and therefore at most distantly related etymologically.

"feat…imbued with innovation, style, and technical virtuosity" (10). A member might highlight

the importance of a pure hack by contrasting it with downplaying qualifiers, describing a "mere

hack" or "self-deprecatingly saying he was 'hacking away at'" the model. Furthermore, "the

most productive people working on [the model] called themselves 'hackers' with great pride."

Eventually, hacking spread as an ethnic identifier. "Hacker culture" has become a widespread

phrase. The Jargon File, a volunteer-run online guide to hacker attitudes and language

ideologies, speaks of "hackish traditions, folklore, and humor," adopting the adjectival –ish

suffix commonly used to denote ethnic or ethnolinguistic identity, as in "English."[178] In addition,

as the Jargon File and others note, hackers resisted being painted as lockpicking burglars by

adopting the term, "cracker," for those who break into third-party systems. Nonetheless, the

ambiguity remains because hacking relies on a preexisting system. As Kelty (2008:182)

observes, "hacks range from purely utilitarian to mischievously pointless, but they always

depend on an existing system or tool through which they achieve their point."

That reliance points to the impartial overlap between computer hacking and what has

come to be called "story hacking." Story hacking does not have a clear standard definition. But

its key elements appear to be authorial collaboration and rapid execution under time pressure.

Storyhack.org states a formula: StoryHack = Creative Collaboration + Rapid Prototyping +

Hacking + Storytelling.[179] It conducts daylong events as workshops according to "hacking and

storytelling principles as tool [sic] for design and problem solving." Transmedia LA co-hosted

an inaugural LA Story Hackathon in August 2013, in which teams "competed to create an

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[178] http://catb.org/jargon/html/, accessed October 7, 2013. The choice of the –ish suffix as opposed to alternatives

such as –ese (hackese, or hackerese) may be less than accidental, because of "hack"'s Germanic etymology or

because –ish typically applies to Germanic ethnicities associated with folklore tradition among many in the U.S.

[179] Accessed October 7, 2013.

original cross-platform fiction story over a 26-hour period of time."[180] Teams had to "design a

cohesive narrative spanning three or more technological platforms and execute a single one,"

based on a theme disclosed one week prior to the competition.[181]

The etymology of story hacking is unclear but it almost certainly derives from computer

hacking. In their most basic meaning, computer "hacks…are clever solutions to problems or

shortcomings in technology" (Kelty 2008:182). Similarly, story hacks are solutions to

storytelling challenges.

But computer hacks "are work-arounds, clever, shortest-path solutions that take

advantage of characteristics of the system that may or may not have been obvious to the people

who designed it" (Kelty 2008:182). They enact the self-understanding of:

> archetypal hacker selves: self-determined and rational individuals who use their well-
>
> developed faculties of discrimination and perception to understand the 'formal' world—
>
> technical or not—around them with such perspicuity that they can intervene virtuously
>
> within this logical system either for the sake of play, pedagogy, or technological
>
> innovation. In short, they have playfully defiant attitudes, which they apply to almost
>
> any system in order to repurpose it. [Coleman 2013:10]

By contrast, although story hackers, too, have playful attitudes, and perhaps are defiant with

respect to the conventions of modern authorship, they are not trying to prove a logical point

about an existing technological system. Instead, they are trying to hack into a more abstract

problem of storytelling narrative, which is not necessarily unstructured but is not concretely set

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[180] Storycode.org, accessed October 7, 2013.

[181] http://transmediala.org/partnerships/creatasphere-transvergence-summit/, accessed October 7, 2013.

before them as a target, especially if done outside the deliberate and deliberative structure of a hackathon.

2. Hacking in MMP.

This distinction explains that between licit and illicit hacking as it occurred during MMP. In-game, the players were supposed to hack into AIC's system. Doing so was their collaborative, authorial contribution to the unfolding narrative. Though not quite remix authorship, these licit hacks were necessary in order to complete the ARG and achieve the convergence of regular and alternate reality as a bonding, authentic experience between producers and players. These licit story hacks reflect the playful, creative spirit that hackers most often ascribe to themselves.

Players were not supposed to hack into the story infrastructure itself, however. They were not supposed to remix in the out-of-game chronotope. Yet, as numerous examples throughout this study and especially this chapter have illustrated, expectations in a new media era create a powerful temptation to do so. MMP was no exception. Some players tried to hack the out-of-game computer accounts the producers used to structure the ARG. These illicit computer hacks conformed to the pejorative connotation of computer hacking as technically adept but invasive feats. They were bald efforts to remix the ARG in the out-of-game chronotope where the modern authorship habitus prevailed. The ARG thus reconfigured the concept of hacking according to the framework of authorship under transformative pressure.

The contrast between licit and illicit hacking is evident in how the producers talked about each. For example, one organizer posted a message to the producers' group that she had "been

swamped with rally [protest against AIC] and its aftermath, so a bit behind on uploading content, but not to worry, still in schedule. Plus players uncovering that they can hack into other (old) accounts, so they've been busy." The narrative flow in-game was not impeded despite the producers falling behind because the players were still engaged in their licit hacking activities, finding ways into AIC employees' online accounts to find out more information about the storyworld.

> By contrast, the same organizer sounded the alarm about illicit hacking as well, writing:
> Ok, in other news, ever since we got listed under 'no[w] playing' in argnet we got hardcore players hacking left and right. This just started happening yesterday. So keep an eye out for inappropriate hacks. So far they even got the main redrover account for aic… so there is a new password for now. You can find it on trello… totally random combination of letters. Ohy!

"Hardcore players hacking left and right" with "inappropriate hacks" broke into the out-of-game managerial account for designing the AIC website, causing problems for the producers and requiring additional vigilance.

The contrast can be further specified in terms of the temporal tension that drives authenticity, highlighted by the grammatical system of tense–aspect–mood. The basic contrastive structure can be illustrated with a hypothetical example using mood or modality, which conveys possibility, constraint, obligation, and so forth, mainly through verbs in English. Taking a modal auxiliary verb of exhortation, "should," from the out-of-game perspective, in-game hacking should happen in order for the game to proceed. By contrast, out-of-game hacking should not happen. Or, to take the modality of obligation, in-game hacking must happen from both an out-of-game and in-game perspective in order to achieve the desired authentic outcome.

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Out-of-game hacking must not happen. Grammatical modality is one way to express the intertextual boundary maintenance.

Example 1 further illustrates the grammar of boundary maintenance. It consists of a report by one of MMP's organizers to the other producers concerning how far the players have gotten in licitly hacking into AIC employee email accounts.

<u>Example 1</u>

01   Retroactive accounts that have been up already but no one has hacked

02   into yet include:

03   Charley Sangvhi/Wellness & Fitness Manager pass: omega3☐

04   Thaddeus Westland/R&D Technician pass: doctorwho☐

05   Emory Martinetto/Research Analyst pass: steampunk

06   Now, since players are finally figuring out how to hack into the site with

07   LauraLee, even when we are now moving to Betsy tomorrow, I think they

08   still won't figure out how to hack into LauraLee until maybe the

09   weekend. Though, once one account is 'vulnerable' and ready to be

10   hacked into then is always 'vulnerable' and can always be access as long

11   as you know the username and password. So once they figure out the

12   format, and that the vulnerability relates to who has gone and is going on 13

        vacation... then they will be in sync with the release schedule. I'm not too 14

        worried about that... they will catch up.

Lines 1–2 establishe a basic problem of the then-present moment through tense and aspect. Some of the AIC accounts that had been put online had not yet been hacked into by the players, who were either unaware of them or unable to crack them. These accounts "have been"

online, in the present perfect (and continuous), and have been present there "already" in contrast to the absence of "yet" whereby no one "has hacked" them in the present perfect (but not continuous). Lines 3–5 specify the accounts in question.

In Line 6, the description of the players shifts from their failure to hack so far to their increasing abilities. "Now," in the present, which is also "finally," as an occurrence subsequent to the past failure, players "are figuring out," in the present progressive, how to hack the accounts in a relative future (compare "trying to figure out" in Chapter 5; both are examples of catenative, or chained, verbs). This unfolding development coincides with the producers ("we") continuing to march forward with unrolling the game in Line 7. Thus, the players are figuring out how to hack "even when," or simultaneously to, the "now" in which we "are moving" in the present progressive to a future event "tomorrow." Thus, the problem remains unresolved because the players' present progressive efforts still lag the producers' timeline.

The problem is affirmed with a personal evidential, "I think," that predicts continuing lag in Line 8. The players ("they") "still," projecting from now into the future, "won't figure out" how to hack in that future, "until" a future endpoint, here, the weekend. The auxiliary verb "will" is a way to express the future in English, but it is also a modal of certainty, and in this context can be understood to mean that the players will fail to achieve the desired future outcome as soon as the producers would like.

In Line 9, resolution begins to emerge with the contrastive conjunction, "Though." Once an account "is" primed for hacking in the present simple tense, it remains in that state of readiness. So, in Line 10, the possibility will "always" remain that the account "can be accessed" by players who have the account information. Lagging behind does not mean losing access or falling behind.

In Line 11, the conclusion becomes explicit with another conjunction, "So." "Once" upon a future time when the players "figure out" how to hack based on an in-game temporal schedule of AIC employee vacations (Line 12), the players "will be," in that future time, synchronized with the producers. Therefore, in Line 13, another personal evidential, "I am," disclaims worry because the laggards "will catch up" and converge with the producers' timeline in the future.

What all this grammatical manipulation of temporality does is align the chronological and unified times across the boundary between in-game and out-of-game. The initial narrative trouble is that the players are not keeping up chronologically in-game with the producers' chronological actions out-of-game. This lack of synchrony might threaten the ultimate experience of the game in terms of unified time in which the producers and players connect intersubjectively through the game.

The organizer then works through this narrative trouble by identifying the resolution in a non-chronological aspect of the game. Although the accounts are exposed to hacking on a rolling basis from out-of-game that coincides with the in-game chronology of AIC vacation schedules, the accounts also remain open to exposure. The producers hold open the past for players to reach into it and draw it into the present and toward the future horizon of a completed, authentic experience.

A final example, which is of talk about illicit hacking, brings in the issue of ownership that always accompanies authorship. That the out-of-game reality is a domain of the ownership corollary to modern authorship is evident in the frequent use of the term, "assets," to describe MMP's pieces of content, whether physical or virtual, in both direct communications among the producers and descriptions on the Trello production website. The chronotopic framework of the

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ARG made the metaphysical question of ownership across realities also an almost territorial question, like real property (land). Hacking out-of-game threatened that ownership as if by trespass. If good fences make good neighbors, a good intertextual boundary makes for an intersubjectively authentic experience in an ARG.

The block quotation a few paragraphs above announces that players started hacking out-of-game. The MMP organizer states that "ever since" the point in time when MMP ("we," embracing the producers and their product in modern authorship terms) "got listed" on blogs, "we" also "got hardcore players hacking" into the ARG infrastructure. At a later date, the organizer sent me an email with a similar message, exclaiming that she had been "putting out fires" because "we got the hardcore players hacking things left and right… and by that I mean not the right things!!"

To get is to acquire or obtain, but "got" commonly indexes acquisition by external imposition on the subject's agency (see Capps and Ochs 1995).[182] MMP "got listed" on a blog in a passive sense (although not necessarily without behind-the-scenes efforts). That construction is relatively straightforward, with "listed" serving as an adjective to describe a change in circumstances, so that the meaning of acquisition approaches a connotation of becoming or a change in status.

"We got players hacking" is slightly more complicated and incorporates the negative affect that often accompanies "got" constructions. The subject and verb elements of the main

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[182] Capps and Ochs describe the use of "got" by an agoraphobic woman to make the verbal modal, "got to," in statements about necessity (things she has to do to survive) (70, 190, 208), and to form a verb phrase with an adjective, as in the dog "got loose," posing danger (123), and a woman "got locked out," facing risk (130). The latter is the same as "got listed," though it was a positive development for MMP. "Got players hacking" is more complicated, as the text above indicates.

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clause remain "We got." But what we got is "players," in the sense of acquisition. Those

players are qualified by "hacking (left and right)." The players we got come with syntactic and

semantic baggage, hacking. In other words, we got hacking players. Put another way, we got

players who are hacking, in the present progressive, and thereby causing real-time problems of

temporal alignment at the boundary between out-of-game and in-game.

In this context, "got" becomes a term of assessment that speaks to the responsibilities and

privileges of ownership. Got conveys information about what the players are doing that assesses

their actions negatively with respect to the producers' ownership of the ARG infrastructure as

modern authors. In the email to me, got also conveys to me, the recipient of the message, that

the speaker (or writer, in this case) has been unable to engage fully in certain authorial activities

because she is preoccupied with policing ownership issues. The full sentence in the email to me

read:

> omg, I've been just project managing and putting out fires cause now that we are listed
>
> under 'now playing' on argnet we got the hardcore players hacking things left and right...
>
> and by that I mean not the right things!!

"Omg" stands for "oh my God." It is a token of assessment that foreshadows the content of what

is about to be assessed. "Oh" expressions can also signal "changes of state" in a speaker's

knowledge or stance (Heritage 1984a), although usually they occur other than in the first turn of

a sequence. In this case, the written preface of "omg" may do something similar by

foreshadowing the change in state caused by the hacking activity in addition to setting up the

assessment.

Thus, after "omg," the organizer informs me that she has "just"—only, limited to—been

managing the project and putting out fires, by way of a kind of apology for any perceived lack of

responsiveness on her part. She explains the "cause" to be that "we got the hardcore players hacking." The acquisition denoted by "got" is really a change of state with serious implications for the crucial chronotopic boundary. The assessment of the consequences of "got" becomes explicit in the final exclamation of "not the right things!!"

Computer hackers have a well-developed "legal consciousness" (Merry 1990) about the implications of their activities, in both analogical and non-analogical terms and ones that include explicit reference to intellectual property law (Coleman 2013). The illicit hackers in MMP, who were acting like computer hackers, may not have expressed such sophisticated theories of legal ownership, but they were decidedly testing the boundary that preserved the out-of-game reality as the domain of the producers as modern author-owners, and caused the same kind of anxiety about control in the MMP producers that pirates or remixers cause modern authors in other situations.

III. Conclusion.

This chapter examined production of a storytelling narrative that instantiates the double edge of artistic authenticity in new media, including hacking as exemplary of the authoring and owning dilemma of the double edge. As a generic exemplar of the transmedia alternate reality game, the Miracle Mile Paradox had a framework of juxtaposed realities, one out-of-game and one in-game. These realities each had their own chronotopic, or time-space, arrangement that rested on certain rules of participation. Out-of-game, the relationship between producers and audience was more like the modern authorship habitus. In-game, the audience took on a more collaborative, co-authorial role. The boundary between these two chronotopes was perhaps the

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most important element. A joiner and divider, it defined the framework in a way that made it possible to accomplish the alignment of chronological and unified time from out-of-game to in-game and back again that was necessary for the game to serve as a vehicle for the intersubjective pursuit of authenticity. The addition of "paradox" to the story's title, which reflects the back to the future quality of Jane's transmission through the time switch in-game, fortuitously marks this significance of the boundary in negotiating the double edge. As a space of negotiation, the boundary was a focus of intertextual maneuvering. Some players even tested the limits of their power under the emergent authorship habitus by trying to break through and remix the out-of-game chronotope.

MMP is thus an example of practice amidst a transforming field of authorship. The juxtaposition of the production and play chronotopes, and of talk about licit and illicit hacking, maps my model of authorship as the enactment of, and commentary on, indexical packages in a practice that places both the modern and remix habituses of authorship on the field of production at the same time.

Therefore, relative to the preceding discussions of the copyright case and intracommunal performance, this chapter also moves closer down the spectrum from the most obviously metapragmatic talk about authorship to authorship as a pragmatic act, or what I propose as a general habitus of authorship regardless of particular authorship ideology or topic of discourse. I analyzed how MMP's producers and players engaged in the activities of cultural production. The distinction between metapragmatics and pragmatics of authorship begins to fade. Because of the chronotopic boundary, the requirement of out-of-game knowledge in order for the story to exist suppresses that knowledge in order for the story to be experienced. This principle can be generalized to contexts where "authorship" is not the topic. Discursive consciousness of talk

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about authorship fades as the practically conscious experience of doing authorship comes forward.

CHAPTER 12: From Talk about Authorship to Talk as Authorship

I. <u>Remixing Methods and Theory</u>.

      The three preceding chapters have followed a cline from the most overtly regimenting talk about resources of authorship—stories, storytellers, and storytelling—as symbolic knowledge by critics and litigators outside the storytelling profession, through professional storytellers' insider talk about authorship as a topic of knowledge but also something they all experience practically every day, to the storytellers' talk about authorship in the course of experiencing while producing a story. In this chapter, I pick up the thread at that end, where discursive action weaves together knowledge and experience of authorship.

      In other words, talk *about* authorship merges with talk *as* authorship. The community I have described constitutes a "recursive public" (Kelty 2008:29–30) in which "they express ideas, but they also express infrastructures through which ideas can be expressed (and circulated in new ways)." Kelty was describing how technology "geeks" "argue about technology, but they also argue through technology." The people in my study do something similar in discoursing about authorship through authorship. Because authorship is primordially descriptive of communicative practice, the "depth" (to use Kelty's term) of this recursivity extends beyond the Hollywood community to inform the infrastructure of communication even when authorship is not the semantic topic of discourse and even when the speakers in question do not bear an obvious social label as authors like Hollywood storytellers do.

      Thus, the particular case of this community becomes a general theory of authorship. Put another way, the authorship that Goffman described narrowly as part of the panoply of speaking

roles becomes a broader theoretical concept that includes a communicative function in an immediate linguistic context but also describes the stakes of footing, face, and self-presentation on a larger social and institutional scale. This chapter therefore returns to my model of authorship proposed in Chapter 6. There is an actual, non-analogical connection between studying talk *about* authorship as the enactment of a particular habitus or language ideology such as romantic authorship or remix authorship by a specific group of people (their metapragmatics of authorship), on the one hand, and, on the other hand, studying talk *as* authorship by any group of people in any context (a general pragmatics of authorship). I illustrate the latter by revisiting examples from the earlier chapters, including the first, least obvious case, wherein the courtroom interlocutors authored legal discourse in pursuit of authenticity as members of a juridical community.

II. <u>From the Particular to the General</u>.

Preceding chapters demonstrated that people do not always share assumptions about authorship or its relationship to ownership and negotiate both by turning to authenticity. If authorship, ownership, and authenticity are three articulating pieces of a framework concerning communication, how do people in a given communicative setting negotiate authenticity to achieve the shared understanding sufficient for socially coherent action as authors and owners? A place to start answering that question is to show how the dichotomy between discursive and practical consciousness stitches together the particular and general habituses of authorship I proposed in Chapter 6.

A. <u>Review of the Authorship Model</u>.

In that chapter, I argued that romantic authorship ideology constitutes a particular habitus of authorship, which maps onto the modern regime of authorship–ownership and its institutionalization in IP law. Similarly, remix authorship ideology constitutes another particular habitus of authorship emerging now to challenge that regime. Both are permutations of a more general habitus of authorship that describes communicative action as a structural practice regardless of whether it is spun on the ground into a romantic, remix, or any other ideological framework.

The diagrams I used showed a cascade of dialectics that connects the semiotic to the macrosocial to produce an account of authorship–ownership as communicative social action. In the general habitus, these dialectics are all driven by the pursuit of authenticity. In the particular habituses, the pursuit of authenticity is contoured ideologically, imbuing the value of authenticity with romantic or remix specifics. For example, the U.S. statutory sentence, "Copyright protection subsists in original works of authorship" tautologically assumes romantic criteria of authenticity and authenticity of romantic authorship in the phrase, "original works of authorship." That assumption scales from its grammar to its institutional consequentiality. Similarly, but to opposite effect, a copyright scholar's assertion, "Remix is the basic human condition," transfers authenticity to remix authorship by naturalizing remix as the essence of human experience.

The partiality of these competing frameworks as particular habituses allows for the realignment of authenticity and the transformation of authorship on the field of production concerned with authorship as a topic of discourse. At the same time, that partiality illuminates

the more general habitus of authorship as the pursuit of authenticity through communicative

practice on any field of practice. Remove the overt concern with authorship and its pragmatic,

experiential aspect comes forward.

  B. Talk Is Authorship.

Thus, the particular habituses display discursive consciousness of authorship, the general

displays practical consciousness of authorship, and they are linked non-analogically. The

particulars are instances of the general, and the general applies categorically to other particular

habituses with other topical foci, as long as they are communicatively enacted. In Chapter 6, I

gave the example of how people may react to seeing another person injured, starting with

"ouch!" "are you okay?" and extending it to the trope of the good Samaritan and complicating

factors like interethnic hostility and conversational elicitations of moral stances.

  1. Talk about Authorship Is Illuminating but Not Unique.

My focus on how a community does in fact talk about authorship and ownership merely

makes the connection between the particular and general clearer. The clarity comes partly from

the empirical evidence gained by excavating the discursive link between authorship and

ownership and their reliance on authenticity. It also comes from a language ideological parallel

between the particular and the general. Studying talk about authorship is a way to access talk as

authorship because talk as authorship is always ideological and habitus-bound.

For example, lawyers and judges enact a professional habitus, having "learned to think like a lawyer" (Mertz 2007a) through law school pedagogy that mimics the Socratic form of appellate practice, as well as in relation to broader legal consciousness among non-lawyers about legal discourse and institutional forms (see Merry 1990). In enacting that habitus, they are "speaking legally" rather than just "about law" (Latour 2010:ix). When they talk about an overt topic of legal interpretation such as original expression in a copyright case, they do so by speaking legally within the structural affordances of the institutional context and its artefactual and social appurtenances.

Furthermore, lawyers may be very aware that they are supposed to talk a certain way, but they may remain unaware that the pragmatics of lawyering enacts specific ideologies, including the devaluation of pragmatics and the promotion of linguistic referentialism (see Mertz and Weissbourd 1985).[183] Such ideologies suppress how speaking legally is authoring in the sense of staking claim to social position (authoring) that solicits ratification (owning) in a context-relevant way. In other words, speaking legally enacts the general habitus of authorship in the field of law. Law is not unique, either. The fact that language use always occurs on multiple levels of awareness is integral to how language is used in social interaction (Mertz and Yovel 2003).

The particular and general thus are stitched together by this simultaneity of discursive and practical consciousness. Talking overtly about something as a topic of symbolic knowledge

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[183] Haviland (2003) details the consequences in a murder trial in an Oregon court. The Mexican defendant and witnesses spoke Mixtec, not Spanish. But court officials provided only a Spanish interpreter, recorded only the English translation, and assumed that the only issue was accurate word-for-word translation between languages. The result was rife miscomprehension and distortion of testimony, with the defendant's confusion and hesitation taken to be evidence of his culpability rather than a collective procedural problem that might be resolved.

lies at the surface of awareness, as when lawyers talk about authorship and ownership in the context of realness and original expression, storytellers talk about them in the context of storytelling authenticity, and transmedia producers talk about managing hacks to preserve a story-game's experiential promise. Talking itself is an experiential activity, as when lawyers talk as lawyers, storytellers as storytellers, and producers as producers. The latter layer is talk as authorship (with ownership), or authorship as a general, categorical description of communicative action.

2. Authenticity Stitches Talk *about* to Talk *as*.

Authenticity is the linchpin again. Once again, that is true regardless of the overt topic of the talk and extends to the general case. In the "ouch!" "are you ok?" sequence, there is no overt talk about authenticity. But there is an implicit concern with what Garfinkel called the rational accountability of practical action, which requires the participants to enact an intersubjective relationship understandable in terms of authenticity or inauthenticity, ranging across the immediate semiotics of the encounter to the moral reflex called for by the practice–structure dialectic to the social position the reflex habitually marks on the field. Authenticity is not usually an object of symbolic knowledge in such an encounter, but, rather, is sublimated into practical experience. It rises to the surface if brought to discursive consciousness, as when a son asked his Armenian father what he would do if he saw a Turk hit by a car, and the father expressed a moral reflex of care (and enacted a habitus of solidarity) that contradicted his usual attitude of ethnic mistrust. The son's point was, in so many words, that focusing on being an authentically good Samaritan led the father to talk authentically as a good Samaritan, with no

apparent awareness of the contradiction. The contradiction surfaced only when the son brought it up to me in another metapragmatic context, our interview.

Also once again, however, it is easier to see the centrality of authenticity in stitching together the particular and the general in my Hollywood data because authorship and authenticity stand out as objects of symbolic knowledge before being folded into experience. The discursively conscious pursuit of authentic knowledge (or realness, original expression, compelling story, immersive experience, etc.) is also the practically conscious experience of lawyering, storytelling, or producing in an authentic or inauthentic way. The parameters of the authentic knowledge are determined largely by the relative success of the authentic experience in intersubjective terms—persuasiveness in court, for example.

If the focus of discursive consciousness shifts to the authenticity of the lawyering, storytelling, or producing activity, then the topic of authenticity recedes to the background, if temporarily. That shift occurred, for example, when Suzanne Stefanac occasionally interrupted her own performance to apologize that her computer failed to display her prepared slideshow on the large screen behind her. On one of those occasions, she even enlisted the campfire motif that formed part of the topic of storytelling authenticity to make a joke about the virtual campfire the audience should imagine crackling on the blank screen. She linked performing authentic storytelling to talking about authentic storytelling through the shifting focus of awareness. In that transitory moment, she briefly called attention to the fact that her own performance was the practically conscious authoring of an intersubjective experience dependent upon authenticity. During the bulk of the performance, that fact lies recessed while her topic of storytelling authenticity occupies discursive consciousness.

Furthermore, authenticity can consist of different kinds of semantic knowledge, be contextualized differently, and lie at varied distances from the surface of awareness. With respect to my data, it does not matter whether authenticity was talked about as autocreativity or as primordial collaboration. And it does not matter whether authenticity was talked about as a legal object through the modern regime's lens of original expression, as a storytelling object through the emergent remix lens, or as an object embedded implicitly in the practical issues of producing a story-game and voiced obliquely through comments such as "not the right things [being hacked]."

Rather, from the standpoint of modeling authorship, authenticity is an analytic variable with a function in the dialectics. Because authorship and ownership turn on authenticity, whatever ways that people talked about authenticity and talked authentically implicate the token–type relation between talk about authorship and talk as authorship. That is why my figure diagramming a general habitus of authorship simply says "pursuit of authenticity," while the diagram of the romantic habitus says "substitution of particular for general" and the diagram of the remix habitus says "realignment via 'authenticity.'" It is always, typologically, a pursuit of authenticity. For a long time, insofar as authorship is a discursive topic, that pursuit of authenticity has been shaped predominantly in romantic terms. And it is now being realigned in remix ones.

Sometimes, because the particular tokens naturalize the relationship between authorship and authenticity, very overt talk about authenticity suppressed awareness that an authorship ideology was at issue. Authorship was naturalized through authenticity. For example, the lawyers debating *Catfish* were very focused on the film's realness and originality but no one openly questioned the applicability of the modern authorship regime or copyright law. They

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enacted a general habitus of authorship in a tried and true legal form by arguing over the meaning of authenticity. In doing so, they reinforced the modern habitus of authorship, both as the symbolic knowledge for deciding the case and as an experiential assumption about authorship that has been inherited from the past and carried forward to future encounters.

At other times, very overt talk about authenticity included overt discussion of authorship but suppressed awareness that the discussion involved alterations to a particular habitus or language ideology concerning authorship rather than what people assumed to be a universal meaning of authorship. The storytellers' performances in formal settings held out the modern and remix habituses against each other and measured both against the value of authenticity. They typically aimed at defining authorship globally by defining authenticity globally, choosing whether the modern or remix view is true. They did so by enacting a general habitus of authorship in a performance genre. The general habitus was the scaffold for a debate that purported to be about universal authorship but was really about selecting a particular authorship ideology as symbolic knowledge to sediment into experiential assumptions. It was really about struggle on a Hollywood field of cultural production reliant on a particular habitus of authorship, which they substituted for the general habitus as part of the process of "ideologizing" (Philips 1998:223).

3. Semiotic Stitching of Token to Type.

In both instances just described, this multilayered interplay of discursive and practical consciousness stitched together the particular token and the general type. The stitches can be seen in the indexical microlinguistics. For example, the example of Stefanac's performance has

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a stitch where the metapragmatics of authorship and the pragmatics of authorship intersect at precisely the point of narrative trouble. At the beginning of her performance, Stefanac reported a question she often received about whether fan participation and remix through new media is going to "hurt the integrity of narrative."

The conversation analysis markings on the phrase are as follows: hu:rt ˙h u<the integrity of narrative. In Appendix A, I explain that the elongation of the vowel in "hurt" and the hesitations marked by the subsequent intake of breath and "u," followed by a rush into "integrity," indicated a word-search delay. That is, the speaker delayed at precisely the point where she narrated the appearance of trouble ("hurt") for authenticity ("integrity") in authorship ("storytelling"). The delay highlights her discursively conscious focus on selecting an appropriate word to describe what is at risk.

The point to add now is that the delay itself is trouble with respect to the speaker's narrative performance. To obtain social ratification of the claim to social position that she makes through the performance, or ownership through authorship, she must resolve that delay, without too much delay, in a way that her audience finds coherent, plausible, or persuasive. That is, she must convincingly perform an authentic expression of meaning with respect to their shared enterprise. The pragmatics of delay are performed with practical consciousness. Elongation, breathing in, "u" tokens, and pacing are all meaningful features almost always enacted beneath the surface of awareness.

Pronominal deixis provides another example. In Chapter 8, I quoted an interviewee who is now a transmedia consultant and producer. He recalled the shift from the authenticity of mass media in his childhood to the authenticity of participatory media today. He voiced several identities through "we," "I," and "they." He begins with "we used to be inspired, we used to

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dare to dream and to use the screen big and small to show the spectrum of human possibilities."

This "we" may encompass both mass media producers and mass media consumers, although it shades toward the former who used the screen to show the human condition. He shifts more clearly to a consumer perspective in remembering that "I used to be able to sit and watch something for two hours and know everything I could be and everything horrible I could become." Furthermore, "that's what storytelling was to me" as a consumer but perhaps shading into a producer as he became aware of not only the story product but storytelling as a profession. Then, because of new media, "because we know so much more about it now, because it's accessible, the veil's been lifted." This "we" seems inclusive again but shades toward the consumer perspective this time because consumers now know more about media production. Finally, because the veil has been lifted, "they've been put in an interesting position to earn our trust instead of just get it naturally because of what they do for a living." "They" clearly indexes producers as opposed to "our" we who are consumers.

The precise allocation of voices through those pronouns is less important than the fact of multiplicity, both in the co-occurrence of various pronouns and the potential for multiple voices within the first-person pronouns. The distinctions thereby created are metapragmatic ones. They configure an array of identities and voices through which the interviewee describes the change in storytelling authenticity by ascribing varied and varying epistemic and affective states, as well as actions and experiences, to I, we, and they. The pronouns help frame his discursively conscious talk about authorship, authenticity, and the ownership dilemma caused by the lifting of the veil that used to align precisely with the media screen.

The pronominal array is also part of his practically conscious talk as authorship, authenticity, and ownership. The speaker inhabits some of the first-person identities and voices,

and excludes himself from the third-person one. Through the pronouns, he authors claims to social position in respect of his account, mapping himself on to the field, although without necessarily expecting explicit ratification from the interviewer. He may be thinking about his own positioning as he utters the deictic phrases, but he is likely doing so in terms of placing himself within the narrative rather than with respect to narrating.

In fact, at the end of the interview, I gave him a piece of paper and a pen and asked him to map transmedia's place in Hollywood however he chose. Figure 12.1 shows his illustration. A puppet-like avatar of "ME" sits in the center of where the "business of storytelling"—an elegant amalgamation of artistic and commercial activity—"is today" in the present simple reinforced by adverbial aspect, where it "needs to be" in a catenative verb chain that points to the existential future from a state of present simple exigency, and what it "could become" in the modality of subjunctive possibility. He claims a central position in the present state of affairs, the desirable future, and its open possibilities. I elicited this map as metapragmatic commentary on the industry, which he provided. But, inevitably, because of the dialectic bond between pragmatics and metapragmatics, he also included a pragmatic claim. The indexicality of "me" as both landmark and cartographer graphically represents the dialectic nexus.

12.1 Mapping Transmedia in Hollywood
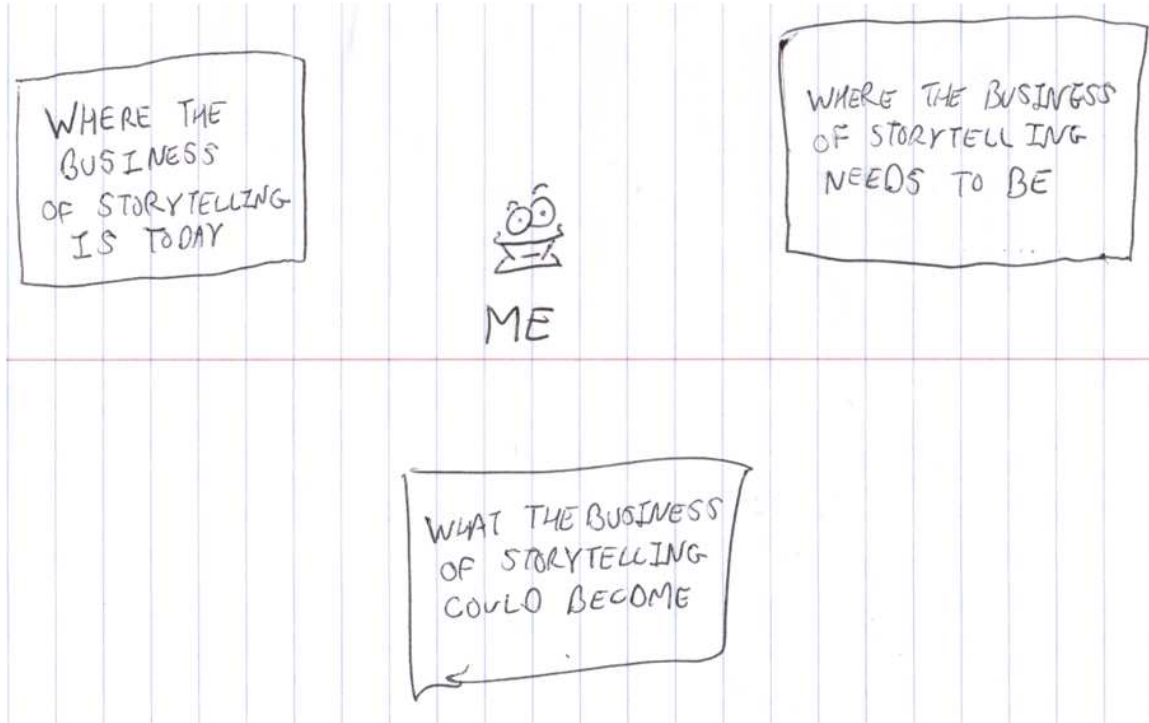
The map highlights how pronominal deixis serves as a precise intersection of the

particular and general habituses of authorship in the interviewee's account. Using the pronouns

affords commentary on authorship as well as autobiographical identification with the audience

that now seeks co-authorship and the producers who are embracing co-authorship. The pronouns

allowed the speaker and map-drawer to perform Foucault's author function through a plurality of

selves or of Goffmanian speaking roles, speaking simultaneously the "I" of observing the

historical moment commented upon in the interview and the "I" of authoring in the interview

moment. The pronouns afforded an authorial speech-act on both levels. It is the same kind of

positioning that characterizes Nina Paley's confession that the only option "I [an artist] have is

trusting you [the audience]" as the modern and remix habituses clash, because "we're still

making this up as we go along" (see Chapter 8).

C. <u>Scaling Up: Staking Social Claims by Talking about the Stakes</u>.

The anxiety that lurks in these examples of indexicality scales outward from the semiotic to the social. Indexical positioning is a way to map person, place, and time on multiple levels (compare Hanks 2000:153 on how Mayan officials subtly distinguished between addressees "in whose name" they produced colonial documents and those "in front of whom" they produced them). It is also a way that people arrive at an intersubjective perspective, as I's and you's and so forth are attached to here's and there's "somatically," thence experientially and with respect to an emergent image of the world (Husserl 1999:116–119).

In my interview, and exemplary of my study generally, pronouns are positioned and repositioned in relation to the "veil" that once supported the authenticity of romantic authorship under a mass media model for Hollywood production, and now has "been lifted" because of changing expectations according to which the audience demands more participatory access to production. The veil is a boundary metaphor that evokes the double edges of pursuing authenticity through a work of art when expectations are changing.

As a matter of the intersubjective quest for authenticity, the pronouns and the veil combine to echo the mask through which the double edge plays out. Affective intensity marks the numerous instances I have cited in which participants talked about the mask, whether in terms of the need to deceive the audience in order to provide them with a good experience or of the frustration or contentment with the audience's tendency to hack stories in unanticipated or undesired ways. This personalized attention to the double edge is indicative of, or reflective of, the significance of authorship as claim-staking, of the social risk and potential reward in authoring claims that beg the ownership of social ratification, according to a criterion of

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authenticity. This community's anxiety about the stakes of authorship reveals the larger social stakes of footing, face, and self-presentation in which Goffman's limited author-speaker engages. The communicative quality of authorship is regrounded in the social stakes that authorship has long implied in non-linguistic theories and folk attitudes.

The anxiety that heightens attention to the double edge scales out further to the field of production. The intersection through pronouns is especially interesting because the interviewee who grew up as a fan is now a professional within the industry with a combination of establishment credentials and outsider status as a transmedia proponent. His position on the field, which is similar to that of many of the study participants, affirms the usefulness of studying this community to understand a moment of potential transformation. They are insiders and outsiders professionally as well as para-ethnographers of their industry who reflect upon it in light of their own experiences as consumers. They commonly self-identify as "fanthropologists," a term some of them used to find common ground with me and understand the objectives of my sideways study.

This institutional scaling applies beyond Hollywood's anxiety about authorship. In Hollywood, talk about authorship, ownership, and authenticity is talk about the flow of capital governed by a romantic or remix habitus of authorship. This talk is part of the struggle to define the value of authorship as capital and who can claim it.

At the same time, in and also beyond Hollywood, the general habitus of authorship governs talk that constitutes the flow of capital through communicative practice. This talk is authorship, ownership, and authenticity. It can enhance or diminish social capital in a relevant context, such as the legal profession. At one trial I attended (not the *Catfish* proceeding), the plaintiffs' lawyer exasperated not only a defense witness with his hesitating, repetitive,

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roundabout questioning, but also the judge, who rebuked him for it in open court. The lawyer's

social failure was one of authenticity that led multiple co-participants in the interaction to reject

the claims to social position he authored through his questioning techniques. Economic and

symbolic capital—the fruits of property—depend on the authenticity of this talk-as-authorship.

The judge warned that lawyer that he risked sanctions that might cost him money or leverage in

the case (and thence his reputation). The same stakes apply to the storytellers' intra-communal

performances and the story-game's producers' investment in the Miracle Mile Paradox.

III. Revisiting Three Data Examples.

    I now revisit examples from the *Catfish*, performance, and Miracle Mile Paradox

chapters, this time focusing on them as instances of talk *as* authorship that stakes ownership

claims within context, or in an interactional field that is also part of a field of practice (see Hanks

2005a), such as that of law or Hollywood community-building, or story production. In doing so,

I illuminate different angles of the temporal tension within authenticity that drives this talk as

authorship just as it drives talk about authorship.

  A. Lawyering as Authoring.

    1. Authoring Power at the Generic Boundary.

    Chapter 9 discussed how the controversy over the genre of the film, *Catfish*—was it a

documentary or a scripted movie—pointed to a deeper concern with "realness" that is about

authenticity. At another boundary between discourse genres, the one between broader society and legal institutions, that debate translated into a dispute over the originality criterion of copyright infringement doctrine. The judge and lawyers who participated in the summary judgment proceeding applied filters of legal interpretation to the controversy in order to produce competing evidential accounts of originality on which turned authorship and ownership. The legal proceeding thus drew upon the underlying authenticity driver and shaped it through the legal lens.

The opportunity to exert power lies at that generic intersection. A number of linguistic anthropologists and conversation analysts have demonstrated that courtroom conversation both draws upon aspects of the social world and influences, even constructs, them in return. Typically, these studies show that the structure of the legal talk either represents social order iconically or indexes a social identity, ideology, or practice, and often does both. For example, Zinacanteco marital dispute resolution mutually reproduces marital ideologies (Haviland 1996); Tongan sexual harassment cases mutually reproduce nationalist ideologies based on kinship affiliation (Philips 2000); Kenyan marital dispute resolution in Islamic courts mutually reproduces gender role ideology (Hirsch 1998); and bilingual proceedings in Hopi Tribal Court and Hong Kong courts mutually reproduce ethnic ideologies that inform their respective bicultural societies (Richland 2008; Ng 2009). In other studies, courtroom interaction runs ordinary uses of language through professional ideological filters, with a similar effect of mutually reproducing ideologies of gender (Matoesian 2001); race (Goodwin 2004); sexual orientation (Deeb 2013); or personhood (Danet 1981). In all of these examples, a social index such as an identity or practice is taken up and reworked in legal discourse.

In the *Catfish* proceeding, recapitulating the social controversy in legal terms did neither of those things in any obvious way. Yet, simply enacting the social controversy in the course of constructing the legal frame laid the groundwork for having a legal frame in the first place, as well as for intervening back in the social controversy. In the *Catfish* case, the social index drawn upon is authorship. Authorship is what the legal interaction mutually reproduces with the social context. This peculiarity creates a parallel between the social discourse and the legal discourse. On the one hand, that parallel affords the intertextual bond between them as with any operative index in any other legal case.

On the other hand, the fact that the topic of authorship is about communication means that the legal professionals are not just talking about authorship (drawn from the social context) but also are doing authorship (enacting authorship in the legal setting). This quality is not unique to the *Catfish* proceeding, just as participants do not have to be talking about gender to reproduce gender ideology. Rather, because the *Catfish* case focuses on the particular habitus of authorship, it opportunely points toward the general habitus of authorship as something that the judge and lawyers practiced as legal professionals, regardless of the topic at hand.

This general applicability sheds light on how intertextuality occurs across the law and society boundary. Authorship is a kind of meta-index. The fundamental concern with authenticity drives a legally oriented practice of authorship to address in an authentic way any metapragmatic target.[184] The legal process constructs the social world by using the social world to construct a legal frame. In the *Catfish* case, the judge and lawyers were under pressure to deal with the filmmakers' catch-22 of authenticity in a legally authentic way. Another way to state

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[184] That target itself will be governed by authenticity concerns in how people practice it, as is the case for the particular habitus of authorship as either a modern or remix ideology.

that pressure is as the pressure to persuade, which is a ubiquitous but often slippery word in legal discourse. Notably, both legal scholars and linguistic anthropologists of law (some of whom are also trained lawyers and law professors) often locate the crux of persuasion in narratives and, in particular, a professional argumentative format that seeks to alter an interlocutor's ideological frame of reference and very frequently involves a clash between legal and non-legal modes of storytelling and beliefs.[185]

2.   Authenticity's Temporal Tension in the Semiotics of Legal Interaction.

A nexus of this intertextual connection can be pinpointed in the temporal tension harbored within the semiotics of the courtroom talk. Because of the dialectic between metapragmatics and pragmatics, this semiotic temporality at a microscopic level drives the legal conversation about authorship and as authorship. The theory behind it is Peirce's account of interpretation, as applied to legal discourse by Kevelson (1990) and further developed in courtroom contexts by Richland (2008).

Kevelson and Richland argue that legal interpretation epitomizes a paradox of reason borne of the multiplicity inherent in the act of reasoning. Richland (2008:96) draws upon Peirce's terms and relates them to Silverstein's subsequent elaboration of language ideologies, summarizing, "adversarial legal reasoning involves the representation of a disputed event via signs (Representamen) that shape the legal significance of certain events (Objects) to decision-makers (Interpretants) by pointing (via metapragmatics) to multiple and competing legal theories

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[185] Compare, for example, Singer's (1989) account based on teaching law students and Mertz's (2007a) detailed linguistic study of how law students are socialized into the profession.

(Grounds or Ideologies)." Participants'—decision-makers such as judges and juries but also, prior to decision, lawyers and witnesses as well—competing efforts to channel the interpretation across the fluid conversation generates all the "possibles" that "may be understood as creating and transforming agents or signs representing agentive force…as knowledge" (Kevelson 1990:15). This arena of multiplicity "produces meaning" "out of itself."

The result is both "continuity and discontinuity" (Richland 2008:95) as reasoning unfolds, bounded by the affordances typologized according to what Peirce calls grounds and Silverstein calls ideologies. What coalesces as interpretation in one "semiotic moment" (94) becomes the sign that allows interpretation in the next moment, within those bounds; one speaker's utterance stating an argumentative understanding is the raw material for the next speaker's interpretive utterance. Thus, "ensuing instances signify new iterations of a type or 'sort' of idea in ways that are always informed by but never identical to the prior semiotic moments to which they are linked" (94–95). This resemblance harbors the continuity and discontinuity defined by the range of possible interpretations within the bounds of ground or ideology.

The paradox emerges because the interpretations that remain unselected in a semiotic moment "disappear but leave a trace, an effect and a consequence" (Kevelson 1990:15). What Kevelson calls the agentive force of knowledge arises not merely from the act of selecting one interpretation but from the persistent kaleidoscope of "implicate possibles." The crucial insight is that paradox is inevitable but not paralytic, a condition under which "action must be taken…and must be taken in only one direction at the given time" but always as a "judgment subject to correction" (Kevelson 1988:287, 293). The "legisign, in Peirce's lexicon, is law-like but provisional."

For these thinkers, the social significance of this "pragmatic paradox" (Richland 2008:92) is that it opens up metapragmatic space to exploit complication, irony, and contradiction in order to contest and even transform meaning. Kevelson takes an explicit normative stance. The complete end to the sentence quoted above is that the kaleidoscope of possibles amounts to "agentive force, which, as knowledge, contributes to our creation of a greater and freer world." Richland enlists Silverstein's discussion of ideologies and metapragmatics, cited in the summary statement quoted above, to illustrate this consequence of the semiotic structure at a communicative and socially organizational level. Because metapragmatics is dialectically bound to pragmatics, any interpretive act is always mediated according to ideological typologies into which meaning is fitted. Richland uses this framework to explain how participants in property disputes in Hopi Tribal Court constantly exploit the paradox to gain traction—sometimes contradicting even themselves—within institutional bounds defined not by a simple clash between "Anglo" and Hopi legal ideologies but an amalgamation of them.

Their emphasis thus lies on the discursively conscious consequences of practically conscious action. That framework underpins the kind of analysis done in Chapter 9 about the judge and lawyers' competing interpretations. Here, however, I reverse the emphasis to focus less on the space of possible interpretation and more on the moment of interpretation when the gap opened by the paradox becomes temporally exploitable for pragmatic action. Figure 12.2 models this moment.

12.2 Semiotic Temporality in Courtroom Conversation
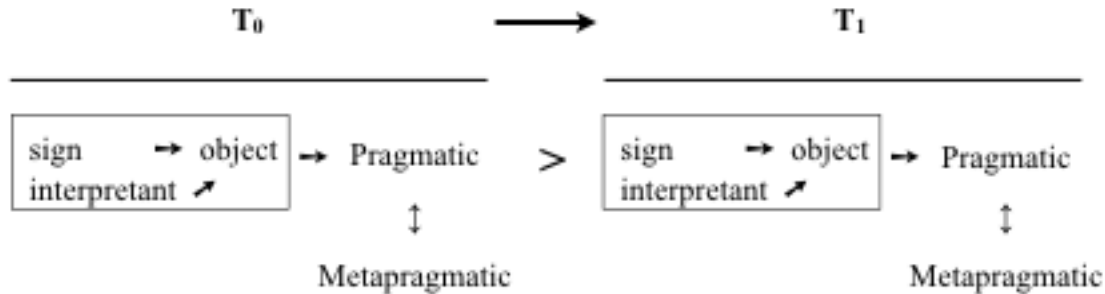
The figure posits two sequential utterances in an unfolding conversation, at T_0 and T_1. T stands for time. Most often, T could also stand for speaker's turn as well, although the divisions between Ts more accurately correspond to utterances, which can be segmented within a turn. Beneath the bar that encompasses T_0 is a semiotic representation of the utterance. This representation is the same one that appears leftmost in my authorship model. The triangle of sign, object, and interpretant combine in the pragmatics of utterance, which always dialectically entails a metapragmatic, regimenting counterpart. The same representation applies to T_1. The ">" symbol of derivation indicates that the second utterance is informed by, but not identical to, the first one, as described by Richland.

That gap represented by ">" is both the metapragmatic space of possibles and a pragmatic moment of possibles. During this moment, meaning is opened up between two interlocutors (or anyone else who qualifies as an interpretant of the situation). This moment of interpretation, or, rather, interpretability, is the moment in which an intersubjective connection is possible, resulting in mutual understanding in the broadest sense, which can include disagreement, partial overlap, or miscomprehension.

This moment exhibits the temporal tension within authenticity. In that moment lies the chronology of the sequence from T_0 to T_1 as well as the unified time of experience that makes interpretive action meaningful. The productive tension between these two senses of time lies in the delimitation of affordances of interpretation at T_1 by the interpretation at T_0, which is a chronological effect, on the one hand. On the other hand, the delimitation occurs by setting a condition for, or inducing a change in, the temporal experience of the object being interpreted—the meaning of "what happened," for instance—which is a quality of unified time that can also redound upon the prior interpretation at a later moment through the resilience of the web of possible meanings.

This temporal duality, in turn, maps onto the duality of authenticity as both pursuit and goal. The moment of possibles is when participants can fit their practical action to situationally authentic expectations, such as expectations about legal argumentation. This fitting is always necessarily also metapragmatic, so that the practical token is bound by ground or ideology. The metapragmatics thus scale up to the level of meaning with respect to the topic at hand, as pursued through institutional pragmatics, for instance, arguing about property inheritance in a way that is potentially authentic because it combines ideas about property inheritance with ways of arguing.

But the dialectic also scales down to the authenticity of the acts before considering the discursively conscious topic at hand. In this sense, the multiple, paradoxical meanings that give rise to actionable knowledge are evidence of an underlying feature. There exist opportunities to argue in the first place because of a largely practically conscious ideology of how to speak legally that binds to the act of speaking in a legal setting. Speaking in court is a pursuit of legal authenticity aimed at a goal of legal authenticity. The possibility of doing so arises from the temporal moment between utterances.

This description of the semiotic temporality of legal interpretation at a deep pragmatic level extends the Peircean framework and sharpens its account of reason and time. In the Peircean view, inevitable paradox makes reasoning indeterminate. To me, indeterminacy reflects the temporal tension, and reasoning stems from that tension's expression as the pursuit and goal of authenticity.

To begin with reason and authenticity, for Peirce, reason is the only mode of inquiry that can "lead one to some approximation of the truth, at some conceivably possible time" (Kevelson 1987:17). Furthermore, reasoning cannot merely appear valid as a logical sequence, but also must be methodologically or rhetorically sound (100). That methodological emphasis, or Peircean "method of methods," is the essence of his pragmatist philosophy. Because of the paradox of continuity and discontinuity in meaning-making, reason is always open-ended. This approach to reason echoes the Kantian one from which I derive the duality of authenticity. Whatever ideal or pure reason may exist beyond the horizon, reasoning subjects must practically pursue it as a practical goal on the horizon.

Moreover, the indeterminacy of reason reflects its temporality. Kevelson (1987:97) pieced together Peirce's sporadic investigations of time, summarizing the point that "time is a logical construct or sign in Peirce's expanded logic which functions methodologically in the process of accounting for the growth of a leading idea in discourse or argument." Even more summarily, "time as method" means that reason is a process of becoming rather than discrete states of being. Aggregating data is less constitutive of reasoning than building "interrelationships of meaningful representations, or ideas." Only through the latter do people assimilate and transform meaning—again, open-ended as a "continuous predicate" (98).

In addition, this approach to time includes both its chronological and unified kinds. "By accepting Peirce's notion of a judgment sign as a virtual but provisional law we also accept the before and after aspects of each given judgment. In short, we take account of time" (Kevelson 1987:101). Peirce is arguing for a "common sense" understanding of time but against how that understanding is conventionally limited to a chronological, even progressive, connotation. Thus, "we find Peirce saying that the future is as real as the present," insisting on "the infinite" of becoming as a "dam" against "Dewey's later evolutionary logic" (97, 102).

Chronology and unified time work together. According to Kevelson:

Peirce transformed the Aristotelian notion of time as the measure of motion with respect to a before and an after into a concept of motion which, by implying change, further implies that all change significantly points to some incompleteness and imperfectability in the object under investigation. The concept of infinite time as Peirce conceived it represents an infinite quantity of intervals linking meaningful moments in relation. Such intervals are the occasions for what Peirce called Pure Play or Musement. [103]

The "spatial" relation of play or musement is the space of possibles in reasoning, or the space of "Real Becoming" (104). It might be compared to, if not necessarily equated with, Heidegger's association of authenticity with the relation of Dasein to Being.[186]

Finally, this duality results in a description of an "instant" of time that harbors both kinds of time. For Peirce:

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[186] Kevelson addresses Peirce's partial overlap with phenomenology elsewhere (1987:115–126), agreeing that his thought "coincides with" Husserl's on "some basic concepts" while seeking to distinguish Peirce from phenomenological "solipsism." That distinction is somewhat moot for present purposes in light of my understanding of phenomenology as a fundamentally intersubjective area of inquiry anyway.

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there is no difference between the time of before and the time of after anything. Although each is the reverse of the other in themselves they are exactly alike. So if instants of time cannot be compared how can we speak of truth and falseness in propositions which may be either representations of a before or an after? We can say, Peirce suggested, that 'Time is therefore a determination of existents. A perfectly determinate time is called an instant', (1908 MS 138:2). [Kevelson 1987:111][187]

Past, present, and future are distinguishable only "infinitesimally" (114). In other words, the instant is an existential experience, divisible and sequential as a matter of a retrospective aspectual relation between instants, which feeds back into the multidimensional experience of time as a process of building interrelationships of meaningful representations.

The centrality of time to Peirce's account thus can be framed in terms of the centrality of time I have posited. The moment of possibles between T_0 and T_1 could be phrased as an instant of possibles. Whereas the space of possibles captures the sense of metapragmatic regimentation that identifies a goal of authenticity, the corresponding moment of possibles captures the sense of pragmatic action in pursuit of authenticity.[188]

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[187] The internal citation is to documents located at the Peirce Edition Project in Indianopolis (Kevelson 1987:177).

[188] In keeping with her account of legal reasoning as exemplary of this method, Kevelson's rhetorical focus is on the metapragmatic, or how people arrive at knowledge through the "process of evolving an idea" (1987:97). But even that phrase points to time as a method and process being also about experience. The "judgments" that are both law-like and provisional as metapragmatic outcomes of temporality are also pragmatic continua, because:

> time must correspond with the doubt-belief open-ended process and be regarded as a concept which includes not only changes of direction in an ideational, space-like manner, but also must involve that aspect of duration which refers to changes of intensity and intensification. [101]

Intensification, she clarifies, evokes the "rhythmic alteration of something moving in place" (102) that Peirce observed when additional light fell on a point. Moving in place deepens experience through knowledge.

Thus, through the chain of conversational moments, speaking in court is an example of the general habitus of authorship, tailored to the field of law. The utterance at T_0 is an authorial claim on which turns a social distinction interpretable as authentic or inauthentic according to expectations about legal pragmatics. The utterance at T_1 ratifies that claim or not, regardless of whether the utterance expresses agreement, disagreement, or anything else in terms of the topic under discussion. The second utterance also makes its own authorial claim, and so on.

3. From Semiotic Temporality to Social Position-Taking.

The key point—of this example and this chapter as a whole—is that this link between authorship and ownership is not merely metaphoric, but an actual, practical link that runs in both directions via authenticity. Capital, both economic and symbolic, is at stake for the legal professionals and their clients as well as for the structure of the field of law as a whole. Property claims to that capital turn on the success in authoring authentically on this field.[189] Authorial

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[189] Kevelson draws an analogy between Peirce's theory of ideas and the legal concept of property through the notion of the "real," writing that:

> According to Peirce, the growth and development of ideas is equivalent to the growth and development of real value. Recall that real value, like real estate, alludes to the elemental, basic relationship between portions of the earth's surface, defined and titled, and a person's property in a comprehensive sense. Property in land was synechdochal of the entirety of a person's value in the world; property represented a sign of that value. This process takes place as a social enterprise between persons in community.
> [1988:14]

Her purpose is analogical, and she later relies on a specific, modern liberal definition of property in order to make the synechdoche work. But it is an intriguing connection through the notion of "real" value as a sign that both connects and distinguishes members of a community. Rather than seeing a correspondence of value between a

claims to that capital turn on success in communicative boundary-marking in an authentic way

during the moment of possibles. Each is dependent upon the other.

The key theoretical implication for anthropology is that this link pinpoints the boundary-

marking required to collaborate communicatively and pinpoints how that dual function connects

linguistic practice to social practice. To stake a communicative claim of social distinction is to

seek social position in legal terms (or those applicable to whatever other field is at issue), and to

obtain ratification of that claim is to move closer to acquiring profit and prestige in those terms.

And to stake a communicative claim is to delimit a co-participant's claim-staking affordances

with respect to the use of that capital in the remainder of the interaction and whatever adjustment

to positioning on the field results from it. The semiotic temporality I have just identified

specifies the mechanics in the first dialectic of the cascade that models authorship, which is

isolated in Figure 12.2 above.

4.   Revisiting What "Happened" in *Catfish*.

An illustrative example is the discussion between the judge and plaintiffs' lawyer about

what "happened" when the *Catfish* filmmakers incorporated "All Downhill from Here" into their

film. In Chapter 9, I showed how each interlocutor braided together narratives from three times,

those of the events depicted in the film, of the filmmakers' actions, and of presenting legal

evidence in the courtroom. They exploited intertextuality between the legal frame and the

underlying artistic one at key junctures between these times by employing various features of

person and her property, viewed from an anthropological perspective on practice, the sign relationship can describe

intersubjective boundary-marking in which value is constantly at issue.

language use. The result was a challenge to the film's realness, and therefore its originality, and therefore the filmmakers' authorship, by the plaintiffs' attorney, versus demurral by the judge, who introduced an alternative whereby the defendants might still have an authorship claim as long as they did not preconceive a plan to use the song.

While the earlier analysis focused on the legal commentary about authorship of the film, the narrative braiding also reveals the semiotic temporality of legal talk as authorship. Participants strove to stake claims as authentic legal professionals by managing a temporal boundary that affords collaboration precisely because it distinguishes respective positions.

For example, in Example 1 in Chapter 9, the plaintiffs' lawyer utters numerous evidential phrases, some subjectively oriented, such as "my understanding is" and "you also see" and others objectively oriented, such as "there is." After each present-tense evidential, he talks about the past times of depicted events ("was sent") and filmmakers' acts ("talked," etc.).

These evidential phrases assert claims from the lawyer's standpoint as an author participating in the ongoing courtroom conversation. Those claims are claims to social distinction as a competent or expert legal professional because they assert mastery over the evidence and the evidentiary standard. To obtain ratification of those claims would be to gain ownership of that position, both within the conversation and also projecting beyond it to the case's impact as a position-taking on the field of law.

Toward the end of the lawyer's turn, he uses the conjunction, "so," to conclude his argument and simultaneously lock into place his authorial claim. The summary that follows repeats an objective evidential phrase, "it is (not)," followed by succinct statements of what the filmmakers did and what happened naturally.

The bookend to "so" is the judge's contrastive conjunction, "but." Between so and but lies the possibility—the moment of possibles between T_0 and T_1—that the judge will ratify the lawyer's claim or do something else to it. She does the latter.

The judge makes her own authorial claim in a fashion similar to the lawyer. She, too, employs evidentials, such as, "is there," "is it," and "do you have," before referring to the two narrative times of the past ("was," "were going," "decided"). The institutional norm that judges use the interrogative form does not prevent them from making arguments, including through response-preference design and other pragmatic devices, and thereby asserting authorial claims. Furthermore, it is her job to question the lawyer's logic and represent institutional neutrality and authority. For example, she challenges him with "but" but also remains open-minded by putting an "or" within her question.

Within convention, therefore, the judge partially ratifies the attorney's claims, allowing the conversation and the competition for capital to proceed—in contrast to the situation from another case I mentioned earlier in this chapter, in which the judge publicly humiliated an attorney, calling into question the legal authenticity of his actions and coming close to halting the proceeding. In addition, the *Catfish* judge, too, authorially claims social position and seeks their ratification as ownership.

Another moment of possibles occurs between the formal interrogative at the end of the judge's question and the attorney's response. The question, phrased as "did it," is designed to elicit agreement in the form of "yes" or replication in a declarative form, such as "it did," or something similar. The attorney complies by repeating "it," followed by a specific reference to what "did" stands for, namely, "just happened." He turns the judge's question, "did it just happen," into "it just happened."

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He also adds a qualifying adverb, "apparently," that signals upcoming trouble for this apparent agreement. The attorney thus partially ratifies the judge's claims. He then says, "but I don't think that is the test" to avoid fully ratifying them, lining up a contrastive conjunction, his subjective stance, and an objective declaration about the evidentiary standard.

Finally, both speakers did things within their own turns to strengthen their positions before the other speaker got to them. The attorney moves from subjective evidentials to objective evidentials three times, while the judge moves in the opposite direction once in ascribing evidential stances. As a general rule, it is better for the attorney to cast his evidential claims as broadly as possible because his task is to preserve the actionable claim for trial. Even though the plaintiffs do not have the burden of proof at summary judgment, it is also better for the judge to cast their attorney's evidential claims narrowly because her task is to weigh what he can present against what the defendants' attorney can present. These moves within the turns gear up toward the moments of possibility between them and sharpen the respective claims as ones that are authored and seek ownership.

This example locates the general habitus of authorship, as applied to the field of law, in the semiotic temporality that lies at the nucleus of language as practical action. In the context of law and legal conversation, Kevelson and Richland have elaborated upon the paradox of reasoning in Peirce's theory of indexicality, which paradox emerges from the temporality of iteration. I developed that temporality further, associating the paradox with the tension between chronological and unified time and illustrating it by reviewing a portion of the *Catfish* data. Because that tension drives the intersubjective pursuit of authenticity, which drives authorship and ownership as practices, the semiotic temporality scales up to define what it means to author as a participant in the courtroom.

The upward scale informs the methodology of studying law and society inspired by legal realism, whose early twentieth century proponents were themselves inspired by pragmatism. In a famous 1935 law review article, Felix Cohen summarized their program, string citing James, Dewey, and Wittgenstein, quoting Peirce and Russell, and then exhorting lawyers:

> Instead of assuming hidden causes or transcendental principles behind everything we see or do, we are to redefine the concepts of abstract thought as constructs, or functions, or complexes, or patterns, or arrangements, of the things that we do actually see or do. [2006:187]

Peirce's influence on other realists has been documented as well (see Kevelson 1987:70–82, 1988:219–229).

One of the central realist tenets is that legal discourse about some topic is never separable from the pragmatic activities of the people engaged in the discourse. My combined analysis across Chapter 9 and this section demonstrate this point in linguistic detail by showing the link between the metapragmatic talk about authorship and the pragmatic talk as authorship in the *Catfish* proceeding. The question of realness in the case is multidimensional.

Furthermore, the shifting doctrinal and cultural frameworks that crystallized as realness in the *Catfish* case only make it easier to see that contextualized social action is always the source of meaning, in keeping with the pragmatist approach (see Suchman and Mertz 2010). The microlinguistic analysis of the court proceeding fits within a "contextualist" (Nourse and Shaffer 2009:79) strand of the "broad tent" (Erlanger et al. 2005:337) effort to integrate doctrinal and social scientific research known as New Legal Realism (see Macaulay 2005 for a comparison between the "old" and "new" realisms). Beyond law, because legal reasoning exemplifies practical reasoning, the insight into the nucleus of the pragmatics–metapragmatics

dialectic extends to authorship in other settings that do not conform to the institutional structure of law.

B. <u>Performing as Authoring</u>.

1. <u>Authoring Power through Generic Calibration</u>.

Another mode in which study participants combined genre, participation, and narrative in a general habitus of authorship is through the formal performances described in Chapter 10. There, I discussed how professional storytellers and members of auxiliary professions spoke before colleagues in ways that navigated the generic boundary between a description of the storytelling industry and the performance itself. The speakers calibrated the narrative performance to the narrated description in order to talk into being visions of the changing nature of authorship and ownership as functions of authenticity.

This calibration is another way that intertextual power is exerted, similarly to the intertextual boundary between law and society discussed in the preceding section. Also similarly, the exertion occurs through co-constructed narrative, although some of the performances may seem less participatory than in court because the settings give speakers longer turns and greater command of the floor and involve discussions of relatively shared goals rather than a stark dispute.

2. Projecting Positions through Performance.

As a result, the temporal (or, more accurately, spatiotemporal) expression of the

boundary can be rendered as a projection from the T_0 of the performance outward to the T_1 of the

world the narrative describes, rather than as the sequential progression from utterance to

utterance. Figure 12.3 models this projection. A speaker pursues authenticity through the

chronological performance in order to project a unified experience of the authentic goal through

the narrative accomplished by that performance. This duality replicates the pragmatics–

metapragmatics dialectic as the practical action of the performance aims toward ideological

regimentation of the narrative.

12.3 (Spatio)Temporal Projection during Narrative Performance
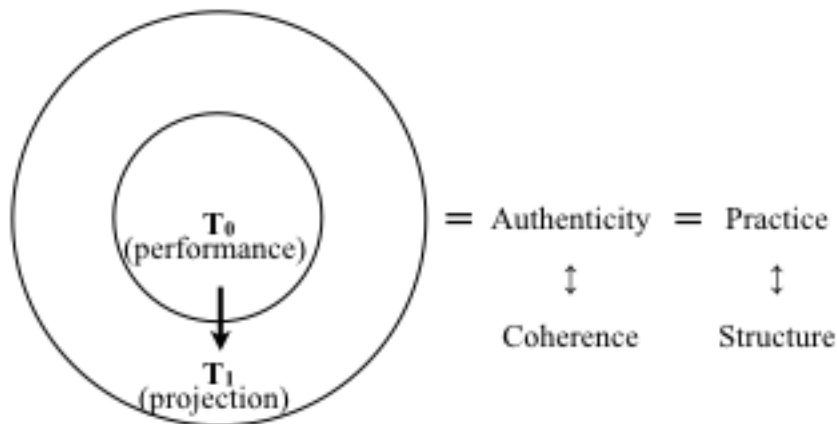
The communicative structure of the performance also makes it easier to see how this kind

of practical action replicates the next dialectic in the cascade, that between practice and structure,

depicted in Figure 12.3. The performance in the formal setting is a practice among this

community of storytellers that aims toward defining the structure of storytelling as a profession and industry, the schemas or codes according to which authentic storytelling garners capital. As always, this relation is dialectic, so that the performance is also the enactment of structure, and the projection is also the result of continual practice across performance events and other activities.

3. <u>Authenticity's Temporal Tension in the Position-Taking of Performance</u>.

The mechanism through which that process unfolds is the tension in personal narrative between authenticity and coherence. Narrators seek to convey the immediacy of experience promised by authenticity, and to establish that sense of immediacy with their co-narrators or audiences, while under pressure also to convey the stability promised by linear, moral, or causal organization (Ochs and Capps 2001:17, 56–57). In the narrative projection from T_0 to T_1, that organization corresponds to ideological or structural order.

Calibrating the two Ts involves a negotiation between performing authentically and projecting stability. A challenge to this calibration arose, for example, when Stefanac's slideshow failed and she acknowledged an obstacle to her performance by joking about a digital crackling fire and several other comments. She recalibrated her talk about authorship by making that joke and reuniting commentary on authorship with commentary on her own performance.

The same recalibration applies at the level of her talk as authorship. The slideshow failure threatened the authenticity of her performance as a practice of the general habitus of authorship on the field of cultural production. To speak in that forum before an audience of other professionals involved in the storytelling branch of cultural production was to seek capital

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on that field through one of the community's principal communicative venues. To win capital required her to perform authentically, measured by her delivery of a coherent message about the field. The performance fit the authenticity of the practical action to a cultural structure, thereby staking an authorial claim to social position on the field of cultural production organized according to that structure, and seeking ratification of that claim as ownership of capital. The slideshow failure threatened that authenticity because it threatened to disrupt the message. The joke deftly repaired the breach by integrating the failure into the campfire imagery of the message through a convention, joking, designed to gain sympathy or empathy.

Thus, I argue, the tension between authenticity and coherence is not merely oppositional but involves calibrating them. Ochs and Capps (2001:156) argue that the "experiential logic" of personal narrative involves managing the tension. To that argument can be added the impetus to make authenticity and coherence compatible across the boundary between T_0 and T_1. This impetus derives from the recursive property of the authenticity–coherence tension, and, in turn, drives narrative authorship. It is the same as the recursive property of authorship as a meta-index of communicative practice that stitches together talk about any particular topic with talk as authorship in its universal sense. At its root, therefore, is the temporal tension between chronological and unified time that translates into the tension between the pursuit of authenticity and the authentic goal.

The tension becomes recursive in narrative practice through the tension between authenticity and coherence. Because authenticity is dually pursuit and goal, the authenticity side of the tension is complete in one respect—which is how the performance as talk about authorship turns on being authentic or not.

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But the goal aspect also gets projected onto coherence, in the same way that the performance is both practice and structure but occurs as practical action through the projection onto structure by performance. It is another way to make the point that performance enacts universal authorship by projecting onto the structure of cultural production.

Thus, at every level, authenticity harbors within itself the tension between authenticity and coherence. They are mutually constitutive. As a matter of temporality, expressed as T_0 projected outward to T_1, authenticity always consists of pursuit (authenticity) plus goal (coherence). Every utterance that pursues authenticity during the unfolding performance at T_0 projects toward the goal of coherence at T_1. Every projection could be traced to an infinite degree of recursion, so that the projection is not just a linear one but also an existential one, a projection not just along the sequence of utterances but outward from the spatiotemporal experience of the performance to the spatiotemporal imagining of the world it describes. Even when a speaker speaks for a long, mostly uninterrupted time, the narration is driven continually to make that projection.

The recursivity creates a space, or space-time, of possibles at the boundary between T_0 and T_1, similar to the moment of possibles described for *Catfish* but with different dimensionality. In that space, a speaker's authorial claims to social position seek ratification by projecting onto the world in which the authored performance is nested. Success turns on being authentic in that claim-staking, as judged intersubjectively with her immediate and imagined audiences. Success means having staked an authentic claim to author and thereby own a position in the field—again, a field in which the performance itself is nested as a token event. From the token event located at T_0, she talks about authorship as a type in T_1. She also talks as an author who fits the token to type and seeks to secure her own position by doing so.

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4. Revisiting *Avatar* and the "Lawyer Stick".

An illustrative example is the Storyworld panelist's performance (Example 3 in Chapter 10) in which, responding to a moderator's prompt to identify an industry trend, Kathy Franklin constructed a narrative that identified conventional copyright as an obstacle to greater audience participation and collaboration, but an obstacle that industry professionals will have greatly diminished by the time Storyworld reconvened three years thence. She constructed that narrative by situating the obstacle on retrospective, present, and prospective vectors along which fans remixed and producers—herself, her company, her peers in the audience, and Hollywood generally—enforced copyright or worked on solutions. Various linguistic features that organized that framework of person, time, and action allowed her to exploit intertextuality between the performance frame and the descriptive frame. The result was that she identified a property-based ideological conflict with respect to authorship and predicted eventual harmonization.

The analysis in this section turns to Franklin's own claims of authorship as a professional storyteller talking among peers in a characteristic venue of community discourse. One place to observe the temporal projection is in the combination of time-oriented verbs and adverbs, status-oriented nouns and verbs, and personal pronouns.

For example, Franklin used a first-person pronoun that refers to herself and her company (the makers of *Avatar*) in combination with several present progressive verb phrases: we are seeing, are sitting, (are) looking. The metaphor of sitting draws the first-person perspective that she ascribes to herself and her colleagues into the performance space-time, where she is actually sitting. The metaphors of seeing and looking cast the first-person gaze across the spatiotemporal boundary to industry-wide trends.

This construction also begins to author a claim to social position for herself and her colleagues as members of the industry who are sitting in a position from which they have something to say and do about the trends and acquire capital as a result—which will also be a result for her as a performer on the panel if she obtains ratification of that position from her audience immediately or at some point after the conference. This projection is thus a space and moment of possibles in which Franklin foreshadows that she is about to mark the proprietary boundary in some specific way in both her talk as authorship and her talk about authorship. She is speaking in pursuit of authenticity.

Franklin goes on to describe a "move toward fan empowerment" on the field of cultural production, in which the Storyworld conference is embedded but also compartmentalized. Fan empowerment emerges in the broader structural world toward which Franklin projects, where the goal of authenticity is the main concern. But she also endows fans with present progressive movement ("are creating") that speaks to the pursuit of authenticity. By ascribing this pursuit of authenticity to the fans, she is able to complete the projection from where she is sitting and seeing, in the present progressive of T_0, toward what she is looking at in the concurrent present progressive of the broader T_1 world in which T_0 is nested.

This concurrence allows her to foreshadow trouble for coherence in the wider world. As she looks at what is going on there, she sees an emergent narrative. The first-person, present progressive "we are trying" is the bridge between T_0 and T_1 that constitutes both a claim within the performance space-time and a description of action in the referred-to space-time. To try is a verb of effort. It anticipates the pursuit of authenticity and the attempt to resolve the narrative trouble.

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The remainder of this long utterance concludes with the series of infinitives that project toward the future, "to figure out how to clear…to be okay." What will be cleared are "legal pathways," which is to say, the pathways will be cleared of law-related trouble. What will result is the authentic goal, that "what fans do" according to their newly acquired, new media dispositions, will be "okay." The metaphor of clearing pathways is a physical one that easily maps onto the notion of field that corresponds to the structure of the broader world. Law-related troubles congest a field that is under pressure from new media, and the pathways of capital flow must be cleared. To be okay is a status and an expression of the goal of authenticity. If the pathways are clear, the goal is achievable. Furthermore, such a resolution would vindicate the claim staked in the performance space. Franklin's pursuit of an okay world, projected outward from the conference, will earn ratification of her claims to social position authored at the conference.

Franklin is finally explicit about the trouble when she describes the "lawyer stick," meaning aggressive copyright enforcement. Inauthenticity consists of it being "incredibly difficult"—a barrier to the pursuit of authenticity—"to engage fans"—the goal. The trouble resides "in the past" and continues into the present through the present perfect, "has been." It continues in the present because the fans "are worried" and into the modally certain future, when "you will" enforce copyright against them, cementing the inauthenticity as temporally universal, an existential problem under the existing state of affairs. As long as "what they are doing" in the present progressive results in a metaphoric beating, intersubjective authenticity eludes "they," the fans, and "you," meaning entertainment producers and grouping the speaker together with her immediate audience.

That sentence thus primarily describes a problem of coherence, goal, and structure in the broader world. It also folds back to the performance space-time through the pronouns. In effect, the speaker accuses her audience of being inauthentic, although she does not necessarily exempt herself from the accusation. She does so by positing the goal of fan engagement, which is broad enough to mean almost anything that could count as authentic, but also implies participatory, remix engagement because of both her preceding statements in earlier lines and the general theme of the conference. In this performance, she has already staked an authorial claim to a social position that embraces a new mode of storytelling authenticity. Asserting the inauthenticity of copyright enforcement under those conditions tilts the scales in favor of obtaining ratification of that claim and confirming her, in the performance space-time, as an author in the sense of the general habitus of communicative action, as applied to the field of professional storytelling.

Further evidence of this tilt comes immediately in the next sentence. She reverts to the first-person, present-progressive "we are trying." Against the backdrop of extant inauthenticity, she and her colleagues are pursuing authenticity. Once again, "we" bridges the two space-times, authoring an immediate claim as communicative action and projecting a wider descriptive claim. Also once again, the series of infinitives point toward an authentic goal. This time, she explicitly invokes a "playing field." On that field would exist modal possibility, so that fans "can be creative and can be innovative," statuses that would fulfill the goal of authenticity in a remix world, without endangering producers' status of "ownership."

Franklin eventually merges the performance with the broader world by admitting that "this is a complicated to be" but predicting that "we will have a much better approach" by Storyworld in three years' time. By that future time, at least a more harmonized quest for

authenticity "will" replace the present-tense ("is") conflict between remix and copyright. To accomplish this merger would be to impose structural coherence through harmonization. To have predicted that harmonization accurately, and to have contributed to its realization through the performance would be to earn ratification of Franklin's claim to social position authored through her talk at Storyworld.[190] Through the inclusive "we will have," she offers her audience the chance to join her by projecting co-authored proprietary claims to the future, and forecasts collective capital gain through the reconvergence of performance space-time and broader space-time "when we are at Storyworld three years from now."

In the *Catfish* example, capital was at stake for the legal professionals, clients, and the structure of the field of law. In this Storyworld example, capital is at stake for the speaker, her audience, and the structure of the field of professional storytelling. Property claims to that capital turn on success in authoring authentically on this field. The boundary between the performance space-time and the broader field's space-time generates a space and moment of possibles for practical action. Franklin strove for authenticity by projecting across that boundary. That projection linked authorship to ownership non-metaphorically.

The projection occurred through narrative, which is a ubiquitous mode of talking about life experiences and, therefore, a primary mode of authorship. Ochs and Capps identified a tension between narrative authenticity and narrative coherence. My analysis developed that tension further by associating it with the fundamental tension between chronological and unified time that drives authenticity, such that authenticity and coherence are mutually constitutive in a

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[190] The prediction does not have to come true for Franklin to have authored authentically from her immediate audience's perspective. She only has to win ratification from them, which will translate into capital immediately, though always subject to revision.

recursive pattern that allows for the narrative projection back and forth in the dialectic between

practice and structure. The analysis thus contributes methodologically to linguistic anthropology

by anchoring authorship to two ubiquitous features of language use, ideology and narrative, and

offering this model of authorship as an analytic tool for specifying ideological and narrative uses

of language in terms of context-specific, practical action.

C. <u>Producing (and Playing) as Authoring</u>.

1. <u>Authoring Power through Boundary-Making and Boundary-Crossing</u>.

A third dimension of temporality in talk as authorship can be seen in the production of

the Miracle Mile Paradox. Chapter 11 emphasized the boundary between the chronotope of

actual reality in which the romantic habitus of authorship governed the initial production of

MMP and the chronotope of the alternate reality in which the remix habitus governed its play as

a participatory narrative. The boundary made it possible to produce MMP as a story product,

that is, as the marker of a position-taking on the Hollywood field, that represents the emergent

ethos of transmedia storytelling. The boundary also triggered the double edge discussed

throughout this study because inviting the audience to participate in ways that advanced the

game as a remix-style experience also inadvertently encouraged some of them to hack behind the

scenes according to the remix ethos, which may have threatened the authenticity of the enterprise

as a whole.

Both kinds of boundary-crossing highlight multidimensionality of the field of cultural

production, beneath the smooth surface of the habitual illusio. The boundary-crossing was

communicative pragmatic action in the course of the production and play. That action exerted power at the intertextual boundary. Whether as collaboration between producers and players to propound an emergent mode of storytelling or as conflict between them over control or the limits of that mode, these power dynamics constituted struggle on the field with the potential to change it.

New media served as gateways at the boundary, affording both licit connections such as through the mobile phone text messages delivered to players of the live experience and illicit ones such as hacks into administrator accounts for the online components. By facilitating transmedia to such an unprecedented extent, new media illuminate the multidimensionality by making transformation possible. Copying or pirating a book challenges the structure of the field superficially. But changing the rules of authorship for a story product exploits granular possibilities of the field that may explode on a larger scale if they reach critical mass.

Pragmatic action through the story-game narrative thus acquires broader significance as action that seeks to reconfigure the particular habitus of authorship from romantic to remix. It is talk about authorship of the kind emphasized in Chapter 11: discursively conscious, metapragmatic and ideological in quality, sometimes explicitly so in linguistically obvious ways, as in the case of talk about hacking, sometimes more diffusely in the overall effort to produce a novel form of entertainment.

That action is also talk as authorship, an example of the general habitus of authorship with respect to the field of cultural production. Through the practically conscious, experiential aspect of these acts, producers and players claimed social position with respect to that field amid its turmoil.

2. <u>A Game as the Game</u>.

This variation on the relation between the particular and general adds dimensionality to the field as the site of a game. As discussed in Chapter 5, in Bourdieu's practice theory, the elements of a field of production comprise an organizational framework for a sphere of social activity, or game, that unfolds according to a shared illusio or commitment to its rules, including contest and the possibility of change. The illusio flows from and through habitus in the dialectic between habitus and field constituted by interested participation. Interested participation is, in other words, practice, which both enacts the structuring of habitus per the field's organization and harbors a space of possibles for perpetuating or subverting that organization. Hence the metaphor of the game, with its connotation of habituated rules as well as play and contingency.

Ortner (1996, 2006) developed the game metaphor further as part of her program to make practice theory account for social change and attendant notions of agency, inequality, and power. Her modification to serious game captures the power element, in particular, which is the source of potential change when situations involving power asymmetry induce unexpected outcomes. In addition, the serious game metaphor ensures that agency is seen as socially constrained and contoured to cultural and situational variables and, further, that agentive action is discerned not only in large-scale political or historical movement but also micro-social encounters.

The general habitus of authorship suits that model and adds a tool for understanding the added dimensions that Ortner seeks to explain. My description of authorship as staking a claim to social position and ownership as obtaining ratification of the claim is tailored to connect practice theory and linguistic anthropological theory. In keeping with the game metaphor, these definitions relate things such as Goffman's notion of interactional footing to a field of social

action. Authorship is a way of being agentive that is socially constrained, culturally informed, and situationally specific. It occurs at a microscopic level and scales upward, as earlier portions of this study and chapter have demonstrated.

Furthermore, on a stable field, authorship might perpetuate social structures or result in marginal adjustments. On an instable field, however, authorship can lead to transformation through the interplay of the particular and general. For example, new media have altered the conditions of position-taking in Hollywood that traditionally occur according to the particular romantic habitus of authorship.

The MMP transmedia alternate reality game exemplifies this instability. Boundary-marking between the chronotopes of actual and alternate reality turns on the unstable mutuality of the romantic and remix habituses. The game opened a specific space of possibles for power struggle. The struggle had small-scale aspects, such as the illicit guerrilla hacks. And it had larger-scale aspects that could connect to many others going on in the entertainment industry today, such as the licit hacks that represent the producers' and players' shared attitude in favor of an emergent mode of storytelling and against the conventional ideology of modern authorship. By engaging in these power dynamics, the participants enacted the general habitus of authorship with respect to Hollywood's field in ways that could result in small-scale moves such as success or failure of the game as a result of successful or failed licit or illicit hacks (success and failure being always open to viewpoint interpretation). They also could feed into larger-scale transformation such as the emergence of transmedia storytelling as a new dominant mode, which is what MMP's producers and players broadly desire. Transformation may be something even larger and yet unimagined if transmedia storytelling is engulfed by the very participatory culture it was meant to enlist, which is the dizzying prospect that the propensity to hack unleashed by

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new media has brought to the forefront of IP, security, privacy, and many other conversations globally. In short, authorship is a mode of communicative practical action on a field that can reproduce the field or change it to some degree depending on the extent to which authorial claim-staking challenges the field's particular framework for allocating capital.

3. Authenticity's Temporal Tension in Boundary Play.

As with the preceding sections, this proposal turns on the tension between chronological and unified time. Figure 12.4 models this dimension of temporality.

12.4 Chronotopic Temporality of an ARG
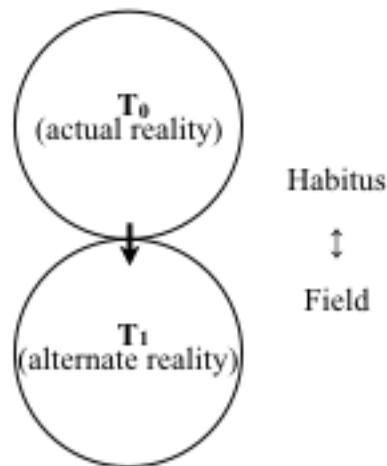
T_o represents the out-of-game chronotope (time-space) of actual reality from which the producers conceived, planned, and initiated the alternate reality game. T_1 represents the in-game chronotope of alternate reality in which the narrative of the game unfolded, involving both the characters animated by the producers and the audience who participated as players.

The downward arrow across the all-important boundary indicates the practical action initially accomplished by producing the story-game. To make a transmedia ARG is to take a position on the field of storytelling production. This action includes the pragmatic–metapragmatic and practice–structure dialectics but also makes it easiest to see the third dialectic in the cascade, between habitus and field. To make a transmedia ARG is to play the habitual game a little differently.

The boundary between T_0 and T_1 therefore is a space of possibles, and producing the ARG may alter the field. This space is also a time of possibles, because the position-taking product, or story, involves a chronotope that differs from conventionally understood entertainment products. It unites the production and consumption of the product in a mixed romantic (T_0) and remix (T_1) way that differs from conventional products of modern authorship such as novels or films.

Whether or not that difference is truly game-changing is an open question. As Bakhtin might be the first to point out, the dialogic quality of a novel means that the audience has a co-authoring role even if it appears merely to read the book. A transmedia project lies on the cusp of potential transformation. The habitus of cultural production at T_0 is a combination of romantic and remix ideas, longstanding but newly inspired to larger possibilities by the florescence of new media. The habitus is enacted through acts, including in large part communicative acts, that work upon the field of cultural production so as to change the game.

In doing so, these acts invite dialectic response back upon the habitus. It can come from various quarters, including the T_1 of the transmedia product or position-taking outcome. Because transmedia invites audience co-authorship and co-ownership, one consistent response to transmedia projects has been that these co-authors go beyond the bounds of remix participation

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planned by producers. The illicit hacking in MMP is one example. The audience's own habits have changed as a result of new media, and its eagerness to join revolutionary professionals to transform the field could overwhelm the latter's own objectives, swallowing the palisades of professionalism in a radical remix transformation of the particular habitus and ideology of authorship. Thus, as with the figures in the preceding sections, the arrow from T_0 to T_1 really goes in both directions, just as habitus and field are not really compartmentalized to one T space-time or the other.

These possibilities to alter the particular habitus and ideology that govern the Hollywood field of production exist because the acts that pursue the possibilities constitute acts of general or universal authorship. To produce a transmedia story in T_0 is to author in a general sense, that is, to stake a claim to social position with respect to a field, in this case, the field of professional storytelling production. To obtain ratification of the claim would be to garner economic and symbolic capital in terms of that field.

That ratification would come largely in the form of authoring acts by others, including the audience, which makes it own claims by participating (or not) in a transmedia story in T_1. Some of the audience's claims may ratify the producers' claims by adhering to the boundary between T_0 and T_1 marked by the producers and designating distinct areas of romantic and remix authorship, respectively. The result would be a joint challenge to the modern authorship–ownership regime. Some of the audience's claims may challenge the producers' claims and seek a different ownership arrangement by rejecting the boundary markers and drawing new ones. The result would be something else—failure, total transformation, marginal change to the existing dominant regime, or something else—born of a power struggle between producers and consumers who display overlapping but non-identical forms of the remix habitus and ideology.

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This stitching together of particular and general provides dimensionality to the theoretical game. In a transmedia project based on an ARG, such as the Miracle Mile Paradox, the theoretical game involves an actual game as the vehicle of position-taking. The power dynamics of MMP as a match in the macrosocial game of the authorship regime illuminates the dimensionality in the space of possibles during an unstable, unpredictable moment on the cusp of potential transformation. The scale of something like MMP can show the kinds of dimensions called for by Ortner's notion of serious games and how an individual occurrence can contribute (or not) to a ramified sequence that results in eventful transformation in Sewell's historical sense.

4. <u>Revisiting Hacking in MMP</u>.

An illustrative example is the licit versus illicit hacking in MMP. As observed in Chapter 11, maintaining the boundary between the out-of-game (T_0) realm governed by romantic authorship and the in-game (T_1) realm governed by remix was crucial to intersubjective authenticity from the point of view of the producers. Eroding that boundary was an authentic imperative on a larger order of magnitude for some (not all) players because doing so extended the remix ideology to actual reality (T_0) as well.

Within this framework, licit hacks, or those planned by the producers out-of-game for players to perform in-game, represent a narrative move according to a new transmedia habitus of professional storytelling, one that combines the romantic and remix ideologies. This move afforded MMP production as a new kind of position-taking on the field of professional storytelling, one that occurs largely according to remix ideology as long as it stays in-game or occurs out-of-game only as collaboration that the producers planned or accept (the boundary is

fluid for transmedia attitudes as a whole; for MMP, the intent was the standard one to keep the infrastructure in the hands of the producers). By contrast, illicit hacks represent a narrative move by some players to leverage that affordance toward a more radical transformation of the habitus out-of-game into a remix one.

The temporal tension between chronological and unified time lies at the center of this delicate framework. The move to produce MMP according to the emergent habitus of professional storytelling was practical action in pursuit of authenticity and undertaken chronologically in actual reality (T_0). This action projected into alternate reality (T_1) as the chronotope where the goal of authenticity might be achieved and would be evidenced by its contribution to altering the field. In an idealized scenario, playing MMP would enact the goal, merging it with the pursuit and thereby aligning chronological time and unified time in the experience shared intersubjectively by producers and players. To work in that way, however, chronological time and unified time had to be kept separate as elements of the game itself. The boundary had to be preserved. When some players started pursuing authenticity according to their own chronological time and with their own goal of unified time, they created a competing and mutually exclusive alignment. Illicit hacking could be authentic from that perspective—to absorb actual reality into the remix ethic of alternate reality would dissolve the mediating boundary—but not from the producers' idealized one.

This instability of the double edge makes MMP an example of potential eventfulness. One of the criteria of eventfulness, that occurrences be notable by contemporaries, brings this chapter full circle back to the relation between discursive and practical consciousness that informs the relation between the particular and general habitus and all of its temporally driven dimensions discussed so far. In MMP, the boundary between actual and alternate reality

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regulates the flow of discursively conscious communication between them. The producers seek

to monopolize discursively conscious knowledge about the story-game's structural aspects.

From the producers' perspective, the authenticity of the product depends on players suppressing

their knowledge that the game is a fantasy and accepting it as practically conscious experience.

This suppression is a twist on the suspension of disbelief that the most authentic romantically

produced stories convince audiences to do, but this remix version depends on a different

arrangement of temporal relations. In Chapter 11, Example 1, one of MMP's producers reported

to her colleagues that the players had not yet performed licit hacks into some of the fictional

email accounts. When they figured out how to, "then they will be in sync with the release

schedule." That is, they will have synchronized their practical activity in the alternate reality to

the metapragmatic, structuring activity of it by the producers operating from actual reality.

Yet one consequence of the novel temporal arrangement of a transmedia ARG is that

some members of the audience are tempted to hack into actual reality. In MMP, these few

rejected the delicate gauze of the suspension of disbelief. Instead, they pursued knowledge about

MMP in actual reality, enacting a practically conscious remix disposition on a larger order of

magnitude. The potential power of this unleashed disposition comes through in metapragmatic

commentary from the producers in actual reality. The same producer quoted above also reported

that "we got the hardcore players hacking things left and right…and by that I mean not the right

things!!" The very act of authoring an alternate reality in which the audience co-authors is risky

because it gives those co-authors an opportunity to stake ownership claims over actual reality,

for better or for worse.

MMP shows how, in the course of cultural production on the field of professional

storytelling, talk as authorship lies in the temporal enactment of an emerging habitus of

storytelling that can have both intended and unintended consequences for that habitus. The transmedia story-game structurally exemplifies the uneasy contemporary blend of romantic and remix authorship. The game thus serves as a token instance of the larger, serious game that characterizes this field, and, under practice theory, characterizes any field. Through the story-game, producers and players engaged in the general habitus of authorship—they pragmatically co-authored—in ways that had transformative potential for the particular habitus of authorship—romantic or remix ideology—that governs this field. My analysis of this field at a time of disruption contributes methodologically to sociocultural anthropology by providing a tool, authorship, for identifying and assessing the large portion of practical action that occurs communicatively, and thereby providing another bridge between linguistic and social theory.

IV. <u>Conclusion</u>.

This chapter shifted focus from how study participants' talk about authorship in various settings enacted competing particular habituses of authorship amid turmoil in the Hollywood field of cultural production, to how that talk also was authorship in the sense of a general habitus of communicative practice. When people engage in the power struggle for capital on a given field, they do so largely through communicative action. That action is authorial in that it stakes claims on which social distinctions turn, and proprietary in that it seeks ratification of those claims resulting in recognition of social position on the field, to be obtained by others' authorial acts.

The capital at stake in these authoring and owning actions makes this characterization more than mere metaphor. Talk about authorship in terms of the particular habitus stitches

together with talk as authorship in terms of the general habitus, and would do so regardless of what the field in question may be. The imbrication of discursively and practically conscious layers of language use does that stitching and produces the cascading dialectics of authorial action scaling from microlinguistic to macrosocial. This layering occurs through the temporal tension that constitutes striving for authenticity in talk as authorship and in what that talk is about. Revisited examples from the preceding chapters showed how that temporality projects in various ways between the pursuit of authenticity through authoring and the goal of having authentically authored a position in the world.

This dimensionality is my methodological remix of authorship to add insights to the empirically grounded study of law and society; to linguistic anthropology, by modeling authorship as an analytic tool for specifying ideological and narrative uses of language in terms of context-specific, practical action; and to sociocultural anthropology, by modeling authorship as a tool for identifying and assessing how communicative practical action effectuates power struggles and game changes on a field of practice.

This chapter also completes my remix of authorship theory and its place in law and in anthropology. My model, starting with the kernel of temporal tension, its experiential vivification through the quest for authenticity, and the practices of authorship and ownership that ensue, is ultimately about how people collaborate by marking boundaries. The final chapter expands on what this remixed model says about how subjectivity is enacted and opened to change through intersubjective communication.

CHAPTER 13: Authorship (Remix)

My objective in this study has been twofold. I investigated contemporary turmoil in the authorship–ownership regime as a moment of potential social transformation. And I used the turmoil's intensification of authorship discourse to ethnographically ground my approach to a larger question of subjectivity and intersubjectivity. New media have instigated a contemporary twist on the mask that simultaneously individuates and unites people. It plays out in the field in terms of themes such as realness, professional craftiness, and multiple realities. And it informs major concepts of anthropological inquiry into personal and social experience: authorship and property. In this concluding chapter, I address some broader implications of this era of remix authorship, first, in terms of the eventful moment and, second, in terms of legal and anthropological theory.

I.   Remix Authorship and a New Media Age of Anxiety.

In her ethnography of Hollywood in the years immediately after World War II, Powdermaker (1951) observed that its denizens took property rights to the extreme and were extremely anxious about them. She presaged scholarly intertwinement of IP's material and symbolic aspects by connecting the stories about property that industry participants told themselves to the stories they authored as commercial products, which projected the social and economic anxiety of their postwar audiences. Enlisting a storytelling trope to weave this braid of language, practice, and experience more tightly than by mere metaphor, she wrote that:

anxiety grips everyone from executive to third assistant director. The happy endings of at least 100 per cent net profit for the studio and a relatively long period of employment at high salaries for employees, are becoming less common. Yet, although this is well known, many individuals still cherish the fantasy for themselves. In the movies the happy ending is still almost universal. Perhaps the people who make the movies cannot afford to admit that there can be another kind of ending, and many of those who sit in the audience prefer this fantasy, too. But an increasing number are becoming dissatisfied with the so obviously contrived nature of these endings. The neat and unrealistic movie solution to all problems is neither satisfying nor entertaining. [309]

Another moment of anxiety now grips Hollywood. It reflects even more disruptive change that cuts across entertainment products and production, their symbolic and material significance, and the identities once clearly marked as producer and consumer. I framed my study of this moment according to the theme of remix authorship. Evocative of a mixed bag of creativity, appropriation, and bricolage, remix authorship captures the anxiety triggered by new media technologies and practices as well as the optimistic sense of opportunity that many people feel.

As an empirical ideology, remix authorship is partly a cause of the turmoil and partly a response to it. On the one hand, it challenges the dominance of romantic authorship ideology that underpins the modern sociolegal regime of authorship–ownership and so shakes up the field of production in Hollywood and beyond. On the other hand, it displays a restless on-the-ground methodological attitude. Remix is perpetual motion. This restlessness can be seen in the double edges of the quest to realign or recalibrate authenticity. Those double edges, in turn, are a function of the oscillation between knowledge and experience that connects talk *about* with talk

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as and speaks to what it means both to live in and to study an era of paradigmatic disruption and potential transformation.

A. <u>Remix Authorship as Perpetual Motion</u>.

"In order to survive, it needs to evolve." By "it," my friend meant transmedia storytelling. We had been discussing what she felt was a year of stagnation in 2013, with the failure of transmedia storytellers to innovate a breakthrough model that proved its worth and the failure of established Hollywood producers to capitalize on obvious transmedia opportunities. She went on to say that we all will look back one day and only then recognize some story product that changed everything. To paraphrase her musing, a traditional Hollywood studio with deep pockets and a successful existing property (a term she used) will take the long view and recognize that transmedia adds substantial marginal value for low marginal cost. Proven commercial and legal viability will unshackle what transmedia proponents already believe is the artistic future.

A Bastille event, one might say; the rest will be history. In the meantime, she made her comments at the cusp of coexistence between the modern field and an emergent remix(ed) one. Her anticipation of hindsight identified the contemporary moment as one in which the double edges of realigning authenticity and the dynamics of partial awareness combine to tinge the quest with a curious blend of confidence and anxiety.

The double edges highlight the incomplete supplanting of romantic authorship by remix authorship. Their coexistence and the way people toggle between them, for example in the chronotopic structure of the Miracle Mile Paradox, is a reason not to naturalize remix ideology as

a substitute for romantic ideology, but rather to see both as instances of a more universal, structural practice of authorship. Toggling between those ideologies is also a practice of remix methodology that reaches toward a still indeterminate vision of how to pursue and attain authenticity.

The dynamics of partial awareness are what obscure that vision. As authorship, by way of its romantic and remix ideologies, has surfaced to discursive consciousness as an object of knowledge, it has become more difficult to experience authorship as authentic in practical consciousness, that is, without thinking about it. Remix ideology is symptomatic of a historical moment in which the metapragmatics of regulating communication are unstable. Remix itself is hyperactively metapragmatic, a practice of constantly producing and reworking information for additional commentary and reworking. This restless, methodological aspect of remix is an attempt to find ways to re-sublimate the bond between authorship, ownership, and authenticity into experience.

   1.   <u>Remix Diffused in Contemporary Attitudes toward Experience</u>.

This current (im)balance between knowledge and experience seems to motivate cultural phenomena that exhibit a yearning for authentic experience along with overcompensation to suppress knowledge of it. In this dimension of remediation, new media cause anxiety because they induce knowledge about experience, but also offer a corrective by being iconic and indexical of experience. An example is the endlessly "meta" viral videos that combine navel-gazing and incisive critique, in-your-face creativity and winking derivativeness. These double-edged artefacts of double-edged authorship and ownership surfaced alongside similar signs of the

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times, such as consumerist skepticism of the hard sell, almost gleeful frets that digital natives are conformist yet self-centered, and casualness about privacy coupled with dismay about surveillance.

There is an irony to all of the above that points to a culture of irony. Irony is about disrupted, or disrupting, expectations. People have always experienced stories, including modern forms of commoditized content or marketing narratives. But uncertainty about how to pursue and attain authentic experience erodes trust in experiencing. Self-aware irony shields against the knowledge of uncertainty. It provides a protective layer of skeptical knowledge that may afford a recovery of experience.

The self-conscious, often disjointed genre of participatory narrative that characterizes much of contemporary comedy is one example. It even occurs in conventionally produced and consumed television programming that is *not* satire or parody but, rather, often quite earnest. For example, episodes of *Louie* (on FX) superficially mimic NBC's earlier classic, *Seinfeld*, by using the eponymous comedian's stand-up bit to frame the episodic narrative. But *Louie* integrates the stand-up into the narrative by having Louis C.K. interact with the audience or club waitstaff in darkly humorous ways and then continue on with his evening, often deflated somehow by the imposition on his performance. In a similar vein, popular "single camera" comedies mimic "reality television" programs that supposedly follow ordinary people around recording their unscripted everyday lives, and often include "confessionals" where they speak directly into the camera. These techniques play with the fourth wall and the kinds of awareness it represents in a way that echoes how the Miracle Mile Paradox reconfigures the fourth wall in the alternate reality game. It is precisely the audience's inclusion in the production joke that these comedies are actually scripted that allows a seemingly more authentic, immersive experience of otherwise

conventional Hollywood story products.[191] This style echoes in *Catfish*'s realness controversy, which was spurred by audience uncertainty about being completely in on its ironies. That double-edged artistic controversy ultimately turned on knowledge versus experience, perhaps most elegantly in one critic's Pascalian confession that if the filmmakers were duping the audience, then more power to them in exemplifying their message about new media.

    2. <u>Remix Is Still Romantic</u>.

The diffuse culture of irony displays the blend of confidence and anxiety that results from contemporary conditions. The culture of irony is a "hallmark of Generation X,"[192] which I described earlier as the cohort most closely identified with both the gloomier and sunnier sides of current Hollywood trends. This blend of confidence and anxiety is evident in discourse I cited in earlier chapters. Kathy Franklin spoke of clearing legal pathways so that fans "can be innovative yet still not endanger our ownership of our IP." In connecting those two thoughts, she juxtaposed remix movement with romantic status quo. Indeed, "static" traditional storytelling versus transmedia storytelling was a contrast drawn by one of the Miracle Mile Paradox's principal producers when pitching the idea to the Transmedia L.A. group. People in Hollywood constantly express faith—sometimes as desperation or resignation—in remix authorship as an

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[191] Conventional dramas sometimes spice up their fare with a wink at this culture of irony, too. A recent plotline on CBS's *The Good Wife* had employees of the National Security Administration who were listening in on the main characters' phone calls comment on the drama unfolding through those calls as if the employees were watching an episode of dramatic television—that is, as if they were in the same position as audience members. Meanwhile, one of the eavesdropped characters was herself watching a humorously melodramatic television show.

[192] Sherry B. Ortner (email to author, April 4, 2014).

unstoppable force, although, for better or worse, romantic authorship has proved more immovable than hoped or feared.

That basic dichotomy recurs through a series of others: knowledge versus experience, analog vs. digital, narrative vs. collage, product vs. process, commodity vs. experience, nominalization ("our ownership") vs. verbalization ("can innovate"). Although some contrast stasis with motion, the more precise distinction is between stable, linear, completable motion and restless, modular, perpetual motion.

Like the Miracle Mile Paradox chronotopes, these dichotomies are symbiotic as much as oppositional. They might sometimes point toward realigning authenticity. If the Mike & Ike transmedia campaign was indeed successful, it may owe partly to a transfer from product to process. The campaign was like a synechdoche of new media practices. It modeled the transfer of the experience of eating the candy in front of a movie screen to eating the candy while engaged in participatory media culture. Put another way, it remixed knowledge about the product into a resonant process of experience.

The law has versions of this dichotomy as well. Some piggyback on commodity vs. experience and product vs. process. In Chapter 7, I contrasted the temporal qualities of consuming a product in successive platforms or windows with consuming it on-demand, on any platform, and even through multiple platforms simultaneously.

A more law-specific dichotomy is property vs. contract. Contract emerged as a secondary theme at various field sites, especially the legal conferences. Sometimes, contract arose as its own doctrinal domain. For example, California and some other states allow lawsuits for so-called "idea theft," which arises from an implied contract to purchase someone else's idea for a story. Although often discussed alongside IP cases, jurists are careful to distinguish the

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legal bases. As one judge emphasized during a panel of the Copyright Society of the USA

meeting, contracts are between two people, while property is a socially created right against the

world.

But it is precisely that distinction that prompted others to talk about contract, or as if

about contract, in order to get around problems such as the double edge of terms of use licenses.

If an audience member agrees to the terms of use, then she has fair warning as to reasonable

expectations of the ensuing participatory experience. Some scholars of new media use the idea

of an implicit contract as to expectations concerning genre and delivery to explain the criteria of

authorial legitimacy and the reasons for remix (Austin 2012). Fans who are disappointed in a

storyline and create fan fiction in response "reject narratively specified events in order to allow

the completion of their presumed generic contract with the producers" (Jenkins 1992:158). In

other words, they might remix the romantically delivered narrative in order to achieve the

authentic experience promised by some kind of implicit contract with the storyteller. Contract,

of course, can involve the exchange of property, building in the flexibility that remix demands.[193]

At the same time, that fluidity begs the question of property. Parties must have something to

transact.

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[193] Along similar lines, Mee's (2011) history of conversational culture in late Georgian Britain describes

conversation as mediation or barter, in order to counter the idea that language is a barrier with one of language as a

facilitator of exchange. The idea of conversation as exchange, however, implies that communicative practices

mediate authenticity, whereas I argue instead that communicative practices constitute authenticity. Communicative

practices are not about exchange between individuals but about co-construction of individuality and sociality in

grounded ways. In fact, contract implies liberalism and a liberal theory of exchange even more than property does,

and might be less well suited to anthropological inquiry than property for that reason.

B. <u>Toward a Remix Analytic</u>.

In all these dichotomies, the remix quest to realign the pursuit and goal of authenticity does not discard romantic authorship but incorporates it into an aesthetic of experience. Reversion to primordial storytelling to make "evergreen" storyworlds transfers the romantic spirit from singular commoditization to perpetual, distributed experience. The intimate intrafaces of knowledge circulation ritualize the conflict between romantic and remix authorship, but accomplish the ritual by blending romantic qualities of performance with the remix aesthetic of ambient intimacy ("I have faith that when we're at Storyworld three years from now, we will have a much better approach").

Even copyright discourse shares in this aesthetic as jurists, including the *Catfish* participants, remix a romantic authorship doctrine that also organizes their professional work. The lifted veil spurs efforts to realign law and society in the quest for authenticity. It also influences the mode of those efforts. Lawrence Lessig makes his books available online under Creative Commons licenses and hosts wiki forums for others to collaborate on rewriting them post-publication. He also countersued a record company that had sued him for using a copyrighted song as an example of remix in a lecture he posted on YouTube; their settlement reportedly affirms that his was fair use and requires the label to pay a sum to a non-profit entity opposed to strict copyright (Sydell 2014).

These dichotomous remixes are intense during the present moment. The intensity shows in the paradoxically anxious yet confident tone that pervades discourse of IP, Hollywood, and broader issues. Large-scale misalignment between the pursuit and goal of authenticity is characteristic of an uncertain, transitional era in the quest. This aesthetic of experience has

characteristics of a disruptive moment, and even more particularly this early twenty-first century historical one.

But the quest and misalignment are not unique when considering the longue durée. Contemporary intensity highlights a characteristic of all moments. One aspect of new media not being entirely new is that the visibility of this aesthetic, its surfacing to awareness as part of contemporary experience and to the observer's eye, sheds light on subjectivity and intersubjectivity as big questions of the human condition.

I have approached those questions through the lens of authorship and ownership because I followed the empirical eruption of these concepts, which are major ones in legal and anthropological inquiry. These concepts touch upon the constitution of the social world. People sometimes remix authorship, but they are always remixing as authorship. The opposition of remix and romantic ideologies in the contemporary moment, which really exhibits the symbiotic relationship of remix and romantic practices, refracts to authorship and ownership as mutually constitutive practices in any moment. Extrapolated from within historical eventfulness, authorship becomes perpetual motion of claim-staking and ownership becomes temporary stability of claim ratification. Together, they are practices of intersubjective boundary-marking and collaboration. Extrapolation to this generally applicable, flexible model of authorship is possible because of the elemental quality of authorship and ownership in social constitution. The contemporary moment affords an analytic opportunity to connect the experience of living it with others to what it means to live among others (see Schutz 1967:28–38). Remix authorship recurs as an etic methodology.

II. Remixing Theory, Rhyming with History.

    A. Authorship.

        1. The Limits of Awareness.

This extension from talk about authorship to talk as authorship to a model of authorship rests on that Weberian observation.[194] The call is coming from inside the house, as horror flick aficionados might say. Theorizing authorship is a value-rational or substantively rational act (Weber 1949:52–56; 1978:8–9, 24–26, 85–86). It is a "theoretical mastery of reality" (Weber 1946:293–294) from inside the text (compare Geertz 1973:5) because authorship is the text. Authorship creates the text through structured but flexible enactments of communicative practice. This value-rationality reaches back to Kantian practical reason as the basis for the quest for authenticity. It makes it possible to identify what Garfinkel, building on Weber and Schutz, called a "recognizably rational account" (1967:17) of communicative action within an unfolding situation that is also recognizably rational across situations. Goffman's or Bakhtin's author is integral to the latter as much as to the former. The coextension of authorship with authoring is unavoidable but this limitation can actually facilitate understanding authorship's universal qualities.

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[194] Schutz modifies Weber's distinction between observational and motivational understanding to show that objective and subjective interpretation are not wholly distinct but instead that there exists a connection of "meaning-experience" between what is "directly experienced" alongside others and "more distant" experience in contemporary or historical relation to others.

Bourdieu made a compatible point in discussing his methodology for studying literary authorship. He wrote that:

There is a specific economy of the literary and artistic field, based on a particular form of belief. And the major difficulty lies in the need to make a radical break with this belief and with the deceptive certainties of the language of celebration, without thereby forgetting that they are part of the very reality we are seeking to understand, and that, as such, they must have a place in the model intended to explain it….[A] rigorous science of art…has to take into account everything which helps to constitute the work as such, not least the discourses of direct or disguised celebration which are among the social conditions of production of the work of art qua object of belief. [1993:35]

On the one hand, Bourdieu calls for the analyst to achieve a "radical break" with a powerful ideology of authorship in order to examine it. On the other hand, he cautions against "forgetting" that the ideology is "part of the very reality" to be understood (see also Bourdieu 1995:230–231 for his formulation of "tearing oneself out of the illusio" that is also "part of the very reality we are concerned to comprehend" in contemplating rules of art).

He proposes the field as the site where the reality of ideology appears and locates that reality in the "intertextuality" between an "internal" and "external" reading of a work of art (1995:205). The field draws in the analyst, who cannot pretend to stand completely outside it. The epigraph to Rules of Art quotes Raymond Queneau's catachrestic aphorism, "C'est en lisant qu'on devient liseron." Queneau played on a French parallel to "practice makes perfect" that employs the imagery of blacksmithing: "c'est en forgeant qu'on devient forgeron," which translates as, "It is in blacksmithing that one becomes a smith." Queneau substituted the root "lire," meaning to read, for "forger." Whereas "lisant" means reading, however, "liseron" does

not mean reader. It means bindweed, a choking plant, so that Queneau's version translates as, "It

is in reading that one becomes bindweed." Although the result is absurd in a literal sense, the

imagery of entanglement in the very text that one tries to read aptly captures the analyst's

situation. Whether or not that was Queneau's intent or Bourdieu's in quoting him, Bourdieu

makes the point explicitly in his general theory of practice. He (1977) urges the analyst to break

from his own habitus, but not to believe that he can achieve complete objectivity. Rather, he

must seek awareness of the "limits inherent in his point of view on the object" (2; see also

Bourdieu 1990:28, 30)—that is, interrogate his assumptions concerning what counts as his own

discursive versus practical consciousness.

I would explicitly merge his points about methodological limitation and about authorship

ideology's tight grip because I have addressed authorship not only in the Hollywood equivalent

of literary production but also as basic to communicative practice. We might be hard-pressed to

see the ideological substitution of romantic authorship ideology for authorship's universal

qualities were it not for the contemporary rupture and historical investigation, much of which has

been inspired or revitalized by that rupture.

2. Flexibility to Retheorize Authorship.

That admission puts a positive spin on Foucault's critique that despite the non-existence

of a robust subjective author, its ideology survives in the author function because there is

nowhere else in the smooth discursive web to establish a true alternative. Locating the author's

universal characteristics in the fabric of discourse liberates authorship from a particular ideology.

Though everyone resides inside the text, the text is authored, and authorship is a way to

accomplish textual action—much as Foucault did in his critique and professional storytellers and copyright scholars are doing now.

There is a semiotic basis for my stance. When Bakhtin rejected individualistic authorship-as-ownership in favor of dialogism, he noted that even relatively detached observers of a communicative utterance are always in the dialogue on a "special level" (1986:125). This incomplete detachment stems from the dialectic between pragmatic and metapragmatic, the ineluctable bond between how language is used and rules for how language is used. The farther away from the topic at hand she is, the more easily an observer or analyst may discern the ideological contour of that bond. But when the bond concerns authorship in the sense of what I call a general habitus, or its core, essential quality as communicative action, that discernment becomes increasingly difficult. My data demonstrated this point by focusing on talk about authorship that is also talk as authorship. Speakers collapsed the difference between an ideology of authorship and what might count as a universal model of authorship.

This embeddedness of authorship in practice is how I arrive at my model that brings macrosocial consequentiality to existing linguistic anthropological notions of the author. Those existing notions correctly emphasize authorship's collaborative, co-constructive quality, but also overemphasize it at the expense of understanding how authorship marks boundaries and make social distinctions. I broaden authorship to its semiotic bases in order to recover its broader applicability. In discussing indexicality, Hanks (2005a:210) remarks almost in passing, "reciprocity is a worthy achievement, but much of ordinary deictic practice operates on the barriers, divisions, and conflicts between interactants." I propose that socially meaningful language use depends on reciprocity and divisions working together. Outcomes that are readable as collaborative or conflictual are of a higher order; whether collaborative or conflictual, an

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outcome readable into a social event is dependent on the coincidence of coming together and marking boundaries at a structural level of semiotics.

Articulated at the intersection of theory with empirics, my model is generally applicable and flexible. It extends from the semiotic dialectic to the other two. From a practice theory perspective, because talking about authorship as ownership is also a practice of doing authorship, it is, further, to some extent doing authorship as ownership. What a speaker does as an author has ownership built into it because ownership is already embedded in the dialectic between practice and structure. It is already built into the habitus of authorship in any field of practice.

B. Property.

To speak of authorship together with ownership in this way is also grounded in history and ethnography. Their association is clear from pre-modern European formulations, through Hobbes' equivalence between them, to the crystallization of the modern regime, Bakhtin's and Goffman's cuts against the grain, and contemporary debate. The same thread that binds the experience and analysis of authorship inside the text extends to property. Authorship and ownership are linked because we treat them as such. To denaturalize the bond should not lead to renaturalizing it, but neither should it mean throwing out the baby with the bathwater.

1. Anthropology.

My approach gives authorship non-metaphorical purchase on the field of practice through authorship's link to ownership. In turn, updating the flat semiotics still prevalent in much

sociocultural theory supplies a tool to sharpen understanding of how action and practice occur insofar as they are communicative, as well as how communicative practice can lead to macrosocial transformation. This structural linkage applies beyond the cultural core of the modern authorship–ownership regime. Anthropologists' longstanding interest in cross-cultural property systems groups them around position-taking: property is a way of marking boundaries for the distribution of capital, however permanently or impermanently, tangibly or intangibly. Property is sublimated into social relations that are organized in large part according to authorial communication.

In that respect, Lévi-Strauss's (1962b:132) pun that animals are "bonnes à penser"—good goods to think with—applies even more aptly to intellectual property.[195] Intellectual products are not wholly distinct from other kinds. Someone(s) must think up a physical commodity before making it. But the emphasis in IP on the intellectual genius, effort, or collaboration required to come up with an expressible form of an idea leads to an emphasis on characteristics that distinguish IP from other kinds of property, especially inexhaustibility (nonrivalrousness). This emphasis concentrates structural contradictions of a property regime on the ubiquitous question of authorship, which is always a question of social relationships based on communicative action.

This concentration may be most evident in societies that first developed modern IP, if mainly because they are the most studied. As Boyle (1996:47) observes, the liberal view of

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[195] The phrase entered English as "good to think" (Lévi-Strauss 1963:89), but a biographer retains the plural expressed by "bonnes" to translate the phrase as "goods to think with" (Leach 1989:31), so my translation keeps both connotations. Lévi-Strauss was explaining the transformation of objects (animals) that began as unitary goods of economic value into ideational categories of symbolic value. IP poses a similar puzzle, which in this case is not lost to human memory but an ongoing topic of debate.

property exemplifies a great internal contradiction of liberalism between "our desire to be free and our desire for security." Population density and economic complexity finally forced U.S. jurists to abandon the fiction that absolute property rights are reconcilable with pure negative liberty, in favor of the flexibility of clear-eyed legal realism. But even then, inevitable compromises could be framed as physical compromises, or compromises with respect to the boundaries of use of land or goods. IP focuses the problem of mediating the tension between freedom and security back onto people and their moral, utilitarian, or other value to one another and mutual claims.

In other words, IP focuses the question of property as a social practice back onto the authorial claims made through property, and the proprietary claims staked through authorship. My study brings them together as more than a metaphorical relationship but one that impacts the field of struggle and power in both symbolic and economic ways. Such was my point in reinterpreting Myers' account of cigarette-sharing and saving face in terms of authorship and ownership. Other societies do not necessarily have the same contradiction as liberalism—although globalization has ensured its coloration of many situations, such as conflicts over cultural property—but the position-taking, capital value behind any system of property ensures that it will harbor structural contradictions that motivate people to try to resolve them (which may be why property perennially interests anthropologists).

My approach thus may also bridge critiques by some anthropologists of the cross-cultural applicability of property. For example, Myers (1989:16–17) finds property too legalistic a term to capture the Pintupi take on ownership, which he associates instead with "identification." Presumably, he means even the watered-down, non-absolutist version of property rights that most U.S. lawyers would have in mind today. Yet, his description of Pintupi attitudes toward

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land, whereby one can alienate some rights without alienating all, comes very close to the moral rights theory of copyright in which an author retains certain rights to control an expression post-transfer.

In addition, the "co-ownership" that characterizes the Pintupi framework is integrally temporal because it involves both identification (an experiential state) and the possibility of change. My model of authorship could be used to analyze the linguistic, communicative aspects of such a framework because the model integrates ownership into social relationships as the ratification of claims to social position and rests the whole edifice on the contingent, temporal test of authenticity.

2. Law.

The same approach may provide jurists and policymakers with greater flexibility than the conventional jurisprudential assumption that authorship is a found cultural status joined to a legally ascribed status of ownership. Given liberalism's focus on the subject, the status-oriented view unsurprisingly dominates most reform proposals as well, which tweak but do not fundamentally challenge the romantic idea of the author. By contrast, recognizing the fluid, symbiotic rather than oppositional quality of the mashup of remix and romantic ideologies offers a way to ground doctrine in cultural practice that could help with the brittleness of the copyright wars.

On the one hand, my data illuminate some of that ground, both diffusely and, in the *Catfish* analysis, minutely in highlighting how social changes in authorship confronted doctrine during litigation. In that respect, my study joins other perspectives from inside and outside

academia that expose ways in which doctrine is shaped on the ground through the unavoidable engagement with changing cultural expectations. My findings apply to copyright-reliant industries beyond Hollywood and should extent to IP law more generally because of the shared authorship–ownership nexus (see Biagioli et al. 2011:10 on the "constellation of IP discourses and objects" they gather from a variety of scholars and stakeholders).

On the other hand, I also aim to help rethink doctrine from the ground up. My study dovetails in some respects with recent legal scholarship such as Cohen's notion of the networked self. For example, she (2012:80) writes, "From each user's situated perspective, the experienced cultural landscape determines the resources that are available to that user….Both creativity and cultural progress emerge contingently out of interaction between situated users and cultural landscapes." She even goes a little farther in positing "an account of where creativity comes from that locates creativity in the process of working through culture alongside others who are always already similar engaged" (84; Cohen cites Craig's citation of Bakhtin, which I note in my literature review). Cohen's multidisciplinary perspective also takes in elements from Goffman and anthropology. Her approach remains basically individualistic or psychological, whereby individuals are situated in culture.

My compatible but distinct approach is basically social, whereby intersubjectively constructed subjects individuate some kinds of claims in an ongoing process. This grounding could have doctrinal and practical implications. For example, it gets underneath IP commoditization to see not only how it packages romantic authorship ideology but also a romantically inflected definition of authenticity, so that a market arrangement such as product rollout across platforms actually regulates the temporality of experience. If that regulatory arrangement is what grates now that expectations of authentic experience have changed, then

possible solutions to the divergence between law and society, producer and consumer might address the realignment of the social quest for authenticity rather than tighten the romantic screws top-down or dissolve the romantic element completely in a remix free-for-all, neither of which extremes reflects the concerns I found in the discourse of authorship.

C. Experience.

Finally, then, my approach anchors authorship and ownership not only to each other, but also to an anthropology of experience. Conversely, it anchors experience to these practices as one way to understand how subjectivity is enacted, opened to change through intersubjective communication, and engaged toward social cohesion, conflict, and change. Authenticity provides the link between authorship and ownership in terms of value, expectations, and the impetus to perpetuate or transform. And authenticity's meaning is shaped by the form that authorship–ownership takes historically, which evolves when something like new media shakes up the field. In the framework I offer, the tumult in what it means to be a subject and to be intersubjective occurs through authorship and ownership practices, even as they, too, are remixed.

The quest for authenticity gives logic to the simultaneously collaborative and distinguishing qualities of authorship–ownership. In fact, the simultaneity is the logic. The mutuality of authorship and ownership occurs in the space-time of authentic possibles created by the relation of chronological to unified time. This temporal structure, with its horizontal, striving quality, balances the drive for semantic coherence with the functional range of vagueness of meaning necessary to cooperate communicatively over time (see Garfinkel 1964).

This space-time of possibles can be narrowed contextually to describe a community's political organization and may be normatively valuable to some. For example, Shiffrin, whom I cited earlier for her discussion of Lockean bases for IP, argues elsewhere for the philosophical desirability of a certain vagueness that stimulates collective deliberation of the liberal moral community (2010). More generally and objectively, this space-time of possibles is one in which people "act 'as if'" (Vaihringer 2009). They act as if they share procedures of meaning-making to sustain cooperation by testing boundary-marking claims, and they face the if-nots such as new media that strain an illusio and can transform it. Grasping the bull by the horns, the organizers of Transmedia, Hollywood renamed its 2014 incarnation "Transforming Hollywood."[196]

These as-ifs and if-nots comprise unfolding phenomenological attitudes and modifications of them. The space-time of possibles of authorial action is a space-time in which the intersubjective precondition of authentic subjective experience reconciles with the boundary-marking precondition of intersubjective collaboration. Both occur mutually. What is true for me in terms of remixing theory is that authorship and ownership will always have the double-edged quality and will always be part-romantic and part-remix, or whatever other terms we come to use. The double edge may be most apparent in how people interact through cultural products, but it is ultimately about the people. The Transmedia L.A. group faces one now as its members seek to remain insurgent in the field while gaining traction through formalization, such as the institution in 2013 of a new management structure, small fees to attend meetings, and a "university" program of fee-based seminars. Authorship-as-ownership is truly authorship-*as*-ownership, and ownership-as-authorship. The risky double edges of the quest for authenticity in aligning that relationship are also the edges of possibility.

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[196] See http://www.transforminghollywood.tft.ucla.edu, accessed May 7, 2014.

APPENDIX A

This appendix provides further detail on Example 1 from Chapter 10, in which Suzanne Stefanac performed a narrative of storytelling authenticity to members of Transmedia, L.A. This detailed examination confirms my interpretation of Stefanac's performance in that chapter. Her microlinguistic pragmatics structure the performance to bond with her audience, pinpoint the artistic double edge at the core of the ideological turmoil in authorship and its underlying motivation of authenticity, and calibrate the performance to the argument by constructing the former as another iteration of the campfire tale where people laugh together.

I. Introducing Potential Trouble and Dissolving It.

I transcribed the excerpts from video made publicly available by TLA on its website, and according to the conventions of conversational analysis elaborated by Clayman and Heritage (2002:347–353) from the system developed by Jefferson (Sacks et al. 1974).[197] The excerpt

[197] They are: underlining indicates audible stress; atypically caPItalized letters indicate increased volume; a : indicates the preceding sound was prolonged; a - indicates abrupt cut-off; ↑ or ↓ indicates a jump in pitch; a ° indicates the subsequent word is hushed; words framed by < > are slowed; words framed by > < are rushed; a single < precedes a "jump-started" word; words framed by [ ] on two successive lines indicates overlapping talk; = signs indicate a word runs into the next; a series of h's indicates audible out-breath; a · preceding such a series indicates audible in-breath; numbers inside ( ) indicate silence of x seconds (with (.) indicating a micro-pause); a word inside ( ) is a best guess; a word inside (( )) describes a nonverbal state or act; a . indicates downward sentence-final intonation; a , indicates even phrase-continuing intonation; a ? indicates upward sentence-final intonation; a ¿ is slightly less downward; a : preceding an underlined letter indicates a slight downward intonation; an underlined : indicates a slight upward one.

labeled Example 1, Part 1 covers approximately one minute and one second of the video. It includes Stefanac's statement of potential trouble, the joking interlude that established further intimacy with her audience through the campfire motif, and the hint at resolution to the trouble by direct reference to campfires and the innate desire for storytelling.

Example 1, Part 1

01   Stef: Ts um ˙h and (.) one question that peopl::e (.) come (.) to ask me

02   about quite regularly i:s um ˙h d↑o I think tha::t all of the::se (.) um

03   cross-platform pla::ys and the ˙h u:m (.) u<all the: user<the fan

04   engagement, is ↑this going to somehow hu:rt ˙h u<the integrity of

05   narrative, u:m that can we sti:ll te:ll a story from beginning to end

06   ˙hh and not have it um somehow (.) lo::se its oomph lose the (.)

07   <the beauty of it, ˙hhh (.) and ↑I l:a:ugh, and-and (.) an- u >I'll tell

08   you wha- u-i-u< the reason I la:ugh um ts and this is where the

09   slides would start ˙h now

10   Aud: hehe[HAHAHAhahaha]

11   Stef: [hhh heh heh ˙hh ↑HE] ↑AHH UM ˙h you have a fire

12   crackling here video of a fire, (0.3) ts ↑ever since we first sat

13   around ca:mpfire::s we've wanted to tell each other stories ˙h

14   we've wanted to tell stories and be told stories I believe that it's

15   absolutely innate.

Just before Line 1, Stefanac has concluded saying that her career has involved storytelling at every point. She swallows, then, in Line 1, clicks her tongue, says "um," takes in a breath, says "and," and pauses. This string of devices marks a clear boundary between the talk

about Stefanac's own place in this storytelling world and the topical substance of what she has come to talk about (see Heritage 2010 for an explication of topical agenda-setting in another conversational format and kind of setting).

Taking each device in turn, the tongue click, or unvocalized lingual palatal plosive, can be a consonantal phoneme in English (as in "hats"), but is not a standalone morpheme (word). It often is a "pre-closing token" (Wong and Waring 2010:188), although in this case it seems to be a post-closing, or pre-opening, or transitional one. Stefanac uses it two more times in this part of the excerpt, as described below.

"Um" can signal something amiss in unfolding talk, but can also serve other purposes depending on its position within an utterance (Schegloff 2010). Stefanac frequently employs "um" in between informational segments and often where she performs a pragmatic shift such as a change in voicing. Other instances discussed below appear in Lines 3, 5, and 8. In Line 1, the "um," like the tongue click, appears to be a token of transition.

Taking in breath is commonly done as a speaker winds up a phrase and, like "u" or "um," can signal that the speaker intends to keep her turn going (Clayman 2013). They also are a physiological necessity if a speaker's lungs have run out of air, and Stefanac had just swallowed, which may have coincided with empty lungs. In this case, the performance rules are such that Stefanac is unlikely to be asked to cede to another speaker (though the TLA meetups are informal enough that people sometimes did interject with comments or questions). But, for that very reason and perhaps also as another adaptation from ordinary conversation, Stefanac appears to take the breath at the usual place.

The conjunction, "and," also projects continuation as a matter of conversational pragmatics (Clayman 2013), which is also its syntactic function and semantic meaning. It does

not automatically lead to further talk. Stefanac, however, once again appears to use this device to mark the boundary between informational segments and project further talk.

The pause is very brief, or a "micropause" (Jefferson 2004a:46). Like some other non-lexical features of talk, pauses can serve multiple functions depending on their contextualized use (Sacks 1995), including as boundary markers. Once again, this pause must be considered together with what surrounds it. For example, conjunctions such as "but" and "well" followed by a pause may indicate a speaker holding a turn or passing it off, depending on the minutely specific criterion of closing the airway with the glottis (Local and Kelly 1986). In Line 1 (and Line 7) of Stefanac's talk, a different conjunction, "and," is followed by a pause. There is insufficient data to interpret what she is doing in terms of holding her turn to as great a degree of specificity. But, together with the other tokens, holding a turn and, equally importantly, marking a boundary, is what she empirically accomplishes. She is also rather consistent in the types of such boundary markers that she uses.

Still in Line 1, following these markers, Stefanac utters the first informational segment, which is the pre-sequence to the reported question. She elongates the "l" in "people."[198] This instance appears to fit the category of elongation as a "delay" (Sidnell 2013:95) for time while selecting appropriate subsequent words. In Sidnell's example, the next word is a referent. In this case, Stefanac may be using the pre-sequence in which "people" occurs to plan the upcoming reported speech. Further evidence that the elongation is part of a pre-sequence delay

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[198] Phonetically, this "l" is an alveolar lateral approximant (Ladefoged 2006:16). A vocalized airstream is pushed over the back of the tongue and redirected mostly around its sides because the tip is pressed to the top of the mouth behind the teeth. It lends itself to indefinite continuation limited only by air supply.

comes from the micropause that immediately follows "people" and another one that follows the next word.

A similar elongation occurs in Line 2 as Stefanac concludes the pre-sequence informational phrase with "is." Another "um" and in-breath mark the boundary of the phrase.

A sharp rise in pitch on "do" accompanies the beginning of the next informational phrase. Couper-Kuhlen (2001) argues that a speaker's sudden high pitch at the onset of a turn can signal effectively to interlocutors not to begin their own turns until the speaker has completed the turn under the context-specific expectations (see also Reed 2009:351, 359 on the "intonational phrase," although she argues against it being the primary segment of turn-taking as a more general rule). Her data concern how callers-in to radio shows explain the reason for the call and hosts allow them to do so. Unlike callers on the far end of a telephone line, Stefanac is under relatively little pressure by other speakers. But her shifts of voice within her performance are somewhat complex, as the schematic above illustrated. Raising pitch in this way marks a clear shift from the pre-sequence to the report itself. "Do" is the first word of the actual reported question.

In addition, Stefanac places stress upon both words in the deictic evidential, "I think."[199] She does not directly quote others, because she has converted what would be a "you" in an actual question from another person into an "I," which underscores her subjective stance—the beliefs she is about to share—vis-à-vis the audience in front of her.

Still in Line 2, after framing the question with that personal evidential, Stefanac elongates the "that" that introduces the propositional content of the question. This elongation of the demonstrative that introduces a subordinate clause appears to be another case of word-selection

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[199] The stress on "I" may be more of a vowel elongation.

delay. She then states the cause of the potential trouble: participatory culture afforded by new media. The phrase, "all of" encompasses that whole universe of practice. It qualifies an elongated deictic "these," which is followed by a micropause, again suggesting projection to a very wide range while she searches mentally for specific examples to give.

Stefanac's gestures support the interpretation that she has in mind an entire category of practice. Her hands had been clasped since around "regularly." As she says "these," they begin to unclasp, and on "um" the fingers spread and face each other as if forming a little globe.

In Line 3, she specifies some of the category's more particular facets. On "cross" in "cross-platform plays," she gives a beat of the hands, and on "platform" rapidly pulls them apart as if exploding the globe. At the same time, she emphasizes the plosive cluster of "pl." Her hands come together again on "plays." She thus rounds out one specific facet of new media practice. The elongation of plays may be another word-selection delay, because she adds a conjunction ("and") and definite article ("the"), which lead into a noun phrase referent that, it turns out, will be another example.

Before reaching that referent in Line 3, Stefanac takes in breath, says "um", micropauses, utters "u" and accelerates into another facet, "all the user," which she changes instantly to "fan engagement."   That catalog of tokens fits her typical style so far. In this particular instance, they mark a lesser boundary, one between the two examples rather than between voices or propositions. The "self-initiated" "repair" (Schegloff et al. 1977:367) from "user" to "engagement" suggests that the "um" and other "non-lexical speech perturbations" that precede it are word-selection hesitations (similar to elongation in earlier lines). She goes from one example to the next with some delay. It cannot be confirmed, but is possible, that the significant hesitation in this line while she searches for descriptors is a facet of recipient design. Stefanac

may be choosing her words carefully, either to demonstrate knowledge about transmedia or to avoid mischaracterizing it from the perspective of her audience (or both).

Gestures do further work at this stage. On "u," Stefanac starts to relax her handclasp. On "the user," she pulls them apart again, but more gently, and then drops them down together, followed by several beat gestures with open palms and spread fingers as she says "fan engagement." In light of the accompanying verbal talk, all of these gestures in Lines 2–3 support her evidential language. In the case of the exploding globe that goes with "cross-platform," they illustrate the semantics of her talk.

Line 4 shifts from the potential cause of trouble to what the trouble itself is. Stefanac introduces a new question word, "is," plus a deictic reference to the preceding description of the cause, "this." A sharp rise in pitch sets apart this new clause from the preceding one, like the pitch rise on "do" at the start of the preceding informational phrase. The pitch rise in Line 4 is on "this" rather than on the question word, which emphasizes that the crux of the question is the "this," that is, new media practice as the potential cause of trouble.

Continuing in Line 4, Stefanac states the trouble: "hurt the integrity of narrative." She elongates the vowel in the trouble word, "hurt" (she may also emphasizes the initial consonant). This elongation appears to be like the preceding ones, because it is followed by an in-breath and "u" as tokens of hesitation before a rush into "the integrity," which is the referential complement of "hurt."

In addition, Stefanac holds her hands apart with open palms and spread fingers, beating them up and down lightly as she states the question phrase, "is this going to somehow." She beats her hands downward sharply once as she states the authenticity word, "integrity," and brings them together again as if to mark the end of the most significant phrase concerning the

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trouble: "hurt the integrity." Similarly to when she provided examples of participatory culture in earlier lines, this pattern of emphasis plus closure appears to be part of Stefanac's "stable gesture vocabulary" (Kendon 1997:120).

In Line 5, Stefanac continues with her style of setting apart topics with hesitations, in this case, a slightly elongated "um." Furthermore, she repeats her frequent gesture of spread hands with a beat down as she says "story" with slight emphasis. In the brief space between "story" and "from," she also smiles and nods her head sharply upward. She thus highlights not only narrative in the abstract, but the actual product that storytellers make, and, as "tell a story," their practical activity. Moreover, as she says "beginning to end," Stefanac holds her hands out again slightly facing each other with fingers spread, in what has now become a repeated gesture of indicating a problematic issue.

In Line 6, she takes in a breath that separates the chronological movement of "beginning to end" from the unified experience of the "oomph" and "beauty" of a story. Whereas "beginning to end" corresponds to the pursuit of authenticity through narrative conventions, "oomph" and "beauty" are proxies for the goal of authenticity. After the intake of breath, she reiterates the lead-in to the problem with "not have it," along with the same gesture of holding out her hands. She then restates the problem in terms of this goal of authenticity, namely, to "lose" oomph and beauty. "Lose" is elongated. This elongation does not precede a word-selection delay, but, rather, follows one marked by "um somehow (.)." Stefanac thus lands emphatically on a referentially evocative word once she has selected it. She repeats "lose" as rephrases "oomph" to "beauty." Stefanac also shakes her head to the left as she says lose (see the analysis in Chapter 10). In addition, her hands clasped together again on "somehow" and parted on "lose," staying parted until she clasped them again as she concludes the entire

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statement of the problem with "beauty of it" in Line 7. These gestures draw on her vocabulary of rounding out a concept.

Also in Line 7, the major transition from the problem reported as a question to an inkling of resolution through her response is marked by a very long intake of breath, a micropause, the conjunction "and," and a pitch rise on "I." Stefanac answers the question by reporting her habitual response: "and I laugh." As discussed in Chapter 10, she speaks the last word with smiley voice.

She then hesitates for a prolonged period, repairing by repeating cut-off utterances of "and," coupled with a micropause and "u," and accelerating an evidential colloquialism, "I'll tell you what," also followed by substantial hesitation expressed with post-velar or guttural vocalization ("u-i-u"). Cutting off words is a common technique of self-repairing utterances (Schegloff et al. 1977), while the "u-i-u" may be a form of continuation (compare the discussion of conjunctions plus throat closure several paragraphs above). Stefanac is transitioning from the reported conversation of people asking her a question and her direct address to her audience ("I'll tell you what"). She may be marking both a break and continuity as well as anticipating the apology for the slideshow failure she is about to make to her directly addressed audience.

Her gestures support this interpretation because they precede the verbal apology. As she says "and- and" and "u," Stefanac moves her clasped hands slightly to her left. Evident in the video, but mostly off-screen, is a table. Her notes are there and, it seems, also her computer. Verbally, in Line 8, she begins to explain "the reason I laugh." On this utterance of "laugh," she opens and spreads her arms downward in a beat and also slightly to her left again. These leftward gestures are unusual compared to her earlier ones, which were centered in front of her body.

The apology segment begins with another segmenting "um," and another tongue click. This click and the one in Line 12 bookend the apology and joke that follows, helping to mark out the interlude of commentary on Stefanac's own performance from her topic of storytelling.

The apology itself comes in a deictic reference to the formal performance structure as a spatiotemporal one: "this is where." On "this," she shifts her hands to her left toward the table in an expansive gesture. She completes the content of the apology with "the slides would start," containing the modal verb "would" to indicate that they were planned to start but in fact will not. As she says "start" in Line 8, the corners of her mouth draw upwards very slightly, perhaps presaging the actual laughter about to come.

In Lines 9 and 10, the interlude of intimacy coalesces. After "start," Stefanac takes in breath, says "now," and exhales forcefully. This exhale consists of breathy laugh particles. She also clearly smiles while exhaling. Prompted by her action, immediately, the audience—whose one speaking line in the excerpt is Line 10—audibly laughs. Stefanac joins in with overlapping laughter, trailing the audience's amplification until her own powerful laughter explodes as theirs dies down. As her own laugh ends, she sweeps her hands across her body to her right side and slightly behind her—also unusual compared to her earlier gestures—toward the television screen, and even briefly turns her head away from the audience and toward the screen. She closes the laughter with "UM" and intake of breath and makes the joke about a video of a crackling fire in Lines 11–12.

Also in Line 12, Stefanac concludes the interlude and another agenda transition with slight downward intonation marked by "," and a relatively long pause, as well as another tongue click, handclasp, and a pitch rise as she says "ever" to introduce the content of her argument, which will explain why she laughs at the question about new media's threat to storytelling

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integrity.   She marks this argument with what is perhaps an evidential gesture of spreading her hands out, face down this time, as she says "ever since." Continuing into Lines 13–15, she explains the "innate" desire for intersubjective storytelling sparked by that very first technological innovation, the campfire. She emphasizes the "be" before "told" that connects author and audience with both active and passive forms of "tell."

She also emphasizes and elongates "campfires" noticeably, as well as the second syllable of "innate," which are key words, but otherwise her intonation remains steady for the remainder of this excerpt relative to earlier lines. She does continue an evidential gesture with beats of her hands at about a forty-five degree angle on the first syllable of "absolutely." She also folds her hands palm up to her chest and brings them down again on the second syllable, throwing her head back slightly at the same time in an emphatic body movement (somewhat similar to when she uttered "story" earlier). She repeats both the downward hand beat and head toss on the second syllable of "innate."

II. Articulating the Real Challenge.

The excerpt labeled Example 1, Part 2, begins approximately sixteen and a half minutes into Stefanac's performance and lasts for approximately two and a half minutes. Stefanac did not finish the sentence about television's impact from her historical timeline, but rather cut it off and skated to her argument that "we're just as transfixed by a great story" now as ever.

Example 1, Part 2

01   Stef: We're °just as <transfixed> by a great story toda::y, as we <were

02   back then> that's the thing° <this is the whole reason I don't

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03		believe ˙h that there's any:: danger to a great storyline <in fact I
04		think this proliferation ˙h of all o' these threads and tendrils that
05		kind of start to grow up around and encase a great story ˙h only
06		give it more heft, only give it more (.) rhythm only give it more ˙h
07		um cha::rm make it more poignant make it deeper, make it more
08		interesting I mean ˙h ↑I'm a big *Game of Thrones* fan an- an I
09		L:OVE THE:APP I love the- I love <going online I like reading ˙h
10		all the:: u:m ˙h you know fa:n si:tes I like looking at fa:n ficti::on I
11		think it's really the(ir/re)- ˙h ↑none of that is any way endangering
12		that great storyline I think that u- you know it's ˙h we're entering a
13		ne:w ti:me where ˙h u:m if we do:n't not only allo::w those but
14		u:m find ways to trigger them and to ˙h u make it more fun for
15		ourselves as creators and fo:r everyone who's v:iewing them ˙hh u
16		we('ll) get left in the d:ust you know I think that there is an
17		↑excepti- there ↑are exceptions to this and not ˙h everything <I was
18		just talking with uu with <my friend Ellen who had just come to
19		v:isit> ˙h you know *Mad Men*'s an interesting ex↑ample because
20		Weiner re:ally hates all this stuff he doesn't want anything to do
21		with (h)i(h)t hihi ˙h he's ag(h)ains(h)t (h)it ˙hh you know he just
22		wants to tell 'is damn sto[ry]
23	Aud:	[he]
24	Stef:	you know ˙h but what ↑happens i:s an' he t(h)ells a gr(h)eat
25		st(h)ory hh ˙hh but (0.3) ts what ↑happens i:s all this stuff is gonna

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26		grow up anyway there will be all these people pretending to be
27		Don Draper on: the Twitter o:r ˙h you know <there'll be fan
28		fictions and stories and graphic novels an' <you really- u one of
29		the things I would've shown u here is um a warning oh it's so
30		worth it there- on the Gilgamesh tablet hihehe ˙hh just in case you
31		thought uu (.) that u:m (.) ts (1.2) the protection o::f intellectual
32		property is a new ide:a ˙h here's the:: u this is carved on the front
33		tablet the first tablet of the Gilgamesh story ˙h "may all these gods
34		curse anyone who breaks, defaces, or removes this tablet with a
35		curse which cannot be relieved terrible [an] merciless [as long as
36	Aud:	[he] [hi hi he ha
37	Stef:	he lives ˙h MAY] THEY LET HIS NA:ME HIS[S]EED be
38	Aud:	ha ha he he hh] [he]
39	Stef:	carried off from the land ˙h and may they put his °flesh in a dog's
40		mouth.°"
41	Aud:	hh he he ha ha [ha ha] ha ha ha
42	Per1:	[ni::ce]
43	Per2:	That would be better than the federal-
44	Per3:	That's what my l:awyer said
45	Stef:	[U HE HAHAHA HA HA ˙HHH] So::: you know I mean
46	Aud:	[ha ha ha ha ha ha ha ha ha ha ha]

In Lines 1–2, she states her main conclusion in a lower, not quite whispered voice,

indicated by the round superscript circles (similar to temperature degree marks) that begin with

"just" and end with "thing." She spoke these words slightly slower than her surrounding speech, enunciating so as to almost pause between syllables (marked by the < > brackets in the most noticeable places). Elongation and a slight downward intonation on "today" separates the two, parallel parts of the argument, each of which is an "as" clause that points to a moment in time: "as transfixed…today, as…back then."

Also in Line 2, Stefanac comes out of this main argument with a jump-started (<) deictic reference to it, "this is." "This is" causal, or "the reason" for her laughter in Part 1. Moving into Line 3, she now clarifies that she laughs because "I don't believe that there's any danger to a great storyline." In addition, the jump-started speech coincides with a relative lack of any sentence-final intonation as well as at least one intake of breath in the middle of a phrase, between "proliferation" and "of" in Line 4.

In Line 4, Stefanac uses another jump-start to initiate her further claim that, "in fact," new media practices enhance storytelling. In contrast to the evidential of what "I don't believe," now she affirms what "I think." These and subsequent evidentials connect her argument to her audience through herself as a witness.

Her gestures change at this point. Throughout the earlier lines, she had been pumping her arms in beat gestures similar to those described in Part 1, with her hands up, palms open, and fingers spread (though not fully extended). But as she says "in fact," she closes her fingers into fists. On the third syllable of "proliferation," she opens her fists and spreads her arms out wider than before, embodying the act of proliferation. She brings her arms back toward her body when she says "o' these," then extends her fingers fully and, on "threads," starts to shape her arms upwards in a curving motion as if sculpting a large vase. She continues to make this shape on "tendrils." She starts to round her arm motion as if to come over the top of the vase. As she says

"around" in Line 5, she folds them palm down over that top. She reshapes back down the body of the imaginary vase as she says "and encase," then drops her arms, hands clasped in front of her body, on "a great story."

At the end of Line 5, Stefanac provides her three-part lists, one consisting of parallel phrases containing nominal proxies of authenticity and the other adjectival ones. She sets apart these lists by breathing in just before the first "only," which is not otherwise a natural phrase break syntactically. The first two "onlys" are marked by stress, as is the final "make." These stresses may mark the opening and closing of this rhetorical device. There is also stress on "rhythm, "poignant," and "deeper," which are three of the proxy words for authentic experience. The stress on "rhythm" comes after a micropause and, combined, those two features may indicate a delay for a word search followed by stress to maintain momentum of the list. Somewhat similarly, the intake of breath and "um" before "charm," which is elongated, may indicate another word search delay, so that the emphasis on "poignant" and "deeper" reflects the maintenance of momentum as Stefanac shifts from that slowed conclusion to the first series ("give it") into the second series ("make it").

In addition, on the second "only," Stefanac unclasps her hands and draws them up in front of her torso. On "more," she pulls them toward her chest and on "rhythm" thrusts them downward, palms up, embodying a rhythmic beat. She pulls them back to her chest and repeats the thrust, less dramatically, on the last four iterations of the series, uniting them all in that embodied authentic rhythm.

Once again, in Line 8, Stefanac moves quickly into the next piece of her narrative without marking a break with intonation or breath at the expected place. She goes directly from "interesting" to the evidential, "I mean." Then, she does take in breath. A sharp rise in pitch on

"I'm" leads into her personal example of how remix and transmedia enhance storytelling. She has stated her main argument, concluding with the list-making rhetoric. Everything that follows is qualification.

"I'm" is further deictic testimony. It comes with the *Game of Thrones* example. In Line 9, her volume increases dramatically, and her pitch rises and falls slightly, as she utters her affective assessment of the mobile application, "I LOVE THE APP." Affect and evidence continue to intertwine in her use of her body. Having held her arms at her body after concluding the lists, she spreads them out to either side, palms up, in a "so what" or "you know" gesture on "*Game of Thrones*" and starts to sway side-to-side. She smiles slightly on the first "love" and keeps smiling through "fan fiction." Self-repair, delays, and jump-starts precede searches of what else she loves, before she settles on the elongated "fan sites" and "fan fiction."

Another self-repair cuts off that description to return to her main point in Line 11, namely, that "none of that" harms storytelling. An intake of breath and another pitch rise mark this return, as does a return to her style of arm beats up and down as she makes an argumentative point. In Line 12, she again speeds into the next phrase with an evidential before delaying with an "u," "you know," and intake of breath to organize the next point.

That point is that, despite the historical continuity in abstract terms, the present represents a "new time" of risk for professional storytellers as a practical matter. Her walk through prehistory and history showed that the alignment or misalignment between chronological and unified times is perpetually debatable, but also resolves harmoniously on a grand historical scale, making it interesting and unproblematic. At the same time, however, the view from the ground is less clear and riskier. In particular, it is riskier for professional storytellers. The elongation of "new time" in Line 13 appears to reflect Stefanac settling on the appropriate description for that

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smaller scale after the delays. It also distinguishes this qualification from the general argument about historical continuity. On "new," she pulls her hands up. On "time," she thrusts them closer together and downward, as if to embody entry into the new time.

In Lines 13–16, she explains the risk with an extended if–then clause. She deictically embraces herself and her audience as the people at risk with "we," the storytellers who can allow or disallow "those," a deictic that refers new media practices she has previously invoked. The elongation of "allow" provides an assessment on the inaction of "don't," previewing the forthcoming statement of the risk.

Before stating it, however, Stefanac elaborates further that allowing is not enough. She searches for ways to say that storytellers must also embrace "them," meaning "those" new practices. She settles on "find ways to trigger them" and "to make it more fun." She conducts a few beat gestures while making this case, before pulling her arms in toward her body and thrusting them downward again on "ourselves," sending them wide to the sides on "everyone" to embrace everyone in the world, and pulling them back into a clasp.

Stefanac then takes a breath and says "us" before completing the then part of the if–then clause. If we remain inert, then "we('ll) get left in the dust" (the "'ll" is in parentheses because she appears to include it but it is not clearly audible).   Dust is an especially apt metaphor for a performance so focused on history.

Midway through Line 16, Stefanac again breezes through a natural break to utter another evidential phrase, "I think," which leads to a further qualification. The pitch rise on "exception" marks this new qualification. She also leans back and pushes her hands out palms down on the first syllable, as if to embody braking.

A self-repair and second pitch rise correct the objective evidential of the singular "there is" to a plural "there are." The correction may simply be to broaden the case. Or it may anticipate the upcoming example of *Mad Men*. In Hollywood, it is commonplace to mention specific works by name in order to provide reference points, but it is also risky to single them out. In fact, Stefanac does delay introducing the example, using a rushed aside about a conversation she had with a visiting friend in Lines 17–19. As she says "just talking with," she gestures toward someone in the audience (not visible on the video), and smiles, sharing responsibility with that person for what it is to come. The pitch rise on the second syllable of "example" as she finally gets to it may also be an apologetic assessment for singling it out.

In Line 20, Stefanac reports on the affective stance of *Mad Men*'s creator, Wiener, by elongating "really" and stressing "hates." She performs her typical hand beat with outstretched arms on "hates." She kicks her hands out sideways on "anything" as if to dismiss the thought.

The breathy laugh particles in Line 21 strongly suggest that she is, indeed, apologetic for making this report, that is, she recognizes that she has said something illicit. These particles continue as she repeats that Wiener is "against" these new media practices. Nonetheless, she escalates the affect in her report with a stressed, epithetic statement of romantic authorial ire, "tell 'is damn story" in Line 22. She physically embodies the emphasis. On "to," she pulls her hands up to her ears. On "tell," she thrusts them forcefully downward in almost claw-like grips. And on "damn" and "story," she beats the claws downward. Someone in the audience picks up on the discrepancy between the illicitness and emphasis in talking about Wiener's attitude, uttering a single laugh token in Line 23.

In Line 24, Stefanac qualifies the exception with a contrastive conjunction, "but." Another pitch rise introduces the qualification of what "happens." Before continuing, she self-

corrects again to apologize. She praises Wiener's authorial skill, lacing breathy particles throughout and after the phrase of praise in Lines 24–25. As she says "great story" with that aspirated voice, she shakes her hands, palms up, loosely in front of her, much more loosely than her typically tight arm movements. She also lower her gaze and her whole head and nods it downward. It is the only time she breaks gaze with the audience other than when turning to her notes or the screen.

A very long delay separates this correction from picking up the qualification. The apology now crystallizes. Stefanac may or may not have begun by apologizing for transgressing rules of intimacy by talking about Wiener, but now she is going to say that, despite being a great, romantic storyteller, his reported attitude is futile. She delays with a long intake of breath, a long pause, and a tongue click, before restarting "what happens" with another pitch rise.

In Line 25, Stefanac explains that qualification of what happens. She says "stuff" with her fingers spread out flat and her hands palm up at the sides. On "grow"—which hearkens back to the threads and tendrils of new media proliferation—she sweeps her arms up to head level, lifts her chin, and gives a slight hop. On the second syllable of "pretending," she repeats the sweep and the chin lift. On "Twitter," she sweeps with one arm. On "fan," "stories," and the second syllables of "novels," she sweeps with both arms.

In Line 28, Stefanac again glides into the next, and final, piece of the elaboration upon her main argument, not pausing between "graphic novels" and a jump-started "you really," but delaying slightly right afterwards with an "u." She switches tack to explain that she "would've shown" a slide at this point in the presentation ("here") that, after a word search delay, she characterizes as a "warning" with slight stress. On "would," she turns her body partly to the right, toward the screen behind her, and gestures to it with both hands. She thus performs what

would happen "here" even without the slides, which leads her to recite what is on the missing slide anyway. It turns out to be a significant move in terms of the intersubjective connection with her audience.

In Line 29, she initiates the move with the "response cry" (Goffman 1978), "oh!", which, as Goffman observes, is often thought of as if spoken only to oneself but is actually an interactional cue. She trembles the cry slightly, lending it an affective quality of inspiration or urgency leading into "it's so worth it" with stress on "so." As she says "oh," she also turns to her left, away from the audience. She moves toward her notes on the table. In Line 30, she looks back at the audience on "tablet." This return of gaze is an evidential gesture regarding the source of the speech she is about to report. She also laughs a little, foreshadowing a very marked interlude of intimacy based on laughter about to come. As she takes in breath, she turns back to the notes.

In Lines 30–31, she delays substantially with a verbal aside ("just in case"), "uu" and "um," pauses, and a tongue click, while she apparently looks for and prepares to recite the passage from the tablet. During the aside, she identifies a reason for reading the quotation other than its' being worth it for affective reasons. It will demonstrate that intellectual property is not a new idea. This preface is important because the actual words of the tablet are not self-evidently about IP, at least in the modern sense for which that term was coined in the first place. The preface connects the ownership part of authorship–ownership to her main argument of historical continuity. It explains why even apparent exceptions such as *Mad Men* may stand no chance of surviving remix without modifying the modern bond between authorship and ownership. The warning in the tablet becomes a warning about the efficacy of the IP regime that enforces that bond in the field of production. The significance of her preface is underscored by

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Stefanac's movements. She pauses in her search of her notes, standing up and facing back toward the audience before she says "protection."

In Line 32, still facing her audience, she specifies the evidential source of her upcoming quotation, which is the inscription on the first tablet of the Gilgamesh epic. She shapes the tablet in the air with her hands as she says "tablet." On "story," she turns back to her notes, leaning over to recite from them. The reported speech is a direct quotation, in contrast to the report in Part 1 of the transcript, and marked in Part 2 with quotation marks for that reason. This difference is significant because she proceeds to perform within her performance, leading to the laughter and jokes that bond with her audience.

She builds the performance slowly, beginning with a fairly even recitation voice in Line 33. But the audience quickly picks up on both the brimstone content of the reported speech and Stefanac's affective appreciation of it. Someone utters a "he" laugh token in Line 36, right before Stefanac says "merciless" with smiley voice. More audience voices join in with laughter that crescendos and overlaps her ongoing recitation. Stefanac takes in a breath and booms out the next part of the recitation as the laughter wanes. On "LET," she starts to stand back up from leaning over her notes. She raises her hands to her shoulders, palms out, and presses forward as if proclaiming to a crowd—though she is still facing the notes, not the audience. Thus, the performance within a performance is conducted almost entirely as a different, almost not co-present character.

In Lines 39–40, however, she concludes the recitation in a much softer voice, paralleling the one with which Part 2 began. As she says "flesh," she turns back toward her audience, clenches her fists, and beats them a couple of times up and down. On "mouth," which is the final word of the recitation, she drops her fists to her thighs with an audible smack. The audience

starts to laugh. Stefanac returns to them as her original performing self by rolling her head and eyes and then covering her eyes with her hands, pulling her arms down and gazing up at the ceiling as if to appeal to heaven. Together, they share in marveling at the vociferous threats carved on the tablet.

One person assesses the warning wryly as "nice." Another begins to comment in a way that connects the Sumerian punishment with U.S. copyright law in Line 43. But she is cut off by another person who makes a lawyer joke in Line 44. This last person gets Stefanac's attention. She looks at the speaker and nods while listening to the joke, then bursts out in raucous laughter at it, along with the rest of the audience. The storytellers in the room bond over the stereotype of lawyers as sharks, which is a good thing if they are your sharks. Stefanac takes in a breath loudly, the audience ceases its laughter, and Stefanac uses the conjunction "so" to transition into the concluding moments of her performance before the discussion period.

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