

**BRETT GAYLOR (DIR.) (2009) *RiP: A REMIX*  
MANIFESTO**

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Brett Gaylor's documentary on the friction between copyright law and remix music is highly engaging to look at and listen to. The 'talking heads' that appear in the film will be familiar to copyright watchers (Lawrence Lessig, Cory Doctorow), and many examples have been exposed quite a bit too (Disney's *Steamboat Willy*, *Negativland*, *Gilberto Gil*). But Gaylor also presents some less-known material: for example, he has great interviews with Dan O'Neill of the Mouse Liberation Front, a beguiling copyright resistance movement from 1971, and clearly a model for Gaylor of how to speak truth to power with style and pleasure. (Spoiler: you get to see Minnie and Mickey doing something in bed Disney never let us in on.) With snippets of visuals from popular culture collaged with interview footage, and a central focus on the Pittsburgh DJ Girtalk, Gaylor's film embodies the punchy, sampling aesthetic it champions. When it adds up the dollars necessary to clear rights for a remix, or turns off the driving soundtrack at the limits of the fair use exception, it effectively dramatizes the costs of corporate copyright on the DJ dance scene. For me, the film brought to mind comedian Sarah Silverman's plea last fall for Jewish college kids to take a 'Great Schlep' down to Florida and register their grandparents to vote for Obama. Gaylor's film too tries to provoke a particular demographic into action by appealing not so much to a higher cause as to self-interest and to a cultural style that defines their social identity.

Such targeting can be an effective or even necessary strategy. But then Silverman was trying to get kids to engage with political process. Gaylor is trying to get kids to remix—which, he asserts, they're already doing. That's one dismaying thing about this film, ultimately: it acts like a political film but is nothing of the sort. The 'call to action' is not, 'watch out, Canada!', which it could usefully have been, but rather 'remix this film!'. Not even 'remix Time

Warner's corporate products', but 'remix my film'. It seems somewhat narcissistic as an exercise, and interestingly, Gaylor's Open Source Cinema site, which provides remixing software, has so far generated far more volume in spam than in responses to his call.

It's common among copyright geeks over the age of forty to begin a presentation or commentary by saying something like, 'who would have thought such a boring topic would be interesting to anybody'. Well, it is, and the first, and quite appropriate, response to a film such as this is to say, 'hurray!'. It's wonderful to see that abstruse arguments about media history, legal principles, and creative process can be popularized. Nonetheless, the film's shortcomings are serious, and those shortcomings represent widespread liabilities of 'free culture' rhetoric as a whole. As a proponent of what I've always called 'fair copyright' rather than 'free culture', I think it imperative to cast a critical eye on the ways copyright issues are represented by 'our' side as well as 'theirs'.

First, let's examine the film's manifesto and organizing framework:

1. Culture always builds on the past.
2. The past always tries to control the future.
3. Our future is becoming less free.
4. To build free societies you must limit the control of the past.

I'll accept the first proposition as a truism. After that, though, the claims and logic degenerate, even granting that manifestoes cannot be expected to be subtle. Gaylor half remembers his *Nineteen Eighty Four*. But the Party slogan in Orwell is different: 'Who controls the past controls the future: who controls the present controls the past' (1948, Chapter 3). In other words, it's *present* power that controls both past and future. Gaylor wants to call the corporate music industry 'the past' (this is a common move in remix discourse: you'll know the phrase 'outmoded business models', for example), but the music industry *isn't* the past. If it were, it wouldn't be a problem for remixer. In fact, 'the past' in the sense it's used in Gaylor's first proposition, that is, cultural objects produced some time ago, risks being entirely lost in these copyright skirmishes. Digital rights management can block access to public domain materials, and thereby render cultural heritage otherwise available for 'remix' entirely inaccessible. Throughout *RiP*, Gaylor uses the history of technology to show the insistent rebalancing of copyright as a response to technological change, and he incorporates archival film

footage and stock photos with great effect as well. But the manifesto makes clear that he ultimately only wants to *sample* the past to illustrate presentist concerns. This is a very different attitude than that held by a great number of other critics of expansionist copyright: the archivists, historians, teachers, and filmmakers who want law or scholarship that will allow the past to speak more loudly and with its own integrity. For many of us, fair copyright is precisely about bringing the past along with us into the future, and Gaylor's manifesto may seem to miss or trample the very issue that keeps us in the discussion.

But ultimately it is the word 'free' in these propositions that is the most troubling. For Gaylor, a mother's vague worry that the dance music her son is making as a hobby may generate a letter from a lawyer is evidence that 'our society' and 'our future' are becoming 'less free'. While I'm sympathetic with the 'it's my party and I'll dance if I want to' approach, and certainly share the concern about corporate copyright bullying, the film seriously risks bathetic drop by using 'lite' examples while claiming grave danger. My differences with Gaylor may go beyond strategy to philosophy. Adrian Johns has recently pointed out the continuity of pirate discourse with major strands of neoliberal economics and libertarian politics (2009: 45-46). Gary Hall observes that 'for all the romantic, counter-cultural associations of its apparent challenge to the commodity culture and property relations of late capitalist society, there is nothing inherently emancipatory, oppositional, Leftist, or even politically or cultural progressive about digital piracy' (2009: 25). Indeed, with the word 'free', the narrowness of Gaylor's framing of the issue becomes excruciatingly clear. He's not talking about Congolese youth forced to join guerilla militias; he's not talking about young Tibetan monks rounded up by police; he's not even talking about Punjabi farmers who commit suicide because of the debts they've racked up in thrall to terminator seeds: he's talking about a specific 'our' of white, male, North American, middle class kids who feel a slight degree of fear, and who frankly seem to rather *like* that frisson. (I would venture that Girtalk, like Negativland before him, will become more famous as a poster-boy for free culture than he may ever have done as a DJ. And when Lawrence Lessig, 'the coolest lawyer in the world', tells Gaylor that his film is 'totally illegal', Gaylor giggles with glee.)

I don't want to belittle the concerns of the film, because, again, I share them. But it seems to me that the film itself belittles them by overplaying them, and by not acknowledging their connections or

contrasts to other sorts of social struggle, or indeed, other dimensions of intellectual property struggle. Freedom in this discourse is a transcendent moral value; brandished in this way, it is all or nothing. One sombre black and white segment shows a young man draped in chains as he uses his DVD player and computer. Gaylor sees only two alternatives: free life in colour, or black and white life in chains. This is just as unproductive as the 'it's all mine' property discourse of hard-core owners' rights. Why not get away from the rights discourse and talk about balances and compromises? Gaylor must, for example, know about the proposal of the Songwriters' Association of Canada for a levy on internet access. Would that hamper freedom? In what form could it work? Is it not important that singer-songwriters and composers without day-jobs and doting parents have the 'freedom' to create? What about the problem of cultural property as understood in Indigenous communities? How can we acknowledge Indigenous protocols or laws and also allow for cultural recombination and freedom of expression? Etcetera, etcetera. Such are copyright and cultural policy problems that will take enormous patience and nuance to address, but instead, Gaylor declares sententiously that 'this movie is about a war'. The film's website commends Gaylor for 'sound[ing] an urgent alarm and draw[ing] the lines of battle', and asks 'which side of the ideas war are you on?' (National Film Board, 2009). Well, for myself, I'm not on any side, because I'm not in a war. Such language is a) a kneejerk echo of the Hollywood/recording industry message, b) offensive to anyone who has ever experienced a blood and guts war, and c) a joke to those who are not already convinced of the importance of remix. But most importantly, it is, d), an unproductive way of framing our current copyright challenges, because it suggests that the debate won't end until one side has achieved total victory. That won't happen, and it would be a disaster if it did.

Of course, Gaylor can't take the credit or blame for this discourse of freedom-fighting: he is picking up the language of the Electronic Freedom Foundation, *Wired* Magazine, and law professor Lessig, guru-in-chief of the so-called 'free culture movement', whose two most recent books are entitled *Free Culture* (2004) and *Remix* (2008). Both behind the scenes and in front of the camera, Lessig is the star of this film. Gaylor's third proposition, for example, comes straight from Lessig, who says, 'Ours was a free culture. It is becoming much less so' (2004: 30). Gaylor follows Lessig all the way to China. It seems odd though that this location is mere backdrop, functioning only to show us what a dedicated missionary Lessig is. The film makes him look like other missionaries,

parachuting in with American ideas without apparently a great deal of attention to local conditions. In his book *Free Culture*, Lessig says that he uses the word 'free' in the sense of "free speech", "free markets", "free trade", "free enterprise", "free will", and "free elections" (2004: xiv): in other words, continuous with the base concept of market capitalism, with all its contradictions, rather than a challenge to it. It would have been interesting to hear how all this 'free' stuff intersects with the social realities of China, but Gaylor and Lessig alike are more comfortable with taglines than complexities. Lessig has acknowledged that, 'like all metaphoric wars, the copyright wars are not actual conflicts of survival. Or at least, they are not conflicts for survival of a people or a society, even if they are wars of survival for certain businesses or, more accurately, business models' (2008: xvi). And he has been at pains to say that 'a free culture is not a culture without property; it is not a culture in which artists don't get paid' (2004: xvi). However, these insights don't seem to have gotten out. Meanwhile, Lessig's vision of cultural history and creative process is almost laughably thin from the perspective of anyone versed in the most basic cultural studies and communications research; it manifests technological determinism of the crudest kind. In his almost eerily effective public presentations, one of which is extensively excerpted in *RiP*, Lessig presents the twentieth century as a dark ages when people could only passively consume culture. It took the invention of digital media for us to be able to wake up and be creative, he says. This is, simply, ridiculous.

After Lessig and Girtalk, the third star of this film is science fiction writer and talking head Doctorow, whose views as expressed here are just as bald: he seems to think that because he has an annual pass to Disneyland, he ought to be able to do whatever he wants with any cultural product he purchases. I'll give Doctorow credit, however, for revealing to me what has now become my major critique of *RiP*. At one point Doctorow likens DRM (digital rights management) to a UTI (urinary tract infection): 'it used to be that with a DVD or a CD or other media, all the uses of it flowed freely and easily, but with the new regime for DRM, every new use falls in a small painful spurting drip'. Ewh! For anyone who has ever had a UTI, this is an excruciatingly effective metaphor, if not exactly suitable for polite company. And who would such viewers be? Predominantly women. Now I don't *know* that Doctorow has never had a UTI, and I hope for his sake that he has not, but I suddenly realized in my visceral reaction to this metaphor that on the whole, *RiP* addresses itself only to men, and that it represents 'free culture' as an explicitly masculine cause. (Maybe Doctorow is aware of the gender issue and was trying

to reach out to women viewers, but at least as Gaylor treats it, it makes an odd friendly overture.)

The film, all 86 minutes of it, gives speaking roles to five women: a disembodied older voiceover, Marybeth Peters (the United States Registrar of Copyrights), 'Girtalk's Mom', 'Girtalk's Girl', and Paris Hilton. Only Peters gets more than two sentences. This film is 'boytalk.' To be sure, the film begins with a woman's voice. 'Today', she declares in a voiceover, 'we're going to create a mashup, a fun and adventurous way to make something fresh out of something stale'. It's an old woman's voice, cheery and didactic, obviously intended to evoke a home economics lesson on bread pudding. In a different film, it might have been an entrée to exploring continuities with 'old' and 'female' modes of cultural recombination, but given what follows, it comes across as mere mockery of the old and the female. The only female expert in the film is Peters, and she is represented in a misleading and sexist way. After our introduction to our hero, Girtalk, we hear Gaylor's voice asking, 'But who would have a problem with Girtalk's music?'. We see a shot of the U.S. Capitol, and then a hallway inside, where high heels echo. Then we cut to Peters, an older plump woman wearing practical clothes, saying that she has been at the copyright office for more than forty years, and admitting that she does not own a computer and has never downloaded. To show her what a mashup is, Gaylor pulls his laptop out and displays Girtalk in action remixing some Elvis Costello. The following couple of minutes have to be seen to be believed, but we flip back and forth between Girtalk punching away at his laptop while sitting on the end of a bed in which his girlfriend lies half asleep in a mess of bedcovers (the camera pans in for a closeup), and Peters, looking bemused in her office. It's a textbook case of the 'female as muse', on the one hand, and another well-trodden stereotype of 'silly old woman'. Peters is, of course, not the source of the challenge to Girtalk's music: that would be the executives (mostly men, no doubt) of the record labels. Neither is she offended by what she hears; rather, she's impressed. But, the film's only articulate woman, she gets to play its 'bad guy', standing as the implicit answer to the question 'who would have a problem with Girtalk's music?'.

Elsewhere in the film, 'Girtalk's Mom' gets a few lines about her worries that her adored son might not be on the right side of the law. And then there's Paris Hilton, whose presence at Girtalk's performance at the Coachella Music Festival proves, according to Gaylor, that 'copyright infringement is *hot*'. Hilton mumbles a word

or two to Girltalk, his girlfriend mumbles a word or two to Hilton, and he's over the moon, rushing off to post the photo on his blog. In this world, women can be grandmas, moms, or sex symbols, but they sure aren't creators or thinkers. I'm rather surprised to be having to point this out in a 2009 film, and maybe others will consider me to be 'missing the point'. But to the extent that I share Gaylor's concerns about copyright, I think it imperative to draw attention to the film's sexism. I don't think that copyright is a 'man's issue' — or a youth issue, or a white-only issue, or a North American issue. If it continues to be represented as such, the 'fair copyright' cause will wither into yet another 'special interest'.

A final concern arises for me from the fact that *RiP* is a National Film Board of Canada film about US copyright. All the more power to the NFB and to Gaylor to reach out to a larger market and larger problem than Canada alone. However, this does produce some degree of confusion. We are very far into the film before we are told that the law we've been hearing about thus far is specifically American, and that Canadian law is in fact different; even then, we don't learn the substance of the differences. A key difference between US and Canadian law when it comes to remixing is that in the US it is illegal (since 1998) to circumvent technological protections on digital materials. That means that fair use, the provision that allows for quotation without permission for certain public interest purposes, cannot be practiced when it comes to DVDs, for example. In Canada, however, circumvention of such digital locks is *not* illegal. It may well become so: criminalization of circumvention was a feature of the Conservatives' Bill C-61 which died upon the election call of fall 2008, and a similar bill may rise from the dead any time. But the main *Canadian* copyright event of the past few years has been the series of Supreme Court cases defending fair dealing (Canada's counterpart to fair use) as a 'user's right'. This film had a chance to be a call for Canadians to defend and indeed expand fair dealing: it could have distinguished between aspects of US law we wish to import, and those we don't. Instead, it focuses only on music industry strong-arming: a problem, yes, but hardly the only user's rights issue facing Canadians, and hardly something we have much power to change.

*RiP*'s vibrancy makes clear that remix will not rest in peace. If only to increase the ease of its growth, however, and especially if we wish to promote its various counterparts, it is important that future efforts in this vein be more self-conscious about the costs of polemic. In particular, it will be exciting to see a wider range of cultural practices

appearing in film treatments of copyright issues, and to hear the voices of creators, teachers, and ordinary folks dancing to slightly different beats. Gaylor has invited people to contribute new material to the evolving film via his website, and it will be interesting to see if his vision is truly 'open' enough to garner such participation.

## References

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