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The Personal is still Political: Museums, Participation and Copyright

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Abstract

Copyright is a means of managing the interests of individual authors and those of the 'public interest'. In a museum context, copyright is a technical practice which illuminates how museums imagine and manage their own organizational legitimacy – a settlement which has often operated through a 'public interest argument' ('we need you to hand over control of your object/story for the benefit of all'). Drawing on interviews with people who work in museums and those who have taken part in a museum participation project, we focus on a digital storytelling project to show how copyright was deployed to make an in-practice argument for the how museums might legitimately relate *personal* story telling with the '*public* interest'. The project did this through three processes: *coming into the public* via managing informed consent through evoking future audiences, *making an author* through creating intentional decisions and 'responsibilization' and *making an object* by transforming a digital story into a 'finished' object which is, in turn, transferred into the museum collections. While those involved in the project recognized they had signed over the rights to their story and were, in most cases, broadly happy with this – 'that's what the form was for', as one put it – the personal nature of the story itself (linked to personal memories, friends and family) and the sociality of the process of making it (in a group; through interactions with museum staff) was also emphasized. This sociality was expressed in the sense that participants would like to be told when a story is going to be re-displayed, be sent drafts of interpretation and be invited to the opening of the exhibition – a mode of relationship with the museum consistently described as 'courtesy'. The article concludes by suggesting that the expectation of courtesy – though it might seem like a very modest claim – does something to museums and makes way for more nuanced asymmetries within the public interest argument. Rather than assuming that 'the public interest' lies in treating people (slightly coldly) in the same way, the lens of courtesy might suggest ways of both respecting the importance of the public ethos (for institutions to address themselves to ideas of fairness, inclusion and equality) yet might also work to socialize this impulse and reimagine a responsive *public* museum from the bottom up.

Key words: Museums, Participation, Ethics, Copyright, Informed Consent

As researchers and museum practitioners, each of us has been involved in the design of copyright and consent forms. These forms have been passed through various bodies (UK University ethics committees, UK local authorities under the Research Governance process; US Institutional Research Board; Museum senior management teams). We've then used the forms, got them signed, passed them over or kept them safe.[1]

As anyone who has done it knows, *getting the form signed* is an awkward moment.[2] Awkwardness evokes a sense of something not being quite right. It is the inability to make things flow, the inability to make sure everything just feels good between you and someone else. Awkwardness is felt because, and as, other things beyond the moment are somehow called in. Awkwardness is, therefore, a 'fissure'; it is an indication of tension, of an empirical specificity

which allows questions of power and politics to be located (Giroux, Shumway, Smith, and Sosnoski 1984: 274).[3] Or in *Deleuzoguattarian* terms, awkwardness as a fissure may also be imagined as a rhizomatic break and gap, which creates the potential for movement and growth and therefore possibility (2004: 17, 246).

The fissure of awkwardness is our starting point because it locates some of what is bundled up in concepts and practices of 'copyright'. The complexity of what is bundled up is all the more so when considering, as we do here, how copyright works in participatory museum projects. Drawing on interviews with museum practitioners and those involved in museum participation projects conducted for two recent research projects, we suggest that copyright – and its fissures – point to the registers through which museums are a site for the ongoing renegotiations in the relationship between the individual and state.[4] These renegotiations can be traced over intersecting planes. These include governmental policy which aims to educate, inform or support individuals and communities and does this often through the logics of personhood, agency and intentionality (Rose 1998, 1999; Dean 1999); the logics of neo-liberal economics and the rise of the consumer over the citizen in the context of public services (Clarke 2005; Clarke et al. 2007); and the epistemic shifts towards the personal and the confessional which, in turn, question the role of the professional as, at the same time, 'authority' becomes more widely distributed (among and between professionals, friends, TV and websites). More specifically the awkwardness of getting the form signed points to something very particular at stake: the emerging shift in the ground for the wider and imagined 'public interest' (imagined as a kind of 'greater good') as a legitimate frame for an institution's interactions with specific individuals: the emerging limits of the logic which says 'we deal with you this way for the good of everyone'.

Far from a mere technical site we show how copyright, as it is used in museum participatory projects, is a particularly rich place for revealing the *awkward* contortions of museums as *public* institutions trying to find a place for themselves in a time where the logics of the 'public interest' are no longer holding – an issue we explore through the delineation of different iterations of the 'public': 'public domain', 'public interest' and 'public accountability/ audit'.[5] The endpoint for our argument asks how such fissures might be read as a source for an institutional politics: an institutional politics through which museums might reinvent themselves and their understandings of accountability, and therefore 'democracy', through responding bottom up to the emerging cracks in the ground on which they have long been built.

What is 'bundled up' in Copyright?

The aim of Intellectual Property Rights are to provide incentives to produce new and original intellectual and cultural expressions by making it possible for an author to have control over how their work is used. While this is not the case in all jurisdictions, in the UK Intellectual Property Rights covers the expression of 'things created by the human mind'.[6] This does not, therefore, include ideas but the way they come to have form, whether through writing or being recorded.[7] There are four legally determined areas of IP: Patents, Trade Marks, Designs and Copyrights.[8] However, copyright has emerged as the most cited and recognized IP issue for museums and heritage organizations because it reflects and informs their ability to collect and display. In this context, copyright is, in effect, an interface between the rights of the individual who has produced or authored the object and the museum's ability to make the object accessible to the public. Putting museums and copyright together has the effect of illuminating the specific ways in which both are about striving for what might be seen as a legitimate management of the relationship between private and public. Before moving on to consider how the ingredients of private and public are mixed together in copyright, we want first to consider their interrelationship in museums.

The evocation of 'the public' is not simply a description of what museums do – 'serving the public' (Museums Association 2008) – the use of 'public' in museum policy and ethics is, in effect, a political argument. A political argument for a particular means of managing resources and a particular way of managing the relationship between individuals and others; an argument we will term the 'public interest argument'. In contrast to '*a* public' ('open to the public' as crowds or visitors (Tarde (1969 [1901]: 279)) '*the* public' cannot fully manifest itself precisely because, in Michael Warner's terms, it is a 'social totality', it is 'everyone' (2002: 49). The 'social totality' of the public is a key idea in museum ethics (and in the ethics of public service in general, see Manquand 2004: 37-62). Precisely because of the non-co-presence of 'the public', the idea of

'balance' between individual and the public-as-social-totality has been located as a specifically professional task. For example, in the UK Museum Association Code of Ethics for museum professionals it is suggested that 'a number of sometimes competing considerations may need to be balanced' and 'you will need to exercise judgment in applying the principles set out in the Code of Ethics for Museums' (2008: 4). Two key 'balances' are advocated: 1) between now and future and 2) between specific individuals and 'the public interest' (2008: 3.12; 6.0; 6.4). The paradox of this is that 'museums belong to everyone' – the public as a 'social totality' – yet for a 'balance' to be struck between specific individuals and groups, it is museums themselves which have to conjure up the non-co-present public. This is the political argument effectively evoked by the 'public interest': museum ethics comes through museum professionals' imagination.

When seen in the context of the Museum Association's evocation of ethics and the public interest, copyright is one tool in the mediation between individual and public interests. This is not at all surprising as copyright has long been an actor in the changing boundaries of private and public (MacQueen and Waelde 2007: xii). Technically the definition of 'public domain' describes works which are not in copyright but, from the first, the principle of copyright has been that its restrictions are justifiable *only* to the extent that they support incentives for the creation of new knowledge and creativity in the broad 'public interest' (Lessig 2008: 90). In other words, even if works are in copyright, and therefore not technically in the public domain, the legitimacy of that restriction lies in their availability (through being published) to the public and in the 'public interest'.

Yet this copyright status quo – which accepts copyright as a temporary privatization in the public interest – is currently being tested. A key example is the way in which copyright in the digital age, as Lawrence Lessig has argued, acts as a 'new enclosure' movement (1999) due to the increased significance of 'copying' in ordinary interactions with digital objects:

> To share a book requires permission. To read a book requires permission. To copy a paragraph to insert into a term paper requires permission. All ordinary uses of a creative work are now regulated because all ordinary uses trigger copyright law – because, again, any use is a copy. (Lessig 2009: 100)

Lessig argues that 'it is crucial to recognize [...] that thus control is radically greater than the control of the law of copyright in an analogue world (2008: 29).[9] The digital does not simply make ordinary access into 'copying', but it has also facilitated new forms of creativity, referred to by Lessig as 'read-write' (2008: 28), where remixing and editing together digital content is a key mode of expression. This critique has led to initiatives such as Creative Commons. For works otherwise in copyright, Creative Commons offers authors a number of off-the-peg licenses which specifies how work may be used by others without them having to come back and ask the author's permission. Rather than actually being 'commons' as such (because assertion of attribution is the standard basis of Creative Commons licenses), Creative Commons does effectively create a kind of expanded yet contingent public domain; an *expanded* public domain because it opens up works in copyright for read-write (use not just access) and a *contingent* public domain because the author can set the terms and conditions of the extent of use.

A second instance where the politics of copyright is being tested is in the debate concerning indigenous cultural heritage, where it is the *extent* of the 'public domain' that is the issue. Intellectual property rights have become so significant in this context because there has been an assumption that knowledge associated with indigenous people is 'traditional knowledge' and therefore automatically in the 'public domain' (Torsen and Anderson 2010; see also Kirshenblatt-Gimblett 2006).[10] This is, in part, because it has been assumed to not pass the 'originality' test, bound up in IP law (Torsen and Anderson 2010: 24-25). In contrast to the copyright activism exemplified by Lessig and Creative Commons, activism by indigenous peoples has argued that not all knowledge is legitimately public:

> There is information that is restricted, that our children cannot learn about, there is information that is restricted even to adults, there is information that is of a secret or sacred nature, that many people have no knowledge of or access to. That knowledge is only there for certain people to have access to. (Galarrwuy Yunupingu, 1986, cited in ATSLIRN protocols, 'Secret and Sacred Material')[11]

Since 2006, activists and lawyers working in this area have argued for forms of IP to be re-encoded within *sui generis* law – 'a unique law complete unto itself and often created when current and existing laws are inadequate' (Anderson 2010: 34). Conceptually, the idea of *sui generis* stands in contrast to appeals in a digital context either to pre-capitalist notions of 'commons' or enlightenment notion of 'public domain' and 'public interest'. Unlike the public-interest orientated logics under which copyright is invoked – such as the desire for equality between individuals, fair treatment and transparency – *sui generis* is asymmetrical, negotiated, contingent and responsive to the ways of knowing that it describes.

As these two examples of IP activism suggest, the links between copyright and public domain flow in different directions. In commercial contexts there is a movement towards increasing control and enforcement. This has been contested by activism, which locates the 'commons' as a contingent public domain. Yet the very model of a 'public domain' has been used elsewhere to ignore specific indigenous traditions of knowing which, in turn, has given rise to activism that has argued for the need for new forms of IP agreements which are highly specific and developed through negotiation. We draw attention to these dynamics of copyright and the public domain because they suggest the different pressure points on the 'public interest' as a form of political argument – a political argument that secures the professional management of resources through achieving a balance between individuals or groups and the public as social totality. Yet while motivated by different readings of 'public', both examples share an interest in a more responsive relationship between the individual or specific groups and the public domain and therefore also gesture towards the relevance for museums of emerging models of 'post-public' democracy – whether framed as associative (Hirst 1994), co-produced (Gannon and Lawson 2008; Morris 2011), self-generating (Butler 2011 cited in Graham, Mason and Nayling 2012: 10) or of the multitude (Hardt and Negri 2004) – which emphasizes that democracy flows through social relationships rather than being managed at a distance through institutional structures. We will be tracing this by following copyright through the museum and then return to the question of museums and the 'public interest argument'.

Participation, Policy, Publics and the Personal

As a result of the centrality of museums' imaginative role in securing their own legitimacy, museums seem constantly haunted by a sense of democratic deficit. There is no question that 'participation' has been seen as one remedy for this deficit (Black 2012; Simon 2010). Yet participation has a complex heritage. While 'participation' has a political lineage associated with 'democratic maximalists', who see representational democracy as failing the promise of democracy as government by the people (Pateman 1976), today 'participation' can also be found in policy and writings associated with the right (Cameron 2011)[12] and the left of centre (e.g. writings by Compass; Demos). The multiple uses of 'participation' from both the right and left can be helpfully located, as we suggested in the introduction, as instances in the ongoing renegotiation of the relationship between the individual and the state. This renegotiation is perhaps most striking in areas such as social care where there has been a movement – long argued for by disabled activists – away from local authorities' providing services towards individuals being given 'direct payments' in order to employ their own personal assistance (Leece and Bornat 2006; Williams et al 2007) or in the idea of 'co-production' of health through the relationship between medical professionals and an individual changing and adapting their behaviour (Gannon and Lawson 2008). While participation flows from frustration with the limitations of representational democracy and can, in some instances, contest the role of the professional as best judge of the balance between the individual and 'the public', its critical impetus has also been harnessed to privatization and, in its weakest form, become associated with consumerism and the rise of the citizen-as-consumer (Clarke 2005; Clarke et al. 2007). In this renegotiation of the relationship between individual and the state, the legitimacy of all organizations described as public (however 'arms length') and funded with public money is clearly at stake.

The question of museums' legitimacy came across strongly in the review of literature one of us conducted in preparation for the 'Partnership and Participation: Intellectual Property and Informed Consent' project (Graham 2012). Through this we identified four trends in reading 'participation' in relation to museums:

- *Good for 'Us'*: making the museum/heritage site or research better and more relevant;

- *Good for 'Them'*: motivated by government and policy to support, educate or improve the public;

- *Not Good for Anyone*: which suggests that institutions can too often be unaware of their 'coercive power to manipulate', be manipulative, fetishize authenticity and only practice 'empowerment-lite' (Lynch interview; 2011a: 6).

- *Good for Us All*: working through logics of solidarity or logics of bottom-up, activist or associative democracy (Hirst 1994) either to create institutional change or new logics of legitimacy.

The key argument to highlight is that each logic imagines earning political legitimacy – earning the justification for their funding and existence – in different ways. In the *Good for 'Us'* mode, the legitimacy is imagined through the epistemic value of participation – ways of knowing that the institution could not otherwise know – which then make museums more relevant to a wider audience (Black 2012; Simon 2010; Ames 2003; Shelton 2003). In the *Good for 'Them'* logic, museums' legitimacy comes from following a governmental vision set via elected officials and with an emphasis on value for money and accountability. In *Not Good for Anyone*, participation is either not redeemable as such or only redeemable through sharing much greater control (e.g. Lynch 2011a; 2011b). The *Good for Us All* philosophy (often turned to by those critical of current iterations of participation) imagines democratic participation as a form of activism, which generates its own bottom up and alternative reading of 'legitimacy'; whether that is through influencing government and/or governance structures (e.g. of museums) or invigorating a grassroots democracy through being responsive to individuals' interests and needs (e.g. Lynch and Alberti 2010; Butler 2011 cited in Graham, Mason and Nayling 2012: 10). As we will show, copyright sits between the individual and 'public interest' as a specific kind of tool within such negotiations over legitimacy.

To illuminate the enmeshing of these logics of legitimacy via the interrelationship of participation and copyright, we will focus on a very recent contemporary collecting project called Culture Shock! Culture Shock! was a Tyne & Wear Archives & Museums-led digital storytelling project (the other partners were Beamish: The Living Museum of the North, The Bowes Museum, Hartlepool Museums & Heritage Service and the cultural think-tank Culture:Unlimited) that collected and accessioned over 500 digital stories between 2008–2010.[13] The Culture Shock! storytelling workshops lasted for four day-long sessions (though different arrangements were made if necessary), during which all those involved developed the idea for their story through a 'story circle' process of trying ideas out in a group, recorded their voice over, scanned in and then added photographs using iMovie software and then finalized the story. Two of the authors – Helen Graham and Rhiannon Mason – were themselves involved with Culture Shock! as part of the 'Art on Tyneside' project which worked with people from across the North East to develop media for *Northern Spirit: 300 Years of Art from the North East*, a permanent display at the Laing Art Gallery, Newcastle (opened October 2010). Of the 67 pieces of media the 'Art on Tyneside' project co-created for the gallery, 11 were done through digital storytelling as part of Culture Shock!

Culture Shock! is a well developed response to the varied logics of participation in museums. It is an attempt to link good knowledge ('Good for "Us"' – more representative and therefore more interesting collections and displays) and good policy ('Good for "Them"' – IT skill develop, self-esteem, self-efficacy and social cohesion).[14] The very fact of people telling and making the stories themselves using simple software put copyright firmly in the frame, and tracing the use of copyright through Culture Shock! helps us disentangle the logics of 'participation', forms of personhood and 'public' legitimacy which copyright was used to 'bundled up'. We interpret this through three dynamics of copyright in Culture Shock!: what we have termed the process of the personal story *coming into the public*, the process of *making an author* and, finally, the process of *making an object*.

Enmeshing Legitimacies

The lynchpin of the strategic enmeshing in Culture Shock! – the concept which holds each strand together – is the personal. In this, Culture Shock! can be seen as part of a wider 'turn to the personal', theorized as a 'reflexive project of self' (Giddens 1991) where, through various techniques including psychology, culture and consumerism and politics, we *work* on ourselves (Miller 1993, Rose 1998). As with participation, the 'turn to the personal' must be seen as having multiple and politically contradictory lineages which include, for example, the highly significance critique of the public/private in politics, associated with the Women's Liberation Movement slogan 'the personal is political', the increase use of profit motives to create consumers in relation to education, health and social care (Marquand 2004) and, as Lauren Berlant describes of North America, 'contemporary nationalist ideology [which] recognizes a public good only in a particularly constricted notion of simultaneously lived private worlds' (Berlant 2002 [1997]: 5).

The personal turn has found expression in museum and heritage practices of various kinds, including oral histories and, of course, digital storytelling (Graham 2009; 2012). This is signalled by the shift in oral history practice from focusing on empirical detail to the valuing of personal memories (Lewis cited Graham, Mason and Nayling 2012: 10). This has been greeted by some as a significant fissure for heritage practice. As Bernadette Lynch, ex-Deputy Director Manchester Museum and critic of 'empowerment-lite' (2011a: 6) approach to museum 'participation' has put it:

> Now we're collecting people – we were collecting objects – and now we're representing lives, and sometimes the most intimate lives, in ways which work within our overarching narratives. I was terribly, terribly uncomfortable about this. At what point do they give up control of their own story. We ran into that with Collective Conversations (at Manchester Museum) at what point are people involved in editing and its representation. Do you get to take people's life stories and do something with them? I'm uneasy about the cut off point. It is presented as 'you signed something and it's gone. Now, thank you very much, your input is no longer required' (cited in Graham, Mason and Nayling 2012: 13)

In the light of the turn to the personal, it is possible to see Culture Shock! as an implicit search for a range of practices which, in effect, justifies the museums' institutional relationship to *the personal.* In the project, copyright is used to calibrate and professionally manage the relationship between the ethics of consent, the personal as an epistemology, the cultivation of personhood as a social policy aim and the logics of the 'public interest'.

Coming into the public

The very structure of the Culture Shock! workshop was devised around a movement between the personal and the public. In each workshop an initial more individual ideas phase – often including trips to galleries – was followed by sharing ideas in a 'story circle' as a way of helping participants imagine how future visitors would respond to their story.

Yet before the story circle even took place, copyright was located as a means of signalling the beginning of the process of *coming into the public*. Culture Shock! had a standard copyright form which assigned full copyright to the museum, but also gave room for individuals to specify restrictions (e.g. not for posting on the website) and had two purposes as Alex Henry, Culture Shock! Project Co-ordinator, and Iain Watson, Director of Tyne & Wear Archives & Museums (TWAM), outline:

Alex Henry:

> We asked participants to sign form at the beginning or as close to the beginning as possible. […] We wanted to make sure participants were clear how their stories would be used. I wouldn't want them to tell a very personal story and then be shown a form at the end and say 'I wouldn't want to show anybody'. It gave participants an opportunity to self-censor. A lot of people were very open about

the stories that they told. We got some quite hard hitting stories about mental health, self-harm and domestic abuse.

Saying to people at the start 'this is what we're going to do with your story. It's going to be on to a big screen in Middlesbrough town centre or on the web' [was important]. [Then] people could at least make that decision themselves.[15] (Cited in Graham, Mason and Nayling 2012: 13)

Iain Watson:

In Culture Shock! I think it was explicit from the start that these were going to be made available on the website, they were going to be accessioned as museum objects and that regardless of intellectual property law the museum has some kind of proprietary interest in the content produced. I think natural justice said that. And I think we were clear with people about that. (Cited in Graham, Mason, Nayling 2012: 20)

So the Culture Shock! aim was that *coming into public* was facilitated by a formal copyright assignment which would mean both that only stories compatible with public display and collection would be told and, in line with the purposes of copyright, the museum's 'incentive' would be secured as they would know it could display and collect the story.[16]

    Unlike the notion of private incentive in copyright there was, as Watson implies, a 'public audit and accountability' aspect to the justification; it was this 'proprietary interest' which justified spending public monies on that individual. The Culture Shock! project's aim here was both that signing the form would help people make informed decisions about how personal they wanted their story to be given it would be made public and, at the same time, to set up and secure the legitimacy of the 'public interest' argument. Signing the form was, then, a moment of setting the terms (opt in/opt out), shaping the personal for public consumption, a moment of public audit and accountability *and* a moment of political persuasion.

    Making an Author

    Another way of thinking about this is that in the process of developing personal stories for public display, copyright worked as a way of *making* the storyteller an intentional author and, in effect, supporting (through the copyright form and the story circles) a conscious decision for their story to become 'public'. All of which was consonant with Cultural Shock!'s social policy aims of self-esteem and self-efficacy. Yet it was also a form of, what John Clarke has called in relationship to shifts to personalized social care, 'responsibilization' (2005: 447). By signing the copyright form the participants were, it was hoped, helped to understand and feel the consequences of their actions (by seeing the reactions of others in your story circle; knowing the story is for the museum to display and collect). Of course, because TWAM are widely recognized as excellent practitioners[17] in outreach, it was never quite this straightforward and Henry notes numerous occasions where subtle work was done to support informed decision-making. Nevertheless it could be argued that signing the form was a moment where the responsibility is transferred to the individual, even as a significant form of ownership (in the form of the right to copy and distribute) was being transferred to the museum.

Making an Object

Finally, copyright was directly related to the museum collecting and accessioning the stories and the specific desire to properly value the significance of the stories for understandings of the North East. Accessioning the stories into the collection, as suggested in the Culture Shock! evaluation (2011: 12), was also designed as a means of increasing the social policy impact of the project. To put it another way, it was the museum deploying its greatest 'Unique Selling Point' (as a collecting institution) to increase – or in audit terms to 'add value' – to the outcomes of the project. Paradoxically, having worked so hard to create an intentional author and while simultaneously working for outcomes of self-esteem and self-efficacy, the moment of collection through full copyright assignment also became a moment of 'handing over'.

The question of how to treat co-produced work or oral histories is often expressed as equivalences – that in order to value this digital story we must treat it as if it is a Ming Dynasty vase (for example). This is expressed in a range of terms but which regularly includes accessioning, display values (Galani and Moschovi 2010; Butler cited in Graham, Mason and Nayling 2012: 10) and inclusion on the collections database as an object (rather than 'an event' or 'additional information') (McGugan; Strachan; Young cited in Graham, Mason and Nayling 2012: 10). While 'transfer of title' is pretty standard with material culture, the same motivations for this do not apply to digital objects. Digital objects can be in multiple places at once and be used by many people at once, all without being broken or degraded. As such, it is as if the 'USP' of collecting as a means of 'adding value' worked not simply by *making an author* but also by *making an object* – and treating (in the terms introduced above) a digital story *as if* it is a material object. So while TWAM staff certainly did not think about it this way and staff often told people they could post their stories on You Tube or make copies, transfer of copyright legally meant that the individual participants no longer had these rights themselves. This had the effect of the museum asking for participants to hand over of control of the stories as a way of showing how much they were valued.

However, as Henry explains, the story was *made an object* also in another way – the 'passage point' of copyright transfer as a precursor to accessioning had the technical effect of fixing the object as finished (even before it had begun being made). This means that the digital object was no longer – as many digital objects are – open to 'read-write' (Lessig 2008), but became complete. These strategies were explicitly imagined in 'public audit and accountability' terms (as a subset of the broader public interest argument) and were motivated by Tyne & Wear Archives & Museums' 'proprietary interest'. As Watson put it, copyright needed to act as a form of end point because, for reasons of equity and fairness, 'you can't concentrate limited resource on small numbers of the same people'.

In these three ways – *coming into the public*, *making an author* and *making an object* – the use of copyright in Culture Shock! was aimed at ensuring the legitimate mediation between personal and the public and that public monies were well spent on outcomes, which could be made publically available and that the object would be fixed and copyright secured so no further public monies would need to be spent. Culture Shock! was, therefore, a well formed in-practice argument for the public legitimacy of the museum and the professional 'balancing' of the 'public interest'.

But… the awkward fissure

Yet for those who made digital stories, things were not quite this clear cut.

Although in general the 'public interest' argument did hold, it did so with certain contingencies. Contingencies, we suggest, which reflect the shifting ground on which museums now stand. Here we explore participants' views of Culture Shock! through three sources: a reading of the Culture Shock! evaluation by Culture:Unlimited; two workshops we ran with a mix of professional and Culture Shock! participants with Mel Whelwell, Principal Officer Collections Management at TWAM, at the Culture Shock! Conference (29 September 2011); and two focus groups we conducted with six Culture Shock! participants with Alex Henry, Culture Shock! Project Coordinator.

For all the participants we spoke with, it mattered enormously that they had been able to tell the story that was important to them (rather than their story having to be 'in response to the collection' or objects (see also Fouseki 2010: 186-7)); for many it was highly significant that they made the story themselves using the technology (though this was noted as frustrating at first and that more workshop time would have been helpful) and, crucially, the museum collecting the story – its USP – was noted as a point of 'pride'. Culture Shock! was also, and significantly, widely praised as fun, enjoyable and a chance to meet new people, including museum staff. Yet what was not universally accepted was Culture Shock! reading of the 'public audit and accountability' aspect of the 'public interest' argument.

The official Culture Shock! evaluation by Culture:Unlimited (who were involved in initiating the project) pins its most striking findings around copyright, arguing that participants want ongoing relationships with their story and the museum:

> Although each participant was asked to sign a copyright waiver, which in a legal/technical sense gave control over their story to the museum concerned, this was not the way participants saw it in reality. Their view, instead, was that they had given something of themselves to the museum(s), and that it remained precious and they held a strong stake in how it was used thereafter. This project created a community of stakeholders, rather than suppliers of stories and, rather like the transformation of the music and publishing industries, the old structures for protecting assets and controlling their use (copyright, licensing, loan agreements, legal ownership) began to dissolve. (Culture:Unlimited 2011: 7)

This broad finding was also reflected in our workshop and focus group discussions and, in effect, shows the success of the way in which the Culture Shock! process *made an author*. Although the Culture:Unlimited evaluation does imply that the 'stakes' participants have are in opposition to 'copyright' assignment, when looked at in detail, many of the things participants want do not strictly transcend the copyright agreement they signed. For the most part, participants' interest in keeping in touch could be couched under the legal provision of 'moral rights' which mean that, even if they assign copyright to someone else, authors who 'assert this' (through putting their name on their story) have a right to be cited as authors and to object to derogatory treatment. In one of the focus groups we ran, this was expressed in terms of expecting the museum to respect the integrity and intentionality of the story. Barry Martin argued that he would not want his story changed or 'messed about with' and Michael Young was very clear that he wouldn't want his story to be used in a disrespectful way or to be subject to ridicule.

However, while some of the provisos Culture Shock! participants wanted to make certainly fit within the provision of 'moral rights', others do not.[18] Where the copyright form did not succeed was in *making an object* in the sense of fixing it as 'finished'. Alex Henry has had requests to change, for example, specific photographs in the story – a request that indicates, in a sense, an author hoping to take advantage of the non-fixed nature of the digital. As Michael Young asked during one of the focus group, 'perish the thought but what if me and my wife split up and she said, "get rid of that DVD?"' Another question which certainly does require more rights over their story, than those provided by 'moral rights', was the right to copy and share their story with friends, family and on the internet. The copyright agreement does technically preclude the author of the story actively copying and sharing it themselves – which, given the Culture Shock! project's aims of 'self-efficacy' raises the questions of whether full copyright assignment to the museum (as opposed to joint copyright) was strictly necessary.

However, it was the question of 'future use' that made visible the bigger fissures in the 'public interest' argument. While it was recognized that the copyright form did not necessarily require 're-asking permission', there was a general sense that it would 'nice to know' if your story is being displayed. Specifically the word 'courtesy' came up repeatedly.[19] As Mary Cleary said, 'as a courtesy it would be nice to know, but I wouldn't expect the museum to come back and seek permission. That's what the form was for'. Michael Young also noted that the museum did not *need* to re-ask permission, 'but I would still like to know as a matter of courtesy if they were using my work. It's good for bragging! They are using my work'. And John Kilpatrick said, 'it is a courtesy. How would it be if I came up here for an opening and there was [his friend's] story and he didn't know'. Young and Kilpatrick both also said they would like to know how the story was going to be interpreted, though not to 'be prescriptive', as Young put it, but again, just because it would be interesting and, again, a courtesy. This emphasis on courtesy was, in one sense, a recognition that they didn't have a legal *right* to know as such, yet at the same time it drew attention to the social side of a more implicit contract which had, in effect, developed throughout the project: a social rather than a legal contract.

Taken together, the participants' views of the project add a range of contingencies to the 'public interest' argument made through the copyright practices of Culture Shock! While it was accepted that Culture Shock! was about *coming into public* this was not, therefore, seen as a once and for all movement. Where the copyright transfer form imagined this was like stepping over a line between private and public, the participants point to the significance of context. While Culture Shock! did give participants a sense of authorship – expressed through pride and 'bragging' – it was also highly relational. In the focus groups *making an author* and *making an*

object were discussed always in relation to the group with whom they made the story and the staff they worked with. This sociality was also intrinsic to the stories themselves, the knowledges shared came through discussion and came through sharing thoughts and feelings, which implicated others (wives, partners, brothers, sisters, ex-school friends, ex-colleagues). When read in this light, wanting to know how the stories were going to be interpreted was not about 'control' as such and, instead, could be read as simply expecting this sociality to continue. One of the effects of this was that participants also refused the 'responsibilization' implied in *making an author* and *making an object* and instead wanted to understand the use of the story as part of an ongoing discussion, much as making the story had been part of an ongoing discussion during the workshops. Indeed the question 'what if I split up with my wife' and I needed to change my story – the question of 'what if my life changes?' – again is in line with the experience of Culture Shock! as a process which both reflected life and was part of life. In both groups we discussed how the museum could reflect this into the future, after all current staff had gone. Michael Young suggested there should be a 'policy which says, not that these things are sacred, but that lots of work went into them and they should be respected'. Young suggests that it is not just the object but also the atmosphere in which they were created that needs to be carried forward.

The repeated use of the idea of courtesy is remarkable because it is not a rights-based claim. The power of rights-based claims have lurked behind many critiques of the institutional power of museum and heritage organizations, such as 'recognition' (Waterton and Smith, 2010: 11), 'having a stake' (Smith and Waterton 2009: Ch.4), or 'actors not beneficiaries' (Lynch 2011b: 160). However, rights-based claims certainly have the potential to have unintended consequences in the context of a public sector ethos (e.g. the rise of litigation in the UK National Health Service). At the very least, and in the context of public sector spending cuts, there might be political gains to be made by exploring models of political assertion, which make *personal* claims but in a less *individualized* way. 'Courtesy' could easily be read as a pretty modest claim and one that does nothing to disrupt the usual power relations of the institution. However, the very fact of the museum collecting personal stories did demand from the museum a much more complex and nuanced reading of the 'public interest' argument. On the one hand there was a sense from those that made stories that the 'public interest argument' held: yes, the museum needed to know it could use the stories now and in the future ('that was what the form was for'). But under that 'headline' there was also a sense that the project had created new social relationships, which meant the museum was personally accountable to the Culture Shock! participants through a specifically *social* obligation.

Conclusion: Courtesy and the 'public interest argument'

Copyright is such a rich site for tracing politics of museums and museum participation because – as we explored through the implications of the digital and the implications of IP for indigenous cultural heritage – copyright is predicated on specific notions of the author, 'objects' and the public. More specifically in the context of museums and participation, copyright is a tool in the political settlement associated with 'public interest', which sets up the museum professional as the legitimate mediator between individual interests and the interests of the public-as-a-social-totality. Yet the management of copyright as a management of legitimacy also, as we have shown, draws our attention to some awkward fissures.

The work we've done with participants suggests why this moment feels awkward. In part, this reflects the shift created by the 'turn to the personal'. If museums solicit personal and authored knowledge, then the impersonal contract of 'we treat you like this for the greater good' is brought into question. Yet there is something more hopeful here too, something less about the erosion of public trust or the assertion of individual rights as such. There is no question that what most people say when they talk about museum participation projects is that the process was fun, enjoyable, interesting, they met great people, they liked the staff, they were proud of the outcomes, they brought their families to the opening. And *here* is the heart of these projects: many different interactions and the sociality of *the process*. So it is not, then, surprising that this mode, this way of working – its atmosphere – is still expected from the museum after the project ends.

When read in this light, getting the form signed feels awkward because it is an insertion of a more bureaucratic logic into a highly personal and personally responsive context. The form as a cut off meant to mark the transition between the personal – moving from the private into the public and the 'completion' of the story – is in danger of denying what makes participatory projects valuable. Implicitly museums with their 'USP' as collecting institutions assume that the objects being collected *as objects* is the highest compliment they can pay a participatory project. But perhaps this is only valuable if it is done in a way which recognizes that project outcomes are primarily *social objects* in multiple senses: sharing personal stories about people who they are close to, made through a group process, with 'the museum' as manifested through specific staff and to be celebrated with family and friends even when also being shown to a wider public on a 'big screen'.[20]

None of this is a rejection of the public interest argument per se. Neither is it a demand for relational ethics – where the museum would be accountable only to those who participate – nor a demand for a democracy only of contemporaneous association (Hirst 1994). In this sense, the Culture Shock! in-practice argument did work: there was an acceptance that the museum needs to balance individual interests in some way, not least because of the museums' role in preserving things for the future. Yet while it might seem modest, the use of the vocabulary of 'courtesy' over the vocabulary of 'rights' both signals something about the way the personal, private and public are intermingled and points to some political possibilities for publically-funded museums making arguments for their own legitimacy.

For Mimi Schiller and John Urry, the shifts we have described would support their argument that we need to stop fighting the last war: 'despite the heroic efforts of 20th-century normative theorists to rescue the divide, the various distinctions between public and private domains cannot survive. Any hope for public citizenship and democracy, then, will depend on the capacity to navigate these new material, mobile worlds that are neither public nor private' (Schiller and Urry 2003: 113). Schiller and Urry's argument takes us back to the two instances of copyright activism with which we opened: the Creative Commons expanded yet contingent public domain and the *sui generis* laws relating to indigenous cultural heritage. Both raise the question of whether museums can develop nuanced and strategic asymmetries within the public interest argument, which recognize the different political possibilities and limitations set in train by rival material culture and non-rival digital culture and the different responsibilities invoked by soliciting personal stories and using socialable methods.

Culture Shock!'s enmeshing to secure its funding included 'Good for Them' logics, that the project would support people to learn skills, develop self-esteem and that the process would enable 'tolerance' and 'social cohesion'. This could be read as the project offering a more up-to-date and less paternalistic version of the traditional – in Tony Bennett's terms (1995) – civilizing function of the museum. Yet the very use of the personal and the sociality of the Culture Shock! process opened up the potential for a reversal of this process. Culture Shock! brought into being a new and now personally-engaged public which show the potential to civilize both the museum and the meaning of 'public interest' with the modest but also always-charged notion of courtesy.

Notes

[1] And then (where appropriate) destroyed them according to Data Protection requirements.

[2] The idea of awkwardness was explored by Natalie Brichet at the 'Re-visiting the Contact Zone: Museums, Theory, Practice' Conference held in Linkoping, Sweden 17-21 July 2011 and this notion of awkwardness has been very useful in identifying the affective charge to audit process in participatory projects.

[3] Henry Giroux, David Shumway, Paul Smith, and James Sosnoski, 'One important task for such a transformative critique is to identify the fissures in the ideologies of the dominant culture. In the absence of intellectuals who can critically analyze a society's contradictions, the dominant culture continues to reproduce its worst effects all the more efficaciously. And, without a sphere for cultural critique, the resisting intellectual has no voice in public affairs' (1984: 274).

[4] The two research projects were: 'Partnership and Participation: Intellectual Property and Informed Consent' and 'Tackling Ethical Issues in Community-Based Research'. Both research projects were funded by the Arts and Humanities Research Council. The former project involved all the authors (AH/J500743/1) and ran between 2011–2012. The second involved Helen Graham who worked with Alex Henry (formerly Tyne & Wear Archives and Museums) and Aileen Strachan (Glasgow Museums) with a wider project, led by Professor Sarah Banks (Durham University), exploring ethics in community-based research (*AH/J006645/1*).

[5] We have used 'public accountability/audit' instead of public value because of the varied use of the term. Sometimes 'public value' has an audit aspect to it, however it has also been widely use to contrast with techniques of management associated with New Public Management (Lee et al 2011).

[6] Web2Rights, 'IP and Web 2.0 factsheet'. http://www.web2rights.org.uk/, **accessed 9 September 2013.**

[7] While this is an oft-stated fact about intellectual property, there are arguments to say that it has changed with the inclusion of 'databases' within copyright law under 1997 Copyright and Rights Database Regulations (i.e. that the facts and data noted in a database are subject to the same protections as is the academic paper that comes out of analyzing the database).

[8] Office of Intellectual Property, 'Types of Intellectual property', http://www.ipo.gov.uk/, **accessed 9 September 2013**

[9] It has, therefore, been argued that we need new ways of approaching copyright in a digital age. A number of models have been suggested; for example, a 'collecting society' model for digital platforms (e.g. You Tube paying a fee every time a copyrighted work is viewed), or flat fee to use copyrighted work (Lessing 2008: 256). In the UK relevant law is HMSO (1988) Copyright, Designs and Patents Act. http://www.legislation.gov.uk/ukpga/1988/48/contents, **accessed 30 April 2013.**

[10] This has led to a number of legal cases where specific nations or communities have had to legally contest use of symbols or ways of knowing. For example, the beauty manufacturers

Aveda tried to trademark the word 'indigenous' and only backed down when firmly contested by indigenous peoples. As Aveda ultimately put it in a press release, 'we are discontinuing the Indigenous product line to demonstrate our ongoing support and respect for indigenous peoples in their efforts to protect their traditional knowledge and resources' (cited in Torsen and Anderson 2010: 59-60).

11   Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols. http://aiatsis.gov.au/atsilirn/protocols.php, accessed 30 April 2013. For other commentary on the inapplicability of the public domain to indigenous knowledge see, Tulalip (2003) *Statement by the Tulalip Tribes of Washington on Folklore, Indigenous Knowledge, and the Public Domain. www.wipo.int/tk/en/igc/ngo/**tulaliptribes**.pdf*ý**, accessed 30 April 2013**.

12   Cameron, D. (2011) 'PM's speech on Big Society', http://www.number10.gov.uk/news/ pms-speech-on-big-society/, accessed 30 April 2013/ The Big Society website hosted by the Cabinet Office defines the Big Society as 'about helping people to come together to improve their own lives. It's about putting more power in people's hands – a massive transfer of power from Whitehall to local communities'.

13   The Culture Shock! digital story telling project came out of a report, also called Culture Shock! – published in 2006 – which was commissioned and funded by the UK government Home Office and conducted by a think tank then called Campaign Learning in Museums and Galleries and now called Culture:Unlimited.

14   The policy aims linked to Culture Shock! – as set out in the evaluation of the project – indicate (as is very common in arts and museum expression of their policy value) a focus on the individual and on aggregate – or society-level – benefits (see also Sandell 2002). So self-belief, self-efficacy and self-esteem (Culture:Unlimited 2011: 5) are cited as are 'skills-development' (Culture:Unlimited 2011: 6) and 'bonding social capital' (Culture:Unlimited 2011, pp. 6, 35).

15   Alex Henry noted that the approach and the copyright form did itself evolve over time and that staff members did use a flexible approach when it was felt appropriate.

16   The museum positioning themselves as having a proprietorial interest finds resonance with the legal provision for copyright be held by the 'person by whom the arrangements necessary for the making of the sound recording or film are undertaken' (HMSO Copyright, Designs and Patents Act, 1988: Part 1, 178).

17   Department of Culture, Media and Sport (2009c). *DCMS Museum Peer Review Pilot: Tyne and Wear Museums.* http://www.culture.gov.uk/reference_library/publications/5934.aspx/ , accessed 30 April 2013, 7.

18   An issue, which pointed to a certain fissure in public interest argument, was around commercial use. It was clear that commercial use of the story was not anticipated and some people were very clear that they felt this would be inappropriate. However, for Holden this was simply not an issue; the way he saw it he had been able to make the story for free and if the museum could benefit that that was fine. John Kilpatrick, however, found this a more tricky issue and suggested some kind of 90%/10% deal, so he could give 10% to charity. This type of debate – through a short interchange – does signal some of the consequence of the shift in public funding. John's feeling was that if his work made money then it would be charity that would be a more worthy site for the money.

19   Courtesy was also used – in a similar way – in focus groups and interviews with participants in Curious, a project based at St Mungo Museum of Religious Life and Art, Glasgow Museums (see Graham, Mason and Nayling 2012)

[20] We explore what this might mean for museum practice – how to inflect copyright practices with sociality and courtesy – in a booklet also based on these findings (Graham, Mason and Nayling 2012).

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