Reuse, Misuse, Abuse
For my mother, the very ground on which I stand
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Reuse, Misuse, Abuse
Introduction

Theorizing Misuse

In November 2015, the Montreal International Documentary Film Festival (RIDM) came under fire for including Quebec filmmaker Dominic Gagnon’s seventy-four-minute film of the North in its program. As with some of Gagnon’s previous films, this film’s imagery was appropriated entirely from clips posted on YouTube. In this case, all the clips were shot by or featured Inuit people. The soundtrack was composed of music by Inuk throat singer Tanya Tagaq. For his use of neither the images nor the music did Gagnon seek or obtain permission from the YouTube posters or from Tagaq. The latter publicly called the film racist, demanded her music be removed from the soundtrack, and became one of the leaders of a campaign against the film. In response to the film, an Inuk broadcaster named Stephen Puskas began contacting as many of the YouTube subjects as he could locate to let them know that their images appeared in Gagnon’s film. As a result, many asked that their images be removed. Gagnon then began screening a version of the film without music and replaced the images he had been asked to exclude with black. Soon after, Gagnon stopped screening the film altogether, and it is now extremely difficult to see in its original form. Nonetheless, Gagnon did not seem to feel he had done anything wrong, claiming in an interview with the Aboriginal People’s Television Network (APTN) that
he was the target of criticism simply because, as he put it, “I am a man and I am white.”

Inevitably, this conflict led to a discussion among filmmakers, programmers, and commentators about freedom of speech versus the long history of white colonial misrepresentation of indigenous peoples. However, it also raises important questions about the artist’s rights and responsibilities with regard to appropriating recorded sounds and images of other people, particularly in the digital age when so much is so easily available. One of these questions has to do with consent. As Robert Everett-Green noted,

The fracas about Of the North [sic] isn’t just about what’s in the film, but about how it was made. Gagnon didn’t go to the North, and although he identifies each clip at the end of the film, he never tried to contact those whose footage he used; nor anyone who was pictured in it. He figured that if people had allowed YouTube to show their videos to all comers, no further consent was necessary.

Indeed, one of Gagnon’s lines of defense was to argue that the posted footage was already public and, therefore, fair game. Moreover, Gagnon argued that the film was less about Inuit people than about how people record themselves for platforms like YouTube. He said, “To me it’s more a story about how Inuit people appropriate social media, how they represent themselves, what they feel like doing.” In Gagnon’s view, because these videos were posted on YouTube, they became not representations of individuals or a culture but symptoms of a social media phenomenon. A group of Quebec filmmakers came to Gagnon’s defense in an open letter, not so much validating the film itself as the need for freedom of expression and the opportunity to discuss the film, writing that the removal of the film from the RIDM program meant that “the public is deprived of the sine qua non condition for a sound democratic debate, the possibility of determining its own opinion.”

Despite these defenses, many critics, particularly indigenous viewers, continued to find the film offensive. Inuk documentary filmmaker Alethea Arnaquq-Baril accused the film of representing Inuit people as “violent, wandering drunks that neglect their children and don’t care for the lives of animals: that’s the image I took away from the film … I think it’s kind of a cheap move to totally play up a negative stereotype of a marginalized people for your own artistic gain.” She noted further that Gagnon clearly selected cer-
tain types of clips, choosing to include, for instance, numerous clips of drunken Inuit people. “It’s as if he went searching for clips of ‘drunk Inuit’ or ‘drunk Eskimo.’ This is a decision he made to portray us this way. He went in with his own perception; it’s not a reflection of how Inuit perceive ourselves.” At least in Arnaquq-Baril’s view, Gagnon’s particular choice of videos reflected his preconceived ideas about Inuit people. Arnaquq-Baril also noted that many of the appropriated images were not self-representations but, rather, videos taken without the subjects’ permission or perhaps even knowledge. Thus, Gagnon’s selection of clips in Of the North constituted, for many viewers, a harmful misrepresentation of his subjects. Moreover, the sense of skewed representation was not due exclusively to the content of the images but also to how Gagnon fitted them together. As Jonathan Culp wrote,

In Of The North [sic], the ugliness inheres not only in the source material, but in the arrangement of sequences. As Gagnon clearly knows, for all his talk of “how they represent themselves” (the YouTube material was shot by hundreds of amateur Inuit filmmakers), the editor holds the power of meaning and interpretation. And Gagnon’s perspective is both alienated and ill-informed, almost proudly so.’

Gagnon’s perspective, as conveyed through both choice of material and editing, is not innocent but deeply ideological, whether he acknowledges it or not.

Two sequences involving laughter are particularly illustrative of this fact. In one, we see a man in long shot beating a small seal to death as an unseen woman behind the camera laughs. In another, we see images of raw sewage pouring into a pristine landscape followed by images of caribou eating the sewage, again accompanied by laughter. These are upsetting images, no doubt. Yet, what is most egregious in these scenes, like many others in the film, is the total lack of contextual information. The juxtaposition of animal harm and these Inuit people’s laughter makes the people seem cruel and heartless. However, we have no idea who these people are, nor do we know anything about the conditions under which they are living, let alone the origins of those conditions. Without such information, the inclusion of these sequences suggests that Inuit people commit and record animal cruelty just for fun—which is, at very least, not the whole story in these videos. By including these sequences and not offering contextual commentary, Gagnon
eschews responsibility for their content while nevertheless conveying an extremely negative impression of the people recorded therein.\textsuperscript{10}

Thus, the objections to the film are multiple and multifaceted. Not only did Gagnon fail to seek consent to use the images and sounds he appropriated, but he is a white artist who has never even been to “the North” appropriating images of indigenous people. Not only does the content of the appropriated materials reflect negatively on its subjects, but the particular way in which Gagnon selected and then edited the materials together exacerbated the negative misrepresentation of an entire group of people. Not only does he appear to be ignorant of—or at least lacking in critical awareness about—existing stereotypes and racist discourses about indigenous people in Canada (and beyond), but his film reinforces the unequal relations of power inherited from colonialism—wittingly or no. It is in the intersection between these various issues—consent, (mis)representation through selection and editing, and existing power relations—that the ethical question at the heart of this film’s production and circulation lies. However, none of these issues can be considered strictly in isolation.

\textbf{Beyond Consent}

Indeed, if the problem of audiovisual appropriation was reduced solely to consent, certain films by indigenous artists that have not been criticized—and have even been celebrated—might also come under fire. Indigenous filmmaker Kent Monkman’s three-minute film \textit{Sisters & Brothers (2015)}, for example, was one of four films commissioned by the National Film Board of Canada that “remix archival footage to address Indigenous identity and representation, re-framing Canadian history through a contemporary lens.”\textsuperscript{11} The film begins with written text quoting Native American activist Leonard Peltier saying, “Hope and resiliency. These are your greatest strengths. Sisters and brothers, all of one human family. Your generation and mine.” The film then cuts to images of grasslands and a group of white cowboys gazing at bison through a matte that connotes binoculars. The images of bison are intercut with images of indigenous children who—it becomes clear—were forcibly taken away from their families and placed in what were euphemistically called “residential schools,” designed to assimilate them into white colonial culture. Throughout Monkman’s film, montage is used to create a visual metaphor equating the mass slaughter of the bison with the
practices of the residential school system that sought to annihilate native culture. The film ends with another title, “We have recorded the deaths of over 6,000 children [while in residential schools]... Many were not returned to their families and most were buried in unmarked graves.” This quotation is attributed to Justice Murray Sinclair, writing on behalf of the Canadian Truth and Reconciliation Commission (TRC), completed in 2015.

Regarding consent, Monkman’s film is as potentially problematic as Gagnon’s. The unidentified residential school children whose images Monkman appropriated did not give their consent either for the original filming—the images were clearly taken by advocates of the residential schools who would have had the power to film regardless of the children’s wishes—or for the appropriation. Indeed, it would likely have been impossible for Monkman to locate these people, who are unnamed and many of whom are probably deceased.¹² Nonetheless, if the ethics of audiovisual appropriation were reduced solely to consent, this would be an unethical appropriation. Yet, the fact that Monkman himself is an indigenous filmmaker of Cree ancestry and that his film serves as a critique of the residential school system and a defense of the children who were its victims mitigates the sense that he is violating his subjects’ rights. His film is a cry for justice for these children who cannot demand it themselves and, as such, reads as an intensely and actively ethical text. One particularly striking image shows an unidentified (and likely unidentifiable) indigenous girl in a residential school staring back at the colonial camera and, by extension, looking at us across the temporal divide of decades (figure 1). Her returned gaze asserts her identity and presence, which the Canadian colonial government tried so hard to erase. Monkman’s inclusion of this image in his film thereby becomes an act of indigenous reclamation.

In the comparison of these two texts, it becomes clear that the ethics of audiovisual appropriation are complex and cannot be reduced to any single variable. Indeed, these are only two examples of a phenomenon that exceeds any attempt to account for all its possible permutations. As different as they are, of the North and Sisters & Brothers both gesture toward a much broader practice that has become pervasive in contemporary film and video culture. Segments of pre-existing recordings—of which there is now a seemingly endless, accessible supply—have increasingly become the building blocks of new articulations. This “remix” or “Read/Write” culture, in the terms coined in part by Lawrence Lessig, offers opportunities to use recorded sounds and images as a new set of semantic units from which new kinds of previously
impossible “sentences” may emerge.\textsuperscript{13} Drawing parallels between written quotation and audiovisual appropriation, Lessig has written, “Whether text or beyond text, remix is collage; it comes from combining elements of [Read Only] culture; it succeeds by leveraging the meaning created by the reference to build something new.”\textsuperscript{14} Lev Manovich similarly defines remix as “a composition that consists of previously existing parts assembled, which is edited to create particular aesthetic, semantic, and/or bodily effects.”\textsuperscript{15} Remix—or what I call “misuse” for reasons that will become clear—enables both the partial retention and simultaneous transformation of the meaning of the original document.

Of course, as numerous theorists have demonstrated, this kind of practice is not a recent development.\textsuperscript{16} Quotation of written documents is, obviously, an ancient practice; collage has been a fundamental component of visual art since Picasso; and musical sampling has its roots in 1970s Jamaican DJ culture and African American hip-hop. The reuse of pre-existing film footage goes back to the earliest days of cinema. Even as the first films began to circulate, entrepreneurial exhibitors re-edited and repackaged them as
new films. Soviet filmmaker Esfir Shub, however, is credited with producing the first compilation film when she made *The Fall of the Romanov Dynasty* in 1927. By re-editing documentary footage produced by and for former Czar Nicholas II when he was still in power, she transformed footage honoring the Czar and his regime into a celebration of their demise. Meanwhile, Joseph Cornell’s 1936 *Rose Hobart*, in which Cornell took the Hollywood melodrama *East of Borneo* (George Melford, 1931) and retained only (with a few exceptions and additions) the footage including the main actress, Rose Hobart, and then set this re-edited footage to music, is generally regarded as the first experimental found footage film. The Situationist practice of détournement also deployed audiovisual appropriation to undermine the power of mass culture. In the 1950s and 1960s, the Situationists made use of elements of popular culture—including photographs, especially advertisements, and film footage—to disrupt its hegemonic discourse through collage techniques of juxtaposition. Guy Debord and Gil Wolman wrote in 1956 that “When two objects are brought together, no matter how far apart their original contexts may be, a relationship is always formed. . . . The mutual interference of two worlds of feeling, or the juxtaposition of two independent expressions, supersedes the original elements and produces a synthetic organization of greater efficacy.” In their emphasis on “new combinations” and the “juxtaposition of two independent expressions” to generate novel relationships and syntheses, Debord and Wolman extended the insights of Soviet montage theory to the specific revolutionary potentialities of appropriation of pre-existing visual materials. They theorized the potential of détournement as a weapon of class struggle that could reveal the inner workings of capitalism to further the socialist revolution. And since the times of Shub and Cornell and the heyday of Situationism, the works of numerous experimental film and video makers—along with many musicians and other types of visual artists—have similarly mined pre-existing documents and recordings to produce transformed meanings.

Undeniably, however, digital technologies have made pre-existing recordings significantly easier to acquire, re-edit, and manipulate. Indeed, audiovisual appropriation is now a practice in which almost anyone with access to a computer can participate. As a result, millions—if not billions—of internet videos have emerged from this practice. Moreover, digital media has dramatically increased the speed at which such appropriations occur. The same image or sound clip may reappear as an element of multiple texts days, hours, or even minutes after it was produced and posted online. And this
art form includes a huge range of practitioners. Even as amateurs enthusiastically engage in this practice, professional experimental film and video makers continue to create works in this way. Such makers regularly repurpose pre-existing recordings as a means of commenting on the vast archive of images and sounds that are now available to anyone with a computer and an internet connection. Although these experimental works may have different aims from most YouTube appropriation videos, what unites both popular appropriation-based memes and experimental found footage works is a clear sense of the subversion of meaning. We are—for the most part—meant to recognize the appropriation, the repurposing, the change in signification.

In the face of the frequency and rapidity of the circulation, appropriation, and recirculation of these recordings through digital technologies, however, questions arise regarding the ethics of such appropriations, particularly when the recordings in question depict actual, as opposed to staged fictional, events—as Gagnon’s *of the North* and Monkman’s *Sisters & Brothers* both demonstrate. Although there may be ethical issues raised by the appropriation of staged, fictional recordings, the ethics of appropriating actuality recordings is much more fraught. In fictional recordings, we perceive a gap between the self of the performer and the performance; in actuality recordings, we seem to have access to the person’s “real” self. Of course, the relationship between actuality recordings and the “real” is complex and involves its own kinds of performance. However, the sense of access to the actual subject is much stronger in actuality recordings, and from this sense of proximity stems the urgency of ethical questions regarding their appropriation.

As indicated by the preceding examples, the ethical implications that arise when the actuality recording’s perceived original meaning and affect are subverted are complex and contradictory. The premise of this book is that every reuse of a pre-existing recording is, on some level, a “misuse” in the sense that its new use was not intended or at least not anticipated by its original producer. Indeed, audiovisual appropriations are often compelling precisely because the recordings they find and appropriate seem to have been “misused,” intended for another purpose. Recordings that we recognize as having been taken from one context of use and placed in another may carry with them a trace of their earlier intended uses even as they are now mobilized for a different intent. This recognition of contrasting intentions generates the often-fascinating experience on the part of the viewer of what I
have elsewhere called “intentional disparity.” This experience of intentional disparity is based on the perception of a previous intention ascribed to and seemingly inscribed within the appropriated recording that is different from the intention that appears to inform its present use. Of course, we cannot really know the “original intention” behind the appropriated recording. This would be to invoke the intentional fallacy. Nevertheless, we as viewers of a work of audiovisual appropriation often experience some sense that the appropriated recording is in some fundamental way “misused,” even if it is only because the original producer of the recording could not have anticipated its use in the present text. Moreover, we often do imagine or project an original intention, even if it cannot ultimately be known.

Furthermore, this sense of unintended meanings may offer us an experience of epiphany or even revelation. Sometimes, a significant social or political critique may arise from the play of intended and unintended meanings. And this may make the misuse appear to be worth the ethical “cost” that derives from the appropriation and reuse of actuality recordings. Or not. Indeed, I choose the term “misuse” precisely because it registers the presence—or at least possibility—of ethical dilemmas and negotiations inherent in the form. Whereas the terms “remix” and “reuse” express a neutral value—mixing or using again is neither good nor bad—and theorizations of détournement actively and exclusively celebrate its revolutionary potential, the term “misuse” indicates ambivalence. This does not mean that every misuse is necessarily unethical. In fact, there are many instances of productive misuse of actuality recordings that, although they may generate an ethical disturbance, may nevertheless seem justified. However, as we shall see, there are other instances in which the misuse may shade into abuse, generating a feeling that the appropriation violates our ethical standards in some way. Watching certain works of audiovisual appropriation, we may feel like we are participating in an act of exploitation, of voyeurism and/or mockery, an experience that forces us to acknowledge the unequal power relations involved in the act of audiovisual appropriation.

While numerous studies and discussions—Lessig’s among them—have focused on the legalities of appropriation in terms of the copyright, this study is not interested in the notion of intellectual property or ownership. Rather, it acknowledges that—legally or not—makers are appropriating existing content and it attempts to account for some of the specifically ethical ramifications of these appropriations. Moreover, most of the texts examined here fall under the auspices of fair use or fair dealing in that they
constitute “transformative” use, which was defined in US courts in 1994 as “altering the original with new expression, meaning, or message.” Thus, the ethical responsibility vis-à-vis the legal “owner” of a given image or sound recording in terms of that ownership is not the focus here. Instead, I am concerned with the ethics vis-à-vis those subjects who are inscribed in the recordings and, to some degree, vis-à-vis the audience.

Not all the works engaged in this study can be designated “documentaries.” However, many of the ethical concerns raised by the appropriation of actuality recordings are linked to those raised by documentary production. Bill Nichols has written extensively about the question of the ethical responsibilities of the documentary film or video maker in relation to his or her film subjects. Drawing on the concept of axiology, the study of values, he has suggested the neologism “axiographics” which he has argued may “address the question of how values, particularly an ethics of representation, comes to be known and experienced in relation to space.” In Nichols’s analysis, our sense of ethics is often based on our perception of the location of the maker in relation to his or her subject and, by implication, the construction of the viewer’s relation to the film subjects who become the objects of our gaze. He has argued that the camera inscribes the ethical stance of the documentary maker vis-à-vis her subject: “An indexical bond exists between the image and the ethics that produced it. The image . . . gives evidence of the politics and ethics of its maker.” In other words, as viewers, we read an ethics of the documentary maker in the images he or she has filmed, and we do so through an evaluation of the maker’s stance—literal and figurative—toward the film’s subjects. Notably, the notion of axiographics rests to some degree on the assumption that the film or video maker was, at some point, in the presence of the film subject, choosing the angle from which to shoot, deciding whether or not to be present onscreen, and so on. The appropriationist, however, operates at an additional spatial—and potentially personal, emotional, and social—remove that further complicates our ethical evaluation.

This spatial remove intensifies several ethical issues already present in documentary production. Whereas the documentary maker often acquires some degree of ethical standing by having “been there” with the film subjects, the appropriationist—in most cases—never comes into direct contact with any of the subjects. This raises the question: what gives the appropriationist the right to take these sounds or images “out of context” (a phrase that has come to harbor immediately negative associations with exploita-
tion and deception)? Beneath this question lies the assumption that appropriationists may feel less responsibility vis-à-vis the original subjects, a literally irresponsible attitude potentially encouraged by the easy access to materials afforded by online digital archives and databases—and their seemingly anonymous origins. In one of the few existing essays devoted to the ethics of audiovisual appropriation, Thomas Elsaesser has described a shift from analog film production to digital postproduction as filmmaking, as follows:

Whereas analog filmmaking, centered on production . . . seeks to capture reality in order to harness it into a representation, digital filmmaking, conceived from postproduction, proceeds by way of extracting reality in order to harvest it. Instead of disclosure and revelation . . . post-production treats the world as data to be processed or mined, as raw materials and resources to be exploited.24

The terms Elsaesser chooses to describe audiovisual appropriation—“data to be processed” and “resources to be exploited”—imply an anxiety and perhaps pessimism about the ethical implications of this form of (post) production, suggesting that “the world” and, by implication, the people in it may become simply a series of objects to be manipulated without the appropriationist—or the viewer—having any sense of responsibility to that world or those people.

Moreover, as suggested previously, the question of the subject’s consent may quickly arise. Of course, the notion of “informed consent” has long been a standard for regulating documentary filmmaking more generally. As John Stuart Katz and Judith Milstein Katz noted in a pioneering documentary anthology dedicated to “image ethics,” “voluntary and informed consent is required if the film-maker is to be considered as having acted ethically.”25 Katz and Katz detailed many of the problems linked to obtaining truly informed consent, which is far from simple. However, whereas documentarians must generally obtain at least some kind of signed release from their subjects, audiovisual appropriation often involves the use of materials without any form of consent; subjects are rarely even informed of the reuse. If consent of the subjects is taken as constitutive of an ethical reuse of a recording, then the appropriationist gesture appears unethical almost by its very definition. In fact, one common response to the anxiety about people’s images and voices being appropriated without limitation is to suggest that
these people must give their informed consent for any audiovisual appropriation. Lawyer Lorelle Babwah, writing within the United States legal context about the song and video entitled “The Bed Intruder Song,” produced by The Gregory Brothers (whose work I discuss at length in Chapter 2), has argued that Antoine Dodson, the man whose voice and image was appropriated for the song and video, should have the right to sue The Gregory Brothers for violating his “right to publicity.”26 Although he agreed to participate in the original news broadcast that The Gregory Brothers appropriated, Dodson never gave his permission for this broadcast footage to be used in “The Bed Intruder Song.” J. Thomas McCarthy defines the right to publicity as “the inherent right of every human being to control the commercial use of his or her identity.”27 Drawing on Dodson’s example, Babwah concluded that

State laws regarding the right of publicity and privacy protections should construe consent as narrowly as possible to protect the rights of an individual private citizen to exert control over his or her personal identity. Specifically, the consent to be filmed should not be interpreted as consent for that content to then be uploaded, manipulated, and broadcasted throughout the Internet.28

She further suggested that private individuals (as well as celebrities) should have the legal right to sue anyone who appropriates their image and profits from the appropriation in any way.

Although this legal argument is persuasive on an affective level—given that few of us would like our image or recorded voice reused without our explicit consent—the implication is that audiovisual appropriation as an art form and as social commentary could be drastically curtailed. Moreover, there are numerous problems with requiring explicit consent as the criterion for an ethical audiovisual appropriation. What should a maker do when the film subjects are now dead, are no longer com pos mentis, or cannot be found? Is such material then a priori off limits? More importantly perhaps, are there not cases where a subject might, for self-interested reasons, deny permission to use a recording that could be used in the service of attaining justice for someone else? Does the social value of certain potential uses of a given recording ever exceed the recorded subject’s right to control it?

Indeed, despite Elsaesser’s proposition that audiovisual appropriation cannot disclose or reveal, he simultaneously acknowledges its potential for
disclosure and revelation, particularly in cases when the original maker is revealed as ethically suspect in some way. In his analysis of Harun Farocki’s *Aufschub* (2007), in which Farocki appropriates and self-reflexively interrogates footage shot at the Westerbork transit camp for Dutch and German Jews bound for Auschwitz, Elsaesser suggests that there are audiovisual appropriations that we may deem actively ethical, attempting to in some small way acknowledge the people in these images, whose rights were so violently disregarded. Likewise, Elsaesser suggests that in Fiona Tan’s *Facing Forward* (1999), which appropriates instances of ethnographic footage of “primitive” people in which these people look back at the camera, “the ethnographic film is turned inside out, brushed against the grain where the objects of a particular gaze are allowed to look back and become subjects.”

Similarly, in *Sisters & Brothers*, the indigenous children who were objectified by the colonial camera can look back and become active subjects in Monkman’s film. Elsaesser takes important steps toward theorizing particular instances of audiovisual appropriation he deems ethical. However, the precise process by which we as viewers may evaluate the ethics of a given appropriation remains opaque.

Furthering Nichols’s discussion of documentary ethics in her study of French documentary, Sarah Cooper succinctly articulates one of the key bases upon which a documentary’s ethics vis-à-vis its subjects may be evaluated. She has written, “It is the difference between an excess of the image that we cannot know, and what we actually perceive, that becomes a space of responsibility which persistently resists any attempt to reduce those we see either to their image, or to an image of ourselves.”

Drawing on the philosophy of Emmanuel Levinas, Cooper suggests that the fundamental ethical challenge posed by documentary to the viewer is to see those onscreen neither as entirely others—thereby reducing them to their image, to objects rather than subjects akin to ourselves—nor as mimetic reflections of ourselves—thereby disregarding the specificity of their experiences and identities. Cooper further argues that the ethical must actively undercut the certainties of the seeing subject, opening us up to difference but also reminding us that the other can never be fully known through his or her image. (Or, I would also add, voice.) In a later article, Cooper further articulates the tension between proximity and distance that in her view characterizes the ethical in relation to documentary: “An ability to ‘let the Other be’ suggests the registering of distance from others, yet such distance [does] not correlate with indifference; on the contrary, in Levinasian philosophy . . .
such distance emerge[s] from within relations of extreme proximity, a proximity without which ethics would be impossible. A continuous tension between distance and proximity in relation to the other constitutes a space of responsibility within which viewers may come to see others in a new relation to themselves. Audiovisual appropriation of actuality footage provides a fertile ground for the production of such a tension precisely because it simultaneously suggests both proximity, through the indexical trace of the recorded subject, and distance, through the viewer’s awareness of the appropriation. Thus, audiovisual appropriation can offer a particularly productive space for an exploration of the ethics of our relationships with others. Yet, this potential fundamentally depends on how each work of audiovisual appropriation constructs our relationship to the particular sounds and images it appropriates—and, thereby, on the responses it generates for each viewer in the moment of encounter with an other through the text.

Philosopher Martha Nussbaum suggests that the ethical is deeply intertwined with lived experience. Ethics are not a fixed set of rules, and they cannot be divorced from lived encounters. She distinguishes the ethical from the moral by identifying the essential ethical question as “How should one live?” She writes:

This question does not . . . assume that there is a sphere of “moral” values that can be separated off from all the other practical values that figure into a human life. . . . What they [who seek an ethical life] are asking is not what is the good “out there,” but what can we best live by, and live together as social beings.

Although Nussbaum’s analyses generally focus on literature, her work is relevant to film as well. In the contemporary world, if we are to “live together as social beings,” we must think through how we wish to look at and listen to one another through our recorded images and voices. As viewers, we must constantly assess what we are looking at or listening to and how we are being asked to look at and listen to it by a film or video—and to decide whether that is a position we wish to take up. Moreover, in the deluge of recorded sounds and imagery that circulate and recirculate, repositioning us again and again in relation to others onscreen, this assessment must be constant and vigilant.

Another implication of the Nussbaum quote above, however, is that no external system exists for distinguishing once and for all the ethical from
the unethical. Indeed, one of the challenges of discussing the ethics of audiovisual appropriation (like the ethics of any practice) lies in the fact that because ethical evaluations depend to some degree on individual values, orientations, and situations, there is no objective way to determine what counts as ethical and what does not. Cooper suggests, following Levinas, that “an ethics is produced through the encounter, rather than preexisting it.”

In the end, it falls on the individual viewer, in the moment of encounter with the text, to determine whether he or she deems a given act of appropriation ethical. However, this determination is necessarily based on shared cultural mores. As we shall see, there are certain kinds of appropriations that I will argue most viewers are likely to feel are justified while others are not. Yet, precisely because they derive from shared cultural values, ethics are not rigid and ahistorical but are, rather, socially situated and historically specific. Hence, the rise of digital technologies may be changing what sorts of audiovisual practices we consider ethical. Nichols aptly notes, “Ethics can be said to be an ideological mechanism by which those in power propose to regulate their own conduct.”

As viewers in the digital era, situated in a position of spectatorial power, we must decide based on shared—but malleable—cultural values what sort of spectatorial acts we wish to participate in.

Writing about narrative fiction cinema, Jane Stadler argues for a key relationship between embodiment and ethics in contrast to theories of ethics grounded wholly in rational assessment to the exclusion of any affective dimension. She has written that “in order to make sense of either a screen text or the ethical dimensions of a given situation we must have an embodied response to the information we are making sense of. We see, hear, feel, and in other ways physically form an impression of the subject matter.”

Following Stadler, I suggest that it is the moments of embodied response—of whatever kind—that have the greatest potential to provoke an assessment of the ethics of a given audiovisual appropriation. All the works examined in this study provoked in me both an intellectual comprehension and an embodied response—whether laughter, disgust, horror, sadness, or discomfort of some other kind. Although the intellectual aspect allowed me to make sense of my embodied response, it was the embodied response itself that led me to consider the ethics of the appropriation to which I responded so viscerally and affectively.

Close attention to both the cognitive and affective experience of watching works of audiovisual appropriation may offer some clarification regarding their ethics. To further elucidate this experience, we must ask: How do
we understand the ethical responsibility of the maker who appropriates (rather than directly records) actuality materials vis-à-vis those represented in the image or sound recordings? What kinds of intellectual, embodied, and affective effects may audiovisual appropriations generate for us as viewers? And what are the structures through which we evaluate the ethics of these effects? Nichols has noted that there is always a “cost” to what he calls “epistephilia, the desire to know.”** The “misuse” of actuality recordings always involves an additional cost. This study seeks to determine the structures by which we as viewers may decide whether the potential for knowledge—or some other kind of experience—exceeds that cost. As I shall demonstrate in what follows, when it comes to the audiovisual appropriation of actuality recordings, we must determine our ethical evaluation through an interrogation of the complex interplay between three things—our sense of the rights of those recorded, our projection of the intentions of the producer of the original document, and our reading of the intentions embedded in the act(s) of appropriation. Moreover, there is an overarching structure that contributes to our ethical encounter with a work of appropriation, which I refer to as the “layered gaze.”

**The Layered Gaze**

The gaze in watching an actuality recording is always already layered, the gaze of the maker overlaid by that of the viewer. Often, we do not notice this layering, identifying our gaze unconsciously with that of the maker. Yet, if our affective response to the film subject seems to contradict those of the maker, we may experience a sense of alienation, a feeling that we have been—or else wish to be—expelled by the film and its gaze, which becomes suddenly visible as a figure. When I watch *Mondo Cane* (Gualtiero Jacopetti, Paolo Cavara, Franco Prosperi, 1962), for instance, a film that catalogs “bizarre” practices from around the world with the aim of shocking the (white Western) audience, I am aware of the mocking, objectifying, and often colonialist gaze of the makers. I squirm in my seat. I look away, wishing to distance myself from the filmmakers’ demeaning perspective on the people they filmed. However, the potential for these contradictions is literally multiplied in the case of audiovisual appropriation. Indeed, I would argue that appropriation of previously recorded material creates a multilayered structure based on our perceptions: of the film subject, of the ethical
stance of the original maker (which may be rooted in his or her historical and social context) toward his or her material, and of the ethical stance of the maker who has appropriated this material, editing and reframing its images and sounds to a new end. It is the relation between these three perceptions that will determine whether we read the reuse as ethical. This constitutes the structure of the layered gaze.

But when this layered gaze is in effect, what precisely determines whether a viewer will read a particular reuse of a particular found image as ethical or not? In her “phenomenology of the ethical gaze,” Vivian Sobchack performs a semiotic phenomenology of the filming of actual human death. She notes, “In the indexical representations of documentary the very act of vision which makes the representation of death possible is itself subject to moral scrutiny.”68 She further notes that codes such as camera shake, framing, distance, and duration may serve to justify the filming of real death, constituting our perception of the filmmaker’s “gaze” through these codes. She then delineates a series of documentary “gazes” entailed in the filming of an actual death that seem to justify this filming, an act that might otherwise be regarded as unethical. The gazes that she identifies as ethical include the “accidental gaze,” the “helpless gaze,” the “endangered gaze,” the “interventional gaze,” and the “humane gaze.”69 In other words, the maker may accidentally record the death, may be helpless to prevent the death, may herself be endangered in the situation, may attempt to intervene to prevent the death, or may record an image of death out of compassion for the dying—all of which seem to justify the filming of indexical, documentary death.

Given that the act of appropriation always occurs at a remove, however, the appropriationist who wishes to reuse an image of real death does not share the situation with her filmed subject. Hence, she is not in the same danger. Being in a different space and time, she is helpless in that she cannot intervene, but this does not justify the appropriation because she can choose whether or not to appropriate these images. Her appropriation is deliberate and cannot be excused as accidental. In fact, it is only the humane gaze—or a version of it—that may persist in the act of appropriation. Sobchack writes that “the humane gaze . . . visibly and significantly encodes in the image its own subjective responsiveness to what it sees.”70 She suggests, for instance, that sustained duration is often one of the formal elements that “visibly and significantly encodes” the humane gaze. This sense of encoded “subjective responsiveness” is deeply relevant to the reading of the ethics of audiovisual appropriation. However, in works of appropriation, this subjective
responsiveness must be encoded both in the *choice* of existing material and in the *editing,* which includes not only the ordering of images and sounds but also reframing, masking, superimposing, and so on. In other words, whereas in the act of filming, the filmmaker’s "gaze" is encoded in the cinematography, in the case of appropriation the appropriationist "gaze" is constituted primarily through the appropriationist’s selection and editing of the found recording.

Of course, the demand for subjective responsiveness does not apply only to images of death. Indeed, when it comes to appropriation, there are many kinds of recordings whose “misuse” seems to demand subjective responsiveness on the part of the appropriationist; otherwise, the viewer may experience the appropriation—which is always already a transgression—as an intolerable one. A strong feeling of transgression may arise, for instance, when a found recording we read as having been intended strictly for a private or limited audience (of a romantic or sexual nature, for instance) is used in a public documentary. Even if recordings of these activities exist, if we understand that they were addressed only to a particular audience—the subject’s lover, perhaps—it may seem like an ethical violation for a maker to appropriate them for widespread display, raising questions of voyeurism and violation of privacy. However, this sense of transgression may be mitigated, at least in part, by our sense of the subjective responsiveness of the appropriationist, how she or he chooses to edit and thereby reframe these private recordings—and to what end.

By the same token, there are works of appropriation that actively undermine any sense of subjective responsiveness, and this sometimes constitutes an ethical gesture in that it serves the function of critique. For instance, when the image or recorded voice of a powerful political figure is appropriated in the service of political critique, this may appear to belong to the tradition of political satire, which we generally understand as an integral aspect of freedom of expression within a democratic setting. When the critique serves to disrupt hegemonic media forms that—for instance—exclude minority identities and experiences, this also serves the function of social criticism. Yet, the ethics of such a critical gaze depends on how we perceive the target of the mockery and the power relations between the appropriationist and the appropriated subject. When this mocking gaze is aimed at a different kind of subject, it can serve reactionary functions, its humor disguising discrimination based on race, gender, sexuality, class, ability, and so on. In such instances, we may perceive the absence of subjective responsiveness as an ethical failure.
Thus, the concept of the layered gaze may help us to articulate these complex relationships that ultimately inform our ethical evaluation of the appropriation. Significantly, however, while Sobchack’s articulation of the gaze in relation to ethics is extremely useful, its focus on the visual elides the importance of audial experience. In English, there is no audial term that is parallel to “gaze,” a fact that has been a source of great frustration for me. Because I prefer not to generate an awkward neologism, I will occasionally use the term “ear” as the closest audial parallel to “gaze.” Nevertheless, I want to emphasize that the layered gaze is often a layered act of listening as well.

The layering of the gaze also gives rise to a secondary structure involved in the experience of audiovisual appropriation: a reorientation of the viewer’s attention in relation to the found recording. Writing about the appropriation of Civil War photographs in the PBS documentary *The Civil War* (Ken Burns, 1990), Judith Lancioni points to the ways in which reframing as a cinematographic technique—the famous “Ken Burns effect”—can redirect our attention to elements of a photograph that were less noticeable. For instance, she notes how this technique is used in *The Civil War* to foreground African American experience. Moreover, in redirecting our attention, she suggests that the film may lead us to notice the fundamental polysemy of each image.

The effect of reframing is analogous to the operation of a very elemental perceptual gestalt, namely the figure/ground relationship. Figure and ground are relative, but exclusive, terms; in other words, what is conceived as background cannot be reconstituted as figure without a certain amount of conscious adjustment. When viewers see in close-up (i.e., as figure) an individual whom they have just seen as part of a group shot (i.e., as background), they must make perceptual readjustments that may make them more conscious of the epistemology of seeing.  

While the reframing Lancioni describes is one important way of generating this “perceptual readjustment,” there are numerous other ways in which appropriationists transform the relationship between figure and ground, bringing latent visible—and audible—elements of the recording to consciousness. In addition, the act of appropriation may also constitute the gaze (or ear) of the original producer itself as a figure to be interrogated. Hence, in bringing to light something suppressed and important in a recording that had been overlooked or actively ignored, certain works of audiovisual
appropriation may justify their acts of "misuse." By the same token, however, the appropriationist's own gaze—as conveyed through his or her editing—may also become the object of scrutiny, particularly when misuse begins to feel like abuse. Thus, the "perceptual adjustments" that occur in the viewing of a work of audiovisual appropriation often involve a shift in attention between the layers that constitute the layered gaze. Because the sense of what constitutes an ethical appropriation ultimately depends on the individual viewer, she must perform a complex (if not explicitly thought out) evaluation of multiple ethical layers and figure/ground relationships. Through this layered act of viewing, she must decide for herself if the strategies and ends justify the misuse of the pre-existing recordings. The remainder of this book will attempt to illuminate further the structures that may guide this decision.

Chapter 1, "(Re)exposing Intimate Traces," examines some of the ways recorded sounds and images that we understand as "intimate"—considering all the various meanings of the word—have been repurposed. Through an examination of films that appropriate banal home movies, explicit medical photographs, audio love letters, and surreptitiously taken audio recordings, I pose the question of whether and in what ways such recordings can be ethically reused. I suggest that certain films have variously solicited an attentive gaze, an occluded gaze, or a disclosing gaze that may—at least for some viewers—mitigate the sense of ethical trespass that these films necessarily produce to some degree.

Chapter 2, "Speaking through Others," examines instances of audiovisual appropriation that may be understood as a form of what I call "archival ventriloquism." By manipulating a subject's recorded body and voice, an appropriationist may "speak through" that other's body and voice in a manner not entirely unlike that of a ventriloquist. I suggest that this act of "speaking through" can have a variety of ethical implications, depending on the obviousness of the act of ventriloquism to the audience and on the power dynamics established between appropriated subject and appropriationist (and, by extension, the viewer). These factors help determine whether we read the gaze of the appropriationist as "playful," "satirical," or "derogatory." Moreover, I suggest that when audiovisual appropriation overlaps with cultural appropriation, the ethically suspect specter of racial ventriloquism may emerge. Nonetheless, I argue that archival ventriloquism retains its potential as a tool for meaningful social critique.
Chapter 3, “Dislocating the Hegemonic Gaze,” examines a range of texts that disrupt their appropriated materials through a practice of what I call “embodied interruption” and the production of a “dislocating gaze,” which may engender an essential critique of hegemonic media tendencies. I argue that by inserting minority bodies or voices into texts aligned with dominant identities and ideologies, these films make visible the erasure or distortion of minority identities and experiences in mainstream media. In producing moments of both temporal and spatial incoherence, these films refuse to allow the texts they appropriate to cohere, both literally and figuratively. Moreover, by placing the minority body where it does not “belong,” these interruptions offer a critique that does not deny or disguise its situated, embodied origin.

Chapter 4, “Reframing the Perpetrator’s Gaze,” examines several films that attempt to use audiovisual appropriation as a form of ethical intervention by “repairing” an injustice that lurks within the appropriated materials. Such films appear to consciously misuse their materials in order to attempt to right a wrong. Whether they appropriate recordings originally produced by Nazis, in the service of a flawed judicial process, or in the name of “national security” within the context of the “war on terror,” such works attempt to reverse the relation between figure and ground, drawing our attention to the corrupt, unethical gaze of those who produced these recordings in the first place. Although there may be an ethical “cost” involved in these appropriations, I suggest that these films allow—or force—us to see something that we might otherwise disregard and that not looking, in these cases, is far worse than looking.

My fifth and final chapter, “Abusing Images,” examines a series of texts that arguably, at least for some viewers, fail to adhere to a certain ethical standard in relation to their imaged subjects and/or their audiences. In particular, I examine two sets of texts that appropriate the image of a murdered child and may produce—though only in certain viewers—a sense of actual endangerment. In some cases, this sense of endangerment is inadvertently elicited; in other cases, it is intentionally solicited. In either case, however, albeit to varying degrees, the texts that elicit this gaze constitute an unethical form of audiovisual appropriation.

The appropriated other, though seemingly distanced from us in space and time, is nevertheless our responsibility. As viewers who look and listen (and
like and share), we can hide behind neither the screen on which we watch the image nor the excuse that the recording was “already out there.” In looking, in listening, we are complicit. This book attempts to, at very least, help us become aware of this complicity so that we may actively decide to what degree we are willing to be party to a given misuse. Although legal means are too blunt a tool for regulating audiovisual appropriation, which is a complex, rich, and generative form, we must nonetheless continually pose the question of, as Nussbaum puts it, what values “can we best live by” so as to “live together as social beings.” Or, in other words, in a digitized media landscape in which all our images and voices are potentially up for grabs, we must ask: how can we best live with ourselves?