

1 sovereign code



Frontispiece of the "Leviathan " by Thomas Hobbes

Eric Eldred V. John D. Ashcroft,537 U.S. 186

0100010110100000010010011101010000100100001010001001001000000101001001010110101
010111010000000000100100000010010011101010000100100001010001000000010010101001010
11010101010000100010010000001001001110101000010010000101000000010101010010101
001010110100001011010001000100100000010010011101010000100100000001001001011010
01010100100001010111010001011010001000100100000010010011101010000100000001001001
01101001010000101010101110100010110100010001001000000100001101010000001000010001001
001001011000010010101110100010110100010001000000100001001001001110100100001010
00100100100001000101010010101010111010001011010000001000000101000010000100100
00101000100000010110100101010010101101010101110000100000010101101000010001000101101
000100010010001001001110100000100000101000100100100001010101010101010101101000
1011010001000001000000100001101010000100100001010001001001011010010101001010101011
10100010110100010101010100010010000001001001110101000010010000101000100100101101001010100101
011010101011101000101101000100010010000001001001110101000010010000101000100100101010
10010101101010101110100010110100010001001000000100100111010100001001000101000100100101101
001010100101011010101011101000101101000100010010000001001001110101000010010000101000100100
101101001010100101011010101011101000101101000100010010000001001001110101000010010000101000100
1001001011010010101001010110101010111010001011010001000100100000010010011101000010010000101
000100100100101101001010100101011010101011010010101001010110101101101000100000010010011101010
00010010000101001011010010101001010111010001010101101001010100101010010101101010111010001
01010101001101000010100011001000010100011010100100 q0100010110100010001001000000100100111010
1000010010000101000100100100101101001010010101101010101110110001011010001000100100000010010
01110101000010010000101000100100101101001010010101101010101110100010010001001000000
0100100111010100001001000010100010010010010110100101001010110101010111010001011010001000100
1000000100100111010100001001000010100010010010010110100101001010010111010001011010001
0001001000000100100111010000100100001010001001001011010010101001010101010111010001011
01000100010010000001000111010100001001000010100010010010110100101010101011101010111010
0010110100010001001000010010011101010000100100001010001001001001011010010101010101010

Justice Ruth Bader Ginsburg author of Eric Eldred V. John D. Ashcroft



"If the human community is to retain meaningful possession of the knowledge it is accumulating, breakthroughs to syntheses of new order are absolutely essential."

Walter Ong - 1962 review of Marshall McLuhan's "The Gutenberg Galaxy"

Breakthroughs to syntheses are hard to come by. There's a problem in the code shop. Bug somewhere. Deadbeat, bad code blocks the way. **Story Follows:**

The City of University City commissioned "buildbetterbarrel," then they banned it, banned it right out of the city library. University City is a St. Louis suburb. It's a close one, tight at the west. The money for "buildbetterbarrel" came from an earmarked city fund. The source was the city's cable licensee Charter Communications. The money was part of a 1981 license agreement: get something, give something back. The City's art bursar CALOP managed it. CALOP stands for "Committee for Access and Local Origination Programming." CALOP's inaugural mission read, *"fund cultural and educational programs produced locally by film and video makers for broadcast on regional cable channels, focused first on the needs of our citizens and the rich heritage and cultural contributions of our diverse city and region."*

Missions and mediums change. Time to tweak. In 2004 the city launched a new Five Year Plan. And while the usual anodyne, saccharin blurbs were there....

- celebrating the rich history, culture and arts of our city and region.
- supporting artists in the region, thus increasing the wealth of art and culture in a city founded on the importance of both.
- promote regional cultural and artistic offerings.

Now there was something else. The checklist recognized there might more out there.

- build a larger and more viable pool of talent supporting and expanding understanding of the arts, culture and education locally.
- look favorably on other forms of programming including concerts featuring local artists and locally written and produced dance, theatrical and animated productions.
- better position CALOP to engage in new media opportunities.

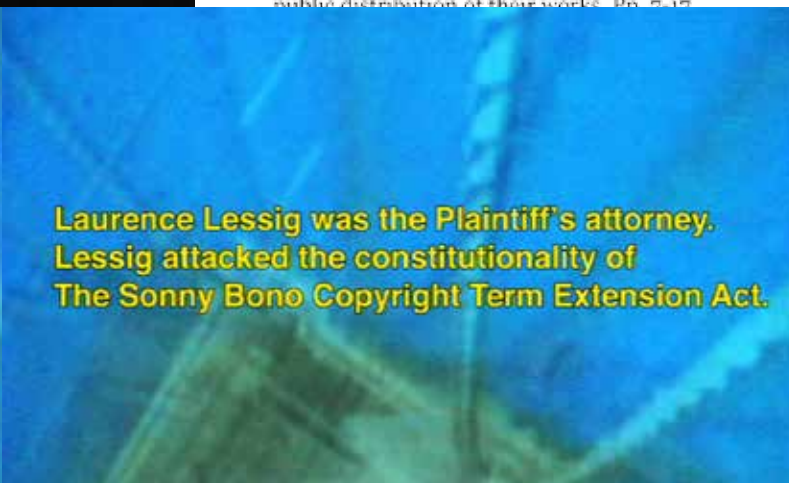
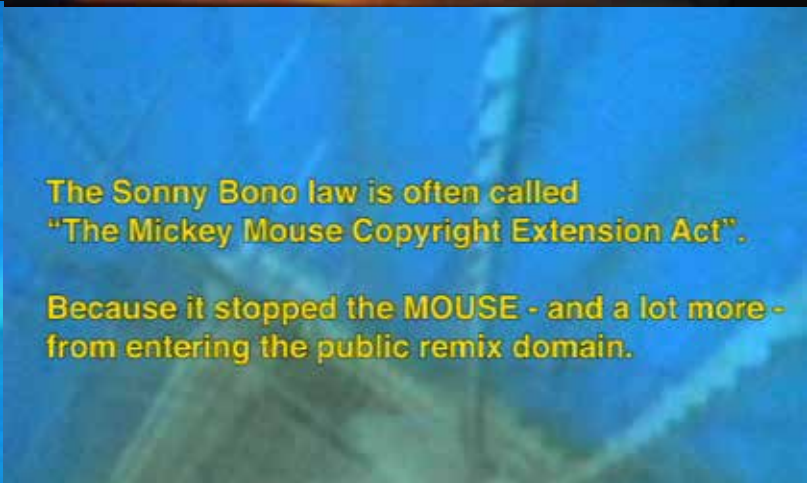
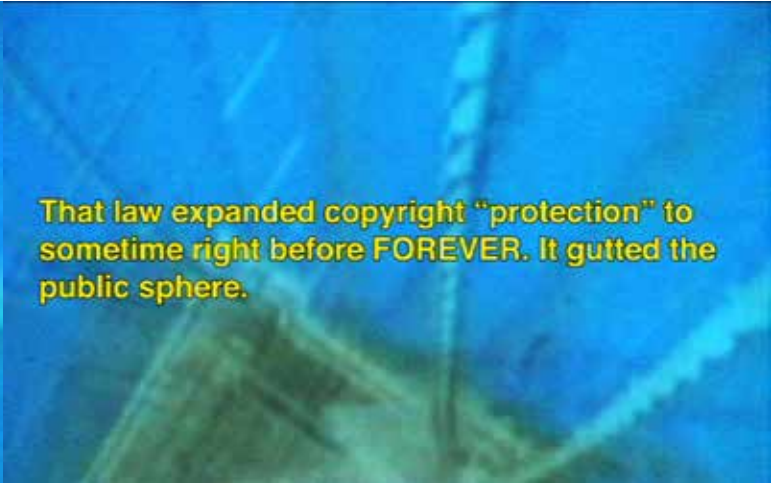
"buildbetterbarrel" kickstarted Calop's amended mission. It opened first as a remix concert. The documentary came later. The concert showcased the remix rhetorical superstars of the 1930's and 40's, Marshall McLuhan and his grammarians. Posse was the mosaic. Posse was the gist for Paul and Arno Heuduck digerati successors. The dj/vj's used the concert to map and mythologize. And they did it "Heuduck like," and in a like venue. This concert was in a de-commissioned chapel, a one time place of worship. This remix digerati - as their glaziers forerunners- wrapped the chapel "in cut and paste plaids." Their mosaic wasn't mortared in plaster, but recorded on digital tape. Posse remix-redux found its way into "buildbetterbarrel." But grammarians, even when packaged with a little house music, get wearisome. So there were an add-ons. Steamboat Willie and the Supremes turned up. The Mouse and The Black Robed 9-some were part of the mix. But even with this ace line up things didn't work out. Why? What happened? It is detailed in the side-bar emails-memos. They try to explain the ban, the layout, what went wrong. They decode the attempt to link fair-use, copyright, and digital commons to a new media heritage site, and "out" the bad code.

Don't blame The Mouse or Justice Ruth Bader Ginsburg for why the barrel got banned. Blame it on a bug. This bug blurs the line, clouds what separates public and private realms. Need markers, a little GPS. The challenge is assembling cartographic tools to help "city fathers" and the rest of us.

the images are taken from

the buildbetterbarrel

segment “bench” and a
post production remix concert,



copyrights also authorizes patents, the Court’s inquiry is significantly informed by the fact that early Congresses extended the duration of numerous individual patents as well as copyrights. Lower courts saw no “limited Times” impediment to such extensions. Further, although this Court never before has had occasion to decide whether extending existing copyrights complies with the “limited Times” prescription, the Court has found no constitutional barrier to the legislative expansion of existing patents. See, e.g., *McClurg*, 1 How., at 206. Congress’ consistent historical practice reflects a judgment that an author who sold his work a week before should not be placed in a worse situation than the author who sold his work the day after enactment of a copyright extension. The CTEA follows this historical practice by keeping the 1976 Act’s duration provisions largely in place and simply adding 20 years to each of them.

The CTEA is a rational exercise of the legislative authority conferred by the Copyright Clause. On this point, the Court defers substantially to Congress. *Sony*, 464 U. S., at 429. The CTEA reflects judgments of a kind Congress typically makes, judgments the Court cannot dismiss as outside the Legislature’s domain. A key factor in the CTEA’s passage was a 1993 European Union (EU) directive instructing EU members to establish a baseline copyright term of life plus 70 years and to deny this longer term to the works of any non-EU country whose laws did not secure the same extended term. By extending the baseline United States copyright term, Congress sought to ensure that American authors would receive the same copyright protection in Europe as their European counterparts. The CTEA may also provide greater incentive for American and other authors to create and disseminate their work in the United States. Additionally, Congress passed the CTEA in light of demographic, economic, and technological changes, and rationally credited projections that longer terms would encourage copyright holders to invest in the restoration and public distribution of their works. *Id.*, 517.

...rely on several novel readings of the Clause, are...
...tion of the CTEA’s 20-year term extension as a...
...ed Times” constraint. Critically, petitioners fail to...
...ant threshold with respect to “limited Times” that...
...not create perpetual copyrights, and neither...

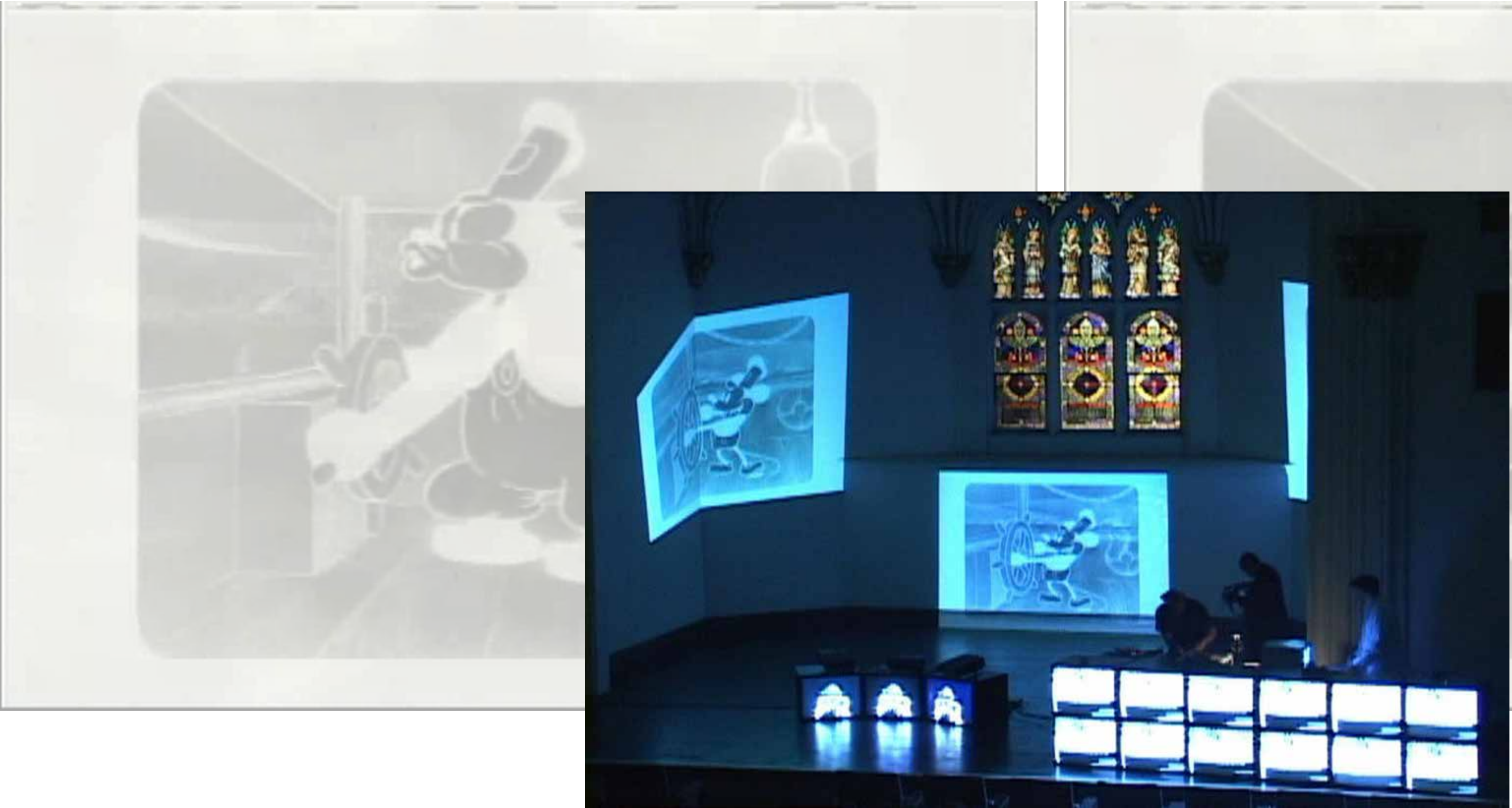
...d on the proposition that Congress may not...
...the author, are unavailing. The first such...
...overlooks the requirement of “originality,”...
...one Service Co., 499 U. S. 340, 345, 359. The...
...Rather, it addressed only the core question o...
...st trained on the Copyright Clause words...
...ue the “limited Times” prescription, as to...
...ailing is petitioners’ second argument, that...
...e Progress of Science” because it does not...
...o works already created. The justifications...
...provide a rational basis for concluding that...
...ongress’ unbroken practice since the found...
...e copyright term to both future works and...
...ted is petitioners’ third contention, that the...
...additional consideration ignores copyright’...
...inal work an “exclusive Right” for a “limited...

Tim[e]” in exchange for a dedication to the public thereafter. Given Congress’ consistent placement of existing copyright holders in parity with future holders, the author of a work created in the last 170 years would reasonably comprehend, as the protection offered her, a copyright not only for the time in place

Date: Mon, 2 Apr 2007 13:55:43 0700
From: Paul Guzzardo <paulguzzardo1@yahoo.com>
Subject: documentary items
To: Ed Nickels <ENickels@nucalgon.com>,
Cameron Sanders <csanders@mediareresults.com>,
Dennis Riggs <director@hectv.org>
To: Ed Nickels, Deninis Riggs and Cameron Sanders

Thanks for the new CALOP logo animation. It will be used as an insert window in the doc credits. I wanted also to use this email to take time to provide a status report. First of all I am in the process of doing additional post production work, i.e. audio balances and some background additional music. This also includes inserting some voice over material to augment the narrative aspect of the documentary. As discussed in earlier emails, there are groups/associations that are interested in the documentary, specifically as it highlights our metropolitan area's "rediscovered new media history." I'm going to send DVD 's on to them: Geddes Institute, The Media Ecology Association and AMLA (The American Media Literacy Association). I understand, however, that in this first 6 months, any presentation requires authorization by the CALOP board. AMLA <http://www.amlainfo.org/> will shortly be putting a link at their convention site to the buildbetterbarrel blog and two other web sites relating to the documentary. The documentary in addition to being shown at the conference will be remixed on June 23rd at the AMLA convention. The remix will be part of a 2 hour concert and panel. It opens the conference. As you will note, the draft documentary I submitted last month was 36 minutes. I anticipate that the final draft will be closer to 38 minutes. I believe given content and the documentary's hybrid new media and narrative temperament- this length is necessary, and it does help in pulling in this international circle. I think this is critical if this story is to get out of St. Louis . I wanted to raise this at this time because I understand that the contract references a 30 minute broadcast product. Shaving "buildbetterbarrel" down to 30 minutes I'm afraid would greatly affect the quality and impact of the documentary, specifically in trying to grab a share of this international audience. As a side note my documentary my documentary SECRET (with Kathy Corley) has played a number of times on HECTV, and while not a Calop funded documentary, it runs for 20 minutes. Also I've structured the documentary in terms of these "nine events of new media" with that hope that the individual segments could eventually migrate to the new generation of web video distribution models such as www.youtube.com I think this would further St. Louis's claim to being a genesis of new media. Finally, please advise if I need to send copies of my third quarter bill and invoices to anyone else. It was included in the packet that I dropped off at that the University City Manager's office.

Paul



Paul Guzzardo <paulguzzardo1@yahoo.com>
04/18/07 05:37 PM

To: Ed Nickels <ENickels@nucalgon.com>
cc
Subject: Fwd: buildbetterbarrel

Mr. Nickels

This is confirm our conversation this afternoon in which you requested a legal memorandum regarding the use of remixed Steam Boat Willy fragments in the "From the Bench" segment of "buildbetterbarrel". I will prepare a short memorandum regarding the segment and the fair use doctrine. I will email it to you later this week.

It is also my understanding that you are contacting Janet Watson regarding the 3rd quarter disbursement/ billing of \$2500 and that a check can be picked up tomorrow.

And of coures thank you for continued support of what I believe will be an important documentary.
paul

Nu-Calgon Wholesaler Inc., 2008 Altom Ct., St. Louis, MO 63146, is not responsible for errors or omissions in this e-mail message. Any personal comments made in this e-mail do not reflect the views of Nu-Calgon Wholesaler Inc. If you are not the intended recipient, please note that any dissemination, distribution or copying of this communication is strictly prohibited and delete this message from your computer.

If you wish to not receive future e-mails from Nu-Calgon Wholesaler Inc. reply to the sender and put "delete" in the subject line.

CALGON is a licensed trade name.

From: Paul Guzzardo <paulguzzardo1@yahoo.com>
To: Eric Friedman <erics@friedmangroup.com>
Sent: Thursday, April 19, 2007 12:48 PM
Subject: Fwd: buildbetterbarrel - memo

fyi
Dennis raised the question of copyright
and i told ed i give him a memo
here it is
and mom is better
she had the flu and got dehydrated
hospitalized
but I'm picking her up now
Paul

Paul Guzzardo <paulguzzardo1@yahoo.com> wrote:

Date: Thu, 19 Apr 2007 10:46:29 -0700 (PDT)
From: Paul Guzzardo <paulguzzardo1@yahoo.com>
Subject: buildbetterbarrel - memo
To: ENickels@nucalgon.com
CC: Dennis Riggs <director@hectv.org>

Mr. Nickels

I received your note regarding the disbursement. I will however not be in today as my mother is ill, and I can not get to St. Louis . But an associate David Keith Holz – a professor of art history at Western Illinois -University (WIU) will pick up the check tomorrow morning. I should add that WIU has inquired about showing "buildbetterbarrel" next fall.

Also I've attached the requested Memorandum. It provides "From the Bench" segment background and addresses the application of the FAIR USE doctrine. I'm copying Dennis Riggs with this.

And again thank you. Paul Guzzardo

ENickels@nucalgon.com wrote:

Paul, I confirmed late yesterday with Janet that she has the check for you. Any problems, etc. please don't hesitate to get in touch with me. Ed Nickels

Nu-Calgon Wholesaler Inc. is not responsible for errors or omissions in this e-mail message. Any personal comments made in this e-mail does not reflect the views of Nu-Calgon Wholesaler Inc. If you are not the intended recipient, please note that any dissemination, distribution or copying of this communication is strictly prohibited and delete this message from your computer.

CALGON is a licensed trade name.

Paul Guzzardo <paulguzzardo1@yahoo.com>
04/18/07 05:37 PM

To: Ed Nickels <ENickels@nucalgon.com>
cc
Subject: Fwd: buildbetterbarrel

Mr. Nickels

This is confirm our conversation this afternoon in which you requested a legal memorandum regarding the use of remixed Steam Boat Willy fragments in the "From the Bench" segment of "buildbetterbarrel". I will prepare a short memorandum regarding the segment and the fair use doctrine. I will email it to you later this week.

It is also my understanding that you are contacting Janet Watson regarding the 3rd quarter disbursement/ billing of \$2500 and that a check can be picked up tomorrow.

And of coures thank you for continued support of what I believe will be an important documentary.
paul

Nu-Calgon Wholesaler Inc., 2008 Altom Ct., St. Louis, MO 63146, is not responsible for errors or omissions in this e-mail message. Any personal comments made in this e-mail do not reflect the views of Nu-Calgon Wholesaler Inc. If you are not the intended recipient, please note that any dissemination, distribution or copying of this communication is strictly prohibited and delete this message from your computer.

If you wish to not receive future e-mails from Nu-Calgon Wholesaler Inc. reply to the sender and put "delete" in the subject line.

CALGON is a licensed trade name.



fair use memo 1

BACKGROUND : The “buildbetterbarrel’s” event segment “From the Bench” is a video essay on creativity and intellectual property law. This multimedia short uses a digital remix grammar to demonstrate the intellectual property doctrine - FAIR USE. Fair Use is a central part of our copyright system. It allows any of us to quote and reproduce parts – or sometimes all – of copyrighted works, if the use advances creativity and democratic discussion. There are similar free expression safeguards in trademark law. Together, they assure that the owners of “intellectual property” cannot close down the free exchange of ideas.

“From the Bench” is also a journalist record of a remix concert. It remixes and edits a live concert video feed. The concert was performed at Winifred Moore auditorium on April 28th. The content for the Winifred Moore concert was initially developed for the February 2006 installation laser/net. The venue was Centrespace Gallery Dundee Scotland. <http://www.vrc.dundee.ac.uk/centrespace/2006/lasernet.html>

Laser/net opened “The City in the Digital Age” which was sponsored by the Geddes Institute for Urban Research, University of Dundee. It was part of a series of symposiums examining the effects of digital technology on civic life and space. Experts were drawn from the fields of geography, urban design and planning, architecture, new media and from law. Laser/net - as a content generating installation - is discussed at length in my article in the current issue of the architectural journal AD. Is There a Digital Future Landscape Terrain? –<http://www3.interscience.wiley.com/cgi-bin/jhome/109924136?CRETRY=1&SRETRY=0> (Remixed images from “steamboat willy” are in that publication.)

The remixed “steamboat willy” footage “From the Bench” falls clearly within the definition of Fair Use. The Disney Corporation has NO MORE right to claim a copyright infringement in “From the Bench” than would Wal-Mart or Halliburton. (On October 27, 2006, unedited video segments “From the Bench” were presented to the School Of Information and Library Science Student Association of the Pratt Institute. <http://pratt.edu/~silssa/> .The presentation included a discussion of the fair use doctrine/issues contained in this memorandum.)

SPECIFIC CONTENT : “From the Bench” uses a digital remix art practice as a device/strategy to remix a United States Supreme Court oral argument. The case is Eldred v. Ashcroft. 537 U.S. 186 (2003). The sound track’s remixed voices are the voices of the Justices of the United States Supreme Court and of plaintiff Eldred’s counsel Lawrence Lesseg. (Note-The opening audio is from the file sharing case Grokster versus MGM, in which counsel refers to the land mark betamax case, United States Supreme Court decision, Sony Corp of America v. Universal City Studios, 464 U.S. 417 (1984))

Eldred v. Ashcroft was a case heard before the Supreme Court of the United States, challenging the constitutionality of the 1998 Sonny Bono Copyright Term Extension Act. Oral arguments were heard on October 9, 2002, and on January 15, 2003. The Sonny Bono Copyright Term Extension Act is also referred to as the Mickey Mouse extension act. The effect of the Copyright Term Extension Act was to extend copyright law right prior to the date “the mouse” was to go into the public domain. This is why fragments of Steamboat Willy were used in “From the Bench” and why plaintiff’s counsel Lawrence Lesseg voice can be heard talking about Steamboat Bill. Steamboat Bill (1928) is a feature-length comedy silent film featuring Buster Keaton. It was parodied by Walt Disney’s Steamboat Willie.

I should add that I am leading a panel addressing “creativity in an information age” at the American Media Literacy Association’s (AMLA) <http://www.amlainfo.org/> national media literacy media conference in St. Louis scheduled from June 23-26 It is anticipated that 500 attendees will be at the conference and the accompanying research summit. The panel will discuss this and other issues.

And a final thought - I would be happy to arrange for a panel of intellectual property lawyers to discuss fair use. Possible such a panel could proceed or follow a HECTV’s showing of “buildbetterbarrel.” Coupling a panel discussion with the documentary would certainly offer another layer to the documentary, and I would think would be of interest to a broad television audience.

fair use memo 2

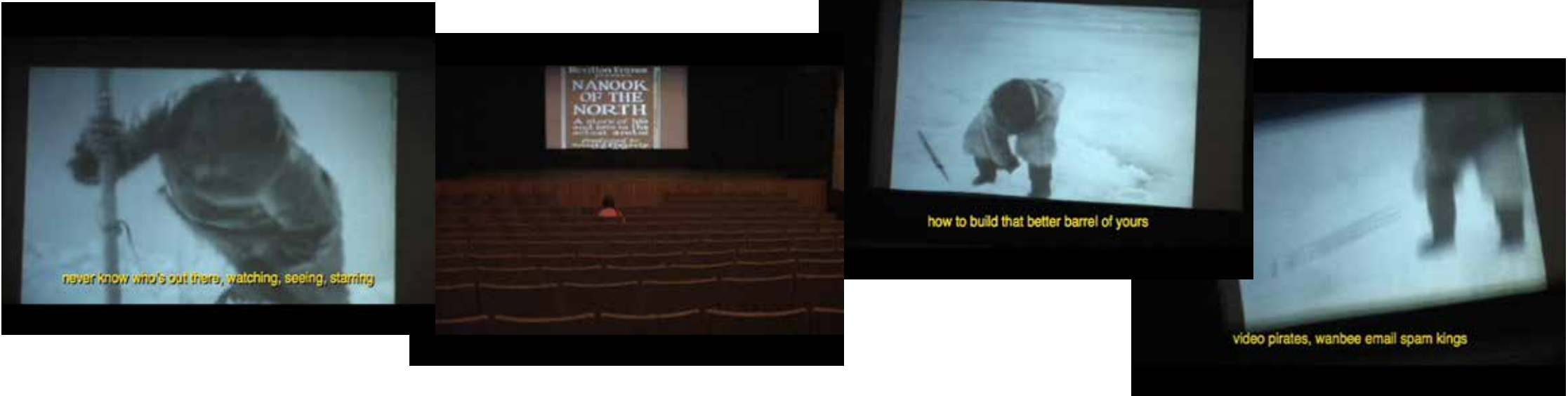
Please find additional comments regarding “buildbetterbarrel.” I believe it would be helpful if I could make a short presentation at an upcoming board meeting. I will be in St. Louis the second week of October through mid November.

1) FAIR USE DOCTRINE The original April memorandum provided a detailed analysis on “the fair use doctrine” and its application to “buildbetterbarrel.” In that memorandum I mentioned that the National Media Education Literacy Conference (NMEC) was scheduled in St. Louis in June, and that I’d be taking part in the Conference. By way of an update, “buildbetterbarrel” was shown at NMEC, and the “fair use doctrine” was addressed at the Conference. Speakers discussed the devastating effect restrictive /narrow applications of the “fair use doctrine” had on our nation’s classrooms. A post conference “fair use doctrine” publication was recently released. It is titled “The Cost of Copyright Confusion On Media Literary Education.” It was funded by the MacArthur Foundation, and is attached.

2)) FIRST AMENDMENT As discussed in earlier conversations with Calop representatives THERE IS ANOTHER ISSUE HERE. The “From the Bench” segment is afforded protection as SPEECH under the First Amendment of theUnited States Constitution and its Missouri counterpart. This overriding constitutional right makes a fair use/intellectual property legal analysis somewhat academic and moot. “From the Bench “is both reportage

and commentary on SONY CORP. OF AMERICA V. UNIVERSAL CITY STUDIOS, INC., 464 U.S. 417 (1984) and ELDRED V. ASHCROFT 537 U.S. 186 (2003). In these decisions the United States Supreme Court considers how we construct and tell stories in an information age. “From the Bench” examines the Court’s analysis by using 1) explicit case content 2) the “cut and paste” multimedia syntax and grammar that is the subject of the cases. Every citizen has a First Amendment right to comment on governmental policy, and that includes a new media film maker. That right cannot be abridged by a municipal corporation. I am simply exercising my first amendment right of free speech.

3) THE CHILDREN OF UNIVERSITY CITY in my first meeting with your former president Cameron Sanders, we discussed the heritage of St. Louis as storytelling site. It was at that meeting that Cameron gave me a copy of Calop’s new 5 year mission. He suggested that I submit a grant for a new media related piece. We talked about St. Louis’s Marshall McLuhan and Father Water Ong, and why both men were so important to the children of University City. Marshall McLuhan and Father Water Ong wrote about why we need new ways to tell stories and to pass them on. They feared what would happen to future generations if there were obstacles “to the telling and to the passing on our stories.” **This is why I made the documentary “buildbetterbarrel.”**



* sometime after the events detailed in the emails and the fair use memos CALOP ceased funding documentary filmmakers

buildbetterbarrel went back into production after CALOP banned the barrel. release 2 included a double feature. the add-on was Nanook of the North, the first ever documentary. this time around the storyline entailed two bungling video pirates_ "wannabe internet spam kings."

- 1) a Japanese voice over pirate,
- 2) a Bulgarian voice over pirate.

the script is above.



yeah what's with all the snow

4 もう一つおきつてとて思はせはすよ。
5 ちゃんとあさてお
6 三脚台 ここにむてきてといたのに
7 窓に人に見えたら
8 三脚台を松葉が代わりに使えたら
9 どうしたの? もう
10 梅雨のたる人 ぬるぬる ぬるぬる ぬるぬる
11 じつとして
12 皆どこ? 誰もいないしもない
13 その方が安全ね
14 変えようね
15 じつとみてよ 星のかがやきまじないで
16 わかって事
17 誰かいるかわからないね
18 どうしたんだろう 一つたすにきけるの
19 こんな生活をするなんて
20 二流の密造者 重創者 ぬるぬる
21 どちらかといえば 三流
22 著作権侵害者 ぬるぬる
23 勇ましい男ね
24 特別 ぬるぬる
25 ビデオのとり方
26 良いビデオの作り方 うでか
27 理解出来ない (かわらない)
28 ぬるぬる ぬるぬる ぬるぬる ぬるぬる

10 もうあつたの ぬるぬる
18 どうしたんでしょう 一つたすにきけるの

22 著作権侵害者ね。

- 1) Late, late we're late - **Закъсняваме!**
- 2) not my fault - **не е моя вихата**
- 3) you didn't charge the battery, FOOL **ти не зареди батерията, глупак**
- 4) I thought we had another one - **мислех че имаме друга**
- 5) Steady hold it, hold itsteady now - **полека дръж го, дръж го полека**
- 6) We needed to get that tripod in here, but you said NO.... **Ние трябваше да донесем триподът тук, но ти каза не**
- 7) Explain a tripod to Mr. Ticket Taker
- 8) Could have walked in with a limp, used it as a crutch
- 9) hey what's going on here? **Ей, какво става тук**
- 10) Good barrel stuff comes later, probably **Буре**
- 11)I guess, just stay steady, solid. **предполагам просто отой неговичи**
- 12) Where is everybody ... this place is empty **къде са всички, това място е празно**
- 13) A lot safer that way **много по-сигурно е така**
- 14) Seems odd **изглежда странно**
- 15) But keep your eyes open **Но си дръж очите отворени**
- 16) I know, my job **Знам, моя е работата**
- 17) Never know who's out there....watching... seeing... starring **вие не знаете кой кой е там, виждаш, виждаш, виждаш**
- 18) I don't get it, when do we get to the barrel **не разбирам, кога...**
- 19) what a way to make a living **каква работа**
- 20) second rate bootleggers **второстепенни контрабандисти**
- 21) third rate I'd say **третостепенни**
- 22) video pirates - wanbee email spam kings **видео пирати - искащи да си имат спам кинг**
- 23) male enhancement - **мъшко подобрение**
- 24) but with a special treat, a big gift **но със специален дар, подарък**
- 25) "a how to video" - "как" видео
- 26) how to build that better barrel of yoursmy wrist is sore, take it **как да построим това твое по-добро буре... китката ми е уморена, вземи го**
- 27) I don't get this
- 28) ...What's with all the....snow **не разбирам това**

Da my se nebugu, всичкия този сняг!

10 second take