

## EARLY CINEMA'S HEYDAY OF COPYING

### The too many copies of *L'Arroseur arrosé* (*The Waterer Watered*)

*Between 1895 and 1909, new American film entrepreneurs complained that 'copying' was out of control. Although 'copying' may have been widespread, and sometimes referred to as 'theft', it was more a worldwide industry practice than an extralegal operation. Before the 1909 US court case that decided the question of copyright in the motion picture, movie producers copied in an attempt to meet the demand for product. My discussion of the notion of 'copying', however, is somewhat ambiguous in that I need to make the term cover motion picture print duplication ('duping') as well as remaking. Framed by Lawrence Lessig's statement about the contemporary period, 'copyright is out of control', I wonder here if today's excessive use of copyright could be foretold in the way in which early cinema pioneers talked about the order that regulation would bring to the new industry. I ask, more specifically, if this early period of unfettered reproduction can tell us anything about contemporary conditions in which the technological capacity to duplicate has outstripped the state's capacity to regulate duplication.*

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Between 1895 and 1909, new American motion picture industry entrepreneurs complained that 'copying' was out of control. There was, however, a sly hypocrisy in this complaint. In the years before copyright in the moving picture was tested, the major players in both the US and Europe all were involved in a variety of copying practices in an effort to profit quickly. They all attempted to undercut their competitors either by striking duplicate prints or by remaking short films which they then sold as their own. Especially between 1896 and 1903, one can conclude from reading the US trade papers, there was a particular copying frenzy on the part of the early movie companies, a frantic effort to replicate each other. In later years, the first film historians concurred that before key tests of the US code, the last of which occurred around 1909, copying was as much an industry practice as it was an industry problem.<sup>1</sup>

A century later, however, the copyright principle with its monopoly grant may be much more clearly seen as nakedly corporate. In 2001, for example, Stanford Law professor Lawrence Lessig, in a challenge to the entertainment industry, would stand up to movie protection czar Jack Valenti, then president and Chief Executive Director of the Motion Picture Association of America. Lessig's argument? Not that copying is running rampant but that, to quote Lessig, '*copyright* is out of control' (Lessig and Valenti 2001: n.p., my emphasis).

Revisiting cinema's early moment allows me to consider how it is that we arrived at this point in US copyright law. Like Lessig, I object to the implication that ordinary users are pirates. The degree to which we are constituted as potential infringers reminds me of the Hitchcock films which so successfully implicate the viewer in the crimes committed by characters on screen. Viewers are temporarily positioned as the murderers they would never want to be. In an effort to counter this assumption that users are pirates, my approach urges a vigilance, not against film and tape piracy, or against other alleged forms of piracy, but a vigilance in relation to discourses of copying and accusations of theft, often our own.

In the period 1895 to 1909, there was much uncertainty about the legal protection of the 'work', something as yet undefined and, as in the case of the motion picture, not even fully evolved as a form. In a flurry of copyright test cases in the first decade of the twentieth century, motion picture producers in the US tried to use the courts to put each other out of business as much as to force the courts to resolve the issue of whether images that moved were copyrightable. Copyright was, in other words, one of a number of cutthroat business strategies. Certainly media historians can do more to represent this period as one of venal struggle over ownership in the work, but I also want to try to put a more positive spin on the business practices of the heyday, which I attempt to do here by arguing that copying also should be seen as a solution to the problem of too little product to meet the demand for 'moving pictures'. From the point of view of the aggressive new industry entrepreneurs, they were pioneering copying as a business practice that could be legitimized as inventory-building. Their object was to supply exhibitors with a popular, proven product by any means. But what means would win out? Here we might remember that in this period it was not even clear where the money was to be made – in selling cameras and projectors or in producing, distributing, and exhibiting moving pictures.

While one part of my project aims to describe an early culture of copying and copyright confusion, another involves a challenge to historiography that has featured legal 'winners' and 'losers'. While I believe that this narrative is increasingly on the wane, it still serves as an unacknowledged underpinning to most histories that take up questions of the expansion of capital. Here, in a nutshell, is the kind of 'winners and losers' story that I am challenging: *When*

films were not copyrighted, they were fair game for pirates who made illegal 'dupes'. This practice meant that important artists (the best example of which is French filmmaker Georges Méliès) lost out to the pirates. While the pirates made fortunes, the original artist never made the money that he could have made; witness Méliès, who died in relative poverty.<sup>2</sup> Note here how an economic lesson is foregone in favor of the personal tragedy of the artist.

The focus on the development of an art form, which requires a suffering Méliès, is at odds with an understanding of the industrial struggle for control, deflecting attention from what was undoubtedly a corporate skirmish. Méliès participated in the scramble for culture as much as the other nascent European and American entrepreneurs, and in this chaotic period one finds numerous examples of companies crying 'thief' while they copied each other. Copying was a calculated strategy for maintaining market control as well as a means for getting a start in the new industrial field. After all, Georges Méliès's very first film, *The Card Players*, was a copy of the Lumière company's *The Card Players*.<sup>3</sup> Six years later, with the tables turned after his *Voyage dans la lune* (*A Trip to the Moon*) (1902) became so extensively duplicated in the US, Méliès attempted to check clandestine printing of his titles by establishing a branch of Star Films, where the most damage to the company was occurring. Méliès's brother, Gaston, in the catalogue issued at the 1902 opening of the Star offices in New York, announced: '... we are prepared and determined energetically to pursue all counterfeiters and pirates' (Ramsaye 1986, p. 396). Again, Terry Ramsaye's portrayal of Méliès, as the only defender of motion picture copyrights taken out in the US, fails to characterize the climate of copying.<sup>4</sup>

Other examples abound and indicate that no company was above the fray. Perhaps understanding the success of its own comedy, *Arroseur et arrosé*, the Lumière company copied an American idea, most likely the Edison Company *Pillow Fight* (1897), as *Bataille d'oreillers* (1897).<sup>5</sup> The Edison company itself was copying Lubin company films before Lubin, the Philadelphia upstart, retaliated against the more powerful Edison by copying its titles. Vitagraph did Edison's dirty work, buying and duping the Lubin films that found their way into the Edison list of titles in circulation.<sup>6</sup> But the vague premise of copyright, nothing more than an exclusive right that can be turned into a defense against others' use of a work, can gloss over the important difference here between two kinds of copying, as I have mentioned, remaking and duping. The Lumière remake, for instance, involved restaging and reshooting the Edison film, while Vitagraph's duping involved the purchase of Lubin prints which were then reprinted.<sup>7</sup>

Much of this information about duplicating and remaking, although relatively well known, has remained a film industry history narrative subplot and has received even less attention in cultural studies. In the first versions of film history, it was important to single out the breakthrough films, to proclaim masters and masterpieces. Some might argue that in attempting to compensate

for being thought an industry and not an art and consequently founding itself on a masterpiece tradition, the first film criticism too blindly followed the model of fine arts and literature. The earliest film histories would have to establish something that (after so many professional and amateur 'histories' of Hollywood) we no longer question. We take for granted that business history can be wrapped up in a discourse of the artistic masterpiece. Now, painfully aware of the fate of Walter Benjamin's influential hypothesis about how mass production would de-auraticize the original, we need to assert again the challenge the multiple poses to the enshrined 'masterpiece' and to further press claims about the troublesome massification in mass culture (Benjamin 1968). I am relishing this moment before control, savoring the contradictions inherent in control, and seizing the difficulties of this moment as our legacy.

### **The adventures of *L'Arroseur arrosé* (*The Waterer Watered*)**

I have elsewhere discussed one of the most interesting contradictions that inheres in copyright control as the tendency toward both availability and limitation. Considering the copying epidemic in early cinema suggests another approach to the contemporary debate as to whether copyright regulations contribute to 'creativity' or innovation by securing profit for the owners, or whether copyright restricts 'expression' (and therefore enterprise) by limiting signs available for recombination (Gaines 1991). Lessing's statement, 'copyright is out of control', would suggest that in the contemporary moment the tension is being resolved on the side of limitation (restriction as good for business) as opposed to availability (restriction of restrictions). Thus, starting with some skepticism about the ways in which US intellectual property regulation has historically been viewed as 'good for business', we might be able to ask more pointedly if in the early culture industries the benefit is to one business over another or to business in general. There it is clear that in the struggle for market dominance among early motion picture companies, holding copyrights and patents was one of the most effective means a company could employ to eliminate or weaken the competition. My position in regard to the proliferation of multiple copies, including so-called unauthorized ones, is perhaps a minority position, as I hold that each copy is extremely interesting in its likeness to the other and the more copies the better. Without a doubt, the discourse of the masterpiece in league with the business history of 'winners' has conspired to suppress the history of the making, between 1895 and 1900, of so many American as well as European films featuring gardeners whimsically sprayed with a hose. It is difficult to reclaim this moment as anything other than market chaos, but in the following, against the current, I will stress the market forces backstory and pose what could be called the phenomenon of multiple singularity.

Of the major film history texts that I have surveyed, only two mention the ten different copies of *L'Arroseur arrosé* that circulated in this period.<sup>8</sup> Consider the implications of one *L'arroseur arrosé* standing in for all of them, as this title so often does in film history textbooks (Parkinson 1995, p. 17). The degree to which early film historians folded so many versions into one (or in a few instances two) is emblematic of the degree to which they were committed to film history as the story of the achievement of industry dominance. Contemporary film historians have only recently become interested in the relation of legal culture to form, although the question of the relation between mode of production and the evolution of film style has been and continues to be important. But *L'arroseur arrosé* raises more than the issue of the discovery of cinematic space or the as yet unanswered question of the evolution of the story film.<sup>9</sup> Suppressing the unusual number of print variations makes it difficult, if not impossible, to approach the story of the years before the question of copyright in the moving image was resolved without lamenting the absence of regulation. Thus it is that I am attempting to see this less as a question of the absence of regulation than as the remarkable presence of so many competing signs.

If we look only at this one title in the first two to five years of the fledgling industry, between 1895–1900, we can see duping and its alternative, remaking, as widespread business practices in all their glory – and I do mean glory, for the ten copies of *The Waterer Watered* attest to the unfettered ingenuity of the early French, US, and British companies. From the point of view of an audience seeking entertainment, repeat productions meant more possibilities to see a popular comedy short. From the point of view of aesthetic history, the number of permutations of a single scenario is also relevant, an object lesson in the semiotics of the narrative fragment. As an initial proposition, it would seem that if the question of copyright protection mattered – and continues to matter – it is primarily from the standpoint of a monopoly over signs. Another way of putting this would be to say that only from the standpoint of maximum profit does copyright protection of the singular work matter.

The question remains as to whether this historical exercise helps us to imagine the founding conditions of limitation versus availability. Consider the simple scenario of the boy 'watering' the gardener who 'waters' the boy back. We only conceive of this 'idea' as protectable today after a century-long cultural experience of escalating claims to this effect. But the real problem with any argument for a limit to the number of cultural signs available for recombination is that it starts with a quantified understanding of the way cultural production works.<sup>10</sup> What is remarkable about the heyday is the ingenuity with which so many rival companies circumvented the untested copyright law, and the speed with which the earliest companies rushed out their competing product, product scandalously based in this case on what some

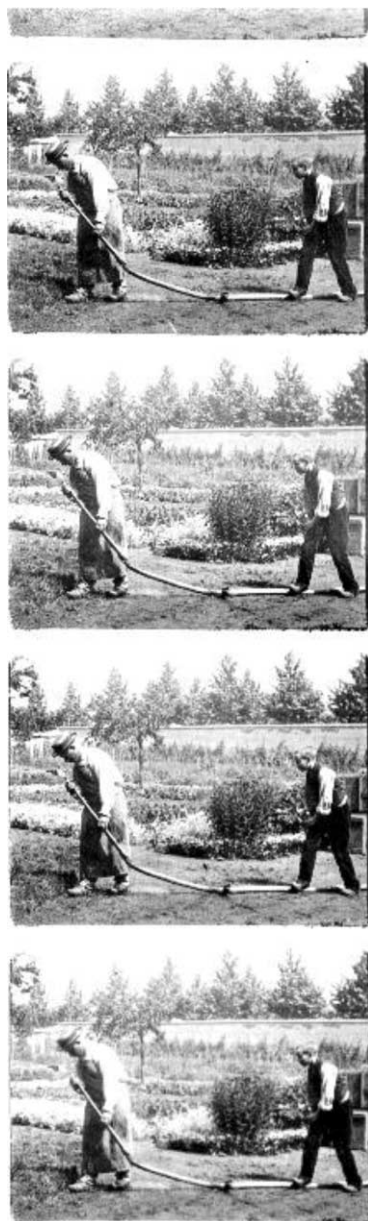
would now say was the 'same idea'. A mapping of the first five exhibition years of *L'Arroseur arrosé*, this wonder product, suggests the remarkable rapidity at which it traveled, from conception to the 'shelf', so to speak. It was moved, that is, by way of a network of product spies, thieves, and middlemen, and limited in its distribution only by the number of weeks it took a company agent to travel with a hand-carried print between Paris and New York by boat and train. And here I am deliberately conflating the story conception with the form it takes as a 35mm film print that could be projected as part of the show in a vaudeville or a more makeshift storefront theatre. For my part, it is a calculated provocation, a challenge to legal sources that have had so much difficulty describing cultural phenomena and the forms they take. Let me now attempt to compile the accounts of the many ways in which the waterer and the watered story was produced and seen.

Film studies students in the US and Europe will be familiar with this canonical work which in the chronological approach to film history usually is screened in the first week of class. For those unfamiliar with this 60 second comedy, let me say that it is a joke most likely inspired by a French newspaper cartoon. The gist of the joke is that the gardener does not at first see the prankster step on the gardener's watering hose, although the viewer does. When the gardener examines the nozzle to see why the water has stopped, the boy takes his foot off the hose, releasing the spray of water into the gardener's face. Since, in the manner of the gardener's retaliation against the boy, the surviving prints begin to diverge, let me leave the question of the core story there and proceed to the problem of tracking the variations. Most recent French language sources now confirm that as *Le jardinier* (*The Gardener*), the film was shown on the historic Paris exhibition program, 28 December 1895.<sup>11</sup> I stress 'as' *Le jardinier*, because this was one of the unofficial titles used for the film until the publication of the first Lumière company print sales catalogue in 1897. There the official title became *Arroseur et arrosé*, a title translated from the French into English by the Institute Lumière as *Sprinkler and sprinkled*. Jean-Marc Lemotte, archivist at the Institute Lumière, explains that after the first version in 1895, two others films with the gardener sprinkled by the boy were shot, but all three were finally listed in the catalogue as *Arroseur et arrosé*. This would be nothing more than interesting evidence of company efficiency if it were not for the significant difference in the ending of the first as compared with the second and third, as I have noted. In the French catalogue, number 99-1 (1895), although the waterer is watered, the waterer isn't.<sup>12</sup> Seldom noted, even today, is the fact that in 99-1, the boy is spanked as punishment, and in 99-2 and 99-3, the gardener instead turns the hose on the boy. It is difficult to resist the word play of the preferred French title *Arroseur et arrosé* (*Sprinkler and sprinkled*), but the characterization of the two figures in terms of the agent and the butt of the joke ever so slightly locks the gardener and the boy into separate roles. One wonders why, in the

English-speaking world, the preferred title has not been the official Lumière one. Perhaps *L'Arroseur arrosé*, 'the waterer watered', rather than 'waterer and watered', does more to suggest that the first waterer (the gardener) is watered as well as the second (the boy), going a little further toward implying that *two* waterers are watered. The verb helps to pose the riddle. 'Which waterer is the waterer who is watered?' The comedy of the tables turned, in which the prankster who hoses the gardener is himself hosed down in return, becomes a reversible loop in which both get wet. But it is also possible that *L'Arroseur arrosé*, this not-Lumière, 'unofficial' title (outside France) perhaps originated with what in retrospect we would understand as an 'unauthorized' print, as I will discuss next. And then again, all of the following films represent the waterer watered.

Here is how I would now represent the problem, cautioning that the following chart ( table 1) must be understood as merely a start that does not fully iron out the vagaries of either the early Lumière productions or their imitators. The film has also been variously cited as: *Le jardinier et le petit espiègle*; *A Practical Joke or A Joke on the Gardener*; *Watering the Gardener*; *The Gardener, the Bad Boy, and the Hose*; *Teasing the Gardener*; *The Adventures of the Bad Boy and the Garden Hose*; as well as *The Waterer Watered*, *The Sprinkler Sprinkled*, and *Sprinkler and Sprinkled*.

Early in the first of the string of emulations was that of George Méliès.<sup>13</sup> Probably in May or June 1896, Méliès made his own *L'Arroseur*, a film that Georges Sadoul later found inferior to the Lumière's *L'Arroseur et arrosé* (Sadoul 1947, p. 323). Now, from the point of view of distribution, consider not the European but the American product's early scarcity and inferiority. Consider the Vitascope premiere, 23 April 1896, at the New York Koster and Bial's Music Hall, where the five Edison company films did not amaze and impress the audience as much as the legitimate British import, Robert Paul's actualité, *Rough Seas at Dover* (Musser 1990, p. 63). Not surprisingly, even before the June 1896 US premiere of the Lumière cinématographe, the waterer watering was projected on the vitagraph, although it is not known whether this print was a dupe of the first Lumière or an early American remake (Musser 1990, p. 141). Thus, on the preceding chart it is referred to as the mystery print. Here is another title as false indicator in a nutshell: just as the early audience did not know an authorized print from an unauthorized dupe – which was which – neither do we now know, as researchers, whether the short film screened was a manufactured duplicate, sometimes called a 'contratype print', or a restaged scenario. All that we can assume about a mystery print (where company credit is not given in an advertisement) is that an enterprising exhibitor had been to Paris and returned with an idea or that this exhibitor was able to secure a print by borrowing, stealing, or duping, for no French company would have knowingly sold a print to a representative of an American company.



**FIGURE 1** Stills from film screened as *L' jardinière* at the 28 December 1895 Lumière cinematograph Paris premiere. In this version, the boy is merely spanked. The film was later titled *Arroseur et arrosé*, along with two other gardener and the bad boy films. The latter two carry the ending in which the gardener retaliates by sprinkling the boy.



TABLE 1

<b>Title</b>	<b>Year</b>	<b>Production/distribution company</b>
<i>Le jardinier (Arroseur et arrosé)</i>	1895	Lumière
<i>Arroseur et arrosé</i>	1896–97	Lumière
<i>Arroseur et arrosé</i>	1896–97	Lumière
<i>L'Arroseur</i>	1896	Méliès
<i>The Gardener &amp; the Bad Boy</i>	1896	(Unknown/Mystery Print)
<i>The Gardener &amp; the Bad Boy</i>	1896	Lumière
<i>Bad Boy &amp; the Gardener/Garden Scene</i>	1896	Edison Mfg. Co.
<i>Bad Boy and the Garden Hose</i>	1896	J. Stuart Blackton & Albert E. Smith
<i>L'Arroseur arrosé</i>	1897	Léar and Frère Brazile
<i>Arroseur arrosé</i>	1897–98	Gaumont (dir. Alice Guy Blaché)
<i>Gardener with Hose, or the Mischievous Boy</i>	1898	G. A. Smith
<i>Gardener, Bad Boy, and Hose</i>	1899–1900?	Lumière/Warwick Trading Co.

For the US premiere of the Lumière cinématograph, on 29 June 1896, at Keith's Union Square Theatre in New York, *L'Arroseur et arrosé*, now officially translated into English as *The Gardener and the Bad Boy*, was on the program along with *A Dip in the Sea* and *Lumière at Cards* (Musser 1990, p. 138, 1991, p. 87). Edison, quick to capitalize on Lumière's success, thereafter began to produce comedies unlike any the company had made before, all 'reminiscent', says Charles Musser, of *The Gardener and the Bad Boy* (1991, p. 68). Whether there were two or three Edison 'bad boy' films is uncertain, but note how closely the catalogue title *Bad Boy and the Gardener* follows the Lumière American release title, *The Gardener and the Bad Boy*, all the better to confuse the public. Perhaps it had not as yet occurred to Edison to camouflage its copying practices with clever new titles, as it would when, in 1904, Edwin S. Porter reconceived and remade Biograph's film *Personal*, now titled with an intriguing encapsulation of its own narrative, *How a French Nobleman Got a Wife Through the New York Herald Columns*.

Regardless, in July 1896, the *Boston Herald* (28 July, p. 7) described an Edison film that sounds suspiciously like the first Lumière issue, shown in that city at the Keith's vaudeville house. (In the Boston print, the gardener is watered and the boy only spanked). But the Edison catalogue also lists a significant variant under *Bad Boy and the Gardener*: a 'lady' is watering and she gets splashed, requiring a father character to punish the prankster (Musser 1997, p. 221).<sup>14</sup> We can assume that the new entrepreneurs J. Stuart Blackton and Albert E. Smith bought a copy of *The Gardener and the Bad Boy* from Edison

when they also bought a new Edison Projecting Kinetoscope, number 13. The film was on their program later that year, in November 1896, as *The Bad Boy and the Garden Hose*, along with other new Edison actualities: *Sea Waves at Coney Island* and *Shooting the Chutes*. The barely altered title may indicate a hurried duplication rather than a complete remake.

The early French film producers would insist that the Americans were the master dupers, but perhaps the French should be appreciated for having refined the multiplication and variation of the basic scenario. In addition to Méliès's 1896 *L'Arroseur*, there was at least one *L'Arroseur arrosé*, produced in 1897, by Léar and Frère Brazile (Sadoul 1947, p. 305). Producer/Director Alice Guy Blaché made her own *Arroseur arrosé* for Gaumont between 1897 and 1898 (McMahan 2002). The comic idea thus was still fresh in 1898 and its 'legal' availability apparently unquestioned and unchallenged in France.

While after 1900 the duping and reshooting of waterer watereds appears to have subsided somewhat, the title variations or discrepancies have persisted into the present. While the earlier historians linked title variations to remakes by key companies, later historical overviews have telescoped them all into the Lumière comedy, itself really two or three comedies according to Lumière Institut authorities. One could ask here if the proliferation of titles is not also a consequence of the unfettered propertylessness of the early cinematic experiments. The instability of titles which went far beyond the problem of loose or rather promiscuous translation between, in this case, French and English, is itself an index of the shape of the multiply singular product in this period. The instability of titles becomes an index of the 'free for all' of the heyday, or, as some would have it, of the 'unregulated' conditions.

For instance, G.A. Smith is later said to have made both the *Gardener with Hose, or the Mischievous Boy* and *A Practical Joke or A Joke on the Gardener*, 'copied', say Rachel Low and Roger Manvell, from *Watering the Gardener*.<sup>15</sup> In one contemporary history, the Lumière *Arroseur et arrosé* is translated as *The Gardener, the Bad Boy, and the Hose*, 'often known', says the author, as *Watering the Gardener*' (Burch 1990, pp. 149, 286).<sup>16</sup> *The Sprinkler Sprinkled* may be the English language title of a contemporary video release in the US, but the Museum of Modern Art still insists that they hold a print of *Teasing the Gardener*, Iris Barry's original translation of the French for Bardèche and Brasillach's history. Summing up the moment and offering the sixteenth title, Terry Ramsaye has said, 'The earliest Lumière films all went through the duping mills. Their subject — *L'Arroseur Arrose* — *The Adventures of the Boy and the Garden Hose* — first of the slapsticks of the screen was duped with especial enthusiasm' (Ramsaye 1986, pp. 318–320).

Enthusiasm? For the effortless profit or for the fun of the subterfuge? Fittingly, a film that is about the uncontrollable, about things done to us behind our backs and things backfiring in our faces comes to stand for the most out-of-control moment in the long cinema century. *L'Arroseur arrosé* is a

metaphor for the pragmatic tricks of the 'outlaw' business period, the smuggling, the sneaking, and the sniping. The turning-the-tables-on-the-scamp scenario is also about strategic diversion. The lesson I take from this is a renewed skepticism of business reports and records. Such skepticism enables us to see, for instance, that the Edison company's decision to file or not to file for a copyright (or a patent) was never simply an oversight, but more likely a deliberate strategy to advance the company's position.<sup>17</sup>

Thus we might now consider from the industry point of view the beauty of the copy as a business solution: speed, economy, and most of all, retaliation. With the future of the industry open and uncertain, copying was a great corporate game. For the Edison company it was a way of sending threatening messages to users of machines in violation of Edison's patents. For newcomer Sigmund Lubin in Philadelphia, who became known as the Pirate King, copying was a way to stand up to Edison's bullying. Distribution in this short period was, then, circulation not just of prints but of threats. Where the public saw 'moving picture' titles advertised in newspapers and eventually on the marquees, competitors in the business (exhibitors and producers alike) saw taunts and territorial encroachment. Flexing its legal muscle, the Edison company prosecuted defiance of the copyright principle – the same principle that it also violated. If nothing else, the early skirmishes remind us that copyright is not now and never was a protective ring around the work; rather, it is a completely imaginary seal based on the fantasy that a company had unlimited resources to challenge an adversarial user. Thus the corporate vision of the work safely 'protected' from pirates, defended against competitive use by enemies, is still illusive. Copyright, we would do well to remember, is only a defensible monopoly if you have the money and the influence to plan and make good on a threat. Paradoxically, duplication, the very practice that insured early and easy profits, even before 1909, became unprofitable as companies began to calculate the costs of litigation as a business expense.

In the short heyday, however, copying, the production of a print double by reprinting or retelling, would have been economical because it was easy and, as in the case of the many waterer watereds, as yet unopposed. If you could not buy the desired film because the producer was unwilling to sell it, you stole it and duped it. If you couldn't steal a print, you reshot it yourself. At least one scholar has linked duplication to a failure to innovate, and thus not a sound financial investment (Musser 1991, p. 13). But in the earliest years, 1895–1900, the opposite also may have been the case. From the point of view of exhibition, given the demand for product that could not be produced fast enough, one could argue that copying was product innovation that turned on a dime – or on a title. Every major US and European company was forced to think of all of the ways in which the boy might trick the gardener, in one instance even by representing the gardener in drag. After all, copying literally followed the first logic of the new motion picture apparatus itself, which is,

'to produce is to reproduce is to produce'. The companion logic of machine-made culture, ease of dissemination or distribution, is also evidenced in the configuration of French, British, and American variant titles indicating early distribution to international markets. Stories crossed national boundaries shipped in cans; duplication factories were hooked up to the beginnings of distribution routes, only barely imagined as the global networks they would become.

## Conclusion

There is a tension in this article between the story of origins and the story of unfettered proliferation of culture. The one is the consequence of the centripetal force of historical research, which produces an inevitable convergence on 1895; the other, the result of the equally strong tendency to entrepreneurial dissemination and the capitalization on confusion in the early period. The original Lumière catalogue number 99-1 could not, after all, single-handedly produce the phenomenon of world-wide renown (even if in retrospect film historians insist on its significance). From the point of view of late nineteenth century spectators and exhibitors in the US, UK, and France, *any* watering the gardener joke was *the* watering the gardener joke. The suppression of this phenomenon exemplifies one more futile attempt to control the technology whose tendency is toward the mass and the multiple. It was not that the reproduction of prints and stories was 'out of control' but that it was then – as it is even more so today – quite beyond control.

I would go further to reject the notion implicit in the concept of 'version' of 'this the same thing only different'. The proposition 'similar but different' that defines a version is no insight at all, because this can be said of everything under the sun – 'similar but different'. To say that something is different from something else is to say nothing, really, about either. The difference between difference and similarity is barely distinguishable. Hence, my conclusion; the best historical summation of the early period is Maurice Bardeché and Robert Brasillach's, which I translate as: 'The great producers of the time started with the same films' (1935, p. 15). The great challenge to all of the subsequent copyright claims made on behalf of the significant difference between works is to assert that they were and are all the same work.

Finally, studying the vicissitudes of the copy is a challenge to commonsense understandings of creative practice as well as motion picture style history. Stated simply, the conservative premises underlying innovation and originality are undermined if origin is undeterminable.<sup>18</sup> These early adventures have implications as well for contemporary music piracy and copyright in the popular song, as well as for the ostensible 'theft' of moving image works. Once again, think of the confusion of the contemporary moment in which

internet-based industries began to think that 'to download' is 'to copy'. Another technological leap, another quantum leap for sign production, challenges intellectual property premises. In closing, then, I want to note something that Jacques Derrida once said, a companion to an observation made by film archivist Nico de Klerk. Derrida said, 'all origins are similarly unoriginal' (1974, p. xiii). But the preferred quote for film historians is from de Klerk, who once said of archival prints that it is possible that 'there never was an original in the first place' (1994, p. 69).

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## Notes

- 1 The most important cases were *Edison v. Lubin*, 122 *Fed. Reporter* 240 (C.C.A. 3d 1903), where the court decided that the copyright in photographs extended to the motion picture as a whole, not just individual frames, and *Harper and Bros. v. Kalem Co.*, 169 *Fed. Reporter* 61 (C.C.A. 2d 1909), the contest over the Kalem film *Ben Hur*, in which it was found that when the film is projected it becomes a protectable dramatization (Allen 1983, Gaudreault 1990, Seagrave 2003).
- 2 Ezra updates the story with more detail, which helps us to understand both the creation of the mythology and its economic basis: 'The more famous his [Méliès'] films became, the more his competitors pirated them, especially in the United States. Bootleg copies of his most successful film, the 1902 *Voyage dans la lune/A Trip to the Moon*, were manufactured and sold all over the world with the Star-Film logo removed, and Méliès saw only a fraction of the film's profits' (2000, p. 15).
- 3 Of Méliès's first film, Frazer says that with some friends he produced this in early summer 1896, both directing and acting in *Playing Cards* (1979, p. 36). Williams confirms that when Méliès began, he 'mostly copied from the Lumières' (1992, p. 35). Curiously Sadoul, ever defending Louis Lumière, says that until the inventor died, he referred to Méliès as 'the man who stole his ideas' (1953, p. 4). Describing Méliès's start, Abel says that his first films were mostly 'single-shot actualities, no more than 25 meters in length, in imitation of Lumière' (1994, p. 13).

- 4 At the time, copyright could be registered in the US by sending two paper prints of the film to the Library of Congress in Washington DC with a fee of 50 cents for each separate frame.
- 5 This film is a one-shot produced by James White, and the Edison copyright is 24 May 1897. The black backdrop is characteristic of films shot in Edison's studio, Black Maria. Four girls in their night dresses burst pillows causing feathers to fly. This extant film may be viewed on the US Library of Congress website. For the Lumière *Bataille d'oreillers* (1897) see: Sadoul, who says that it was a Biograph film that was copied (1947, p. 300), which is unlikely given the early date. Although Sadoul may not have known who Lumière was copying, one can be certain that the French company knew then that it was copying.
- 6 Musser says that Edison 'depended on Vitagraph for developing and duping uncopyrighted Lubin and Amet films, which it then marketed' (1990, p. 278). Edward Hill Amet started another of the early companies that sold both the motion picture hardware and films to go with the hardware (see Musser 1990, p. 177). His Amet Talking Machine Company in Waukegan, Illinois based on his projector, the magniscope, began film production in March, 1897 (1990, pp. 162–163). Both Amet and Lubin were sued by Edison for patent infringement in early 1898, part of a flurry of Edison lawsuits to defend his patents at the end of 1897 and early in 1898 (1990, p. 239). Edison had effectively put Lubin out of business for two years, but a Biograph victory over Edison meant that Lubin could return to the US and start business again (Eckhardt 1997).
- 7 Such duplication was a photographic laboratory process involving both the making of inter-negatives from positive prints and the striking of prints from existing negatives. Note that in this period films were purchased outright, and it was only later that producing companies instituted rental over purchase as the basis of distribution and exhibition. See also Musser 2004.
- 8 The reference here is to Bardeché and Brasillach (1935, p. 15), and the Barry translation of it, (1935, p. 7). Macgowan (1965), a minor text, mentions 'ten different versions in circulation'. He also uses both the English title, *Watering the Gardener*, as well as *L'Arroseur arrosé*, to refer to the first film, the one claimed by Louis Lumière, where the gardener gets 'doused' as he looks into the nozzle and the boy gets away. By the 1960s, *L'Arroseur arrosé* clearly refers to all variants, even, as Macgowan implies, to the 'episode' reproduced by at least one Englishman. Also consulted were Chanan 1996, Deslandes 1966, Sadoul 1947, 1948, 1953, 1985, Low and Manvell 1948, Mitry 1967, Everson 1978, Thompson and Bordwell 2003.
- 9 David Bordwell identifies frames from 'One of the Lumière's early films, *Le jardinier et le petit espiègle* ('The Gardener and the Little Rascal', 1895), best known as *L'arroseur arrosé* ('Watering the Gardener') (1997, p. 104). Later, he says that the 'remake' of *Le jardinier et le petit espiègle* identified as *L'arroseur et arrosé* (1896 or 1897) begins with a 'deeper staging than its predecessor' (1997, p. 173). Or, the difference between I and II is certainly

significant, as it illustrates staging in depth as superceded by a more horizontal staging. Important as well is Bordwell's mention of contemporary avant-gardist Malcolm LeGrice's *After Lumière—L'arroseur arrosé*, a structural reconsideration of the earlier work, which goes to the question of the infinite renewability of signs.

- 10 To make my position more clear, I should say that I am skeptical of the 'need for availability' of cultural signs argument for several reasons. The assertion that cultural signs are easily quantifiable is not only problematic, but it also forms an awkward basis for a legal strategy. In effect, the arguments for both copyright 'protection' and 'availability' have been framed in such a way that the adversarial nature of these arguments is cloaked. The case for 'protection' is the argument that one restricting company makes against another, potentially restricting company. The case for 'availability' falls to the other side that might, under other circumstances, argue for 'protection'. One might be called upon to consider how copyright protection is an asset or a product safeguard without which a small company could not survive in the marketplace of cultural signs. However, my project involves an attempt to begin to ask questions about the consequences for mass circulation of signs during a period of confusion about regulation in an era different from our own.
- 11 Meusy (1995, p. 21) lists *Le Jardinier* as one of the ten films on the program at the premiere screening at the Grand Café, as does the Institute Lumière website: [www.institut-lumiere.org](http://www.institut-lumiere.org). This does not mean that the film was not shown earlier. See Cosandey (1996, pp. 82–94), for an account of the efforts of the French to 'establish' the brothers as the premiere innovators and the Paris screening in 1895 as the origin of cinema, despite claims that could have been made over the years by German, British, and American companies. The technical advantages of the Lumière cinematograph over other inventions, such as the Edison company's kinetograph, could not have been foreseen on 28 December 1895.
- 12 Email correspondence from Jean-Marc Lamotte, Institute Lumière, 9 December 2004. Lamotte explains here that the Institute worked with Aubert and Seguin in their commentary on the Lumière catalogues, where the films are referred to as 99-1, 99-2, and 99-3, or *Arroseur et arrosé* I, II, and III. Dubert and Seguin also say that all evidence points to only one film in which the 'rascal is not sprinkled', but hesitate to say that this 'only spanked' or 'not sprinkled' rendition would have been the backyard drama filmed by Louis Lumière in 1895. One or the other of the two subsequent enactments, shot as early as spring or summer of 1896, or as late as 1897 by an unidentified cameraman, must have been the prototype for the double-watered *Arroseur et arrosé*. Also relevant, says Lamotte, is the fact that despite catalogue descriptions that made a distinction between the prints in which the boy is spanked and prints in which the boy is watered, customers might have thought that they were buying one but would be shipped another, depending on print availability.

- 13 He had originally purchased from R.W. Paul in London the animatograph, which was really an 'unauthorized kinetoscope', according to Williams (1992, p. 21). He began producing as soon as he had rigged up and patented his 'Méliès-Reulos-Kinteograph' camera-projector.
- 14 The lady, Musser says, would have been played by a man in drag. The same subject is listed as 110 ft. in the 1901 catalogue, and both 50 and 150 ft. in 1896 (Musser 1997, p. 221).
- 15 Low and Manvell say this film was 'copied' from *L'Arroseur arrosé*, which they translate into English as *Watering the Gardener*. The phenomenon is, for them, just an example of the same tricks and situations repeated. As the British authors lament, 'originality of theme and treatment' was 'rarely the aim' of the early directors (1948, p. 50).
- 16 See Burch (1990, p. 286) for yet another discussion of the Lumière variations. He makes reference to Vincent Pinel's argument that *Le Jardinier et le petit espiègle* is an 'uncatalogued' film, not the film photographed by Louis Lumière in summer, 1895, the film 'normally known' as *L'Arroseur arrosé*. One should note how this story suggests that there was yet another film, one not catalogued.
- 17 Edison's decision not to take out a patent on his kinetograph in Europe, for instance, was, as he would later say, a calculated risk. Taking out a patent was tantamount to advertising an invention, inviting the competition to challenge the patent by making their own machines. See Ramsaye (1986/1926), 'Romance of the Motion Picture', typescript version of sections of *A Million and One Nights*, Harvard University Special Collections.
- 18 One of the few historians of this period to foreground this is Williams, who discusses the real impossibility of judging on this basis. He says: 'It makes for great trouble arriving at critical judgments of works of the period, since assessments of originality often turn out to be uncertain or beside the point ...' (1992, p. 44).

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