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Tristram Shandy and the limits of copyright law;
Or, is a blank page an idea?

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Abstract
Australian copyright law does not give copyright protection to ideas. However, depending on the analysis used, certain types of creative outputs can be treated as ideas, rather than the protectable expressions that are given the status of a copyright work. Denial of the status of work will affect the economic right of the creator, and they will also be denied moral rights. This paper explores copyright law's adoption of a Lockean conception of ideas through the 18th century literary property debates, but shows that in the 18th century, the concept of ideas had not hardened into the forms used now. Instead, the law accepted and acknowledged that 'books' or 'compositions' (in their conceptual sense as well as their physical sense) and compositions were literary property. Through the agency of Lawrence Sterne's digressive comic masterpiece, Tristram Shandy, a nine-volume novel published at the height of the 18th century literary property debates, the notion of Lockean ideas, textual sparcity and the concept of the creative process is juxtaposed against the oppositional categories of idea and expression now used in copyright law. It is suggested that the adoption of a concept like 'book' or 'composition' to frame textually or visually sparse creative outputs, could provide a legal recognition for creative outputs now refused copyright protection.

> I know there are readers in the world, as well as many other good people in it, who are no readers at all, — who find themselves ill at ease, unless they are let into the whole secret, from first to last, of every thing which concerns you.
>
> (*Tristram Shandy*, Vol. I, Chap. IV, p. 8).

Absences and spaces: the limits of idea and expression

Australian copyright law, as in the common law jurisdictions, uses abstract categories called works – literary works, dramatic works, artistic works and musical works – to determine whether a creative or commercial output will be given copyright protection. As an abstract concept, rather than a physical 'thing', works do not generally have to meet any kind of physical requirement, form or content; a literary work does not presuppose the need for a poem, novel, or book, though a poem, novel, or book will probably be a literary work. A copyright *work* has to be sufficiently closed and perfected, so that others can tell with certainty where the boundaries are drawn, to

limit the scope of a work – the more abstracted the output, the less likely it will be a work. The law uses a series of techniques to set aside outputs that are deficient in some way, such as requiring a basic level of originality, and by refusing to protect outputs that are classified as *ideas*. This precept applies internationally to all members of the World Trade Organisation, through the obligation contained in Article 9 (2) of the TRIPS Agreement, which provides that 'Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such'.

Copyright *will* protect the *expression* of ideas. But as it is unconcerned with questions about the creativity, genius, or aesthetics of a work, it will protect any expression that meets a base level of having originated from its creator.[1] A highly creative output can fail, on the other hand, to meet the requirement of an expression, and by being characterised as an idea, will have no copyright protection, and is free to be exploited by others. The kinds of outputs I have in mind are those pieces which are not *perfected* in a conventional sense, because they are schematic, incomplete, sparse, malleable or changeable, and constructed through textual gaps, spaces or interstices. I will refer to these outputs as 'textually sparse'.

The *Copyright Act 1968* (Cth) ('*Copyright Act'*) does not define idea and expression, but relies on case law to determine and set the boundaries between the two categories. However, despite this reliance on case law, the distinction between the two ontological categories of idea and expression is not clearly drawn. But it is apparent that the concept of *idea* used in the judgments includes the commonplace understanding of idea: that it is an unformed concept that has not been fully developed into its perfected state. The law, however, also uses another meaning of idea that is less commonly used. *Idea*, in this sense, is used to a physical or material component or elemental state, which has the ability to be used to form or make up a complete whole, or which is used in everyday discourse. It comprehends information, facts, data, and the basic elements of language. *Idea*, used in this sense, relates to those things that are the building blocks used to construct the external material world. To treat ideas as *expression*, according to this mode of analysis, would give the copyright owner the right to control the building blocks of knowledge, to the exclusion of the rest of the world.

When analysing the ontological categories of idea and expression, the courts appear to construct the categories oppositionally, which tends to result in textually sparse outputs being constructed as *ideas*. Thus, adopting the mode of analysis used by the courts, in *Kenrick v Lawrence*,[2] it was held that a voting card comprising an image of a 'square' and a 'cross' was an idea that merged with its expression. Adam Ant's face paint, *simpliciter*, was not an artistic work because it was constructed as constituting two painted lines. Lawton LJ reasoned that:

> A painting is not an idea: it is an object; and paint without a surface is not a painting. Make-up, as such, however idiosyncratic it may be as an idea, cannot possibly be a painting for the purposes of the Copyright Act 1956.'[3]

[1] *University of London Press Ltd v University Tutorial Press Ltd* [1916] 2 Ch 607, 608.
[2] (1890) 25 QBD 99, 104.
[3] *Merchandising Corp of America Inc v Harpbond Ltd* [1983] FSR 32, 46.

By analysing these squares, crosses and lines as elements absent from the whole, the elements become reconstructed as ideas. The squares, crosses and lines were extracted and examined absent the framing devices within which they are contained: square and cross appear in a page with other material, lines appear on a particular face, with a unique hairstyle and clothing. As *idea*, each element is not a copyright work, but considered within its frame, is the whole textually incomplete?

Rarely, what would be considered to be textually deficient outputs will be accepted as a work. In a recent Australian decision, Conti J accepted that a lengthy preparation process of two weeks, after which a masthead for a Chinese newspaper was created using calligraphy 'in one go',[4] was enough to constitute an expression, and thus an artistic work. Conti J held that: 'The use of the Chinese brush pen on traditional Chinese rice paper by Professor Huang [the calligraphy artist] was sufficiently 'expressive' to bring into being a 'painting' for the purposes of copyright protection',[5] and that 'Professor Huang expended a great deal of knowledge, judgment, skill and labour in the production of the artistic work (Exhibit A2) which I have characterised as a 'painting''.[6] Conti J, however, was careful to delineate Chinese calligraphy as a mode of expression, from Western calligraphy:

> there is a difference between the cultural significance and esteem of Chinese calligraphy and corresponding Western forms; Chinese calligraphy being a visual art, rather than a literal art, and having an important cultural and aesthetic role in Chinese life of ancient origin.[7]

It is instructive that Conti J did not use the word 'expression' when referring to the calligraphy. Instead, by characterising the calligraphy in terms of a quality – it was 'expressive' - Conti J avoided the problem that the calligraphy could have been as easily characterised as an idea and not an expression. By using a word that bears a resemblance to, but is not synonymous with 'expression', Conti J was also able to avoid engaging with idea/expression at all, thus using a linguistic device to acknowledge the discourse of idea/expression, while at the same time avoiding it.

This decision also shows that, in advance, there is no way of knowing if a creative piece or output constitutes an expression, especially if the creative output is not *perfected* in a conventional sense, because it is schematic, incomplete, sparse, malleable or changeable, and constructed through textual gaps, spaces or interstices. Copyright is not a registrable right: it exists simply because it has been created (once the work fulfils the next step required by law, that the expression is captured some way, through their embodiment or capturing in material form: *Copyright Act* ss 22(1)-(2)). A creator will not know if their output constitutes a work unless there is an action for infringement, at which time the characterisation of the work will become clear.

But what of the concept of textual absence, or where spaces constitute the whole work? In 2002, the UK composer, Mike Batt, settled a copyright dispute with the

[4] *Australian Chinese Newspapers Pty Ltd v Melbourne Chinese Press Pty Ltd* (2003) 58 IPR 1 [107].
[5] *Ibid* [108].
[6] *Ibid* [109].
[7] *Ibid* [107].

John Cage Trust over John Cage's silent composition, 4'33". Batt was reported to have said that:

> I am pleased that Cage's publishers have finally been persuaded that their case was, to say the least, optimistic. We are, however, making this gesture of a payment to the John Cage Trust in recognition of his brave and sometimes outrageous approach to artistic experimentation.
> (IPN 2002).

He had included a silent track on his album, *Classical Graffiti*, which he credited to Cage and himself. The work is composed in three movements that are made up of the word 'tacet'. Cage's silent composition does not have any specified length. It has been suggested that:

> while it may challenge the definition of music, it does not challenge any definition of composition — the earliest score was written on conventional manuscript paper using graphic notation similar to that used in *Music of Changes*, with the three movements precisely scored to reflect their individual lengths. The most famous version of the score is the so-called *Tacet* edition, which is features three movements all on one page, each labelled tacet — the traditional musical term for when a musician does not play for a movement.The length of 4′33″ is in fact not designated by its score. The instructions for the work indicate that it consists of three movements, for each of which the only instruction is "tacet", indicating silence on the part of the performer or performers.
> (4′33″ Wikipedia).

For copyright purposes, though, it is challenging to accept that this text on its own can constitute an expression, though its image and its form on paper may comprise a work (though the use of single words would refute the chance that the work could be protected by copyright). The chance of testing the case did not occur, because the case was settled. It is interesting because the composition's reproducibility (rather than its creation) puts the creative output into the hands of the person interpreting the text, along with the creative process involved in getting the movement down on paper. It is its end result – what is heard in the concert hall, or what is listened to at home – that is characterised by its spaces and interstices, not the words on the page created as a musical work.

Sparse 'expressions' are thus caught by the gatekeeper role that idea/expression serves, and are characterised as ideas and thus not protected by copyright law. Copyright law, in the Anglo-American world in particular, is ultimately concerned with the efficient management of a property right in intangibles. To meet the standard of property, so the logic goes, boundaries have to be set, and the right only given where some-'thing' can be marked out so that others know what that property is. This gatekeeper role of idea/expression is imposed as well, it seems, because the breadth of the rights a copyright owner has in their property is greater than simply 'copying' the creative output. As well as the bare copying rights, which include the rights of reproduction, communication, or publication: s 31 (1) (a) (i)-(iv); (2) (b), for literary, dramatic or musical works, an adaptation right also exist: s 31 (1) (vi). The owner of sparse creative work could, on this analysis, be able to profit from an output that, on

the face of it, could not show that there was anything ‘property-like’ in the first place. Alternatively, the owner could limit others using the building blocks of language, something which the law has not allowed. On the other hand, it is possible to infringe copyright (s 36), by taking a substantial part of the work (s14), which involves the taking of a qualitatively key facets of the work. Conversely, taking large portions of unoriginal material will not constitute a substantial part.

The test used to delineate ideas from expression, thus determines what may and may not be protected by copyright law. Knowing what is or is not an idea, however, is not clear cut, suggesting that what is idea for one purpose or another is malleable, depending on the purpose of the work involved, and judicial assumptions about the correct ordering of property rights through copyright law. Consequently, being characterised as an idea will end any enquiry into the status of the creative output or creative content as a copyright work, and highly creative outputs and content will be open to the world to be used and copied by others. Less creative outputs that meet the requirements of expression will be given copyright protection, and creative springboarding will result in copyright infringement.[8]

Ideas and the protection of cultural outputs and creative content

While legally neat – ideas are out, expressions are in - the result for creators is unsatisfactory. Either the creator has to modify their creative outputs to ensure the work is protected, which may offend the creative process, or they are left with no effective protection for their work. In any case, it is apparent that creators can never be certain if their outputs are copyright works.

One further consequence arises. If characterised as an idea, creators will not only be denied the economic, distributional property rights of copyright, but will also be denied access to the moral rights of attribution and integrity (Part IX Copyright Act 168 (Cth)). Moral rights will only be granted if a copyright work exists, and a work cannot exist if the creative output is characterised as an idea (an exception is that moral rights are given to filmmakers in Australia). This consequence for creators is, I suspect, not considered when a work is characterised as an idea. Creators have to rely on the general law to protect the reputations of their outputs, while commercial and mundane outputs characterised as works will obtain a moral right protection.

These inconsistencies and negative implications for Australian creators may be contrasted with future protections for creative outputs internationally. In 2005, a new UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* was agreed upon by most member states of the United Nations, though Australia abstained, and will be unlikely to ratify it. The Convention is concerned with the protection of creative outputs and content, which highlights the negative consequences that flow from a copyright law that can treat textually sparse creative outputs as unprotected ideas.

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[8] eg *Rogers v Koons* 960 F.2d 30; *Campbell v Acuff-Rose Music, Inc* (1994) 510 US 569; *TCN Channel Nine Pty Ltd v Network Ten Pty Ltd* (2001) 50 IPR 335.

However, another means by which the test for ideas may be reconceptualised comes from an historical re-reading of what the law means by 'ideas'. Through this re-reading, it can be shown that the law has adopted an 18th century conception of 'idea' that is hostile to certain types of creative practices. But it is by showing how a classic 18th century novel which teases this conception of idea, it is possible to show that by 'framing' textually sparse or unstable creative outputs through external physical boundary.

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Idea and expression, the 18th century, and British Empiricism

> Pray, Sir, in all the reading which you have ever read, did you ever read such a book as Locke's Essay upon the Human Understanding? —— Don't answer me rashly, --because many, I know, quote the book, who have not read it,---and many have read it who understand it not:---
>
> (*Tristram Shandy*, Vol. II, Chap. II, p. 77).

It appears that the concept of *idea* used in contemporary copyright law, is the *idea* of 18th century British empiricism: ideas as the external material to be used by the mind to create knowledge. The development of copyright concepts and the rise of the methods of empiricism ran hand in hand during the 18th century: Locke's 1690 *An Essay Concerning Human Understanding*, appeared during the lead up to the enactment of the first copyright statute, Statute of Anne 1710, 8 *Anne* c.19, while Hume's 1748 *An Enquiry Concerning Human Understanding* emerged during the early stages of the appearance of the delineation between ideas and expression in copyright law.

It is Locke's conception of ideas that I am concerned with here, not the Lockean concern about property and the rights associated with mental labour that is usually the subject of analysis in copyright law (eg Sherman and Bently 1999, p. 23). I am more interested in seeing how his concept of ideas was resisted in the early phases of copyright argumentation – or property that is 'ideal' (Sherman and Bently 1999, p. 25) - as part of the wider social framework including the concept's centrality in Laurence Sterne's *The Life and Opinions of Tristram Shandy, Gentleman*.

In 1690, John Locke published what may now been seen as his blueprint for empiricism, *An Essay Concerning Human Understanding*. Simply put, Locke claims that knowledge is made by the mind processing ideas that are experienced through the senses or the process of reflection based on observations of the external or material world. Ideas are, in their simple or complex form, the building blocks of knowledge; it is the application of human reason to those ideas that provide for certainty and stability of the knowledge. It is Locke's conception of ideas – or that which is *ideal* as used in the 18th century - and their apparent adoption into the distinct ontological categories of *ideas* and *expression*, used by the law, that is the concern of this paper.

The imposition of Locke's conception of ideas, as something that 'exists', particularly when broken down into constituent parts, can be particularly damaging for 'outrider' creative outputs that are textually deficient or irregularly constructed, where creative intentions are paramount. They may be easy to copy and thus infinitely reproducible based on external features. I propose, instead, for textually sparse creative outputs, to return to the notion of the book or composition, as a framing device that will afford some level of protection for them.

The image of the book, composition, and printing in the 18th century

As will be seen, the development of nascent modern copyright concepts, such as ideas, were caught, in part, by the debates and disputes surrounding the possibility that a common law perpetual copyright had survived the enactment of the first copyright statute, the 1710 Statute of Anne, 8 *Anne* c.19. The dispute involved a struggle that took place in public discourse, the legislature and through the courts between 1732 and 1774. By the time of the 1774 vote of the House of Lords vote in *Donaldson v Beckett*,[9] which ended a 60 year struggle by publishers to retain a perpetual copyright (the publishers lost), the delineation between idea and expression had become settled in law. I suggest that the delineation of idea and expression, as an argument designed to limit the rights of publishers, did not reach its zenith until the latter part of the 18th when *Donaldson v Beckett* was decided, or as Sherman and Bently have pointed out this case marks the shift from a pre-modern to a modern conception of intangible property (Sherman and Bently 1999, pp. 38-42).

Unfortunately for creators, the publishers constructed their right to publish through the rights of authors. These debates have been cast as an argument about property, or the nature of authorship, (Saunders 1992; Rose 1993; Sherman and Bently 1999). My interest relates, instead, to the use of the categories of idea and expression in the cases, and to look briefly at the pre- *Donaldson v Beckett* decisions that privileged 'book' and 'composition' - the 1760 Equity decision in *Tonson v Collins*,[10] and the reasoning of the majority in 1769 common law decision in *Millar v Taylor*.[11] I do so to ask whether the use of formed physical and conceptual boundaries, rather than the abstract category of works, may provide a more effective means to protect creative outputs than provided for by the oppositional categories of idea and expression. These earlier methods, now lost from copyright law, include framing a work as *book* (both physical and conceptual), and the looser conception of the *composition*. I will suggest that both concepts provide useful techniques to provide protection for creative outputs that may be otherwise deficient because of their spaces, gaps, and interstices.

It is clear that the logic of empiricism was dominant by the end of the 18th century, recognising the emergence of a rationality in the development of intellectual property law (Sherman and Bently 1999, pp. 19-35). Consequently, textual devices used in the arguments in *Tonson v Collins*,[12] (the decision itself is very brief) and the reasoning of the majority in 1769 common law decision in *Millar v Taylor*,[13] have been lost.

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[9] 98 ER 257.
[10] 96 ER 180
[11] (1769) 98 ER 201
[12] 96 ER 180
[13] (1769) 98 ER 201

In *Tonson v Collins*, Mansfield LJ accepted the existence of a perpetual copyright.[14] However, it is Blackstone's argument for rights of authors in their literary property (apparently accepted by Mansfield LJ), which refuses to accept the validity of a closed, Lockean meaning of 'idea'. While Blackstone's arguments are usually treated as an appeal to natural law, his arguments show that the law accepted the importance of the creative process as a facet of literary property:

> I must maintain, that 'a literary composition, as it lies in the author's mind, before it is substantiated by reducing it into writing,' has the essential requisites to make it a subject of property … He alone is entitled to the profits of communicating, or making it public. The first step to which is clothing our conceptions in words, the only means to communicate abstracted ideas. Ideas drawn from external objects may be communicated by external signs; but words only demonstrate the genuine operation of the intellect … The next way of publication is by writing, or describing in characters, those words in which an author has clothed his ideas. *Here the value which is stamped upon the writing merely arises from the matter it conveys*. Characters are but the signs or words, and words are the vehicle of sentiments. *The sentiment therefore is the thing of value …*[15] (emphasis added).

His opponent, Yates, who was to become the sole dissenting judge in *Millar v Taylor*,[16] hung his arguments on one key element that were also used in *Millar v Taylor* – that the publishers were claiming a property right in incorporeal ideas. He argued that there is no way of knowing an author's work other than through their style, or the marks on paper, neither of which , he argued, was a known species of property.[17] In reply, Blackstone responded that: 'Style and sentiment are the essentials of a literary composition. These alone constitute its identity.'[18]

While the Lockean notion of idea was present in Yates' arguments - the treatment of ideas as the building blocks of thought in the mind - they did not hold sway in that case. Nine years later, in *Millar v Taylor*, the courts' reasoning suggests that the concept of ideas had shifted more closely to the elemental treatment of ideas derived from Locke's empiricism, though the position of the court was not clearly settled. Aston J was concerned that 'The plaintiff's supposed property has been treated as quite ideal and imaginary; not reducible to the comprehension of man's understanding; not an object or law, nor capable of protection',[19] but the work:

> … has indicia certa; for, though the sentiments and doctrine may be called ideal, yet when the same are communicated to the sight and understanding of every man, by the medium of printing, the work becomes a distinguishable subject of property …[20]

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[14] *Tonson v Collins* (1760) 96 ER 180, 190.
[15] *Ibid*, 180-181.
[16] *Millar v Taylor* 1769) 98 ER 201, 229-250.
[17] *Tonson v Collins* (1760) 96 ER 180, 185-186.
[18] *Ibid*, 189.
[19] *Millar v Taylor* 1769) 98 ER 201, 219.
[20] *Ibid*, 2221-222.

Ashton J is struggling with the boundaries to be drawn around the content of a book (or text) in the mind rather than the book (or text) revealed. Willes J held that the 'literary composition is as of the material; which always is property. The book conveys knowledge, instruction, or entertainment: but multiplying copies in print is a quite distinct thing from all the book communicates.'[21] What constituted its use, however, was the 'knowledge, instruction, or entertainment' contained within it, that others were free to use. This reasoning shows the extent to which Willes J struggled with the concept of ideas. The right, however, had shifted to the labours of the authors as well as the texts, thus reflecting the common understanding of Locke's conception of property as the admixture of labour to the commons:

> It is wise in any state, to encourage letters, and the painful researches of learned men … and though a good book may be run down, and a bad one cried up … yet sooner or later, the reward will be in proportion to the merit of the work.
>
> A writer's fame will not be less, that he has bread, without being under the necessity of prostituting his pen to flattery or party, to get it.
>
> He who engages in a laborious work, (such, for instance, as Johnson's Dictionary,) which may employ his whole life, will do it with more spirit, if, besides his own glory, he thinks it may be a provision for his family [22]

In moving closer to the contemporary formulation, Mansfield LJ held that:

> I use the word "copy," in the technical sense in which that name or term has been used for ages, to signify an incorporeal right to the sole printing and publishing of *somewhat intellectual, communicated by letters* ….The property in the copy … is equally an incorporeal right to print a *set of intellectual ideas or modes of thinking,* communicated in a set of words and sentences or modes of expression.[23]

Expression, however, did not negate or negative the rights found in *ideas*, and the sense of the book and composition as the container in which sentiments could be found ran alongside an opening up of the text into the abstract categories of contemporary copyright.

An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the time therein mentioned

Sitting in between all these events is the novel that provides some sense of the value of affording some rights in a book or composition. It is contemporaneous to the developing literary property debate, actively engages in Locke's conception of ideas, and is famed for its periodic use of textual sparcity: Laurence Sterne's *The Life and Opinions of Tristram Shandy, Gentleman* ('*Tristram Shandy*'). *Tristram Shandy* appeared in nine volumes, from 1759 (a year before the decision in *Tonson v Collins*), and the final volume published in 1767 (*Millar v Taylor* was decided two years later).

[21] *Ibid*, 216.
[22] *Ibid*, 218.
[23] *Ibid*, 251.

As Sherman and Bently, quoting Birrell note, the literary property debate was 'discussed everywhere and by everybody' (Sherman and Bently 1999, p. 9). Sterne, as an author, is not immune, and in *Tristram Shandy*, plays on the events. Tristram's father and his uncle *Toby* contemplating the state of writing at 'the latter end of queen *Anne*', involving Addison and his publication, *The Spectator*, proceed to examine the state of knowledge, learning and writing in England in 1759, makes a sly reference to the preamble to the Statute of Anne, which sought to provided 'encouragement of learned men to compose and write useful books':

> Thus, --- my fellow labourers and associates in this great harvest of our learning, now ripening before our eyes; thus it is, by slow steps of casual increase, that our knowledge physical, metaphysical, physiological, polemical, nautical, mathematical, ænigmatical, technical, biographical, romantical, chemical and obstetrical, with fifty other branches of it, (most of 'em ending, as these do, in *ical*) have, for these two last centuries and more, gradually been creeping upwards towards that *Αημή* of their perfections, from which, if we may form a conjecture from the advances of these last seven years, we cannot possibly be far off.
>
> When that happens, it is to be hoped, it will put an end to all kinds of writings whatsoever; — the want of all kind of writing will put an end to all kind of reading; --- and that in time, *As war begets poverty, poverty peace*, ——must, in course, put an end to all kind of knowledge,---and then ——we shall have all to begin all over again; or , in other words, be exactly where we started.
>
> ——Happy! Thrice happy Times! I only wish that the æra of my begetting, as well as the mode and manner of it, had been a little alter'd,--or that it could have been put off with any convenience to my mother or father, for some twenty or twenty-five years long, when a man in the literary world might have stood some chance. —
>
> (*Tristram Shandy*, Vol. I, Chap. XXI, pp. 57-58).

But there is also a joke on Locke, on literary property, and himself. Sterne himself claimed that he did not write for money: 'I wrote not [to] be fed, but to be famous.' (quoted in Goring 'Introduction', *A Sentimental Journey*, p. xii). However, he was keen to get the best price for the first two volumes of the book, and was disappointed that a London publisher would not take up the volume, and that it had to be published in York (Feather 1984, pp. 421-422). There are other jokes in *Tristram Shandy* at the expense of copyright. Sterne rails against 'plagiarism', and to prove his point 'plagiarises' Burton's *Anatomy of Melancholy*, itself copied from another source in (Ricks 1967, p. xviii).

The novel became a hit and made Sterne famous, and was picked up by London publishers. Samuel Johnson, in 1776, was dismissive: 'Nothing odd will do long. *Tristram Shandy* did not last'. (quoted in Ricks 'Introductory Essay', *Tristram Shandy*, p. xii). Not very many people, however, knew what the novel was about, but eagerly waited for each new volume in the series to try and find out what was happening to Tristram, his father, his uncle *Toby*, Pastor Yorick, and the concupiscible widow *Wadman*, among the large cast of characters.

The novel is digressive and fragmented. Pastor Yorick, who represents Sterne, dies in Chapter I. Two black pages (Vol I, Chap. IV, pp. 31-32) mark the sorrow of his passing, but he appears in the rest of the book. The Author's Preface appears in Vol. III, Chapter XX (pp. 174-182). It is purportedly an 'autobiography', but it is more a discourse on Lockean philosophy, the nature of writing and reading, and plays on textual conventions by dispensing with words and replacing them with these other non-textual devices that are characteristic of textual sparseness.

Tristram Shandy is characterised by its schematic narrative, lack of conventional structure, and its reliance on typographical devices in place of 'words', and squiggles, dashes, dot, asterisks and different fonts. Chapter XL of Volume VI incorporates 6 lines of various degrees of 'squiggliness', making up nearly half the physical length of the chapter, designed to try to tell readers about the progress of the story, and improvements in Tristram's ability to tell the story. (pp. 425-427). These textual devices, however, are not random, but provide clear textual and communication signals to 18th century readers.(Vande Berg 1987).

But more subtly, he provides an intriguing foil to the emergence of empiricism that would be valorised in copyright, as Sterne teased Lockean ideas mercilessly, from the circumstances surrounding Tristram's own unhappy conception to the continued mental contortions of Tristram's hapless Uncle Toby's constant struggle with Locke's association of ideas. Tristram's own conception was affected by a 'strange combination of ideas, the sagacious *Locke*, who certainly understood the nature of these things better than most men, affirms to have produced more wry actions than all other sources of prejudice whatsoever' (Vol. 1, Chap. IV, p. 9).

More particularly, for this paper, it is form of the novel and its digressions, scant text in part, and narrative disruption that makes it as much as anything a *composition* as it is a *book*, parts of which would be constructed now as simply constituting *ideas* rather than *expression*.

The widow Wadman

> ——And possibly, gentle reader, with such a temptation—so wouldst thou: For never did thy eyes behold, or thy concupiscence covet an thing in this world, more concupiscible than widow *Wadman*.
>
> CHAP. XXXVIII
>
> To conceive this right,— call for pen and ink—here's paper ready to your hand. ——Sit down, Sir, paint her to your own mind——as like your mistress as you can——as unlike your wife as your conscience will let you—'tis all one to me——please but your own fancy in it.

> ———Was ever any thing in Nature so sweet! —so exquisite!
> ——Then, dear Sir, how could my uncle *Toby* resist it?
> Thrice happy book! thou wilt have one page, at least within thy covers, which MALICE will not blacken, and which IGNORANCE cannot misrepresent.
>
> (Vol. VI, Chaps. XXVVII - XXXVIII, pp. 422-424).

The blank part of this page is not a mistake – it is a page of the text of this chapter. The widow Wadman is described not by the author or by Tristram, but by the reader. This absence is a joke on a joke – there is no *idea* here that can be found in any place other than in the mind of the reader. The idea is not sullied by a want or a mistake of expression, so the text is absent but is more than present through the interpolation of the reader, in much the same way that John Cage's piece is present though absent at the same time. Sterne is also teasing the concept of the book – book as concept, composition and physical entity, and throws out the possibility that, along with the blank chapters in the final volume - Volume IX, Chap. XVIII and Chap XIX (pp. 565-566) - and the black pages, the squiggles and other elements of textual sparcity are protected within the confines of the physical entity that is the book. However, Sterne plays another joke on the physical entity of the book in Volume III, between Chap. XXXVI and Chap. XXXVII (pp. 205-206) – he places two marbled pages here, a few pages away from the end of the book. Marbled paper does not belong here – its usual place is at the stuck down end papers of the book.

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As a composition or a book, *Tristram Shandy* is complete and closed. All of its textual sparseness is given protection within its covers and framing devices. It was clearly a literary composition and thus a literary property when it was created. Its

strange component parts, however, would now be treated as ideas, and would be lucky to be given the protection of copyright.

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