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USING MUSIC

Making the Video: Constructing an Effective Counter-Hegemonic Message in Only Forty-Nine Minutes

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THE ASSIGNMENT

In late 1999, communication professor Sut Jhally, with whom I worked during my graduate studies at the University of Massachusetts, approached me to produce an educational video on the music industry, which became *Money for Nothing: Behind the Business of Pop Music*. This 49-minute documentary, released in the fall of 2001, is a critical examination of the music industry aimed primarily at college and high school students, although I've received positive feedback from older nonstudents who knew little about the workings of the music industry. *Money for Nothing* is hosted and narrated by Sonic Youth's Thurston Moore, and it features interviews with solo artist Ani DiFranco, Public Enemy's Chuck D, Spearhead's Michael Franti, and Le Tigre's Kathleen Hanna, as well as music journalist veteran Dave Marsh, *BOP* magazine editor Shirley Halperin, and professors Robert McChesney and Reebee Garofalo.

Jhally is the founder and executive director of the Media Education Foundation (MEF), a Northampton (Mass.)-based nonprofit production house that translates, in video form, the ideas and arguments of the Critical Cultural Studies literature for a largely undergraduate audience. MEF has been referred to as "the house that *Dreamworlds* built," a reference to *Dreamworlds: Desire/Sex/Power in Rock Video*,

the widely used educational video that critiques the use of sexist images in music videos. The story of *Dreamworlds*' origins is an important one for a variety of reasons, some of which relate to issues that arose when making *Money for Nothing*.

To briefly summarize, after Jhally began selling *Dreamworlds* to other university professors for use in the classroom, MTV's lawyers threatened to sue Jhally and the University of Massachusetts for copyright and trademark infringement. This is a clear example of how intellectual property law is deployed ideologically, because it is obvious that this educational video, which featured a sober British voice lecturing over the video images, without music, did not threaten MTV's market. In other words, no one was going to purchase a copy of *Dreamworlds* in place of watching the network's programming, which is one of the important variables to consider in a copyright infringement case. MTV simply did not like the opinion Jhally was espousing and tried to use intellectual property law to shut down dissent.

Despite the fact that Jhally's appropriations of the music network's intellectual property fit the very definition of "fair use" (a statute within the 1976 U.S. copyright law that allows for the use of copyrighted material for use in, for example, educational contexts), and although the University of Massachusetts lawyers acknowledged this, these lawyers advised Jhally not to make a public issue of MTV's actions. When Jhally insisted on continuing his distribution of *Dreamworlds*, the university lawyers backed away and told him he was on his own because—like most organizations and businesses—the university did not want to deal with a potentially costly lawsuit, no matter the merits of Jhally's case.

In response, Jhally established MEF to distribute the video and to take the brunt of any lawsuit, and he then proceeded to play a game of legal chicken with MTV, sending out press releases to major news outlets, many of which picked up the story. MTV officials never publicly responded to Jhally's critique in *Dreamworlds*, nor did they pursue further legal action, presumably because they knew the video genuinely did constitute fair use and because they had suffered the public embarrassment of Jhally calling their legal bluff. Since 1991, MEF has employed liberal notions of "fair use," producing numerous videos that use privately owned media texts to engage in cultural criticism. The issue of copyright law's impact on cultural criticism is an important one, a point I will return to later in this article.

Despite the fact that it had enjoyed a considerable success with its first music-themed educational video, MEF had not produced another documentary that focused on popular music during its 10 years in operation. This gave me, as the producer, free reign to approach the topic from virtually any angle—something that was both a blessing and a curse.

THE PROCESS

Although I am credited with the title of producer, no project this size can claim a single author, something that is true of *Money for Nothing*. The documentary was largely a collaborative effort between me, Jeremy Smith (the editor), and Thom Monahan (the sound designer), both of whom are listed as associate producers. As the executive producer, Jhally also had input, as did numerous others who con-

tributed to the documentary's final form (interns, coworkers, other MEF producers, graphic designers, etc.). However, during the first stage of preproduction, I worked by myself in defining the direction and tone of the documentary—something that was, as I alluded to earlier, an extremely difficult process. Knowing that I had only 40 to 50 minutes to work with, the average length of a college class, the most troubling task was figuring out how to boil down the workings of an entire industry and construct a coherent argument in the allotted time, hence this article's cheeky subtitle: "Constructing an Effective Counter-Hegemonic Message in Only Forty-Nine Minutes."

I felt the way Brian Eno likely did when he was commissioned to create the Windows 95 launch sound. He said in an interview published in the *San Francisco Chronicle*,

The thing from the agency said, "We want a piece of music that is inspiring, universal, blah- blah, da-da-da, optimistic, futuristic, sentimental, emotional," this whole list of adjectives, and then at the bottom it said "*and it must be 3 seconds long.*" I thought this was so funny and an amazing thought to actually try to make a little piece of music.

The same was true of the length of time I had to work with. My problem of focus was settled when I decided to start from the following question: What is the process through which popular music is promoted, distributed, and consumed by large audiences? Because *Money for Nothing* is aimed at those who know little of how the music industry operates, this question allowed for both description and criticism in the documentary's content.

The first thing I settled on was a four-part structure, the particulars of which were largely kept intact from preproduction to postproduction—although, of course, there were changes, additions, and substitutions, such as Monahan's idea to address the issue of touring in the section on gatekeepers, which already included radio, MTV, and retail. As for the overall format of *Money for Nothing*, I followed the "talking heads" documentary style used by many of the other MEF videos. From there I drafted an outline that mapped the desired content of the four major sections and proceeded to write interview questions I hoped would provoke the response that filled in each area of the overall argument.

After each interview was completed, MEF interns prepared transcripts so that I could excerpt what was said and place it within the outline. This document slowly transformed from an outline to a paper edit—which was essentially a collaged script accompanied by each beta tape's time code, so that each moment in the interview could be quickly located by the video editor, Jeremy Smith. This was quite different from authoring a book or journal article, because I was relying on other people's words to tell a story for me. And because I could *only* rely on others, it was like slowly, tediously piecing together a jigsaw puzzle until all the pieces fit correctly.

As I stated, the overall structure of the video was in place before production started. This four-part structure consisted of an introduction to the music industry; a discussion of the major gatekeepers that filter music to consumers (radio, MTV, touring, and retail); a section on music, advertising, and marketing; and a conclu-

sion that provides alternatives to the current situations presented throughout the documentary. This structure made sense in terms of creating a narrative arc and in constructing a coherent argument, while at the same time making no assumptions about a viewer's level of knowledge about the music industry. Once the project was in postproduction, both Jeremy Smith and Thom Monahan exercised as much editorial control as I did in changing and tweaking the script. Thom and Jeremy have played in a number of independent bands (such as the Pernice Brothers, the Lilys, and the Figgs), and they are smart, critically minded musicians, which made them perfect collaborators for a project like this.

THE OBSTACLES

Because my primary medium had almost exclusively been the written word before I began this project, it also was a challenge to craft an argument in a way that would lend itself to visual images (MEF videos, including *Money for Nothing*, are heavy on graphics and media clips that are designed to sustain students' attention). This meant asking interviewees to answer questions with specific examples—for instance, an answer might include a reference to a musician whose video we could insert while the interviewee was talking. But as I said, I was used to *writing* (and, more specifically, writing in a particular manner for an academic audience), so the combination of the need to simplify, to develop an argument efficiently, and also to deliver a thorough critique of the popular music industry was a formidable challenge.

Another difficulty was settling on a list of interviewees and, even more complicated, working out the logistics of scheduling. Professors Reebee Garofalo and Robert McChesney and rock critic Dave Marsh were perhaps the most accessible interviewees, allowing us (in the cases of Garofalo and Marsh) to rearrange their homes in order to set up a temporary studio. The musicians, however, were much more difficult to pin down, because of touring schedules and other unforeseen contingencies. For instance, Kathleen Hanna was to come to MEF's studio in Northampton the day after a performance by her band Le Tigre, but they blew out both their amplifiers and spent the entire day searching for new amps, causing us to reschedule.

We had to drive down to New York City and, in true low-budget form, we set up lights, sound, and the background in a hotel suite, because it was far cheaper than renting a studio in the city. (Also in true low-budget form, our stage lights ended up blowing the hotel's circuit breakers, forcing us to repeatedly call the housekeeping staff, whom I'm sure thought we were shooting a porn film.) Other musicians were difficult to schedule (it took over a year in the cases of Chuck D and Ani DiFranco), and some simply didn't want to participate, for various reasons (like Adam Yauch of the Beastie Boys). When it came time to select a narrator at the end of the project, MEF simply asked Thurston Moore, who lives down the street from our studios—although Thurston was shot on location in his own vinyl-cluttered basement.

We were very conscious of race and gender in selecting our interviewees, even though these weren't issues the documentary deals with to a great extent. Because

the music industry and popular music studies are dominated by men, the last thing we wanted was a parade of white men pontificating on the state of popular music, and I feel we succeeded in assembling a diverse range of people in *Money for Nothing*: along with four white men were three women and two African-Americans. We also were conscious of the credibility the younger interviewees and musicians might carry with students, so these people were used as much as possible to balance out the “gray factor,” as I jokingly referred to it.

Even more important is the fact that we needed to use copyrighted materials to engage in a critique of media texts, something that copyright owners have been notoriously reluctant to authorize, as I documented throughout my book, *Owning Culture: Authorship, Ownership and Intellectual Property Law* (2001). However, it can be persuasively argued that such uses fall within the domain of fair use as outlined in the 1976 U.S. copyright statute. Fair use evolved from court decisions that recognized the fact that absolute control of copyrighted works would circumscribe creativity and, perhaps more importantly, limit commerce (Buskirk, 1992). The fair use statute recognizes that, in certain contexts, aspects of copyrighted works can be legally reproduced, and it allows for the appropriation of copyrighted works for use in, for instance, “criticism, comment, news reporting, teaching . . . scholarship, or research,” according to the 1976 U.S. copyright statute (Buskirk, 1992, p. 91). Fair use may apply to a variety of other situations not listed above, and in determining whether a work is fair use, the U.S. Congress outlined the following four factors:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes
- (2) The nature of the copyrighted work
- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- (4) The effect of the use upon the potential market for or value of the copyrighted work (Elias, 1996, p. 169)

Despite the fact that fair use exists, it is extremely expensive to defend oneself against an intellectual property lawsuit, even if the law is clearly on one’s side. In many instances, it is the size of the corporation and the amount of money they are willing to spend on legal fees that determines the outcome of a copyright infringement dispute, even before it can go to court, something that has resulted in what the Supreme Court has called a chilling effect. In “The Sound of Silence’: Academic Freedom and Copyright,” Sheila Whitley (1997) discussed the ways in which copyright works to restrict what can be reprinted in academic books and journals, to make it more difficult to engage with certain cultural texts in order to critique or discuss them.

Responding to Whitley’s essay, Timothy Taylor (1998) supported her assertions, giving personal examples of the way in which copyright law, to a certain

extent, shaped and limited the content of his book, *Global Pop* (examples that, after speaking to numerous colleagues, he said were fairly commonplace). Taylor stated,

My editor at Routledge tended to be extremely cautious about such matters; if we had a refusal from anyone, no matter how unconsidered, he wouldn't allow anything to be reprinted save the usual four or five lines of lyrics. I don't think this is an unusual practice on his part, but simply cautious; no editor wants to be the person of whom an example is made in a lawsuit. And this, of course, is the way the "industry" operates: they can't go after everyone, but they can go after someone in enforcing their extremely narrow (and, to them, profitable) notion of what "fair use" means. (1998, pp. 129–130)

There are numerous other examples of authors engaging in criticisms of media texts who have been denied copyright permission to reprint the very thing they are critiquing. Em Griffin, in his introductory book for communication undergraduates, reprinted an analysis of a Diet Coke television commercial that a former student gave. He wrote, "Although Marty's reading of the Diet Coke commercial may not appear particularly radical, it includes a significant—if implicit—social critique." Griffin discussed how the student's analysis took to task the way the ad fed off our society's obsession with thinness:

In fact, Marty's claim that the ad targeted weight-conscious viewers was sufficiently subversive to incur the disapproval of Coca-Cola. The company expressed its displeasure with his analysis by denying me permission to run photos from the ad in this book. (1997, p. 17)

Em Griffin told me that, like most book deals, his contract with McGraw-Hill required him to secure permission to reprint copyrighted materials. Because Coca-Cola was "so adamant that under no circumstances would they let this be used in connection with Marty's critique," Griffin said, "I didn't pursue the issue when they said [his critique] would have to be dropped before they gave permission. . . . Put another way, I was scared off" (Griffin, 1999). When Sut Jhally was finalizing a contract with Routledge for a book that would be much like *Dreamworlds* but which critiqued sexist images in media texts more broadly, he hit a major snag when he insisted on using numerous advertisements and images without asking permission, claiming "fair use." The Routledge editor checked with the legal department of Taylor & Francis, the parent company, but the lawyers refused to allow these unauthorized reprintings, despite the fact that it was exactly this type of appropriation for which the fair use statute was written. Many businesses, institutions, and universities are reluctant to sanction critiques and other intellectual endeavors that fit the definition of fair use because of the extremely high expense of litigating an intellectual property case.

Therefore, letters from corporate lawyers act as *de facto* cease-and-desist court orders, and the proliferation of these letters gives way to self-censorship. In this environment, the obvious question to ask is, how in the world are people supposed to critique the ubiquitous, privately owned texts that help shape our con-

sciousness without being able to reproduce them? (“Okay kids, close your eyes and imagine a scene from MTV’s *Total Request Live*, now. . . .”) People still do engage in such activities within more independent organizations, like the Media Education Foundation. Within the context of businesses that must make more conservative interpretations of fair use as a protection from costly litigation, however, it becomes much more difficult.

Fortunately, MEF is an organization that has no parent company with lawyers who are nervous about litigation, and it boldly operates under a broad definition of “fair use.” This policy is made clear by placing the following statement at the end of *Money for Nothing* and other recent MEF videos:

The use of media material in this video is protected by the Fair Use Clause of the Copyright Act of 1976, which protects the unlicensed reproduction of media for the purposes of criticism, commentary and education.

As the means of distributing educational materials increasingly falls under the control of larger companies that are not willing (or able) to take risks, such as Taylor & Francis, it becomes more important for independent companies like MEF to survive and prosper.

THE USES

Money for Nothing’s reason for being is to educate the public (with the target audience being students) about the ways this particular culture industry operates. I want to give people the tools to engage in critique and criticism—one of the fundamental goals of the media literacy movement, of which the MEF is a leader. Roy Shuker wrote:

The arguments in support of media literacy are various, but centrally involve two facts of contemporary life. . . . First, the mass/popular media’s saturation of society, and the high levels of its consumption among young people; and, second, the pervasive influence of these media, which act as “consciousness industries.” The obvious argument for media literacy which encompasses the development in the learner of a critical perspective on all popular media, be they print, visual, or aural, is the sheer pervasiveness of such media and its enormous appeal among the young. (2001, pp. 9–10)

As a university professor, I have observed there are few media forms that claim as much influence and ubiquity in my students’ lives as popular music, through their consumption of compact discs, car radios, mp3s, music videos, and other sources. Because of its importance, music has always been a good place to begin classroom discussions about representation, media ownership, and other such issues, but I have found a dearth of video-based classroom aids that focus on music—a void that I hope *Money for Nothing* fills. I designed it so that it can be viewed

both as a full-length documentary and as a classroom aid that can be seen in smaller fragments, which is why the whole is composed of four parts that can exist as stand alone pieces, with their own introductions and conclusions.

To help teachers direct student discussions in a direction that complements the critical message of *Money for Nothing*, the MEF's Website, www.mediaed.org, provides study guides that are available for the dozens of educational videos it has produced in the past 10 years. *Money for Nothing's* study guide is viewable as an html file on the Web and as a downloadable pdf file that can be printed. It is 10 pages long and contains a synopsis of the video, detailed key points from each section, discussion questions, and exercises for research and writing. In other words, the video and study guide work as a teaching aid in the best possible sense of the term, providing experienced educators, inexperienced teachers, and those who are not familiar with the subject matter with the raw materials to engage students in multiple discussions of the topics covered in the documentary.

Here is a sample discussion question that deals with issues covered in Section 1 of the video:

Corporate executives might question the film's premise that their concern for the bottom line is incompatible with bringing quality and diversity to the airwaves. How do you feel about this?

In the part of the study guide that covers Section 2, there are questions that deal with the way what we see and hear is affected by consolidated ownership and recent trends that have allowed these media companies to grow larger.

How did the passage in 1996 of the Telecommunications Act alter the media and musical landscape? What does it mean that the radio airwaves are "public" and that they were given, rather than bought, by corporations? And what does this mean to musicians who want their music to reach the public?

Other questions attempt to connect many of the topics dealt with in *Money for Nothing* to larger issues within the cultural and political landscape of the United States:

Do you feel TRL's brand of choice and democracy have anything in common with presidential politics? How do media work similarly in both instances? And what questions does this raise about the overall relationship between media and democracy?

The study guide also provides numerous exercises and assignments that are designed to encourage students to think critically about the music industry—the way the business operates and how it affects the music they consume. These assignments are only blueprints, although they are nevertheless detailed, and can be adapted for class discussion, writing assignments, and group or individual research projects. Below is an extended example of the kinds of exercises for writing and research that tie directly into *Money for Nothing*:

Test Robert McChesney's argument in the film that MTV is basically a 24-hour infomercial. Watch MTV for a full hour and keep a running log of everything you see. As you do so, note the number and type of actual advertisements or commercials you see (note the product and describe the ad). At the same time, record your observations about the content you see—describe the actual programming or show featured that is not supposed to be an advertisement. At the end of the hour, turn off the TV and look at your notes. Did you see anything in the course of the hour that wasn't trying to sell something else? Was the so-called content itself a kind of commercial? If so, what do you think it was selling? What differences did you notice between "official" ads and this content? For class, organize your notes into the kinds of advertising you noticed: official ads, ads posing as content, and any other categories you come up with.

The study guide also contains Web links to related resources, such as a critical analysis of the 1996 Telecommunications Act by Mark Lloyd of the Civil Rights Forum on Communication Policy, as well as articles on corporate consolidation and links to corporate Websites, such as Viacom, the parent company of MTV and VH1. The study guide can be used in any number of ways, and its 10 pages contain enough material to construct a lesson plan based on *Money for Nothing* that could be extended over several class sessions.

THE END

This documentary makes no effort to be, to use Fox News' highly suspect slogan, "fair and balanced." It presents a very specific argument that students will not find in mainstream media, and when answering questions about the documentary's potential one-sidedness, my reaction is to agree that, yes, it may not air big business's arguments—but corporate America's worldviews are represented in most media outlets nearly 24 hours a day. *Money for Nothing* is merely a drop in the bucket when compared to probusiness perspectives that receive airtime, and it does not even come close to tipping those scales. And while I'm on the subject of airtime, multiple people have told me *Money for Nothing* should be aired nationally and have a wider audience. Although this is true—it *should* be seen by many more people—*Money for Nothing* could never be seen on commercial broadcast networks (it's just not the sort of thing the networks would find a viable program that could attract advertisers).

More importantly, and sadly, PBS would be an excellent place to air such a program, but that is impossible as well. Even though *Money for Nothing* certainly meets broadcast production standards, and it is certainly topical, PBS carefully enforces a copyright clearance policy that would make it impossible for this documentary to meet those guidelines. There are easily 100 video and audio clips used throughout the documentary to illustrate the things the interviewees discuss, and all of those images and sounds are owned by a handful of media conglomerates like Viacom and AOL/Time-Warner. The administrative costs of simply requesting

copyright clearance, not including the extremely expensive licensing fees, would make such an endeavor impossible for a small nonprofit like MEF.

And, as my previous discussion of copyright law suggests, these intellectual-property-owning companies likely would not grant permission to use these clips in the first place, another example of the way in which copyright law functions to repress critical public discourse within the United States and elsewhere. Even though the fair use provision allows for the existence of the kinds of expression found in *Money for Nothing*, the majority of the channels through which discourse can flow (television, book and magazine publishing, the Internet, etc.) are owned by major corporations that are fearful of litigation. When PBS, a media outlet that ought to take a stand on the issue of fair use, does not do so, it does not bode well for the media literacy movement's potential reach and influence—particularly if one cannot reproduce the thing that is being critiqued. That makes the university setting all the more important in carving out a space where fair use can be practiced actively, because without the free exchange of ideas and images that fair use ostensibly protects within our media saturated society, we cannot hope to foster a functioning democracy composed of active, informed citizens.

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