
The Humble Meta-Genius

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I had the privilege of being one of Keith Aoki's co-authors on two comic books: *Bound By Law* (2006)¹ and the forthcoming *Theft! A History of Music*.² These are not your ordinary comic books — they are comic books about the law, created with the goal of providing accessible, entertaining educational materials about subject matter that might otherwise seem relatively dry. My colleague and co-author James Boyle and I wrote the scripts, and Keith — through his singular genius (whose cogs, gears, and sparks one can only guess at) — turned them into some of the brilliant artwork you see below.

Keith was the ideal collaborator because he was both a great legal scholar and an extraordinarily talented artist. Many of the contributors to this symposium saw the former set of gifts. I had the privilege of seeing them both. This tribute will take three prevalent themes in Keith's scholarship, and explore how they manifested themselves in his art.

The first theme is the *relationship between freedom and control*. Keith wrote about intellectual property law (in addition to a daunting number of other subjects³), and the tension between freedom and

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¹ KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, *BOUND BY LAW?* (2006).

² KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, *THEFT! A HISTORY OF MUSIC* (forthcoming) (on file with author).

³ For an appreciation of Keith's work beyond intellectual property see, e.g., Keith Aoki & John Shuford, *Welcome to Amerizona—Immigrants Out!: Assessing “Dystopian Dreams” and “Usable Futures” of Immigration Reform, and Considering Whether “Immigration Regionalism” is an Idea Whose Time Has Come*, 38 *FORDHAM URB. L.J.* 1 (2010) (analyzing immigration reform); Keith Aoki & Kevin R. Johnson, *An Assessment of Latcrit Theory Ten Years After*, 83 *IND. L.J.* 1151 (2008); Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699 (1993).

control is one that lies at the core of intellectual property's grant of exclusive rights — every time the law gives an author the right to control her work, it restricts the freedom of subsequent authors and readers to use that same work.

This theme appears both explicitly and implicitly in his art. Here is Keith's explicit depiction of the desire for control, in which he imagined an artist confronting the horrors of a world *without* the control provided by intellectual property law. I have juxtaposed his drawing with its inspiration:

Image 1



In a wonderfully ironic move, Keith shows the need for creative control by transforming an iconic image from Edvard Munch's series "The Scream." To express the message he wants, he needs to be free to transform Munch's image. Freedom is implicit in his expression of control.

How did Keith depict freedom (or, at least, legal guarantees for artistic freedom)? Here is his illustration of the complexities involved

in navigating the freedoms provided by copyright's "fair use" doctrine,⁴ flanked by his inspirations:

Image 2



Again, Keith invokes iconic works — in this instance Hieronymus Bosch's "The Garden of Earthly Delights" and Salvador Dali's "The Persistence of Memory" — to envision a "surrealist garden of intellectual property delights."

Of course, freedom and control are two sides of the same coin: artists rely on *both* the freedom to build on preexisting material, and control over their new creations. The study of this dialectic was central to Keith's work, and he embraced the inherent tension. In the panel that follows, the artist is actually so torn by the dialectic that he splits in two. Look at how Keith presents an artist's split-personality struggle with the conflicting impulses of freedom and control:

⁴ 17 U.S.C. § 107 (2012). Generally speaking, the fair use doctrine permits the free use of copyrighted works for a range of purposes including criticism, commentary, and parody, when the use is limited and does not interfere with legitimate markets of the copyright holder.

Image 3



Note the homage to classic comic superheroes, another recursive riff on freedom and control.

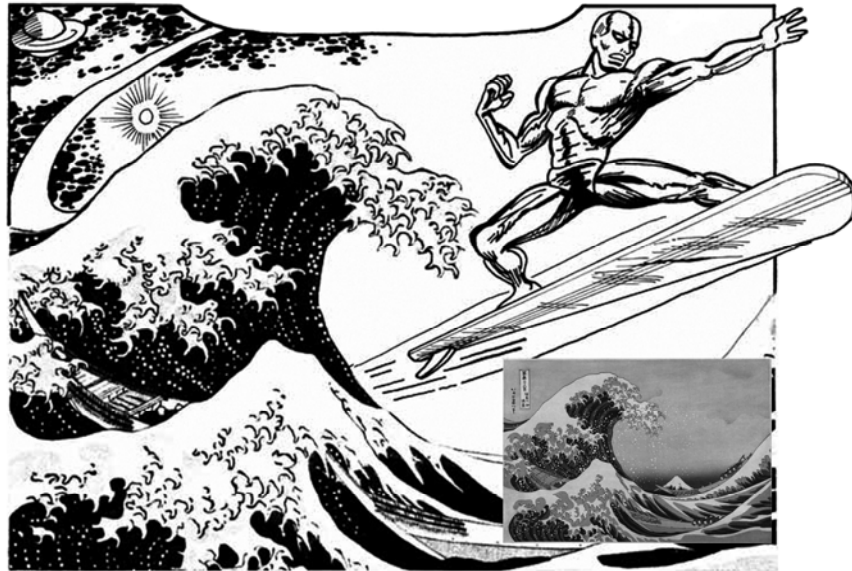
The second theme in Keith's work is intimately bound up with the first — *the nature of authorship*. The idea of Romantic authorship posits that “authors” create *ex nihilo*, out of thin air, rather than drawing on the culture around them. If this notion holds, then authors have a diminished need for freedoms to draw upon the past and correspondingly greater claims for control over their own artworks as they make their way in the world. Conversely, if creativity does not occur in a vacuum, but depends on the ability to build on that which came before, then authors require a wider zone of freedom; excessive control over source materials would stifle the creative process. (The line between the split superhero personalities above would shift accordingly.)

In his scholarship, Keith engaged with the literature on the construction of authorship and persuasively challenged the notion of Romantic authorship. But in Keith's case, he not only wrote about authorship, he was himself a more talented author than most of us can hope to be.

Keith's art both illustrates and — self-reflexively — reflects his scholarly themes, providing particularly compelling commentary on the nature of authorship in the process. Looking at the examples above, think of the way Keith transformed the works of Munch, Bosch, and Dali into works with entirely new meanings, or how he paid homage to the classic square-jawed and muscle-bound comic superhero. He built on the past, and created something new, something his own. Or consider the image below: Keith was tasked with illustrating a discussion in our comic book about a lawsuit over a

surfing documentary. My co-author James Boyle suggested including an *homage* to Jack Kirby's Silver Surfer. What did Keith do?

Image 4



The Silver Surfer is shooting forth from a beautiful rendition of Katsushika Hokusai's famous woodblock print "The Great Wave off Kanagawa," with Keith's intergalactic imagery echoing both the Marvel comic and Japanese *ukiyo-e* aesthetics, tying the two images together.

Keith did not create *ex nihilo*, indeed his scholarship denied the possibility, but he was no less a brilliant "author."

The third and final theme of this tribute is one that runs through all of Keith's work (and, indeed, his life) — *justice*. In the realm of intellectual property, he focused on distributive justice: the way that the benefits and burdens of intellectual property law get distributed in society, and the way that certain "takings" are free while others are subject to compensation.

In a fascinating article succinctly entitled "Distributive and Syncretic Motives in Intellectual Property Law (with Special Reference to Coercion, Agency and Development),"⁵ — unlike his pictures, Keith's

⁵ Keith Aoki, *Distributive and Syncretic Motives in Intellectual Property Law (with Special Reference to Coercion, Agency and Development)*, 40 UC DAVIS L. REV. 717 (2007).

titles were never short of words, something we would tease him about — Keith asked the question “Who Owns the Blues?” His article offered a rich and nuanced answer that traces the complex interaction of music, law, and race through the history of that distinctively American art form.

The history of American music is replete with instances in which the distribution of intellectual property’s benefits and burdens skewed along racial lines — white members of the music industry regularly exploited the works of black musicians who were unfamiliar with copyright law. A simple response to these inequities might be to afford the black musicians greater intellectual property protections. But, characteristically, Keith did not shy away from complexity.

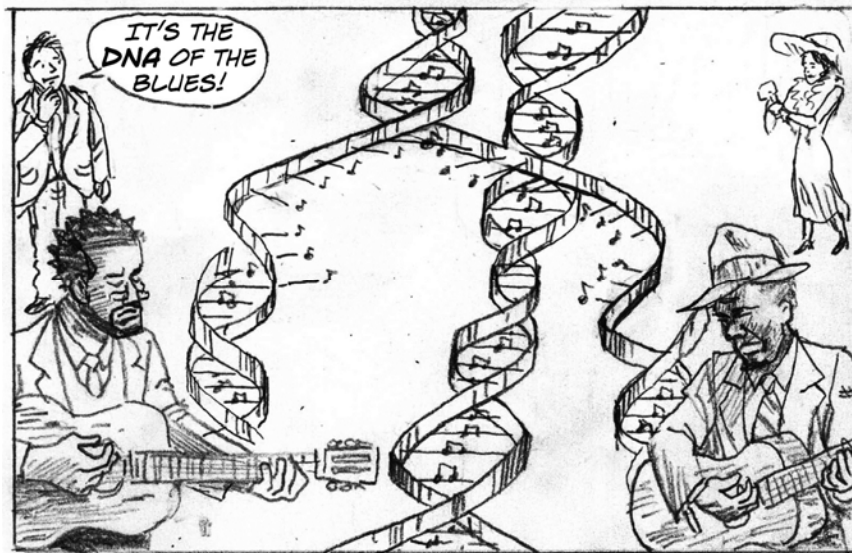
Keith drew a distinction between the external appropriation of collaborative music away from the communities that created them (as when white producers appropriated black music), and internal appropriation within those musical traditions. It was the former external appropriation that was problematic, and exacerbated by structural disparities such as unequal bargaining power and discrimination.

However, with regard to internal appropriation, Keith observed that the absence of intellectual property protection may actually have enabled the “hybrid and syncretic practices”⁶ that created the blues (and many other musical traditions) — from the contributions of antebellum and post-Civil War spirituals, to those of West African and Afro-Caribbean musicians, to the turn of the century New Orleans music that fed the twelve-bar blues. Stronger intellectual property rights could have hindered the borrowing that allowed the blues to develop in the first place.

Keith explored this phenomenon in his art as well. Here is his drawing of the “DNA of the blues”:

⁶ *Id.* at 771.

Image 5



Keith was not afraid to tackle the complexities inherent in distributive justice. The article I have just discussed says, with a characteristic unwillingness to settle for the status quo “we should also ask ourselves: is this the best that we can do?”⁷

His art reflected that refusal to accept the status quo as somehow natural, inevitable, and just. In the image below, notice that Justice is peeking from behind her blindfold as Keith interrogates the distributive effects of our intellectual property laws:

⁷ *Id.* at 772.

Image 6



Our forthcoming work with Keith focuses on music, and it was shaped by his multiple gifts. In addition to his talents as a scholar and visual artist, Keith was also a talented musician. Looking at the images that follow, one can imagine a younger Keith Aoki seeing these artists for the first time, trying out a few chords, reaching for a “fake book.”

Image 7



As I have tried to show, the ideas Keith explored in his scholarship were also, consciously or not, embodied in his art. As a result, his ideas live on simultaneously through two rather different, but complementary, mediums. Looking at them in tandem is akin to experiencing the waking and dream life layered together, something I think Keith would have appreciated.

He channeled the world in a way that only his nimble — and deeply “meta” — mind could. He gave us a unique, indelible imprint, always with unbelievable humility and all in the service of both justice and whimsy. He is missed more than his humble self could ever have imagined.

IMAGE CREDITS

Image 1:

KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, BOUND BY LAW? 30 (2006).

The Scream. Edvard Munch. Oil, tempura, and pastel on cardboard (91 cm x 73.5 cm). 1893. National Gallery, Oslo, Norway. Image source: http://en.wikipedia.org/wiki/File:The_Scream.jpg.

Image 2:

KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, BOUND BY LAW? 12 (2006).

The Garden of Earthly Delights (detail). Hieronymus Bosch. Oil-on-wood triptych (220 cm x 389 cm). 1490-1510. Museo del Prado, Madrid, Spain. Image source: http://en.wikipedia.org/wiki/File:The_Garden_of_Earthly_Delights_by_Bosch_High_Resolution.jp.

The Persistence of Memory. Salvador Dali. Oil on canvas (24 cm x 33 cm). 1931. Museum of Modern Art, New York, New York, U.S.A. Image source: http://en.wikipedia.org/wiki/File:The_Persistence_of_Memory.jpg.

Image 3:

(left) KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, THEFT! A HISTORY OF MUSIC (forthcoming) (manuscript at 116) (on file with author).

(right) KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, THEFT! A HISTORY OF MUSIC (forthcoming) (manuscript at 117) (on file with author).

Image 4:

KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, BOUND BY LAW? 51 (2006).

The Great Wave off Kanagawa. Katsushika Hokusai. Color woodcut (25.7 cm x 37.8 cm). c. 1829–1832. From *Thirty-six Views of Mount Fuji* in The Library of Congress, Washington, D.C., U.S.A. Image source: http://en.wikipedia.org/wiki/File:Great_Wave_off_Kanagawa2.jpg.

Image 5:

KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, THEFT! A HISTORY OF MUSIC (forthcoming) (manuscript at 132) (on file with author).

Image 6:

KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, THEFT! A HISTORY OF MUSIC (forthcoming) (manuscript at 156) (on file with author).

Image 7:

KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, THEFT! A HISTORY OF MUSIC (forthcoming) (manuscript at 185 (George Harrison), 136 (Blues singers), 167 (Roy Orbison), 178 (George Clinton), 43 (Mick Jagger), 27 (Jimi Hendrix), 42 (Bob Dylan), 121 (Dizzy Gillespie), 173 (Public Enemy), 10 (Ray Charles), 147 (Elvis Presley), 145 (Little Richard), 187 (Michael Bolton)) (on file with author).