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#### ABSTRACT

I explore some explanations for why the raging debate over colorization disappeared almost entirely from both the scholarly dialogue and the popular press about ten years ago. I also suggest how some of the insights from the colorization debate long ago inform issues of greater concern today. I propose that the pragmatic approach I suggested ten years ago is promising for understanding the issues presented by new technologies today and in the future.

#### KEY WORDS

colorization, film, technology, aesthetics, pragmatism

Ten years ago it was difficult to pick up a newspaper or an aesthetics journal or to attend a professional meeting in philosophy or aesthetics without encountering the raging debate over the colorization of films.<sup>[1]</sup> But in about 1995 that debate disappeared almost entirely from the radar screen. My goal here is to explore what has happened in the past decade that moved this debate off the front burner -- if not off the stove entirely. I also will propose how some of the insights from the colorization debate long ago inform issues of greater concern today.

#### 1. Recent attention to colorization

Colorization has not entirely disappeared from the literature, but it is no longer a central focus of anyone's attention.<sup>[2]</sup> It is sometimes mentioned in passing as an illustration or analogy to some other issue.<sup>[3]</sup> Although there is an occasional commercial flare-up on the issue,<sup>[4]</sup> it also is recognized as an uncontroversial artistic technique when practiced by the artist on his or her own work.<sup>[5]</sup> Even though it remains a popular discussion topic in classrooms, it is not included in most aesthetics textbooks.<sup>[6]</sup> The search engine Google.com turns up a few recent essays on colorization, but they seem mainly to be student term papers that rehash the old debates,<sup>[7]</sup> on-line encyclopedia articles,<sup>[8]</sup> or essays by non-philosophers<sup>[9]</sup> which do not move us beyond the debate of *circa* 1995.

The nation's courts do not seem very interested in the policy or philosophical issues of colorization either. The U.S. Supreme Court has never used the word 'colorization.'<sup>[10]</sup> In the Federal appellate courts, only one case has considered colorization -- not for its desirability, but in a bankruptcy case in which the failure to complete a contract to colorize work for a movie studio was one of the financial issues.<sup>[11]</sup> The Federal district courts talked about colorization in six cases in the past thirteen years, but these were mainly fights about patents for elements of the colorization process, not anything substantive or philosophical about the merits of colorization or the rights of artists.<sup>[12]</sup> The rights of the patent holders on the colorization process were of more interest to these courts.

One group seems to have remained somewhat interested in colorization, *viz.*, law students editing law reviews. Over the past decade, at least fifty-six articles have been published and can be found with a simple Lexis search. But they do not focus on colorization as their main concern and are not addressing the themes that so engaged philosophers a decade ago.

Some articles in the law journals have looked at international intellectual property law, of which colorization (treated differently in continental Europe from the United States) is one minor issue.<sup>[13]</sup> Some in the law seem interested in the role of "moral rights of artists" in the United States, an issue we have only recently come to terms with as we enter international copyright treaties. Legal scholars are interested in the technical issues of merging conflicting cultures and attitudes toward intellectual property and the rights of artists. As philosophers, the challenging issues are the cultural differences that lead to such different approaches to artists. In the United States and Great Britain, for

example, we have approached intellectual property rights as mainly economic property rights. Continental Europe, especially the French, have long understood a moral right of an artist to the integrity of the work, even after the transfer of economic rights. That issue, of course, is at the heart of the colorization issue. Although we have had some limited attention to these philosophical underpinnings of our understanding of artistic creation, we have much to probe and try to understand.

## 2. Declining interest in colorization

Why has colorization itself, as an issue, apparently disappeared from our collective intellectual consciousness? Why do *any* once-urgent issues of public and scholarly dialogue disappear from our radar screens? Perhaps we reach a resolution that almost all people find agreeable. We no longer debate equal-pay-for-equal-work as the culture did in the early seventies. We seem to have reached a public understanding that this is the right thing to do and we have moved on to other issues, such as equal-pay-for-comparable-work, for example.

Perhaps we feel all the perspectives are on the table and we will never fully resolve the issue, but we have reached an equilibrium in our daily lives so that we do not really need to continue the discussion. I do not believe we ever reached a consensus on colorization, but perhaps we reached an equilibrium and felt that all the issues were on the table and there was nothing more to say.

Perhaps we lost interest in colorizing simply because Ted Turner stopped colorizing films and provoking controversy. He, in turn, seems to have stopped colorizing for simple economic reasons.<sup>[14]</sup> If crass commercialization was to blame for colorization in the first place, as some thought, then ordinary market forces perhaps led to its demise in recent issues.

But I believe there is more to it. 1995, the last year in which the scholarly dialogue showed an interest in colorization, was a turning point in ways we could not have imagined at the time. This was the last year in history when almost everybody was blissfully ignorant of the World Wide Web. Some academics and scientists were using a crude, user-unfriendly form of e-mail, and a few even knew something about the Web. Some members of the public were subscribing to America On-Line (AOL), then a pre-Web technology with on-line resources.

## 3. A technological turning point

But by late 1995, the "killer ape" of the Web exploded in our national consciousness. Suddenly, we all needed new Pentium computers with the power and software that could access the Web. We tried free offers from Internet companies and were forever transformed. Suddenly, otherwise normal adults found themselves "surfing" the Web for hours, days, even months at a time, amazed at the amount of material available. In those "salad days" of the Internet, we turned our attention to teaching our students on-line or digitizing vast libraries of material so we could access them on-line and skip the hard work of searching "real" books and journals in non-virtual buildings called libraries. We reveled in our self-publishing to the world by creating and posting our own individual web pages, even if nobody but family members ever looked at them.

We are no longer amazed at astonishing research feats that would have been inconceivable only a decade ago, such as searching the huge database of court decisions looking for the occurrence of a single word, "colorization," as I did for this project. In a matter of a few years, we have become downright complacent about the capabilities of computers and related technologies to change our lives and our work. In this environment, we are no longer shocked or dazzled or startled by the capabilities of technology. Colorization seems a downright trivial, almost ancient technology with issues somewhat clear and unambiguous, even if we do not all agree on the desired outcome.

Our frenzied attention to a different sort of technology, with a new vocabulary of its own -- of bits and bytes and virtual realities and

cyberspace -- made the technology of colorization seem positively quaint and uninteresting. Our ethical interest in technology has been diverted to a vastly more complex and interesting set of challenges. We wonder how new technology changes our understanding of the identity of a work and the moral rights of artists. We face a host of new challenges in understanding how copyright law is being dramatically reshaped by the piracy now made so easy from Web pages. We are overwhelmed with the issues of digitizing films, special effects, and various realities -- virtual, pseudo- and otherwise.

#### 4. Evaluating new forms of modification of artworks

Philosophical dialogue on these issues is taking shape and will likely preoccupy us for years. [15] I propose that the approach I developed for the colorization debate a decade ago will serve us well in addressing technology issues. I was not interested in either defending or criticizing colorization *per se*, nor am I now interested in defending or criticizing specific technological practices. Rather, I was interested then and now in the quality of the various arguments presented in the debate, and I urged that we look to other art forms for precedent on how to address modifications made in existing artworks, whether through new technologies or otherwise. "Art made from art" or "derivative works" based on other works can be found in all artforms and provide us with principles helpful in sorting out the colorization and now the technological issues.

I identified three types of arguments in the literature, none of which provided a decisive solution on colorization. First, I looked at the rights of artists. [16] These include their right to freedom of expression, both in creating a work of art and in altering existing works. I also considered whatever moral rights artists have, as they do in Europe, to prevent the alteration of their work even after they have relinquished their economic rights.

Next I looked at arguments that center on the rights of works themselves. [17] a peculiar notion in the literature. To this day, we have not extended rights to inanimate objects and we must strain with difficulty to find such rights.

Third, I considered the rights of audiences -- whether rights to quality art or art as intended by the artists or as intended by another person who altered the work. [18] But these supposed rights do not resolve anything in the colorization argument either.

I then articulated principles to use in assessing the value and legitimacy of any kind of alteration in any artwork -- whether colorization of films or something else. I took what I consider a pragmatist approach, looking to the continuing dialogue within art world communities.

First, I suggested we look to conventions for the acceptability of modifications within an art form [19] -- conventions which reflect that art community's shared views about the practices which best promote the potential of that art form. The first principle goes to the evaluation of that art form. What are the conventions for modification within an art form? Think of the continuing debate over lighting in our perception of visual arts, of our standards for architectural preservation of historic buildings, and of our evolving standards for the use of wires and toe shoes in dance.

Second, I said we should look to the assessment of the artist producing that work. [20] This considers the ongoing dialogue within an art community, and we should not be surprised if it continually shifts. Standards evolve for what evidence to count as contributing to our valuation of our artist's skills. Some modifications unfairly hurt the reputation of an artist -- as filmmakers sometimes claimed in the colorization controversy. But some actually seem to help -- as with the now-standard use of pointe shoes in reconstructions of the dances of Danish choreographer Auguste Bournonville.

## 5. Principles for assessing modifications in art

I then proposed four principles<sup>[21]</sup> which help us better weigh the appropriateness of modifications to any art form, including colorization:

(1) If the artist is still living to clarify his or her intentions and preferences for the presentation of the work, we are more likely to feel an obligation to defer to the artist's wishes. Living artists can clarify their intentions and preferences for the presentations of their work. The work is then more accurate evidence of the skill of the artist.

(2) If the artist is no longer living, we are more likely to find modifications objectionable if the artist knew about (or reasonably could have anticipated) the alternative technology or method of presentation and thus could be presumed to have made a conscious decision not to use it. If we know that the artist made a conscious decision not to use an available technology, we have an additional piece of information about the artist's skill.

(3) We are more likely to object to changes made by someone else without the permission of the artist (for example, the addition of toe shoes to Bournonville's choreography) than to modifications made by the artist (for example, the revision of the ending by Balanchine to his *Four Temperaments* or the "colorizing" by Wallace Nutting of his own black-and-white nature photographs). If the artist made the changes in his or her own work, we presume that the changes were intentionally made; we thus have additional information about the artist's skill in artistic decision-making. For example, Balanchine changed the choreography for the ending of his *Four Temperaments* when he staged the work for television and liked it so much that he retained the changes for theater performances, some thirty years after he originally choreographed the work. The credits for the television performance say the work was "choreographed and *reconceived* for television" by Balanchine.<sup>[22]</sup>

In contrast, if someone else made the changes, we do not know (based on that information alone) whether the artist would have made that decision. Even so, we do not take the artist's decision to modify as beyond debate. Legitimate aesthetic debates have occurred over the changes by authors to their own works. (For example, the Pacific Northwest Ballet prefers Balanchine's original ending to *Four Temperaments* and still performs that version.)

(4) We are more likely to object to modifications that are not clearly identified as such, when the modified work is "passed off" as the "original" work to a new audience. If the derivative work is clearly identified as such, we are being told that it does not fully reflect the intentions of the artist and his or her skill in artistic decision-making, so we place less weight on the value of the work as a means of assessing the artist's skill. Films on television show the results of the colorization battles of a decade ago, as they now routinely include disclaimers that the film has been altered to fit the television screen, or that it has been shortened to make it suitable for a general audience.

## 6. Recent controversies

These principles on colorization help us understand more recent controversies in the arts. It is worth remembering that the main forms of distribution for colorized films in the early 1990s were television and videotapes. DVD technology did not emerge into the mainstream until the last few years of that decade. Some of the DVD distribution is similar to that of videotapes, and the accommodations are also similar. For example, DVDs provide you with a choice of a widescreen version as in a theater or an altered version to fill out the TV screen. The DVDs likely include a caption explaining whether the film has been restored or the score digitally remastered. In other words, film distributors now provide full disclosure about the alterations, if any, that have been made. This is consistent with my fourth principle, that we are less likely to object to modifications if they are labelled as such and there is no attempt to "pass off" the modification as the original work of the artist. We know the artist did not intend those changes and thus do not alter our judgment of the

skill of the artist based on those changes.

*Casablanca*<sup>[23]</sup> -- about which much of the original colorization controversy flourished -- cannot today be bought in its colorized version. You get the original black-and-white in what they call the "standard version: presented in a format preserving the aspect ratio of its original theatrical exhibition." But the sound is now Dolby digital, a technology that was unimagined in 1943 when the film was released? and nobody seems to get exercised about that modification, perhaps because it is labeled (and thus not "passing off" something the artist did not intend), and because we all know we'll enjoy the sound more today because of that process. In *Casablanca*, we also get subtitles available in English or French an accepted modification in the dialogue of the movie world community.

Comparable alterations seem to be accepted without controversy in the DVD versions of Woody Allen films.<sup>[24]</sup> A powerful director, still living of course, he was a vocal critic of colorization at the time. His DVDs include foreign language subtitles, and they are shown in the original "theatrical release format" -- but "enhanced for widescreen TV." Apparently, for Allen, enhancement for newer TVs is okay, but not alteration of the colors. Presumably, Allen oversaw the enhancement process, so we can still fairly use the work as evidence of his artistic skill.

The greater storage capacity of DVDs has made possible the inclusion of other material that was not distributed on videotapes. Not all of that material seems relevant here, as it does not involve "the work" itself or an alteration to it, as colorization did. For example, including the movie trailer, which is clearly not part of the film, whether on a tape or a DVD, does not raise the issues that modification by colorization does.

The DVD release of *The Godfather DVD Collection*<sup>[25]</sup> includes an enormous amount of bonus material, though much of it does not involve an alteration to the actual work itself. We get foreign subtitles, "enhanced" widescreen format, Dolby Digital and those ubiquitous audio commentary tracks by Coppola himself, all of which alter the actual work from its original form. As Coppola is still alive and can decide what we should see to make judgments about his work as an artist, so these alterations have not provoked controversy.

After years of quiet in the press, a colorization controversy emerged over the release by Sony's Columbia TriStar of *Three Stooges* DVDs with digitized color, along with the original black-and-white versions of the films. Sony says that the colorization is far superior to earlier techniques and the DVD gives viewers the option of watching the original black-and-white version. Sony also acknowledges the economic interest in colorizations, saying that adding the colorized version means they can release more old films than would otherwise have ". . . economically feasible." Critics, such as director Sam Raimi, claimed that this sort of change is ". . . an artistic interpretation that's not anybody's right to make except the director's." But using the test of whether viewers can draw an appropriate inference about the talent of the artist, the inclusion of the original black-and-white seems to blunt that objection.<sup>[26]</sup>

## 7. What next?

Where do we go next? Technology moves so fast, it is can be difficult for philosophers to keep up. Matthew Causey, a new media artist, asks how the ". . . ontology of the performance (liveness) [has been] . . . altered within the space of technology?"<sup>[27]</sup> He suggests that we explore reconceiving theater to include other media, including various technologies. The broader issues, I would suggest, include reconsidering the ontological nature of both traditional theater, as well as technnologies, virtual reality, and cyberspace, rich terrain for philosophers.

Philosopher David E. W. Fenner recently argued that modification of recordings of certain music with today's sophisticated technological possibilities is not objectionable, so long as the work exists in multiple



instantiations and improves the aesthetic experience of some listeners. Interestingly, he argued for his position by citing just such an argument concerning colorization. [28] This use of the precedent of colorization appropriately appeals to the several factors we should use in making such judgments about the appropriateness of other modifications to a work and avoids claiming some sort of "bright line" test.

The colorization controversy was also mentioned in passing to support an argument by philosopher Eric Katz that historic art works, especially those found by humans in natural settings, should never be altered, but should instead be shown respect. This too suggests that the principles of the colorization debate deserve broadening to issues of modification of works in general, not narrowly framed "bright line" tests. [29] Gary Edgerton similarly suggests that the most important remnant of the colorization debate is helping us understand how to address future technologies, such as digital color imaging. [30]

Perhaps the most important lesson learned from the colorization debate in its heyday is that looking for absolute principles of right and wrong do not help much in the long term. What I proposed then for colorization and now for greatly expanded uses of technological innovation is that we look for broader principles that would help us sort out new issues we cannot even imagine today. As philosophers, that is what we do best and what we can contribute most usefully to the dialogue. Given the rapidly evolving technologies of our daily and artistic lives, a pragmatic approach that centers on on-going community dialogues continues to hold the most promise, as I argued ten years ago.

#### Endnotes

Earlier versions of this paper were presented at the Annual Philosophy Symposium, California State University, Fullerton, March 13, 2003, and at the annual meeting of the Society for the Philosophic Study of the Contemporary Visual Arts, Washington, DC, December 28, 2003.

[1] Examples of the publications in that era include: Vincent Canby, "'Colorization' Is Defacing Black and White Film Classics," *The New York Times* (November 2, 1986), Sec. 2, pp. 1, 21; Charles B. Daniels, "Note on Colorization," *British Journal of Aesthetics* 30:1 (1990), 68-70; David N. James, "On Colorizing Films: A Venture into Applied Aesthetics," *Metaphilosophy* 20:3-4 (1989), 332-340; Flo Leibowitz, "Movie Colorization and the Expression of Mood," *Journal of Aesthetics and Art Criticism* 49:4 (1991), 363-365; Jerrold Levinson, "Colourization III-Defended," *British Journal of Aesthetics* 30:1 (1990), 62-67; Yuriko Saito, "Contemporary Aesthetic Issue: The Colorization Controversy," *Journal of Aesthetic Education* 32:2 (1989), 21-31; James O. Young, "In Defence of Colourization," *British Journal of Aesthetics* 28:4 (1988), 368-372; James O. Young, "Still More in Defense of Colorization," *Journal of Aesthetics and Art Criticism* 50:3 (1992), 245-248; Julie Van Camp, "The Colorization Controversy," *The Journal of Value Inquiry* 29:4 (December 1995), 447-468.

[2] Word searches of literature from 1995-2004 were conducted of JSTOR, Project Muse and the Philosopher's Index. Not a single philosophical article could be identified on colorization, other than those listed in note 1, the most recent of which was published in 1995.

[3] In "Understanding Moral Limits in the Duality of Artifacts and Nature: A Reply to Critics," Eric Katz mentions one sentence, in the past tense, in parentheses, about the colorization issue, but only to underscore his separate point that he is not interested in changing or improving works of art. *Ethics & the Environment* 7:1 (2002), 138-146, 143. Similarly, David E.W. Fenner, in "In Celebration of Imperfection," argues that some modifications of art are justified, and cites James O. Young's analogous arguments for colorization as support. *Journal of Aesthetic Education* 38:2 (Summer 2004), 67-79, 76-77.

Elizabeth S. Anderson cited colorization as an example of an emphasis on economic value above all, but only as a passing reference in an essay on women's labor. "Is Women's Labor a Commodity?" *Philosophy and Public*

[4] See below, the release of Three Stooges DVDs with digitized color, along with the original black-and-white versions of the films.

[5] E.g., in the film *Pleasantville*, the narrative explored the relationship of the world of television to some other reality, by gradually colorizing the black-and-white scenes. Gary Ross, Director (New Line Cinema, 1998).

In "Writing on a White Paper," Maria Antonella Pelizzari, briefly mentions a Native American artist, Victor Masayesva, Jr., who experimented with colorization of his own work. *Performing Arts Journal* 54: 18 (1996), 20-25, 22. Elizabeth Weatherford, in her essay on this artist, also mentions his use of colorization of his own work. "To End and Begin Again: The Work of Victor Masayesva, Jr.," *Art Journal* 54:4 (Winter 1995), 48-52, 49.

[6] *Arguing about Art: Contemporary Philosophical Debates*, edited by Alex Neill and Aaron Ridley, included colorization in its first 1995 edition, and continued to include it in the revised second edition in 2001. (New York: McGraw-Hill, Inc., 1995, 2001); see Section 2, "Colorizing Movies."

[7] E.g., Jamyang Lodto, "The Questionable Morality of Colourising Movies," *Sophia: Philosophy Student Journal*, <http://web.uvic.ca/philosophy/sophia/issues/sophia2002/lodto.htm> (acquired July 5, 2004).

[8] E.g., Gary Burns, "Colorization," Archives of the Museum of Broadcast Communications, <http://www.museum.tv/archives/etv/C/htmlC/colorization/colorization.htm> (acquired July 5, 2004).

[9] E.g., Nima Taradji, "Moral Rights, Colorizations & The Romantic," <http://www.taradji.com/color.html> (acquired July 5, 2004).

[10] Search according to Lexis-Nexis Academic Universe.

[11] *Otto Preminger Films v. Qintex Entertainment*, 950 F.2d 1492 (9th cir., 1991).

[12] *United State ex rel. Roby v. Boeing Co.*, 100 F.Supp. 2d 619 (2000); *Barroso v. Polymre Research Corp. of Am.*, 80 F.Supp. 2d 39 (1999); *Richard Feiner & Co. v. H.R.I. Indus.*, 10 F.Supp. 2d 310 (1998); *Bloomstein v. Paramount Pictures Corp.*, 1998 U.S. Dist. LEXIS 20839 (1998); *Zenith Elecs. Corp. v. ExZec Inc.*, 876 F.Supp. 175 (1995); *Novacolor, Inc. v. American Film Technologies, Inc.*, 1992 U.S. Dist. LEXIS 10315 (1992).

[13] E.g., James Powers, "Intellectual Property Problems Associated With the Internet," *U. Balt. Intell. Prop. J.* 5 (Fall, 1996 / Spring, 1997), 85-101.

[14] Gary Edgerton suggests this view, when he says, "The enduring significance of colorization begins and ends with business and technology." "Digital Color Imaging and the Colorization Controversy: Culture, Technology, and the Popular as Lightning Rod," in *Technohistory: Using the History of American Technology in Interdisciplinary Research*, edited by Chris Hables Gray (Malabar, Fla: Krieger Publishing Com[pany, 1966), pp. 5-32, see esp. 22.

Lodto, *supra*, note 6, suggests an economic explanation for the demise of interest in colorization. Burns, *supra*, note 7 has also cited the economic factor.

[15] A comprehensive treatment by philosophers of the technology issues in art is "Technology, Appreciation, and the Historical View of Art," John Andrew Fisher and Jason Potter, *Journal of Aesthetics and Art Criticism* 55:2 (Spring 1997), 169-85. Colorization receives only brief mention. It is considered merely an "extension" of other technological processes, pp. 172. The debate over colorization is characterized in one brief sentence, as ". . . not just a fight over the best representation of individual movies, it is a battle over what a movie is." 176. This essay illustrates how

philosophers are turning their attention to the impact of technology. Fisher and Potter argue, for example, that the rapid changes in our we appreciate art are shifting our understanding of what art is away from historical approaches to a more abstract emphasis on appreciation.

[16] Van Camp, 449-455.

[17] *Ibid.*, 460.

[18] *Ibid.*, 460-462.

[19] *Ibid.*, 462.

[20] *Loc. cit.*

[21] *Ibid.*, 465-466.

[22] "Choreography by Balanchine, Part I," *Dance in America*, PBS, 1977 (emphasis added).

[23] *Casablanca* DVD, Turner Entertainment Co., 1999. Original film 1943. ISBN: 0-7907-4399-X.

[24] *The Woody Allen Collection*, DVD, 2001. ISBN: 0-7928-4897-7.

[25] Paramount Pictures, 2001. ISBN: 0-7921-7490-9.

[26] "Stooges DVD revives colorization debate," MSNBC.com, accessed 8/10/2004.

[27] Matthew Causey, "The Screen Test of the Double: The Uncanny Performer in the Space of Technology," *Theatre Journal* 51:4 (1999), 383-394, see esp. 394.

[28] Fenner, *supra*, note 3.

[29] Katz, *supra*, note 3.

[30] Edgerton, *supra*, note 13.

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