

Casey Wolf
AMST 252
Russek
5/26/11

Mine!: Navigating the Murky Waters of Food Recipe Ownership

Who can claim ownership over the peanut butter and jelly sandwich? Who has the copyrights to Pad Thai? In these cases of food, foodways, and cultural capital, the easy answer of “both no one and everyone” does not quite suffice. We live in a world where a recipe for a dish that is reflective of the available ingredients and practices of a remote region in Asia can become the hottest new trend in the restaurants of Los Angeles. So it is important that we reflect on the implications of the proliferation and re-appropriation of ethnic food practices in order to understand our roles in the organic assembly line of creating food culture. Rather than being formed mechanically piece-by-piece like on a conveyor belt, food practices do not follow a straight trajectory, they are in a constant state of flux, and they have not one but many “authors” subjectively determining how an ideal product should look, feel, taste, and smell.

Food and Intellectual Property: A sticky situation

The Western notion of intellectual property is especially difficult to carve out with regard to the circulation of food practices (at global and local levels) for several reasons. Protectors of intellectual property such as patent and copyright “not only presume that the act of innovation is largely individual rather than social, but that innovators are motivated by financial gain, and that it is the role of the state, rather than innovators, to ensure that new knowledge is used responsibly”.¹ However, these assumptions about the nature of creation and ownership are not universally accepted. Many indigenous communities

share a worldview that is “communitarian, not individual, focused on sharing rather than shielding things, respect for land and all living things as sacred rather than as objects ripe for exploitation and consumption”.² It would make sense to apply this more egalitarian, community-based mindset to food practices but, of course, hotter heads have prevailed. The more constricting, imperialist notion of intellectual property has been used as a lens to view recipe ownership and development. This misapplication of the concept has caused trouble and misunderstanding with food recipes’ movements both within a community and in between different communities.

The PB&J in America

Not many foods conjure up as much feeling of nostalgia and comfort in the American imagination as the peanut butter and jelly sandwich. According to a nationwide survey conducted by the J. M. Smucker Company, the average American will eat approximately 1,500 PB&J’s before graduating high school.³ As such a staggeringly ubiquitous food, peanut butter and jelly sandwiches are not marked as part of an ethnic community but rather a product and possession of the American community as a whole. Even when the food travels to other countries it is either rejected or deeply connected with American food practices. The Dutch find the sandwich “repugnant” because the “particular combination of salty and sweet seems strange to the Dutch palate”.⁴ Michelle Riordan, a waitress at a Chinese restaurant in Cahersiveen, Ireland, cites as a reason why she loves America, among several other convenience food examples, that Americans have the “luxury” of buying peanut butter and jelly in the same jar.⁵

Even though the peanut butter and jelly sandwich is established as something fiercely American, and therefore part of a culture that values the orderliness of sole ownership and individual invention, a patent dispute that raged a little over a decade ago called into question who in America could possibly claim that they knew the PB&J best. In 1999, the J. M. Smucker Company obtained a patent for a “sealed crustless sandwich” later to be marketed as “Uncrustables”™.⁶ The product was accused of essentially being a peanut butter and jelly sandwich with the crusts cut off, and the company’s ensuing efforts to prevent other companies from making similar products further provoked a discourse that labeled the case a “colossal idiocy” of a patent.⁷ In the American patent system, a product must meet certain “standards of novelty, usefulness, and non-obviousness”.⁸ What this product had failed to do, in the eyes of a federal judge and the media that perpetuated the story, was make a clean break from the “obviousness” of a PB&J in American society.⁹ This case demonstrates that Americans believe that the standard PB&J and its variations do not belong to anyone but exist as part of the fabric of our society. If someone does wish to claim ownership of a PB&J innovation, it must be a wholly unrecognizable shift in the development of the recipe in order to be deemed intellectual property.

Crossing borders with recipes in tow

Problems may abound when an individual attempts to claim ownership of a ubiquitous food circulating within a community. But these problems are further nuanced and magnified when a food recipe is brought from one community or culture to another via an intermediary. From a Western perspective, the act of using another culture as a

resource to be tapped can be seen as a form of cultural conquest. In her chapter “Let’s Cook Thai”, Lisa Heldke argues that the “adventuresome” cooking of middle to upper middle class white Americans has direct ties with colonialist tendencies. “When I began to examine my tendency to go culture hopping in the kitchen, I found that the attitude with which I approached such activities bore an uncomfortable resemblance to the attitude of various nineteenth- and early twentieth-century European painters, anthropologists, and explorers who set out in search of ever ‘newer,’ ever more ‘remote’ cultures they could co-opt, borrow from freely and out of context, and use as the raw materials for their own efforts at creation and discovery.”¹⁰ This pang of guilt she feels in connection with culture hopping is warranted because from a Western perspective, this is, in fact, cultural colonialism. She cites Claudia Roden’s *A Book of Middle Eastern Food* as a cookbook where the author did not give due credit to the women from which she gained her food knowledge: she stole their intellectual property according to Western terms.¹¹ However for a culture not as obsessed with individual ownership, culture re-appropriated by a “colonizer” has a different set of potential concerns. Anthropological work with Mexican and Mexican American women has shown that while “uninterested in notions of authenticity” when it came to food recipes they worked to counteract the negative imagery and stereotypes surrounding Mexican culture with the proliferation of its food.¹² For Nit Sithisack, manager of First of Thai restaurant in Faribault, Minnesota, re-appropriation of authentic Thai cuisine to something more Americanized is another part of good business. “We do have kids that come in that want ketchup with their chicken fingers, if they can’t eat this, can’t eat that, we’ll provide that for them. We can

add anything, omit anything, pretty much you can come in and modify your own dish, no problem.”¹³ On this intimate individual level, cultural re-appropriation is an innocent synthesis of taste preferences juxtaposed in small town Minnesota. Only when the ethnic other is treated as an interchangeable and exploitable resource does the practice of re-appropriation become an issue of undeserved intellectual property.

Determining food as intellectual property must be handled differently depending on both its circulation pattern and the perspective from which it is viewed. A recipe from an indigenous community may not be viewed as a possession of that community but when proliferated throughout another community it may bring about negative side effects such as stereotypical imagery and subconscious cultural colonialism. Intellectual property is not always a logical concept to apply to the development of food practices, but it does reveal different food cultures' attitudes towards how ideas are grown and modified in the global exchange of cultural practices.

¹ Barsh, Russel L. "Who Steals Indigenous Knowledge?" Proc. of American Society of International Law, Washington, D.C. *JSTOR*. Web.

² Wiessner, Siegfried. "Intellectual Property and Indigenous Peoples." Proc. of American Society of International Law, Washington, D.C. *JSTOR*. Web.

³ "PB&J Is A-OK." *Prepared Foods* (2002). Web.
<http://findarticles.com/p/articles/mi_m3289/is_10_171/ai_93307617/>.

⁴ Salzman, Catherine. "Continuity and Change in the Culinary History of the Netherlands, 1945-1975." *Journal of Contemporary History* 21.4 (1986): 618. *JSTOR*. Web.

⁵ Riordan, Michelle. "Conversation in Cahersiveen." Personal interview. Aug. 2006.

⁶ Shih, Anna M. "The Patented Peanut Butter and Jelly Sandwich: Food as Intellectual Property." *Gastronomica: The Journal of Food and Culture* 2.1 (2002): 23. *JSTOR*. Web.

⁷ Ibid.

⁸ Ibid. 25.

⁹ Ibid. 23.

¹⁰ Heldke, Lisa. "Let's Cook Thai." *Pilaf, Pozole, and Pad Thai: American Women and Ethnic Food*. University of Massachusetts, 2001. 177. Print.

¹¹ Ibid. 185.

¹² Pilcher, Jeffrey M. "Eating Mexican in a Global Age: The Politics and Production of Ethnic Food." *Food ChainsL From Farmyard to Shopping Cart*. University of Pennsylvania, 2009. 159. Print.

¹³ Sithisack, Somsanith. "Interview with Nit Sithisack." Personal interview. 25 Apr. 2011.