AESTHETICS, COPYRIGHT AND A TWENTY-FIRST CENTURY RENAISSANCE: THE IMPACT OF INTELLECTUAL PROPERTY LAWS UPON MUSICAL DISCOURSE

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AESTHETICS, COPYRIGHT AND A TWENTY-FIRST CENTURY RENAISSANCE: THE IMPACT OF INTELLECTUAL PROPERTY LAWS UPON MUSICAL DISCOURSE

The presence of copyright creates what is perhaps the greatest problem for the musicians, artists and cultural consumers of the twenty-first century; a centuries old law affecting their daily existence in a way quite unlike any other cultural tract. Rational debate becomes anathema, instead radiating from partisan encampments, each propagating a complex substructure of personal interests, each unwilling to concede to the fundamental changes brought about by the digital age.

A new approach is needed; one which seeks to move beyond factional analysis by consumer or legislator to better understand the discourse of the aesthetic endeavours of humanity. In filling this research gap, by understanding how these laws affect our musical landscape, this study argues that we can move toward a reconciliation; one which has at its core both the nature of the musical object and a suggested positioning in the legal sphere.

The paper examines this through the evaluation of prevalent legal ideology and the deconstruction of both historic and contemporary economic data to understand the implied functionality of copyright. Key to the methodology of this exegesis is an engagement with the metaphysical nature of modern cultural artefacts and the comparative qualities of our own contemporary socio-cultural environment. The study argues that in appropriating and controlling music, copyright has the potential to undermine what many see as an emerging twenty-first century musical renaissance.

This dissertation therefore simultaneously challenges the basics of two core arguments: that intellectual property is an outmoded ideological weapon and that music cannot exist without its presence. By actively engaging in these debates, *Aesthetics, Copyright and a Twenty-First Century Renaissance* seeks to shed light upon a legacy of socio-political concern at the heart of a global musical culture.

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INTRODUCTION

> [Culture is] the body of ideas which a people holds about itself and its environment, together with the tools and artefacts by means of which its members relate to one another and to the world which they inhabit.[1]
>
> NORMAN JOHN GREVILLE POUNDS

On Wednesday 18 January 2012, internet users the world over went into meltdown. Wikipedia, the internet's largest free encyclopaedia and staple of modern-day life, had shut down access to its English-speaking users for twenty-four hours in support of growing opposition to the Stop Online Piracy (SOPA) and Protect Intellectual Property Acts (PIPA) then making their way through the United States Congress. As other sites such as BoingBoing, Reddit and Flickr joined the movement over the course of the day, more than one hundred and sixty million people saw Wikipedia's on-screen protest message, eighteen senators backed away from the proposed legislation, and four and a half million people signed an online petition condemning the scope of the acts.[2] As news of this thoroughly modern uprising went viral, it became apparent that something had changed in the public consciousness. Although not the first (and almost certainly not the last) display of public outrage at the growing heavy-handedness of copyright legislation, the day of the blackout showed in perhaps the most tangible way yet that something is woefully amiss in the world of intellectual property. As one critic said, "a rebellion against broad copyright rights and the overly complex ownership system for the building blocks of culture is upon us".[3]

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[1] Norman John Greville Pounds, *The Culture of the English People: Iron Age to the Industrial Revolution*, (Cambridge, 1994), p. 1.

[2] Jenna Wortham, 'A Political Coming of Age for the Tech Industry', *The New York Times* (Accessed 19 January 2012) <http://www.nytimes.com/2012/01/18/technology/web-wide-protest-over-two-antipiracy-bills.html?_r=1&pagewanted=all>.

[3] Lydia Pallas Loren, 'Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licences and Limited Abandonment of Copyright', *George Mason Law Review* 14 (2007), pp. 271-328 (p. 273).

Pounds's comment, a quiet re-evaluation of these cultural foundations, speaks volumes to a world undergoing a "musical renaissance".[4] By asking us to evaluate culture as a multitude of interconnected systems, ideologies and artefacts, he removes this most polarised and bi-partisan feud from its dual positioning in legal positivism and cultural absolutism to create a broader historical engagement with the fundamental objects of our human endeavour. In understanding the debates surrounding the events of 18 January from Pounds's cultural perspective, we open possible diplomatic resolutions to this war for the benefit of the future of musical landscapes.

The terms of this peace agreement will not come easily. Initially conceived as a response to the explosive growth of literary materials and consequent economic opportunities brought about by the advent of Gutenberg's movable type, many suggest that copyright has moved far beyond its original remit as first substantiated in Britain's 1710 Statue of Anne.[5] The act offered publishers limited rights for a fixed period, after which their copyright expired and the work moved into the public domain. In guaranteeing a fixed period of time in which a rights owner would be the sole profiteer from their cultural product, it was theorised that owners would be encouraged to invest the time required to create new culture, thereby benefitting society as a whole.[6] The statute was therefore the first incarnation of what we can recognise as the basics of our own contemporary copyright law:

- Copyright is enforced as a civil matter (although occasionally pursued as criminal under certain jurisdictions).

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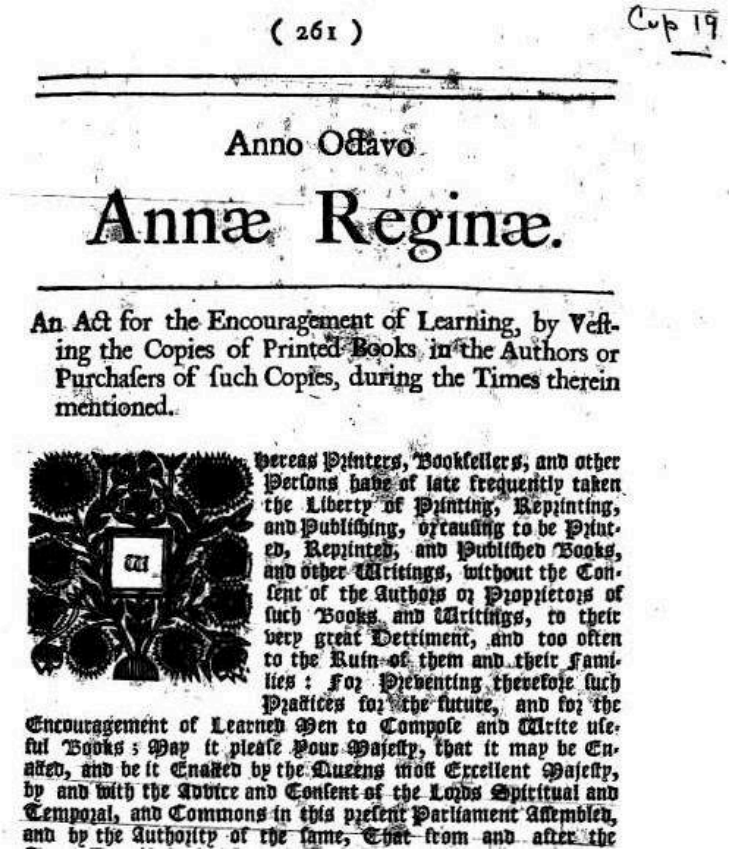
[4] Max Hole, 'What the music industry needs to do with the classical renaissance', *The Guardian* (Accessed 3 February 2012) <http://www.guardian.co.uk/commentisfree/2012/feb/02/classical-renaissance-music-industry>.

[5] Some studies incorrectly give the statute's codification as 1709; however, due to repeated amendments, the act did not gain royal ascent until 1710.

[6] Ronan Deazley, *Rethinking Copyright: history, theory, language* (Cheltenham, 2006), p. 13.

- Copyright lasts for the life of the author plus fifty to a hundred years from their death. In the case of anonymous or corporate creations, a finite period is arranged.
- While some jurisdictions require certain conditions to be met for the establishment of copyright, most recognise copyright in any completed work, without formal registration.
- "Fair" exceptions to the creator's exclusivity of copyright are given in most territories, therefore loopholing the authors rights for teachers, scholars, critique etc. and creating a "commons" of work for public use and benefit.
- Copyright, as with trademarks, patents, trade secrets and other forms of intellectual property, is applicable to "any expressible form of an idea or information that is substantive and discrete".[7]



(261)

Cap 19

Anno Octavo

Annæ Reginæ.

An Act for the Encouragement of Learning, by Veſting the Copies of Printed Books in the Authors or Purchaſers of ſuch Copies, during the Times therein mentioned.

Whereas Printers, Booksellers, and other Perſons have of late frequently taken the Liberty of Printing, Reprinting, and Publiſhing, or cauſing to be Printed, Reprinted, and Publiſhed Books, and other Writings, without the Conſent of the Authors or Proprietors of ſuch Books and Writings, to their very great Detriment, and too often to the Ruin of them and their Families: For Preventing therefore ſuch Practices for the future, and for the Encouragement of Learned Men to Compoſe and Write uſeful Books; May it pleaſe Your Majeſty, that it may be Enacted, and be it Enacted by the Queens moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal, and Commons in this preſent Parliament Aſſembled, and by the Authority of the ſame, That from and after the

Illustration i.i Facsimile of the Statute of Anne (1710). Note that it is "an act for the encouragement of learning". Image sourced from *Primary Sources on Copyright (1450-1900)*, L. Bently & M.Kretschmer (eds.) in: <www.copyrighthistory.org>, (Accessed 21 November 2011).

[7] World Intellectual Property Organisation, *Understanding Copyright and Related Rights* (Accessed 11 November 2011) <http://www.wipo.int/freepublications/en/intproperty/909/wipo_pub_909.pdf>, pp. 6–7.

As a unified international trade agreement, copyright purports to be now, as it was then, a tool designed to promote the development of our society, through the promotion of knowledge and learning.[8] With the emergence of the digital age however, many argue that these ideological motivations behind copyright have lost their way, with commercial interests seeking to protect their proprietary rights and cultural producers fighting the reaches of what they see as an archaic ideology.

Beholden to a new class of financially motivated politician, the rights ideology as laid out in the Statute of Anne and by the Founding Fathers in Article I, Section 8, Clause 8 of the United States Constitution has morphed into a restrictive, aggressive and ideologically motivated tool for those in power to control both their proprietary interests and more contentiously, their ideologies. Many argue that the law is changing culture, forcing the hand of artists, musicians and cultural producers to comply to an ever more rigorous legislative structure.

The onset of this litigious society has indelibly changed the socio-political landscape, but less questions have been asked about the direct impact of this shift upon the culture which it purports to protect. How has it affected output? What problems does the law face in regard to the aesthetic object? Has music changed since the emergence of copyright? Pounds's characterisation of culture offers significant insight into the links between music and the concomitant systems surrounding it. His historical insight brings forth ideas surrounding how western society has progressed in the face of massive social, ideological and economic change. Yet discussions pertaining the copyright of music, especially from a musical rather than purely legal stance, are few and far between. This study therefore attempts to fill this gap by arguing that copyright is a social construction and has therefore played a pivotal role in shaping the global cultural landscape.

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[8] Hannibal Travis, 'Opting Out of the Internet in the United States and the European Union: Copyright, Safe Harbors, and International Law', *Notre Dame Law Review* 83 (2008), pp. 332-358 (p. 384).

In understanding intellectual property laws external to a purely legal context, we can understand the power structures at play both in the musical and legal spheres. This approach will demonstrate how copyright's application can benefit both global cultural policy and the survival of contemporary music by exploring some of the areas where both music, law or society can shift to accommodate ontological changes. The study argues that in order to achieve this, we must look to the object which copyright attempts to legislate, to understand the world it operates in, and to deconstruct our prior notions of the legal-cultural relationship. This study aims to find synthesis in their changes and to understand how they might develop in a positive, useful way into the future, in a way more akin to synthesis than to conflict. This, then, is more than a study of copyright legislation, but rather a survey of culture and music in twenty-first century society.

Chapter one establishes the fundamental problems facing these basic tenets through an examination of the social nature of the legal system. In discussing Pounds's idea that, in order to present this culture as a system, we must not only consider the preserved artefacts, but also the systems and sources which created them, we can understand, in a strictly philosophical sense, where the problems of copyright arise. The thesis will then build upon an argument put forth by Michele Boldrin and David K. Levine, which suggests that copyright was to blame for the end of successful classical composition in England. In debating this point, we ascertain in no uncertain terms how the problem, as laid out in chapter one, has affected culture and its development over the ages. Having acknowledged copyright's role as a tool for cultural shaping, the study goes on to discuss the impact which this is having in the contemporary world and how a new generation of legal theorist might alter this course. In debating the issue in the context of both new musical tropes and new legal ideology, the author hopes to create an idea of synthesis and shared development between the two disciplines. As we move into a new phase of the digital age, the study examines whether open content licensing, is a viable or

merely interim solution to the problem. In asking if this licensing infrastructure can work for a new breed of cultural producer, I hope to move from philosophical and legal perspectives to offer an empirical insight into a world undergoing vital changes in both the socio-cultural and legal realms.

Copyright is an impossibly vast subject; the resources unending, the debates prolonged. For this reason there are obvious areas which my thesis will not attempt to cover. For instance, the text refers to music as a broad church, one which encompasses many styles, genres and peoples. While the author does recognise different praxes with regard to copyright legislation in these differing fields, the nature of the discussions presented in this work aim to engage all of these arenas on some level. The study largely focuses on Anglo-American parlance and therefore uses legislature such as the Statute of Anne, rather than more Continental understandings of civil law, as the locus for these discussions.

Too often in discussions of copyright, debate polarises into two camps: a band of hard-line reactionaries intent on preserving intellectual property laws better suited to an analogue age, and an aggressive secularist youth (Eben Moglen's "dot-communists"), intent on maintaining a digital way of life which, since the mid 1990s, has exploded beyond the bounds of common law.[9] This study will attempt to synthesise arguments from both corners in order to explore the role which music copyright plays in a digital, postmodern context.

While the work is largely philosophical in tilt, it avoids mimicking the so often repeated body of core texts; those by Immanuel Kant in the early days of the concept, by G.F. Hegel around the turn of the century and by such inimitable figures as Ayn

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[9] Eben Moglen, *The dotCommunist Manifesto* (Accessed January 5 2012) <http://old.law.columbia.edu/publications/dcm.html>.

Rand, Karl Marx and John Locke in the dawn of capitalism.[10] While these historical linchpins do present invaluable references for the ideological placement of copyright, the perpetual interaction with the issues which they raise (access, control and ownership) are, as Anthony McCann notes, creating a field of stagnation around our cultural goods.[11] It is for this reason that the study focuses upon the body of material which has emerged in the past ten years; scholarship written in the wake of the Digital Revolution. This new literature offers what are often more measured, more usefully sectarian and fundamentally more practical ideas to the debate. These include treatises by professor of law at Harvard and all-round copyright demagogue, Lawrence Lessig; Lessig's co-founder on the board of Creative Commons, Michael W. Carroll; legal theorist and aesthetician Anne Barron and cultural historian Siva Vaidhyanathan. Coupled with ideologues such as Jaques Attali and Darren Hudson Hick, the work attempts to offer musical reconciliation to what is so often a purely legal problem. Because of the vital and current nature of copyright debate, a starting point for much of my research (particularly the later chapters, where analysis is still new and unsteady) was sourced from online blogs, articles, forum and twitter feeds. In doing this, I hope to capture the very essence of the problem at hand; its pervasive and omnipotent presence in the lives of a global community. In addition, composers, musicians and educators, those with real experiences and strong opinions, have helped form a great deal of the responses offered in this thesis.

This treatise attempts to better examine the understanding of musical discourse in law. Along the way, it hopes to shed light on the history, the social dimensions and the cultural implications of legal constructs. As demonstrated above, the field of copyright needs new perspectives, particularly from the point of view of artists and cultural

[10] The examples in mind include Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor, (Cambridge 1996), pp. 71-72; Ayn Rand, *Capitalism: The Unknown Ideal*, (Pittston, 1986), pp. 130-133; any Marxist critique surrounding property e.g. Karl Marx, *Capital: Volume One*, (London, 1990); John Locke, *Two Treatises of Government: Second Treatise of Government*, ed. Crawford B. MacPherson, (London 1980).

[11] Anthony McCann, *Beyond the Commons: The Expansion of the Irish Music Rights Organisation, the Elimination of Uncertainty, and the Politics of Enclosure*, (PhD Dissertation, University of Limerick, Ireland, 2002), pp. 12.

producers; it is in this realm that I hope this study finds an audience. Finally, in examining copyright in the context of twenty-first century culture, I hope to demonstrate both how we as a society interact with our own cultural landscape and how we can best serve this landscape into the digital future.

1

CONSEQUENTIALISM, POSITIVISM AND THE PROPAGATION OF ECONOMIC THEORY: LEGAL CONSTRUCTIONS OF THE NATURE OF MUSIC IN THE AGE OF COPYRIGHT

In a 2010 article for the American Society for Aesthetics, Darren Hudson Hick identified what he believed to be a key factor in copyright law's incongruity with the world around it. Despite stating his case with reference to literary theory, his understanding of the problems inherent to intellectual property debates transcended aesthetic boundaries:

> Problematically, copyright law has focused primarily on **issues of the rights** of copyright, and not on the **nature of its objects**, or else has tried to estimate the latter in its attempts to explicate the former, and it is from here that many of the problems of copyright arise.[12]

Hick's summation neatly defines the fundamental problem at the heart of the copyright conundrum. There is, as he says, seemingly a greater focus on rights issues; how far (and arguably, how aggressively) legislation can extend, for what period and over which jurisdictions. A cursory examination of several articles published in prominent legal journals on the subject of copyright further supports this claim; a vast majority are *issue* led, rather than *aesthetically* minded. Similarly, any understandings of the nature of music offered in important legislative acts are vague to say the least. In the American Copyright Act of 1976 for instance, Congress did not offer a definition of the "musical work", declaring instead that the term had come to rest on a "fairly settled" meaning; the UK equivalent (the Copyright, Designs and Patents Act of 1988) spuriously took the term to

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[12] Darren Hudson Hick, in: *American Society for Aesthetics Online* <http://www.aesthetics-online.org/articles/index.php?articles_id=46> (Accessed 21 November 2012), [emphasis my own].

mean "a work consisting of music exclusive of any words or action intended to be sung, spoken or performed with the music".[13] On the surface of things, no strict, comprehensive legal understanding of the musical work prevails; there appears to be, as Hick says, an abundance of estimation.

In order to understand this dichotomy, we must therefore look to the artefacts of our own culture and understand the systems and sources which produced them. In doing this, we can understand where the problems of copyright arise and what impact this has upon musical discourse. This chapter therefore seeks to establish the inherent characteristics of copyright and in so doing argues that the law (and by extension, copyright) has an inherently social nature; it is this ontological positioning which makes it so potent a tool within cultural landscapes.

The study uses a consequentialist perspective to criticise copyright protection and in so doing, hopes to understand the vital impact of this social construct upon our musical landscape. To do this, the chapter first seeks to pinpoint the problems inherent to copyright; where our current contentions with the issue lie and how this has come to pass. The study then goes on to understand why the law behaves in the manner it does and where it attains its focus. The study concludes by establishing the complex and hierarchical nature of what ostensibly appears to be a simple economic right. In examining these points, the author hopes to show that, in misunderstanding the artistic work, as well as the issues surrounding the aesthetic, copyright is establishing a damaging environment.

The chapter largely draws upon legal and economic theorists (including Jaques Attali and Michael W. Carroll) alongside aesthetic theory to garner a basic understanding of why metaphysical understandings of our cultural goods remain poor at

[13] For the United States 1976 Copyright Act, see: <http://www.copyright.gov/title17/> (Accessed 24 November 2012). For the United Kingdom Copyright, Designs and Patents Act of 1988, see: <http://www.legislation.gov.uk/ukpga/1988/48/contents> (Accessed 24 November 2012).

best. In attempting to understand why the law appears to be so dismissive of this nature, I hope to understand why we have faced so many problems in contemporary intellectual property discourse and in so doing, understand how we might ameliorate the situation. Academic papers have overwhelmingly dismissed aesthetic debate in favour of more complex studies into the extension of rights issues and encroachment of property lines. I herein hope to change this trend.

In order to do this, we must first establish if Hick is right in pinpointing the dichotomy between legal activities and aesthetic ideologies as the nexus of problems in the copyright debate. Just why does the law focus on issues of rights and not upon the nature of the aesthetic objects which are beholden to it? Resisting the temptation to cover what is already well-trodden ground, understanding the nature of the musical object, let alone its ontology, is a difficult enough task for even the most skilled aesthetician. A comparatively straightforward definition of the musical work would have us believe that it is an object containing organised sound "for the purpose of enriching or intensifying experience through active engagement (e.g., listening, dancing or performing) with the sounds regarded primarily, or in significant measure, as sounds"; an eliminativist could argue that no positive theory of the nature of musical works can be convincingly defended; we could even argue that musical works, like all works of art, are *actions*, in particular the compositional actions of their composers.[14]

If no straightforward account of the nature of music can be presented by aestheticians and philosophers, Hick's main contention that the law does not attempt to understand the musical work concept, implying that financial interest (or perhaps laziness) on the part of the legal profession have dictated the understanding reached by copyright professionals, begins to look weak if ideological synthesis cannot be reached in

[14] See: Jerrold Levinson, *Music, Art, and Metaphysics: Essays in Philosophical Aesthetics*, (Oxford, 2011), p. 273; R. Rudner, 'The Ontological Status of the Esthetic Object', *Philosophy and Phenomenological Research* 10 (1950), pp. 380-8 and David Davies, *Art as Performance*, (Malden, 2004).

the musical community. I hereon argue that we must look to copyright's own inner logic to establish an ontological basis for the musico-legal work.

Michael W. Carroll's research emphasises the importance of understanding both the history of intellectual property laws and their interaction with society, politics and culture. In a 2005 paper for the Villanova University School of Law, Carroll expands upon a methodological framework used by intellectual property scholars to understand these issues of historicity in legal doctrine.[15] Crucial to his framework is a distinction between functionalist perspectives (ones which view legal doctrine as changing in response to shifting needs or interests external to legal discourse) and autonomist ones (positing that law and society develop along different paths, with the law striving for internal coherence), each with their own more detailed sub-division (see **Table 1.1**).[16]

	Materialism	**Intellectualism**
Functionalism	*Functionalist-Materialism* Law is driven by changes in means and modes of production and concomitant social changes.	*Functionalist-Intellectualism* Law is driven by intellectual movements and conceptual changes outside the law.
Autonomism	*Autonomist-Materialism* Law is largely irrelevant to organization of means and modes of production, and these primarily drive social change.	*Autonomist-Intellectualism* Law strives for internal coherence and changes in response to intellectual movements within the law.

Table 1.1 Michael W. Carroll's perspectival table. Sourced from: Michael W. Carroll, 'The Struggle for Music Copyright', *Villanova Law/Public Policy Research Paper* (2005), pp. 908-958 (p. 914-915).

Carroll makes the vital addendum that an overwhelming majority of intellectual property history is written from a functionalist-materialist perspective; that is, one which views economic factors (namely property rights) as key to the debate.[17] In so doing, the law firmly roots its understanding of music in tenets of economic value. The inordinate

[15] Michael W. Carroll, 'The Struggle for Music Copyright', *Villanova Law/Public Policy Research Paper* (2005), pp. 908-958 (p. 913).

[16] Carroll, 'The Struggle for Music Copyright', p. 914.

[17] See Robert W. Gordon, 'Critical Legal Histories', Stanford Law Review 36 (1984), pp. 57-125, (p. 60-61); cited in Carroll, 'The Struggle for Music Copyright', p. 914.

employment of this ideology by intellectual property scholars is greatly damaging to the understanding and progression of copyright doctrine, as it supports Hick's accusation that *rights* (i.e. a Lockean construction of the extension and reach of the power of law in protecting these properties), rather than metaphysical considerations (i.e. the aesthetic nature of the artistic object) are propelling the legal discourse surrounding art and music. In acknowledging the dominance of this perspective throughout intellectual property history, we can begin to understand the problems inherent to musico-legal discourse and to create a broader understanding of why copyright functions as it does. However, Robert W. Gordon, cited in Carroll's study, notes that:

> In some of the very best recent work in legal history, even writers thoroughly committed to placing legal forms in social and economic context have stressed how important it is to understand the internal structures and logics of such forms on their own terms.[18]

What must be established therefore, is an understanding of the intrinsic logic behind copyright; its functional positioning regardless of socio-economic context.

In an address to the Swedish parliament in November 2009, Lawrence Lessig discussed 'externalities', that is, "the notion of a cost or benefit not transmitted through prices that is incurred by a party who did not agree to the action causing the cost or benefit".[19] The cost of an externality is a negative externality, while the benefit of an externality is a positive externality.[20] In order to balance these two forces, Lessig, along with economic scholars including Arthur Cecil Pigou, Kenneth J. Arrow and William Baumol, suggest that government policy must work to "internalise the externalities" in order to encourage the production of the positive externalities (e.g. offering tax relief to the owner of a beehive so that the activities of his hive might benefit farmer's crops in

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[18] ibid.

[19] O.E. Williamson, 'Transaction Costs and Property Rights', *International Encyclopedia of the Social & Behavioral Sciences* (2001), pp. 15840–15845.

[20] Lawrence Lessig, Address to Swedish Parliament, in: *Swedish National Library Online* <http://www.kb.se/aktuellt/video/Lessig>, (Accessed 8 January 2012).

the local community), whilst diminishing the impact of the negative (e.g. imposing fines upon companies with a large carbon footprint).[21]

Applied to our discussion of intellectual property laws, Lessig is arguing that copyright acts as the political mechanism for internalising the benefits produced by music (i.e. socio-cultural development, economic growth etc.). Perhaps best described by Summer M. Redstone of the right-leaning Progress and Freedom Foundation as a tool for furnishing innovation, in *internalising* these positive externalities (remunerating musicians through the enforcement of copyright laws) we are encouraging creativity and therefore furthering the production of cultural goods.[22] Lessig claims in no uncertain terms that the control and interplay of these externals is unavoidable and in so doing suggests that, without economic incentive, we reduce (or even eliminate) the benefits produced by music for society. But in claiming that the control of our aesthetic rights must lie in a political mechanism, Lessig is constructing a dependence upon a highly volatile partisan system.

The foremost problem with the dependence upon this structure is its close alignment with the offices of power. Jaques Attali notes that: "In controlling art [i.e. imposing the construct of economic externalities over aesthetic objects], governments have an unwitting hand in what the global population hears and interacts with. It is then, a most subtle tool in any government's armoury".[23] When the law is beholden to political influence and private interests, it acts to preserve those interests, those issue of rights, rather than concerning itself with the metaphysical or ontological merits of the objects under its control. Nowhere is this hegemonic structure more clear than on Capitol Hill, where media conglomerates are willing spend vast sums to ensure that this most powerful

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[21] ibid.

[22] Summer M. Redstone, 'Copyright is Even More Right in the Digital Age', <http://www.pff.org/issues-pubs/pops/pop13.21_sumner_speech.pdf>, (Accessed 8 March 2012).

[23] Jaques Attali, *Noise: The Political Economy of Music*, trans. B. Massumi, (Minneapolis, 1985), p. 135.

of constructs is upheld in the constitution. To note one example, the American access and funding site MapLight.org states that donations from private interest groups and media conglomerates to Congress in the years from 1990 to 2011 surpass copyright reformist payments a thousand to one.[24] Over roughly the same period, Congress has enacted thirty-two different statutes to further bolster the legal architecture surrounding these rights issues, laying the foundations for new proprietary models of ownership as the digital revolution takes hold.[25]

This study argues that this methodology has taken hold as a result of the aesthetic tension between legal process and aesthetic theory, as pinpointed by Hick. Says legal theorist John Gardner:

> In any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits.[26]

Gardner's quote implies that the entire infrastructure of law is a social construct; one in which a more powerful class imposes legal norms upon the rest of a system. The inherent design of this social construct means that the "sources" of a norm (policy makers, social leaders, the wealthy, as well as the broader ideologies prevalent in any social system), rather than any moral benefits of that proposed norm (in our case, the understanding of the nature of a musical object) are of prime importance in legal discourse. It is for this reason that the law focuses on issues of rights and not upon aesthetic concerns: it works from a socio-political, rather than distinctly logical sphere. In our case, as Roland V. Bettig argues, copyright is a capitalist construction on the part of the ruling classes to control culture and to propagate an economic and ideological agenda.[27] This infrastructure means that sources are at liberty to create and endorse

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[24] 'Interest Groups', <http://maplight.org/us-congress/interest>, (Accessed 9 January 2012).

[25] Lawrence Lessig, *Republic, Lost: How Money Corrupts Congress-and a Plan to Stop It* (Boston, 2011), p. 94.

[26] John Gardner, 'Legal Positivism: 5 ½ Myths', *American Journal of Jurisprudence* 46, (2001) pp. 194-201(p. 199).

[27] Ronald V. Bettig, *Copyrighting Culture: The Political Economy Of Intellectual Property* (Boulder, 1996), p. 114.

norms which are meaningful to *them*; hence, while these may not necessarily exclude aesthetic or philosophical concerns, the nexus of normative value in legal and economic praxis creates a pre-existing bias in their favour.

This bias explains the enshrinement of externalities to enforce the proprietary constructs of rights issues. Supported by many Demseztian thinkers, who suggest that proprietary interests are a social construct, a methodology implemented by a ruling structure to shape behaviour and assert ideological agendas, these proprietary constructs are norms created out of private interest by groups with ideological presets behind them.[28] Therefore, following a Demsetzian approach, any norm associated with copyright is a social construction.[29] As Pierre Bourdieu said, "the most rational law is merely an act of social magic that is successful".[30] Bourdieu's comment, a characteristically short yet incisive aphorism, cuts to the very core of the copyright problem; it implies that, no matter the intrinsic function or external logic of a legal issue, it is systemic of a broader social discourse.

In establishing property as a legal norm, the "sources" transformed a positivist value into a natural right. To expand: Gardner's aphorism implies that he does not believe the legal systems such as copyright to have a basis in natural law i.e. a system of law which is determined by nature and is therefore universal.[31] This means that copyright was therefore not beholden in any way to morality, meaning that any moral dimension to copyright legislation was bound to be ignored by the legal sphere. In establishing this norm, other copyright norms fall into place: the idea of property

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[28] See Harold Demsetz 'Toward a Theory of Property Rights', *The American Economic Review* 57 (1967), pp. 347-359.

[29] Demsetz 'Toward a Theory of Property Rights', p. 347.

[30] Pierre Bourdieu, *Ce que parler veut dire: L'économie des échanges linguistiques* (Paris, 1982), p. 20 [translation author's own].

[31] R.D. Schwarz, 'Natural Law', *International Encyclopedia of the Social & Behavioral Sciences* (2001), pp. 10388-10392.

manifests the corresponding ideas of a single owner and therefore a single author. The individuation of the creator also builds a norm of the work as unified whole, in turn shaping societal behaviour to treat the act of copying as wrong. In essence, by re-assigning the work concept to the economic realm, the legal sphere was able to maintain aesthetic expectations while creating financial incentive.

To move these discussions from the discursive: in bestowing the idea of property upon the musical object, the law creates a dimension of rights hitherto not existing in the work concept. As Anne Barron states in a 2008 paper:

> ...both the legal and aesthetic musical work concepts are at once distinct and overlapping: both reify a temporal experience (a musical event), but for very different reasons. Whereas the musicological category facilitates a certain kind of musical appreciation and certain kinds of listening practice, the legal category facilitates the drawing of proprietary boundaries around 'objects' that will figure in commercial transactions and the be focus of commercial expectations.[32]

Barron's summation, in very real terms, demonstrates the impact which copyright, a socially driven political tool, has upon the musical object; in splitting up the work concept, the legal sphere creates the idea of music as a rival good, that is to say, altering its status as an object which does not deprive others of its presence. The legal validation of the norms of intellectual property practice (the issuance of property rights under copyright statutes) therefore ensure that the very nature of copyright is based in an economic, rather than aesthetic world. As Barron says, the musical work concept facilitates an understanding of music, while the legal concept encourages the protection of personal property. We can note the friction copyright creates between more materially based legal understandings and the more praxis-based aesthetic understanding of a musical work. This political interest in cultural norms therefore creates a dichotomous tension at the heart of the musical work concept: a value driven aesthetic experience. In

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[32] Anne Barron, 'Introduction: Harmony or Dissonance? Copyright Concepts and Musical Practice', *Social and Legal Studies*, 15 (2006), pp. 25-51 (p. 25).

short, if copyright does this to one object, imagine its impact upon an entire cultural discourse.

This chapter has argued that the law is a social construct and therefore any legislature is necessarily imbued with social bias and hegemonic structure. In debating the nature of law, the nature of the power systems inherent to our society and comparing those objects alongside cultural artefacts, we can begin to understand the system of culture to which Pounds refers in our introduction. In asking where the problems of copyright originate, we can understand how best to solve them in the future. In examining key perspectives surrounding the debate, we can understand the bias of this cultural system towards different spheres of influence. In looking beyond copyright's intrinsic functionality to its positioning as a socio-political tool, this chapter has established that officials, those with the power, money and influence to dictate legal, social and economic norms are, through the imposition and manipulation of copyright legislation, also dictating our cultural norms; that is to say, dictating the appropriate behaviour for artists, musicians and cultural producers.

By understanding this hierarchy surrounding intellectual property, this control of commons and dissemination of culture, we do far more than unravel the problems of copyright. Instead we begin to understand the hegemony of power surrounding every facet of our lives and how we understand the cultural goods which are presented to us. We can understand that the SOPA and PIPA acts were attempting to introduce new norms, new ways of thinking about artistic works in the digital environment; both as a result of heavy sponsorship from some of the largest media corporations in the United States. The proceeding chapter intends to throw these ideas into greater relief by examining in empirical terms the impact which copyright has upon musical landscapes. In doing this, we can begin to understand the way these social structures can dominate cultural discourse, simultaneously asking how change can be affected in the future.

2
UNDERSTANDING COPYRIGHT'S IMPACT UPON MUSICAL LANDSCAPES

English music has had a rich and varied heritage. Distinct in its positioning as a European island culture, the country has been responsible for the output of sophisticated polyphony, heart-wrenching pastoralism and more recently, a burgeoning tide of New Complexity. But as late as 1922, England; the home of Byrd, Elgar and Tallis was still branded by many on the Continent as *Das Land ohne Musik*.[33] Many blame this lack of "quality" upon provinciality, the trappings of an inward-looking society or, looking through what is often a Teutonic lens, a lack of aesthetic understanding.

Having discussed the nature of copyright as a broader cultural discourse however, this study attempts to move forward and offer a fresh perspective on this derogatory claim. Coming under the influence of copyright in the eighteenth century, English music was one of the first to face intellectual property legislation, a fact which, I herein argue, negatively affected its output for generations to come. This chapter therefore aims to show that the English problem, so often blamed upon insularity, has deeper roots in the introduction of intellectual property statutes. In so doing, the chapter offers a clear example of the way in which copyright shapes cultural landscapes.

The study starts by supporting the claim that copyright was responsible for the ending of successful classical composition in England and in so doing demonstrates how, in the course of its attempt to maintain this value, copyright discourse, rather than purely social or economic movements changed the musical landscape around it. The argument is contended by asking whether copyright is solely responsible for this change,

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[33] Jürgen Schaarwächter, 'Chasing a Myth and a Legend: "The British Musical Renaissance" in a "Land Without Music"', *The Musical Times 28* (2008), pp. 53–59 (p. 57).

namely through the exploration of historical considerations. The study concludes by demonstrating that, no matter what was expressly responsible for the application and imposition of copyright, its presence has changed how artists, musicians and purveyors have changed the way they create culture. In so doing, the study establishes a universal nature of copyright and attempts to understand how we might overcome the problems it presents.

Economic data from this period forms the primary source material for the study; Michele Boldrin and David K. Levine's study of intellectual property will be used alongside a cultural materialist framework to argue that the English musical landscape is the product of a legal discourse. Too often attributed as a by-product of the Industrial Revolution, scholarship has largely chosen to ignore the impact of intellectual property discourse upon a national music. Academic papers have overwhelmingly stuck to a cursory analysis of the work and have thus far failed to argue any lasting legacy (be that musical or extra-musical) for it. I herein hope to change this trend.

In their 2008 critique of intellectual property laws, Michele Boldrin and David K. Levine argue that the introduction of copyright correlates almost exactly with the end of successful classical composition in England.[34] This claim is not fully substantiated in their work, nor in F.M. Scherer's similar enquiries into the economics of music during the eighteenth and nineteenth centuries. The claim is of vital importance to this study as, if proven correct, demonstrates in clear, empirical terms, the extent to which the law has the capacity to shape cultural landscapes.

In order to fully examine this contention, we must establish how exactly the introduction of copyright affected musical discourse. The study does this through a survey of English composers from the centuries before and after the introduction of the British Statute of Anne. To make any distinctions clearer, the timeline is presented in

[34] Michele Boldrin and David K. Levine, *Against Intellectual Monopoly* (Cambridge, 2008).

direct comparison with a similar survey carried out in Germany, a country chosen for its many similarities with Britain (similar socio-economic and military history; both cornerstones of protestantism in Europe, with their respective populations possessing what what Max Weber described as the "Protestant Work Ethic").[35] Where Germany differs is one vital point: it was one of the last European states to introduce copyright legislation (a form of intellectual property was not introduced there until 1837).[36] In making a comparison with a latecomer to the copyright infrastructure, I hope to make the understanding of the problem clearer. **Table 2.1** therefore charts the births and deaths of successful English and German composers between 1500 and 2000.[37]

There are two relevant points to make from this data. First is the issue of topography in English music prior to 1700. From around 1430 to 1650, English music was dominated almost exclusively by those composers who were subject to royal privilege (note the dominance of Thomas Tallis and his pupil William Byrd, both subject to favours from Queen Elizabeth I). Alternative musical output was non-existent; to compete was to dissent. Such was the strength of the monopolies held by these musicians that we feel the strength of these privileges even today; Byrd and Tallis's work is amongst some of the only Tudor music which has stood the test of time.[38] Before any intellectual

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[35] Max Weber, *The Protestant ethic and the "spirit" of capitalism and other writings*, trans. Peter R. Baehr and Gordon C. Wells (London, 2002).

[36] Frank Thadeusz, 'No Copyright Law: The Real Reason for Germany's Industrial Expansion?', *Spiegel Online* (Accessed 8 February 2012) <http://www.spiegel.de/international/zeitgeist/0,1518,710976,00.html>.

[37] Thadeusz, 'No Copyright Law: The Real Reason for Germany's Industrial Expansion?', *Spiegel Online.* In an attempt to keep population disparity between the two countries at a minimum, note that 'German' is broadly taken to mean any active composer in the economic area laid out in the 1857 unification. George Frideric Handel is excluded from proceedings due to his significant presence in both countries. Successful composers are drawn from Scherer's database (see Frederic M. Scherer, 'The Emergence of Musical Copyright in Europe from 1709 to 1850' *Review of Economic Research on Copyright Issues* 5, (2008) pp. 3-18). While the concept of 'success' is naturally hard to qualify, the study hopes to broadly refer to the most high-profile, prolific and well remembered composers of each age.

[38] J. P. Wainright, 'England ii, 1603-1642' in J. Haar (ed.), *European Music:1520-1640* (Woodbridge, 2006), pp. 509-21 (p. 512).

Table 2.1 A comparative survey of notable English and German composers between 1500-2000.

property law was even codified therefore, we can observe the impact that publishing monopolies were already having upon musical discourse in England.

When copyright legislature *did* arrive in England, the effect is yet more pronounced. Clear to see in **Table 2.1**, the most obvious characteristic of the data is a vacuum in the production of English music between the early 1700s and the mid 1800s. When this vacuum is considered in the context of the history of copyright, Boldrin and Levine's argument becomes much stronger. The 1710 Statute of Anne (for all intents and purposes, the first copyright legislation in the country; applied to music by the end of the century), correlates neatly with the downturn and effectively heralds in the age of Schmitz's *Das Land ohne Musik* under the rule of the Hanovarians.[39]

[39] See Boldrin and Levine, *Against Intellectual Monopoly*, p. 4. The Statute of Anne did not cover printed music until a case filed by J.C. Bach in 1777, paving the way for the extension.

The data is yet more alarming when compared to Germany. As can be seen in **Table 2.1**, we see a comparatively consistent compositional trajectory maintained over the same time period. While this data is somewhat subjective (England *did* produce quality composers during this period; John Blow and Thomas Arne, for example, as well as other members of the "B" or "C" list not mentioned in this chart, such as John Stafford Smith and James Hook), no one can argue that the quantity or quality of England's middle period can match the comparative output of a German scene which produced behemoths like J.S. Bach, Georg Phillip Telemann and Ludwig van Beethoven.

We could also speculate about one more trend in the data which further supports Boldrin and Levine's thesis; the same trajectory is later copied by Germany in the wake of the introduction of copyright (note the drop in compositional output after the same time following the 1837 introduction). While this argument is somewhat inconclusive, the fact that changes in output can be perceived at similar times to the introduction of intellectual property legislation cannot be ignored.

We could, of course, attempt to explain these figures away in the general ebb and flow of the production of western classical music. We could surmise that fate dealt the English a poor hand of compositional talent, or that tastes at the time were simply not compatible with the style of music being produced. But can such a sharp and neatly defined lacuna be explained away in such a manner? Surveys from France, Italy and Austria all show similar levels of progress prior to the introduction of their own copyright legislation; from the period from around 1700 to 1850, none display vastly differing levels of compositional output to the immediately preceding centuries; post-copyright, all do.[40] What cannot be denied therefore, is that copyright had an impact upon this landscape. The more complex question is *why*.

[40] See, for example, Schaarwächter, 'Chasing a Myth and a Legend', pp. 53–59.

In his comparison of music and economics in the eighteenth and nineteenth centuries, F.M. Scherer suggests that composers ceased to produce music in the wake of copyright as there was less incentive for them to do so.[41] He notes that:

> From the qualitative evidence on Giuseppe Verdi, who was the first important composer to experience the new Italian copyright regime and devise strategies to derive maximum advantage, it is clear that copyright could make a substantial difference. In the case of Verdi, greater remuneration through full exploitation of the copyright system led perceptibly to a *lessening of composing effort.*[42]

Because of increased terms of protection, copyright allowed composers to construct, and subsequently fence-off entire oeuvres of reified, printed music. In doing this, the law reduced the need for composers to make money from their individual works, but rather solidified their identity in a broader discourse; as Siva Vaidhyanathan postulates, rewarding "the established at the expense of the emerging".[43] In a later paper, Scherer (an ardent supporter of copyright legislation) attempts to defend this lessening of effort as an unfortunate side effect of a generally more positive trend to encourage others to emulate the paths of successful composers.[44] This summation is gravely mistaken. Composers such as Verdi, as well as England's notoriously litigious Thomas Arne (who first trained as a lawyer) had the financial and legal tools necessary to make copyright legislation work to their advantage. Combined with the fact that an overwhelming majority of composers hailed from the lower-middle classes, the introduction of copyright and subsequent shaping of the musical landscape into a heavily monopolised world, forced a large number of composers out of the practice as result of their lacking

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[41] Frederic M. Scherer, *Quarter Notes and Bank Notes: The Economics of Music Composition in the Eighteenth and Nineteenth Centuries* (Princeton, 2004), p. 194.

[42] ibid.

[43] Siva Vaidhyanathan, *Copyrights and Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity* (New York, 2003), p. 186.

[44] F.M. Scherer, 'The Emergence of Musical Copyright in Europe from 1709 to 1850', *Review of Economic Research on Copyright Issues*, 5 (2008), pp. 3-18 (p. 13).

theoretical knowledge, financial backing and requisite legal know-how to pursue claims and support their rights.[45] Composing became a trade which was no longer economically viable to many, essentially preventing a broad class of society from participating in the act of composition, hence our much bemoaned vacuum.

Compelling as Boldrin and Levine's argument is, we cannot ignore one vital point in **Table 2.1**; if so obviously put-off by a lack of incentive in the eighteenth century, why did a new swathe of English composers take up their trade once more in the late nineteenth and early twentieth centuries? While many like Schaarwächter contend that even the best twentieth century English composers were no match for their contemporaries on the continent, the rise of such inimitable figures as Edward Elgar, Ralph Vaughan Williams and Benjamin Britten cannot be ignored. Therefore, if we are to maintain that copyright was to blame for the halt in the production of English music, we must also ask what prompted the start of the British Musical Renaissance (circa 1860), and in so doing, suggest what bearing it has upon Boldrin and Levine's argument.[46]

One rationalisation is that composers were never fully dissuaded as a result of legal constraints in the first place. Foremost among these arguments is Ronald Inglehart's suggestion that Britain's Industrial Revolution had the single biggest part to play in the dramatic shifts in England's cultural landscape.[47] Citing the stable political situation and a burgeoning open-minded social environment from around 1688, Inglehart posits that in the upward curve of this rapid economic expansion, the creation of cultural goods was no longer of prime importance to the English populace, therefore suggesting that

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[45] Deborah Rohr, *The Careers and Social Status of British Musicians 1750-1850: A Profession of Artisans* (Cambridge, 2001), p. 23.

[46] R. A. Stradling and M. Hughes, *The English Musical Renaissance, 1860-1940: Construction and Deconstruction* (London, 1993), p. 4. While the term 'English Musical Renaissance' more specifically refers to those composers associated with the Royal College of Music around the middle of the century, this study seeks to also include the broader landscape in the term.

[47] Ronald Inglehart, *Culture Shift in Advanced Industrial Society* (Princeton, 1990), p. 3.

economic factors, rather than legal ones, were the greatest shapers of the musical environment during this period.[48] Inglehart's argument therefore implies that the renaissance arrived at a plateau in this upward curve of rapid expansion; a point in the social environment which would re-focus attention from material to aesthetic considerations.

When this suggestion is compared to Germanic compositional output, Inglehart's assertion begins to gain traction. Germany did not experience its own Industrial Revolution until around one hundred and fifty years after Britain, meaning its economic progress in the late eighteenth and early nineteenth century was comparatively measured, creating an infrastructure poorly suited to rapid economic development or entrepreneurship. According to Inglehart's ideology, an emphasis would have therefore remained on the creation of cultural goods, rather than the pursuit of financial gain over this period; hence the constant trajectory in **Table 2.1**.[49]

If we examine Boldrin and Levine's problem from this historic-economic perspective, we could argue that the reason behind the renaissance, as well as the earlier halt in production, was changes in material fortune external to the law, rather than any direct reaction to prior constrictive legal issues. However, this study argues that reducing the halt in production of English music to a lack of economic interest misses a complex part of the argument.

The late eighteenth and early nineteenth century brought about calmer legislative seas; prior to 1850, the newly introduced law had faced repeated challenges as artists and publishers attempted to substantiate its reach.[50] As the limits of both copyright and natural law became established in English common law by the middle of

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[48] Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston, 1966), pp. 29-30.

[49] Inglehart, *Culture Shift in Advanced Industrial Society*, p. 4.

[50] Boldrin and Levine, *Against Intellectual Monopoly*, p. 10.

the proceeding century, so the number of artistic endeavours appears to have increased.[51] The reason for this was, as R. A. Stradling and M. Hughes suggest, a concomitance of social changes in the late eighteenth and early twentieth centuries.[52] Michael W. Carroll insinuates that fundamental to the introduction of the Statute of Anne was the manifestation of Jürgen Habermas's "public sphere", a "discursive space in which individuals and groups [congregated] to discuss matters of mutual interest and, where possible, to reach a common judgment".[53] A result of England's economic prosperity and subsequently increased resources during the rise of the Industrial Revolution, the public sphere facilitated new communal debate and discourse in the arts and sciences, particularly among a new aspirant amateur and middle-class. This explosion in cultural discourse among a broad cross-section of society created a need for new norms, new ways of controlling discourse for the "sources" of legal doctrine. Copyright therefore solidified its role as a tool for determining the facets of culture. When, faced with the rise of the German Empire and a need to assert its social values on a world stage, a need arose for music to assert itself as a political tool, the grip of the law loosened. English music took on a role as a vehicle for embodying national identities and resisting alien influence. In encouraging this investment in a collective, quasi-politicised discourse, the sources of politically powerful tide of debate away from the public sphere and into a more internalised, aesthetic realm.

It is for this reason that Boldrin and Levine's argument requires such qualification; copyright, by its very nature, is a social entity. It is an extension of the concomitant socio-economic proceedings in the world around it and therefore extends any policy or ideology prevalent at that time. It could be said therefore, that while

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[51] Deazley, *Rethinking Copyright*, p. 13.

[52] Stradling and Hughes, *The English Musical Renaissance*, p. 13.

[53] Gerard Hauser, 'Vernacular Dialogue and the Rhetoricality of Public Opinion', *Communication Monographs* 65 (1998), pp. 83–107 (p. 86).

copyright shapes its musical landscapes, it is the broader socio-political structures which are responsible for carrying this out. If this has been proven true in the English case, one final question remains. Can copyright's nature as a tool for shaping cultural discourse be said to be a universal characteristic, or simply demonstrate a misguided implementation of the act in the eighteenth century? I believe this question is best understood in a very different region, era and cultural landscape. I therefore move this discussion to the case of the Nigerian film industry.

Due in part to favourable socio-economic conditions and government imposed restrictions upon the availability of foreign films), Nigeria's quasi-DIY culture of film production has flourished since the first pioneers of the movement in the early 1990s. Now the second largest cinema industry in the world (revenues fall behind those of Bollywood, but far surpass annual takings of Hollywood), Nigeria boasts a $250 million industry, producing an estimated 200 videos for the home video market every month.[54] But this is a unique creative environment, clearly shaped by the presence of strict intellectual property discourse. Notes *The Economist* in a 2010 article:

> ...new films are quickly copied illegally and distributed all over the continent. Film makers have approximately a two-week period (which they call the mating season) to reap profits on a given movie before copiers deprive them of further opportunities for profit. So film makers make their money, and then quickly churn out another movie to make more money.[55]

This demonstrates the dialectical presence of copyright in Nigeria; that it is both highly ineffectual, but that its presence 'incentivises' a rapid output of cultural material. Endemic copyright violations characterise an output which thrives on low-production values and high output. The industry is subject to the same intellectual property regulations as other signatories of the Berne Convention, yet culture in Nigeria has been

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[54] Colin Freeman, 'In Nollywood, 'lights, camera, action' is best case scenario', *The Telegraph* (Accessed 8 March 2012) <http://www.telegraph.co.uk/news/worldnews/1550776/In-Nollywood-lights-camera-action-is-best-case-scenario.html>.

[55] 'Lights, camera, Africa', *The Economist* (Accessed 5 March 2012) <http://www.economist.com/node/17723124>.

unmistakably shaped in its own unique way.[56] This hyper-fast infrastructure has many effects, including the vital role of cultural ambassador, linking societies across both sub-saharan Africa a broader diaspora the world over. While this case also remains proof that exchange of ideas can flourish under copyright, it has, in essence, characterised the cultural output of an entire generation. While Nigeria's case may initially appear anathema to discussions of the history of western classical music, its case presents a modern example of a perpetual problem; that a universal characteristic of intellectual property laws is their responsibility for moulding the cultural landscapes of which they are a part.

What the introduction of copyright effectively achieved in both the English and Nigerian cases therefore, was the solidification of a dominant hegemonic position; that is to say, a particular class or group exercising power over shaping the ways in which a subordinate group makes sense of the world.[57] While in England, it was the power and influence of the monarchy, in Nigeria copyright plays a role in neo-colonial discourse, imposing Western intellectual property values upon an entire continent. Masked under the façade of 'incentivisation', in controlling culture, or more explicitly, in shaping its progress, the political sphere has found a way to eliminate the need for a "constant exercise of violent coercion".[58] In being able to appropriate and control cultural commodities through favourable intellectual property laws, political bodies can prevent the free spread of knowledge and the natural path of human economic and social progress.[59] In controlling how individuals use and distribute artistic endeavours, private interest groups are able to maintain their economic interests and political groups can

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[56] See World Intellectual Property Organisation, *Berne Convention for the Protection of Literary and Artistic Works* (Accessed 4 February 2012) <http://www.wipo.int/freepublications/en/intproperty/909/wipo_pub_909.pdf> for the current text of the Berne Convention.

[57] Antonio Gramsci, *Prison Notebooks: Volume 1* (Columbia, 2010), p. 236.

[58] ibid., p. 26.

[59] Anna Mancini, *Copyright Law Is Obsolete* (Dover, 2006), p. 39

maintain an stable society. While some even go as far as to say that the imposition of copyright contravenes the dispersal of Freedom of Knowledge as laid out in the United Nations Declaration on Human Rights, it cannot be denied that its impact plays a vital political role in shaping cultural landscapes.[60]

This chapter has demonstrated that, regardless of original intent, copyright leaves a footprint on the cultural landscapes in which it takes up residence. This claim is supported in the opening stages of this chapter through the bolstering of Boldrin and Levine's claim that copyright was indeed responsible for the ending of successful classical composition in England. Studying the impact of this change upon composers at the time clearly shows the negative effect which sweeping legislative changes can have upon our own artistic endeavours. Boldrin and Levine's argument is contended through the exploration of historical considerations; namely the suggestion that the Industrial Revolution's convulsive economic changes altered individual cultural aspirations. In demonstrating that this accusation, as posited by Ronald Inglehart, is a fallacy, the study concludes by demonstrating that copyright's universally socio-political nature has the capacity to broadly shape how artists, musicians and cultural purveyors create their wares. The study draws to a close by exploring the impact of this change in the modern world. From this episode, we can surmise that the introduction of copyright has shaped cultural discourse since its introduction in even a primitive form in the sixteenth century; through its role as a purveyor of supposed incentives, intellectual property has been used by a political class to radically change the course of cultural history. In understanding the legal discourse in this way, we can begin to understand how we might affect change in the landscape: in the digital revolution, have similar constraints occurred?

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[60] Hipatia, *Second Manifesto* (Accessed 4 February 2012) <http://www.hipatia.info/index.php?id=manifesto2_en>.

3
RECLAIMING THE MUSICAL WORK: HETEROGENEITY AND DECONSTRUCTION AS TOOLS FOR CULTURAL RENEWAL UNDER COPYRIGHT

> Music is a herald, for change is inscribed in noise faster than it transforms society...Listening to music is listening to all noise, realising that its appropriation and control is a reflection of power, that it is essentially political.[61]

"Noise" today is a very different entity to the object which formed the first subject of intellectual property legislature. As plurality, intertextuality and structural delineation take precedence in our cultural world, our assertion that copyright has changed the cultural landscape takes on new meaning. Jaques Attali's summation from the third part of his seminal work *Noise: The Political Economy of Music* demonstrates the importance of understanding a link between cultural and legal discourse.

These current trends present a problem in the legal sphere. With sources and rights owners the key stakeholders in reformist discourse, changing intellectual property statutes is a difficult task. As the previous chapter established, if the two are not in balance, creative output is negatively affected. Much of this plurality falls outside of the discursive realm of copyright protection, thus meaning it is not appropriated by those "sources" mentioned in chapter one. We are therefore faced with a new opportunity; as the digital age enters a new phase, we must understand how to legislate a work which, at its core, does not subscribe to the rights as laid down by the Founding Fathers of copyright. I therefore argue that there is hope for renewal in music and copyright

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[61] Attali, *Noise: The Political Economy of Music*, p. 5.

discourse and that, in order for the practice of copyright to succeed, it must facilitate a degree of heterogeneity.

This chapter therefore aims to explore this hegemonic position today: what has copyright affixed to our understanding of music and how does it affect out understanding and creation of the aesthetic object? In examining the heterogenous nature as key to the cultural landscape, an understanding of the musical object and its utility value in the twenty-first century is also established. In recognising this trope, the study moves forward to demonstrate how the reaches of the law actively legislate against it, thereby shaping our current output in very distinct terms. While this thesis seeks to ask question about the advancement of cultural discourse into the future, we must also pause to consider whether permitting this deconstruction of the legal work concept is a positive move for the general advancement of society. The chapter synthesises these viewpoints by offering new understandings of the role copyright should the twenty-first century musical landscape, advocating the removal of law from key substrates of the musical discourse. For this first time in this study, the contemporary musical work is examined as primary source material alongside legal frameworks, in order to convey the damaging impact which current legal discourse is having upon music. In examining "non-standard", less familiar works, the author hopes to offer new perspectives on this problem. In following the cultural framework of this study, this chapter identifies possibilities for the rejection of copyright as a political tool.

Image 3.1 charts every song sampled in the four minutes and fifteen seconds of Girl Talk's 2008 track "What It's All About"; a twenty first century anthem to the plurality and vitality of popular culture. Some samples present themselves ironically, others aim at incisive social comment; many simply find a new sound-world in the context of an old beat. Whatever the impact, remix, as exemplified here, a trope so heavily saturated with contemporary cultural artefacts and consequently subject to legal

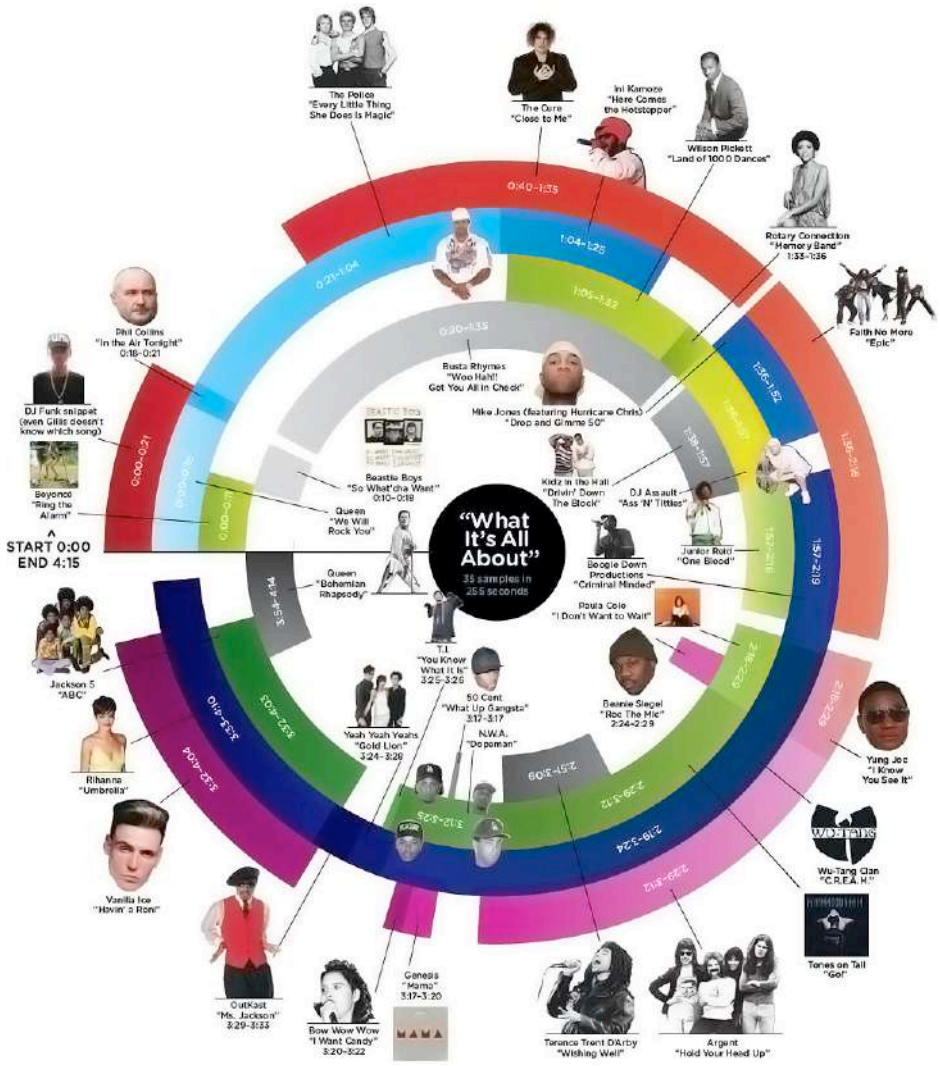

Illustration 3.1 An infographic charting the songs used in Girl Talk's 2008 track "What It's All About". Image sourced from Angela Watercutter, 'Mashup DJ Girl Talk Deconstructs Samples From *Feed the Animals*', *Wired Magazine* (August 18 2008), <http://www.wired.com/special_multimedia/2008/pl_music_1609>, (Accessed 12 December 2011).

battles at every turn, questions the very roots of legal value in music.

Over and above the more static understandings of remix as a simple act of reworking or revamping, what Girl Talk (real name Greg Gillis) has achieved is far more complex than Gustav Mahler borrowing a folk tune, than J.S. Bach re-writing a chorale

or than George Frideric Handel mincing the work of a contemporary.[62] John von Seggern argues that:

> ...remix is a major conceptual leap: making music on a meta-structural level, drawing together and making sense of a much larger body of information by threading a continuous narrative through it...in an era of information overload, the art of remixing...points to ways of working with information on higher levels of organization, pulling together the efforts of others into a multilayered multi-referential whole which is much more than the sum of its parts.[63]

Through re-purposing cultural artefacts to create new meta-structural meaning, artists like Gillis have altered our prior perception of aesthetic value solely residing in a unified, authored work, as established in copyright law. Where we once heard aesthetic, we instead hear *concept*, and in bringing these conceptual structures to the fore, remix is moving the musical work firmly into a social sphere, one which, more than anything before it, occupies a unique position in direct opposition to the law. Gillis's conceptual position is made all the more clear given the fact that most, if not all of the sampled works used in "What It's All About" are currently held in copyright by some of the most notoriously litigious media conglomerates in the world. In fragmenting an excess of 'original' works, Gillis heightens this sense of de-valuation yet further. The heterogeneity of remix is part of the twenty-first century; it permeates literary, artistic and academic spheres and represents, better than any trope before it, the inherently social nature of music. Instead of embracing this plurality however, copyright cannot comprehend it.

The law looks to the "idea/ expression dichotomy", a vague guiding system first cited in 1879 and more explicitly substantiated in the early 1970s to aide courts asserting the tradition single-author led vision of musical works.[64] The law sees no value in Gillis's vision as it corrupts the understanding of a pure legal work. Despite harbouring a place

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[62] "remix, n.", in: OED Online, Oxford University Press (Accessed 8 January 2012) <http://www.oed.com/view/Entry/246356>.

[63] John Von Seggern, 'Postdigital Remix Culture and Online Performance' (Accessed 8 January 2012) <http://ethnomus.ucr.edu/remix_culture/>.

[64] Edward Samuels, *The Idea-Expression Dichotomy in Copyright Law* (Tennessee, 1989), (Accessed 4 March 2012) <http://www.edwardsamuels.com/copyright/beyond/articles/ideapt1-20.htm#fn2>.

in artistic lineage (see aforementioned Mahler, Bach and Handel), remix is viewed as a legal threat. The system attempts to delineate the "idea" (an entity not protected by copyright) from "expression" (the concomitant labour of the artist which *is* protected under copyright) within an aesthetic object.[65] In so doing, we are leaving a path open for other cultural producers to develop and expand upon common ideas and discoveries without barring the progress of humankind.

Nichols v. Universal Pictures Corp., the 1931 case which fully substantiated the dichotomy, saw Judge Learned Hand work through the problem of incomprehensibility in literary plots.[66] In suggesting that the concept of the idea of the literary plot (on its own is too general and abstract to qualify as expression, so must be *idea*) was formed of subsequent layers of expression, Hand implied that, at some point in the process, the concomitant sequence would no longer be idea, but rather *expression*. The continued use of Justice Hand's precedent ensured that copyright protected only the necessary components of an object i.e. those created by the author, while allowing copyright to protect other works to a far greater level of abstraction.

However, when faced with a work such as "What It's All About", the dichotomy becomes unstuck, as establishing the nexus of this expression is no longer a foregone conclusion. As Darren Hudson Hick says:

> The problem with [the idea/expression dichotomy] is that it seems the description will not have changed from the description of an idea to that of an expression, but that the idea described will have become detailed enough to qualify *as* an expression.[67]

Because of its focus on meta-narrative discourse, is "What It's All About" an idea, rather than expression? Or, because of the sheer number of samples used, can we say that Gillis has built a piece of expression based on a meta-narrative idea? If so, does his use of

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[65] ibid.

[66] Nichols v. Universal Pictures Corp., 45 F.2d 119 (2dCir. 1930).

[67] Darren Hudson Hick, 'Making Sense of the Copyrightability of Plots: A Case Study in the Ontology of Art', *The Journal of Aesthetics and Art Criticism* 67 (2009), pp. 399-407 (p. 401).

others' material determine the rights to his expression? Implicit in this distinction is the imbuing of one's own artistic merit into the work; and to a degree sufficient to satisfy the artistic tastes of the courts. While characterisations of the dichotomy as *ex post facto* may therefore initially appear extreme, the law's seeming need to make cultural products fit its own author-centric legal mould are concerning; not least because they enforce the production of cultural products from the individual, rather than collective consciousness. If the disavowal of remix through precedents such as the idea/expression dichotomy continues, our musical landscape will be radically altered.

If we are to continue to rally for remix as an important socio-cultural movement, we must discuss one vital social question. Towards the beginning of Book IV of *The Republic*, Plato demands that:

> ...music and gymnastic be preserved in their original form, and no innovation made. [Mankind] must do their utmost to maintain them intact...for any musical innovation is full of danger to the whole State, and ought to be prohibited...when modes of music change, the fundamental laws of the State always change with them...if amusements become lawless, and the youths themselves become lawless, they can never grow up into well-conducted and virtuous citizens.[68]

While the Socratic dialogue may initially seem a world away from discussions of popular culture, Plato's concern with the preservation of the 'original' is greatly useful in the debate surrounding value in the ontological positioning of remix. Following Plato's argument, if music is deconstructed (remix) and is no longer considered to emanate from the individual *ex nihilo,* Plato would have us believe that the civilised world, the nature of governance, the very meaning of civil order would splinter. [69] This understanding of music as inexorably bound to the state, echoed at the start of the first chapter by Jaques Attali, implies that state-sanctioned radicalism (remix) is intrinsically linked to the devastation of western civilisation.

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[68] Plato, *The Republic*, B. Jowett (trans.), (London, 2008), p. 296.

[69] David Berry, 'Art, creativity, intellectual property and the commons', <http://www.freesoftwaremagazine.com/articles/focus-art_and_commons?page=0%2C1>, (Accessed 8 February 2012).

Remix, music in an impure, unintended form, therefore has the power to corrupt our own contemporary culture. In allowing the heady nature of the trope to permeate legal discourse, our understanding of the musical work morphs into a multi-referential and heterogenous set of fragments. The sheer quantity of cultural products available in order to facilitate the inherent structure of remix would have to be made available. The law's acceptance of remix would therefore imbue our cultural landscape with plurality with potentially devastating consequences. With emphasis no longer on the individual and instead focused on a vastly expanded cultural commons, some argue that official recognition of remix could create an aura of passivity. In a study carried out for the internet research body Music Think Tank, Kyle Bylin states that:

> ...as the number of cultural options goes up, the amount of satisfaction that a fan derives out of any given choice will be lessened as a result; it may even cause them to opt out of the decision making process all together...the effect of overwhelming choice has the potential to cause fans to...become more passive participants in their cultural lives.[70]

In an age where cultural options are so readily accessible, value in cultural choice is reduced and the need for greater legislative influence increased. Copyright therefore acts to give us agency over the musical choices we make, in order that we might remain active participants in our cultural lives. Bylin's comment therefore demonstrates that copyright still has a place in our contemporary society; although, as can be gathered from the first section of this chapter, not in its current format. In order to understand how copyright should develop to accommodate remix, we must therefore understand what remix *is* in a broader, ontological manner.

In his 1987 study *Music in Society*, Croatian musicologist Ivo Supičić suggests that "music does not exist *per se*, but only in its relationship to man".[71] Supičić's statement cuts

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[70] Kyle Bylin, 'Savor Your Music: The Effect of Abundance in Culture', <http://www.musicthinktank.com/blog/savor-your-music-the-effect-of-abundance-in-culture.html>, (Accessed 2 April 2012).

[71] Ivo Supičić, *Music in Society: A Guide to the Sociology of Music* (New York, 1987), p. 223

to the core of music's being; it is not the musician, the audience, or those privileged with the correct knowledge which brings music its value, but rather a far broader understanding of the art in collective discourse. We can infer that Supičić considers the the entire infrastructure of reception, production and interpretation to be of prime importance to music's continued active existence; in essence, the very nature of music is grounded in its relationship with all of society. For Plato to assume that deconstructing music (remix) will lead to the deconstruction of society is therefore a grave misgiving; as is Attali's summation that society is beholden to ideological developments in music. Music is a product of Man, therefore reflects him, and everything about him, but does not affect his progress or his decisions in society.

Second to note in Supičić's statement is that the preservation of the entire social structure of music is essential. Translated to our discussions of intellectual property, this means the preservation of the activities of both the lowest and highest member of the sphere. As copyright accommodates those at the top of the chain, how can it be seen to protect those at the bottom of this discourse? It is here we look to discussions of the amateur.

An amateur is defined in the Oxford English Dictionary as "one who cultivates anything as a pastime, as distinguished from one who prosecutes it professionally".[72] The *role* of the amateur however, is far more complex. Kenneth Anderson notes that "...since at least the time that Western music began to break out as a high art separate from the Church, amateurs were a crucial part of the transmission of high musical culture".[73] The amateur therefore fulfils the vital role of translator, both reinterpreting the works produced in the academy's ivory tower and mixing elements from "low" arts to form a

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[72] "amateur, n.", OED Online, Oxford University Press (Accessed April 23 2012). <http://www.oed.com/view/Entry/6041?redirectedFrom=amateur>.

[73] Kenneth Anderson, 'Courtiers of the Cutting Edge: Musical Amateurs and Amateurism in the Age of the Professional', *Times Literary Supplement*, (January 10 2003), p. 1.

transitory 'melting pot'. Be they critic, composer or performer, the amateur can commune with and represent, better than the professional, the interests of the average listener.[74] In essence, the amateur is key to creating a vibrant, lively musical life and is responsible for warding off the passivity as characterised by Bylin and Plato.

In the digital age, following the explosion of digital culture and improved access to technology, this role because yet more interesting. Take the fact that concert venues like New York's *Le Poisson Rouge* boasts a broad range of recent performers, from classical artists like Hillary Hahn, the Arditti Quartet, Phillip Glass and Jonathan Biss to pop artists like Florence and the Machine and Mos Def, all in an informal, non-concert setting; examine the wealth of amateur performances on YouTube titled "Beethoven Piano Sonata"; the number of follow-along scores offered on the same website; or perhaps most striking of all, the creation of the YouTube Symphony Orchestra, a global endeavour to bring together hundreds of amateur musicians through the power of the internet. The concert hall (even the compact disc) is therefore no longer the only place to hear this music; the higher rate of access has blurred lines between genre.

The de-institutionalisation of music plants the amateur still further into this discourse. In de-institutionalising venues, as well as boundaries between high and low arts, so the lines between amateur and professionals become blurred. It encourages a greater synergy between different groups in the musical discourse, thus breeding an even larger batch of musical amateurs. In de-institutionalising the work, and more importantly the *practice* of music, the amateur's role as amplifier of culture has therefore moved from a passive entity during the eighteenth and nineteenth centuries, to what could almost be described as a dictator of new culture in the twenty-first. Therefore, if this link in the chain is constrained, so is the production of new, relevant music.

Lawrence Lessig posits that this new role for amateurs is not yet facilitated by

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[74] Edward T. Cone and Robert Morgan, *Music: A View from Delft*: Selected Essays (Chicago, 1989), p. 98.

copyright. In order to demonstrate this, he deconstructs both the functionality and functionary to form a legislative table:

Table 3.1 Lessig's breakdown of the current reach of copyright legislation.		
	Copies	**Remix**
Professional	©	
Amateur		

As demonstrated in the table, Lessig suggests that copyright makes no distinction between user or use; all are bound into a discourse though the same legislation, the same rights, terms and consequent responsibilities. Therefore, under current legislation, any user of copyrighted material (be they amateur or professional) can be held responsible for the re-use of these rights-managed cultural goods regardless of circumstance. Lessig uses the oft cited example of Stephanie Lenz, a Pennsylvania native who witnessed her child walking for the first time and subsequently did what any proud parent of the twenty-first century would do: upload a clip of the happy event to YouTube. Unfortunately for Lenz, Prince's "Let's Go Crazy" was playing faintly in the background; something which the Universal Music Group were less than thrilled about and subsequently chose to sue for.[75] Lenz's case is far from exclusive; the very nature of YouTube amateurism dictates a very transparent re-reading of contemporary culture. Type the name of virtually any Billboard hit into the search bar and an unending stream of webcam covers appears, any without rights holder permission, many becoming overnight sensations.

It is this powerfully litigious environment, combined with an overwhelmingly poor education with regard to copyright law, that threatens to cut out the actions of

[75] '*Lenz v. Universal Music Corp*', 572 F. Supp. 2d 1150 (N.D. Cal. 2008).

amateurs altogether.[76] This change in the hierarchy of intellectual practice promotes a censorial attitude, regulated by the law, on behalf of the author (i.e. the view promoted by a legal or political class), which overwhelmingly influences contemporary amateur practices. In operating in this manner, in not responding to vital changes in musical topography, copyright (or rather, the painfully litigious multinationals responsible for a large portion of the class action suits), harms a far more important player in the musical game. Highly critical of this 'catch all' legislation, Lessig proposes a move to a more gradated approach to intellectual property doctrine:

Table 3.2 Lessig's proposed move to what he describes as a 'remix culture'.

	Copies	**Remix**
Professional	© Copyright has a legitimate role; owner to control copies.	*Mixed* e.g. Gregg Gillis's work does not copy material, but rather *comments* upon it; a grey area with regard to books and other literary materials.
Amateur	*Mixed* Sharing open source software is acceptable; disseminating copies of a licenced work is not.	*Non-applicable* The amateur is not replicating material, nor are they disseminating it for profit. Copyright is therefore not applicable.

Both tables sourced from: Lawrence Lessig, Address to Swedish Parliament, in: *Swedish National Library Online* <http://www.kb.se/aktuellt/video/Lessig>, (Accessed 8 January 2012).

In making *use*, rather than *copying*, the meaningful action, Lessig asserts that we transform the action of copyright.[77]As Hick says, "where there is no deception, there is no forgery."[78] This new structure allows the amateur to continue "transmission" of cultural goods, while removing them from the glare of an overtly litigious realm. This need for

[76] Musa Wakhungu Olaka and Denice Adkins, 'Exploring copyright knowledge in relation to experience and education level among academic librarians in Kenya', *The International Information & Library Review*, 44 (2012), pp. 40-51, (p. 47).

[77] Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (London, 2004), p. 147.

[78] Darren Hudson Hick, 'Forgery and Appropriation in Art', *Philosophy Compass* 5 (2010), pp. 1047-1056, (p. 1052).

multiple functionalities takes on a new urgency in the digital age due to the internet's role as a "multiplier of cultural innovation".[79]

There are some inevitable problems with Lessig's grids. Firstly, in the United States at least, many amateur endeavours are protected under the Fair Use limitation, a legal exception to the exclusive right granted by copyright which allows for works still under copyright to be used for scholarship, criticism and teaching purposes.[80] Lessig's proposed changes have the potential to erode this exception, as their rights are more strongly delineated. Second is the potentially complex application of the ideology; defining use is, in itself a complex process, particularly when additionally defining amateur or professional usage. However, on the whole it is clear that Lessig has proposed a useful scheme, one which confronts the problems of a new musical age and offers solutions within a pre-existing framework.

This chapter has demonstrated the way in which contemporary musical discourses are both beholden to and shaped by intellectual property laws. In examining the philosophical background to these new musical structures, the study has shown the importance of constantly re-evaluating the cultural world around us. In so doing, the chapter has demonstrated that remix questions the legal value in music through its fragmentation and re-purposing of (what is often) copyrighted material. In making the work conceptual, rather than aesthetic, artists engaged in remix enter a decidedly social realm. Platonic notions of civil unrest are debated as an understanding of the potential ills of these new musical tropes is established. The importance of the amateur demonstrates the misuse and the misrepresentation of copyright in the digital age.

But how can these ontological criticisms work in a practical sense? How can

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[79] 'Culture', <http://creativecommons.org/culture>, (Accessed 14 March 2012).

[80] The doctrine was first incorporated into United States common law in the Copyright Act of 1976, 17 U.S.C. § 107. For the United States 1976 Copyright Act, see: <http://www.copyright.gov/title17/> (Accessed 24 November 2012).

ethics and economics combine to rest on a satisfactory outcome for the producers and controllers of cultural goods worldwide? Are viable alternatives emerging in resolution to these discourses, or does this highly polarised and almost militant debate suggest that copyright, as well as issues of ownership in intellectual property, demonstrate that the situation is a fundamentally flawed paradox which has no certain answer?

As we emerge from a decade of fraught cyber wars (the Napster, Pirate Bay and recent Megavideo debacles come to mind), solutions are slowly beginning to emerge; ones which, at first glance, appear to be more fundamentally imbued with philosophical ideology than current practice allows for. At the forefront of these are Creative Commons licences, a set of new personal rights options, established by the issues laid out by Lawrence Lessig and aimed at re-purposing copyright to fulfil the task it was appointed to do. These licences form the *practical* application of the philosophical issues discussed in this chapter; in such an empirically minded debate, this discussion is therefore invaluable.

4

A CRITIQUE OF CREATIVE COMMONS LICENCES AND THE BENEFITS OF THEIR APPLICATION IN CONTEMPORARY MUSICAL CULTURE

In March of 2008, the American industrial rock project Nine Inch Nails released *Ghosts I-IV*, their sixth studio album and the group's first independent release since its infamous split from Interscope Records in 2007. The album, a four-part ambient adventure, garnered favourable reviews for its artistic merit and topped Amazon's annual MP3 Bestseller list. Despite this critical acclaim, the album is remembered for very different reasons.

Citing growing dissatisfaction with orthodox methods of distribution in the record industry, the band elected to release *Ghosts* through the medium of open content licensing, specifically through the then nascent Creative Commons infrastructure. Established as an ideological development around the Free Software Foundation's GNU General Public Licence (an open content licence for software), Creative Common's licensing was one of the first to move the construct from the sphere of the tech industries and apply such licences to other content such as art, film and music. Nine Inch Nail's application of the licensing allowed fans to listen to and download the album under a variety of differing packages and price points (the first nine tracks could be downloaded for free, while an "Ultra-Deluxe Limited Edition" was available for the more seasoned fan at $300). While not the first time these, or any other open content licensing had been used to distribute music, the project not only challenged the notion of the album as a purely musical endeavour (each track came with corresponding artwork, also available for download, see **Illustration 4.1**), but brought the Creative Commons endeavour to the forefront of the public conscious.

Illustration 4.1 Album Art from the track *8 Ghosts I* from Nine Inch Nails sixth album, *Ghosts I-IV.* Image sourced via PDF from <www.nin.com/> (Accessed 14 January 2012).

Now, four years after the album's release and some eleven since the creation of the Creative Commons licensing infrastructure, critics remain divided as to whether their application offers a solution to the ills of the classical copyright model, or if they form nothing more than a complex distraction affecting little ontological change. Both hated and revered by the cultural sphere, their presence nonetheless puts into practice a new ideology constructed around current musical praxis. This chapter aims to synthesise discussion from the previous chapters to offer a more empirical snapshot at a world with a reformed attitude towards the commons, arguing that these licences are the best example of a practical attempt at legislating Pounds's building blocks of culture. I will begin by discussing how the aims of Creative align with emergence of the postmodern renaissance, and how these two find synthesis together. The study will further consider how these goals sit in current legal discourse and ask whether this ideological framework can find grounding in the cultural landscape. The study concludes with an examination of proprietary values in the modern age and how these licences are working in practice.

The Creative Commons endeavour has spawned a vast community of writers, academics and artists willing to very openly debate the pitfalls and glories of the project; these will form a key part of the critique. In addition, openly available statistics will be used alongside more reactionary models of legal theory and copyright discourse to

explore the place of this licensing system in the growth of twenty-first century music. Too often derided as a liberal alternative to copyright, or lauded as a panacea to the world's intellectual property ills, I believe that these licences need a balanced examination in the musical world. Academic papers have overwhelmingly stuck to a purely legal critique of this system and have thus far failed to argue any lasting legacy for it in the musical world. I herein hope to change this trend.

To begin, we must understand the core aims of the project. Lydia Pallas Loren neatly summarises the organisation's treatise in her probing study of open content licensing in the digital age:

> ...the Creative Commons tools are an innovative attempt to create a category of creative works which essentially are governed by a different set of copyright rules. This different set of copyright rules permits a far greater, and publicly beneficial, range of uses of works than the Copyright Act permits.[81]

In targeting the issue of functionality, the group aims to carry out the goals laid out by Lawrence Lessig at the end of the previous chapter: improving access to education, research and culture through greater access to an expanded "commons" of material. In doing this, the organisation hopes to return to the original ideological founding of copyright as laid out some three hundred years ago. This increased access is achieved through the deconstruction of traditional copyright ideology; where the standard model functions under the principle of unilateral "all rights reserved", Creative Commons advocates a "some rights reserved" approach, enabling the owners of rights in creative content to grant specified freedoms over their works and allowing others to access, distribute or even modify them. The not-for-profit organisation implements this ideological change through the release of six free licences (see **Table 4.1**), allowing users to dictate terms of rights or to fully dedicate their works to the public domain.

[81] Pallas Loren, 'Building a Reliable Semicommons of Creative Works', p. 275.

	**Attribution** **CC BY** This licence lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation. This is the most accommodating of licences offered. Recommended for maximum dissemination and use of licenced materials.		**Attribution-ShareAlike** **CC BY-SA** This licence lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and licence their new creations under the identical terms. This licence is often compared to "copyleft" free and open source software licences. All new works based on yours will carry the same licence, so any derivatives will also allow commercial use. This is the licence used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licenced projects.
	**Attribution-NoDerivs** **CC BY-ND** This licence allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you.		**Attribution-NonCommercial** **CC BY-NC** This licence lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to licence their derivative works on the same terms.
	**Attribution-NonCommercial-ShareAlike** **CC BY-NC-SA** This licence lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and licence their new creations under the identical terms.		**Attribution-NonCommercial-NoDerivs** **CC BY-NC-ND** This licence is the most restrictive of our six main licences, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially.

Table 4.1 Details of the six primary Creative Commons licences offered under version 3.0 (launched 2007).[82] The organisation also provides an "all rights granted" CC0 licence, allowing licensors to "waive all rights and place the work in the public domain".[83]

Under an Attribution-NonCommercial-ShareAlike BY-NC-SA licence for instance, a composer can offer her work for remix (e.g. for another composer) and re-purpose (e.g. in a documentary film), but can still control the work's redistribution under commercial circumstances. This deconstructed licensing structure therefore allows musicians,

[82] 'About the Licences', <http://creativecommons.org/licences/>, (Accessed 14 March 2012).

[83] 'About CC0 — "No Rights Reserved"', <http://creativecommons.org/about/cc0>, (Accessed 14 March 2012).

filmmakers, artists and other cultural producers the control to reach a wider audience without losing the incentive of their income.

The desired impact of this approach is understandably significant. The commons materials swell with a new wave of material available for remix, re-use and repurposing. This increase in resources not only improves temporal access to research, education and culture, but crucially works to form the basis of a remix culture; one which permits a fragmented and conceptually free understanding of the musical work. In addressing what the organisation sees as an "inherent conflict between innovative digital culture and archaic copyright laws", Creative Commons is therefore acting as a liberal alternative to the traditionally strict model.[84] In expressly allowing for these derivative uses, Creative Commons are opening up the creative world to a new aesthetic construct in the postmodern renaissance, one which, at its core, explodes functionality and context and positioning itself as a valuable legal tool of the new digital economy. Perhaps if works used by artists such as Greg Gillis were licenced under this structure, we would arguably be looking at a very different landscape.

However, while Creative Commons might see the merit in re-imagining the work concept, does this endeavour really bear any difference to the core tenets of copyright? In his vehement critique of the licences, David Berry states that:

> ...the Creative Commons project on the whole fails to confront and look beyond the logic and power asymmetries of the present. It tends to conflate how the world is with what it could be, with what we might want it to be. It's too of this time—*it is too timely*.[85]

Despite Berry's positively dystopian outlook, his quip raises an oft fought issue at the heart of Creative Commons practice: that these licences do not function as a *replacement* for copyright, merely as notices for certain conditions where derivates and remix are

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[84] 'Culture', <http://creativecommons.org/culture>, (Accessed 14 March 2012).

[85] David Berry, 'On the Creative Commons: A Critique of the Commons Without Commonality', *Free Software Magazine* (Accessed 14 March 2012) <http://www.freesoftwaremagazine.com/articles/commons_without_commonality>.

desired. They are therefore not the law, but are instead built *upon* the law, upon current, timely problems and upon current, timely power asymmetries. In short, while the organisation purports to maintain a reformist outlook, its key intent is to *preserve* copyright.

A Creative Commons licence's strength is therefore also its downfall. In structuring the licences around current legal precedent, the problems inherent to the latter will continue to impede the former. For example, any current version 3.0 licence lasts for the whole term of copyright and is also bound to the heirs of the authors; a point which the Creative Commons praxis cannot change.[86] Second, the endeavour faces the same problems confronted by classical copyright with regard to divergence in media type; a piece of music could potentially only be used for non-visual purposes, for instance. In ignoring the vastly differing concerns that different cultural producers have, Creative Commons undermine their own endeavour.[87] Third, anyone wishing to use a Creative Commons licenced work must determine if their use is permitted under that licence or if additional permissions are needed.[88] It is, in essence, not as straightforward as Lessig *et al* would have us believe.

The failure to confront current legislative failures is also raised by Péter Benjamin Tóth, director of the Hungarian Bureau for the Protection of Authors' Rights, who maintains that the element of "choice" at the core of Creative Commons licensing is already present in current legislation. In a 2003 blog article for the American Illustrator's Partnership, Tóth accuses the organisation of constructing what he terms a "false dichotomy":

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[86] Péter Benjamin Tóth, 'Demystifying the Creative Commons Licence', <http://www.illustratorspartnership.org/01_topics/article.php?searchterm=00161>, (Accessed 18 March 2012).

[87] Niva Elkin-Koren, 'Exploring Creative Commons: A Skeptical View of a Worthy Pursuit', in P. Bernt Hugenholtz and Lucie Guibault (eds.), The Future of the Public Domain (Kluwer Law International, 2006), p. 9.

[88] Elkin-Koren, 'Exploring Creative Commons', p. 14.

> Copyright provides a list of exclusive rights to the rights holder, from which he decides which ones he wishes to "sell" or grant and which to retain. The "some rights reserved" concept is therefore not an alternative to, but rather the very nature of classical copyright.[89]

This "false dichotomy", a construction of non-existent choices, implies that Creative Commons are essentially muddying the water, offering an unnecessary layer of bureaucracy to an already bloated and red tape-strewn system. While we could contend that classical copyright already provides the tools necessary for the reinvention of culture, it could be said that Creative Commons does not provide these tools either. Given their role as a service provider for standardised licence text, rather than a unified party in any agreement, their role as interpreter of tradition comes into question. For example, the notion as to whether a copyright owner is truly at liberty to abandon only a portion of the rights granted to him remains an open one. Says Lydia Pallas Loren:

> The law in effect at the time of Judge Hand's articulation of the test for abandonment was the 1909 Copyright Act. Because the language of the 1909 Act referred to a single "copyright" and a single "copyright proprietor," judicial construction of that Act interpreted the bundle of rights granted to a copyright owner as "indivisible." The bundle of rights were held to be incapable of assignment except in their entirety. Presumably this would have applied to the doctrine of abandonment, thus precluding the adoption of a doctrine of limited or partial abandonment.[90]

Applied to our discussion, Pallas Loren implies that the Creative Commons endeavour is offering an untested abandonment theory; that is to say, an infrastructure outside the bounds of constitutional law. In creating unconstitutional distinctions such as the element of false choice and this, a misreading of the abandonment clause, Creative Commons poses a threat to a real element of the American law: the fair use doctrine.[91] As touched upon in the previous chapter, the endeavour's introduction of a distinction between commercial and non-commercial purposes (something which fair use allows for) artists could find themselves out of pocket (or equally under-distributed) while those at the other end of the production line (educators, students, amateurs) could fall foul of

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[89] Tóth, 'Demystifying the Creative Commons Licence'.

[90] Pallas Loren, 'Building a Reliable Semicommons of Creative Works', p. 276.

[91] For the United States abandonment clause to which Pallas Loren refers, see: 17 U.S.C. § 203.

Creative Commons's more restrictive stance on this area. This is, in fact all suggestion as Creative Commons cannot supersede copyright laws, but if a case were brought and won it would seriously erode fair use. If fair use is threatened, a wealth of teaching material, debate and remix will die out. Regardless of whether or not one agrees with the test for abandonment, we must recognise that it exists in law.

We could also surmise that the Creative Commons's infrastructure has further entrenched the problems inherent to the traditional copyright model in the cultural landscape. For instance, Berry's first accusation, that the system perpetuates contemporary imbalances of power, is also reflected in the presentation of the licences. Each consists of three layers of licensing description, offered in the following formats:

Digital Code	A summary of the key freedoms and obligations written into a format that software systems, search engines, and other kinds of technology can understand.
Legal Code	The traditional legal tool in a traditional legal format.
Commons Deed	The "human readable" form of the licence.

Table 4.2 A Summary of a standard Creative Commons tripartite licence deed. Table sourced from: 'Three "Layers" Of Licences', <http://creativecommons.org/licences/>, (Accessed 18 March 2012).

Where the Legal Code forms the traditional legal basis of the licence, the remaining two serve as 'translations'; drastically reduced versions of the legal vernacular aimed at both author and machine in a more 'comprehensible' package of terms.[92] These deeds, which omit a great deal of the small print, sugar-coat a legal vernacular which arguably cannot be compressed into a fact-sheet of terms. The breakdown of any intellectual property ideology into comprehensible terms for its subjects is admirable; as many, including Siva Vaidhyanathan and Anna Mancini have said, education, or a lack thereof, is a major stumbling block to its amelioration. However, this oversimplification is not the way and could be viewed as nothing short of misleading. For instance, no Commons Deed for the

[92] ibid.

new 3.0 release fully explains the issue of non-retractability; that is to say, the contractually permanent application of the chosen licence and resultant permanent loss of any abandoned rights. In permanently abandoning some or all rights, artists (particularly young, emerging artists or those without comprehensive legal knowledge) can forfeit a great deal of potential remuneration or future credit unnecessarily. For cultural producers not possessing this knowledge to be tricked into complex legal contracts without *full* understanding of their undertaking is both duplicitous and dangerous for the future of cultural discourse.

Because artists and cultural producers wishing to use the licence will generally *only* read the Commons Deed, one could argue that, as the majority do not consult specialist legal advice (or have the financial means to take advantage of such advice), this structure perpetuates the power of the legal profession (those who determine the terms important enough to be on the Commons Deed) in intellectual property discourse.[93] As it stands therefore, Creative Commons licences could be seen to be maintaining the hegemonic structure of copyright; offering detailed access to a privileged class, while disallowing agency to a key part of the cultural landscape.

If it is the latter, then Creative Commons licences could be seen as far worse than a small legal project and instead as a threat to the reform of both legal and cultural discourse. Introducing more prescient open source licensing around a pre-existing legal structure has the potential to halt the progress of the intellectual property revolution, dissuading reformers into shelving revisions to the copyright act in favour of a 'placebo'. If Creative Commons' aims are not fulfilled in current copyright legislation, why are we wasting time on a distraction, rather than tackling the real issue of legislative reform? Giles Moss stated that:

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[93] Péter Benjamin Tóth, 'Creative Humbug' <http://www.indicare.org/tiki-read_article.php?articleId=118>, (Accessed 14 March 2012).

> ...any attempt to impair commonalty and common rights for concepts and ideas must meet resistance. We need political awareness and struggle, not lawyers exercising their legal vernacular and skills on complicated licences, court cases and precedents.[94]

Moss makes a valid point: in their eight years in operation, Creative Commons have changed parts of the creative industries, but arguably not fast enough or with enough impact. In essence, because this infrastructure does not challenge the main problem with copyright, the issue of terms, it is just complicating the process.

Allowing users to choose their rights has a rather sophisticated impact. First is the rather obvious fact of radically increasing the size of the commons. This in itself brings problems. In an opinion piece for the British technology, news and opinion website *The Register*, Sion Touhig sided against the anti-copyright lobbyists, stating that models used by websites like Flickr, Vimeo and YouTube (those offering free, easy and unlimited access to a wealth of information, data, media and technology resources, all relied upon by an industry which is struggling in the wake of the digital revolution), were putting her business, her passion and her career at stake. A seasoned photojournalist with both UK and international newspapers since 1991, Touhig's article was decrying what she termed the "democratisation of the media"; an unbounded expansion of the commons, largely by amateur photographers and artists, into the spheres of the media and press industries. With *The Guardian* of London's new open-architecture for media publishing (a Twitter-infused, Facebook-run, all-inclusive debate on current issues), the age of the community information sharing has arrived.[95] "The cold hard fact", says Touhig, "is that shareholders, rather than the employees of these conglomerates and society at large [are the ones who] benefit".[96] Touhig even went as far as to suggest that eventually, the

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[94] Berry, 'On the Creative Commons: A Critique of the Commons Without Commonality', *Free Software Magazine*.

[95]Robert Krulwich, 'The Three Little Pigs And The Future Of Journalism', *NPR* (Accessed 12 March 2012) <http://www.npr.org/blogs/krulwich/2012/03/05/147977288/the-three-little-pigs-and-the-future-of-journalsim>.

[96] Sion Touhig, 'How the anti-copyright lobby makes big business richer', *The Register* (Accessed 19 March 2012) <http://www.theregister.co.uk/2006/12/29/photojournalism_and_copyright/>.

population will 'wise up' to their misuse by the media and withhold information, thus radically reducing the scope of the commons. In essence, Touhig argues that cultural goods must form part of the discourse of value and exchange, lest they become devalued, both as economic and cultural wares.

It is here, however, that we could see Creative Commons' positioning in the current legal framework as a very strong ontological situation. Overhauling the legal constraints of the present is a far more difficult task than making the small, manageable reforms as offered by the Creative Commons enterprise. Once the benefits are found to have successful practical application, it may be possible to effect greater change in legal discourse. In reforming from within, rather than in stark opposition to current legislation, the enterprise therefore shows that the *idea* of copyright is a good one; simply that its application to culture in the digital world is flawed.

The solution to this problem lies in the deconstructed approach to both aesthetics and economics at the heart of the licensing ideology. By drawing proprietary boundaries *within* the work, rather than simply *around* it, the private owner trusts in his maintained rights, while the public sphere benefits from the trust that the work's rights cannot be revoked.[97] In creating and nurturing this new ontologically grey area, described by Lydia Pallas Loren as the "semicommons", Creative Commons expands the public commons with new work, whilst still maintaining a modicum of proprietary interests, that is to say, the incentive for creativity.

The further sophistication of the semicommons, over and above the 'traditional' commons, is due to what Pallas Loren terms a "dynamism" between the realms of public sphere and private ownership:

[97] Pallas Loren, 'Building a Reliable Semicommons of Creative Works', p. 276.

> The dynamic interaction between the public rights and the private rights maximizes wealth to a greater extent than is possible under either a purely private or purely common ownership regime.[98]

Because of this increased trust, this understanding that rights cannot be revoked, Creative Commons licensing essentially allows for the economic incentivisation of creativity whilst naturally accommodating the development of remix culture and art. In enhancing the collective, rather than *individual* value in the work, Creative Commons expands the cultural landscape as would never have been possible under traditional copyright. Because of the drawing of boundaries through, rather than around, Creative Commons should theoretically encourage a collective trust in placing authored works into the commons; where before it was 'all or nothing', now artists can benefit society whilst still benefitting from their creative output in a self-perpetuating cycle.[99] Because the infrastructure negates the importance of the work concept and enhances the value instead in the communal cultural landscape; we still hold some value in our individual creations, but this is no longer of prime importance.

This enhancement in the production of part-owned materials has proven results. Take, for example, the Philharmonia Baroque Orchestra's 2006 recording of Handel's *Atalanta*. Jaded by traditional distribution pathways, the San Francisco based group made the decision to release the recording through Magnatune, an independent record label and one of the first to build a viable business model around Creative Commons licensing. Released under an Attribution-NonCommercial-ShareAlike licence, the orchestra was able to increase traffic to a site which sold the music, offer free streaming and sell downloads without being constrained by traditional copyright concerns from the label.[100] *The Wall Street Journal* lauded Magnatune's archetype, stating that it "has potentially given the industry a tremendous shot in the arm", while allowing orchestras

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[98] ibid., p. 150.

[99] ibid.

[100] This licence therefore offers permissions to remix, tweak, and build upon *Atalanta* non-commercially, provided the orchestra was credited and new creations licenced under identical terms.

to reach "new audiences, including ones that are unlikely to hear [them] in person."[101] This dynamism offers proof to any ardent Pigouian supporters that incentivisation need not come in the form of balanced externalities.

A fervent investiture in a semicommons adds up to one thing: a changing musical landscape. Through encouraging the act of sharing, the Creative Commons organisation generates new audiences, ones who are hungry for both different types of music and a communal experience of it. In offering greater distribution, audiences automatically widen; thereby increasing ticket sales and engagement with a plurality of live music. In increasing the overall *value* of the commons, open content infrastructure such as the Creative Commons project also works to bring culture out of institutions and into the public sphere.[102] In eschewing traditional methods of distribution, we allow for greater access to works which would otherwise have been held back behind restrictive and archaic copyright laws.

This chapter has primarily discussed the ways in which the Creative Commons project sought to address their mandate of increased functionality in the individual work through the deconstruction of tradition. In discussing the consequent aesthetic impacts of these increases in both artistic and economic functionality, the author has hoped to establish the significant ideological advancement which these licences possess over the traditional copyright model. While basing a new licensing system so strongly in current legal praxis has significant benefit, this study argues that Creative Commons needs to make broader distinctions between its own legislative efforts and those of statute. The critique concluded through an examination of the lasting legacy of the licensing infrastructure; the introduction and expansion of the semicommons, a body of work with newly drawn and arguably better fitting proprietary rights. In following this

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[101] Lauren A.E. Schuker, 'A rare Handel work gets an audience on the internet', *The Wall Street Journal* (April 15 2006).

[102] 'Culture', <http://creativecommons.org/culture>, (Accessed 14 March 2012).

argument, the study has shown that the licences can have lasting and meaningful application in musical culture, bolstering both modernised distribution methods and allowing greater access to a broader wealth of public material.

Regardless of whether one agrees with the aims of the endeavour, or believes in its success, one thing cannot be denied; their creation has drawn significant attention to the problems inherent to copyright amongst what might otherwise be an apathetic cross-section of society. Simply by virtue of spawning this debate, Creative Commons have offered a glimpse at real solutions to the socio-cultural war, solutions which are beginning to take hold across a vibrant and rapidly expanding technological field. While far from perfect, their very presence offers an empirical solution to a new generation of artists who seek alternatives to a law which they no longer feel is of direct benefit. Their very acknowledgement of a problem, a problem which has affected music for some three hundred years, has already begun to alter the field. As the number of licenced works reaches 500 million, we can only hope that, moving into the future, their presence can affect true, democratic change in the cultural landscape.[103] Whether this is for better or worse is too early to tell; that change is afoot is, for now, an interesting and arguably positive development.

[103] '4.0', <http://wiki.creativecommons.org/4.0>, (Accessed 20 March 2012).

EPILOGUE

> Everyone over age 12 when YouTube launched in 2005 is now able to vote. What happens when — and this is inevitable — a generation completely comfortable with remix culture becomes a *majority* of the electorate, instead of the fringe youth? What happens when they start getting elected to office? (Maybe "I downloaded but didn't share" will be the new "I smoked, but didn't inhale.") Remix culture is the new Prohibition, with massive media companies as the lone voices calling for temperance. You can criminalize commonplace activities from law-abiding people, but eventually, something has to give.[104]

This is how Andy Baio, a small-town technology and culture enthusiast, challenged the readers of his blog on December 9 2011. Written a little over a month before the ideological uprisings of January 18, Baio's aphorism neatly demonstrates the socio-cultural time-bomb waiting for the children of Generation X; a forewarning of the results of decades of tension between heavy-handed legislature and overly entitled tech-savvy youngsters. A generation of amateurs, professionals and students have felt afraid to perform, to cut and paste, to interact with culture for fear of sanctioned reprisals. As new legislative battles wait ready in the wings (the OPEN Act, mimics many facets of the SOPA and PIPA legislation), we must question our understandings of art, culture and legal jurisdiction in order to weather Baio's oncoming storm.[105]

This thesis has argued that copyright has shaped the global cultural landscape due to its ontological positioning as a social construct. In understanding it in this way, in a cultural, rather than legal context, we can understand why it functions the way it does and the power structures at play both in the musical and legal spheres. In answering this question, in posing this topic, we begin to understand the broader picture. Too often in copyright discussions, the debate stratifies into detailed legal or philosophical dispute; either side forgetting the impact that these ideologies are having on a broader culture. In deconstructing the process of culture, both the legal and aesthetic spheres betray their

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[104] Andy Baio, 'No Copyright Intended', (Accessed January 19 2012) <http://waxy.org/2011/12/no_copyright_intended/>.

[105] H.R. 3782: Online Protection and Enforcement of Digital Trade Act,(Accessed 4 April 2012) <http://www.govtrack.us/congress/bills/112/hr3782>.

parts in the development of humanity.

The work has largely drawn from legal and aesthetic theory to demonstrate that tangible shifts have occurred in the musical landscape as a result of the presence of copyright. Through researching both the historical and current status of copyright through an aesthetic perspective, this thesis has shown that copyright is a trope which has shaped the cultural landscape. In sourcing economic data to demonstrate the tangible, financial benefits of copyright, the study attempted to demonstrate the conflicting results of incentivisation and the logic behind the statute. By studying this idea through the work of a new generation of intellectual property scholar, the work has attempted to form a reconciliation between reactionary legal doctrine and hardline aesthetic concepts in order to find a solution to this often damaging presence.

There are obvious limitations to this approach: attempting to reconcile centuries of legal dispute with centuries of aesthetic discord is no mean feat. Similarly, making the assertion that one social system can have such a strong impact upon another is a necessarily hard claim to prove. Nonetheless, this thesis has demonstrated that copyright is a social construction and as such has played a role shaping the global cultural landscape.

When asking what copyright is from a broader, socio-economic perspective, the study has attempted to understand how it could function as a tool for shaping culture. By asking *why* the law behaves as it does and in determining that the law is a social construct, the study demonstrated the power of this discourse for fulfilling such a role. The full impact of this role was explored in chapter two, which considered a specific instance of copyright introduction in order to demonstrate the impact which copyright has upon cultural landscape in empirical terms. In asking if the shape of English classical music was the product of legal discourse, the chapter raised further issues surrounding the impact of this legislation upon our education system and the growth of

developing nations. These questions surrounding the purveyance of knowledge and impact of intellectual property laws upon different users was further examined in chapter three. By understanding the mistakes made in previous centuries, the pinpointing of contemporary uses for music and cultural artefacts allows us to understand how copyright should function in the twenty-first century. In debating this functionality, we also raise more ontological questions surrounding the benefits of copyright in a deeply fragmented society. In critiquing open source content licensing, the study has attempted to draw attention to a broader question; namely if deconstructed licensing systems can free music from a sculpturing legal discourse. In understanding the flaws in this new infrastructure, we can hope to effect change into the future.

Further study should be carried out into the true extent of how, as established in this study, other musical landscapes have been shaped by legal discourse, particularly those cultures in the developing world and can also show us a window into the past, present and future of copyright. Because of copyright's origins as a western concept, this research could determine how its presence maintains the dominance of western musical concepts in global ideology. India, home of Siva Vaidhyanathan and a hotbed of intellectual property research, offers invaluable insight into the rise of a superpower and its subsequent treatment of its own cultural goods. In further researching copyright ideology from a different social perspective, we might gain some insight into our own reading of culture.

A growing area not examined in this work is the anti-copyright and copyleft movements. Necessarily excluded from this study as a heavily politicised niche, the impact of a copyright free or radically reduced copyright infrastructure upon the cultural landscape should nevertheless be examined. Perhaps, once the impact of copyright upon musical landscapes is fully ascertained, we could ask if copyright should be banned altogether?

In re-focusing the understanding of the study slightly, we could examine how other legislative acts impact upon the cultural landscape; how different socio-economic movements within different regions affected cultural output, how labour laws affect the number of composers entering the field, how gender in the arts is affected by legal praxis. In asking how other laws impact the cultural landscape, we can ascertain whether copyright has a disproportionate role to play in its shaping. As the notion of proprietary rights in music explodes beyond the bounds of aesthetic discussion, we should understand how the musical work functions in the digital age. What defines our music and just how open should the public domain be? How could open content licensing be better integrated with the law to facilitate these ideas?

The broader implications of this study are, understandably, boundless. In acknowledging the way in which our cultural artefacts function in the socio-political sphere, we can begin to understand the very roots of how western democracy functions. As one of the most explosive political issues of the early twenty-first century, one which a vast proportion of the electorate has an opinion on, copyright tests the water for democratic debate and ideological representation in the offices of power. Many described the events of January 18th as an act by "...the voice of the people": in the year of the protestor, is copyright the vanguard for change?[106] In finding answers to the questions posed in this thesis, we pose broader questions about civic and personal responsibility; who has a right to cultural goods, how far do those rights extend? In a return to our Platonic discussions of chapter three, if the youth disobey this law, what is to stop them disobeying others? Because of its international accedence, copyright plays a part in the global cultural agenda. In understanding this, we can understand how globalisation, particularly western ideology, affects music, politics, law and economics. In answering these questions, we plot a trajectory for the future of music.

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[106] Kurt Andersen, 'The Protestor: Time Person of the Year', *Time*, (Wednesday, Dec. 14, 2011).

The world, as well as the way we produce, consume and understand music, is changing. As we pass the three-hundredth anniversary of the enactment of the Statute of Anne, we should remind ourselves of the original ideology behind copyright: to promote the development of our society, through the promotion of knowledge and learning. As the debates rage on, we lose vital parts of our cultural environment. In examining the facets of modern culture, the idea of music and its creative trajectory in the twenty-first century, this study has attempted to show some of the problems faced by copyright. If this sustained battle continues, it can only negatively affect the ontological positioning of culture in the twenty-first century.

The thesis has shown that legal discourse has played a role in the development of western musical culture, that its journey has shaped our aesthetic understandings of music, and that, by extension, all social systems are linked. The study has developed work from legal scholars into a music-centric aesthetic approach, one which has attempted to uniquely examine the problem of copyright not strictly as a rights issue, but as a broader player in our cultural environment.

This study differs from those made by scholars such as Boldrin and Levine, Lawrence Lessig and Anna Mancini, as it offers an aesthetic, musical perspective outside of the purely legal sphere. In objectifying copyright, in understanding it outside the realms of the courtroom, the study hopes to offer new perspectives on how the legislation might change to better fit the musical object of the twenty-first century. In order for change to take effect in the world of intellectual property, issues such as these must be considered. We should attempt to find a greater place for solutions such as open content licensing; to entertain the possibility that copyright no longer fits the digital world around us; to ask questions which have the potential to uproot an entire system of ideology. We must make concerted efforts to remove ourselves from the purely economic or political realms, and to better understand the fundamentals of our own culture; to understand the

importance of education in this arena, to understand our cultural goods as transmitters of knowledge. In so doing, we can only become stronger as a society.

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