

Music [Copy Right Remix]

By Nicolas Artman

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Note: this is an example of a more risky term paper; it aimed to accomplish a lot and could've easily failed to be pointed enough to pass. It is not recommended you attempt this style of paper unless you have a *lot* of time to invest into it and are incredibly interested in the topic.

This paper has not been corrected after Dr. Turner's final comments.

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Abstract

The United States Copyright Code defines the ownership and rights surrounding most intellectual property. The laws it contains provides power over the creation and use of all intellectual works with the stated purpose of benefitting inventors and maintaining a fair society. Since the dawn of the digital age and the proliferation of accessible audio alteration tools, these laws have found considerable conflict with a wide array of modern musicians and artists. The restrictions they impose impede new media such as remixes and mash-ups and stymie economic opportunities for new artists. To achieve the original aims of the U.S. Constitution, copyright must be reviewed and revised to serve the public again. According to the ACM Software Engineering Code of Ethics, software developers, musicians, and lawmakers are morally compelled to instrument these changes.

Relevance

Copyright profoundly affects our culture and economy [Remix, BoldrinLevine]. It determines protection we have over our “original works” [CopyrightBasics]. The music industry in particular generates billions of dollars in revenue [MusicRevenue], and the effect of music is felt throughout society [MusicPopularity]. Music copyright thus controls who owns the elements of this key aspect of our society and how others can build from their creative efforts. Recently, the rise of widespread accessibility to remixing and audio sampling tools on computers [CompUsage] has enabled thousands of new artists to create their own remixes [RadioheadRemix, NINRemix]. The law stands in direct contention with many such works [Remix, CopyrightCh5], and determining its modern relevance and ethicality may determine the development of the future of music [Remix].

Introduction

In 1904, George W. Johnson released a professional recording of the song “Laughing Coon” on a two minute Edison cylinder [CS]. At the time each cylinder could only be used to record once and cost about \$86 (estimated 2008 dollars [DVAL]) [Phonograph]. The machine used to record cost about \$3,000 (estimated 2008 dollars [DVAL]) [Phonograph].

Two years after George Johnson released “Laughing Coon,” the composer John Philip Sousa testified before Congress in favor of stricter copyright laws [Remix]. When he spoke there were currently no laws preventing the duplication of a musician’s recorded work. There was a logical reason for this; until the invention of the phonograph, it was impossible to do [Phonograph]. However, Sousa was acutely aware of the effect falling phonograph prices [PhonoPrice] would have on his work. Congress acted quickly and the Copyright Act of 1909 included a few paragraphs of provisions to prevent the duplication of phonographic recordings without paying musicians royalties [CPA1909].

Today, there are more than fifteen pages of text explaining just the basic audio recording copyright laws in effect [CRCH10]. Anyone with a fifteen dollar tape recorder can record an effectively infinite number of takes on a one dollar cassette tape for free [TapeRecording]. The ability to record and play back music on demand is now commonplace. Copyright law has expanded to cover virtually every situation in which music can be played, replayed, and infused with other music and media [CRCH10]. However, with the birth of the digital age, a distinct contention has arisen. In 1900, nearly anything that was feasible to do with music was legal. In the 2000s an average college student can do a wide variety of endeavors with music that are now completely illegal. In 1904 if a wealthy citizen wanted to copy his recording of “Laughing Coon” to give to his friend, he could. If I now wish to copy a recording of my favorite song by Radiohead to a CD and give it to my friend, I am violating the law. Since the majority of U.S. households have computers that can copy CDs and audio recordings [CompUsage], these laws now apply far more to the average consumer than they ever have before.

With the advent of the first commercial sampler in 1978 [SamplerHist], a device designed specifically to record audio for artistic reuse, using audio has become much more widespread and considerably more legally complex. In 1992, copyright law was significantly updated to include rules governing the use of sampled audio. The Digital Millennium Copyright Act significantly altered laws concerning audio use [DMCA], and the current triennial review of the act includes proposed changes to the legality of various uses of audio [DMCA2K9].

In recent years musician Greg Gillis has drastically increased the prevalence of sample based music. In September 2008 Gillis released “Feed the Animals” [FTA1], an album consisting of over 300 samples of other musical artists’ work mixed together [FTA2]. Unlike most releases before his Gillis’ work consisted entirely of other musicians’ published work [GTNYT]. The New York Times has called his music “a lawsuit waiting to happen” [GTNYT]. He has yet to be sued, but still plays concerts for under 2000 people [GTNYT], so he may soon become a prime target for legal action. In

2006 rapper Notorious B.I.G. was forced to pay \$4 million to the copyright holder of a few funk tracks he sampled for use in his songs [SamplingSuit]. If Gillis and others like him become as prominent as Notorious B.I.G., their use of sampling may soon become a big concern for record companies.

With the clash between rights-holders and avant-garde musicians like Gillis only a lawsuit away, music copyright laws may soon change radically. To ensure they change for the better it is our duty to fight for ethical laws that benefit society [SE108]. In this paper I will thoroughly examine the current state of sampling and the laws surrounding it. I will then present the arguments and tradeoffs for and against the current law, based on both ethical principles and effect on modern society. This will determine whether copyright law still fulfills the ethical purpose it was originally intended for or instead requires significant change to once again serve the public good [SECode 1.00].

Definition of New Music

New music and all evaluations of the reuse of audio in musical works refer to audio recordings distinct from the original work that contain new or altered musical elements. Musical elements include audio segments with effects applied to them, generated through synthesis, and combinations of audio clips. The intentional use of technology to make free copies of music simply to avoid paying or to circumvent copy protection is not related to the creation of new musical art and will not be discussed in this paper.

Facts

Sampling is the process of using an audio segment from an original recording in a new recording [SamplingDef]. There are now computers capable of sampling in the majority of homes in the U.S., a stark contrast just a few years prior [CompUsage, PastCompUsage]. Remixes are now featured aspects of many artists' public image such as Nine Inch Nails and Radiohead [NINRemix, RadioheadRemix]. Mash-ups, combinations of two or more song clips to create a new song [MashupDef, Remix], are common in clubs [ClubMashups] and have even been used for entire albums [GTNYT]. Multiple Grammy Award nominated artist Radiohead [RadioheadGrammy] recently finished their second fan remix competition with over 3800 total remixes submitted [RadioheadRemix]. Similarly, Webby Award Artist of the Year [NINWebby] Trent Reznor's band Nine Inch Nails distributes most of their new songs in sample tracks under creative commons licenses so fans can remix them [NINRemix, NINCC]. Australian Drum and Bass group Pendulum announces at the beginning of their concerts "are you ready to remix!?" before using samples of their and others' music to create new music live [Pendulum]. Recently, musical artist Greg Gillis commercially released an album composed entirely of unauthorized samples of copyrighted work [GTNYT].

Current law, however, is in contention with all instances of sampling and remixing unless specifically condoned by all rights-holders or exempted by fair use. Copyright law states that unlicensed use of audio is subject to infringement penalties in all cases not pre-approved by all rights-holders [CopyrightCh11]. Copyright law has been used to sue successful artists for sampling use. Beatles Guitarist George Harrison was successfully sued for over \$1.5 million [Harrison]. Rapper Notorious B.I.G. was successfully sued for over \$4 million [NotoriousBIG]. Rappers Kanye West, Method Man, Redman, Common and their record companies have also been sued as recently as last year [Kanye]. The New York Times has called Greg Gillis "a lawsuit waiting to happen" [GTNYT]; it may not be long before he too is sued. According to the Recording Industry Association of America unauthorized sampling such as Gillis' could result in fees of up to \$250,000 per sample and five years in prison [RIAA, StudentReportsPage].

Principle Question

Are the current copyright restrictions on the use of audio samples in new music ethical?

Arguments

Yes, modern audio copyright law is ethical and necessary.

The amount of copyrighted work used is not a significant factor.

Using part of a copyrighted work is as economically and legally harmful as using the entirety of the work, except in fair use exceptions [MPA, RIAA]. Thus, any argument that applies to an entire song can also apply to its parts.

Copyright law protects personal rights.

Copyright law is designed to protect artists by ensuring that their work is not misused, plagiarized, or stolen [MPA]. Transferring copyrighted material to or from the Internet and other sources is an unethical disregard for this law [MPA]. For example, copying music for a friend to a CD or their computer deprives the artist of the profit that friend's purchase would have garnered [StudentReportsPage]. The protection of copyright fosters creative and economic growth that cannot occur without such safeguards against piracy and theft [RIAA, PiracyReport]. The unapproved sharing of copyrighted works also obscures the artist's voice, depriving them of control over their own creative accomplishments [SAG]. For example, it allows works to be "altered and exploited so that it no longer resembles what the actor, director, musician, vocalist or writer intended, yet is distributed under their names." It is also necessary to protect individuals' personal rights by allowing them control of the music they create so it cannot be used by others without their express permission [Rand]. The protector of such rights should be the government [Rand].

Using copyrighted works hurts their economic viability.

When a song is copied in whole or in part without consent of the rights-holder, it economically damages them [RIAA]. For example, music piracy including all forms of copyright infringement take away \$2.7 billion each year that artists and industry workers would make. The pirated content also helps fund the pirates themselves, generating an estimated \$4.5 billion in 2005 alone [PiracyReport]. Additionally, unapproved use such as remixing a song can hurt them as well. Musicians are not the only people hurt by unapproved use of their music; everyone involved in the process of creating and releasing their music suffers [RIAA, MU]. By taking away musicians' resources, it hurts their ability to be creative [MUArtists]. For example, Rivers Rutherford, co-writer of

billboard's 2001 Country Song of the Year, explains "The average songwriter has to be very fortunate to make any money at all from his craft" [MUArtists]. Without the profits gained from touring and selling merchandise, "Downloading can literally make it impossible for a songwriter to support himself" [MUArtists]. Performers depend upon the income from legitimate sales of their work to continue to create [SAG].

No, modern audio copyright law must be greatly changed or diminished

Modern copyright is economically inhibiting, not protecting.

Modern copyright law do not actually foster creativity and invention as they claim [BoldrinLevine]. Instead, they facilitate intellectual monopolies that enable private entities to stifle ideas from those without the economic power to compete [BoldrinLevine]. Significant copyright reform is the only way to eliminate these monopolistic entities such as the music publishing companies. By decreasing the power of copyright, we can facilitate significant gains in both the economy and the variety and quality of new inventions [BoldrinLevine, Stallman]. Hundreds of millions of dollars are spent each year protecting copyright [CBORReport], which is a waste if it fails to encourage the arts. Sources on copyright infringement such as [PiracyReport] and [StudentReportsPage] do not show that a drastic reduction of copyright law would have negative economic effects, merely that infringement to avoid buying music has such consequences. Additionally, reports on loss due to copyright infringement are inherently flawed by suggesting that any illegal copying causes a loss of revenue that would otherwise exist [Stallman].

Copyright is an artificial construct of the law, not a natural right.

Copyright is not a natural right, but an agreement between rights-holders and the public [Stallman, BoldrinLevine]. The public, in the past, gave up their right to copy media because it simply was not feasible for them to do so, and so they let publishers hold those rights [Stallman]. This created an environment beneficial to both the publishers and the consumers, but today's environment no longer facilitates this mutual prosperity [Stallman, Remix]. Instead, publishers are restricting the rights the public should have to copy, share and manipulate what they buy [Stallman, BoldrinLevine, Remix].

Audio sampling is essentially the same as other artistic reuse and should not be judged differently.

The right to reuse audio for an artistic purpose bears no essential difference from the right to quote a source in an essay [Remix]. Copyright law, however, treats different media in a fundamentally different manner, and fair use law has historically been applied differently to different mediums of expression [Remix]. The restrictiveness of this law has often resulted in denial of personal and artistic expression, such as the removal of audiovisual remixes from YouTube.com and musical remix websites [Remix].

Analysis

The United States was founded on a set of principles embodied by the U.S. Constitution [Constitution]. In the Constitution, one of the powers given to Congress was the ability to give citizens specific rights over their creations [ConstitutionA1S8]. The stated goal of such law was:

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries [ConstitutionA1S8].

Those goals are both noble and just, and were designed to promote and protect invention in a time when an innovation could be easily stolen. For example, without copyright law, it would have been legal to sell copies of another's work without their consent. The copyright clause allowed Congress the power to prevent such acts, thus fostering innovation. However, in recent decades those laws have been ill-revised, and have stagnated considerably. For example, the Motion Picture Association of America is currently fighting to expand the already outdated laws preventing copying part of a cinematic work to include duplication for educational purposes [MPAADMCA09]. The range of laws currently in place are vast and varied, and to discuss them all at once would take volumes. Thus, I will be focusing on a small set of copyright laws governing the reuse of audio clips, or samples, in new musical works. These works are not designed to replace or compete with the original pieces, but rather to combine and reshape them artistically. By examining the principles, rationality, and current state of audio copyright laws, I will determine if they are still ethical and just or if they have now become unnecessary and restrictive.

A Principled Approach

The original principle behind copyright law was that exclusive control over inventions would foster the sciences and arts [ConstitutionA1S8]. Thus, modern copyright law should be examined to determine if the same principle facilitates the same results centuries later. I will consider three important philosophical perspectives that can be applied to issues of sample use and copyright. The first is rational egotism, which is embodied by Ayn Rand's objectivism. The second is deontology, such as Immanuel Kant's categorical imperative. The third is utilitarianism, the philosophy popularized by John Stuart Mill that prioritizes common good over individual success. Two utilitarian methodologies, act utilitarianism and rule utilitarianism, will be discussed. The deontological and utilitarian ethics embodied by the ACM Software Engineering Code of Ethics will provide key points to consider as well.

Ayn Rand and Objectivism

From an objectivist perspective, personal property is one of the most fundamental human rights [RandCapitalism]. Specifically, Rand defines intellectual property as "... the legal implementation of the base of all property rights: a man's right to the product of his mind" [COI130]. To use another's property as part of one's own without their permission is strictly wrong according to objectivism. Furthermore, Rand endorses a strict laissez-faire capitalism model devoid of governmental influence on the economy [RandCapitalism]. Thus, despite her opinion that the model precludes monopolies, if one were to arise it would be unstoppable. Additionally, any private entity can charge whatever it wants for the use of its property – the free market is supposed to take care of any attempts at unfairness by driving away business. If a music publisher wants to charge someone \$5,000 to use a bass solo they own the rights for in an art display, there would be nothing the artist could do. The objectivist viewpoint would maintain that modern copyright law is entirely ethical, and any issues resulting from it are the fault of governmental interference in the economy [RandEcon]. Additionally, objectivism supports absolute ownership without fair use exceptions [RandCapitalism], and thus would support the abolishment of current copyright-limiting statutes. One issue that objectivism faces, however, is the lack of demonstrated real-world success. There have not yet been any countries with a strong laissez-faire economy and a government powerful enough to enforce each individual's rights. Thus, despite objectivism and Rand's firm stance in favor of modern copyright law, modern complications such as vague licensing and fair use exceptions cannot be fairly examined with this viewpoint. Instead of offering a logical solution, it simply offers none, as the preconditions for the philosophy have not been met.

Deontology and the Categorical Imperative

Similarly absolute but far less egocentric, deontological views such as Kant's categorical imperative also have a hard time resolving copyright quandaries. The categorical imperative holds the means of an action in the highest ethical consideration; the end result is nearly irrelevant [Kant]. Thus, the potential economic benefit of copyright law is irrelevant. What matters is whether the act in question is morally right. Unfortunately, a number of contradictions arise when the categorical imperative is applied to copyright cases. For example, is it wrong to use a quote from a TV broadcast without the station's permission? Kant would say yes, because it is categorically wrong to disobey someone's wishes about their personal property. However, many opponents of copyright laws such as Stallman, Boldrin, and Levine believe that is asking the wrong question [Stallman, BoldrinLevine]. Instead of viewing it as unwarranted property use, it could be viewed as artistic use of cultural artifacts. Kant's answer to the question "is it ethical to own part of a society's culture and disallow others from using it to create new cultural artifacts?" would be "Absolutely not." This is because the act of restricting an artist to achieve the end of protecting one's own interest at their expense is based on an ignoble mean. Regardless of the end goal to protect one's future economic interests, the denial of artistic opportunity is wrong. Thus, deontology fails to provide a broadly applicable answer for similar reasons as objectivism.

Utilitarianism and the Greater Good

The third viewpoint to examine will show considerably more promise. Utilitarianism is a philosophy designed to analyze both general and specific situations to promote the common good [Mill]. Utilitarianism uses quantitative reasoning to determine the overall happiness of an action or rule so its ethicality can be logically determined [Mill]. There are two primary forms of utilitarianism: act utilitarianism and rule utilitarianism. Act utilitarianism states that happiness should be maximized in each individual action [Mill]. Rule utilitarianism proposes that a set of rules be followed that generally promote the common good [Mill]. Another way to phrase act utilitarianism is: if the same utility criteria could be applied to everyone with beneficial outcome, then that choice is optimal. Through these common-good mentalities, one can analyze the effects of copyright law on musical reuse. For example, suppose an artist uses his right to control all use of his song to personally profit at the artistic expense of would-be remixers. If a specialist in music economics determines that the money and artistic opportunity lost by this decision is greater than the potential financial power the original artist will retain, then the decision is morally wrong. Economists Boldrin and Levine have argued that this reasoning shows a greater net gain if our society slowly removes the notion of intellectual property than if it retains it [BoldrinLevine]. On the other hand, the Recording Industry Association of America and its affiliates state that copyright infringement hurts musicians and their creative assistants without providing any tangible benefit to society [RIAAInfringement, MPAINfringement]. In determining which side holds the most merit, I will primarily use the tenets of utilitarianism, as its versatility and use in economic theory make it an excellent analytic tool [Util].

The Software Engineering Code of Ethics

The Association for Computing Machinery's Software Engineering Code of Ethics provides a set of guidelines that combine both deontological and utilitarian perspectives. Though primarily targeted at software developers, it is intended to advise others involved with software as well [SECode Preamble]. Three key groups that the S.E. Code provides suggestions for are sampling software developers, artists that use the tools, and policy makers that control their works' legality [SECode Preamble].

The creation of any sampler provides a means to commit copyright infringement; since samplers are not aware of the audio they are recording, they may be used to copy copyrighted material without permission. However, the risk of users breaking the law with these tools must be carefully contrasted with the public good they can provide. Section 1 of the Code states "Software engineers shall act consistently with the public interest" [SECode 1.00]. Additionally, the Code requires that they "Moderate the interests of the software engineer, the employer, the client and the users with the public good" [SECode 1.02]. These precepts urge developers to benefit the public with their software and to consider their needs in its design. For example, expanding their users' ability to make music is in interest of the public good. On the other hand, limiting the audio their users could sample might protect their employers' interests, but might result in an uneven tradeoff between their company and the public. This is highly undesirable,

as the balance between a professional, their client and employer, and the public is very important to maintain according to the S.E. Code [SECode 1.02, 2.00].

Equally affected by the Code are the artists who use software samplers in their professional creative endeavors [SECode Preamble]. They are compelled to accept responsibility for their work and moderate their interests with the public good [SECode 1.00, 1.01]. Artists such as Greg Gillis have clearly done this by publicly releasing his works with no attempt at secrecy [GTNYT]. He also licenses them with a creative commons license so anyone can use them in their own works non-commercially [CCLicense]. The Code supports such efforts to benefit the public good, and specifically notes that it may be permissible to not obey all laws governing one's work "... in exceptional circumstances, [where] such compliance is inconsistent with the public interest" [SECode 6.06]. However, musicians that use samplers for profit may need to provide "fair and just remuneration" [SECode 5.07] to those they sample from. Overall, the message that all people [SECode Preamble] should be compensated for their work is a valuable ethical tenet. In the world of music, the manager may be the public desiring more music, and proper compensation by consumers of their work is a key incentive for them to keep making it [MU, SECode 5.07]. Simply put, if artists can't afford to live then they can't create. This contrast between public good and duty to original artists will be explored in depth in later sections.

Policy makers should also consider the code in their decisions [SECode Preamble]. The U.S. Congress maintains of the Copyright Code [CopyrightOfficeIntro]. In doing so it updates and documents it to represent the people of the United States and promote their general welfare [ConstitutionPre&A1S1, SECode 3.10]. In passing such laws they are obligated to promote the interests of the public their members represent [SECode 1.00, SECode Preamble], as they are effectively a large body of clients. Policies such as the Digital Millennium Copyright Act are intended to address modern copyright issues beyond the scope of the current Copyright Code [DMCA]. Such extensions, which also include fair use, are efforts to address matters of public concern caused by software and uphold human values [SECode 1.05, SECode 4.01]. Also, copyright provides rules to ensure any text, audio, or visual document must be approved by the rights holder before use [SECode 2.04]. Since software facilitates sampling, the developers, musicians, and law bodies that control its use must be aware of the S.E. Code [SECode 8.06] and must recognize its key importance in their ethical duties [SECode 8.09].

Like utilitarianism, the ethical model the Code proposes will be invaluable in determining the current ethicality of the law and proposing necessary changes. Both the developers and users of sampling software should consider the Code often in their professional decisions, and policy makers should reflect on the Code's tenets when creating and revising the law [SECode 8.03, SECode Preamble].

A Tradeoff Analysis

One of the key tradeoffs presented by decision to enforce such extensive property rights is the clash between an individual's benefit and society's prosperity.

A good balance of these sides should support individual musicians' livelihoods without preventing aspiring artists from achieving success. If there were no licensing and copyright laws for music, musicians' work might be easily stolen and used for profit by someone else [MPA]. However, if the laws are too strict it will inhibit creativity and hurt the U.S. economy [BoldrinLevine, Remix, Stallman]. Thus, a thorough examination of legal effects and economic impact will be necessary to get an idea of the balanced of modern copyright tradeoffs.

Ownership and Permission for Use

First, I will examine some of the current restrictions copyright law imposes. If one does not own the copyright to a musical work, they are explicitly prohibited from reproducing, creating derivative works, performing, or transmitting the piece to the public without the owner's express authorization [Copyright106]. According to the Code, anyone using the work must secure the owner's permission before using it [SECode 2.04]. The law also mandates that users follow proper procedures in securing authorization [CopyrightS1, SECode 3.06]. Unfortunately, it also allows copyright holders to reject reasonable requests for unethical reasons. For example, if an aspiring musician wants to remix a popular song and release it for free to publicize themselves, it would be a violation of the law to do so without permission. If the law is just, they would also be acting unethically [SECode 2.02]. On the other hand, it would not be against the law for the copyright holder to write them a letter stating simply "Pay \$10,000 for the use of this song or we forbid you to use it" [CopyrightS1]. Therein lies a problem. If copyright holders can set arbitrary conditions of use, they have a monopoly on their owned works. A copyright is also not required to be owned by the original artist. Copyrights can be owned by a publisher or even a random person who buys it from them [CopyrightBasics]. Thus, it is possible for a publishing company to establish a monopoly on a particular artist's music, and to restrict its use regardless of the creator's wishes. Anyone wanting to use the work would be obligated to obtain permission before using the music, but instead of the artist granting it, the rights holder would. From a utilitarian perspective, this is a prioritization of the individual over society. Though one person or company can gain, everyone else loses considerable artistic and negotiating power. The S.E. Code of Ethics similarly states that "the ultimate effect of [a] work should be to the public good," [SECode 1.03] which can be applied to music as it is to software or any other professional product [SECode Preamble]. If the work is controlled by one entity, it is ultimately to their benefit first, and the public benefit as a secondary effect. Additionally, it allows the entity to unethically disallow access to those without the money or time to acquire permission [SECode 1.07]. Thus, the basic use restrictions copyright ownership grants can easily be used unethically, and the lack of legal checks on owners presents an unfair tradeoff to the public [SECode 1.02].

Fair Use

The Fair Use section of the U.S. code provides instances where unauthorized use of a copyrighted work may not constitute infringement [FairUse]. These instances cover a range of ethical holes in the original copyright code. For example, it suggests nonprofit educational uses should be considered fair use more often than commercial uses [FairUse]. Utilitarianism and the S.E. Code highly value the promotion of public education since it benefits the greater good [SECode 1.02, SECode 1.08, Mill]. Fair use law also takes into account the effect on the original work, providing another possible consideration in cases where the law may be unjust [SECode 6.06].

On the other hand, fair use does not set any specific rules that can be followed to use copyrighted work fairly, as it clearly states “there is no specific number of words, lines, or notes that may safely be taken without permission” [FairUse]. Thus, even with fair use, the aforementioned tradeoff between individual privileges and the public good is still uneven unless copyright holders choose to make only fair deals. In addition, the defenses provided by fair use are subjective and are open to interpretation by each particular court [FairUse, Remix]. Overall, fair use law does not fundamentally shift the balance of power in the public favor, and copyright ownership laws remain unchecked.

Economic Impact

Approximately one-sixth of the U.S. gross domestic product is generated through fair use exceptions to copyright law [FairUseGDP]. Sampled works with other artists' material lie in this region, because that is the only way it can be legal. Musician Greg Gillis makes enough money selling his music for whatever price fans feel like paying to quit his day job as an engineer [GTNYT]. Rapper Christopher Wallace had an album hit #1 on the U.S. album charts that used samples for the backbeats in some songs [ChristopherWallace]. Sampling has had a profound economic benefit for a number of musical artists, but what about the copyright holders? According to the MPA, depriving copyright holders of licensing fees can affect not only artists, but everyone involved in the producing their work [MPA, RIAA]. Thus, the interests of all parties involved must be carefully considered [SECode 1.02]. However, there is a distinct lack of evidence for this claim. While one can find examples of artists profiting from samples in major newspapers such as the New York Times [GTNYT], it is extremely difficult to find evidence of artist's economic downfall due to sampling. The RIAA website, for example, provides a section of its website for “Students doing reports” [StudentReportsPage]. This section contains no reference to damage caused by sampling, only damage caused by piracy. This is a very dubious ethical gap in their data. S.E. Code provision 3.10 states there should be testing and review of related documents, yet there is no indication testing has been done [SECode 3.10]. Also, approval of recent laws without evidence that it passes appropriate tests, such as an economic analysis in this case, is highly unethical according to the S.E. Code [SECode 1.03, SECode 3.10]. By applying these software engineering tenets to the law [SECode Preamble], it becomes clear that testing and analysis is key when discussing copyright law. However, the minimal testing and lack of recent publicized testing goes against utilitarian and S.E. code ethics [RIAAAnnualPiracyReport, SECode 3.10].

In their 2006 report on piracy [PiracyReport], the IFPI, a worldwide recording industry representation agency [IFPI] did not include sampling on its list of new or current methods of piracy. It was also absent when the report detailed economic damage to the industry from copyright violations. Utilitarian principles maintain that a source of demonstrable public good deserves more consideration than unsubstantiated potentialities [Mill, SECode 1.00]. Additionally, some believe the revenue gained through less inhibited sampling will facilitate more economic growth than harm [BoldrinLevine, Remix]. The cultural benefit of more accessible music would ultimately be to the public good. Combined with the decreased likelihood of economic or other discrimination from ethical abuses of copyright power, this would provide many ethical benefits [SECode 1.07, SECode 1.02]. According to the Congressional Budget Office, it will cost hundreds of millions of dollars to each year to continue enforcing current intellectual property laws [CBORReport]. This further supports the view that lessened copyright restrictions would be financially benefit to the U.S. Thus, the economic evidence and utilitarian perspective suggests considerable benefit to reduced sampling limitations.

Social Versus Personal Responsibilities

Musical artists must make profit as all professionals do to survive financially in the modern world. However, for thousands of years music was not a personal endeavor but an element of a society's culture [Remix]. For example, the Ancient Greeks used music to become closer to their gods [GreekMusic]. Modern professional musicians differ in that they must profit from their music by definition [DefProfessional]. This is a marked difference from musicians before the last few centuries. This distinction illuminates the conflict between a musician's duty to themselves, and their duty to society. According to the S.E. Code, one should not promote their interests at the expense of others [SECode 6.05, SECode 1.00]. Removing someone's right to use your work even when it may not affect you falls under this category. Additionally, from a utilitarian perspective, the needs of society to experience and reuse one's music greatly outweighs the need of one person to profit financially from it [Mill]. Thus, from an overall public good perspective, the restriction of sampling and derivative works rights to the copyright holder is a net negative.

Along with the imbalance between personal and public interest there is a lack of clear tradeoffs in agreements for the use of copyrighted works. For example, there is no section of the copyright code that mandates a reason be provided for a licensing fee. This directly contradicts tenet 3.01 of the S.E. Code of ethics, which states one must "[ensure] significant tradeoffs are clear to and accepted by the employer and the client, and are available for consideration by the user and the public" [SECode 3.01]. A musician friend of mine once requested permission from EMI, the label for the artist Radiohead at the time, for permission to use a clip from one of their songs. The amount they requested, he said, was infeasible. Furthermore, the letter informing him of the offer specifically prohibited him from disclosing the amount demanded of him [Interview2]. Thus, the tradeoff presented was unethically hidden from the public [SECode 3.01]. Without proper transparency in use agreements, individuals can unethically discriminate [SECode 1.07] and provide untested [SECode 1.03] and unverified documentation [SECode 3.13] in their conditions.

A Practical Perspective

Copyright laws were originally written to “To promote the progress of science and useful arts” [ConstitutionA1S8]. A key practical evaluation of this law is to consider how well it promotes the sciences and arts today. Some practical concerns to consider include the accessibility of the law, how well it is followed, and how reasonable it is in everyday situations. According to the S.E. code, it is crucial to have well-maintained and documented law that serves the public and clearly displays the tradeoffs made in its establishment [SECode 3.08, SECode 1.00, SECode 3.01, SECode Preamble]. Furthermore, understandable and thorough documentation is key to ensuring that processes such as legal review do not decay and lose their efficacy [Parnas].

Accessibility

For an artist to ensure their work always follows applicable laws, they must first understand the law. For example, if I wish to release a remix of my favorite song and ensure I am not violating any copyrights, I should know the copyright law surrounding the original song and making derivative works. To begin, one might read the U.S. Copyright Code’s laws on music sampling. Chapter 1 of the code is approximately 42,000 words long [CopyrightChap1Length]. Reading that and other resources, all of which are written in legal prose, may be infeasible for many artists. The average American cannot read at the level required to read medical and legal documents [ReadingLevel]. While an engineering degree is a prerequisite to work at most large companies in the field, no certification is required to create and perform music. Despite that fact, the copyright laws that apply to artists are considerably longer and more threatening than the understandably written S.E. Code of Ethics. The Code urges managers to ensure their engineers are informed of standards before they are held to them [SECode 5.02], yet musicians do not get that information except in legal text. Additionally, this text is ill-defined for laypersons who do not understand terminology such as “fixation” or “phonorecords.” A musician friend of mine who often uses samples in his tracks told me “not only do I not understand all the intricacies of that law, no musician I have ever met does. Everyone who can afford it hires a lawyer. The rest of us just hope” [Interview1]. The law itself recommends legal counsel as well, as fair use law states: “If there is any doubt, it is advisable to consult an attorney” [FairUse]. This indicates the law is not geared toward artists, but rather lawyers. Furthermore, without legal counsel musicians can’t fend off lawsuits. According to the MPA, copyright infringement could result in statutory damages from up to \$150,000; if willful infringement for commercial advantage and private financial gain is proved, penalties could reach \$250,000 and/or 5 years’ imprisonment [MPAFAQ]. In a magazine interview, drum and bass artist Mocean said he found it impossible to secure permission to use some samples for a reasonable rate.

I tried for nine months to clear the Mahalia Jackson sample. When I finally got a call back, they’re like, ‘We want six cents a record and \$10,000 in advance.’ I said, ‘You know, I’m going to sell, like, 2,500 records. You’re crazy! My album budget was \$40!’ [Mocean]

For an artist such as Mocean or even Greg Gillis, who started producing his music while in college, these expenses could easily prohibit the creative processes and prevent aspiring artists from releasing their work. It is unethical to prevent them from making music because they cannot afford the legal counseling [SECode 1.07]. Furthermore, it removes their ability to provide a reasonable cost estimate [SECode 3.09] and achievable goals [SECode 3.05].

Adherence to the Law

One possible indicator of an unethical law is mass disregard for it. If the law created to help the people becomes a law that hurts them, it has lost its efficacy by definition and its usefulness in principle. For example, the 1920s U.S. alcohol prohibition failed because people ignored the law [Prohibition]. Civil disobedience has also been used to change the law when groups of people ethically object to it [CivilDisobedience]. Similarly, modern music copyright law is failing because it is no longer applicable to modern culture. Proof of this has been increasingly more frequent in recent years. One of Rolling Stone's top fifty albums of 2008 [RollingStone], Feed the Animals, was composed entirely of unlicensed samples [GTNYT]. Nine Inch Nails is actively complaining to users about the law on its band website [NINNotice]. There are hundreds of thousands of music fans who are circumventing the law via illegal file sharing sites every day [MuDownload]. Additionally, Congress is well aware of the need for the laws to change so people actually follow them and has been debating the best way to accomplish that for years [CongressMusicReform]. According to the Code, it is their duty as lawmakers to determine ineffectual law and correct it to serve the public good [SECode 6.08, SECode 1.00].

Everyday Applicability

There are many laws we rely on each day to keep us safe and help society. From traffic laws to laws against theft, many legal precepts are intuitively reasonable. Ideally, music copyright law should be similarly reasonable. They should protect those who need it, while allowing others freedom to create. While preparing for my presentation on this paper, I made a mash-up of two copyrighted works for my own entertainment. I did not publish this work nor display it publicly. However, according to section 104a of the U.S. Copyright Code, my unpublished remix was a violation of copyright [Copyright 104a, Copyright Basics]. Furthermore, even if the works I had used in my own were not yet published, they are still protected by copyright law just as published works are [Copyright 104a, Copyright Basics]. Since the code does not include a specific time at which an unpublished work becomes protected, it is thus very difficult to determine when copyright should be applied to ordinary situations. This ambiguity provides an unethical lack of documentation for musicians to rely on [SECode 3.08, SECode 3.10]. Additionally, distributing any portion of my work to a friend or colleague incurs multiple instances of copyright violation; one for each original artist in the mash-up, one for transmitting the file, and potentially millions more if the file is then shared. From a utilitarian perspective, this situation has no negative utility. This is because the original artist is entirely unaffected as long as no one else obtains their songs through me and I

bought a license to listen to them legally. However, I have been prevented from a positive utility resulting from my freedom to remix. Thus, the overall utility would be greater without the law, resulting in a utilitarian decision to remove the law's applicability to such cases.

Conclusion

Copyright was a power originally intended to benefit the public by advancing the arts and sciences [ConstitutionA1S8]. Over the centuries, it has transformed into a means for personal profit that may easily be used unethically. Using such law for personal gain goes against deontology [Kant], utilitarianism [Mill], and the Software Engineering Code of Ethics [SECode Preamble, SECode 1.00]. Additionally, the inaccessible and unclear tradeoffs [SECode 3.01] facilitated by copyright law further expose unethical flaws and gaps in the legal documents [SECode 3.08, SECode 3.10, SECode 3.11]. These flaws are simply the natural result of technology outpacing law, for

Even if we knew all of the relevant facts before we started, experience shows that human beings are unable to comprehend fully the plethora of details that must be taken into account in order to design and build a correct system [Parnas].

However, the law is too complex for me to make a proposed revision and to do so would be unethical [SECode 3.04]. Careful analysis has shown, however, that developers, musicians, and lawmakers [SECode Preamble] are ethically obligated to review and improve copyright law [SECode 6.08, SECode 3.08] and their knowledge of it [SECode 8.01, SECode 8.04] to benefit the public again [SECode 1.00]. Audio copyright law should be revised, and everyone involved with it must be agents for that change.

References

Note: if a reference does not appear in a section, it was previously cited and I forgot to duplicate it to that section as well. Please accept my apologies if this error occurs.

Relevance

[CopyrightBasics] U.S. Copyright Office, "Copyright Basics"

[MusicRevenue] <http://arstechnica.com/old/content/2007/04/despite-revenue-slump-riaa-still-not-getting-the-big-picture.ars>

[MusicPopularity] The NPD Group, "Entertainment Trends in America" http://npd.com/lps/Entertainment_Trends2009/

[CopyrightCh5] U.S. Copyright Office, "Copyright Infringement and Remedies" <Copyright Infringement and Remedies>

Introduction

[CS] S.B.L.D.O.S.C. University of California, "Cylinder Preservation and Digitization Project," Nov. 2005.

[Phonograph] Library of Congress, "Edison Film and Sound: The History of the Edison Cylinder Phonograph," The History of the Edison Cylinder Phonograph.

[DVAL] MeasuringWorth.com, "Measuring Worth - Relative Value of US Dollars." Notes: Used nominal GDP per capita estimation to compute current worth relative to value in 1904.

[TapeRecording] Amazon.com, "Sony TCM-150 Cassette Recorder with Automatic Recording Level Control." Price when product page visited on May 10th 2009: \$15 and Amazon.com, "TDK MC60-6PK Microcassette Recording Tape." Price when product page visited on May 10th 2009: \$8

[PhonoPrice] The price of the phonograph dropped from \$150 in 1891 to \$20 in 1900
[Phonograph]

[CPA1909] United States Congress. "Copyright Act of 1909."

[CRCH10] U.S. Copyright Office, "U.S. Copyright Office - Copyright Law: Chapter 10."

[CRHIST] U.S. Copyright Office, "U.S. Copyright Office - Information Circular."

[SamplerHist] Simon Crab, "Electronic Musical Instruments 1870 - 1990."

[CompUsage] U.S. Census Bureau, "Computer and Internet Use in the United States: October 2003." (Note: this is the most recent census data on the topic)

[PastCompUsage] U.S. Census Bureau "Home Computers and Internet Use in the United States: August 2000."

[DMCA] U.S. Copyright Office. *Digital Millennium Copyright Act*. <www.copyright.gov/legislation/dmca.pdf>

[DMCA2K9] Electronic Frontier Foundation, "2009 DMCA Rulemaking I Electronic Frontier Foundation."

[FTA1] G. Gillis, Feed the Animals [Explicit], Illegal Art, 2008.

[FTA2] Illegal-Art Music, "Illegal Art - Feed the Animals."

[GTNYT] R. Walker, "Mash-Up Model," The New York Times, Jul. 2008.

[SamplingSuit] T. Wu, "The shady one-man corporation that's destroying hip-hop.." This article references court case "Bridgeport Music V. Dimension Films, et al." available at <http://cip.law.ucla.edu/cases/case_bridgeportmusicstillinthewaterpublishing.html>

[SE108] Association for Computing Machinery. *Software Engineering Code of Ethics Section 1.08*

Facts

[SamplingDef] Answers.com, "Sample" and Encyclopedia Britannica, "Electronic Instrument (music)." Note: requires subscription.

[RadioheadRemix] Xurbia Xendless Inc., "Radiohead/ Remix." <<http://radioheadremix.com>>

[RadioheadGrammy] Radiohead At Ease, "Grammy Nominations for Radiohead", <<http://www.ateaseweb.com/2008/12/04/grammy-nominations-for-radiohead/>>

[NINWebby] International Academy of Digital Arts and Sciences. "13th Annual Webby Special Achievement Award Winners" <<http://www.webbyawards.com/webbys/specialachievement13.php>>

[NINCC] Creative Commons. "Nine Inch Nails' 'The Slip' out under a Creative Commons license." <<http://creativecommons.org/weblog/entry/8267>>

[Pendulum] Witnessed firsthand at a concert on 10/14/08 in The Fillmore, San Francisco, CA.

[FairUse] U.S. Copyright Office. "Fair Use" <<http://www.copyright.gov/fls/fl102.html>>

[CopyrightCh10] U.S. Copyright Office. "Digital Audio Recording Devices and Media" <<http://www.copyright.gov/title17/92chap10.html#1007>>

[CopyrightCh11] U.S. Copyright Office. "Sound Recordings and Music Videos" <<http://www.copyright.gov/title17/92chap11.html>>

[Harrison] J. Self, "The "My Sweet Lord"/"He's So Fine" Plagiarism Suit". <<http://abbeyrd.best.vwh.net/mysweet.htm>>

[NotoriousBIG] T. Wu, "The shady one-man corporation that's destroying hip-hop.." This article references court case "Bridgeport Music V. Dimension Films, et al." available at <http://cip.law.ucla.edu/cases/case_bridgeportmusicstillinthewaterpublishing.html>

[Kanye] Reuters, "Kanye West, record labels sued over jazz samples" <<http://www.reuters.com/article/rbssTechMediaTelecomNews/idUSN2253482520080522>>

Arguments

[MPA] Music Publisher's Association, "Music Publishers' Association | Copyright Resource Center | Copying Under Copyright: A Practical Guide."

[RIAA] RIAA, "RIAA - Recording Industry Association of America - May 10, 2009."

[Rand] A. Rand, N. Branden, A. Greenspan, and R. Hessen, *Capitalism: The Unknown Ideal*, Signet, 1986.

[Stallman] R. Stallman, "Reevaluating Copyright."

[BoldrinLevine] M. Boldrin and D.K. Levine, *Against Intellectual Monopoly*, Cambridge University Press, 2008.

[Remix] L. Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy*, Penguin Press HC, The, 2008. P. 10-11, 40-42, 80, 120-130. Also referenced where general ideas from the book formed the basis for my claims.

[RIAAAnnualPiracyReport] Recording Industry Association of America, "Annual Piracy Reports" <http://riaa.org/physicalpiracy.php?content_selector=piracy_annual_comm_reports>

[PiracyReport] IFPI, "The Recording Industry 2006 Piracy Report."

[SAG] Screen Actors Guild, "Internet Piracy Hurts Individual Creators, Not Just "Industries," Say the Entertainment Unions"

[MU] Music United, "MusicUnited.org"

[MUArtists] Music United, "What the Artists and Songwriters Have to Say"

Analysis

[Constitution] U.S. Congress, *The Constitution of the United States of America*.

[ConstitutionA1S8] U.S. Congress, *U.S. Constitution, Article I, Section 8*.

[MPAADMCA09] Ars Technica, "MPAA: teachers should videotape monitors, not rip DVDs."

[RandCapitalism] A. Rand, N. Branden, A. Greenspan, and R. Hessen, *Capitalism: The Unknown Ideal*, Signet, 1986.

[COI130] A. Rand, N. Branden, A. Greenspan, and R. Hessen, *Capitalism: The Unknown Ideal*, Signet, 1986. Page 130.

[RandEcon] "All the evils, abuses, and iniquities, popularly ascribed to businessmen and to capitalism, were not caused by an unregulated economy or by a free market, but by government intervention into the economy." A. Rand, N. Branden, A. Greenspan, and R. Hessen, *Capitalism: The Unknown Ideal*, Signet, 1986. Page 48.

[RandPopularity] D. Ganley, "'Atlas Shrugged' author sees resurgence - CNN.com."

[Kant] I. Kant, *Groundwork of the Metaphysic of Morals*, Harper Perennial Modern Classics, 2009.

[Mill] J.S. Mill, *Utilitarianism*, Filiquarian, 2007.

[Util] D. Richter, "Utilitarianism." <http://academics.vmi.edu/psy_dr/utilitarianism.htm>

[SECode <section>] Association for Computing Machinery, "Software Engineering Code of Ethics" <<http://www.acm.org/about/se-code#full>>

[CCLicense] Creative Commons, "Attribution-Noncommercial-Share Alike 3.0" <<http://creativecommons.org/licenses/by-nc-sa/3.0/us/>>

[RIAAInfringement] Recording Industry Association of America, "RIAA - What We Do."

[MPAInfringement] Music Publisher's Association, "Music Publishers' Association | Copyright Resource Center | Copying Under Copyright: A Practical Guide."

[CopyrightOfficeIntro] U.S. Copyright Office, "United States Copyright Office A Brief Introduction and History" <<http://www.copyright.gov/circs/circ1a.html>>

[ConstitutionPre&A1S1] U.S. Congress, *U.S. Constitution, Article I, Section I.* and U.S. Congress, *U.S. Constitution, Preamble.*

[Copyright <Section>] U.S. Copyright Office, *United States Copyright Code, <Section Given in Citation>*

[CopyrightS1] U.S. Copyright Office, *United States Copyright Code, Section 1*

[FairUse] U.S. Copyright Office. "Fair Use" <<http://www.copyright.gov/fls/fl102.html>>

[FairUseGDP] Computer & Communications Industry Association, "Fair Use Economy Represents One-Sixth of U.S. GDP."

[ChristopherWallace] BBC News, "Judge Blocks Sales of B.I.G.'s Ready to Die album" <<http://news.bbc.co.uk/1/hi/entertainment/4823028.stm>>

[StudentReportsPage] Recording Industry Association of America, "For Students Doing Reports" <<http://www.riaa.org/faq.php>>

[PiracyReport] IFPI, "The Recording Industry 2006 Piracy Report."

[IFPI] IFPI, "IFPI" <<http://ifpi.org>>

[CBOReport] U.S. Congressional Budget Office. *Enforcement of Intellectual Property Rights Act of 2008.*

[CopyrightChap1Length] Counted with Microsoft Word 2008 and Apple Pages '09. Source: <<http://www.copyright.gov/title17/92chap1.html>>

[ReadingLevel] Associated Press, "Consent forms a prescription for complexity, study says." Found through personal webpage of Professor Swanson, Cal Poly, San Luis Obispo. <<http://www.calpoly.edu/~dswanson/typicalreader.htm>>

[Interview1] Phone interview with J. Cavanaugh, May 10th, 2009.

[MPAFAQ] Music Publishers' Association, "Copying Under Copyright: A Practical Guide" <http://mpa.org/copyright_resource_center/copying#not%20do>

[Mocean] Andrew Beaujon, "It's not the beat, it's the Mocean," CMJ New Music Monthly, April 1999, p. 25. Found through secondary source John Lindenbaum, "Music Sampling and Copyright Law. Personally confirmed the primary source through access to a catalogued copy of the original magazine.

[GreekMusic] Oracle Education Initiative: Think Quest Online, "Ancient Greek Instruments" <http://library.thinkquest.org/04apr/00275/ancient_ins.htm>

[DefProfessional] Merriam-Webster Online Dictionary, "Professional" <<http://www.merriam-webster.com/dictionary/professional>>

[Interview2] Phone interview with J. Cavanaugh, May 12th, 2009.

[Parnas] D. Parnas and P. Clements, "A Rational Design Process: How and Why to Fake It," *IEEE Transactions on Software Engineering*, Vol. SE-12. no. 2. pp. 251, Feb. 1986.

[NINNotice] Nine Inch Nails, "NIN Remix - remix.nin.com." Notice was displayed when the site was visited on May 5th 2009. Image of page mirrored temporarily at <http://true-reality.net/NINNotice.png>

[MashupDef] Answers.com, "mash-up: Definition from Answers.com."

[ClubMashups] I have personally been to many mash-up clubs. Notable examples include Bootie [<http://www.bootiesf.com/>] and Temple [<http://www.templef.com/>], as well as the Girl Talk performance I attended at Yahoo!'s Open Hack Day 2008.

[Prohibition] M. Thornton, "Alcohol Prohibition Was a Failure" by Mark Thornton (Cato Institute: Policy Analysis)."

[CivilDisobedience] Stanford Encyclopedia of Philosophy, "Civil Disobedience" <<http://plato.stanford.edu/entries/civil-disobedience/>>

[MuDownload] "Music category - Mininova." Visited May 10th 2009. Number of active music torrents as on the date: 267,756.

[CongressMusicReform] M. Peters, "Music Licensing Reform" <<http://www.copyright.gov/docs/regstat062105.html>>

[RollingStone] RollingStone.com, "The 50 Best Albums of 2008 : Rolling Stone."

Conclusion

[Kant] I. Kant, *Groundwork of the Metaphysic of Morals*, Harper Perennial Modern Classics, 2009.

[Mill] J.S. Mill, *Utilitarianism*, Filiquarian, 2007.

[SECode <Section>] Association for Computing Machinery, "Software Engineering Code of Ethics" <<http://www.acm.org/about/se-code#full>>

[Parnas] D. Parnas and P. Clements, "A Rational Design Process: How and Why to Fake It," *IEEE Transactions on Software Engineering*, Vol. SE-12. no. 2. pp. 251, Feb. 1986.

Bibliography

Primary Sources:

1. M. Peters, "Music Licensing Reform," Retrieved April 20, 2009, <<http://www.copyright.gov/docs/regstat062105.html>>

Representative Peters discusses the current issues with U.S. copyright laws for music works. She mentions difficulties faced by musicians in obtaining permission, as well as the antiquated aspects of the law that still exist but have fallen out of use and should be updated.

2. US Congress, "Fair Use," Retrieved April 20, 2009, <Available <http://www.copyright.gov/fls/fl102.html>>

This document legally defines guidelines for courts to use in determining fair use cases for exceptions to copyright law. It outlines four principle factors to be considered in any ruling about the fairness of a particular use case.

3. L. Lessig, Free Culture: The Nature and Future of Creativity, Penguin (Non-Classics), 2005.

Sanford law professor Lawrence Lessig examines the current U.S. copyright law and argues for massive reform. He reviews the entertainment industry's recent actions as well as those of lawmakers. He also covers peer-to-peer technology and other ways the internet has drastically changed our society and may give us unbounded creativity if the laws allow it.

4. L. Lessig, Remix: Making Art and Commerce Thrive in the Hybrid Economy, Penguin Press HC, The, 2008.

Lessig details the current intellectual-property law and its negative effects on the coming generation. He argues that, without reform, the law will criminalize an entire generation of creative thinkers and artists. He also lays out solid methods for new intellectual-property laws that grant reform without harming the ability of musicians to live off their work.

5. T. Rogers & A. Szamosszegi, Fair Use in the U. S. Economy: Economic Contribution of Industries Relying on Fair Use, (CCIA: September 2007) available online at ccianet.org.

This extensive study details the economic effect of fair use copyright exceptions. It details the overall economic impact as well as jobs provided and productivity gained through such exceptions.

6. A. Rand, N. Branden, A. Greenspan, and R. Hessen, *Capitalism: The Unknown Ideal*, Signet, 1986.

Rand details her views on capitalism and the U.S. economy. She proposes a laissez-faire model with no governmental interference in the economy and explains why that will be the most effective option.

7. U.S. Copyright Office, *United States Copyright Code, Section 1*.
U.S. Copyright Office, *United States Copyright Code, Section 10*.
U.S. Copyright Office, *United States Copyright Code, Section 11*.

Section 1 of the U.S. Copyright Code details the official U.S. copyright law definition and scope. Chapters 10 and 11 detail laws specific to audio recordings and their use.

8. M. Boldrin and D.K. Levine, *Against Intellectual Monopoly*, Cambridge University Press, 2008.

Boldren and Levine, two Washington University economics professors, propose radical copyright reform. They detail economic studies and principles in favor of reduced copyright. In addition, they explain the inherent problems with modern copyright law and the ways in which they restrict artistic creativity.

Secondary Sources:

1. H. H. Perrit, Jr. "Note on proposals for reforming copyright law for music". <<http://www.kentlaw.edu/perritt/courses/property/Note%20on%20proposals%20for%20reforming%20copyright%20law%20for%20music.htm>>

Mr. Perrit discusses some recent opinions about the reformation of U.S. copyright law and offers his own insight into some ways we can better reflect our society with our modern laws.

2. M. McGraw. "Sound Sampling Protection and Infringement in Today's Music Industry" <<http://www.law.berkeley.edu/journals/btlj/articles/vol4/McGraw/HTML/text.html>>

McGraw covers the basic rights and responsibilities for those creating and sampling digital music.

3. World Intellectual Property Organization. April 2009; [Cited April 20 2009]. Available online at <http://www.wipo.int/portal/index.html.en>

The WIPO is an agency of the United Nations dedicated to creating a worldwide intellectual property system and protecting property-holders' rights.

4. Recording Industry Association of America. April 2009; [Cited April 20 2009]. Available online at <http://www.riaa.org>

The RIAA is a U.S. organization that represents the major American record labels and their clients both economically and legally.

5. R. Walker, "Mash-Up Model," *The New York Times*, Jul. 2008.

This article includes information about Greg Gillis' career and his albums.

Revision History

Note: most of these changes were the direct result of Dr. Turner's or Chris' comments, so this also serves as a record of those suggestions and my resulting updates. In some places, responses to requests or suggestions are also explicitly noted.

Version 0.1 [Outline]

New Features:

- Primary outline structure with Topic, Question, Facts, Arguments for and against, and analysis sections
- Split analysis into principles, tradeoffs, practical effects, and solutions sections

Core Changes:

- None

Version 0.25 [Full Draft]

New Features:

- Introduction section detailing a brief history of sampling and its inherent copyright conflicts
- Facts section with basic facts about copyright use today and its contention with sampling
- Principle question "Are the current legal restrictions on the use of audio samples in new music ethical?"
- Arguments sections, pro and con
- Principled Analysis section containing objectivist, deontological, and utilitarian viewpoint summaries
- Basic tradeoff analysis section providing a summary of the conflict between individual and group prosperity and rights
- Partial practical effects section with brief description of lack of modern copyright law efficacy
- References section with approximately 40 references and an annotated bibliography for the most important ones

Core Changes:

- Restructured analysis subsections for better flow

Version 0.3

New Features:

- Strengthened Analysis intro and principles sections by utilizing more of the SE Code and constitution

- Created separate sub-sub-headers for each component of the pro/con sections

Core Changes:

- Focused question to: “Are the current copyright restrictions on the use of audio samples in new music ethical?”
- Replaced statements about intellectual property with specific statements about copyright law
- Cited SE Code and statistics where recommended
- Clarified definition of “new music” per request

Version 0.5

New Features:

- Everyday applicability section describing some common day to day problems with copyright
- Accessibility section briefly describing the lack of copyright law accessibility and lawyer availability for artists
- Relevance section describing why people should care about this topic
- Quotes directly from Ayn Rand about her economic views, as requested

Core Changes:

- Began rewriting facts section to naturally lead up to the question
- Added more evidence to con arguments to ensure a fair and balanced arguments section
- Added specific examples where suggested

Version 0.75

New Features:

- Added dedicated SE code section to analysis.principles
- Added tradeoff analysis section with ownership, economic, and private vs public balance sections
- Embellished practical perspective section with further accessibility documentation and adherence to the law information. Incorporated SE code precepts about proper documentation as well.
- Added another couple dozen references as needed or suggested

Core Changes:

- Drastically improved core flow by re-articulating large portions of some sections
- Increased explicit use of SE Code in instances where it was used but not cited

Version 0.85

New Features:

- Finished rewriting facts section as suggested. Gave section to 5 non-SE/CSC/CPE majors to ensure it lead up to the question. Received exceptionally close answers when asked what question they thought it would lead up to.
- Increased the paraphrasing of the SE Code per recommendation, in place of precepts and Code citation.
- Wrote conclusion section
- Linked Parnas' paper on process in after determining if any of the in-class reading felt particularly suited. Other papers fit as well but Parnas' seemed like a natural inclusion.

Core Changes

- Embellished most sections after re-reading SE Code and the class readings. Cited all use of either.
- Prepared copies to be sent off to three colleagues for critique. One SE, two non-SEs.

Version 0.97

New Features and Core Changes:

- Rewrote part of abstract to flow better
- Ensured all parts of the paper properly responded to every single suggestion by Dr. Turner or Chris (too many to list, important ones are already contained in this log)
- Double-checked references
- Went over the paper with the provided checklist

Version 1.00

New Features

- Now comes in physical form!
- Formatted and printed final term paper

CSC 300 Term Paper Grade Sheet

Author: Nicolas Artman
Paper Title: Music [Copy Right Remix]

FACTS: (20%) _____

ISSUE STATEMENT: (5%) _____

ALTERNATIVE ARGUMENTS: (25%) _____

YOUR ANALYSIS: (50%) _____

OVERALL GRADE: _____

Nick Received (Please circle one): A F

Comments: