Legitimating the Remix: Exploring Electronic Dance Music’s Hybrid Economy

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Legitimating the Remix: Exploring Electronic Dance Music’s Hybrid Economy

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May 1, 2008

A Thesis for the Arts and Sciences Honors Program

Boston College
ABSTRACT

Increased access to media and production tools has given the civilized masses the means not only to consume an increasingly comprehensive wealth of content, but also the means to interact with that content in ways never before imagined. This has allowed the digital generation to grow ever more comfortable creating and editing content outside of the professional environment. Much of the creative output of our day comes in the form of the “remix,” a piece of content which is constructed, in full or in part, from bits (most often in the form of bytes) of other media artifacts. However, because of American law and international copyright agreements that prohibit the copying (reproduction or derivation) of creative works, a generation of amateur producers has been criminalized. Despite the message sent by recent prosecutions in light of the letter of copyright law, the original spirit of copyright law was to encourage creative production, not restrict it. Within the music industry, the international electronic dance music community demonstrates how new forms of content and copyright management within a hybrid economy could benefit artists, fans, and industry alike in our copyright future.

Keywords and phrases: copyright, remix, electronic dance music, EDM, hybrid economy, techno, DJ, disc jockey
Table of Contents

DEDICATION............................................................................................................. 5

INTRODUCTION........................................................................................................ 6

CHAPTER 1: Copyright Basics.................................................................................. 10

The Copyright Act of 1976....................................................................................... 12
International Copyright Treaties.............................................................................. 13
The Sonny Bono Copyright Term Extension Act...................................................... 14
Fair Use.................................................................................................................. 15
The No Electronic Theft Act................................................................................... 16
The Digital Millennium Copyright Act.................................................................... 17
Types of Infringement, Legal Defenses, and Legal Remedies.............................. 18

CHAPTER 2: Twentieth Century Content Culture.................................................... 21

The Shift from Read/Only to Read/Write Culture.................................................. 23
Remixing and the Law............................................................................................ 25
Criminal Generation............................................................................................... 27

CHAPTER 3: Possibilities: the Hybrid Economy....................................................... 30

The Commercial Economy..................................................................................... 30
The Sharing Economy............................................................................................ 32
The Hybrid Economy............................................................................................. 34

Community Spaces................................................................................................ 35
Collaboration Spaces.............................................................................................. 35
Communities......................................................................................................... 36

CHAPTER 4: Electronic Dance Music, Vanguard of Read/Write Culture................. 38

Defining Electronic Dance Music.......................................................................... 38
The DJ as Reader/Writer........................................................................................ 39
The Producer as Reader/Writer.............................................................................. 43
Dedicated to Judy, for her limitless patience, kindness, and support throughout this process,
and to Will, for helping me to become a better person every day.
Introduction

The art of collage goes at least as far back as twelfth century Japan, when calligraphers glued together bits of paper and fabric to create a surface on which to paint their poetry. Collage is very much the essence of the creative act itself, as each producer cannot help but draw upon works past to create new content. Intertextuality is an inevitability of creation; just as we carry genes of our mothers and fathers in our persons, our artistic creations carry the genes of knowledge that has preceded us. Intentional collage emphasizes the importance of allusion—both deliberate and accidental—in our semiotics; collage pieces remind us that all “new” meaning is, in some way, referential.

In the digital millennium, collage has taken on a whole new dimension.

While the overwhelming impact of broadcast media stands proudly in the spotlight of the last century, we have yet to fully illuminate the effects that digital media will have on the creation and consumption of content in this one. The Internet has put in our sights universal access (both legal and illegal) to an increasingly comprehensive wealth of information and creative content. Likewise, unprecedented leaps in technology have handed the everyman the means to create more of the very content he so rapidly consumes. For less than a thousand dollars, consumers can now purchase a personal computer that comes loaded with the basic software needed to create and edit photos, videos, music, websites, books—virtually all forms of digitized media.

The so-called “digital natives” (Gasser & Palfrey, 2008) have inherent media literacy unmatched by their elders; they have captured the potential of
these new technologies to create content in quantities never before dreamed of. Because of these youngsters’ overwhelming exposure to media from such a multitude of channels, one of their primary forms of output comes in the form of digital collage, or “remix,” of the media they have consumed (Lessig, 2008b, p. 69).

Remix takes many forms, and everything from blockbuster movie clips to pop diva yelps is considered fair game to today’s producers. Ironically, the copyright laws in America explicitly outline just the opposite; the “fair use” window for copyrighted content is minute at best. Copyright trial rulings over the last two decades have shown that the American courts still largely disapprove of unlicensed “derivative works,” maintaining that the original creator holds the exclusive right to copy any part of his or her work (with strict exceptions for licensing and fair use) (Vaidhyanathan, 2001, p. 3).

As a result of these copyright laws, we have unwittingly created a generation of criminals, “pirates” who break the law at every turn by remixing copyrighted material in their Youtube videos, their blogs, their GarageBand projects, their Photoshop creations. While “quotation with citation” has always been allowed and encouraged in writing, this liberty is not extended to the other realms of creation in which reference is just as likely (Lessig, 2008b, p.82). This thesis will, in part, discuss the effects of law and industry on this generation that, despite warnings and litigation, simply doesn’t view “borrowing” copyrighted content as stealing.

While many scholars, educators, and free-speech advocates cry out for copyright law reform, the creative content industries (especially in the
entertainment sector) struggle to suppress the growing acceptance of copyright infringement among today’s youth. Arguments to uphold the rigidity of current copyright laws suggest that a freer content economy would necessarily damage the “vitality of culture and the arts” (Keen, 2006, p. 1). Conversely, the creation of the Creative Commons, “copyleft,” and other such “free culture” movements emphasize the benefits of modifying copyright laws (Lessig, 2005).

The music industry is on the forefront of the so-called copyright wars. Record labels have been fighting artists’ use of sampling in music production at least since the late 1980s, when sample-based songs began to reach the top of the pop charts. Court cases like Campbell v. Acuff-Rose Music, Inc. (1994) and Bridgeport Music, Inc. v. Dimension Films (2005) have raised the question of whether the use of a guitar riff or a bassline is the exclusive right of the original creator, or whether artists should be allowed to borrow a bit from a song without paying fees to a record label. For now, the U.S. courts uphold the rule: no license, no sample allowed.

Nevertheless, there exist entire creative cultures based and bred on sampling. Electronic dance music (EDM) is one of the music industry’s most prominent examples. This culture originated with the DJ, the master of referential edits. The DJ’s job is essentially to create a spontaneous, educated, and well-selected music collage. In EDM, the sampling of other artists’ work is nothing short of normal.

Despite the heavy use of sampling, few if any artists in this niched community have faced litigation in recent years. There are several reasons this might be. First, because of the genre’s concentrated exposure. Second, because—
in many instances—even the original artists might not recognize their warped content. And third, because music industry attorneys are busy fighting the industry’s “bigger fish”: piracy.¹

Still, questions remain. Should these EDM artists be considered copyright criminals, or do they deserve the praise they accumulate for their collage creativity? Trends show that the music industry as we have known it in the 20th century has already begun to perish (Hiatt & Serpick, 2007). Lawrence Lessig’s “hybrid economy” offers a potentially sustainable model for some sectors of the industry despite the overall decline of music sales (2008b). This thesis aims to explore how the EDM community, the ultimate culmination of “remix” culture, might serve as an example of that model for the future of content and copyright management in the music industry.
Chapter 1

Copyright Basics

Our founding fathers viewed intellectual creativity as a necessary component of a healthy society. After all, what would America mean if not for the writings of Emily Dickinson, the prints of Andy Warhol, or the croons of Elvis Presley? The “culture wars” of Truman’s presidency are evidence of the pride and validation that a nation feels when showcasing the creative content of its citizens.

The United States Constitution includes a clause designed to encourage creative expression by offering protection to the creative works of U.S. citizens. This clause was designed to ensure that Congress would have the power “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” (U.S. Const. art. I, § 8, cl. 9). These “writings and discoveries” have been grouped into what we today call “intellectual property.”

Intellectual property can be divided into two distinct categories. First, there is industrial property, which includes “inventions (patents), trademarks, industrial designs, and geographic indications of source” (World Intellectual Property Organization [WIPO], 2008, p. 6). The second type of intellectual property, copyright, includes the following works of authorship:

1. literary works;
2. musical works, including any accompanying words;
3. dramatic works, including any accompanying music;
4. pantomimes and choreographic works;
(5) pictorial, graphic, and sculptural works;
(6) motion pictures and other audiovisual works;
(7) sound recordings;
(8) architectural works. (17 U.S.C. 102)

This thesis will focus on how copyright laws in America and the treaties governing copyrights internationally have both shaped and threatened the creative communities they were designed to protect.

In the United States, creative work is protected from the moment it is first recorded in a fixed “copy” or “phonorecord” (U.S. Copyright Office, 2008a, p. 3). A copy is a physical object from which the creative work can be read, perceived, or observed either directly or using a device; this includes everything from books to sheet music, film to paintings, photos to manuscripts. While “copy” includes the fixed form for most types of works, a sound creation needs to be fixed in a “phonorecord,” which includes all types of audio recording objects such as compact discs, cassettes, vinyl records, etc. In 1995 the government recognized the need to extend the definition of the phonorecord to include digital transmission formats such as mp3s, and thus enacted the Digital Performance Right in Sound Recordings Act of 1995 (U.S. Copyright Office, 2008c, p. 2).

It is important to understand that copyright protection is automatic, but only when the work is in fixed (“expressed”) form. So your idea for a song is not protected, but the recording of that song is.

The 1995 act mentioned above is an important example of how copyright laws expand and change over time, especially as new technologies are introduced.
The following overview of the recent history of copyright will help illustrate the context in which artists are creating today.

*The Copyright Act of 1976*

The Copyright Act of 1976 was the first major revision of federal copyright law since 1909. (The 20th century introduction of television, recorded music, cinema, radio, and modern telecommunications made the previous legislation heavily outdated.) Among other things, this act introduced and solidified the “fair use” doctrine (to be discussed shortly). The U.S. Register of Copyrights in 1976, Barbara Ringer, called the act “a balanced compromise that comes down on the authors' and creators' side in almost every instance” ("Righting Copyright," 1976, p. 1).ii

Under the Act of 1976, a copyright holder (the creator of the work or the legal heir) is entitled to the following exclusive rights regarding his or her work:

1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
5. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;
6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission. (17 U.S.C. 106)
Violation of these exclusive rights is a crime called “copyright infringement.” We will discuss the types of copyright infringement and their consequences later in this chapter.

The Copyright Act of 1976 also redefined the length of the copyright term (how long the protection lasts). Works that have exceeded their copyright term enter in the public domain, where they can be published and shared freely. Prior to 1976, the copyright term had a maximum of 56 years from the time of fixation; under the 1976 act, the term was set at the author’s life plus fifty years (17 U.S.C. 302). Works created before 1978 had an optional renewal of 47 years, granting these works up to 75 years of protection. In essence, the Copyright Act of 1976 extended the “limited times” of copyright protection.

International Copyright Treaties

Another important progression in U.S. copyright law came in 1989, when the U.S. became a party to the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) on March 1, 1989. Under the Berne convention, each of the 164 parties agrees to the minimum standards set forth by the convention, including automatic copyright protection at the origin of fixation (Berne Convention, 1971, p. 9-12). Each country must recognize the works of other parties in the same way they would recognize works of their own nationals.

The WIPO Copyright Treaty of 1996 made adjustments to the Berne Convention in light of information technology. Additionally, the 1994 Agreement
Legitimating the Remix 14

on Trade-Related Aspects of Intellectual Property Rights was created to define minimum standards of intellectual property regulation for members of the World Trade Organization. The U.S. ratification of such international intellectual property agreements helps to promote the protection of creative works around the world by eliminating much of the confusion that arose from questions of jurisdiction over copyrights of foreign works.

*The Sonny Bono Copyright Term Extension Act*

The copyright term was again extended under the Sonny Bono Copyright Term Extension Act (CTEA) of 1998. This act extended the length of protection to 70 years after the death of the author—20 more years than the 1976 act provided. The CTEA also extended the protection of pre-1978 works to 95 years (instead of 75). Ultimately, the CTEA ensured that no additional works will enter the public domain until the year 2019.

In the original copyright clause in the Constitution, the creator is promised protection of their work for “limited times.” This important stipulation ensures that the great works will not remain forever behind the bars of copyright; eventually, long after the death of the creator, the works become the property of the public, so that the public can use them to further contribute to the “progress of science and useful arts” (U.S. Const. art. I, § 8, cl. 9). The copyright clause demonstrates an understanding that all creation is collage.
Therefore, the passage of the CTEA raised important constitutional questions about the government’s ability to extend copyright terms without violating the First Amendment rights of the general public. By repeatedly extending the copyright terms of protected works—potentially ad infinitum—Congress risks imposing on the rights of free expression for future generations of artists, musicians, writers, inventors, and other creators. In many ways, it has already imposed on these rights for the remix generation.

*Fair Use*

Before the Copyright Act of 1976, the courts had been using a common law practice of what would be codified as the Fair Use Doctrine. “Fair use” is a defense for copyright infringement as defined by the rights listed in 17 U.S.C. 106 which allows for the reproduction of copyrighted works for purposes such as “criticism, comment, news reporting, teaching..., scholarship, or research.” Whether or not the use of copyrighted material is “fair use” is determined by using the following measures:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole;
4. the effect of the use upon the potential market for or value of the copyrighted work. (17 USC 107)

The courts use these guidelines to determine whether or not a particular use of copyrighted material is, in fact, a fair use or copyright infringement.
The next definitive U.S. copyright statute was the No Electronic Theft (NET) Act of 1997. This act was a reaction to the court case *U.S. v. LaMacchia* (1994). This case called into question the *mens rea* (“guilty mind”) requirement for criminal copyright infringement as established under the Copyright Act of 1976, which required an infringer to act “willfully and for purposes of commercial advantage or private financial gain” (17 U.S.C. 506[a]). LaMacchia, then a student at the Massachusetts Institute of Technology, created a bulletin board system on which he encouraged the exchange of copyrighted software. In the language of the 1976 statute, a criminal case would have required a for-profit operation; because LaMacchia did not make any money from his bulletin board, he could not be tried for copyright infringement. U.S. attorney Donald Stern decided to charge LaMacchia with wire fraud (Hartman, 1995), which ultimately led to the dismissal of the case based on the precedent set by *Dowling v. United States* (1985).

The dismissal of the LaMacchia case inspired Congress to create this new, more specific set of laws to address the problem of copyright infringement *without* profit motive—a problem that would become rampant as Internet access increased across the globe. The NET Act made it possible for the Department of Justice to prosecute under misdemeanor or felony any “willful,” large scale (total retail value exceeding $1,000 over the course of one year) reproduction or distribution of copyrighted works, even if there is no discernible profit motive (Goldman, 2006). The act expanded the previous definition of “financial gain” to
include barter transactions, not just monetary gain. The maximum penalty for infringement under this act was 5 years in prison and up to $250,000 in fines. Statutory damages were raised from $750 to $30,000 per work infringed. Obviously Congress was trying to make a point about piracy. The act did exempt from prosecution the small-scale, non-commercial reproduction or distribution of copyrighted material for personal use. The act also clarified that “reproduction and distribution” included both electronic and material means.

*The Digital Millennium Copyright Act*

In 1998, in order to address new issues of digitally formatted intellectual property and to align U.S. copyright law with the 1996 WIPO Copyright Treaty, the U.S. adopted the Digital Millennium Copyright Act (DMCA). This act made it a crime to circumvent anti-piracy measures built into software, akin to the Digital Rights Management technologies made famous by the music and movie industries. The act additionally outlaws the sale or use of code-cracking devices.

The key innovation of the DMCA is the “safe harbor” stipulation outlined for online service providers, which limits their liability for the infringing activities of their users. However, online service providers are held responsible for removing infringing material upon notice and are required to reveal user identities on subpoena. This is also the law that required “webcasters” (web radio) to pay licensing fees to record companies.
Like the CTEA, the DMCA seems to favor the rights of the copyright holder over the rights of the public to freely exchange expression. This favor allegedly resulted in undue impediments on free speech rights by too-broadly limiting the uses of copyrighted material. Timothy Lee summarizes some of the failures of the DMCA as follows:

The DMCA is anti-competitive. It gives copyright holders—and the technology companies that distribute their content—the legal power to create closed technology platforms and exclude competitors from interoperating with them. Worst of all, DRM technologies are clumsy and ineffective; they inconvenience legitimate users but do little to stop pirates (2006, p. 1).

Ambiguity still surrounds certain areas of the DMCA, including the legality of linking to infringing content on a website (e.g., linking to an infringing YouTube video).

*Types of Infringement, Legal Defenses, and Legal Remedies*

Copyright infringement, the unauthorized use or distribution of material protected by copyright law, can be divided into three types: direct, contributory, or vicarious liability infringement. (The latter two are both considered “indirect” infringement.) The table below explains the requirements that the plaintiff must prove for each type of copyright infringement:
Legitimating the Remix

<table>
<thead>
<tr>
<th>Type of Infringement</th>
<th>Plaintiff Must Prove</th>
<th>Example Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct</td>
<td>A) That infringer copied from the plaintiff’s work, and B) That, if copying is proved, it is so “material” or substantial as to constitute and unlawful appropriation</td>
<td>Basic Books, Inc. v. Kinko’s Graphics Corp. (1991)</td>
</tr>
<tr>
<td>Contributory</td>
<td>A) That the defendant knew of the infringing activity, and B) Materially contributed to the infringement of a valid copyright</td>
<td>MGM Studios, Inc. v. Grokster, Ltd. (2005)</td>
</tr>
<tr>
<td>Vicarious Liability</td>
<td>A) That the defendant has the right or ability to control the infringer’s activity, and B) Derives financial benefit from the infringement</td>
<td>Dreamland Ball Room, Inc. v. Shapiro, Bernstein &amp; Co. (1929)</td>
</tr>
</tbody>
</table>

(Herbeck, 2008)

The burden of defending copyright usually falls to the copyright holder or a trade association that represents the copyright holder, such as the Recording Industry Association of America (RIAA). That is to say, most copyright infringement cases are civil suits. In cases of extreme infringement, the Department of Justice will press criminal charges.

Defenses against infringement include: the work in question is not eligible for copyright protection, the work has passed into the public domain, permission to use the work granted, independent creation of the work, fair use, and other statutory defenses such as the DMCA’s safe harbor defense. Legal remedies (i.e., consequences) for infringement include injunctive relief, impounding or destroying the infringing work, actual damages and/or profits, the assignment of
the court costs and attorneys fees of the plaintiff, and statutory damages (Herbeck, 2008).

In the following chapter I will discuss some of the ways that these laws and court case precedents have threatened the expression of creative material. In particular, I will discuss the resurgence of what cyber-law scholar and co-founder of the Creative Commons Lawrence Lessig calls the “read/write” culture. This culture is particularly evident in the “remixes” of creative artifacts discussed in the introduction. I will explore how current law may be impeding progress in remix-based creative communities, particularly in electronic dance music, and will later discuss the “hybrid economy” model outlined by Lessig and how it can compliment a culture of less restrictive copyrights.
Chapter 2

Twentieth Century Content Culture

Not so long ago, there was no such thing as a record—at least a phonorecord. In pre-modern centuries, people who wanted to hear music in their homes learned to play instruments or sang songs to fill the silent air. They passed these songs along between generations, relics of culture passed from one amateur to another. The everyday individual, though he may or may not have composed the music, was responsible for performing that music and making his own adjustments to it. These adjustments could range from changing the lyrics for fault of memory to adapting a piano piece for violin, but either way the amateur musician was always in the process of updating the music that had been handed down to him. Music was community property, and everyone was welcome to participate.

The 20th century brought with it all the joys of modern recording technology. The introduction of Thomas Edison’s phonograph in 1877 made it possible for music to be played in the absence of instruments or musicians. By the end of the World War I, the disc had become the primary means of recording music. Where before “performance” of a work had included only the physical performance of a piece in a concert hall or in a chamber from sheet music, now music could be “performed” in the home. For the first time in history, nearly all brackets of culture could gain access to a wide range of professional-grade music culture—not just the amateur music enjoyed at home or the sounds of live musicians playing in the same room.
As recording technology advanced through the century, it became easier and cheaper for anyone and everyone to consume music. And we sure did consume (Gronow, 1983). Music quickly became one of the world’s most exciting industries as it gave birth to a new breed of superstar (no one had ever known the likes of the Beatles before recording technology). As we moved from vinyl discs to cassettes, cassettes to compact discs (CDs), and CDs to mp3s, music became more affordable and accessible with every passing year.

The birth of the phonorecord was a key turning point in the way that music was both created and consumed. Before the “music industry” commanded how music was recorded and distributed, writing music was primarily the occupation of solitary persons—men like Bach and Gershwin and Souza dedicated their lives to jotting notes onto paper so that their works could be reproduced as sheet music and performed by other professional musicians. While the phonorecord made it possible to move the “performance” of that music into the family home, it also moved the production of that music from the stage to the studio (though, of course, music performance continues to be an important expression of musical culture to the present day, a subject I will address in subsequent chapters).

Because records are far more expensive to produce and distribute than sheet music, it became necessary for musicians seeking exposure to get signed to record labels that could fund the production and distribution of their records (and make a buck or two along the way). This system ultimately led to a commercialization of music that had never been known in previous centuries. For
the first time, big business had a major say in who “made it” in music, and how far they made it.

At the same time the music industry was blossoming, the world was being infiltrated by all sorts of new mediums of mass communication—radio took the entertainment industry by storm, only to be superseded by television in a matter of decades, and Hollywood sank its roots into American culture. The 20th century is marked by an exponential increase in commercialized culture consumption (Benkler, 2007). While in past centuries the absence of culture distribution systems had encouraged amateurs to take part in the creation of “folk” culture, now culture became commercialized and industrialized, so that most of society consisted of citizens who were primarily consumers, not creators. (Lessig, 2008b, p. 25).

The Shift from Read/Only to Read/Write Culture

Lawrence Lessig describes this type of consumer culture as a “read/only” culture (2008b). He borrows this term from computer science, where it refers to a type of file that can only be read, not edited or changed. This is a useful description for understanding the culture consumption habits of America and other industrialized nations in the 20th century. As people began to consume (“read”) more content faster, reverence for professional, commercialized culture replaced the amateur tendencies to make adjustments to that culture. The amateur creator became lost in the shadows of the superstar as more people
spent their time listening to music, watching movies, and reading books—not creating them.

The arrival of digital media at the end of the 20th century ushered in yet another wave of consumption unlike anything that preceded. Now people didn’t have to leave the house, much less their desks, to collect even more of the same culture that would have demanded a trip to the theatre in the 1800s. Apple’s iTunes (introduced in 2001) and similar services restructured the media distribution system, making it possible for the consumer to buy music (and eventually movies, TV shows, music videos, audio books, games, and more) on their own agenda—when and where they wanted it. And what the consumer can’t (or doesn’t want to) find by legitimate means, he can usually pirate (but that’s another topic for later in this thesis). Culture consumers gained access to more content than ever before.

The good news of the digital century, at least from the standpoint of culture creation, was that the same computers that facilitated an increase in read/only culture also provided the tools to interact with that culture in increasingly easy, affordable ways. Many personal computers come packed with programs like Apple’s iLife suite—easy-to-use editing programs that are included in the price of the computer. Even software programs like Photoshop, Pro Tools (audio), or Final Cut (video) are available for hundreds of dollars, instead of the thousands one would have spent on equipment and space to do the same job “analog” only a decade earlier. Digital made it possible for the commercialized production studio of the 20th century to move back into the bedroom of the
amateur. Although the Internet solidified read/only culture, it also made possible a return to what Lessig calls the read/write culture. “Read/write” again refers to a type of computer file, the type that allows changes, edits, and updates to existing data. In a read/write culture, consumers remix the media they consume—be it music, film, television, radio, software, or visual art—by “creating and re-creating the culture around them” (Lessig, 2008b, p. 28).

Read/write culture and the influx of remixing in the 21st century means that the amateur is once again participating in the culture creation process, in much the same way that the pre-modern amateur musician would participate by adding a verse to a famous folk song in front of the fireplace. Although the remix itself is older than recording technology, digital editing software and Internet distribution channels like Youtube have brought this type of creation to a whole new level of popularity. The triumphant return of read/write culture should be something exciting for a society that has begged its youth to exchange idle television watching for more productive activities. In read/write culture, people of all ages and interests are inclined to consume their media with an eye towards re-creating it, in turn making each piece of culture—original, remixed, and even re-remixed—infinitely more full of meaning.

Remixing and the Law

“Everyone is bombarded with media,” said Gregg Gillis, also know as the remix musician Girl Talk. “Now I think we’ve almost been forced to use it as an
Gillis was made famous by the release of his album *Night Ripper* (2000), a collection of “mash-ups” (a remix style in which the artist “mashes” together bits from songs, often from disparate genres and styles). On the album, Gillis mixed together more than two hundred small clips (samples) of songs ranging from Elton John’s “Tiny Dancer” to Sonic Youth’s “Schizophrenia.”

The bad news, at least for Gillis and artists like him, is that this highly creative style is in violation of copyright law because it is considered *derivative* copying of protected works. (In fact, the album was released on none other than label Illegal Arts, a sampling-centric label self-consciously named for its read/write tendencies.) Although Gillis claims his work falls under fair use protection because of the brevity of the samples and the “transformative” nature of the work, the letter of the law and legal precedents would suggest that his work is still open to prosecution.

In 2004, a U.S. Court of Appeals made explicit its feelings about sampling music: “Get a license or do not sample” (*Bridgeport Music, Inc. v. Dimension Films*, 2005). This case, which disputed the legality of a sample in rap group N.W.A.’s song “100 Miles and Runnin,” would reinforce the legal standard for sampling set by *Campbell v. Acuff-Rose* (1994), ultimately debunking the “de minimis” defense such as Gillis would use. Although N.W.A.’s sample—a two second guitar riff from a Funkadelic song, pitch-shifted and looped—was practically indistinguishable from the original, the courts still found this use of a protected work to be in violation of the law. Perhaps the most confusing aspect of
the *Bridgeport* ruling came after the license stipulation, when the court declared that they “do not see this [ruling] as stifling creativity in any significant way.” Yet they were criminalizing the creative work of one of the most popular music groups of the day.

These are primary examples of the way in which copyright law criminalizes creative sectors of society that we should instead be *applauding* for their contributions to read/write culture. Was Funkadelic or its copyright holding entity (Bridgeport Music) losing money because N.W.A. sampled “Get Off Your Ass and Jam” without permission? Or did copyright law overextend its arm into the First Amendment rights of creators by protecting an industry that discouraged amateur creation in the first place? These are important questions that lawmakers should carefully consider as they shape intellectual property laws in the 21\textsuperscript{st} century. The creative contributions of the next generation are at stake.

*Criminal Generation*

In the meantime, what are creators—musicians, filmmakers, multimedia artists, and other sorts of remixers—doing to fight for their rights? More often than not, they’re not fighting at all—they’re just breaking the law (Lessig, 2008a). While certainly piracy and filesharing can be detrimental to artists in obvious ways, copyright infringements in the form of a remix have not been proven to deprive the original work of value. (Consider: would hearing a three-second sample of a Depeche Mode song in a mash-up stop you from purchasing the
original album?) Don Joyce, of the remix-oriented band Negativland, explained to Lessig: “In my mind, the work that’s reusing it is not in competition with the original. And you haven’t removed the original. It’s still there. And if you sample from it, you’ve made something else” (2008b, p. 273).

Still, the industry and its representatives insist that sampling threatens artists and their way of life, and for the time being, the United States legal system agrees. It is a desperate move by the industry to hold onto a profit model that has worked well for almost a century.

(Enders Analysis, 2008)

Clearly, as indicated by the tumbling record sales of the current decade, the music industry is going to have to adopt a new approach in order to survive. However, scholars and supporters of the “free culture” movement have suggested that read/only and read/write culture can co-exist in ways that benefit both the artists and the industry. Lessig calls this a “hybrid” economy, in which the
creative community performs a balancing act between a “commercial” economy and a “sharing” economy. In the next chapter I will discuss the implications of each of these types of economies, and how they can coexist. I will then explore how one especially remixed facet of the music industry—electronic dance music—is implementing such a hybrid, and succeeding.
CHAPTER 3
Possibilities: the Hybrid Economy

As digital wares and the web help to bring the remix and read/write culture back into the hands of the creative amateur, these new mediums also threaten the established model of distribution—a model that the record industry is hesitating to let go of.

Scholars such as Lessig, Fisher, Benkler, and Mason suggest that the capitalism of creative culture and the laws that protect that capitalism are due for an update. Some even say that some parts of the industry can not only survive, but perhaps even increase profits by adapting to a more read/write-friendly business model (Lessig, 2008b, p. 228). In Remix, Lessig outlines the traditional “commercial” economy and compares it to the “sharing” economies that have become so common in the Internet age (with reference to Benkler). He then explains how “hybrid economies” combine aspects of both models to create a system of compromise between the industry and the consumer. This chapter will explore the nature of these three economies.

The Commercial Economy

An economy exists wherever there is some sort of trade going on between two or more parties. The trade could involve time, effort, friendship, goods, or—in the most common example—money.
The commercial economy is an economic model with which we should be familiar. It is the traditional business model in which one entity (the business) gives something to another entity (the consumer) in exchange for something deemed to be of equal value (money). Each party is seeking to find the best possible rate of exchange to increase their own trade efficiency. This seemingly simple equation of exchange is the basis of our entire financial system.

The commercial economy includes the involvement of an element of “price” in the exchange (Benkler, 2004, p. 275). So every time you make a purchase, you are participating in a commercial economy by consenting that the price of an object—say, 99¢ for a song in iTunes— is a fair exchange. For a particular economy to survive, the exchange between parties must continue to be viewed by both parties as relatively equal or worthwhile; otherwise, one party with have no motivation to continue the exchange. (Obviously there are many complications and subtleties to this model, such as monopoly or price-fixing; however, for the purposes of this thesis, only a basic understanding of the commercial economy is necessary).

Like so many other aspects of our lives, the way this commercial economy works had been radically shifted by the introduction of the Internet. The web has “caused an explosion in the opportunities for business to make money by making old businesses work better” (Lessig, 2008b, p. 121), but has also provided for an array of new types of business. Game-changing web corporations like Amazon and Google have revolutionized the way that companies relate to their customers by using technology to help them understand customers better. Still, the far-
reaching impacts of the Internet economy are not only commercial. The Internet has also helped to foster the growth of another sort of economy—the sharing economy.

The Sharing Economy

Unlike a commercial economy, a sharing economy explicitly does NOT deal with the element of price. Although the commercial economy is useful for our exchange of goods and services, it is not a very helpful economy when it comes to relationships. (You wouldn’t want to pay your boyfriend every time he came over in exchange for his time; but you would share your time with him in exchange for his time.) In the sharing economy, exchange is measured not in terms of price, but in terms of social relation or community benefit.

In Lessig’s words, the “relations” metric of the sharing economy is “insulted” by the price metric of the commercial economy—which is why it’s seldom that one economy could substitute for the other (2008b, p. 145). (Again: your boyfriend would probably—hopefully—be insulted if you tried to pay him to come hang out with you. But he would accept in exchange those things that “money can’t buy,” like appreciation and affection. Money is unwelcome in a sharing economy.) By Benkler’s definition, in sharing economies, “non-price-based social relations play those roles” that money and price play in the commercial economy (2005, p. 282). Sharing economies provide us the means to make connections with other people.
While the reasons for participating in a commercial economy are fairly obvious (I want what you have, and you're willing to give it to me for a value I agree with), there are different (and infinitely complicated) reasons that people may participate in a sharing economy. On the one hand, the motivation may be self-centered, or “me-regarding,” when the individual participates in a sharing economy because it benefits him or her. On the other hand, there are times when participation is altruistic or “thee-regarding”—sometimes, people just like helping other people (Lessig, 2008b, p. 151). These two regards are related and not mutually exclusive. Volunteering at a local shelter can benefit both you as an individual as well as the people who need to stay at the shelter.

The Internet has introduced a whole new span of opportunities for communities based around a sharing economy. Many people join these communities for me-regarding reasons—because it benefits them to share with other members of the community. However, many of these communities rest somewhere in the nether region between me- and thee-regarding—people join the community because it benefits them, but they also enjoy the element of “giving back” to the other people in the community.

Wikipedia—a free online encyclopedia written and edited by a global team of hundreds of thousands and used by hundred of millions—is perhaps the most prominent example of this type of sharing economy (Zachte, 2009). People make contributions not because it necessarily helps them individually (although certainly it may help them pass the time or have a little fun), but because contribution helps the community as a whole. Because Wikipedia’s funding is
donation-based, it is free (literally) of the price factor that would tie it into a commercial economy. Open source software development is another prominent example of how a sharing economy can build a community that revolves around increasing the resources for everyone involved, without a price tag.

*The Hybrid Economy*

Although the Internet has made sharing economies like Wikipedia more common than ever before, there are circumstances in which a combination of the price-orientation of the commercial economy and the non-price-orientation of the sharing economy can coexist—although the balance must be carefully maintained. Lessig writes:

A hybrid is either a commercial entity that aims to leverage value from a sharing economy, or it is a sharing economy that builds a commercial entity to better support its sharing aims. Either way, the hybrid links two simpler, or purer, economies, and produces something from the link (2008b, p. 177).

In order for that link to survive, a distinction between the two economies must be maintained within the hybrid. When the members of a sharing economy begin to feel that the weight of the commercial price-tags is getting too heavy, the members will stop sharing content freely. Likewise, if members of a commercial economy begin to perceive it as more of a sharing economy, they will stop paying. Lessig outlines three types of Internet hybrid economies, which I will briefly explain:
Community Spaces: In a community space, people interact and share information or interests. Craigslist is an example of a community space that allows people to post free, classifieds-style ads on web message boards that are divided by city. The site’s content is provided by users, who share this content for both me- and thee-regarding reasons. Craigslist sticks its toe into the realm of commercial economy by charging for particular types of ads (jobs in certain cities; apartments in New York City). But it maintains its sharing economy by leaving “99 percent of the site’s content” free (Tapscott & Williams, 2007, p. 187). This allows Craig Newmark, who launched the site, to make a commercial profit, but does not violate the sharing needs of the community. Flickr is another example of a sharing community. The site offers paid “pro”-level memberships with additional benefits in order to make revenue, but the price factor is limited to this measure in order to prevent deterring the community from sharing their content freely.

Collaboration Spaces: In a collaboration space, people work together to build a community project from which everyone in the group can benefit. Websites with user-generated content such as Last.fm (or the original Gracenote website) are great examples. Members of the Last.fm community contribute their data in the form of songs that they have listened to, which the site’s technology aggregates. The site also allows community members to inform others about the artists that they listen to by editing artists’ profiles in Wikipedia-fashion. Members create value for the community both by listening to music and writing artist descriptions. The cataloging of music data is the project that the
community is building. By listening to a song by a particular band on a particular label, users direct the advertising that the site uses to get revenue; but since the ads are relevant to the musical tastes of the listeners, the ads only contributes to the collaboration space “conversation” that already exists at Last.fm.

**Communities:** While “community spaces” provide a place for users to convene around a particular subject, they do not have the fullness of life that Lessig attributes to full web communities like the online game “Second Life.” Second Life is a virtual world designed in large part by its members. Although the original site designers provided the basic framework, the growth of this constantly expanding web world is based on the volunteer work of its members, who build new features and expand the world however they’d like. Members teach other members how to use the space, beautify and expand the environment, write new code to expand the world’s capabilities, start institutions that make the virtual world work better, and even self-govern the virtual world. These hefty collaborative efforts are all part of the virtual sharing community of Second Life. Again, the site can generate revenue built around these user innovations without violating them (2008b, p. 186-224).

In all three types of sharing communities, the commercial owners of the site make the site’s content malleable to the users, and by doing so open up their product (website) to vast improvements in value— for free! This user-generated improvement is the essential trademark of the hybrid economy. When innovation of the site is democratized, both the members of the sharing economy and the commercial entity behind the sharing economy benefit from the added value. By
leaving content open to the creative manipulation of the users—open to be both read and written—both parties benefit, even if one gains commerce and another gains content and community.

Although the “sharing” dimension of the Myspace website has never been anywhere near as free or interactive as the sharing elements of Second Life, it is also an example of a sharing economy “community.” However, the decline of patronage on the site since 2006 is an example of how oversaturation of commercial advertising can deter community members from continuing to share (GigaOM, 2008). The hybrid balance is certainly a delicate one, but one which can be maintained with mutual respect from the community members and the entities that maintain the economy.

For the music industry, adoption of a hybrid economy could mean drastic changes in the way that music content is distributed and the way that artists are compensated. In the next chapter, I will discuss ways that the hybrid economy can be applied to the music industry by demonstrating how electronic dance music has already begun to benefit from embracing this model.
Defining Electronic Dance Music

Electronic dance music, or EDM, is electronic music that is centered in the purpose of making people move. It is inherently linked to the disc jockey (DJ) culture of modern nightclubs, but the essence of the genre goes back to the very roots of social culture, when the shaman would lead his tribe in drum-driven dance circles around the fire (Brewster & Broughton, 2000, p. 4).

The genre is perpetuated primarily by the contributions of two types of figures: producers and DJs. Producers are the men and women who actually create the “tracks” (the genre-preferred term for songs). Although the Internet makes it possible for these artists to independently distribute mp3s of their tracks with relative ease if they choose, many producers still release some, if not all, of their tracks on record labels. Just like in other music genres, labels offer artists the benefits of credibility, stability, and connection to a desired audience.

The DJ “mix”—the name used to refer to a single DJ performance in which many tracks are mixed together over a period of time—is the primary vehicle through which EDM tracks make it into public awareness. The DJ’s inclusion of a track in a mix is necessarily a recommendation of that track. The art of the DJ therefore lies somewhere between the job of the critic (music “reader”) and the job of the producer (music “writer”). He or she sorts through a seemingly limitless variety of tracks, then selects the prime cuts for presentation to the crowd. The economy of the EDM scene is especially dependant on these
“recommendations” from respected DJs.

(DJs come in many shapes in sizes: radio DJs, hip-hop DJs, reggae “deejays,” and many others. Although all DJs share much in common, this thesis focuses on the role of the DJ specific to EDM, music designed for or relating to the nightclub context.)

Within electronic dance music there are myriad “genres, subgenres, and sub-subgenres” of production styles, ranging from house to techno to dubstep to trance and back again in seemingly infinite spirals of hyper-specificity (McLeod, 2001). The Wikipedia article “List of electronic music genres” includes more than 200 names.

For the purposes of this thesis, EDM does not include the genre of hip-hop; although these genres certainly have many elements of overlap, hip-hop has a distinctive culture that is dissimilar in many ways to EDM. Therefore, it would be a misrepresentation of and disservice to the genre of hip-hop to be included in this analysis.

The DJ as Reader/Writer

The first DJs were the radio jockeys of the early 20th century. In the early 1940s, the first “dance music” DJs started jockeying on a set of two turntables; this ensured that the DJ could keep the sound going without a break in-between songs, a technique that is still central to club DJing today. By the 1960s, specialized DJ equipment began to appear, such as the DJ mixer and high-end portable sound systems (Nelson, 1996, p. 4). Over the century, the DJ became known in pop culture as a sort of human jukebox, someone to keep the party
music going (Brewster & Broughton, 2000).

Since its conception, the role of the DJ has been expanded from record-changer to “read/write” musician. The DJ doesn’t just play music to a crowd—although this is certainly how the practice began. DJs are responsible for moving the music along to the whims of the crowd. They reinterpret music—and in turn, reinvent it—in a moment of time that is simultaneously specific and dynamic. The DJing associated with EDM encompasses very essence of remixing, of read/write culture.

DJing is evolutionary, a constant process of re-contextualization—postmodernism at its most potent (Neill, 2002). The DJ is not a musician proper, but a sort of *metamusician* (Brewster & Broughton, 2000, p. 13), making music from other music in a “live” circumstance. Brewster and Broughton explain in *Last Night a DJ Saved My Life*:

> Because of the complex ways records can be combined (not just played one after the other with a respectful gap in between), and because of the continuous nature of dancing, and because of the relative anonymity of the acts which made the records, and because a nightclub context makes the DJ the most important element, and for a host of other related reasons, we are happy to treat the music in a club as belonging to the DJ rather than the people who originally made it. (2000, p. 13)

Two recordings craftily married together by a skillful DJ can have an entirely different meaning, feeling, and impact than either single track could have had on its own. The creative power of read/write culture is manifested in the DJ mix.

But the DJ mix—at least the recorded distribution of it—is precisely what puts DJs at odds with copyright law.

“As a process, DJing is inevitable and necessary for our times, an elegant way to deal with data overload,” writes Jace Clayton, a Brooklyn-based DJ and
producer. “As a performance, it’s what the kids are grooving to the world over. As a product, it’s largely illegal” (Clayton, 2008, p. 178)

In 2001, Clayton (better known by his alias “DJ/Rupture”) recorded a 60-minute DJ mix called *Gold Teeth Thief*. The mix was made using three turntables to meld together parts of more than forty different tracks, several of which were his own productions. Because the mix included big-label, high-profile tracks like Missy Elliott’s “Get Your Freak On,” and Paul Simon’s “Homeless,” Clayton did not release the mix for sale, but instead posted a free mp3 of the mix on the Internet for friends to listen to. Thanks in part to the favor it quickly gained in the underground music media, *Gold Teeth Thief*—a mix that Clayton never intended for mass distribution—had soon been downloaded hundreds of thousands of times (Clayton, 2008, p. 178).

Although the No Electronic Theft (NET) Act of 1997 made it possible to be tried for copyright infringement without “commercial advantage or financial gain,” labels and music industry trade associations such as the RIAA currently seem more concerned with prosecuting other sorts of non-commercial copyright infringement—namely piracy—than with squelching free distribution in a “derivative” form such as a DJ mix. Still, even though he gave the mix away for free, the inclusion of copyrighted songs in the mix is illegal without proper licensing, and artists like Clayton could face criminal charges for such work.

One European label later offered to pay to license the tracks used on *Gold Teeth Thief* so that they could (legally) release the mix. However, when Clayton’s track list was submitted to their legal department to determine how realistic the licensing endeavor would be, the label said the task was “Impossible. Our lawyers
laughed at us” (Clayton, 2008, p.179).

“If I were a band, and Gold Teeth Thief an album, not a mix, that would have been my big break,” writes Clayton. “But its more common for even a popular DJ to receive a cease-and-desist order than to get a mix-album deal with a larger label” (2008, p. 179). The industry represented by these “larger labels” views mixing—remixing or any other kind that uses their copyrighted materials—as stealing, not art.

Clayton’s story is a primary example of how copyright laws are limiting the potential of a very creative read/write industry and its artists—especially by placing a too-heavy burden on “derivative” acts of creation. Although Clayton took the legal risk of distributing his mix, many copyright scholars are calling attention to this risk, asking what sorts of free expression may stay suppressed because of fear of legal vulnerability. Suppression of creative expression is the very antithesis of why copyright systems came to exist in the first place (Fisher, 2004).

It is important that labels, fans, industry associations such as the RIAA, and legislators all begin to understand how keeping current copyright protections in place is limiting our rights to creativity both in America—where that right is guaranteed by our First Amendment—and in parties to the Berne Convention around the world. The following chapter will explore how EDM has continued to be sustainable in a freer (less restrictive) copyright climate.

Though the DJ mix is certainly indicative of the twenty-first century shift from read/only to read/write culture, so too is the music that the DJs mix.
The Producer as Reader/Writer

Behind the scene of these DJ booths is the industry that creates the records on the decks. (Records, of course, can include vinyl, CDs, or mp3 recordings. “Decks” usually refer to turntables, but is also just the hip term for any platform the DJ uses to mix recordings together.) The producers of EDM create their pieces most often from a combination of new and old sounds—sultry vocal samples from the likes of The Supremes are baked together with beats that only a machine could muster. So by the time the track (on vinyl, CD, or mp3) makes its way into the booth and booms out onto the dance floor, its elements—everything from bass kicks to high-hats to synthesizer thrusts—have been used and re-used so many times that the final product can seem hardly related to its elementary components.

Paul Frick is a producer and DJ from Berlin, arguably the hub of modern EDM since the early 1990s (Robb, 2002). Last year he created a track for Kalk Pets Records that provides a perfect example of how electronic dance music can take elements of other music—copyright-protected elements—and create something that is beautiful, but, like Gold Teeth Thief, ultimately illegal. Frick’s didactic track, playfully titled “Steal my Heart,” includes a narration that explains how the track was created out of components from other music. The voice over begins, “Look, I found this nice bass drum on a record from Guillaume and the Coutu Dumonts.” Then, the bass begins to thud.

As each new element of the track comes in—all of them sampled from other pieces of music—a narrator (speaking for Frick) explains from whence the sound came. The samples range from a “breathing female sound” by Janis Joplin, to
marimba chords by percussionist Matthias Engler, to beats and brass from other electronic artists. Even the track’s title vocal sample is a reconstruction: “These vocals were sung by Grace. She’s a great singer, and a friend of mine,” chimes the narrator. “I pitched them, and made them say ‘steal my heart’ instead of ‘feel my heart beat,’ just to make it kind of fit the track’s theme of stealing other people’s work. I hope she won’t be mad at me.” Frick’s track, despite its ironic undertones, is the very explanation of how EDM is produced today.

Due to popular demand on message boards, Myspace, and blog comments, Frick later released a “dub” version of the track without the voice over. The EDM community validated the creative value of this track by demanding a voiceless version. However, based on the precedent set by *Bridgeport* (2005), Columbia Records could legally pursue Frick for the Joplin sample he used in both versions of this song.

Whether Columbia Records would come after Frick is here beside the point. The vulnerability of this track under American and international copyright law highlights the importance of understanding the threat that copyright poses to the creative expression in DJ mixes as well as EDM production. The sooner we lift the legal limits on this sort of creativity by adjusting the Fair Use Doctrine to reflect current creative trends and technology, the sooner the music industry can begin implementing new profit-making strategies using Lessig’s hybrid economy to benefit artists, labels, and fans alike.
CHAPTER 5

The Hybrid Economy of Electronic Dance Music

From the Source: Feedback From Labels

In order to gain a better understanding of how the EDM sector of the music industry is coping with piracy and other issues relating to copyright, and to get a feel for the ways these types of labels are innovating within the current industry climate, I conducted a survey of EDM labels. I used a comprehensive list of labels acquired from the database at Resident Advisor, an online music magazine that is the premier source of coverage for this genre. I used a random-start systematic sampling method to select labels from the list. The use of probability sampling helped to ensure that the range of labels contacted would be unbiased and diverse.
I submitted the survey to the listed contact email addresses of the labels. Due to the maintenance of the database, some of these emails failed to be delivered, and some others did not elicit a response. After one week, I sent one reminder email to labels that had not yet responded. Out of 681 labels that I attempted to contact, 69 labels responded in full to the questionnaire, a response rate of about ten percent. The answers from incomplete questionnaires were not included in this analysis.

The questionnaire was designed using the Intres Tool website, which allowed me to send out an email that included a link to the questionnaire. Both open-ended and closed-ended questions were used. I felt that it was important to include open-ended questions to get a realistic and comprehensive perspective on an opinion-laden topic. The closed-ended questions provided more concrete, numerical data about basic feelings shared or disputed by the respondents. I followed up with some of the labels via email where there were ambiguities that needed resolution. Input from these respondents was used in combination with other research to understand how the EDM industry succeeds in implementing variations of Lessig’s hybrid economy. (See a copy of the questionnaire in Appendix B.)

_Electronic Dance Music’s Hybrid Economy_

It’s no mystery why the digital distribution model is trumping the CD-based music market of yesteryear: digital music is both cheaper and easier to come by than its hard-copy predecessors. The problem that the music industry faces, of course, is how to make a profit from an audience that thinks they should get to
hear the digital music they want, when they want, and for free. And of course, distributing free music alone could never sustain this industry.

The combination of several factors makes it both feasible and worthwhile for the EDM community to merge the music industry’s traditional, “commercial” profit model with the “community space” and “collaborative space” sharing economies, ultimately creating a hybrid economy that allows a relative amount of copyright freedom (compared to the system supported by current laws)—all without eliminating the potential for artists to make a living from their creative efforts. “Albums for people like Britney Spears are over, but for other people it means more opportunities,” said Ian Rogers, former president of new media for the Beastie Boys’ company Grand Royal, in an interview with Fox (Lehner, 2003). These types of opportunities—opportunities for the “amateur musician” of read/write culture—will help cultivate musical creativity in the digital century. The following sections aim to demonstrate the ways in which the EDM industry capitalizes on the opportunities presented by hybrid economic practices.

Disclaimer

It is important to remember that EDM is a particular genre with particular characteristics and practices. This means that, although the model presented by EDM could be replicated by some other sectors of the industry, this thesis is not designed to suggest that implementing the practices of the EDM community could heal the wounds of the entire music industry. However, this argument does serve to demonstrate and suggest methods that other genres of the industry could adapt to their particular needs.
Podcasts, Mixes, and Live Sets

One of the simplest ways that EDM labels and artists participate in the hybrid economics is through the free distribution—by labels, artists, fans, and websites—of mp3s of podcasts, mixes, and live sets.

A podcast is a series of mp3 recordings which is usually issued on a regular basis in association with a particular group, website, or publication. For example, many talk radio shows release their content in podcast form after the original broadcast. In the case of EDM, a podcast is usually a DJ “mix” or a producer’s “live set”. In EDM lingo, a mix is a recording of a DJ mixing together other artists’ music. This mix could be done live at a venue, or from the comfort of a home studio. Conversely, a “live set” entails a performance of a producer’s original works. Because EDM tracks are made up of dozens (sometimes hundreds) of tiny samples, producers performing a live set often “mix” together the samples used to make their tracks in much the same way a DJ would mix together the tracks created by other people. However, the main distinction is that in a mix, a DJ mixes together pre-recorded tracks, while in a live set, a producer uses equipment and software to mix together and perform music that is his or her original creation.

Because they very often (and in the case of DJ mixes, almost always) contain non-licensed copyrighted content, podcasts, mixes, and live set mp3s are distributed for free. (Still, free distribution does not excuse the distributors from infringement, as clarified by the NET Act. It does, however, seem to make them less likely targets for prosecution.) Blogs and webzines give away free podcasts to simultaneously promote the music in the podcast and the site itself. Because the
mixes are very often by famous and respected DJs, giving away these mixes for free—thereby adding content to the community space—adds to the commercial value of the websites, helping to balance out the hybrid.

Artists and labels use this free distribution method to help combat the (often) unwanted free distribution of their music: piracy. If a DJ mixes together his or her label’s tracks in a succinct and attractive package, the mix can raise the label’s brand awareness, which in turn drives sales of the artists or tracks included in the mix. One of the labels surveyed, a Dutch label that has been operating since 2004, noticed a distinct increase on sales of their back-catalog after they released a free podcast. Because of the so-called “viral” potential of digital distribution, an mp3 of this sort can be easily passed around in online communities and reach potential fans on the other side of the world within a matter of minutes. By sharing some valuable content for free in the form of a podcast, the label was able to increase its commercial value.

By this method, fans often get free copies of new and often unreleased tracks—without the need to pirate them.

_Piracy as Promotion_

But what about the fans who still choose to illegally download the label’s tracks, even though they received a copy of the track for “free” in the context of a mix? According to many of the respondents of the questionnaire, “piracy is still promotion” (respondent, Area Sur Records). The chart below shows respondents’ feelings about how piracy is affecting their labels.
Although the feeling was not unanimous, more than half of the labels that responded believed that piracy helped their label in some way. And 43 percent of the labels believed that file-sharing website could at least provide their label with valuable information about the success rate of one of their releases. All of the labels surveyed said they feel the impacts of piracy (both positive and negative), and many labels have implemented new hybrid-economic styles to keep their labels alive in light of a trend that doesn’t seem to have an end in site.

One label, 56stuff, based in St. Petersburg, Russia, moved to an entirely free digital distribution model. Since 1998, the label has been organizing events and selling CDs. However, in 2007, the label decided to stop selling its releases, and made them available to download for free on their website: “Feel free to share tunes that you love with humankind! Torrents, Soulseek and the likes, music forums and communities are our friends! Just don't forget to point out our titles and authors’ names. Also we like when our site is linked at the same time.”

The Montreal-based label Archipel sells releases for a given period of time (in this case, three months), then releases them for free once the track’s initial
hype has already died down. This is an especially smart model in a genre in which *newness* is next to godliness, and where digital production methods continue to increase the rapidness of the “turn-over” rate of each new style and subgenre. The carefully mixed element of surprise can make a DJ’s reputation; redundancy will almost always break it. And what can be more surprising than something you’ve never heard before? Regardless of their methods, many labels agreed that piracy can bring their label to new fronts in parts of the world that otherwise would not have access to this sort of music. Or, as Clayton so aptly said, “One man’s piracy is another man’s distribution network” (2008, p. 186).

“Sharing is human nature,” said the respondent from Baracca Records. “It will happen with everything and I think it does more help than harm. The artists get more gigs and shows because the people know the music.”

*Event-Based Revenue*

The respondent from Chicago’s Audio Logic Recordings stipulates, “Labels will only be able to survive if they build and brand and provide events, tangible goods (apparel, etc.), in addition to the music.”

Jace Clayton sums up the special circumstances of EDM performance culture in a succinct phrase: “Economics favor the DJ” (Clayton, 2008, p. 179). In the 20th century, musicians—especially superstars—made most of their living from record sales (Hiatt & Serpick, 2007). This commercial model, of course, seems to be breathing its dying breaths at the hands of piracy. Nearly all tiers of the music industry have turned to live performance as the remaining cash crop, and EDM is no exception. (After all, it’s quite difficult, at least at this point in
technological history, to pirate an experience.) And unlike a band, a touring DJ has only self and records to transport—no band-mates, no amplifiers, no drum kits. It’s therefore much cheaper for a DJ to travel, and depending on size the venue, this single man or woman can be paid thousands of dollars for a few hours of party-fueled work.

Out of the 69 questionnaire respondents, 47 percent earn at least part of the label’s revenue from events, and 66 percent of these list events as their primary source of revenue. Events here could include “label showcases,” in which artists on the label tour and play gigs together to help promote the label’s image. It could also include fees that labels collect for booking gigs for their artists at events around the world. Either way, these labels recognize that piracy will happen no matter what, so they support their artists and the distribution of their works in some part by selling the experience of the artist. It’s for this reason that EDM clubs play such a key role in the discussion of EDM in general. “The music is just promo for your next show,” said the respondent from one Berlin-based record label. The sharing tendencies of EDM labels (in part through the free distribution of podcasts, mixes, live sets, and even releases) support this events-based commercial element of the hybrid.

*Electronic Dance Music as both “Community Space” and “Collaborative Space”*

Like many musical genres, the proliferation of EDM is based in large part on the fervid participation of a fan-based community. Thanks to the Internet and the genre’s “rhythmic, rather than lyrical base” (“Techno’s Edge,” 2003), this community (and many others like it) is increasingly global, continually blurring
the geographical lines associated with music “scenes” of yore (e.g., LA Hardcore, New York Noise, etc. [Azerrad, 2001]). Because the birth of this genre coincided with the first murmurs of the Internet culture, EDM is quintessentially international, a community reaching from the beaches of Chile (home of techno superstar Ricardo Villalobos) to basement parties in Helsinki.

Forum discussions, blog comments, and other forms of web-based banter in EDM “community spaces” revolve around many different facets of the genre, including topics such as:

- the music’s underlying concepts (spiritual, visceral, social, academic);
- live performances of DJs or producers (and subsequent distribution of their mixes and live sets in mp3 format via the Internet);
- clubs and venues that house the performances;
- labels that release the tracks;
- software and hardware producers use to create the tracks;
- equipment DJs use to perform the tracks; and even
- headphones and sound-systems that amplify the music to crowds ranging from the lone bedroom listener to the crowd of one million at Berlin’s annual Love Parade Festival.

The exchange of information about these (and many other) elements of EDM culture takes place almost exclusively within community and collaborative spaces on the Internet. (After all, it’s pretty hard to strike up a meaningful conversation about stylus preferences when the room is vibrating with 150-decibel bass beats.) Message boards such as mnml.nl (a Holland-based bulletin-board system named after the EDM subgenre “minimal techno”), blogs like Little White Earbuds, and “webzines” like Resident Advisor provide agoras for exchange.
Websites like mnml.nl are strict sharing economies that do not involve finances of any sort. Members of such message boards create “profiles” (pseudonyms, usually attached to an identifying picture known as an “avatar”). Once a user has created a profile, they can make “posts” to the bulletin board about everything from upcoming events to production techniques. Mnml.nl is especially popular for the section of the board that allows members to post their new productions or DJ mixes in order to get feedback and suggestions from other members. In this type of community space, one of many popular bulletin boards revolving around EDM, participants share content—new music, advice, feedback, even track lists to DJ mixes—without any commercial exchange.

However, many other EDM communities support sharing a wealth of EDM-related content by commercial means such as hosting ads (in moderation), selling merchandise, partnering with other industry entities, or hosting events. This combination of sharing and commercial tendencies moves these sites into the realm of hybrid economies.

“Mp3 blogs” are weblogs that revolve around music, usually of a specific genre. They often include hyperlinks or embedded music players that allow readers to “stream” tracks, which means they the mp3 can be listened-to online, without actually downloading a copy of the track to their computer hard drive. (Like webcasting, streaming is still technically a breach of copyright law, but far less hounded by the industry than file distribution). The “good” blogs (in the eyes of the artists and labels) are the ones that couple streams with links to websites the music can be purchased, online music stores like JunoDownload and Beatport. One such EDM blog, “Little White Earbuds,” offers reviews of new
albums, appraisals of recent events, interviews with artists and even DJ mixes to its readers, all for free (http://www.littlewhiteearbuds.com).

(Little White Earbuds screen shot, April 29, 2009)

Little White Earbuds provides links to purchase points on JunoDownload and hosts a small Juno ad at the top of the page, in turn supporting the community space created by the blog’s content and the reader responses. Writers
for Little White Earbuds are paid a very small amount per article ($5 per review, $10 per feature or interview, etc.) as a sort of “thank you,” from the editor, Steve Mizek, but it is by no means a “price”-driven operation (W. Lynch, personal communication, January 4, 2009).

By offering the blog’s content for free and taking submissions from writers who are as much fans as they are professionals, Little White Earbuds provides EDM content that is not driven by the commercial influence of advertisers often placed on traditional music industry journals like *Rolling Stone,* or even indie music webzine *Pitchfork Media.* Being supported by partnerships with online stores means that the tracks being reviewed must have already been released; however, this approach is in many ways a better way to support the EDM labels than the traditional music journalism trend of giving “sneak peaks” of unreleased materials, which can lead to decreased sales. For this reason, many of the label owners who participated in the questionnaire for this research consider mp3 blogs not to be piracy-provoking or criminal, but as important promotional allies in an industry oversaturated with content.

It is important to distinguish that while many EDM mp3 blogs maintain a special respect for the labels, not *all* blogs are so kind to the industry. The labels surveyed repeatedly mentioned that blogs and other websites based in Russia are notorious for leaking releases before the official release date. While some EDM labels send their own “cease-and-desist” letters to piracy websites like these, others view piracy as a sort of promotion to underserviced frontiers, as discussed earlier in this chapter.

Resident Advisor, currently the most popular EDM webzine, provides a
similar variety of content as Little White Earbuds, but on a much larger scale.

(Resident Advisor screen shot, April 29, 2009)

Here again, the site’s content is primarily furnished by unpaid writers—men and women, both professional music journalists and portfolio-building amateurs, who take the time to carefully consider and review the latest EDM singles, EPs, albums, artists, and events as a free service to the greater community. Still, the
writing element of the site functions like a traditional newspaper or magazine, with writers reporting to a small team of paid editors to ensure that the content adheres to journalistic practices and quality standards.

In addition to offering reviews of releases and events, the website also offers:

• features and news about all facets of the genre;
• event listings (which include EDM happenings at both commercial and underground venues around the world), and photos of these events
• a “feed” that showcases noteworthy EDM news on other websites;
• comprehensive databases of labels, DJs, and venues;
• monthly DJ charts (in which a DJ lists his or her top ten tracks for the month, a great form of publicity for the labels); and
• a weekly podcast featuring mixes from some of the genre’s biggest and most influential artists.

All this content is provide—for free—by writers and artists who find the topic worth their payless hours. This community input towards greater knowledge is the very nature of the sharing economy, just like with Wikipedia.

The commercial side of Resident Advisor’s hybrid economy is provided from ad revenue and partnerships. These revenues support the small paid staff, the maintenance of the sites’ servers and bandwidth, and helps Resident Advisor to sponsor festivals and other EDM events. Too much advertising or too many positive reviews of the site’s financial supporters could mean that readers and writers would abandon the site for other community spaces, like the Little White Earbuds blog or mnml.nl. But because Resident Advisor’s community forum
(message board) allows users to voice their needs and wants, and because the site responds to those voices, Resident Advisor is able to balance the needs of its hybrid economy. By giving valuable content for free, in turn the website gets valuable content for free from its members, and the hybrid economy is maintained—at least for now.

In much the same way that EDM facilitates many “community space”-type sharing and hybrid economies, it also creates many “collaborative spaces,” in which a communal effort is translated into a communal product of some sort.

Although it is not exclusive to the EDM genre, Discogs is one of the music industry’s most prominent collaborative spaces. Discogs is a user-built website that aims to build a database of “discographies of all labels, all artists, all cross-referenced.” Users can contribute new submissions for unlisted releases of any genre, format, or year. That listing is then tied together, using hyperlinks, to other releases by the same artist, label, genre, etc. The website also provides an arena for the re-distribution of the “artifacts” of this music (physically copies like CDs and vinyl records) by offering a “marketplace” feature.

(Discogs screen shot, April 29, 2009)
Discogs is especially important for EDM fans and labels because it is considered to be the world’s most comprehensive database of vinyl music recordings; vinyl plays a significant role in EDM, where turntable mixing with vinyl records is still considered by many to be the most “credible” form of mixing. (I will discuss the role of vinyl shortly.) Because many EDM vinyl records are out of print, limited print, and/or hard to come by (a problem complicated by the global nature of the genre), a collaborative space like Discogs makes it possible for fans to track down records that would have cost them a world tour to find in pre-Discogs days. (My own recent acquisition of a rare 12-inch dub single pressed in the year 2000 in New Zealand—bought from a Discogs member in Hampton, England—is testament to the site’s extensive power to bring together a global community.) Because access to the site’s content is free, Discogs is an example of one of EDM’s most important collaborative spaces. The commercial side of the Discogs hybrid economy, which is used to better support its sharing side (Lessig, 2008b, p. 177), is funded by the 5% it makes on each marketplace sale—a number big enough to bring in revenue, and small enough to keep sellers selling and members sharing.

On Wax: the Role of Vinyl in EDM’s Economy

The much-revered techno label Ostgut Ton—a Berlin-based label married to the genre’s most celebrated nightclub, Berghain—does not distribute any promotional materials to the press. In fact, Ostgut Ton is so protective of their releases that they only distribute them in one hard(er)-to-pirate format—vinyl. But there's more to their choice than mere piracy protection.
Because EDM had its start back in the days when 12-inch records reigned, vinyl discs have a rather sacred role in the genre. Many of the world’s most famous DJs still use only vinyl recordings in their mixes, refusing to use mp3-based programs like Ableton Live, or even mp3-to-vinyl conversion programs like Serato Scratch, to DJ their sets. Some praise the medium’s sonic fidelity, while others simply say they are addicted to the feel of vinyl. The finite nature of the vinyl release—the fact that a limited number of physical copies exist in the whole world—adds an element of allure that can increase the label’s brand image in a genre that is obsessed with exclusivity.

Therefore, even with the ease and almost no-risk investment of digital distribution, EDM on wax is not leaving the genre anytime soon. Many of the labels surveyed use the earnings from their digital sales to support the expenses of pressing and distributing vinyl— to keep the credibility of the label tied to the sanctity associated with vinyl, and to service the members of the community that prefer it. Many of the labels surveyed say they barely break even on the sale of vinyl releases.

The use of piracy-prone digital sales (in essence, guaranteeing that the music will enter the uncontrolled file-“sharing” economy) to support the production of vinyl is, in its own way, a representation of the hybrid economy. The community of “true” fans (i.e., fans willing to pay for the music) benefits from the label’s willingness to “share” its profits with those who crave the genre’s the original medium. Because many of the label’s owners and managers are EDM fans themselves, they are willing to sacrifice profits from digital sales to provide hard-copy content (in the form of vinyl records) to the community. In essence,
the labels subsidize the sale of vinyl records with the easy profits of digital sales. Though the commercial element of price is involved in selling the records, the relational dimension of the sharing economy is represented by the labels’ willingness to take a hit for the sake of the community.

“You can touch, rub, hug, sleep, and eat off your piece of vinyl,” said the respondent from a New York label. No matter how high the file quality, you can’t quite hug an mp3. Keeping vinyl in the picture—both a “me-regarding” and a “thee-regarding” act of a sharing economy—is just one more way that EDM labels participate in the hybrid.
CHAPTER 6

Shortcomings of This Research and Implications for Future Research

The amount of academic literature on electronic dance music, especially in relation to copyrights, is fairly limited at this point in time. Because of this, many of my findings were perhaps hyper-specific in the realm of the greater issues of copyright, piracy, and the music industry. However, I believe that this genre of music is quickly gaining increasing prominence in pop culture, and digital media is bringing the DJ—and many other types of remixers—into the public eye. So although my findings may not provide a “solution” to the music industry at large, I believe the EDM community provides a model for other low-to-mid range sectors of the industry who are struggling to understand their role in the changing capitalism of the Internet age.

Future research should more intimately and thoroughly examine the opinions and practices of EDM labels, artists, distributors, digital sales sites, venues, blogs, and many other facets of a genre that exists primarily under the radar of pop culture.

A recently published study from Norway shows a trend that music pirates are ten times more likely to buy music than people who don’t pirate (BI Norwegian School of Management, 2009). I think it would be especially interesting to use the techniques implemented in this survey specifically with EDM fans. More empirical studies about these issues will be necessary to fully understand the ways that EDM can be an example to other genres in its support of artists and industry within a freer copyright culture.
CONCLUSION

That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density at any point, and like the air in which we breathe, move and have our physical being, incapable of confinement of exclusive appropriation. (Jefferson as cited by Lessig, 2008b, p. 290)

“Ideas,” in this sense, are what set humans apart from other animals. The expression of an idea in fixed form captures that idea for just a moment, netting down its expansive nature, at least temporarily. Still, the dissemination of this expression, and its interpretation, reinterpretation, and rebuttal are all part of the ongoing lengthening of human knowledge. If we could not build on the works of others, we could hardly build at all. Each new creative work is a collage of ideas past with ideas present, always with a bearing on ideas future. This concept of collage, of “remix,” is essential to the creation and continuation of culture.

It has become clear that current copyright protections—which criminalize people who use parts of protected works in the creation of new works—are endangering free expression by making remix a crime. Instead of the encouraging the “read/write” culture that digital media has helped to reignite, copyright laws err on the behalf of “read/only” content industries, industries that thrived and dominated on the consumerist habits of a century past. If we are to continue to encourage creative expression to the benefit of society at large, a new, global copyright standard must be set.
The creative content industries, and in particular the music industry, claim that the removal of copyright protections will deprive artists of the incentive to create. In essence, they want us to believe that changing copyright will kill music.

However, Lawrence Lessig has demonstrated how a freer copyright culture can coexist with profitability in what he has called the hybrid economy. This type of economy combines the sharing nature of entities such as Wikipedia with the commercial economies capitalism has always known, to create a hybrid economy that can support commercial needs without diminishing the power of read/write culture.

Electronic dance music is a genre that is based almost entirely on the sampling of other people’s works; it embodies the very concept of remix and read/write culture. The DJs of EDM meld together the tracks of other artists to create the “mix,” an act that is considered musically original by the genre’s proponents. The producers of EDM use technology to create tracks that marry together the new with the old, often including the old at the risk of facing criminal prosecution. This genre of music is therefore a living example of the many fruits that could be borne from a freer copyright culture. Because the genre is founded on an open economy of content—in which artists are not only allowed to use the works of other artists, but are encouraged to do so—the labels that make up this part of the music industry exemplify the potential value to be found in the hybrid economy.

Although this is not a model that could be implemented by all facets of the music industry, it is an important example to help us better understand how freer
copyright laws can support, not destroy, creative culture in the digital millennium.

Certainly the music industry as we know it is bound for big changes—with piracy always at its heels, there is little choice but to adapt. But the good news, in the words of a respondent from Fade Records, is that “music will always be.” Even if it has to be a little different than it used to be.
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MGM Studios, Inc. v. Grokster, Ltd. 545 U.S. 913 (2005)


APPENDIX A: List of Acronyms

- **CD**: compact disc
- **CTEA**: The Sonny Bono Copyright Terms Extension Act of 1998
- **DJ**: disc jockey
- **DMCA**: The Digital Millennium Copyright Act of 1998
- **EDM**: electronic dance music
- **NET**: The No Electronic Theft Act of 1997
- **RIAA**: Recording Industry Association of America
- **WIPO**: World Intellectual Property Organization
APPENDIX B: Label Survey

The following is the text of the survey that label representatives answered online. The online survey had a more interactive format, including radio buttons, check boxes, scales, etc. to make the questions easy to answer. Some questions were not considered in my analysis because of wording that was unclear or not specific enough.

Introduction:

Piracy and electronic music labels

I am asking you to answer a few questions regarding how piracy and digital downloading affect your label. Your answers will be treated as confidential if you choose.

I very much appreciate your input. Please read each item carefully and respond as thoroughly as possible.

Contact me at sarah.joy.murray@gmail.com if you have additional questions or input.

Click next to continue.

PAGE 1:

Name of label:

Affiliated labels/sublabels:

Location (city, country):

Genre(s):

PAGE 2:

Number of label releases to date:

Year of first label release:
PAGE 3:
What formats does your label release? (Mark all that apply)

- Digital/Web
- Vinyl
- CD
- Other (please describe):

PAGE 4:
For the following items, please indicate as accurately as possible how many of each type of release you sold in 2008. (Radio buttons provided to indicate sales based on scale below:)

N/A, 1-49, 50-99, 100-149, 150-199, 200-299, 300-349, 350-399, 400+, Don’t know/Don’t want to answer

**Digital/Web release**
- Albums
- EPs
- Singles
- Individual Tracks

**Vinyl release**
- Albums
- EPs
- Singles

**CD Release**
- Albums
- EPs
- Singles
PAGE 5:
Approximately how many countries does your label distribute to?
What is the biggest source of income for your label?

PAGE 6:
How has your distribution model changed since the label’s conception?

PAGE 7:
Has this label ever distributed promotional mixes, livesets, or podcasts for free?
   • Yes
   • No
If NO: Continue to the next page
If YES: How successful do you feel these mixes were compared to your for-sale releases?
How do you think these mixes affected the sales of your releases?

PAGE 8:
Many artists release and distribute mp3s of mixes, livesets, and podcasts without the affiliation of their label. How do you think the distribution of these mp3s affects your sales?

PAGE 9:
Is your label responsible for booking gigs for artists?
   • Label books gigs for artists
   • Label uses agency to book gigs for artists
   • Artists book their own gigs
IF the label books the artists, does the label receive any profit from the gig?
   • Yes, label receives profit
   • No, label receives no profit
PAGE 10:
Do you think music piracy (illegal downloading, filesharing) has harmed your label in any way?
  • Yes
  • No
Do you think that music piracy has helped your label in any way?
  • Yes
  • No
Please describe in as much detail as possible how you think music piracy has affected your label. Please include both positive and negative, if applicable:

PAGE 11:
Has your label ever released an official mix (for sale)?
  • No
  • Yes
If NO: Continue on to next page. If YES: Did you get permission to use the tracks in the mix?
  • Yes
  • No
  • I don’t know
>> If NO: Did you fear that your label might meet legal consequences for failing to secure permissions to use the tracks?
  • Yes
  • No
  • Didn’t know we needed to secure permissions
>> If YES: Did you pay licensing or other fees to be allowed to use the tracks in the mix?
  • No
  • Yes (approximately how much per track?):
PAGE 12:
What sort of promotional materials do you provide to media outlets and DJs? (choose all that apply):

- Digital/Web promos
- Vinyl promos
- CD promos
- We don’t distribute promos

PAGE 13:
Does your label take steps to make releases seem more “appealing” to buyers so they will be more likely to buy than steal? If so, please explain.

PAGE 14:
Does your label take measures to try to combat the piracy of your releases? If so, please explain.

PAGE 15:
Do you think mp3 blogs such as Little White Earbuds, Mnmlssgs, Modyfier, Boing Poum Tchak, etc. are helpful to your label?

- Yes
- No
- I don’t know

Do you think these types of blogs are hurtful to your label?

- Yes
- No
- I don’t know

What can these types of media outlets do to help your label?
PAGE 16:
For the following two pages, please use the scale listed at the top (Strongly Disagree, Disagree, Neutral, Agree, Strongly Agree, Not Applicable) to indicate how much you agree or disagree with the following statements. Please mark an answer for each statement.

• Electronic music fans are more likely to buy releases than fans of other types of music
• Electronic music fans are more likely to pirate (steal/share) releases than fans of other types of music
• Mp3 based DJ programs have reduced the demand for vinyl releases
• Artists and labels should secure permission to use tracks in an official mix
• Filesharing websites can provide my label with valuable information about the popularity of a particular release
• Digital distribution has increased the level of creativity in electronic music

PAGE 17:
Please use the scale at the top (same as above) to indicate how much you agree or disagree with the following items:

• It is easy to be successful running a record label
• It is easy to make a profit running a record label
• It is important to me that my label makes a lot of money
• My label is my primary means of subsistence
• I would like for my label to be my primary means of subsistence

PAGE 18:
What are some benefits and downfalls of web-only releases?
What are some benefits and downfalls of vinyl-only releases?

PAGE 19:
Please list any additional information or opinions you would like to share regarding the topic of piracy and electronic music in the digital age:
Do I have permission to use the information you’ve provided in association with the name of your label in my final thesis, or would you prefer for your responses to remain anonymous?

- Yes, you can use my label name
- No, please make my responses anonymous

Would you be open to further questioning on this topic in the coming weeks as I continue my research?

- Yes
- No

Is this email the best way to contact you?

- Yes
- No, please use this email:

**Conclusion:**

Thank you for sharing your time and answers! Please feel free to contact me at sarah.joy.murray@gmail.com with any further questions or comments.
APPENDIX C: Track List for Citation CD

I have included a CD that contains nine pieces of music discussed in this thesis. Because of the highly experimental nature of some of these tracks, I feel that it is helpful for the reader to hear them to gain a full understanding of the types of works that are being suppressed by current copyright law. I would like to thank the artists who created these pieces for their boundless creativity, as well as the Copyright Act of 1976 for allowing me to use these tracks as a fair use within this scholarly context.

1) “Pump up the Volume” – by M|A|R|R|S (1987), pg. 8
   Although I could not find citable verification, this song—a number one hit in the U.K.—was allegedly one of the first legal cases revolving around an unlicensed sample.

   This is my favorite track from Night Ripper. It’s a great example of “mash-up” and of Gillis’ genius in reinventing so many songs that I grew up with in a new context.

3) “100 Miles and Runnin’” – N.W.A. (1990), pg. 26
   This track was the crux of the Bridgeport Music case, in which N.W.A.’s sample of Funkadelic’s “Get Off Your Ass and Jam” was not considered a fair use.

4) “Pretty Woman” – 2 Live Crew (1989), pg. 26
   This track was the crux of the Campbell case, in which 2 Live Crew’s parody of Roy Orbison’s “Oh, Pretty Woman” was not considered a fair use. (Well, it was considered fair use in the original trial, but the Supreme Court overturned the decision.)

5) “Gold Teeth Thief, Part A” – DJ/Rupture (2001), pg. 41
   Both parts of this release are available for download at the link provided in the notes of this thesis. Rupture did go on to produce an original album, “Special Gunpowder,” in 2005. He recently released an amazing licensed mix, Uproot, for sale on Agriculture records.

6) “Steal My Heart feat. Crawford” – Paul Frick (2008), pg. 43
   You can download the dub version of this track for free on Little White Earbuds: http://www.littlewhiteearbuds.com/download-paul-frick-steal-my-heart-dub-version/

7) “Jelly Belly feat. Grace” – Konsens (Unknown year), pg. 44
   This is the song that Frick uses for the main vocal sample in “Steal My Heart.”

8) “Day” – Omar S (2004), pg. 43
   Omar S is a popular producer and DJ from Detroit. This track is another great example of a read/write combination of new and old content.

9) “Come See About Me” – The Supremes (1964), pg. 43
   Omar S’s aunt was one of The Supremes, which might explain why he sampled this track for the vocals in “Day.”
NOTES

In April of 2009, four of the administrators from BitTorrent super-site Pirate Bay were convicted of copyright violations for facilitating piracy. Although these convictions are viewed as a huge victory for the industry, the website is still functional and active, raising more questions than ever about the effectiveness of piracy prosecution.

This article in *Time* beings with an invaluable quote from Mark Twain which I cannot help but include: “Only one thing is impossible for God: to find any sense in any copyright law on the planet ... Whenever a copyright law is to be made or altered, then the idiots assemble.”

The U.S. had refused to become a party for 102 years because of the major changes it would require for U.S. copyright law: inclusion of moral rights, removal of requirement for copyright registration, and elimination of the mandatory copyright notice.

See *Eldred v. Ashcroft* (2003) to learn about the Supreme Court’s decision regarding the power of Congress to extend copyright within the bounds of the First Amendment.

See *Harper & Row Publishers, Inc. v. Nation Enterprises* (1985) for a definitive example of the fair use claim failing the defendant in court. Also, for a fun example of a “fair use” video remix, check out Eric Faden’s “A Fair(y) Use Tale” at http://www.youtube.com/watch?v=CJn_jC4FND0

This documentary “Good copy, Bad Copy,” available for free download at http://www.goodcopybadcopy.net

This mix is still available for download at http://negrophonic.com/goldteeththief.htm

You can steam the track learn more about how Frick made it here: http://modyfier-modifying.blogspot.com/2009/01/blog-post_08.html

As a matter of fact, in 2007 there was a huge debate on the site’s forums because a review of a release on one of the advertising labels was edited after it was first posted. The original review was more negative, so readers believed that Resident Advisor was influenced by the label to change the review. This sparked an uprising of sorts that resulted in the resignation of some of the sites editors. This shows the careful balance that hybrid economies must maintain to encourage their communities to continue submitting content for the benefit of all.