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Who's really doing the stealing? How the music industry's pathological pursuit of profit and power robs us of innovation

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Abstract: Open access to knowledge is the foundation of learning and discovery in higher education. Yet in Australian music faculties, the use of essential material is regulated and commercialized by record companies and music publishing houses. This paper details the impact of this framework through the eyes of music academics and students by making equity parallels with traditional academic arrangements. It outlines aspects of originality at the coalface while also revealing persistent blocks to creativity and the growth of identity. Through this examination the paper suggests alternatives for music education, research and development to be fully recognised as part of any truly national Australian innovation system.

In situ

Imagine an academic environment where most writing cannot be cited without fear of litigation and that a slim body of 'approved' work is subject to expensive fees, complex restrictions, and a tedious audit trail. Imagine that such material is limited to popular culture and tabloid press and that even here, certain star journalism is off-limits. Cutting edge investigations or fringe publications are not allowed to be read, copied or distributed for the purposes of teaching or research. In-text quotations are prohibited in academic work, from undergraduate essays to scholarly publications. If university populations wish to access literature not available in these provisions, individuals must purchase this material for personal use only. Imagine such an Orwellian university system in this age of the so-called knowledge society and the creative workforce. Welcome to the 21st century music faculty.

Music is practice-based. Its essence and publications are not best represented in text, but rather, in 'thinking through making' (Fitzgerald, 2007): through concerts, specialized scores and most recently – in sound recordings. While this now substantial body of knowledge has the capacity to provide a powerful reference point for university students and academics alike, it is in fact, subject to a censorship regime exactly as indicated above.

This paper will outline the corporate imperatives and the regulation instruments that frame this somewhat surreal setting. It will explore music licensing policies in action and detail how they impede the development of Australian musicians at one of the country's oldest and largest music institutions, the Queensland Conservatorium. Finally, the paper will conclude with suggestions for knowledge transfer arrangements that are more equitably aligned with other academic disciplines and that are better suited to the production of quality research and authentic learning in the music sector.

Nice space, a shame about the personality

Since the dot-com bubble at the turn of the millennium, it has come to pass that the humble MP3 file underpins the earliest public understanding of the creative potential of the Internet. Web 2.0 has now become synonymous with file sharing, social networks and value-adding around all kinds of digital objects in e-space: from works including music, photography and film through to newspapers, journals, books and data sets. In parallel, most are also aware of the highly publicised offensives of

media industries who seek out and prosecute copyright infringements, attempting to stem the flow with the cry 'file sharing is a crime'.

Music copyright laws were originally intended to protect the intellectual property (IP) rights of creators. In practice however, predatory behaviour by record companies and music publishers returns little reward to new artists (Albini, 1997), seeks to ever-extend the copyright ownership period of boomer era contracts (currently 70 years plus the life of the author), and is more intent on re-licensing and extracting the maximum return from earlier catalogues rather than to invest in the development of future talent (Cadd & Morris, 2007). Big media uses the law to control creativity and lock down innovation (Lessig, 2004) in its pursuit of profit and power as compellingly described in the documentary film, *The Corporation* (Achbar & Simpson, 2004):

To assess the "personality" of the corporate "person," a checklist is employed, using diagnostic criteria of the World Health Organization and the standard diagnostic tool of psychiatrists and psychologists. The operational principles of the corporation give it a highly anti-social "personality": it is self-interested, inherently amoral, callous and deceitful; it breaches social and legal standards to get its way; it does not suffer from guilt, yet it can mimic the human qualities of empathy, caring and altruism . . . a disturbing diagnosis is delivered: the institutional embodiment of laissez-faire capitalism fully meets the diagnostic criteria of a "psychopath." (Synopsis; para. 3).

Amusing, yet chillingly close to the truth, such behaviour is a fundamental obstruction to the nurturing of professional artists. Blindly adopted by governments and one-size-fits-all university policy makers, corporate 'ownership' of music artefacts aggressively limits higher education access to knowledge through copyright law. Consider the effect of this prohibition on developing craft, creativity, innovation and the prosperity of future Australian music-making in the following examples of what now occurs in university music faculties.

Can't start a fire without a spark

Recorded music licensing costs in Australian universities are payable to four collection societies: the Australasian Performing Right Association (APRA); the Australasian Mechanical Copyright Owners Society (AMCOS); the Phonographic Performance Company of Australia (PPCA); and the Australian Record Industry Association (ARIA). While substantial fees are paid annually, these are levied on a per-institution basis. The licences provide limited private listening and local on-demand audio streaming, while expressly forbidding any copying or sharing of media-bases across the sector.

Music copyright laws are imposed on learning, teaching and research under the same restrictions that apply to radio stations, night-clubs and bars:

Individual academics must undertake compliance checks against the licence database on a piece-by-piece basis to ensure that given music titles are 'legal'. Despite the assertions that "the four societies between them control about 95% of recorded music available in Australia" (Griffith University, 2006; para. 2), coalface practice reveals that up to 80% of desirable and/or less-mainstream material is unavailable through these arrangements. This includes works from classical, jazz, world, experimental and other culturally diverse traditions. If any such music is utilised, the university may be subject to litigation from other copyright holders not included in the music societies license cover.

The core of approved licences are centred around popular culture, therefore one might assume that the catalogue would be fit-for-purpose in popular music enquiry. Not so. This has proved to be artistically limited because the use of music from The Beatles, The Rolling Stones, Queen or ACDC is prohibited. Popular music studies

therefore lack the academic scaffolding to analyse these recordings in order to develop craft, to develop wider cultural and historical understanding and to innovate by 'building on the shoulders of giants'.

In classical music, creativity and the application of craft come into play when performing artists put their knowledge to work in the elucidation of major works on the stage. This too is limited by corporate compliance. Access to seemingly out-of-copyright historical pieces may be restricted through the use of music scores owned by publishing houses. Scores must be secured individually, attract usage fees, and have terms which variously limit photocopying by orchestras, public performances, sound recordings and their replication.

In the case of jazz or rhythm and blues, excellence demands both technical 'chops' and the application of high level improvisational skills. Again, the use of classic forms or 'charts' (scores) is locked down by the publisher. Specific recordings of 'standards' by jazz greats are limited in their distribution, often impossible to obtain, or in the case of new recordings by music faculty ensembles, cannot be redistributed to contribute to this body of knowledge.

Commons sense

The only space that remains truly 'open' is for 100% original work, composed, performed and recorded by university staff and students. This has provided logical opportunities which are useful to briefly explore here, but as is also argued, do not deliver any 'magic bullet'.

The Queensland Conservatorium profiles and leverages an innate participatory culture (Jenkins et al., 2007) by borrowing from web 2.0 methodologies. Radio IMERSD (2006) is an open access platform which allows for students, staff and visitors to post original digital works as pod/vodcasts, thus creating public value by more visibly engaging in the faculty's teaching and research aspirations. A second Net Radio component delivers streaming audio to university cohorts, limited by commercial music licensing arrangements where this applies. On-line social networks (MDB, 2005) have become an integral part of a blended learning approach, a 'hidden curriculum' (Draper & Hitchcock, forthcoming) which allows for peer review, community knowledge and a historical record to be maintained.

Aspects of IP in these arrangements come together in a number of ways through the use of Creative Commons (CC) licences. Experience indicates that young musicians are notoriously disinterested in IP, much preferring to engage in creativity rather than in copyright law. Consequently, artists are often 'ripped off', are poorly prepared and do not fully understand what they are signing when offered stardom in a contract (Albini, 1997). CC licences have provided a efficient pathway into understanding the basic rights of creators and have been successfully used in Conservatorium classes and projects (Draper, 2006). CC helps students to appreciate different licensing models and value-adding that might benefit creative endeavours, while opening healthy discussion about appropriation, 'remix', control and fair use (in the case of Radio IMERSD, by granting the university certain rights under which to publish their work). Finally, students develop judgement about aspects of self-commercialisation, the wider entertainment business, ethics and/or corruption.

Music eats itself

However, while often providing admirable examples of creativity and tenacity, these approaches still fail to 'deliver the goods'. A conservatoire aims to train musicians at the highest level with its graduates aspiring to be professional artists of the future. Musicians cannot be truly creative in the field without learning the field (Beghetto & Kaufman, 2007). For example, peer review has proven to be a powerful learning

tool, but in a closed cohort of faculty peers, artists are often 'dancing in the dark'—the process becomes self-referential. Not only does musicianship require quality instruction and extended, deliberate practice, most critically it requires "not just copying but rather a transformation or reorganization of incoming information" (Ibid, 2007; p. 73). Corporate censorship of music publications significantly restricts the range of available information and in turn, limits its transfer as knowledge. Left to their own devices, students turn to iPods and MySpace(s) but are limited by experience, historical context and the control of mass media culture.

Music licensing in universities reflects a catalogue that is dominated by The Big Four international labels – EMI, Sony BMG, Universal and Warner. Many local productions can therefore comprise derivative works and mimic what is marketed as 'quality' in (often American) popular culture, the net effect prophetically outlined in Australia's first and only national cultural policy document, Creative Nation (Australian Government, 1994). Its thrust was much in tune with the then rising wave of the dot-com boom:

Many Australians say that just now Australian culture is under unprecedented threat. The revolution in information technology and the wave of global mass culture potentially threatens that which is distinctly our own. In doing so it threatens our identity and the opportunities this and future generations will have for intellectual and artistic growth and self-expression . . . [we must] ensure that what used to be called a cultural desert does not become a sea of globalised and homogenised mediocrity (Introduction, para. 13)

A quest for the acceleration of creativity and innovation has become core rhetoric for governments, industry and higher education alike. Therefore in developing innovation policy for the 21st century, as Brian Fitzgerald wrote recently, "we need to think closely about the shape and role of copyright law and policy" (2008; para. 12). Further, what then is the role (in this case) for music institutions and what will be the policy frameworks that are appropriate to teaching, learning, research and the building of creative capital in this sector?

How shift happens

The Federal Government has the opportunity to respond to these imperatives in its reviews of the National Innovation System, the National Collaborative Research Infrastructure Strategy roadmap, and in the Australia 2020 Summit (the latter puzzlingly lacking any reference to the music industry, an oversight which presumably will be addressed by the Minister for the Arts). A new direction for innovation in music-making must include an IP framework which encourages, rewards and includes rather than locks down and punishes.

Progress could be made even under the current licensing arrangements: all universities pay the same fees, but media is restricted to on-campus use. Therefore resources should be linked, where just as in other academic disciplines, an overlay repository could serve the benefits of national access to essential material. This structure could incorporate web 2.0 mechanisms for creative interaction and peer review of new original works, thus enhancing the poorly understood and still unleveraged potential of the Strand Report to the Federal Government on Research in the Creative Arts (Strand, 1998).

Any 'education revolution' might then consider the next stage beyond the university sector in the relationship of these resources to schools and TAFE. Beyond this, a framework to engage with open access e-publishing, external review and the wider public. Clearly, on the industry side of the equation if there is a will, there are ways forward. This is now evident in initiatives in China, India, and Canada around blanket music licensing, indirect advertising revenues and other partnerships (Friedman, 2005). Reminiscent of the drama that unfolded in the early days of radio

and free broadcasts (Moorefield, 2005), industry is slowly coming to terms with the Internet through arrangements for artists' returns that better suit the model.

Coda

On the shores of another sea, an old potter retires. His eyes cloud over, his hands tremble, the hour to say goodbye has arrived. Then the ceremony of initiation begins: the old potter offers the young potter his best piece. As tradition dictates among the Indians of northwest America, the outgoing artist gives his greatest work to the incoming one. And the young potter doesn't keep that perfect vase to contemplate or admire: he smashes it on the ground, breaks it into a thousand pieces, picks up the pieces, and incorporates them into his own clay. (Buining, cited in Jackson, 2006; p. 214)

In academia too, remix is the very foundation of scholarly research and student learning, where high quality examples of discovery through 'building on the shoulders of giants' are treasured and rewarded. In Gutenberg's world this is self-evident. In the digital media world however, censorship of culture as the property of The Corporation not only pathologically limits its own future prosperity, but ultimately robs us all of innovation.

The Australia 2020 Summit press release offers that "the Government's interest is in harnessing and harvesting ideas from the community that are capable of being shaped into concrete policy actions" (Australian Government, 2008; About the Summit, para. 9). The web 2.0 phenomenon continues to demonstrate the possibilities in what Stanford University's Lawrence Lessig terms Free Culture (2004): in democracy, in creativity, in new business models and in global innovation. Australia's innovation system already possesses significant broadband infrastructure across its universities which is crippled less by lack of speed (for the moment), but more so through lack of judgement in response to the extra-national domination of copyright law. It is simply a matter of legislation.

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