

Title of Paper: Copyright and Creativity: Changing Paradigms and the Implications for Intellectual Property and the Music Industry.

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Abstract:

Copyright law is entangled with the romantic conception of the creative process. So is the music industry. This romantic conception has been challenged more recently to the point that there has been a paradigmatic shift of the conception of creative activity within the research community. This change has not as yet occurred for popular conceptions of creativity nor has the law changed its basis. Once these older views are substituted with the recent work on cultural production and confluence models of creativity, the implication for rights holders in the music industry may or may not be significant dependent on the pragmatics for the industry and the general acceptance of these recent creativity research findings. Examples of the changing structures of intellectual property and what this shift might mean for songwriters in particular, can be drawn from the struggles of Lindy Morrison, former *Go-Betweens* drummer, and the attitude to songwriting developed by writers such as Paul Mac and Daniel Johns.

## Copyright and Creativity: Changing Paradigms and the Implications for Intellectual Property and the Music Industry.

Phillip McIntyre, University of Newcastle.

It might not be what you want to hear, especially if you're a romantic at heart, but the music industry is financially dependent for its existence 'on the legal regulation of the ownership and licensing of a great variety of musical works' (Frith, 2001:32). The fact is that the use of the legal rights held by copyright holders within the music industry has generated significant amounts of money. A percentage of it has been applied as patronage for those engaging in various forms of creative activity including songwriting and performing. And yet, despite these monetary connections with the central creative acts in music making, creativity is 'one of the most important yet unexplored issues in the study of popular music' (Hesmondalgh and Negus, 2002:178). The interesting corollary with these ideas is that if the notions of creativity that underpin current copyright laws are not supportable by research and are proven to be, instead, simply seductive myths or, as Margaret Boden contends, 'imaginative constructions, whose function is to express the values, assuage the fears, and endorse the practices of the community that celebrates them' (2004:14), where does that leave the laws themselves? As Keith Sawyer argues 'these laws are based on obsolete myths about creativity – that it's the unique possession of a single individual, and that every component of a creative product is completely novel. But most creative products are collaboratively created, and most of them are built out of existing ideas and components' (2006:311). If this is the case where does this situation also leave the artists and rights holders who stand to benefit most from either upholding or changing these laws?

### **CHANGING PARADIGMS: COPYRIGHT, ROMANTICISM AND CONFLUENCE MODELS OF CREATIVITY**

The Copyright Act of Australia, in a manner similar to other copyright acts world wide, grants a rights holder, such as a music publisher or songwriter, a bundle of exclusive rights apart from the right to copy. According to the Australian Copyright Council (ACC), if a person or institutional entity owns a copyright in a work they are

exclusively entitled to: reproduce the work in a material form, for example by recording a performance, filming it, photocopying the work, copying it by hand, or scanning it onto a computer disk; make copies of the work available for the first time, i.e. publish it; make the work available to the public through fax, email, broadcast, via cable to subscribers and place it on the internet; adapt the work i.e. arrange it in a different way to the way it was originally written as an adaptation or version; and perform it live to an audience (ACC, 2006:online).

The owner of a copyright can also allow the intellectual property to be used by another person. This situation is analogous to a landlord renting an apartment for an occupier's use who pays a fee for this use of that apartment. Similarly, a rights holder, in return for allowing someone else to use the copyright, is paid a fee which is called a royalty. This royalty can be thought of as a percentage of derived income paid by the person who is allowed to use the work to the rights holder i.e. the copyright owner. Organisations such as the Australasian Performing Rights Association (APRA) act as an agent collecting and distributing income to copyright holders such as songwriters and their publishers who have a percentage of the rights in the work assigned to them in return for promoting the song and administering the income generated from it.

To complicate matters a little more there are rights other than the rights in the work involved in a music recording. Not only can a person own the intellectual and intangible work, the song, but they can also own the medium on which that work is carried. These rights are called mechanical rights. The word 'mechanical' refers to the carrying device; the tangible medium which the work is carried on. It is the 'thing' that can be purchased. This can be an LP, a cassette, CD, or mp3 file. It may also be a signal received direct from some central source via satellite or over the phone. The term 'mechanical copyright' dates back to the early 1900's, when recordings were first made. This was a 'mechanical' process and a 'mechanical royalty' was due to the copyright owners for every sale of a mechanical reproduction. The Australian Mechanical Copyright Owners Society (AMCOS) administers these rights, usually on behalf of record companies.

It should then be clear that property in the work is distinct from the property in the recording. The ability to buy, sell, lease and trade these intellectual property rights has

been crucial to the financial well being of the music industry. In a recent report entitled *Copyright Industries in the US Economy: The 2000 Report* it was asserted that U.S. copyright industries:

contribute more to the U.S. economy and employ more workers than any single manufacturing sector and grow at a higher rate than the U.S. economy as a whole. In 1999 the total copyright industries contributed approximately \$[US]677.9 billion (up nearly 10% from the previous year) to the U.S. economy, accounting for approximately 7.33% of the GDP (RIAA,2003:online).

Additionally the Australian Recording Industry Association (ARIA) reported as of June 2006 that ‘recorded music sales in Australia increased by over \$12 million, or 5.8 percent, to over \$224 million in the six months to June 2006’ (ARIA, 2006:online) when compared to the corresponding period the year prior. With these sorts of financial imperatives at play the protection of money making intellectual property rights has become a significant issue. However, it has been argued that the historical development of the notion of intellectual property and the copyright laws that govern it, is deeply entwined with the parallel development of the Romantic notion of artists as free-willed individuals self-directed and unconstrained in their work (Petrie, 1991). As Lionel Bently asserts, ‘copyright law, romantic authorship and the overpowering significance of the author were ‘born together’ (Bently, 1994:974).

Romantic conceptions of creativity developed slowly post-Renaissance and adapted the related inspirational ideas of creativity. The inspirational view has its antecedents in both Judeo-Christian ideas and Greek thought. Plato’s (1937) musings on the muse and the idea that a creator must be undisciplined and almost mad while waiting to be divinely inspired are still with us today. While the Romantic view is not so sharply drawn it also claims that creativity has a lot to do with the extraordinary. From the Kantian perspective (Petrie, 1991), where the field of aesthetics has linked itself to the notion of individual creative geniuses, there is a disconnection with the biblical or Platonic idea that the source of a creator’s genius comes from a divine external source. Kant instead insisted that the locus of creativity could be found internally in the individual agent. He argued that;

creation of art is not only independent of prior procedures or rules, but it is independent of all conditions other than spontaneous activity made possible through faculties in the creators consciousness (in Rothenberg & Hausmann, 1976:29).

This move away from creativity being driven by an external force working on the individual, toward an emphasis on the unknowable internal landscape of the creator, was a significant shift and has served its part in the ongoing rejection of rationalism.

Rationalism, seen as ‘the belief that creativity is generated by the conscious, deliberating, intelligent, rational, mind’ (Sawyer, 2006:15) owes a large part of its heritage to Aristotle. His conceptions travelled through to ‘the European Renaissance, when reason was valued above all’ (Sawyer, 2006:15). The following development of romanticism (Watson, 2005:606-623) was a rejection of, and a reaction to, these ideas (Negus and Pickering, 2004:7). It developed around the same time as the introduction of the Statute of Anne, the precursor to most modern copyright law (Samuels, 2000:11-13), in the early 1700s. In opposing rationalism with the idea that ‘creativity bubbles up from an irrational unconscious, and that rational deliberation interferes with the creative process’ (Sawyer, 2006:15) the Romantics shifted the emphasis towards individual self expression that was motivated by an ‘inner muse that was beyond conscious control’ (ibid:16). It eventually lead to the stereotypical view of the quasi-neurotic artist (Freud 1976, Zolberg 1990) existing in their garret waiting for the muse to arrive or inspiration to strike so that they can freely express their personal vision. These ideas have the individual creator, the unconstrained agent, squarely at the heart of the creative process.

These inspirational and romantic notions are seen in the writings of music journalists who reinforce the myths both the industry and the performers build around themselves (Shuker, 1994). These myths are echoed by the audiences of all popular music genres in the west who, along with the industry, tend to oppose art with commerce (Negus, 1996) and pursue a logic that tries to sustain the myths in order to proclaim and maintain valid cultural territory (Stokes,

1994). The major problem is that recent conceptions of creativity reject out of hand these romantic ideas (Sternberg 1999, Boden 2004). Coombes argues that;

Perhaps no area of human creativity relies more heavily upon appropriation and allusion, borrowing and imitation, sampling and intertextual commentary than music, nor any area where the mythic figure of the creative genius composing in the absence of all external influence is more absurd (Coombes in Demers, 2006:ix).

The absurdity of the romantic ideal is difficult to sustain when one examines the lives of those particular social and cultural grouping considered to be creative. Post-sixties rock artists, for example, are often seen as free-willed agents heroically fighting the structures of the industry to maintain their 'creative freedom' (Negus, 1996). Peter Wicke, however, has claimed, while talking solely about rock music, that:

music as the individual expression of an outstanding artistic personality is *de facto* impossible. Rock is a collective means of expression, to which the individual musician can only contribute in a collective activity with others, with technicians, producers and, of course, with other musicians. (Wicke, 1990:15).

Keith Negus and Michael Pickering concur arguing that at a certain period of rock music's development the music industry, particularly in Britain, was:

re-organised around a series of dichotomies in which rock artists were favoured over pop or soul performers; albums were favoured over singles; and self-contained bands or solo artists who were judged, from a position derived from Romanticism, to express themselves through writing their own songs, were favoured over the more collaborative ways in which singers or groups of performers have, for many years, worked with arrangers, session musicians and songwriters in putting together a package (2004:54-55).

These ideas were transferred not only to other genres but also, as many others were, to the Australian musical context. Building upon the Romantic notions of authorship, the music industry thus proceeded to act as though these constructions were in fact true. The law also proceeded in this manner for ‘there can be little doubt that, since 1800, cultural assumptions about authorship have informed the development of copyright law’ (Bently, 1994:979). If the latest research into creativity is added to this mix of myth and construction then a modification of the way creators relate to these institutional constructions may also be needed.

Despite its importance research into this area of creativity in popular music is particularly sparse (Shuker, 1994:99) and it appears that a Romantic perspective is somewhat difficult to dislodge in popular music studies. Simon Frith’s large and influential body of work, particularly his early writing (e.g. 1978), is an example here. Without a considered and rational approach to creativity, which Keith Negus and Michael Pickering see as ‘one of the most important yet unexplored issues in the study of popular music’ (2002:179), there is a certain difficulty in circumventing many of the common myths and misconceptions. Some research specifically focused on creativity, songwriting and popular music (e.g. Toynbee 2000, McIntyre 2006) is only now beginning to appear.

Since the 1950s there has been a concerted effort in the broader research community to understand at the empirical and rational level what constitutes creativity. During this period romanticism was quickly rejected by most researchers (Bailin 1988, Zolberg 1990, Stillinger 1991, Weisberg 1993, Wolff 1993, Negus 1996, Howe 1999, Sternberg 1999, Boden 2004, Pope 2005) and mystical or metaphysical approaches were discredited as sources of truth about creativity (Sternberg 1999: 4-5). There is now a considerable research legacy in this area that includes disciplines such as the various subfields of psychology (e.g. Weisberg 1993, Gardner 1993, Runco & Pritzker 1999, Sternberg 1999, Boden 2004), sociology (e.g. Zolberg 1990, Wolff, 1993, Bourdieu 1993), education (Bailin 1988), literary theory (e.g. Pope 2005) and communication and media studies (e.g. Negus & Pickering 2004).

However, the Hegelian synthesis of many of these ideas may be found in attempts to resolve the agency/structure dichotomy (Giddens 1979, Bourdieu 1993, Archer 2003).

Realising that unidisciplinary approaches tend to give ‘an incomplete explanation of the phenomenon’ (Sternberg 1999:9) there have been various confluence models of creativity suggested. As Sternberg asserts, ‘many recent works on creativity hypothesise that multiple components must converge for creativity to occur’ (1999:10). This so-called confluence school of thought has generated a number of models (Amabile 1983, Gruber 1988, Sternberg & Lubart 1991). It is argued here that the systems model of creativity (Csikszentmihalyi, 1988, 1997, 1999), coupled with the recent work on cultural production by Pierre Bourdieu (1993 & 1996), could quite readily replace the older Ptolemaic, or person-centred views seen in romanticism, with a more Copernican conception where the individual agent is still seen to engage in creative activity but they are conceived as agents who are part of a much larger structured system in operation (Csikszentmihalyi, 1997).

Csikszentmihalyi argues that creativity does not emanate from an individual alone. For creative activity to take place there must be an interaction between a field, domain and individual. Csikszentmihalyi asserts that ‘the easiest way to define a field is to say that it includes all those who can affect the structure of a domain’ (in Sternberg, 1988:330). The ‘domain’ is the symbol system that the person and others working in the area utilise. It is the culture, the conventions, the knowledges the person is immersed in. The individual is the person who understands and manipulates the domain.

For creativity to occur, a set of rules and practices must be transmitted from the domain to the individual. The individual must then produce a novel variation in the content of the domain. The variation then must be selected by the field for inclusion in the domain (Csikszentmihalyi, 1999:315).

The point at which creativity occurs is purely arbitrary as the relationships between the three components of the system, the field, domain and individual, are interrelated in a set of dynamic links of circular causality. Each of the components of the system affects the others and is also affected by them in turn (Csikszentmihalyi, 1988:329).



This rational view offers a more pragmatic position than that espoused by romantic or inspirationist ideas. It gives room to re-instate the productive agent, as opposed to agreeing to their rhetorical disappearance in some poststructuralist arguments (Barthes 1977, Foucault) as it sees the creative individual as both constrained and enabled by the structures they engage with without returning to the myths of the heroic and inspired genius. The adoption of the systems model not only recognises the intertextual influence of pre-existing works and the traditions a creative individual must draw on to be productive but it also recognises the collaborative input of members of the field to the creative work. What this shift in thinking would mean for those involved in songwriting, can be drawn from the struggles of Lindy Morrison, former *Go-Betweens*' drummer, and the process of songwriting developed by writers such as Daniel Johns and Paul Mac.

## **CASE STUDIES OF SONGWRITERS**

Paul Mac is one of the more successful electronic dance music artists in Australia and is a conservatorium trained musician. Daniel Johns is arguably the most currently successful rock musician in Australia. They recently joined each other to work in The Dissociatives. Both songwriters are signed to the same record company, i.e. Eleven, and they describe their collaborative process as complementary. Mac suggests that his formal training has been useful in harnessing the informally acquired songwriting techniques of Daniel Johns and conversely both recognise that Johns has contributed a more filmic approach to arranging and orchestration. Mac asserts that the songwriting is a 'really nice combination of those two spaces. You get the best of both worlds' (in McIntyre, 2004:6).

With a strong body of work already behind each of them it is relatively easy to discern a continuing development of their own dance and rock traditions in the new work developed for the Dissociatives. Johns' song structures have proceeded over the course of his career, however, to become less formal in traditional popular songwriting terms. They have, instead, taken on the formalities of film soundtracks and both writers share an interest in film music. Despite this interest their work in the Dissociatives is tightly structured and fits quite readily within the pop song tradition. As Johns declares:

I had a real aversion to pop structures until I met Paul and Paul kind of introduced me to how beautiful they can be providing it's an interesting song. I always thought that if you structure a song in that way you were conforming and it no longer was of any artistic relevance. Paul showed me that it can actually be of more artistic relevance because it's more palatable to people and you can open their minds to different forms of melody and so on. That is one of the most valuable lessons I've learnt from working with Paul (in McIntyre, 2004:6).

Each seems to have discovered that the tighter the limits of the domain, the symbol system they utilise, the more the individual must work to produce points of difference and interest in the work. It is an approach that is both constraining and enabling to their process. Mac asserts that;

Through all the periods there's always been different forms and they're kind of there for a reason. They work, you know. It's what you actually do with the forms, how you twist it, that makes stuff interesting...Just treat it as a structure. I think that when Dan and I were writing this stuff we were writing a song a day. It was nice to have this kind of format of intro/verse/chorus/middle-eight/outro and come up with the bits and there you go, there's song. It's just such a driving form (in McIntyre, 2004:6-7).

This validation of the songwriting tradition is laudable but when that tradition was dominated by the publishing industry songwriters were seen as separate entities to performers and orchestrators. The songwriter's task was to simply supply melody, words and chords for performers to use. Once sheet music was overtaken by recordings as the predominant way audiences bought music the perception of what it was to write a song also changed (McIntyre, 2001:106). The emphasis in recordings moved to the sounds that could be made; sounds that were attractive to listeners. But the copyright world still sees songwriting in early sheet music terms. In this somewhat archaic and predominantly Eurocentric world (Toynbee, 2006) Paul Mac, who primarily contributed structures and arrangements, instrumentation and orchestration to support the melody and lyric provided by Johns, would simply be described as an arranger and Johns would be described as the songwriter, in as much as he produced

the lyric and melody and Mac provided the bed that those elements sit on. 'That's not quite accurate' Mac insists.

We both wrote the music from the chords and everything. But, I think those definitions are so old-fashioned. I think it was James Brown's quote 'well hang on, it's such a white way of looking at it.' You can't copyright a waveline or a drum beat because it's always the melody that's deemed to be the thing of value. I think songwriting is not just melody, words and chords. It's also a headspace. That's the lesson of techno. So I think whoever's programming sounds, if you're doing that, I think it's of equal value. So I think we've looked at it as a sort of new way of sharing the songwriting (in McIntyre, 2004:7).

It hasn't been as easy, however, for Lindy Morrison to make those declarations and succeed in being paid for her input to the songwriting of her previously successful band. Morrison, formerly the drummer who supplied the beats for the Go Betweens, has been engaged in ongoing legal activity with her former colleagues. She states that:

we would go into a rehearsal room and simply jam on four chords, we would jam on them over and over again, doing different rhythms and different feels and Robert or Grant would put a melody on top while we were jamming over and over again and the riff, the guitar riff, if we used one... for instance a song that definitely came from the drum beat was *Twin Layers of Lightning*... I came up with a two bar drum pattern and the guitar riff was based around that pattern and the feel of the song was definitely based around the drum beat. I doubt very much whether he would've come up with that song without the drum beat. It just wouldn't have happened. But then they wouldn't have come up with a lot of the songs if they hadn't had me to sit there playing over and over again for hours (Morrison in McIntyre, 2003:111-112).

Despite her collaborative creative contribution Morrison contends that attempting to include performer's names on APRA forms, the forms that allow the payment of royalties to rights holders, meets with considerable resistance. She states that:

I've often done panels with people from APRA and if you say that in front of people from APRA they really go off their heads... Because they'll always say 'the only person who's entitled to publishing is the person who wrote the melody and the person who wrote the lyrics. There's no-one else who should be included,' you know, 'we won't hear of it!'. Panel after panel the same thing will happen (in McIntyre 2001:104).

As a result of not being recognised as part of the writing team, despite fulfilling what Paul Mac describes as the 'new way' to look at and share the songwriting, nor most significantly having a writer's agreement in place, Morrison has been fighting through her activities as the Artist Director of the Phonographic Performers Copyright Association (PPCA) and elsewhere to gain some financial redress for her creative efforts.

## **IMPLICATIONS OF THE CHANGING CONCEPTIONS OF CREATIVITY**

However, as Lionel Bently points out, authorship in law requires 'some expression of personality rather than mere sweat of the brow' (Bently, 1994:977). As such the courts, in Bently's case those in the U.S., still conceive of creativity in the romantic sense. This is evidenced with the introduction of moral rights; rights premised on the idea of the self-expressive free-willed artists, of the Kantian and Romantic kind, have a right to have what is believed to be *their* work recognised and not have its integrity tampered with.

The instance of moral rights is but one example of how Romantic conception of authorship is displaying a literally unprecedented measure of ideological autonomy in legal context. Recent copyright decisions show that even as scholars of literary studies elaborate a far-reaching critique of the received Romantic concept of authorship, American lawyers are reaching out to embrace the dull range of its implications' (in Bently, 1994:977).

But if the nexus between copyright and romantic authorship, and thus property rights, cannot be broken by arguments from the poststructuralist perspective, as Bentley argues, what might happen when the research on creativity, which is increasingly driving towards the idea of confluence as exemplified in the systems model, overtakes the predominantly romantic cultural assumptions that have driven copyright law? More than likely very little as the systems model of creativity seems to be more compatible with individual ideas of authorship than the disappearance of them suggested by the poststructuralist position. If the law can ‘invent’ authors where none exist, such as in the case of computer generated works, then recognising a conception of creativity that still includes individuals, albeit in a slightly modified and less Ptolemaic way, would not be too difficult. But does this mean that the law could not be adapted to suit these new conceptions? Certainly not. It may be that, as Siva Vaidhyanathan argues, ‘a leaky copyright system works best’ (2001:184) since the case is that copyright law has needed to be malleable, changing and adapting as the contexts it has operated in have changed. The attempts to deny remuneration to lyric writers in Britain in the early twentieth century (Frith, 1990) is a case in point. While copyright cases tend to revolve around ‘the important and distinctive parts of the musical work’ (Ian McDonald cited in McIntyre, 2001:104), this creates an openness in the law which ‘recognises the variety of approaches a songwriter can use when creating their works’ (McIntyre, 2001:105). This adaptability has worked pragmatically to simplify questions of property rights (ibid) and was recently seen in operation in the Brooker and Reid versus Fisher case resolved in December 2006 in the British High Court<sup>1</sup>. As Bentley argues, even though copyright may be built on an image of romantic creative authorship and there is a common assumption that it is principally in place to protect the rights of creators, the emphasis in the law has been more predominantly geared towards a way to recognise the legal privileges of

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<sup>1</sup> The Brooker & Reid v Fisher case was instigated by Matthew Fisher, the former organist in sixties rock band Procol Harum, against the recognised songwriters of the band’s classic rock hit *A Whiter Shade of Pale*, Gary Brooker and Keith Reid. Fisher was making a claim on a portion of the songwriter’s royalties as he argued that the notes he played on the organ for the recording were in fact a crucial element of the song and these entitled him to be recognised as a co-writer. The British High Court agreed and ruled that 40% of the future (not past) royalties from the song are now to be allocated to Fisher. The resolution of the case appears to be causing some concern amongst songwriters as it appears to establish a precedent for musicians and performers to make wholesale claims on what have been traditionally songwriter’s royalties. However, if the case revolved around what was seen as the ‘important and distinctive’ elements in the recording then this is another example of the law proceeding on a case-by-case basis (McIntyre, 2001:105) rather than changing the fundamental fabric of copyright law.

property owners. This is a subtly different set of goals to those assumed by most artists. Copyright law uses the image of the creative individual;

‘as a point of attachment – a point at which to ascribe a property right and by which the right can be determined. But the essence of that ascription is that it is a divestible or alienable right. In law, authorship is a point of origination of a property right which, thereafter, like other property rights, will circulate in the market, ending up in the control of the person who can exploit it most profitably (Bently, 1994:980-981).

The denial of authorial contributions by certain collaborators not ‘officially’ recognised as writers, as evidenced by Lindy Morrison’s case, and others such as the disputes between the former members of bands like Skyhooks (Jenkins 1994:151), can be seen in part as an instance of the law attempting to merely simplify property rights, not protect certain inalienable romantic rights. Lionel Bently argues in *The Modern Law Review* (1994) that:

Copyright law denies authorship to the contributor of ideas and in cases of collaborative works, frequently refuses to recognize contributors as authors in an attempt to simplify ownership. Because a single property owner means that assignments and licences of copyright are easier and cheaper to effect, copyright law prefers to minimise the number of authorial contributions it is prepared to acknowledge rather than reflect the ‘realities’ of collaborative authorship. To simplify ownership in this way may privilege certain contributions over others, but it provides a property nexus around which contractual arrangements can be made recognising the value of those contributions (1994:981-982).

In this case it’s unlikely that copyright law, despite the complications it produces for some creative individuals, will simply go away. Samuels argues that ‘copyright will continue to be important in the international legal community for as long as we want to encourage the making of creative works’ (2000:248). This assertion indicates that, without a system like it being in place, the level of patronage the notion of intellectual

property provides may not necessarily continue. Csikszentmihalyi argues that the field, in this case the music industry, is instrumental through its system of patronage in bringing works to fruition. As was the case with the Florentine bankers during the Renaissance, works occurred when 'patrons insisted on certain standards that benefited them' (Csikszentmihalyi, 1997:325). With copyright law directing the vast bulk of money to the rights holders, music, as it is practiced in the early twenty-first century, is victim of its own contradictory belief systems. 'In our culture, a huge number of talented and motivated artists, musicians, dancers, athletes, and singers give up pursuing their domains because it is so difficult to make a living in them' (Csikszentmihalyi, 1997:333). And this is where the chief problem lies. The industry functions on the money generated by copyright. The money generated through the application of intellectual property rights may not be distributed well if romanticism, with its emphasis on an individual artist's unconstrained agency, is invoked as the basis of both copyright and creativity. Recognition by all involved in making songs of the structural limits and possibilities (Bourdieu, 1996) a creative individual works within may change this situation, not necessarily in financial terms, but certainly in their approach to the industry. As Janet Wolff argues;

everything we do is located in, and therefore affected by, social structures. It does not follow from this that in order to be free agents we somehow have to liberate ourselves from social structures and act outside them. On the contrary, the existence of these structures and institutions enables any activity on our part, and this applies equally to acts of conformity and acts of rebellion...all action, including creative and innovative action, arise in the complex conjunction of numerous structural determinants and conditions. Any concept of creativity which denies this is metaphysical and cannot be sustained. But the corollary of this line of argument is not that humans agents are simply programmed robots...practical activity and creativity are in a mutual relation of interdependence with social structures (Wolff, 1981:9).

## **CONCLUSION**

No matter whether you see copyright as either a constrainer or an enabler, whether you favour the agency of the individual where copyright is argued to

stifle creativity, or you adhere to the idea that the structures built around copyright are a practical way of applying rewards and stimulating creativity, or you realise as researchers examining creativity are starting to do that structures such as copyright mechanisms and creativity operate go hand in hand in both a constraining and enabling way, those who produce creative works should be faced with the supposed anomalies and the perceived inequities of copyright law for some time. Despite well intentioned calls for their dissolution (Smiers, 2002), or at least restriction and reformation (Toynbee, 2002) and their basis within an unsupportable conceptual paradigm, the copyright structures the music industry relies on appear to be as firmly in place as they have historically been (MacMillan, 2002:112). With this as the pragmatic situation it would be advisable for the person who contributes significant and distinctive material in a collaborative way to any musical output to implement a binding writer's agreement in line with existing copyright law, rather than rely on a set of romantic misconceptions about their own authorial contributions to that creative work, to give them income enough to continue creating music within an often times hazardous rights based industry.

The more personally difficult step for individual songwriters to take, especially those steeped in the Romantic beliefs of their own artistic activity, is to eschew the Ptolemaic conceptions of their own centralised importance in the creation of songs and, in the light of current research on creativity, take the necessary ontological leap towards a more Copernican understanding of the whole process. This may produce for some a disturbing realisation that the confluence of multiple systemic factors, only one of which is themselves, actually produces songs. The troubling corollary for those who premise their arguments and identity on Romanticism is that a sense of personal entitlement to a substantial share of remuneration and recognition, in short fortune and fame, may also be diminished in necessarily recognising the range of factors at work in making songs and then, through an extension of rights, sharing more of the income and rewards with the various other members of the field who have been critically involved in this system of creativity.



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