

Decolonizing networked technology: learning from the street dance*

Introduction

The presence of globally networked technology—mobile and smartphones, digital cameras, video game players, personal audio recorders/players and computers that connect to a global communication network—is increasingly a fact of life for people all over the world. Since these technologies are widely used to create, copy and transmit creative works (music, text, images), they all implicate copyright law. Thus, copyright has emerged as a key force shaping the use of globally networked technology and the increasingly digitized culture that such technology enables. This Chapter examines the use of globally networked technology in and around the Jamaican street dance, a site of Jamaican popular music-making. It will explore the dangers and the advantages that the increasing ubiquity of globally networked technology holds for Jamaican musicians, who must navigate an infrastructure of internal and external techno-colonialism when seeking access to new opportunities for personal and community advancement.

The Jamaican example matters for several reasons. First, Jamaica has developed a vibrant music industry that enjoys international stature without stringent local copyright enforcement.¹ This makes it an interesting counterexample to common claims that copyright is an essential prerequisite for creative economies. Second, many Jamaican musical practices of repetition, reference and recombination are culturally similar (if not direct precursors) to recent, digitally-enabled musical forms like the “remix” or the “mashup,” which dominate the focus of Anglophone legal discourse on creativity and new technologies.² Third, Jamaican creative traditions come out of a colonized country, whose relationship to local and global power structures is based largely in histories of exploitation, hostility, and disenfranchisement. Thus, investigating the Jamaican experience can suggest ways for people historically treated as the objects of policies to become active agents in society-building. Lastly, a practice that enables broader participation also serves the interest of a copyright law aimed at fostering creativity and the flourishing of culture, a goal of many local and international copyright regimes.

Research context

This Chapter is part of a larger research project on Jamaican musical practices and their

* The author is indebted to the colleagues, mentors and editors who generously gave their time to assist in improving this chapter, including Prof. Sean Pager, Prof. Esther Kingston-Mann, Brady Kriss (Esq.), and Kendra Salois, and to the Center for the Study of Law and Society at UC Berkeley Law School.

¹ Jason Toynbee, *Reggae Open Source: How the Absence of Copyright Enabled the Emergence of Popular Music in Jamaica*, 358 in COPYRIGHT AND PIRACY: AN INTERDISCIPLINARY CRITIQUE 357-373 (Lionel Bently, Jennifer Davis, & Jane C. Ginsburg eds., 2010), available at <http://oro.open.ac.uk/26336/>; KRISTER MALM & ROGER WALLIS, BIG SOUNDS FROM SMALL PEOPLES: THE MUSIC INDUSTRY IN SMALL COUNTRIES 176 (1984); Peter Manuel & Wayne Marshall, *The Riddim Method: Aesthetics, Practice, and Ownership in Jamaican Dancehall*, 25 POPULAR MUSIC 447, 463 (2006); LLOYD BRADLEY, BASS CULTURE: WHEN REGGAE WAS KING 228, 350 (2001); Heather Royes & Tom Tavares-Finson, *Current Status of Copyright Legislation in Jamaica*, 16 JAMAICA JOURNAL 14-18, 15 (1983).

² DOMINIC POWER & ALLEN JOHN SCOTT, CULTURAL INDUSTRIES AND THE PRODUCTION OF CULTURE 226 (2004). There are also similarities between Jamaican practices and Brazil’s *tecno brega* music scene that Sean Pager describes in his contribution to this volume. See Sean Pager, *Digital Content Production in Nigeria and Brazil: A Case for Cultural Optimism*, Chapter __, BITS BOOK. Complete at later date.

implications for copyright. That study is an ethnographic examination of Jamaican practices,³ and advances a theoretical and practical understanding of copyright's role in a society increasingly limned with globally networked technology. Copyright law relies on a specific set of assumptions about the nature of creative work, and about property rights' role in social relations. Therefore, understanding copyright's role in society requires a close, historically and culturally situated examination of the practices the law governs.

Throughout this Chapter, I use the term “musicking” to refer to the totality of practices by which people engage with music. Musicologist Christopher Small defines musicking as “to take part, in any capacity, in a musical performance, whether by performing, by listening, by rehearsing or practicing, by providing material for performance (what is called composition), or by dancing.” The term emphasizes music’s dynamic and social nature as “an action in which everyone participates.”⁴

Centering the analysis on the broader concept of musicking provides a more complete accounting of creative practices, and recognizes the value of music as a practice, not simply a product or profession. Acknowledging the myriad actors within musicking allows a critical analysis of the conferral of copyright rights to particular participants or works within the broader musicking context. Addressing this will ideally lead to more appropriate legal policy, and enable communities and individuals to more effectively participate in the legal system to advance claims on their own behalf.

The global context for Jamaican creativity

We are the slave descendants of the African race

- The Abyssinians⁵

Originally a node in the global network of the slave, sugar, and rum trades, Jamaica has always been part of a global system. Contemporary Jamaica is situated in the international networks of communication, coercion, trade, exploitation, dialogue and argument of modern global colonial capitalism. Modern global capitalism is “colonial” in that its institutions are informed by a colonial history even though formal colonial relationships have ended. Coloniality is expressed through the “marginalization and suppression of the knowledge and culture of subaltern groups”⁶ along colonial lines. Coloniality is reinforced when intellectual property law has the effect of filtering out creative works and practices of marginalized communities.

The most internationally well-known Jamaican musician is Bob Marley, whose “rebel music” was well suited to the indigenous and anti-colonial movements of the 1960s, and whose widespread success benefitted from the synergy between his message and the historical era. Paradoxically, colonial power itself played a role in Marley’s global reach. A white, upper-

³ My fieldwork consisted of observing studios, dances, and daily life of Kingston and other parts of Jamaica, conducting 45 interviews with musicians, producers, engineers, vocalists, record label owners and distributors. Over 9 months I visited 31 studios, for a total of 230 hours of focused observation. This chapter draws primarily on observations from two sites: the recording studio and the street dance.

⁴ CHRISTOPHER SMALL, MUSICKING: THE MEANINGS OF PERFORMING AND LISTENING 2 (1998).

⁵ THE ABYSSINIANS, THE AFRICAN RACE, (Tropical Sound Tracs 1976)

⁶ Arturo Escobar defines “imperial globality” as “an economic-military-ideological order that subordinates regions, peoples [the “subaltern”] and economies world wide,” and which is supported by “global coloniality” A. Escobar, *Beyond the Third World: Imperial Globality, Global Coloniality and Anti-globalisation Social Movements*, 25 THIRD WORLD QUARTERLY 207–230, 210 (2004).

class Jamaican, Chris Blackwell⁷ was instrumental in establishing Marley internationally, and also came to own the rights to much of the music Marley played.⁸ This example illustrates how, even for successful musicians, copyright law can benefit those with colonial advantage and perpetuate the colonially-informed allocation of benefits. This is true on a wider scale in Jamaica, where despite the music's global reach, artist's successes do not transform their communities, nor lead to widespread economic advancement, especially for the poor majority most involved in musicking.⁹

It's worth considering whether the allocation of resources along colonial lines is part of the problem. In this context, what are the implications of digital media and globally networked technologies for Jamaican creative practices? A key issue is whether globally networked technology will exacerbate inequalities within Jamaica and in Jamaica's relationship to the rest of the world.

The Jamaican context for creativity

Jamaican copyright law stems from and closely parallels UK copyright law, although the realities of local creativity diverge significantly. In Jamaica, copyright applies to a creative work that is "original"¹⁰ and that is recorded "in writing or otherwise."¹¹ It assigns a set of exclusive rights to owners, who are either authors or those who "caused the writing to happen."¹² These requirements - originality, fixation, and definition of authorship - assume and reinforce a vision of creativity that is culturally specific.¹³ But the culture on which copyright law is based is not Jamaican culture. Although the vast majority of the Jamaican population is of African descent, and local creative practices are shaped by that heritage as well as by the specific history of the island, domestic copyright law was identical to UK law until 1993.¹⁴ In addition, for most of Jamaica's history copyright was not enforced domestically.¹⁵ Thus, the Jamaican musical tradition existed prior to and outside of copyright.

Part I of this Chapter provides a history of Jamaican musicking that explores four major characteristics that have implications for copyright law and policy. First, Jamaican musicking's creative energy is anchored in the island's poor majority. Second, Jamaican musicking has distinctive methods of technological engagement. Third, Jamaican musicking is based in a specific set of traditions related to repetition of musical elements in performance and production. Lastly, Jamaican musicking's content is global and hybrid in nature, reflecting Jamaica's position as a node in global cultural and economic networks.

After setting these features in historical context, Part II explores how these characteristics

⁷ Jon Stratton, *Chris Blackwell and "My Boy Lollipop": Ska, Race, and British Popular Music*, 22 J. POPULAR MUSIC STUD. 436-465, 436 (2010).

⁸ DAVID VLADO MOSKOWITZ, *THE WORDS AND MUSIC OF BOB MARLEY* 131 (2007). Island's owner Chris Blackwell profited more from Marley's music than his band did. See, e.g. JON MASOURI, *THE STORY OF BOB MARLEY'S WAILERS: WAILING BLUES* (2008).

⁹ THROSBY, DAVID. *THE MUSIC INDUSTRY IN THE NEW MILLENNIUM: GLOBAL AND LOCAL PERSPECTIVES* 13 (2002).

¹⁰ The Copyright Act, Act 5 of 1993, Part II, § 6 (Jamaica), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=128291

¹¹ *Id.* at II § 6 (2).

¹² SIMON FRITH & LEE MARSHALL, *MUSIC AND COPYRIGHT* 17 (2004).

¹³ ROSEMARY COOMBE, *THE CULTURAL LIFE OF INTELLECTUAL PROPERTIES: AUTHORSHIP, APPROPRIATION AND THE LAW* 208-10 (1998).

¹⁴ Until 1993 Jamaican copyright law was the UK Copyright Act of 1911. Copyright Act, 1911, 1 & 2 Geo. 5, c. 46, (U.K.). The 1993 Jamaica Act retained many key features. MALM & WALLIS, *supra* note 1, at 179.

¹⁵ Manuel & Marshall, *supra* note 1, at 465, Henry Self, *Digital Sampling: A Cultural Perspective*, 9 UCLA ENT. L. REV. 349 (2001-2002); MICHAEL WITTER, *MUSIC AND THE JAMAICAN ECONOMY* 6 (2004).

come together in the central site of musicking - the street dance. Street dances are events that occur outside, usually late at night into early morning, on the sidewalks and streets of urban Jamaica. Disc jockeys (“DJs,”) vocalists, dancers, vendors of food, drink & cigarettes, and other participants gather around and interact with “soundsystems” (a assemblage of audio equipment, audio recordings and a crew running it). Analyzing the street dance reveals the crucial role of reputation in shaping socioeconomic relations. Part IIIa describes how globally networked technology’s engagement with the street dance can create opportunities for Jamaicans by redefining the terms on which they are able to engage with the broader world. Part IIb shows how technology is often embedded with global copyright norms that can limit its possibilities. Part IV argues that making legal space for local practices in the international system might allow Jamaican creativity to flourish and further social and economic equality.

Part I - A Brief History of Jamaican Musicking

Musicking in Jamaica involves songwriting, recording, singing onstage, in an audience, in a recording studio, or online audience. It encompasses dancing in a club or street dance, at home, among friends, or in a video, live or recorded and broadcast online. Musickers include Djs, producers, engineers, instrumentalists, vocalists and audiences.¹⁶

Jamaican music and the poor

Jamaican musical talent’s main source is “downtown” in the neighborhoods of the urban poor majority.¹⁷ Vocalists, musicians, engineers, dancers, most audiences, night clubs, street dances and recording studios are concentrated downtown, while the wealthy live uptown in secluded, gated, guarded areas. Patois, the dialect spoken by the poor majority¹⁸ dominates the lyrics of Jamaican popular music.¹⁹

The social function of Jamaican musicking has always been linked to the identity and experience of the underclass. Since the 1950s, musicking helped Jamaicans “formulate responses to the pressures of urban Jamaica, poverty, ghetto survival, the prevalence of the gun, and the sociological impact of the transnational politics of the drug trade.”²⁰ While not the only site of musicking, the street dance crystallizes musicking as a source of social power, being a place allowing musickers to define and redefine identity across social lines.²¹ It is an “exilic space,” a site of autonomous cultural formation, because it is at least partly independent from colonial institutions of power.²² These exilic spaces are sites of vibrant

¹⁶ The majority of musickers, especially the producers, engineers, and instrumentalists, are men, however, although women are under-represented in the music scene, they have more opportunities than men in the formal nonmusic economy. Gender dynamics in the street dance are more complex than this Chapter has space to explore. The work of Carolyn Cooper, *infra* notes 21 & 22 (1989, 1995) lays the groundwork for such a task.

¹⁷ Sonjah Stanley-Niaah, *Kingstons’s Dancehall: A Story of Space and Celebration*, 7 SPACE AND CULTURE 102, 105 (2004); NORMAN STOLZOFF, WAKE THE TOWN TELL THE PEOPLE: DANCEHALL CULTURE IN JAMAICA 62, 147 (2000).

¹⁸ KEVIN O’BRIEN CHANG AND WAYNE CHEN, REGGAE ROUTES: THE STORY OF JAMAICAN MUSIC 74, 94 (1976). STOLZOFF, *supra* note 17, at 3, 67.

¹⁹ STOLZOFF, *supra* note 17 at 98, 141.

²⁰ Loretta Collins, *Raggamuffin Cultural Studies: X-Press Novels’ Yardies and Cop Killers Put Britain on Trial*, 9 SMALL AXE: A CARIBBEAN JOURNAL OF CRITICISM 70, 72 (2001),.

²¹ CAROLYN COOPER, NOISES IN THE BLOOD: ORALITY, GENDER, AND THE “VULGAR” BODY OF JAMAICAN POPULAR CULTURE 141 (1995). (The dancehall creates a “radical underground confrontation with the patriarchal gender ideology and the pious morality of fundamentalist Jamaican society.”)

²² “Whatever influence the materially deprived and socially marginal urban lower class exercised in the society... came largely from the group’s historical occupancy and creative use of what may be termed exilic social

musical creativity; their relative autonomy is likely a contributing factor in that creativity.²³

However for wealthy, usually lighter-skinned Jamaicans, culture associated with the poor, primarily dark-skinned Jamaicans is denigrated as much as celebrated.²⁴ Elites associate popular music and its musickers with moral failings quite consistent with colonial hierarchies of power and taste, and have consistently done so with whatever music was popular among the poor.²⁵ To this day, the national newspaper publishes letters by preachers, government officials, professors, and other elites criticizing popular music as degenerate.²⁶ This systematic hostility reveals the remnants of a colonial attitude in which many elites strove to imitate colonial values.²⁷ Such attitudes historically impeded to poor musickers' access to elite-controlled resources for promotion and distribution.

1940-1970: the rise of phonographic orality

Jamaican musicking is rooted “phonographic orality,”²⁸ which is the incorporation of recordings into a live performance. In the 1940s, Jamaicans gathered around, danced to, and sang along with radios and jukeboxes.²⁹ In later decades, these gatherings moved to turntables and speakers,³⁰ which developed into more elaborate “soundsystems” (turntables alongside massive sets of speakers and powerful amplifiers). “Soundmen” owned and ran soundsystems, while “disc jockeys” (DJs) played the records. DJs added another layer of interactivity by speaking or chanting over the music using a microphone. Live performance incorporated recordings, which functioned as a DJ’s musicking tools and raw materials, rather than simply as objects for purchase by the public.³¹

Liquor store owners owned the earliest soundsystems,³² using them to attract customers. Community gathers around soundsystems occurred in yards next to residences or shops, in bars and nightclubs or in the street. DJs played popular American R&B, country, and soul music, using albums brought back from overseas by Jamaican travelers, sailors and visitors.³³ After Independence in 1962, a local record industry developed as soundsystems began to build studios to make more records for the dances, also reusing recordings in production by

space... a social site for dissidence and the repair of cultural injuries.” OBIKA GRAY, *DEMEANED BUT EMPOWERED: THE SOCIAL POWER OF THE URBAN POOR IN JAMAICA* 92 (2004); Stanley-Niaah, *supra* note 17, at 115; COOPER, *supra* note 21, at 11, 123, 141. Cooper also evokes exilic space when describing the lyrical practices of Jamaican popular music as “verbal marronage” – marronage is the practice of slaves escaping from their enslavers and forming independent communities. See Carolyn Cooper, *Slackness Hiding From Culture: Erotic Play in the Dancehall* 22 *JAMAICA JOURNAL* 12 (1989).

²³ YOCHAI BENKLER. *THE WEALTH OF NETWORKS* 383, 418 (2006).

²⁴ Stanley-Niaah, *supra* note 17, at 114.

²⁵ Dennis Howard, *KINGSTON OUTPOST* (Mar. 10, 2009), <http://dennishoward.blogspot.com/2009/03/setting-record-straight-on-slackness.html>.

²⁶ Roderick Hewitt, *Slackness and the moral order in Jamaican culture*, *JAMAICA GLEANER ONLINE* (Sept. 4, 2004), <http://www.jamaica-gleaner.com/gleaner/20010904/cleisure/cleisure4.html>. Daraine Luton, *On the dancehall bandwagon - Local academics being blamed for falling standards*, *JAMAICA GLEANER ONLINE* (Dec. 27, 2009), <http://jamaica-gleaner.com/gleaner/20091227/lead/lead4.html> (On professors giving too much attention to dancehall); STOLZOFF, *supra* note 17, at 223.

²⁷ STOLZOFF, *supra* note 17, at 233.

²⁸ Jason Toynbee, *Copyright, the Work and Phonographic Orality in Music*, 15 *SOC. LEGAL STUD.* 77, 2 (2006).

²⁹ Dennis Howard, *Punching For Recognition: The Juke Box as a Key Instrument in the Development of Popular Jamaican Music*, 53 *CARIBBEAN QUARTERLY*, Dec. 2007, at 32–46.

³⁰ DAVID KATZ, *SOLID FOUNDATION: AN ORAL HISTORY OF REGGAE* 3 (2003).

³¹ Garth White, *The Development of Jamaican Popular Music, part 2. Urbanization of the Folk: the Merger of Traditional and Popular in Jamaican Music*, 1 *AFRICAN-CARIBBEAN INSTITUTE OF JAMAICA RESEARCH REVIEW* 50 (1984). Although bands were more common early on, after the 1950s they became less common.

³² STOLZOFF, *supra* note 17, at 233.

³³ Howard, *supra* note 29; ADRIAN BOOT & MICHAEL THOMAS, *JAMAICA: BABYLON ON A THIN WIRE* 34 (1976).

recording locals singing over imported instrumental records.³⁴ The new Jamaican-created genres of Ska and Rocksteady still incorporated older sounds, relying heavily on cover versions of US R&B hits. The island's radio station did not play music popular among the poor majority (whether locally made or not), which left the soundsystems as the main arbiter of taste and popularity.

As the local recording industry developed, Jamaican-made recordings circulated widely, especially between the expatriate communities in the UK and Canada.³⁵

1970-1980 Repetition and reference embedded in Jamaican musicking

By 1970, Reggae music had emerged out of Ska and Rocksteady, but the earlier music did not vanish. Reggae incorporated lyrics, basslines, melodies, and drum patterns from Ska and Rocksteady, reinterpreting them alongside new sounds and references. Often a producer would use a selection of the earlier recording - most commonly the instrumental track separated from the vocals. The use of the instrumental version, called a "riddim" is a defining feature of Jamaican musicking.³⁶ Studios commonly record different vocals over one riddim (popular "Stalag 17" riddim has 279 recorded vocal versions),³⁷ and sold records with full song on one side and the riddim on the other. Phonographic orality was embedded in the material production of the record, because anyone who had one could sing over the instrumental.

Repetition of riddims and shorter selections of sounds facilitates an interactive and social musical experience, drawing together musickers with instruments, voices, and dancing feet into a coordinated but open moment of interaction.³⁸ Repetition also contributed to a common culture of shared knowledge and experience,³⁹ incorporating the sounds of everyday life. Many songs are collages, including verbal quotations (especially Bible verses), and musical quotations or actual pre-recorded selections ("samples") from existing songs, commercials, and sounds from radio, TV and film.⁴⁰

References to preexisting music were sometimes used like citations, evoking musical history or inspiration in the listener. In other cases samples had broader symbolism, drawing on past associations and accruing new ones. For example, in the 1970s a police siren – a reflection of the political unrest of the 1970s -- was a common musical element, initially evoked the emotional response to a genuine emergency. Over time, sirens become a sonic punctuation signaling a high point in the music itself. The dynamic interplay of musical references is at the center of how Jamaicans have historically constituted Jamaican identity.⁴¹

³⁴ Manuel & Marshall, *supra* note 1, at 449.

³⁵ Radio in the UK and Canada did not play Jamaican music either, and soundsystem culture spread the music. KLIVE WALKER, *DUBWISE: REASONING FROM THE REGGAE UNDERGROUND* (2005); BRADLEY, *supra* note 1, at 111; SIMON JONES, *BLACK CULTURE, WHITE YOUTH: THE REGGAE TRADITION FROM JA TO UK* 39 (1988).

³⁶ Manuel & Marshall, *supra* note 1, at 447; JONES *supra* note 35, at 39.

³⁷ *Dancehall & Reggae Riddim Database & Search Engine*, RIDDIMBASE, <http://www.riddimbase.org/riddimbase.php> (last visited Feb 6, 2011).

³⁸ BRADLEY, *supra* note 1, at 504; JOHN MILLER CHERNOFF, *AFRICAN RHYTHM AND AFRICAN SENSIBILITY* 111-112 (1979).

³⁹ "These [repetitive] musical relationships ... condens[e] social and cultural relationships both in time and over time through invention and musical allusion." Ingrid T. Monson, *Riffs, Repetition, and Theories of Globalization*, 43 *ETHNOMUSICOLOGY* 31, 46 (1999).

⁴⁰ Manuel & Marshall, *supra* note 1, at 448.

⁴¹ Louis Chude-Sokei, *Post-Nationalist Geographies: Rasta, Ragga, and Reinventing Africa*, *AFRICAN ARTS*, Aug 1994, at 81-, 82. The music scene was literally central to Jamaica's future: Edward Seaga, the fifth Prime

Musical references also reveal Jamaican identity as hybrid in nature. In the 1960s, influenced by the identity-building projects of Jamaican Independence, studios drew heavily on Jamaican folk traditions and proverbs. At the same time, musickers reworked music drawn from Jamaica's diverse cultural context,⁴² such as a folk tune brought by ancestors of Jamaica's Chinese minority, or an US R&B, jazz or pop tune, in a Jamaican style. By the 1970s, musickers were also influenced by Pan-African ideologies like Rastafarianism and global indigenous resistance movements.

Reggae hooked into the energy of anticolonial movements in the 1970s and spread Jamaican music farther abroad. While the US, UK and Europe had better capacity to track allocate and pay royalties within their own boundaries, the disconnect between local musicking and foreign legal practices was significant.⁴³ Although some middle-class Jamaican entrepreneurs with better international connections profited handsomely from the marketing of Jamaican music abroad, the few formal connections between local and foreign actors, and lack of local infrastructure meant that copyright remained irrelevant to the poor majority.⁴⁴

1980-1990 Expressing the diasporic experience through hybrid sounds

In the 1980s Jamaican phonographic orality, carried to the US by Jamaican émigrés like DJ Kool Herc,⁴⁵ played an important part in the development of American hip-hop, which is similarly centered on live interaction with recordings. By 1990 Jamaican musicking hybridized reggae with American hip-hop to create the genre “dancehall.”⁴⁶ Dancehall combined the digitally generated and sampled sounds and more minimal production style of early hip-hop instrumentals with patois vocals and Jamaican musical references.

Dancehall’s popularity spread as far as Zimbabwe and Japan.⁴⁷ Circulation of the riddim tracks with the dancehall recordings facilitated the spread of phonographic orality alongside the recordings. In the international context, phonographic orality spawned new recordings involving local DJs, vocalists, and sonic references. These distant audiences in turn inspired Jamaicans to engage with this global network of listeners and performers, when on tour and in their lyrics.⁴⁸

“Me ragamuffin’ and me international... (*I’m poor/tough and internationally known*)

Say galang Cutty Rankin’ gwaan go kill them with the culture... (*People say to me: go on, Cutty Ranks, use Jamaican practices to dominate other DJs*)

London Paris, and even California,

Minister of Jamaica, initially gained a name running one of the first recording studios in the 1960s. OBIKA GRAY, *supra* note 22, at 44.

⁴² Stolzoff describes this mixing of references as “creolization.” STOLZOFF, *supra* note 17, at 15.

⁴³ BRADLEY, *supra* note 1, at 55, 253, 274.

⁴⁴ Toynbee, *supra* note 1, at 369.

⁴⁵ Henry Self, *supra* note 15, at 349; JEFF CHANG, CAN'T STOP WON'T STOP: A HISTORY OF THE HIP-HOP GENERATION 21-2, 131 (2006).

⁴⁶ “Dancehall” is the second truly global wave of Jamaican popular music after roots reggae. The term “dancehall” can also refer to an enclosed location where dancing occurs.

⁴⁷ Louis Chude-Sokei, *The Sound of Culture: Dread Discourse and Jamaican Soundsystems*, in LANGUAGE, RHYTHM, & SOUND: BLACK POPULAR CULTURES INTO THE TWENTY-FIRST CENTURY 185, 197 (J. K. Adjaye ed., 1997).

⁴⁸ Louis Chude-Sokei, *supra* note 4,1 at 80, 82-3; Chude-Sokei, *supra* note 47, at 187; Monson, *supra* note 39, at 43, 46.

Down a Japan or me gone down a Africa
Down a New Zealand or even inna Canada
Yes, Cutty Rankin a go kill you with the lingua (*my lyrical
skills/use of Jamaican patois will defeat others in musical
competitions*)

-Cutty Ranks, "The Stopper"⁴⁹

Foreign musickers respected the Jamaican source. Some, seeking inspiration, or symbolic stamps of Jamaican approval, recorded or collaborated with Jamaican musickers, usually paying one-time fees rather than negotiating future rights.⁵⁰ Even when produced in Jamaica, the music retained its hybrid quality through incorporating sonic as well as lyrical references from its global reach.

1990-present. The digital era: still sounds from the urban poor

Since the 1990s, the energy of popular music continues to be centered on the lower classes, and street dances remain the arbiters of musical style and popularity. Upper class Jamaicans are rare among popular vocalists, dancers and musicians,⁵¹ although uptown Jamaicans do get involved in studio production, management, distribution and promotion.

Digital technology has begun to lower the class-based barriers to studio production and distribution. Home studios proliferated in the 1990s, continuing the traditions of musical re-use as new technology enables cheap duplication, sampling, editing.

Local recording studios⁵² draw on hundreds or even thousands of shared riddims and samples; including riddims made from foreign songs. US hip-hop recordings facilitate this practice by distributing separate vocal and instrumental tracks.⁵³ For example, Jamaican artist Vybez Kartel's 2007 song "Independent Woman" added vocals over an American artist Ne-Yo's instrumental. This combination of Jamaican content with a US-originated tune was wildly popular in Jamaican dances.⁵⁴ However, Ne-Yo's record label (EMI) eventually demanded that Kartel destroy all copies of his version.⁵⁵

For musickers, potential royalties are outweighed by other sources of money, derived from what musickers can control – their personal combinations of skills and personality in live, real-time activity. Thus, they primarily use recordings and performances to enhance their reputations, producing music quickly and performing it often. Vocalists especially depend on payments for live performances⁵⁶ or for custom recordings advertising shows or studios;

⁴⁹ CUTTY RANKS, THE STOPPER, Fashion records 1990.

⁵⁰ CHANG, *supra* note 18, at 375.

⁵¹ STOLZOFF, *supra* note 17, at 147.

⁵² Fieldwork included 32 out of an officially estimated 75-200 studios. See WITTER, *supra* note 15, at 34.

⁵³ Manuel & Marshall, *supra* note 1, at 467.

⁵⁴ Heard by the researcher at least twice a night at five different dances over the course of two months, to ecstatic response including comments by all categories of musickers regarding the tune's high quality and popularity, July-August 2007.

⁵⁵ Henry, Krista. *Stop Order on 'Rampin Shop' - Ne-Yo's publishing company writes Kartel* JAMAICA STAR (January 29, 2009), <http://jamaica-star.com/thestar/20090129/ent/ent1.html> .

⁵⁶ VANUS JAMES, THE CARIBBEAN MUSIC INDUSTRY DATABASE: A REPORT PREPARED FOR THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) AND THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) 19 (2001), available at http://www.wipo.int/about-ip/en/studies/pdf/study_v_james.pdf

engineers and producers are paid for studio time; instrumentalists are paid for performance or studio sessions; all can become “personalities” whose endorsements are valuable commercially.

Part II - The Street Dance

The street dance is the heart of Jamaican musicking. The following vignette, drawn from my fieldwork, describes the scene at a popular dance, which I attended seven times over the course of seven months.

Local radio, TV, and word on the street called Boasy Tuesday “the hottest dance in town.” The “Fire Links” soundsystem organized it⁵⁷ it weekly in the Ken Cot neighborhood.

At 11pm on a Tuesday night, January 2009, we walked through the streets Ken Cot. From blocks away the bass boomed; as we rounded a corner we were joined by other people in twos and threes, and down the road could see two massive, black-painted walls of speakers on the right sidewalk. Roadside vendors were selling bottles of beer, mostly from the front yards of the houses lining the street. Some men moved through the crowd, balancing piles of snacks and cigarettes on their heads held together with a wire, from which they would tear off a bag of peanuts if you paid them a few Jamaican dollars. As the night went on, the crowd deepened on each side of the street, attendees generally facing each other across the street, until the crowds grew too thick and began to converge in the middle. Alongside one of the speaker walls, a raised stage held several DJs behind a large table holding CD players and a mixer. One of the DJs was exhorting the crowd through a microphone, and a cluster of other DJs, soundmen, vocalists and local celebrities, male and female, crowded the stage, dressed in the latest fashions. By 2am the whole street was packed with people in their most outrageous outfits, the throng parting reluctantly to allow cars to drive slowly through at occasional intervals, and once to allow a stream of young men on expensive motorcycles.

That night a German film crew (mostly short-haired white men in dark t-shirts and jeans) brandished expensive video and audio gear, while (as usual at Boasy) several Japanese women in outfits fully as extreme in color and style as the most daring Jamaican dancehall queen “profiled” for the cameras. A photographer from Yardflex.com was there snapping shots of the event with a large expensive camera, and two other folks with notably expensive cameras were identified to me as local newspaper reporters. Two video men whose cameras plugged into the soundsystem circled, illuminating the crowd with bright lights on their cameras.

The Djs played music from several piles of CD books — all the CDs appeared home-burned or non-commercially released, and many had hand-inked words on them or a scrap of paper taped to one side. The night begin with older Jamaican music and American hip-hop and R&B, but the night peaked with the latest hits from Jamaica – including “specials” tunes with lyrics customized by the singer for the DJ, by inserting the DJ’s name (or that of the soundsystem) into the song.

Later in the night, teams of dancers, mostly male and clad in flamboyant outfits involving rings, neck chains, scarves, tight bright colored pants and patterned shirts, vied for attention in the “video light.” The video men also trained their cameras on “mogglers” (models), crews of women in three or four dressed in tight-fitting, revealing, matching outfits, and on female dancers similarly attired. The dance crews' impeccably performed synchronized

⁵⁷ "Soundsystem crews include “five to fifteen men, with two to five selectors (DJs) and three to ten ... roadies and technicians” STOLZOFF, *supra* note 17, at 119.

*dance moves occasionally degenerated into a full on scrum for central position in the area illuminated by the camera's attached spotlight.*⁵⁸

Around 1:30 am a tune came on, emphasizing this point:

A di gal yuh know a fi di gal dem,
fi di videolight girls, aight then
Walk up inna di video fah yuh cute gal (Die doo)
Talu up inna di video fah yuh cute gal (Die doo)

*(to the girls, for the girls, for the video light girls, all right then,
walk in front of the video camera because you are cute,
stand up tall in the video because you are cute)*⁵⁹

Mr. Vegas & Lexxus "Video Light"(2002)⁶⁰

The battle for the video light dramatizes the main currency for Jamaican musickers: reputation. Most of the resources circulating at the street dance are provided to people based on their standing; outsiders and newcomers are forced to pay for things that insiders and stars have thrust upon them. For example, vocalists, dancers, and "mogglers" are usually unpaid and perform in order to build their reputations by being seen. Enhanced reputation increases their chances to be hired to play at formal venues, endorse a product, or become a TV or radio personality. Because studios run many soundsystems, making a good impression could potentially lead to studio time or a longer association with the studio. But if a performer should become famous, those relationships can reverse. Soundsystems may cajole, barter with or possibly pay a new celebrity to lend his or her presence to an event. Videographers may be paid by soundmen, local media institutions, or sellers of DVDs made from their videos, or may document events in order to make their own reputations as cameramen.

Reputation also shapes access to musical recordings: the CDs played are not usually commercial releases. Popular soundsystems are inundated with recordings, from artists and studios. Less established soundsystems might have to work harder to get recordings, or pay for them (although this did not seem common). Downloading music is possible, although Internet access is not very reliable. But since a tune's popularity in Jamaica is mainly decided at the weekly dances, staying current requires social efforts that cannot happen only online.

Although no musical resources circulate with complete freedom, permission is shaped by dynamic social relationships. This makes it difficult to align copyright law's fixed default rules, altered through negotiation of formal contracts, with the shifting interests and power relations in the street dance.

Free street dances are crucial for building a soundsystem's reputation and for staying current with the urban poor, who are the center of Jamaican popular music authority. Soundsystem crews organize most street dances, providing speakers, DJ equipment, lights, engineers and DJs. While they do not charge admission, it is widely asserted that soundsystems get a percentage of alcohol sales.⁶¹ In general, money payments are not tied to exclusive control over musical works; they depend instead on ancillary sales of alcohol, food and other sundries.

⁵⁸ See, e.g. *Women Fight for Video Light: Three to be sentenced after brawl at dance*, THE JAMAICA STAR (Aug. 12, 2008), <http://jamaica-star.com/thestar/20080812/news/news1.html> .

⁵⁹ Although these lyrics encourage women to show off, men fought as hard or harder for the video light.

⁶⁰ MR. VEGAS & LEXXUS, VIDEO LIGHT (Greensleeves Records 2002).

⁶¹ CHANG, *supra* note 18, at 110, STOLZOFF *supra* note 17, at 203

Part III - Media Convergence on the Street dance -- benefits and risks

IIIa - The benefits of media convergence

As well as enhancing the ability of musickers to build their reputations, globally networked technologies reveal new performative identities to a wider audience. The increasing visibility of the dance in turn increases visibility of a set of hitherto under-examined musickers: the dancers. While always significant on the island and in expatriate communities, dancers appear to be reaching greater levels of international fame as DVDs and online videos circulate internationally. New York journalist BADH interviewed Nash & Marvin, dancers who attend the most famous Jamaican street dance: “Passa Passa” (or Pasa Pasa):

BADH: Fellas, tell me when you knew Passa Passa bussed you?

Nash: When I was shopping in Pavilion Mall and some girls just start scream. I was wondering what they were screaming about. And they were like ‘we watch you on Pasa Pasa!’ For real, that’s when I know Pasa Pasa gone worldwide. I felt like a king without a throne.

“Buss” (short for “bust out”) is a slang term that translates as “to make famous.” BADH asks when the dancers knew that the dance event had made them famous, and Nash describes being recognized at a Jamaican shopping mall by women who had seen them on a DVD or online. They go on to describe how foreigners watch their videos overseas and come to Jamaica to experience the street dance, and how the dancers get booked in Canada, where they are also recognized, and in New York as well.

Marvin: Normally when people come from American and they see me they are like “you’re Marvin, I see you on the Pasa Pasa video”.... Pasa Pasa sell off all over the world yes because people come from all over to attend Pasa Pasa to see us. But when I get a call from a promoter in Canada who said he had four shows for me, that’s when I knew I buss. When I touched Canada, jeezum peace, I couldn’t even walk. Security had to escort me when I went in their mall. The girls just went mad saying that’s Marvin. Everybody wanted to take pictures, autographs and hugs

BADH: (laughing) That is the same thing that happen to you and Nash tonight in Kings Plaza?

Marvin: (laughing) Even in Kings Plaza the girls just go crazy.⁶²

This exchange reveals fame’s material effects: the ability to travel, to get paid and to parlay that into a career through the connections made along the way. None of these effects require a property right in the recordings of the dancers, nor in their dances (although attribution is important). In addition, although as performers they could have rights over recordings of their performances, they do not appear interested in exercising that right. Instead they focus on building their reputations, relying on fast and broad circulation of their image. Dancers’ experiences are consistent with the Jamaican tradition of musickers profiting indirectly from the copying and distribution of recordings.

Transcending technical and social gatekeepers

Globally networked technology can weakening traditional gatekeepers to global audiences. Camera phones, affordable video cameras, and networked platforms like YouTube increase

⁶² Interview by BADH with Dancehall Reggae Stars: Nash from Jermain Squad and Marvin, BAH.D.BIZ http://www.badh.biz/index.php?interview=jermaine_squad_nash_and_marvin&pageid=hot-interviews (last visited Feb 6, 2011).

the dance's visibility beyond traditional media institutions, and beyond national boundaries. In previous eras international fame required significant dependence on elites, who restricted not only the *number* but also the *type* of musickers along colonial definitions of taste.⁶³

In addition, this new technology distributes reputation-building capacity more widely. Musickers can reach overseas networks of publicity and distribution with fewer middlemen. The wider accessibility of fame has social significance. Outside Jamaica, Jamaicans are often portrayed as uncivilized, dangerous, and “low.”⁶⁴ On the island, poor Jamaicans are specifically stereotyped this way. In both instances, claiming respect and fame is a way for poor Jamaicans to defend their identities as respectable. Thus the street dance matters not only for individual opportunities to gain fame or prestige, but also for its role as a place where Jamaican musicking *collectively*⁶⁵ celebrates Jamaican-ness in the face of international denigration, and celebrates the urban poor in a class-bound society. Someone ignored and marginalized in daily life, for example, can claim respect as a personage whose presence is noted by video cameras⁶⁶ and whose image can become internationally known.

It is significant, however, that these claims have mainly been made from places sheltered from the direct attention of copyright enforcement, and from other state actors (police, zoning laws, immigration and customs officials).⁶⁷

IIIb The risks of media convergence

The increased visibility of exilic places has a negative side. In live performance, DJs or soundsystems infringe the public performance right in songs they play without permission. Videotaping DJ and dancer performances creates a derivative work of the audio recordings playing on the video soundtrack, which could be found infringing. Distributing that video might infringe the distribution right in the underlying works. Additionally, videos could reveal how a studio that generated the underlying works included unlicensed content. A credited author or owner might be liable for any unlicensed reuse of music in that recording.

Thus, circulation of videos in which DJs, dancers, vocalists, producers and everyone else interact with recordings is both a documentation of infringement and may in itself risk infringement of various copyright rights. Embedding copyright enforcement into technology could limit its usefulness for Jamaican musickers, hindering local creative traditions, and hindering access to international platforms of communication and distribution

Jamaican copyright vs. the street dance

If the musical recordings included in dance videos are entirely produced within the Jamaican tradition, the risks of liability might not be realized. Currently Jamaican dancers and DJs appear focused on fame, and producers on validation by the street dance, rather than royalties.⁶⁸

⁶³ Benkler discusses how bottlenecks limit individual freedom, but bottlenecks can be specifically limiting to marginalized communities. BENKLER, *supra* note 23, at 147.

⁶⁴ Gray, *supra* note 22, at 93.

⁶⁵ Gray, *supra* note 22, at 110; SONJAH STANLEY-NIAAH, DANCEHALL: FROM SLAVE SHIP TO GHETTO 15 (2010).

⁶⁶ Donna P. Hope, *Passa Passa: Interrogating Cultural Hybridities in Jamaican Dancehall*, 21 SMALL AXE: A CARIBBEAN JOURNAL OF CRITICISM 125, 137 (2006).

⁶⁷ Gray, *supra* note 22, at 109.

⁶⁸ Krista Henry, *Dancers to Copyright Moves* JAMAICA STAR, (Sept 19, 2008) <http://jamaica-star.com/thestar/20080919/ent/ent1.html> (Despite the title, the article describes only one instance of legal action out of many public disputes).

However, since Jamaica joined the World Trade Organization's *Agreement on Trade-Related Aspects of Intellectual Property Rights*⁶⁹ (TRIPs), and the *Berne Convention for the Protection of Literary and Artistic Works*,⁷⁰ there has been external pressure to enforce copyright in ways that might cause difficulties for the street dance. The main effort so far from the Jamaican government and several new, island-based rights-holding organizations⁷¹ has been to launch initiatives to encourage artists to claim and enforce copyright.⁷² These tend to endorse copyright enforcement as *de facto* benefiting Jamaican creators. Few of these events and announcements attend to the complexities of the musicking process, and few of the government-generated research documents grant much value to non-royalties-based musicking.⁷³ None of the documents I observed from the Jamaica Intellectual Property Office mentioned street dances, riddims, or YouTube, or accounted for the value that musickers get from circulation rather than restriction of music.⁷⁴ Instead, the primary focus appears to be enforcing owners' exclusive rights. New technology could bring new teeth to these aspects of copyright, which could interfere with the access and circulation-related values musicking generates.

International copyright vs. the street dance

A more pressing problem arising from copyright's clash with Jamaican musicking is the continuing practice of incorporating foreign-generated audio recordings into new productions and performances. Increasing street dances' visibility on the global stage may draw increased attention to these practices. Many major copyright-owning corporations in the US and international music scene have already made attempts to monitor music use on new technologies,⁷⁵ and have at times directed threats at Jamaican musickers.

These threats may not immediately stop local circulation, but access to online platforms for music circulation matters for musickers who derive financial and reputational benefits from international fame. Platforms based in the US, such as YouTube, are subject the US Digital Millennium Copyright Act (DMCA),⁷⁶ which requires the platform to have a system in place for removing content a copyright holder alleges to be infringing. Many sites also use audio scanning software that automatically removes a file if the software detects a soundwave too similar to that of a recording claimed by a copyright owner.⁷⁷ This could limit Jamaican musicking's global reach.

⁶⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments--Results of the Uruguay Round, 33 I.L.M. 1125 (1994) [hereinafter TRIPs]

⁷⁰ Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971, and amended on Sept. 29, 1979, 25 U.S.T. 1341, 828 U.N.T.S. 221 [hereinafter BERNE]

⁷¹ The Jamaica Association of Composers and Performers (JACAP), the Jamaica Performers Rights Society (JPRS), JAMES, *supra* note 56, at 54.

⁷² Yardflex Admin, *International Reggae Day Focuses on Intellectual Property Rights for July 1*, June 24, 2008, <http://www.yardflex.com/archives/002800.html> ; Jamaica Intellectual Property Office, *World Intellectual Property Day "Designing the Future,"* Feb. 28, 2011. <http://www.jipo.gov.jm/?q=node/1151>.

⁷³ Although measuring informal activity is difficult. See e.g. WITTER, *supra* note 15; JAMES, *supra* note 56.

⁷⁴ See, e.g. JIPO, COPYRIGHT AND YOU (2009); JACAP, KNOW YOUR RIGHTS (2009), on file with author.

⁷⁵ Carmen Kate Yuen, *Scuffling for a Slice of the Ringtone Pie: Evaluating Legal and Business Approaches to Copyright Clearance Issues*, 8 VAND. J. ENT. & TECH. L. 541, 545 (2005); ASCAP Makes Outlandish Copyright Claims on Cell Phone Ringtones, ELECTRONIC FRONTIER FOUNDATION (July 2, 2009), <http://www.eff.org/press/archives/2009/07/02>.

⁷⁶ Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (codified as amended at 17 U.S.C. §§ 101-1205 (2009) (The Digital Millennium Copyright Act protects hosting platforms like YouTube from infringement liability if they comply with copyright owner's requests to remove items identified as infringing. However, the original uploader is entitled to dispute the removal on various grounds.)

⁷⁷ LEE B. BURGUNDER, LEGAL ASPECTS OF MANAGING TECHNOLOGY 311 (2010).

Pressure from US based copyright holders, including threats like EMI's stop order to Vybez Kartel over his re-use of an American pop song, could limit what music is available for making future recordings or performances. Since the Jamaican musical tradition involves a collage-like incorporation of existing musical, sonic and lyrical elements, limiting this hybridity could lead to the homogenization of Jamaican music⁷⁸

Perhaps most problematically, local production techniques could be affected if copyright-specific filters were embedded in studio computers or mixing boards. In fact corporations in the US content industry have already attempted to install such software⁷⁹ on personal computers in the US, as well as mandate its installation on networks and platforms.⁸⁰ Automated restrictions on music re-use would chill Jamaican creative practices.⁸¹

Pervasive Enforcement – from surveillance to discipline

To the extent that networked technology can embed and automatically enforce a particular kind of copyright law, technology can shape musicking practices. It can enter social spaces and limit social interactions regardless of people's wishes to participate in musical culture. The spread of globally networked technologies could lead to the rise of pervasively distributed copyright enforcement.⁸² However, the impact of technologically enhanced copyright controls may be limited in Jamaica, where electricity is not always reliable, computers not widespread, and law enforcement at best sporadic.

Poor Jamaicans are not wholly at the mercy of law, legal infrastructure, the state, or multinational corporations. Legal institutions are porous, flexible, and overlaid by networks of personal relationships, while physical infrastructure (roads, electricity, mail), are inconsistent due to an overall lack of resources. Thus Jamaican state is not powerful enough to directly control daily life with police or legal institutions, or indirectly control it through construction and maintenance of infrastructure. The Jamaican government has been aptly described as inconsistent, flexible, and parasitic.⁸³ Because the state fails to achieve the consistency of influence in society that is the best argument its existence, the state must depend in part on the poor majority for its legitimacy, and cannot compel them to move wholly against their interests or desires. Thus marginalized Jamaicans draw some strength from their experiences outside state influence with which they can negotiate their lives in relation to law.⁸⁴

⁷⁸ See Mirra Burri in this volume, for an overview of culturally protectionist arguments that echo the valuation of culturally homogenous content. *Destroying or erecting digital walls: Enquiry into the notion of cultural protectionism and its dimensions in cyberspace*: Chapter __, BITS BOOK complete at later date. However, Jamaica's diasporic reality means that multifarious sources are essentially Jamaican. See, e.g., Louis Chude-Sokei, 'Dr. Satan's Echo Chamber': Reggae, Technology, and the Diaspora Process., 9 EMERGENCES: JOURNAL FOR THE STUDY OF MEDIA & COMPOSITE CULTURES 47, 58 (1999).

⁷⁹ Dierdre K Mulligan & Aaron K. Perzanowski, *The Magnificence of the Disaster: Reconstructing the Sony BMG Rootkit Incident*, 22 BERKELEY TECH.L. J. 1157, 1158 (2007); Pamela Samuelson & Jason Schultz, *Should Copyright Owners Have to Give Notice About Their Use of Technical Protection Measures?*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1058561. In 2005, Sony installed software compromising the security of up to two million people's computers, attempting to enforce copyright protection on Sony CDs.

⁸⁰ BENKLER, *supra* note 23, at 383.

⁸¹ Lori A Morea, *Future of Music in a Digital Age: The Ongoing Conflict between Copyright Law and Peer-to-Peer Technology*, 28 CAMPBELL L. REV. 195, 218 (2005); Lawrence Lessig, *Re-Crafting a Public Domain*, 18 YALE J.L. & HUMAN. 57, 60 (2006).

⁸² Julie Cohen, *Pervasively Distributed Copyright Enforcement*, 95 GEO. L. J. 1 (2006).

⁸³ GRAY, *supra* note 22, at 9, 12, 324.

⁸⁴ Chude-Sokei, *supra* note 47, at 191

Given Jamaica's musical history, the argument made by WIPO representatives that, in the English-speaking Caribbean, "rejection of copyright would lead to the drying up of ... artistic production"⁸⁵ is not persuasive. On the other hand, copyright overenforcement would likely not dry up artistic production completely, because artistic production –or culture making - is a fact of social life.⁸⁶

However, the law can shift the kind of culture-making people do, and the communities and individuals who can profit from it. Thus law can limit musickers' autonomy through a kind of normalizing logic.⁸⁷ Rewarding normal behavior against which one can set deviant or marginalized behavior, law can perpetuate a tiered system of participation and legitimacy. If copyright raises rewards for normal behavior, or raises the costs of deviating from formal law, musickers must choose between their traditions and social institutions and the possible advantages of relying on formalities. But formalities have a cost, which musickers I interviewed implied they were aware of. Musickers often told me they were "not yet at the level"⁸⁸ where they could sign contracts or sue anyone. While this made them less professional (even in their own eyes), their framing suggests they are aware that professional levels of participation require access to resources from education to finances - resources unequally distributed in Jamaica. Framing participation with formal law as a personal goal obscures the systematic reasons why some people are at different levels than others, and reflects a normalization of discipline in which achievable realities for marginalized people inevitably fall short of an idealized goal. But these musickers' level is not below, so much as outside the law. In the street dance, law's absence as much as its presence, enables Jamaica's musical heart to beat.

Part IV- Copyright and technology: providing space for creativity

Hybridity and phonographic orality need some protection from permission-focused copyright surveillance.⁸⁹ Copyright could best foster future creativity in Jamaica by tailoring itself to support exilic spaces like the street dance.

The Jamaican Copyright Act includes a limitation to copyright for amateur clubs, societies, and charitable organizations.⁹⁰ Including street dances under the umbrella of amateur clubs, would exempt practices occurring at them from copyright enforcement. This would require relaxing the "nonprofit" requirement currently in the Act, but since street dances are open to the public, free of charge and the benefits accrue only indirectly, the diffuseness of the benefits achieves a social purpose importantly different from individual gain. Domestically, applying this exception to street dances could provide a conceptual framework for street dances that affirmatively supports phonographic orality, and which would better reflect the reality of Jamaican musicking and its sources of creativity, and thus better serve the people involved.⁹¹ Internationally, because the TRIPS Agreement and the Berne convention,⁹²

⁸⁵ UNESCO & WIPO, PROCEEDINGS OF REGIONAL SEMINAR ON COPYRIGHT FOR ENGLISH-SPEAKING CARIBBEAN STATES 7 (1981).

⁸⁶ See, e.g. Michal Shur-Ofry in this volume, on copyright's limited role in shaping cultural practices. **Chapter** , **BITS BOOK complete at later date**

⁸⁷ Cohen, *supra* note 82, at 41.

⁸⁸ Eight out of 53 interviewees said they had seen a contract, and three of those only once.

⁸⁹ Christophe Geiger, *Promoting Creativity through Copyright Limitations: Reflections on the Concept of Exclusivity in Copyright Law*, 12 VAND. J. ENT. & TECH. L. 515.

⁹⁰ The Copyright Act, Act 5 of 1993, Part VI, § 79 (Jamaica) available at http://www.wipo.int/wipolex/en/text.jsp?file_id=128291.

⁹¹ "Challenges that postcolonial struggles pose... may not be appropriately met by habitual reliance on categories of thought inherited from the colonial era" COOMBE. *supra* note 13, at 215.

⁹² RUTH L. OKEDIJI, THE INTERNATIONAL COPYRIGHT SYSTEM: LIMITATIONS, EXCEPTIONS AND PUBLIC INTEREST

support “limitations and exceptions to copyright,” this exemption might give a basis for defending local practices against the demands of foreign copyright holders intent on restricting use of copyrighted works. Although asserting such a defense might require significant legal resources, the increasing criticism of a one-size-fits-all intellectual property regime,⁹³ especially for the global South, suggests the possibility of new support for an intervention in this direction.

Jamaica’s “fair dealing” language could also support these practices, since the Act says judges should consider “all relevant factors” in finding fair dealing, including the “nature of the work. (b) The extent and substantiality of that part of the work affected by the act in relation to the whole of the work; (c) the purpose and character of the use; and (d) the effect of the act upon the potential market.”⁹⁴ A strong argument could be made for fair dealing on all factors in the creation and use of the music in the street dance, however, because the fair dealing defense is so fact specific, a successful argument in one case would not bear on other similar cases. The various musickers participating in the street dance could each be targeted separately for specific infringements, which could divide the community. A blanket exception for amateur clubs better approaches the collective nature of street dances and thus would better defend the social practices that occur within them.

Audio or audiovisual recordings that incorporate existing copyrighted works risk drawing attention from the biggest players in the global music industry, who support an expansive interpretation of copyright.⁹⁵ However, obtaining a license is not a realistic or practical option for most Jamaican musickers. Even with new technology enabling the tracking and monitoring of the use of copyrighted audio recordings, little in the Jamaican creative tradition supports the practice of seeking permission. Altering these traditions would require a substantial re-educational process that would directly contradict central features of Jamaican musicking history and identity, and would be difficult to enforce and possibly harmful to creative practices.

A more useful approach would be a compulsory license for derivative works. A compulsory license, which would allow for the re-use of material for a set fee determined by the state, would bring riddims, remixes and sampling into legitimate circulation. The availability of a set-fee compulsory license would increase certainty for musickers, and might lead to broader participation that could outweigh the any reduction in royalties for individually-negotiated derivative work licenses.

Any exemptions incorporated into Jamaican law would have to be carefully crafted to abide by the limited allowance for limitations of copyright in article 13 of the TRIPs agreement. One possible argument could be that in Jamaica the “normal exploitation of the work” and “the legitimate interests of the right holder”⁹⁶ arguably include, if not require, the unimpeded

CONSIDERATIONS FOR DEVELOPING COUNTRIES, UNCTAD-ICTSD PROJECT ON IPRS AND SUSTAINABLE DEVELOPMENT, ISSUE PAPER NO. 15 (2006) *available at* <http://www.iprsonline.org/unctadictsd/docs/ruth%202405.pdf>.

⁹³ D. Archibugi & A. Filippetti, *The Globalisation of Intellectual Property Rights: Four Learned Lessons and Four Theses*, 1 GLOBAL POLICY 137–149 (2010); Alan Story, BURN BERNE: WHY THE LEADING INTERNATIONAL COPYRIGHT CONVENTION MUST BE REPEALED 40 HOUS. L. REV. 764 (2003-2004).

⁹⁴ The Copyright Act, Act 5 of 1993 Part VI, §54 (Jamaica), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=128291.

⁹⁵ Jeannine M Marques, *Fair Use in the 21st Century: Bill Graham and Blanch v. Koons*, 22 BERKELEY TECH. L.J. 331, 341 (2007), *Bridgeport Music v. Dimension Films*, 410 F.3d 792, 801 (6th Cir. 2005).

⁹⁶ TRIPS, *supra* note 73, art. 13.

circulation and use of musical recordings.

Many interviewees were receptive to the idea of monitoring nodes of digital musical engagement at both the international and local level for the purpose of collecting money for artists. If monitoring technologies could be effective in tracking music use online and in networked technology, then taxing hardware (phones, to mixing boards or computers) or Internet providers could generate funds, which could be distributed proportionately based on tracked information.⁹⁷ Approaches such as YouTube's recently launched program offering copyright holders the opportunity to advertise on videos that would otherwise be taken down as infringing, can leverage technological monitoring to generate money through circulation rather than restriction.⁹⁸ If there were no dramatic increases in hardware and services costs to consumers, such approaches would leave the musicking public freer to engage actively in digital media, and to potentially enhance their musicking reputations, and create new works with less fear of repercussions. Monitoring would need to be narrowly tailored to protect local actors' privacy and safety, but if the threat of infringement liability were reduced, it would be easier to collect data on usage that could inform future policy. However, the question of how to fairly allocate ownership and related rights, and the potential effects on users' practices requires careful study. One potential problem would be that non-Jamaicans could own the majority of identifiable works, making the system a net loss for the Jamaican economy.⁹⁹

A fixed fee set by the state could take advantage of the extensive reach of currently illegal, but affordable recordings, without pricing them beyond the grasp of the majority.¹⁰⁰ In Jamaica, most people buy music from someone on a street corner, in the form of informally-produced "mix CDs" – compilations of the latest tunes that week – which are treated by the government as counterfeit goods.¹⁰¹ These mix CDs are substantially more affordable than commercial releases, much more current with the fast-changing tastes on the island, and a source of promotion for the musickers represented on them. Mandatory licensing for these compilation CDs would facilitate promotion, while still generating some funds for copyright owners. Nearly half the people I interviewed in Jamaica explicitly spoke against the Jamaican government campaigns to arrest the vendors and destroy the CDs.¹⁰² They decried these campaigns as bad for business but also as revealing the government's poor social priorities. Several interviewees said, "at least he (the vendor) isn't turning to the gun to make his money!"¹⁰³

Neither the amateur clubs exception nor a mandatory license for derivative works would necessarily protect non-Jamaican sites like YouTube from liability for musicking that spills over onto their platforms. If EMI wanted YouTube to remove a dance video that included tracks with EMI-owned samples in it, YouTube's current takedown practices suggest it would comply. However, YouTube could tailor its counternotice¹⁰⁴ procedures to include

⁹⁷ See e.g. FISHER, WILLIAM W. PROMISES TO KEEP: TECHNOLOGY, LAW AND THE FUTURE OF ENTERTAINMENT 223 (2004).

⁹⁸ Claire Cain Miller. *YouTube Ads Turn Videos Into Revenue* N.Y. TIMES, September 2, 2010. <http://www.nytimes.com/2010/09/03/technology/03youtube.html>.

⁹⁹ SOCIAL SCIENCE RESEARCH COUNCIL, MEDIA PIRACY IN EMERGING ECONOMIES 17, (Joe Karaganis ed. 2011) available at <http://piracy.ssrc.org/the-report/>.

¹⁰⁰ *Id.* at i,16-18.

¹⁰¹ Michael M DuBose, *How the Show Goes on: Law and Theater in the Twenty-first Century*, 29 COLUM. J. L. & ARTS 481-497 (2006).

¹⁰² 27 of 52 personal interviews in Jamaica 2009 and 2010.

¹⁰³ Interviews, 2009.

¹⁰⁴ BURGUNDER, *supra* note 88, at 311.

exemptions for local uses depending on the country, as identified by the ISP of the uploader.

It might be even more effective to organize an international coalition of interested parties, perhaps via an organization like WIPO or the UN, to petition to alter or reinterpret international treaties, which could in turn pressure local laws to change (including revising the DMCA which shapes YouTube's policies). Interest in this notion already exists outside Jamaica: for example, the Canadian government has been discussing a provision to its copyright law that would legalize non-commercial derivative works "that do not financially damage the original copyright owner."¹⁰⁵

Redefining authorship and ownership

While copyright law is not an effective way to fully overcome widespread power inequalities in the global or local arenas, there are some specific tweaks to copyright law that could temper the existing local inequalities and benefit some categories of currently disadvantaged musickers.

Redefining the relationship between author and owner could empower local actors and the urban poor to resist exploitation. Jamaican law currently grants rights in recordings to those who "caused the recording to happen," which directs control and royalties towards the (middle class) Jamaicans who own most domestic recording studios. Allowing for the reallocation of rights and credit as described above, and recognizing the value of reputation would mitigate the unfairness in the current copyright law and practice.

Jamaican law discusses the "right to be known as the author" as accruing to "authors" and defines the author of a musical work as "the composer."¹⁰⁶ This circular identification does not account for the broad range of participation in the creative process. Since authorship is the basis for copyright ownership, it can be thorny for participants in the creation of a work to negotiate authorship credit – since authorship implies a cut of future royalties. But attribution is not reduced when more people are attributed. Thus, explicitly separating attribution from the ownership right, and allowing a collaborative attribution that falls short of authorship, would allow collaborators to be credited more easily and allow more collaborators to build their reputations.

Jamaica could also adopt something like Germany's "surprise best-seller clause."¹⁰⁷ If a work unexpectedly sells far more copies than was anticipated, the creator is allowed to renegotiate the contract by which it was sold to the owner. In cases of group creation, criteria would have to be set as to who would be party to such a negotiation, perhaps at the point of discussing attribution. Such an alteration would address disparities in information and negotiating power between weaker individual artists and more powerful recording studios, and between more and less globally networked actors.

Conclusion

Street dances possess enormous creative value as "exilic spaces" – spaces beyond the direct control of state authority, where different values, creative practices, and ways of being can

¹⁰⁵ CONSUMERS INTERNATIONAL, INTELLECTUAL PROPERTY WATCHLIST REPORT 4 (2011) available at <http://a2knetwork.org/sites/default/files/IPWatchlist-2011-ENG.pdf>.

¹⁰⁶ The Copyright Act, Act 5 of 1993, Part I § 2 (1)(b)(c)(b) (Jamaica) available at http://www.wipo.int/wipolex/en/text.jsp?file_id=128291.

¹⁰⁷ William Cornish, *The Author as Risk-Sharer*, 26 COLUM. J. L. & ARTS 1, 9 (2002).

flourish and allow the urban poor to create their own social power.¹⁰⁸ These exilic spaces are possible precisely because they are on the periphery of the formal legal and social systems, particularly copyright law. Strengthening copyright law and enforcement that only protects western colonialist values of creativity risks stifling Jamaican musicking and its great achievements in building the social power of the marginalized people in an unequal system, and in fostering an intensely creative music industry. Thus, the lens by which we should examine networked technology and digital media in Jamaica ought to be its effect on the ability of music to continue to “challenge the oppressive limits of a colonial and neocolonial sociopolitical structure.”¹⁰⁹

Technologies that take the structure and function of copyright for granted may harm, rather than foster, creativity due to a mismatch with the local institutions, creative processes, and priorities where the technology is used, and may serve to perpetuate the marginalization of those already marginalized in the current system. This Chapter has argued for dual, perhaps mutually reinforcing goals of creativity and equality. In this case it means that technology must not perpetuate the problematic aspects of copyright. We must learn how technologies can co-exist with practices in daily life regardless of whether they fit or clash with existing copyright, and we must begin reevaluating copyright policy so that technology and local practices can be mutually supportive. Understanding the Jamaican street dance as the creative center of musicking reveals the intricate dynamics that may be interfered with or supported, depending on the choices made in integrating legal restrictions into networked technology.

Overall, we must foster the ability of people to create exilic spaces, spaces like the street dance in which playful, dynamic, experimental, affirming, disturbing social practices help us envision a community able to make full use of the material, social, and technological resources available to them and redefine their position in the world.

¹⁰⁸ Cohen, *supra* note 82, at 39; GRAY, *supra* note 22, at 94.

¹⁰⁹ Chude-Sokei, *supra* note 47, at 191.