DISCOURSE AND POWER IN THE FORMULATION OF UK ANTI-FILE-SHARING LEGISLATION: THE PLACE OF RECORDING COMPANY AND MUSIC CREATOR INTERESTS

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by

Andrew William Kirton

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ABSTRACT

Throughout the history of 'music industry' in the UK at least, legislators have frequently been called upon to help establish and maintain preferable (profitable) socio-economic arrangements in the face of disruption following technological development. The history of copyright legislation can thus be read as one in which we see the gradual extension and expansion of rights in ways that enable the effective *monetisation* of practices afforded by technological development, and/or the *restriction* of those technologically afforded practices seen to be detrimental to existing profit accumulation strategies.

The passing of the *Digital Economy Act 2010 (c.24),* which brings forward new anti-file-sharing measures, further illustrates the apparent capacity of music corporations to affect legislative action/change in this area. This thesis offers an account and analysis of the visible 'discursive' mechanisms via which recording companies and their representatives were apparently able to affect the specific direction of recent legislative action.

The thesis demonstrates that music creators, as a distinct set of actors within the recording and broader music industry, were apparently unable to affect legislative change. The interests of creators were seemingly marginalised in the UK Government's legislative response to file-sharing. The thesis subsequently provides further important illustration of the way in which copyright laws are apparently being advanced and rationalised in line with corporate interests exclusively.

CONTENTS

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INTRODUCTION

On 8th April 2010, the *Digital Economy Act 2010 (c.24)* received Royal Assent. This Act effectively imposes obligations on Internet Service Providers (ISPs) to take various actions against individuals suspected to be engaged in the unauthorised reproduction and circulation of Intellectual Property (IP) online. Such actions may include, if authorised by the Secretary of State, the temporary suspension of the individual's Internet account. This Act has subsequently become one of the most controversial legislative actions in the history of information and communications regulation at least. This thesis offers an account and analysis of its formulation in relation to the interests and activities of two distinct but inextricably linked sets of actors within 'the music industry'.

Throughout the history of 'music industry' in the UK, legislators have frequently been called upon to help establish and maintain preferable (profitable) socio-economic arrangements in the face of ongoing technological development. The history of copyright law can thus be read as one in which we see the gradual extension and expansion of rights and their enforcement, in ways that enable the effective *monetisation* of practices afforded by technological development, and/or the *restriction* of technologically afforded practices that are seen to be detrimental to existing profit accumulation strategies.

In the wake of online music file-sharing, recording companies as investors in the production of IP have once again called upon

legislators to help restrict what they see as a major threat to their existing business models and profit accumulation strategy. The recent passing of the *Digital Economy Act 2010* (the DEA), which allows individuals suspected of file-sharing to be disconnected from the Internet, raises some important questions about the mechanisms via which such corporate interests become prioritised within the legislative processes and activities of a democratic administration.

This thesis offers a critical account and analysis of some visible processes in the formulation and development of the DEA. In particular it focuses on the process of formal public consultation which preceded the eventual passing of the Act. In doing so the thesis offers an assessment of attempts by the recording companies to affect the specific direction of legislative action. Likewise, it offers an assessment of music creators' attempts to do the same.

Chapter 1 of the thesis offers a broad account of the development of music industry in the UK. It draws attention to the intertwined roles of both technological development and copyright law. The somewhat contradictory role of technological development is discussed, as on the one hand enabling the development of music industry by providing technical capacities for the storage and retrieval of music, whilst on the other hand affording practices that frequently disrupt the commercial processes of music industry. The crucial and dual role of intellectual property rights is explored in relation to this as on the one hand enabling the effective commoditisation of music, and on the other hand providing a means of dealing with

disruption following technological development (through the restriction of various technologically afforded practices).

This dynamic relationship, between technological development and the development of copyright law, is illustrated through a discussion of the development of music industry (in the UK primarily). The historical narrative outlined highlights the apparent power of commercial actors, particularly recording companies, in affecting the specific direction of legislative change in attempts to protect preferable (profitable) socio-economic arrangements. The nature of recording companies' response to recent developments in digital and networking technologies is discussed as an apparent continuation of this historical trend. The frequent enhancement of rights and their enforcement in the interests of recording companies as 'investors' is discussed as problematic in seemingly putting aside the original justifications of copyright law as a means of financially rewarding and incentivising creators.

Chapter 2 discusses the nature of established socio-economic relations between music creators and recording companies as investors. The inherent tensions and conflicts that emerge from these relations are highlighted and discussed. It is asserted that recording companies' attempts to maximise profitable returns in a highly risky market necessarily involve the economic exploitation of music creators. The apparent inadequacy of the current copyright system in securing financial rewards for creators is highlighted and contrasted with the way it functions to the economic benefit of recording companies as investors in and exploiters of IP.

The above situation - that in which copyright laws seemingly fail to secure financial rewards for creators as intended, whilst clearly benefiting corporate investors in and exploiters of IP - is argued to be the result of the specific way in which the current copyright system developed as outlined in the previous chapter. The recent passing of the *Digital Economy Act* is argued to be a further illustration of the way in which enhancement of copyright laws and their enforcement function to the economic benefit of corporations but do nothing to directly benefit creators in any direct or obvious way. The *Digital Economy Act* is discussed as an attempt to maintain a system in which creators become economically exploited by recording companies and typically receive little economic reward for their creative work.

Chapter 3 offers a discussion of the mechanisms and processes by which commercial interests might become prioritised within legislative processes. The concept of 'pressure' as a form of 'power' is discussed alongside the concept of 'discourse' as the means by which this particular form of power may be exercised. A strategy for analysing these processes that draws on the discipline/approach of (critical) discourse analysis is outlined. The specific approaches to data collection and analysis adopted in the research are described. The chapter ends with a reflexive discussion of the place of values in research.

Chapter 4 represents the first of 4 analysis and discussion chapters. This particular chapter focuses on the discourse of the UK New Labour government. The development of a particular economic narrative and strategy is illustrated and discussed. This economic strategy is shown to necessarily involve the

prioritisation of particular economic actors and their interests. In particular, the economic strategy developed and articulated by New Labour is shown to involve the prioritisation of creative industries. The continued economic productivity of these industries is shown to be construed as crucial to Britain's success in the new 'global knowledge based economy'. The subsequent prioritisation of intellectual property rights on the legislative agenda is highlighted as an inevitable corollary of this strategy and the subsequent development of policy in this area is discussed. The chapter draws on the concept of the 'economic imaginary' as a way of understanding the development of New Labour's economic strategy and its articulation through policy.

Chapter 5 offers an analysis and assessment of the recording industry's attempt to affect legislative change in response to the 'problem' of file-sharing as an economic threat. In particular the discourse of recording companies' UK representative trade association is explored. The way in which this organisation constructs and communicates certain arguments and claims is highlighted. Particular discursive and rhetorical strategies are acknowledged alongside the way in which the arguments and claims of the recording industry are legitimated in reference to New Labour's broader economic strategy. The attempt to effectively influence and direct the specific nature of legislative action through prescription is highlighted and discussed.

Chapter 6 offers an analysis and assessment of the discursive activities of organisations claiming to represent the interests of creators. The depiction of technological developments and in particular file-sharing as a threat to creators is highlighted as

the basis for of these organisations' supporting of proposed legislative responses to file-sharing. This backing of the proposed legislative action closely aligns the interests of creators with recording companies. The interests of these two sets of actors thus appear synonymous in relation to file-sharing. This is construed as problematic given the inherent tensions which exist between these two parties, as discussed in chapter 2. The alignment of creator and investor relations by these organisations is also highlighted as surprising given that these organisations have themselves developed a substantial critique of investor-creator relations in the recording industry.

The final analysis and discussion chapter (chapter 7) explores and draws attention to some dissenting voices and alternative perspectives among creators with regards file-sharing. Some entirely different understandings and experiences of file-sharing as having potentially positive consequences and implications for creators are highlight and discussed. The positive interpretation of file-sharing stems largely from a general dissatisfaction with, and critical understanding of, existing investor-creator relations. These positive interpretations of file-sharing and the general dissatisfaction with the way in which creator have been excluded from debates about file-sharing are shown to been the basis for the formation of a new creator led organisation. This organisation is shown to develop a discourse that is strongly resistant to the proposed legislative actions of the government. The attempts to affect legislative action by this group are acknowledged as ultimately unsuccessful however,

demonstrating an apparent lack of discursive power (relative to recording companies).

The thesis concludes with a summary and discussion of the research's main findings and arguments. There is an acknowledgement of some limitations to this research before possible directions for further research are suggested and discussed.

CHAPTER 1

MUSIC, TECHNOLOGY, AND COPYRIGHT: THE MAKINGS AND SHAKINGS OF AN INDUSTRY

Introduction

Technological development has played something of a contradictory role in the development of music industry. On the one hand, music industry would not be what it is today without the development and commercial appropriation of various technical capacities to store, distribute and retrieve music. On the other hand, wider appropriations of those same technical capacities have frequently presented challenges to established commercial interests and practices. Today more than ever perhaps, this seemingly paradoxical role of technological development is clear to see. Established commercial actors have been working hard to exploit the opportunities that new digital and networking technologies have presented in terms of the marketing, promotion, distribution and retail of music online. At the same these same technologies have afforded practices (namely file-sharing) that directly challenge established commercial systems and logics, and music's very status as a commodity.

The production and circulation of music as a business has also become dependent upon a particular legal environment. Copyright law represents a legal environment in which commercial actors may effectively monetise the production and

distribution of music via various technical means. In affording the producers of music exclusive legal rights over their products as private property, copyright law allows the restriction of wider technological appropriation - it places restrictions on what others may legally do with music without the producer's permission. A difficulty faced by commercial producers of music however, is that copyright laws and their enforcement generally lag behind technological developments and have often appeared inadequate as a means of restricting emergent and sometimes conflicting/competing appropriations of new technical capacities.

In an attempt to establish or maintain preferable (profitable) socio-economic arrangements in the face of changing technological environments and the problems they bring, commercial actors have frequently called upon legislators to extend or enhance the scope of copyright law and its enforcement throughout the history and development of music industry. The history of copyright law itself subsequently presents itself as one in which we may observe the gradual extension and expansion of rights in the interests of these established commercial actors. This chapter develops a broad account that clearly illustrates this theme/trend.

The chapter begins by outlining the general role of both technological development and copyright in the development of music industry. The chapter asserts that the two (technological development and copyright law) cannot be understood in isolation from each other and that developments in relevant technical capacities and the development of copyright law are inextricably intertwined. The chapter thus begins to outline a

historical account that illustrates the way in which the development of modern copyright laws closely follows technological development and commercial actors' attempts to exploit new technical capacities for the production and distribution of music. Changes in law are shown to be an apparent result of the pressure placed on legislators by commercial actors, who in the face of a changing technological environment seek to ensure the construction and maintenance of a commercially conducive legal environment.

The first half of the chapter focuses on early developments in technology, music industry and copyright law, from developments in printing to recording capacities. The second half of the chapter focuses on events following the 'digitisation' and subsequent emergence of music online. These more recent developments suggest the continuation of a long running theme. The changing technological environment brings both opportunities and difficulties for established commercial interests and actors. These actors have responded in their usual way, striving to exploit the opportunities presented by technical development via the articulation of exclusive rights afforded by existing copyright laws, and placing pressure on legislators to further enhance the scope of those existing laws and their enforcement in order to restrict what others may do. The Government's response to this pressure also appears somewhat typical - the legislative environment has been modified in ways that appear to benefit existing commercial actors exclusively.

The picture that emerges from the narrative outlined in this chapter is of an industry with powerful lobbying capacities, of a

legislative process seemingly open to the influence of corporate interests, and of a copyright regime which benefits investors in creators rather than creators themselves.

The Role of Technological Development and Intellectual Property Rights in Music Industry

'Music is, by its nature, non-material. It can be heard but not held. It lasts only as long as it plays. It is not something that can, in any direct way, be owned' (Frith, 2001: 26). The question of how music became 'commoditised' offers a useful way of introducing and explaining the crucial roles of both technological development and intellectual property rights in the development of the modern music industry. Technological development, as already suggested has played something of a contradictory role in the development of music industry, affording opportunities for the commercial production and distribution of music on the one hand whilst also affording practices that challenge these commercial practices and music's very status as a commodity. The concept of 'intellectual property' meanwhile lies at the heart of a legal environment in which music comes to be treated like any other form of private property. The exclusive rights that intellectual property laws convey, allow producers of music to commercially exploit their products by offering some legal protection from both commercial competitors and the non-commercial reproduction and distribution of their products/'property'.

With regards the role of technological development specifically, the development of various money making practices around

music have in a very clear sense been dependent upon the development of what Simon Frith (2001) describes as technological capacities to 'store' and 'retrieve' music. To elaborate on Frith's conceptualisation, technical capacities to 'store' music in such a way as to allow its subsequent 'retrieval' have a commercial potential. As a highly valued cultural 'good' or 'product', people have throughout history been willing to pay to access these musical 'stores' and 'retrieve' the music held within it, whether that store be an actual person (e.g. a musician), or some 'functional artefact' (Gendron, 1986) such as a written score, Compact Disc or digital file.

People themselves may be thought of as the most fundamental of such musical 'stores' (Frith, 2001). People 'store' music in their memories, and it is retrieved via performance. People were also the first kind of musical store to be commercially exploited; 'a musician would retrieve - perform - music in return for payment, whether from secular or religious patrons, from communities or passing individuals (Frith, 2001: 28). The professional musician in this sense has existed for many hundreds of years, and the live performance of music remains an important commercial practice today. However, very few musicians represent independently operating commercial actors today. Rather, the majority of professional musicians are tied into complex commercial systems and networks, at the centre of which sit large powerful corporations. In the present day context, most professional musicians and performers operate in the service of other dominant commercial actors (predominantly recording companies and larger entertainment corporations). In this sense,

musicians and performers still represent an important 'store' from which music can be retrieved, but they become locked into certain alienating socio-economic arrangements whereby they are quite literally exploited as a capacity it seems, in the same way that scores, records or CD's are exploited as capacities for the storage and distribution of music (the nature of the relations that exist between music creators and recording companies are discussed in more detail in chapter 2).

Throughout history commercial practices have developed around the development of other technical capacities to store, distribute and retrieve music. The most important technological developments in this regard were of course developments in printing and recording capacities, which in turn gave rise to a print music publishing industry and a recorded music industry. The development and accumulation of commercial practices around these new technical capacities for the storage of music never simply meant that one form of music business replaced another, but rather meant a reorganisation of commercial arrangements.

Emergent and existing commercial practices may well come into conflict with each other, but they may also come to compliment each other. The modern music industry still ultimately relies on the input of musicians and songwriters for instance, but as commercial practices, composition and live performance are now 'tied into a complex system of money making' (Frith, 1992: 49) that involves the commercial exploitation of an ever-present demand for music via the appropriation of various other technical capacities at the same time. The modern music

industry actually represents something more akin to a 'networked economy' (Leyshon et al., 2005) than it does a single, unified, homogenous industry. This networked economy is constituted by a series of (commercial and non-commercial) actors all connected via the flow of both music and capital. Increasingly though, these networks and their flows appear to be controlled by large entertainment corporations (e.g. Universal) as dominant commercial actors.

A seemingly ever-present 'demand' for music stored and mediated via various technical means is what ultimately drives music industry and its development. The commercial exploitation of this demand has been far from unproblematic however. Demand remains largely unpredictable and unstable (Frith, 2001) and music industry as such represents something of a 'risky business' (Hesmondhalgh, 2007). One major difficulty faced by commercial actors in the effective commercial exploitation of this demand for music, stems from the fact that other actors will use the technological capacities available to them to reproduce and distribute music freely. This free reproduction and circulation of music challenges the economic rationalisation of music's production as a commodity. It is in this context that the concept of intellectual property has played a crucial role in the development of music industry. The articulation of this concept and it's enshrinement in the laws of modern states provides producers of music with a means of restricting what others may do with their products via emergent technical means.

'Intellectual property' (IP) may be understood as a general name given to those products of some creative or imaginative effort. The *World Intellectual Property Organisation* (WIPO) describes IP as referring specifically to, 'creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs' (WIPO, 2010: Online). Understood as a form property, the products of creative work come to be treated like any other form of private property, in which one would expect to benefit from certain exclusive rights of 'ownership'. Intellectual property *rights* (IPRs) are precisely those rights that one would expect to have over the creations of their mind if they were indeed to be classed as a form of private property. In other words, IPRs conventionally express property ownerships legal benefits (May and Sell, 2006).

The *World Trade Organisation* (WTO) confirms that, 'intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time' (WTO, 2006: online). These rights are enshrined in the laws of modern states and indeed all those that wish to participate in international trade must incorporate minimum levels of legal IPRs under the 1994 *Trade Related Aspects of Intellectual Property Rights* (TRIPS) agreement. The principle piece of legislation enshrining IPRs in the UK is the *Copyright, Designs and Patens Act 1988* (c.48), though this act has been amended and extended a number of times since it came into force in 1989 following lobbying pressure from commercial actors in the context of changing technological environments.

The key function of IP as a legal concept and its enshrinement in law has in a very clear sense been to allow the products of creative work to be brought into the market place as a form of private property (May, 2006). As May and Sell highlight, the legal recognition of IP conventionally affords its producers three economic rights: (1) the right to charge rent for use; (2) the right to receive financial compensation for loss or damage; and (3) the right to demand payment for transfer to another party (May and Sell, 2004: 7). These things mean different things in different contexts however, and it is necessary to make some further distinctions at this point. We may at least draw a broad and relevant distinction here between 'industrial IP' (the rights of the producer in which are protected under 'patent' law) and 'artistic IP' (the rights of the producer in which are protected under 'copyright' law). As May and Sell (2006: 9) suggest, the conventional way of understanding the distinction between patents and copyrights is as a distinction between the protection of an *idea* which has a useful or applicable industrial function (eg. a light bulb), and the protection of an *expression* of an *artistic* idea in words, images or sounds (e.g. a painting, song, or book).

'Expressions' of artistic ideas, are themselves usually referred to as 'works'. When an artistic idea is expressed in some tangible form, it becomes subject to copyright law. This is one reason why the development of technological capacities to store music are important in relation to copyright - they provide the means by which music can be 'fixed' in some tangible medium, become subject to copyright, and thus be brought to market as a

commodity in the form of intellectual property. Crucially, copyright law affords the producers of creative 'works' the legal right to control the way in which that work may be used by others (UKIPO, 2010). As the name suggests, copyright is principally the exclusive right to copy or reproduce a work. This is clearly a commercially valuable right. Its enshrinement in law essentially functions to makes it an offence for anyone other than the copyright holder to reproduce or copy a work. Copyright laws provide the holder of copyrights with a monopolistic control over their products.

There are other important elements to modern copyright however. Martin Kretschmer (2000) usefully outlines the rights which copyright law typically affords producers of artistic IP or creative 'works'. When a work is subject to copyright, *four exclusive* rights arise he suggests: 1) the exclusive right to publish the work; 2) the exclusive right to reproduce and distribute the work; 3) the exclusive right to perform the work in public; and 4) and exclusive the right to authorise another party to do these things (Kretschmer, 2000: 213). Likewise, the *United Kingdom Intellectual Property Office* (UKIPO) asserts that copyright includes the exclusive rights to: copy; distribute; communicate to the public; rent or lend; and perform of the work in public (UKIPO, 2010: 3). What is broadly referred to as 'copyright' then is actually a bundle of IPRs and can more accurately be referred to as copyrights (plural). Through the legal recognition and articulation of these rights, music - an intangible, immaterial thing - comes to be treated like any other form of property and subject to exclusive rights of ownership.

The use of the term 'exclusive' in relation to IPRs is crucial of course. All such property rights can be defined negatively as the 'right to exclude' (Kretschmer and Kawohl, 2004: 41). No-one but the copyright 'holder' has the legal right to do the things outlined by Kretschmer and the UKIPO above for instance.[1] The copyright owner may bring legal action against anyone who does these things without their permission and (typically) their financial compensation. This is important in that anyone could use the same technological capacities that the producer uses in order to *re*produce music they did not themselves produce. If anyone can copy and distribute music *freely* (without having to financially compensate the producer) then the viability of producing music as a *business* is, theoretically at least, reduced.

The logic behind the above proposition is simply that individuals are less likely to pay for something they can get for free. If this proposition holds then capital invested in the initial production of music becomes difficult to recoup and profitable returns unlikely. In the case of copyright, an argument often posited is that without the protection afforded by copyright law, the (economic) incentive to produce creative works is reduced. It is suggested that the creative production might therefore not take place, to the detriment of society at large (Kretschmer and Kawohl, 2004; May and Sell, 2006).

Copyright law is crucial in the context of music industry then; it affectively places legal restrictions on how music may be used

[1] What exactly may and may not be done legally, and for what purpose, represents a key point of contention in debates surrounding copyright however, especially in the context of continually evolving technical capacities as we shall see below.

without the producer's permission and financial compensation. One could as such offer a 'negative reading' of those exclusive rights outlined by Kretschmer as including: 1) the right to prevent publishing; 2) the right to restrict reproduction and distribution; 3) the right to restrict the performance of the work in public; and 4) the right to restrict others doing any of these things. In this sense, copyright is often referred to as a solution to the problem of 'scarcity' in the music and cultural industries more generally. In legally restricting the reproduction of creative/artistic works, copyright law can be understood as imposing 'artificial scarcity' on the products of cultural industries (Kretschmer, 2000; May and Sell, 2006; May, 2006; Hesmondhalgh, 2007). In ensuring that creative works are not reproduced without the express permission and financial compensation of the copyright holder, the production of music as a business thus seemingly becomes dependent upon the construction and maintenance of the special legal environment that is copyright law.

It is clear then that both technological development and copyright law play a crucial role in music industry. Both are prominent but largely separate areas of writing and analysis however. What follows is an attempt to synthesize these two areas of analysis via the development of a narrative which highlights the inextricably intertwined roles of these two factors in the development of music industry (in the UK principally). In doing so the narrative must necessarily omit much of the overly technical detail to be found in the growing body of writing and analysis in the area of intellectual property rights especially. The

discussion seeks to develop a narrative that clearly but *succinctly* illustrates the way in which a tension between the commercial interests of the music industry, and the values, beliefs, understandings and practices of others, often surface around particular technological developments and the articulation of intellectual property rights.

Early Developments in Music Industry: Printing and Copyright

As already discussed, technological development has been a crucial factor in the development of music industry. The most important developments have been those that have enabled the storage of music in some kind of 'functional artefact' (Gendron, 1986). Once embodied in some physical object from which it can be retrieved, music – an intangible entity - clearly becomes more object and property like; something that could be owned or possessed (though for consumers, the notion of actually owning the music stored within the functional artefacts they purchase remains something of an illusion). The embodying of music in physical objects also allowed its commoditisation proper. The printing press was perhaps the first major technological development in this regard.

Garofalo (2000) suggests that when Gutenberg invented the printing press in around 1450, he laid the foundations for the modern music industry. The basic process of producing and marketing music was established in England by at least the late Middle-Ages (Lloyd, 1975). Forms of musical notation and scoring had existed for a long time prior to this of course, but

with the invention of the printing press, mass (re)production of musical scores became possible as the basis of a commercial enterprise. As suggested already, this new technological capacity did not mean that one form of music business immediately replaced another. Rather, old and new money making practices intertwined and in many ways complemented each other. For the music to be retrieved from a score, musicians were still required for instance. There was a growth in several interrelated markets following the invention of the printing press and its appropriation for the production and distribution of sheet music including: 1) that for live performance of the music stored within scores; 2) that for the sheet music itself; and 3) that for instruments via which to retrieve the music stored in print.

Crucially, the growth of an industry based on the mass production of printed music saw an interest in the legal environment of copyright emerge as a key issue in the business of music production. Basic copyright mechanisms evolved initially in relation to book printing during the 15th century when an estimated 20 million books were circulating in Europe (Eisenstein, 1979). As the reprinting of popular books became common place, crown/sovereign 'privileges' emerged as a means of solving the over reproduction/profitability problem. Crown Privileges granted exclusive rights to print and sell books usually for a limited period of time (Kretschmer and Kawohl, 2004). The first book printed under such a privilege in England was published in 1518, and the earliest known privilege granting the exclusive rights to print and sell music was awarded to a publisher in Italy in 1518 (Kretschmer and Kawohl, 2004).

This basic system of crown privileges remained intact throughout the 16th and 17th centuries, and with regards the publishing of music most composers simply handed over manuscripts in return for a one of fee from publishers, who then registered the book with the relevant authority. There was little concern for the rights of the actual author of the works in this early period, highlighting the notion that such privileges, as proto-copyright mechanisms, were principally designed to provide investors in IP (in this case publishers or book printers) with a certain commercial protection rather than providing authors with any kind of protection. Manuscripts were often sold on between publishers without the involvement, consideration, or financial compensating of authors according to Kretschmer and Kawohl (2004).

The first formal copyright law enacted in Britain, the *Statute of Anne* 1709, came into force in 1710 for the protection of 'Books and other Writings'. The so-called 'Act of Anne' provided publishers with 'the sole right and liberty of printing' for 14 years upon registration of a manuscript in Stationers' Hall, London (Kretschmer, 2000: 198). Initially music was not thought to be protected under the terms of the 'Act of Anne' however. Kretschmer and Kawohl (2004) draw on Hunter (1986) here who suggests that 18th century music publishers did not lobby for statutory protection since it was felt unnecessary in that most musical works would not remain in demand for more than a few years. There *are* apparently examples where the Act of Anne was successfully articulated in relation to cases of the reprinting of music however. In 1777 for example, J.C. Bach and C.F. Abel

won a case against a London publisher for the unauthorised publication of a J.S. Bach lesson, thus establishing that printed music could in principle be protected under the terms of the existing Act, a precedent which music publishers would go onto exploit (Kretschmer, 2000).

In the UK, the Talfourds Act of 1842 offered a more formal recognition of printed music as being subject to exclusive rights of ownership and extended the term of copyright to 42 years from publication following lobbying from publishers (May and Sell, 2006). This essentially meant they could reap financial benefits of ownership for a longer period. Simultaneously, performing rights were recognised for the first time, which would grant the publisher the exclusive right to authorise and receive financial compensation for not just reproduction of a score, but also the public performance of the music stored within. There was no institutional mechanism for monitoring such musical activity at that time however. For any individual composer or publisher, it was impossible to know when and where a composition to which one owned the copyright was being performed. It was not until the Copyright Act of 1911 and the setting up of the Performing Rights Society (PRS), as a collective body able to monitor usage and recover and distribute performance 'royalties', that performing rights became fully acknowledged in the UK (Kretschmer, 2000). This again represented the extensions of rights to cover a wider range of uses of music, effectively allowing their monetisation and incorporation as a revenue stream into the emerging 'music industry'.

It was the publisher and not the author who remained the sole beneficiary of the emerging copyright system. Individual creators still lacked access to the technical means of reproduction and distribution of their work that might allow them to benefit financially from their creative products. Instead, they could only sell their products to those who did have access to such capacities in return for a fee. In doing so, publishers effectively purchased the exclusive legal rights that were now afforded to authors of work with their purchasing of compositions. Thus, while the developing copyright system may be said to have been designed to encourage creative production, it simply provided investors in creative production with a means of benefiting financially from the reproduction of musical works for longer periods and from a wider range of uses by other parties.

The Development of Recording Industry

The next major development in technical capacities for the storage and retrieval of music was sound recording. Following the invention and development of Thomas Edison's phonograph and Emile Berlinger's Gramophone at the end of the 19th Century, actual sound could now be stored in functional artefacts for later retrieval or 'playback'. A sound recording in this sense is the product of a process whereby 'live' sounds are 'captured' and 'stored' (usually in some functional artefact such as a tape or disc), at the moment of production, allowing the future retrieval, or 'playback', of those sounds. Recorded music was entirely different to sheet music in terms of what it gave people however. With records, music could now be 'retrieved' more freely at home,

but as a matter of consumption rather than technique, skill or work. This had some interesting cultural implications of course, but crucial for the current discussion, is the notion that with the advent of sound recording and its embodiment in functional artefacts, music itself - actual sound - became even more object like, a 'thing' that could be individually possessed or owned (Eisenberg, 1988).

The immediate commercial implication of recording technology was the development of an entirely new industry sector – the manufacture distribution and retail of recordings. By 1910 the recording industry had established itself in most countries throughout the world (Martin, 1995). Sales of recorded music accelerated in the years after the Second World War, but the 1920s and 1930s brought a decline and then a virtual collapse. The business did revive but in a different form, with major recording companies linked to film and radio interests. At the start of the post war period the basic structure and organisation for the modern recording industry was in place (Frith, 1988). Records soon eclipsed sheet music as the dominant medium for storing and disseminating music as a commodity. Record companies thus displaced publishing houses as the dominant institutions of commercial music production (Garofalo, 2000). By the 1960s recorded music sales surpassed the gross revenues of all other forms of entertainment for the first time (Petersen and Berger, 1975). The commercial exploitation of recorded music also challenged the role of live music with various conflicts of interest emerging around the use of recorded music in live music venues (see chapter 6 for further discussion).

Copyright was first applied to sound recordings in the UK under the Copyright Act of 1911 (Garofalo, 2000). Recording companies agreed at this point, that the purchaser of a gramophone record acquired the right to play that sound recording in public. By the end of the 1920s however, a drastic decline in record sales was being observed. This decline coincided with a world-wide economic recession but the recording industry pinned the decline in recorded music sales specifically to increased radio airplay. This led to a major rethink on the part of recording companies (Frith, 1987). In 1934 a court upheld the *Gramophone Company's* claim that only the manufacturer of the record as the copyright holder (not the author of the music embodied in those artefacts), had the right to play that recording in public (Frith, 1987).

Phonographic Performance Limited (PPL) was set up to administer their new rights and appropriate the income generated. The newly formed *International Federation of the Phonograph Industry* (IFPI) began lobbying governments around the world for the amendment of domestic laws along similar lines (McFarlane, 1980). In this instance, a reinterpretation of copyright made the public performance of recorded music subject to license and payment to record companies as rights holders. The public performance of recorded music today remains restricted under the terms of copyright law, and its broadcast via radio and T.V. or performance in shops, bars and restaurants, represents a major revenue stream for the recording industry as producers of recorded music (Hull, 2004).

The next major technological challenge to the recording industry's profits, and around which further debates about copyright ensued, came after a sharp decline in the value of recorded music sales in 1978-1983 (Frith, 1987). Again this period coincided with economic recession, but the recording industry depicted the rising sales of blank cassette tapes and portable cassette players as directly responsible for the decline. Cassette technology had been introduced during the 1960s following developments in magnetic recording techniques, and had become the industries preferred means of product dissemination by the mid 1970s (Garofalo, 2000). But precisely because of the formats superiority in terms of usability it became increasingly popular among consumers for using recorded music in ways unintended by rights holders. The IFPI's response to the apparent threat of this particular technological development was to embark on an international campaign for a levy to be placed on blank tape and/or recording equipment sales on behalf of the recording industry (*The Case for a Home-taping Royalty,* 1984).

Though there was little concrete evidence to support their claims, the IFPI asserted, that there was little doubt that 'private copying is seriously affecting the profitability of the phonograph industries' (IFPI; cited by Frith, 1987: 60). The result of the campaign was the amendment of Copyright Law in the US via the *Audio Home Recording Act 1992* which introduced said royalty, though there was no equivalent amendment to law in the UK. Regardless, the case of the recording industry's reaction and response to home-taping illustrates the way in which commercial interests in music have

typically responded to the challenges that technological development sometimes present. The fact that the IFPI were successful in their campaign to have legislation amended, in the US at least, further illustrates the apparent lobbying power of these interests and the way in which copyright laws have been enhanced in ways that did not necessarily benefit authors of the music recorded and reproduced for sale and licensing. In investing in the production of recordings, recording companies become the primary beneficiaries of the rights afforded by enhanced copyright laws. Authors remained dependent on those institutions for access to the technical means of reproduction and dissemination and could expect to see little in the way of financial reward from the reproduction of their work. This issue is discussed further in the following chapter.

The Unintended Consequences and Divergent Appropriations of Technological Development

The case of 'home-taping' highlights a crucial point: Music business has generally 'swum along in the wake of consumer behaviour, trying to profit from the unanticipated consequences of invention' (Frith, 1987: 62). Although music business practices have evolved around new technological capacities for the storage and retrieval of music, music businesses have rarely been the designers of these technologies, their applications and appropriations. Indeed, the music business only began to assume its modern form as an unintended consequence and application of sound recording in the 1880s, and the challenges that this posed to piano makers, sheet music publishers, and music

teachers soon became apparent (Martin, 1995). The development of the recording industry disrupted the structure of the 19th century music business, but further technological developments have disrupted the recording industry as we have already seen above. Thus, as Martin (1995: 256) suggests, '[j]ust as the recording industry has been shaped by the need to cope with a volatile market, so it's established process, practices and institutions have been constantly undermined by technological innovations'. As Théberge discusses;

> '[A]rtists and consumers have often used technology in ways unintended by those who manufacture it. In this way, pop practices constantly redefine music technologies through unexpected or alternative uses [...]. It is essential to recognise, firstly, that conflicts in musical aesthetics and values have accompanied virtually every development in music technology and, secondly, that the possibilities offered by music technologies are never exploited equally, or even accepted in sphere of music-making. Indeed, different uses of technology reflect different aesthetic and cultural priorities'
>
> (Théberge, 2001: 3).

While it is in the interests of the music industry to use technologies in ways that will enhance or extend profit accumulation and maximisation strategies, musicians and consumers have often appropriated technologies in ways that allow them to pursue their own, often conflicting interests. As Martin (1995) acknowledges, the development of the music business provides countless illustrations of Marx's insights into the ways in which changes in the forces and means of production ultimately act to undermine existing 'social relations of production' (Marx, [1859] 1968).

Crucially, whilst 'the history of the music industry is that it has greeted any new technology – from piano rolls to radio to cassette tape – with suspicion' (Garofalo, 2001: 94), it is also true that the music industry has ended up bringing new technological capacities under their control and been able to exploit affordances according to their own commercial interests. In discussing the rise of music online and the development of file-sharing Kusek and Leonhard acknowledge that:

> 'Just about every new transformative technology has been fought, tooth and nail, until it could no longer be contained, discredited, or sued out of existence, and only then it was reluctantly embraced, its providers acquired and controlled, then put to work to bring in the bacon'
>
> (Kusek and Leonhard, 2005: 140)

The established music industry's main weapon in this regard has been copyright. The extension and enhancement of copyright law has enabled both the monetisation of emerging technological capacities whilst at the same time allowing the way in which others may use music via these new technological capacities to be restricted. In the 21st century we have been witnessing the continuation of this apparent trend. New technical capacities for the storage, distribution and retrieval of music have been developed and appropriated. Whilst these developments have presented opportunities for the extension of existing business strategies and practices, they have also presented challenges to those existing systems of profit accumulation.

The Internet is indeed the ground upon which this play between competing interests is currently being played out. On the one

hand the internet is regarded as a potentially lucrative forum for direct marketing strategies, sales and licensing for both the traditional record company and a new generation of entrepreneurs, while on the other it has emerged as an alternative distribution channel for all forms of independently produced music as well as a potential site of new experiences and interaction between consumers. The emergence of music online yet again presents itself as an unanticipated consequence of technological developments and convergences.

'Digitisation' and the Rise of Music Online

Throughout history music industry interests have had to deal with technological developments that have threatened to disrupt established business practices. The latest of these technological developments is best summarised perhaps by the term 'digitisation'[2]. The term digitisation can be understood as referring to the process of converting information into a digital format; a process whereby information is represented numerically in a series of 1's and 0's, rendering it amenable to processing by computers. The 'digitisation' of recorded sound has in the longer term presented the recording industry with a major problem. Profit-making in the recording industry depends largely on the production of artificial scarcity (most crucially via the articulation of intellectual property rights as discussed above). The accuracy and ease with which recordings embodied

[2] Hesmondhalgh uses the term 'digitalisation'. I propose using the term 'digitisation' instead since the term 'digitalisation' is used elsewhere to refer to the administration of 'digitalis' for the treatment of certain heart conditions. Confusion is unlikely among readers of this work of course.

in digital files can be copied and circulated presents a major threat to such artificial scarcity however (Hesmondhalgh, 2009: 59).

Digitisation has not been all bad for the recording industry. After arriving on the market in 1982, the appropriation of the CD format brought about the biggest boom in recorded music sales ever seen by the recording industry. Leyshon et al. (2005) refer to the subsequent 15 or so years of sales growth as a 'golden era' in the history of the recording industry. The introduction of the CD persuaded music consumers to replace their vinyl and cassette collections and by the mid 1990s the CD had become the predominant format for recorded music and thus the primary source of sales revenue for the recording industry. In 1999 CDs accounted for 2.5 billion or around 66% of the 3.8 billion 'units' shipped by the recording industry, with cassettes accounting for 0.9 billion and LPs 0.02 billion (IFPI, 2001). CDs also enabled recording companies to exploit their own back-catalogues, via the reissuing of old recordings in the new format. As Robert Sandall (2007a) points out in an excellent account of these developments, as a digital format, the CD contained the seeds of its own destruction however:

> 'Anybody who owned a CD could indeed use it as record companies had traditionally used master tapes: to clone thousands more, and quickly, using kit available on any high street. And at home, CD burning hardware on computers made it simple to produce copies in seconds.'
>
> (Sandall, 2007a: 30)

There is a familiar story here of unexpected consequences: the industry's adoption of the digital CD format in the early 1980s, and its successful campaign to persuade consumers to shift from vinyl to CD, can be seen to have lifted the recording industry out of a period of economic decline. But in storing music as bits of information, record companies were also undermining the material distinction between production and reproduction on which copyright law rests (Frith and Marshall, 2004: 3). The industry had apparently been warned about the dangers of what amounted to giving away master tapes, but they were too concerned with immediate profits to debate the potential problems of this new technical capacity (Sandall, 2007a).

Using freely available software, digital content could be 'ripped' from CDs and converted into an MP3 file for storage on any computer. MP3 is shorthand for Moving Pictures Experts Group (MPEG) 1 Audio Layer 3, an audio compression and encoding format that uses an algorithm to reduce the amount of data required to represent an audio recording digitally by a rate of about 12:1, consequently reducing the size of the original file dramatically (Anestopoulou, 2001: 320). With the release of CD 'burners' to the public in 1998, people could now transfer MP3 files from their computers onto recordable CDs (CD-Rs), and a black economy in counterfeit CDs soon proliferated. The IFPI claim that the global traffic in pirated disks was worth US$4.5 billion in 2005, with pirate CDs sales outnumbering legitimate sales in a total of 30 national markets (IFPI, 2006b).

But while physical piracy of CDs spawned infrastructures for the manufacture, distribution and sale of counterfeit CDs that would

directly compete with legitimate sales, rapidly expanding Internet access and developments in online networking technology had the capacity to render such physical infrastructures, legitimate or otherwise, almost entirely obsolete by doing away with the necessity of physical product altogether. The nature of MP3 files means that they can be easily uploaded to the Internet and quickly downloaded. Once embodied in a MP3 file and stored on one persons computer, the sound recording contained can be made available on the Internet for anyone to make their own copy for free. What's more, these digital files could be played back on one's computer or simply transferred to dedicated and portable playback devices (MP3 players). The recording industries entire physical infrastructure for moving product to consumer and for extracting monetary compensation could now be bypassed.

By the end of the 1990s, people were posting large collections of MP3 files containing copyrighted sound recordings on websites and servers to be freely downloaded by anyone with Internet access. The proliferation and spread of music online, plus the difficulties in trying to find a particular recording, inspired North American college student, Shawn Fanning, to create *Napster,* a software application that enabled people to search for and obtain music online by remotely accessing each others hard drives. Soon after its launch in 1999, millions of *Napster* users were sharing billions of copyrighted sound recordings embodied in digital files over the Internet[3]. Since then, hundreds more

[3] See John Alderman's *Sonic Boom: Napster, P2P and the Future of Music* (2001) for a comprehensive commentary on these early developments.

software applications of varying design and popularity have been developed for the purpose of sharing music online. It is estimated that hundreds of millions of 'file-sharing' applications have been downloaded since the turn of the century and that millions of people have been freely downloading billions of songs in MP3 format every year (Kusek & Leonhard, 2005).

Following Bakker, Hesmondhalgh (2009) acknowledges how a number of distinct but interrelated technological developments have been important in the rise and proliferation of online music file-sharing. He summarises 4 important developments as follows:

1. The development of the MP3 compression standard which allows digital audio files to be reduced in size making them easier to store and circulate.

2. The spread of high-bandwidth internet connections.

3. The introduction of multi-media computers with increased storage capacity, soundcards, CD-Roms and speakers

4. The development of relatively easy to use software that allows users to rip music from CDs and convert them into various digital audio file formats, and software that allows users to search for, locate, download and upload digital audio files via the internet.

(Hesmondhalgh 2009: 59)

Together, these developments have afforded a practice which, if able to proliferate unfettered, threatens to destroy the recording

industry as it currently exists. Hesmondhalgh (2009) acknowledges that these innovations were primarily driven by the telecommunications and software industries, which in relation to the recording industry he describes as representing rival sectors of economic capital accumulation. Whilst the recording and other content industries might have liked restrictions to have been placed upon the development of some of these technological capacities at times, the industries behind those developments were able to resist those measures, having been placed at the centre of government agendas for maximising competitiveness in the global economy. As we shall see however, and as Hesmondhalgh himself acknowledges, the recording industry has been lobbying hard for the extension of laws to restrict the ways in which people may appropriate these new technological capacities.

The Nature of File-Sharing

A definitive definition of file-sharing is difficult to find. Authors and commentators tend to discuss the phenomenon and associated issues without explicitly or clearly defining the practice, and thinking too much about what distinguishes this particular practice from other forms or methods of information sharing (which is what file-sharing is a form of in essence). One of the difficulties associated with defining file-sharing is that, as a technologically mediated and in some cases 'illicit' practice (depending on precisely what is being shared), the technical characteristics of file-sharing are constantly evolving. As increasing amounts of time and money are spent trying to

combat the practice, equal amounts of time, effort and money are being spent on developing new, more efficient, and less easily detected and restricted ways of practicing the activity.[4] Definitive definitions of file-sharing are as such in danger of becoming quickly outdated.

The internet was being used to share music files from the mid 1990s via Internet Relay Chat (IRC), email and personal web spaces. What is referred to as 'file-sharing' though refers to the process of sharing digital files via specifically designed computer programmes or applications. In essence, as Michael Einhorn describes, file-sharing applications 'provide to web users the ability to find and download files from other computer hard drives by typing an appropriate title, word or phrase' (2004: 79). 'Downloading' refers to the act of obtaining such files via file-sharing networks, whereas 'uploading' refers to the act of making these files available for others to download. Though the specific nature and design of file-sharing applications have evolved over time, simply put, file-sharing applications allow anyone with access to the internet to search for and freely copy recorded music.[5]

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[4] The development of file-sharing as a technologically mediated practice provides an interesting case study in the way that the criminalisation of culturally prevalent activities may not only act to displace those practices spatially but may also act as a catalyst for creativity, adaptation, resourcefulness, and ingenuity among those criminalised. Note how as one file-sharing network is shutdown users simply shift to another, how the providers of file-sharing services have sought to (re)locate their operations within certain spatio-legal territories, and how the technical characteristics of file-sharing have evolved as methods for identifying and restricting it have developed.

[5] See David (2010) chapter 3 for a brief discussion of the varying design and nature of file-sharing systems.

In his book, *Peer to Peer and the Music Industry: The Criminalisation of Sharing,* Matthew David defines file-sharing as 'the circulation of compressed digital computer files over the Internet using an array of location and exchange software' (2010: 2). This definition remains suitably broad so as to encompass the range of forms that file-sharing has taken, whilst also providing clear indication of what 'file-sharing' actually is. In essence, as David's definition indicates, file-sharing logically refers to the *sharing* of *files.* As David's definition further indicates however, the term file-sharing is typically used to refer to the sharing of *digital* files *online* specifically. In other words, the term file-sharing is not typically used to refer to the sharing of any other kind of 'file', or the sharing of files - even *digital* files - offline. Individuals may share digital files offline via the circulation of physical artefacts such as CD's, memory sticks, and portable hard drives for instance, but this would not normally be referred to as file-sharing, despite the fact that it simply represents a different method of transferring digital files from one storage device to another.

The term file-sharing is also used to refer to the transfer of files in the absence of an economic transaction. This latter distinction, between transfers which take place as part of an economic transaction and those which do not, draws attention to perhaps the most important characteristics of file-sharing. The term *sharing* is used precisely because the activity to which it refers is said to constitute an act of 'sharing'. Within the networks of sharing that file-sharing applications afford, a kind of 'gift economy' (Leyshon, 2003) is at work, where reciprocation is

understood to be an important aspect of 'appropriate' behaviour.[6] As Hesmondhalgh notes, a certain ethos or ethic is often espoused by users of these networks, which resembles 'a version of freedom located in an anti-commercial anarchism of the "property is theft" variety' (Slater, 2000; cited by Hesmondhalgh, 2009: 60). As Hesmondhalgh asserts though, we must not lose sight of the fact that many of these file-sharing networks operate as commercial enterprises supported by advertising and often backed by venture capital, further illustrating the fact that the conflict surrounding file-sharing is not simply one involving a tension between commercial and anti-commercial interests, but one that also involves tensions between competing sectors of economic capital (ibid.).

We must also bear in mind that the sharing of information is something of an anthropological given so to speak (music itself is, after all, fundamentally a communicative endeavour and social practice). The sharing of information embodied in digital files via electronic networks simply represents a logical continuation and extension of a fundamental human practice in this sense (which is what makes any attempt to restrict it so philosophically troubling for some perhaps). There is a tendency to talk about anything associated with technological development as 'new' – a promotional discourse usually instigated by the developers of those technologies. Quite often however, it's the technological means that's new, and not the practice itself. This is certainly the case with music file-sharing.

[6] Economist Stan Liebowitz (2006) argues that the term 'file-sharing' is actually somewhat of a 'misnomer' since participants hardly 'share' music in the true sense of the word. Rather it should be called 'anonymous file copying' since that reflects what actually occurs he argues.

Whilst the specific technologically mediated forms which the sharing of information takes today are 'new', the fundamental practice of sharing information is not.

The current status of file-sharing means it is impossible to derive any truly accurate measure, which probably leads to some gross inaccuracies. In highlighting the difficulties in measuring file-sharing, economist Stan Liebowitz (2006) asserts that while file-sharing is carried out through computers - devices capable of measuring such activities – the desired data has yet to live up to its full promise. He emphasises that the sources currently available give extremely varied accounts of the extent of file-sharing and that studies have generally suffered from one or more serious imperfections. Despite these difficulties in measuring the true extent of file-sharing, estimates proliferate in academic, industry, public and policy circles.

The Recording Industry's Response to the emergence of Online Music File-sharing

Recording companies have been asserting that file-sharing is the primary cause of an economic downturn being experienced since the turn of the century. Leading companies in the sector began posting disastrous results and projections from 2000 onwards. EMI for example posted a financial loss £54.4 million in the six months leading up to 2001 (Leyshon et al., 2005). David Sandall (2007a) also highlights how the period since 2000 has seen some drastic cost-cutting exercises among major recording companies including significant culls of staff and artists. The closure of several well-known high street music retailers would appear to

be further evidence of the decline in sales of recorded music embodied in physical artefacts since the turn of the century[7].

In 2006, the UK recording industry trade body, the British Phonograph Industry (BPI), asserted that 'the overwhelming majority of reputable third party research shows that illegal file-sharing has been a key factor in the recording industries 22% worldwide sales decline between 1999 and 2004' (BPI, 2006a: 5). They also provided a substantial list of studies and reports whose conclusions and findings support this claim. The apparent links between the dramatic decline in the value of global music sales and the emergence of the file-sharing naturally led to a proliferation in econometric studies attempting to measure and demonstrate the relationship (Liebowitz, 2006). The majority of this evidence seemed to support the conclusion that file-sharing has brought significant economic harm to the recording industry. As Liebowitz (2006: 24) declares, 'the birth of file-sharing and the very large decline in CD sales that immediately followed is a powerful piece of evidence on its own'.

Recording companies argue that a significant proportion of people have stopped buying music now they can now get it quickly and easily for free via file-sharing networks. This seems like a logical argument, but there may be other factors at work also. As Leyshon et al. (2005) acknowledge there is evidence to suggest that the rise of file-sharing cannot be held solely

[7] Recorded music retailer *Music Zone* went into administration in January 2007. This was followed by the closure of 105 *Fopp* stores across the UK in June 2007. HMV announced significant profit warnings in 2007. Richard Branson also dumped *Virgin Megastores* in 2007.

responsible for the depth and severity of the apparent decline in recorded music sales. Both Laing (2004) and Sanghera (2002) suggest entirely alternative explanations for the apparent decline in people's expenditure on recorded music. One argument suggests that competition for consumer spending on entertainment has intensified greatly with the launch of DVD, new video game systems and so on. These two authors also argue that the mid 1990s represented the end of the 'CD replacement cycle' that gave rise to a 15 year boom in recorded music sales (Laing, 2004: 89). Laing also highlights the obvious implication of general economic circumstances and points to a global economic stagnation from the turn of the century. He draws on Snell's (2001) conclusion that 'historical trends confirm a strong correlation [...] between music sales and consumer confidence' (Snell, 2001; cited by Laing, 2004: 89). The extent of *physical* piracy which has proliferated since the 1990s must also be taken into account when considering the reduction in legitimate music sales since the turn of the century of course.

Despite the value of these alternate explanations for the decline in the value of global music sales, they have paled into insignificance next to the weight of evidence that the music industry has gathered (via commissioned research) to show the direct link between the emergence and proliferation of file-sharing on the one hand and a significant decline in the economic value of global music sales on the other. There have also been moves to forcefully debunk some of these alternative arguments. In his review of these alternate arguments, Stan Liebowitz (2006) systematically dismisses each of them. He

asserts in his review that all of the studies of which he is aware, except one, find that file-sharing brings about some significant degree of harm to copyright owners (Liebowitz, 2006). The recording industry as represented by the IFPI is keenly aware of this supporting evidence, as demonstrated by their regular reference to it in publications and on their website.

Whether file-sharing is directly responsible for the decline in revenues and sales or not, the phenomenon has provoked a severe reaction and response within the global recording industry. This has involved large-scale litigation and public awareness campaigns, and intense lobbying of governments/legislators. The major global recording companies apparently felt so threatened by *Napster* as the first major file-sharing application, that they joined forces to sue it out of service. Found to be falling foul of US copyright law and faced with lawsuits filed on behalf of major recording companies, the original *Napster* was shut down in 2001. Major recording companies subsequently began to wage war on numerous websites, individuals and technologies that they perceived to be enabling the widespread 'theft' of 'their property'. In an attempt to shut down any space for ambiguity or doubt about the illegality of unauthorised file-sharing, record companies and their representative organisations/trade bodies have been pushing hard for the clarification, enhanced enforcement, and extension of copyright law in the context of the new technological environment.

Even before the emergence of *Napster* and the proliferation of other file-sharing systems, content corporations including music

corporations were moving to make sure that the Internet could be successfully exploited in commercial terms. As Hesmondhalgh (2009) discusses, the first major response to the rise of the Internet came with the *World Intellectual Property Organisation's* Geneva conference in 1996 where signatories agreed to update their national laws to allow rights holders to extend their rights in relation to the changing technological environment. The result was the *Digital Millennium Copyright Act* (DMCA) in the USA in 1998, and the EU *Copyright Directive of 2001.* The UK Government implemented this directive via *The Copyright and Related Rights Regulations 2003* as a statutory instrument. Crucially, these acts contained clauses which made it illegal to counter the Digital Rights Management (DRM) systems that were being developed and used by content industries to protect their products from unauthorised reproduction. As Hesmondhalgh acknowledges, such an extension of copyright law into the digital terrain was to be expected, and were an early sign that 'the digital environment was being fruitfully presented by copyright industries, such as the recording industry, as a threat, one against which legislation was needed to protect them' (2009: 66).

After successfully seeing the original file-sharing network *Napster* closed down in 2001, the recording industry and their respective trade associations continued to pursue litigation against the developers and providers of file-sharing applications including *Grokster, Morpheus, OiNK,* and more recently *The Pirate Bay* amongst many others. Victories on the part of the recording industry in each case can be seen as an indication of

the 'continuing legal and regulatory power of the oligopoly of corporations that dominate global music circulation and rights ownership' (Hesmondhalgh, 2009: 61). Recording companies have also pursued litigation against individual users of such file-sharing applications. In the UK context, the BPI began a rolling programme of legal action against individual up-loaders in 2004. By May 2005, around 90 cases against individuals had been launched with 60 settlements by July of the same year. By May 2006, more than 100 cases against individuals had been settled without the need for court action, with an average settlement of over £2,000.

Elsewhere, led by the *Recording Industry Association of America* (RIAA) and backed up by US copyright law including the newly implemented *Digital Millennium Copyright Act* 1998 (DMCA), record companies in America have been the most active in this respect bringing cases against hundreds of individuals to date. The RIAA were the first to announce that individuals would face legal action in 2003. Again, most cases of copyright infringement brought against individuals were settled out of court, one of the most famous such cases being that brought against a 12 year girl from New York who settled for $2,000. The first case brought against an individual file-sharer to reach trial represented a further resounding victory of music corporations. In 2007 a North-American woman was found guilty of copyright infringement and ordered to pay $222,000 damages plus costs. The jury ordered Thomas-Rasset, 32, from Minnesota, to pay $222,000 for making 24 songs available for others to download via the *Kazaa* file-sharing

application - a cost of $9,250 per song. Thomas-Rasset appealed and was awarded a retrial, but in 2009 the defendant was found guilty again, and this time ordered to pay $1.92 million in statutory damages. This sum was later reduced to $54,000, but the recording companies who had brought the case against Thomas-Rasset refused to accept this and so a third trial was held in 2010. This third trial resulted in Thomas-Rasset being ordered to pay $1.5 million – equivalent to $62,500 per song.

These various litigation campaigns have proved hugely controversial of course, representing what Hesmondhalgh describes as a 'public relations disaster' for the recording companies involved (2009: 61). Recording companies have continued to pursue litigation against individual file-sharers regardless, though they have now implemented a system of 'informing' (warning) suspected file-sharers that their actions may result in litigation should they not 'cease and desist'.

Despite the continued efforts of the recording industry to restrict people's uses of music and technology, file-sharing continues to proliferate amongst a significant proportion of the public. Despite legal threats and technical locks, people have continued to file-share exposing what Simon Frith and Lee Marshall (2004) describe as radical disjuncture between the law and the social practices it supposedly governs. They summarise the developing situation and the nature of copyright in music more generally as follows;

> 'Copyright law has an effect on how we act but it does not determine our actions. When we consider the law (any law), we do not just obediently follow it, but bend it and, significantly, follow the laws as

> we think it should be. If copyright law is counter intuitive, if it contradicts widely held beliefs about the avaricious nature of the recording industry, then it is unlikely to be followed. Many musicians and most music consumers seemingly do not believe in existing copyright laws, and so rights holders are trying to make us believe in them through legal threats and technological locks. The outcome of this struggle cannot be predicted; it depends upon the particular power relations involved. And as Toynbee rightly concludes, wishful thinking apart, to promote copyright change requires us to acknowledge that there are powerful actors out there with vested interests in strengthening the existing regime.'
>
> (Frith and Marshall, 2004: 213)

Recent developments in the UK give a clear indication of what the outcome of this 'struggle' might be. In the face of the continued proliferation of file-sharing, music corporations have continued to exert pressure on legislators to further enhance the enforcement of copyright law. The result of this pressure has been the passing of the *Digital Economy Act 2010 (c.48),* which gives rights holders the legal right to have individuals suspected of sharing their 'property' online disconnected from the internet. In a seemingly unprecedented move, the state has thus effectively delegated copyright law enforcement duties (including punishment) to corporations who depend on the enforcement of those laws for the purposes of profit accumulation. Contrary to what Frith and Marshall (2004) suggest above, this outcome was entirely predictable given the precedents which define the development of music industry and outlined in this chapter. Music corporations have proven to be powerful lobbyists throughout history.

Concluding Discussion

This chapter has offered an account of the development of music industry which highlights the intertwined roles of technological development and copyright law. It has shown firstly that technological development has presented opportunities for the commoditisation of music but has also frequently presented problems for music industry. People often wish to appropriate new technical capacities and use music in ways that commercial producers would rather they did not. As Simon Frith asserted in relation to attempts to restrict people's uses of technology and music, 'they [consumers] own record/radio/cassette players, so why can't they do what they like with them? Copy a record for a friend? Tape the best tracks from a John Peel show?' (1987: 60).

As Hesmondhalgh (2009) asserts, those seeking to make money from the production and circulation of music have always had to fight to enforce the boundary between what they define as 'legitimate' forms of music consumption – those involving financial compensation, monetary exchange, and flows of income – and what they wish to define as illegitimate consumption practices – those practices which do not involve financial compensation for reproduction and distribution, such as file-sharing. Thus, as Théberge suggests:

> 'It is important to recognise that what is at stake in the various controversies surrounding the MP3 file format is not simply the issue of copyright *per se*. The case of Napster needs to be understood as a clash between radically different value systems – between a particular notion of what constitutes a legitimate form of social interaction [...] and the commercial needs of the industry.'

(Théberge, 2001: 23-24)

Social actors naturally appropriate technological capacities according to their own interests, and while it is in the interests of corporations to appropriate the internet and other technologies for the purposes of profit accumulation and maximisation, music fans and consumers may appropriate these technical capacities according to conflicting interests – to share music, to bypass what the industry defines as legitimate music consumption practices and what statutes define as legal.

The commercial actors of the music industry have thus always greeted new technologies for the storage, reproduction, retrieval and dissemination of music with suspicion and their established business practices have frequently been disrupted by technological innovation, development and appropriation. The narrative outlined in this chapter illustrates how the recording industry has 'generally ended up benefiting financially from every technological innovation of the twentieth century. When the dust settles around the current flap over MP3, it is likely that the same will be true' (Garofalo, 2001: 94). As Hull (2004) suggests and as has been illustrated here, the recording industry has been prone to using litigation to assert their control over the production, supply and distribution of music via new technological means. What's more, these industries have been extremely effective in lobbying governments for actual changes in copyright law in ways that clearly benefit their interests in profit accumulation.

The recording industry was one of the first industries to experience the threat of digital technology (Frith and Marshall, 2004; Hesmondhalgh, 2009) and has been at the forefront of attempts to extend and enhance the scope and enforcement of intellectual property rights in the face of changing technological environments. They have been swift and decisive in trying to deal with the challenges that the internet and digital technology has presented them with in this sense. Existing commercial music interests have called upon legislators to enhance the scope of copyright law, persuading them to write in amendments to existing laws that allow them to effectively exploit the practices afforded by recent technological developments. The initial expansion or enhancement of existing copyright laws into the online environment has been followed by the passing of laws in the UK that allow commercial actors themselves to further enforce existing copyright laws and restrict people's actions.

Frith and Marshall (2004), May and Sell (2004) along with many other's writing in the area all acknowledge that legislation has continually extend the notion of copyright from getting paid for usage (reward for authors) to controlling usage (restriction of users) however. As Frith suggests, to apply copyright law is to ultimately and in principle restrict usage – the copyright owners' basic power is to prevent their work being used in certain ways; 'The history of copyright law is the history of the steady extension of legal clauses on what can't be done' (1987: 71). Kretschmer and Kawohl concur that in the current legal environment, 'access to property becomes conditional on the discretionary decision of the owner. Property entails the right to

say no' (2004: 41). Thus as Hesmondhalgh asserts, 'the original stated purpose of copyright, to stimulate creativity within society, is being sidelined in favour of the protection of corporate interests' (2009: 67).

The argument that there are social benefits to be gained from the development and dissemination of knowledge and ideas underpins common justifications for copyright. To this end, IPRs should ensure the right to reward that might incentivise creative production. As May and Sell discuss, it is often assumed or asserted that;

> 'Without IPRs there would be little stimulus for innovation. Why would anyone work toward a new invention who would be unable to profit from its social deployment? Therefore, not only does intellectual property reward intellectual effort, it actually stimulates activities that have a social value and most important, it serves to support the social good of progress. Underlying this argument is a clear perception of what drives human endeavour; individual reward. Only by encouraging and rewarding the individual creator or inventor (with property and therefore market related benefits) can any society ensure that it will continue to develop important and socially valuable innovations, which will serve to make society as a whole more efficient'
>
> (May and Sell, 2006: 22)

Copyright, as a bundle of IPRs applied to artistic products, was designed to incentivise the production of creative works for the benefit of society. This aim was explicit in the Statute of Anne, and remains an important justification for IP laws everywhere. In the case of music though, the original principles of copyright have been put aside. As both Kretschmer (2000) and Frith and

Marshall (2004) have acknowledged, the history of copyright is one of continuous extension of copyright in scope in ways which clearly benefit investors in creative production (publishers, recording companies). It is not clear how the enhancement of copyright benefits creators (authors) however. Kretschmer refers to this apparent paradox the 'dialectic of music copyright' (2000: 215).

What is of particular interest here is the way in which the continual extension of copyright law continues to be rationalised and justified. As commercial and corporate actors have continued to call for particular changes to copyright law as investors in IP production, they have attempted to justify these calls in terms of the benefits to creators and society at large. For example, Frith highlights how in their campaign against home-taping, the IFPI argued its case in both general and particular terms;

> 'In general, the loss of revenue has implications for future investment, employment, talent development and so on; in particular, people are getting pleasure from music makers who are getting nothing back in return. The whole point of copyright is to ensure that the author of the work, its absolute owner, is duly rewarded for other people's enjoyment of that work – without such rewards there would be no economic incentive to make musical or literary works in the first place [...]. The question that is evaded by IFPI is the precise relationship between the author's copyright (as creator of the work) and the record company's copyright (as owner of the material on which the work is recorded).
>
> (Frith, 1987: 61)

As suggested, the general utilitarian justification for copyright is that creators should be encouraged to create and make their creations available for the general good of society. This means that creators should be financially rewarded for their work and that this financial reward should be enough to at least cover an creator's investment in developing 'skills' and acquiring 'resources'. Copyright law is thus said to provide an incentive for creativity, by ensuring creators have a legal right and opportunity to economic reward. There are obvious problems with this ideal in practice however.

As well as the obviously problematic nature of the assumption that individual financial reward is what drives creativity, those who would seek financial reward are rarely in a position to do so easily. Reproducing, marketing and distributing creative products has always been prohibitively expensive and requires access to the technical means to do these things. Creators thus invariably need the financial help of others – namely publishers and recording companies in the case of music creators. Enlisting the help of recording companies and publishers usually means the creator ceding both some creative control and the exclusive rights of ownership afforded to them via copyright law however. In return for their investment in creative production, recording companies and publishers acquire the rights of ownership. As Kretschmer (2000) concludes, the chief beneficiaries of copyright law and its continual enhancement and extension are thus commercial investors in creators, not creators themselves.

In the next chapter, the discussion moves towards a more detailed consideration of the nature of the relationship between

creators and investors in the modern day music industry. The discussion highlights that while the production of recorded music depends on the collaboration of artists and bureaucrats, the tension between them, a tension usually read ideologically as art versus commerce, is built into the system (Frith, 2001). These tensions emerge as creators become financially dependent upon recording companies as investors, who in an attempt to maximise profit accumulation, develop and implement economic strategies which see them generating profits whilst the creator struggles to see any financial reward for their creativity. It becomes clear that the current copyright system conveys no obvious economic benefits to creators, but remains central to recording industry business models. This is why these corporate actors continue to lobby for the enhancement and enforcement of copyright laws.

CHAPTER 2

THE TENSION WITHIN: CREATOR-INVESTOR RELATIONS IN THE RECORDING INDUSTRY

Introduction

Making music is a kind of anthropological given. People do and always have made music in some form or another, as Simon Frith like many others acknowledges; 'music is a universal human practice, like talking or tool making. All of us can do it; all of us do do it: sing to ourselves or our children, hum and chant, dance and tap out a rhythm' (Frith, 2001: 26). Making music is a kind of everyday activity, something we might do primarily for leisure, pleasure, or recreation, as a means of passing the time, expressing our mood, or relaxing for instance. For some people, making music is much more than just an everyday leisure activity however. For a significant number of (mainly young) people, making music is something they hope to do as a career. They will expend a huge amount of time, money, and energy honing their musical skills in the hope that one day this might be how they make their living.

As a career, making music has a certain appeal. The thought of spending your days doing something you love and getting paid to do so will always be attractive. The fame, status, wealth and autonomy that successful creators are perceived to enjoy only add to the allure of course. Hundreds of thousands of individuals set out in pursuit of a career making music every year. Of all

those who do so only a tiny fraction will succeed. The apparent success of a few inspires many however.

Drawing on various accounts, analyses and studies, most especially Keith Negus' (1992) groundbreaking study of recording companies in the UK, this chapter provides an overview of what pursuing a career as a music creator has generally been understood to involve. The account developed here suggests that the route to making a living making music is not only fraught with difficulties, but involves significant tensions and conflict that emerge as creators attempt to position themselves within a highly competitive and complex field of commercial cultural production. These tensions become most pronounced it seems when, in attempting to following a now well-established route to 'success', creators enter into and attempt to negotiate relations with other commercial actors and institutions as 'investors'.

It is on the basis of the account developed here that we can see more clearly that copyright laws as they are currently articulated seem inadequate in securing financial rewards for the creators. This is surprising given that copyright laws are often justified on the basis that they should and do benefit creators. Instead, copyright laws are shown to most clearly benefit those who invest in creators, namely recording companies. The account developed here ultimately raises questions about the value of the current copyright system, and its continued extension in response to the changing technological environment. More importantly, the account raises questions

about common 'creator-centred' justifications for the continual enhancement of copyright laws.

The 'Great Pop Dream'

Writing in *The Guardian* about established music industry processes and practices at the end of the 1990s, Neil Strauss describes how the archetypal pop/rock dream involves getting together with some friends in a basement or garage to write songs and perform them at local clubs until a label takes notice and offers you a recording contract; 'then the label takes care of the rest: hit singles, arena shows, limos, parties, a new house for mum' (Strauss, 1999: 114). As Strauss indicates, recording companies form a key part of the great pop dream. Ever since the business of producing and marketing recordings as commodities became the basis of a global industry, 'making it' as someone who creates music has essentially meant getting signed to a major recording company and becoming a 'recording artist'.

Recording companies contract individuals and groups to feature on recordings and then attempt to develop them as global stars via marketing and promotion. They invest huge amounts of money in acquiring promising creators as 'featured artists', then producing, manufacturing, distributing and marketing recordings in the hope that they can generate a profitable return on their initial investments through sales and licensing of those recordings. When successful, recording projects may see unknown music creators become global household names. As Keith Negus suggests, when success *does* come, 'it brings phenomenal financial rewards, status, mobility and power'

(1992: 139). And, as suggested, these success stories 'provide an enduring source of inspiration to tens of thousands of aspiring recording artists, sustaining them in the belief that at some point in the near future they will be recognised by, and then signed to a major record company' (Negus, 1992: 41).

The reality is of course, that of all those hundreds of thousands of aspiring artists who set out in pursuit of 'the great pop dream', only a tiny fraction will ever 'make it' even beyond the early 'start-up' phases. As Weinstein discusses in reference to her study of heavy metal bands in the US:

> 'The obstacles prove to be too great to surmount. Disharmonies within the group, lack of financial resources, personal problems, fatigue, waning enthusiasm in the face of frustration, inability to make hard decisions to sacrifice weaker members, and lack of the requisite talent and skills all contribute to failure'
>
> (Weinstein, 1991: 75)

For those bands that do manage to 'keep it together', they are essentially engaged in something akin to a 'Darwinian struggle' (Shuker, 1994: 110) for recognition among local and regional audiences, and among the handful of major recording companies who are constantly looking for new acts to sign as the basis of product. At any one time in any major city there are likely to be thousands of aspiring and unsigned creators 'all slugging it out night after night in a never ending cacophony of competition, strategic repositioning, and reconfiguration' (Krischner, 1998: 250).

Research conducted in Liverpool by Sara Cohen (1991) suggested that there might be one band for every one thousand members of

the city's population for instance, but this estimate was based only on those bands which were visible at that time. The activities of creators at these local and regional levels include writing and working-up material to be performed across a network of local venues and 'nights' organised by local promoters and enthusiasts. There is often some low-level commerce here, but music making at this local and regional level remains predominantly an amateur or quasi-professional activity for the most part, with most creators holding down part-time jobs and living close to or on the poverty line.

As Keith Negus (1992) suggests, music making remains purely a recreational or leisure activity for some, but for an equal number if not more, activity as an unsigned artist is undertaken in the hope of securing a recording contract. As Negus acknowledges, Cohen (1991) is one of the only writers to have devoted any detailed attention to the way in which unknown and unsigned musicians attempt to shape what they do to meet the perceived needs or demands of the recording industry, and the way in which the logic of 'making it' informs and directs practice at this level. As Cohen describes in her account of rock bands in Liverpool:

> 'There existed a general feeling that being in a band was a legitimate career to follow rather than a drop-out phase some adolescents might pass through before going on to a more 'serious' occupation [...]. A band could provide a means of escape where fantasies were indulged but it could also play an important cultural and social role, providing an outlet for creativity and a means by which friendships were made and maintained. Basically, most people were in bands for these social and cultural factors. They enjoyed it. They loved playing, performing,

> and socialising, and since alongside that there always existed the possibility of 'making it', that is earning a living from the band in one way or another, then the quest for success became a major motivation and preoccupation, a ray of hope in a grim reality, and band members were drawn into all kinds of plans, strategies, and activities designed to achieve that success. It might sound clichéd but it cannot be denied that being in a band was seen by many, whether employed or unemployed, to be a 'way out' of their current situation [...]. Thus for many bands the major problem was how to 'make it' [...].'
>
> (Cohen, 1991: 3)

For these unsigned aspiring creators, music making at the local level represents the base layer of a pyramid that must be climbed in pursuit of success. Simon Firth (1988a: 111) termed this pyramid 'The Rock' but actually rejected this model in favour of a 'The Talent Pool' analogy (ibid: 113) whereby unsigned acts operate at margins of a pool, at the centre of which sit major recording companies 'fishing' for creators with commercial potential[8].

This massive and constant oversupply of aspiring music creators is a key feature of the modern day music industry. It represents something like the 'vast reservoirs of under-employed artists'

[8] Though frith thinks the pyramid model has become outdated and argues that the talent pool analogy is more relevant to the organisation and practices of the recording industry today, there undoubtedly remains different 'levels' of commercial activity and success (local/regional, national and international most obviously) and thus the pyramid model remains relevant in many respects. The pool analogy is also relevant however in thinking about the vast reservoirs of unsigned creators that exist. The contemporary recording industry probably reflects and incorporates both models, as Negus (1992: 56) has suggested, and probably represents something more akin to a network. There is a danger with the network analogy however of flattening out the hierarchies that obviously exist.

that Bernard Miège (1989: 72) and subsequently David Hesmondhalgh (2007) discuss in reference to the nature and organisation of work in the broader cultural/creative industries. As discussed further below, this vast reservoir of unsigned creators represents a crucial resource for recording companies in that it is from this pool of talent that they will look to essentially contract labour as the basis of new recording projects. Hesmondhalgh (2007: 71) claims that such reservoirs of unemployed creative labour are actually getting bigger as 'more and more people have aspired to work in the glamour of the cultural industries'. Whether or not this is true, what is clear is that, as Hesmondhalgh acknowledges, 'many more people seem to want to work professionally in the cultural industries than have succeeded in doing so' (ibid.). This is especially true of those seeking to become a signed recording artist perhaps.

Hesmondhalgh suggests that there are a number of interrelated factors at play in this pool of underplayed people seeking work in the cultural industries (ibid: 206-207). He suggests that creative industries generally appear more *open* than other sectors in that they seemingly require no specialist or professional training or qualifications. He also discusses the level of relative autonomy that workers in such industries are perceived to enjoy as a major attraction (ibid: 67-70, 197-201)[9]. We might also draw attention to the increasing popularity and number of courses, qualifications and even institutions dedicated to providing relevant skills and knowledge to those seeking work in the

[9] This *perceived* level of autonomy may indeed be an attraction, though the level of autonomy that music creator's actually enjoy is questionable, as will be discussed shortly.

creative industries, including the recording industry[10]. The music industry, via various industry bodies, has itself expressed a desire to encourage more people to pursue work in the industry and has been actively involved in various relevant educational and training initiatives. It is also worth acknowledging the role of Government here, in providing increasing support for the development of the creative and cultural industries and promoting their value as a solution to the declining economic value of more traditional manufacturing industries (as discussed further in chapter 4). In its *Creative Britain* whitepaper for instance (DCMS, 2008), the UK Labour Government set out a clear skills, training and educational agenda for developing the 'creative workforce'.

Of course some people are genuinely inspired and motivated to be musically creative regardless of the perceived rewards and lifestyle. But alongside all such factors that may push and pull people towards a career in the music and other creative industries, it is important not to underestimate how, for aspiring recording artists, the success of a few 'stars' provides the basis of an enduring dream. It is worth thinking about the realities of this process of getting signed and 'making it' as a 'successful' recording artist in a little more detail however, since it opens the way for a discussion of the apparently inherent tensions that exit within the music industry, and of the apparent discontent among

[10] The BPI sponsored Brit School in Croydon and the Liverpool Institute for the Performing Arts (LIPA) both provide educational programmes specifically tailored to those wishing to pursue a career as music creators for instance. In 2008 Lucian Grainge, Co-CEO of *Universal Music Group*, suggested that A&R scouts would benefit from having a presence at the Brit School.

creators with current socio-economic arrangements as structured by the legal environment of copyright law.

Artist and Repertoire: Identifying Contenders for the Prize

In Simon Firth's (2001) terms, music creators represent the 'supply end' of recording companies' business models; creators provide, and are in themselves, the raw material of the recording industry's product (sound recordings featuring named 'artists' or 'acts'). As already suggested, the vast reservoir of unsigned and aspiring creators that exist represent something like a 'pool' in which recording companies may fish for those individuals, groups, and sounds which show any commercial potential or promise as the basis of future recording projects. The business of producing and marketing recordings is an extremely risky one however, especially given the costs involved in acquiring artists and developing recording projects.

On the basis of his study of recording companies in 1989-1991, Keith Negus estimated that at the beginning of the 1990's a major recording company in Britain would anticipate having to spend up to £330,000 over the first 12 months of an average recording project with a new act (1992: 40). These expenses break down roughly as follows according to Negus: £100,000 for advances to the artist(s); £150,000 for recording and production costs; and £80,000 for basic promotional expenses (ibid.). Writing much more recently, Dave Simpson (2007) estimated that the total cost of launching a new act and recording project today was actually closer to £600,000.

As suggested, these investments are seemingly made at massive risk. It is variously estimated that around 90% of the recording industry's product is actually loss-making (Frith, 2001: 33). Negus reports that 'record company staff assess potential acts with a working knowledge that approximately one in eight of the artists they sign and record will achieve the level of success required to recoup their initial investments and start to earn money for both themselves and the company' (1992: 40). Such a low success/high failure rate simply reflects the difficulties that recording companies face in attempting to service a highly unpredictable demand in the market for recordings. The fact that the recording industry can be sustained as a multi-billion pound industry despite this high rate of commercial failure raises some important questions of course, and initially reflects the fact that when recording companies do 'get it right', the profits generated tend to more than cover the previous eight or nine failures.

The development of global stars and the continual (re)exploitation of established names and their recording back catalogues represents a key strategy for recording companies in this case (which is one reason why recording companies have continually lobbied for the extension of copyright terms for sound recordings). Established names guarantee profitable sales in simple terms and only 'global stars' are capable of generating the kind of revenues required for expansion and maintenance in periods of economic downturn and difficulty. Simon Firth has suggested that 'star-making' rather than 'record selling' is actually the core activity of recording companies since the latter

is essentially dependent on the former (2001: 35). He also suggests that it is the few stars that provide the vast majority of recording company profits (ibid.). Developing global stars requires time and money however, thus there is also a need for immediate and short term income also (Negus, 1992). Whilst acknowledging the importance of developing global stars, Negus suggests that not every act signed by recording companies would be developed with long-term success in mind. He describes how;

> 'In order to sustain itself from day-to-day (pay the staff and general running costs), and reproduce and enlarge its market share over the long term, a record company needs a balance of continual chart hits that will bring in regular revenue and maintain a steady cash flow, and long term established career acts that will sell vast quantities of recordings on a global scale. Long term careers do not happen by themselves or simply as a result of public choice or because of artistic talent. Artist careers must be carefully planned and built. It is the global career acts which provide the capital for expansion and re-investment in new acts. It is within these business requirements for immediate short-term income and planned sustained long term high earnings that artistic policy is built.'
>
> (Negus, 1992: 55)

Negus suggests a distinction then between those artists who are signed to be developed as long term career artists and those who are signed to fulfil the need for more immediate and short-term income. These latter acts might be the more experimental signings, those who reflect a current musical fads, trends or fashions, and those who could be marketed to a particular niche in the market for instance. Negus later describes how acts become subject to differential development, promotion and

marketing strategies depending on the company's assessment of their potential in this regard.

Regardless of whether the acts that major recording companies sign are acquired and developed in the hope that they will become global stars, there is naturally a constant need for new acts and new material. In other words, recording companies are constantly in the market for fresh faces and sounds. As previously suggested, the reservoir of unsigned creators discussed above is a crucial resource for recording companies in this case. All major labels employ what are commonly known as 'Artist and Repertoire' (A&R) staff and who are primarily responsible for identifying artists as potential signings for the companies they work for.

As Negus (1992: 38) discusses, these A&R staff are 'continually engaged in seeking new acts and material', and 'have, historically had the first say in proposing the type of artists and music acquired by recording companies'. It is important to note a potentially important distinction here; that between the *proposing* of signings, and the actual decision to offer creators a contract with the label. This latter decision-making is a responsibility which is increasingly being shared via collaboration between individuals and departments within recording companies. We will come to this decision-making process shortly, but it is firstly important to acknowledge that, A&R staff are at least responsible for who and what gets *considered*. A&R departments thus play a crucial role in the career prospects of aspiring stars.

If 'making it' means getting signed, then getting signed relies on getting into the initial position of being considered by a recording company, which in turn depends on being brought to the attention of their respective A&R departments. In this regard Negus describes a recording companies' A&R department as:

> '[...] the repository of knowledge about past present and future musical trends and stylistic developments. Staff in the A&R department constantly monitor changes among established artists, the new acts that are being acquired by other companies, and attempt to follow developments amongst various audiences and subcultures. In order to deal with the fast-changing musical styles and fashions which are a particularly important characteristic of changes in Britain, A&R staff regularly utilise a contact network covering a range of production, minor record labels, publishers, managers and lawyers. A complex web of information networks is employed so that what is happening across the country can be communicated to and assessed by the corporation [...]. Within these networks there is a regular exchange of information [...]. The A&R staff ask these third parties what they are doing: who are they signing, recording and developing? What trends have they identified or heard about? In turn these smaller set-ups present what they are doing to A&R staff [...]. They will probe the large company for information about the type of acts and material being sought [...]. These smaller companies also have their own networks of regional contacts [...]. People at all points in this ever-changing web are constantly cultivating new contacts and consolidating existing relationships, and it is within these networks that interest in a particular act or recording is usually initiated.'
>
> (Negus, 1992: 47)

Negus' account of these processes illustrates one point quite clearly; that A&R staff rarely just stumble across potential acts, and that potential signings are rarely approached 'cold'. Rather,

A&R staff are usually equipped and faced with a great deal of knowledge about potential signings, acquired via the information networks described above. On the one hand Negus describes how:

> '[...] the established record labels have become reluctant to seek raw 'talent' in dingy dance halls, smoky pubs or amongst the continuous stream of unsolicited recordings (demonstration tapes -'demos') that they daily receive. The major record companies have been increasingly looking for acts which have already undertaken a significant process of development, or who are able to provide a clear indication of their commercial potential. As a result of this an early 'discovery and development' role has been developed to publishers, production companies, managers and small record companies [...].'
>
> (Negus, 1992: 40)

In this sense music-making at a local, regional, and sometimes national level, acts as a series of 'proto-markets' for the major international recording companies (Toynbee, 2000: 27-29). Given the high financial risk involved in developing major recording projects, major labels are constantly looking for ways to assess the potential of those projects, and of course, it is easier to make such assessments if an act has already demonstrated that potential in some tangible sense as Negus suggests.

Over the last 20 years major labels have increasingly moved to bring smaller labels under their control via mergers and acquisitions, a much discussed process of both vertical and horizontal integration that has resulted in the consolidation of four major recording company/label 'groups'. Some of the labels within each of these groups are hierarchically ordered so that

new signings may work their way up the label structure as they develop, from the smaller domestic subsidiaries up to the main international label. The smaller subsidiary labels function something like the research and development departments of the major companies in this sense. A&R staff at major labels also spend time negotiating the acquisition of acts from labels outside of their group of course, a process that Frith (1983: 103) referred to rather more cynically as 'poaching'. It is in these cases that, rather like in professional football, individuals most clearly become 'treated as property, each with a price, a measurable value that can be exploited, increased, realised in the marketplace' (ibid.).

Knowing when an acts' deal with other companies are coming to an end relies on those information networks discussed above. Whilst contact with people working with artists on smaller and even rival labels is important in this case, those people working with the vast numbers of currently unsigned artists are also crucially important actors in these information networks. In this regard Negus (1992: 48) draws attention to those most junior A&R 'staff', often referred to as 'talent scouts'. These are commonly causal employees of the company and have jobs elsewhere in the industry as promoters, DJ's, journalists and even bar workers for instance – jobs which see them spending a great deal of time 'in the musical field' as it were. These typically younger individuals are more receptive to immediate changes and emerging trends among youth and music culture and are as such of great value to recording companies' A&R departments.

Negus describes how these 'scouts' spend a large part of their time at venues watching performances, continually listening to demos and talking to bands. Whilst they tend to have very little formal responsibility, they are frequently responsible for bringing new material and potential signings to the company's attention. Negus suggests that they are primarily responsible for bringing information and not people to the company's attention however, and they are primarily employed simply to keep the company in touch and up to date with musical changes and developments (1992: 48). They are nonetheless crucially important actors; on the basis of the information these scouts provide, acts will be considered by more senior recording company A&R staff.

When acts are brought to the attention of formal A&R staff a process of assessment, evaluation and projection might take place as the basis of any decision to sign a new act. This process might involve collaboration between junior and senior staff in the A&R department on the one hand, and between A&R and other departments within the company on the other. Negus noted in the early 1990s that in many recording companies the decision to sign artists is increasingly being made in conjunction with other actors and departments within the company. Drawing on the interviews he conducted with recording company personnel, Negus describes how:

> 'when acquiring artists A&R staff are not working and making decisions, even at this early stage, totally in isolation from the rest of the company. There was, he acknowledged, discussion and feedback

> from various quarters whenever a prospective artist had been exposed to the company'
>
> (Negus, 1992: 49)

Negus suggests that the most crucial relationship in this regards is that between A&R and the marketing department. Simon Frith (2001: 35) asserts likewise; 'no-one gets signed to a record label without a discussion of how they will be marketed'. Though Negus acknowledges exceptions to this trend, where 'key decision makers' in A&R departments enjoy a relative autonomy, where acquisition decisions are kept within the A&R departments exclusively, or where a kind of 'hierarchical democracy' often takes shape, he asserts that 'in many companies, however, there is formal contact and explicit acknowledgement that A&R and marketing staff are involved in the decision to acquire artists, and an indication that the relationship between the two has historically changed and become closer' (Negus, 1992: 50).

While Negus does not appear to explicitly acknowledge it, this increasing collaboration and connection between A&R and other departments within a record company could be taken to indicate the increasing rationalisation of these 'creative' decision-making processes according to commercial imperatives. Simon Frith (1983: 39) has argued that 'all A&R decisions are basically financial' and in the last analysis one would tend to agree that commercial considerations would be paramount in these decision making processes. We are after all, ultimately talking about commercial enterprises, whose primary objective must be to generate and maximise profit. Negus (1992) seems to suggest

however, that this does not necessarily mean the requirements of capital accumulation *determine* all artistic related decisions within a recording company. But it must be acknowledged that A&R staff are operating within commercially orientated organisations and must thus adhere to the overall business plans, strategies, policies, and visions and direction laid down by senior personnel in more direct consideration of these requirements.

Such business strategies laid down by more senior management must undoubtedly inform and constrain the practice of A&R staff, but certain embedded cultural values regarding art and creativity requires that individuals also distance themselves from these imperatives, in an appeal to artistic integrity and autonomy. From the few accounts of how potential acts are assessed, one can see how broader constraining commercial/financial considerations exist in tension and become blurred with appeals to such cultural values. Negus describes how:

> 'In some companies the A&R departments quite consciously try to maintain a distance between themselves and the rest of the organisation and operate what the head of one management company described as a 'bunker' mentality. This is a tactic which A&R staff adopt in an attempt to establish and maintain a reputation for signing according to what that consider intrinsic artistic criteria without intervention for other divisions within the company. It is an identity which A&R staff actively cultivate and communicate to influential media figures, contracted artists when working with them, and to prospective acts when trying to persuade them to sign to their company rather than a competitor [...].'
>
> (Negus, 1992: 49)

Negus' account clearly highlights how in the commoditisation of creative or artistic practice a tension between the requirements of the market and creative/artistic integrity and autonomy often emerges. This 'art versus commerce' tension is particularly evident in the music/recording industry, in the way that people attempt to rationalise and justify events, processes, practices and actions which appear to defy the notion that true artistic talent/value will naturally be rewarded[11]. It is a tension which emerges and is evident in most aspects of the industry and can be found being expressed among creators, consumers, and corporate personnel alike.

Negus succinctly illustrates how A&R staff often talk of 'gut feelings', 'intuition', and 'instinct' with regards assessing the *commercial* potential of an act, and how they equally draw on mystifying accounts of how 'something happens in your chemistry, your blood [...] a tingling, a certain electricity' (Davis, quoted by Negus, 1992: 52) when explaining their decision-making processes. These accounts are common as apparent attempts to deal with and evade the brutal realities of commercial requirements in a sector where artistic integrity and autonomy are still culturally highly valued. But 'intuition' in this sense is clearly about knowing (intuitively or not) what *artistic* and *aesthetic* qualities make for a *commercially* successful recording project. The two things are thus blurred. As highlighted though, A&R staff will typically downplay any

[11] All popular music enthusiasts could name commercially successful recording projects with poor aesthetic qualities or commercially unsuccessful projects with good aesthetic qualities, and A&R staff are undoubtedly some of the most avid music enthusiasts.

commercial motivations, considerations and requirements in an attempt to conform to culturally valued notions of artistic integrity and autonomy. A&R staff are ultimately operating within commercial institutions and within the context and confines of commercial imperative, thus financial considerations must be paramount, whether they are explicit in first hand accounts or not.

Negus asserts, 'record company staff are responding to the immediacy of music as a listener, but also assessing the potential artist in terms of global audiences and markets [...]. Hence, it is an intuitive response which is based on immersion in a particular environment with its specific demands and cultural values' (1992: 53). This suggests how even the 'immediacy of listening' is shaped by the context within which A&R staff operate. Through institutionalised knowledge and experience of what 'works', commercial imperatives clearly impinge upon, constrain, inform and direct the processes of identifying and assessing creators as the basis of recording projects, however 'immediate' those assessments might be and however they might be construed and/or expressed. But these commercial imperatives are combined with knowledge of what is culturally valued as creative authenticity, originality, autonomy and integrity. Thus as Negus concludes, 'in attempting to deal with the uncertainty and risk involved in signing new artists, these staff have drawn on a set of cultural values and experiences which enable them to assess the potential of an act and predict its future development' (1992: 61).

Living the Great Pop Dream: Recording Deals and their Discontents

Once the commercial potential of creator as a recording artist has been assessed and the decision to offer them a deal made, A&R staff will approach the act and/or their managers with a formal offer and contract to be signed. The contract will detail and set out the specific nature of the deal being offered and obligations of both parties (creator and corporation). The nature of recording deals, as set out in these contracts have come under increasing scrutiny and come in for a great deal of criticism from various commentators, analysts, and insiders over the last 20 years especially. But before moving on to look at the discourse surrounding recording deals and contracts in any detail, it is first useful to outline the general nature of the relationship between creators and recording companies under the terms of these deals. While deals vary according to the perceived potential and prior achievements of the act, it is possible to glean a general picture of how recording deals 'work' to structure formal socio-economic relations between creators and recording companies as investors.

In relatively simple terms a recording deal involves the recording company agreeing to advance an artist a specified amount of money (to cover general living and equipment expenses whilst recording material) and to pay them a certain percentage on the sales of those recordings when released. For this the artists is obliged to deliver to the recording company a specified amount of recorded material (usually a fixed number of albums) during the period of the contract. The contract will

usually cover a period of several years but will contain an 'options' clause that gives the company the right to retain or release an artist from a contract at specified points during the term of the deal (usually every 12 months or after each recording and release cycle). In turn the recording company invests in recording, production, manufacturing, marketing, promotion and distribution, and is as such financially committed to making the project successful. They make these investments in the hope that they will be able to recoup expenses and make a profitable return through sales and licensing of the recordings produced. As suggested by Negus' account, the recording company will have made carefully considered calculations as to how much they should invest weighed against expected returns given the acts perceived potential and the planned development strategy.

For creators securing such a recording deal represents a crucial step in the 'great pop dream'. But whilst securing a recording deal is an achievement that itself brings with it some prestige and immediate financial compensation (in the form of an advance), securing a recording deal in no way guarantees any long-term critical or commercial success as a recording artist/creator. At the point of being offered a recording contract, creators are still a long way from fully realising the 'great pop dream' of stardom and affluence, and the possibility of 'failure' still looms large.

As already discussed, the majority of recording projects are commercially unsuccessful, especially in the short-term, and when projects *are* unsuccessful, the creators behind them face the very real prospect of being 'dropped'. Furthermore, as Negus

asserted above, many acts are simply signed and developed as short term projects, to bring in more immediate revenue, and these are typically acts which relate to the ever changing trends and minute fads and fashions of (especially British) music culture. An 'of the moment' act may get to release one recording, and experience some immediate or short-term 'success', but as musical trends move on, the company may indeed decide to abandon them and go in search of the 'next big thing'.

Negus highlights that being dropped from a label can have severe psychological and motivational effects on artists and few artists manage to pick themselves up and return to the struggle for recognition and a new contract (1992: 138). Being dropped is essentially a mark of 'failure' which stays with the creator when they leave the label, making it unlikely that another label might pick them up (ibid: 137). It is worth thinking a little more about what constitutes such 'failure', and how recording artists are assessed during the term of their recording deal with a company.

Negus suggests that when assessing a creator's progress, recording company staff might consider a number of factors, but that the 'bottom line' must be the artist's potential to bring any reasonable return on investment (1992: 137). He describes how the most explicit assessment of an artists progress and development is made at the point when the 'option' to either retain or release comes around; 'it is at this point when the criteria of success and failure are most clearly articulated' (ibid: 135). These decisions are usually made jointly by the A&R staff and other senior personnel in the company who would each have been briefed on different aspects of the projects development he

says. As suggested, the most obvious indicators which inform decision-making at this point are the sales figures, but Negus asserts that sales figures are considered alongside any critical acclaim or notable media attention, and fan base or following which has been established, and the judgements of various personnel as to how the act will continue to progress (ibid: 135).

Negus (1992: 135-7) further illustrates how decisions to either retain or release an act are not based purely on the *immediate* economic situation. Negus acknowledges that there is no standard 'break even' figure for an act because each deal involves different levels of investment, but he suggests that to recoup the level of investment in a new project cited above (£330,000) an act would need to sell 600,000 recordings before any further investment was made. Such a high volume of sales for a new act is practically unheard of however. Negus suggests that 100,000 sales for a first release would be considered very respectable, and a clear indication that an act was in the process of 'breaking'. In such cases, those other factors mentioned above would be taken into consideration, and if there are promising signs that interest in an act would continue to 'build', and that the act were still motivated and capable of producing further acceptable material, then the company may decide to be patient and retain the act, making further investments in a new recording and release cycle.

As Negus suggests, the company would be acutely aware that by the time an act released a second recording, their investment in the band would have probably more than doubled, thus the pressure to recoup would be increasing. At this point, regardless

of an acts progress and potential, unable to withstand any further escalation in deficit the decision to drop an act will be inevitable if sales of each release do not represent a marked improvement on the previous. Negus is also keen to point out however, that as investment and time spent developing an act increases the decision to 'give up' on them becomes increasingly difficult. There is also a danger that a band released mid way through a recording deal, could be picked up by a rival, and the economic rewards for years of patience, development and investment accrue to a competitor.

The risk of economic failure as a recording artist is high then, with the majority of signed acts apparently being dropped before they get chance to experience the great pop dream in any real sense. As Negus asserts:

> 'The majority of artists signed to record companies enjoy a very brief period of success; they are famous for fifteen minutes, to repeat Andy Warhol's much used aphorism. Often their temporary fame is closer to three and a half minutes. A large number do not achieve any success whatsoever, either critical or commercial [...]. A vast majority simply return to their day jobs in offices, banks, warehouses, factories, equipment stores and record shops'
>
> (Negus, 1992: 138-9)

As Negus suggests here, the financial position of the vast majority of creators who manage to secure a recording deal is generally such that once dropped it is necessary to find employment elsewhere. But even for those who mange to sustain employment as a featured recording artist in the services of a recording company, it seems that the financial rewards are often

not what had initially been expected. Furthermore, life as a recording artist under the direction of a commercial enterprise brings with it some other apparent tensions and difficulties. It is in this context that recording deals have come under increasing scrutiny and come in for some harsh criticism from a range of observers, commentators and analysts. Chief among these critics are those who have experienced life as a recording artist first hand it seems.

In an open letter to recording artists in 2001, *Hole* singer Courtney Love offered the following remarks with regards the economics of the recording industry:

> 'Record companies have a 5% success rate. That means that 5 % of all records released by major labels go gold or platinum. How do record companies get away with a 95% failure rate that would be totally unacceptable in any other business? Recording artists only get a tiny fraction of the money earned by their music [...]. The royalty rates granted in every contract are very low to start with and then companies charge back every conceivable cost to an artist's royalty account. Artists pay for recording costs, video production costs, tour support, radio promotion, sales and marketing costs, packaging costs and any other cost the recording company can subtract from their royalties. Recording companies also reduce royalty figures by "forgetting" to report sales figures, miscalculating royalties and by preventing artists from auditing record company books'
>
> (Love, 2001: Online)

This rather more cynical interpretation of how recording companies manage to sustain themselves in the face of a massive failure rate is well illustrated by Love, who goes onto describe how, 'thousands of successful artists who sold hundreds of

millions of records and generated billions of dollars in profits for recording companies find themselves broke and forgotten by the industry they made wealthy' (ibid.). She highlights a number of well-known cases to illustrate her argument here.

One of the most oft-cited critiques of the kind of economics involved in recording deals was written by Steve Albini, a North American songwriter, singer and musician turned record producer. In 1993 Albini wrote an article for the American left-wing cultural magazine *The Baffler* entitled 'The Problem with Music' (Albini, 1993: Online). In the piece, Albini provides a hypothetical account of a band that signs a 4 year recording contract with a major label. He details the finances involved in recording and releasing the bands first album under the contract and describes how despite selling 250,000 copies and generating $1,625,000 in sales, the band members each end up with $4,031.25, while the label makes a profit of $710,000. Albini concludes;

> 'The band is now ¼ of the way through its contract, has made the music industry more than 3 million dollars richer, but is in the hole $14,000 in royalties. The band members have each earned about 1/3 as much as they would working at a 7-11, but they got to ride in a tour bus for a month.'
>
> (1993: Online)

Albini asserts in reference to 'the math that will explain just how fucked they are', that 'these figures are representative of amounts that appear in record contracts daily' and that 'there's no need to skew the figures to make the scenario look bad, since real life examples abound' (ibid.). Albini's account was reprinted

in American music magazine *Maximum Rock 'n' Roll* a year later (1994) and has since become widely cited as a critique of recording deals. In 2000 Courtney Love gave a speech to the Digital Hollywood conference in *New York,* in which she outlined another hypothetical but apparently typical major label recording deal. In Love's version, the recording company makes a net profit of $6.6 million from the release of a recording while the featured artists received nothing from sales and had to live off the initial advance (Love, 2000). In an apparent moment of 'intertextuality', Love concludes that, 'the band may as well be working at a 7-11' (ibid.).

The assertions made about the poor financial situation of artists under contract with recording companies is backed up by other first hand accounts. For instance, Dave Rowntree, formerly a drummer with the 'Britpop' band *Blur,* claimed in an interview for *The Observer* in 2009 that 'my band weren't millionaires. For much of our careers we lived on tuppence ha'penny. We used to call ourselves the Poverty Jet Set as we were flown around the world first class but got home and had no money for tea bags' (Rowntree, quoted by Grundy, 2009).

The closing clause to Albini's statement above ('but they got to ride in a tour bus for a month') is interesting in that Albini seemingly acknowledges that the plight of recording artists might be rejected given the attractive aspects of the pop star lifestyle they are typically perceived to have enjoyed (such as going on tour). The benefit of getting to ride on a tour bus for a month is seemingly trivialised in the context of the financial exploitation and hardship that recording artists face and which

Albini is attempting to draw attention to. Interestingly, Love also acknowledges that recording artists who complain about their financial situation might face some cynicism when she says;

> 'Of course, they had fun. Hearing yourself on the radio, selling records, getting new fans and being on TV is great, but now the band doesn't have enough money to pay the rent and nobody has any credit [...]. Our media says, "Boo hoo, poor pop stars, they had a nice ride. Fuck them for speaking up"; but I say this dialogue is imperative. And cynical media people, who are more fascinated with celebrity than most celebrities, need to reacquaint themselves with their value systems'
>
> (Love, 2000: Online)

These actors wish to draw attention to what they clearly see as exploitative socio-economic relations then, and in doing so, they move to dismiss the suggestion that recording artists have no right to complain about their financial situation given that they 'had fun'. But whilst inevitably provoking *some* cynical and critical responses, such critiques of recording industry practice resonate widely throughout a traditionally anti-commerce/anti-corporation music (especially rock) culture.

The article by music journalist Neil Strauss (1999) cited earlier bears testament to the level of hostility and distain often felt or at least expressed towards the recording industry within popular music culture. His article also indicates how critiques of recording industry practices and recording deals, such as those initiated by Albini have found some resonance among observers and commentators. In his article, which begins by outlining the nature of the great pop dream as involving getting together with

friends, writing great music and writing for a recording contract to appear, he describes how, 'the dream, for those few who actually get to live it, has usually turned into a nightmare' (2009: 114). Strauss goes on to offer a sustained critique of recording deals, drawing on interviews with industry personnel to illustrate the economically exploitative nature these arrangements. He apparently concurs with Albini and others in claiming that recording artists are unlikely to see any actual money from sales, 'even if you're lucky enough to sell a million albums' (ibid.). He describes how from the outset the artist is put into the position of accepting debt and that because that debt is paid back out of the artists royalty rate most acts never see a penny from their record sales.

In 2001, a US based organisation, the *Future of Music Coalition* (FMC), published a document entitled 'Major Label Contract Clause Critique', which apparently confirmed and even expanded upon many of the accusations being made by recording artists against recording companies. As the title suggests, the FMC document draws attention to and critiques a number of what it describes as standard major label contract 'clauses'. They claim that their critique is based on information provided by attorneys working with major labels, and that the document they produced quotes 'ACTUAL contract language from ACTUAL record label contracts' (ibid: 1. original emphasis). The FMC provides what it calls 'PLAIN ENGLISH' translations of standard contract clauses in order to illustrate their onerous nature (ibid. original emphasis).

Firstly, the FMC highlight a number of clauses which they claim appear in standard recording contracts and which effectively function to reduce the value of royalty payments to creators in the way that Albini and Love seem to be suggesting. Firstly, they highlight how the royalty rate is typically only applicable to 85% of recordings sold in order to account for returns, give-aways and discounted sales. They then highlight how the value of the royalty rate is then reduced via the application of various 'standard industry deductions' that will be set out via various clauses in standard contracts (FMC, 2001: 8-9). These include deductions for transport/distribution, packaging, and new technology costs for example. They offer another hypothetical example of how these deductions work to reduce the value of royalties payable to artists:

> 'As an example, let's think about a CD that has a value of $10. The "net sales" definition means you're only going to get paid on 85 of every 100 units shipped. However, there are further deductions. Clause #2 indicates that $2.50 cents comes off that $10 before you apply the royalty percentage. But wait, there's more. Clause #3 means that your royalty percentage (the one you apply to the dollar figure after figuring in the 85% rule and the 25% container charge) is further reduced by 20%. Have I mentioned the absurdity of a container charge for "New Tech" i.e. digital distribution where there are no manufacturing costs? (And don't forget that the reduction there is 25%, not 20% as with CDs).
>
> Here it is important to remember that artists' contract royalty rate is not statutory, transparent nor is it public. Traditional contract royalties begin at a much smaller "11 –13 percent" and allow for that royalty amount to be further diminished through a process of unfair deductions that are standardized within the industry.

> To understand this royalty reduction, multiply an 11 percent royalty rate by 85 percent for a "free goods" deduction. Then multiply it by 75 percent for a "packaging" deduction. Then multiply it again by 75 percent for a "new media" deduction. After this process of deduction, an 11 percent royalty is effectively reduced to less than 6 percent.
>
> (FMC, 2001: 9)

Strauss (2009) also draws attention to the absurdity of deductions for new technology in the context of digital distribution, and quotes an industry lawyer who says that no-one can seem to get rid of such clauses and that they have simply become standard practice.

We can see then how via such standard industry deductions the value of royalty payments to creators is dramatically reduced. What's more, as Albini and Love point out, the recording company then also charge various costs to the creator, including the cost of producing the record, manufacturing costs, promotion and touring costs, to be paid out of the creator's royalty. And of course, any initial advance on royalties must be paid back. These accounts clearly illustrate how it could be the case that the creator rarely sees any money from sales of recordings, and are left in a position of relative financial hardship, while the recording company attempts to recoup its costs as quickly and as ruthlessly as possible. We thus see clearly how the current copyright system conveys no obvious economic benefit to creators who become dependent upon the investment of recording companies. Recording companies however, in receiving exclusive rights of ownership over the recording they produce clearly do benefit economically from copyright laws however.

It's not just the economics and financial detail of recoding deals that have come in for criticism. Another common criticism is the way in which recording companies may control and restrict the nature of creators' output via contracts. The FMC highlight what they call 'Delivery/Acceptance' clauses which afford recording company the final say as to what is recorded and whether it is of an 'acceptable' standard (2001: 5). Recordings will only be accepted and released by the company if they consider them to be commercially and/or technically satisfactory or viable. As Frith acknowledges, 'recording companies rarely act simply as distributors, a mechanism used by artist A just to reach an audience. Rather, the company will attempt to shape A's music to meet its own understanding of the market' (2001: 34).

If the recording company decides not to release a recording, the creator is obliged to try again in order to fulfil the terms of the contract, at extra cost to them of course. More time spent in the studio means more expense to the creator. Furthermore, the more time the creator spends in the studio, the longer they will have to wait before they can start repaying all the recording companies expenses out of their royalties, and begin receiving any income from sales themselves. Examples of creators being sent back to the studio by their recording company abound. Strauss (1999) lists several in his critique, and Negus (1992) highlights this general issue of creative control as a major source of tension and conflict between creators and recording companies. It is another example of how commercial imperatives come to impinge upon practice in this environment. These tensions most often come to be understood and expressed in

terms of commercial constraint versus creative or artistic autonomy.

The most fundamentally problematic aspect of recording deals in relation to copyright perhaps, is highlighted by both Courtney Love and the FMC. Contracts establish exclusive rights of ownership over recordings made under the term of the contract. In signing a recording contract, the creator essentially relinquishes any ownership over the recordings they make and thus any control over what ultimately happens to those recordings. Even if the recording company decides to not release a recording, it belongs to them, and so the creator can not simply release it themselves and reap the potential financial rewards of their creativity. In reference to such clauses the FMC states:

> 'Unless Congress and/or the courts speak up and say otherwise, you have no ownership or control whatsoever in the sound recording copyright created under the contract.
> If you don't recoup the costs necessary to produce, market, and distribute the record, you will never see another penny beyond your advance (unless you wrote some of the songs, and even then it's not probable).
> Nor will you likely be able to get your hands on the dust-gathering CDs sitting in the label's warehouse to sell on your website or on tour.
> Nor will you be able to authorize/license anyone else to do the same.
> Nor will you be able to license/authorize the use of the sound recording in any movie, advertisement, TV show, talking cupie doll, or otherwise.
> And don't think you can simply jump in the studio and re-record the songs on a new CD (at least for a long time after the end of your deal), because a separate part of the contract will prevent it.'
>
> (FMC, 2001: 2-3)

Courtney Love equally highlights this practice as needlessly onerous for artists, and it is one which in the UK context, the *Musicians Union* (MU) and the *British Academy of Songwriters and Composers and Authors* (BASCA) have jointly been campaigning to have abolished (see Missingham, 2006, and Chapter 6 here). They describe how this practice of assigning the rights over recordings to recording companies leads to a situation in which thousands and thousands of recordings lay dormant and unexploited, while the creator has no access or right to them (2006: 27-28).

The issue of 'rights assignments' has also been picked up by the *Featured Artists Coalition* (FAC) in the context of campaigning for reforms in the relationship between creators and corporations in the digital age specifically, as discussed further in chapter 7 here. This assignment of rights to recording companies is absolutely central to the current discussion. The exclusive rights of ownership that copyright laws afford provide for flows of income from the various uses to which music might be put. This is why recording companies and publishers constantly lobby for the extension and enhancement of copyright laws. The expansion and further enforcement of rights in new contexts translates into further expanded and protected income for the rights holder, who as we have seen, is the corporation and not the creator.

These critiques of recording industry practices and the deals they make with creators have been discussed widely within the media and the practices and processes to which they refer have also been discussed within academia. The validity of those examples offered by the likes of Albini and Love is difficult to

assess however given that labels are never likely to disclose the specific nature of recording contracts, or detail their finances freely and openly as both Negus (1992) and Harker (1997) acknowledge. Furthermore, the accounts of creators tend to become refracted through and framed by a wider discourse of anti-commercialism in popular culture, thus it is often difficult to separate rhetoric from reality. But the message coming from those who have experienced recording deals first hand, seems to be one of dissatisfaction with those socio-economic relations and arrangements into which creators are pulled and pushed in their desire to make a living making music. As Strauss suggests;

> 'talking to everyone from up and coming bands to those who have been signed for more than a decade, from artists with low sales to superstars [...], there is a growing dissatisfaction with a system that has been building its fortress for more than 100 years'
>
> (1999: 114)

There are of course those few creators who apparently achieve a great deal of financial success, and there are likely to be many variations on contractual arrangements. Negus (1992) also highlights how established stars are in a much better position to negotiate much improved terms in the recording deals they sign. The reality however seems to be that a great number of creators are still signing recording deals, and previously unsigned creators are probably extremely vulnerable to signing contracts without hesitation. Some immediate financial compensation for the time spent developing their skills, the prestige of being a signed act, and the chance to spend time doing what you love

within a professional environment, and the possibility of going on to 'make it big' are all major attractions.

In his now famous piece, 'The Problem with Music', Albini graphically illustrates the extreme lengths that unsigned creators would go to in order to win a recording contract. These acts are likely to be largely uninformed and unaware of what exactly a recording deal actually entails however. As Albini reflected more recently in an interview for the NME, 'I think a lot of bands are doing it out of naked ignorance. If a major had approached me about putting my records out when I first started making records I would have signed the first thing that walked through the door. I wouldn't have known any better' (quoted in NME, 4 April 2009: 30). Both Negus and Albini also draw attention to the employment of slick young A&R staff who are able to present an amicable and in-touch image of the company to prospective signings. Negus suggests though:

> 'The days in which naïve acts signed exploitative contracts have been well documented and are by no means over. However, they have become less widespread as the music industry has consciously attempted to cultivate a more professional image. It has become standard practice for contracts to stipulate that the artists must have received professional legal advice before signing [...]. Artists are now accredited with being more commercially minded and aware of what the contractual relationship with a record company entails.'
>
> (1992: 43)

Accounts such as those provided by Albini and Love have resonated widely throughout popular music culture, but whether this means creators are more savvy to the kind of strategies that

recording companies employ in an attempt to maximise returns, or whether armed with this better understanding of what to expect from recording companies means creators are less likely to enter into those relations as Negus suggests is unclear. Regardless of financial rewards, becoming a recording artist as an established route to success as a creator is still bound up with other forms of capital and prestige. And it seems that the prospect of 'success', however it is defined, still pulls many people into these apparently onerous socio-economic relations. It is unlikely that the kind of deals recording companies make with creators will change in any significant way without some kind of legislative intervention or creator-led revolution in the relations of music production.

Concluding Discussion

Perusing a career as a music creator means entering into relations with other commercial actors and institutions. Conflict between music creators and these other actors, recording companies most especially, are common place it seems. These conflicts typically arise in relation to the specific nature of formal contractual relationships between these actors. This chapter has provided an overview of the nature of these relations and the tensions that apparently arise. It has been asserted that the socio-economic relations into which creators are obliged to enter in the pursuit of 'success', are in many respects problematic. In order to stand any chance of reaping financial reward from their creative work, they must engage in relations with powerful commercial actors, but in so doing they essentially cede both

economic and artistic control over their products and are seemingly placed in positions of severe economic vulnerability and exploitation.

It is not surprising that such exploitation exists. The practices that commercial actors have developed reflect an attempt to deal with the difficulties that they face in attempting to commoditise and commercialise a specific form of cultural production. The high risk of economic 'failure' means that recording companies must do all that they can to maximise returns, even if this means economically exploiting the creators they rely upon for the development of product. The exact nature of the practices recording companies have developed simply reflect the requirements of capital accumulation in this sector. As Simon Frith asserts, whilst established arrangements for the commercial production of music today 'depends on the collaboration of creators and bureaucrats, the tensions between them, a tension usually read ideologically, as *art vs commerce,* is built into the system' (2001: 34).

Just because these tensions are built into the system and in a sense inherent, understandable or even predictable, it does not mean they should be viewed or acceptable or inevitable. They are, from the perspective of creators at least, as demonstrated via the accounts discussed above, deeply problematic. Whereas there is a tendency to view these tensions as a conflict between art and commerce, between control and autonomy, they more broadly reflect the kind of tensions that emerge between workers and employees in any industry perhaps. In the creation of surplus value, labour is by definition exploited; workers receive

an unequal share of the profit generated. This is clearly evident in the functioning of the recording industry. It is in this commercial context that the interests and position of music creators, those who should principally benefit from copyright laws, needs to be re-evaluated and discussed.

What is most striking about the current nature of the relationship between recording companies and creators is the way in which copyright has seemingly become meaningless or irrelevant for creators if not detrimental to their interests in making a living making music. For recording companies, strong copyright laws becomes crucial both for the reasons discussed in the previous chapter (dealing with opportunities and disruption afforded by technological development) and for maximising returns on products. This is why they consistently lobby for stronger copyright laws and their enforcement as determined by statute.

It is entirely unclear how creators - those who should apparently benefit from and be incentivised by the protection and rewards that copyright is said to convey - benefit in any way from copyright laws and their continued enhancement. As Hesmondhalgh (2009) asserts, it is essential to understand above all else, that the rights afforded to the creators of music or any other kind of intellectual property are assigned to third parties as part of the recording and publishing contracts they are encouraged to sign. It is these recording and publishing companies (that are most often part of larger entertainment corporations) which effectively own the rights to recordings and compositions, and it is these institutions that ultimately reap the

financial rewards afforded by the legal articulation and enforcement of these rights. Very little of this income appears to flow back to the actual creators whom copyright laws are principally supposed to benefit.

Oft cited figures produced by the *UK Monopolies and Mergers Commission* in 1996 suggested that 80% of music authors earned less that £1,000 from publishing royalties for instance and that for more than 90% of authors, the copyright system did not provide 'sufficient' financial rewards (Kretschmer and Kawohl, 2004). We have also seen from the above discussion that recording contracts function to similar effect, with creators receiving very little in the way of economic reward from the production and distribution of recordings.

If a central justification for copyright law has been to ensure that creativity takes place, by ensuring that there is an opportunity for creators to be rewarded for their creative work (as discussed in the previous chapter), how will the continued extension and enhancement of copyright laws in the internet age be justified, especially when under the current system creators do not benefit from copyright in any obvious or direct way? And what will the attitudes of creators themselves be towards file-sharing, and what will be their attitudes towards recording companies' and the government's response to the phenomenon? In the next chapter a strategy for exploring and analysing these justificatory strategies for the continued extension and enhancement of copyright law, its scope, and its enforcement is outlined.

CHAPTER 3

DISCOURSE, PRESSURE, AND ANALYSIS

Introduction

This chapter offers a description and explanation of the methodological approach adopted in this research. The first part of the chapter briefly outlines, reformulates and restates the 'problem' to be investigated. It then attempts to situate this problem in relation to some relevant concepts that have not yet been fully acknowledged and discussed. In particular, the chapter introduces the concepts of power and pressure, discusses these in relation to the legislative process. The discussion also introduces the concept of discourse, as a means of exercising power within the legislative process. The next section offers a discussion of discourse and the approaches to its analysis that have informed this research. The penultimate two sections of the chapter are dedicated to a description of the data collection and data analysis techniques applied. By way of conclusion, the final section offers a brief discussion and reflection on the place of 'values' in the research process.

Before going any further, it seems important to re-establish a clear sense of what this research has attempted to achieve and why. Only once the aims are clear in this sense, can one reasonably go onto discuss how the researcher attempted to

achieve these aims. And only once the aims are clear can one reasonably go on to consider and assess the suitability of the general approach and specific techniques employed to address these aims.

Developing and Defining the Research 'Problem'

The research began then with the observation that recent technological developments, namely those in digital and networking technologies, have afforded some practices that challenge established commercial arrangements for the production and circulation of music as a commodity. In particular, as music consumers and fans have increasingly moved to appropriate new storage, retrieval, reproduction and distribution capacities for the purposes of sharing music freely, established commercial processes for the production and distribution of music seem increasingly threatened. In so doing, music's very status as private property, and thus a commodity, seems threatened. The review of existing literature suggested that such a phenomenon was not unprecedented however. Throughout its development music industry has frequently been disrupted by the development and appropriation of new technical capacities (as discussed in Chapter 1).

Existing literature also highlights the fact that despite frequent periods of disruption following technological development, established commercial actors had generally ended up benefiting from these technological development and been able to both effectively exploit new technical capacities for the circulation of music to commercial gain, and restrict how others may use these

technical capacities. An exploration of this dynamic pointed towards the crucial role of copyright law in the development of music industry. The concept of intellectual property had been successfully deployed and articulated by commercial producers of music as a means of legitimately restricting what others may do with the music they produce and distribute. The scope and enforcement of the exclusive property rights that producers claimed in relation to their products are determined by statute, thus commercial producers have frequently become engaged in lobbying for the further enhancement of these rights, especially following the development and appropriation of new technical capacities that increased access to music and threatened the artificial scarcity constructed by copyright laws.

Recent developments indicate a continuation of a long running theme in the history and development of music industry. Technological development has once again presented commercial producers of music with a potential problem; new technical capacities have been appropriated by others for the purpose free circulation (in the form of online music file-sharing specifically). Construing the proliferation of file-sharing as a threat to their established commercial practices and profit accumulation strategies, actors within the music industry have thus been lobbying hard for the further enhancement and extension of copyrights and there enforcement. The subsequent legislative response has appeared somewhat typical; in the face of an apparent widespread rejection or disregard for those existing socio-economic arrangements for the production of music as a commodity, and of the laws that should supposedly

determine/govern those arrangements, legislation allowing the enhanced enforcement of those laws in the new technological environment has been formulated and passed. In this sense, or 'in other words', the passing of the *Digital Economy Act* (DEA) is an attempt by the government to aid the maintenance existing socio-economic arrangements for the production of music as a commodity in the face of a perceived threat. But, why might one be concerned with or interested in these recent events; how might they be formulated as a 'problem' worthy of sociological investigation?

Firstly, the measures brought forward by the DEA can be problematised on a number of grounds. As discussed previously, the DEA imposes obligations on Internet Service Providers (ISPs) to cooperate with recording companies by providing details of, and sending letters to, the holders of those internet accounts identified as having been used to illegally share music online. These ISPs may also ultimately be required to terminate those accounts. These actions would take place upon the instruction of the courts following requests by rights holders such as recording companies.

These punitive measures seem problematic firstly in that, in removing a *suspected* file-sharer's access to the means of illegally sharing music, access to a whole range of other crucial online resources is also removed. Furthermore, other legitimate users of that internet account would also lose their access to the internet, regardless of whether they had actually committed any offence themselves. The punishment thus appears disproportionate in

terms of the effects it may have, and indiscriminate in potentially allowing innocent parties to be punished alongside those who are suspected to have infringed copyright.

The above problem relates to a second, more practical problem with regards the implementation of those measures brought forward by the DEA. Whilst copyright holders, in conjunction with ISPs may identify internet *accounts* that have been used to share music online illegally, identifying the individual(s) responsible for specific offences is likely to be much more difficult given that: 1) most internet accounts are used by more than one person; and 2) internet accounts can be 'hijacked' by others without the account holders permission or even knowledge. Proving beyond any reasonable doubt that any individual is responsible for any specific online infringement would be seemingly impossible (at least without the closer surveillance of suspected individuals).

Also, as methods for detecting the illegal file-sharing of music online have advanced, so the methods of file-sharing have also adapted and evolved in response. Specifically, some file-sharing applications now offer means of hiding or encrypting one's IP address, which is the one piece of information that is used to link activities taking place online to specific internet accounts (and thus to particular individuals). The individuals responsible for online copyright infringements, and the practice of file-sharing itself, are thus likely to become increasingly difficult to detect anyway - as criminalisation and enhanced enforcement drives further innovation and ingenuity on the part of file-sharers and

those providing/developing the technical means of sharing (see also footnote 4 page 37).

Furthermore, detecting those infringements and identifying the individual responsible requires a level of surveillance and information sharing (between ISPs and corporate rights holders) that raises questions about privacy and data protection rights of course. Moreover, this process of surveillance and information sharing relies on ISPs fulfilling the obligations imposed on them, but why would ISPs want to start 'giving up' valued customers, sending them threatening letters, and even terminating their accounts? The obligations imposed on ISPs involve costs that they are understandably reluctant to burden, especially given that file-sharing has little if any financial implication for their own economic enterprise? ISPs are clearly reluctant to accept and fulfil the obligations imposed on them by the DEA, a fact reflected in their lodging of an appeal by two of the UK's biggest ISPs, *BT* and *Talk Talk*.

So, given the apparently problematic nature of the anti-file-sharing measures brought forward by the DEA, how has this legislative action been legitimated? This is a crucial question. As May and Sell discuss in relation to the development of IP law, 'Laws require constant and explicit justification in order to function [...] and such justification often takes place through appeals to non-legal ideas about the role or purpose of legal control' (2006: 17). With regards copyright and related laws (including those legislative acts which simply extend the scope or allow the enhanced enforcement of existing copyright laws) these

'non-legal ideas' are of course those of intellectual property (IP) and of the value of enforcing intellectual property rights (IPRs) through legislature. As discussed in previous chapters, the enshrining of IPRs in UK law has always been justified on the basis that creative production was to the benefit of society at large. As such, creators must be encouraged to create; they must be 'incentivised' in other words.

The affording and enforcement of exclusive rights of ownership in creative works through legislature functions to create an artificial scarcity that allows those products to be brought to market as private property. Copyright law thus creates a special legal environment in which the opportunity to reap economic rewards from creative production is (at least in theory) established. Such a prospect is said to incentivise creative production; without copyright laws and their enforcement, the prospect of economic reward is diminished, along with the incentive to create the argument goes. The subsequent loss in creative production is society's loss more generally.

In previous instances where the commercial producers of music have lobbied for enhancements to copyright law and for restrictions on technological appropriation to be implemented, they have used these exact justifications; copyright provides creators with a means of reaping financial rewards and thus an incentive to create, to the benefit of society at large. With regards the production of recorded music, according to accounts of the position of creators within the recording industry outlined in the previous chapter, this argument or justification for the

continued enhancement and extension of copyright laws has obvious flaws however.

Despite the fact that the original creators are those who should principally benefit from copyright, this never appears to have been the case. Creators have never been in a position to access the means of commercial (re)production and distribution themselves and have thus had to rely on the investment and involvement of other commercial actors. In entering contractual relations with these other actors, creators effectively cede any rights of ownership they have in the creative works they produce. The effect of this, as shown in the previous chapter, has been somewhat problematic in the sense that creators do not appear to benefit from copyright laws in any obvious or direct way. Rather, it is rights holding corporations who benefit from copyright law.

In an attempt to deal with the difficulties of commercial cultural production, an industry in which products face a high risk of economic failure, they seek maximise profit by minimising returns to creators on the one hand, and by continually seeking to expand and enhance the copyright laws which provide them with flows of income. Very little of this rights generated income actually flows back to the original creators of music, with investors implementing onerous contracts that function to maximise returns to them, and minimise returns to the creators in which they 'invest'. The continual expansion of copyright laws in the face of new technological capacities to access and use music seemingly functions to make rich corporations richer.

Meanwhile, music creators continue to face what can reasonably be described as economic exploitation by these corporations and copyright laws clearly remain inadequate in achieving its original stated purpose of incentivising and rewarding creativity.

Given that copyright laws seemingly fail in their originally stated purpose of securing rewards for individual creators, and given that copyright laws are they are currently formulated and articulated instead function to allow investors in creative production to become exploiters of not simply the products of creativity but exploiters of the original producers themselves, this research pays particular attention to the way in which the interests of creators are presented and represented by those seeking to further enhance the enforcement of existing copyright laws in the online environment. The research seeks to explore this the way in which the interests of creators have been presented and represented through a broader exploration and analysis of how the DEA and the specific measures it contains were presented as legitimate, justified and worthwhile, especially given their apparently problematic nature.

In particular then, the research asks, what justificatory strategies for the enforcement and punitive measures brought forward by the DEA are offered by recording companies as those who requested them, and by the UK Government as those who have inscribed them into law? And, how do the interests of creators specifically, feature in these justifications and arguments? Such questions have driven the research in hand, and answering them logically requires an exploration of the

discursive mechanisms and processes at work in the development and formulation of the DEA. The research has focussed on the discursive activities of three distinct groups in this regard then: 1) government, policy makers and legislators; 2) recording companies and their representatives; and 3) music creators and their representative organisations. Before moving on to discuss the specific approach adopted and the methods of data collection and analysis employed, it is useful to briefly consider the nature of the 'discursive mechanisms' at work in the formulation of government policy and legislation, those that apparently allow some interests to become prioritised and others marginalised; mechanisms to which this thesis has already referred, but have yet to be fully explained.

Pressure and Influence in the Legislative Process

As discussed in chapter 1, what may and may not be done with music is defined by the legislature produced by states and their respective legal institutions. As John Scott discusses in relation to the formulation of this legislation;

> 'States and other authoritarian organisations are not mere automatic emitters of decisions and commands. The decisions made by those in positions of authority are the outcome of processes of policy formulation and deliberation [...]. There is, then, a decision-making process that opens up possibilities for those who seek to influence the decisions that are made.'
>
> (Scott, 2001: 51)

Within the legislative process then, there apparently exists a space or scope for interested actors to exert pressure on

legislators - to initiate, modify or in some visible manner act so as to affect policy outcomes in some way. In terms of the specific mechanisms through which such influence is actually exercised and is effective, most Governments provide formal frameworks and procedures through which interests and evidence can be collected and aggregated to inform policy decisions. These may take various forms including committees, advisory councils, working groups, policy communities/networks, and formal 'public consultation' processes in particular (see below).

In so doing Governments seemingly open up decision-making, policy formation, and legislative processes up to the influence of individually interested actors and the organised groups they frequently form. As Scott (2001) suggests, these processes may involve the participation of a wide range of actors and groups in mechanisms of interest, opinion and evidence aggregation instituted by Governments. In the case of the UK Government's decision making around issues of intellectual property and copyright law in the internet age and in light of the file-sharing phenomenon specifically, a clear and visible mechanism for the gathering of information, opinion and evidence - and thus for the exertion of pressure and influence - was in operation. This took the specific form of a series of sequential 'public consultations'.

Public consultations represent a formal process of information and opinion aggregation that commonly precedes legislative action in modern democratic societies. In allowing for public participation in discussion of issues of broad public concern, these consultation processes are promoted by Governments as an in important element of the representative democracy they claim

to institute. In the last UK Labour Government's (1997-2010) own words for instance: 'Public engagement, including consultation on policy development and service design, is an important part of a modern representative democracy' (DBERR, 2007: 2). In the forward to the UK Labour Government's 'code of practice' on consultation exercises, John Hutton MP declared:

> 'This Government is committed to effective consultation; consultation which is targeted at, and easily accessible to, those with a clear interest in the policy in question. Effective consultation brings to light valuable information which the Government can use to design effective solutions. Put simply, effective consultation allows the Government to make informed decisions on matters of policy'
>
> (Hutton, in forward to HM Government, 2008: 3)

The code of practice goes on to outline a range of guidelines for the implementation of consultations designed to maximise their effectiveness as information gathering exercises. In the introduction, the Government states:

> 'This kind of exercise should be open to anyone to respond but should be designed to seek views from those who would be affected by, or those who have a particular interest in, the new policy or change in policy. Formal consultation exercises can expose to scrutiny the Government's preliminary policy analysis and the policy or implementation options under consideration.'
>
> (HM Government, 2008: 5)

In the case copyright law and IP law more generally, 'those who would be affected by or those who have a particular interest in, the new policy' is clearly broad, and this is reflected in the range of responses received to the UK Labour Government's

consultations of IP and copyright. The specific nature of these consultations and the responses received is discussed further throughout the following chapters. Here, it is only necessary to highlight that this consultation process provided a mechanism through which pressure could be exerted on legislators and decision makers by interested parties.

It is within the public consultation process that developed over the last 5 years that we find the most obvious and forceful attempts to justify and rationalise the further enhancement of copyright law and its enforcement in the online environment. Through this process various interested parties attempt to influence legislators. Their actions ultimately represent an attempt to exert pressure through the use of language. The analysis of this language-in-use, as a form of social action, provides the basis of the following chapters. Before going on to present this analysis however, it is necessary to discuss the approach taken to that analysis, and describe how that analysis actually took place.

Discourse as 'Language in Use'

As many authors have noted, the term 'discourse' has become common currency in a variety of disciplines, and is used widely across the social sciences and in a variety of ways (Fairclough, 2003; Mills, 2004; Howarth, 2000). Much of social science depends on a range of judgements about what discourse is and what it does, but these judgements have often been hidden or left implicit (Potter, 2004). 'Discourse' as a concept is frequently left undefined as if it's meaning were simply commonsensical (Mills,

1997; 2004). Commonsense understandings of the term 'discourse' seem synonymous with dialogue, conversation or communication. These terms all indicate a notion of language in use, which is as good a starting point as any it seems. Understood as such, discourse can clearly be seen to be a central part of social life. We *use* language constantly; and it is constantly *in use*. Discourse is essentially a social practice in this sense, and thus well within the realm of sociological study. To develop a fuller understanding of discourse, we may briefly draw attention to the way in which discourse has been understood in various approaches to its analysis.

What is discourse analysis (DA)? According to Jonathan Potter and Alexa Hepburn (2004), among others, answering this question becomes harder and more complicated every year. DA is understood and applied in a variety of ways across the social sciences (Potter, 2004; Potter and Wetherell, 1994). One of the reasons for this complexity is that different analytic and theoretical approaches to DA have emerged and developed almost simultaneously across a range of different disciplines including linguistics, sociology, psychology and literary theory to name a few (Muncie, 2006; Potter, 2004; see Howarth, 2000 also). It is not surprising to find DA described in some research methods texts as 'generic' and covering a 'heterogeneous' number of approaches (e.g. Muncie, 2006: 74; Silverman, 2006: 223). While some concerns are shared across the various approaches, disciplinary home usually inflects method and approach in significant and often irreconcilable ways (Potter, 2004; see also Howarth, 2000 and Mills, 2004). Indeed, discourse analysis can

be seen as a contested disciplinary terrain where a range of notions and practices compete (Potter 1996). The complexities are formidable.

Potter (2004) describes how in the mid 1980s it was possible to find an array of books called discourse analysis with almost no overlap. The situation in the 2000s is the same and even shows signs of increased fragmentation and confusion. It would not be helpful to survey all the different approaches here, only to say that some include a more detailed focus and analysis of texts and their abstract linguistic structures and some don't. DA in social sciences for instance is often strongly associated with the work of Foucault (1972) and those working in this tradition generally pay less attention to the detailed linguistic features of the text and are more engaged with broader social theory in an attempt to make the link between text and the broader social, political, economic, cultural and temporal contexts within in which that text is situated and becomes meaningful (Fairclough, 2003). There are also those purely linguistic approaches to DA that are grounded in the discipline of linguistics, which tend not to engage with broader sociological concerns at all however.

This research has drawn firstly on the more general approach developed by Jonathan Potter (2004; with Wetherell, 1994; with Hepburn, 2004), and the more specific approach outlined and developed by Norman Fairclough (1995, 2001b, 2003) and Ruth Wodak (2004). This latter approach is known as Critical Discourse Analysis (CDA). These approaches, though diverging in certain respects and apparently emerging out of distinct

disciplinary homes, both have more general sociological orientations and concerns than some other approaches to DA. Both concerned with language use as a crucial element of social life. Neither of these approaches claims sociology as their disciplinary home however. Potter (2004) describes the approach he develops as having its origins primarily in social psychology, while Wodak (2004) asserts the linguistics origin of her approach to CDA. Nevertheless, both express interests that seem very much in keeping with this study and provide a clear understanding of what discourse is, what it does and how it should be approached in analysis.

Both Potter (2004) and Wodak (2004) can be seen to develop and build on an everyday understanding of discourse as language-in-use, but go into some detail about what it is and what it does. We will begin with the understanding of discourse as outlined by Fairclough and Wodak (1997):

> 'CDA sees discourse – language use in speech and writing – as a form of 'social practice'. Describing discourse as social practice implies a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s), which frame it: The discursive event is shaped by them, but it also shapes them. That is, discourse is socially constructive as well as socially conditioned – it constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people. It is constitutive both in the sense that it helps to sustain and reproduce the social status quo and in the sense that it contributes to transforming it. Since discourse is so socially consequential, it gives rise to important issues of power. Discursive practices may have major ideological effects – that is, they can help produce and reproduce unequal power relations between (for instance) social classes, women

> and men, and ethnic/cultural majorities and minorities through the ways in which they represent things and position people.'
>
> (Fairclough and Wodak, 1997: 258)

The understanding of discourse outlined by Potter (2004) has clear resonances with that outlined by Fairclough and Wodak above (1997). Firstly, Potter (2004: 609) describes discourse as 'action-oriented', an approach which sees discourse as a form of 'social action' just as CDA sees discourse as 'social practice'. Secondly, Potter describes discourse as 'situated', a view which acknowledges the fact that 'actions do not hang in space, but are responses to other actions, and they in turn set the environment for new actions' (*ibid.*). In a more abstracted sense than Potter explicitly suggests, this ultimately encourages analysis to acknowledge the importance of 'context', something which CDA considers to be crucial (Wodak, 2004). Thirdly, Potter describes discourse as 'constructed', referring not only to the way discourse are constructed out of words, sentences, rhetorical devices and so on but the way discourse 'constructs and stabilizes versions of the world [...] as both constructed and constructive' (2004: 610). The words 'constructed' and 'constructive' could easily be synonymous with constituted and constitutive in the sense used by Fairclough and Wodak above.

Essentially then, both of these approaches to discourse promote an understanding which sees it as a form of social action and as such has potential effects or consequences. The distinct significance of CDA relates to the addition of the term 'critical' to the title (*Critical* discourse analysis), which can be traced to the

influence of the Frankfurt School and broader Marxist thought, in particular the work of Jürgen Habermas. This specific aspect of CDA raises important issues, which is why it has been drawn upon alongside Potters more general approach to DA. Wodak describes how;

> 'The reference to the contribution of critical theory to the understanding of CDA and the notions of 'critical' and 'ideology' are of particular importance [...]. Critical theories are afforded special standing as guides for human action. [...] Such theories seek not only to describe and explain, but also to root out a particular kind of delusion. [...] One of the aims of CDA is to 'demystify' discourses by deciphering ideologies. [...] defining features of CDA are its concern with power as a central condition in social life [...]. Language is entwined in social power in a number of ways: language indexes power, expresses power, is involved where there is a contention over and a challenge to power. Power does not derive from language, but language can be used to challenge power, to subvert it, to alter distributions of power in the short and long term. [...] CDA aims to investigate critically social inequality as it is expressed, constituted, legitimised, and so on, by language use (or in discourse). Most critical discourse analysts would thus endorse Habermas' claim that 'language is also a medium of domination and social force. It serves to legitimise relations of organised power. Insofar as the legitimizations of power relations...are not articulated...language is also ideological'.'
>
> (Wodak, 2004: 187)

So while both Potter's and Wodak's approaches see discourse as a social action and as inextricably linked to others elements, objects and actors - it is situated within a wider social context in other words - this takes on a special significance in CDA. Wodak (2004) highlights Critical Theory's concern with structures of power relations, and further how power relates specifically to

discourse. Essentially, discourse is a means of exercising and legitimating power. This concern with power and how they might be related to discourse has clear resonances with the concerns of this research.

In their response to the 'threat' of file-sharing to their established business practices, the recording industry makes particular arguments. They do so in an attempt to exert pressure and influence on both policy makers and the general public as consumers and citizens of the state in which laws define what they may and may not do. As Firth pointed out in relation to the music industry's response to home-taping, 'this is a political campaign – it requires state legislation – and an ideological campaign – it requires public support' (1987: 60). The important point is that the recording industry's arguments for the enhancements of laws have been shown to be based on spurious assumptions and propositions about how strong copyright laws and enforcement functions to the benefit of creators. The move to influence copyright law is based purely on an interest in securing and extending their profit accumulation. This is not surprising, but it is concerning that the recording industry has apparently been successful in influencing governments and legislators, especially given the problematic nature of how copyright laws are articulated by recording companies in relation to music creators. As Simon Frith and Lee Marshall describe, 'many music consumers seemingly do not believe in existing copyright laws, and so rights holders are trying to make us believe in them [...]. The outcome of this struggle cannot be predicted; it depends upon the particular power relations involved. [...] to promote

copyright change requires us to acknowledge that there are powerful actors out there with vested interests in strengthening the existing regime' (2004: 213).

Discourse is the primary means through which music corporations and commercial actors may assert power and influence policy makers then. It is also a means through which power and influence can be legitimated and also challenged, questioned or resisted. To what extent then are such power dynamics and differentials evident in the discourse surrounding IP and copyright in the internet age? In particular, how is the apparent power of corporations to influence policy, a power evident in the passing of laws which extend rights in the interest of these corporations, justified and legitimated? And to what extent is this power being resisted, and the apparent exclusion or rejection of this resistance being legitimated and justified through the discourse of both corporations and the state? These are questions that the subsequent analysis seeks to address through an analysis of the discourse surrounding legislation in relation to IP, copyright, and file-sharing in the internet age. The following sections of this chapter outline the specific approach to data collection and analysis adopted. The approaches described by Potter (2004) and Wodak (2004) provide some guidance here, but this guidance needs to be combined with wider practical and ethical considerations.

Data collection: *Collecting Discourse*

As Silverman (2006) points out, discourse studies tend to be quite 'catholic' in the kind of discursive materials collected and

analysed. Sometimes many materials are combined together in the same study. Potter (2004: 612) suggests that discourse analytic research can be carried out on virtually any set of materials that involve talk and text, and he successfully demonstrates the combination of materials in a previous article on discourse analytic practice (e.g. Potter and Wetherell, 1994). In outlining some of the key principles of CDA Wodak suggests that 'multiple genres' and 'multiple public spaces' should be incorporated wherever possible to investigate 'intertextual and interdiscursive relationships' (2004: 188). She also suggests that critical discourse analytic study might incorporate elements of fieldwork and even ethnography in order to explore the object under study from 'the inside' (*ibid.*). As Potter (2004) acknowledges however, materials should continue to be chosen in the first instance on the basis of the research. In this case, the research has involved the collection of a range of discursive materials produced by a range of different actors, but which all related to the issue of copyright and file-sharing.

Collecting Documents and Texts

The term 'text' usually refers to any form of meaning laden data that can be 'read' including visual images and sound recordings. Textual data usually refers to those texts that can be collected for the purposes of analysis (David and Sutton, 2004). In this research, the textual data collected was in the form of written documents and involved a relatively straight-forward data collection strategy. The unobtrusive, un-reactive nature of textual data makes it an extremely valuable source of

information about things which would otherwise be difficult to obtain through obtrusive measures. Documents were chosen in this case because they directly related to the research problem of course. The production of documents represented the recording industry's, the state's, and other interested parties' primary medium or means of communicating arguments concerning copyright and file-sharing. The specific nature of the mechanism that the UK Labour Government provided in order for interested parties to communicate their arguments to a large extent determined that documents would be the primary discursive material to be collected for analysis in this research - the public consultation process instituted was one which required *written* submissions.

The research thus focuses on texts produced by a range of actors, but who fell into three distinct interest groups. Firstly, texts produced by the UK Labour Government and its various departments were collected. These texts consisted of the relevant consultation documents, reports, press releases, and published speeches. All were accessed and retrieved via the websites of the relevant government department and were simply downloaded and stored on the researchers computer in relevant files for later analysis. During the research period, pages were set up by relevant government departments relating to the various consultations they launched. These sites invariably provided access to the various responses received to consultations from interested actors, organisations and parties including the representative organisations of both recording companies and creators.

Representative organisations of the recording industry (BPI, IFPI, AIM) and music creators (BASCA, MU, FAC) all have their own respective websites. These websites were also regularly accessed throughout the research, allowing the collection of other relevant texts including reports, press releases, speeches and general information about the organisations. Each of these organisations was found to be producing and publishing texts relevant to the debates about file-sharing besides those official responses to the UK Labour Government's formal consultations, and much of these proved useful in providing an insight into how each of these organisations were attempting to either justify, interpret or resist proposed legislative responses to file-sharing. Documents dating back to the mid 1990's were collected in some cases, but the vast majority of documents were published between 2005 and 2010, which coincides with the period when the UK Labour Government began consulting on the issue of IP in the internet age, and when the issue of file-sharing in particular began to appear high on the public, political and industry agenda.

The documents collected from the websites of these various organisations, institutions and bodies can be thought of as both highly 'authentic' and 'representative' in each case. These are two of the criteria that Scott (1990) suggests should be considered when selecting documents for use in social research. The other two criteria that Scott (1990) suggests should be considered are than of 'credibility' - how much trust can we place in what the documents says - and 'meaning' - the meaning of the text. Both of these issues in this case will be in a sense the actual

subject of analysis in that we are seeking to explore what these documents are trying to convince its readers of, how and why.

Some relevant news reports/articles were also collected and have been drawn upon in the analysis. Most of these articles were identified via the setting up of email alerts with various newspapers, magazines and news websites. Some were also collected via the use of the *LexisNexis* newspaper database, which allows one to perform more or less complex key word searches of a range of UK national newspapers. These news reports often contained interview material with various relevant and interests actors and also provided an insight into the way in which press releases were being appropriated by various reporters and commentators, and how events were generally being perceived and reported in wider discursive circles and arenas.

The advantages of this 'unobtrusive' method of web-based research are that vast amounts of data are available without great expense or delay. The data can be accessed instantly from a computer with web-browsing capacities. In this sense the data collection method was relatively cost and time effective requiring little preparation compared to other methods of data collection such as interviews and survey research. We generally take such internet access and websites for granted today, but such research would have been extremely difficult to conduct 15 years ago of course.

Since the documents are made publicly available by the authors via their websites and are generally intended for public

dissemination anyway, issues of 'consent' seem largely negated. And given that the documents do not contain any kind of sensitive information about individuals, no significant ethical issues arose in relation to this particular aspect of the research. As official and publicly accessible documents, these publications also have permanence and are readily available for others to check, which is important for the validity and reliability of the research. Furthermore, since these documents are already in electronic format, they could be directly copied and stored in dedicated files, organised by producer and date, on the researcher's computer ready for analysis.

One major problem encountered was simply the vast number of documents and texts that were found and collected via these online searches. The web based research had generated well over 500 individual documents or texts for analysis. As is often the case, the initial data collection strategy will generate an 'assemblage' of data (Lee, 1993). Before any further analysis could be conducted, a significant period of time was spent attempting to reduce the sample of texts to a more manageable number, which essentially represented a process of subjectively selecting those documents which were thought to be of most relevance and which are most representative of arguments generally being made by different actors and organisations. Within the chapters that follow, a wide range of such texts are drawn upon, and all texts referred to are listed at the end of the thesis. The process of *analysing* the discourse found in these texts was the principle task of the research of course. The

conduct of the actual analysis is outlined in detail below under *Data Analysis: Analysing Discourse.*

Interviews

Both relevant literature and analysis of the texts collected and analysed raised a number of questions about the representation of one particular group in debates surrounding music file-sharing – creators. As such, throughout the research period, a number of interviews (15) were conducted with currently active music creators. Interviews were conducted mainly with what could broadly be defined as 'rock bands' who were either located in or were in some way linked to (either through friendship networks or through the live music circuit) the northwest of England, especially Liverpool. Potential interviewees were identified via informal friendship networks and the convenience based sample quickly snowballed as more people were identified and contacted. Once potential interviewees were identified, they were generally contacted via email or telephone and asked if they would be interested in participating. Arranging interviews was a process that had to be constantly renegotiated. And many intended interviews simply never happened for various reasons. The sample that was achieved was never intended to be in any sense fully representative of all music creators, but it did provide for an insight into the attitudes, experiences and understandings of creators in a range of positions in relation to the recording and broader music industry.

The majority of the creators and bands interviewed were either unsigned or signed to small independent recording companies.

Two were signed to large independent labels that had close links with major recording companies and larger music corporations. These interviews provided an opportunity to further compare and contrast the arguments of the broader music industry, and recording companies especially, with the understandings, attitudes and experiences of creators, which was important for those reasons outlined earlier in this chapter.

In terms of the actual conduct of these interviews, the approach adopted was relatively informal, with interviews being largely unstructured and open-ended, thus representing something like Robert Burgess' (1984) classic conception of an research interview being like a 'conversation with a purpose'. Interviews are often distinguished by the level of structure imposed, which refers to the degree to which the form and order of the questioning is kept standard from one interview to the next. While the fully structured interview helps to maintain a certain level of reliability and repeatability, unstructured interviews are said to privilege depth and internal validity through an attempt to let the interviewee determine the flow of the dialogue and 'speak for themselves'.

Interviews may also be distinguished by the level of 'standardisation' we might place around the answers interviewees may give. Fully closed answers of course allow a greater degree of quantification whereas fully open answers allow for greater depth and detail. Qualitative interviews as such tend toward the unstructured and non-standardised, rather than structured and standardised, though there is a broad scope between the two extremes (David & Sutton, 2004). While there

was no hypothesis to be tested in this research as such, there was obviously a topic and some key themes to be gleaned from the literature and an initial analysis of recording industry discourse about file-sharing for instance. A reflection on these key themes allowed for 'semi-structured' interviews to be conducted in some cases. Questioning remained open-ended however, allowing the respondents freedom in their answers. The researcher kept a casual 'aide-mémoire' of key issues to be covered during the course of the interview, which included discussion of their current activities as a music creator, their aspirations, thoughts on the changing technological environment and its implications, relations with other actors including recording companies and consumers, and of course the proposed legislative response to the file-sharing phenomenon.

The notion of 'interviewer bias' or 'interviewer effect' refers to the fact that the very presence and nature of the interviewer may have an effect on the interviewee and the subsequent outcome of the interview. The interaction between interviewer and interviewee may generate 'talk' that is as much a dynamic of the interview as it is a representation of the interviewee's real interests, opinions, understandings etc. There is no simple solution to this problem perhaps, but researchers should be aware of it at least. The timing and situation of the interview was a crucial element to reducing anxiety or tension. Settings were negotiated with research participants and familiar social settings such as café's and bars were advantageous in some senses, but were prone to interruption and noise. The advice of several authors including David and Sutton (2004), Burgess

(1984), Berg (2004), and Arksey and Knight (1999) was considered in planning and conducting interviews. The British Sociological Association's *Statement of Ethical Guidelines* were consulted alongside the University of Liverpool's *Code of Research Practice* also.

Most of the interviews conducted were recorded using a portable digital voice recorder, which allow the recordings to be directly transferred to the computer ready for transcription and subsequent analysis. Transcribing the interview allowed the discourse to be read in a more detailed way as a text, but attention was also paid to the un-transcribable features of the discourse wherever possible – hesitation, repair and so on. The process of transcribing actually represented an initial phase of analysis. Transcribing interviews of course is an extremely time consuming process that is made only marginally less so by transcription playback software such as *ExpressScribe* which was used in this research. Estimates of the time needed to transcribe 1 hour of interview vary from 4 hours (McCracken, 1988) to 8 hours (Arber, 1993). The time consuming nature of qualitative interviewing and transcribing represents its biggest disadvantage, but the depth and quality of data was extremely valuable for both this and future research.

The notion of 'informed consent' is generally agreed to be the ideal mode of operation in social research:

> 'informed consent means the knowing consent of individuals to participate as an exercise of their choice, free from any element of fraud, deceit, duress or similar unfair inducement or manipulation'
>
> (Berg, 2004: 64)

Misinforming and deceiving participants in social research is fraught with ethical difficulties and requires substantial scrutiny. This research did not require or need adopt such extreme strategies however. In following the principle of informed consent, participants were firstly given full details of the research and provided with a 'research information sheet'. Issues of consent and confidentiality were explained, and the opportunity for the participant to ask questions and decline to participate was presented. Each participant was then asked to sign a consent form. This was all done before commencing interviews. A process of debriefing also was used to ensure that participants were happy with what had been said, had understood the research, the questions, and the destination of the information provided.

It was felt necessary to further protect the interviewees' privacy and anonymity in the research. This meant enforcing and observing strict confidentiality, by which personal details were never revealed to anyone other than the researcher. Initially this was done through the assigning of codes to transcriptions and ensuring that corresponding information about participants was kept separate and secure in line with relevant data protection laws (*UK Data Protection Act, 1998*). Participants were assured of this confidentiality via the use of research information sheets, which were distributed prior to the actual conduct of the interview. Participants remain anonymous and are simply referred to in the analysis by number rather than by name or pseudonym.

Data Analysis: Analysing Discourse

There is no single recipe for analysing discourse (Potter, 2004). Different kinds of studies require and demonstrate different procedures and levels of analysis with different intentions. The initial object of this study is to explore to the arguments and justifications being put forward for the enhancement of laws by different sets of actors. The intention is to draw out the discursive and rhetorical strategies being deployed. The practice of reading the texts and drawing out specific phenomena clearly need to be 'systematised' in some way however. The analytic challenge is to identify potentially significant themes and/or instances in the data. The practical counterparts to this are the assigning of codes to segments of data and the subsequent retrieval of similarly coded segments (Lee and Fielding, 2004).

'Coding' in this case simply involved reading and sifting through materials for instances thought to be of significance in relation the research problem; coding expresses what is judged too be significant in other words (Potter, 2004). It was necessary to accompany this coding with notes or 'analytic memos' expressing the exact nature of each segment's significance. Coding is not a discrete stage of the analysis but usually a process that is ongoing and cyclical. The necessary reading and re-reading of texts means interests, labels and codes often change as new thinking is sparked off by new findings. This was certainly the case in this research. It had initially been intended that some form of analysis software would be used to conduct the analysis, but given the amount of data collected and the cyclical nature of the analysis, it was quickly found that conducting the analysis

via such software was of no real benefit, and thus the analysis and coding was conducted on paper predominantly, which meant printing materials of and keeping paper files of data.

In terms of what precisely was coded and judged to be significant in these texts, the researcher attempted to draw on the advice of Potter (2004) who suggests that analysis should usually involve a focus on some combination of variation, detail, rhetoric, and accountability in the texts. These are not rules or specific categories of analysis but simply point to the kind of occurrences in discourse that may be of interest to the researcher. 'Variation' represents a major analytic lever according to Potter and Wetherell (1994). Variation works on a range of different levels however. Variation both between discourse and within discourse is important. It is important because it can help identify and explicate the different actions different discourses are performing at different times exposing their ultimately action oriented, situated nature. The researcher will benefit, according to Potter (2004), from attending to variations between single texts, within texts and between what is said what could have been said.

One of the central features of discourse analysis is a concern with 'rhetoric' and a focus on variation is frequently the best way to start to unpick rhetorical organisation (Potter and Wetherell, 1994). Exploring rhetorical organisation involves inspecting discourse both for the way it is organised to make argumentative cases and for the way it is designed to undermine alternative cases (Biling, 1996). As Potter and Wetherell (1994) suggest, this draws our attention away from questions about how a version

relates to some putative reality and focuses it on how a version relates to competing alternatives. A focus on rhetoric is closely linked to an analytic concern with 'accountability' according to Potter (2004). Accountability is involved where there is a concern with displaying ones activities as rational, sensible and justifiable. Making one's actions accountable can be viewed as constructing them in ways that make them hard to rebut or undermine or in ways that make them seem fair or objective (Potter and Wetherell, 1994). All these concepts were found to be useful in the analysis of the discourse collected in the research, and often formed the basis of broad coding strategies.

Potter (2004) also highlights that successful analysis of discourse will typically draw upon prior analytic studies. Although discourse analysts have not been interested in producing general laws, they have been concerned with features of discourse construction and interaction that might apply across studies. More specifically, earlier studies can throw light on phenomena appearing in current materials. Reading other work is one of the ways of developing the analytic mentality required according to Potter and Wetherell (1994). With regards the discourse produced by the recording industry about file-sharing, there are no other relevant 'discourse studies' with which to make direct comparisons, but there are a few examples where attention has been drawn to the rhetoric of the recording and music industry.

The first example comes from a historical study of intellectual property and music by Kretschmer (2000) who briefly draws attention to the rhetoric of plagiarism, theft and piracy constructed by the recording industry in relation to CD piracy,

which could be applied directly to the case of the recording industries campaign against file-sharing. The second example is provided by Harker (1997) who draws attention to the use of statistics by the IFPI. This latter example provides a good example of the use of quantification, which Potter and Wetherell (1994) discuss as an example in their discussion of discourse analytic practice. Lee Marshall has also drawn attention to rhetoric surrounding copyright in the music industry in a range of works, whilst Matthew David (2010) briefly draws attention to the general arguments or the music industry in the context of file-sharing specifically.

Attending to the fine 'detail' of the text is fundamental to the analysis of discourse and depends on the discipline of close and careful reading. The sort of detail the researcher is interested in is precisely that which is lost in more traditional forms of quantitative content analysis. There is no formula for reading this detail and Potter and Wetherell (1994) describe how it can be surprisingly difficult to overcome the goal of academic reading which is to produce some gist or unitary summary of what has been said. The presentation of analysis and findings and the reaching of some firm conclusions must necessarily involve some summarising however, highlighting a very real tension in discourse analysis. The chapters which follow represent the outcome of an attempt to employ all the analytical techniques outlined here in order to ultimately arrive at some conclusions as to the nature of the justificatory and argumentative strategies deployed by various groups in formulation of the DEA. The individual chapters thus illustrate and discuss how specific sets

of actors have attempted to justify, challenge, or influence this legislative action via the construction and articulation of particular arguments and propositions.

Concluding Discussion: The Place of Values in Research

It may be prudent to conclude this chapter by briefly reflecting on the issue of 'values' in research. It is widely acknowledged in the social sciences, that all researchers may bring their own values, interests, preferences and assumptions to the research process. We all possess values and knowledge derived from our own personal experiences and interpretations of the social world. Such an acknowledgement can be traced to Max Weber's (1949) assertions that all research is influenced to some extent by the values of the researcher and only through those values do certain problems become identified, selected and studied in particular ways. But while Weber acknowledges that social research can never be truly value-free in this sense, he suggests that the social researcher is obliged to conduct their research in such a way as to ensure that these values do not dictate the outcome and so attempt to achieve some level of 'objectivity' (David and Sutton, 2004; May, 2001). For some, the concept value *neutrality* is as much a myth as value *freedom*, and represents something of an indefensible position (Gouldner, 1962; Ravn, 1991). As human beings we do not possess the capacity to step outside ourselves, our values and our knowledge to observe the social world from some objective position, however hard we might try.

The implication of this for the current discussion is that, as Valerie Janesick (2003: 56) bluntly asserts in relation to qualitative research, 'there is no value-free or bias-free design'. So what, if anything, is to be done about this? It seems clear that researchers should be aware of the place of values and interests in their research, make them explicit and allow them to be open to scrutiny. As David and Sutton (2004) suggest, honesty seems to be the best policy in this case. And as Charles Taylor asserts; 'there is nothing to stop us making the greatest attempts to avoid bias and to achieve objectivity. Of course, it is hard, almost impossible, and precisely because our values are always at stake. But it helps, rather than hinders, the cause to be aware of this' (1994: 569). These principles of open reflection are central part of good research practice in the social sciences and will be adhered to here.

So what values may be at work this research endeavour? As Tim May asserts, values can come to play a role in every aspect of the research from beginning to end. Even the decision to research involves values and motivations. Berg (2004: 17-18) suggests that, 'many people arrive at their research ideas simply by taking stock of themselves and looking around. [...] you merely need to open your eyes and ears to the sensory reality that surrounds all of us to find numerous ideas for research'. As David and Sutton (2004: 6) acknowledge, some issues simply become 'ripe for research' in the eyes of those able to fund research activity. Silverman (2006) acknowledges that some research is initiated by the formulation of problems by external groups and parties. As Tim May asserts, 'even when researchers

are given a free reign to develop and design research in any way they decide, or undertake a research project into any social area they wish, it does not follow that it is then immune from values' (2001: 51).

In the case of this research, the initial idea emerged from the researchers own interests in popular music, experiences of working in music development and out of previous academic study in this area. It is not felt that any of these factors represents an unreasonable bias or selectivity in the decision to conduct this research however. One looks upon the fact that the researcher has experience and knowledge in the area as a positive factor. It might mean that the researcher is more attuned to the key debates and issues to be considered at least. There is clearly a critical edge to the research also however. There is a concern with power relations here and a sense that we should be critical of the discourses of the powerful and seek to expose those competing discourses and voices of the less powerful. This is indeed a central tenet of Critical Discourse Analysis.

In 'Whose Side Are We On?' (1967) Howard Becker asserted that presenting a view of the world from the point of view of 'underdogs' or 'outsiders' will always draw accusations of *advocating* that perspective. The focus on these less powerful discourses is extremely valid in the view of this researcher, but it is important to acknowledge, as Becker (1967) asserted, presenting a perspective is not the same as advocating it. Likewise, in this research it is not suggested that any discourse is more or less representative of any reality and therefore 'better'

or more valid than any other. Rather it is simply acknowledged that these discourses reflect different interests, and thus the privileging of any one might be at the expense of an alternative and equally as valid perspective and interest. When this is particularly evident in the policy arena, it becomes an extremely important issue one would posit. Exposing legislative actions as involving the unreasonable privileging of corporate interests at the expense of wider and as equally important social and cultural interests, or as involving the production and reproduction of spurious justifications would be a grand of course. This research did not set out to *prove* that the formulation of the DEA involved such things. Rather the researcher set out to investigate, as objectively as possible, whether this was or was not the case. The chapters that follow present some compelling evidence, found in the research, of both the influence of recording companies in the legislative process, and of the reproduction of very questionable justifications for the enhanced enforcement of copyright laws in the online environment. It also highlights the equally troubling marginalisation of other competing interests and perspectives.

CHAPTER 4

NEW LABOUR AND THE KBE: THE PRIORITISATION OF INTELLECTUAL PROPERTY ON THE UK GOVERNMENT'S LEGISLATIVE AGENDA

Introduction

Via an analysis of relevant texts including policy documents, speeches and press releases, this chapter offers a discussion of New Labour's development of a particular economic/industrial strategy. The analysis and discussion reveals and illustrates the way in which the Government's legislative response to file-sharing emerged out of a concern for securing the UK's success in what it saw as a changed global economic environment. In particular, the analysis illustrates how New Labour's conception of the new economic environment led to the prioritisation of certain industry sectors. It so happened that these industry sectors were those that faced particular challenges from the emerging technological environment of the internet, digital and networking technologies.

In an attempt to protect these industries, and support them as a means of securing the UK's future prosperity, the Government moved to ensure that these industries could adequately protect themselves and continue to be economically productive in the internet age. In the case of the music industry and other creative

and knowledge based industries this necessarily involved a renewed concern for the legal environment of intellectual property rights. Whilst intellectual property (IP) laws appeared adequate in terms of providing a particular environment in which these industries could be economically productive, the enforcement of these laws did not. The Government, under New Labour, thus ultimately moved to legislate in order to make it easier for rights holders to bring legal action against file-sharers, and furthermore see those individuals punished by having their access to the technical means of file-sharing removed. These actions were justified by New Labour as a means of helping support creative industries, of achieving success in the global economy, and securing future 'prosperity for all'.

The first part of the chapter offers a broad account of the development of new Labour's economic/industrial strategy via reference to various relevant documents. The chapter then illustrates how this economic strategy led to the prioritisation of certain industries and to the subsequent elevation of IP laws on the legislative agenda. The chapter focuses in particular on the development of the legislative response to file-sharing and the way in which New labour seemingly justified such actions in relation to the requirements of the new global economy and the threats of the new technological environment. Some significant discursive and rhetorical strategies in the discourse of New Labour are highlighted. In particular, it is shown that the process of consultation which preceded legislative action represented something more akin to promotion of New Labours economic vision and strategy. The chapter ends with a broader

discussion of how we might understand the development of New Labours economic strategy.

New Labour and the KBE

In 1997 the UK Labour Party was elected to power ending 18 years of Conservative government. The discourse and discursive nature of the 'New Labour' Government, as they branded themselves in an attempt to shrug off ties to past Labour administrations, has been subjected to significant critique and analysis over the last decade (e.g. Fairclough 2000; 2001c). Here, it is only necessary to draw attention to the way in which New Labour adopt, develop and articulate a particular vision of the modern world and economy. 'New Labour' actively embraced a notion of what has widely become known as the global Knowledge Based Economy (KBE). The implications of this for the legal framework of intellectual property rights and for those businesses which rely upon it, including the recording and broader music industry, were to be profound. The notion of the KBE provided an ideological basis upon which to develop and implement various new economic/industrial strategies, projects and policies designed to keep Britain moving 'forward not back' (The Labour Party, 2005: Online). It was the notion of the KBE, which ultimately provided a discursive frame within which to legitimate and justify *The Digital Economy Act 2010, (c.24).*

Having successfully convinced the public that, 'Britain will be better with new Labour' (The Labour Party, 1997: Online), the party quickly set about developing a new industrial and economic strategy. The 'goal', according to the New Labour

Government, 'must be to reverse a century of relative economic decline by raising the sustainable rate of growth' (DTI, 1998: 6). The strategy that New Labour had developed and intended to implement in this regard was comprehensively set out in the White Paper, *Our Competitive Future: Building the Knowledge-Driven Economy* (DTI, 1998). This 66 page document developed a clear narrative regarding what precisely was needed, why, and how it would be achieved. The strategy and context within which it was being developed was succinctly summed up in the then Prime Minister Tony Blair's forward to the paper:

> 'The modern world is swept by change. New technologies emerge constantly, new markets are opening up. There are new competitors but also great new opportunities. Our success depends on how well we exploit our most valuable assets: our knowledge, skills, and creativity. These are the key to designing high value goods and services and advanced business practices. They are at the heart of a modern, knowledge driven economy. This new world challenges business to be innovative and creative, to improve performance continuously [...]. But it also challenges Government: to create and execute a new approach to industrial policy [...]. The White Paper creates a policy framework for the next ten years. We must compete more effectively in today's tough markets if we are to prosper in the markets of tomorrow [...]. That is the route to commercial success and prosperity for all. We must put the future on Britain's side.'
>
> (Blair, in forward to DTI, 1998: 5)

The 'modern world' (as opposed to the pre-modern world to which previous failing governments were attached) is depicted as being in a state of change. This change is squarely attributed to technological development and the effect this is having on 'markets'. Responding to the 'challenges' and 'opportunities' of

this 'new world' is depicted as being the task of industry and industrial policy. Later in the document for instance, the authors state that: 'The Government as a regulator will open up markets, crack down on harmful anticompetitive behaviour and modernise markets so British business can exploit the opportunities of electronic commerce' (DTI, 1998: 12). *Economic* competitiveness and success in the new 'tough markets' is clearly depicted as a means of securing 'prosperity for all' however (Blair, 1998: 5). Thus, industrial and economic strategy is placed at the heart of broader social progress.

Crucially, there is also an assertion that 'knowledge' and 'creativity' would be somehow central to maximising the UK's competitiveness in these new markets. Blair explicitly states for instance that 'success *depends* on how well we exploit our most valuable assets: our *knowledge*, skills, and *creativity* [...]. They are at the heart of a modern, *knowledge driven* economy' (ibid. Emphasis added). This rather vague assertion continues throughout the report and articulated in statements like: 'The UK's distinctive capabilities are not raw materials, land or cheap labour. They must be our knowledge, skills and creativity' (DTI, 1998: 6). The broader context of economic decline following the crisis of 'Fordism' and an increase in international competition is being explicitly acknowledged here of course. One clear implication of New Labour's interpretation of and response to this broader context, is that certain other industries, particularly those that produce goods based on creativity (which would increasingly come to be known as 'creative industries' within

policy circles), were to be supported and developed as leaders in the global market place.

The elevated status and prioritisation of the 'creative industries' in UK economic and industrial policy was, not explicit in the DTI White Paper above, but it was clearly evident in the publication of the first *Creative Industries Mapping Document* (DCMS, 1998). This document marked an explicit attempt to map the economic contribution of the 'creative industries' to the UK, and to identify the opportunities and threats they faced. The Government's definition of the creative industries seems to have been relatively broad; 'those industries which have their origin in individual creativity, skill and talent and which have a potential for wealth and job creation through the generation and exploitation of intellectual property' (DCMS, 2001a). This included industries ranging from antiques and advertising to software, TV and radio. Crucially for our discussion though, it included the music industry. In the 1998 mapping document, the UK music industry is identified as a sector of strong economic growth and potential generating an estimated £2,081.3m in 'value added' (DCMS, 1998: 68). The international competitiveness of the UK music industry was also highlighted.

The opportunities and difficulties faced by the music industry in the new technological environment were also outlined in this early document. There was a brief discussion here of the opportunities and challenges that the internet in particular would bring. The key aspect of this was the assertion that: 'Companies doing business on the Internet will, however, need to be assured that adequate copyright laws are in place worldwide

to ensure that they can obtain a reasonable return on their investment' (DCMS, 1998: 75). It is interesting to note here that copyright is being discussed in terms of assuring returns on investment (which is what recording companies do) rather than rewards for creators and creativity. In concluding their assessment and discussion of the UK music industry in 1998, the DCMS identified intellectual property rights and copyright law as key issues in relation to the growth of the industry in the new technological environment:

> 'Issues critical to the [music] industry over the next decade include:
>
> - ensuring that standards of copyright protection are maintained in the UK and that similar levels of protection are extended throughout the EU (through the forthcoming Copyright Directive) and the rest of the world
> - in particular, ensuring that the opportunities afforded by the Internet are coupled with technological and legal protection of intellectual property
> - combating piracy'
>
> (DCMS, 1998: 76)

Already within view then, were the challenges that technological development might present to those enterprises that relied on the concept of intellectual property and its effective legal articulation and enforcement. With the prioritisation of 'creative' and 'knowledge-based' industries as part of New Labours new economic strategy, there naturally followed an increased concern for and interest in the legal framework of intellectual property rights. If the UK's economy and future prosperity was to become increasingly dependent on knowledge based and creative industries, then the legal framework of intellectual property

rights would clearly need to be modified in order to deal with the challenges that the new technological environment would bring.

Whilst the particular importance of the creative industries was not being explicitly acknowledged in the 1998 DTI White Paper, the importance of *IPRs* was:

> 'Intellectual Property Rights (IPRs) are fundamental to an innovative economy. They give businesses and individuals' confidence to exploit their ideas commercially and undertake further innovation. The IPR system should reflect fully the demands of the knowledge driven economy. This means we need to keep pace with developments in new technologies and the way businesses operate, for example, information and communications technology; make Intellectual Property Rights affordable and accessible; ensure rights are accepted and enforced internationally; and maximise the return from the knowledge base.'
>
> (DTI, 1998: 57)

There is an apparent reference to the usual utilitarian justification for IPRs here, in suggesting that they give individuals the confidence (or rather incentive) to undertake innovation. The importance of IPRs is clearly being asserted in relation to businesses and thus the economy as a whole though, rather than to individual creators. The suggestion that IP law should be modified in the face of technological development, thus framing technological development as a threat to business and the economy, is also clear to see. In acknowledging and asserting the importance of IPRs to the economy and economic strategy, New Labour made a commitment to 'implement an action plan to modernise the intellectual property rights system' (DTI, 1998:

64). This was encapsulated in what they called 'The IPR Action Plan':

> 'Keep pace with developments in new technologies and the way businesses operate in the knowledge driven economy.
>
> • Agree EC Directives on copyright in the information society and stronger protection for software-related inventions.
>
> • Introduce a worldwide system for electronic trading in IPR.
>
> • Make Intellectual Property Rights affordable and accessible.
>
> Review the impact of fees charged by the UK Patent Office.
>
> • Consult on proposals to reduce the tax compliance costs of IPR transactions.
>
> • Reform the civil law system for IPR litigation.
>
> • Push for an EC patent which is affordable and easy to enforce.
>
> • Ensure that EU harmonisation of "second tier" or "petty" patents benefits UK firms, particularly small businesses.
>
> Ensure rights are accepted and enforced internationally.
>
> • Ratify the international treaties on copyright agreed in the World Intellectual Property Organisation.
>
> • Take action against countries that take a soft line on counterfeiting and piracy.
>
> • Ensure countries seeking membership of the EU meet their obligations to protect and enforce IPRs.
>
> • Press the US to introduce a 'first to file' patent system in line with the rest of the world.
>
> Maximise the return from the knowledge base.
>
> • Review how IPRs can be used to maximise the value we get from publicly-funded research.'
>
> (DTI, 1998: 56)

Interestingly, no action was taken with respect IP laws for some time. Between 1998 and 2005 however, New Labour continued to develop and promote its new economic strategy for building a 'knowledge driven economy'. It continued to measure and

promote the economic contributions of the creative industries in particular through the publication of *Creative Industries Mapping Documents* and the like (DCMS, 2001a), map out and assess the implications of the changing technological environment for these industries (e.g. DCMS, 2000a), and set up various committees and working groups such as the *Creative Industries Task Force,* which allowed issues of concern to the creative industries to be further communicated to and assessed by government, which was all being done in the context of pursuing and implementing the Government's strategy for securing Britain's competiveness in the new global KBE.

There was a palpable appetite and desire to promote the value of the creative industries during this period. For example, in the forward to the 2001 *Creative Industries Mapping Document* (DCMS, 2001a) Chris Smith MP describes how:

> 'In a knowledge economy the importance of these industries to national wealth is more commonly recognised; and the special needs of these industries are reflected more in policy development at national, regional and sub-regional levels. The creative industries have moved from the fringes to the mainstream [...]. They are a real success story, and a key element in today's knowledge economy.'
>
> (Smith, in forward to DCMS, 2001a)

There was a particular focus on music industry as a sector of especial value and potential throughout. This was evident in publications such as *Consumers Call the Tune: The Impact of New technologies on the Music Industry* (DCMS, 2000b), a report with echoed and reaffirmed much of what had already been established in the government's first assessment of the music

industry in 1998: 'For Government and the Music Industry to promote and safeguard the intrinsic value of music and copyright by adopting the recommendations of the IP Group, of the Creative Industries Task Force and the legislative recommendations below', which included, 'to create – and to do so quickly – a secure legislative framework' and 'To press for the early adoption of the EU Copyright Directive' (DCMS 2000b). The latter recommendation was implemented via statutory instrument (No. 2498), but not until 2003.

Further evidence of a particular interest in the music industry during this period can be seen in publications such as *Banking on a Hit: he Funding Dilemma for Britain's Music Businesses* (DCMS, 2001b) and *A Survey of Live Music Staged in England & Wales in 2003/4* (DCMS, 2004). All such activities seemingly involved either formal or informal collaboration between the government and key actors and organisations within the music industry. The Governments desire to maintain close communicative connections with the music industry was particularly evident in the setting up of the *Music Industry Forum* in 1997, a policy working group of sorts 'set up in 1997 to act as a high level point of contact between the industry and Government', and to examine 'key issues facing the music industry over the coming years' (Smith, in forward to DCMS 2000b). A kind of policy community or network seemingly emerged around the creative and music industries, which clearly allowed music corporations and their representatives to exert some kind of pressure on the government.

New Labour's development and pursuit of this particular economic strategy continued as it entered into its second term in Government, where its prioritisation and mapping of the creative industries sector - in the context of responding to the opportunities and challenges presented by the new technological environment - would culminate in a major review of the legal framework for the articulation of IPRs in 2006. The commitment made by New Labour in their 2005 election manifesto under the heading 'Copyright in the Digital Age' is especially important in this regard;

> 'We will modernise copyright and other forms of protection of intellectual property rights so that they are appropriate for the digital age. We will use our presidency of the EU to look at how to ensure content creators can protect their innovations in a digital age. Piracy is a growing threat and we will work with industry to protect against it.'
>
> (The Labour Party, 2005: 99)

With their re-election for a third term in 2005, New Labour moved to fulfil this pledge through commissioning the biggest single review of the intellectual property framework that the UK had seen. The *Gowers Review of Intellectual Property* (HM Treasury, 2006) represented the fulfilment of the Labour Government's longstanding commitment to complete a broad ranging review of the UK's entire intellectual property rights framework in light of growing concerns about it being 'fit-for-purpose' in the digital age and economy. The official 'Call for Evidence' for the review sought to clearly locate the importance of the UK's legal intellectual property framework in relation to the notion of the global KBE.

As we have already seen, the narrative constructed by New Labour was essentially one that involved construing and asserting that the future prosperity of the UK was dependent upon its ability to be competitive in the global KBE. According to New Labour, success was dependent above all, on the health of certain industry sectors and business. Whilst it had already become evident that the creative industries were considered important in this respect, the move to fully review the legal framework of IPRs confirmed that it was those businesses that relied on IPRs specifically that were being construed as particularly important in achieving success in the global KBE. Indeed, these industries would now come to be known specifically as 'knowledge based industries' within New Labour's economic/industrial policy discourse. This is clearly asserted in the introduction to the Gowers Review's official 'call for evidence' for instance: 'The UK's Intellectual Property framework [...] is a critical component of our present and future success in the global knowledge economy. Our economic competitiveness is increasingly driven by knowledge based industries [...]' (HM Treasury, 2006a:1). In his accompanying letter, Andrew Gowers asserted that; 'Intellectual property is crucial to the success of knowledge-based industries, which are increasingly important for the UK's economic competitiveness in the global economy' (Gowers, 23 February 2006).

What is also clear from these 'invitational' documents is the way in which legislative change is being construed as an appropriate way to deal with the 'threat' of technological development. In the call for evidence the government states: 'Globalisation and

technological change have both raised tensions in the existing IP system [...]. Digitisation has radically lowered the cost of duplication as well as distribution [...].' (HM Treasury, 2006a: 1). Gowers asserts that 'The review will examine whether improvements could be made to the intellectual property framework, especially in the context of rapid technological change and globalisation' (Gowers, 23 February 2006). Of particular importance were the following remarks:

> 'With the increasing pace of technological change, in particular the digital technology and growing use of the internet, the review will seek to provide a solid foundation for the governments long term strategic vision for IP Policy, based on sound economic principles. Its key aim is to ensure IP systems remain appropriate in the face of global economic and technological change and the increased importance of the knowledge economy worldwide.'
>
> (HM Treasury, 2006a: 3)

The official call for evidence goes on to highlight a range of general and specific issues for consideration in relation to the changing technological environment for IPRs and IP industries. Issues raised included Digital Rights Management (DRM), copyright exceptions, and crucially, file-sharing. In relation to File-sharing the call for evidence made the following remarks;

> 'The widespread use of the internet and the advent of high speed digital networks has made it increasingly easy to copy and share digital information quickly, easily and without appreciable loss of quality. This has enabled widespread copyright infringement, most notably the use of file sharing technologies to download unlicensed music. It has been suggested that copyright exceptions lack clarity and are ill equipped to deal with these technological challenges. Furthermore, public awareness of the boundaries of lawful use is low,

> and legal sanctions on infringement appear to lack clarity and consistency across different forms of IP.'
>
> (HM Treasury, 2006a: 2-3).

It was in relation to such issues that Gowers was requesting responses/submissions from interested parties. The Gowers Review was thus to be based on the kind of public consultation process highlighted in the previous chapter as an opportunity for the Government to collect and aggregate opinion, evidence and interest with regards this particular policy/legislative area. Crucially, the consultation represented a formal opportunity for various interested parties to exert pressure on the government, and attempt to influence the outcome of policy recommendations and decisions. The consultation received over 500 responses from a range of interested parties (organisations and individuals). The responses of various music industry organisations are analysed and discussed in the next chapters.

It is relevant to briefly note here some immediate evidence of the influence of the UK music industry on the consultation process however. Alongside the consultation process, the Treasury commissioned a piece of research to assess the economic impact of extending the term of copyright in sound recordings from 50 years. The recording industry had been lobbying for an extension to the term of copyright in sound recording to 90 years for some time (see, BPI 2006a) and the commissioning of this specific piece of research alongside the Gowers review may be taken as evidence of the responsiveness of Government to such lobbying pressure. Unfortunately for the recording industry, both the independent review and Gowers recommended that the term of

copyright should not be extended. The Gowers review concluded that: 'Extension does not represent harmonisation'; 'Extension would not increase incentives'; 'Works in copyright are less available'; 'Most recordings do not sell for 50 years'; 'Extension would cost the industry'; and 'Artists would not necessarily benefit from extension' (HM Treasury, 2006b: 49-56). In so doing, the review systematically dismissed all those arguments that the recording industry had put forward for the extension of copyright term in sound recordings in a lobbying pamphlet produced by the BPI (2006a) and in the research the BPI had commissioned alongside their own submission to the Gowers Review (PCW, 2006).[12]

With regards the other findings and recommendations of the Gowers Review, in the most part it simply echoed the narrative that New Labour had been developing since 1998. The Gowers review was important however in the way it more forcefully articulated the notion that IPRs and knowledge based industries specifically are crucial to achieving success in the Global KBE. For example, in the forward to the final report, Gowers asserted that: 'In the modern world, knowledge capital, more than physical capital, drives the UK economy. Against the backdrop of the increasing importance of ideas, IP rights, which protect their value, are more vital than ever' (Gowers, in forward to HM Treasury, 2006b: 1). The economic contribution of those industries which deal in IP was highlighted and promoted

[12] It is interesting to note that two independently commissioned studies (CIPIL, 2006; PwC, 2006) into the same issue could reach two entirely different sets of conclusions. The contrasting outcomes possibly reflects the difference in interests between: 1) the two organisations commissioning the studies; and 2) the two organisations conducting the studies. It could also reflect differences in methodology of course.

forcefully also; 'Knowledge based industries have become central to the UK economy – in 2004 the Creative Industries contributed 7.3 per cent of UK Gross Value Added, and from 1997 to 2004 they grew significantly quicker than the average rate across the whole economy [...]. (HM Treasury, 2006b: 3). The threat that globalisation and technological development presents in relation to these industries was once again forcefully asserted;

> 'While global and technical changes have given IP a greater prominence in developed economies, they have also brought challenges. Ideas are expensive to make, but cheap to copy. Ideas are becoming even cheaper to copy and distribute as digital technology and the Internet reduce the marginal cost of reproduction and distribution towards zero. As a result, the UK's music and film industries lose around twenty per cent of their annual turnover through pirated CDs and illegal online file sharing.'
>
> (HM Treasury, 2006b: 3)

File-sharing is singled out as a particular threat here. Its effects on music industry revenues are also highlighted, but it is interesting to note that the source of this data is largely music industry sponsored/commissioned research. This is an important point since these actors have a vested interest in highlighting the economic effects of file-sharing. This is evidence of the way in which the consultation process and legislative decision making more broadly may act to favour the interest of those in a position to provide expert and specialised information/evidence and who can afford to do so, namely commercial actors and in particular large multi-national corporations and their industry representatives.

The highlighting of the importance and economic contribution of IP based industries, and of the challenges that the new technological environment has brought, provide the basis of a rationale for the review and its subsequent recommendations then. With regards the question that Gowers and his team had been asked to address – whether the current legal framework for the protection of IP was fit for the digital age – The review found:

> '[...] the current system to be broadly performing satisfactorily. However, there are a number of areas where reform is necessary to improve the system for all its users. The Review therefore sets out a range of pragmatic recommendations, which can be grouped around three themes: first, stronger enforcement of rights; second, lower costs for business; and finally, balanced and flexible rights.
>
> (HM Treasury, 2006b: 4)

The Gowers review subsequently makes 54 individual recommendations for varying significance and importance, including the aforementioned recommendation that the term of copyright in sound recordings not be extended (Recommendation 3). This latter recommendation indicated that the Government, or Gowers and his review team at least, were not swayed irrevocably by the arguments of the recording industry. There were also a recommendation in the review that a new exception be introduced for private copying, which would allow music consumers to make use of technical capacities to transfer music from CD's to computers and other play-back devices for personal use (Recommendation 8). This private use/format shifting exception recommendation subsequently became the subject of two further consultations conducted by the UK Intellectual

Property Office (UKIPO, 2007; 2009). The recommendation has been vehemently opposed by the recording industry, which claims that such an exception represents a right to copy freely, would undermine established principles of copyright, and only add to the file-sharing 'problem' (see BPI, 2006b).

At the December 2006 Pre-Budget Report, the Government agreed to implement all the recommendations in the Gowers Review. Of particular importance in this sense, was the following recommendation:

> 'Recommendation 39: Observe the industry agreement of protocols for sharing data between ISPs and rights holders to remove and disbar users engaged in 'piracy'. If this has not proved operationally successful by the end of 2007, Government should consider whether to legislate.'
>
> (HM Treasury, 2006b: 8, 100)

This particular recommendation reflected the fact that whilst this practice of information sharing and cooperation was being adopted to some extent, the efforts of the industry (rights holders and ISPs) to reach a sector wide voluntary agreement to address the problem had largely failed. The recommendation was important in the sense that it gave an indication of what was to come in terms of a formal legislative response to the continued proliferation of file-sharing and the economic harm that the recording industry claimed it was inflicting on them.

In July 2008, the *Department for Business Enterprise & Regulatory Reform* (DBERR) launched the *Consultation on Legislative Options to Address Illicit Peer-to-Peer (P2P) File-sharing* (DBERR, 2008). This consultation was designed to

specifically to take forward recommendation 39 of the Gowers review, reflecting that no apparently effective measure to address file-sharing had been implemented by the music industry in collaboration with internet service providers (ISPs), by 2008. The consultation document thus sets out and seeks to gather views on proposed legislative options to facilitate and ensure co-operation between rights holders and ISPs in order to address the 'problem' of the illicit use of P2P systems (DBERR, 2008). In the consultation document DBERR stated that:

> 'Copyright owners (rights holders) have struggled to develop effective business models in the digital world against a backdrop of pervasive and illicit P2P copying of copyright material. Existing remedies are slow, expensive and have proved largely ineffective. That being the case they have sought to engage with ISPs to agree ways in which they can co-operate to reduce illicit P2P traffic [...].Because there would appear to be common interest between ISPs and rights holders to come to a voluntary solution the Government has been keen to give the different parties the time and opportunity to develop such an agreement, though we would wish to be assured that it was legal, effective and fair. More recently we have worked closely with ISPs and rights holders to arrive at a set of principles encapsulated in a memorandum of understanding (MOU) that would provide an agreed industry framework for action.'
>
> (DBERR, 2008: 5)

The consultation document echoes Gowers in stating its belief that an 'industry solution', based on voluntary agreement between rights holders and ISPs would be best, provided that it was 'fair'. But the Government acknowledged both in and through this consultation that a voluntary agreement 'appears highly unlikely' (DBERR, 2008: 29). They acknowledge that such

an agreement 'would require the voluntary participation of all ISPs and it has become clear that we do not yet have this' (ibid.). In the consultation document, the Government thus sets out a number of alternative solutions to the 'problem' of file-sharing. The document promotes what it describes as its 'preferred option' of 'a co-regulatory approach' (ibid.) however. This preferred option consisted of 'a self-regulatory approach' that would be 'overseen by a regulator who would have responsibility for approving codes of practice' (ibid.):

> 'The regulator will invite stakeholders, including ISPs and rights holders to join a group to explore effective mechanisms to deal with repeat infringers. Members of the group will look at solutions including technical measures such as traffic management or filtering and marking of legitimate content to facilitate identification, as well as ways in which rights holders can take action against the most serious infringers.'
>
> (DBERR, 2008: 5)

The code of practice which rights holders and ISPs were expected to develop would ultimately include: 'An obligation on ISPs to take action against subscribers to their network who are identified (by the rights holder) as infringing copyright through P2P' (DBERR, 2008: 5). As suggested, this particular 'solution' to the 'problem' of file-sharing was promoted in the consultation document as the Government's preferred option. Acknowledging that this co-regulatory approach may be difficult to achieve however, the document also sets out a number of other regulatory options for consideration by interested parties. These included:

'• Option A1: Streamlining the existing process by requiring ISPs to provide personal data relating to a given IP address to rights holders on request without them needing to go to Court.

• Option A2: Requiring ISPs to take direct action against users who are identified (by the rights holder) as infringing copyright through P2P (this is essentially the same legal obligation as in the preferred option [...], but without any self regulatory element).

• Option A3: Allocating a third party body to consider evidence provided by rights holders and to direct ISPs to take action against individual users as required, or to take action directly against individual users.

• Option A4: Requiring that ISPs allow the installation of filtering equipment that will block infringing content (to reduce the level of copyright infringement taking place over the internet) or requiring ISPs themselves to install filtering equipment that will block infringing content.'

(DBERR, 2008: 6)

It is interesting to note that all such options are essentially designed to ensure that ISPs co-operate with rights holders, thus making it easier for rights holders to take action against file-sharers. The document outlines and details the difficulties faced by rights-holders and in particular representatives of the recording industry, the BPI, in bringing legal action against file-sharers given that ISPs work on the assumption that they cannot, under the provisions of the UK Data Protection Act, simply pass on the names and details of those whose accounts have been used to infringe copyright online (DBERR, 2008). The regulatory options that the government subsequently outlines and promotes in this consultation are clearly designed to remove or overcome such barriers for rights holders, regardless of the objections of ISPs.

This was perhaps the clearest indication that it was the interests of rights holding corporations that were being prioritised in this legislative decisions-making process. The whole consultation is presented in terms of finding a 'solution' to the 'problem' of file-sharing. But whilst file-sharing is conceivably a problem for rights-holding corporations in that it may bring economic harm through the bypassing of established socio-economic arrangements for the production and distribution of music as a commodity, it is not clear that file-sharing is a problem in any sense for anyone else. In an attempt to see profitable socio-economic arrangements maintained these corporations clearly seek legislative support. They have thus been lobbying hard for such legislative action, as we will see more clearly in the next chapter. And from the above legislative thinking on the part of the UK Government, it seems that what these rights holders wanted, they were likely to get.

The influence of these rights holding corporations in this process, particularly recording companies and their representatives, is clear to see in this government policy discourse. For instance, the DBERR consultation document suggests that: 'The Music industry has so far been the most affected sector, with millions of individuals engaging in unlawful file-sharing' (DBERR, 2008: 12). The document subsequently draws on research conducted by *Jupiter Research*, commissioned by the BPI, to outline the scale and economic impact of file-sharing on 'the music industry'. The document also frequently refers to 'discussions' that had been taking place elsewhere between the music industry and the government. These organisations have clearly been afforded a

position within policy networks and communities that allows them to exert pressure and influence, a position which, as economically powerful actors they are able to take full advantage of it seems.

Interestingly, unlike in the Gowers review and elsewhere, in the DBERR consultation there is no attempt to offer any rationale or justification for why the music industry in particular should be supported and protected by the government. Rather, the need to support this industry is simply assumed. However, the consultation document does briefly draw attention to the Government's *Creative Britain* paper (DCMS, 2008), which further outlined and developed the economic strategy for securing Britain's future prosperity that New Labour had been developing since it came to power in 1997. In the *Creative Britain* document, the role of the creative industries and the need to support them via strong intellectual property laws is much more explicit than it had previously been. For instance in the forward to the paper, the New Labour government sated that;

> 'now is the time to recognise the growing success story that is Britain's creative economy and build on it [...].Our creative industries have grown twice as fast as the rest of the economy in recent years, now accounting for over seven per cent of GDP. If they are to continue to grow in size and significance, we must work hard to maintain the most favourable conditions to stimulate British innovation and dynamism [...]. Britain is a creative country and our creative industries are increasingly vital to the UK. Two million people are employed in creative jobs and the sector contributes £60 billion a year – 7.3 per cent – to the British economy [...]. This is a strong position.

> But there are major challenges ahead over the next decade. Global competition is growing as other countries recognise the economic value of creativity. To face this, our creative industries need the best possible business support structures in place [...]. The challenge is as much for government as it is for business, but the action plan we put forward here is a sign of our intent. Now is the time to recognise the growing success story that is Britain's creative economy and build on that.
>
> (DCMS, 2008: 4-5)

Under the heading 'putting the creative industries at the heart of the economy' the Creative Britain paper subsequently talks of a need to foster and protect intellectual property. The government stated:

> 'We will consult on legislation that would require internet service providers and rights holders to co-operate in taking action on illegal file sharing – with a view to implementing legislation by April 2009. Finding voluntary, preferably commercial solutions, remains the ideal, but the Government will equip itself to introduce legislation swiftly if suitable arrangements between ISPs and relevant sectors are not forthcoming or prove insufficient. We will also explore tougher penalties for copyright infringement. These actions signal the Government's strong support for the creative industries as we move towards a fully digital world.'
>
> (DCMS, 2008: 10)

In this document we find an explicit justification for the prioritisation of creative industries and their support through enforcing strong IP laws. Creative industries are depicted as central to the success of Britain in a newly competitive global KBE. It is a narrative that was being articulated by New Labour throughout their term in office, and this paper represented the

culmination of a decade of economic and legislative strategising. Crucially, the above statement about 'fostering and protecting intellectual property' was formulated as a specific commitment in the *Creative Britain* paper. The DBERR consultation represented a first step in an attempt to fulfil this commitment alongside addressing the recommendation of the Gowers review.

The DBERR consultation received over 80 responses from various individuals, organisations and interested parties. In their response to the consultation exercise, which set out the Government's preferred option for addressing the problem of file-sharing, the government acknowledged that 'none of the options highlighted won widespread support', and that there was a 'marked polarisation of views' between rights-holders, ISPs, and consumers (DBERR, 2009: 2). They concluded that it was not possible to proceed with the preferred option of a co–regulatory approach between of rights holders and ISPs. However, the government asserted on the basis of evidence it had received that; 'it is clear that rights holders are suffering financial losses, and that their losses due to unlawful P2P file-sharing are growing. [...] in the UK in 2007, the music industry claimed losses of £180m' (DBERR, 2009: 6). Apparently judging such a situation to be unacceptable in relation to the economic strategy it had set out and intended to pursue, New Labour announced that:

> 'the Government has decided to move forward with an approach based on option A2, but with a specific obligation being placed on ISPs to notify alleged infringers of rights (subject to reasonable levels of proof from rights-holders) that their conduct is unlawful.

> We hope that this will have a substantial impact on unlawful file-sharing, perhaps reducing by around 70% the number of people engaged in it [...].. However, we also recognise that some people will not want to stop file-sharing and will continue in the face of notifications from their ISP. Where people are particularly serious infringers of rights it is proper that legal action should be taken. To date, rights holders have found it impossible to identify the particularly serious infringers and have been as likely to take a first time or once-off infringer to court as a serial committed infringer. We intend to require ISPs to collect anonymised information on serious repeat infringers (derived from their notification activities, *not* from monitoring their customers' activities), to be made available to rights-holders together with personal details on receipt of a court order. We intend to consult on this approach shortly.
>
> (DBERR, 2009: 6-7)

In the absence of any consensus as to what should be done about file-sharing, New Labour announced its intention to legislate and impose regulations to ensure the co-operation of ISPs with rights-holders. This announcement was confirmed in the publication of the government's *Digital Britain: Interim Report* (DCMS, 2009a). In the report the government outlined a number of actions including action 13, which stated;

> 'Our response to the consultation on peer-to-peer file sharing sets out our intention to legislate, requiring ISPs to notify alleged infringers of rights (subject to reasonable levels of proof from rights-holders) that their conduct is unlawful. We also intend to require ISPs to collect anonymised information on serious repeat infringers (derived from their notification activities), to be made available to rights-holders together with personal details on receipt of a court order. We intend to consult on this approach shortly, setting out our proposals in detail.'
>
> (DCMS, 2009a: 11)

It was confirmed then, that rights holders would be granted greater powers to deal with the 'problem' of file-sharing and the threat that it presented to their commercial practices of profit accumulation.

As suggested in the above statement, the New Labour government consulted further on the intended legislation via the *Department of Business Innovation and Skills'* (DBIS, 2009a) *Consultation on Legislation to Address Illicit Peer-to-Peer (P2P) File-Sharing*. This consultation document outlined a context in which file-sharing had been identified as 'causing significant damage to the UK's creative industries' and in which 'despite industry efforts, culminating in the Memorandum of Understanding (MOU) signed in July 2008, no voluntary solution was identified' (DBIS, 2009a: 2). In response to this context, the Government set out proposals for legislation that would place a duty on the Government's *Office of Communications* (Ofcom) 'to take steps aimed at reducing online copyright infringement' (DBIS, 2009a: 14): Specifically, Ofcom would be required to place obligations on ISPs to require them:

> '• To notify alleged infringers of rights (subject to reasonable levels of proof from rights holders) that their conduct is unlawful; and
> • To collect anonymised information on serious repeat infringers (derived from their notification activities), to be made available to rights-holders together with personal details on receipt of a court order.
>
> Ofcom will also be given the power to specify, by Statutory Instrument, other conditions to be imposed on ISPs aimed at

preventing, deterring or reducing online copyright infringement, such as:

- Blocking (Site, IP, URL)
- Protocol blocking
- Port blocking
- Bandwidth capping (capping the speed of a subscriber's internet connection and/or capping the volume of data traffic which a subscriber can access)
- Bandwidth shaping (limiting the speed of a subscriber's access to selected protocols/services and/or capping the volume of data to selected protocols/services)
- Content identification and filtering'

(DBIS, 2009a: 14)

During the consultation period, the government issued a statement acknowledging that rights-holders had been arguing these measures would not be strong enough to have a significant effect on the 'problem' of file-sharing. They thus announced that they would be 'adding suspension of accounts into the list of measures that could be imposed' (DBIS, 2009b: 3-4). The consultation subsequently received over 220 responses. In response to these submissions, the Government announced that:

> 'As a result of the consultation, and taking into careful account all responses received, legislation to address online copyright infringement forms part of the Government's Digital Economy Bill, as announced in the Queens Speech on 18th November 2009. It is being introduced in the 5th Parliamentary Session (November 2009). [...] we will introduce two obligations on ISPs:
>
> 1 To send letters to subscribers identified by rights holders as allegedly responsible for a breach of copyright.

> 2. ISPs will be required to collect anonymised information on serious repeat infringers (based purely on the notifications provided by rights holders). This information will be made available to rights-holders together with personal details on receipt of a court order.'
>
> (DBIS, 2009c: 2-10)

As announced here, legislation was subsequently passed imposing these requirements. The *UK Digital Economy Act (C.24)* received Royal Assent on 8th April 2010. The act comprises 48 sections covering 11 topics, one of which is 'online infringement of copyright'. This topic was covered in sections 3-16, which insert new sections into the *UK Communications Act 2003*. These new sections impose obligations on internet service providers aimed at the reduction of online infringement of copyright. The obligations require ISPs to:

> '• Notify their subscribers if the internet protocol ("IP") addresses associated with them are reported by copyright owners as being used to infringe copyright; and
>
> • Keep track of the number of reports about each subscriber and, on request by a copyright owner, compile on an anonymous basis a list of those subscribers who are reported on by the copyright owner above a threshold set in the initial obligations code ("relevant subscribers"). After obtaining a court order to obtain personal details, copyright owners will be able to take action against those included in the list'.
>
> (DCMS, 2010: 5)

Ofcom is named as responsible for the specification and enforcement of these obligations through the approval of legally binding 'codes of practice'. In terms of how these new obligations might work in practice, the DCMS provide a useful summary in their explanatory notes:

> 'Copyright owners identify cases of infringement and send details including IP addresses to ISPs; The ISPs verify that the evidence received meets the required standard, and link the infringement to subscriber accounts; The ISPs send letters to subscribers identified as apparently infringing copyright. They keep track of how often each subscriber is identified; If asked to do so by a relevant copyright owner, ISPs supply a copyright infringement list showing, for each relevant subscriber, which of the copyright owner's reports relate to that subscriber. The list does not reveal any subscriber's identity; Copyright owners use the list as the basis for a "Norwich Pharmacal" court order to obtain the names and addresses of some or all of those on the list. At no point are individuals' names or addresses passed from the ISP to a copyright owner without a court order; Copyright owners send "final warning" letters direct to infringers asking them to stop online copyright infringement and giving them a clear warning of likely court action if the warning is ignored; and Copyright owners take court action against those who ignore the final warning.'
>
> (DCMS, 2010: 6-7)

This process represents a somewhat streamlined version of what already happens in terms of rights holders bringing actions against file-sharers. It does ultimately make it easier for rights-holding corporations to take action against individuals however. Crucially, sections 9-12 of the act also specify that the Secretary of State may give powers to Ofcom, to order ISPs to 'limit internet access' of certain subscribers. These sections have proved most controversial perhaps in that they signal the way for rights holders to demand that file-sharers be disconnected from the internet, thus removing their access to the technical means of file-sharing (and an extremely valuable social and cultural resource at the same time). In terms of justifications

and rationale for this legislative action, it was stated in the accompanying explanatory notes that;

> 'The communications sector is one of the three largest economic sectors in the UK economy, accounting for around 8% of GDP. In recent times, this sector has undergone significant changes, shaped by the development and use of digital technologies by industry and consumers. It was against this background that *Digital Britain*, the government's investigation into this sector, was launched in autumn 2008. The government published the Digital Britain White Paper, entitled *Digital Britain: Final Report* (Cm 7650) in June 2009. The White Paper made a number of recommendations, some of which required legislation. The Digital Economy Act 2010 takes forward a number of these.'
>
> (DCMS, 2010: 1)

Stephen Timms MP meanwhile appeared in a video on the DBIS website stating that, 'it's [the digital economy bill] an important bill. It aims to make the UK a world leader in digital and creative industries' (Timms, 2010: Online). Timms subsequently goes on to regurgitate New Labour's master narrative about the changing nature of the global economy, the importance of the creative industries in achieving success in that economy, and the importance of strong IP enforcement in that context.

With regard the overall discursive character of these various documents, it is firstly important to highlight the way in which the notion of the Global KBE is presented as fact. As Norman Fairclough effectively demonstrated in his analysis of the discourse of New Labour; 'in the political language of new labour, "globalisation" and "the new global economy" are represented as accomplished facts rather than partial or uneven

tendencies, and "change" is represented as an inevitable movement in the direction of globalisation. The language of new labour tells us "there is no alternative"' (2000: viii). Such a tendency is clearly evident in the documents referred to above.

It is also notable that the discourse in these documents is also overwhelmingly declarative with lots of categorical assertions made in relation to issues and concepts which are entirely open to debate. Linked to this is the frequent use of quantification to support and evidence those categorical assertions. The assertion that the creative industries are growing is frequently backed up by statistical evidence which is as much a reflection of how that growth has been measured as it is a reflection of any actual growth. The economic damage caused by file-sharing is also frequently supported by statistical evidence, but this evidence is often linked to organisations that represent vested commercial interests in promoting that evidence in an attempt to influence legislative processes.

The statistics generated by such organisations must be understood as 'organisational products' (Thomas, 1996) – as subjective representations rather than as factual accounts of reality. The claims and representations that New Labour make must be viewed in the same way that any particular account of events must be viewed - as partial, incomplete, and reflective of particular interests, experiences, positions and perspectives. The constant use of and reference to supporting evidence in the form of statistics produced by various organisations, and the constant reference to previous or related government publications, is also a good example of 'intertextuality' and 'interdiscursivity'.

The declarative nature of those 'consultation' documents drawn upon above is particularly noteworthy. Although these documents are effectively produced as part of a 'consultative' process that is supposed to encourage participation in dialogue around an issue of some public interest, they can be read instead as *promotional* documents predominantly. They contain the same kind of declarative statements about the nature of the economy, change, and the need for specific kinds of action as New Labours white papers. Through these declarative statements, New Labour effectively sets the terms of the debate. They dictate which issues are to be debated or discussed, how, and more importantly for what purpose. They do not allow for open discussion, dialogue, debate or participation.

Whilst New Labour's consultation documents do ask questions, there is an interesting oscillation between asking and telling in these documents. Assertions that clearly contain or direct the reader toward certain answers are made alongside questions indicating that the Government has preferred answers to these questions. This was explicit in the DBERR consultation on legislative options to address file-sharing, where the consultation document made explicit the government's preferred option. The character of such consultation documents was also noted by Fairclough who argues that, 'although New Labour constantly initiates "great debates" and calls for debate and discussion around its policy initiatives (e.g. welfare reform), it seems in broad terms that it sets out to achieve consent not through political dialogue but through managerial methods of promotion and forms of consultation (e.g. in focus groups) which it can

control' (2000: 12). This is clearly evident in the documents that New Labour produced in relation to issues of IPRs and file-sharing.

Operationalising the Imaginary

What we see in the discourse of New Labour is the adoption and development of a particular narrative about the nature of the economy. The economy in which the UK must participate is depicted as irrevocably changed. It is an economy in which competiveness and success relies on the 'knowledge intensive' industries and products. The UK's success in the new global economy is thus depicted as dependent upon the health of certain industry sectors, and for New Labour, the creative industries - as those which rely on creativity and its economic exploitation through the articulation of IPRs – are prioritised as one such sector in particular. These industries are acknowledged as in need of protection in the new technological environment however. Since these industries are crucial to success in the global KBE, the need to legislate against technological threats to their economic success thus arises as a corollary. This narrative necessarily involves prioritisation of economic interests and considerations then, and this prioritisation is seemingly justified by the notion that prosperity for all depends upon the UK's economic success in the global KBE.

The legislative response to file sharing that emerges from New Labour's economic strategising clearly benefits corporate rights holders. This is explicit and justified in terms of the economic vision they had embraced and developed. These corporations

would contribute to success in the global KBE. The question of whether this legislative response benefits creators, as those who should principally benefit from IPRs, is entirely omitted however. The rationale and justifications for copyright laws, and the extent to which they function to the benefit of everyone equally as they should, are never called into question. Copyright is only important in so far as it provides creative industries with a means of being economically productive. So long as knowledge based businesses can remain economically productive, then nothing else matters it seems.

How might we understand the development of this particular economic vision and strategy then? What factors might have been at work in the development of this strategy? What is the wider context in which this vision and strategy was required? In understanding the legislative response to file-sharing under New Labour, as based in a particular narrative about the world, we might usefully draw on Bob Jessop's (2004) development of the notion of the 'economic imaginary'. For Jessop, economic imaginaries are narratives that emerge and are adopted in response to crises in economic and political stability.

According to Jessop, crises of capitalism emerge when established socio-economic arrangements no longer work as expected and where established means of dealing with economic problems fail to be effective (2004). This leads to profound cognitive and strategic disorientation of social forces, actors and institutions. Jessop sees the accumulation of these crises as potentially 'path-defining' moments. He describes such crises as 'a potential moment of decisive transformation, and an

opportunity for decisive intervention [...] a space for determined strategic interventions to significantly redirect the course of events as well as for attempts to muddle through in the hope that the situation will resolve itself in time' (2004: 167).

According to Jessop, the strategic and structural disorientation that accompanies such crises triggers 'semiotic innovation' (ibid.). In other words, crises are typically followed by a proliferation in discursive interpretations and proposed solutions; alternative visions rooted in the old and/or the new. Many of these will invoke, repeat or re-articulate established discourses, 'others may develop, if only partially, a "poetry for the future" that resonates with the new potentialities (Marx, cited by Jessop, 2004: 167). Jessop refers to these various competing narratives as 'economic imaginaries'.

Specifically, 'economic imaginaries' arise and develop as various economic, political and intellectual actors/institutions seek to (re)define socio-economic activity in the wake of disruption and disorientation. Powerful forces construct narratives that help rationalise and legitimate the restructuring of economic activity according to their specific interests. On the basis of these narratives, new strategies for the maintenance and continuation of capital accumulation are developed alongside new structural and organisational forms from within which to institutionalise and operationalise these strategies. Essentially then, 'economic imaginaries' provide a discursive frame within which to (re)establish order, (re)stabilise economic stability, and 'displace and/or defer capitals inherent contradictions and crisis tendencies' (ibid: 163).

Clearly, the state, or more specifically Government's are key actors in these processes. Government's have a supreme responsibility as regulator of national economies and economic activity. If the state cannot resolve any apparent (and in Marxist terms inherent) economic crisis then its Government will be called into question (Hay, 2006). In the face of such crises, political parties and Governments may select and develop a particular economic imaginary in order to frame their strategies and actions as responsive solutions to these crises. In doing so government's may discursively (re)constitute and materially (re)produce economic imaginaries across many sites and scales, and in different spatio-temporal contexts (Jessop, 2004).

Jessop's formulation allows for the emergence of many competing narratives at any one time, and thus an ensuing struggle for 'hegemony'. He suggests that some basic 'evolutionary mechanisms' exist for the selection and retention of a suitable dominant narrative (2004: 164-165). The existing material requirements and interdependencies that have developed as structures of capitalist socio-economic activity clearly constrain the possibility of radical alternatives emerging *and* being successfully operationalised at a national or international level however[13]. Furthermore, capitalist social arrangements are characterised by an unequal distribution of various forms of power and capital. Some agents clearly posses greater levels of 'discursive power' than do others; not all

[13] It is possible that Jessop overstates the space for and level of economic imagining that may exist; it seems clear that no truly transformative 'economic imaginary' has ever arisen and been successfully implemented in any capitalist society. The *transformation* of capitalist social formations through the economic imagining that follows crises of capitalism thus presents itself as 'improbable'.

narrators will be afforded equal opportunities to develop a competing economic imaginary or discursive solution, and neither do all narrators have an equal chance of being effective in their discursive activity.

Not all imaginaries can be durably constructed, institutionalised and operationalised. Their plausibility depends on their apparent correspondence to material conditions and requirements, especially in the eyes of interested parties and civil societies at large. According to Jessop, 'if they are to prove more than "arbitrary, rationalistic and willed" (Gramsci, 1971: 367-377), these imaginaries 'must have some significant, albeit necessarily partial, correspondence to the real material interdependencies in the actually existing economy and/or in relations between economic and extra-economic activities' (Jessop, 2004: 162). The relative success of these narratives depends on how they correspond in part to 'reality' in other words.

Economic imaginaries are necessarily partial and therefore frequently problematic however, as is any single 'version of reality'. They are a kind of 'ideal type'. The elements, objects and interests that they necessarily prioritise through inclusion are only ever part of a much broader, complex contextual totality. In other words, imagined economies inevitably involve some misrepresentation, are always selectively defined, typically exclude elements, and are only ever partial. Crucially however, they are always presented otherwise; as accurate reflections of some actually existing reality according to Jessop (2004).

This framework provides a useful way of understanding the legislative response to file-sharing in the UK, as part of New Labour's particular economic vision and strategy. This particular conceptualisation of the nature of economic activity in the digital age can be understood as emerging in response to the disruption in capitalist arrangements and formations. The notion of building a competitive knowledge driven economy was seized upon and promoted as a solution to economic crisis in the UK, following the decline of manufacturing industries, rapid globalisation of capitalism, and the failure of previous governments to effectively resolve these crises and alleviate its consequences.

After a period of relative economic stability between the mid 1940s and early 1970s, during which the economies of industrialised countries individually enjoyed continuous growth with wages and profits steadily increasing in parallel, the rate of growth suddenly went into decline. Britain for instance, experienced a series of economic 'recessions' from the early 1970's onwards. The first of these recessions materialised in the mid 1970s, the second in the early 1980s, and the third in the early 1990s. They were each accompanied by high rates of inflation and unemployment. These recurring recessions are taken to represent 'crises'; a disruption and growing instability in those socio-economic arrangements characterised by 'industrial' manufacturing, mass-production, mass-consumption, and where the nation-state remained the locus of economic activity. This particular accumulation regime is frequently referred to as 'Fordism' after the company which epitomised the

mass and industrial manufacturing based enterprise that characterised this era - the Ford motor company.

The growing instability of national economies and economic enterprise during this period can be seen as a consequence of the continual drive towards commoditisation, accumulation and profit maximisation within the capitalist mode of production. Facilitated by important technological developments, capitalist economies gradually expanded their reach. New transnational markets developed, and flows of both capital and goods have spread throughout ever larger networks, ending the reliance on domestic markets as the locus of economic activity. Global financial markets were created, and the control of national governments over local economic activity was diminished. For over thirty years, American, European and Japanese companies had been slowly expanding to obtain economies of scale on an international level. Outside the control of any one national government, these transnational companies operated largely unregulated. As production shifted elsewhere, the virtuous circle of rising production and consumption was broken.

Solutions to these difficulties had to be found. The question for individually advanced economies was how to retain a competitive and dominant position in these new global markets. Part of the 'solution' has clearly been the prioritisation of industries which rely on the production of knowledge intensive goods. From the end of the 20th century, industrialised economies, especially the US and the UK, increasingly began to reframe their economic and productive activities in reference to the 'Knowledge Based Economy' (KBE). The general idea was

that an increasingly valuable asset and commodity in the context of competitiveness in the global market place was quite simply, 'knowledge'. Knowledge based industries and goods were being seen as key to securing these national economies' competitiveness and dominance in the global market place.

The KBE discourse has deep roots in discussion and debate about the nature of socio-economic arrangements in the post industrial era. The notion that current socio-economic arrangements are markedly distinct from all that has existed hitherto in that knowledge and information somehow now occupy a more prominent place, has been continually advanced within academia (see especially Webster 2006 for a summary of information society discourses). Like many ideas and concepts that developed within academia and specialist circles, this one soon filtered out into formal policy-making circles. It gained particular momentum according to Jessop (2004) during the 1980s, as American capitalists and state managers sought an effective reply to the growing competitiveness of their European and East Asian rivals. Jessop thus frames the KBE precisely as the dominant economic imaginary to have been developed 'in response to the interlinked crises of the mass production – mass consumption regimes of Atlantic Fordism, the exportist growth strategies of East Asian national developmental states, and the import-substitution industrialising strategies of Latin American nations' (2004: 166).

Throughout the 1990s, the KBE played a key role in guiding and reinforcing activities aimed at restructuring, restabilising and consolidating a 'Post-Fordist' accumulation regime and

corresponding mode of regulation in these capitalist economies according to Jessop. As a master narrative, the KBE has been embraced and reproduced by political and economic institutions globally. As Fairclough observes, 'governments on different scales, social and democratic, now take it as a mere fact of life (though a fact produced in part by inter-governmental agreements) that all must bow to the emerging logic of a globalizing knowledge-driven economy' (2003: 4). As Fairclough indicates in brackets, the KBE has helped consolidate *itself* through its ever wider institutionalisation and operationalisation.

Essentially then, the notion of the KBE provided a basis and guiding principle for the development of a new accumulation strategy based on the exploitation of 'knowledge'. Crucially for our discussion, we can see that this re-imagining and refocusing of economic and productive activity within advanced capitalist economies led to a significant reprioritisation of knowledge based industries and the legal framework of IPRs within which knowledge intensive products could be commercially exploited. Nicholas Garnham (2005) has shown how the development of 'information society' thinking is helping to sustain a view that the creative industries are a key sector of economic growth, and how this in turn has led to an alliance between various business interests and the state around the extension of intellectual property rights. This process is clearly evident in the development of industrial and economic policy in the UK under New Labour, and in the discourse surrounding it, as shown in this chapter.

Conclusion

This chapter has shown that New Labour's legislative response to file-sharing was rooted in a particular economic vision and broader strategy. This strategy was seemingly developed in response to a range of contextual factors that included economic decline, increasing global economic competition and the failure of preceding Government's to develop and implement any visibly effective response/solution. New Labour's economic strategy was based on an idea that the economy had changed fundamentally; that globalisation and technology had opened up markets to new international competitors, and competitiveness required a intensification of economic activity in areas of unique specialisation. Success and competitiveness in the new global economy were depicted as being dependent upon certain industries, namely creative and knowledge based industries. This led to a renewed interest in the legal framework of IPRs as providing the mechanisms through which these industries could be economically productive. The IP framework was identified as functioning adequately in terms of enabling knowledge based industries to be economically productive. The enforcement of these laws in the online environment was identified as one area deserving of particular attention and potential action however. Some of these industries, including the music industry, were identified as under threat from the online infringement of copyright via file-sharing networks. The Government thus developed and promoted a set of legislative proposals which sought to make it easier for rights holders to take action against file-sharers.

The culmination of this process was the passing of the *UK Digital Economy Act 2010* (C.24). This act contained clauses placing obligations on ISPs to co-operate with rights holders and thus make it easier for those rights holders to take action against those suspected to be infringing upon their rights. This legislative response was justified by the Government in terms of the economic strategy they had developed. The businesses that would benefit from this legislative action would contribute to success in the global KBE, upon which the future prosperity of all had been depicted as dependent. The question of whether this legislative response benefits or harms anyone else was entirely omitted however. The rationale and justifications for copyright laws, and the extent to which they function to the benefit of everyone equally as they should, were never called into question. Copyright was only judged to be important in so far as it provides creative industries such as the music industry with a means of being economically productive. So long as creative and knowledge based businesses can remain economically productive, then nothing else matters it seems.

Whilst there is evidence of music corporations having been prioritised within New Labour's economic strategy and its implementation, it is not clear that this strategy was itself a direct result of pressure from such corporations or their representatives. Rather, it seems that the broader economic strategy New Labour developed necessarily involved the prioritisation of the music industry and its protection. However, it may be the case that the music industry was active in taking advantage of this prioritisation, and been influential in directing

the specific direction and nature of the eventual legislative response. The music industry's attempts to influence the direction of legislative action will be explored in the next chapter via an analysis of various texts produced by representative organisations in response to government consultations, announcements and various other events.

CHAPTER 5

'RECORDING INDUSTRY' RHETORIC AND THE PRESCRIBING OF TECHNICAL MEASURES

Introduction

This chapter offers an analysis and discussion of the UK recording industry's response to file-sharing. Once again the recording industry is attempting to protect and maintain established socio-economic arrangements for the production and circulation of recorded music as a commodity in the face of technologically afforded disruption. It is argued herein, that the discursive activities of the recording industry must be seen as crucial in this regard. Their strategy of maintenance and recovery relies on an attempt to affect a legislative response through the exertion of pressure on legislators via the construction of various arguments and claims. This chapter highlights, analyses and discusses the recording industry's core arguments and discursive strategies.

The chapter draws on various texts including submissions to government consultations, press releases, and other published documents to illustrate recording industry rhetoric in response to file-sharing. It is shown that the attempt to induce legislative action involves the construction and communication of various interlinking arguments and claims about the place of the recording industry in the broader economy, about the

consequences of file-sharing, and about the subsequent need to protect the recording industry from file-sharing as an economic threat. The chapter draws attention to the discursive and rhetorical devices in operation here including interdiscursivity (engaging with notion of competitiveness and success in the KBE), intertextuality (drawing on govt discourse, reports, legislation and studies to show value of creative industries and economic damage done by file-sharing), and quantification as a means of validating claims and arguments.

It is ultimately argued that the UK's New Labour Government provide a discursive frame within which the recording industry may effectively justify their attempts to protect and maintain an established set of socio-economic arrangements. The apparent capacity of the recording industry to successfully affect or influence the *specific* direction and nature of legislative action is subsequently highlighted. The recording industry does not attempt to demonstrate how the enhanced enforcement of copyright laws in the online environment benefits anyone other than recording companies as rights holders and commercial exploiters of copyright however. They simply legitimate the legislative action in relation to the broader narrative of achieving success in the global KBE. Despite suggestions to the contrary it is asserted that the legislative response to file-sharing does not benefit creators in any obvious or direct way.

THE BPI: 'Representing the UK Recorded Music Business'

Individual record companies were not found to be participating in the debates and UK government consultations surrounding file-sharing. Rather, this task had apparently been delegated to the industry's official representative organisation and trade association in the UK, the *British Phonograph Industry* (BPI).

The BPI has been highly active in debates about file-sharing. As outlined in the previous chapter, during the period 2006-2010 the UK Government launched a range of consultations regarding copyright law and its effective articulation in the context of the changing technological environment. One was focussed broadly on the adequacy of IP laws in the internet age and two were focussed specifically on legislative options for dealing with the problem of file-sharing. The BPI made extensive submissions to each of these consultations. The New Labour Government also published several strategy documents during this period and made various announcements or statements to which the BPI responded. These responses typically took the form of press releases or statements.

Formal submissions to government consultations were often supported by concomitant press releases or statements, potentially alerting the wider public to the arguments being made. Alongside responding to government actions, the BPI also produced a range of other texts encapsulating their arguments and thoughts on file-sharing. The BPI's website provides an online archive of press releases, comments, statements, and

other relevant texts including industry reports. Submissions to government consultations were generally accessed via the relevant government department websites. In sum these various texts form the basis of the analysis presented in this chapter.

On the 'About us' pages of their website, the BPI describes their role as follows:

> 'The BPI is the representative voice of the UK recorded music business. We are a trade organisation funded by our members – which include the UK's four major record labels and hundreds of independent music companies. BPI members account for approximately 90% of all recorded music sold in the UK, and globally the UK's recorded music market is the third biggest. Established in 1973, the BPI was mandated to "discuss matters of common interest and represent the British record industry in negotiations with Government departments, relevant unions and other interested parties and to promote the welfare and interests of the British record industry." Over thirty-five years later, we still put this mission statement at the heart of all our work.'
>
> (BPI, 2010a: Online).

Here and in other texts including press releases and submissions to government consultations, the BPI makes clear statements about its role as the representative of the UK's recording companies. Since its apparent and rather confusing change of name in 2007, they state at the foot of all press releases and in other documents that 'the BPI (formerly known as the British Phonograph Industry) represents the UK recorded music business.' For the purposes of this research, it seems reasonable to assume that this organisation is highly representative of the

population (recoding companies) with which we were initially concerned; or at least it claims to be. The BPI claims to be the UK's recorded music business' collective 'voice'. To suggest something has its own distinct 'voice' in this way serves an important rhetorical function of course - it suggests unity where we might otherwise assume some level of heterogeneity. We should also note here that the BPI assert that they are highly representative of the population in saying that its members 'account for approximately 90% of all recorded music sold in the UK'.

There is a further issue to consider here in terms of the BPI's representativeness. In claiming to be the voice of 'the UK recorded music *business'* or 'the British record *industry'* rather than recording *companies* exclusively we must think about who precisely the BPI is claiming to represent. There is a tendency perhaps to talk about the collection of recording *companies* as the recording *industry*. This might actually serve to misconstrue the situation in a way that benefits recording company interests however.

As is asserted in all relevant academic, educational and analytical literature, the recording *industry* actually represents a complex and dynamic commercial system made up of many discrete parts, each performing distinct functions (e.g. creators, mangers, publishers, engineers, producers, manufacturers, distributers, promoters, press, radio, television, retailers, collection societies, consumers and so on). Through the movement or 'flow' of both product and revenue these more or less discrete parts are connected and more or less intimately

bound up with one another, but, as discussed earlier in this thesis, the different parts of this system may hold different and sometimes conflicting interests. The recording industry system clearly involves some tension between the interests of creators in seeking 'success' and the interests of recording companies in maximising profit for instance (as discussed in chapter 2). The BPI does not actually represent the interests of creators however, only those of recording companies. Creators are clearly an integral part of the recording industry however, and thus to suggest that the BPI is a representative of the recording *industry*, rather than of recording *companies* exclusively, may be something of a misrepresentation.

Of course, such misrepresentation may serve an important rhetorical function. In representing the recording industry as a unified whole, the notion of, and space for, any dissent within that whole is at least partially mitigated. In considering the discourse of the BPI, it is as such important to recognise that what might be presented as the interest of the recording industry, is more likely to reflect the interests recording companies exclusively. The interests of recording companies include, above all else perhaps, the maintenance of socio-economic arrangements in which they attempt to maximise profit accumulation through the economic exploitation of creators and subjugation of their own interests.

In its response to the 'threat' of file-sharing, the BPI is not just attempting to protect recording companies from economic harm, but maintain the whole system of which they are a part and which they rely upon. The system they have instituted involves

the exploitation of creators, which results in some tension and conflict. The recording industry clearly seeks to omit any notion of this system being unfair however. As we shall see, they depict the recording industry as functioning to the benefit of all involved, creator and corporation alike. One of the ways in which the BPI attempts to do this perhaps, is through casually claiming to represent the interests of the whole system ('the recording *industry*'), rather than just the interest of those who the system favours (recording *companies*). We might consider of course, that as a complete system, the many parts of the recording industry work towards a common goal of commercial production and are therefore unified by an interest in the efficient functioning and maintenance of this system perhaps. This is indeed something which the BPI appears to suggest, as we shall see. But given that there is a high level of resistance to and critique of this system, and given the frequent exposition and exposure of this system as inherently unstable, contradictory and exploitative, this construal is clearly problematic. In other words, the discourse of the BPI is one which seeks to protect and maintain a system in which the recording company is dominant, and one which seeks to omit or subjugate any notion of conflict within.

It is also important to note that the BPI is not the only representative body for recording companies. At the international level, there is also the *International Federation of the Phonographic Industries* (IFPI). This organisation is important in communicating recording company interests in an international arena. An analysis of the discourse of this

organisation would be important given that the issue of file-sharing crosses nation-state jurisdictions and given that the recording industry is indeed global in reach and multinational in scale. This organisation has been highlighted as important in lobbying for legislative change at an international and European level by authors such as Firth (1987) and David (2010). Their role in lobbying for changes in international standards and agreements will undoubtedly become more salient over the next few years, and there is an important critique to be carried out here. At present however, there are still considerable differences between national legal environments, and the capacity for legislative change within each nation state remains significant. The analysis at present remains focussed on the situation in the UK and on the discourse of the BPI as such.

The BPI's Attempts to Affect Legislative Action through Discourse

The discourse with which this chapter is most concerned is that which represents the attempt by the BPI, as representative of recording company interests, to affect the specific direction of legislative action against file-sharing in the UK. This discourse must be understood as an irreducible part of recording companies' attempts to maintain and reproduce existing socio-economic arrangements for the production and circulation of recorded music as a commodity in the face of technologically afforded challenges. It is through the construction and communication of particular arguments, claims and representations that the BPI attempts to affect legislative

actions as a means of dealing with the 'threat' of file-sharing. In attempt to induce and direct legislative action the BPI sets out a number of interlinking claims and arguments about the nature of existing socio-economic arrangements for the production and circulation of recorded music as a commodity, about the value and contribution of the recording industry, and about the consequences of file-sharing. The communication of these arguments involves the use of various rhetorical devices that are best illustrated and discussed in reference to specific examples.

One of the most important and prevalent aspects of the BPI's discourse in its *visible* communications with government, is the promoting of the economic performance of the UK recording industry. In its submission to the *Gowers Review of Intellectual Property* (HM Treasury, 2006) for instance, the BPI stated that, 'the UK can boast one of the healthiest and most successful recorded music industries in the world. Its social and economic contribution is impressive' (BPI, 2006: 2). This was followed by a list of illustrative statistics:

- 'Some 56.1% of the UK population bought music in 2005. While the nominal trade value of the UK recording industry in 2005 was £1.176bn, UK consumption of music in all its forms totals almost £5 Billion a year and music activities generate the equivalent of 126, 000 full-time jobs in the UK.
- The music sector benefits the UK's international trade. In 2004, the UK sector showed a trade surplus of £83.4m, earning £238.9 in export income.
- The UK boasts the highest per capita consumption of recorded music in the world;

- UK record companies provide the consumer with one of the most diverse repertoires of music anywhere in the world. In 2005 8,764 singles and 31,291 albums were released in the UK;
- Independent research shows the price of top ten CDs in London is the lowest in Europe;
- The UK recorded music industry is second only to the US in its share of exports of music around the world, with for instance 8% of the US market and 12% of the German market in 2004;
- Over a period from 2000-2004 when the worldwide recorded music market declined by 15.4%, the UK market grew by 3.4% in value terms.'

(BPI, 2006: 2-3)

This promoting of the value and contribution of the recording industry to the economy especially is prevalent throughout the discourse of the BPI, especially in submissions made to government consultations under New Labour. It obviously involves a high level of quantification and intertextuality in terms of referring to various sources of quantitative data, which are usually studies that the BPI or associated creative industry organisations themselves commissioned. In the 65 page submission to the *Gowers Review* (HM Treasury, 2006), 68 separate instances of quantification were noted. Likewise in the 47 page BPI submission to the DBERR consultation, 36 separate instances of quantification were noted.

The use of such quantitative evidence simply functions as a convenient validating strategy, but the validity of such quantitative studies can always be called into question. The BPI consistently states such quantifications as 'fact' of course. For instance, The BPI states later in their submission to the *Gowers Review* that 'extending the term will lead to an increase of

£3.3bn in nominal revenue over the next 50 years' (BPI, 2006: 15). This seemingly factual - or modally *realis* - nature of this statement constructed through the use of the auxiliary verb 'will' rather than 'may' or 'might' or 'could', is actually based on an *estimate* calculated by PwC (2006) in research commissioned by the BPI. A separate piece of research produced by the University of Cambridge, commissioned by the Government, estimates a wholly contradictory 'net loss in present value terms of 7.8% of current annual revenue' (CIPIL, 2006: 49). Of course, the categorical assertion made by the BPI above leaves no room for such contradictory estimates.

The extensive deployment of and referral to such quantitative 'evidence' in the discourse of the BPI reflects their capacity to generate such massive amounts of potentially powerful data, a capacity that smaller and less commercially orientated organisations are likely to lack, reflecting a significant imbalance in the potential 'discursive power' of different interested parties. When we come to look at the discourse of creators in chapters 6 and 7 in particular, we will see how this apparent disparity in this specific capacity for discursive power is further manifest.

The 'social' contributions of the recording industry mentioned in their statement above are much less clearly defined and evidenced in the discourse of the BPI. This reflects the difficulty of evidencing such social and cultural affects through quantification on the one hand, but may also reflect the way in which the BPI sees economic and social contribution as essentially synonymous, in the same way that the Government

more broadly sees success in the global KBE is crucial to securing 'prosperity for all'. Elsewhere however, the BPI *has* sought to assert more clearly the social and cultural contributions of the recording industry.

In a publication entitled *More than the Music: The UK Recorded Music Business and our Society* (BPI, 2008) the BPI outlines a number of social and cultural initiatives in which it has been involved. The fact that the BPI fails to outline these 'social contributions' in its submissions to government consultations probably reflects a recognition that economic considerations are likely to be prioritised however.

Alongside the promoting of the recording industry's contributions to the economy, there is also a constant reference to the international competitiveness of the UK's recording industry. The final two points in the list above provide a clear example of this. In their submission to the *Gowers Review*, this was again noted as a prominent theme. 6 separate instances of highlighting the economic performance of the UK recording industry in relation to global competitors was noted, which again always involved the use of quantification. Such claims about the economic performance of the UK's recording industry are clearly designed to resonate and link with New Labour's broader economic strategy as outlined in the various strategy and consultation documents discussed in the previous chapter. The BPI attempts to reaffirm that the recording industry is indeed one of those industries that is contributing and will continue to contribute to the UK's success in the global KBE. The attempt to interlink and resonate with New Labour's particular economic

strategy is more explicitly clear in other instances of intertextuality. For example, in their submission to Gowers, the BPI makes the following observation:

> 'The UK Government has declared that, to quote the Minister for the Creative Industries James Purnell MP "We wish to make Britain the world's creative hub – to turn our creativity into industrial success – to turn talent into hits, and hits into profits. Industry must help us answer these questions."'
>
> (BPI, 2006: 15)

The BPI is thus clearly aware of and attuned to the New Labours economic visioning and discourse in this area. The BPI's strategy involves highlight not just the value of the recording industry to the economy, but also the challenges it faces - challenges which threaten the recording industry's economic performance, and thus the UK's success in the global KBE. In the submission to the *Gowers Review* the BPI outlined a range of what it described as inadequacies with regards the current copyright system, including the current length of terms (which Gowers subsequently recommended should not be extended as discussed in the previous chapter). The BPI were also keen to point out the challenges arising from the new technological environment however. For example, they describe how:

> 'Thanks to the capabilities of modern technology it is open to anyone to infringe copyright in a sound recording by, for example, illegal filesharing [...].Thus far the opportunities presented to the music industry by these changes have been outweighed by many consumers taking the opportunity to avoid paying for music, contributing to a global decline of 15% in the recorded music market in the last 5 years. This has been coupled with an increase in piracy of such significant

> proportion that it is clear that the decline is due, not to a fall in the popularity of music, but to the ease with which music can be consumed illegally without rewarding the legitimate content owners.
>
> (BPI, 2006: 5-6)

There is the typical use of quantitative evidence here (though it is un-sourced) and the usual certainty in the claims they make as facts. Claims about the economic consequences of file-sharing are especially prominent in the BPI's submissions to New Labour's consultations on possible legislative responses to file-sharing. In the submission to the DBERR (2008) consultation for instance, the BPI make an explicit statement as to the necessity of a legislative response to file-sharing given its economic consequences:

> 'There can be no doubt as to the *necessity* of tackling illegal file-sharing. Some 6.7 million people in the UK (16% of the online population) are engaged in illegal P2P File-sharing in 2008, a figure which is projected to rise to 8.7 million (19% of the online population) by 2012, if remedial action is not taken. This activity is a direct infringement of copyright and erodes the commercial value of the UK's world renowned music sector. It is calculated by independent sources that £180 million of losses can be directly attributed to online copyright infringement in 2008; the losses for the six year period from 2007-2012 are predicted to exceed £1.2 billion [...]. It is clear that such a level of loss is unsustainable.'
>
> (BPI, 2008b: 3. Original emphasis)

The economic damage that file-sharing is *estimated* to have had and *might* continue to have is clearly illustrated and evidenced by the BPI in the usual manner here, through drawing on statistical evidence from studies commissioned by the recording industry and the creative industries more broadly (e.g. Jupiter

Research/BPI, 2007). Elsewhere the BPI begin to develop both broader arguments about the consequences of file-sharing and why they should be protected from the economic damage it supposedly causes. In their response to the DBERR consultation the BPI develops a broad argument about the impact of online copyright infringement on the wider economy:

> 'Government should ensure that copyright can be meaningfully enforced because of the negative implications of not doing so on wider society and the economy. If it becomes accepted that copyright law can be broken with impunity, not only does it lead to a withering away of respect for copyright, but potentially other intellectual property rights and other laws to (for example, contract and defamation law). In particular, ignoring the infringement of copyright law online can lead to a general perception that the internet is an amoral marketplace where usual standards of respect for other and respect for the law do not and need not apply. In such an environment, not only do rights holders suffer. But anyone trying to engage in legitimate commerce may find themselves confronted to indifference to their rights, such as e-Bay customers not receiving goods or payment. Moreover, copyright is central to the creative economy. Unless it is respected, those individuals and companies who generate creativity will not be rewarded and will not be able to continue their creative and economic activity. Given that the creative sector currently accounts for around 8% of GDP, its diminution would have a significant impact on the health of the UK economy as a whole.'
>
> (BPI, 2008b: 9).

Here the BPI argue in no uncertain terms that failing to take action against file-sharing would have negative implications on wider society and the economy. The BPI asserts that copyright is central to the creative economy. They assert elsewhere that, 'the

UK recorded music market depends for its very existence on IP Law' (BPI, 2006: 2), but here they begin to universalise this assertion by applying it to an unspecified and undefined 'creative economy'. The BPI clearly seeks to align itself as part of a broader community of valuable industries. There is the usual quantification of the 'creative industries' contributions to the economy in this case. The BPI also crucially argues above that unless copyright is enforced and the opportunities for economic reward secured, then creative activity/production will falter. The crucial assumption here is that creative activity is dependent on the incentive of financial reward of course (we will return to this notion below). The diminution of this sector of the economy will have a significant impact on the health of the economy as a whole according to the BPI. In other words, if the government wishes to protect the UK's economy, then it must address the online infringement of copyright. The relationship between economic and *social* 'health' is left unexplained however, the two presumable being considered synonymous as observed earlier.

The BPI also argues above that if people feel able to ignore copyright then this could have implications for other industry sectors, in that they will ignore other laws. File-sharing - which the BPI describes as 'morally wrong' (BPI, 2009b: 2) - will lead to an 'amoral' market place if allowed to continue the BPI suggests. The notion that file-sharing would act as some kind of gateway to the violation of other laws seems somewhat problematic. It also has links to the BPI's conflation of file-sharing with other forms of physical piracy and even 'theft'. Essentially though, the notion that a disregard for copyright will lead to a disregard for

other laws simply functions as an attempt to extend and universalise the threat of file-sharing.

In terms of the social consequences of file-sharing, the BPI frequently refer to the threat to jobs. For instance, in their submission to the DBERR consultation they state that: 'The core issue is that copyright is being infringed and thousands of jobs are being put at risk' (BPI, 2008b: 15). Elsewhere they state that: 'Tackling illegal file-sharing will allow Britain's creative industries to flourish in the digital age, lifting the threat to existing jobs as well as future employment opportunities' (BPI, 2009b). It is not at all clear how file-sharing is thought to affect jobs however, and the BPI offers no statistical evidence to support these claims. It seems that this claim is simply another attempt to broaden out the threat of file-sharing. On the basis of such claims about the consequences and impacts of file-sharing the BPI calls for legislative action to tackle file-sharing: 'There can be no doubt as to the necessity of tackling illegal file-sharing' they state (BPI, 2008b: 9).

> 'BPI's members' rights (and, to varying degrees, the rights of all creative industries) are being systematically infringed on a catastrophic scale. This not only has a huge adverse impact on creative industries themselves, but also on the two million jobs they provide in the UK and on new employment opportunities within them. Whilst commercial solutions have a vital role to play in tackling illegality, statutory action is also essential.'
>
> (BPI, 2009a: 1)

In terms of the specific nature of the statutory action called for, the BPI asserted in response to the DBERR consultation that

voluntary solutions had been unsuccessful and that achieving a significant reduction in must be 'underpinned by statutory obligations on ISPs' (BPI, 2008b: 1). The BPI argues that ISPs are 'in a unique position to address the problem of online copyright infringement' (BPI, 2009a: 1) but acknowledge that ISPs 'have different views' (2008b: 3). The BPI thus asserts that, 'statutory amendments will be beneficial in [...] enabling more effective protection of the rights of creators and owners of music' (BPI, 2008b: 3). The BPI thus suggest that rather than the Government's preferred 'self-regulatory' approach, option A2 (the option which was eventually adopted) may be preferable. They assert that this legislative response should include two obligations should be placed on ISPs:

> 'First, an obligation to take reasonable measures to prevent the use of their networks and services by their customers infringing the copyright of third parties; and secondly, a duty to act in relation to specific customers' accounts when notified by rights holders of copyright infringement taking place on those accounts'
>
> (BPI, 2008b: 2)

The recording industry is effectively calling for a legislative response that will make it easier for rights holders to take action against file-sharers. Specifically though, this would involve requiring ISPs (a rival sector of capital) to co-operate with the recording industry, and themselves take action against file-sharers. In particular, the BPI asserts that the 'proposed legislation should require ISPs to apply technical measures' (2008b) and that the list of 'potential technical measures should include temporary account suspension as it a simple, cost

effective and proportionate measure' (2009a: 3). Interestingly, after these calls for the technical measures to include suspension of accounts, the Government made an announcement (DBIS, 2009b) that the legislative proposals would indeed be revised to include such measures, as discussed in the previous chapter. In response the BPI made a revised submission (BPI, 2009b) stating their support for the governments revised proposals. In relation to these proposals they argued that:

> 'TAS [Temporary Account Suspension] is the most effective of proposed technical measures in actually stopping infringement occurring. Also, consumer research shows that TAS is one of the strongest deterrents of all proposed technical measures [...]. TAS is a proportionate measure: it does not infringe on human rights [...]'.
>
> (BPI, 2009b: 2)

The BPI strongly argued the case for the temporary suspension of accounts to be included as one of the technical measures that ISPs would be required to implement. The assertion that TAS does not infringe on human rights is an example of how the BPI consistently move to dismiss counter and competing arguments. In relation to the human rights objection to the proposed TAS measure, the BPI assert: 'There is no "right to access the internet" under European law' (2009b: 6). Furthermore, they assert that 'the rights of the individual do no take precedence over the rights of a copyright holder' (ibid. 7).

In a further example of how the BPI consistently moved to dismiss counter arguments and claims in the documents they submitted to governments they argued: 'It is asserted by some that the practice of illegal file-sharing is so deeply engrained in

popular culture that any attempts to deter or prevent it are doomed to failure. BPI does not accept this for a moment; and our position is supported by evidence' (BPI, 2008b: 4). They subsequently go on to list statistical evidence that the proposed measures are and will continue to be effective.

In response to the eventual passing of the Digital Economy Act in 2010, the BPI issued a press release that included the following:

> 'BPI chief executive Geoff Taylor welcomed the passage into law today of the Digital Economy Act as a key milestone in the development of the internet, which will help secure Britain's world beating status as a creative force in music and entertainment.
>
> Geoff Taylor said: "The acts measures to reduce illegal downloading will spur on investment in new music and innovation in legal business models. An internet that rewards creative risks will mean more British bands enjoying global success, more choice in how to access music online, and more jobs in our fast growing creative sector".'
>
> (BPI, 2010c: Online)

Here we see yet another attempt to legitimate the DEA in the context of competitiveness in the KBE, but we also see, for the first time in the discourse of the BPI, an argument being made about the interests of creators in relation to the DEA. The BPI claims that the DEA, in reducing file-sharing, will result in 'more British bands enjoying global success' (ibid.). It is not clear however, how or why this might be the case. There is no indication or argument made about how the measures contained in the Digital Economy Act and which the BPI had been pushing for might benefit creators. Any discussion of creator interest had

been entirely absent in the submissions made by the BPI in government consultations. Elsewhere however, the BPI makes some claims about the role of recording companies in the broader music industry which may help shed some light on how they believe the protection being afforded recording companies by the DEA might serve the interests of creators also.

On their website, the BPI depicts the role of recording companies in relation to creators as follows:

> 'Record companies are the main investors in, and developers of, musical talent in the UK and globally. Around 23% of label revenue is poured back into the signing and developing of new talent through their A&R (artist and repertoire) departments. Record labels enable artists, through advances and marketing/sales support, to treat music making as a full-time career. They exploit the artists' recordings commercially and collect and pay the resulting royalties on their behalf.
>
> Labels traditionally pay for the recording and mixing of albums (with this money being recouped through the sale and wider exploitation of those recordings) and they often underwrite new acts' touring costs to help raise their profile and sales. On top of manufacturing and distributing the recordings (to both physical and digital retailers), record labels provide an essential promotional and marketing role. This includes developing and executing ad and marketing campaigns as well as promoting and plugging the acts to media.
>
> Labels can also seek out other ways for the recordings to be exploited, such as being used in movies and adverts, and license rights to global parties in different markets. In recent years, a number of labels have moved beyond the sole acquisition and exploitation of the rights associated with sound recordings to take an

> interest in artists' other sources of income, such as live, songwriting and merchandise.'
>
> (BPI, 2010b: Online)

According to the BPI, recording companies enable music creators to make a living making music. They provide *the* means by which bands may become global stars as 'investors' in creative production. Without recording companies then, creators stand no chance of making a living making music. The seemingly logical but implicit corollary of this proposition is that in protecting recording companies from economic harm, the DEA protects opportunities for creators to be invested in and thus to become 'successful'.

The problem with this argument would be that, as far as the account developed in chapter 2 revealed at least, relationships with the recording industry for the vast number of aspiring creators are in no way financially rewarding and very rarely lead to the kind of 'success' suggested by the BPI above. In fact, the account developed in chapter 2 suggests the existence of a wholly onerous and exploitative relationship between creators and recording companies as investors. Whilst recording companies might benefit from the stronger enforcement of copyright laws online, in that it helps to maintain their business models and income flows, unless the nature of recording contracts or copyright laws themselves change to ensure that it is creators who primarily benefit from copyright laws and their enforcement, then it is in no way clear how creators might benefit from the protection of existing socio-economic arrangements offered by the DEA.

Contrary to the critical assessment of creator-investor relations in the recording industry, the BPI asserts that 'the existing copyright framework has served creators, investors and the consumers well' and 'the recorded music industry provides ample evidence that UK's copyright laws work well – to the benefit of music fan, record company and performer alike' (BPI, 2006: 2). The precise way in which the existing copyright framework does function to the benefit of anyone other than recording companies is entirely unclear and remains so however.

Discussion

The discursive activities of the BPI are clearly designed to affect legislative action on behalf of recording companies. Through the construction of various propositions, arguments, and claims, and through their validation of these via the production of quantitative 'evidence', the BPI attempts to convince legislators of the legitimate and justified need to legislate against the online infringement of copyright. The specific way in which the BPI does this is crucial. In asserting the economic productivity and international competitiveness of the UK's recording companies, the BPI clearly seek to resonate with New Labour's broader economic vision and strategising. In this sense, the BPI seeks to locate its arguments firmly within what Jessop has described as a particular 'economic imaginary' – a narrative which emerges in response to crises in capitalist social formations and which is part of the overall attempts to repair or reinvent existing capitalist arrangements in some meaningful way (Jessop, 2004).

In this case, the economic imaginary within which the value of the recording industry is framed is that of the global KBE.

The 'master narrative' or 'imaginary' constructed and promoted by New Labour provided the BPI with an ideal frame within which to locate its arguments about the need to protect the recording industry from technological threats such as file-sharing. The BPI consistently acknowledges and refers to New Labour's stated aim of becoming a world leader in the global KBE. In this context the BPI forcefully asserts the need to protect the recording industry from the threat of file-sharing via legislative actions that ensure the effective enforcement of copyright laws in the online environment.

A clear ultimatum was offered by the BPI in the form of a rhetorical question; 'Is the government prepared to take steps to incentivise the investor in sound recordings?' (BPI, 2006: 6). This question succinctly conveys the nature of the BPI's central argument. The BPI continually asserts and promotes the economic contribution and performance of the recording industry. They assert the economic damage being done to the industry by file-sharing and assert that the effective enforcement of copyright must be achieved through legislative action if recording companies are to continue to be economically productive. Instances of intertextuality and interdiscursivity were crucial in setting out and validating these arguments and claims. Of particular importance perhaps is the validation of claims made by the BPI through the use of statistical evidence. The ability to produce such validating statistical evidence reflects an important capacity for discursive power in the

legislative process, one that less economically resourceful/powerful organisations and individuals are likely to lack.

Furthermore, it is important to note the prescriptive tone and nature of the discourse of the BPI with regards legislative action. The BPI effectively tells the government what it should do in order to protect the recording industry from file-sharing, and thus ensure the UK's success in the global KBE. In sum, the recording industry demands that statutory requirements be placed on ISPs (a rival sector of capital and economic actor) to implement technical measures to reduce file-sharing. The inclusion of these requirements in the Government's legislative proposals and subsequent legislative action appear to reflect the prioritisation of economic interests on the part of New Labour, and indicate the possible influence of the recording companies in particular - in directing the specific nature and direction of the subsequent legislative action.

Overall then, the discourse of the BPI can be seen as part of an attempt to protect and maintain an established set of socio-economic arrangements for the production and circulation of recorded music as a commodity - arrangements that clearly function to the benefit of recording companies as corporate rights holders. Recording companies are threatened by the appropriation of technical capacities for the free reproduction and circulation of their products, and since recording companies are unable to effectively restrict these practices themselves, they call on the state to further enhance the enforcement of those copyright laws upon which their business models rely. They

attempt to affect this legislative action through discursive activities. The apparent success of the recording industry in this context relies on their ability to successfully articulate their demands within New Labour's own broader economic narrative and strategising. The prioritisation and protection of certain economic interests that New Labour's economic strategy involves, allows arguments and claims of the recording industry to be uncritically accepted. The subsequent legislative response is justified and legitimated in terms of securing the economic productivity of a particular sector of economic capital in order to achieve successful competitiveness in the global KBE. The original justifications for strong copyright regimes – those of incentivising creators through the securing of opportunities for economic reward – are entirely absent in this discourse however.

Conclusion

This chapter has offered an analysis and discussion of the UK recording industry's 'discursive' response to the threat of file-sharing and proposed legislative actions. It has drawn on various texts including submissions to government consultations, press releases, and other published documents to show how recording companies, or rather its official UK representative body the BPI, have attempted to deal with technologically afforded challenges to their profit accumulation strategies. The chapter has attempted to show how the BPI sought to affect legislative action through its discursive activities. In other words, the discussion has attempted to show how the BPI has attempted to protect and maintain favourable socio-economic arrangements for the

production of music as a commodity in the face of technological disruption, through the construction and promotion of various arguments about the value of UK recording companies in terms of securing the UK's place as an international competitor in the global KBE.

The chapter has highlighted and discussed the recording industry's core arguments and discursive strategies in this regard. In terms of the arguments made by the recording industry, it was shown that the attempt to induce legislative action involved the construction and communication of various interlinking arguments and claims about the place of the recording industry in the economy, about the consequences of file-sharing, and about the subsequent need to protect the recording industry from file-sharing as an economic threat via legislative action. The chapter has drawn attention to the specific discursive and rhetorical devices in operation, which include interdiscursivity as a means of rationalising arguments within the broader context of the UK's competitiveness in the global KBE, and intertextuality in the form of reference to statistical evidence as a means of validating claims and propositions. It was also shown that the discourse of the recording industry was highly prescriptive in attempting to guide and influence the specific nature of legislative action. Of particular note was the way in which the BPI was apparently successful in prescribing temporary account suspension as an appropriate technical measure in the fight against file-sharing.

Ultimately, the chapter has shown that the UK Government, under New Labour, provided an economic imaginary that

allowed the BPI to effectively justify the legislative changes they required and desired. The apparent capacity of the recording industry to successfully affect or influence the specific direction and nature of legislative action must be understood in relation to this broader economic narrative and context. The BPI did not attempt, and was seemingly not required, to demonstrate how the enhanced enforcement of copyright laws in the online environment benefits anyone other than recording companies as rights holders and commercial exploiters of copyright however. The BPI was simply required to legitimate legislative action in relation to the broader narrative about securing the UK's competitiveness in the global KBE. Traditional justifications for copyright laws – those of securing rewards for and thus incentivising creative production - were entirely absent in the discourse of the BPI.

It was asserted in chapter 2 that in the absence of any amendments to copyright laws themselves to ensure that it is creators who primarily benefit from copyright laws, then they remain in subordinate position in relation to recording companies as investors, and thus vulnerable to economic exploitation. It is not clear that creators benefit in any way from legislative action to enhance the enforcement of existing copyright laws in the online environment. At best, the DEA will only aid in the maintenance of existing socio-economic arrangements for the production and circulation of music as a commodity, but in which creators appear to face unfair economic exploitation. So, what arguments might creators put forward with regards the unauthorised sharing of music online, and New

Labour's subsequent legislative response? The next chapter discusses attempts to promote the interests of creators in debates about online music file-sharing by dedicated representative organisations.

CHAPTER 6

THE REPRESENTATION OF CREATOR INTERESTS BY ESTABLISHED ORGANISATIONS

Introduction

This chapter presents an exploration and analysis of the way in which creators and their interests have been represented in debates about online music file-sharing. The analysis focuses on the role and discursive activities of organisations who claim to protect and promote the interests of music creators. The analysis draws on a range of texts produced by relevant organisations over the last four years 2006-2010; a period during which significant policy debates and legislative activities have been taking place. The texts analysed and drawn upon include: web-pages; promotional material; press releases; published speeches, letters, and statements; commissioned reports; and responses to UK Government consultations on copyright and file-sharing.

The focus of the analysis is the way in which creators and their interests are depicted and described by officially representative organisations. In doing so the analysis presented also considers the way in which other actors in the music industry are depicted by these creator centred organisations however, and how the relations between actors are depicted. Moreover, the analysis considers the extent and ways in which the discourse of these

organisations mirrors and/or diverges from that of recording companies as discussed in the previous chapter.

The chapter shows that the discourse of organisations claiming to represent the interests of creators is somewhat ambiguous. On the one hand, these organisations are keen to draw attention to the tensions which arise between creators and recording companies, and to the inadequate nature of the current copyright system in providing creators with a means of reaping financial rewards. On the other hand, these organisations seem to share many of the same concerns of the recording industry. In particular, they draw attention to the threat that file-sharing represents in terms of employment opportunities for creators. They subsequently express support for the legislative response to file-sharing, despite the fact that it ultimately protects a set of socio-economic relations which they themselves have sought to critique and problematise. This raises some further important questions about the interests of creators with regards file-sharing.

Protecting and Promoting the Interests of Creators

When we undertake any commercially oriented activity, we inevitably enter into relations where, in the name of profit-making, there is a potential for particular kinds of conflict it seems. As discussed in more detail in chapter 2, established socio-economic arrangements for the production of music as a commodity require music creators to enter into relations with various other commercially oriented actors. Conflict between music creators and these other actors, recording companies most

especially, are common place. These conflicts typically arise in relation to the specific nature of formal contractual relationships between these distinct actors, as each attempt to pursue their interest in generating a profitable income via their distinct activities. In attempting to pursue an interest in making money via their creative activities, music creator may come into conflict with other actors also. Examples of music creators coming into conflict with managers, publishers, technology companies, journalists, and even consumers, can be observed wherever the actions of these actors has been thought to have implications for the music creators ability to make money from their activities. It is in this commercial context that the 'interests' of music creators apparently need to be more forcefully promoted and protected it seems.

Just as organisations have emerged throughout history in order to promote and protect the interests of workers in any industry, organisations have been formed to protect the interests of music creators as they try to negotiate 'the music industry' as a set of socio-economic arrangements which may provide them with the opportunity to make a living making music. It is important to acknowledge in this case, that the organisations which exist to promote and protect the interests of music creators exist to promote and protect the interests of creators who seek to make money from their creative activities. They do not in others words exist to protect and promote the interests of those who make music purely for leisure or pleasure, as a form of recreation for instance.

In the UK, several organisations have been concerned with promoting and protecting the interests of those music creators operating in commercial contexts. As the nature and organisation of the music industry has changed throughout history (via processes of technological development, appropriation and rationalisation as discussed in chapter 1), so has the position of creators within that industry. As creators have been faced with new challenges, new organisations and alliances have emerged and disappeared. This process has continued up to the present with existing organisations disappearing and new organisations being formed in light of the changing technological environment.

In this analysis reference will be made to two organisations in particular: the *Musician's Union* (MU); and the *British Academy of Songwriters, Composers and Authors* (BASCA). The focus in the analysis is on the nature of these organisations' engagements in debates about online music file-sharing. The analysis looks at the discursive activities of each organisation in turn, since each claims to represent a distinct set of creators whose interests in file-sharing may potentially differ.

The Musicians' Union: Protecting the Interests of the Professional Musician

The MU is an intriguing organisation in the context of understanding the music industry and the place of music creators within it. As an officially recognised 'Trades Union', its formation represents a concern for improving employment conditions to be found among workers in any industry. For an

industry in which we are often encouraged to romanticise the tensions between 'worker' and 'employer' as a fundamental tension between the creative autonomy of the artist and the rationalising and restricting commercial imperatives of the capitalist, it is interesting to see these tensions framed and expressed in more industrially familiar terms. The very existence of the MU suggests a need for creators' interests to be protected in commercial contexts, but it is interesting to see precisely how this need is translated into action by the MU. This section presents an analysis of the way in which the MU represents and depicts its members and their interests in the language it uses, especially in relation to the issue of file-sharing. It is necessary to begin this discussion with a brief history of the MU.

The MU began life as the *Amalgamated Musicians' Union* (AMU), an organisation formed to promote and protect the interests of musicians working in concert halls and theatres during the late 19th century (Jempson, 2008). Traditionally at least, the MU is concerned with the interests of its *musician* members as 'performers' of musical 'works', rather than 'authors' of those works. The organisation was formed in 1893 after 21-year-old clarinettist Joe Williams circulated an anonymous letter among musicians working in the Manchester area, inviting them to attend a meeting to discuss the need for a 'Protecting Union' (ibid.). The anonymous letter read:

> 'GENTLEMEN
>
> The phrase "WE OUGHT TO HAVE A UNION" is often uttered by musicians especially when we are compelled (for want of society) to

> rehearse etc., without remuneration. Unfortunately, with the phrase the matter drops. No-one seems willing to start a Union, and yet on all sides it is admitted that one is necessary [...].
>
> The Union that we require is a Protecting Union, one that will protect us from Amateurs, protect us from unscrupulous employers, and protect us from ourselves. A union that will guarantee our receiving a fair wage for engagements. A society that will keep the amateur in his right place, and prevent his going under prices. A union that will see you are paid extra for rehearsals, and in time raise salaries to what they out to be.
>
> If you are in favour of a Musicians Union, sign the following and forward to
>
> "ANONYMOUS"
>
> 32 Clifford Street
>
> Old Trafford'
>
> (Williams 1893, cited in: Jempson, 2008: 5)

As new manufacturing industries developed and grew during the late 18th and 19th centuries, labour became increasingly geographically concentrated in new urban-industrial centres like Manchester. These industrial nodes also became centres of music production. Music halls and theatres sprung up as entrepreneurs sought to capitalise on the increasing demand for entertainment among the burgeoning urban populations. With the increasing number of music halls came work opportunities for thousands of professional musicians. Just as employment conditions had become an increasing concern for those working in the factories and mills, there was a growing dissatisfaction among these musicians with the increasingly exploitative

employment conditions that mangers and owners were instituting.

Among the most pressing concerns were extremely low wages and a refusal to pay musicians for time spent rehearsing. New highly organised industrial 'Trades Unions' were beginning to prove their effectiveness in leveraging improved working conditions and pay in the new manufacturing industries and in 1868 the *Manchester and Salford Trades Council* called together the first national *Trades Union Congress*. As Jempson discusses in his history of the MU: 'Within a few years this annual 'Parliament of Labour' would exert an influence that politicians could no longer ignore, and ordinary workers began to find a voice on the national stage. Musicians, however, still lacked a collective voice' (2008: 3).

While musicians' organisations did exist, Jempson suggests that most professionally trained musicians did not want to be tainted by association with manual workers and their radical labour movements, and that those organisations that did exist tended to be selective, even 'elitist', in their membership. It was the need for a more united and inclusive organisation along with the successes of trade unionism in other sectors which apparently inspired Williams to form the AMU in April 1893. The AMU signed up anyone who sought to make a living making music and with over one thousand members by November 1893, the Union began challenging employers through strike actions and litigation. Backed by Local Trades Councils, the AMU increasingly began to gain recognition and

with every success, 'new members came flocking in' (Jempson, 2008: 7).

The MU was formed at a time when the production of music was literally becoming an 'industry', and as this music industry developed and drew in increasing numbers of musicians as 'workers' the need for a protective organisation became apparent. On the history of the MU and Williams' role within it, Jempson writes that he was anxious to protect 'job opportunities' in particular and that 'wages, conditions and regularity of work were quite literally the bread and butter issue for most AMU members' (2008: 7-8). It was this concern for wages, work opportunities and employment conditions which remains at the core of the MU's activities today, as an officially recognised 'Trades Union' and member of Britain's *Trades Union Congress*. In its own words:

> 'The Musicians' Union is an organisation respected around the world which represents over thirty thousand musicians working in all sectors of the music business.
>
> As well as negotiating on behalf of musicians with all the major employers in the industry, the MU offers a range of services tailored for the self-employed by providing assistance for full and part time professional and student musicians of all ages.'
>
> (MU, 2008d: Online)

As suggested, negotiating with employers remains at the heart of the MU's activities, but the MU also now boasts a wide range of member services including: specialist legal advice on issues such as contractual arrangements and rights management; provision of professional training; legal assistance in the

recovery of unpaid fees and damages (MU, 2008c). Under 'Why Join' on their website, the MU simply asks 'Can you afford to go it alone?':

> Everyone who plays an instrument knows that it can be a source of tremendous enjoyment. But if you have ambitions to make all or part of your living from any kind of music then it can become a serious business. You will need the help of the only organisation that cares about every kind of musician.'
>
> (MU, 2008b: Online)

A clear distinction is being made here between the performer wishing to make money from their activities and the amateur musician. The assertion is made that if you want to make a living making music then you *will* need the 'help' of the MU. The MU was formed at a time when this need became apparent, and it remains to serve this same need today it seems. Just as the music industry has changed and developed throughout its history however, so has the MU, a point that the organisation is keen to acknowledge itself:

> 'The music profession and the music industry have seen constant evolution and change over the years. The Musicians' Union has evolved and changed with them, with one aim in view - to offer musicians a better service and a democratic organisation dedicated to their needs.'
>
> (MU, 2008b: Online)

As was illustrated in chapter 1, the changing nature of the music industry has had a lot to do with processes of technological development and (re)appropriation. As technical capacities for the storage, circulation and retrieval of music have developed, the music industry has constantly had to renegotiate the

problem of 'scarcity' whereby artificial limits have needed to be imposed on capacities to reproduce music is some form or another. The continual processes of technological development and (re)appropriation have presented particular concerns for musicians however and the implications of technological development for performers of musical work have been something which the MU has been dealing with throughout its history. As Jempson suggests: 'new technology has often posed problems for a union devoted to the performance of live music. Too often the MU has seen jobs lost and valuable skills disappear as machines take over from the live musicians' (2008: 25). In particular, as sound recording and playback technologies developed during the late 19th and early 20th centuries they increasingly began to be appropriated for use in movie theatres, radio broadcasts and dance halls. During the early 20th century, the MU quickly began to realise the 'threat' that the technological capacity to store and reproduce actual sound represented for its members.

The cinema was the first workplace to be hit by the threat of recording and playback technology. In early 20th century the cinema was quickly becoming one of the most popular forms of leisure and entertainment. By 1929 there were some 5,000 cinemas in Britain showing silent movies to which musicians provided a live soundtrack. Jempson states that well over half of the MU's membership was working in cinema orchestras at this time (2008: 11). Gramophone records soon began replacing musicians and orchestras however and with the arrival of the 'talkies', 'thousands of musicians who had been earning up to £5

a week found themselves out of work' (Jempson, 2008: 12). The increasing use of recorded music on radio and in dancehalls equally began to reduce employment opportunities for musicians. The arrival of radio and then television meanwhile saw the popularity of music halls dwindle, further compounding the apparent threat. Throughout the mid to late 20th century, the MU undertook a series of actions and embarked on a series of campaigns aimed at securing the future of live music and thus employment opportunities for musicians in light of the changing technological environment.

There is a long history of concern for not just employment conditions but also employment opportunities then, especially in the context of a constantly changing technological environment. This concern is clearly evident in the language of the MU today. In their promotional pamphlet, 'Introducing the Musicians' Union' they state:

> 'Endeavouring to promote the rights and interests of its members, the MU strives to ensure technological advances are harnessed to promote more work opportunities for musicians.
>
> (MU, 2008a: Online)

This particular extract clearly demonstrates the nature of the MU's concerns when it comes to technological development. Their discussions of technology are consistently framed in terms of employment opportunities. The notion that technologies need to be 'harnessed' in this case implies that technology might otherwise be advanced in ways that threaten job opportunities. Crucially, it is this established and seemingly deep-seated concern for the implications of technological development for

employment opportunities that frames the MU's participation in the file-sharing debate.

Before going on to discuss the MU participation in debates about file-sharing in detail, it is worth briefly acknowledging that there are also ways in which the MU's role and concerns have apparently changed over the years. Whilst, as we have seen, the MU has typically been concerned with the interests of musicians as performers of musical work, the MU has expanded its membership to include authors as well. In its promotional material the MU talks about tackling 'issues raised by musicians when working in the live arena, the studio, *or when writing and composing*' (MU, 2008a: Online. emphasis added).

Equally, under the heading 'Rights Protection' the MU claims: 'Many composers, songwriters and producers call upon the MU to help in protecting their rights and interests' (ibid.). The apparent expansion of the MU's membership to include not just performers, but authors also, is undoubtedly a reflection of the need to take account of the dual roles that many creators undertake in the modern music industry, as dominated by the need for constant musical innovation, something provided for by more popular genres such as rock and pop. Indeed as Jempson noted with regards the role of the MU in the context of a rapidly developing pop industry in the 1960s: 'The MU took under its wing many of the thousands of young musicians who hoped to beat the Beatles' (Jempson, 2008: 18). Creators acting as both authors *and* performers of musical work became the staple of the modern music industry from the mid 20th century, as the 'rock band' became the dominant creative figure.

Today then, the MU continues to serve its originally stated role as a union for the protection of musician's interests. Given the deeply engrained concern with technological advance and their implications for musicians, it is unsurprising to find the implications of digital and networking technologies high on the MU's agenda. Given that the MU seeks to protect the interests of musicians operating in the capacity of both performer and author, we see the threat of technology framed in two distinct ways. Firstly, recent technological advances are depicted as presenting a threat to rights, as the mechanism via which musicians are able to gain financial remuneration for their work. For example, under the heading 'Rights Protection' in their promotional material, the MU state that, 'with the progress of online technology, copyrights and rights protection have become two of the most important subjects for writers and musicians' (MU 2008a: Online). Secondly, the internet and associated technologies are depicted as a threat in terms of employment opportunities. We have already seen this concern framed as a need to 'ensure that technological advances are harnessed to promote more work opportunities', and this particular concern has been expressed more explicitly in relation to file-sharing.

File-sharing as a Threat to Employment Opportunities for Creators

A concern for the implications of file-sharing in terms of employment opportunities for musicians is clearly evident in a

press release issued by the MU on 17 March 2010, which began as follows:

> 'Building a Digital Economy
>
> 1.2m Jobs will be lost to Piracy by 2015 in Europe's Creative Industries if Current Trends Continue
>
> Trade unions across Europe's creative industries endorse new EU-wide study that reveals the dramatic impact of piracy on jobs loss figures
>
> Strong EU legislation is required to tackle the problem of digital piracy and reverse current trends'
>
> (MU, 2010a: Online)

The press release goes on to highlight the value of the creative industries to the EU's economy, the economic damage done by 'digital piracy', and then quotes the endorsing comments of various other interested parties, including the IFPI who also issued a press release drawing attention to the same study (see IFPI, 2010: Online). The fact that both the MU and the IFPI endorse this study implies a shared interest between creators and the recording industry of course. The study being referred to in the press release was commissioned by *Business Action to Stop Counterfeiting and Piracy* (BASCAP), an initiative of 'the world business organisation', the *International Chamber of Commerce* (ICC, 2010: Online). It was actually conducted and authored by *TERA Consultants,* an 'independent consultancy firm providing services in the field of ICT' (TERA, 2010: 68). There is not the space to offer a full critique of the studies objectivity or methodology here, but in an executive summary the authors claim that their analysis determined the following:

- In 2008 the European Union's creative industries [...] contributed 6.9%, or approximately €860 billion, to total European GDP, and represented 6.5% of the total workforce, or approximately 14 million workers.
- In 2008 the European Union's creative industries most impacted by piracy (film, TV series, recorded music and software) experienced retail revenue losses of €10 billion and losses of more than 185 000 jobs due to piracy, largely digital piracy.
- Based on current projections and assuming no significant policy changes, the European Union's creative industries could expect to see cumulative retail revenue losses of as much as €240 billion by 2015, resulting in 1.2 million jobs lost by 2015.

(TERA, 2010: 6)

The reason for drawing attention to this executive summary is that it is interesting to compare the information as it is presented by the authors of the report here with the information presented in the MU's press release. Firstly, the order of the three main findings presented in the study's executive summary is reversed so that predicted job losses is the first piece of information communicated in the press release. We should also note the changes in modality here. In the MU's press release, the phrase '1.2m jobs *will* be lost to piracy by 2015 [...]' (emphasis added for illustrative purposes) implies certainty, whilst the phrase, '[...] creative industries *could expect* to see cumulative retail revenue losses of as much as €240 billion by 2015, resulting in 1.2 million jobs lost by 2015' (emphasis added for illustrative purposes) found in the study's executive summary is rather less certain. Such subtle changes in modality are important as rhetorical devices,

particularly in persuasive and argumentative genres such as press releases.

Also, in *TERA Consultants'* original executive summary above a distinction is made between piracy and digital piracy; '[...] losses of more than 185 000 jobs due to piracy, largely digital piracy' which acknowledges that these losses may not be due entirely to digital piracy as a specific form of piracy. In the MU press release however, no such distinction is made. Rather the MU says; 'Strong EU legislation is required to tackle the problem of digital piracy and reverse current trends' suggesting that the job losses are entirely the result of *digital* piracy specifically. Again, this conflation can be interpreted as an important discursive strategy. It allows for the depiction of file-sharing in terms of a criminal activity when in fact file-sharing represents copyright infringement, which is not a *criminal* but a *civil* offence. It also allows the supposed effects of file-sharing to be inflated.

Of course, the emphasising of the effects of digital piracy in the above press release is significant in the context of the wider events. When this press release was issued, the implementation of the Government's proposed legislative measures in the form of the *Digital Economy Bill* was being debated in the House of Lords. This press release could be seen as an attempt to influence the passing of this bill. On this latter point, it is important to note in reference to the assertion made in the MU's press release about the 'requirement' for 'strong legislation' that no such recommendation is made in the actual

study itself. In the study's executive summary above it is stated that the *predicted* job losses are 'based on current projections and assuming no significant policy changes'. In the MU's press release this apparent proviso on the interpretation of findings offered by the study's authors is reformulated as an assertion about the *need* for legislation.

The fact that the MU endorses this study, and presents it in the specific way that it does, is significant then in that it signals the adoption of a strong anti-file-sharing, pro-legislation position akin to that adopted by the recording industry as discussed in the previous chapter. By implication, creators, or musicians at least, are similarly represented as anti-file-sharing and pro legislation. The way in which the MU uses the above study is further illustrative of the way in which organisations draw on other texts as rhetorical and discursive resources, something which we have seen throughout the analyses presented in this thesis. In making their own arguments, organisations bend and manipulate the discourse of others to suit their own interests and ends. It is of course an example of 'intertextuality' and 'interdiscursivity' in analytic terms. In this particular case, the MU is seemingly using this study to promote the argument that 'digital piracy' reduces job opportunities, and that legislation is required to tackle this threat.

What is particularly interesting about this particular MU press release is that the argument is in no way related directly or explicitly to musicians or music creators, those actors that the MU claims to represents. This is indicative of the fact that the MU was not actually the author of this press release. It is

actually a reproduction of a press release issued by another organisation, the *Creative Coalition Campaign* (CCC) of which the MU is a member, and who themselves simply reproduced the press release issued by ICC/BASCAP as the study's commissioning party.

The CCC is an alliance of several creative industry Trades Unions. The alliance was formed specifically to promote a shared interest among trades unions in the sector, to protect creative industry workers from the threat of piracy. In March 2010, once again at the time when the Digital Economy Bill was being debated in Parliament, the MU issued a press release promoting the coalition, which included the following statements;

> 'The Creative Coalition Campaign was formed in August 2009 to encourage the Government to combat the threat that online copyright infringement, including illegal file-sharing, presents to future content creation not to mention many jobs, including sound engineers, camera crews, set designers, IT workers, make-up artists, journalists, printworkers, script writers, proofreaders, retail shop assistants and freelance photographers, among others [...].
>
> Various surveys have suggested that the number of UK citizens involved in infringing copyright in relation to films, TV and music is between five million and 10 million. This represents a significant threat to UK jobs.'
>
> (MU, 2010a: Online)

As indicated by the presentation of such arguments, the CCC adopts a clear anti-file-sharing, pro-legislation position in the file-sharing debate. The presentation of this particular argument about the effect of piracy on jobs was articulated in relation to file-sharing specifically in a submission they made to the DBIS

(2009a) consultation on proposed legislative measures. The following extracts are from the CCC's 4 page submission:

> 'This position statement is issued by the Creative Coalition Campaign [...]. It comprises the member organisations shared views on measures required to tackle on-line copyright infringement [...].
>
> A report published last year found that up to 800,000 people work in the sector, and with piracy depriving their businesses of up to 20% of their revenues every year, many will be at serious risk. Similarly, piracy threatens investments and growth in economic output [...].
>
> [...] government and civil society are on the side of the law abiding majority, rather than the minority who consider illegal file-sharing to be victimless. It is no such thing, as several recent economic reports have underlined: the victims include a range of people employed in everyday jobs, such as sound engineers, camera crews, costume and make up artists, book binders, script writers, retail shop assistants, freelance photographers and others employed on creative projects rendered unviable by the problem [...].
>
> Given the many thousands of jobs at stake now [...], the role identified by the secretary of state in triggering the availability of technical measures is an essential element of the revised proposals and one that the Creative Coalition Campaign's members welcome and applaud [...].
>
> As Government makes decisions that will impact will impact rights owning business and workers in the creative industries for years to come, it should recognise [...] that the policy environment for the creative industries should be accorded top priority, especially given the current economic situation and the Government's settled view that the creative sector can draw the UK out of recession through a sustained programme of investment and job creation.'
>
> (CCC, 2009: 1-4)

Here we see this particular line of anti-file-sharing argumentation constructed more fully and forcefully in the context of New Labour's proposed legislative measures to tackle file-sharing. The submission is clearly one of strong support for the proposed legislative measures, and there are some interesting rhetorical features to note. Firstly, there is a validation of the submission as reflecting the 'shared views' of the member organisations. There is then an unsubstantiated claim about the impact of piracy on the economics of the industry sector. This is followed by a rejection of a counter argument, in which people in 'everyday jobs' are depicted as the 'victims' of piracy. 'Creative projects' are described as being 'rendered unviable by the problem', suggesting that, should file-sharing remain unaddressed, such creative projects will cease to continue.

We should also note the modality in use in the above submission. We should note the phrases, 'many of these [jobs] *will* be at risk', and, '*given* the many thousands of jobs at stake now', in particular. Despite the complete absence of any supporting evidence, the notion of jobs being at stake is presented as fact or as a certainty; they are '*realis*' statements in terms of their modality. That jobs are at stake because of file-sharing is clearly *not* a 'given' as they suggest, but its presentation as a fact is an important rhetorical device. There is finally an interesting attempt to resonate with wider policy concerns and New Labour's broad economic vision of securing economic growth and competitiveness through the prioritisation of creative industries; the contributory role of the creative industries in drawing the

UK out of recession is asserted as a rationale for according legislative support for these industries a top priority.

Perhaps most significantly for the current discussion is the fact that within this submission, the music creator, as a distinct actor, is completely absent. Nowhere in this submission is there a specific reference to musicians, not even in the list of 'victims' of piracy offered. Instead, we have frequent references to 'rights owning companies' or 'businesses' and a relatively undistinguished group of 'workers' in the 'creative industries'. In this particular case, it's not even the interests of the music industry that are represented, but the interests of the 'creative' industries more broadly. The interests of the MU's members are smashed together with those of other 'workers' in these industries. Significantly, the CCC also includes as members the BPI, the *Premier League* and the *Entertainments Retailers Association* and the *Federation Against Copyright Theft* (FACT) among others - all organisations which saw fit to make individual submissions to ensure that the unique and distinct interests of its members were well represented. The MU on the other hand chose not to make any such independent submission to the government's consultations on its proposed legislative measures.

The MU lists 'Campaigns & lobbying' as a key benefit of membership. It states on its web-pages that 'The MU is in regular contact with the Dept for Culture Media and Sport as well as the Ministers with particular responsibilities for culture and entertainment and ensures that musicians are well represented during vital debates which affect musicians working

at all levels of the industry' (MU,2008c: Online). It is surprising then to find no evidence of the MU engaging in the file-sharing debate on its own terms. The CCC however, has been very active in promoting its arguments, with the CCC's chair, Christine Payne, authoring several articles appearing in national newspapers and online, in which she can be found reiterating the threat to jobs from file-sharing (see Payne, 2009a; 2009b; 2010).

The CCC also took out a full page advert in *The Guardian* urging MPs to 'Vote Yes' to the Digital Economy Bill stating; 'We need to act now before even more jobs come under threat, which is why we urge you to vote to support the UK's creative industries by voting yes to the Digital Economy Bill' (CCC, 2010b: Online). Via its participation in the CCC, the MU and its members are aligned with a strong anti-file-sharing, pro-legislation position in the debate then, a position which is legitimated via an argument about the knock on effect of file-sharing on jobs. The MU's apparent anti-file-sharing, pro-legislation position is confirmed however, by their actions and activities outside the formal lobbying process.

File-Sharing as Threat to the Rights of Professional Musicians

In 2010, the MU launched an anti-file-sharing campaign called 'Music Supported Here' and in which we see the threat from file-sharing framed in a slightly different manner. Here, the MU develops something of a moral argument about respecting musicians' right to choose how their music is used. Through the campaign, file-sharing is likened to theft, but economic

arguments are de-prioritised as the MU seemingly strives to distance itself from 'corporate interests' and instead situate music creators at the centre of the debate. In a press release announcing its launch the campaign is described as being 'designed to unite musicians and fans in a common understanding of the need for musicians to have the right and the means to control the use of their music in a digital world' (MU, 2010d: Online). In the same press release Horace Trubridge, Assistant General Secretary of the Musicians' Union is quoted as saying:

> 'Musicians are individuals with different views about music on the Internet and P2P and Music Supported Here gives musicians a platform to discuss the issue and share ideas. That said, no one likes to be ripped-off and Music Supported Here reminds fans that it's the musicians who want to be able to decide how their music is distributed in a digital world and if they don't want it to be free, don't nick it!'
>
> (MU, 2008d: Online)

In the first line Trubridge apparently acknowledges the fact that some musicians do not share the same anti-file-sharing pro-legislation views as recording companies. However, any notion of dissent among creators is quickly dismissed in the line, 'that said, no one likes to be ripped-off' implying that actually, all musicians would agree that file-sharing is bad. The likening of having your music shared online to being 'ripped off' continues on the campaigns website where they describe the campaign as being about, 'the simple but important principle that musicians should not get ripped-off in the digital world [...] for music fans

it's a way to say that you don't rip-off musicians' (MU, 2010e: Online).

The use of the phrase 'ripped-off' has a similar rhetorical purpose to using the term theft or stealing when referring to file-sharing perhaps, though the connotations are slightly different. Describing something as theft clearly denotes a criminal act, whereas describing something as a 'rip-off' is more ambiguous in a legal context. The term 'rip off' is clearly derogatory however, and connotes 'cheating', 'conning', or 'deceit'. We also see an actual instruction directed at consumers with regards respecting musicians right to choose how their music is used: 'if they don't want it to be free, don't nick it'. Here there is a more direct reference to file-sharing as theft through the use of the more colloquial verb, to 'nick'. It is not just those who file-share that are being accused of ripping-off musicians however. This accusation also appears to be aimed at other actors and in particular, the companies behind file-sharing networks. In a video featured on the campaign's website for instance, Trubridge offers the following on the nature of these companies:

> 'One of the myths that continues to exist about The Pirate Bay, and LimeWire, and illegal downloading sites is that they are sort of freedom fighting, libertarian people who are overturning the industry for the good of art and for the good of music, and that's just not true. They're not. They're commercial capitalists who are selling advertising to prop those sites up and are making a lot of money out of it; making a lot of money out of other people's creativity which they sell advertising on the back of.'
>
> (Trubridge, 2010: Online)

Here Trubridge directly addresses a counter-argument about the nature of file-sharing. He rejects the notion of those behind file-sharing sites as acting in the best interests of music, a notion purported by the founders of *The Pirate Bay* for instance, and instead recasts them as a purely commercial interest. Following the theme of being 'ripped-off', he depicts their activities as exploitative, as making money from someone else's hard work. In the same video he juxtaposes this image of the commercial interests of those behind file-sharing, with an image of the MU as non-commercial and 'pure':

> There's no kind of big conglomerate hiding in the background driving it. It's us, you know. We're doing it for musicians and we're doing it for, particularly for grassroots musicians, musicians who are just starting their careers. That's what it's about. So there's a sense of purity about it, which I think musicians are attracted to. It's coming from an organisation that really has you know, no financial gain to make out of this. We just think it's about time there was a pure message in this area.'
>
> (Trubridge, 2010: Online)

Here Trubridge seems keen to distance the MU and their campaign from the overtly commercial imperatives and interests of corporations. In describing their message as 'pure' and 'for musicians', Trubridge seems to be implying that whereas the claims of corporations might be challenged as reflecting corporate greed, the MU's campaign is somehow more authentic or honest, an attempt to assert the legitimacy of the MU's claims perhaps. The use of the term 'pure' is in itself interesting in that it implies that corporate interests are somehow 'contaminating'. As we know, the MU exists to protect commercial interests but it

seeks to protect the commercial interests of musicians and creators themselves, rather than those of 'big conglomerates' who employ them. The website of the *Music Supported Here* campaign also features endorsements from several independent musicians (see, http://www.musicsupportedhere.com/films/). The placing of creators at the centre of the debate is an important aspect of the MU's anti-file-sharing campaign it seems. The core message of the campaign is clearly a moral one about respecting the rights of these musicians to control how their music is used, and key to this in the context of file-sharing is respecting musicians' right to economic remuneration. This moral argument also translates into an economic one in this case. It is in this context, that the MU asserts the value of copyright to creators. For instance, the MU's anti-file-sharing campaign also involves a manifesto which states:

> 'In today's internet-sharing world, it's never been easier for original music to be hijacked, plagiarised, copied or just plain nicked. That's why music copyright has never been so important. Copyright is important for musicians because it safeguards the rights to their own music. And it's important for music fans because it pays for musicians to make more music. The Musicians' Union (MU) is committed to making sure that everyone respects the value of music and the huge part it plays in our lives. But we can't expect the right to enjoy music unless we respect the rights of the people who make it.'
>
> (MU, 2010f: Online)

Here then, in an attempt to persuade consumers that file-sharing is bad, copyright is framed as something which protects musicians, and is depicted as providing the mechanism via which creators can be rewarded for their work, which in turn

allows them to continue creating music for the benefit of music fans. File-sharing is depicted as theft and an abuse of musicians' rights to control how their music is used, which is as much a moral argument as it is an economic one. As we have already seen however, the proposition that copyright laws provide adequate mechanisms for the economic remuneration of creators is very questionable. Interestingly, the MU itself has been keen to draw attention to the inadequacy of copyright laws in this respect, as we will see below.

The MU on Anti-file-sharing Measures

Whilst the MU failed to respond to the official consultations on the UK Governments proposed legislative measures to tackle file-sharing, we can see a clear anti-file-sharing and pro-legislation position emerging from the above. The MU's position in these debates is further confirmed by their independent responses to various events via press releases issued on their website. In response to the publication of the *Digital Britain* whitepaper (DCMS, 2009b), in which specific plans for anti-file-sharing legislation was outlined, the MU stated:

> 'Although we welcome the publication of Digital Britain in that it will ensure that debates about key issues such as internet piracy and public service broadcasting are had at the highest levels, we also have some concerns about the proposals in the report [...].
>
> We believe that the Government's proposed requirements for Internet Service Providers to notify subscribers identified as infringing copyright, and to collect anonymised information on serious repeat infringers, coupled with additional powers for Ofcom to implement

> technical measures against those individuals who continue to infringe copyright, will still not be enough to meet the target to reduce filesharing by 70-80% within 2-3 years.'
>
> (MU, 2009a: Online)

Here the MU implies that even more needs to be done to tackle file-sharing as a threat to their members' interests. The MU asserts with some certainty that the proposed measures '*will* still not be enough' to reduce file-sharing by the desired amount, though they offer no alternative themselves. Interestingly, in a later press release entitled 'Illegal downloading – MU statement', the MU states: 'We believe that a 'three strikes and you're out' policy is overly harsh and we would instead argue for a more proportionate response. However, we do believe that there needs to be an ultimate sanction for serial uploaders and that this ultimate sanction should be disconnection from the internet' (MU 2009b: Online). In the very same press release, the MU reaffirms its support of legislation as an appropriate response to file-sharing, stating that: 'We wholeheartedly support the government's recent announcement on how to deal with this threat' (ibid.). The discourse of the MU itself is clearly one of anti-file-sharing and pro-legislation then.

Via the MU's participation in debates about file-sharing, creators of music are presented as anti-file-sharing and pro-legislation. The MU presents the threat of file-sharing in two distinct ways. Firstly, there is the framing of the threat to creators from file-sharing as a threat to employment opportunities. In making this argument via participation in the

CCC however, creators are represented simply as 'workers' in the broader creative industries. In this sense, the interests of creators become undistinguishable from both recording companies and other content owning businesses, and from other workers employed in the 'creative industries'. This theme of protecting employment opportunities from the threat of file-sharing clearly echoes a historical concern for the implications of technological advances. Here however, the notion that technological appropriation directly threatens jobs is stretched to make an argument about the inadvertent effects that consumer appropriations of technology might have on musicians. The argument that file-sharing does economic harm to 'the industry', that recording companies stop investing in the production of new music, and that as a result there will be fewer employment opportunities for musicians, is by no means a 'given' as the MU asserts however.

Secondly, the MU frames file-sharing as a threat to the rights of musicians to control what happens to the music they create and to receive financial reward for their creativity. This involved asserting the value of copyright as a means of protecting the right to financial reward, and involved asserting that the prospect of financial reward ensures the continued production of music on the part of the original creator. This argument presumes that file-sharing has a negative effect on sales of recordings of course, a much disputed proposition. Furthermore, the problem with this argument is that, even if we are to accept that file-sharing does have a negative impact on sales, performers on recordings receive no financial

compensation from this, unless they are the authors of the work or a featured artist. Even authors and featured artists receive very little financial reward from the sale of recordings however. This argument about the importance of upholding and respecting copyright laws is also articulated by another important organisation for the representation of music creators and their interests.

The British Academy of Songwriters and Composers: Protecting the Copyright Interests of Authors

Whilst the MU primarily represents the interest of musicians as 'performers of work', the *British Academy of Songwriters, Composers and Authors* (BASCA), formed in 1947, exists to represent the interests of 'authors' (composers, lyricists, songwriters) of musical works. These actors are afforded exclusive rights over the work itself (the musical and/or lyrical composition), and enjoy the legal right to financial compensation for a wide range of uses to which their 'work' may be put. This includes the performance of the work in public, the recording of a performance of the work, and the issuing of recorded performances to the public in various forms. BASCA describes itself as 'the voice for music writers' and states that it 'exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music [...]' (2010a: Online). BASCA states 'the lobbying of politicians, civil servants and industry bodies' (2001b: Online) as one of its key activities, something which they elaborate upon

within the 'about us' pages of their website under the subheading 'Campaigning':

> '[...] BASCA makes sure the voice of the creator is heard in the corridors of power. Members of BASCA's Board also serve at the highest level with the leading organisations in the copyright community, including the PRS, MCPS, British Copyright Council, Creator's Rights Alliance and the Music Business Forum. Whether on questions of copyright protection in the digital age, issues facing the subsidised music sector or legislation affecting broadcasting, the Academy speaks up for Britain's songwriters and composers.'
>
> (BASCA 2010c: Online)

Like the MU, BASCA has a clearly stated role in terms of representing the interests of its members. In the above extract there is an explicitly stated concern for 'questions of copyright protection in the digital age' and an expressed commitment to engaging with relevant parties on behalf of its members with regards such issues. Surprisingly however, only one instance of BASCA independently engaging in debates about file-sharing on its own terms could be found. This was an article written by Cliff Jones, a record producer and 'executive member' of BASCA, which appeared on *The Times Online*. The article entitled 'Illegal Downloading Makes us all Poorer' suggests that file-sharers 'will ultimately reduce the quality and amount of good music they get', but offers no substantive argument or explanation as to why this *will* be the case (Jones, 2008: Online).

The suggestion that file-sharing has negative consequences for the future of music production is the prominent theme of Jones' article. The article ends by quoting David Ferguson, a fellow of

BASCA, who says "the question I ask of anyone who abuses copyright, steals tracks and samples or downloads music illegally is, 'how rubbish do you want your music to be in future?' [...] Everyone will end up poorer if things carry on this way" (Ferguson quoted by Jones, 2008: Online). Again there is no explanation of why this might be the case, but as a repetition of an argument made throughout the industry by various parties, we can assume that this argument is based on the proposition that file-sharing reduces sales which translates into reduced income. The prospect of reduced income from sales in turn reduces the incentive and opportunity to produce music. Copyright laws, in other words, must be upheld and respected, to ensure that people continue to receive financial reward, and thus continue to create. We are already familiar with the problems of this argument.

Ferguson is also quoted as saying 'the problem [with file-sharing] is that it is seen as a 'victimless crime' (ibid.). Neither he nor Jones says who the victims of copyright infringement (which is not as he suggests a *criminal* offence) actually are however. And interestingly, Jones accuses musicians of contributing to 'the sense of moral ambiguity' which surrounds file-sharing. This is presumably an implicit reference to the actions of those creators who have given their music away for free online, advocated file-sharing, or have criticised the governments proposed legislative response to file-sharing (these instances of dissent are discussed further in the next chapter). Despite this brief engagement in the public debate, there is no evidence of BASCA having engaged with policy-makers on the

issue of file-sharing on its own terms via independent submission to formal consultations. BASCA, like the MU, has participated in various coalitions and alliances such as *UK Music*, who espouse strong anti-file-sharing and pro-legislation messages however. No evidence can be found of these creator centred organisations deviating from the recording industry line when it comes to the issue of file-sharing, and in the main, the arguments and language to be found in the engagements of these organisations closely mirrors that of other industry organisations, including that of the BPI.

This sense of unity that emerges from all of the above, and the notion that creator interests are synonymous with those of recording companies, seems at odds with the notion of a fundamental tension between creator and other actors within the industry that is frequently highlighted in many existing accounts. We may well ask whether such tensions do indeed exist or whether this notion of a fundamental tension is simply the romanticised view of a critical industry audience. The latter may be true to some extent, but the idea that the interests of creators are synonymous with those of the wider industry seems like an untenable notion, based on what we saw in chapter 2, what will be discussed in the next chapter, and on the basis of what both the MU and BASCA have argued elsewhere.

The Need to Protect Creators from Recording Companies

Away from debates about online music file-sharing, creator organisations have over the last decade been drawing increasing attention to the disadvantaged position of music creators within

existing socio-economic arrangements for the commercial production and circulation of music. This includes the MU and BASCA among others. On 26 October 2006, the MU and BASCA announced the publication of a jointly commissioned report into 'the status of music creators in the UK's growing creative economy' (MU, 2006: Online). The 64 page report written by Andrew Missingham and entitled 'Status Quo...? An Exploration of the Status of Composers, Performers and Songwriters in the UK's Creative Economy' (Missingham, 2006) highlights the distinctly disadvantaged position that music creators occupy within existing socio-economic arrangements.

The report makes a number of important assertions about the status of music creators in society and most importantly in relation to the 'creative economy'. Firstly, in a manner typical of many of the texts analysed in this thesis, the report promotes the value of creative industries to the UK economy, a process which involves a high level of intertextuality and interdiscursivity. Consider the following extract for instance:

> 'It is the government's expressed aim to "make the UK the world's creative hub". Our creative industries are currently growing at more than twice the rate of the rest of our economy, and are one of the UK's economic success stories. Contributing £11.4 billion to the UK's balance of trade, they constitute a greater proportion of GDP than in any other country in the world. In the UK, they are larger than the construction industry, insurance, pensions, or the pharmaceutical sector. However, other countries are increasingly developing their own creative economies. In this growing global market, we have to do all we can to maintain our competitive advantage.
>
> (Missingham, 2006: 4)

In promoting the value of the creative industries there is the usual drawing on quantitative evidence, but there is also the drawing on New Labour's discourse of ensuring and building competitiveness in the global KBE. The threat from 'other countries' to the UK's competitiveness is a major theme in the report. For example, later in the same section Missingham writes:

> 'We live in a global marketplace where many countries are increasingly recognising the value of their creative offer and are exploring similar methods of content exploitation [...]. Competitor economies view the quality of artistic content as crucial to the development of their creative industries, and on their wider economies in the long term.
>
> (Missingham, 2006: 5)

At this point Missingham quotes the policy documents of these competitor economies as evidence of the threat from other countries. This threat forms the basis of the reports call to the UK Government to not only support the creative industries generally through policy, but to give increasing support to the music industry in particular, and to creators especially as the providers of the 'raw material' for this industry. Missingham writes that,

> '[...] current trends suggest music will form an increasingly significant component of our economy. To compete in the global market, the creators of the UK's music content that will power these industries (our musicians, songwriters and composers) will have to be the worlds best. [...] music creators have the potential to contribute to the growth of the economy like never before. However, if we are to be "the world's creative hub" we need a legislative, tax and benefit system that encourages creativity, and creative individuals.'

(Missingham, 2006: 7-8)

Missingham's contention is that music creators are in fact not adequately supported by the existing legislative environment:

> [...] existing legislation, taxation and social security provision have not considered the status of artists as a distinct group, the issues particular to their working practices have been approached in an ad hoc manner. All too often, this puts the artist at an unfair disadvantage [...].'
>
> (Missingham, 2006: 6)

The highlighting of the artists 'disadvantaged position' here especially in terms of their weak bargaining and economic position as outlined above, is evident throughout the report. The theme is particularly evident in David Fergusson's (BASCA's chief executive) introduction to the report, when he calls on the Government and other key agencies to 'address the key issues which affect the current plight of the majority of composers & songwriters' (2006: ii). He goes on to highlight that less than 1 in 100 professional artists are able to earn a full-time living from their creativity (ibid.). On the specific nature of creators' disadvantaged position within existing socio-economic arrangements, Missingham stresses that:

> 'Despite being crucial to our creative economy, artists' working conditions can put them at a disadvantage to workers in other sectors. Reasons for this include:
>
> - A large number of employers, sporadic employment with inevitable concomitant unemployment.
> - Poor and unpredictable income levels (on the basis of often irregular salaries, fees, royalties and resale rights etc.) plus the

necessity of devoting unpaid time to research and personal development.

- Poor individual bargaining power.
- Combining artistic work with another waged job, in order to survive financially.
- An unpredictable market place and the associated risks of success and hazards linked to the effects of fashion.
- Unavoidable mobility, linked to isolation giving a poor bargaining position.
- Dependence on intermediaries of various kinds such as agencies, publishers, producers and others.

(Missingham, 2006: 6)

Missingham subsequently makes 25 policy and practice recommendations aimed at 'improving the status of the artist, so they can better contribute to the UK's cultural and economic wealth' (ibid.: 8). Besides the call to view creators as a distinct and separate category of workers and to take account of the unique disadvantages and challenges that they face, Missingham specifically recommends that 'artists are included from the start in every decision making process that either has a cultural dimension, or affects the cultural sector' (2006: 2). The involvement of creators in the policy process is necessary according to Missingham since it 'can enhance the chances of cultural and creative projects succeeding. This may seem self evident, but unfortunately in the UK it still rarely happens' (2006: 13). With regards policy making in this area, Missingham writes that:

> '[...] most other creative industries initiatives share an emphasis upon facilitating the exploitation of IP [...], as opposed to focussing upon how to encourage the creation of intellectual property which will be

> the raw material of any existing or emerging business model. [...] considering artists as a separate entity [...] will increase understanding of their conditions, their social and economic contribution and thus increase the likelihood of their contribution to the UK's creative economy being maximised [...]. The danger of taking our creative output for granted and assuming that the UK will have a never-ending flow of creative, artistic output, without a coordinated approach to how we support the individuals who create this content, cannot be overstated. [...] concentrating attention on better exploitation of our creative output will stunt economic growth in this sector.
>
> (Missingham, 2006: 4-5)

This is a point that the MU also made forcefully in their independent response to the *Gowers Review of Intellectual Property* (HM Treasury, 2006). In their submission to the *Gowers Review,* the MU stated that they were:

> '[...] concerned that the points raised in the discussion paper appear to place an emphasis on the opinions of corporate bodies [...]. We would contend that as much attention should be given to the position of the original creators whose work is subject to commercial exploitation by these corporate interests.'
>
> (MU, 2006a: 1)

There is a strong emphasis on the need to consider the interests and viewpoints of music creators as a distinct set of actors in these documents then, a theme which is echoed in the *Creators Rights Alliance's* response to the *Gowers Review* also (MU and BASCA are both members of the CRA). It is significant that when it comes to the issue of file-sharing specifically however, any notion of creator interests being distinct from those of corporate bodies is absent in the engagements of these

organisations. This appears to be further evidence of the way that in debates about file-sharing the constituent elements of the music industry have seemingly been drawn together, and any notion of tensions within has been displaced.

Another important theme which emerges from texts produced by these creators' organisations when they are not engaging in the current debates about file-sharing is the issue of contractual relations between creators and exploiters of music as IP. Several of the recommendations made by Missingham in his 'Status Quo' report relate to the nature of contractual arrangements in the modern music industry. The major issue is the way in which unsuspecting and powerless creators are separated from the rights in the IP that they create by the exploiters of IP. Whilst Missingham, like the MU, BASCA and other creator organisations, is adamant that copyright law is valuable to creators in protecting their rights to receive financial compensation, they are keen to draw attention to the problematic nature of the way in which these rights are articulated in a commercial reality:

> *'De jure,* the Copyright Design and Patents Act protects artists by assigning to them an automatic right of ownership once a work has been created and recorded [...]. In principle this right of ownership, backed up with the force of law, should give artists the ability to secure reasonable income from their work and the ability to allow others to exploit the work on their behalf [...]. During the limited life of copyright, the force of the law should also give artists the ability to seek reasonable redress if these rights are infringed.
>
> [...] the situation *de facto* does not work like this. The CDPA regards this right of ownership of artistic work as no different to ownership of

> any other property. They're viewed in the same way as owning a car or a sofa. As such, this right of ownership can be sold on, transferring (or 'assigning') the rights of ownership to another party, either in part or completely. What is more, as long as this is contractual this assignment is binding. Case law has shown that this contract does not even need to be written.
>
> Whether by way of 'standard' contracts, total rights assignment for a one-off fee, the use of opaque language to disguise the effect of the transfer (for instance describing rights assignment as a 'license') or by making assignment of rights a condition for being paid, artists are regularly being separated from their rights [...].
>
> This is a problem because it does not take the law where it was intended to go, and is unhelpful to the longer term health of our creative economy. A major reason for copyright protection [...], is to incentivise the creation of this intellectual property. As the CDPA currently stands, this facet of the law is weak and subject to abuse.'
>
> (Missingham, 2006: 28)

Crucially, Missingham subsequently recommends that the ability to assign copyrights be removed, in order to help protect creators' rights. Missingham also draws attention to the 'rights grab' approach of recording companies who are keen to secure the rights to financial compensation for uses of IP which have not yet come into being, and also the way in which IP owned by recording companies lies dormant when the original creator could be making use of it had they not assigned the rights away.

This critique of contractual relation between creators and recording companies has a long history of course and attention has been brought to the problematic aspects of these contracts by a range of actors and organisations (see for instance Albini 1998;

FMC, 2001; Hesmondhalgh, 2007). It is significant then that again, the internal tensions between different actors within the industry that these critiques bring light to, are entirely absent in the industry's engagements in the file-sharing debate, even among those industry organisations such as the MU and BASCA who have drawn attention to these tensions elsewhere.

Whilst Missingham's 'Status Quo' report does not represent a direct engagement in the public and policy debates about file-sharing, he does draw attention to the issue in the context of better protecting artists in the changing technological environment. Again, the changing technological environment is used as a basis upon which to stress the importance of creating a legislative environment in which creators may prosper. Missingham writes that:

> We are currently living in an age of technological change so rapid, that it constitutes a revolution. In this revolution new markets and opportunities are radically reconfiguring relationships between creators, producers and consumers. What our creative landscape will look like in 10 years time can only be guessed at. A failure to be prepared for emerging or unforeseen changes will be a significant threat to the long term health of our creative economy. [...] one of the only predictions that we can make with any certainty is that artists will play a key role in tomorrow's creative economy [...].
>
> (Missingham, 2006: 4)

In this case, the changing technological environment is framed as a threat to the UK's creative economy in the same way as it has been elsewhere. But technological advances are also framed as a threat to creators specifically as the 'drivers' of that

economy. In this context the report talks of the way in which the value of *artist's work* has been 'eroded' by illegal downloading (ibid: 16). Here we see arguments about file-sharing depriving creators of income rehearsed: 'digital means of copying, altering and distributing intellectual property [...] make it easier than ever to copy music illegally [...]. This deprives the creator and rights owner of income' (2006: 15). Under the heading 'Safeguarding our Intellectual Property' the report simply recommends that 'the government reviews the methods of enforcement available for IP infringement' (ibid: 3).

In an important precursor to subsequent debates, the report also briefly draws attention to the role of ISPs in combating file-sharing and creating alternative business models in the new technological environment (ibid.: 35-36). The report talks of a 'regulatory no mans land' (ibid: 35) and the need to 'bring ISPs into the official value chain which links creators to consumers' (ibid: 36). Perhaps most importantly however, the report specifically advocates making 'unlicensed intermediaries – rather than consumers – the target of copyright enforcement actions' (ibid: 36). This is significant since it goes against one of the main facets of the governments proposed legislative measures that the recording industry so vehemently backed. Both the MU and BASCA, the commissioner's of this report, subsequently gave their full backing to the government's proposed legislative measures.

Despite these brief mentions of file-sharing, the focus of Missingham's important 'Status Quo' report is very much on improving the status and position of creators within existing

socio-economic arrangements for the commercial production and circulation of music. This objective is clearly and precisely framed within the context of international competitiveness in the KBE, something which Missingham suggests creators will play a central role in ensuring, provided they can be better supported by the legislative environment. In concluding the report Missingham writes that:

> '[...] the accepted prognosis is that the sector peopled by artists, the creative industries, will continue to form an increasing proportion of our economy of the future.[...] politicians and policy makers will have to work harder to understand the sector and its concerns. When they do, we find that things change for the better [...]. However, this careful consideration happens all too infrequently. We risk losing international competitive advantage that we have built in this sector if we do not act now to improve the status of artists in the UK [...]. The UK will suffer if we don't get serious about our approach to the creative economy, not least by addressing the specific concerns of the individuals who create the IP which will power this economy.
>
> (Missingham, 2006: 51)

The framing of the concern for improving the lot of creators within the discourse of ensuring competitiveness in the global KBE was undoubtedly a conscious rhetorical strategy. Missingham's Status Quo report seems to have been largely ignored however, as a concern for dealing with file-sharing as a direct threat to the economics of the recording and film industries has taken priority. The prioritisation of file-sharing in the policy arena over issues such as contractual arrangements within the industry seemingly reflects the lobbying power of those corporate interests who stand to lose most as their

traditional business models become increasingly outmoded in the digital age. Organisations such as the MU and BASCA currently seem to be toeing the anti-file-sharing, pro-legislation industry line, temporarily at least. This is surprising given that the socio-economic arrangements that this anti-file-sharing position ultimately functions to preserve, are socio-economic arrangements that these organisations have themselves sought to problematise.

Conclusion

This chapter has presented an exploration and analysis of the discursive activities of two organisations that were explicitly formed to promote and protect the interests of creators as a distinct group of actors within the recording and broader music industry. The analysis has shown that these organisations have been keen to draw attention to the problematic nature of contractual relations between creators and other organisations in the industry on the one hand, and to the relatively disadvantaged position of creators within existing socio-economic arrangements for the production and circulation of music. The apparent need to 'protect' the interests of creators when operating in commercial contexts forms an important part of these organisations' agendas and reason for being it seems. This depiction of creators as a group of actors with distinct interests that often come into conflict with other actors in the industry is clearly at odds with the discourse of the BPI as representative of recording companies.

However, these organisations also draw attention to the threat of technological advances and file-sharing for music creators. Technological advance has been framed as a threat to employment opportunities, and has also been framed as a threat to the ability for creators to make money from their activities. These organisations' apparent disdain for technological advance seemingly brings them into line within the anti file-sharing, pro-legislation stance of recording companies. The interests of creators in the file-sharing debate seemingly become synonymous with those of recording companies in this case. Any tensions which might exist between creators and other actors within the industry are thus de-prioritised in the campaign to address file-sharing as a common threat.

On the one hand, this apparent coalescing of interests might reflect the power of corporate interests to set the lobbying agenda, leading to a de-prioritising of tensions such as those expressed by Missingham and others. On the other hand, we should consider that maintaining a set of socio-economic arrangements that are perceived to be under threat may well be in the collective interest if those arrangements are understood to be in any way mutually beneficial, as the BPI has asserted. An agreement among both recording companies and creators, that file-sharing is a threat that needs to be dealt with as a priority, is certainly something that seems to be emerging from the analysis of representative organisations. The same arguments about file-sharing, and the same rhetorical devices and strategies, can be found reproduced by the various organisations independently, as well as through wider coalitions and alliances.

But we may well ask whether the interests and views of creators are being adequately represented by these organisations at all. An apparent dissatisfaction among creators with the way in which their interests have been officially represented in the debates about file-sharing *is* evident and this is the subject of the next chapter. In the next chapter attention is brought to some dissenting voices among creators. Attention is also brought to the formation of a new 'artist led' alliance known as the *Featured Artist Coalition* (FAC). The formation of this organisation apparently represents an attempt to unite music performers and authors as a common interest group, whilst retaining an important sense of distinctness from other actors and interests in the industry, especially recording companies. This discourse of FAC and their engagements in the file-sharing debate are discussed alongside some lone voices of dissent. The opinions and interests of unsigned creators are considered also. All this reveals a diversity of opinion and a sense of ambiguity and ambivalence with regards file-sharing and the legislative response to it among music creators.

CHAPTER 7

CREATOR DISSENT AND RESISTANCE: CREATORS SPEAK FOR THEMSELVES?

Introduction

In the previous chapter we saw how organisations claiming to represent the interests of music creators have adopted a relatively strong anti-file-sharing and pro-legislation position. These organisations depicted file-sharing as a treat to creators in terms their ability to make a living making music and in terms of employment opportunities in particular. They expressed strong support for the Government's legislative response to the perceived problem of file-sharing. In doing so these organisations seemingly aligned themselves and the interests of those creators who they claim to represent with the interests and arguments of recording companies. Chapter 5 discussed the way in which the BPI attempted to affect legislative action on behalf of recording companies. This was understood as an attempt to protect their profit accumulation strategies from the challenges associated with the development and appropriation of new technical capacities. In chapter 2, these profit accumulation strategies were shown to involve the economic exploitation creators, thus in backing the New Labour's anti-file-sharing legislation, creator organisations such as the MU and BASCA backed legislative

actions that will function to sustain a socio-economic system that is evidently problematic for their creator members.

The response to file-sharing displayed by these creator organisations seems somewhat surprising given that these organisations have themselves sought to draw attention to the problematic nature of relations between creators and recording companies that current profit accumulation strategies involve. These organisations backed a legislative response that functions to protect and preserve these very same strategies. They claimed that file-sharing threatened the opportunities that exist for creators to make a living making music, and that file-sharing represented a disregard for the rights that creators rely upon on. In this case the UK government's response to file-sharing may help maintain a system that whilst placing creators in position of economic exploitation, does provide legit opportunities for creators to achieve success. These opportunities need to be protected from technological threats including file-sharing they argued.

This chapter draws attention to some alternative voices, opinions and understandings among creators. Some resistance and opposition to recording companies' litigious responses to file-sharing, and to the UK Government's proposed anti-file-sharing legislation, to be found among music creators is highlighted and discussed. Attention is also drawn to arguments and propositions about the potentially positive implications and applications of file-sharing for creators. In the second part of the chapter attention is drawn to the formation of a new creator-led organisation that voiced strong opposition to the Government's

proposed legislative response to file-sharing. In doing so this organisation clearly seeks to distinguish the interests of creators from those of recording companies. Some concerns about the potentially bias nature of this organisation are acknowledged however, and it is recognised that this organisation was ultimately unsuccessful in resisting legislative action despite their active participation in the relevant debates and formal consultations. It is argued that this creator-led organisation lacked the necessary capacity for discursive power to influence and direct policy decisions in the way that recording companies were apparently able to.

Rebellious Tones amongst Established Creators

Before going on to explore the perspectives and opinions of some unsigned and emerging creators, it is worth briefly exploring some of the sentiments that more established creators have expressed with regards file-sharing and the future of the music industry. Here we see how some established creators are actually celebrating the disruption that file-sharing might eventually bring about. Steve Albini made the following comments in an interview for the NME in 2010 for instance:

> "I'm actually quite excited seeing the conventional music industry collapse under its own weight, as they keep doing these desperate things like suing their fans. Seeing them shit the bed like that is actually quite satisfying"
>
> (Albini, quoted in NME, 4 April 2009: 30)

Steve Albini is admittedly 'excited' about the prospect of the conventional music industry collapsing under pressure from file-

sharing. Likewise, in reflecting on the implications of the Internet for the future of music in 2002, David Bowie, made the following comments to a *New York Times* reporter;

> "I don't even know why I would want to be on a label in a few years, because I don't think it's going to work by labels and by distribution systems in the same way. The absolute transformation of everything that we ever thought about music will take place within ten years, and nothing is going to be able to stop it. I see absolutely no point in pretending that it's not going to happen. I'm fully confident that copyright, for instance, will no longer exist in ten years, and authorship and intellectual property is in for such a bashing. Music itself is going to become like running water or electricity. So it's like, just take advantage of these last few years because none of this is ever going to happen again. You'd better be prepared for doing a lot of touring because that's really the only unique situation that's going to be left. It's terribly exciting. But on the other hand it doesn't matter if you think it's exciting or not; it's what's going to happen.'
>
> (Bowie, quoted by Parales, 2002: 30)

Like Albini, Bowie expresses excitement at the prospect of an outright transformation of the established music industry. Bowie makes some specific propositions however. He firstly queries the validity of engaging with recording companies as a creator. This reflects a proposition - about the potential of the internet in enabling creators to operate independently from recording companies - that has become relatively common place in discourse surrounding music and the internet. Within academic discourse this notion discussed in relation to the concept of 'disintermediation', which simply refers to the cutting out of middle layers in mediating processes. In the case of the recording and broader music industry, it relates to the bypassing

of established mechanisms and institutions including, and most especially, recording companies in the commercial production of music (see Janson and Mansell, 1998). As Courtney Love has suggested, 'record companies stand between artists and their fans. We signed terrible deals with them because they controlled our access to the public' (Love, 2000: Online). This is a situation that the internet promises to change according to some however, including Courtney Love. Love posits that 'in a world of total connectivity, record companies lose that control':

> 'Record companies controlled the promotion and marketing; only they had the ability to get lots of radio play, and get records into all the big chain stores. That power put them above both the artists and the audience. They own the plantation. Being the gatekeeper was the most profitable place to be, but now were in a world half without gates. The internet allows artists to communicate directly with their audiences; we don't have to depend solely on an inefficient system where the record company promotes our records to radio, press or retail and then sits back and hopes [...].Now artists have options. We don't have to work with major labels anymore, because the digital economy is creating new ways to distribute and market music. And the free ones amongst us aren't going to. That means the slave class, which I represent, has to find ways to get out of our deals [...]. I'm leaving the major label system and there are hundreds of artists who are going to follow me.'
>
> (Love, 2000: Online)

As Neil Strauss suggested in a piece for *The Guardian* back in 1999, there are two 'great pop dreams'. The first according to Strauss is to get signed to a major label, 'but the dream, for those few who actually get to live it, has usually turned into a nightmare. That's when the next dream kicks in. This is the

dream of independence, of breaking away from the label and going it alone' (Strauss, 1999: 114). It is with regards this second 'great pop dream' that the internet is thought to have potentially valuable affordances for creators. Whereas traditionally a creator has needed to engage with recording companies to stand even the remotest chance of 'making it', the internet affords opportunities to do things differently and without the help of recording companies.

This notion of 'disintermediation' became increasingly popular as a limited number of established creators have left the major label system over the last few years, and begun experimenting with the opportunities for independence that new digital and networking capacities afford. This group of creators includes such established names as *Simply Red*, *Prince*, and *Radiohead* for instance. This limited group of established creators have demonstrated a range of approaches to monetising their activities, but crucially, each left recording companies in order to take advantage of the distribution opportunities afforded by new technical capacities. In 2001 *Simply Red* left their recording company and set up their own website in order to promote and sell their work independently and direct to fans. Such actions have been replicated more recently by the band *Radiohead* who in 2007 released their album, 'In Rainbows' independently through their own website as a pay-what-you-like download. *Radiohead* also sold vinyl and deluxe box set editions of the recording via their website, and licensed distribution of the recording in standard CD format to an independent physical distribution company. *Prince* meanwhile decided to experiment

with an entirely different business model and sold the exclusive right to distribute his new album as a font cover give-away with the *Mail on Sunday*. He repeated this move in 2010 with the *Daily Mirror*. In each of these cases, these creators were able to fund their own recording projects, retain the rights of ownership of their work, and as such become the main beneficiaries of the income generated through the articulation of intellectual property rights.

Of course, the ability of these creators to successfully and independently monetise their activities may be in large part due to the fact that they are established names, have a large and loyal following, and could be relatively confident that people would actively seek out and buy their music. They also had the resources to independently manage the whole operation from recording to promotion and setting up shop online. In the case of *Prince*, only because a national newspaper felt confident that giving away his album would increase sales of their newspaper was he able attract their interests and sell the rights to do so. But again, only because he was in a position to fund his own recording and thus retain copyright in his work was he able to do so. That these acts are able to do these things reflects the fact that these creators have benefited from years of investment from and effective marketing by the recording companies they were previously signed to. We must ask to what extent relatively unknown bands have the resources to produce a recording, set up a website that allowed them to sell their work, and attract enough fans to their website to generate a profitable financial income without the help of recording companies.

There have been examples of rather less established acts choosing to pursue similar strategies also however. During the period 2005-2010 a number of creators demonstrated the apparent potential of the internet in enabling creators to achieve some wider popularity and recognition without the help of traditional recording company promotion and marketing campaigns. *Arctic Monkeys* and *Enter Shikari* are two bands in particular to have been frequently cited by commentators and analysts as cases illustrative of the way in which the internet may help creators build a substantial following without the help of recording companies (see David, 2010 for instance).

In both of these cases, it is said that the free distribution and online circulation of demo recordings, coupled with both the bands 'and their fans' use of online social networking capacitates allowed these creators to quickly build a substantial fan-base and 'buzz'. With increasing attention from audiences, promoters and the media, these bands were able to tour relatively extensively across the UK and easily sell out live venues. These two bands differ in the way in which they attempted to monetise their growing popularity however. Whereas *Enter Shikari* set up their own independent recording label, The *Arctic Monkeys* eventually signed with independent recording label *Domino*, who were ultimately able to build upon the substantial following the band had already generated through online word of mouth. The eventual submission to the established music industry model is revealing and is a theme that ultimately came up in interviews with unsigned creators conducted as part of this research (see below).

The other notion that Bowie proposes above is that the very concept of intellectual property is to be abandoned in the age of free distribution. Some creators have apparently abandoned the idea of selling music altogether - *The Charlatans* proceeded to offer recorded music for free online in 2007 for instance. But whilst individual creators may indeed decide to give their music away for free and relay on alternative means of generating income, such as through live performance, merchandising and sponsorship/brand tie-ins, a total abandonment of intellectual property rights as a means of monetising the production of music remains highly unlikely of course. It is especially unlikely given the emphasis which Governments are now placing on legal IP frameworks and the industries that rely upon them, as reflected by New Labour's legislative response to file-sharing. And whilst *some more established* creators might be adopting or at least promoting a more relaxed attitude towards the free distribution and sharing of their music, it is not clear whether this is the case among less established and unsigned creators. It is not clear that these creators may effectively bypass recording companies and still achieve some success as a creator making a living making music.

If emerging creators do think they can find success without the help of recording companies, then what do they envisage that their business models would look like? Will they still rely on the production of recordings as commodities, and would this in turn require the same kind of copyright laws and their enforcement that recording companies have pushed for, but that they would be the main beneficiaries of such rights instead of investors? In

which case, what will be the attitudes of those creators attempting to go it alone towards file-sharing and New Labour's proposed legislative response? Or do emerging creators envisage a kind of post-copyright world, in which the production of recorded music represents something more akin to advertising, and that revenue would be generated via other activities. In which case we might again ask, what would be the attitudes of these aspiring creators with regards file-sharing and the various responses to it that we have observed to date? The next section explores the expressed attitudes, beliefs and understandings of some unsigned and aspiring creators in relation to some of these questions.

Unsigned and Aspiring Creators on the Internet, File-Sharing and the Future of Music

As part of the research a number of interviews (n=15) were carried out with unsigned and aspiring music creators (see Chapter 3 for methodological detail). This represented an attempt to answer some of the questions raised above about the attitudes and understandings of emerging creators with regards file-sharing, its implications, and the UK Government's proposed legislative response. It also allowed one to compare the expressed attitudes and understandings of creators themselves with the position articulated on their behalf by representative organisation such as the MU and BASCA. In reflecting upon what these creators had to say about file-sharing, its implications for their pursuit of economic success as music creators, and about recording company and government

responses to file-sharing, a number of themes emerge and can be presented here as key findings for further illustration and discussion below.

Contrary to what the discourse of the MU suggested about the interests of creators (with regards file-sharing and its implications for their careers) the creators spoken to as part of this research suggested that the sharing of their music online was something to be embraced. They suggested that the sharing of their music would actually be celebrated as representing a certain kind of artistic success in the form of recognition among wider audiences. They also suggested that the file-sharing of their music could have positive implications for their pursuit of a career as a creator. Creators argued that attempting to restrict the sharing of music and punish those that engage in such practices was on the one hand pointless since sharing was so deeply embedded in contemporary music culture. They also suggested that attempting to restrict or objecting to the sharing of their music would be illogical and potentially damaging as a creator. Creators objected strongly to attempts to restrict file-sharing as such.

Creators acknowledged that file-sharing represents a major challenge for recording companies. They felt that recording companies were failing to accept that the wide and free circulation of recorded music as a central part of contemporary music culture, and as something that should ultimately be embraced. Creators asserted that recording companies still had an important role to play in their careers however, and that creators would ultimately rely upon their input in the pursuit of

economic success. They suggested that recording companies must accept the free circulation of music amongst audiences however, and should be looking to find ways to exploit the free circulation of music online through developing and prioritising alternative forms of income generation with the creators they invest in. Ultimately, creators felt that recording companies' attempts to restrict the sharing of music online, especially through the punishment of individual consumers, was not in the best interests of creators and should be avoided. This is clearly not the position that was articulated on their behalf by organisations such as the MU however.

With regards the implications of file-sharing for creators then, interviewees suggested that whilst recording companies might face economic challenges, this was a consequence of their reliance on revenue from sales in a culture in which the free circulation of music was naturally embedded. One creator suggested for instance, that:

> "Labels are still trying to sell music like it was the only way people can get hold of it, you know, and don't seem to want to accept that people can get anything they want for free now. People have always shared music on cassettes or whatever, but it's just easier to find and get the music you want now, so people are doing it more I think. Labels need to just accept it and think about what else they can do rather than thinking they can carry on like they have been. Like things change, you know."
>
> (Interviewee 7, 3 September 2008)

Creators generally believed that recording companies' traditional strategy of relying on sales of recorded music was becoming increasingly outmoded and, as we will see further below, needed

to change if they were be successful. But whilst creators often acknowledged the economic difficulties that recording companies face because of file-sharing, they did not apparently believe that file-sharing had any negative economic consequences for most creators themselves. Interviewee's suggested firstly that those creators who were signed to recording companies receive little income from sales anyway, thus file-sharing was economically inconsequential to them. For instance, a creator signed to a relatively large independent label said:

> "It's [file-sharing] not really something I feel all that worried about to be honest, you know, since it doesn't really affect me, or a band in our position I mean. We never would have seen any real money from record sales anyway. We don't really sell enough music I think. We would never get any money from the label off the back of record sales. I mean... We got our advance from the label, so that's cool you know, but it's them that might suffer from file-sharing I think, not us. You know, because the label might struggle to see a return on their investment in us and the record, and I suppose that's bad for them [...]. I don't really feel that bad about it to be honest, because it doesn't really affect me financially."
>
> (Interviewee 2, 15 May 2008)

Here we see further evidence and an awareness of those same economically problematic contractual relations that others have drawn attention to. Upon reflection on their financial arrangements with the label, this creator subsequently rejects the idea that file-sharing has any economic implications for them. Likewise, when questioned about the potential consequence of file-sharing on their career a second creator signed to an independent label creator suggested that:

> "as you know a signed 'artist', I guess it has no real consequences as such. I mean financially it makes no difference to me [...]. Financially speaking, it's not really something I've worried about or thought to be a particularly big thing you know? But on the other hand you know it's great that people want to hear our music however they do it, so it's kind of flattering at the same time."
>
> (Interviewee 11, 5 November 2008)

This individual is again unconcerned about the economic consequences of file-sharing for them as a 'signed' creator, again indicating the problematic nature of their contractual relations with their recording company. The latter admission that people wanting to access their music by whatever means is 'flattering' reflects the sentiments expressed by those *unsigned* creators interviewed as part of the research. For example, one unsigned creator suggested that:

> "[...] a band in our scenario would be like, totally into file-sharing. I mean, the idea of people getting on to your music and then liking it and then wanting to pass it on and share it, like that would help us loads [...]. Any file-sharing for us has got to be seen as positive really, because it means people are listening to us [...]. It's beneficial to be honest because, obviously we want more people to know about us so people getting it off other people then I'm totally fine with that. If someone's gone out of their way to have a look at your stuff and downloaded it, then you've just got to see it as cool."
>
> (Interviewee 13, 25 May 2008)

This creator then, file-sharing is construed as wholly positive; it indicates recognition of their artistic talent and quality. Similar sentiments were expressed by other unsigned creators spoken to. For instance, one creator spoke of how putting your music 'out

there' and observing any related traffic would be a sign that 'people were responding to what you were doing' (Interviewee 12, 24 August 2008). Having your music shared by fans was universally considered complementary by the creators spoken to, and as something that should be celebrated by creators as a recognition or confirmation of their talents as creators.

File-sharing was also discussed in terms of the positive implications it could have for unsigned creators' pursuit of economic success. File-sharing, and other online distribution methods were seen as a way to effectively generate interest in the band - interest that could be converted into alternative forms of income, such as income from ticket sales, merchandising and sales of physical product. Rather than representing an economic harm then, file-sharing was being associated with subsequent economic gain for unsigned, independent creators.

But whilst the free circulation of music was being associated with independent income generation by some, for most, economic success was not something that could be achieved entirely independently. It was in this regard that creators pointed to the role that recording companies would still play in their careers. For instance, one creator asserted that;

> 'it's all very well struggling along on your own, but if a label comes along and offers you a contract then you'd be stupid to say no [...]. They can do things that you can't do on your own [...]. I mean file-sharing's a winner in terms of getting your name out there and attracting attention and getting you set up to some extent, but the goal for us will always be to get a deal [...]. I think file-sharing and

> free distribution is a way to get things moving [...] but unless you've got a heap of cash its just not going to happen, is it?'
>
> (Interviewee 3, 2 June 2008)

Many creators discussed the *importance* of having what one called an 'online presence' (Interviewee 5, 17 July 2008) and of 'having you're music out there for people to get on to' (ibid.). When questioned about the importance of this online presence, creators suggested that, on the one hand, attracting as much attention as possible and 'getting people on board', was what it was 'all about' (Interviewee 4, 6 June 2008). But they also acknowledged that the more interest they could generate the more chance they would have of being noticed by a recording company.

The creators spoken to as part of the research thus saw recording companies as key to achieving long term economic success. Creators were adamant that they would ultimately be unable to 'make it big' on their own (Interviewee, 3, 2 June 2008). Whilst they all saw that file-sharing and the free online circulation of music could help creators gain recognition and popularity amongst wider audiences, they all acknowledged that achieving the kind of economic success that would sustain them as full-time music creators would require the input of traditional recording companies. Translating popularity and the artistic success that this represented, into economic success, was not something that creators saw themselves as in a position to do in other words. It was posited that recording companies could simply do things that creators could not do independently, and

that this was mainly due to the resources (money, expertise, contacts) that recording companies had at their disposal.

The prospect of attracting a label thus still appears to loom large in creators' minds and to a large extent this traditional notion of an established route to success informs their practice, in a similar way to that which Cohen (1991) observed more than twenty years ago. This is interesting given the amount of discussion that has been devoted to the notion of a radical transformation in which the established music industry systems would be completely outmoded. Despite still seeking to attract the investment of recording companies, aspiring creators suggested that the nature of recording companies' practices and business models must ultimately change to suit the nature of music culture in the digital age.

They asserted that the free circulation of music among audiences and fans online was something that must be accepted as a central part of contemporary music culture. Creators asserted that file-sharing was not something that could be restricted and that recording companies 'need to move on, and find different ways of making money with creators' (Interviewee 8, 3 September 2008). Creators suggested that there would always be people willing to pay for experiences that could not be shared so easily online. For instance, creators talked of special edition releases in physical format, along with income from live performance, merchandising, and brand tie-ins. They suggested that these represented important revenue streams that recording companies, in conjunction with creators, must

increasingly look to exploit, and that they move away from music sales as a core revenue stream.

Creators acknowledged that accepting file-sharing and 'moving on' was not what recording companies were in fact looking to do however. They were highly critical of recording companies' attempts to sue music fans and of threats to disconnect people from the Internet for sharing music. One creator asserted that:

> "Cutting people of the internet clearly isn't going to work [...]. For a start it's not going to stop people file-sharing. I mean, what's wrong with people sharing music anyway. If they don't want to buy it it's up to them. Who cares? [...] There's plenty of people who are going to fork out a 'tenner' on a CD if they want [...]. I'm not into kicking people up the arse for liking music. Why would you be?"
>
> (Interviewee 15, 26 February 2009)

With regards such responses to file-sharing the attitudes and opinions of the creators spoken to as part of this research clearly diverged from those expressed by their representative organisations such as the MU. Creators asserted that 'we' should not be seeking to restrict of what they saw as a key aspect of contemporary music culture – the sharing of music. As such, they strongly objected to the idea of punishing fans for doing so. They were generally adamant that the sharing of their music was something that had to be embraced and celebrated, and that to do otherwise would be nonsensical from the point of view of creators. Another creator interviewed as part of this research gave a much more detailed account of his attitudes towards file-sharing, the responses to it they had observed, and what they saw as an alternative approach:

"File-sharing is just a way for people to discover new music. People have always done it and always will do it. I don't think you *can* stop people doing it. But I mean... I don't think as an artist you necessarily want to stop people sharing your music, whether they want to pay for it or not. I mean, if you didn't want people to share or hear your music then why would you bother making music at all [...].

I don't think musicians can complain about file-sharing really. I mean, how can I say, 'don't share my music. If you want it, you have to pay for it'? Getting people on board is what it's all about. You can't start kicking off because someone burnt your album off a friend, or downloaded it from the internet, because those people are saying that they like your music; they're fans... you know what I mean? I mean, recording companies are shitting themselves obviously, because they've got money to loose, but as an artist you've got nothing to lose from file-sharing I don't think. We should be embracing it really [...].

The thing is, we're like tied into a system with recording companies, and they're fucking suing people, and that can't be good for us as artists. They need to do something more positive for us you know, like saying 'yeah, download their music, and don't forget to tell all your friends about them. If you like them, why not come and see them play live next week, and buy this limited edition album with all this amazing artwork that you can't get online'. Instead, they're trying to shut interest in us down by telling people they can't do things that we want them to as artists. It's fucking stupid; you know? They're only interested in album sales and that's just not a viable business plan anymore."

(Interviewee 4, 6 June 2008)

Reflecting on the expressed attitudes and understandings of such individuals, we can see how creators may have been misrepresented in debates about file-sharing by organisations such as the MU. As we saw in the previous chapter, the MU

expressed strong support for New Labours proposed anti-file-sharing legislation, arguing that such restrictions on file-sharing were in the best interests of those creators seeking to make a living making music. All of the creators spoken to as part of this research were highly critical of attempts to restrict the free circulation of music among fans and audiences however. They described file-sharing as something to be celebrated by creators, and as something which recording companies in particular must accept as part of contemporary music culture. Within debates about New Labour's proposed anti-file-sharing legislation, there was as such an apparent need for a more accurate representation of creators' perspectives. One significant development in this context was the formation of a new creator led organisation, the Featured Artists Coalition. The participation of this organisation in debates about anti-file-sharing legislation is the subject of the next section.

The Featured Artists Coalition: Fighting for a 'Fair Deal' for Creators in the Digital Age

The formation of the *Featured Artists Coalition* (FAC) in October 2008 reflected a growing dissatisfaction among creators with they way in which they had been marginalised within policy debates about file-sharing it seems. FAC was formed as an explicit attempt to unite creators under one banner and retain some sense of distinction from the interests of recording companies, and campaign for a fairer deal in the digital age. In their own words:

> 'The Featured Artists Coalition campaigns for the protection of performers' and musicians' rights. We want all artists to have more control of their music and a much fairer share of the profits it generates in the digital age. We speak with one voice to help artists strike a new bargain with record companies, digital distributors and others, and are campaigning for specific changes'
>
> (FAC, 2008a: Online)

FAC was formed by some of the most popular and widely recognised creators in the modern music industry, something which earned it instant recognition in the public sphere. The national press were quick to take note (see Gibson, 2008 and NME, 2008 for instance) of an official announcement of the organisations formation which apparently celebrated the support of some big names:

> 'The Verve, Radiohead, Jools Holland, Kaiser Chiefs, Kate Nash, Robbie Williams and Billy Bragg are among dozens of musicians and performers calling for changes to the law and record industry [...]. Formed by some of the best-known names in music, the Coalition will give artists the voice they need to argue for greater control over their music [...]. To date, over 60 artists have joined the Coalition by signing its founding Charter. These range from established artists like Radiohead, The Verve, Craig David, Robbie Williams and the Kaiser Chiefs through to newer acts like Kate Nash, The Futureheads and Sia.'
>
> (FAC, 2008e: Online)

The high profile membership of FAC, whilst gaining the organisation immediate recognition, raised some suspicion and became object of cynicism among some commentators however. Whilst Owen Gibson pointed out in *The Guardian* that 'millionaire rock stars are traditionally more synonymous with

conspicuous consumption than the workers' struggle' (4 October 2008: 3), one NME reporter was more explicitly cynical. Under the headline 'OH, JUST FAC OFF' they wrote:

> 'The Featured Artists Coalition...ooh, sexy! Radiohead, Iron Maiden, Billy Bragg, Robbie Williams and Travis forming a Union to take on the evil record labels! Fair play if they're out to stand up for small bands, but it smells like a bunch of millionaire rock stars terrified of making fewer millions in the recession, of a future where being a musician is merely a job paying a decent wage. Most unions are there to keep their members above the breadline; I just hope the FAC isn't there to keep its members above the thoroughbredline.'
>
> (NME, 2008: 43)

That the legitimacy of this organisation would be brought into question given the nature of its membership is unsurprising perhaps, given the deeply embedded ideological opposition between art and commerce within popular music (especially rock) culture. Creators have long had to struggle with this opposition, juggling a desire to be commercially successful and make a living making music with the apparent need to remain true to one's art and appear unconditioned by economic imperatives and constraints. For those few creators who make it as far as getting signed to a recording company and for established creators such as those founding members of FAC, their position appears even more precarious and the tension between creative and commercial imperatives even more acute. As Lee Marshall explained in reference to the anti-file-sharing actions of metal band *Metallica*: 'artists within the industry walk a tightrope: despite the fact that they must produce something commercial to satisfy their record labels, they must aspire

publicly to the ideology of *art pour l'art* and appear completely uninterested in business matters. For a band to have artistic credibility they have to be against the record industry even while they are part of it' (2002: 7).

The more cynical reaction to FAC expressed above is an interesting case in this sense. As we shall see below, FAC expresses and represents strong opposition to the established music industry and their purely economic interests. This would apparently put the organisation and anyone associated with it on the right side of the 'art Vs commerce' ideological division. However, since the organisation's proposals have economic implications for creators, they are ultimately met with suspicion, even though they involve arguments and sentiments that are oppositional to recording companies in particular. It seems that any attempt to do anything other than concentrate on 'art' among creators is met with suspicion by commentators and observers. Even attempting to lead an apparent movement against the 'evil record labels' was met with cynicism in this case, despite the fact that this is precisely what 'artists' are supposed to do according to rules of artistic authenticity.

Cynicism aside, the FAC's campaign *is* one which involves strong anti-music-establishment sentiments and discourse. In fact, as Gibson noted in *The Guardian's* feature on the new organisation, some of the big names involved in the coalition add some credibility to this anti-establishment campaign. Billy Bragg in particular, who Owen Gibson (2008: 3) reminds us 'did after all record *There is Power in a Union'*, has a long history of involvement in broadly left-wing political activism. He has

recorded and performed cover versions of a number of socialist anthems such as 'The Internationale' and 'The Red Flag' for instance and has been an outspoken opponent of fascism, racism, bigotry, sexism and homophobia, frequently drawing attention to such issues through his music (Collins, 2007).

Bragg has also been involved in various movements and protests against Government policy and legislation, most recently backing a campaign to reform the UK's electoral system (Bragg, 2010b). In January 2010 Bragg also refused to pay his income tax whilst, in the midst of the global economic recession, bankers at the *Royal Bank of Scotland* continued to receive 'excessive' bonuses (Press Association, 2010). He was reported to have told a crowd at 'Speaker's Corner' in Hyde Park, London: 'Millions are already facing stark choices: are they willing to work longer hours for less money, or would they rather be unemployed? I don't see why the bankers at RBS shouldn't be asked the same' (Bragg, quoted by Power, 2010: online).

One of Bragg's earliest engagements in political activism came in 1985 when, dissatisfied with the way in which the conservative government was handling various social issues, he formed an alliance of musicians known as *Red Wedge* who tried to encourage young people out of political apathy and vote for the labour party in upcoming general elections. The alliance took its name from a now famous lithograph by Russian artist Lazar Markovich Lissitzky (better known as El Lissitzky) entitled, *Beat the Whites with the Red Wedge* (1919), which featured as a soviet propaganda poster during the Russian Civil War (1917-1921). The intrusive red wedge is said to symbolize the pro-

revolution Bolshevik *Red Army* penetrating and defeating the *White Army* of loosely allied anti-Bolshevik, counter-revolutionary forces. The red wedge symbol was adopted and re-appropriated by an alliance of musicians fronted by Bragg as a symbol of their broadly leftist political inclinations. Of course the colour red has long been associated with socialist movements, as symbolising the blood of the workers, and its is interesting to note the use of such socialist imagery by FAC. FAC's banner/ header, which appears at the top of all FAC web-pages, at the top of press releases, and on press hoardings that feature as a backdrop to broadcast interviews and statements by FAC members, features a red wedge in the place the letter 'A'.

The pro-revolutionary connotations of FAC were predictably played up in press coverage, with terms such as 'comrades' and 'revolutionaries' frequently appearing in reference to its spokespersons. Reporting on the organisations first formal members meeting in March 2009, the industry newspaper *Music Week* described how artists had gathered to 'declare war on the industry's "old practices"' (Ashton, 2009: Online). Such interpretations of FAC's agenda are less likely to have been made on the basis of their use of socialist imagery however, and more likely to have been made on the basis of their explicitly stated aims, objectives and reason for being.

FAC and its members argue that old industry practices need to change to adapt to and reflect the realities of the new technological environment. They argue that where decisions have and are being made as to how business practices should change, creators have not been included and their interests

poorly represented. This provides the rationale for forming the organisation. Furthermore FAC and its members propose a number of specific changes to the law and business practices and commit themselves to engaging in debate and discussion with various other actors and interested parties, to ensure that creators and their interests are properly represented in the digital age. It is with regards this final point that FAC can be seen to have come into direct conflict with the wider music industry's anti-file-sharing and pro-legislation campaign. On their web-pages FAC states that:

> 'Digital technology has transformed how we buy and listen to music. In doing so it has radically altered the economic relationship between artists and their audience, and the business world that operates between the two.
>
> Navigating this new commercial reality is complicated. Issues range from the little known, little understood 'making available right', and the lost artist income arising from it, through to the wholesale distribution of large collections of copyrights by technology companies without fair compensation for artists.
>
> The industry needs to change fundamentally to address these issues.'
>
> (FAC, 2008b: Online)

Here we see a certain technological determinism that typically arises in attempts to summarise the processes of change which have been taking place over the last decade or so. But we see the different actors involved and the relationships between them being represented in a particular way. Artists are depicted as having an economic relationship with their audiences (which is being *radically* altered) and an undefined 'business world' is

depicted as operating 'between the two'. This immediately functions to distance 'artists' from that 'business world' and its commercial imperatives, and depict that business world as something separate from both artist and audience and the relationship between them.

Whereas other organisations have been keen to draw attention to and prioritise the economic *threat* to creators of technological development, FAC and its members are keen to highlight the economic *opportunities* that technological developments have presented creators. In a press release announcing the first members meeting of FAC, David Rowntree of the band *Blur* is quoted as follows:

> "The digital revolution has swept away the old music business of the 1960s, and changed forever the relationship between artists and fans. For companies who made their living sitting between the two, these are increasingly hard times, but for music makers and music fans this should be a fantastic opportunity."
>
> (Rowntree quoted by FAC, 2009a: Online)

Here we see a similar representation of the relationship between the different actors, but we also begin to see how the changes to these relationships wrought by technological advance are being depicted as presenting *opportunities* rather than *threats*. Likewise, Jazz Summers who manages *The Verve* and Kate Nash among others is quoted in an earlier press release as saying, "Digital technology gives artists the opportunity to control their future - this is the time to seize that opportunity" (Summers quoted by FAC, 2008e: Online). And on the homepage of his website, through which he promotes FAC and the other

political campaigns/movements he is involved with, Billy Bragg states:

> The internet offers huge potential for artists who want to make music on their own terms. As the old business model crumbles to dust, artists have much to gain from entering into dialogue with their fans, not least from encouraging them to buy their music directly from the farm gate, secure in the knowledge that the money they spend will support the artist in their work [...].
>
> It's time to start our own revolution and cut out the middleman....
>
> (Bragg, 2010a: Online)

Here then we have a much more explicit expression by a founding FAC member, of how arrangements for the production and circulation of music might be altered and changed in the new technological environment. In a manner similar to that seen in other accounts of the music in the 'digital' or 'internet age', old business models are depicted as outmoded, and established relations as reconfigured. The opportunities that these changes bring for creators are depicted in economic terms, and the notion of 'disintermediation' is celebrated. We saw in chapter 5that the recoding companies were keen to dismiss the notion that creators would increasingly go it alone and that recording companies would become increasingly redundant as part of an overall attempt to preserve existing socio-economic arrangements. But the notion of technologically afforded revolution in the relations of music production is clearly something which FAC and its members seem to be purporting. But whilst Bragg individually appears to be advocating some kind of outright and total revolution involving the outmoding of

recording companies, the kind of changes being advocated in the discourse of FAC as an organisation seem much more nuanced, specific, and their vision of the future clearly includes creators working with other actors in the music industry.

FAC and its members frequently use the term 'revolution', which would imply an outright transformation along the lines of those suggested by David Bowie, Billy Bragg and other commentators. What they are actually advocating are subtle changes to the existing socio-economic relationships between creators and other actors in the industry, not the abandonment or overthrowing of these relations. They call for the establishment of economic relationships and arrangements which 'better reflect the new music landscape' (Summers, quoted by FAC, 2008e: online). For example, on their website, under the heading 'a new approach' they state:

> 'Historically, many artists signed away control of their rights for long periods of time in agreements devised before the digital age when the music industry operated in a different cultural and economic climate. In the digital era there needs to be a new set of agreements that reflect the new ways music is consumed by fans'
>
> (FAC 2008c: Online)

This issue of rights and their assignment has been high on FAC's agenda for change from the start. In the press release announcing the formation of FAC in October 2008 (2008e) and on the 'our campaign' pages of their website, FAC list the following 6 areas in which they are seeking changes:

1. An agreement by the music industry that artists should receive fair compensation whenever their business partners receive an economic return from the exploitation of the artists' work.
2. All transfers of copyright should be by license rather than by assignment. Artists lose the ownership of their copyrights because they are assigned in most agreements to record companies, publishers and others to exploit.
3. The 'making available' right should be monetized on behalf of featured artists and all other performers.
4. Copyright owners to be obliged to follow a 'use it or lose it' approach to the copyrights they control.
5. The rights for performers should be improved to bring them more into line with those granted to authors (songwriters, lyricists and composers).
6. A change to copyright law which will end the commercial exploitation of unlicensed music purporting to be used in conjunction with 'critical reviews' and abusing the UK provisions for 'fair dealing'.

(FAC, 2008c: Online)

Interestingly, the concerns outlined here closely mirror those highlighted in the report commissioned by MU and BASCA in 2006, suggesting that their interests as organisations formed to promote and protect the interests of creators are closely aligned. The concerns outlined here also illustrate the fact that what FAC is advocating are changes to both copyright law and business practices which are designed to improve the economic status and position of creators in the music industry. These concerns also illustrate the how FAC envisages a future which will still involve intermediation by other actors including recording companies. What FAC is seeking to do as such is

'strike a new bargain with record companies, digital distributors and others' (2008b: Online) to ensure that creators 'have more control over their music and a much fairer share of the profits it generates in the digital age' (2008a: Online). FAC acknowledges that the generation of these profits will involve third parties then, but it is the apparent marginalisation of creators and their interests by these third parties that concerned the founding members of FAC and motivated them to form the coalition. Brian Message, co-manager of *Radiohead* and Kate Nash was quoted by FAC as follows:

> "It is time for artists to have a strong collective voice to stand up for their interests. The digital landscape is changing fast and new deals are being struck all the time, but all too often without reference to the people who actually make the music. Just look at the recent MoU on file-sharing between labels, government and the ISPs. Artists were not involved.
>
> (Message quoted by FAC, 2008e: Online)

Robert Ashton reports on the *Music Week* website how;

> 'Next to a sign that read "FAC: the revolution starts here", Billy Bragg explained that one of the reasons he wanted to see FAC is that "for the past few years the big labels have had a lockdown on the debate about digital. Artists have been marginalised and fans criminalised. With the sorts of deals that labels have been doing, we don't feel our best interests have been represented"'
>
> (Ashton, 2009: Online)

Likewise Jazz Summers, manager of *The Verve*, was quoted in *The Guardian* as saying: "Every meeting I go to, I look around the table and there are 20 or 30 people, but no-one representing the artist" (quoted by Gibson, 2008: 3). Gibson reported further:

'Jazz summers said that while there had always been industry bodies to represent record labels, managers, publishers and live promoters, there had never been a group to represent the artists' (Gibson, 2008:3). These sentiments were reiterated by Kate Nash who was quoted in a *Daily Star* article on FAC as saying

> "I find it so surprising that this hasn't already been set up, seeing as you have so many other organisations looking out for a lot of people in a lot of industries. But it hasn't, and we are, and that's exciting."
>
> (Nash, quoted by Dawson, 2009: 18)

These actors frequently cite the marginalisation of creators and their interests by other actors within the music industry as the main rationale for the formation FAC. They argue that during a period of transition, when negotiations are taking place and deals are being struck, the voice of artists must be heard, and this is precisely why FAC was formed. On the 'our campaign' pages of its website the organisation asserts that:

> 'Featured Artists, those credited on recordings and who are the primary named performers, are responsible for the majority of income in the music industry. Their interests need to be properly represented [...]. Artists need an effective collective voice to represent them and have a real say in shaping the future of the industry [...]. The laws and regulations governing intellectual property, and its administration, will evolve with the digital age. We want the interests of artists to be at the forefront of this transformation.
>
> (FAC, 2008c: online)

One of the key issues, in relation to which FAC feels that the interests of creators have been marginalised or excluded, is file-

sharing. In particular, FAC states that, 'we believe that deals recently signed between major labels and internet platforms have not been done in the best interests of artists' (FAC, 2009b: Online). With regards recording companies' and the government's proposed legislative actions FAC asserted that: 'The FAC continues to believe that it is wrong to criminalise ordinary music fans for file sharing' (FAC, 2009c: Online). In their submission to the DBIS consultation (2009a) FAC state that:

> 'we have serious reservations about the content and scope of the proposed legislation outlined in the consultation on P2P file-sharing. Processes of monitoring, notification and sanction are not conducive to achieving a vibrant, functional, fair and competitive market for music. As a result we believe that the specific questions asked by the consultation are not only unanswerable but indicate a mindset so far removed from that of the general public and music consumer that it seems an extraordinarily negative document [...]. Ordinary music fans and consumers should not be criminalised because of the failings of a legacy sector of business to adapt sufficiently fast to new technological challenges. [...] we vehemently oppose the proposals being made and suggest that the stick is now in danger of being way out of proportion to the carrot.
>
> (FAC 2009d: Online)

On behalf of its creator members then, FAC stakes out a very clear position in relation to the government proposed legislative action to deal with file-sharing. It is one of strong opposition to the government's proposals. Crucially, this position is one which stands in marked contrast to that of the recording industry, and that adopted by other creator organisations such as the MU. It is a potion that seems much more closely representative of the

sentiments expressed by those individual creators interviewed as part of this research. Whilst also offering its own critique of recording industry arguments and claims about the economic harm of file-sharing, FAC begin to develop counter arguments about the potential value of file-sharing to creators:

> [...] there is evidence that repeat file-sharers of music are also repeat purchasers of music, movies, documentaries etc. Recent research by MusicAlly has demonstrated the continued popularity of the CD as the purchased product of choice by many music fans. This combined with the continued significance of the CD in the revenue balance of record labels, suggests a much more complex equation in which file-sharing may erode sales, but where it may also promote other revenue streams. For this reason it is dangerous to view the downloading of music as the direct online equivalent of CD sales [...]. Much online activity surrounding the sharing of music often coincides with a great deal of fan support for the artist concerned [...]. A file-sharing fans' economic contribution to an artist's career may focus around the purchase of merchandise and tickets to live concerts – the irreplaceable experiences which contribute to artists' success.'
>
> (FAC 2009d: Online)

Such propositions closely reflect the sentiments and propositions set out by individual creators in the first half of this chapter, about the potential value of file-sharing rather than its harms. The discourse of FAC thus seems much more attuned to the expressed interests, attitudes and experiences of creators in this sense. After some increasing press attention and speculation as to the message that FAC was trying to convey on behalf of its creator members, the organisation was forced to issue a press statement clearly setting out its position on legislative proposals for account suspension:

> 'Statements made in opposition to this idea by members of the Featured Artists Coalition have been taken to imply that we condone illicit file-sharing. This is not the case and never has been [...]. However, we seriously question the wisdom of seeking to deal with this problem by terminating the internet connections of individual music fans [...]. The focus of our objection is the proposed treatment of ordinary music fans who download a few tracks so as to check out our material before they buy. For those of us who don't get played on the radio or mentioned in the music media – artists established and emerging – peer-to-peer recommendation is an important form of promotion [...]. By demanding blanket suspension powers from the Government, the industry is in danger of cutting-off a promotional tool that is of great use to fledgling artists who seek to create a buzz around themselves yet don't have the financial support of a major label.'
>
> (FAC, 2009e: Online)

Again then, FAC stakes out a position that is clearly at odds with the recording industry, and more closely aligned to those attitudes and beliefs expressed by those individuals interviewed as part of this research. In this instance the position that FAC adopts is in relation to the specific legislative measures that recording companies were seemingly instrumental in formulating. This is one of clearest indications that the interests of recording companies are not synonymous with those of creators with regards file-sharing. FAC clearly seeks to distance itself from these legislative proposals and in so doing clearly distinguishes the interests of creators from the interests of recording companies. A reluctance on the part of creators to bring legal action against the consumers of their music seems like a logical stance and one which would correlate with those sentiments expressed by creators in the first half of this chapter

- why would a creator whish to alienate their audience and adopt such an antagonistic position as that implied by the governments proposals backed by recording companies? What's more, it seems that FAC's resistance to these legislative proposals is based in a much more fundamental critique of not recording companies, and of the apparent alliance between rights holding corporations and the state around the issue of file-sharing.

Conclusion

This chapter has drawn attention to the fact that many creators are strongly opposed to attempts to restrict the sharing of music online among audiences and fans. In fact, some creators were even celebrating such activity and the opportunities that it presented. These alternative perspectives were in real danger of being marginalised and sidelined in policy debates about possible legislative action in this area however. Whilst some established creator organisations such as the MU and BASCA had previously developed strong critiques of recording industry practices and the position of creators in relation to recording companies, they ultimately moved to support the proposed anti-file-sharing measures that the creators discussed in this chapter so vehemently oppose. In so doing these creator organisations imply that the interests of recording companies might be synonymous with those of creators when it comes to file-sharing and the need to address it. In response, we saw the formation of an important new creator led organisation, which in seeking to promote the interests of creators within debates about file-

sharing, as distinct from those of recording companies, attempted to communicate strong opposition to proposed anti-file-sharing measures. Ultimately, this organisation was unable to effectively influence the policy makers however, a fact reflected in the eventual passing of the DEA regardless of this resistance.

It is of course extremely disappointing for creators and observers of this process to see the interests of those very people whom copyright laws are designed to incentivise, marginalised and effectively ignored in the formulation of legislation designed to allow the enhanced enforcement of those laws. What we see instead is an apparent privileging of corporate rights holders and their interests. As we saw in chapter 4 however, the way in which the need for legislation in this area was framed by New Labour was never about individual creators. The need for legislation in this area was explicitly framed in reference to a need to protect certain industry sectors from technological and cultural threats, and ensuring their competitiveness in the global economy. Expressions of dissatisfaction among creators with the exploitation that creators face in entering into relations with these corporate rights holders, and with the idea of punishing fans, clearly do not resonate with the Government's interests in protecting and maximising the economic productivity of corporations. They apparently lacked the capacity to influence and direct policy decisions in the way that the recording industry seemed able to.

CONCLUSION

This thesis has offered a critical account and analysis of the formulation of what is in effect a piece of anti-file-sharing legislation in the UK; the *Digital Economy Act 2010* (c.24). It has been argued that in bringing forward measures for the enhanced enforcement of existing copyright laws in the online environment, the DEA ultimately aims to preserve a particular set of socio-economic arrangements that clearly benefit a particular set of interests; namely the interests of corporate rights holders as exploiters of the intellectual property created by others. The thesis has shown how in response to file-sharing as a threat to their established profit accumulation strategies, recording companies were apparently able to direct the specific nature of legislative action in this area, but that this was dependent upon the development of a conducive economic vision on the part of the UK's New Labour Government. The thesis has also highlighted the way in which the creators of IP – as those who, according to original justifications, should principally benefit from copyright laws – were apparently unable to influence legislative activity in this area. The thesis has attempted to highlight and illustrate the specific mechanisms and processes via which the interests of these two distinct sets of actors were prioritised and marginalised respectively.

The thesis firstly drew attention to and illustrated the development of a particular economic strategy by the UK's New Labour Government (1997-2010). This economic strategy involved the prioritisation of particular sectors of economic

activity and production; namely those industries that New Labour imagined would be capable of helping ensure the UK's economic competitiveness in the new global 'Knowledge Based Economy' (KBE). The notion of the global KBE - as an economic environment that is distinctly dependent on knowledge intensive goods and services - was whole heartedly embraced by New Labour it was shown. It was in relation and in reference to this particular 'economic imaginary' that New Labour began to develop its own distinct economic and industrial strategies and policies.

The notion of a distinct new global economy characterised by knowledge intensive industry was not in itself new of course. As a variant of what might be more broadly referred to as 'information society' thinking, the global KBE has origins in the 'post-industrial society' thinking of the mid 20th century at least. In the face of faltering economic growth and stability built on industries now clearly in decline and under threat from international competition, the successive governments of advanced capitalist societies have increasingly sought to identify and advance those sectors of economic production that might remain competitive in this new global economic environment. It is in this context that 'knowledge intensive' industries have increasingly become prioritised within the advanced capitalist states and economies of the modern world.

For New Labour, one sector that would help ensure the UK's competitiveness and success in the global KBE would the 'creative industries'; industries based on the economic exploitation of the products of creativity. It was shown in chapter

4 how the prioritisation of the creative industries, as part of New Labour's new economic strategy, necessarily involved a prioritisation of legal frameworks for the effective economic exploitation of creative products as Intellectual Property (IP). Many of those industries that New Labour sought to prioritise rely upon the concept of intellectual property, and on the existence of a special legal environment that enables them to effectively exploit ownership of that property commercially. As discussed in chapter 5, a major review of the UK's legal intellectual property rights framework soon followed as an inevitable corollary of their attempts to operationalise their particular economic strategy.

Among the industry's being prioritised by New Labour, in accordance with their new economic and industrial strategy, was the music industry, and more specifically, the recorded music industry. Through creative industry 'mapping' exercises and consultation, the economic contribution and international competitiveness of the UK's recorded music industry was quickly identified by New Labour. In consulting with music industry personnel, through various formal and informal policy networks and committees such as the *Music Industry Forum* set up in 1997, these actors were able to effectively communicate specific concerns to Government. The subsequent prioritisation of file-sharing on the legislative agenda inevitably followed.

From the turn of the century at least, file-sharing was being construed by the global recording industry as a significant threat to their continued and future economic performance. Trade associations such as the IFPI began lobbying hard for effective

international treaties and legislative responses. As discussed in Chapter 1, the first major response to the threat of free online circulation came in the form of an international treaty requiring its signatories to update their national laws to allow the extension of rights into the online environment. The *1996 WIPO Copyright Treaty* resulted in the formulation and implementation of the *Digital Millennium Copyright Act* in the USA, and EU Directive 2001/29/EC *On the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society'*. As an EU member state and signatory to the WIPO treaty, the UK implemented the EU Directive in 2003 via the *Copyright and related Regulations Act*. Whilst these international agreements and their domestic implementations vastly increased the scope of existing copyright laws, reflecting both the increasing pervasiveness of information society and knowledge economy thinking as well as the lobbying power of multinational corporations in influencing legislative frameworks in this context, in the UK, recording companies moved to further exploit New Labour's expressed commitment to supporting such industries in an attempt to secure the UK's competiveness in the global KBE. Specifically, they called on the New Labour Government to enhance the *enforcement* of existing laws online via appropriate legislative action.

The result of the recording industry's calls for legislation to enhance to copyright law enforcement capacities was the drafting of measures to be included in the DEA. The development and formulation of these proposed anti-file-sharing measures has been the main focus of this research. Whereas

traditionally, copyright and related laws had been justified in terms of incentivising creators of IP through the affordance of protections against the unauthorised reproduction of their work, these newly proposed copyright enforcement measures were justified purely on the basis of a need to protect economically productive rights holding corporations from technologically afforded disruption. This was justified by new Labour on the basis of securing the UK's continued economic performance in the global KBE. The question of whether the enhanced enforcement of copyright laws in the online environment was of any consequence to the creators of IP became marginalised as an apparently irrelevant issue in this context.

We saw in chapter 5 how in response to these new legislative proposals, the recording industry deployed a range of argument and claims about the nature of the recording industry and the supposed implications of unabated online copyright infringement. We saw how the recording industry firstly asserted and sought to reaffirm the contributions it made to the UK's economy and society. It secondly asserted the economic damage that file-sharing had caused. In both cases, the capacity to produce and draw upon a range of statistical 'evidence' as validations of these claims was clearly crucial as a rhetorical device. The recording industry's success in affecting legislative action was thus also dependent on the economic resources of this industry to generate such validating evidences. Crucially, these discursive constructions were seemingly designed to resonate deeply with New Labour's stated economic strategy of becoming a creative hub and world leader in the global KBE.

The necessity of legislative intervention was legitimated by the recording industry through direct reference to New Labour's stated economic vision and strategy. Put bluntly, the recording industry provided New Labour with an effective ultimatum; if the economic performance and contributions of the recording industry were to be secured then the recording industry must be protected from the threat of file-sharing. As part of a broader attempt to operationalise its stated economic strategy for securing success in the global KBE, New Labour moved relatively quickly to finalise legislative proposals to address the unauthorised sharing of music online. The apparent success of the recording industry - in inducing this legislative response - was heavily dependent on, or at least intimately bound up with, the development of a broader conducive economic strategy on the part of New Labour then.

Whilst the success of the recording industry in inducing the required legislative response must be understood within the context of New Labours development of a conducive economic strategy rooted in a global KBE discourse, the apparent capacity of the recording industry to direct the *specific* nature and direction of legislative proposals should not be ignored. Through the public consultation process that New Labour implemented, the recording industry seems to have been particularly influential in recommending internet account suspension as a sanction to be imposed upon those suspected of file-sharing. It was recording companies who appear to have been particularly influential in prescribing the particular technical measures that legislation should bring forward as such. The recording

companies' representatives claimed that it was this particular measure – account suspension – that would be most effective in addressing the free and unauthorised circulation of music online.

The subsequent inclusion of these measures in the government's proposed measures, and ultimately, in the *Digital Economy Act* (DEA) may be taken as an illustration of the capacity of such corporations to influence the specific direction and nature of legislative action. That the interests of recording companies were so privileged in this legislative process is further illustrated through a consideration of those other interested actors who attempted to influence and direct the nature of this legislative action, and whose perspectives and interests we expect might have been given equal consideration by legislators.

Copyright laws naturally interest a range of different actors in society. Firstly, the general public as consumers have an interest in the availability of the products of creativity protected by copyright laws. As was discussed in chapter 1 of the thesis, copyright laws and the restrictions they place on what may and may not legally be done with the products of creativity should in principle balance a public interest in access with the interests of producers in restricting that access for the purposes of financial gain. As many observers have commented in recent years however, legislation has continually extended the principle of a right to control or restrict usage. As has been suggested, to apply copyright law is to ultimately and in principle restrict usage – the copyright holder's basic power is to prevent their work being used in certain ways. Within the special legal environment constructed by copyright law, access to property becomes

conditional on the discretionary decision of the owner; property entails the right to say no in other words.

The history of copyright law is one of the frequent extension of this right to say no and restrict usage. In placing restrictions on new technologically afforded cultural practices, the DEA ultimately represents a continuation of this theme. What's more, as discussed in chapters 1 and 3 especially, the specific measures contained in the DEA also raise concerns about consumer privacy rights, and the proportionality of the sanctions to be placed on those *suspected* of sharing IP online without the rights holder's permission. It is important to note that the DEA did not go unchallenged from consumer groups however. Organisations such as *Consumer Focus* and the *Open Rights Group* especially, along with hundreds of individual consumers, made robust cases against the government's legislative proposals in their submissions to public consultations. Whilst these objections have not been explored as part of this research, it is important to acknowledge the level of resistance voiced by these actors, if only to further illustrate the apparent privileging of corporate interests by the New Labour Government.

Even more interesting in this context perhaps, is the privileging of recording companies as one sector of economic production over Internet Service Providers (ISPs) as another. As discussed in chapter 3, the DEA effectively imposes obligations on ISPs which they have understandably been extremely reluctant to accept. As corporations with interests in protecting their customers, ISPs made robust cases against the government's proposed anti-file-sharing measures in their submissions to the relevant public

consultations.[14] It is particularly interesting that the interests of ISPs should be subjugated to those of corporate rights holders through the DEA given that the telecommunications sector of which ISPs are a part, were, even more so than the 'creative industries' perhaps, one industry sector that governments including New Labour have construed as equally central to securing success in the global KBE and information society more generally. Whether this represents a significant shift in economic and industrial policy, is something to be explored and considered further in research. Again, whilst the discursive activities of this particular group of actors (ISPs) has not been the particular focus of this research, it is important to acknowledge the high levels resistance voiced by these actors, if only to once again illustrate the privileging of recording company interests over all others in the formulation and eventual passing the DEA.

The other group of actors whose perspectives, attitudes and understandings with regards file-sharing have been explored in this thesis are the *creators* of IP. As was discussed in chapter 1 and emphasised throughout the thesis, copyright laws have traditionally been justified in terms of incentivising creative production for the good of society. The argument that there are social benefits to be gained from the production and dissemination of knowledge, ideas and creative works underpins

[14] At the time of writing this conclusion, two major ISPs in the UK had lodged a formal appeal against the obligations imposed upon them through the DEA. The DEA is to subsequently become subject to a judicial review in 2011.

the very copyright laws that the DEA will see being enforced to new degrees and in new technological environments.

As discussed in chapter 1 the concept of copyright was initially developed and operationalised according to a general utilitarian justification; that creators should be encouraged to create and make their creations available to the betterment of society at large. In affording creators exclusive rights of ownership over their work which they then could exploit commercially, copyright laws is said to provide a *financial* incentive to creative production - a special legal environment exists in which creators are provided with a means of reaping the financial rewards in other words. There are obvious problems with the realisation of this ideal in practice however. In the case of commercial music production at least, it seems that copyright laws rarely function to the direct financial benefit of individual creators.

As illustrated in chapter 2 of the thesis, those creators who would seek financial reward via the articulation of IPRs are rarely in a position to do so easily. Producing, reproducing, marketing and distributing the products of creative work has always been prohibitively expensive and requires access to the technical means to do these things. Creators thus invariably need the help of others – namely recording companies in the case of music creators. Enlisting the help of recording companies usually means ceding the exclusive rights of ownership afforded by copyright law however. In return for their investment in creative production, recording companies acquire these rights of ownership and it is them as *investors* in and *exploiters* of IP that become the chief financial beneficiaries of copyright law, not

creators themselves. Furthermore, it was illustrated in chapter 2 how, in the pursuit of profit maximisation, recording companies actively seek to minimise returns to creators further, often leaving them in a severely disadvantaged economic position.

The continuous enhancement of copyright laws clearly benefits rights holders. But in the case of commercial music production, these rights holders are commercial enterprises who invest in creative production (publishers, recording companies), not creators themselves. It is not clear as such, how the continued enhancement of copyright law benefits creators in any direct way. The same is true of the extension of copyright law into the online environment, and of enhancements to copyright law enforcement such as those brought forward by the DEA. What has been of particular interest in this research as such is the way in which this recent extension of copyright law has been rationalised, justified and legitimated. What has been demonstrated is that, not only does the enhanced enforcement of copyright law benefit the creators of IP in no obvious way - as is the supposed intention of copyright law - but that at no point in the legislative process was any attempt made to justify the extension of copyright law enforcement in relation or reference to creators. Moreover, the thesis has demonstrated that the interests, perspectives, attitudes and understandings of creators with regards file-sharing were effectively marginalised in the formulation of the DEA.

In chapters 6 and 7, the representation of creators in debates about file-sharing and proposed anti-file-sharing measures as explored. Firstly, the representation of creators by established

organisations including the Musicians' Union and the British Academy of Songwriters, Composers and Authors was explored. It was revealed that whilst these organisations have previously been keen to draw attention to the problematic nature of the contractual relations that creators are obliged to enter into with investors, when it came to participating in debates about the UK Government's proposed anti-file-sharing measures, these organisations expressed strong support for those proposals and aligned themselves closely with other industry actors, including recording companies. These organisations asserted that file-sharing presented a direct threat to the opportunities for creators to make a living making music and thus must be restricted. What's more, in voicing support for proposed anti-file-sharing measures, these organisations were effectively advocating measures that would allow existing socio-economic arrangements for the commercial production of music to be maintained in the face of technologically afforded disruption.

The thesis then drew attention to a range of dissenting voices and alternative perspectives among creators however. In chapter 7, some alternative notions about the consequences and implications of file-sharing were highlighted via an exploration of what various individual creators had expressed about the subject either independently or during interviews conducted as part of the research. The exploration of what a range of creators had independently expressed about file-sharing revealed attitudes, understandings and perspectives that contradicted sharply with what established creator organisations such as the MU had suggested. The individual creators interviewed as part

of the research actually expressed pro-file-sharing sentiments, highlighting the positive implications and applications that the free circulation of their music could have for them as aspiring creators. These creators also expressed strong opposition to recording companies' responses to the file-sharing and to the UK Government's proposed anti-file-sharing measures. They expressed a belief that recording companies had failed to accept what they saw as a crucial and positive part of contemporary music culture – the free circulation and sharing of music among audiences and fans – and that attempting to restrict such practices was counterproductive, potentially damaging, and not in their interests as aspiring and emerging creators.

The failure of any established organisation to accurately represent the expressed interests of creators within debates about file-sharing was shown to have led to the formation of a new creator led organisation; the *Featured Artists Coalition* (FAC). This organisation voiced strong opposition to the UK Government's proposed anti-file-sharing legislation. FAC argued that the proposed measures were not in the best interests of creators, and that their interests and perspectives were being marginalised and ignored in the formulation of the DEA. The attempts by FAC to influence legislative action accordingly was ultimately unsuccessful however. The opposition to proposed anti-file-sharing measures that this organisation voiced appears to have been ignored, with those measures being brought forward regardless.

As suggested, the enhanced enforcement of copyright was not being legitimated in reference to creators, despite the fact that it

is creators that copyright laws were originally developed to incentivise. Rather, the anti-file-sharing measures contained in the DEA were being legitimated and rationalised by New Labour in relation to a much broader economic vision and strategy. The DEA must be seen as part of New Labours attempts to implement a strategy for securing the economic productivity of rights exploiting corporations, not creators. The plight, interests and attitudes of creators, as articulated most forcefully by FAC, did not represent a legitimate concern for New Labour within the context of maintaining the economic performance of these corporations, despite the fact that these corporations ultimately rely on the creativity of those creators.

The formulation and passing of the DEA is a succinct illustration of the way in which copyright laws are being continually enhanced and extended according to the interests of corporate rights holders then. Copyright laws are now being extended and their enforcement enhanced without any reference to or consideration of the interests of those whom copyright laws were originally developed to protect. Rather, in the case of the DEA at least, these laws are now being rationalised and legitimated in reference to the much broader economic visions and strategies of national Governments it seems. As suggested, the DEA can be understood as part of New Labour's attempts to operationalise a particular economic/industrial strategy developed to secure the UK's economic performance in the new global KBE. Issues relating to the specific nature of arrangements via which IP might be acquired and exploited by corporate rights holders

apparently remain unimportant in policy making, so long as those corporations are seen to be economically productive.

It is important to further consider the global context in which the DEA has been formulated. As suggested, the formulation of the DEA clearly indicates the way in which local IP policies appear to be developed according to the interests of corporate rights holders. This theme has also been noted at the international level. The formulation of the WIPO treaty in 1996 reflects the way in which the new digital environment was being construed by multinational copyright industries including the recording industry - which is after all dominated by a few multinational corporations and conglomerates - as a threat to the stability of their economic operations. The international nature of these industries' economic operations has inevitably seen these corporations become increasingly concerned about foreign and international IP policies and frameworks. International treaties that introduce requirements for minimum levels of protection in all signatory states have a long history of course, from the 1886 *Berne Convention for the Protection of Literary and Artistic Works* through the World Trade Organisation's 1993 treaty on *Trade-Related Aspects of Intellectual Property Rights* (TRIPS) to the 1996 WIPO *Copyright Treaty*. As highlighted earlier, this latter international treaty was crucial in attempting to bring all member states into line on issues of IP protection in the digital environment.

The formulation of the 1996 WIPO treaty has been taken by critical commentators as an indication of the way in which IP policy globally was being formulated according to the interests of

rights holding corporations. But whilst international conventions exist to ensure minimum levels of protection across the globe, discrepancies still exist in the precise levels of protection afforded rights holders within individual spatio-legal territories. These discrepancies may simply reflect the differing ways in which copyright initially developed in different territories, or the differing ways in which international treaties have been interpreted and implemented. Crucially, such discrepancies may see those territories in which protection is thought to be lagging come under increasing pressure from both international copyright industries and regulators to update their laws accordingly. The result of such discrepancies often seems to be the development of new international treaties and/or the development of simple 'catch-up' legislation within individual territories. The ultimate effect seems to be though, in the continual drive towards what is often referred to as international 'harmonisation', copyright laws are being continually extended and enhanced in the interests of rights holding corporations. The relationship between domestic IP policy-making and both foreign and international IP policy cannot be over looked in this case.

The initial formulation of proposed anti file-sharing measures in the UK (which enhances provisions for the enforcement of copyright laws online beyond those observed in *most* other nation-states), coincided with the passing of a similar piece of legislation in France (*Law on Authors' Rights and Related Rights in the Information Society*, 2006). This piece of French legislation afforded rights holders similar powers for the enforcement of IPRs online to those afforded by the proposed

DEA. Interestingly, this piece of French Legislation was developed to implement the same 2001 EU directive that had already been implemented in the UK in 2003, further reflecting the differing ways in which such international conventions may be interpreted and implemented within individual spatio-legal territories. We might ask though, given the fact that this piece of French legislation preceded the UK's DEA by nearly 4 years, to what extent the UK Government was pressurised into following suit. Interestingly, there was very little reference to the French context within discursive materials explored within this thesis, but this is not to say that such foreign policy making was not significant in the UK context of course – it only means that the situation within France was not being used as a point of reference explicitly. We might also ask, whether the development of similar legislation in France and the UK will ultimately see legal frameworks being modified elsewhere in the continual movement towards the international 'harmonisation' copyright laws. In other words, is the UK's *Digital Economy Act 2010* and the specific measures in brings forward a sign of things to come internationally? Answering these questions requires further research.

The recent prioritisation and rapid development of legislative activity in the area of copyright and IP more broadly, has in turn seen increasing public attention being brought to the potential implications of these laws and the circumstances under which they are being developed. The controversial nature of those measures contained in the DEA, like attempts to restrict the free circulation of information more broadly, have opened the way for

significant critique and activism. Whether the significant pockets of resistance that do exist will be effective in forcing government's to reconsider the enhancement of copyright laws in the interests of corporations is unclear and perhaps unlikely. As demonstrated in this thesis, dissenting voices and alternative perspectives are being effectively marginalised as copyright laws increasingly come to be legitimated and rationalised in terms of protecting corporate rights holders from economic damage, as a means of securing national economic performance, rather than in terms of incentivising individual creative production for the good of society, as was initially intended.

As resistance to these developments grows, dissenting and critical voices will become increasingly difficult to ignore however. Academic observers and commentators - those with the space and time to explore these issues in-depth - have an important role to play in this context. As has been attempted in this thesis, academics can attempt to draw attention to the interplay of different interests and factors in the development and formulation of IP policy and legislation. They can explore and attempt to elucidate the apparent mechanisms and processes at work, and if necessary draw attention to their potentially problematic nature. Whilst the account and analysis developed in this thesis has provided important illustrations of the way in which interests of corporate rights holders have been privileged and prioritised, and to the way in which the interests of creators have been actively marginalised in the development and formulation of a specific piece of domestic legislation, there

is of course much more to be done, and the limitations of the thesis in this context should be acknowledged.

Firstly, in seeking to explore the mechanisms through which the interests of particular set of commercial actors were prioritised and may have been able to influence legislative action, the research has only been able to examine and account for those *visible* processes or mechanisms through which this may have occurred. It should be acknowledged that there may be any number of 'hidden' processes and mechanisms through which the interests of these corporate actors may have been able to influence legislative action, or at least been give the opportunity to do so (through informal and unrecorded meetings for example). Future research should seek to identify any less visible processes, though the attempt to uncover purposefully hidden activities obviously presents some practical difficulties for the academic researcher of course. Furthermore, the research presented herein is necessarily time-bounded. As has been asserted throughout, the broad processes under consideration here have been in motion for a much longer period than has been the specific focus in this thesis. In future, attempts must be made to further and better illustrate the way in which recent legislative developments might represent the continuation and intensification of a broader trend in IP legislation.

The research has also only been able to focus on the activities of a limited number of actors. As suggested in this conclusion, the legislative processes in question actually involve the participation of a vast range of actors whose activities have not been accounted for fully in this thesis. In particular, there are

those other actors who voiced strong resistance to the formulation to the DEA such as ISPs and consumer groups. But it would also be important to consider further the role of those other actors who may have been supporting the government's proposed anti-file-sharing measures including, most obviously, other corporate rights holders such as film corporations and software producers; actors who together form a powerful alliance it seems. There are also other actors within 'the music industry' itself who were visibly active in attempting to affect legislative action. This includes most especially the industry wide organisation *UK Music* which claims to represent the collective interests of recording companies and creators alike. Space and time ultimately restricted the opportunity to engage in an analysis of all these other actors' discursive activities, but it would make a valuable addition and contribution to further research in this area.

Finally, it is crucially important for future research to explore the international and global context within which the development of local IP policies is situated. As suggested in this conclusion, the international and global nature of advanced capitalism raises both the spectre of and requirement for a certain standardisation of local IP regimes. The danger is of course, that this standardisation in effect means increasing the scope and scale of those more relaxed IP regimes to meet the more restrictive policies of the UK for example. The relationship between domestic, foreign, and international IP policy making must be further explored in future research, as should the

activities of various interested actors in relation to these processes.

As suggested, it is important that academics do not simply explore these issues, but attempt to draw wider attention to those aspects seen to be problematic where necessary/appropriate. In conducting this research into the development of the DEA, it was noted that several academics had attempted to engage in the legislative process via submissions to the relevant formal public consultations. Whilst this represents a potentially effective intervention in principle, academics must be mindful of those potentially problematic dynamics of the consultation process that have been highlighted in this thesis. For instance, it seems clear that these consultation processes and the documents that foreground them are often more promotional and prescriptive than they are dialogical. In setting the terms for debate, they effectively close down space for debate rather than open it up. It's also clear that responses to these government consultations are likely to be read by only a very limited set of actors if anyone other than legislators. And if responses do not resonate with the Governments own agenda, they are unlikely to be heard or have any real resonance or impact. Engagements in these processes on the part of academics should not be limited to engagements in formal consultations as such, but should ideally involve participation in debates taking place in wide range of arenas, both public and private.

Despite its limitations, it is hoped that this research has provided an insight that could form the basis of a valuable contribution to these debates. It has been posited that the

formulation of DEA provides further evidence and illustration of the way in which the original stated purposes of copyright are being marginalised in IP policy-making. Legislative activity in this area has clearly become about protecting rights holding corporations from the difficulties that they face as commercial exploiters of IP in the digital environment. The formulation of the DEA provides further evidence of a now well-observed alliance between these corporate rights holders and governments around IP policy and legislation. Via a critical engagement with the discursive activities of key actors, the thesis has offered a unique and valuable illustration of this phenomenon.

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