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**How does Widespread Copyright Violation, as
Facilitated by Networked Telecommunications, Impact
upon Artistic Practice and Industry in New Zealand?**

A thesis presented in partial fulfilment of the
requirements for the degree of

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Abstract:

The culture of artistic content creation is changing. Once upon a time cultural products, and the ability to dictate how they were used and consumed, could be easily controlled via virtue of the difficulty of working with analogue formats in regards to modification, mass duplication or sampling. The widespread adoption of digital technologies, and the Internet serving as a global vector of seemingly endless information exchange, has rendered these hindrances to content duplication, distribution, and manipulation irrelevant in the wake of a globally distributed network of techno-*cosmopolitan* media content consumers. With the widespread normalisation of illegal online file-sharing, consumers of entertainment can essentially source anything they desire at a non-existent cost, whilst simultaneously excluding themselves from traditional economic channels of distribution.

This research, partially presented as a documentary, investigates the opinions of artists (photographers, filmmakers, and musicians) working and living in New Zealand regarding the prevalence and impact of online copyright infringement. How has this new digital ecosphere impacted their work/practice as an artist and the industry generally? Is the fact that content gains far greater proliferation via these networks an advantage to media creators? Or does the reduction in scarcity and/or effort to obtain said art remove much of the associated value and thus the need to pay? A consumer can steal art considerably more easily now, but an artist can also source material for inspiration or reappropriation in ways largely unavailable in the past.

In what ways (and with how much success) have content creators adapted to this new paradigm? How do these viewpoints correlate with variables such as medium, time spend in the industry and level of professional/economic involvement? And, indeed, how should both the creators, and the consumers, of media content think about art in a new world where it can be digitised so easily?

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Committee Approval Statement:

This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 15/01.

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Introduction:

“Yeah, I’ve had people that go, you know, “What is copyright?” [They were] just so naive to the concept. And that was sort of quite scary. I was like, so you don’t know that you can’t just take anything off the Internet and claim it as yours?”

– Bradley Garner: Photographer (personal communication, July 5, 2015).

We live in an abundance of media content. The bygone era of media scarcity has evaporated, and waiting (or paying) for media entertainment is no longer required - even in geographically remote locations such as New Zealand. Accessing media through engaging in online copyright infringement has become increasingly straightforward as the world becomes increasingly connected digitally, and even individuals with no real technical expertise find it easy to locate entertainment online for free. The copyright laws that are currently utilised and enforced in the majority of the western world were originally created around a centralised, analogue-based distribution model, yet the widespread adoption of the Internet has greatly enhanced the ability of almost everybody to digitally acquire and distribute information and culture. The new dynamics of cultural distribution have destabilized the nature of artistic copyright and the creative industries; new technology has altered our capitalistic equation and caused *creative destruction* (Schumpeter, 1942) to the current paradigm - and this is only going to increase as computer technology and interconnected telecommunications networks become more powerful and more prevalent. “If the twentieth century made culture generally accessible, the twenty first will make it universally accessible.” (Lessig, 2008, p. 37).

There is a general perception that artists who were previously earning a living wage from their artistic expression now see their income diminish as *digital natives* and *digital immigrants* alike turn to illegal downloads. Movie and television studios see the cinema and DVD audience choose to stream or use peer-to-peer software to engage in cinematic entertainment. Certain individuals now download or stream music, rather than make any sort of purchase at all. It is not difficult to argue that this shift in the behaviour of some demographics has negatively impacted the artistic industry. Alternatively, there is evidence within contemporary theories of digital culture that Internet-enabled piracy offers promotion and/or access through mechanisms that mainstream distribution ignores or is generally incapable of (Lobato, 2007, 2008, 2012), as well as offering audiences and artists alike limitless capacity to gain inspiration, and perhaps even promote societal happiness (Bauwens, 2005a, 2007, 2009; Benkler, 2004, 2006). In an age where

digital technologies have become the prime tools through which people both in professional and amateur contexts create and distribute information, restrictions on duplication, distribution and reuse are becoming irrelevant and difficult to enforce. “New technologies and new ways of using information are continually being developed and serve to question our assumptions about copyright and creativity.” (Berry, 2008, p. 28). The new paradigm of cultural distribution has irrevocably altered how consumers relate to the creation and distribution of content. A piece of art is now considerably easier to obtain, often without the bother of purchasing, and consequently, consumers view artistic content as disposable and less valuable. When almost any user can acquire and modify art and culture, the previous concepts of ownership and control now seem irrelevant. When those consuming information alter their relationship to it, by extension, those creating it must change how they relate to it also.

When vinyl records were the predominant format on which music was sold and stored, duplication was a time consuming process involving expensive technology as well as some level of expertise to produce analogue copies. When videocassette recorders or celluloid film was the only format on which to view cinematic entertainment, copying was not the simple drag and drop operation we experience through new media technology. Piracy obviously existed within an analogue distribution ecosystem, but required a huge amount of extra effort and time. “The technologies of publishing were expensive; that meant that the vast majority of publishing was commercial.” (Lessig, 2004, p. 19). In the case of illegally duplicating/‘pirating’ a film, rather than the simple *Google* search for a file to download or ‘stream’ we experience in contemporary culture, one would have had to employ the use of two VCR (videocassette recorder) machines running in tandem in order to produce what would end up being an inferior duplication.

Unlike copies of intellectual property made using analogue copiers (such as photocopy machines, video and music tape recorders, facsimile machines and others), digital copies of intellectual property produce perfect copies without any loss of quality. The first generation and the 1000th generation copy of digital material are indistinguishable. (Sclachter, 1997, p. 19).

These older limitations to duplication do not exist with the use of digital technologies and interconnected telecommunications networks. Previous limitations that impacted the quantity and the quality of duplications are irrelevant to digital platforms. Additionally, the limitations geographical location placed on analogue technologies are almost entirely irrelevant to a digital network.

The new abilities offered by digital technology, and the ease with which culture can be distributed, modulated, collected, and collaborated upon has altered how some artists relate to art created by both themselves and others. “Production tools converged. Computers were increasingly used to create and edit text, images, sound, film, and television images. A large array of different media technologies were replaced by software on powerful computers.” (Fagerjord, 2009, p. 188). This has led to an explosion of remix culture, such as mash-up music, which is largely built upon the use of samples. Due to the fact that “a defining feature of this mash-up genre is that the samples are remixed without any permission from the original artists” (Lessig, 2008, p. 12), art of this sort is often illegal under the current copyright system, despite the fact that this reuse rarely creates content rivalrous to the original. Authors such as Lawrence Lessig (2004), Kembrew McLeod (2005); and Clay Shirky (2010) argue that this sort of cultural creation should be deemed *fair dealing/fair use*¹, affordances offered under copyright legislation such as the *New Zealand Copyright Act 1994* stipulating that one may reuse the content of others without the expressed written consent of the copyright holder for the purposes of education, research or critique. An instance of reuse can be considered *fair dealing* based on criteria such as amount used, purposes for use, and how “substantial” to the original work the sample is considered to be. ‘Substantial’ is intended to mean how important it is to the greater work rather than amount taken (*Information Sheet: Fair Dealing*, 2009). However, little to no consideration is taken, nor generally has been taken (McLeod & DiCola, 2011) in regards to the concept of artistic sampling when we experience it in collage, mash-up, video montage, house/hip hop/electronic music and similar art forms, and this has led to many artists suffering undue litigious stress due to overzealous copyright holders claiming such actions are copyright infringement. This often leads artists to measures such as manipulating content beyond recognition, aiming for obscure samples, or paying for samples legally in order to avoid being caught up in the conflict against file sharing and becoming a victim of what Lessig has described as “collateral damage” (2008, p. 18). Indeed, McLeod and DiCola (2011, p. 35) made the comment that through the “quite distinct legal issues” presented to the legal system by cases of digital sampling, “the courts helped bring the golden age² of sampling generally to an end, often without attention to the consequences for creativity”. Many of these legal issues still exist today. Alternative copyright systems such as *Creative Commons* now exist and aim to more easily facilitate this sort of culture creation, but often the material artists seek for use is not available

¹ *Fair dealing* is the term used in New Zealand (and other commonwealth nations), and is strongly related to the *fair use* laws in The United States. Although *fair dealing* is slightly less flexible than *fair use*, they are extremely similar concepts.

² This ‘Golden Age’ of sampling is generally accepted within the Hip Hop community to have flourished between the late 1980s and the mid-1990s.

under a *Creative Commons* license, as copyright holders must choose to use a *Creative Commons* license, whereas (in New Zealand) traditional copyright is automatically placed on work upon its creation.

This thesis examines the opinions New Zealand's musicians, filmmakers, and photographers have around these issues. How do they feel the ease with which audiences and artists can now acquire content through informal channels has impacted the artistic landscape? How has it affected their working environment and practices and by extension how has this affected the artistic industry they are associated with? Has there been a general shift to aspects of their practice which may not be as easily digital usurped? Do they feel we should continue to battle a seemingly failing war with online pirates utilising laws some describe as antiquated and inadequate or do New Zealand's artists feel there may be other ways to approach or react to situation? Indeed, networks of digital pirates of media content make everything easily attainable without making payment to the content creator, but in that same movement of virtual commodities it is argued that a vastly larger and more diverse audience can gain exposure to content than was ever possible before – which obviously acts as massively valuable crowd driven promotion. Furthermore, one may argue that if the raw materials, as well as the tools, are available in the form of easily downloaded digital content and low cost high speed computers, the population at large can work on the collective cultural project that is artistic expression and we can theoretically create more and better art/information than ever before – as well as serving it to the world.

This research consisted of filmed interviews seeking to establish the opinions New Zealand's artists (musicians, photographers, and filmmakers) hold in relation to these issues, how this influences their practice, and by extension how these issues may have impacted New Zealand's artistic communities and environments. The research is presented both as a written discussion of the findings, as well as a 30 minute documentary. The written thesis includes: a materials and methods section, a literature review, and the results of the study followed by a conclusion of the findings.

The material and methods section contains a breakdown of the relationship between the documentary and the written component. It contains discussion of the process of data collection via documentary, as well as discussion of documentary as a mode of cultural investigation. It also includes a discussion of the archival and additional material that was sourced, remixed and reused in the creation of the documentary, as well as the legal specifics associated with creating content using another party's material. Many images and videos (most

of which were either *Creative Commons* attribution license or available in the public domain) were utilised. This section also discusses the issues associated with investigating a subject where, due to the triviality of many copyright laws and how they interact with digital platforms, many participants could possibly inadvertently incriminate themselves.

The literature review introduces the key thinkers and debates in the area of copyright and networked digital telecommunications. The subtopics which are discussed include: the alterations to cultural creation, distribution and acquisition through digital media; the specifics of copyright legislation in New Zealand and how this has been amended in the light of new technologies; the issues surrounding copyright being enforced in ways which are detrimental to artistic creation; digital sampling and fair use, and alternative copyright systems such as *Creative Commons* which seek to incorporate this practice both for professionals and amateurs; and the impact, both tangible and intangible, for society and individuals alike that may result from a culture which relates to information in a more open, collaborative and less linear way.

The results and discussion contains a breakdown of the opinions held by the twelve participants who took part in data collection. It explores how these positions have affected how these artists create, promote and distribute their work. It discusses how this relates to theories expressed in the existing literature. Do New Zealand's artists interact with online copyright infringement in much the same way as The United States and Europe? Or does something about the local context of a dramatically smaller population and industry, and relative geographical isolation influence New Zealand's audiences, artists and cultural industries to behave differently?

Materials and Methods:

This portion of the thesis will discuss: the process and considerations which went into participant selection; documentary film as a mode of cultural investigation, the specific modal approaches which were taken with this documentary, as well as how the documentary relates to the written thesis; the use of remix and reuse of pre-existing material which exists within the documentary, including the different issues surrounding licensing; and the ethical issues which exist when one undertakes cultural research where participants could potentially incriminate themselves, yet there is no possibility of presenting the information completely anonymously as the participants appear in the documentary.

The process of collecting data via video recording and then constructing a documentary based around this material creates ethical issues, such as those that arise when you are investigating and then broadcasting information surrounding subject matter that is at times inherently illegal. Additional issues include the fact that the documentary is to some extent a remix piece, a creation where material from other sources has been altered and included. Documentary filmmaking is a powerful tool for cultural research which has the ability to communicate far and wide to demographics which do not normally engage with academic literature. "The ability for documentary film to reach significant audiences through such a powerful medium makes the genre a natural and necessary tool for activism, one that can no longer be overlooked in the study of rhetoric and social change." (Aguayo, 2005, p. 222). Documentary also has beneficial qualities as a companion piece to the written component of cultural research, especially when we are considering topics associated with artistic creation. Documentary as a medium offers opportunities to include examples of artistic expression which could not appear in a written piece, such as music. The audio-visual medium of film also offers the participants an opportunity to speak and voice their opinions in their own words in a way which is more direct than a textual account alone, although the associated text is able to investigate issues in more detail than is possible with a short documentary.

Video Guided Data Collection

Data collection was based around conducting filmed interviews, ranging from approximately sixty to ninety minutes. Individuals were asked a series of questions, which they had been sent upon initial contact requesting involvement. Participants were able to refuse to answer any question on any basis. Individuals were selected based on: artistic medium, artistic genre, time spent in the industry, and perceived level of professional engagement. This was

done in an effort to gain a varied collection of well thought out, and well supported, positions and opinions. Initial research (prior to contact) around these variables was based on seeking out their representation within traditional mass media, such as the level of their appearance within publications, television etc., as well as their following/success on social media platforms such as *Facebook*, *Twitter* and *SoundCloud*. The specific opinions that each participant had in relation to the subject of Internet enabled copyright violation, as well how they felt it had impacted the New Zealand entertainment industry, were not known before the process of contacting individuals was underway, but certain assumptions based on the artistic output of each professional content creator could be made prior to data collection commencing. For instance, it would not be unreasonable to assume that a musician who creates remix mash-up music via sampling old funk records and 1980s children's cartoons would be in favour of open access to content (copyrighted or not) for the purpose of reuse.

Participants were selected from within the music, photography and film industries. Content creators who were involved with lending their opinions to the investigation included: eight musicians of various varieties/genres, two individuals involved with the film industry, and two photographers (one of whom also works in videography). A non-artist participant was also present in New Zealand's *Creative Commons'* public lead. Featured participants were:

Costa Botes: An independent creator of (primarily documentary) films who has been involved with New Zealand filmmaking since the 1980s. Artistic involvement is his primary source of income, as well as working in tertiary education.

Grayson Gilmour: A musician (primarily alternative/indie). While now primarily a solo artist he first came to prominence playing in the band *So So Modern* during the mid-2000s. Music performing/recording comprises a moderate part of his income.

David Stevens: A beatmaker/producer (who utilises samples within music) and radio station manager/personality. He has been active since the early 2010s. Music performing/recording comprises a small part of his income.

Hayden Sinclair: A beatmaker/producer who has been releasing electronic music since around the mid-2000s. He has also been involved with professional sound engineering. Music performing/recording comprises a moderate part of his income.

Shaun Anderson: A metal/jazz drummer (primarily) who is to varying degrees involved with around 15 bands (two of which, *Saving Grace* and *Depths*) have toured internationally. In addition to this he works in music education. He has been

professionally active since the early 2010s. Artistic involvement is his primary source of income.

Kaye Davis: A professional artistic photographer, tertiary educator, and current chairperson of the NZIPP (New Zealand Institute of Professional Photography) Honours council, who are responsible for managing the annual NZ Iris Professional Photography Awards. She has been involved with photography professionally since approximately the mid-1990s. Artistic involvement is her primary source of income.

Peter-James Dreis: An alternative musician active since the late 2000s who frequently releases work under the *Creative Commons* 'Attribution-ShareAlike' 3.0 License, allowing reuse (even commercially) but under the condition that new works that sample these creations are shared under the same licence. He has been active since approximately the mid-2000s. Artistic involvement comprises a small part of his income.

Damian McGregor: A DJ who works with both digital and analogue formats. He has been active approximately since the 1990s. Artistic involvement comprises a moderate part of his income.

Dan James: An artist, video DJ (VJ), DJ and Mash-Up musician. He has been active since the mid-2000s. Artistic involvement comprises a small part of his income.

Bradley Garner: A photographer/videographer who is primarily involved with creating content for the music industry. He has been involved with the artistic industry since the mid to late 2000s. Artistic involvement is his primary source of income.

Andy Campion: A Filmmaker who works both on projects intended for free, Internet distribution, as well as being an employee of *Weta Digital*. He has been active since the early 2010s. Artistic involvement is his primary source of income.

Matt McGregor: 'Public Lead' of the New Zealand branch of *Creative Commons* and the sole non-artist participant of the research.

Documentary as a Mode of Cultural Investigation

"We in documentary have a moral responsibility for what we put on the screen." (Rabiger, 2009, p. 351). Documentary filmmaking is an effective tool for the purposes of cultural investigation, both in terms of collecting data, and in effectively communicating findings. "Documentary offers access to a shared, historic construct. Instead of *a* world, we are offered access to *the* world." (Nichols, 1991, p. 109). It can be argued that documentary offers a more

direct connection between the audience and the opinions of the participants than text alone. Primarily this is accomplished through the filmmaker allowing the participants to speak for themselves, rather than merely reporting their quotes; a greater portion of the original context can be more easily preserved in documentary film than in many other forms of reporting. Documentary offers us something close to realism, and a more realistic representation of the world. "Realism presents life, life as lived and observed. Realism is also a vantage point from which to view and engage with life." (Nichols, 1991, p. 166). It is through offering realism that documentary is an effective tool through which to investigate, interpret, and communicate the social issues that anthropological, sociological, and cultural research seeks to address. It should be noted however that despite striving for realism, all art forms, including documentary, are constructed through choices of editing etc. Due to this complete objectivity is not possible, but it is more attainable than in other art forms. As Bill Nichols (1991) states:

Documentary ... begins with a concrete representation of people and places, situations and events but depends for its success far more on its ability to induce us to derive larger lessons, broader outlooks, or more overarching concepts from the detail it provides. (p. 29).

Documentary, and specifically what Bill Nichols (1991, 2010) refers to as the *expository mode* of documentary, also benefits from the fact it can more readily utilise images, archival material, direct voiceover/narration etc., and indeed function as multimedia of sorts in a way that narrative film traditionally does not. The *expository mode* of documentary filmmaking exists "less to establish a rhythm or formal pattern ... than to maintain the continuity of argument or perspective." (Nichols, 2001, p. 169). Furthermore, the "expository mode ... affords an economy of analysis since points can be made succinctly and pointedly in words." (Nichols, 2001, p. 169). This mode of documentary filmmaking is effective, and suitable, for cultural research as it allows the creator to be more direct and succinct around important and/or complex subjects. "This is the mode closest to the classic expository essay or report" (Nichols, 1991, p. 34). The documentary and written aspect of this thesis will speak to each other and arrive at the same conclusions, although the written portion will be afforded more space for elaboration and detail in relation to some of the issues that arise.

Although the process of interaction, as well as any prominent presence by the filmmaker, is largely void from this film as a plot device or method to communicate information, the documentary associated with this research has elements associated with the *interactive mode* (Nichols, 1991) as it "revolves around the form known as the interview." (Nichols, 1991,

p. 47). The information obtained during data collection was garnered via “the actual encounter of filmmaker and other.” (Nichols, 1991, p. 44), and the film is very much built upon the ‘talking heads’ that these interviews provided. Although the story/conflicts of the interaction between filmmaker and subject which arise in other documentaries within the *interactive mode* (such as those of Louis Theroux or Michael Moore) are excluded due to irrelevance to subject matter from this documentary, certain conventions that exist within the *reflexive mode* (Nichols, 1991) of documentary, which reveal the act of documentary filmmaking itself, provide a nod to this interaction, as well as acknowledging the constructed nature of communications such as these, even when making an effort to be objective. It is possible for *reflexive* documentaries to offer, or at least make a gesture toward, “commentary beyond the journey [of the documentary] undertaken, frequently on the nature of filmmaking.” (Bruzzi, 2006, p. 109). In a reflexive documentary “the formal processes of making the film, combined with the audiences awareness that they are watching a mechanical representation of reality, are not minimized but celebrated.” (Fox, 2010, p. 23). Although this documentary makes no great critique on the act of documentary filmmaking itself, shots which give witness to the act of the preparation of the interviews (camera/lighting/audio gear being set up etc.) are included in an effort to highlight the construction of this artistic product. This exists in an effort to break the ‘fourth wall’ and to a certain extent give emphasis “to the encounter between filmmaker and viewer rather than the filmmaker and subject.” (Nichols, 1991, p. 60).

Of course, the majority of research for documentaries is “qualitative and involves using your [the filmmaker’s] intuition and making subjective judgements.” (Rabiger, 2009, p. 342). No artist can create without something of their own opinion/views influencing the final product. Despite this, offering as many varied and at times conflicting ideas in relation to the subject matter as is relevant achieves something close to an accurate representation of the participants’ opinions and actions in relation to the issues. Again, with the *expository* mode of documentary, a filmmaker “emphasizes the impression of objectivity and a well-substantiated judgement ... it affords an economy of analysis, allowing points to be made succinctly and emphatically.” (Nichols, 1991, p. 109). As the various artists interviewed had diverse views in relation to the subject, conflicting opinions were able to be articulated. As a medium “documentary may address us on more than one level and with more than one argument. Like narrative fiction, documentary may convey mixed, ambivalent, or paradoxical messages.” (Nichols, 1991, p. 137). Through taking this approach to the collection and transmission of the information, it is possible to offer an honest, well rounded, fair, and entertaining representation of the relationship New

Zealand's artists have toward online copyright infringement. The primary method through which to achieve this end was by aiming for:

professional detachment from the issues at hand. Ethics need not mean taking a stand for or against the values or beliefs of others so much as acting in ways that do not withhold respect from subjects or undermine trust from audiences. (Nichols, 2010, p. 59).

This will allow an audience to arrive at their own conclusions based on the supplied information and their own views on the subject matter, rather than being actively encouraged into any specific ideological position.

Archival Material and the Art of Remix

In the making of this documentary archival material as well as other content not created by the filmmaker was sourced, modulated, manipulated and then used as remixed media. This primarily included still images and video and was done in an effort to illustrate the spoken information expressed in the documentary, primarily through proving visual aids, and to serve as an example of what remixed culture might appear as.

As the use of the material from other content creators without explicit written permission is illegal if the copyright holder has an *All Right Reserved* copyright license placed upon it, the content that was acquired and used in this documentary was found either in the *Public Domain*, or under a *Creative Commons* Attribution license. All that is entailed with using content licensed this way is attributing the source, rather than paying for a license or even notifying the creator of the original material. Screenshot images of the *New Zealand Copyright Act 1994*, the *Copyright (New Technologies) Amendment Act 2008*, and the *Copyright (Infringing File-Sharing) Amendment Act 2011* obtained via www.legislation.govt.nz were also utilised, but as per the stipulations of section 27 of the *New Zealand Copyright Act 1994*, copyright does not apply to legal documents such as these.

Much of the archival video material that is present was sourced through databases which collect content specifically for reuse, such as *archive.org* or the *Creative Commons* search engine, which scours several sources such as *Flickr*, *YouTube* and *Google*. The majority of the still images which were utilised in the creation of this film were sourced through *Wikipedia Commons* by way of *Google* Image search, which has search options included which allow a user to easily filter out content labelled for reuse. A small amount of material was also provided by the participants of the study. This was in the form of images and video supplied with the prospect of being included, as well as music that the musicians were willing to perform for the

camera during the interview process which was later manipulated using digital editing programs and included in the documentary.

Extensive information relating to the source of outside material utilised in the creation of the documentary was collected as material was found for consideration, so as to give proper attribution in the credits of the completed film to the sources of the material utilised.

Ethical Dilemmas, Incrimination, and Anonymity (or the lack thereof)

“Ethical considerations attempt to minimize harmful effects ... Filmmakers who set out to represent people who they do not initially know but who typify or possess special knowledge of a problem or issue run the risk of exploiting them.” (Nichols, 2010, p. 52). Effective and comprehensive communication with participants is a key component to having an ethically sound research process. This allows participants to make a more relevant and insightful contribution to the research as they will have greater knowledge of the study and enhanced ability to prepare. This also creates a non-threatening environment which will be more conducive to investigative discussion. During all levels of communication with a participant, it is important to “be clear and honest about the purposes of the piece, or central questions” (Fox, 2010, p. 108). This allows them to enter a more relaxed and open working relationship while taking part in the study; they will not feel deceived, have greater trust for the researcher and hopefully provide more authentic and comprehensive information. All prospective participants received an information sheet outlining the research, a copy of the permission form they would be required to fill out before participation, as well as an advanced copy of the questions which they would be asked during the interview process. Participants were encouraged to engage in correspondence with the researcher if they had any queries or comments relating the research or the subject matter.

When undertaking research, especially when the option of anonymity is unavailable such as when the participants will be featured in a visual medium such as film, it must be ensured that no harm, (emotional, physical, financial, legal or otherwise) comes to any participant as a result of their involvement with the study. Indeed, the filmmaker has the “responsibility to guard those who trust you from consequences that you, not them, can see possible.” (Rabiger, 2009, p. 354). In the case of this documentary/research, the prime area of interest was avoiding the possibility of a participant incriminating themselves by admitting to engaging in copyright violation. This is not an area that was intentionally addressed, but the possibility of it arising due to the subject matter was highly likely. It has been a damning criticism, and one many (Lessig, 2006, 2008; McLeod, 2005) would argue is accurate, that online copyright violation has become

so easy and trivial that many engage in it absentmindedly, or due to ignorance of the specifics of the law.

Appropriating and recontextualising existing photographic media [or any media content] in one's own work has long been a powerful means of questioning and subverting mainstream media by video artists and activists [among artists working in other mediums]. Today, with the explosion of media repositories such as Google Image Search, YouTube ... the use and misuse of copyrighted material has become a greyer area than ever before. (Fox, 2010, p. 101)

If one was to take a photo from someone without permission (and it was not under a *Creative Commons* license or available in the *public domain*) and use it as their profile picture on Facebook, because of the fact that in New Zealand copyright protection is automatically placed on a work this would be an example of digital copyright violation. And this is without wading into the considerably more murky waters of the world of digital sampling and reuse in the creation of art where, despite the strong argument that this is an example of *fair dealing*, many see it as violation.

Avoiding participants encountering legal trouble due to their own interaction with copyright violation was intrinsically important to ensuring that this was a positive experience for those interviewed. This was achieved initially by making the participants aware of this issue in an effort to allow them to still discuss all material they felt was relevant (such as the idea of artists themselves violating copyright online, which definitely happens) but address them in a more rhetorical, less personal manner. In any regard, all participants were ensured that no material which may cause legal issues was to be included in the documentary, and if it was to be included in the written portion of this research it would be done so under anonymity. This approach to handling sensitive content was approved by the *Massey University* Ethics Council.

In order to ensure this research was to be conducted ethically, the project was submitted to the *Massey University* Ethics Council for consideration. As the subject matter includes opportunities for participants to incriminate themselves, the specifics of the research had to be considered at a council meeting, rather than being classified as low risk. Information supplied included specifics regarding the proposed research, copies of the required consent forms that participants would sign, a copy of the questions which would be posed to the participants of the study, as well as a copy of the information sheet that all participants were sent.

Conclusion:

This section has discussed the methods through which data was collected and communicated in relation to this research. It has discussed why documentary is an effective means through which to approach and broadcast the findings of the thesis. Issues surrounding the reuse of another content creator's material and the legal situation associated with this manner of artistic expression were also addressed. Furthermore, the ethical issues which exist with cultural research, cultural research in the form of a documentary, and specifically the ethical considerations that need to be addressed when investigating illegal activity were also discussed.

Literature Review:

This literature review will explore ideas surrounding how the Internet has altered the ways in which information can move around the world regardless of copyright restrictions. It will explore content based around how the affordances of these new technologies have not only altered the actions of consumers, but have altered artistic practice both for individuals and artistic communities as a whole and indeed have further implications for society. The primary area of interest will be issues surrounding the idea of 'ownership', and by extension 'copyright'. Outlined here are many issues which have arisen due to the interaction between the abilities new media have granted us to access and manipulate content, whether subject to copyright or not, and the older laws of copyright which seek to exercise the same manner of control present in earlier distribution models.

Specific topics for consideration include: the methods through which copyright is being implemented or modified on the Internet, how these modifications might impact artistic cooperation and expression, and how this in turn affects the industry. Additionally, the research will be commenting on mechanisms through which the current copyright system may hinder an artist's ability to research and/or manifest their art. Arguably this primarily occurs through the restriction of access to content and restriction of ability to manipulate said content despite the Internet offering new options of expression along these lines. The existence of stringent copyright laws restricting reappropriation of content was less relevant prior to digital technology. Direct manipulation of content was largely prohibitively difficult while working with analogue formats, though several subcultures such as hip hop still managed to directly sample material. Forceful control of culture access intended for purposes of research, entertainment or inspiration arguably counteracts the huge benefits to information sharing that the Internet offers all manner of consumer and creator. This obviously can have negative implications for the creation or synthesis of information. As Christian Fuchs (2010) states: "The production of knowledge is based on prior consumption of other knowledge ... Consumption of knowledge produces individual meaning and incentives for future social production and communication." (p. 191).

Additionally, interest will be placed on culture sharing organisations such as *Creative Commons* and the *Peer to Peer Foundation*. These embrace the positive aspects of the free distribution of information granted to us by digital technologies and encourage sharing,

collaboration and cultural/technological evolution in the digital world in order to more effectively create and proliferate quality content. These models of distribution will create a *permission culture* (Lessig, 2005), the aim being to offer copyright holders an alternative method through which to control the use of their content, instead of the current mainstream copyright system or a fully free culture which could risk allowing no incentive for creation beyond the pleasure of it. “The gap between what the law permitted and what technology allowed could have been closed either by changing the law or changing the technology.” (Lessig, 2008, p. 98). In an epoch where culture can be so easily manipulated, modulated, reused and rereleased as new, interesting and important artistic expression, restrictive copyright rules are arguably irrelevant and a hindrance to artistic evolution.

As this research specifically investigates the impact widespread copyright violation has had on New Zealand based artists, ideas surrounding globalisation, and specifically the loosely connected *cosmopolitan* community must be taken into account. *Cosmopolitanism*, a concept traced to ancient Greek philosopher Diogenes of Sinope (Laertius, 1853) from the 5th century B.C.E, describes individuals who consider themselves a part of the wider world community (the human species as a whole) rather than a local one (a tribe, country etc.). This mind-set is supported by the Internet as geographical (and even temporal) separation in no way limits connection between single agents or communities within this network. It has been theorised (Lobato, 2007, 2008, 2012) that in geographically isolated locations such as New Zealand the population is often persuaded to engage in Internet piracy in an effort to make up for what it is missing out on, either due to content not being available at all or only available under expensive subscription plans. To a *cosmopolitan* who considers themselves a part of a community where “the global and the local do not exist as cultural polarities but as combined and mutually implicating principles.” (Beck, 2002, p. 17), having to wait for the local broadcast or release of content is considered an unlikely option and indeed, artists themselves can also utilise this system in order to spread their content beyond traditional distribution.

Changes through Digital Media

“A new ‘electronic renaissance’ [(Rushkoff, 2003)] has taken place, a profound shift in individuals’ perceptions of their own agency in electronic environments.” (Tkacz, 2012, p. 397). These changes to the landscape of culture distribution brought on by widespread illegal file sharing could be described as an example of *creative destruction* in capitalism, an idea popularised by economist Joseph A. Schumpeter (1942) on theories derived from Karl Marx. This concept describes the impact of a development within the culture, political economy or

interrelations (or all three) of a capitalistic equation which forces it out of equilibrium and into fluctuation before restabilising. We are yet to witness the latter as of 2016. It should be added that the idea of a market truly finding 'equilibrium' within a capitalist system is more a thought experiment than a comment on reality (Walras, 2013).

Extensive literature has been written expanding upon the various ways in which this new paradigm interacts with artists, as well as offering proposed approaches copyright law can make in order to incorporate these new developments while still offering professional content creators some compensation for their work. It is even argued that largely positive results can emerge from a hugely connected, collaborative society where content moves freely due to a breakdown of control over distribution. Lessig (1999, 2004, 2008), McLeod (2005) and McLeod with Dicola (2011) make the argument that stringent copyright enforcement is detrimental to culture creation due to stifling channels of distribution, and due to causing "collateral damage" (Lessig, 2008, p. 18) to artists engaging in *fair use/fair dealing* while combating Internet pirates. Lobato (2008, 2012) makes the point that alternative channels and methods of culture distribution such as piracy can often act as legitimate (in terms of functionality, not legality) methods through which to advertise to a previously untapped audience, or supply content to an audience which has no other method through which to acquire it. Indeed, some in the music industry have been forced into adopting this approach to some extent. *Radiohead* producer Nigel Godrich was quoted (Nager, 2015) as saying: "The recorded music industry has been so decimated by piracy that the only way for artists to survive is by gaining visibility at any cost, which includes allowing piracy itself." Theorists including Yochai Benkler (1999, 2002, 2004, 2006), Christian Fuchs (2010), and Michel Bauwens (2005b, 2007), despite often approaching these issues from at times disparate political or philosophical positions, similarly make the point that the erosion of barriers to information and content creation is hugely beneficial at fostering interpersonal (and intersocietal) connections within the human population, and by extension furthering information creation through collaboration and/or open sharing of material. It should be added that Clay Shirky (2008), as well as Michel Bauwens (2009), state that these methods of relating to content, which largely deviate from traditional forms of content ownership, often serve the collective more than the individual, and individuals (specifically professional content creators) may not continue to contribute if they get no reward other than enjoyment. Negative consequences of this new environment have been pointed out. Art, or anything really, could be felt by some individuals to lose its sense of novelty or *aura* (Benjamin, 2008) when it is so easily obtained, duplicated, and distributed. In addition to this, Andrew Keen in *Cult of the Amateur* (2007) states that in an age of overabundance of information, generally more bad art than good

is created, which may simply suppress a consumers ability to access quality content. As digital technologies have greatly aided in the ease of the creation of art, and the Internet has made content distribution so easy due to a lack of *gatekeepers*, arguing the position that the abundance of art available on the Internet essentially makes it more difficult to find the truly great art is not difficult – as far as the Internet is concerned there is no ‘bad’ or ‘good’ art, only information. But of course, it is worth adding that determining what is considered ‘great’ art could never be a completely objective exercise anyway, even when humans are involved in content selection.

As much as some proponents of the older model of culture ownership and copyright control may deny it, it is true that the Internet’s digital environment has changed how we must address these issues. This has primarily occurred due to the eradication of scarcity around information or cultural products, as well the ease of distribution which sees many instances of population (or crowd) driven proliferation. As David Berry states in *Copy, Rip, Burn: The Politics of Copyleft and Open Source* (2008):

Intellectual property does not operate in the same way that physical property does ... without scarcity or without any ‘wearing out’ or consumption of the works, it is argued that it becomes difficult, if not impossible, for the market to function rationally. (p. 71-72).

The old rivalrous approach to commodities, where if someone was to sell you something by the virtue of it being a physical object they would no longer have it, seems irrelevant as it is possible to copy any virtual/digital object, give it to someone, and still keep a copy for yourself – and most analogue forms of art have found a way to exist digitally (with the notable exceptions of art such as sculpture and carving). There have been many proposed approaches to this new paradigm attempting to still enforce some sort of copyright, while still taking into account the new abilities of the Internet.

It is the genius of a common law system, as ours is, that the law adjusts to the technologies of the time. And as it adjusts, it changes. Ideas that were as solid as rock in one age crumble in another. (Lessig, 2004, p. 3).

Of course, many theorists (Landes, 2000; Vaver, 2012) have put forward positions supporting current implementation of copyright legislation, or at least see it as the necessary means through which to properly stimulate artistic development through compensation – if people download material illegally they may not purchase a copy or contribute in any other meaningful

way to the artist. In addition to this, theorists such as Adam Smith (2010), Dutfield and Suthersanen (2008), and Patry (2011) discuss motivations to enforcement of the idea of ownership and copyright on more moral grounds. These theorists, among others, argue that if copyright and by connection the ability to make money through royalties etc. completely erodes, there will be little incentive for artists to create.

Creating these works involve a good deal of time, money and effort (sometimes called the “cost of expression”). Once created, however, the cost of reproducing the work is so low that additional users can be added at a negligible or even zero cost. Thus, the cost of making 10 or 250 copies of a print are roughly the same once the plate has been created. It follows that in the absence of copyright protection, unauthorized copying or free riding on the creator’s expression would tend to drive the price of copies down to the cost of making them. But then the party who expended the resources to create the work in the first place will be unable to recover his costs. Hence, the incentive to create new works will be significantly undermined without protection against unauthorized copying. (Landes, 2000, p. 6).

In a world where information is becoming increasingly easy to access, even if the information was originally released under copyright in a different format, the goal is to create a way of sharing and distributing content which still benefits the content creator. Michel Bauwens (2009) of the *P2P Foundation*, who actively advocate for, support and reinforce the advantages of peer to peer production, notes this issue:

The key issue for labour is that peer production is currently sustainable collectively, but not individually. A peer-to-peer project can sustain itself through the renewal of its volunteer labour force, but at the individual level, volunteering cannot be a permanent state ... A peer producer voluntarily contributes his or her creative brainpower to a common project; also contributing physical productive resources to create the user-generated capital base that will enable the infrastructure of cooperation to endure. However, the same peer producer also needs to make a living. (p. 130-131)

Much of the content/effort invested into systems such as this could be considered an example of the general population, a segment of society which prior to the Internet and digital technologies had considerably less opportunity for content creation/distribution, contributing their *cognitive surplus* (Shirky, 2010) toward a common goal. This has generally proven to promote the creation of culture, despite what some theorists (Keen, 2007) may note about the

quality of this culture. Often, however, little sustainable economic advancement is achieved for individuals creating the content, which is an issue for professional content creators.

Anthony Reese (2000) recognised the incredible ability the Internet has to disseminate culture and felt “copyright law in the digital era should attempt to facilitate the development of legitimate dissemination of music [and other culture] over the Internet because this promises to significantly increase public access to copy-righted music.” (p. 238). He sees it as an opportunity to be used, specifically because it is happening already, from an economic perspective:

some balance must be struck between enacting legislative solutions to the copyright problems arising from new technologies before such technologies have developed fully, and waiting to enact legislation until such technologies already have become so widely adopted that the political costs of settling disputes over applying copyright law to the new technology have become extremely high. (p. 264-265)

Online music stores which are currently in operation such as *Apple’s iTunes* are attempting to bridge the gap in successfully monetising online sales of culture, with some success. Music streaming services such as *Pandora*, *Spotify* and *Tidal*, work on a model where you do not pay for or own the music in a traditional sense— revenue streams stem from either advertising space on free services, or marginal monthly fees (prices lie in the \$US20 range) for access to an online library of content. Video streaming services such as *TiVo* and *Netflix* in the United States or *Lightbox* and *Neon* in New Zealand are fast usurping the role that traditional broadcast television held. But, in most senses these models of distribution are simply an interpolation of digital technologies by older media providers seeking to control content distribution (either legally or technologically), and typically function in much the same way traditional distribution does/did – often with the same issues relating to regional access to content. Legitimized digital distribution also, generally speaking, fails to incorporate the ability to converge, mix and remix media, although *Bandcamp*, *Soundcloud* and other online content distributors such as photography service *Flickr* do offer users the option of releasing content under a *Creative Commons* license, obviously with the purpose of promoting reuse and sharing in a relatively structured manner. However, in essence these distribution models are in most senses not a significant deviation from previous methods of content distribution. One still doesn’t have the same unlimited access to content selection offered by illegal downloading when utilizing these services; legitimate digital distribution vectors only serve customers what they have the legal rights to. Furthermore, these channels/sources of entertainment are able to undertake far

greater market research (or surveillance) on their audience (Morozov, 2012) which many consumers resent. In addition to this, digital services such as these exert more overbearing and stringent control of what an individual may do with a piece of content through increasingly technological means of content control such as digital rights management (DRM). DRM software limits the amount of plays, how many copies you are permitted to make etc. of a certain digital product. These could be considered an example of *crippleware* or *antfeatures*, where extra work has gone into the less expensive product version, much like that applied to trial versions of software, designed in an effort to persuade you to purchase the more expensive edition. It should be noted that these sorts of content control measures are routinely circumvented. This has even lead to the *Copyright (New Technologies) Amendment Act 2008* applied to the *New Zealand Copyright Act 1994* having specific clauses attempting to discourage the removal/circumnavigation of these controls, though these laws were designed more to combat those doing this in order to sell content, rather than merely for the purposes of format shifting or the like (*Information Sheet: Copyright (New Technologies) Amendment Act 2008*, 2009).

Copyright in New Zealand

In New Zealand, the law that currently regulates copyright is the *New Zealand Copyright Act 1994*, which came into force on January 1st, 1995. It exists with much the same purpose as the *Statute of Anne* (1710) of England, the original law upon which many countries with historically close ties to England, including The United States (Patterson, 1965), base their own copyright laws. The *Statute of Anne* (1710) was designed with the “regulation of published works in mind. It was conceived as a device that would prevent other booksellers [from] copying those published works.” (Bentley, 2010, p. 10). Much like most copyright systems in existence today, it was claimed to have been enacted with an aim of “the encouragement of learned men to compose and write useful books.” (Bentley, 2010, p. 19 quoting Rose (1995)) by protecting income.

International copyright regulations have influence over New Zealand’s copyright legislation. *The Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) from 1994 sets down minimum standards for aspects such as copyright length that nations must adhere to. *The Berne Convention* established in 1886, and revised in 1928, requires that all signatory countries within this agreement recognise the copyrighted worked of other nations the same as they do their own. Furthermore, New Zealand is also party to the *Universal Copyright Convention* (UCC) of 1952, which the United States supported as an alternative for nations disagreeing with aspects of *The Berne Convention*.

New Zealand copyright law functions in much the same manner as that of other Western nations, primarily owing to the fact that it used The *Statute of Anne* as something of a template, although important differences exist between the laws in New Zealand and that of other countries, primarily around the period of time before copyright on a work expires and it enters into the *public domain* (the point at which a work is deemed to be free of copyright and open to use by all). For example, in the United States, generally speaking, copyright, which is enforced under the *Copyright Act of 1976*, lasts for 70 years after the death of the author, though there are provisions within the act for copyright to last as long as 120 years after creation. In New Zealand, copyright of sound recordings “expires 50 years from the end of the calendar year in which the recording was made, or was legitimately made available to the public – whichever is the later.” (*Information Sheet: Copyright for Owners of Sound Recordings*, 2014, p. 2). Visual art such as photography, sculptures and paintings have a copyright duration of the life of the creator plus 50 years. The copyright life of a ‘moving image’ (a film) is 50 years from the end of the calendar year in which the film was made, or 50 years from the end of the year in which the film was released to the public. It should be noted that if the signing of the Trans Pacific Partnership (TPPA) goes ahead, copyright term in New Zealand will be extended from 50 to 70 years.

The *New Zealand Copyright Act* (1994) has been amended many times, generally in order to fix what was seen as unclear wording, put more control over the importation of films, add greater specificity as to how infringement is investigated, or for other administrative purposes. Amendments of this manner include: *Copyright Amendment Act 1997*, *Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998*, *Copyright Amendment Act 1999*, *Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003*, *Copyright Amendment Act 2005*), among others. But the amendments which are the most relevant to this research are those which were drafted attempting to bring the law up to date with current technological developments, specifically digital technologies and the Internet based illegal file sharing it facilitates. These amendments were the *Copyright (New Technologies) Amendment Act 2008*, and the *Copyright (Infringing File Sharing) Amendment Act 2011*.

In 2001 the *Ministry of Social Development* conducted a comprehensive review of New Zealand’s copyright law with the specific aim determining its effectiveness in the light of new technologies, specifically the Internet. This investigation, and the amendments that resulted, were very much following in the footsteps of the *Digital Millennium Copyright Act* enacted in the United States in 1998, a copyright law created with the intention of implementing two treaties by the *World Intellectual Property Organization* in 1996 which had the explicit purpose of curtailing Internet copyright infringement. In 2009 the *Copyright (New Technologies)*

Amendment Act was passed, with strong support from media corporations such as the *Recording Industry Association of New Zealand* (RIANZ) – which is now called *Recorded Music NZ* – and the *Australasian Performing Right Association* (APRA). This amendment made alterations to encompass the widespread adoption of file-sharing. Included in this were alterations redefining ‘copy’ and ‘copying’ so that digital content is clearly included, with an exemption regarding the ‘transient copying’ that all computer networks engage in in order to serve content. Furthermore, statements around “communication to the public” were amended in order to be more “technologically neutral” in an effort to include the Internet and other digital communications (*Information Sheet: Copyright (New Technologies) Amendment Act 2008*, 2008, p. 2). Information regarding the liability of Internet Service Providers (ISPs) surrounding online copyright infringement was added – including the fact that their liability is limited if they are unaware of the infringement (i.e. they are only hosting the content of a customer). However, this limitation of liability can be removed if a copyright owner makes the ISP aware of the infringement occurring within their systems. At this point they will be liable if they do not act. The *Copyright (Infringing File Sharing) Amendment Act 2011* further provided copyright owners with a process for dealing with this situation. The *Copyright (New Technologies) Amendment Act 2008* also included the controversial (Kay, 2011; Deeks, 2011) section 92a, which stated that after ‘three strikes’, three instances of a copyright holder making a complaint against your Internet account regarding copyright infringement, you could have your Internet disconnected for 6 months. This aspect of the amendment was repealed before coming into law in the wake of massive public outrage, being described as “guilt by accusation” (Pilcher, 2009). Protest included the New Zealand Internet Blackout Campaign, an online movement promoted by the *Creative Freedom Foundation NZ*, where participants would black out their avatars on their social media accounts in protest of the guilt by accusation aspect that this law seems to allow for.

In 2011 the *Copyright (Infringing File Sharing) Amendment Act* came into force which, as well as repealing section 92a, had the explicit aim of battling online file-sharing via peer-to-peer networks (as opposed to attempting to curtail copyright infringement elsewhere online, such as *YouTube*). It provided copyright owners with an updated process for protecting their copyright based around sending notifications to ISPs after which the ISP must issue a warning to the infringing party. Up to three can be issued before the infringing party must go before the Copyright Tribunal and can then be issued a fine of up to \$15,000(NZ). This amendment was met with much the same criticism as the *Copyright (New Technologies) Amendment Act 2008*. Issues specifically being around assumption of guilt, as well as the fact that the Internet account holder

is the individual who will be charged with the infringement, regardless of whether they were the infringing party or not. Furthermore, the possibility of disconnecting an individual's Internet capabilities was seen as an unjustified overreaction by much of the public, especially considering the huge number of people who use the Internet to work, communication, manage finances etc. This position was somewhat supported by a 2011 United Nations report affirming the position that Internet access is a basic human right (Kravets, 2011), which came out mainly in response to laws enacted by the United States and France which gave ISPs the power to disconnect accounts from the Internet.

Weaponised Copyright vs. Sampling and Remix

The act of remixing, reusing and reinterpreting another creator's work should be seen as a valid form of artistic expression. In most instances the new art is in no way rivalrous or in competition with the original art. If one was to search for a certain musical recording, some aspect of that recording used in another piece of art would not be seen as an adequate replacement.

Although many people think of remix culture as primarily being based around music creation, arguably the remix and reuse, share and reshare mentality as an act of artistic expression is most visible within the general population in the form of *meme* culture. A *meme* is generally understood to be the reappropriation of an image or video, or really any piece of culture, which is then shared on the Internet. In many instances, the online Internet community (such as the *meme* creating population of image sharing site *imgur*) will make several versions of the same *meme*, typically only altering it slightly on each version. Through this a new self-referential, intertextual, postmodern form of cultural expression has flourished in the online ecosphere. Contributors and members of communities such as this even communicate within comment sections and forums etc. utilising reused images/gifs which are directly or contextually understandable. In reality, the concept of a *meme* has existed in society in the form of urban legends and the like for an extended period of time. Shifman (2012) explored the topic:

The term 'meme' was coined by biologist Richard Dawkins in his book *The Selfish Gene* (1976) to refer to small cultural units of transmission, analogous to genes, which are spread by copying or imitation. Like genes, memes undergo variation, selection and retention. At any given moment, many memes are competing for the attention of hosts. However, only memes suited to their socio-cultural environment will spread successfully; the others will become extinct. Memes can be ideas, symbols or practices

formed in diverse incarnations, such as melodies, catch-phrases, clothing fashion or architectural styles. (p. 188)

Such widespread use of artistic reappropriation as a method to share/remember information, form and reinforce communities, and have fun, shows the importance of this manner of expression – the technology utilised is no real reason to see this reappropriation as any different from the long standing history of this sort of information/culture creation. New technologies have merely altered the vector, and enhanced the capabilities of the creators.

Quotation, reuse, remediation and, indeed, stealing have long been a part of artistic expression, long before the direct sampling and manipulation via technology we see in today's hip hop and electronic music culture. Blues, jazz, folk, country and even rock and roll or classical music often reuse each other's ideas, reinterpreting it in their own way.

Muddy Waters ... saw little distinction between improvisation and composition. Each time they sang a song, it was both old and new. They felt free to draw upon common musical and lyrical themes shared by others in their community. (McLeod, 2005, p. 35).

Many artistic communities function and benefit from this approach to content creation. South African artist Candice Breitz, referenced in Lessig (2008), makes the point that “in African and other oral cultures, this is how culture has traditionally functioned ... culture, stories and histories were shared communally between performers and audiences, giving rise to version after version.” (p. 7). Breitz goes one step further in stating “that every work of art comes into being through a similar process, no matter how subtly... Every artist reflects – consciously or not – on what has come before and what is happening parallel to his or her practice.” (Lessig, 2008, p. 8). But current copyright law could be seen to trample on this manner of culture creation, and even causes issues with more debatable instances of reuse, such as the controversy surrounding Sam Smith's Grammy award winning '*Stay with Me*' (2014) and Tom Petty's '*Won't Back Down*' (1989), in which members of the public, as well as the publisher of the Tom Petty song, accused Sam Smith of stealing the chord progression from the Tom Petty song. This was eventually remedied by Tom Petty, and co-writer Jeff Lynne, being offered additional writing credits on Smith's song.

More direct forms of reuse such as the sampling associated with hip hop also causes legal issues. Peter Yu (2014), quoting Judge Ralph Guy, points out that reuse of this nature is:

never accidental. It is not like a case of a composer who has a melody in his head, perhaps not even realising that the reason he hears this melody is that it is the work of

another which he had heard before. When you sample a sound recording you know you are taking another's work product. (p. 2)

Lawrence Lessig, amongst others such as Kembrew McLeod, *P2P Foundation* founder Michel Bauwens and Yochai Benkler, have commented upon the destructive power that ill formed (or ill enforced) copyright laws can have upon the creation of art which utilises 'sampling' or quotation of others work. As Lawrence Lessig states in the prologue to Kembrew McLeod's *Freedom of Expression*® (2005): "Twenty-first-century technology has exploded the creative capacity of our culture. Twentieth-century law irrationally restricts it." (p. x). McLeod (2005) adds to this that:

By wielding intellectual-property laws like a weapon, overzealous owners erode our freedoms in the following ways: (1) we, or our employers, engage in self-censorship because we think we *might* get sued, even if there's no imminent threat; (2) we censor ourselves after backing down from a lawsuit that is clearly frivolous; (3) worst of all, our freedoms are curtailed because the law has expanded to privatise an ever-growing number of things – from human genes and business methods to scents and gestures. (p. 3).

It is generally accepted amongst those supporting creative and/or educational reuse of culture that current copyright laws often function not to promote artistic expression through providing economic incentives as is claimed, but "to protect certain industries against competition." (Lessig, 2005, p. 19). This stifles creative and cultural advancement. Berry (2008), with reference to Drahos and Braithwaite (2002), states:

It is interesting to note that the owners of these creative works are seldom the creators and pressure for the extension and strengthening of copyright comes almost exclusively from the multinational corporations. This alone should raise questions as to who is benefiting from the rise in intellectual property protection. (p. 28).

The argument is that if copyright laws seek to support corporate and economic positions rather than encourage or allow for remixed creativity, they will continue to cause these issues with artistic expression.

Fair Use (and Reuse) and Creative Commons

Many theorists (Bauwens, 2005a, 2005b, 2007, 2012; Benkler, 1999, 2002, 2004, 2006; Hardt & Negri, 2005, 2009; Lessig, 1999, 2005, 2008; McLeod, 2005, 2008) have put forward ideas that embrace open sharing through the new abilities offered by digital media technologies,

specifically that of the remix and reuse of others content. Included in this are models which could essentially be considered extensions to '*fair use/fair dealing*'. *Creative Commons* (founded by Lawrence Lessig in 2001) seeks to make large amounts of information and art available to the public for sharing and even modification and reappropriation. Bollier and Clippinger (2005) describe *Creative Commons* as a:

Social regime for managing shared resources and forging a community of shared values and purposes. Unlike markets, which rely upon price as the sole dimension of value , a commons is organized around a richer blend of human needs – for identity, community, fame, and honour – which are indivisible and inalienable, as well as more 'tangible rewards.' (p. 263)

Although perhaps being implemented through a differing ideological or political position, *Creative Commons* exists in much the same spirit as other organisations that work to provide a commons which people can build from. Such as the *P2P (Peer 2 Peer) Foundation* established in 2005 by Michel Bauwens, the *Free Software Movement* founded by Richard Stallman in 1985 and even some scientific/academic institutions which seek to promote the sharing of content. According to Lessig (2005), *Creative Commons* aims:

to build a layer of *reasonable* copyright on top of the extremes that now reign. It does this by making it easy for people to build upon other's work, by making it simple for creators to express the freedom for others to take and build upon their work. (p. 282).

The main strength *Creative Commons* endows, at least in relation to professional content creators, is that one may take advantage of the immense distribution possible through peer driven sharing/promotion, while still enforcing attribution to the original source as well as the possibility of other stipulations – most prominently the ability to restrict others from commercially benefiting from your content.

Yochai Benkler argues that the Internet "has tremendous potential ... to liberate individual creativity and enrich social discourse by thoroughly democratising the way we produce information and culture." (2006, p. 1245-1246). Benkler, among others such as McLeod, Lessig and Bauwens, firmly attest that by allowing everyone to participate in the production of culture, and allowing them to reuse other creators' content in order to do so, the resulting information and art production/distribution generally benefits society, whether the content creator (or the person who the content was 'borrowed' from) benefits economically or not. The *Creative Commons* website echoes this sentiment, stating:

At *Creative Commons*, we believe that a vibrant culture depends on accessible ‘commons’, that global store of works available for creative reuse. With the rise of the internet and digital technologies, the commons is more accessible than ever. As a result, we now enjoy an extraordinarily rich culture of sharing, remix and reuse. (creativecommons.org).

The contributors who engage in these collaborative type networks often have, to some extent, different motivations to content creators who may be driven primarily by economic advancement. Yochai Benkler (2004) feels there are ‘intangible’ motivations that drive some creative commons communities/contributors:

The claim ...is that (the) phenomena I describe here and elsewhere—sharing of material shareable goods and peer production of software, information, and cultural goods more generally—resemble an ideal market in their social characteristics, but with social cues and motivations replacing prices as a means to generate information and motivate action. (p. 342)

However, opportunity for economic advancement through utilisation of *Creative Commons* type information sharing systems is indeed possible, both in a direct and in an indirect manner. For example, French electronic music producers *Daft Punk* indirectly benefited through Kanye West sampling their music via the resulting interest from his fan base, some of which would have become fans of their music. Often the reuse or remix of work (especially by an artist with more cultural influence) could act as important and authentic advertising that would be difficult to acquire elsewhere. Indeed, these are some of the “more tangible rewards” (2005, p. 263) that Bollier and Clippinger describe. Indeed:

An ‘economy of contribution’... is not a radical break with the system of capitalism - in the vein of the historical attempts to create communism - rather it is a system that works within and alongside the contemporary market economy... The aim of an economy of contribution is thus to use and adapt new technical affordances to facilitate different, perhaps broader, means of creating and sharing value. (Kinsley, 2012)

Different interpretations of a ‘creative commons’ exist, but all generally follow the format which Lawrence Lessig’s organisation follows. One which allows content providers to select their own copyright license which range from allowing a remixer to reappropriate with impunity with only simple attribution to original creator, to more stringent licenses that allow sharing under certain circumstances but do not allow others to manipulate and/or remix the content or benefit

economically. The goal behind *Creative Commons* type organisations/networks is not to allow piracy to run rampant, but to make allowances for new art forms to flourish while still ensuring some level of copyright to be applied.

The ease with which information can proliferate and be modified has become evident, and the all-encompassing nature of older copyright models do not seem to fit in a world where the reuse and remix of other people's art has become widespread. Speaking in the film *Good Copy Bad Copy* (Johnsen, Christensen & Moltke, 2007), mash-up artist Greg Gillis (*Girl Talk*) believes this widespread reappropriation that has occurred with the Internet and digital technologies, and the media convergence associated, is an inevitable reaction to the ease with which we obtain media.

Everyone is bombarded with media now, I think we've almost been forced to take it upon ourselves and use it as an art form. If people were handing out paints for free right now I'm sure there'd be a lot more painters out there.

Anders Fagerjord believes that "the massive file sharing we are now witnessing is part of the same development." (2009, p. 190). Copyright is enforced with the intention of removing content which could be seen as in competition with the original article, but the reuse of content that commons type systems support is generally not attempting to do be rivalrous to the original. "Peer-to-peer file sharing is the enemy in the 'copyright wars'. The war is not about new forms of creativity, not about artists making new art...But every war has its collateral damage." (Lessig, 2008, p. 18). Piracy seeks to duplicate, transmit or otherwise illegally deal with content of which you do not own the copyright. This is often done for the purposes of making money, or in order to avoid paying money. Creative reuse seeks to create new art/information with the aid of someone else's material, perhaps to even honour or bring new life to this material, not replace or economically challenge the original art.

There is rebuttal to the position that incredibly easy access to information and distribution inherently benefits society and culture. Indeed, there are proponents of the idea that this incredible ease of duplication and distribution in fact has the potential to harm democratic access to information through ideas such as: information being inherently unreliable when there are no gatekeepers (Keen, 2008); the ease of contribution and/or the illusion of meaningful contribution marginalising the topic and/or depleting offline activity (Dean, 2009); or even the depletion of *aura* when content is duplicated so easily, as Walter Benjamin (2008) has described in relation to the mechanical reproduction of art. Furthermore, it should be noted that some critiques exist around the impact *Creative Commons* type copyright interaction has

had on copyright in the developing world. Specifically, they feel that it has only served to validate and strengthen an intellectual property system (that of mainstream copyright) that they did not greatly align with to begin with. Indian Journalist Frederick Noronha, quoted on the *P2P Foundation (Creative Commons – Critiques, 2012)* states that “there is an overall culture of sharing knowledge here, even if this isn’t called ‘Creative Commons’”. Minhaaj R Rehman, also referenced by the *P2P Foundation*, further notes that:

Nobody in Pakistan knew about copyright, copyleft or CC a decade ago. Even when academics knew about copyright, they just didn’t deal with it, primarily because of eastern tradition and religious injunctions of collectivism and open literacy. CC and copyleft movements have made it harder, here in Pakistan at least, for poor students and educators to use books. Sure, they inspired academics to copyleft their work, but at the same time, they convinced them that copyright, which should never exist in the first place, is good. (*Creative Commons – Critiques, 2012*)

Peer Production, Sharing and Society

The Internet, and a more easily accessible commons along with the technology to more easily acquire, manipulate and reshare content, is certainly having an impact on the portions of society involved with cultural products, even if only to consume them. Open sharing has the ability to bring populations and individuals together through at least the possibility of inclusiveness. Through this, the creation and cultivation of new communities of creators and consumers gives the sense of a fundamental connection with the rest of mankind through access to our shared cultural resource (Silverstone, 2007). The intensification of boundless access the content through ease of endless, lossless duplication and the breakdown of copyright protection has immense capacity to alter human perception of information, the sharing/ownership of information, and cooperation. Indeed, the current copyright laws that do not take this relatively novel cultural phenomenon into account are for a majority of practitioners largely irrelevant; the laws must change with advancements in technology (Lessig, 2005).

The primary influences of this new approach to media proliferation on society can be witnessed in phenomena such as: a) a more prevalent culture of *prosumers* - amateur content contributors; b) a more widespread culture of content sharing for individual expression or simply for sharing’s sake; c) the situation where it is increasingly easy for both individuals and populations to more easily define who they are, and what community they belong to (or wish to belong to) based on their consumption of media. Their own personal taste, interest or a myriad of other factors become the decider on what they consume, rather than allowing factors

such as geographic location or availability of culture to dictate consumption. Indeed, what could be seen to be happening here is the creation of new communities in a way largely unseen in the past based on easy access to resources through disregard of copyright controls.

One interesting development fostered by digital piracy is an explosion of *prosumer* (Ritzer & Jurgenson, 2010) activity, which collapses the distinction between creator and consumer. The idea of a *prosumer* (a producer/consumer) is not entirely new, digital technologies have merely given this phenomenon “greater centrality” (Ritzer & Jurgenson, 2010, p. 14). Theoretically, this allows for more democratic creation of content, and perhaps better content/information though utilising collective intelligence (Bauwens, 2007, 2012; Benkler, 2004, 2006). When one has no barriers to acquiring material to utilise, as well as no barriers to acquiring tools of media manipulation such as software like *Adobe Photoshop*, people are no doubt going to contribute their *cognitive surplus* (Shirky, 2010) if they are so inclined. More ability for the general population to engage in content creation and collaborate than ever before certainly positively impacts society, and arguably a breakdown in copyright contributes to this.

This collapse of the distance between creator and consumer, as well as the reduction of the importance of physical distance between individuals and communities, has created a more connected society. Those who can (the *cosmopolitans*), find what they want, connect with who they want, and exist in this globalised (within the developed world) environment of free flow information in almost any way they desire. “The results of peer production are not distributed to [only] those with purchasing power, but to all those who may want it.” (Bauwens, 2009, p. 127). Through this, new ‘imagined communities’ (Anderson, 1991) can crop up around shared interest and values, such as information/art/culture consumption. The worldwide interest in and emulation of the hip-hop culture of The United States of America is an example of this. Due to the ease of consuming (and distributing) almost anything that an individual wants, they can easily define who they are based on defining their own personal taste through what they consume (if they know what they should consume). This sentiment very much echoes Bourdieu’s (1984) ideas surrounding how our taste, what we choose to consume, to wear, to learn about etc., contributes considerably to who we are. Both on a superficial level (based on what people perceive us to be) and actual level (as what we consume will influence us psychologically):

“Taste classifies, and it classifies the classifier. Social subjects, classified by their classifications, distinguish themselves by the distinctions they make, between the beautiful and the ugly, the distinguished and the vulgar, in which their position in the objective classifications is expressed or betrayed.” (p. 6).

It's not difficult to argue that the Internet allows populations and individuals alike to do this like never before, although this is a position which to some extent indulges *digital utopianism*. Endless access to content free of charge due to the breakdown of copyright allows individuals to consume what they want, to the extent that they want. It allows individuals and communities to curate their identity via consumption, as well as identify and connect with others within their community, in a globalized manner which would have been largely impossible prior to the Internet. Indeed, "nationalism [or other forms of community construction/identification] is not the awakening of nations to self-consciousness: it invents nations where they do not exist." (Gellner, 1964, p. 169). Much as communities or 'nations' have sprung into existence in the past, they do so now in the digital environment, unhindered by the restrictions of the non-virtual world.

"Cosmopolitans use networked communication to scan the planet in search of diversity and communicate with others of their kind from around the world." (Jenkins, 2006, p.125). Communities of collaborating artists exist and interact via content sharing almost all over the world. In this way *cosmopolitans* share, communicate and collaborate in order to form the international, perhaps abstract, communities that globalisation fosters and that content creation can be arguably enhanced through. As Henry Jenkins states:

Global convergence is giving rise to a new pop cosmopolitanism. Cosmopolitans embrace cultural difference, seeking to escape the gravitational pull of their local communities in order to enter a broader sphere of cultural existence. The first cosmopolitans thought beyond the border of their village; the modern cosmopolitans think globally...the term pop cosmopolitan ... [refers] to ways that the transcultural flows of popular culture inspire new forms of global consciousness and cultural competency. (2006, p. 117)

Indeed, creating, sharing and enjoying media content as a global community rather than a local one could be seen as a socially beneficial aspect of open sharing. Michael Hardt and Antonio Negri (2009) comment that "one primary effect of globalization ... is the creation of a common world, a world that for better or for worse, we all share, a world that has no "outside." (p. VII). Indeed, this seems to be true, at least for those who have access to the technology. However, Jenkins is quick to note, with reference to Hannerz (1990), that this is by no means a perfect way to create cross-cultural communities or understanding as often cosmopolitanism merely involves "selective appropriation and repurposing of other cultural traditions for one's own interests" (2004, p. 135) - often at the expense of any true understanding. Though certainly

a cross-cultural, global flow of information creates more understanding than none at all. "Motivation for peer-production is intrinsically positive, i.e. deriving from passion rather than from 'extrinsic positives' (self-interest or greed, [an] external monetary mechanism)." (Bauwens, 2009, p. 127). The prevalence of a 'gift economy' (Barbrook, 1998) type sharing culture, as well as the connected concept of the contribution of content not simply for economic gain but rather for enjoyment, recognition etc. (Benkler, 2004; Clippinger & Bollier, 2005; Shirky, 2010) has positively impacted society, although one might argue that artistic content creation has always essentially been this. Creation for pure enjoyment, and the fact that this has been immensely democratised due to greater availability of technology and content, has changed what it is to be a content provider online, but it has not necessarily changed what it is to be a quality content provider.

This literature review has established the issues which have arisen around the interaction between older copyright laws established in a time when analogue storage and distribution was the norm and the new paradigm offered by the Internet. Explored were some ways in which copyright law could be considered infeasible in the new digital environment, as well as some current ideas which may reconcile copyright with the abilities of digital technologies while still providing incentive for professional content creators. Furthermore, thoughts around societal impacts which may have occurred due to the adoption of an easily accessible content sharing network have been explored in relation to entertainment culture.

Results and Discussion:

“Copyright is the bedrock on which the economy of art rests.”

Costa Botes: Filmmaker (personal communication, July 24, 2015).

This section addressing the results of the research includes discussion and reflection upon the data collected from the participating individuals, and connection to existing literature based around this area of research that speaks to the information obtained. Quotes (at times abridged but not taken out of context) gleaned from the interviews conducted during data collection are included and referred to throughout in order to illustrate the opinions held by the participants. The primary areas of interest addressed are: the participating artists’ opinions on the initial and eventual impacts, both for creators and consumers, that have resulted from the onset and normalization of digital media piracy; the ways in which those involved with the artistic industry have adjusted to the ecosystem ushered in by this paradigm (such as intensified policing/law enforcement or alternative purchasing models such as digital distribution); and thoughts existing around the feasibility of alternative licensing systems such as *Creative Commons*.

The piracy of entertainment online is extremely widespread, with Netnames.com estimating that around 23.8% of global bandwidth is devoted to infringing activity (Price, 2013, pg. 3). “The spectre of mass infringement now haunts creators and industry executives, who feel threatened by their loss of control over distribution.” (Hunter & Suzor, 2015, p. 132). Content creators and executives alike have spoken in the media of the economic losses associated with diminished sales of commodified culture as consumers opt for the instant access, almost boundless selection, and economically free nature of online media piracy. As Lars Ulrich, drummer of US-based heavy metal band *Metallica*, stated to congress in 2000: “Napster hijacked our music without asking ... They never sought our permission. Our catalogue of music simply became available for free downloads on the Napster system.” (Patel, 2015). Academics and researchers have also devoted energy to assessing the impact that piracy has had on the artistic industries, with many studies suggesting a negative correlation between Internet piracy and economic advancement. Smith and Telang’s (2012) research found that of 14 peer reviewed academic studies, 12 concluded that media piracy is harmful to revenue. Data relating to recent recorded music sales seem to find some credence around these themes, with the *International Federation of the Phonographic Industry* reporting that “global recorded music sales and

licensing have plunged from nearly \$27 billion US dollars in 2000 to \$15 billion in 2010, with some countries witnessing a coinciding decrease in investment in developing local talent.” (Danaher et al, 2014, p. 3). The theory behind this of course being that the decline has coincided with an incline of digital media piracy.

Digital technology allows individuals to copy content essentially endlessly, and the controls on duplication, ownership and copyright that digital rights management (DRM) software seeks to assert is easily removed by media pirates. Furthermore, new copyright legislation designed and implemented with the aim of policing and hopefully eliminating online media piracy is often not perceived as effective in relation to curtailing copyright infringement entirely. It would not seem unrealistic to presume that far too many individuals engage in copyright violation through the Internet for copyright holders to take legal action against them all, especially considering it is usually not an easy process for copyright holders to take action against all alleged copyright infringers³. “It upsets me that the victims of theft and freeloading are expected to be the policemen as well.” (Costa Botes, personal communication, July 24, 2015). Due to this, many consumers are largely unworried by the laws prohibiting the infringement they engage in, either due to a feeling that they will not get caught, or simply due to ignorance of the laws surrounding this practice.

Many Digital Natives learn how to operate peer-to-peer sharing systems before they learn about the law. Rarely do schools teach their students the nuances of this topic, often because teachers are confused too. Social norms and the law have drifted widely apart. (Palfry et al, 2009, p. 2).

Furthermore, if infringing content is detected online by a copyright holder, and removed from one channel of distribution such as *YouTube* or *SoundCloud* via a DMCA (*Digital Millennium Copyright Act* 1998) takedown notice or other complaint, a user can easily reshare the infringing content. Mash-up artist Dan James (personal communication, 31 July, 2015) states that: “In my experience, the tactic of DMCA takedowns isn’t very effective, because if you are taken down from one platform, you can simply jump ship to another one”. These factors have fostered a new digital environment of overabundance and as a result traditional distributors have a fragment of the control over distribution that they had under an analogue distribution model. This lack of control has greatly diminished the strength of the copyright “which is there to

³ In New Zealand, infringing parties must receive three copyright violation notices (which must be at least 90 days apart) before they can be taken to a tribunal where they may be fined up to \$15,000. Provision for Internet disconnection was available under the Copyright New Technologies Act 2008 (but not enacted), then removed with the Copyright (Infringing File-Sharing) Act 2011.

protect me and try and protect my income.” (Bradley Garner, personal communication, 5 July, 2015).

However, there exists rebuttal to the position that the novel dynamics arising from this system are entirely (or inherently) a negative force for artistic production and/or the artistic industry. Despite the fact that many see the reuse and/or redistribution of another’s artistic creation without consent as a violation of copyright, it can certainly be argued that through the extended and non-conventional advertising facilitated, there are advantages to the originator of the content. Additionally, the limitations to distribution copyright arguably enforces, which often segment the consuming population based on time zones, physical location, and price are irrelevant if one chooses to engage in copyright violation. This can benefit audiences by giving them access to a wider ranging selection of media content than previously. In some economic, political, or geographical situations, illegal sources of media such as streaming sites or peer to peer torrent⁴ downloading is the most practical approach in relation to particular pieces of content. Independent musician Peter-James Dreis (personal communication, 10 June, 2015) echoes this sentiment in the statement: “If I’m looking for some obscure Norwegian black metal album I can’t exactly go to JB-Hi Fi ... they’re just not going to have it. The Internet is the only place you can turn to for this.” This relates to New Zealand as several media products never enjoy a general release in this part of the world, the minimalistic market based in New Zealand obviously paling in comparison to demographics based in North America and Europe. “With the rise of broadband communications, foreign media producers will distribute content directly to the American consumers (and vice versa) without having to pass US gatekeepers or rely on multinational distributors.” (Jenkins, 2004, p. 119). Fuelled by unbridled distribution, this can in turn cultivate new markets which investors in the artistic industry may later be able to utilise in a more economically beneficial manner.

In addition to this, when these methods of combating online piracy are impactful on an individual level, they often are criticized as causing “collateral damage” (Lessig, 2008) to the artists, educators, and researchers who one could effectively argue are engaging in ‘fair dealing’, rather than more specifically targeting those guilty of copyright violation directly in competition with the official article. Beatmaker and producer Hayden Sinclair (personal communication, June 10, 2015) made comments on the prospect of this. “There used to be a hip-hop group ... called

⁴ Downloading via torrent software (such as BitCommet, Deluge, BitTorrent or μ Torrent) is typically faster and more secure (in terms of not losing your connection, not in terms of privacy). Rather than the typical direct link typically utilised with other sorts of downloading, with torrenting the content being acquired is broken into several ‘packets’, which can then be downloaded from (and also instantly shared to) several sources at once.

Fast Crew. They took a sample ... and got in a lot of trouble for it. They basically like fell off the map". Indeed, it is not difficult to argue that:

"ratcheting up the copyright system another notch will not create a future where the bulk of aspiring artists can reliably make a good living from their work. It will, however, reduce the flow of knowledge and culture in our society and make or ordinary acts of learning, play and creativity more expensive." (Hunter & Suzor, 2015, p. 139).

To what extent do these ideas ring true with photographers, filmmakers, and musicians in New Zealand? What might influence these ideas? What other perceptions of this environment do New Zealand's artist's hold around this topic and the social, cultural, economic, and political issues associated? Of course, with qualitative research such as this, at times a conclusion which is truly all encompassing is difficult to attain, especially when the subject matter is considered controversial by the public, industry professionals, and the media generally. It is understandable that opinions and reactions surrounding a subject of contention such as this will likely be strongly influenced by life and business experience in the area, in addition to emotional and ideological positions held in relation to the considerations of the research. Despite this, broader conclusions can be expressed around certain aspects.

A Copyright Paradigm in a Digital Environment (and/or the quantity of quandaries occurring for those who live there)

In June of 2016 a coalition of 186 musical artists/bands penned an open letter to the US congress detailing the inability of the *Digital Millennium Copyright Act 1998* to combat the online digital piracy of music. Entitled *Dear Congress: The Digital Millennium Copyright Act is Broken and No Longer Works for Creators*, artists ranging from Taylor Swift to Slash illustrated the current environment of thievery fostered by a lack of proper enforcement. Primarily, they felt this was due to the fact that, generally speaking, the DMCA is too cumbersome and expensive for the majority of professional artists to effectively utilise:

The DMCA simply doesn't work. It's impossible for tens of thousands of individual songwriters and artists to muster the resources necessary to comply with its application ... We ask you to enact sensible reform that balances the interests of creators with the interests of the companies who exploit music for their financial enrichment. It's only then that consumers will truly benefit.

It seems to be no new thing for big name artists to be speaking out about the apparent financial losses they have suffered due to the breakdown of copyright in a digital environment and a

general sense of powerlessness from a legal standpoint to have any meaningful impact on any sort of macro scale. Perhaps the most notable case in the early fight against online piracy (at least within popular memory) was *Metallica, et al. v. Napster, Inc.* filed in 2000. The pervasiveness associated with the nature of sharing online has urged many artists to support enhanced policing of online piracy. The granular approach of bringing action, be it via digital takedowns or more direct legal force, to such a small quantity of infringing parties is seen as entirely ineffective in relation to how quickly piracy proliferates. Groups such as the *Authors Guild in the United States*, as well as representatives from the New Zealand music industry, state that the sluggish nature of the process of bringing action against any individual/group, as well as the financial issues associated with taking action against so many parties, makes this an impedingly time consuming task. Filmmaker Costa Botes argues that aiming at the networks who serve content, such as *YouTube* or ISPs, and attempting to discourage what he sees as perhaps wilful ignorance of the presence or movement of infringing material, is a way to move forward in the piracy battle.

“I think we need laws that actually work...There’s no point in going after some kid who’s downloaded 10 songs and fining him to hell. That’s not going to change anything. But who does need to be fined to hell are the Internet Service Providers who indulge in this shonky behaviour and pretend look the other way and say ‘who me?’” (personal communication, July 24, 2015).

However, both amendments relating to digital copyright enacted on the *New Zealand Copyright Act 1994* contain material protecting ISPs from liability if infringing material is unknowingly stored on their servers, but they must act if they are made aware of the existence of infringing content. It does seem easy for one to criticize some hosts of content (such as *YouTube* and *Google*) due to the revenue gathered via advertising that is present when individuals access or consume pirated content via these avenues. But again, the owners of these channels of nefariously sourced entertain can easily claim ignorance to instances of infringement on their networks until they are officially made aware of it. At this point it will be removed and the infringing party receive notification. It is in essence an elaborate game of cat and mouse, even when software is used in the aid of finding infringing material. The online media ecology of nefarious digital distribution is an evolutionary arms race. With reference to Sudler (2013), Orme (2014, p. 2) states that “anti-piracy policies tend to have a large immediate impact, but their effects diminish over time as the anti-piracy actions are rendered less effective by evolving technologies for sharing files online.”. The apparent issue is that, despite efforts to curtail and/or

eliminate online copyright violation, people are still very willing to engage in it. Digital inhabitants will devise methods through which to circumvent incoming, and established, anti-piracy measures. The use of digital rights management (DRM) software has frequently been used in order to control content – with the use of such technology being applied to products such as DVDs since as early as 1996. But artists express dissatisfaction with the effectiveness of preventing piracy this way due to the apparent lack of integrity these controls have when pirates attempt to remove them. Photographer Kaye Davis feels more effort should be put into strengthening these controls. “I’d like to see money put toward creating a system in which you can’t remove the metadata from an image, because right now if you put copyright [controls] on an image anyone can just strip that out” (personal communication, August 14, 2015).

It seems relatively intuitive to assume that non-sanctioned alternatives to an establishment’s preferred distribution network will cause an impact on the current state of affairs. And in capitalistic equations such as that associated with the entertainment industries, “creative disruption” (Schumpeter, 1942) most often inflicts negative economic consequences upon agents existing within that current distribution network, and causes a destabilization of the current paradigm. The entertainment industries do report losses due to the widespread displacement of attention that ease of access online has facilitated, and individual artists certainly report negative consequences relating to the loss of control over their own content.

The effect of having my films illegally ripped and uploaded to YouTube without my permission were fairly immediate, I was selling modest quantities of DVDs and they just dried up... The first alert I had was when I was organising a screening in Canada and I got a call saying they were going to pull the film, and I said why and he said because it’s up on YouTube. I had those films removed, it was series of four incidents over three weeks, but by the time I had they were up on 300 pirate sites. (Costa Botes, personal communication, July 24, 2015).

Many artists, and their legal representation, hold the position that if consumers are able to acquire a product for free online they will be unlikely to purchase a copy via the designated sources, but indeed some research opposes this. If this position is factual, it could be said that economic incentive for the creation of cultural products of this nature is diminished due to waning economic return. If the artistic industry does not seem a profitable one to work within it seems likely that less people will engage with it professionally. Filmmaker Andy Campion makes the point that “a huge reason why we make this art is to make a profit thus to make more

art, so the more that people are downloading the less films that will be made” (personal communication, August 4, 2015). At least to some extent, this is very true – especially in relation to larger budget art forms such as filmmaking. “Art isn’t free, it costs. It costs the person or the people who get together to do it. And in the case of film it’s a tremendous input cost.” (Costa Botes, personal communication, July 24, 2015). The initial investment that a film, or any art, often requires in order to be created seems less economically viable if it is almost guaranteed that illegal versions of varying quality will be available online for free. “The sorts of people who invest in small films from places like New Zealand don’t exist anymore, they’ve all been driven out of business, because they were quite marginal.” (Costa Botes, personal communication, July 24, 2015). However, due to lowering costs of production more independent culture is in fact produced now than in the past. Furthermore, in a lot of ways it is inherently difficult to objectively measure the impact of something that by its nature attempts to remain hidden. In addition to this it is disingenuous to assume that every illegal download equals a lost sale. Many (perhaps almost all) of the people who illegally source music and films, images and software, pornography and literature, do so because it is just too easy and it’s free. They consume it, but they would never consider paying for it. Digital inhabitants download music via torrents, in-browser media rippers, or various sites which will convert music found on *YouTube* into easily downloadable Mp3s. They will stream films and television as soon as it is available online due to the cost or inconvenience of going to the cinema or watching it on TV. Individuals acquire content and manipulate and reshare it as their own without giving any credit to the artist. “It is easy to violate copyrights because ... all of that information is instantly available.” (Hayden Sinclair, personal communication, June 10, 2015). Indeed, in an environment which at the moment is the “wild west” (Costa Botes, personal communication, July 24, 2015), arguably it is infeasible to think digital copyright is easily enforceable, or indeed enforceable in any meaningful way at all in an online ecosystem (Heneghan, 2002). There has been a divorce between commodities in the real world, and digital products available online.

At the end of the day ... it’s just become easier to do it [violate copyright]. Most people won’t walk into a shop and steal a chocolate bar, but most people would go onto a torrent and steal a song, and the values are about the same in the retail value. But one’s really easy to steal and the other has a bit of a challenge ... I guess you can tell everybody everything there is to know about copyright and they’ll still do it – it’s free! (Bradley Garner, personal communication, July 5, 2016).

The nature of a digital artefact, an object to which many consumers have an abstract, ethereal relationship toward in comparison to the tactile, concrete perception most individuals have of

physical objects, means that many individuals see no issue with duplicating and distributing digital content. Additionally, within a digital environment, where content can easily be copied essentially infinity times without effecting the original article, the rivalrous relationship that physical objects have with one and other is irrelevant. This only reinforces this separation between digital and real for some individuals.

Especially amongst younger demographics, certain individuals not only consider the acquisition of content online as normalised and exceedingly simple but indeed are barely aware of the laws relating to the movement of copyrighted material online.

Young people operate in the digital realm overwhelmingly ignorant of the rights, and to a lesser degree the restrictions, established in copyright law. They often engage in unlawful behaviour, such as illegal peer-to-peer music downloading, yet they nevertheless demonstrate an interest in the rights and livelihoods of creators. (Palfrey et al, 2009, p. 79).

This line of thought is arguably correct for large portions of the communities consuming content via the Internet. People often feel their own personal actions will be largely inconsequential online, even if they are told there may be negative impact to their infringement. Due to this, online copyright infringement can easily be seen by content creators as something that is almost impossible to have any meaningful control over. Musician Grayson Gilmour made the statement that:

I would have had albums with *So So Modern* or myself just end up on like blogs or torrent sites straight after they've been released or even sort of before they are released ... I used to care about that, I don't anymore because I've kind of given up on the idea of file ownership being a big thing because someone else is going to stream it eventually (personal communication, October 2, 2015).

Despite efforts to discourage populations from utilizing illegal distribution, it has become an increasingly common practice to digitally share media content. "If someone at work gives you a film on a flash drive and you watch it and enjoy it and it was your only way of seeing it, you probably don't feel that you've really done anything wrong." (Andy Campion, personal communication, August 4, 2015). This general sense of apathy held by portions of the digital dwelling population, at least in practice, has driven many artists to effectively give up on fighting unlicensed distribution of digital content directly due to the inevitable nature of digital piracy and a lack of resolution despite technological or legal efforts.

The monetisation of digital distribution seems like an obvious step for content providers to take. Consumers enjoy the immediacy of digital distribution, as well as control over consumption in a way like never before, such as being able to watch a TV show whenever they desire rather than being controlled by a TV schedule. Furthermore, it is a relatively easy way to consume content without ever having to leave your home, while still compensating the creator. Essentially all participants who contributed thoughts to this research were engaged in some form of monetised digital distribution as it is seen as an effective first point of purchase. Obtaining music through *iTunes*, or viewing content via *Netflix*, is relatively cheap – certainly much cheaper than other forms of distribution (DVDs, records, cinema tickets etc.). But as it stands, many consumers see legitimised digital distribution as an ineffective replacement to online piracy. And in addition to this, many online consumers of content are simply used to acquiring content illegally. It has been until very recently the default method through which to acquire content online, filling the void that legitimate digital distribution was not occupying due to being too restrictive or non-existent.

“Maybe if the industry had adapted before it got out of hand we wouldn’t be in this situation, maybe there would still be a sense of [digital] music be worth something, not as much as a CD, not as much as a record, but just something because digital music for me now days is worthless.” (Grayson Gilmour, personal communication, October 2, 2015).

Unfortunately, the advantages of legitimate digital distribution over analogue also exist within the media piracy framework, only without the price tag and probably with greater selection. Furthermore, both artists and consumers are aware that certain barriers to consumption still exist with monetised/legitimized digital distribution in relation to piracy. Consumers often find issues related to geographical location, in which consumption is somewhat ineffectively controlled via filtering consumers based on IP address – even if the content is available free of charge to compatible IP addresses. Video On Demand (VOD) services such as that offered by TVNZ in New Zealand or BBC IPlayer in The United Kingdom provide content free of charge (revenue streams primarily being provided by advertising), but due to rights issues these content providers only legally function within designated locations. These services, and others like them, employ ‘geoblocking’ technology which only allows consumers to view content if they have an appropriate IP address. Foreign users can easily get around these measures via using Virtual Private Network (VPN) software in order to be artificially associated an IP address compatible with the media source. But despite how relatively easy this is to do, utilising digital piracy is easier. In addition to this, subscription services, like traditional content providers such as TV

networks, can only serve the content that they have the legal rights to provide. This effectively means that there is no one legitimate digital distribution service which will provide all the content a consumer could possibly want. In order to match the selection of content offered by piracy via legitimate digital distribution, a consumer will require multiple subscriptions (as well as most likely sourcing material via other formats).

One day there might be like the ultimate site that's got life every film and show ... *Netflix*, it's very hard to get older films When something like that comes along I think people will happily pay for it. It's instant, it's high def[inition], it looks great, and it's nice to know you're paying for it. But I think until things are easily accessible people will still [illegally] download and stream. (Andy Campion, personal communication, August 4, 2015).

Indeed, portions of the population engage in infringement due to ignorance of the law, or a feeling that their personal involvement with pirated content has little impact overall, but there is also a subset of consumers where digital piracy is the only practical method through which to acquire certain content. This may be due to material being solely available through a subscription service such as *Netflix* (which consumers resent purchasing in order to watch just one or two shows), or due to the content not being available at all via traditional means. The argument can be voiced that 'entertainment is not a human right', and this is probably true, but when people are able to consume so readily, large portions of individuals will simply be compelled to indulge. "If something is not out yet but it's available in America, people are gonna find a way to get it ... The Internet gives you that in a poky little country like New Zealand." (Peter-James Dries, personal communication, June 10, 2015). In this way, piracy can be seen to serve an important function for some communities in terms of access, both in relation to consumers seeking specific entertainment, and in relation to content creators finding inspiration, not to mention extended proliferation of their own content through this method. For some geographically removed locations, including New Zealand, piracy "provides the only form of media access that exists" (Lobato, 2007, p. 119), at least in relation to certain products. In this way it can certainly function as an "alternative distribution system rather than a nefarious crime network." (Lobato, 2007, p. 119). Even contributors to this study admitted to at some point in the past utilising less than legal means through which to acquire media, often stating a feeling of cognitive dissonance in relation to their own infringement. The point was frequently made that much of this is done for the purposes of research, in an effort to seek inspiration, or perhaps in order to try the product out before making a purchase. Most reported purchasing the material they enjoyed which they had discovered via these methods, and characterised

online copyright violation in this way as a mechanism through which legitimate sales were generated where they would not have occurred previously. This is indeed a phenomenon content creators can benefit from, with metal and jazz musician Shaun Anderson citing this as something that has tangibly benefited him personally.

People sharing things illegally does benefit artists and creators of content ...it just gets it so far out there ... I don't think my [metal] bands would be as big as they are internationally if it wasn't for that, people being able to just sift through *Mediafire* or like a blog site ... getting the exposure over in the States to get the distribution deals was most likely just due to people illegally downloading our albums and stuff (personal communication, August 12, 2015).

This position that alternative distribution paths can have positive aspects is certainly not an alien concept. These networks often penetrate novel demographics (geographical, economic or otherwise) and indeed can stir interest in an artist amongst a population who previously would have been unaware of their output. "Online piracy can act as a mechanism to spread information about a good from consumers with low willingness to pay to consumers with high willingness to pay." (Peukert et al, 2015, p. 1). In addition to this, the use of samples only furthers this aim; discovering new artists/music based on hearing samples within another creators output is incredibly common. Arguably, at the very least illegal sharing of content will act as non-linear, crowd-driven advertising creating brand/artist awareness based around authentic collective enthusiasm rather than traditional forms of marketing (though traditional forms of marketing definitely drive illegal downloads). At best it may even drive economic advancement in some other indirect manner such as broadening a fan base or encouraging another form of financial engagement such as attending a performance.

These methods, as well as slightly more controlled forms of crowd distribution such as *Creative Commons*, can certainly be very effective in gaining a content creator a new audience, but are largely a risky way to purposefully approach content distribution as there is little to no guarantee of a return of any kind.

Ultimately ... even those people who are torrenting and things ... they just want it [media content] to be out there in the world... where it ... gets not so good is when it starts taking away money from the person who made the content (David Stevens, personal communication, July 7, 2015)

Material goes viral via social media regularly, and an artist may gain invaluable exposure due to this, but at the expense of traditional sales it could be seen as an ineffective alternative. Musician and DJ Damian McGregor commented on the often forced change in how some artists approach distribution as new technologies become more prominent. “[We see] artists having to compromise on the way they do things. Do you release say five albums and then maybe start charging? Or do you never charge and only ever make money from doing tours?” (personal communication, October 8, 2015). This is perhaps a great arrangement for consumers (assuming new art continues to be made) but it’s an uncertain approach for content creators. “It’s good for your soul to give, but at the same time it [entertainment] is a service. People should pay” (Damian McGregor, personal communication, October 8, 2015). Generally speaking, filmmaker Costa Botes saw the advantages of viral marketing fostered or enhanced by media piracy as only greatly helping those who already have healthy distribution networks. Considering that distribution via the interconnected agents of the anti-rhizome that is social media is the primary way through which viral marketing functions, this is not a difficult position to support. “Talent clumps into a small group of people doing really well and a great many who do nothing or very little ... everywhere the Internet touches the middle is hollowed out ... and there’s your problem.” (Costa Botes, personal communication, July 24, 2015). This position is consistent with comments surrounding *power-law* as a way to describe the scaling of connections that appear within various networks. “Power-law distribution implies that nodes with only a few links are abundant, but a small, negligible minority have a very large number of links.” (Barabasi, 2014, p. 420). This description applies well to networks such as social media where certain connection points (‘nodes’) have disproportionately more connections (or attention via followers) than other points within this network. Furthermore, *power-law* as a method through which to describe the relationship between nodes implies that connections can increase exponentially as a node increases its relative dominance within a network, of course until other factors limit growth such as quantity of available connections. If a few of your friends like a certain artist on *Facebook*, you will most likely be encouraged to like also, whether it is implicit such as seeing content relating to an artist within the newsfeed, or more direct such as the associated page appearing within suggested content. In effect, nodes within a social network which have a large amount of connections can effectively, and intentionally, utilise this for viral marketing, but if a node lacks pre-existing attention, purposefully utilizing this network to effectively distribute information to a large amount of connection points is difficult – even if people don’t have to pay for the content.

In addition to this, while it may be technically possible to acquire almost any material via illegal sources, as is often the case with clandestine methods of distribution (be it for art, computer games, cracked software, or controlled substances), generally speaking one must know what they are looking for and be aware of how to find it. They most likely won't come across it accidentally – and sites trafficking in pirated material are often treacherous, pop-up filled places for the uninitiated. Word of mouth can certainly cause huge amounts of illegal downloads, and this may create positive 'buzz' around content, but it is difficult for word of mouth to push the popularity of an artist no one is aware of. "Audiences are likely to be primed by online and/or offline promotion, reviews and/or word-of-mouth before searching for content on these sites [illegal sources of film/televised content]." (Huffer, 2016, p. 4). Of course, several streaming sites as well as torrent portals do promote the content that is available, but this is typically dominated by media which is already popular as it will most likely gain more clicks, and thus more opportunity for advertising revenue. In this way, sources of entertainment such as illegal streaming sites or torrent networks often work well if an individual wants to find a specific piece of content, but they often fall short as a method through which one can share their own content and feel it will have a reasonable chance of being noticed as already popular content is disproportionately downloaded via illegal sources.

Many artists, perhaps via choice but most likely via some Darwinian mechanism, have allocated attention and energy to aspects of their artistic expression which are less easily usurped digitally. This has obviously been considerably more successful for certain art forms over others. For instance, musicians have more vectors for their artistic expression which cannot be digital pirated than feature filmmakers do. Furthermore, certain genres within wider mediums have had differing interactions with online piracy, typically due to audience demographics. Heavy metal or pop music is illegally downloaded more than classical or jazz for example, as the demographics who consume these genre's, in a generalised sense, have differing relationships to digital piracy, and digital technology generally. Additionally, artists who have primarily existed within one sort of distribution model, namely a non-digitally dominated one, will likely have a differing opinion to someone who has been accustomed to it most of their life. "I do see copyright infringement on the Internet as being fundamentally different, mainly because I've grown up with it ... I guess record companies and things probably don't." (Shaun Anderson, personal communication, August 12, 2015).

Musicians who regularly perform live can perhaps convince themselves to see illegal distribution of their albums as promotion for their live performance. The fact that record sales have been steadily declining over recent years, due to both piracy and a move toward streaming

services such as *Spotify*, means certain musicians will have to rely less on record distribution. In reality, for a majority of professional musicians, record sales have long been seen as one of many sources of income, rather than the primary way a band would economically benefit from their craft. As well as performance, use of music within television, advertising, and film was cited by participants of this study as a source of revenue largely uncorrupted by illegal piracy. Many musicians, in the wake of apparently insurmountable copyright infringement, have even returned to an interest in analogue purchase formats, which often include extra material (liner notes, memorabilia, coloured records, etc.) or even additional music.

I find a lot of artists I follow these days will do dual releases [digital and analogue]. Cassette tapes are big at the moment, this local guy from Wellington called *Alphabethead* released an EP recently and it's awesome, and the tapes have got more material on them than the digital version. And there's also that big return to vinyl and that type of thing. (Hayden Sinclair, personal communication, June 10, 2015).

As well as providing incentives for purchase such as additional products other than the music, this approach is less easily pirated. In addition to this, the *aura* associated with certain objects (Benjamin, 2008) is typically more tangible in non-digital artefacts, many consumers enjoy the tactile nature associated with analogue products that perhaps, through lack of convenience, arguably encourage the consumption of music to be more of an event. "There is an intentionality about putting on a [vinyl] record" (David Stevens, personal communication, October 8, 2015), which consumers enjoy.

Photographers can easily have their content reappropriated online. From something as simple as an individual taking an image, cropping the watermark, and then using it as their *Facebook* profile picture without credit, to a photo being used in an advert without permission (which could likely lead to a law suit), control over distribution of photographic images has drastically dropped in a digital age from a time when photographers would work on analogue formats. It is so easy to do that many consumers/users are barely aware of the legal controls around such actions, and even relatively ignorant to the fact that someone took the time to create this art at all. Many photographers employ the use of large watermarks to make images essentially unusable when promoting content, but theft and reuse of images from platforms such as *Instagram* and *Facebook* is exceedingly common in a way that previous exhibition of photography never has been. Photographers do however generally engage in personalised and commissioned work that can scarcely be outsourced to *Google* Image search. Band, wedding, and portraiture photography must be personalised (in most cases).

Box office earnings are up slightly from where they have previously been, but in a lot of ways this reflects the increase in ticket pricing (due to popularity of 3D film, as well as other factors), as the quantity of ticket sales (between 1995 and 2016) have actually dropped (*THE NUMBERS: Where Data and the Movie Business Meet*, 2016). Consumers may still be attending the cinema, but this is generally for large budget films as many films of small to medium budget (relatively speaking) receive little to no theatrical release. In comparison to other artistic mediums, filmmakers have fewer options that cannot be rivalled by illegal online distribution. Furthermore, the output of filmmakers in terms of individual releases is generally speaking considerably more expensive, and less numerous, than the other artistic mediums discussed here. Filmmaker Andy Campion stated that “when I think of who’s been hit the worst I do think of the larger budget things [artistic endeavours], because they have more of an economic investment and they have more to lose.” (personal communication, August 4, 2015). Large budget film projects such as those created by Hollywood obviously cost more, but they also typically benefit from a large theatrical run. The theatre going experience is considerably superior to a laptop screening or even a projector, in this there is almost an equivalent of a performance situation which is not easily replaced by the *Pirate Bay*. But a large majority of professional filmmakers create works that will not enjoy this manner of promotion or opportunity for widespread exhibition, and the companies who invest in filmmakers who make films on a lesser budget are less likely to invest in such a marginal climate, which impacts employment/funding opportunities.

20-25 years ago you could make films in New Zealand and you could have a reasonable expectation that that a distributor in The United States or Europe would actually pay you a reasonable advance for that work and be able to put it on a limited theatrical run in some of the bigger cities in America say, that they could issue it on DVD money would be made, maybe not a lot. It probably wouldn’t even pay back the film, but money would be made and it was a viable functioning economy. (Costa Botes, personal communication, July 24, 2015).

Filmmakers can of course also engage in personalised/commissioned work in much the same way as photographers, such as wedding/event videography as well as corporate video and advertising related content, but many filmmakers (as well as photographers) may not consider this sort of content creation as artistically stimulating/rewarding. However, there is no intrinsic reason why this should be the case (advertising, for example, can be artistically significant/influential). In any case content creators have long engaged in this manner of employment, regardless of the impact of digital piracy.

Generally speaking, artists who wish to survive in this digital environment are finding points on which to gravitate and generate income where online piracy has a more tenuous grasp, while simultaneously labouring to ensure the online ecosystem of piracy and illegal media sharing is one which is more difficult to inhabit. “I think the industry in learning to work with the fact that this happens, and everyone is finding their own way.” (Kaye Davis, Photographer). Certain individuals and mediums have interacted differently, and indeed it seems to have been proven that in this current situation there is no one effective way to combat online infringement. It seems that many artists are forced to approach online copyright, and the artistic industry generally, in an alternate manner – or indeed perhaps the laws need to be updated, adopted, and/or modified in order to encompass the new ways in which consumers and artists relate to digitized media content.

Creative Commons (or the ‘middle ground’ of digital copyright)

The primary aim of *Creative Commons* is to grow the commons. That’s very broad, but basically we want as much copyrighted, and non-copyrighted content, to be available as possible for the public to use and reuse without seeking permission and without circumventing technical restrictions. (Matt McGregor, personal communication, July 13, 2015).

It ranges from difficult to impossible to offer a truly all-encompassing theoretical (or even anecdotal) analysis of the applicability and usefulness of the functions of *Creative Commons* in relation to all artists in New Zealand. This is especially true if we are on some level comparing creators who work within different artistic mediums or genres, as well as creators who have different economic relationships to their artistic production. However, through investigating and reflecting upon the opinions expressed by various artists we can begin to illustrate an idea of how *Creative Commons* relates to certain artists in certain situations. Through doing this we can roughly determine to what extent New Zealand’s artists see *Creative Commons* as a beneficial, and sustainable, way to distribute content in a professional context.

Filmmaker Costa Botes (personal communication, July, 24, 2015) argues that generally speaking *Creative Commons* as a system of distribution and licensing is unnecessarily “complicated” (due to the many licenses and their various, differing controls), and indeed *Creative Commons* New Zealand public lead Matt McGregor agrees that “*Creative Commons* is simpler than [mainstream] copyright but there is still an education barrier there” (personal communication, July 13, 2015). The difficulty, or at least the perceived difficulty, of the use of *Creative Commons*, as well as that fact that most artists are not fully aware of the specifics or

indeed the existence of *Creative Commons*, does act as a barrier to adoption for many content creators. However, automation of the use of *Creative Commons* through platforms such as *Google*, *SoundCloud*, *Flickr*, and *YouTube* has seen general increase in use of the licenses, both as a tool to distribute and acquire content. “To explain *Creative Commons* you have to explain copyright and that’s a fairly high bar. Automating *Creative Commons* on sites like *SoundCloud* is a good idea.” (Matt McGregor, personal communication, July 13, 2015). Via these platforms content creators generally have simple tick or dropdown boxes which let a creator dictate how their work can be reused, emphasis generally being placed on whether someone reusing it may share/remix for commercial purposes. The content is then presented through the platform in a way which clearly states what license is in effect. This ensures that acquiring and distributing open source material is simplistic, while still having legally enforceable controls placed upon it.

The argument was made that traditional copyright already makes allowances for people to share their content in a way that will allow people to reuse: “If you want to give your stuff away for free there is nothing stopping you! Do it!” (Costa Botes, personal communication, July 24, 2015). Of course, one may simply release their content free of charge and allow reuse by virtue of removing (or more specifically not enforcing) the copyright automatically applied. This will in essence place it directly in the *Public Domain*. The *Creative Commons* CCO license, which expresses that a copyright holder voluntarily waives all copyright in relation to a piece of content, is an effective way to “as completely as possible” (*About CCO – “No Rights Reserved”*, 2016) relinquish material to the *public domain*. The possible issues surrounding intentionally removing copyright from a piece of work have been discussed (Rosen, 2002), but making it extremely clear to prospective reusers that the copyright holder waives all copyright is certainly an approximation of this. If this is effectively done, a work can essentially be considered in the *public domain* before its copyright expires. Some artists do engage in this practice, though it is not popular among professionals intending to earn a living from their craft. Generally speaking, the option of completely free distribution of content could be seen as too open for most professional artists. Through doing so one effectively relinquishes all control over ownership of work, as well as any direct economic advancement from said work such as royalties. Furthermore, there is little insistence on attribution to the originator of material within a completely copyright free environment; one can easily share content without prospective consumers knowing its origin, or even engage in plagiarism.

The concept of *fair dealing* does allow provision for reuse in certain contexts, but the rules surrounding what constitutes reuse under *fair dealing* as opposed to copyright infringement are not well defined for most individuals, especially in relation to modes of reuse

that *fair dealing* laws generally do not adequately address such as musical remix or video montage. “Most people don’t know how restrictive copyright is and how difficult it is to navigate ... Most artists don’t have a good understanding of what copyright is, and they certainly don’t have a good understanding of what *Creative Commons* is.” (Matt McGregor, personal communication, July 13, 2015). Theorists such as Lessig (2004, 2008), Berry (2008), and McLeod (2005, 2008) have pointed out that traditional copyright falls short in enabling this manner of reuse. This is often due to the possibility of copyright holders making negative contact with individuals who remix in an effort to eliminate copyright infringement (the ‘collateral damage’ Lessig (2008) has referred to). This obviously could stifle an artistic mode of creation which has been enhanced by digital technology and the liberal reuse of other creators’ content, especially if one wishes to do this in a professional (or at least public) context.

With the rise of the Internet there were a lot of legal cases overseas over things that were trivially very easy to do, but still illegal... Most [Internet based] ‘infringement’ isn’t downloading *Game of Thrones*, most [Internet based] infringement is generally non-commercial fair use [fair dealing] that is trivially illegal because copyright is so restrictive. (Matt McGregor, personal communication, July 13, 2016).

This restrictive nature certainly could be argued to apply both in relation to those wishing to reuse others’ content, as well as those that wish their content to be reused.

Creativecommons.org (2016) reports that between 2010 and 2016 the total amount of works distributed under the licenses increased from around 400 million to approximately 1.1 billion. As of 2014, approximately 56% of this *Creative Commons*-licensed content being shared was on one of the ‘free culture licenses’, which allow even for commercial reuse. But indeed, huge amounts of this is amateur produced art for which the creator most likely expects no economic compensation. Many individuals who acquire, modify, and distribute material in this way (such as the contributors toward image sharing site *imgur*), do so without any thought toward the copyright issues which at times would technically be present. They most likely would have little concern for *Creative Commons* as well. Indeed, mash-up artist Dan James notes that for many individuals the concept and practice of mash-up and remix “is a critique on the ideas of ownership in the first place” (personal communication, July 31, 2015). Most likely, it is not impertinent to make the argument that many of the people who are involved with licensing content through *Creative Commons* do so for ideological reasons based around the idea of an

open source, open society of free flow content where “information wants to be free”⁵ (Gans, 2015) rather than necessarily to make money. Engaging in the use of *Creative Commons* licensing with this motivation is often a decision based more around emotional or political justifications than any traditional business model. As well as more academic literature, even mainstream publications such as *Wired* magazine (Kelly, 2009) have commented on the rise of a “global collectivist” culture of “new socialism” that speaks to this. The “share-friendly” (Kelly, 2009, p. 1) nature of *Creative Commons*, and other organisations along these lines, is easily argued as an effective way to work toward this aim in relation to the proliferation of information, specifically in a manner where some sense of legal control is attained.

Although use may be increasing generally, are more professional content creator’s engaging with this licensing system? It can certainly be argued that if one wants to label their content for reuse, or acquire content for reuse without the relative hassles of dealing with copyright holders, “*Creative Commons* is a great middle ground.” (Matt McGregor, personal communication, July 13, 2015). Rather than having a piece of content completely protected by an *All Rights Reserved* copyright license where permission must be granted, or releasing it into the digital ecosphere to proliferate unabated, an artist can instruct prospective remixers and/or sharers with what they allow to be done with their material directly on the license. An individual seeking no real economic compensation from a piece of content (essentially an amateur artist) could share through a license such as CC BY (where remixers only have to attribute their source). Even professional artists can at times adopt *Creative Commons* if they see benefit to this system, perhaps using something such as BY NC ND where one may share another’s work (with attribution) but may not alter it or utilise it commercially. “The *Creative Commons* license has it written right on it [the limitations of the specific license], and that’s what you can do.” (Peter-James Dreis, personal communication, June 10, 2015). The directness that exists with *Creative Commons* is seen as a positive aspect by artists and consumers alike. “I like the idea of offering different levels of sharing, and being able to guide people with what they can do with your music.” (Damian McGregor, personal communication, October 8, 2015). Obviously, the prime strength of a *Creative Commons* license, when using it to distribute art, is that if one still wishes to make money from that art, “you can restrict commercial use while allowing non-commercial.” (Matt McGregor, personal communication, July 13, 2015). Most importantly, *Creative Commons*’ licenses are legally enforceable. It is this fact that makes it feasible for an artist to share some or

⁵ This phrase apparently (Gans, 2015) originates to a conversation at the first annual Hackers Conference, held in Marin County, California in 1984, between apple co-founder Steve Wosniac and Stewart Brand, the publisher of counter-culture magazine *Whole Earth Catalog*.

all of their content this way, even if they have to perhaps alter their modus operandi in relation to a new paradigm of distribution. Indeed, if a content creator wishes to have their work, or at least awareness of their work, proliferate widely via people sharing or remixing your content, *Creative Commons* is debatably the best option currently available which allows copyright holders some manner of control over the content. Many musicians, electronic artists in particular, design songs to be easier to remix (particularly by DJs) with the hope that this reuse will be alternative and authentic advertising. Indeed: “I think people that are savvy to the current cultural climate can see the benefit of someone remixing or bastardizing your work in some way.” (Dan James, personal communication, July 31, 2015). *Creative Commons* could be seen as a sensible way to move forward as more people continue to get involved in this sort of artistic production. Certainly it is an example of what Lessig (2004) is referring to when he talks of “law[s] adjust[ing] to the technologies of the time.” (p. 3), particularly due to it not offering the perceived hard line approach of mainstream copyright, but still theoretically allowing artists some control.

But of course, in relation to professional content creators, we have to ask: is it pertinent for an artist seeking to economically benefit from their creations to actually use this system? As a method through which to economically advance as an artist it may seem paradoxical to release content consumers can obtain without the creator gaining financial compensation. Even if this is existing in a manner which seeks to have considerably more control over distribution than a completely open system such as piracy, the fact that consumers can obtain content free of charge renders it very similar.

In a world where the propensity to pirate of all consumers is near-orthogonal to willingness to pay, the effect on revenues will be unambiguously negative. Almost a decade worth of empirical research, particularly concerning recorded music, confirms this perspective, showing that (average) sales displacement rates are non-negligible (Smith and Telang, 2012; Waldfogel, 2012). (Peukert et al, 2015, p. 2).

It seems relatively obvious that consumers are considered unlikely to pay for content if they are able to source it free of charge; sourcing material this way would be directly rivalrous to the commercially available incarnation. “The more people that have it for free, the less people that will go out and spend a \$1.99 on *iTunes*.” (Bradley Garner, personal communication, July 5, 2015). But many artists see benefits, both economically tangible and not, gained through licensing content via this framework. *Creative Commons* New Zealand public lead Matt

McGregor discussed the two primary motivations encouraging professional artists to engage in *Creative Commons* as a method through which to share material.

[There are] two models there. So you've got the one model which is: we're doing this for the public good, and that's definitely a model that some artists indulge in. Which is, we've created this work because of all the other artists that came before us, we're reusing their work, we've built on their work, we're inspired by their work therefore we feel an obligation to feed it back into the commons ... that's kind of an ethical model for them. The other is the more ... business model approach to *Creative Commons* which is that I want to use *Creative Commons* to distribute my work more broadly than is ordinarily allowed under *All Rights Reserved* copyright and hopefully get a greater audience and perhaps enter private licencing deals or get people to crowd fund my work or to just buy digital versions of the work when they can ... pay for it... There are different business models that have arisen but those two tracks tend to be the two basic reasons why people are using CC (*Creative Commons*) - the public good reason and the alternate business model reason. (personal communication, July 13, 2015).

This loosening of copyright control, through *Creative Commons* or otherwise, is an effective way to increase proliferation due to eroding the primary barriers to consumption: specifically the need to purchase content; and the distribution politics which mean certain content is only available in certain locations. This will theoretically function as, at the very least, an effective tool of crowd driven, non-linear, and decentralised advertising for the brand of the artist, as well as the aspects of one's artistic output which cannot be digitally usurped as effectively. "If you're going to give your stuff away for free, hopefully you're at least getting some advertising for it ... that's me from a business perspective." (Bradley Garner, personal communication, July 5, 2015). This could benefit a creator in a relatively direct and tangible manner, such as prospective consumers of content listening to music obtained for free and then attending a concert. Content creators may also benefit via more abstract mechanisms related to the free sharing of content. An example of this may be instances of consumers aligning the artist with the perceived 'free and open' ideology which is associated with modes of copyright and ownership more accessible for the consumer. This could certainly lead to creating positive optics of the artist, at least among some communities of consumers. An artist could be seen to create due to a love of art, a devotion to fans, and/or an interest in contributing to the vast repository of content the Internet has become, as opposed to be seen as creating purely for financial gain. This idea/perception of the creator would be crowd driven information proliferating via word of mouth rather than

corporate or traditional advertising – thus perceived as more authentic or legitimate. Put more succinctly, to certain demographics this could be seen as the opposite of ‘selling out’. But of course, this atypical non-linear approach to the cultural industry is a more realistic option for some mediums over others, those involved with the production of film/television for instance have less aspects of their craft which are safe from digital piracy. “Downloading in no way benefits the artist, other than [having] people see it.” (Andy Campion, personal communication, August 4, 2015). If the fact that consumers have seen and enjoyed a piece of content is unlikely to drive other economic streams, it is understandable to not see this method of marketing as sensible.

Matt McGregor (personal communication, July 13, 2015) makes the point that “use by [professional] artists is patchy at the moment, it’s sort of an option among many, but it’s certainly growing where public money touches copyright.” His postulated reason for this being that when ventures are collectively funded (i.e. by taxes) the community who funded the resulting product may wish for it to be universally available, to be reinvested back into the community that funded it. An example of this in action would be the US government funded NASA releasing thousands of images under a *Creative Commons* license. In mid-2016 NASA (in conjunction with the Houston Cinema Arts Society Crowd) even held the CineSpace filmmaking competition (judged by Richard Linklater), where material sourced from the NASA website had to comprise at least 10% of the entry. This, not so incidentally, generates interest in NASA, and hopefully expresses connotations that it is an organisation that works for the public good and gives back to society and culture.

This perception of a creative entity does engineer and cultivate positive optics, and offer alternative relationships with consumers, but many artists feel the uncertainty associated with distributing in this way is often not beneficial for individual artists or the artistic community – one could easily share their art this way and, though they may be seen as a giving individual/creator, receive little to no financial compensation. “If you want to see your work be remixed and proliferate in different ways then go for it ... I myself haven’t really pursued *Creative Commons* because I still rely on those little bits of income [from selling music] to kind of keep the ball rolling.” (Grayson Gilmore, personal communication, October 2, 2015). Furthermore, content could easily be shared in this way without those who are consuming really having any idea who made it. “I’ve had people take a photo of mine, crop out the watermark and then republish it without credit. And I’m like ‘I’m glad that you like my work, but maybe you’ve forgotten that it’s my work... It’s become this file, not necessarily a piece of art.” (Bradley Garner,

personal communication, July 5, 2015). Unfortunately, the aim of free advertising or positive public relations manoeuvres will be ineffective for an artist seeking publicity in an environment where consumers barely know who created the art they consume.

If a supposedly professional artist is unable to make a living (and thus requires a day job) they will have less time and energy to put toward creative outlets and will effectively cease to be a professional artist. And it's not easy to argue that a reduction in the amount of professional practitioners in any medium, genre, community etc. will diminish artistic advancement and evolution of an artistic subset, and indeed art/culture overall. There may be more art generally available due to people engaging in the free sharing, and the argument could be true that more art being created and shared will spur faster artistic/information evolution - but this most likely would create a cultural environment which is "sustainable collectively but not individually" (Bauwens, 2009, p.130). A huge amount of people contributing their labour – their time and (primarily) intellectual energy, their "cognitive surplus" (Shirky, 2010), toward a single project (or set of projects) definitely has beneficial properties in a collective context. Peer produced creations such as *Wikipedia*, where several volunteer contributors write and review articles, have created a hugely useful online databases of knowledge. But while collectively of great worth, and easy to maintain and expand due to a relatively high turnover of contributors, individual contributors often receive no tangible benefit from this output. Artists who contribute content to the collective repository of culture that is the Internet certainly push artistic creation forward, make the search for entertainment and inspiration easier than ever before, and perhaps gain some emotional contentment, but if a tangible benefit such as financial compensation via a direct or indirect mechanism is not acquired, a professional artist technical ceases to be so, both economically and semantically.

Creative Commons as a method through which to share content was seen by the artists interviewed during data collection as having some positive values, but many were seen to only work at the beginning of an artist's career as a way to gain exposure. "Maybe if it's just a hobby or when you're just starting out it could work really nicely, but after a while you got to say this is my work and its worth something because of the work associated with it." (Bradley Garner, personal communication, July 5, 2016). Furthermore, even though *Creative Commons'* licenses insist on attribution in a way that illegal piracy effectively never does, participants within the study felt that, generally speaking, the enhanced proliferation and non-linear, peer driven promotion that *Creative Commons* offers content creators also exists in online piracy. "Sure it [*Creative Commons*] can act as a bridge [to more lucrative audience engagement] but just in the

same way the illegal downloading does, basically.” (Shaun Anderson, personal communication, August 12, 2015). For example, countless articles have been written regarding the fact the HBO’s *Game of Thrones* has been intensely pirated, and pondered upon the positive impact associated with this publicity. This ‘buzz’ was not created by traditional advertising or distribution, but the collective engagement, whether it was legal or not, with this product.

Based on the intentions of *Creative Commons* in an artistic context, which is to promote and facilitate the sharing and reuse of content, it would seem to be an excellent system for remixers to locate and acquire useable material. Methods of artistic expression such as audio sampling in hip-hop music, image reuse in collage or meme creation, or the reference and reappropriation we see of archival content in documentaries, of course can benefit from an intellectual property system which is intended to foster reuse. If one is interested in easily finding material to remix, as long as they are not too specific with the content they require, sourcing media through *Creative Commons* is an effective way to acquire legally reusable content. One criticism of sharing frameworks such as *Creative Commons* was around the sourcing of specific remix material. This was highlighted by the participants of the research who frequently utilise samples. A large majority of the time the particular piece of culture that an artist wishes to use is not available under a *Creative Commons* license as most art is immediately placed under *All Rights Reserved* copyright. Very often, those aiming to work with pre-existing content are often doing so in order to sample the actual cultural artefact, be it for purely aesthetic purposes such as liking how a particular bass line sounds, or more abstract aims such wishing to serve the audience some sort shared meaning based around the mutually recognised material. When sampling is done in this way the “cultural currency due to the memories associated” with the sample (Dan James, personal communication, July 31, 2015) are integral to the art form. A remix of a song or a recut of a movie trailer makes little sense if it is not the actual material being manipulated and transformed. In this situation, only the actual article may be sampled and still have the intended impact upon consumers. Merely sampling something that is similar is rarely considered adequate. Often the inspiration to utilise a piece of a song in a new remix begins with the consumption of that media, rather than with the realisation that a certain piece of content is available for reuse. “I guess it started with ‘This is awesome’, but I want to add my vibe.” (Bradley Garner, personal communication, July 5, 2015). Put simply, although *Creative Commons* makes available large amounts of high quality cultural content for reuse, it is often not the specific material artists are looking for due to the fact that only a small minority of content creators use this form of licensing. “I think that *Creative Commons* is great, the only problem is that not everyone is using it.” (Dan James, personal communication, July 31, 2015).

This relates strongly to one critique of *Creative Commons* as it currently functions, the argument that it is not a true 'commons' as we would traditionally understand it, such as the way we understand 'common land' for instance, but rather a "commons without commonality" (Berry & Moss, 2005, p. 2). Due to the fragmentation between the culture that is generally available, and the minority of culture available under various open sharing licenses, it is argued *Creative Commons* is a *commons* in name only.

"the Creative Commons network provides only a simulacrum of a commons. It is a commons without commonality. Under the name of the commons, we actually have a privatised, individuated and dispersed collection of objects and resources that subsist in a technical-legal space of confusing and differential legal restrictions, ownership rights and permissions. The Creative Commons network might enable sharing of culture goods and resources amongst possessive individuals and groups. But these goods are neither really shared in common, nor owned in common, nor accountable to the common itself. It is left to the whims of private individuals and groups to permit reuse. They pick and choose to draw on the commons and the freedoms and agency it confers when and where they like." (Berry & Moss, 2005, p. 2-3).

The fact that the majority of cultural material such as music and film is not available for free reuse stands directly in the way of many artists interacting with licenses of this manner as prevalently as could perhaps be possible. Many artists simply use content despite copyright restrictions, or acquire the content they desire to use via legal channels. Indeed, for creators who wish to find content for educational purposes, or are in need of generalised material which is not too specific, *Creative Commons* is an invaluable resource. But many professional artists often see licensing through these methods as too open to be used as a primary tool of distribution and/or too restrictive (in terms of available content) to utilise to any great extent as a source of content to reuse. These factors do have some influence on each other. This aside, the details, and often the very existence of *Creative Commons* (and open sharing systems in general), are not as well-known as one might hope, despite the recent update in use.

I can only speak from my own experience around *Creative Commons* ... but to be completely honest I don't think people really care about them ... I think if I talked to all the people I know who make beats I'd be surprised if one of them knew what it actually meant, or could go 'Hey, I use that one [specific license]', and [knew] how ... that relates to my music. (Hayden Sinclair, personal communication, June 10, 2016).

At this point, this seems to be one of the larger barriers to wider adoption of *Creative Commons* amongst artists.

Conclusion:

A Future Approach (or how should we try to think about art and ownership in a digital world?)

We have artificial scarcity in a lot of sectors really ... Copyright lasts an awful long time, in New Zealand, for most works, it lasts the life of the author plus 50 years. Most works do not stay in commercial circulation that long, most works stay in commercial circulation for about 5 years. So what you have in a middle there, is a work sort of dies until it falls out of copyright and then we can bring it back to life again.

Matt McGregor: *Creative Commons* New Zealand (personal communication, July 13, 2015).

This fact, whether it is a viable justification or not, means that certain people feel the controls around digital distribution are an effort to enforce centralised distribution rules upon a decentralised and/or distributed network. In essence, individuals feel that government and industry refuse to update laws based on the current landscape of distribution and the new ways in which people interact with media online. Due to this, certain subsets of populations will always be difficult to dissuade from copyright infringement. Furthermore, while many people can intellectually understand the idea that illegal downloads can be a negative thing, the big name companies running campaigns against piracy still seem to make record profits; people feel their piracy makes little difference. A majority of consumers do not view copyright infringement as equivalent to traditional theft. The barriers are so insignificant online, and acquiring a copy of a digital album is not perceived as equivalent to stealing a record. In addition to this, people perceive little impact at the level of consumption from widespread copyright infringement online. And in any case, many people would continue to pirate material regardless.

Different mediums obviously have varying approaches to suppressing or compensating for the aspects of their artistic output that illegal piracy is in competition with. Different artists within a professional context approach this issue from different angles, most artists have built their careers in varying environments and often with differing aims. Generally speaking, there is not a linear progression or career plan that an artist can follow, and due to the political, ethical, and indeed moral issues associated with this subject matter, many individuals often form complimentary or contrasting views based around ideological concepts, long held beliefs, political position, and predetermined notions, as opposed to evidence. This could perhaps occur

due to wilful ignorance, accidental ignorance due to confusion around this area of discussion, or in fact the lack of a concrete method through which to objectively observe or measure the impact of these Internet based technologies. Some artists never were in a relationship with their artistic expression that made money via something easily pirated. Exclusively touring bands may have felt some financial drain from record sales – but if live performance (and/or perhaps merchandise sales such as t-shirts) was always the primary source through which economic gain was earned within their business plan, there would have been a lesser impact than on a producer who only ever sold recordings. Content creators who work through commissioned projects such as photographers and filmmakers still work on a contract basis, but control over content is largely diminished where the digital incarnations of these art forms can be so easily duplicated and distributed despite technological or legal controls. Overall, the concerns an artist may have regarding digital copyright infringement will differ based on the individual and the motivations they have for creating art.

Has any of my stuff ever been used without permission? You know I wouldn't have any idea. Maybe. Maybe? Don't know. Do I care? Not really ... If making money was the only reason I made music I would probably approach this differently. (Hayden Sinclair, personal communication, June 10, 2015).

As was realised before this research was undertaken, it is extremely difficult to make broad generalisations around how online copyright infringement has impacted all artists in New Zealand. However, certain themes can be expanded upon when looking at the collective response to the central questions, and certain consistent (to some extent) ideas can be teased out from the opinions, reactions, responses and prospective future approaches that the research participants put forward. Despite differing opinions on the approach of legal or technological controls over the distribution of content, as well what sort of relationship to ownership should be taken in a digital context, the vast majority of artists hint at a similar feeling around how art is viewed on the Internet by some consumers. Specifically, they feel that the separation between how art is perceived in the 'real world', and how consumers relate to the commodified digital representation of art that exists online, allows infringement to appear as an appealing, apparently victimless endeavour. It is perceived, that this disconnection allows some consumers to separate the art from the content creator in a digital environment – many hardly consider the idea of the creator of the content they consume/share. When no individual or tangible entity is associated with a piece of content it seems easy to distribute it – someone else has already distributed it to you (and probably a million other people) so why not pass it on?

In general, it would seem that the vast abundance of art online has led to many individuals becoming disillusioned with media content - that fact that it's so easy to acquire, delete, and then acquire again, renders digital products undervalued in relation to physical ones. In this way, a vicious cycle could be seen to be in effect. People still love to consume entertainment and art, this much is apparent due to the ravenous consumption of all sorts of entertainment that takes place, but because content is so easy to acquire, it loses much of its scarcity based financial or intangible value, and due to having little value, it is easy to share or illegally download. A sculpture, a painting, or a vinyl record feels like a tangible product –and stealing it, to most, would seem unacceptable. These objects are not abstract, taking one for yourself would deprive one from someone else. The scarcity is essentially based on physics; it is scarce by virtue of being a physical object. But digital products seem less real, and the scarcity applied to these objects, enforced by copyright, feels disingenuous to many individuals. Because of this, arguably it is easy to subconsciously hold digitized art in low value. Even artists can fall into this relationship with content in a digital context. Metal and jazz musician Shaun Anderson (personal communication, August 12, 2015) feels that “digital products do remove a special quality, sometimes I don't even know the names of the songs or artists anymore... I felt I wasn't getting as much depth as I previously had [with analogue formats].”). Due to this, he seeks to consume music in ways which are more directed, and closer to analogue formats. “Putting up barriers for the consumption of music” (personal communication, August 12, 2015). Whether this is by only adding limited amounts of music to your cell phone, or actually only consuming analogue content, what essentially amounts to intentional, artificial, self-imposed limitations seem to be one way that an individual may derive more meaning out of an artwork.

“It's about... getting them to realise that somebody made this, rather than it merely existing on the Internet.” (Bradley Garner, personal communication, July 5, 2015). More firmly establishing the connection between the artist and the content that boundlessly flows around the digital ecosphere is largely seen as a way to change the relationship that digital dwelling content consumers have with media content.

I think record sales have plummeted, yes, but I don't think they are as bad as people say they are or as bad as they would have been ... I know people that will download my album and then come to the show and buy the album. Sometimes it comes down to how hard the band is working, if you're touring a lot people will buy physical copies of your album because you are there in their face and they can see you as a person. (Shaun Anderson, personal communication, August 12, 2015).

Making this very connection could possibly be something that will encourage consumers to purchase art from artists, seeing the artist as a person, and not a part of a massive corporation. Consumers need to realise that large portions of content creators are not rich and famous, and have limited to no backing from corporate interest. If copyright violation is being touted as some way to fight 'the man', consumers may have grossly misinformed perceptions of the economic status of a large majority of artists. Most artists aren't rich, and "the idea of the middle class artist is becoming less common." (Costa Botes, personal communication, July 24, 2015). In the current configuration of pirated content distribution, really only the owners of the networks and the hosts of the piracy sites make money. Through pop-up and sidebar advertising, purveyors of copyrighted content can easily draw economic gain from the work of others. "Where we are at the moment is the Wild West, and the only people who got rich in the Wild West were the robber barons." (Costa Botes, personal communication, July 24, 2015).

The Internet is indeed a piece of technology that can enhance creativity and society generally. The ability to share, duplicate and modulate media content has huge potential to enrich lives through ease of information transmission, and through possibly enhancing art forms new and old via the global sharing and cooperation that the Internet can foster. Whether content creators relish the idea or not, digital platforms are the vectors through which a large portion of the world's media content flows and, barring a massive solar flare, this will increasingly be so as more of the world's population increasingly transfers their lives online. But art is still yet to find steady financial footing in the digital world in the same way it did in an analogue configuration, and possibly it will be unable to. But, in the same manner that pirates evolve and mutate to circumvent or evade the latest fleet of anti-piracy manoeuvres and technologies, artists will strive to find ways to exist in an online landscape, and use its positive qualities to their advantage. Indeed, "the possibilities are just endless with the Internet." (Damian McGregor, personal communication, October 8, 2015). It seems a difficult task to predict, dictate or even venture a guess on the nature in which creative content producers will ultimately encompass this new technology into the industry. Present trends toward legitimate digital distribution, enhanced enforcement of laws and policing technologies, as well as more reliance on content not easily digitized will continue, but as more and more content creators emerge and exist entirely within an industry where consumers and artists have become increasingly accustomed to this digital environment, changing perceptions towards the nature of art on the Internet, and ownership of digital content online will possibly gain popularity. "I'd like to see a time where the promise of the Internet is born out and all the clever, creative, fresh thinking people can find new ways of living, new ways of being." (Costa Botes, personal

communication, July 24, 2015). Through this, the potential the Internet has to benefit culture creation and distribution, especially in far removed locations such as New Zealand, will allow media content and those who produce it, to proliferate and propel themselves into the 21st century (and beyond).

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