

An “Independent” View of Bill C-32’s Copyright Reform

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“Q: ARE YOU IN MYSPACE? DID YOU FACEBOOK?
YOU SHOULD DO THAT THINGS! IT IS TERRIFIC EXPOSURE.
NOW IS A NEW PARADIGM! WHAT IS A PARADIGM?”

— Silver Mount Zion FAQ¹

“[Copyright reform] maybe works for Nickelback and Sarah McLachlan,
but has nothing to do with us.” — Interview Respondent

A. INTRODUCTION

The act of legislating copyright assumes that there is a consensus over what copyright is: that those participating in the dialogue of law-creation use words similarly; that implicated parties have definable interests and use their rights in specific ways; that those uses of copyright are held by owners as property-like rights and entitlements. Reform of that legislation presumes an essence of what copyright does: that rights holders (creators or owners) seek to maximize the strength of their right and sell more products; that the public benefits from increased access; that copyright provides access; that a copyright may be regarded as a reward that incentivizes creative production and artistic labour, and other such assumptions. This notion of consensus is highlighted by the fact that when closely analyzed, the

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1 Silver Mount Zion FAQ at www.tra-la-la-band.com/f-a-q

words used to define copyright are ambiguous: terms like “public,” “interest,” “creator,” “user,” and “owner” are notably indeterminate.² These words are used as metaphors,³ metonymies, analogies or projections and among some group of people (or interests) these terms have a shared meaning that allows conversation about copyright to proceed.

What are the contours of that consensus, what I call for the purposes of this study the “copyright culture,” that allows legislative reform to proceed with some certainty about basic terms and governing propositions? Like any culture, copyright culture is historical, referential to a time and place, path-determined and contingent; meaning is produced and disseminated through various practices, beliefs, artifacts and institutions.⁴ In this introductory section I sketch some of these features.

The members of the copyright culture presumably include courts, legislators and those creators, owners and users who can fit their activities within the shared belief system that allows the business of copyright law to proceed. Copyright law is primarily about the business of artistic commodities. As Gervais has noted, “copyright is ‘a professional right’: a right used by professionals against other professionals” (or was considered this way up until the 1990s)⁵ “because of the need to organize the market for copyright works and the related financial flows among all the professionals involved.”⁶

Several elements of this so-called copyright culture can be discerned. First, it subscribes to an individual rights discourse rooted in “liberal and neo-liberal assumptions,” governed by notions of individualism, desert, exclusion, and action out of rational self-interest.⁷ Within that framework,

2 T. Scassa, “Interests in the Balance” in M. Geist, ed., *In the Public Interest — The Future of Canadian Copyright Law* (Toronto: Irwin Law, 2005) at 41, www.irwinlaw.com/pages/content-commons/interests-in-the-balance.

3 On intellectual property metaphors see the “Myths & Metaphors of Private Law and Intellectual Property” series held at McGill University’s Faculty of Law in 2009–2010, http://m-m.mcgill.ca/home_en.html; C.J. Craig, “The Canadian Public Domain: What, Where, and to What End?” (2010) 7 Can J L & Technology 221 at 221, <http://ssrn.com/abstract=1567711>; W. Patry, *Moral Panic and the Copyright Wars* (New York: OUP, 2009).

4 C. Rojek, *Cultural Studies* (Cambridge: Polity, 2007).

5 D. Gervais, “Use of Copyright Content on the Internet: Considerations on Excludability and Collective Licensing” in M. Geist, ed., *In the Public Interest — The Future of Canadian Copyright Law* (Toronto: Irwin Law, 2005) at 519, www.irwinlaw.com/pages/content-commons/use-of-copyright-content-on-the-internet--considerations-on-excludability-and-collective-licensing---daniel-gervais.

6 *Ibid.* at 525.

7 C.J. Craig, “Reconstructing the Author-Self: Some Feminist Lessons for Copyright Law” (2006–2007) 15 Am U J Gender Soc Pol’y & L 207 at 208. I leave open the question of whether the “copyright culture” tends to a particular gender, race, religious

community interest, inclusion, altruism and action out of a non-monetary interest play little role, as evidenced by Bill C-32's focus on digital locks, and its language of "providing rights-holders with recognition, remuneration and the ability to assert their rights."⁸ Second, the sources of authority for the Canadian copyright culture are in statute and case law,⁹ but written and unwritten industry practice and convention may help define these rules.¹⁰ Third, Canada's copyright culture primarily protects economic rights rather than other types of rights that might inhere in works such as the *droit d'auteur* or moral rights of the continent.¹¹ Fourth, these individuated economic rights commodify the author's work and are separable from the author, preparing the work to be traded on a market in its entirety or in parts through licences and other agreements. Thus works may have many owners who can do different things with the work. Fifth, Canadian copyright legislation has always been preoccupied with managing the trade of copyright works from other countries across its borders¹² particularly given the size, cultural richness and shared language of the USA and Great Britain. This focus on goods moving across borders rather than within the country continues to the present particularly given the globalization of the culture industries.¹³ It manifests itself in the principle that copyright should be as similar to its international counterparts as possible,¹⁴ a fast-food (rather than, say, *terroir*) ethic of copyright law neat-

or socio-economic perspective: see, e.g., L. Murray, "Review of RiP: A Remix Manifesto, by Brett Gaylor" *Culture Machine* (June 2009), www.culturemachine.net/index.php/cm/article/view/372.

- 8 Bill C-32, *An Act to Amend the Copyright Act*, 3d Sess., 40th Parl., 2010, www2.parl.gc.ca/content/hoc/Bills/403/Government/C-32/C-32_1/C-32_1.PDF.
- 9 It is a truism that copyright is "a creature of statute": *Compo Co. v. Blue Crest Music Inc.*, [1980] 1 S.C.R. 357, at 373; *R. v. Stewart*, [1988] 1 S.C.R. 963; *Théberge v. Galerie d'Art du Petit Champlain Inc.*, 2002 SCC 34, LexUM at 5.
- 10 *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339 at 55; *Sillitoe v. McGraw-Hill Book Co. (UK)*, [1983] F.S.R. 545.
- 11 The Supreme Court of Canada confirms that "Canadian copyright law has traditionally been more concerned with economic than moral rights." This difficulty is attributed to the fact that "[u]nfortunately, the present text of the *Copyright Act* does little to help the promotion of the fusion of moral rights with the economic prerogatives of the law, since there is no comprehensive definition of copyright that embodies both": *Théberge*, above note 7 at 12. See also Y. Gendreau, "Moral Rights" in G.F. Henderson, ed., *Copyright and Confidential Information Law of Canada* (Scarborough: Carswell, 1994) at 171.
- 12 G.L. Parker, *The Beginnings of the Book Trade in Canada* (Toronto: UTP, 1985).
- 13 Rojek, above note 4 at 55.
- 14 "It is desirable, within the limits permitted by our own legislation, to harmonize our interpretation of copyright protection with other like-minded jurisdictions":

ly embodied by the preamble to Bill C-32 which states: “Whereas in the current digital era copyright protection is enhanced when countries adopt coordinated approaches, based on internationally recognized norms.”¹⁵ Those international norms are expressed in World Intellectual Property Organization treaty “norms.” As a result, Canadian copyright law explicitly prioritizes international harmonization and trade over local texture.

Sixth, the “copyright culture” subscribes to the idea that copyright *does* something beyond merely give an author a copyright in a work, although what that something might be is unclear. According to courts and judges, copyright “balance[s] between promoting the public interest in the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator”;¹⁶ its role is “to encourage disclosure of works for the ‘advancement of learning’”;¹⁷ and finally, copyright addresses the concern that “[e]xcessive control by holders of copyrights and other forms of intellectual property may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole.”¹⁸ As a mechanism to regulate behavior copyright is a blunt instrument; the benefits touted by lawmakers often fall flat.¹⁹ Researchers have doubted that copyright provides a coherent incentive or reward to produce works²⁰ and have suggested that instead it restricts (rather than aids) the dissemination of works.²¹ Regardless, the copyright culture subscribes to the idea that copyright in fact does something and what it does is sufficiently important to warrant sustaining and reforming copyright.

Théberge above note 9 at 6.

15 Bill C-32 above note 8.

16 *Théberge*, above note 9 at 30. See also *SOCAN v. CAIP*, 2004 SCC 45 CanLII at 132.

17 *Apple Computer, Inc. v. Mackintosh Computers Ltd.*, [1987] 1 F.C. 173 at 200 (T.D.).

18 *Theberge*, above note 9 at 32.

19 But then the idea that a statute could be a “mind-altering substance” is a particularly modern preoccupation: D. Manderson, “Fission and Fusion: From Improvisation to Formalism in Law and Music” (2010) 6(1) *Critical Studies in Improvisation*, <http://journal.lib.uoguelph.ca/index.php/csieci/article/view/1167>.

20 See works cited in Scassa above note 2 at 52–54. See also R. Towse, C. Handke, & P. Stepan, “The Economics of Copyright Law: A Stocktake of the Literature” (2008) 5(1) *Review of Economic Research on Copyright Issues* 22; W.M. Landes & R.A. Posner, *The Economic Structure of Intellectual Property Law* (Cambridge, Mass: Belknap Press, 2003) reflecting similar ideas.

21 R. Ku, J. Sun, & Y. Fan, “Does Copyright Law Promote Creativity? An Empirical Analysis of Copyright’s Bounty” (2009) 62 *Vanderbilt LR* 1669. I am unable to locate equivalent empirical research on Canadian copyright law either supporting or refuting this hypothesis.

Understanding who, what and why the "copyright culture" represents makes it easier to put that notion of copyright in its place²² as a limited representation of activities involving authorship and creative works in Canada. Bill C-32's proposed preamble²³ which refers to copyright law as both "a marketplace framework law and cultural policy instrument"²⁴ with goals of "promot[ing] culture and innovation, competition and investment in the Canadian economy"²⁵ supports a certain kind of creative production and omits activity that does not fit. Since the *Copyright Act* is not particularly adept at representing even major traditional Canadian cultures (French and various First Nations come to mind), it is clear that the Act does not represent more particular cultures and their notions and practices of copyright and artistic production, for example, folk musicians in Winnipeg, improvising playwrights in Toronto and independent documentary filmmakers in Halifax.²⁶

This paper considers how a particular culture of artistic production interacts with the culture of copyright by examining, through observation and interview, an example of the former: Montreal's (principally Anglo-phone) independent music labels. This choice of methodology consciously avoids a strictly functionalist approach that considers how copyright's rules are translated or replicated through corollary informal norms, enforcement, penalties and sanctions in a particular occupational or group setting.²⁷ It allows for the possibility that there may be no corollary or functional equivalence between the two cultures²⁸ while attempting to avoid dualities or stereotypes that frequently arise like independent vs. major, local vs. international, authenticity vs. consumption. This study builds on the insights of earlier interviews of Canadian artists by Laura

22 Inspired by the title of a SSHRC Collaborative Standard Research Grant recently awarded to Laura Murray, Kirsty Robertson, and Tina Piper: "Putting Intellectual Property in its Place: Rights Discourses, Creative Labour, and the Everyday."

23 Bill C-32 above note 8. Note the current *Copyright Act* does not have a preamble.

24 *Ibid.*, preamble.

25 *Ibid.*

26 L. Murray & S. Trosow, *Canadian Copyright: A Citizen's Guide* (Toronto: Between the Lines, 2007).

27 See, for example, E. Fauchart & E.A. Von Hippel, "Norms-Based Intellectual Property Systems: The Case of French Chefs" (January 1, 2006) MIT Sloan Research Paper No. 4576-06, <http://ssrn.com/abstract=881781>; K. Raustiala and C.J. Sprigman, "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design" (2006) 92 Virginia LR 1687, <http://ssrn.com/abstract=878401>.

28 In this case the copyright culture and the indie culture.

Murray and Kirsty Robertson,²⁹ and Michael Geist,³⁰ and is influenced by work in contemporary ethnomusicology.³¹

Montreal's independent music has been framed by Straw, Stahl, and others as a "cultural scene"³² or "bohemia"³³ drawing on Bourdieu's ideas of *habitus*.³⁴ "Indie" has been held to refer to "a philosophy based on a proactive approach to one's career; retaining complete artistic control to maintain the integrity of one's art, regardless of record label affiliation."³⁵ It embraces a range of sounds (pop, post-pop, jazz, dance, punk, etc.) traditionally characterized by an oppositional taste culture. The indie ethos celebrates self-reliance, "DIY," creative autonomy from commercial restraint, innovation, geographic localism, increasing access to and participation in music-making, fostering strong music communities, operating on a small, local scale, and encouraging more "shared collaborative and diverse sonic cultures."³⁶ The indie scene is self-defining, thus when interviewing a label I would ask for recommendations of other labels within their scene and interview them. Interviewees ranged across the label spectrum, from artisanal labels like Fixture to professional, high-profile labels like Last Gang, all conducting business principally in Montreal. Most of the labels were run by musicians and former musicians, and as the study progressed, my definition of what constituted an indie label evolved to include some functions performed by festivals and venues.³⁷ I interviewed labels as opposed to artists or bands because labels are business-like en-

29 Discussed in L. Murray, "Copyright" in M. Raboy & J. Shtern, eds., *Media Divides: Communication Rights and the Right to Communicate in Canada* (Toronto: UBC Press, 2010) and L. Murray above note 26.

30 M. Geist, "Why Copyright: Canadian Voices on Copyright," www.michaelgeist.ca/content/view/3547/406.

31 For example, Wayne Marshall, "Routes, rap, reggae: Hearing the histories of hip-hop and reggae together," Ph.D. Thesis, University of Wisconsin, <http://gradworks.umi.com/32/61/3261509.html>.

32 W. Straw, "Cultural Scenes" (2004) 27(2) *Society and Leisure* 411; W. Straw, "In and around Canadian music" (2000) 35 *J Canadian Studies* 173.

33 G. Stahl, "Tracing Out an Anglo-bohemia: Musicmaking and Myth in Montreal" (2001) *Public* 20/21 99.

34 P. Bourdieu & L. Wacquant, *An Invitation to Reflexive Sociology* (Chicago: University of Chicago Press, 1992).

35 D. Cool, "What Is Indie?: A Look into the World of Independent Musicians" NFB (Canada 2006).

36 D. Hesmondhalgh, "Indie: The institutional politics and aesthetics of a popular music genre" (1999) 13 *Cultural Studies* 34.

37 At the time of this article's publication I have interviewed twenty people representing thirteen labels and two festivals and the study is ongoing.

terprises that manage the creative works of artists and thus have a direct interest in copyright-like type rights. Thus I envisioned that they would be “brokers on the boundary”³⁸ or translators, like technology transfer offices to the tech sector, and versed in indie and copyright culture respectively. My analysis is also framed by my own experience as a Board Member of PopMontreal, Montreal’s indie music festival, since 2007.

The independent music sector is one of Canada’s most vibrant cultural scenes, both creatively and financially. The Canadian Independent Record Production Association (CIRPA) estimates the market share of Canadian independent labels at approximately 14 percent of Canada’s \$800 million music industry.³⁹ According to the Nielsen Music 2009 Year End Music Industry Report for Canada, record companies other than the four major record multinationals⁴⁰ and their sub-distributed companies occupied a total market share of 17.93 percent for current and catalogue albums, representing a growth of 0.50 percent since 2008 and the third largest market share after Universal and Sony.⁴¹ Tied with Sony and second only to Universal, independent record labels occupied a market share of 19.33 percent for current albums. While all majors save Universal occupied a greater market share for catalogue albums than current albums, independent companies’ market share for catalogue albums was 4.20 percent less than its share for current albums. Independent labels also occupied the second largest market share for digital albums in 2009 at 20.93 percent and for digital tracks at 21.40 percent. Montreal-based independent record labels exist in a milieu where 95 percent of albums released by Québécois artists are produced locally (up from 10 percent in the 1980s).⁴² Artists with roots in independent labels or music scenes have a strong presence in Canada’s

38 D. Fisher & J. Atkinson-Grosjean, “Brokers on the boundary: Academy-industry liaison in Canadian universities” (October 2002) 44(3-4) Higher Education 449. See also M.J. Madison, “Notes on a Geography of Knowledge” (2009) 77 Fordham LR 2039, <http://ssrn.com/abstract=1371701>.

39 CIRPA, *Music Business Canada*, v. 2009 (2006).

40 EMI Music, Universal Music, Sony BMG Music, and Warner Music.

41 In contrast, all major record companies save Sony suffered diminishing market shares in 2009: *The Nielsen Company and Billboard’s 2009 Canadian Industry Report* (2010), http://ca.nielsen.com/content/nielsen/en_ca/news/news_releases/2010/The_Nielsen_Company_and_Billboard_s_2009_Canadian_Industry_Report.html.

42 L’Association québécoise de l’industrie du disque, *Mémoire de l’Association québécoise de l’industrie du disque, du spectacle et de la vidéo (ADISQ) soumis au ministère des Finances dans le cadre des consultations prébudgétaires effectuées par le ministère des Finances en vue de la préparation du budget 2004–2005*, (2004) at 40.

major music awards such as the Junos⁴³ and the Polaris Prize,⁴⁴ and have gained a strong international reputation for the quality of music produced in Montreal.⁴⁵ These facts and numbers don't even begin to account for the impact of local music festivals either specializing in, or including, independent artists (in Montreal these include PopMontreal, Osheaga, Mutek, Suoni per il popolo, and JazzFest) that contribute millions of dollars to the local economy.

The Silver Mount Zion⁴⁶ quotation that starts this paper highlights how even starting a conversation between the copyright culture and labels in the independent music scene proved challenging. During my interviews many respondents strenuously avoided using terms such as "copyright," "products," "business models" or "branding" by opposing, avoiding, or re-defining the terms. For example, the terms "label" or "business model" were replaced with "art project," the term "branding" replaced with "curation." To reflect this, I represent the labels' understanding that copyright (in its informal and formal instantiations) lives in narratives of threat, rumor, conversation, distance, foreignness, gossip, memory, curiosity or materiality and I proceed by considering the ways that copyright is known and observed "in reflection" rather than directly used or opposed. Well in view of legislation and legal rules that attempt to create a sense of certainty about what copyright is, I take as my starting point for reporting on the interviews that there is no such thing as "copyright." Rather a series of interactions define and constitute what copyright is in dialogue over particular practices, artifacts or preoccupations of the indie scene.

I did not identify an overall approach to or perspective on copyright rooted in a common philosophy other than a broad commitment to indie values. The nature of that commitment varies from label to label and is, in most cases, inchoate. In the context of broader social movements, protest against globalization is less compelling to the labels than it was in the 1990s and the rise in importance of the physical medium makes a

43 Including K'naan (Winner: Artist of the Year); Metric (Winner: Group of the Year); Joel Plaskett, Emily Haines, and James Shaw (Nominees: Songwriter of the Year); Bell Orchestre (Winner: Instrumental Album of the Year); Amy Millan and Patrick Watson (Nominees: Recording Package of the Year); and the categories Adult Alternative Album of the Year and Alternative Album of the Year.

44 An annual Canadian music award based on artistic merit regardless of genre, sales or record label: www.polaris.ca.

45 R. Perez, "The Next Big Scene: Montréal" *Spin* (February 2005).

46 A post-rock band in Montreal's independent music scene.

commitment to environmentalism challenging.⁴⁷ While many of the indie labels interviewed adopted an outsider ethos, except for Archipel this philosophy was not deliberately law-breaking or anti-authority. In selecting which artists to sign and support, labels tended to sign either those whose sound they loved or who were friends. Labels recounted supporting each other since each was viewed as creating a brand, sound or aesthetic that was distinct and not in direct competition with another. For most labels, pursuing that unique sound was critical to avoid diluting the quality of the label and remaining true to indie values.⁴⁸

B. COPYRIGHT AS A MEMORY

The word “copyright” plays a supporting role in the operations of independent music labels in Montreal. A number of labels retain the publishing rights of their artists, most adopt a fifty-fifty split royalty sharing agreement, and a few do not express what they do in terms of “copyright,” “rights,” “royalty-sharing” or otherwise. The overwhelming sense from interviewees is that exploiting copyright is something separate and “legal” that labels do to create a diversified, low-maintenance income stream to

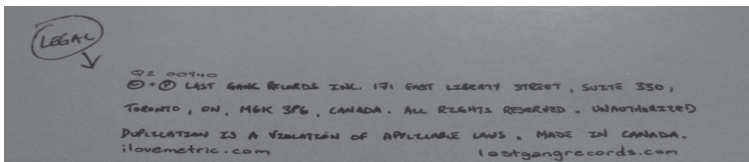


FIGURE 1: A visual representation from Metric’s (2007) “Grow Up and Blow Away” CD case of the interviewees’ responses to discussions of copyright.

provide a financial buffer and a back catalogue of publishing rights, a type of memory of past cultural production by the label (figure 1). Only one label (Archipel) signalled any interest in copyright policy reform: “I think Harper was trying to pass a bill about copyright or something . . . it really scared me . . .” and one interviewee outright rejected the value of copyright reform.⁴⁹ None expressed a view that copyright played any role in determining the kind of music the labels promoted or developed. The Canadian Independent Music Association (CIMA, formerly CIRPA)

47 Although value the physical object (e.g., a record or album art) could be seen as a reaffirmation of the importance of objects in a disposable consumer society

48 Interview respondent, 18 February 2010.

49 See second quotation that opens this paper.

refers to itself as “the collective voice of the English language, Canadian-owned independent sector of the Canadian sound recording industry.”⁵⁰ It regards “effective efficient, relevant modern and updated copyright legislation as vital to the rights of its members” and the “slow pace” of copyright reform as a cause of the “decline in our businesses and the lack of progress in digital distribution.”⁵¹ CIMA represents a scene whose ethos oftentimes runs counter to the notion of an industry association. Only three interviewees were members of CIMA, none mentioned CIMA during the interviews or reflected its views on copyright reform. Perhaps some of the labels interviewed are too indie for an indie association to have much relevance to their activities.

C. COPYRIGHT AS GOSSIP, RUMOUR

Since anyone can automatically get copyright in a work, copyright embodies a sense of democratic access. The ability, however, to actually profit from that copyright (and the underlying work) is less certain and depends on the skill and industry of the creator in navigating the copyright system. In the independent music scene, a key mechanism for compensating artists for use of their copyrights is regarded with a great deal of skepticism: SOCAN, the Society of Composers, Authors and Music Publishers of Canada.⁵² Here, copyright acts as gossip or unsubstantiated rumor of potential reward.

Artists can apply to SOCAN to collect fees for the public performance or broadcast of their work, without assigning the copyright in their work. SOCAN requires venues and anyone performing licensed music, either live or recorded, to purchase a SOCAN licence.⁵³ Most interviewees voiced strong objections to SOCAN, in particular due to a sense that SOCAN’s procedures for determining how artists are rewarded by number of “plays” favour large, commercial artists and that independent artists rarely see any benefit.

Community radio and small venues, many of whom engage in avoidance or obstruction strategies, are seen as particular targets. Their strat-

50 Canadian Independent Music Association: www.cimamusic.ca.

51 Comments on Copyright Reform Submitted by the Canadian Independent Record Production Association (CIRPA), 13 September 2009, www.ic.gc.ca/eic/site/oo8.nsf/eng/02665.html.

52 SOCAN: www.socan.ca.

53 Those licences vary in price depending on the nature of the venue and the rates are set by the Copyright Board: www.socan.ca/jsp/en/pub/music_users/tariffs.jsp.

egies include listing friends’ names repeatedly in playlists, refusing to pay for licences, and misrepresenting the nature of the venue or event to subvert SOCAN’s system and avoid paying fees that they deem excessive and irrelevant. As one interviewee stated: “. . . I would say in defense of the establishments, they shouldn’t be paying . . . [A] bar would be paying for Céline Dion, Nickelback to get money, whereas out of principle, they know the people who we would support are not seeing a dime of it. So it’s a tax.” Because of the intimate, local nature of the indie music scene, the plight of venues affects labels that similarly see themselves as providing spaces for fostering and curating novel sonic experiences. SOCAN is seen to represent an industry-based copyright culture to which musicians in the independent music scene do not belong; Bill C-32’s provisions to strengthen performer’s rights are likely of limited interest given a regulatory regime that limits the remunerability of those rights.⁵⁴

D. COPYRIGHT AS A DISTANT RELATIVE

Bill C-32’s preamble states that the *Copyright Act* is a “cultural policy instrument.” Grants are also regarded as a critical component of Canada’s cultural policy framework.⁵⁵ In this respect Canada differs from the US where labels and their artists have survived largely without any grant support, or public healthcare (which is regarded by some as a form of arts subsidy).⁵⁶ In part, Canada has had to adopt a robust granting scheme because of its proximity to the US and “its vast, low-priced cultural output,” as well as because of its small population, large territory, two major linguistic groups and “the tension between economic and cultural imperatives.”⁵⁷ While a detailed comparison of US and Canadian cultural subsidy is beyond the scope of this paper, copyright in Canada probably means something different in relation to independent music works than it does in the US (and other nations with varied forms of cultural subsidy) because of the important role played by grants. More pointedly, this study suggests that the grants regime may play a more prominent role

54 See, in particular, s. 17.

55 J. Jackson & R. Lemieux, “The Arts and Canada’s Cultural Policy,” www2.parl.gc.ca/Content/LOP/ResearchPublications/933-e.htm#4.%20Department-t.

56 M. Hogan, “What’s the Matter with Sweden?” *Pitchfork*, <http://pitchfork.com/features/articles/7776-whats-the-matter-with-sweden/>. This article is the most recent and comprehensive comparison of Canada’s grants system for independent music to other jurisdictions.

57 Jackson & Lemieux, above note 55; *ibid.*

than copyright in shaping the business models and creative decisions of independent music labels in Canada.

In contrast to responses about copyright, label interviewees believed that grants from federal, provincial and private agencies were a significant predictor of or influence on the creative and business choices of the labels. There was a prevailing sense amongst the interviewees that the real potential for income is provided by grants (and the sale of tangible products, to be discussed later). I identified three principle types of relationship between grantor and grantee, with overlaps between them. First, the relationship between grantor and grantee was, in some cases, seen as reciprocal as opposed to unidirectional, a type of partnership between the granting agencies and the label where label success promoted the funding agency. In other cases, the relationship was regarded as one of dependence, a relationship from which labels could ideally gain independence at any stage, emphasizing values of self-reliance.⁵⁸ Finally, a third type of relationship regarded grants as cementing a type of gift exchange or network of patronage or support.⁵⁹ From a less positive perspective, grants can be perceived as “mysterious” with obscure criteria, “[s]o right now, the best support I’ve seen is just VISA and MasterCard, they’ve been doing wonders for me.”⁶⁰ The relationship between grantor and grantee was often personal and interviewees frequently spoke of their dealings with individuals at granting agencies. Grant-getting is also a way to maintain the divide between commercial production (or sponsorship) and creative production.⁶¹ Some interviewees distinguished grants that were arts-based (e.g., Canada Council), from those that were more industry-based (e.g., FACTOR), and agencies somewhere in-between (e.g., SODEC).⁶² There was a perception that grants were growing on “the industry side. And there’s less and less on the arts side.”⁶³

58 “Because it doesn’t make sense to survive off the back of something else. You’re still a business. If we wanted to be a not-for-profit organization we could be, but we’re not” (interview respondent, 2 November 2009).

59 “[I]t is like a mentoring aspect . . . you can kind of share the money in your community” (Fixture interview, 5 April 2010).

60 Archipel interview, 1 April 2010.

61 Burton interview, 26 May 2010.

62 *Ibid.*

63 Burton interview 26 May 2010.

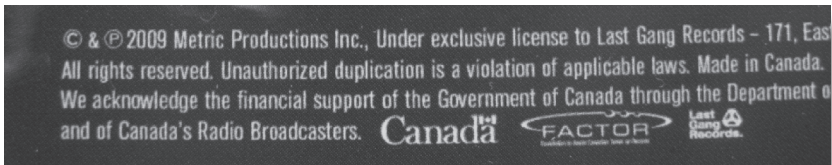


FIGURE 2: Grants and copyright, side by side on Metric's (2009) "Fantasies" CD case.

The types of choices influenced by grants included the nationality of artists to sign, the time when albums are released, where to set up residency, international partnerships,⁶⁴ how to structure the business, whether the label makes a profit, continues or survives, what type and how much promotion to pursue,⁶⁵ what types of sales targets to pursue and where to focus energy (on grant writing), what one interviewee referred to as jumping through the “flaming hoops.” The significance of grants is represented visually on the CD cases produced by the labels where in addition to a sign asserting the label’s copyright, equivalent physical space is given to reflecting the contributions of various granting agencies (figure 2). Like the copyright system, there was a sense that grants could be “gamed” and that in fact entire corporate structures had been established in a particular form to take advantage of granting schemes.⁶⁶ The grants-system, like copyright, generates its own rent-seeking behaviour. The interviews suggested that a grant culture privileges skills like post-secondary education, planning, managerialism and adeptness at grant writing, as well as networking particularly if there is a process of peer review. Copyright seems to be a distant relative to the personal, repeated and sometimes collaborative relationships of labels with granting agencies. More broadly, considering the relationship between the copyright and indie cultures suggests a renewed role for a cultural economics that incorporates grants into a copyright *terroir*.⁶⁷

64 You see it internationally as well, we’ve had people in various countries around the world saying, ‘Look, is there a way we could set something up together?’ . . . so we could take advantage of the grants” (Secret City interview, 2 November 2009).

65 “We probably wouldn’t have spent any of that money if it wasn’t for the grants . . . That’s the neat thing about it, it really does mitigate your risk . . .” (interview respondent, 2 November 2009).

66 “You also find other types of guys who are just really good at getting government money. We probably got the best track record of grabbing money of any company.” (Interview respondent.)

67 Ruth Towse has noted the absence of a discussion about copyright in the context of cultural economics or subsidy and the important role each plays in relation to

E. COPYRIGHT AS A FOREIGN LANGUAGE

An important tool of copyright culture is the licence. A licence or contract is the legal instrument that allows the copyright-holder (generally the creator of the work) to assign or permit others to reproduce or otherwise use copyrighted works in ways that might not be permitted by copyright. Licences have traditionally been used to limit the downstream rights of licence-holders (for example, through shrink-wrap licences) but they have also been developed by the open source software community to enable uses of copyrighted works through “open” licensing.

Licences are key to business practices in the new music industry; artists and/or labels may individually or collectively licence music to third parties for use in movies, compilations, public performances, recordings, video games, ringtones and numerous other uses. Artists may also licence or assign all or particular rights in their works to labels; the “old” music industry major label model was to sign an exclusive recording contract with an artist who would receive royalties and an advance that would generally have to be paid back. The label would manage the recording, marketing and rights of the artist who would generally assign all their rights in a recording and the underlying composition to the label.

The use of contracts and licences between artists and independent music labels, however, has a storied history. Famous US and UK indie labels Rough Trade, Mute, Factory, Touch and Go and others pioneered the “handshake” deal, signing artists on a release by release basis, licensing for limited uses with rights reverting to the artist, pursuing fifty-fifty royalty splits (as opposed to percentage royalties, resulting in greater profits for artists) and eschewing the written contract in favour of musician-centered verbal agreements.⁶⁸

The labels I interviewed subscribed to this indie philosophy, either intentionally or inadvertently reflecting the values of earlier US and UK indie labels. These labels adopted a range of approaches: they did not use formal written agreements, had only recently created these kinds of agreements as a result of receiving funding from a granting agency, or relied on email chains of correspondence. Sharing contractual templates was common.⁶⁹

the other: R. Towse, “Why has cultural economics ignored copyright?” (2008) 32 *J Cultural Economics* 243.

68 R. Strachan, “Do-It-Yourself: Industry, Ideology, Aesthetics and Micro Independent Record Labels in the UK” (2003), PhD thesis, University of Liverpool at 11.

69 Only one label saw drafting particular contracts as important to their self-identity as a label: “Let’s develop our own . . . contract from the ground up, and constantly

In the words of one smaller label, Fixture, a contract would "feel like too much. It'd feel like an overkill We could, but what would it say? What would we put on a contract?"⁷⁰ Agreements tended to be entered into on an *ad hoc* basis, with arrangements facilitated by one's reputation in the indie scene and relationships of trust based on friendship or shared musical interest.⁷¹ A recurring theme throughout the interviews was articulated well by one interviewee who said "we've never, through contractual powers, forced an artist to do something that they don't want to do. We don't ever operate on those terms. That's definitely not part of our philosophy." As a result, according to Don Wilkie from Constellation, "[p]robably more importantly, not having a legal document meant that you actually had to work with people in ways that developed trust, that created relationships where the door was always open to have whatever conversations were necessary to resolve whatever might come up, and that you would actually get to know people and develop relationships that legal documents probably very often stand in the way of, because [then] everybody just falls back to what they understand to be the structure of the relationship."⁷²

The interviews suggest that a commitment to the relationship between the artist and the label rather than a contractual agreement frames the encounter; in fact, the sense was that a contractual agreement would release the parties from engaging and listening to one another and that this would be detrimental to the artistic direction of the artist, the label and the scene or community within which they are embedded. The unwillingness to sign contracts highlights how the copyright culture's assumptions about contracting labour to produce works contrasts with the indie culture's ways of creating music. As brokers on the boundary, the indie label interviewees basically understood (to varying degrees) the notion of a work as a commodifiable product, rights to which can be further sub-divided and licensed exclusively or non-exclusively to third parties. But they also understood that using a contract to deal with artists, for many of whom licensing works is like a foreign language, was not a useful approach.

have them evolve, and hopefully in a couple years' time we'll have these things that really reflect what we do and what we want." (Interview respondent, 2 November 2009).

70 Fixture interview, 5 April 2010.

71 Similar observations have been made by Strachan, above note 68 at 116.

72 Constellation interview, 17 November 2009.

F. COPYRIGHT AS A CURIOSITY

Licensing regimes like Creative Commons (CC)⁷³ introduce creators to managing their works through CC licences, a written contract between a user and the licensor. CC generates a legal document to allow copyright-holders to permit uses of their works that would not be otherwise permitted by adhering to the strict terms of the *Copyright Act*. An interesting feature of the CC licence is the so-called Share-Alike (SA) provision which, if the licensor stipulates, requires that any person who creates a work derived from the author's work has to licence it under the same conditions. This "viral" copy-left provision embodies an aspiration to create a community of creators who adhere to the CC licence. SA, and the CC organization generally, have fostered the creation of specialized communities of digital remix artists,⁷⁴ photographers,⁷⁵ and others. Thus the CC licence mediates between a culture of creative work and the copyright culture, encoding and representing the activity of the licensor in legal form to others who might want to use the work in some other social or cultural setting.⁷⁶

As a co-Project Lead for Creative Commons Canada, I had observed low uptake of CC licences amongst Canadian creator communities⁷⁷ and particularly low uptake of the licences in the indie scene. This surprised me as indie artists expressed great interest in CC and the values expressed by CC overlap with those I identified in interviewing independent music labels: a commitment to sharing creative works on open terms, the importance of informal social bonds, collaboration, attribution, group reputation and credibility validated by a group of fellow practitioners, and support for amateur art that thrives on exposure when expectations of financial profit are limited. Despite all this there was limited familiarity with and no uptake of CC amongst the labels that I interviewed except for one label, Archipel, which produces electronic music, and has based its business model largely on CC licences. The other independent labels interviewed had either not heard of CC or if they had heard of it, had decided not to further investigate using the licences. As one respondent put it:

73 See www.creativecommons.org.

74 ccMixer: www.ccmixer.org.

75 Flickr: www.flickr.com.

76 Madison above note 38 at 2048.

77 In June 2009, a Google search yielded 5,020 users of the Canadian BY 2.5 licence, 2150 users of the BY-SA licence, and 891 users of the BY-NC-SA. The search was performed on the following terms: <http://creativecommons.org/licenses/by/2.5/ca>; <http://creativecommons.org/licenses/by-sa/2.5/ca>; <http://creativecommons.org/licenses/by-nc-sa/2.5/ca>.

Q: [D]o people talk about Creative Commons in your business?

R: Almost never [do people talk about CC in our business]. There was one point where someone from Creative Commons . . . had approached us to ask if we would be open to putting some stuff out under a Creative Commons licence, but he was never able to even express why it would in our interest to do so.

There are two reasons why CC licences may not be compelling to an indie label. First, given that many of the labels (as discussed previously) do not use formal written agreements or contracts to structure their relationships with artists, it is reasonable to expect that those parties might not think to use a licence to structure their relationships with interested strangers, particularly fans. These labels, however, are unconcerned about licensing synch or publishing rights to third parties. Thus relationships between various parties in this ecosystem could be regarded alternately as sacred (between some labels, the artist and the fan) and profane (with commercial third parties). As discussed previously, the “sacred” relationships avoid using written contracts unless required to do so by a grant.

Second, CC licences do not mediate between the label (or artist) and the community. In the case of small labels the circle of people who might listen to an album is either geographically or relationally confined such that the label interviewees expected that most of the music they release will be listened to by friends and the occasional stranger buying music off a digital download service after going to a show. Thus the dissemination of music from these labels largely depends on a physical link made through performance, friendship or physical community perceived of as inextricably linked to the quality of the music and the values of indie music-making, as opposed to through an Internet community regulated in a “legal” way with liberal copyright terms as the governing parameter of the relationship. When parties barely understand or engage with copyright, using that right as the basis of structuring collaborations seems unlikely. In this context a CC licence is not seen as a useful means of signalling appropriate behaviour or a desire to form community through collaborations.⁷⁸

These observations cohere with those who have studied the characteristics of the CC community. While not addressing Canadian licensees, Kim’s 2007 study suggested that the community of CC users is closely related to

78 Much of this analysis applies in the case of larger indie labels where the picture is further complicated by the normative parameters of a robust culture of ‘free’ (discussed in the next section).

the computer and Internet use. Her study found that the most common occupations of CC licensors were computer professionals (28.6 percent of the survey participants), students (18.2 percent), artists (13.6 percent), and educators (9.3 percent), a high proportion of which were those involved professionally or occupationally with computers.⁷⁹ Further, Kim highlighted how on a scale of one to five, where five means “very experienced,” the average CC licensor rated their computer ability as 4.74. I doubt that similar results would be found in the indie music community, whether amongst fans, artists or labels. Meanwhile, in a separate study, Todosichuk found that the top five reasons users on the music site Jamendo.com claimed to use CC licences on their musical works, in order of significance, were to share (“music is culture and should be free and non-commercial”); to facilitate distribution and exposure; to manage and protect music with copyright; to make a political statement (“against major labels and/or for CC”); and because CC licences are popular, easy to access and use.⁸⁰ While these responses have notable limitations⁸¹ they do suggest that using CC licences is both self-focused (three of the five reasons are about managing copyright and a personal career) and altruistic.

In contrast with the bulk of indie labels, Archipel, which bases its business model on CC perceived itself as rooted primarily in an Internet community and was devoted exclusively to electronic music. Consistent with Kim’s results, CC licences make sense for Archipel because fans primarily engage with music on the internet with a high degree of computer literacy—in contrast to the traditional indie scene. It became clear that Archipel does not use CC licences so much as a legal document but as a brand. The label’s president had no specific understanding of how the licences operate legally. In his words: “I always felt [CC] was esoteric—even after ten years I’m not too sure how it works exactly.” But the licences are valuable for their signaling function to fans, many of whom adopt an anti-corporate stance towards music and its commercialization. CC licences also allow Archipel to participate in a “huge community of people that will

79 M. Kim, “The Creative Commons and copyright protection in the digital era: Uses of Creative Commons licenses” (2007) 13(1) *Journal of Computer-Mediated Communication* article 10, <http://jcmc.indiana.edu/vol13/issue1/kim.html>.

80 M. Todosichuk, “Understanding Musical Artists’ Motivation to Share Creative Commons Licensed Musical Works: Applying Social Capital and Social Cognitive Theory” (2009) Master’s Thesis, http://etdncu.lib.ncku.edu.tw/ETD-db/ETD-search/view_etd?URN=etd-0719109-173414, at 42. At page 45 he discusses the strengths and weaknesses of his conclusions.

81 *Ibid* at 45.

be supporting and helping,” referring to CC advocates.⁸² Otherwise, the label did not use formal written contracts: “in 95 percent of releases, we just casually talk about what we need, what we want, what would be good for both of us” regarding the need for such contracts as a sign of mistrust, dishonesty or sharp practice.⁸³

Archipel is one example that demonstrates that a label does not have to use contracts in its business practices to use CC licences with its fans. Perhaps a label that does not believe in using written contracts will be more likely to use CC licences as branding; more research would be required to demonstrate this. Archipel also saw the CC licences as playing a distinct role in constituting a community. The label was named Archipel because “[t]hat’s how we felt: islands in the middle of the sea, not attached to anything. My goal with the label when I started . . . was: just prove we can reach people in other ways, and create a community of people that feel a bit isolated.” Thus Archipel’s motives for using CC licences reflect the hybrid motivations suggested by Todosichuk’s study.

To conclude, for CC licences to be useful ideally they need to mediate between a licensor and others with whom the primary relationship is a virtual one over the Internet. Musicians and labels in the Montreal indie scene do want to connect with strangers but they are a certain kind of stranger — one who can acquire the music commodity online, but who is more richly drawn in by the accoutrements of the entire enterprise: the artful package, the notification by poster, the role-playing of fans in appropriate costume, the performance in a controversial, quirky or historic space where a nuanced type of sharing and free exchange occurs. It remains to be seen whether Bill C-32’s expansion of fair dealing to include education, parody and satire will play much of a role in a culture where referencing to others within the scene is part of the definition of the scene.⁸⁴ The premise on which a movement like CC is built, that “the default copyright laws of most countries, with their ‘lock up the silverware’ approach, do not reflect the reality of a ‘cut and paste’ culture that relies on the ability to manipulate existing material for creation and whose principle measure of success is hits counted” is premised on the idea of an a-local, a-physical online community (even if the licences are ported to national jurisdictions).⁸⁵

82 Archipel interview, 1 April 2010.

83 *Ibid.*

84 Section 29.

85 J. Coates, “Creative Commons — The Next Generation: Creative Commons licence use five years on” (March 2007) 4(1) Script-ed 73, <http://www.law.ed.ac.uk/ahrc/script-ed/vol4-1/coates.pdf>.

CC borrows the assumptions of the “copyright culture”: that an MP3 can be divorced from its context and transported across boundaries, which in fact it can, but only for a subset of fans within the indie scene. Indie music is ideally experienced as real, present and tangible, thus the idea of licensing to create an online community is largely unhelpful and the use of copyright as a relationship builder, curious.

G. COPYRIGHT AS A CURRENCY

Despite limited interest in CC, Canadian indie labels exist within a robust culture of “free.”⁸⁶ As Ian Ilavsky from Constellation put it, free has been good to independent labels:

[I]ndie labels [were] by [and] large just laughing, maybe not all the way to the bank, but we understood there were hundreds of thousands of music fans who were becoming way more musically literate as a result of the massive expansion of their ability to hear stuff for free. It was only helping drive an awareness of all these micro-producers, and this massive diversity of music. It was also informing the way the musicians themselves were making stuff, because they had so many more reference points.

He noted subsequently, however, that “I think [free downloading is] absolutely, clearly hindering the record label business now, whether you’re small or large.”⁸⁷

Without exception, all of the labels we spoke to engaged in practices like giving away a popular track for free and providing promotional copies of CDs or vinyl (demonstrated as well by the considerable collection of CDs and vinyl I have accumulated during the study). As one respondent put it, “[t]here’s always some type of giveaway at one point” and free tracks are used as a “promotional vehicle.” Smaller labels tended even more towards free, gifting much of their music since they appreciated that it had lower market value and viewed P2P networks as important complements to their business. Conor Prendergast from Fixture even expressed difficulty at asking people to pay for CDs or music as expressed in this description: “Even at shows, I think, I just tend to be like, well, I might be able to sell this person a CD, but they just told me they liked the show, so I mean — I’ll

86 Mostly in the sense of free beer not just freedom.

87 Ian Ilavsky, Constellation interview, 17 November 2009.

just give them a CD.”⁸⁸ The interviews suggested that the physical artifact or performance will continue to be an important aspect of the independent music experience and that the MP3 exists as an adjunct to (rather than replacement for) this experience.

The interviewees were realistic about the fact that fans downloaded music for free and expected that their music would be exchanged for free, with some potential benefits, for example “[w]e just realized that our first album had been ripped and put on somewhere recently, which I was pretty flattered by.”⁸⁹ Benefits of “free” included getting good press, blog attention, radio play and whetting fans’ appetite for a new album, provided the track is appropriately labelled with the Canadian label’s name. As one interviewee described:

At one time, there’s gonna be a leak and the music’s gonna get out there . . . At one point in time it’s going to leak; even if you’re not the source and you’ve watermarked, it’s almost inevitably going to happen. I look at it . . . as, a certain amount of leakage will ultimately be used to propel or drive your marketing . . . But I guess I look at that in a glass half full kind of way, and say that, “Well, people are sharing it—which is a good thing, because it breathes this real organic driver or it fuels this organic genuine love for the music, that’s it’s getting out there. This kind of person-to-person feel is really a legit and sometimes creative way to establish a certain profile or get it a certain amount of exposure.

No interviewee suggested curtailing free access to music, even if it is cutting into their profits, and those who spoke of them thought that digital locks were ineffective to pursue, raising serious practical objections to the Canadian government’s efforts through Bill C-32 to protect digital locks.

Another aspect of the culture of free was that those who worked for labels were barely remunerated for the work that they performed, which for most is a labour of love. “We’re doing a pile of stuff for free.”⁹⁰ As a result, other aspects of interpersonal relationships increased in importance, particularly the importance of open collaboration and communication. “Since . . . everything is pretty much based around things being free, where people put importance is in communication. So if a label doesn’t communicate, doesn’t inform what’s going on, doesn’t follow up with things, then

88 Connor Prendergast, Fixture interview, 5 April 2010.

89 *Ibid.*

90 Don Wilkie, Constellation interview, 17 November 2009.

people get bored, and they get to feel uncomfortable.”⁹¹ As Tessa Smith from Fixture described, “[i]n order to bring someone into what we’re doing, we need to become friends with them and build a certain amount of trust, or professional trust, with them. We can’t really work with someone who’s like a stranger. Or they very quickly become not a stranger when we’re working with them.”⁹² As the labels reported, in many cases their most valuable currency is trust and communication.

H. COPYRIGHT AS OBJECT

Underpinning this study is the theme that intangible music plays a limited role in an indie scene that privileges the tangible, a topic that I will address briefly in concluding this paper. In this scene, intangibles become tangible as soon as possible, whether through records, posters, shows, t-shirts, artwork, events in venues or relationships. Interviewees generally veered toward talking about copyright as a material object (the physical object that fixes the work), another conversation entirely from the copyright culture’s discussion of the legal interest in an MP3, digital downloads, and revenue streams.⁹³ This focus is justified by their bottom-line: physical sales form the bulk of revenues of many of the interviewees’ labels, although it is unclear whether physical sales are so significant because they cohere with community values or because labels have fostered physical objects which generate more revenue. As Ilavsky from Constellation remarks, “[t]here for sure is a subset of the music consuming public that maybe, at least for now, is a little bit tired of the ephemeral nature of downloading music and not having an object.” Without exception, the labels interviewed had issued CDs with artistic (often hand-crafted) cover art or package design and many predict that this aspect of their business will grow, outpacing—if it hasn’t already—digital music sales. Some labels explicitly experiment with format, issuing music on cassettes and other historic formats that preserve sonic quality.

A recent debate over postering in Montreal has cemented the links between the intangible and the physical, suggesting that posters play a critical role in “connect[ing] communities, bring[ing] ideas and images to

91 Archipel interview, 1 April 2010.

92 Fixture interview, 5 April 2010.

93 Madison, above note 38 at 2071. He argues that the “property” in copyright exists on three levels: the legal interest (the copyright), the intellectual property work (the song), and the physical object that fixes it to a physical entity (the MP3, CD).

light."⁹⁴ Many institutions of the independent music scene in Montreal (labels, venues, festivals, independent artists) have recently received steep fines for posterings. For one, typically indie, coalition⁹⁵ these have totaled over \$40,000. Posterings is a critical communication medium; given that their audience is generally local to a neighbourhood, many of these groups deliberately sit outside a MySpace Internet world. For some, up to 50 percent of their attendees arrive because of posters they've seen in their neighbourhood; posterings also promises vast advertising potential.⁹⁶ To borrow from copyright culture talk, posters mediate between the creative work and the public's interest in accessing it by providing information that it exists in the first place. In a scene where culture is cheap and personal, the goal is often to create a relationship with an audience rather than an income stream. That mediation happens through a claim to attention in a physical space rather than a property right in an object that's exchanged. As a result, strategies resisting posterings fines have focused on claims to freedom of expression under section 2 of the *Charter*.

I. CONCLUSION

This study has related the copyright culture embodied by Bill C-32 to the culture of Montreal's independent music scene to investigate how copyright is engaged with by one of Canada's most vibrant creative communities. The study has explored how copyright is an interest that may support the label in the future, a rumor rather than a reality through compensation by SOCAN, a distant relation compared to labels' familiarity with granting agencies, a language unfamiliar in certain relationships, a currency of exchange foreign to a community embedded in networks of free and sharing and is juxtaposed against the indie community's commitment to the physical. It would be worth continuing to examine the role that copyright plays within and beyond the indie scene. Further in-depth examination of other Canadian cultural scenes could provide useful comparisons, trends or data to understand the roles that copyright plays outside the "copyright culture"

94 K. Muir on the C.O.L.L.E. website, <http://collemontréal.org/wp-content/uploads/2010/05/COLLE-quotes.pdf>

95 The groups are Drawn & Quarterly, Semprini Records, the Fringe Festival, PopMontreal, and Casa del Popolo. The group has estimated that in one month, they post almost 6,000 posters.

96 As Hilary Leftick, Executive Producer of PopMontreal Music Festival argues: "If I poster on Yonge Street in Toronto, it's possible that 60,000 people will learn about my show."

consensus that fills the discourse of law reform. So long as copyright reform focuses primarily on individualistic, exclusive rights shaped by translating and harmonizing domestic law to international rules its claims to support “creativity and innovation” or provide a “cultural policy instrument”⁹⁷ will remain overbroad and a limited representation of cultural life.

97 Bill C-32, above note 8.