

M/C JOURNAL[M/C HOME](#)[CURRENT ISSUE](#)[UPCOMING ISSUES](#)[ARCHIVES](#)[CONTRIBUTORS](#)[ABOUT M/C JOURNAL](#)[LOG IN / REGISTER](#)**SUBSCRIPTIONS**[ATOM 1.0](#)[RSS 2.0](#)[RSS 1.0](#)**INFORMATION**[FOR READERS](#)[FOR AUTHORS](#)[FOR LIBRARIANS](#)

Copyright in a Collaborative Age

[Suw Charman](#) and [Michael Holloway](#) | [Respond to this Article](#)

Volume 9 | Issue 2 | May 2006

1 The Internet has connected people and cultures in a way that, just ten years ago, was unimaginable. Because of the net, materials once scarce are now ubiquitous. Indeed, never before in human history have so many people had so much access to such a wide variety of cultural material, yet far from heralding a new cultural nirvana, we are facing a creative lock-down.

2 Over the last hundred years, copyright term has been extended time and again by a creative industry eager to hold on to the exclusive rights to its most lucrative materials. Previously, these rights guaranteed a steady income because the industry controlled supply and, in many cases, manufactured demand. But now culture has moved from being physical artefacts that can be sold or performances that can be experienced to being collections of 1s and 0s that can be easily copied and exchanged.

3 People are revelling in the opportunity to acquire and experience music, movies, TV, books, photos, essays and other materials that they would otherwise have missed out on; and they picking up the creative ball and running with it, making their own version, remixes, mash-ups and derivative works. More importantly than that, people are producing and sharing their own cultural resources, publishing their own original photos, movies, music, writing. You name it, somewhere someone is making it, just for the love of it.

4 Whilst the creative industries are using copyright law in every way they can to prosecute, shut down, and scare people away from even legitimate uses of cultural materials, the law itself is becoming increasingly inadequate. It can no longer deal with society's demands and expectations, nor can it cope with modern forms of collaboration facilitated by technologies that the law makers could never have anticipated.

Understanding Copyright

5 Copyright is a complex area of law and even a seemingly simple task like determining whether a work is in or out of copyright can be a difficult calculation, as illustrated by flowcharts from [Tim Padfield of the National Archives examining the British system](#), and [Bromberg & Sunstein LLP which covers American works](#).

6 Despite the complexity, understanding copyright is essential in our burgeoning knowledge economies. It is becoming increasingly clear that sharing knowledge, skills and expertise is of great importance not just within companies but also within communities and for individuals. There are many tools available today that allow people to work, synchronously or asynchronously, on creative endeavours via the Web, including: [ccMixer](#), a community music site that helps people find material to remix; [YouTube](#), which hosts movies; and [JumpCut](#), which allows people to share and remix their movies.

7 These tools are being developed because of the increasing number of cultural movements toward the appropriation and reuse of culture that are encouraging people to get involved. These movements vary in their constituencies and foci, and include the student movement [FreeCulture.org](#), the [Free Software Foundation](#), the UK-based [Remix Commons](#). Even big business has acknowledged the importance of cultural exchange and development, with Apple using the tagline 'Rip. Mix. Burn.' for its controversial 2001 [advertising campaign](#).

8 But creators—the writers, musicians, film-makers and remixers—frequently lose themselves in the maze of copyright legislation, a maze complicated by the international aspect of modern collaboration. Understanding of copyright law is at such a low ebb because current legislation is too complex and, in parts, out of step with modern technology and expectations. Creators have neither the time nor the motivation to learn more—they tend to ignore potential issues and continue labouring under any misapprehensions they have acquired along the way.

9 The authors believe that there is an urgent need for review, modernisation and simplification of intellectual property laws. Indeed, in the UK, intellectual property is currently being examined by a Treasury-level review lead by Andrew Gowers. The Gowers Review is, at the time of writing, accepting submissions from interested parties and is due to report in the Autumn of 2006.

10 Internationally, however, the situation is likely to remain difficult, so creators must grasp the nettle, educate themselves about copyright, and ensure that they understand the legal ramifications of collaboration, publication and reuse.

What Is Collaboration?

11 [Wikipedia](#), a free online encyclopaedia created and maintained by unpaid volunteers, defines collaboration as "all processes wherein people work together—applying both to the work of individuals as well as larger collectives and societies" (Wikipedia, "Collaboration"). These varied practices are some of our most common and basic tendencies and apply in almost every sphere of human behaviour; working together with others might be described as an instinctive, pragmatic or social urge. We know we are collaborating when we work in teams with colleagues or brainstorm an idea with a friend, but there are many less familiar examples of collaboration, such as taking part in a Mexican wave or standing in a queue.

12 In creative works, the law expects collaborators to obtain permission to reuse work created by others before they embark upon that reuse. Yet this distinction between 'my' work and 'your' work is entirely a legal and social construct, as opposed to an absolute fact of human nature, and new technologies are blurring the boundaries between what is 'mine' and what is 'yours' whilst new cultural movements posit a third position, 'ours'.

13 Yochai Benkler coined the term 'commons-based peer production' (Benkler, *Coase's Penguin; The Wealth of Nations*) to describe collaborative efforts, such as free and open-source software or projects such as *Wikipedia* itself, which are based on sharing information. Benkler posits this particular example of collaboration as an alternative model for economic development, in contrast to the 'firm' and the 'market'. Benkler's notion sits uncomfortably with the individualistic precepts of originality which dominate IP policy, but with examples of commons-based peer production on the increase, it cannot be ignored when considering how new technologies and ways of working interact with existing and future copyright legislation.

The Development of Collaboration

14 When we think of collaboration we frequently imagine academics working together on a research paper, or musicians jamming together to write a new song.

15 In academia, researchers working on a project are expected to write papers for publication in journals on a regular basis. The motto 'publish or die' is well known to anyone who has worked in academic circle—publishing papers is the lifeblood of the academic career, forming the basis of a researcher's status within the academic community and providing data and theses for other researchers to test and build upon. In these circumstances, copyright is often assigned by the authors to a journal and, because there is no direct commercial outcome for the authors, conflicts regarding copyright tend to be restricted to issues such as reuse and reproduction.

16 Within the creative industries, however, the focus of the collaboration is to derive commercial benefit from the work, so copyright issues, such as division of fees and royalties, plagiarism, and rights for reuse are much more profitable and hence they are more vigorously pursued.

17 All of these issues are commonly discussed, documented and well understood. Less well understood is the interaction between copyright and the types of collaboration that the Internet has facilitated over the last decade.

Copyright and Wikis

18 Ten years ago, Ward Cunningham invented the 'wiki'—a Web page which could be edited in situ by anyone with a browser. A wiki allows multiple users to read and edit the same page and, in many cases, those users are either anonymous or identified only by a nickname. The most famous example of a wiki is *Wikipedia*, which was started by Jimmy Wales in 2001 and now has over a million articles and over 1.2 million registered users (*Wikipedia*, "Wikipedia Statistics").

19 The culture of online wiki collaboration is a gestalt—the whole is greater than the sum of the parts and the collaborators see the overall success of the project as more important than their contribution to it. The majority of wiki software records every single edit to every page, creating a perfect audit trail of who changed which page and when. Because copyright is granted for the expression of an idea, in theory, this comprehensive edit history would allow users to assert copyright over their contributions, but in practice it is not possible to delineate clearly between different people's contributions and, even if it was possible, it would simply create a thicket of rights which could never be untangled.

20 In most cases, wiki users do not wish to assert copyright and are not interested in financial gain, but when wikis are set up to provide a source of information for reuse, copyright licensing becomes an issue.

21 In the UK, it is not possible to dedicate a piece of work to the public domain, nor can you waive your copyright in a work. When a copyright holder wishes to licence their work, they can only assign that licence to another person or a legal entity such as a company.

22 This is because in the UK, the public domain is formed of the 'leftovers' of intellectual property—works for which copyright has expired or those aspects of creative works which do not qualify for protection. It cannot be formally added to, although it certainly can be reduced by, for example, extension of copyright term which removes work from the public domain by re-copyrighting previously unprotected material.

23 So the question becomes, to whom does the content of a wiki belong?

24 At this point traditional copyright doctrines are of little use. The concept of individuals owning their original contribution falls down when contributions become so entangled that it's impossible to split one person's work from another.

25 In a corporate context, individuals have often signed an employment contract in which they assign copyright in all their work to their employer, so all material created individually or through collaboration is owned by the company. But in the public sphere, there is no employer, there is no single entity to own the copyright (the group of contributors not being in itself a legal entity), and therefore no single entity to give permission to those who wish to reuse the content.

26 One possible answer would be if all contributors assigned their copyright to an individual, such as the owner of the wiki, who could then grant permission for reuse. But online communities are fluid, with people joining and leaving as the mood takes them, and concepts of ownership are not as straightforward as in the offline world. Instead, authors who wished to achieve the equivalent of assigning rights to the public domain would have to publish a free licence to 'the world' granting permission to do any act otherwise restricted by copyright in the work. Drafting such a licence so that it is legally binding is, however, beyond the skills of most and could be done effectively only by an expert in copyright. The majority of creative people, however, do not have the budget to hire a copyright lawyer, and pro bono resources are few and far between.

Copyright and Blogs

27 Blogs are a clearer-cut case. Blog posts are usually written by one person, even if the blog that they are contributing to has multiple authors. Copyright therefore resides clearly with the author. Even if the blog has a copyright notice at the bottom—© A.N. Other Entity—unless there has been an explicit or implied agreement to transfer rights from the writer to the blog owner, copyright resides with the originator. Simply putting a copyright notice on a blog does not constitute such an agreement.

28 Equally, copyright in blog comments resides with the commenter, not the site owner. This reflects the state of copyright with personal letters—the copyright in a letter resides with the letter writer, not the recipient, and owning letters does not constitute a right to publish them. Obviously, by clicking the 'submit' button, commenters have decided themselves to publish, but it should be remembered that that action does not transfer copyright to the blog owner without specific agreement from the commenter.

Copyright and Musical Collaboration

29 Musical collaboration is generally accepted by legal systems, at least in terms of recording (duets, groups and orchestras) and writing (partnerships). The practice of sampling—taking a snippet of a recording for use in a new work—has, however, changed the nature of collaboration, shaking up the recording industry and causing a legal furore.

■ Musicians have been borrowing directly from each other since time immemorial and

30 the student of classical music can point to many examples of composers 'quoting' each other's melodies in their own work. Folk musicians too have been borrowing words and music from each other for centuries. But sampling in its modern form goes back to the [musique concrète](#) movement of the 1940s, when musicians used portions of other recordings in their own new compositions. The practice developed through the 50s and 60s, with The Beatles' "Revolution 9" (from *The White Album*) drawing heavily from samples of orchestral and other recordings along with speech incorporated live from a radio playing in the studio at the time. Contemporary examples of sampling are too common to pick highlights, but Paul D. Miller, a.k.a. DJ Spooky 'that Subliminal Kid', has written an analysis of what he calls 'Rhythm Science' which examines the phenomenon.

31 To begin with, sampling was ignored as it was rare and commercially insignificant. But once rap artists started to make significant amounts of money using samples, legal action was taken by originators claiming copyright infringement. Notable cases of illegal [sampling](#) were "Pump Up the Volume" by M/A/R/R/S in 1987 and Vanilla Ice's use of Queen/David Bowie's "Under Pressure" in the early 90s. Where once artists would use a sample and sort out the legal mess afterwards, such high-profile litigation has forced artists to secure permission for (or 'clear') their samples before use, and record companies will now refuse to release any song with uncleared samples.

32 As software and technology progress further, so sampling progresses along with it. Indeed, sampling has now spawned mash-ups, where two or more songs are combined to create a musical hybrid. Instead of using just a portion of a song in a new composition which may be predominantly original, mash-ups often use no original material and rely instead upon mixing together tracks creatively, often juxtaposing musical styles or lyrics in a humorous manner. One of the most illuminating examples of a mash-up is [DJ Food Raiding the 20th Century](#) which itself gives a history of sampling and mash-ups using samples from over 160 sources, including other mash-ups.

33 Mash-ups are almost always illegal, and this illegality drives mash-up artists underground. Yet, despite the fact that good mash-ups can spread like wildfire on the Internet, bringing new interest to old and jaded tracks and, potentially, new income to artists whose work had been forgotten, this form of musical expression is aggressively demonised upon by the industry. Given the opportunity, the industry will instead prosecute for infringement.

34 But clearing rights is a complex and expensive procedure well beyond the reach of the average mash-up artist.

35 First, you must identify the owner of the sound recording, a task easier said than done. The name of the rights holder may not be included in the original recording's packaging, and as rights regularly change hands when an artist's contract expires or when a record label is sold, any indication as to the rights holder's identity may be out of date. Online musical databases such as [AllMusic](#) can be of some use, but in the case of older or obscure recordings, it may not be possible to locate the rights holder at all. Works where there is no identifiable rights holder are called 'orphaned works', and the longer the term of copyright, the more works are orphaned. Once you know who the rights holder is, you can negotiate terms for your proposed usage. Standard fees are extremely high, especially in the US, and typically discourage use.

36 This convoluted legal culture is an anachronism in desperate need of reform: sampling has produced some of the most culturally interesting and financially valuable recordings of the past thirty years, so should be supported rather than marginalised. Unless the legal culture develops an acceptance for these practices, the associated financial and cultural benefits for society will not be realised.

37 The irony is that there is already a successful model for simplifying licensing. If a musician wishes to record a cover version of a song, then royalty terms are set by law and there is no need to seek permission. In this case, the lawmakers have recognised the social and cultural benefit of cover versions and created a workable solution to the permissions problem. There is no logical reason why a similar system could not be put in place for sampling.

Alternatives to Traditional Copyright

38 Copyright, in its default structure, is a disabling force. It says that you may not do anything with my work without my permission and forces creators wishing to make a derivative work to contact me in order to obtain that permission in writing. This 'permissions society' has become the norm, but it is clear that it is not beneficial to society to hide away so much of our culture behind copyright, far beyond the reach of the individual creator.

39 Fortunately there are fast-growing alternatives which simplify whilst encouraging creativity. [Creative Commons](#) is a global movement started by academic lawyers in the US who thought to write a set of more flexible copyright licences for creative works. These licenses enable creators to precisely tailor restrictions imposed on subsequent users of their work, prompting the tag-line 'some rights reserved' Creators decide if they will allow redistribution, commercial or non-commercial re-use, or require attribution, and can combine these permissions in whichever way they see fit. They may also choose to authorise others to sample their works.

40 Built upon the foundation of copyright law, Creative Commons licences now apply to some 53 million works world-wide (Doctorow), and operate in over 60 jurisdictions. Their success is testament to the fact that collaboration and sharing is a fundamental part of human nature, and treating cultural output as property to be locked away goes against the grain for many people.

41 Creative Commons are now also helping scientists to share not just the results of their research, but also data and samples so that others can easily replicate experiments and verify or refute results. They have thus created [Science Commons](#) in an attempt to free up data and resources from unnecessary private control. Scientists have been sharing their work via personal Web pages and other Websites for many years, and additional tools which allow them to benefit from [network effects](#) are to be welcomed.

42 Another example of functioning alternative practices is the [Remix Commons](#), a grassroots network spreading across the UK that facilitates artistic collaboration. Their Website is a forum for exchange of cultural materials, providing a space for creators to both locate and present work for possible remixing. Any artistic practice which can reasonably be rendered online is welcomed in their broad church. The network's rapid expansion is in part attributable to its developers' understanding of the need for tangible, practicable examples of a social movement, as embodied by their 'free culture' workshops.

Collaboration, Copyright and the Future

43 There has never been a better time to collaborate. The Internet is providing us with ways to work together that were unimaginable even just a decade ago, and high broadband penetration means that exchanging large amounts of data is not only feasible, but also getting easier and easier. It is possible now to work with other artists, writers and scientists around the world without ever physically meeting. The idea that the Internet may one day contain the sum of human knowledge is to underestimate its potential. The Internet is not just a repository, it is a mechanism for new discoveries, for expanding our knowledge, and for making links between people that would previously have been impossible.

44 Copyright law has, in general, failed to keep up with the amazing progress shown by technology and human ingenuity. It is time that the lawmakers learnt how to collaborate with the collaborators in order to bring copyright up to date.

References

- Apple. "Rip. Mix. Burn." Advertisement. 28 April 2006
<http://www.theapplecollection.com/Collection/AppleMovies/mov/concert_144a.html>.
- Benkler, Yochai. *Coase's Penguin*. Yale Law School, 1 Dec. 2002. 14 April 2006
<<http://www.benkler.org/CoasesPenguin.html>>.
- . *The Wealth of Nations*. New Haven: Yale UP, 2006.
- Bromberg & Sunstein LLP. *Flowchart for Determining when US Copyrights in Fixed Works Expire*. 14 Apr. 2006 <<http://www.bromsun.com/practices/copyright-portfolio-development/flowchart.htm>>.
- DJ Food. *Raiding the 20th Century*. 14 April 2006
<http://www.ubu.com/sound/dj_food.html>.
- Doctorow, Cory. "Yahoo Finds 53 Million Creative Commons Licensed Works Online." BoingBoing 5 Oct. 2005. 14 April 2006
<http://www.boingboing.net/2005/10/05/yahoo_finds_53_milli.html>.
- Miller, Paul D. *Rhythm Science*. Cambridge, Mass.: MIT Press, 2004.
- Padfield, Tim. "Duration of Copyright." The National Archives. 14 Apr. 2006
<http://www.kingston.ac.uk/library/copyright/documents/DurationofCopyrightFlowchartbyTimPadfieldofTheNationalArchives_002.pdf>.
- Wikipedia. "Collaboration." 14 April 2006
<<http://en.wikipedia.org/wiki/Collaboration>>.
- . "Wikipedia Statistics." 14 April 2006
<<http://en.wikipedia.org/wiki/Special:Statistics>>.

Citation reference for this article

MLA Style

Charman, Suw, and Michael Holloway. "Copyright in a Collaborative Age." *M/C Journal* 9.2 (2006). 14 Jun. 2012 <<http://journal.media-culture.org.au/0605/02-charmanholloway.php>>.

APA Style

Charman, S., and M. Holloway. (May 2006) "Copyright in a Collaborative Age," *M/C Journal*, 9(2). Retrieved 14 Jun. 2012 from <<http://journal.media-culture.org.au/0605/02-charmanholloway.php>>.

an  publication |



Copyright © M/C 1998-2006 | ISSN 1441-2616 |

[About M/C](#) | [Contact M/C](#) | [Site Map](#) |
[XHTML](#) | [CSS](#) | [Accessibility](#) |