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Decolonizing Copyright: Learning from the Jamaican Street Dance

By

Larisa K. Mann

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Jurisprudence and Social Policy

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

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Abstract

Decolonizing Copyright: Learning from the Jamaican Street Dance

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Larisa Kingston Mann

Doctor of Philosophy in Jurisprudence and Social Policy

University of California, Berkeley

Professor Kristin Luker, Chair

In this ethnographic study I examine the significance of music-making in Jamaican society in the light of the increasing interpenetration of law and technology with cultural practices. I center the local institution of the "street dance" as the heart of Jamaicans' musical practices. Grounded in a historical analysis of musicking – the active practice of engaging with music – in Jamaica and in the Jamaican diaspora, this study reveals how Jamaica's colonial past and present shapes musicking's cultural, political and economic significance in Jamaican life. Most specifically, Jamaican music-makers' collaborative and repetitive practices, that draw on and reinforce shared cultural history, contradict current local and international copyright law.

Copyright law relies on historically and culturally specific assumptions about the practice of creativity, and requires specific institutional context in order to function. But what relation do those assumptions and institutions have to the interests and traditions of music-makers? And how does that relationship change in the context of increasingly globalized copyright law that is increasingly and intimately enforced through globally networked technology?

Through social history and ethnographic data generated by interviews, participant-observation, musical analysis, I reveal how Jamaican musicking practices are creative, productive, and rewarding for individual Jamaicans as well as for communities. I focus especially on the Jamaican poor who dominate Jamaican musical authorship, and who rely on alternate normative systems that shape both their creative practices and their understandings of ownership, control, and the distribution of money deriving from music. I map Jamaican music-makers' engagement, resistance, and reinterpretation of copyright law concepts, and provide an analysis of music-making that reveals how copyright is informed by colonial assumptions that Jamaican practices can sometimes resist and subvert. Drawing on the impressive cultural contributions of Jamaican music-makers to Jamaican and global music culture, which derives from their specific practices (including those that contradict copyright), I offer a critique of copyright informed by a concern for substantive equality, centered on the needs of the Jamaican poor who dominate music-making and offer a corrective theoretical framework for analyzing policy and music-making in the digital era.

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Introduction

Jamaican Roots at the Faultlines of Copyright

Current debates over the relationship of copyright and music have reached a fever pitch. Lawsuits, public protests, bitter arguments, campaigns for the redefinition, limitation or abolition of copyright fly back and forth between corporate entities in the creative industries, government bodies, fans, musicians, journalists and the public. Meanwhile millions of people worldwide continue to engage with music in ways that many copyright owners call illegal. Many of these practices are informed by a spectrum of creativity often called "remix culture"[1] by lawyers, legal scholars and media scholars who often discuss them as part of a new, digital era of creativity.[2] But are they so new? The practices that inspired the current discourse of "remix culture" are historically specific and developed out of black diasporic culture such as hip-hop.[3] Although hip-hop draws on African American oral traditions, it was hip-hop artists' specific technological engagement with recordings (as elements in the composition and performance process) that triggered a wave of legal cases and public discussion of music and copyright. This history informs current concerns about the scope, definition and efficacy of copyright in relation to music-making.[4] We can trace the practice of using recordings as raw material for live

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[1] See, for example Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (London: Penguin Press, 2008); Kembrew McLeod and Rudolf Kuenzli, *Cutting Across Media: Appropriation Art, Interventionist Collage, and Copyright Law* (Durham, NC: Duke University Press, 2011), 4–5, 67; Lori A. Morea, "The Future of Music in a Digital Age: The Ongoing Conflict Between Copyright Law and Peer-to-Peer Technology, The," *Campbell Law Review* 28 (2005): 195–250; Matthew Rimmer, *Digital Copyright and the Consumer Revolution: Hands Off My IPod* (Cheltenham, U.K.; Northampton, MA: Edward Elgar Publishing, 2007), 261; Aram Sinnreich, *Mashed Up: Music, Technology, and the Rise of Configurable Culture* (Amherst, MA: University of Massachusetts Press, 2010); Ruth Towse, *Creativity, Incentive, and Reward: An Economic Analysis of Copyright and Culture in the Information Age* (Cheltenham, U.K.; Northampton, MA: Edward Elgar, 2001).

[2] Damien S. O'Brien and Brian F. Fitzgerald, "Mashups, Remixes and Copyright Law," *Internet Law Bulletin* 9, no. 2 (2006): 17–19 "We now inhabit a 'remix culture,' a culture which is dominated by amateur creators –-creators who are no longer willing to be merely passive receptors of content."; Patricia R. Zimmermann, "Just Say No: Negativland's 'No Business'," *Cultural Studies* 20, no. 2 (2006): 316–322. Zimmerman describes, "A high stakes civil war rages on your laptop. It pits the ever-expanding proprietary commercial music industry empire against the file sharing, grassroots freedom fighters who transform old sounds into new ideas."; See also Sinnreich, *Mashed Up*.

[3] Horace Anderson, "'Criminal Minded?' Mixtape DJs, the Piracy Paradox, and Lessons for the Recording Industry," *Tennessee Law Review* 76, no. 1 (2008); Candace G. Hines, "Black Musical Traditions and Copyright Law: Historical Tensions," *Michigan Journal of Race and Law* 10 (2005): 463–494; Stacy F. McDonald, "Copyright for Sale: How the Commodification of Intellectual Property Distorts the Social Bargain Implicit in the Copyright Clause," *Howard Law Journal* 50, no. 2 (2007): 541–574; David D. Troutt, "I Own Therefore I Am: Copyright, Personality, and Soul Music in the Digital Commons," *Fordham Intellectual Property, Media & Entertainment Law Journal* 20 (2010): 373–419; See Olufunmilayo B. Arewa, "From JC Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context," *The North Carolina Law Review* 84 (2006): 547–642 for contextualizing hip-hop in a Western artistic tradition that also involves creative reuse. However, this does not explain why those earlier traditions failed to trigger widespread lawsuits or legal controversy.

[4] I do not argue that hip-hop is central to understanding copyright's limitations because of essential characteristics of black culture. Instead I suggest that the particular historical moments that led to the rise of hip-hop also created the legal regime that would be in contrast to it. The explosion of law journal articles that address the troubled relationship of hip-hop to copyright, rather than testifying to Hip-Hop's uniqueness, instead exemplifies to the

performance, historically, to Jamaica.[5] Below I argue that Jamaica's particular history and current reality as a site of colonial inequality can help us understand the significance of current musical traditions' clash with copyright law.

Jamaica's colonial past shaped not only Jamaican peoples' musical traditions but also shaped their relationship to the legal and economic institutions that create opportunities for economic and social advancement. The Jamaican legal and economic system is rooted in colonization. For about 175 years, an enslaved African-majority population labored solely to produce wealth for England, and for English representatives on the island. Both property and intellectual property systems were part of this system. Inequality was reinforced by the English belief that enslaved Jamaicans (from Africa) were incapable of producing valuable culture.[6]

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specific historical moment in which this clash of cultures embedded in social practices and law was made visible via hip-hop's particular technological engagements with musical recordings. Lucille M. Ponte, "The Emperor Has No Clothes: How Digital Sampling Infringement Cases Are Exposing Weaknesses in Traditional Copyright Law and the Need for Statutory Reform," *American Business Law Journal* 43, no. 3 (2006): 515–560; For examples of the rise of hip-hop as a topic of copyright scholarship, see Olufunmilayo B. Arewa, "Piracy, Biopiracy and Borrowing: Culture, Cultural Heritage and the Globalization of Intellectual Property," *Bepress Legal Series*, no. 1114 (2006), http://law.bepress.com/expresso/eps/1114/; Anderson, "'Criminal Minded?'"; Lauren Fontein Brandes, "From Mozart to Hip-Hop: The Impact of Bridgeport v. Dimension Films on Musical Creativity," *UCLA Entertainment Law Review* 14 (2007): 93; Tonya M. Evans, "Sampling, Looping, and Mashing… Oh My!: How Hip Hop Music Is Scratching More Than the Surface of Copyright Law," *Fordham Intellectual Property, Media & Entertainment Law Journal* 21 (2011): 843; Chris Johnstone, "Underground Appeal: A Sample of the Chronic Questions in Copyright Law Pertaining to the Transformative Use of Digital Music in a Civil Society," *Southern California Law Review* 77 (2003): 397; Brett I. Kaplicer, "Rap Music and De Minimis Copying: Applying the Ringgold and Sandoval Approach to Digital Samples," *Cardozo Arts & Entertainment Law Journal* 18 (2000): 227; Jason H. Marcus, "Don't Stop That Funky Beat: The Essentiality of Digital Sampling to Rap Music," *Hastings Communication & Entertainment Law Journal* 13 (1990): 767–790; Josh Norek, "You Can't Sing Without the Bling: The Toll of Excessive Sample License Fees on Creativity in hip-hop Music and the Need for a Compulsory Sound Recording Sample License System," *UCLA Entertainment Law Review* 11 (2004): 83–102; Thomas G. Schumacher, "'This Is a Sampling Sport': Digital Sampling, Rap Music and the Law in Cultural Production," in *That's the Joint!: The Hip-hop Studies Reader*, ed. Murray Forman and Mark Anthony Neal (London; New York: Routledge, 2004); Henry Self, "Digital Sampling: A Cultural Perspective," *UCLA Entertainment Law Review* 9 (2002): 347–359; Conversely, there are practices of reuse of recordings that have not generally triggered legal concerns. These occur in the Western tradition particularly of *musique concrète* and other sonic collage. For an illuminating discussion of this history see Jon Leidecker, *Variations #4 : The Explosion*, podcast, Variations: Radio Web Museum of Contemporary Art Barcelona, 2011.

[5] Scholarship on hip-hop agrees on its Jamaican roots. See, e.g. Jeff Chang, *Can't Stop Won't Stop: a History of the Hip-hop Generation* (Picador USA, 2006), 21; Mark Katz, *Groove Music: The Art and Culture of the hip-hop DJ* (Oxford ; New York: Oxford University Press, 2012), 25, 27; David Toop, *Rap Attack 3: African Rap to Global Hip Hop* (Serpent's Tail, 2000); Imani Perry, *Prophets Of The Hood: Politics And Poetics In Hip Hop* (Durham, NC: Duke University Press, 2004), 13 However, Perry focuses mainly on the verbal aspect of hip-hop. I am centering the practice of using recordings as tools in live performance (that includes verbalizing). Jamaica originated the practice of using recordings as a performance tool that later influenced hip-hop. Jason Toynbee, "Copyright, the Work and Phonographic Orality in Music," *Social & Legal Studies* 15, no. 1 (2006): 77–99; Scholarship on Jamaican music often tracks its influence on hip-hop. See, e.g. Norman Stolzoff, *Wake the Town & Tell the People: Dancehall Culture in Jamaica* (New York: Routledge, Taylor & Francis, 2000), 254; Lloyd Bradley, *Bass Culture: When Reggae Was King* (London: Penguin Books, 2001), 142; Michael Veal, *Dub: Soundscapes and Shattered Songs in Jamaican Reggae* (Middlebury, CT: Wesleyan University Press, 2007), 240; Henry Self, "Digital Sampling: A Cultural Perspective," *UCLA Entertainment Law Review* 9 (2002 2001): 15.

[6] Deborah Thomas describes how the British colonial state "linked hierarchies of education and status to color, culture and gender." Deborah A. Thomas, "Blackness Across Borders: Jamaican Diasporas and New Politics of Citizenship," *Identities: Global Studies in Culture and Power* 14, no. 2 (2007): 115; Kamugisha links this hierarchy

Neither Emancipation in 1838 nor independence in 1952 fundamentally altered the general allocation of wealth and power or the dismissal of the black majority's cultural practices, although as I shall discuss below new dynamics between elites and the poor developed over time. Dark-skinned free workers labored for a small, mainly white or light-skinned minority of upper-class Jamaicans.[7] Copyright law was a feature of both colonial and free Jamaica, did not turn out to be incompatible with massively unequal systems of exploitation.

In this dissertation, I endeavor to answer the following questions: What relationship do copyright law's divergences from local practices, as revealed by controversies around "remix culture," have to global systems of power? How does the relationship between local creative culture and copyright affect the available opportunities for music-makers in local and global contexts? And lastly, how can or should we attempt to re-orient copyright law towards the goal of "substantive equality?"[8] My definition of substantive equality means an equality informed by the specific concerns of Jamaicans and others at the (post)colonial periphery.

After drawing answers out of the following research, I will use them to put forth a framework, in Chapter 6, for evaluating copyright that better serves the broad goals of social and cultural policy, identifying specific tensions and concepts that policy makers frequently ignore. The aspects of creative culture discussed below are intended to help facilitate broader and more productive participation in copyright debates by providing a conceptual and practical vocabulary to describe the stakes in copyright policy that are not informed by colonial assumptions.

The following research examines the ways that copyright has been complicit in colonial inequality, and suggests ways to learn from a deeper understanding of copyright's relationship to creativity and equality. This examination is urgently needed for two reasons: first, new technology is bringing particular definitions of copyright law into more intimate and constant contact with everyday life for an increasing number of people all over the world, and second, the increasing globalization of copyright law puts a growing pressure on local governments to reshape or enforce copyright.

Technology is changing the landscape

The most urgent reason for attending to these questions comes form the rise of new technologies of music-making, communication and distribution. New technologies and their increasing capability to connect to global communications networks can potentially alter musickers' relationships to each other, and to law, and to the likelihood of getting paid for their labor. Technology can either facilitate or hinder particular creative and communicative practices, and its capability to do so is shaped by copyright concerns. For example, in the US the Digital Millennium Copyright Act (DMCA) makes companies liable for users' infringement in certain

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to the interests of a "Caribbean elite that sought to define itself on the standards of a global bourgeois class." Aaron Kamugisha, "The Coloniality of Citizenship in the Contemporary Anglophone Caribbean," *Race & Class* 49, no. 2 (2007): 25; For more general accounts of British beliefs in British cultural superiority in relation to colonies, see Edward Said, *Orientalism* (New York: Vintage Books, 1978), 53–4, 80.

[7] Percy C. Hintzen, "Reproducing Domination: Identity and Legitimacy Constructs in the West Indies," *Social Identities* 3, no. 1 (1997): 48; Kamugisha, "The Coloniality of Citizenship in the Contemporary Anglophone Caribbean," 23.

[8] Margaret Chon, "Intellectual Property and the Development Divide," *Cardozo Law Review* 27 (2005): 2884.

contexts, so technology companies make design decisions that limit how users can engage with creative works.[9] While the DMCA raises concerns within the US, it also has international implications. Many use these technologies and platforms outside the US, which brings the DMCA in conflict not only with various creative communities, but various foreign laws.[10] Resolving the conflicts that are sure to arise requires better familiarity with issues at stake for the different communities using these technologies.

Copyright has historically been both trade law and a system for regulating social and cultural practices. As trade law, it establishes ground rules for markets in copyrighted works—which involves defining people's relationship to creativity along market-oriented lines, with producers (and the act of production) clearly distinguished from consumers (and the act of consumption). Although creativity can result in the production of commodities, these social interactions of production and consumption also evoke other social interests: asserting and defining identity, entertainment, education, political commentary, dissent, communicating new ideas or reinforcing shared cultural values. These multiple functions of creativity make copyright a particularly important nexus of interests through which one can explore tensions between specific cultural practices and state, corporate and NGO interests in a particular definition of legal order and legibility.

Alongside its central role in current controversies over copyright, Jamaica has been the focus of several studies of scholars and policy makers whose concern with development is leading to a focus on cultural industries.[11] Places like Jamaica are argued to have a comparative advantage, due to high levels of artistic creativity, and that music already contributes significantly to the economy (in Jamaica, music is often estimated as fourth behind bananas, bauxite and tourism).[12] This increases the urgency of an exploration of the institutions like copyright, which are argued, at the international level, to be essential to development.

The Coloniality of copyright

Jamaican copyright law, from its existence as a colony until 1993, was based in British copyright law. Although earlier versions of UK copyright were technically in force in British

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[9] Fred Von Lohmann, *Unintended Consequences: Twelve Years Under the DMCA* (Electronic Frontier Foundation, March 3, 2010), https://www.eff.org/wp/unintended-consequences-under-dmca.

[10] Bruce A. Lehman, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights* (DIANE Publishing, 1995), 2.

[11] Krister Malm and Roger Wallis, *Big Sounds from Small Peoples: The Music Industry in Small Countries* (New York: Routledge, 1984); Marie-Claude Derné and Keith Nurse, *Caribbean Economies and Global Restructuring* (Kingston, Jamaica: Ian Randle Publishers, 2002), 197; Keith Nurse, "Copyright and Music in the Digital Age: Prospects and Implications for the Caribbean," *Social and Economic Studies* 49, no. 1 (March 1, 2000): 3; Dominic Power and Daniel Hallencreutz, "Profiting from Creativity? The Music Industry in Stockholm, Sweden and Kingston, Jamaica," *Environment and Planning A* 34, no. 10 (2002): 1833–1854; Kyle W. Brenton and Hilary Brown, "National Strategy & Action Plan to Further Develop the Jamaican Music Industry, Prepared for the Ministry of Education Youth & Culture and the Global Alliance Programme," *Minnesota Law Review* 92, no. 4 (2008): 1–44.

[12] Jalani Niaah and Sonjah Stanley-Niaah, "Bob Marley, Rastafari and the Jamaican Tourism Product," in *New Perspectives in Caribbean Tourism*, ed. Marcella Daye and Donna Chambers (London: Psychology Press, 2008); "Passa Passa, the Authentic Tourism Experience," *Jamaica Gleaner Online* (Kingston, Jamaica, March 4, 2007), http://jamaica-gleaner.com/gleaner/20070304/news/news5.html.

colonies, the Jamaica Copyright Act of 1913 formally incorporated the UK Copyright Act of 1911, which remained unchanged even after Jamaican independence in 1962. Neither the UK nor Jamaica was a signatory to the Berne convention until the end of the 20th century, and Jamaica only joined at the same time as it joined the Agreement on Trade Related Aspects of Intellectual Property (TRIPS agreement) in 1994, which marked the first revision to Jamaican copyright since 1913, the Jamaica Copyright Act No. 4. The 1994 act was passed so that Jamaica would be in accordance with TRIPS as required by membership eligibility in the World Trade Organization (WTO).[13] Unlike the UK Copyright Act, the Jamaican Act was not revised between 1962 and 1994. The 1911 Act states that copyright subsists "in every original literary dramatic musical and artistic work"[14] "fixed in writing or otherwise" and that "the author of a work shall be the first owner of the copyright therein."[15]

The law addressed creativity through a model of creativity in which "works" are created by "authors" (even the 'joint authorship' provision of the Act assumes distinct, separable contributions). Such a model of creativity relied on an individualistic conception of creativity that obscures how creativity can be rooted in communities, subcultures, or social groups.[16] In Jamaica and in many countries in the global South (as well as some creative communities in the global North), creativity is practiced in collective ways as well as individualistic ones. By allocating rewards to individuals, copyright concentrates financial return based on a particular individual's relationship to the conditions of its creation. As I will discuss further in Chapters 3 and 5, that relationship is understood differently in different communities and cultures. If a particular tradition of creativity does not fit with copyright, that community will be systematically disadvantaged in relation to the law.

The law can also misrecognize the contributions of actors in the creative process. If a person is not an author or an owner (which can be either the author or someone to whom the author has ceded ownership), the UK Copyright Act (and later versions of copyright law in the UK, Jamaica and beyond) treated that person someone whose relation to the work is consumptive rather than contributory. Because the work is assumed to be a fixed product, it is difficult to recognize how actors who engage with a work after the moment it is defined may also be creative. By focusing on the "work"—a fixed, discrete object—and defining the right of particular actors to control access to that work, the law defined the social relations of musicking around works rather than focusing on the social dynamics of creativity in which works may be an element of a larger creative project.

The continuing requirement of a work's fixation, (originally referred to in the UK Act as being fixed "in writing or otherwise") concentrates legal attention towards moments where music is frozen in a bounded way, as a recording or writing. But in poor countries such as Jamaica,

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[13] Although in 1976 the Jamaican government set up a commission to investigate revisions to the Act, and drafted a Copyright Act of 1977, it was never actually put into law. Heather Royes and Tom Tavares-Finson, "Current Status of Copyright Legislation in Jamaica," *Jamaica Journal* 16, no. 1 (1983): 14–18.

[14] Copyright Act, 1911, Geo 5, c. 46, Part I sec 1(1).

[15] Ibid., Part II § 35(1), and Part I sec. 5(1). The 1911 UK Act incorporates the Musical Copyright Act of 1906 that defines a musical work in terms of "a work in which there is a subsisting copyright." 6 Edward V. ch. 36 section 3 (1906)

[16] Erich Kasten, *Cultural Heritage: Property of Individuals, Collectivities or Humankind?*, Max Planck Institute for Social Anthropology Working Papers (Halle, Germany: Max Planck Institute for Social Anthropology, 2002); Howard Saul Becker, "Art Worlds and Collective Activity" (Berkeley: University of California Press, 1982), 1–39.

both writing and recording require a significant amount of social and material capital, and are concentrated among a few musickers, while creativity occurs primarily in live performance, whether in the studio or in social settings. If ownership accrues to the person who has the power to make a fixation, this can undervalue the contribution of other participants in the musicking process, and does not account for the broader dynamics of creative practice. Similarly, when originality is a criterion for defining copyright, this focuses on the ways that new works are not connected to (or made up of) existing works. The more isolated a work is from its cultural context, the more likely legal analysis will recognize it as original. As will be discussed in Chapter 5, this concept of originality is far removed from the way many Jamaicans perceive what is valuable in a musical work, or even how they use the word "original." Legal definitions of originality and authorship permit copyright to attach power and reward at moments in the musicking process, and to particular musickers, without accounting for the effects on the rest of the process or the other musickers.

Copyright's continuing ill fit with Jamaican practices is revealed in the 1994 Act's focus on individualistic and exclusive rights. The Act requires that copyright owners' permission be sought for any broadcast[17] or public performance of a work.[18] As I will discuss throughout this dissertation, public performance and to some extent broadcasting, or otherwise making musical recordings available for the public, is a crucial aspect of Jamaican musical creativity. The act implied by these rights as the reception or consumption of works by the public (i.e., non-authors) is actually part of a collectively creative process that includes "audiences" and others who are not well represented in this model of creative engagement (especially disc jockeys (DJs)—the people who play recordings on turntables, and engineers—those who manipulate the sound live as it is played through a soundsystem). The Copyright Act (like most others in the West) formally restricts the right to adapt or alter a work; however, as I discuss in Chapter 3, Jamaicans have raised the practice of adaptation and reuse to a sophisticated practice, deeply embedded in Jamaican musical tradition and owing very little to copyright conceptions of ownership and permission.

Despite the way local and international copyright regimes diverge from local practices, the WTO has relied on the TRIPS agreement calls for harmonization of intellectual property laws at the national level, and also extends intellectual property law's application in several directions, raised minimum protection standards, mandated enforcement, and required punishment for

[17] The UK Copyright Act was revised to include broadcasting in 1956, at which time the law also applied in Jamaica.
[18] *The Copyright Act of Jamaica*, 1993 Part I § 1(2)(a).

signatories that did not comply.[19] Member states of the WTO who fail to comply with copyright law can be faced with trade sanctions.[20]

The WTO's primary justification for requiring global "harmonization" of copyright and enforcement is that copyright provides an incentive to creators who are motivated to create more works through the promise of rewards extracted via the control of already-created works. The WTO's one-size-fits-all approach to intellectual property, in which copyright enforcement has only a positive relationship to cultural productivity, derives from The World Intellectual Property Organization (WIPO), WIPO sets the WTO's intellectual property policy, and its approach is epitomized by their 1997 assertion that "development of national authorship and creativity cannot be set in motion without guarantees to the author of adequate remuneration for his efforts."[21] WIPO's assertion continues the rather ahistorical approach put forth over 10 years earlier: a 1981 WIPO and UNESCO study of copyright in the English-speaking Caribbean asserted that "rejection of copyright would lead to the drying up of literary and artistic production."[22] Such a prediction contradicts the history of creative industries throughout the world, and Jamaica's recent history in particular.

Before and after the colonial era, most historical accounts agree, copyright law in Jamaica seems to have gone basically unenforced in Jamaica.[23] Despite WIPO's dire prediction of "a drying up of literary and artistic production," Jamaican music has been productive and successful, both locally and internationally.[24] Jamaica's music industry is the third largest producer in the economy, its main era of dynamic expansion in the 1970s and 80s, before Jamaica joined the TRIPS agreement. Income from one category of Jamaican music (Reggae) has continued to be significant on a global scale: a 1995 UN study puts "worldwide income from [Jamaican-based] reggae music at not below 3 percent" of global music production—an impressive figure for an island with a population of around 2.5 million.[25] Music-makers have

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[19] Ruth L. Okediji and William L Prosser, *The International Copyright System: Limitations, Exceptions and Public Interest Considerations for Developing Countries*, ICTSD Project on IPRs and Sustainable Development (Geneva: UNCTAD/ International Centre for Trade and Sustainable Development, 2006), 4, 30; World Trade Organization, "Trade-Related Aspects of Intellectual Property Rights", 1994 Article 41 (obligating members to ensure procedures for enforcement); World Intellectual Property Organization, "World Intellectual Property Organization Copyright Treaty", n.d. Articles 11, 12 and 14; World Intellectual Property Organization, *World Intellectual Property Performances and Phonograms Treaty*, n.d. Articles 18, 19 and 23 (on "effective" and "expeditious remedies" against infringement in online environments).

[20] Chon, "Intellectual Property and the Development Divide," 2840; Michael P. Ryan, *Knowledge Diplomacy: Global Competition and the Politics of Intellectual Property* (Washington, D.C.: Brookings Institute Press, 1998), 12–13.

[21] World Intellectual Property Organisation (WIPO), *Introduction to Intellectual Property Theory and Practice* (London, The Hague, Boston: Kluwer Law International, 1997), 59. This approach is echoed by Jamaican policy research and international organizations that argue that extending and expanding copyright enforcement would only benefit the music industry and national productivity.

[22] UNESCO and WIPO, *Proceedings of Regional Seminar on Copyright for English-speaking Caribbean States*, Unesco/wipo/kcs (UNESCO and WIPO, 1981), 7.

[23] Bradley, *Bass Culture*, 228, 250; Stolzoff, *Wake the Town & Tell the People*, 59; Royes and Tavares-Finson, "Current Status of Copyright Legislation in Jamaica," 15.

[24] UNESCO and WIPO, *Proceedings of Regional Seminar on Copyright*, 7.

[25] Zeljka Kozul-Wright and Lloyd Stanbury, *Becoming a Globally Competitive Player: The Case of the Music Industry in Jamaica* (Geneva: UN Commission on Trade and Development, 1998), 24.

not, despite the absence of copyright, lacked incentive to make music, and indeed have been responsible for developing national authorship and creativity.

The productivity and vitality Jamaican musicking contradicts many of WIPO's claims in practice, but has not, in Jamaica led to a formal critique of those claims. However in the past 20 years a coalition of countries in the global South have put forth a formal challenge informed by these and other concerns: the Development Agenda (DA). In the "Uruguay Round" of multilateral trade negotiations over intellectual property that led to the creation of the WTO and TRIPS, nations in the global South had fought unsuccessfully for TRIPS to allow as much flexibility as possible for nations to determine the scope of protection. After this failure, they reorganized and successfully pressured WIPO to adopt the DA into its mission in 2000. Countries from the global South argued that copyright law as traditionally defined by WIPO did not serve their interests: as net importers of copyrighted works, for example, they see no immediate advantage in enforcing copyright.[26] The DA emphasized especially that copyright ought to respond to the specific situation of resource-poor countries, and called for alternate contours of copyright informed by their interests. Concurrently, movements have arisen in which communities, regions and nations argue for different kinds of intellectual property rights such as geographical indicators, traditional knowledge, and national patrimony. These movements reveal a desire for new legal instruments of intellectual property to represent, the people and practices those instruments are ostensibly meant to benefit. These movements have also been echoed and supported by a developing field of scholarship in the relationship between intellectual property IP) systems and development; although to date only a few case studies have appeared that explore this relationship in fine-grained detail, especially with respect to copyright.[27]

For the majority of Jamaican musicking history, then, copyright has been explicitly colonial, in the sense that it was written by Jamaica's colonizer.[28] Alongside the contradictions arising from the Jamaican experience, the models of human behavior on which WTO's incentive model is based are also fairly thin.[29] The gap between copyright law on the books and actual musicking practices, as I will discuss below, reflects legal assumptions that rely on specific categories of actors, practices, and products that derive from particular historical conditions of

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[26] Chon, "Intellectual Property and the Development Divide," 2832; Ruth L. Okediji, "TRIPS Dispute Settlement and the Sources of (International) Copyright Law," *Journal - Copyright Society of the USA* 49, no. 2 (2001): 611; Peter Drahos and John Braithwaite, *Information Feudalism: Who Owns the Knowledge Economy?* (London: Earthscan Publications, 2002), 11, 208.

[27] See the literature review, Chapter 2.

[28] Camille Nelson, "Lyrical Assault: Dancehall Versus the Cultural Imperialism of the North-West," *Southern California Interdisciplinary Law Journal* 17 (2008): 258.

[29] Anne Barron, "Introduction: Harmony or Dissonance? Copyright Concepts and Musical Practice," *Social & Legal Studies* 15, no. 1 (2006): 25–51; Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven: Yale University Press, 2007); Rosemary J. Coombe, "Commodity Culture, Private Censorship, Branded Environments, and Global Trade Politics: Intellectual Property as a Topic of Law and Society Research," ed. Austin Sarat, The Blackwell Companion to Law and Society (Malden, MA: Blackwell Pub., 2004), 370–391; Wendy J. Gordon, "Render Copyright Unto Caesar: On Taking Incentives Seriously," *The University of Chicago Law Review* 71, no. 1 (January 1, 2004): 75–92; Diane Leenheer Zimmerman, "Copyrights as Incentives: Did We Just Imagine That?," *Theoretical Inquiries in Law* 12, no. 1 (January 3, 2011): 29–58.

cultural production. I argue that both the form of the law and the ways in which it is enforced provide advantages to those closer to the centers of colonial power.[30] .

This dissertation represents an extension of scholarship dealing with ways that Jamaican musical practices diverge from the copyright regime existing at the behest of TRIPS. Enforcement of copyright policy ought to account for such practices, in relation to their productivity and to their cultural value. In settings where local traditions and creative practices diverge from the legal framework, enforcing copyright law discourages creativity, or it may alter creative output in ways that affect cultural expression. The relationship between creators and copyright has been shaped by the institutional and social capacities in creative communities and more broadly in the society where the law is to be enforced. A governmental policy that does not account for the relationships its people have to the law and legal institutions will likely be ineffective, if not counterproductive.

As will be explored in greater detail below, Jamaican music-making practices reveal a different set of understandings about ownership, permission, access, creativity and originality than what the law assumes, based both in local musical traditions and in material realities around relationships between various actors in the music scene. A central feature of this history and present includes a dynamic relationship between colonial law, explicitly created for the benefit of the colonizer, and local practices shaped by traditions that predate colonial law or even explicitly resist its colonizing intent. While local traditions may not have fit with international copyright law, or were not much shaped by local copyright law, Jamaican musicking developed its own practices and methods for organizing the production of music that have been successful on many grounds, given the music's global reach.

The following detailed study of creative practices "on the ground" will provide a better account of the cultural and material contexts that shape creative practices, and suggest some alternate ways to evaluate and shape copyright.

Ethnographic Methods

Because copyright interacts with the process of creation, and is often justified as a stimulant to the creative process,[31] a serious exploration of its dynamics requires culturally and

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[30] Barron, "Introduction: Harmony or Dissonance," 25; Jason Toynbee, *Creating Problems: Social Authorship, Copyright and the Production of Culture* (Milton Keynes: Pavis Centre for Social and Cultural Research, 2001), 4–5; Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, MA: Harvard University Press, 1993); Martha Woodmansee and Peter Jaszi, *The Construction of Authorship: Textual Appropriation in Law and Literature*, Post-contemporary Interventions (Durham, NC: Duke University Press, 1994).

[31] Copyright is often justified as a system that stimulates creativity. For examples of this argument at the international level, see World Intellectual Property Organization, *Introduction to Intellectual Property Theory and Practice* (London, The Hague, Boston: Kluwer Law International, 1997); in relation to the US, see Robert P. Merges, Peter Menell, and Mark Lemley, eds., *Intellectual Property in the New Technological Age* (New York: Aspen Publishers, 2007); Davies asserts that copyright's purpose is "to provide a reward and stimulus to creators" but fails to elaboration on the difference between "reward" and "stimulus." Gillian Davies, *Copyright and the Public Interest* (London: Sweet & Maxwell, 2002), 508. In the U.S., the U.S. Supreme Court has noted that copyright "intended to motivate the creative activity of authors and inventors by the provision of a special reward." Sony Corp. v. Universal City Studios, 464 U.S. 417, 429 (1984). Also see Mazer v. Stein, 347 U.S. 201, 219 (1954). "The economic philosophy behind the Clause empowering Congress to grant patents and copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare."

historically specific analysis rooted in daily life of a community that copyright law purports to serve. By situating analysis locally, in people's lived experience, conclusions become more broadly useful. Local communities are already embedded in a global network, both materially via trade and emigration, communicatively and symbolically (in terms of how communities imagine and define themselves). So situated, the analysis avoids normalizing or reifying existing communities in their current moment. Empirically grounded research forces the researcher, policy maker or activist to define the problem or concern to be addressed not only in terms of a general or abstract concern, but also in terms of the community that is studied. Lastly, this approach can mobilize research without losing the descriptive nuances necessary to properly understand the communities researched—focusing this way can more effectively motivate both policy and social movements.

Recent years have seen an increase in empirical studies based on surveys, statistical data and interview, that begin to interrogate the relationship between creators and copyright.[32] However, these have not engaged deeply with the historical or cultural context for creation. These empirical studies rarely investigate the ways creators see themselves and their creative activities in relation to broader historical and economic concerns.

I combine historical and ethnographic data in order to more deeply and carefully situate practices in the local context. In multi-sited fieldwork in Jamaica, Toronto and London, I conducted participant-observation, attended musical performances, and observed recording studio sessions. I analyzed musical texts and recordings that circulate throughout the Jamaican diaspora, and interviewed musicians, studio owners, engineers, and other musickers. A more detailed accounting of my methods can be found in the Appendix of this dissertation. I use the data generated by these mixed methods to situate Jamaican musickers in a tradition of cultural participation that flourishes in the margins of and opposition to the legal system of copyright.[33]

I take as the focus of my study practices of "musicking," a term that describes the totality of practices by which people engage with music. Musicologist Christopher Small says that "to music is to take part, in any capacity, in a musical performance, whether by performing, by listening, by rehearsing or practicing, by providing material for performance (what is called composition), or by dancing." The term emphasizes music's dynamic and social nature, as "an

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[32] Towse examines data from collecting societies on money artists earned from copyright. Ruth Towse, "Copyright and Economic Incentives: An Application to Performers' Rights in the Music Industry," *Kyklos* 52, no. 3 (1999): 369–390; Other works draw on surveys or brief case studies. Marlene Cuthbert and Avonie Brown, "Local Musicians in Jamaica: A Case Study," in *Whose Master's Voice?: The Development of Popular Music in Thirteen Cultures*, ed. Alison J. Ewbank and Fouli T. Papageorgiou (Westport, CT: Greenwood Publishing Group, 1997), 135–151; Amanda Lenhart and Susannah Fox, *Downloading Free Music: Internet Music Lovers Don't Think It's Stealing*, Pew Internet & American Life Project (Washington, D.C.: Pew Research Center, 2000); A notable exception to these is the sustained examination of Kente cloth recently undertaken by Boatema Boateng. Boatema Boateng, *The Copyright Thing Doesn't Work Here: Adinkra and Kente Cloth and Intellectual Property in Ghana* (Minneapolis: University of Minnesota Press, 2011).

[33] Loretta Collins, "Raggamuffin Cultural Studies: X-Press Novels' Yardies and Cop Killers Put Britain on Trial," *Small Axe* 10 (2001): 72; Obika Gray, *Demeaned But Empowered: The Social Power of the Urban Poor in Jamaica* (Kingston, Jamaica: University of West Indies Press, 2004), 92; Sonjah Stanley-Niaah, "Kingstons's Dancehall," *Space and Culture* 7, no. 1 (2004): 115; Jason Toynbee, "Reggae Open Source: How the Absence of Copyright Enabled the Emergence of Popular Music in Jamaica," in *Copyright and Piracy: An Interdisciplinary Critique*, , 357–373.

action in which everyone participates."[34] Most importantly for this project, musicking's social values and functions are not defined by the particular processes that produce recordings, but are understood as aspects of broader social practices and linked to the social and material contexts in which they occur.[35] Centering social practices also centers a crucial problem of copyright in practice: the difficulty of allocating rights on the basis of a fixed relationship to music (such as creator or consumer). This is why it is more productive to see musicking—live, interactive performance-- at the heart of music's social function.[36] Such a shift in focus reveals two concerns of this project: examining how the law can reinforce inequality, and how law relates to creative practice. As an example of how copyright can reinforce inequality, consider that because copyright in Jamaica attaches to works in fixed form, the law accords power to creative acts at the moment they involve material writings or recordings.[37] However, different musicking practices require different kinds of social capital: the ability to notate music, or to make audio and video recordings depend on access to education and other capital that is unequally distributed. This means different people will be differently able to derive benefits from copyright. Such unequal outcomes are dependent on social relations external to copyright, but can determine its usefulness to musickers.

Grounding an analysis of copyright in local contexts reveals two key points: first, that music-making serves a wide array of social purposes beyond direct financial gain. I explore this point in Chapter 3, in a discussion of Jamaican street dance as a site of social power for the urban poor. Careful analysis of the dance reveals how dynamic, interactive participatory practices are necessary for the construction of identity and resistance to colonial pressures. The second key finding is that even when people participate in musicking for financial gain, social norms and traditions afford them ways of making money that differ from what copyright can facilitate.[38] These practices often follow a less individualistic logic of wealth distribution.

The relationship between copyright law and global systems of power structures the horizons of possibility for musickers and their communities. I seek to properly historicize global copyright in order to argue that opposing the colonial aspects of copyright is desirable on grounds of equity and cultural flourishing.

Conflicts between practices and laws are likely to increase, due to existing divergence among local copyright laws, the globalization of enforcement, and especially the increasing

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[34] Christopher Small, *Musicking: The Meanings of Performing and Listening* (Middletown, CT: Wesleyan University Press, 1998), 2.

[35] Grimes and Stephenson say that "Music is not only about the relationships among sounds --although it is about them too-- it is also about the relationships among the people attending and participating." Ron Grimes and Barry Stephenson, "'Musicking' – Symphony and Ceremony," *Ritual Studies: International, Interdisciplinary, Collaborative*, n.d., http://ritualstudies.com/ritual-theory/sample-scholarly-post/; Steven J. Mithen, *The Singing Neanderthals: The Origins of Music, Language, Mind, and Body* (Cambridge, MA: Harvard University Press, 2006), 205.

[36] George Lipsitz, "Midnight at the Barrelhouse: Why Ethnomusicology Matters Now," *Ethnomusicology* 55, no. 2 (May 27, 2011): 197 Lipsitz argues that "the object of our studies should be the creative act, not just the created object, [and] our interpretation and analysis become part of that act. This explanation enables us to write about musical texts in relation to their full social and historical contexts, but it also requires us to view those texts as inseparable from their performance."

[37] The Copyright Act of 1976 17 USC §12.1.1. The Jamaica Copyright Act of 1993 § II Part 6.

[38] Toynbee, "Reggae Open Source"; Peter Manuel and Wayne Marshall, "The Riddim Method: Aesthetics, Practice, and Ownership in Jamaican Dancehall," *Popular Music* 25, no. 3 (2006): 447–470.

integration of creative communities into globally networked technological systems. In the next several chapters I explore how or under what conditions copyright enforcement may be problematic for Jamaicans, as well as the specific characteristics of the problems that might arise from copyright enforcement in local and international contexts. I also explore what traditions and practices already exist in Jamaica, and what functions they currently serve—especially in relation to Jamaica's high level of creative activity. My goal is not to concretize specific policy recommendations, but instead to put forth a series of concerns and values that policymakers ought to use in evaluating current and future copyright policy.

Chapter Overview

Following this Introduction, Chapter 1 begins with a review of relevant literatures, which I also use as a frame for my theoretical approach. I synthesize five fields of scholarship: legal critiques of copyright, historical scholarship on the commons, cultural studies, sociolegal studies, and scholarship on colonial inequality. This engagement is instrumental: while I attempt to do justice to the key themes in each field of scholarship, I am also using the fields in a dialogue, in order to draw out my theoretical goal, which is an attempt to reconcile or at least to suggest a path through some of the salient differences in how these fields have dealt with questions of copyright and music.

From within legal scholarship I delineate recent critiques of copyright that come mainly from the US and Europe, historicizing and challenging WIPO (and others)'s claims for copyright's universal applicability. I argue these critiques are not sufficiently engaged with broader questions of law and society. I also analyze the implications of legal scholars' common reliance on the metaphor of "the commons" to describe an alternate model of ownership to copyright. The commons is a term originally applied to land held in common among peasant communities, and is often used by legal scholars as a cipher, ungrounded in the historical realities of actual common-property systems. In the remainder of the chapter I incorporate historical and anthropological work on social practices around creativity and ownership, and theoretical approaches from cultural studies, to fill this theoretical gap. I conclude with an examination of how theories of coloniality provide a useful frame for thinking about copyright in social context.

In Chapter 2, I briefly outline the history of Jamaican musicking in a global system, first situating musicking in Jamaica's particular class politics. From its beginnings as a British colony, in which white British dominated enslaved Africans, Jamaica's need to culturally as well as economically subjugate the black majority has shaped its culture. I describe how colonial inequality has shaped Jamaican culture so that "real" Jamaican-ness is simultaneously read as less civilized but also more authentically Jamaican. This paradox helps explain the continuing ambivalence and hostility of many Jamaican elites and the institutions they dominate (both government and business) to popular Jamaican music. However, another crucial Jamaican reality is that the Jamaican state has not provided a consistent experience of the rule of law.[39] The state

[39] Gray, *Demeaned but Empowered*; Donald Robotham, "How Kingston Was Wounded," in *Wounded Cities: Destruction and Reconstruction in a Globalized World*, ed. Jane Schneider and Ida Susser (Oxford; New York: Berg, 2003), 111–128; Anthony P. Maingot and Wilfredo Lozano, *The United States And The Caribbean: Transforming Hegemony And Sovereignty* (New York: Routledge, 2005).

has not been strong enough to wholly dominate the poor, and instead partially relies on poor communities to maintain social order. Poor Jamaicans have developed cultural traditions that affirm their social worth, and also that enable their survival based on community-based mutual aid and redistribution of wealth. Both the creative practices through which the urban poor define a social order, and their collective practices of mutual aid and redistribution affect their attitudes to copyright.

I outline two key characteristics essential to Jamaican musicking: syncretism and phonographic orality. Since Jamaica was first created as a colony, the music of the majority has been *syncretic*,[40] combining African musical traditions from the various homelands of enslaved people brought to the island with the European, Chinese, Lebanese, Spanish and Indian influences of more free migrants, and influences from other Caribbean islands. Colonial interests brought multiple ethnicities, languages, and classes together, but not on equal terms: a shallow definition of syncretism can obscure the realities of racialized inequality that deeply shape Jamaican life,[41] however syncretism carefully defined reflects the ongoing practice of diasporic people making culture out of their past and present.

Phonographic orality refers to the tradition of live, interactive performance that includes audio recordings as an element—for example, the tradition of "riddims"—where the DJ plays the instrumental parts of a song, separated from the vocals, so that a live performer can sing their own vocal line to the pre-existing recording.[42] The practice (and phonographic orality more generally) dates back to the beginning of replay and broadcast technology, but came into its own with the rise of radios, jukeboxes, and record players. By defining and situating these concepts in historical context, I show that Jamaican traditions form a response to the material and cultural constraints faced by musickers, and are to a great extent contingent on broader social conditions in Jamaica.

In Chapter 3 I discuss the street dance as an exilic space. Street dances are live events where musickers gather, at night, usually on the sidewalks and streets in a poor neighborhood, around a collection of speakers and turntables or CD players, staffed by DJs and engineers, and including people wielding video and digital cameras, selling food, drink and other consumables. Through a series of detailed vignettes, I explore the way street dances generate social power, economic, political and cultural. By situating musicking in this specific social context, I reveal how dances are important especially for the Jamaican poor majority, both in terms of identity formation and performance, and as an alternative economic activity. I use the example of street dances to illustrate and extend political theorist Obika Gray's concept of "exilic social space."[43] The experience of a "relatively autonomous cultural life," Gray suggests, offers protection from the predations the state and from elites who hold the poor in a permanent state of "social dishonour." Exilic spaces are sources of power for marginalized communities because within

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[40] Syncretism is "the reconciliation or fusion of differing systems of belief, as in philosophy or religion, especially when success is partial or the result is heterogeneous." Answers.com, Syncretism, http://www.answers.com/topic/syncretism (accessed Feb. 15, 2012) see also Wikipedia, Syncretism, http://en.wikipedia.org/wiki/Syncretism (accessed Jan. 26, 2007) "Syncretism consists of the attempt to reconcile disparate, even opposing, beliefs and to meld practices of various schools of thought. It is especially associated with the attempt to merge and analogize several originally discrete traditions."

[41] Hintzen, "Reproducing Domination: Identity and Legitimacy Constructs in the West Indies."

[42] Toynbee, "Copyright, the Work and Phonographic Orality."

[43] Gray, *Demeaned but Empowered*, 93.

those spaces marginalized people are less dependent on dominant systems of social order, or can appropriate and reinterpret cultural resources to engage both in dissidence and in "the repair of cultural injuries."[44] In the context of street dances I identify practices that accord music-makers social and economic power: reputational currency (an ongoing practice requiring that one's identity circulate to keep it current with the community), and the circulation of media. Their significance is complicated by the fact that dances are at once local and international. I address the way this translocality and the international circulation of media takes on new significance in the digital era, as technology such as video cameras and camera phones, as well as platforms like YouTube and Facebook, bring new eyes and new enforcers of copyright to the street dance.[45]

In Chapter 4 I introduce the "answer tune," a Jamaican musicking tradition since at least the 1950s. In this chapter I develop the idea of "musical conversation" beyond the idea of musicking as exchange or as sharing emotion or sensation. The concept of conversing musically encompasses practices of symbolic and textual interaction in which participants engage with ideas and issues in cultural life by means of music.[46] Songs are both records of and elements in this engagement. Not only are entire songs "answers" to other songs, they also constitute musical elements within a song; a bassline, melody, or a phrase of text can also form answers to or build a conceptual connect with other elements. I argue that these interactive musical practices are socially beneficial because they foster democratic principles of public participation and dialogue

In Chapter 5, I explore diasporic Jamaican musicking, a shared set of traditions, skills, and knowledge, circulating along routes of travel and communication, but taking different forms in specific locales. While conducting interviews and observations in Toronto and London, I did not compare sites, but instead treated them as other nodes in a translocal network.[47] As I examine the trade-offs facing various musickers I elucidate ways in which local community, diasporic connections, colonial cultural forces, and access to infrastructure shape musicking and reveal the value of copyright under different circumstances.

In Chapter 6, I argue that taking account of musickers' situation, traditions and local knowledges requires a different way of framing and evaluating legal policy. The local reasoning and realities behind widespread noncompliance makes it undesirable to simply encourage or force people to change their behavior in order to comply with law. In addition, local understanding of the role and meaning of law –both copyright law and law more generally, suggest an approach to copyright informed by the relationship between law and the realities of cultural life and material survival for Jamaican music-makers.

Alongside increasing global interest in music and creative industries in relation to economic development, policymakers within Jamaica have begun to become concerned that the Jamaican music industry has not formed enough of an engine for growth. But growth in itself does not guarantee advancement of the poor, even if these people constitute its engine. The most commonly proposed policy solution is to increase Jamaican musickers' inclusion into the formal

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[44] Ibid., 94.
[45] Julie E. Cohen, "Pervasively Distributed Copyright Enforcement," *The Georgetown Law Journal* 95 (2006): 39; Gray, *Demeaned but Empowered*, 94.
[46] Ingrid T. Monson, *Saying Something: Jazz Improvisation and Interaction* (Chicago; London: University of Chicago Press, 1996), 76.
[47] Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton, NJ: Princeton University Press, 2005).

economy and legal system. Is their inclusion in the formal system on its current terms, as defined by Jamaican copyright, TRIPS and the WTO, significant enough to improve the lives of the Jamaican poor? Enacting copyright within a system of unchallenged legacy of colonial exploitation will not answer this question but simply continue the coloniality of copyright. In the following pages I seek to address this dilemma: what needs to change, in the law, or in the broader context of local life, to render music-making a force for increasing prosperity, and just as importantly for social and economic equality?

Chapter 1

Literature Review and Theoretical Framework

Clifford Geertz identified the project of legal anthropology as "a searching out of special analytical issues, that, in however different a guise and however differently addressed, lie in the path of both disciplines [of law and anthropology]."[1]

Because copyright law is a formal law that attempts to regulate the realm of culture, it raises precisely the kind of analytical issues Geertz' framing describes. My initial research questions about the relationship between copyright conflicts and global systems of power, about the changing possibilities for musickers in local and global contexts, and the proper way forward for a copyright law that furthers substantive equality, frame an analytical issue whose investigation lies in the paths of both law and anthropology, but also invokes other disciplines approaches to questions I also find in my fieldwork.

The following review of relevant literatures is by no means exhaustive, but is instead representative. I organize the literature thematically in the following way: In Section I, I begin with an overview of the sociolegal scholarship providing critiques of copyright from a variety of conceptual positions linking them to Jamaican history and to relevant ethnomusicological research. These critiques suggest that copyright's contours are culturally and historically specific, and help to explain copyright's divergence from practices in different cultural and historical settings. Copyright critiques emphasize various public policy goals, especially normative, non-market oriented, and community-based goals, suggesting that the law's limits may be as valuable as its reach. Another key theme in this scholarship is many scholars' use of alternative models of ownership in an attempt to better represent social values neglected by current copyright.[2] One of the most influential counter-models in copyright critique is "the commons." A term originally applied to land held in common among peasant communities, it is often used to mean a resource owned by all of a particular group, or even a resource that is open to all.

In Section II I take up the metaphor of the commons and return to its historical roots. Historical scholarship on the commons is more useful to understanding what is at stake in copyright than has generally been assumed. Historical scholarship on specific commons suggests that the socioeconomic, political and cultural *conditions* within which property rights are defined and enforced are as important as the formal legal definitions of those rights. Such evidence also supports the orientation of this dissertation by showing the importance of case studies, ethnographic methods and history.

Section III draws on cultural studies and media studies scholarship that bring out the dynamics of musical creativity as a cultural practice. I rely especially on scholarship of the

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[1] Clifford Geertz, *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 2000), 169.

[2] Alongside "the commons," another alternative understanding of ownership is exemplified by the "gift economy." See Lewis Hyde, *The Gift: Creativity and the Artist in the Modern World* (New York: Random House Digital, Inc., 2007).

African diaspora and the Black Atlantic, which is both foundational to the field of cultural studies and directly relevant to Jamaica's history as a British colony. Here I draw on works that emphasize especially how traditions incommensurable with copyright such as remixing, pastiche, bricolage, are strategies of disenfranchised communities, especially associated with diasporic people.

In Section IV I describe some of the growing number of sociolegal case studies focused on copyright, which also suggest that systemic inequality structures copyright's function in local context. Following this section I draw out some of the theoretical implications (also suggested by Section III) from legal's scholars critiques of copyright, which suggest that the preconditions for creativity and for equality contrast with liberal individualist priorities of individual freedom of speech and dissent, and contradicts the equation of law with "protection" and "access to rights." Section IV also includes an overview of anthropological takes on property rights that provide some insights into the role of inequality in communities' experience of copyright law.

Section V puts forth the intellectual framework that joins together many of the threads previous critiques unraveled from the legal arguments for copyright. I suggest that persistent institutions of colonial domination and inequality continue to structure the most harmful effects of copyright on the ground.[3] I arrive at this point via the sociolegal approach of "legal pluralism." Legal pluralism has intervened in the field of law, bringing in anthropological insights that decenter and contextualize law as a specific normative order associated with specific communities and interests. But if there are multiple regimes or rules in a society, how do they relate to each other?[4] And how can we evaluate what those relations mean for actors on the ground? To answer these questions requires understanding the source of the main difficulties facing people in the site of study. I argue that especially in relation to Jamaica, colonial inequality is that source. Lastly, I describe how understanding the coloniality of law is useful for theorizing a legal regime that is less implicated in systematic inequality.

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[3] The term "colonial" describes not only the formal relationship between colonized countries and colonizers, but also the effects of that relationship, which have persisted and continue to shape social relations. The fact that many laws in Jamaica written by the British colonizers (including its Copyright Act) had remained unchanged after independence is a particularly clear example. Arturo Escobar, "Beyond the Third World: Imperial Globality, Global Coloniality and Anti-globalisation Social Movements," *Third World Quarterly* 25, no. 1 (2004): 207–230; Coloniality articulated relations of race, gender and class in the era of formal colonial states, these relations were re-articulated in the era of the First-Second-Third Worlds, and re-articulated again in the current era of transnational economic and political power evoked by new institutions like the World Trade Organization, the World Bank, the IMF and the like. What persists as coloniality is a hierarchy of influence and power that places white, Eurocentric traditions and people at the center of political, economic and social norms. Anibal Quijano, "Coloniality of Power, Eurocentrism, and Latin America," *Nepantla: Views from South* 1, no. 3 (2000): 553–4.

[4] Franz von Benda-Beckmann, "Riding or Killing the Centaur? Reflections on the Identities of Legal Anthropology," *International Journal of Law in Context* 4, no. 02 (2008): 97 von Benda-Beckmann points out that "if the crucial question [facing sociolegal scholars] was mainly whether normative and institutional orders providing an organizational framework for political, social, and economic relations and transactions could be called law, independent from their recognition as law by the legal order of the state. If this is denied, there is no need for further discussion, for a concept of legal pluralism is then logically excluded. If it is accepted, state law is then just one (and in itself variable) manifestation of law, and the likelihood of some extent of legal pluralism the rather unexciting consequence."

I. Critical Copyright scholarship

A. Challenging Authorship

One foundational assumption and technical requirement of copyright law is the existence of an author whose efforts are the target of copyright law's incentive model, and who is defined as having a fairly direct relationship to the creative work. However, even in the European and English written tradition, the concept of a unitary author—with a right to control works he/she had a hand in creating—is a historical artifact, inspired by the social and cultural attitudes and institutions that came into existence in the eighteenth century.[5] Historical investigations of authorship demonstrate how the author concept reflects and supports a particular cultural and economic system.[6] In this system, the hero of productivity is an individual drawing inspiration from within rather than from the past or from his (and the assumption was generally male)[7] surroundings, history, or community. In scholarship earlier than the 18th century, or that which reaches beyond the Western tradition, concepts of authorship are revealed to be more diverse, flexible and non-individualistic.[8] Ethnomusicologists, in particular, provide many accounts of creative traditions and communities in which authorship cannot be conceived of in personal and individual terms.[9] Several scholars have suggested that Jamaican creative traditions in particular, rely on creativity that is rooted not only in individuals but also in communities of meaning, and my own research below supports this argument.[10]

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[5] Wendy J. Gordon, "A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property," *The Yale Law Journal* 102 (1993 1992): 1565; Woodmansee and Jaszi, *The Construction of Authorship: Textual Appropriation in Law and Literature*, 462; Rose, *Authors and Owners: The Invention of Copyright*, 176.

[6] Jessica Litman, "The Public Domain," *Emory Law Journal* 39, no. 4 (Fall 1990): 1007–1011.

[7] Ann Bartow, "Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law," *American University Journal of Gender, Social Policy & the Law* 14, no. 3 (2007): 551–584; Dan L. Burk, "Feminism and Dualism in Intellectual Property," *American University Journal of Gender, Social Policy & the Law* 15 (2006): 183–206.

[8] Keith Aoki, "(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship," *Stanford Law Review* 48, no. 5 (1996): 1293–1355; Boateng, *The Copyright Thing Doesn't Work Here*; Anthony McCann, "All That Is Not Given Is Lost: Irish Traditional Music, Copyright, and Common Property," *Ethnomusicology* 45, no. 1 (2001): 89–106.

[9] Ethnomusicological approaches starts from the position that musical practices are not universal, which challenges the universalist assumptions embedded in copyright. Monson, *Saying Something*; J. W Githaiga, "Intellectual Property Law and the Protection of Indigenous Folklore and Knowledge," *Murdoch University Electronic Journal of Law* 5, no. 2 (1998); Ingrid T. Monson, "Riffs, Repetition, and Theories of Globalization," *Ethnomusicology* 43, no. 1 (Winter 1999): 31–65; David Borgo, "Negotiating Freedom: Values and Practices in Contemporary Improvised Music," *Black Music Research Journal* 22, no. 2 (Autumn 2002): 165–188; A few of these scholars specifically address copyright, such as Anthony McCann, "All That Is Not Given Is Lost: Irish Traditional Music, Copyright, and Common Property," *Ethnomusicology* 45, no. 1 (2001): 89–106; A significant number of them address copyright issues because their work has specifically brought them into controversies due to their own field recordings. See, Anthony Seeger, "Ethnomusicologists, Archives, Professional Organizations, and the Shifting Ethics of Intellectual Property," *Yearbook for Traditional Music* 28 (1996): 87–105; H. Zemp, "The/an Ethnomusicologist and the Record Business," *Yearbook for Traditional Music* 28 (1996): 36–56.

[10] Peter Manuel and Wayne Marshall, "The Riddim Method: Aesthetics, Practice, and Ownership in Jamaican Dancehall," *Popular Music* 25, no. 3 (2006): 447–470; Toynbee, *Creating Problems: Social Authorship, Copyright and the Production of Culture*.

Relying on the concept of the author thus necessarily provides a narrow and inaccurate model of creative practices. Isolating an individual author from her social context devalues that context and prevents a serious evaluation of how creativity works in practice. Creative environments often include other copyrighted works, uncopyrighted works, traditions and practices including many centering on social interaction.[11] Historical, comparative, and ethnomusicological approaches to copyright affirm that these contextual and social contributions are under-accounted for in models of creativity enshrined in current copyright law.[12]

B. Challenging Originality

Others have explored the contours of creativity within particular subcultures and communities. Many of these studies challenge the assumption that originality (as defined in the US legal tradition) is the most desirable, useful or valued aspect of creative works.[13] A common theme is the importance of repetition and reference as aspects of creativity.[14] Scholars and artists identify Collage, bricolage, imitation, and quotation as valuable contributions to the field of creative effort.[15] Music scholars have analyzed "sampling"—the use, in a musical work, of a selection of another sound recording—as a social and musical practice. In hip-hop samples are often used because of their familiarity and demonstrate the samplers' grasp of musical history. Samples:

> "[T]he very point of taking the sound of James Brown's scream or one of George Clinton's riffs is to let audiences know that it is the real James Brown or George Clinton that they are hearing. Hence

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[11] Boyle argues that "the idea of the original author or inventor implicitly devalues the importance of the raw materials with which any creator works."James Boyle, "A Politics of Intellectual Property: Environmentalism for the Net?," *Duke Law Journal* 47, no. 1 (1997): 87; Rosemary J. Coombe, "Left Out on the Information Highway," *Oregon Law Review* 75, no. 1 (1996): 237; Kurt Blaukopf, "Westernisation, Modernisation, and the Mediamorphosis of Music," *International Review of the Aesthetics and Sociology of Music* 20, no. 2 (1989): 183.

[12] Julie E. Cohen, "Creativity and Culture in Copyright Theory," *UC Davis Law Review* 40 (2007): 1151; Steve Greenfield and Guy Osborn, "Law, Music, and the Creative Process – Who Is an Author?," in *Readings in Law and Popular Culture*, ed. Steve Greenfield and Guy Osborn (New York: Routledge, 2006), 310–324; John Oswald, "Bettered by the Borrower: The Ethics of Musical Debt," *Whole Earth Review* (Winter 1987): 104–8; Rose, *Authors and Owners: The Invention of Copyright*, 176; Woodmansee and Jaszi, *The Construction of Authorship: Textual Appropriation in Law and Literature*, 462.

[13] The US Supreme Court has said [T]he sine qua non of copyright is originality. To qualify for copyright protection, a work must be original to the author"*Feist Publications, Inc v. Rural Telephone Service Co., Inc.* 340, 345–7 (US Supreme Court 1991). However, Boyle states "[T]he idea of the original author or inventor implicitly devalues the importance of the raw materials with which any creator works."James Boyle, "A Politics of Intellectual Property: Environmentalism for the Net?," *Duke Law Journal* 47, no. 1 (1997): 98. Also see Litman, "The Public Domain," 1000; Kembrew McLeod et al., *Creative License: The Law and Culture of Digital Sampling* (Durham, NC: Duke University Press, 2011), 47, 103; Rose, *Authors and Owners: The Invention of Copyright*, 2, 6, 133.

[14] Barron, "Introduction: Harmony or Dissonance"; Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham, NC: Duke University Press, 1998); Madhavi Sunder, "IP3," *Stanford Law Review* 59, no. 2 (2006): 332; Rebecca Tushnet, "Payment in Credit: Copyright Law and Subcultural Creativity," *Law and Contemporary Problems* 70 (2007): 135.

[15] McLeod and Kuenzli, *Cutting Across Media*; Monson, *Saying Something*, 89 "… the function of repetition in creating a participatory musical framework against which highly idiosyncratic and innovative improvisation can take place has often been lost upon otherwise sympathetic commentators"; Boateng, *The Copyright Thing Doesn't Work Here*, 48.

> the taking ... reclaims his output for James Brown –and for others who identify with his musical legacy."[16]

Samples, as described above, bind listeners and music together.[17]

Another theme of this scholarship addresses how the definition of author has been rooted in beliefs about the source of creative inspiration that have changed over time and place. In Medieval Europe, formally composed music and writings were initially considered to be authored by God.[18] Over time, and especially as the Enlightenment placed greater emphasis on knowledge as something new that could be derived from human endeavor and experiment (rather than wisdom preserved from the ancients or handed down by God), individual authorship began to emerge.[19] This emergence happened alongside other cultural, social, political and economic shifts. Jacques Attali suggests that political economy of music-making anticipates the economic ordering of society, and that music anticipated (bourgeois) individualist models of production.[20] Attali's analysis supports the general conclusion that authorship is historical contingent, rather than an eternal aspect of creativity.

C. *Challenging* "The Work"

Scholars have also addressed how the concept of the copyrightable "work," a fixed and bounded product of creative practice, is historically contingent.[21] This argument builds especially on accounts from musical and cultural studies that examine the changing sites and actors of music-making over time.[22] In Europe, even after the advent of musical notation, written music was not assumed to be the total or definitive representation of the musical experience, but instead

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[16] Barron, "Introduction: Harmony or Dissonance," 34.
[17] Hines, "Black Musical Traditions and Copyright Law"; Self, "Digital Sampling"; David Sanjek, "'Don't Have to DJ No More': Sampling and the "Autonomous" Creator," *Cardozo Arts & Entertainment Law Journal* 10 (1991): 607–624. Also see Monson, "Riffs, Repetition, and Theories of Globalization" suggesting that repetition of shared musical elements serves this function, although not specifically addressing sampling.
[18] Rose, *Authors and Owners: The Invention of Copyright*, 13.
[19] Ibid., 38; Jacques Attali, *Noise: The Political Economy of Music* (Manchester: Manchester University Press, 1985).
[20] Attali, *Noise*; cf. Barron, "Introduction: Harmony or Dissonance" suggesting that legal changes emphasizing authors rights predated a widespread understanding of individual authorship and may have influenced its rise.
[21] Other scholarship describes "the work" as a particularly Western concept, providing evidence of other traditions that do not focus on finished, unchanging arrangements of sound. Michael F. Brown, *Who Owns Native Culture?* (Cambridge, MA: Harvard University Press, 2003); Stephen B. Brush and Doreen Stabinsky, *Valuing Local Knowledge: Indigenous People And Intellectual Property Rights* (Washington, D.C.: Island Press, 1996); Toynbee, "Copyright, the Work and Phonographic Orality"; However, some scholars of Western music also show that Western music has not always been focused on "works" either. See Arewa, "From JC Bach to Hip Hop."
[22] Lydia Goehr, *The Imaginary Museum of Musical Works: An Essay in the Philosophy of Music* (Oxford: Oxford University Press, 1994), 314; Toynbee, *Creating Problems: Social Authorship, Copyright and the Production of Culture*. However, scholarship on contemporary traditions in the West identifies some musics that are process oriented rather than work-oriented. See, David Borgo, "Negotiating Freedom: Values and Practices in Contemporary Improvised Music," *Black Music Research Journal* 22, no. 2 (Autumn 2002): 165–188; Paul Berliner, *Thinking in Jazz: The Infinite Art of Improvisation* (Chicago: University of Chicago Press, 1994); Monson, *Saying Something*.

a kind of template for a creative social act.[23] Some have suggested that copyright law has not only reflected changing concepts of creativity but has also helped to create the concept of a musical work.[24] As much as copyright incentivized authorship, it may have also incentivized people to redefine themselves as authors in order to claim copyright. In this view, law shapes daily practice and social institutions, through mechanisms that control access to and use of creative products depending on whether one can claim to be an author.

D. Broadening Copyright's goal: Democratic participation in discourse

Critiques of copyright also emphasize broader social goals for creative practices than simply producing works for the market. Democracy itself is such a goal, if we include in its definition the broad participation of the public in the representational world of culture and public discourse as well as the formal political and economic structure. Arguments for copyright in the service of democratic discourse or freedom of speech often rely on the idea of a public space of communication unrestricted by regulations on speech. This space is more than a place to formulate political agendas, it is also a place to formulate identities, and a domain in which participants can develop "independent spirit, self-direction, social responsibility, discursive skill, political awareness, and mutual recognition."[25]

Legal scholar Pamela Samuelson identifies a plethora of reasons why copyright law's relationship freedom of speech is of increasing concern, all of which have to do with inequality of power and influence.[26] Samuelson particularly emphasizes the power of publishing conglomerates in books, music, and film to restrict speech through economic and technological means, and to shape law and public discourse to suit their private, commercial interests. This analysis suggests that in any industry with a similar concentration of power, we ought to be particularly concerned about copyright being used to limit freedom of communication.

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[23] Arewa, "From JC Bach to Hip Hop"; Stacy F. McDonald, "Copyright for Sale: How the Commodification of Intellectual Property Distorts the Social Bargain Implicit in the Copyright Clause," *Howard Law Journal* 50, no. 2 (2007): 541–541–574.

[24] Barron, "Introduction: Harmony or Dissonance," 42.

[25] Mark Rose, "Public Sphere and the Emergence of Copyright: Areopagitica, the Stationers' Company, and the Statute of Anne, The," *Tulane Journal of Technology and Intellectual Property* 12 (2009): 123.

[26] Eben Moglen, "Anarchism Triumphant: Free Software and the Death of Copyright," in *The Commodification of Information*, ed. Niva Elkin-Koren and Neal Weinstock Netanel (The Hague: Kluwer Law International, 2002), 63–77. Samuelson lists the following reasons: 1) consolidation of the copyright industries, now dominated by publishing giants in many sectors; 2) the concomitant weakening of individual author's power in the face of massive content owners; 3) a lack of interest among these massive content owners in furthering noneconomic goals like education, innovation, or a flourishing culture; 4) diminishing scope of exceptions to copyright for fair use or other previously permitted purposes; 5) Expending duration of copyright to be effectively perpetual; 6) publishers' increasing ability to protect work that can't be called "original," including databases or digitized versions of public domain works; 7) Excessive pricing that prevents access to most of the public 8) confusing allocations of rights 9) the ability for corporations to privately enforce control over works through TPMs 10) heightened moralistic rhetoric around "piracy" and "theft" that obscures the harms and advantages of unpermitted uses; and 11) increased criminal sanctions that can be applied not only if one has accessed a work without permission, but also if one has the technological capability to do so. Pamela Samuelson, "Copyright and Freedom of Expression in Historical Perspective," *Journal of Intellectual Property Law* 10 (2002): 319–344.

States concerned with democratic cultural flourishing have a clear interest in the noncommercial values of public discourse, which ought to inform their copyright policy.[27] Scholars have framed this interest in various ways, for example, as "cultural citizenship," identified as "the process of bonding and community building, and reflection on that bonding... in partaking of the text-related practices of reading, consuming, celebrating, and criticizing."[28] Other scholars draw on Fiske's concept of "semiotic democracy," which emphasizes that the public can be active, engaged and empowered to become creators themselves.[29] In this understanding, the state ought to foster "the exercise of democratic culture and civic association" in relation to popular culture, meaning "[T]he autonomous creation, critical interpretation, and transformation even of works of pure aesthetics or entertainment [that] helps to support a participatory culture."[30] Such a state project benefits the public (and within the US, matches Constitutional social goals),[31] but is also valuable because of the kinds of social relations it fosters which may positively affect other political and social arrangements.[32] The balance between the public interest in freedom of speech and the other goals copyright law supports is a key theme of the literature. Although copyright fosters freedom of speech, in making possible independently published works, copyright might require particular limits in order to preserve common constitutional values and "the public interest in a comprehensive cultural life."[33]

An interest in democracy and participation also informs Jamaican cultural scholars' arguments regarding the liberatory aspects of Jamaican musical culture.[34] The specific communities involved in Jamaican music highlight another set of democratic values beyond the right to participate and dissent: marginalized people's specific need for self-expression and representation. This aspect of a comprehensive cultural life involves attention to those marginalized voices and their specific needs and interests. Their interests may, in some cases, contradict copyright law. Sonia Katyal makes a case for the public's right to break laws that regulate cultural practices. "Semiotic disobedience," Katyal suggests, may be necessary in order

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[27] Yochai Benkler, "Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain," *New York University Law Review* 74 (1999): 355; Niva Elkin-Koren, "Cyberlaw and Social Change: A Democratic Approach to Copyright Law in Cyberspace," *Cardozo Arts & Entertainment Law Journal* 14 (1996): 215; Mark A. Lemley and Eugene Volokh, "Freedom of Speech and Injunctions in Intellectual Property Cases," *Duke Law Journal* (1998): 147–242; Lawrence Lessig, *Code and Other Laws of Cyberspace* (New York: Basic Books, 1999); Neal Weinstock Netanel, "Copyright and a Democratic Civil Society," *The Yale Law Journal* 106, no. 2 (1996): 283–387; Shourin Sen, "The Denial of a General Performance Right in Sound Recordings : A Policy That Facilitates Our Democratic Civil Society?," *Harvard Journal of Law & Technology* 21 (2007): 233–270.

[28] Jean Burgess, Marcus Foth, and Helen Klaebe, "Everyday Creativity as Civic Engagement: A Cultural Citizenship View of New Media," in *Communications Policy & Research Forum*, 2006, http://eprints.qut.edu.au.

[29] John Fiske, *Television Culture*, 2nd ed. (New York: Routledge, Taylor & Francis, 2011), 239; Michael Madow, "Private Ownership of Public Image: Popular Culture and Publicity Rights," *California Law Review* 81 (1993): 125, 139.

[30] Netanel, "Copyright and a Democratic Civil Society," 351.

[31] Yochai Benkler, "Through the Looking Glass: Alice and the Constitutional Foundations of the Public Domain," *Law and Contemporary Problems* 66 (2003): 173; Lemley and Volokh, "Freedom of Speech and Injunctions in Intellectual Property Cases"; Neil Weinstock Netanel, "Locating Copyright Within the First Amendment Skein," *Stanford Law Review* 54 (2001): 1.

[32] Netanel, "Copyright and a Democratic Civil Society," 349–51.

[33] Christoph Geiger, "Fundamental Rights, a Safeguard for the Coherence of Intellectual Property Law?," *International Review of Intellectual Property and Competition Law* 35, no. 3 (2004): 268–280.

[34] Stolzoff identifies music as "a means by which black lower class youth articulate and project a distinct identity in local, national and global contexts." Stolzoff, *Wake the Town & Tell the People*, 1.

to "create an alternative system of meaning that both appropriates and interrupts the protected associations within the marketplace of ideas."[35] Whether this is normatively desirable depends on the nature of those protected associations. My research suggests that Katyal's description of semiotic disobedience is a useful lens for understanding Jamaican music-making's social function and normative value in the context of formal copyright. Jamaican musicking's syncretic nature[36] combines multiple musical influences through a practice that incorporates recordings in live musical performance.[37] Syncretic and for oral-phonographic practices in Jamaica are primarily associated with the poor majority historically excluded from dominant media outlets.[38] Thus their semiotic disobedience allows them to claim their own space in Jamaica's public sphere. Such musicking requires unrestricted interaction with culture, including appropriating cultural forms, styles, and works, which copyright enforcement could limit or disrupt.[39]

E. Copyright and Creativity

Some copyright critiques look to cognitive theory to examine divergences and contradictions between creative practices and the specifics of copyright law.[40] In this view, copyright does not accord well with the basic cognitive structures underlying creative practice.

Cognitive scholarship addresses the source of creativity, particularly in relation to learning (both learning generally, and also learning how to be a creator). Scholars identify both children and amateurs as creative actors who benefit from unrestricted access to cultural works

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[35] Sonya K. Katyal, "Semiotic Disobedience," *Washington University Law Review* 84, no. 3 (2006): 514; Rebecca Tushnet, "Copy This Essay: How Fair Use Doctrine Harms Free Speech and How Copying Serves It," *Yale Law Journal* (2004): 535–590.

[36] See, for example, Kevin O'Brien Chang and Wayne Chen, *Reggae Routes: The Story of Jamaican Music* (Philadelphia, PA: Temple University Press, 1998), 42; Sebastian Clarke, *Jah Music: The Evolution of the Popular Jamaican Song* (London: Heinemann, 1980), 20–21; Sonjah Stanley-Niaah, *DanceHall: From Slave Ship to Ghetto* (Ottawa: University of Ottawa Press, 2010), 96, 183; Robert Witmer, "'Local' and' Foreign': The Popular Music Culture of Kingston, Jamaica, Before Ska, Rock Steady, and Reggae," *Latin American Music Review* 8, no. 1 (1987): 1–25; Donna P. Hope, "Passa Passa: Interrogating Cultural Hybridities in Jamaican Dancehall," *Small Axe: A Caribbean Journal of Criticism* 10, no. 3 (2006): 125–139.

[37] Carolyn Cooper, *Noises in the Blood: Orality, Gender, and the "Vulgar" Body of Jamaican Popular Culture* (Durham, NC: Duke University Press, 1995), 141; Marlene Cuthbert and Gladstone Wilson, "Recording Artists in Jamaica: Payola, Piracy and Copyright," *Caribbean Popular Culture* (1990): 64–78; Stolzoff, *Wake the Town & Tell the People*, 4, 233; Toynbee, "Copyright, the Work and Phonographic Orality."

[38] Kozul-Wright and Stanbury, *Becoming a Globally Competitive Player*, 18; Stanley-Niaah, "Kingstons's Dancehall," 102; Stolzoff, *Wake the Town & Tell the People*, 107. Also see the continuing theme of Jamaican popular music's association with the poor in Kenneth Bilby, *The Caribbean as a Musical Region* (Washington, D.C.: Latin American Program, Woodrow Wilson International Center for Scholars, 1985); Bradley, *Bass Culture*; Chang and Chen, *Reggae Routes*; Cooper, *Noises in the Blood*; David Katz, *Solid Foundation: An Oral History of Reggae* (Bloomsbury, USA: Bloomsbury, 2003); Stanley-Niaah, *DanceHall*; Garth White, "The Development of Jamaican Popular Music, Part 2. Urbanization of the Folk: The Merger of Traditional and Popular in Jamaican Music," *African-Caribbean Institute of Jamaica Research Review* 1 (1984).

[39] Niaah's discussion of how dancehall is a moment of "performing boundarylessness" implies a contradictions to the legal boundaries set by both property law and copyright. Stanley-Niaah, *DanceHall*, 151–2, 168, 174.

[40] Bradford Simon, "Intellectual Property And Traditional Knowledge: A Psychological Approach To Conflicting Claims Of Creativity In International Law," *Berkeley Technology Law Journal* 20 (2005): 1613–1684; Cohen, "Creativity and Culture in Copyright Theory"; Margaret Chon, "Intellectual Property from Below: Copyright and Capability for Education," *U.C. Davis Law Review* 40 (2006): 803–854.

for developing one's creative facility.[41] Many of the preconditions that such social psychologists describe as favorable for fostering creativity are similar to the conditions bemoaned by analysts of the Jamaican music industry, or are implied by critical copyright theory[42] leading some to argued for limiting copyright in order to foster flexibility and playfulness.[43] Legal scholar Julie Cohen uses a metaphor from physics, "degrees of freedom," to describe an analytic whereby we evaluate legal and cultural institutions in light of "the extent to which they permit purposive creative experimentation, but also the extent to which they enable serendipitous access to cultural resources and facilitate unexpected juxtapositions of those resources."[44] Such experimental or spontaneous approaches are necessary for creativity to flourish. Overall, this attention to creativity begins to address the surprising lack of discussion so far, in copyright theory, of how the incentive mechanism is supposed to work.

Some social psychology research directly challenges the incentive model: suggesting that "tying extrinsic motivation and controls too tightly to the conceptual stages of the creative process can both undermine motivation and diminish the creativity of the resulting work product."[45] Amabile and Collins suggest, "the most straightforward way to preserve intrinsic motivation and enhance creativity is to reduce the emphasis on such extrinsic constraints in the social environment."[46] This contradicts many popular assertions, especially those influenced by economic justifications for secure copyright law, that copyright's promise of royalties directly incentivizes artists to create.[47] However, both the cognitive scholarship, as well as the comparative and historical evidence discussed above suggests that artists' motivations are not necessarily tied to royalties and are often non-monetary, and that creativity may even suffer when too focused on direct returns.[48] Creators may need "breathing space."[49]

We should not assume this space is centered on individual creators. Eva Wirten, in her prescient chapter, "Visualizing copyright, seeing hegemony" points out that dominant copyright

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[41] Lessig, *Code and Other Laws of Cyberspace*, 194.
[42] See, e.g., Ambrose, who states that working conditions that can be characterized to some extent by incompleteness, flexibility, and collaborativity, better foster creativity. Don Ambrose, "Large-Scale Contextual Influences on Creativity: Evolving Academic Disciplines and Global Value Systems," *Creativity Research Journal* 18, no. 1 (2006): 75, 76.
[43] Moglen, "Anarchism Triumphant," 107, 126–29; David Lange, "At Play in the Fields of the Word: Copyright and the Construction of Authorship in the Post-Literate Millennium," *Law and Contemporary Problems* 55, no. 2 (April 1, 1992): 148–51; David Lange, "Reimagining the Public Domain," *Law and Contemporary Problems* 66, no. 2 (January 1, 2003): 463.
[44] Cohen, "Creativity and Culture in Copyright Theory," 1190. Also see Netanel, "Copyright and a Democratic Civil Society," 356.
[45] Ambrose, "Large-Scale Contextual Influences on Creativity:"; Kasof suggests that collaborativity and performance have been underestimated contributions to creativity. Joseph Kasof, "Explaining Creativity: The Attributional Perspective," *Creativity Research Journal* 8, no. 4 (1995): 311. Also see Cohen, "Creativity and Culture in Copyright Theory," 1151.
[46] Mary A. Collins and Teresa M. Amabile, "Motivation and Creativity," in *Handbook of Creativity* (Cambridge: Cambridge University Press, 1999), 306.
[47] Gillian Davies, *Copyright and the Public Interest*, 173; Ruth Towse, "Copyright and Economic Incentives," 372.
[48] Gordon says that "Everyday experience and psychological research both suggest that as a society we benefit most from those works produced by persons whose aesthetic is internally driven" Wendy J. Gordon, "Authors, Publishers, and Public Goods: Trading Gold for Dross," *Loyola of Los Angeles Law Review* 36, no. 1 (2002): 191. Also see Teresa M. Amabile, *Creativity in Context* (Boulder, CO: Westview Press, 1996).
[49] Joseph P. Liu, "Copyright and Breathing Space," *Columbia Journal of Law & the Arts* 30, no. 3,Äì4 (2007): 101–123.

critiques in the service of creativity rely on a model of creativity that is as dependent on an individualistic vision of creativity as is current copyright.[50] Valorizing individual creativity may not serve communities where practices are less individualistic.[51] This critique is especially relevant to indigenous and native communities, and for the global South,[52] where community goals may be more prevalent and salient to local interests. A central difficulty with individualistic notions of creativity is that they do not help us to understand what is at stake when law and practices clash—certain harms and values are collectively sustained and cannot be individually resolved.[53]

Debates around new technologies, particularly new media technologies, have particularly raised concerns about copyright from a public policy perspective. These concerns arise from the literal intersection of technology and policy. Although all design has a kind of embodied politics (in the sense that it reflects and influences social relations)[54] in recent years the US government, has increasingly mandated that copyright law be embedded in technology.[55] As social interactions occur via online, mediated platforms like Facebook and YouTube, these platforms monitor social practices for a variety of reasons, including the use copyrighted material. Many of the concerns with such monitoring evoke the freedom of speech concerns outlined above. However they also have implications for how technology shapes copyright's interaction with other public goals.

The first concern is over copyright's interference with freedom of expression. Scholars have addressed controversies arising from the introduction of technical tools for enforcing copyright called "Technical Protection Measures" (TPMs). Technology designers are under pressure to include TPMs in their designs, especially from laws written with the influence of large players in the content industry.[56] As a result, there is a proliferation of attempts to build copyright enforcement into every piece of technology that could engage with copyrighted

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[50] Eva Hemmungs Wirten, "Visualizing Copyright, Seeing Hegemony: Towards a Meta-Critique of Intellectual Property," in *Cutting Across Media: Appropriation Art, Interventionist Collage, and Copyright Law*, ed. Kembrew McLeod and Rudolf Kuenzli (Durham, NC: Duke University Press, 2011), 257. Also see Rosemary J. Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law* (Durham, NC: Duke University Press, 1998).

[51] Wirten, "Visualizing Copyright, Seeing Hegemony," 254; Coombe, *The Cultural Life of Intellectual Properties*; Michael F. Brown et al., "Can Culture Be Copyrighted? [and Comments and Reply]," *Current Anthropology* 39, no. 2 (April 1998): 193–222.

[52] I use the term "global South" rather than "developing countries" or "less developed countries." However, some suggest that globalization has meant that the South is no longer really geographical since the globalization leads to "emerging neocolonial relations in the midst of the prosperous West." See Mary Bosworth and Carolyn Hoyle, *What Is Criminology?* (Oxford; New York: Oxford University Press, 2011), 414.

[53] Schloss describes "a political valence to the act of taking a record that was created according to European musical standards and, through the act of deejaying, physically forcing it to conform to an African American compositional aesthetic." Joseph Glenn Schloss, *Making Beats: The Art of Sample-based Hip-hop* (Middletown, CT: Wesleyan University Press, 2004).

[54] Langdon Winner, "Do Artifacts Have Politics?," in *The Whale and the Reactor: A Search for Limits in an Age of High Technology*, 1999, 29; Lessig describes one of the four modalities of regulating society "architecture," this includes the physical design of material objects. Lessig, *Code and Other Laws of Cyberspace*, 123, 127–8.

[55] Julie E. Cohen, "Pervasively Distributed Copyright Enforcement," *The Georgetown Law Journal* 95 (2006): 33, 34; Lessig, *Code and Other Laws of Cyberspace*, 85–85.

[56] *Digital Millennium Copyright Act*, 112 Stat. 2860 (Oct. 28, 1998); Von Lohmann, *Unintended Consequences*; Lessig, *Code and Other Laws of Cyberspace*, 117, 175.

content.[57] This includes social media platforms, which are increasingly functioning, for the masses of people participating on them as social spaces, akin to a public forum. Because these platforms have the technical capability to control and shape what kind of speech people engage in, TPMs can limit for freedom of expression.[58] TPMs embed copyright in hardware and portable technologies including cellular phones, CD players, and personal computers. This situation is especially problematic when those designing the enforcement are also copyright owners who see their interests as best served by maximal definitions of copyright.[59]

The second concern about copyright raised by scholars of technology was mentioned briefly above: the relationship between copyright and creativity. A key aspect of this relationship is the role of tinkering, play, and the ability to access and manipulate technologies and works. Copyright can limit these practices, which are so important to creativity (including non-scientific creativity) and innovation.[60] Especially because corporations, not authors, own the majority of copyrighted works, authors benefit from copyright limitations that allow them to make use of cultural material in their creative process.[61] As Charles Geiger asks, "How could authors deal with existing works critically if they had no right to quote? How could university professors and scientists work without the possibility of copying articles in order to prepare their own cultural contributions?"

As technology becomes more intimately entwined in daily life, both concerns become more urgent: copyright enforcement intrudes into relationships and practices that have hitherto generated social value without it. The social relations enforced by copyright may not be appropriate for all social interactions. Currently, private companies that design technology and social media platforms are using their technology to restrict users' communications and breach their privacy and security, or companies risk being shut down by lawsuits or threats of lawsuits from copyright owners.[62] Such events justify the concerns over copyright's effect on freedom of

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[57] Cohen, "Pervasively Distributed Copyright Enforcement," 12.

[58] Pamela Samuelson and Jason Schultz, "Should Copyright Owners Have to Give Notice of Their Use of Technical Protection Measures," *Journal on Telecommunications & High Technology Law* 6 (2007): 41–76; Ian R Kerr, Alana Maurushat, and Christian S Tacit, "Technical Protection Measures: Tilting at Copyright's Windmill," *Ottawa Law Review* 34 (2003 2002): 7–81; cf. Puay Tang, "Digital Copyright and the 'new' Controversy: Is the Law Moulding Technology and Innovation?," *Research Policy* 34, no. 6 (August 2005): 852–871, suggesting these laws are ironically inspiring innovation through the mutual interest the public and technology companies have in subverting them.

[59] Andy Dorman, "Trusted Computing Architectures," *Network Magazine*, July 1, 2005, 53; Neil McIntosh, "Old Bill's Police Tactics," *The Guardian* (London, July 4, 2002), 7, http://www.guardian.co.uk/technology/2002/jul/04/security.microsoft; Arif Mohamed, "Who Can You Trust?," *Computer Weekly*, April 26, 2005, 40, http://www.computerweekly.com/feature/Who-can-you-trust.

[60] Edward Felten, "Freedom to Tinker," *Https://freedom-to-tinker.com/blog/author/felten/* (2002); Pamela Samuelson, "Modifying Copyrighted Software: Adjusting Copyright Doctrine to Accommodate a Technology," *Jurimetrics Journal* 28 (1987): 179–222.

[61] Christoph Geiger, "Promoting Creativity Through Copyright Limitations: Reflections on the Concept of Exclusivity in Copyright Law," *Vanderbilt Journal of Entertainment & Technology Law* 12 (2010): 523; Moglen, "Anarchism Triumphant."

[62] Deirdre K Mulligan and Aaron Perzanowski, "The Magnificence of the Disaster: Reconstructing the Sony BMG Rootkit Incident," *Berkeley Technology Law Journal* 22 (2007): 1157–1232; Julie E. Cohen, "Intellectual Privacy and Censorship of the Internet," *Seton Hall Constitutional Law Journal* 8 (1997): 693–702; Greg Miller, "RealNetworks Breached Privacy, 3 Suits Contend," *Los Angeles Times* (Los Angeles, CA, November 11, 1999); Jason Putter, "Copyright Infringement v. Academic Freedom on the Internet: Dealing with Infringing Use of Peer-to-Peer Technology on Campus Networks," *Journal of Law & Policy* 14 (2006): 419–470.

expression and on creativity. A number of scholars and activists identify copyright as a potential axis of interference, and to call for limits to states or corporations ability to interfere with the public's online communicative acts, and with the acts of creative communities.[63] Geiger, mentioned above, asserts alongside many others, that "the free spaces left by copyright law ensure the free creation of works."[64] This naturally raises the question as to what those 'free spaces' actually are. As will be discussed below, "the commons" has been posited as such a space. Scholars have also relied on another concept from property law to delineate these free spaces: that of the public domain.[65]

F. The Public domain

What are the conditions that allow for cultural flourishing and cultural citizenship? Many critiques of copyright argue that a key component is a robust and accessible pool of shared cultural resources. In David Lange's influential 1981 article, he warned that new rights (such as the right of publicity) were restricting the public's ability to use works or images.[66] Lange warned that these new laws encroached on the public right to draw on and engage creatively with already existing works, which he rooted in the historical concept of the public domain. Later authors built on the public domain concept Lange put forth, tying their concerns to copyright's expansion, especially during the public debate in the US over the Copyright Term Extension Act (CTEA), which dramatically extended copyright's duration. Litman defined the contours of the public domain, calling it "a commons that includes those aspects of copyrighted works which copyright does not protect."'[67] Scholars and policymakers identified the CTEA as harmful because it limited the public domain.[68]

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[63] Steven G. Gey, "Reopening the Public Forum–From Sidewalks to Cyberspace," *Ohio State Law Journal* 58 (1997): 1535–1634; David J. Goldstone, "A Funny Thing Happened on the Way to the Cyber Forum: Public vs. Private in Cyberspace Speech," *University of Colorado Law Review* 69, no. 1 (1998): 3–69; Edward J. Naughton, "Is Cyberspace a Public Forum-Computer Bulletin Boards, Free Speech, and State Action," *Georgetown Law Journal* 81 (1992): 409–442; Dawn C. Nunziato, "The Death of the Public Forum in Cyberspace," *Berkeley Technology Law Journal* 20 (2005): 1115; Noah D. Zatz, "Sidewalks in Cyberspace: Making Space for Public Forums in the Electronic Environment," *Harvard Journal of Law & Technology* 12 (1998): 149–239.

[64] Geiger, "Promoting Creativity Through Copyright Limitations," 532.Geiger, "Promoting Creativity Through Copyright Limitations," 532.

[65] These concepts are often discussed as analogues of each other or are simply elided, see;, e.g. P. B. Hugenholtz, *The Future of the Public Domain: Identifying the Commons in Information Law*, vol. 16 (Kluwer Law International, 2006). However, the concepts of the public domain and the commons evoke different legal and historical traditions.These concepts are often discussed as analogues of each other or are simply elided, see; e.g. P. Berndt Hugenholtz, *The Future of the Public Domain: Identifying the Commons in Information Law*, vol. 16 (Kluwer Law International, 2006). However, the concepts of the public domain and the commons evoke different legal and historical traditions.

[66] David Lange, "Recognizing the Public Domain," *Law and Contemporary Problems* 44 (1981): 153–5. Also see P. Berndt Hugenholtz and Lucie Guibault, eds., *Copyright, Commodification, and Culture: Locating the Public Domain* (The Hague: Kluwer Law International, 2006), 132.

[67] Litman, "The Public Domain," 968. This definition of a "commons" suffers by being rather ahistorical, As will be discussed, actual commons were usually not open-access but carefully managed through social norms.

[68] Lawrence Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World* (New York: Vintage Books, 2002); Siva Vaidhyanathan, "Remote Control: The Rise of Electronic Cultural Policy," *The Annals of the American Academy of Political and Social Science* 597, no. 1 (2005): 122–133; Kembrew McLeod, *Freedom of Expression: Overzealous Copyright Bozos and Other Enemies of Creativity* (New York: Doubleday, 2005).

Among critics of copyright who see themselves as fighting to prevent a shrinking public domain, many legal scholars have argued for fostering the public domain as a kind of cultural conservancy.[69] They suggest the public domain is a primary source of creative material for making new works. Some scholars argue that simply accessing the public domain is an act of creativity that enriches culture, even if no final "work" is produced.[70] Many scholars of the public domain also posit that it is fundamental to a society or industry's productive capacity.[71] Alongside the attention to the public domain as a resource for creativity, scholars also echo the cognitive scholarship that emphasizes the importance of flexibility and play, calling the public domain a playing field "for the exercise of democratic culture and civic association."[72]

However, Anupam Chander and Madhavi Sunder point out that treating the public domain as a free, unfettered resource may not be equally useful to all people affected by copyright law.[73] People without power lack the ability to exploit resources technically open to them.[74] Chander and Sunder argue that advocating for people's rights to access information or culture, without accounting for the ability to develop or use what they access, will not improve the conditions of those already disadvantaged. Shifting attention from access to capability is shifting away from a more liberal, individualist theory of rights that centers on individual freedom without attention to outcomes. Instead, a new evaluation of freedom and progress becomes salient: Amartya Sen and Martha Nussbaum's "capabilities" approach. Sen and Nussbaum propose that we ought not separate people's legal or technical condition of freedom from their ability to access resources, or to have opportunities to move towards a person's "affirmative capability to flourish."[75] Especially given the existence of massive inequalities in the field of copyright, as well as other inequalities in society on a local and global scale, this argument moves closer to addressing equality of outcomes. A capabilities approach suggests that, rather than focusing on whether a resource is open or closed, or whether something should or shouldn't be copyrighted, one should examine what it is that structures various people's ability to make use of a cultural resource. Is copyright's presence or absence a determining factor, or are there other factors that shape one's ability to flourish?

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[69] Jessica Litman, "Creative Reading," *Law and Contemporary Problems* 10, no. 2 (2007): 175–183; Julie E. Cohen, "Lochner in Cyberspace: The New Economic Orthodoxy of` Rights Management'," *Michigan Law Review* 97, no. 2 (1998): 462–563; Lessig, *The Future of Ideas*; Benkler, "Through the Looking Glass."

[70] Joseph Liu, "Copyright Law's Theory of the Consumer," *Boston College Law Review* 44 (2002): 397; Tushnet, "Copy This Essay."

[71] James Boyle, *The Public Domain: Enclosing the Commons of the Mind* (New Haven: Yale University Press, 2008); Lange, "Reimagining the Public Domain"; Rufus Pollock, *The Value of the Public Domain* (London: Institute for Public Policy Research, July 2006), http://www.ippr.org/publication/55/1526/the-value-of-the-public-domain.

[72] Netanel, "Copyright and a Democratic Civil Society," 350.

[73] Many critical IP scholars use the term "commons" and "public domain" interchangeably, and intend both to mean resources that are open to all. In Section IV I describe why this is problematic in historical terms but also how this can lead to policy and analytical mistakes.

[74] Anupam Chander and Madhavi Sunder, "The Romance of the Public Domain," *California Law Review* 92 (2004): 1331–1373; Keith Aoki, "Distributive and Syncretic Motives in Intellectual Property Law (with Special Reference to Coercion, Agency, and Development)," *U.C. Davis Law Review* 40 (2007 2006): 717–801; Chon, "Intellectual Property and the Development Divide."

[75] Martha C Nussbaum, "Capabilities and Human Rights," *Fordham Law Review* 66 (1997): 273, 300; Amartya Kumar Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999), 14.

G. International Concerns with copyright

In relation to international copyright treaties such as TRIPS, scholarship accounting for inequality has focused on other kinds of free space than the public domain or the commons. One approach has been to focus on the "exceptions and limitations" sections of international copyright treaties.[76] As nations grapple with the scope, duration, and subject matter of copyright, exceptions and limitations may be useful for carving out local variations. These local variations may be more equitable (as various interests can be represented in international legal instruments) but also, some suggest, they further the dissemination and diversity of knowledge and culture.[77]

Properly defined exceptions and limitations might serve to formally defuse a clear conflict of interest for some members of TRIPS. Members in the global South remain net importers, while the global North members remain net exporters of copyrighted goods.[78] Thus any system that raises the cost of copyrighted works would raise costs for the global South. This entirely predictable outcome has been a factor in some scholars' argument that these treaties were never intended to serve the global South's interests but exist to perpetuate the economic dominance of the global North.[79]

This concern has not, to date, influenced Jamaican copyright policy. While recognizing Jamaican musicking's impressive productivity, most Jamaican analysts have taken the high level of musical creativity for granted rather than examining the possible contributing factors including the relative absence of copyright enforcement and the broad set of social dynamics around Jamaican musicking.[80] Instead, Jamaican music policy has addressed the copyright infringement intrinsic (or endemic) to Jamaican musicking solely in terms of its cost or harm.[81]

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[76] P. Berndt Hugenholtz and Ruth L. Okediji, *Conceiving an International Instrument on Limitations and Exceptions to Copyright* (Institute for Information Law, University of Amsterdam and University of Minnesota Law School., 2008), 1; Christoph Geiger, "Implementing an International Instrument for Interpreting Copyright Limitations and Exceptions," *IIC. International Review of Industrial Property and Copyright Law* 40, no. 6 (2009): 627–642; Annette Kur, "Of Oceans, Islands, and Inland Water-How Much Room for Exceptions and Limitations Under the Three-Step Test," *Richmond Journal of Global Law & Business* 8 (2008): 287–350.

[77] Hugenholtz and Okediji, *Conceiving an International Instrument on Limitations*, 3 "[... limitations and exceptions] contribute to the dissemination of knowledge, which in turn is essential for a variety of human activities and values, including liberty, the exercise of political power, and economic, social and personal advancement."; Okediji and Prosser assert that "the unlimited grant or exercise of rights without corresponding and appropriate limitations and exceptions has serious adverse long-term implications not only for development priorities, but indeed for the creative and innovation process itself."Okediji and Prosser, *The International Copyright System*, x."

[78] Hugenholtz and Okediji, *Conceiving an International Instrument on Limitations*, 37; Alan Story, "Burn Berne: Why the Leading International Copyright Convention Must Be Repealed," *Houston Law Review* 40 (2003): 767; Ruth L. Gana, "The Myth of Development, the Progress of Rights: Human Rights to Intellectual Property and Development," *Law & Policy* 18 (1996): 315–354.

[79] Story, "Burn Berne."

[80] Marie-Claude Derné and Keith Nurse, *Caribbean Economies and Global Restructuring* (Kingston, Jamaica: Ian Randle Publishers, 2002), 2, 12; Bilby, *The Caribbean as a Musical Region*, 215; Malm and Wallis, *Big Sounds from Small Peoples*.

[81] Vanus James, *The Caribbean Music Industry Database: A Report Prepared for the United Nations Conference on Trade and Development (UNCTAD) and the World Intellectual Property Organization (WIPO)*, ed. Vanus James (Geneva: UNCTAD, 2001), 3 "Pirates of copyrighted materials are also a significant part of the music industry if only because they impose severe income losses on the creators of music."; See also Nicole Foga and Masani Montague, "Electronic Commerce and Music Business Development in Jamaica: A Portal to the New Economy," *Report Prepared for UNCTAD, Geneva* (2000): 8, 14.

The fact that musicking profits those outside Jamaica, where copyright more likely to be enforced, is argued to mean that copyright must be enforced on the island in order to keep more value inside Jamaica.[82] However, as discussed above, the foreign nations that profit from copyright tend to be industrialized nations in the global North, differing from Jamaica in cultural practices, infrastructure and overall wealth. These factors may be more important to the profitability of music-making than specifics of copyright. Although Jamaican policy makers identify some local institutional and infrastructural weaknesses that contribute to the poor returns to Jamaicans, they do not address those weaknesses' source outside the realm of copyright.[83]

Scholarship on intellectual property (IP) in international context in particular expanded as a result of the challenge posed by new technologies of communication, distribution and copying in the digital era. Initially this work appeared to take the WIPO's argument for granted, and focused mainly on technical questions of enforcement and copyright expansion in this new technological environment.[84] Meanwhile international treaties apparently uninformed by even the barest concern for public interests have proliferated, bearing out Samuelson's warning of the dominance of private corporate interest in copyright lawmaking.[85] So far, public outcry, such as that against the US Stop Online Piracy Act (SOPA), and the international Anti-Counterfeiting Trade Agreement (ACTA), has been at least as effective in countering these moves as have legal arguments.[86]

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[82] Brigitte Andersen, Zeljka Kozul-Wright, and Richard Kozul-Wright, *Copyrights, Competition and Development: The Case of the Music Industry* (Geneva: United Nations Conference on Trade and Development, 2000), 23; Foga and Montague, "Electronic Commerce and Music Business," 18; Kozul-Wright and Stanbury, *Becoming a Globally Competitive Player*, 14, 19–20; Bruce Lehman, *Modernizing Jamaica's Intellectual Property System* (International Intellectual Property Institute, 2000); Cuthbert and Wilson, "Recording Artists in Jamaica," 64–78; Jenny Holland and Zeljka Kozul-Wright, *Science, Technology and Innovation Policy (STIP) Review: The Music Industry* (Geneva: UN Commission on Trade and Development, 1997), 3; Michael Witter, *Music and the Jamaican Economy* (UNCTAD/WIPO, 2004), 53.

[83] Derné and Nurse, for example, identify "low local value-added, shallow industrial infrastructure, weak export capabilities and external controls" as other challenges to the Jamaican music industry. Derné and Nurse, *Caribbean Economies and Global Restructuring*, 3; Foga and Montague, "Electronic Commerce and Music Business," 3 also identify "weak institutional and political support, low levels of entrepreneurial capability, low value-added, overdependence on foreign manufacturing and distribution."; Cooper, *Noises in the Blood*, 5.

[84] Geiger, "Promoting Creativity Through Copyright Limitations," 517.

[85] Maira Sutton and Parker Higgens, "We Have Every Right to Be Furious About ACTA," *The Electronic Frontier Foundation*, January 27, 2012, https://www.eff.org/deeplinks/2012/01/we-have-every-right-be-furious-about-acta Sutton and Higgens point out significant constitutional concerns with US participation in a secretly negotiated treaty that would govern speech and trade practices locally and internationally. Also see Susan K. Sell, "TRIPS Was Never Enough: Vertical Forum Shifting, FTAs, ACTA, and TPP," *Journal of Intellectual Property Law* 18 (2011): 447–631; Peter K Yu, "Six Secret (and Now Open) Fears of ACTA," *SMU Law Review* 64 (2011): 975–1094.

[86] Gerry Smith, "ACTA Copyright Treaty Sparks Protests In Latest Anti-Piracy Battle," *The Huffington Post*, January 26, 2012, http://www.huffingtonpost.com/2012/01/26/acta-copyright-treaty-protests-anti-piracy_n_1233960.html; Michael Convente, "ACTA: Bulgaria and The Netherlands Withdraw Support In Response To Weekend Protests," *Pnosker.com: Tech News and Reviews*, February 14, 2012, http://tech.pnosker.com/2012/02/14/acta-bulgaria-and-the-netherlands-withdraw-support-in-response-to-weekend-protests/; Honor Mahoney, "EU Commission Admits Mistake on ACTA," *EU Observer*, March 20, 2012, http://euobserver.com/871/115646; Harley Tsukuyama, "European Parliament's ACTA Monitor Quits in Protest," *The Washington Post*, January 27, 2012, http://www.washingtonpost.com/business/technology/european-parliaments-acta-monitor-quits-in-protest/2012/01/27/gIQALD5BWQ_story.html?tid=pm_business_pop%20.

One reason for the relative ineffectiveness of legal arguments may be due to the rather narrow focus of many of the foremost copyright critics, who do not appear to draw on the sociolegal approaches to rights and legal advocacy, studies of social change and social movements, or studies of alternate legal orders.[87] Although many copyright critics question common assumptions and assertions about copyright, the majority of the critiques are based on short-term policy goals, or US-centric normative values. They have not very often been informed by critical theoretical frameworks such as Marxism, critical race theory, feminism, queer theory or postcolonial theory.[88] Such critical theoretical approaches, however, can provide a grounded normative framework based in addressing the foundations of material inequality, organized on various (interlocking) historical social categories such as class, race, gender, and the experience of colonialism.[89] Overall, questions of power in relation to existing inequality are more implicit than explicit in sociolegal studies, with a few fascinating recent works that begin to attend systematically to questions of power in society.[90] I address these studies in Section VI to draw out their implications for a critique of copyright in relation to power that my own research will extend.

In addition to such scholarship, most critiques of copyright fail to contextualize their analysis within a broader understanding of the role of law in daily life, except to highlight the vast divergence between how copyright asserts ownership and how most people actually act.[91] Whether such a divergence in practices constitutes a problem, or a common occurrence, or whether it maps onto other social conditions that are particular to certain people or communities, has not been deeply investigated in this field.

The overall project of this dissertation is to draw together critical theoretical and empirical scholarship that analyzes dynamics of inequality, empirical research on the role of law in daily life, with sociolegal work that has investigated questions of inequality, power, and the rule of law. But before focusing on the case studies, I want to frame my theoretical approach through a seminal concept in critical IP scholarship, in order to illustrate how this concept has been both over- and under- used as the foundation for a critique of copyright, and how a proper grounding in history can illuminate copyright analyses going forward.

II. Returning to the commons

A foundational work that drew together several challenges to copyright is based on an analogy to physical property in land. James Boyle's "The Second Enclosure Movement" (2003) made an explicit connection between enclosure of English common land from the fifteenth to nineteenth centuries, and the expansion of IP enforcement over what he identifies as shared

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[87] Coombe, "Commodity Culture, Private Censorship."
[88] Wirten, "Visualizing Copyright, Seeing Hegemony," 262; Aoki, "Distributive and Syncretic Motives."
[89] There are a few, mainly theoretical works, in relation to women or questions of gender (which also tend to reinforce the idea that the disempowered–in this case, women, may also be not well served by copyright. Burk, "Feminism and Dualism in Intellectual Property"; Anne Bartow, "Fair Use and the Fairer Sex: Gender, Feminism, and Copyright Law," *American University Journal of Gender, Social Policy & the Law, Forthcoming* [2007].
[90] Chander and Sunder, "The Romance of the Public Domain," 1333. Also see Chon, "Intellectual Property and the Development Divide"; and Aoki, "Distributive and Syncretic Motives."
[91] Tim Wu, "Tolerated Use," *Columbia Journal of Law & the Arts* 31 (2008 2007): 617–636; cf. John Tehranian, *Infringement Nation: Copyright 2.0 and You* (Oxford: Oxford University Press, 2011).

cultural resources in the late twentieth century.[92] In doing so, he evoked the critiques of enclosure made by historian E.P. Thompson.[93]

Boyle argues that just as peasants depended on commons for material survival and autonomy, people today depend on cultural commons for a healthy and flourishing culture. The increasing application of copyright to cultural works, in his argument, constitutes a similar power and resource grab as did the enclosure movement, resulting in harms to the public interest in culture. The enclosure analogy and the language of the commons began before Boyle, and have both continued to gather force, greatly influencing legal scholarship on copyright and IP more broadly (discussed above).[94]

Unfortunately, many scholars of IP use the term "the commons" to mean "open-access."[95] This leads to discussions insufficiently grounded in material and social conditions. This lack of discussion has regrettably continued in much of the critical copyright literature. The historical analogy that Boyle drew on for the term "commons" and the social institution threatened by enclosure, is not generic but historically situated. The social entity faced by the Enclosure movement in England was not land "owned by the unorganized public at large,"[96] but in fact a complex, organized social institution involving land farmed communally by people who tended to live together, intermarry, and stay in the same place for generations. Commons of the sixteenth and seventeenth century were deeply embedded in local communities–indeed they were the *definition* of local communities among peasants—and bound up in a web of social relations

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[92] James Boyle, "The Second Enclosure Movement and the Construction of the Public Domain," *Law and Contemporary Problems* 66 (2003): 33–74 Boyle's challenge was by no means the first. See, e.g., Pamela Samuelson, "The Copyright Grab," *University of West Los Angeles Law Review* 29 (1998): 165–357; Rochelle Cooper Dreyfuss, Diane Leenheer Zimmerman, and Harry First, *Expanding the Boundaries of Intellectual Property: Innovation Policy for the Knowledge Society* (Oxford; New York: Oxford University Press, 2001); William Cornish, "The Expansion of Intellectual Property Rights," in *Geistiges Eigentum Im Dienst Der Innovation*, ed. Gerhard Schricker, Thomas Dreier, and Annette Kur (New York: Nomos, 2001); Hugh Laddie, "Copyright: Over-Strength, Over-regulated, Over-rated?," *European Intellectual Property Review* 18 (1996): 253–260, but Boyle's combination of metaphors and framing has been extremely influential.

[93] E. P. Thompson, *The Making of the English Working Class* (New York: Vintage Books, 1963); E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975).

[94] For a sampling of the many scholars using the language of enclosure and the commons, see Mark Andrejevic, "Surveillance in the Digital Enclosure," *The Communication Review* 10, no. 4 (2007): 295–317; Benkler, "Free as the Air to Common Use"; Peter Evans, "The New Commons vs. the Second Enclosure Movement: Comments on an Emerging Agenda for Development Research," *Studies in Comparative International Development (SCID)* 40, no. 2 (2005): 85–94; Shubha Ghosh, "Fable of the Commons: Exclusivity and the Construction of Intellectual Property Markets, The," *U.C. Davis Law Review* 40 (2006): 855–890; Molly Shaffer Van Houweling, "Cultural Environmentalism and Constructed Commons," *Law & Contemporary Problems* 70 (2007): 23–50; P. Berndt Hugenholtz, *The Future of the Public Domain: Identifying the Commons in Information Law*, vol. 16 (Kluwer Law International, 2006); Anthony McCann, "Enclosure Without and Within the 'Information Commons'," *Information & Communications Technology Law* 14, no. 3 (2005): 217–240; Timothy Schoechle, "Digital Enclosure: The Privatization of Standards and Standardization," in *Standardization and Innovation in Information Technology, 2003*, 2003, 229–240; Troutt, "I Own Therefore I Am"; Peter K. Yu, "The International Enclosure Movement," *Indiana Law Journal* 82 (2007): 827–908.

[95] Lessig, *The Future of Ideas*, 198; Daniel Drache and Marc Froese, "The Global Cultural Commons After Cancun: Identity, Diversity and Citizenship", no. 2, Osgoode Hall Law School, Comparative Research in Law and Political Economy (CLPE) Research Paper Series (2005); Lipika Bansal, Paul Keller, and Geert Lovink, eds., *In the Shade of the Commons: Towards a Culture of Open Networks* (Amsterdam, Netherlands: Waag Society, 2006).

[96] Tyler T Ochoa, "Origins and Meanings of the Public Domain," *University of Dayton Law Review* 28 (2002): 259.

that regulated their use. Although many IP scholars have taken up the commons analogy, they have not fully absorbed this point, or drawn much from empirical work on existing commons, historical or otherwise.[97] A wave of articles and books about the importance of commons' to creativity and to the public good has appeared–but these writers do not always take into account how material and social conditions shaped different people's relationship to particular commons.[98] This renders the history of the commons a kind of *terra nullius* upon which systems of creative practices can be enacted through structuring various incentives. The doctrine of *terra nullius* has extremely problematic historical and practical implications. It was an argument used to justify the displacement or destruction of indigenous people; creating its own justification by erasing and obscuring the reality of existing traditions, norms and social institutions that structured indigenous life.[99] Unfortunately, the question of which practices should be enacted, and how they should be justified has not yet been studied.[100]

A broad theme of the scholarship has aimed to reconfigure analyses of the public domain so that it is seen not as "a distant backdrop for economic activity that is largely private but as the infrastructure that supports private activity and enables its success."[101] In addition, the public domain has been championed as the source of individual expression and creativity. But this (popular) argument maintains a focus on private, individual activity, even when arguing in favor of the public domain's value.[102] Every society is made up of multiple communities with different levels of access, representation or ability to profit materially from cultural works. Who,

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[97] Moving, as Boyle does, from analogies of commons to environmental or ecological systems, unfortunately obscures and externalizes, through metaphor, the conscious decisions and social relations that structured how commons actually functioned. This echoes a similar problem in one of the most famous works on the commons. Garrett James Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (1968): 1243–48 This work similarly posits commons as de facto unmanaged resources. Hardin later admitted that commons in land were not actually unmanaged, and says he should have titled his original model "the Tragedy of the Unmanaged Commons." In his later work he corrected this, but the original concept continues to be influential. Garrett James Hardin, "The Tragedy of the Unmanaged Commons: Population and the Disguises of Providence," in *Commons Without Tragedy: Protecting the Environment from Overpopulation--A New Approach*, ed. Robert V. Andelson (London: Shepheard-Walwyn, 1991), 162–85; Proponents of the commons model have unfortunately not tended to catch this distinction. See, e.g. Tyler T Ochoa, "Origins and Meanings of the Public Domain," *University of Dayton Law Review* 28 (2003 2002): 215; Shubha Ghosh, "Fable of the Commons: Exclusivity and the Construction of Intellectual Property Markets, The," *U.C. Davis Law Review* 40 (2007 2006): 855.

[98] Chander and Sunder point out that "even when commons scholars recognize heterogeneity among appropriators of the commons, they do so only to see whether that heterogeneity threatens the emergence of a sustainable, self-governing commons. Furthermore, such scholars typically neglect the power differentials within the relevant community." Chander and Sunder, "The Romance of the Public Domain," 1341; Bret M. Frischmann, "An Economic Theory of Infrastructure and Commons Management," *Minnesota Law Review* 92, no. 4 (2005): 609; Niva Elkin-Koren, "What Contracts Cannot Do: The Limits of Private Ordering in Facilitating a Creative Commons," *Fordham Law Review* 74 (2005): 375–422; Sabrina Safrin, "Chain Reaction: How Property Begets Property," *Notre Dame Law Review* 82 (2007): 1917–1970.

[99] Stuart Banner, "Why Terra Nullius? Anthropology and Property Law in Early Australia," *Law and History Review* 23, no. 01 (2005): 95–131.

[100] Chander and Sunder describe how the global South has argued for a "res communis" approach that suggests that commonly held resources ought to be regulated so as to benefit all humanity, in contrast to a "res nullius" approach that treats resources as unowned until they are claimed by the first claimant to be recognized. Chander and Sunder, "The Romance of the Public Domain," 1356.

[101] Hugenholtz and Guibault, *Copyright, Commodification, and Culture*, 139. Also see Frischmann, "An Economic Theory of Infrastructure."

[102] Wirten, "Visualizing Copyright, Seeing Hegemony."

precisely, are these commons' users, and how does the commons relate to broader questions of community survival? When commons are not regulated by fixed, individual property claims upheld by law, what is it that structures human relations to each other?

While the analogy to land enclosure is provocative, without careful attention to the material situation of people's daily life, we cannot hope to answer questions about the relationship between formal property rules, informal norms, and the flourishing of culture. Mistaking socially bounded systems of collective ownership ("limited commons") for open-access resources obscures the importance of other social factors, internal and external, to social groups that may be primary determinants of the public domain's ability to sustain itself and its resources.[103] By properly grounding Boyle's analogy to the commons in its historical context, I will illuminate what is at stake and suggests a way forward.

E.P. Thompson's foundational work of commons scholarship is based in a detailed examination of the English enclosures of commonly held lands. Thompson studied moments when states devoted enormous attention to the re-definition and re-allocation of property in the late seventeenth and early eighteenth centuries. Several of Thompson's conclusions continue to be relevant to current copyright debates: most importantly that property law, although argued to be the simple underpinning to a functioning economy, is also the means by which one class might displace another.[104] Thompson, and other historians of enclosure, describe how proponents of enclosure made arguments in favor of efficiency and productivity at a societal level but used them to justify destabilizing the livelihoods of the poor. "It became a matter of public-spirited policy for the gentleman to remove cottagers from the commons, reduce his labourers to dependence, pare away his supplementary earnings, drive out his small-holder."[105] An unfortunate feature of the history of the commons is that it is extremely well-documented, but primarily by people who believed that the poor and the peasants had nothing worthwhile to say, or were not worth observing—instead landlords provided "evidence" of peasant farming practices and productivity. Substantial scholarship has challenged this received wisdom, with evidence that enclosure failed to increase productivity, that its gains were much more mixed than had been previously argued, and that commons were sometimes able to reward innovation and spur growth.[106]

More recently, historians have extended their examinations of the role and value of communal property arrangements in different locations and eras. Enclosure movements have

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[103] Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (Cambridge; New York: Cambridge University Press, 1990), 8, 14, 21.
[104] Edward P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York: Pantheon Books, 1975), 266. Although Thompson is careful to point out that law can in some circumstances be used by the weak against the powerful. Also see Karl Polanyi, *The Great Transformation: Economic and Political Origins of Our Time* (New York: Rinehart, 1944).
[105] Edward P. Thompson, *The Making of the English Working Class* (New York: Vintage Books, 1963), 263; Jeanette M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700-1820* (Cambridge; New York: Cambridge University Press, 1996), 29, 30, 38.
[106] Esther Kingston-Mann, "The Romance of Privatisation and Its Unheralded Challengers: Case Studies from English, Russian and Post-Soviet History," in *Changing Properties of Property*, ed. Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Melanie G. Wiber (New York: Berghahn Books, 2009), 61; Robert Allen, "The Efficiency and Distributional Consequences of Eighteenth Century Enclosures," *The Economic Journal* 92, no. 368 (1982): 937–953; George Yaney, *The Urge to Mobilize: Agrarian Reform in Russia, 1861-1930* (Urbana, IL: University of Illinois Press, 1982), 165–69.

occurred worldwide, from England to Africa to the American South. In these places, scholars point out similar justifications as had been used in England. Advocated at the time as necessary codification and enforcement (or "securing") of private property rights, this codification has resulted in distinct benefits for dominant classes, native, foreign and colonial.[107] Although the effects and motivations for enclosure remain in debate, many studies support an argument against enclosure on productivity grounds. Communal ownership did not invariably stagnate or fail in comparison to privatized land, and enclosure did not inevitably lead to increased productivity or innovation.[108]

Another key issue raised by historians of property rights involves how property rights interact with local autonomy. Scholarship on encounters between the Maori people and the British in what is now New Zealand describe how British changes to the Maori systems of property rights destroyed the latter's political system. While the Maori did not have an open-access arrangement, their property rules were dependent on local knowledge: political power and authority was rooted in members of the community whose role it was to be repositories of knowledge about land ownership. When the British formalized, regularized, and fixed, in written form, Maori property rules, they destroyed local leaders' authority to define property and settle disputes, and effectively destroyed the social cohesion of Maori society.[109] In the American South, Ben Brown has suggested that neither economic interests nor racial allegiance explain the variation in public support for enclosure of common lands, instead positing that the public most cared about the ability to decide for themselves which property system they preferred.[110] Brown found that when Southerners, black and white, saw a change in property regime as coming from outside—whether it was enclosure or maintaining open ranges—it led to local resistance. Both examples suggests that if a legal regime is to reflect the needs and interests of a community, it would be necessary to consider a public interest in local autonomy as it relates to property.

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[107] For examples in Africa, see Diane E. Rocheleau, Philip Steinberg, and Patricia A. Benjamin, "Environment, Development, Crisis, and Crusade: Ukambani, Kenya, 1890-1990," *World Development* 23, no. 6 (1995): 1037–1051; Mary Tiffen and Michael Mortimore, "Malthus Controverted: The Role of Capital and Technology in Growth and Environment Recovery in Kenya," *World Development* 22, no. 7 (1994): 997–1010; Pauline E. Peters, *Dividing the Commons: Politics, Policy, and Culture in Botswana* (Charlottesville: University of Virginia Press, 1994); For comparative examples in England and pre- and post-Soviet Russia see Kingston-Mann, "The Romance of Privatisation and Its Unheralded Challengers"; Chris M. Hann, *The Tragedy of the Privates? Postsocialist Property Relations in Anthropological Perspective*, Max Planck Institute for Social Anthropology Working Papers (Halle, Germany: Max Planck Institute for Social Anthropology, 2000).

[108] In relation to the American South, see the lively debate encapsulated in the following articles: Shawn Everett Kantor and J. Morgan Kousser, "Common Sense or Commonwealth? The Fence Law and Institutional Change in the Postbellum South," *The Journal of Southern History* 59, no. 2 (May 1, 1993): 201–242; Steven Hahn, "A Response: Common Cents or Historical Sense?," *The Journal of Southern History* 59, no. 2 (May 1, 1993): 243–258; Shawn Everett Kantor and J. Morgan Kousser, "A Rejoinder: Two Visions of History," *The Journal of Southern History* 59, no. 2 (May 1, 1993): 259–266. Hahn suggests that enclosure of common lands occurred specifically to weaken the position of free black farmers, while Kantor argues that enclosure happened when the economic benefits of enclosure outweighed the cost.

[109] Stuart Banner, "Two Properties, One Land: Law and Space in Nineteenth-Century New Zealand," *Law & Social Inquiry* 24, no. 4 (1999): 807–852. Also see Justin Richland, "'What Are You Going to Do with the Village's Knowledge?' Talking Tradition, Talking Law in Hopi Tribal Court," *Law & Society Review* 39, no. 2 (2005): 235–272, discussing how Hopi resist formalizing and regularizing property law even to defend themselves in court, in order to maintain autonomy for their systems of knowledge.

[110] Robert B. Brown, "Free Men and Free Pigs: Closing the Southern Range and the American Property Tradition," *Radical History Review* 2010, no. 108 (2010): 117–137.

Scholars focusing closely on historical examples of commons have found that the productivity of socioeconomic systems involves more factors than simply the formal property rules depicting whether they were considered a commons or not. Norms, traditions, rules, and law regulating social behavior, all played a role in whether a commons flourished or whom it benefitted.[111] This outcome suggests that exploring the appeal of commons in culture or knowledge, or in other IP regimes, would benefit from a close and empirical analysis of the culture and conditions of the communities to be regulated.

Close empirical analysis reveals contradictions to the logic on which many standard economic arguments about property rights rely: secure property rights may not always be necessary for economic growth, and other forms of security may substitute for rigid enforcement of law. Annette Kim, in her examination of Ho Chi Minh City, describing a real estate market booming even without a strong legal infrastructure, because other institutions and social norms helped people make decisions and understand what to expect.[112]

Kim's article also highlights how the role of the state can render difficult the enforcement of property rights in a particular context. Formal property rights do not develop naturally out of individual or group interests, but rather exist alongside other rules that the population has already internalized. Although many scholars of development and development agencies themselves have emphasized the importance of property rights (usually understood as fixed, individualistic property rights) as an engine of development and self-determination,[113] Kim points out that reliance on formalizing and enforcing property rights through a legal system "presupposes the widespread rule of law,"[114] which describes exactly what is missing in many countries of the global South, and in Jamaica in particular (where the state is an arbitrary, inconsistent, personalized, and occasionally violent actor in Jamaican daily life). Thus Kim's conclusions point the way for an analysis of property rules that better addresses the social context for formal law.

Such an argument is relevant for IP rights as well.[115] Much of the global South has porous and inconsistent legal infrastructure. Historically, much of this infrastructure was created by colonial powers. Taken together, these facts make it especially likely that many people in those countries will rely on institutions other than formal law.[116] Thus, evaluating a particular

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[111] Charlotte Hess and Elinor Ostrom, "Ideas, Artifacts, and Facilities: Information as a Common-Pool Resource.," *Law and Contemporary Problems* (2003): 111; Ostrom, *Governing the Commons*.

[112] Annette Kim, "A Market Without the 'Right' Property Rights: Ho Chi Minh City, Vietnam's Newly-emerged Private Real Estate Market," *The Economics of Transition* 12, no. 2 (2004): 275–305.

[113] Epitomized by Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000).

[114] Kim, "A Market Without the 'Right' Property Rights," 301.

[115] Andrew Burke, "How Effective Are International Copyright Conventions in the Music Industry?," *Journal of Cultural Economics* 20, no. 1 (1996): 51.

[116] Robert K. Home and Hilary Lim, *Demystifying the Mystery of Capital: Land Tenure and Poverty in Africa and the Caribbean*, ed. Hilary Lim and Robert K. Home (London: Portland, OR: GlassHouse Press; Published in the US by Cavendish Publishing, 2004), 160. For more theoretical and experimental challenges to the "secure property rights" prescription, see Ostrom, *Governing the Commons*; Elinor Ostrom, "Collective Action and the Evolution of Social Norms," *The Journal of Economic Perspectives* 14, no. 3 (2000): 137–158. Boaventura de Sousa Santos makes a similar argument in relation to squatter communities in Brazil, and points out that squatter communities find some stability in "unofficial legality" based in locally generated authority. However, this unofficial legality is influenced by the structure of formal law, even though the law does not support the unofficial conception of property

property regime requires examining the relationship between law and existing norms and social institutions.[117] While Kim does not explicitly examine the relationship between formal property rights and inequality, other work, that empirically explores property rights' definition and effects, has more specifically highlighted how different social groups win or lose out under different property regimes.[118]

Examining commons in historical context helps to de-center the analysis of property rights from a universalized approach to one that reveals the practical experience of ownership and access. Ownership and access are historically, socially and materially contingent on established power, history and community. Empirically informed commons scholarship demonstrates that social relations are at least as important as formal law, and also suggests that the broader relationship between a social group and the law may be more determinative of outcomes than the form a particular law takes. Examining social relations more directly requires analyzing culture and the meanings social actors bring to their actions.

III. Cultural Studies approaches to musical practices

Cultural studies scholarship takes as its subject cultural practices and their relationship to power. Through examining practices, but also cultural objects produced by those practices, cultural studies scholars examine the workings of ideology, social class, nationality, ethnicity, sexuality, race and gender.

Stuart Hall, an influential theorist of cultural studies, developed an approach to culture deeply influenced by the Caribbean experience.[119] Culture, in this approach, is not a unitary, essential characteristic of a particular people or region, but instead a set of practices, performances, or negotiations of identity in relation to a shared history. A primary question for cultural studies scholars is how (popular) culture serves as a symbolic battleground on which people engage with hegemonic power.[120]

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rights. de Sousa Santos makes a similar argument in relation to squatter communities in Brazil, and points out that squatter communities find some stability in "unofficial legality" based in locally generated authority. However, this unofficial legality is influenced by the stucture of formal law, even though the law does not support the unofficial conception of property rights. Boaventura de Sousa Santos, *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (London: Butterworths, 2002).

[117] Kim, "A Market Without the 'Right' Property Rights," 301 "The value of property rights emanates from where it is enforced within the particular institutional context."

[118] John Kangwa, "Zambia: 'Having a Place of Your Own' in Kitwe," in *Demystifying the Mystery of Capital*, 160.

[119] Hall was also Jamaican himself. See also Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (London: Verso, 1993). This is not to say that scholarship on race was easily included in cultural studies, but rather that scholars within and at the margins of the nascent field fought for its inclusion from the very beginning. University of Birmingham Centre for Contemporary Cultural Studies, *The Empire Strikes Back: Race and Racism in 70s Britain* (London: Hutchinson Educational, 1982).

[120] Betül Yarar, "Politics Of/and Popular Music," *Cultural Studies* 22, no. 1 (2007): 35–79 Hegemonic power is the power that maintains the current system of interlocking racial, gender, sexual, nationality, ethnicity, and class inequalities. The term, coined by Antonio Gramsci, addresses how these inequalities are maintained not through threat of violence, but through the normalization of those hierarchies via discourse and political/economic structures that alter the costs of various divergences from the norm. This means that even those who are disadvantaged by them gain validation or other reward by consenting to them. Hegemony is not a unitary institution, nor is it inevitably shaped in one direction, but is a constant struggle among various social groups that is fought out in many

Cultural studies scholars have generally promoted the study of popular culture as a site where questions of ideology, social class, nationality, ethnicity, sexuality, and/or gender were not only performed but also actively struggled over.[121] Within Jamaica, Rex Nettleford, a pioneer of Jamaican cultural studies, worked alongside other scholars (at the University of the West Indies) to establish that the study of popular culture was particularly necessary in the colonial context, where "high" and "low" culture mapped onto colonial hierarchies of race and class. Reclaiming popular culture, for Jamaicans, was part of rejecting such hierarchies.[122] Especially because marginalized people are, by definition, not allowed participation in formal political structures, cultural studies scholars often attempt to look at how people engage with political questions in informal, creative, performative ways. A common critique of such scholarship is that its focus on informal agency is overly idealistic and does not differentiate between accommodation, survival, resistance and revolution. This critique can only be answered by close analysis of the material realities of power in specific cultural contexts, in order to reveal whether resistance is destabilizing or rewriting those realities, or simply allowing marginalized people to cope with the existing unequal system.

The field of cultural studies provides specific approaches to studying a diasporic community such as Jamaican music-makers. As mentioned above, the diasporic experience has informed cultural studies scholarship from its inception;[123] the realities of local communities overlaid with global networks of migration, communication, and consumption, and the historical reality of "multiculturalism" (which exists because of diaspora), contribute to a framework in which culture and identity are always performed and defined in relation to these historic relationships. This scholarly approach sets the diaspora between Enlightenment concepts of universalism and the reductive Afrocentrism that focuses connecting black music only through residual Africanisms. Instead, syncretism itself is a product of diaspora. Paul Gilroy locates a diaspora in the "Black Atlantic," emphasizing how culture is constituted through the crisscrossing routes (rather than Afrocentric "roots") of migration and communication that shape black perspectives and cultures.[124] Gilroy also suggests that "diasporic intimacy," a shared experience of marginalization and exclusion, binds Black Atlantic culture together.[125] Diasporic intimacy is a condition of diasporic peoples, a set of shared social connections created and maintained through cultural practices. Although Gilroy does not explore this concept and it has not been taken up much by subsequent scholars, this concept is useful, if we extend the idea of intimacy towards the concepts of privacy and sovereignty –the need for control of space in which

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arenas, including that of culture. Alan Bullock and Steven Trombley, eds., *The New Fontana Dictionary of Modern Thought*, Third. (New York: Harper Collins, 1999), 387–8.

[121] Dick Hebdige, *Subculture: The Meaning of Style* (London: Psychology Press, 1979).

[122] Carolyn Cooper, "Race and the Cultural Politics of Self-Representation: A View from the University of the West Indies," *Research in African Literatures* 27, no. 4 (December 1, 1996): 97–105; Rex Nettleford, *Caribbean Cultural Identity: The Case of Jamaica*, vol. 47 (UCLA Latin American Center, 1979); Mike Alleyne, "'Babylon Makes the Rules': The Politics of Reggae Crossover," *Social and Economic Studies* 47, no. 1 (March 1, 1998): 65–77; Stanley-Niaah, *DanceHall*.

[123] Scholars in the budding field were challenged to address race and colonialism directly by a book produced from its dominant intellectual home. University of Birmingham Centre for Contemporary Cultural Studies, *The Empire Strikes Back*.

[124] Gilroy, *The Black Atlantic*, 19, 133, 190.

[125] Ibid., 16. However those connections are not homogenous, but incomplete, messy and subject to change. See Martin Clayton, Trevor Herbert, and Richard Middleton, *The Cultural Study of Music: a Critical Introduction* (London; New York: Routledge, 2003), 288.

to be intimate. It is possible that law has a role to play in securing the space in which diasporic intimacy occurs.

The Jamaican diaspora includes the United Kingdom (UK), Canada and the United States.[126] Ethnomusicologists and cultural studies scholars of the Jamaican diaspora mainly describe the extreme marginalization Jamaicans have felt in the cultural arena, including in music, in those locations. For example in Canada, while unable to represent or be included in Canadian identity, many Jamaican-Canadian musickers have found themselves also unable to properly represent Jamaica.[127] A similar dynamic existed in the UK, although it led to a different relationship to popular culture than in Canada for reasons that will be discussed in Chapter 5. Overall scholarship on Jamaican cultural influences in the UK is voluminous in comparison to that of its influence in Canada.[128] As discussed above, Jamaican culture is a foundational theme in the field of cultural studies itself, which originated in the UK. A key theme beyond those emphasized above concerns the importance of Jamaican culture as an influence among non-Jamaicans, especially working-class white youth, and eventually broader non-Jamaican audiences. Scholars suggest that through reaching a wider audience these syncretic cultural moments spread subversive messages and build resistant solidarity in a new syncretic subculture.[129] However others cast this as a dilution of Jamaican consciousness, or a sapping of

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[126] Jenny Burman, "At the Scene of the Crossroads,‘ Somewhere in This Silvered City:’ Diasporic Public Spheres in Toronto," *Public*, no. 22,Äì23 (2001): 196–202; Rinaldo Walcott, "Caribbean Pop Culture in Canada: Or, the Impossibility of Belonging to the Nation," *Small Axe* 5, no. 1 (2001): 123–139; Jerome Teelucksingh, "Scarred and Exiled: Race and the Caribbean Immigrant in Toronto 1970–2004," in *Research in Urban Sociology*, ed. Ray Hutchinson and Jerome Krase, vol. 8 (Bingley, UK: Emerald Group Publishing Limited, 2006), 121–161; Susan P. Mains, "Hurricanes in Toronto: Distance, Identity, and the Jamaican Diaspora," *Focus on Geography* 50, no. 1 (2007): 1–8; Klive Walker, *Dubwise: Reasoning from the Reggae Underground* (London, Ontario: Insomniac Press, 2005).

[127] See especially Walcott, "Caribbean Pop Culture in Canada."

[128] For a sample from this wide swath, see Barbara Bush, "'The Dark Side of the City': Racialized Barriers, Culture and Citizenship in Britain C. 1950-1990s," in *Rastafari: a Universal Philosophy in the Third Millennium*, ed. Werner Zips (Kingston, Jamaica; Miami [Fla.]: Ian Randle Publishers, 2006); Sean Campbell, Glenda Norquay, and Gerry Smyth, "Sounding Out the Margins: Ethnicity and Popular Music in British Cultural Studies," in *Across the Margins: Cultural Identity and Change in the Atlantic Archipelago* (Manchester: Manchester University Press, 2002); Robert B. Davison, *Black British: Immigrants to England* (Oxford: Oxford University Press, 1966); Michael De Koningh and Marc Griffiths, *Tighten Up!: The History of Reggae in the UK* (London: Sanctuary Publishing Ltd., 2003); Michael De Koningh and Laurence Cane-Honeysett, *Young, Gifted and Black: The Story of Trojan Records* (London: Sanctuary, 2003); Jeffrey Green and Howard Rye, "'To the Mother Country - Jamaican Entertainers in Britain 1906-1936'," *South African Theatre Journal* 2, no. 2 (1988): 62–75; Joseph Heathcott, "Urban Spaces and Working-Class Expressions Across the Black Atlantic: Tracing the Routes of Ska," *Radical History Review* 87, no. 1 (2003): 183–206; Dick Hebdige, *Reggae Rastas and Rudies: Style and the Subversion of Form*, vol. 24 (Centre for Contemporary Cultural Studies, University of Birmingham, 1974); Tom Jennings, "Dancehall Dreams," *Variant* 2, no. 20 (2004): 9–13; Simon Jones, *Black Culture, White Youth: The Reggae Tradition From JA to UK* (Oxford: Macmillan Education, 1988); Anthony Marks, "Young, Gifted and Black: Afro-American and Afro-Caribbean Music in Britain 1963–88," in *Black Music in Britain: Essays on the Afro-Asian Contribution to Popular Music*, ed. Paul Oliver (Buckingham, UK: Open University Press, 1990); Kenneth Parker, "Colonizin' in Reverse," *African and Black Diaspora: An International Journal* 1, no. 2 (2008): 169–184; Sheila Patterson, *Dark Strangers; a Sociological Study of the Absorption of a Recent West Indian Migrant Group in Brixton, South London.* (Bloomington: Indiana University Press, 1964); Jon Stratton, "Chris Blackwell and 'My Boy Lollipop': Ska, Race, and British Popular Music," *Journal of Popular Music Studies* 22, no. 4 (2010): 436–465.

[129] Hebdige, *Subculture*; Jones, *Black Culture, White Youth*.

politics by commodification.[130] Jamaican culture's influence in the field of cultural studies also reflects its much greater influence in the field of British culture. These diasporic concerns reflect some of the dynamics outside of copyright law that shape how and when music-makers have found purchase in diasporic locations.

While early cultural studies scholarship did not attend to IP issues explicitly, it still supports IP scholars' claims for the democratic value and productivity of music reuse and collaborative creative practices.[131] Scholarship suggests that musical practices in the Jamaican diaspora (including hip-hop) exemplify syncretism: appropriating existing cultural forms and mixing them together to foster the roots of resistance to racial (and to some extent class) inequalities otherwise encouraged by mainstream society.[132]

In the past 20 years especially, scholars, policymakers, and historically disenfranchised communities have also made ownership claims over cultural works in order to defend against their appropriation by dominant classes.[133] However, many cultural studies scholars and musicians resist defining ownership in market terms. In relation to black cultural works, for example, Fischlin and Heble argue that "the expressive modalities of black culture have repeatedly had to struggle against processes of reduction and commodification."[134] Property rules, according to this argument, rather than according power to owners of culture, transform culture into "forms in which it could be frozen and sold,"[135] which can harm a living tradition of resistance and regeneration.[136] If this is the case, then the terms of resistance to appropriation of culture—or to the material rewards for cultural creativity—must avoid commodifying culture.

A concern with living traditions of resistance and regeneration is especially relevant to the historical targets of colonial exploitation. Cultural studies scholars have analyzed how marginalized people have developed strategies in response to their conditions of removal, exploitation, and continuing marginalization. Hall describes Caribbean identity as being formed,

> At the unstable point where the "unspeakable" stories of subjectivity meet the narratives of history, of a culture. And since he/she is positioned in relation to cultured narratives which have been profoundly expropriated, the colonized subject is always

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[130] Alleyne, "Babylon Makes the Rules."
[131] Dick Hebdige, *Cut'n'Mix: Culture, Identity and Caribbean Music* (Routledge, 2004), xv, 14; Michael Chanan, *Repeated Takes: a Short History of Recording and Its Effects on Music* (London: Verso, 1995), 162.
[132] Hebdige, *Cut'n'Mix*, 97, 109–110; Herman Gray, *Cultural Moves: African Americans and the Politics of Representation* (University of California Press, 2005), 16.
[133] Chander and Sunder, "The Romance of the Public Domain," 1153, 1161; Darrell Addison Posey and Graham Dutfield, *Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities* (Ottawa: International Development Research Centre, 1996); Vandana Shiva, "The Need for Sui Generis Rights," *Seedling* 12, no. 1 (1994).
[134] Daniel Fischlin and Ajay Heble, *The Other Side of Nowhere: Jazz, Improvisation, and Communities in Dialogue*, Music/culture (Middletown, CT: Wesleyan University Press, 2004), 29; Paul Gilroy, "...to Be Real: The Dissident Forms of Black Expressive Culture," in *Let's Get It On: The Politics of Black Performance*, ed. Catherine Ugwu (Institute of Contemporary Arts, 1995).
[135] Gilroy, "...to Be Real," 24.
[136] Jason Toynbee argues, in relation to Jamaican culture in particular, that if copyright had been enforced, Jamaican music would never have developed as fully or spread as far as it has. Toynbee, "Reggae Open Source," 358.

> "somewhere else:" doubly marginalized, displaced always other than where he or she is, or is able to speak from.[137]

This position of being doubled, always looking within and without, "somewhere else," is a diasporic condition. The strategic response is by constructing syncretic identities and cultures, whereby displaced peoples and their descendents weave together multiplicitous identities through drawing on the cultural resources that surround them, both fragments of the past but also elements of the new societies in which they have found themselves.[138] Through syncretic practices, people can resist hegemonic identity constructs that cast them in subordinate roles (although dominant groups can also use syncretic practices). Syncretism is essential to understanding how diasporic communities define themselves in the global system.

In recent years a flurry of cultural and media studies scholars have begun to examine copyright law, but mainly from the US perspective, focusing on recent practices in the US and in relation to digital technology, although often referring to Jamaican cultural influences on media and technology use.[139] That literature is too broad to be fully elaborated here, but much of their analysis draws on and extends the discussions of diasporic culture, and of syncretism laid out in the early era of cultural studies. A significant strain of these new studies of media and culture emphasizes the democratic and pluralistic values of practices such as remixes, mashups and fan fiction that foster contested relationships to current copyright law.[140] Scholars of such practices have often found common cause with copyright critics from the legal realm who make similar arguments. However, similar to the majority of copyright critics, these arguments do not attend to the specifics of inequality that arise from historical social conditions, and the implications they might have for concepts such as "democracy" and "citizenship."

IV. Sociolegal Studies and legal anthropology

Sociolegal studies has addressed many questions relating to questions of democracy and citizenship, but unfortunately has not historically focused much on copyright.[141] Such deficiencies in our understanding have begun to change, mainly due to scholarship on cultural practices in cultural context. Much of the work thus far uses initial studies to support the

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[137] Stuart Hall, "Minimal Selves," in *Black British Cultural Studies: a Reader*, ed. H. A Baker, M. Diawara, and R. H Lindeborg (Chicago: University of Chicago Press, 1996), 115.
[138] Gilroy, *The Black Atlantic*, 101.
[139] Sinnreich, *Mashed Up*; McLeod and Kuenzli, *Cutting Across Media*.
[140] Tarleton Gillespie, "Characterizing Copyright in the Classroom: The Cultural Work of Antipiracy Campaigns," *Communication, Culture & Critique* 2, no. 3 (2009): 274 Gillespie points out that the public and industry-led campaigns against copyright infringement are enacting a particular cultural attitude towards creativity and culture, which he argues "reaffirm traditional hierarchies of cultural production."; See also McLeod and Kuenzli, *Cutting Across Media*; McLeod, *Freedom of Expression*; Suzannah Mirghani, "The War on Piracy: Analyzing the Discursive Battles of Corporate and Government-Sponsored Anti-Piracy Media Campaigns," *Critical Studies in Media Communication* 28, no. 2 (2010): 113–134.
[141] Coombe says of intellectual property research that "a great deal of it is hypothetical and abstract."Coombe, "Commodity Culture, Private Censorship," 369.

challenges to copyright posed by copyright critics and cultural studies scholars. Many argue that specific cultures simply do not fit within the subject of copyright law.[142]

One site of analysis in the recent explosion of law journal articles on hip-hop, for example, focuses on specific practices this genre encompasses, such as digital sampling, which many also link to Jamaican traditions.[143] Here scholarship has remained somewhat divided. Among those that attend to sampling's cultural context, some make the case that sampling is qualitatively different from Western musical traditions, and thus a poor match with copyright law.[144] In contrast, Olafunmilayo Arewa's comprehensive study suggests that hip-hop traditions

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[142] Different attitudes towards ownership of creative works can also be created and sustained by a subculture. Jenkins comments that fans"... see themselves as the legitimate guardian of these materials, which have too often been manhandled by the producers and their licensees for easy profits."Henry Jenkins, *Convergence Culture: Where Old and New Media Collide* (New York: New York University Press, 2006); See also Rosemary J. Coombe, "Author/Izing the Celebrity: Publicity Rights, Postmodern Politics, and Unauthorized Genders," *Cardozo Arts & Entertainment Law Journal* 10 (1991): 365–377; John Fiske, "The Cultural Economy of Fandom," ed. Lisa A Lewis, The Adoring Audience: Fan Cultura and Popular Media (New York: Routledge, 1992), 30–49; Simone Murray, "'Celebrating the Story the Way It Is': Cultural Studies, Corporate Media and the Contested Utility of Fandom," *Continuum* 18, no. 1 (2004): 7; Nathaniel T Noda, "Copyrights Retold: How Interpretive Rights Foster Creativity and Justify Fan-Based Activities," *Seton Hall Journal of Sports and Entertainment Law* 20, no. 1 (2010): 131–163; Deborah Tussey, "From Fan Sites to Filesharing: Personal Use in Cyberspace," *Georgia Law Review* 35 (2000): 1129–1193.

[143] Horace Anderson, "'Criminal Minded?' Mixtape DJs, the Piracy Paradox, and Lessons for the Recording Industry," *Tennessee Law Review* 76, no. 1 (2008); H.E. Anderson Jr, "No Bitin'Allowed: A hip-hop Copying Paradigm for All of Us," *Texas Intellellectual Property Law Journal* 20 (2011): 115–115; Arewa, "From JC Bach to Hip Hop"; Ronald D. Brown, "The Politics of Mo' Money Mo' Money and the Strange Dialectic of Hip Hop," *Vanderbilt Journal of Entertainment Law & Practice* 5 (2002): 59; Tonya M. Evans, "Sampling, Looping, and Mashing… Oh My!: How Hip Hop Music Is Scratching More Than the Surface of Copyright Law," *Fordham Intellectual Property, Media & Entertainment Law Journal* 21 (2011): 843; Carl A. Falstrom, "Thou Shalt Not Steal: Grand Upright Music Ltd. v. Warner Bros. Records, Inc. and the Future of Digital Sound Sampling in Popular Music," *Hastings Law Journal* 45 (1993): 359; R. Gaither, "Chillin Effect of Section 506: The Battle over Digital Sampling in Rap Music, The," *Vanderbilt Journal of Entertainment & Technology Law* 3 (2001): 195; Neela Kartha, "Digital Sampling and Copyright Law in a Social Context: No More Colorblindness," *University of Miami Entertainment & Sports Law Review* 14 (1997): 218; Susan B. Latham, "Measuring the Legitimacy of Unauthorized Compositional Sampling - A Clue Illuminated and Obscured," *Hastings Communication & Entertainment Law Journal* 26 (2003): 119; Stacy F. McDonald, "Copyright for Sale: How the Commodification of Intellectual Property Distorts the Social Bargain Implicit in the Copyright Clause," *Howard Law Journal* 50, no. 2 (2007): 541–574; Sanjek, "Don't Have to DJ No More""; Henry Self, "Digital Sampling: A Cultural Perspective," *UCLA Entertainment Law Review* 9 (2002): 347–359; Robert M. Szymanski, "Audio Pastiche: Digital Sampling, Intermediate Copying, Fair Use," *UCLA Entertainment Law Review* 3 (1995): 271–332.

[144] Anderson, "'Criminal Minded?'"; H.E. Anderson Jr, "No Bitin'Allowed: A hip-hop Copying Paradigm for All of Us," *Texas Intellellectual Property Law Journal* 20 (2011): 115–115; Arewa, "From JC Bach to Hip Hop"; Ronald D. Brown, "The Politics of Mo' Money Mo' Money and the Strange Dialectic of Hip Hop," *Vanderbilt Journal of Entertainment Law & Practice* 5 (2002): 59; Evans, "Sampling, Looping, and Mashing… Oh My!"; Carl A. Falstrom, "Thou Shalt Not Steal: Grand Upright Music Ltd. v. Warner Bros. Records, Inc. and the Future of Digital Sound Sampling in Popular Music," *Hastings Law Journal* 45 (1993): 359; R. Gaither, "Chillin Effect of Section 506: The Battle over Digital Sampling in Rap Music, The," *Vanderbilt Journal of Entertainment & Technology Law* 3 (2001): 195; Neela Kartha, "Digital Sampling and Copyright Law in a Social Context: No More Colorblindness," *University of Miami Entertainment & Sports Law Review* 14 (1997): 218; Susan B. Latham, "Measuring the Legitimacy of Unauthorized Compositional Sampling - A Clue Illuminated and Obscured," *Hastings Communication & Entertainment Law Journal* 26 (2003): 119; McDonald, "Copyright for Sale: How the Commodification of Intellectual Property Distorts the Social Bargain Implicit in the Copyright Clause"; Sanjek,

of repetition and reference are not so different from those in the Western musical tradition. Arewa suggests that copyright law "idealizes" an "unrealistic" model of music-making that misrepresents the Western tradition as much as any other, over-emphasizing originality and uniqueness and under-emphasizing borrowing, imitation and improvisation.[145] The question remains: what set of assumptions about music-making *has* shaped the law? Here some, like Kembrew McLeod, point to particular interest groups such as greedy record labels,[146] others identify cultural bias in the law and its interpretation,[147] and still others point to a history of racial inequality that influences legislators, judges, and interest groups who variously structure access to the law.[148]

The racial analysis of copyright suggests that raw power relations and racist attitudes have directly prevented black ownership of copyrights in ways that rewriting of copyright would be unlikely to change. For example, when ASCAP was the only artists' rights organization, it did not accept black artists as members; thus white artists could copyright songs they learned from black artists and profit from selling the recordings.[149] This history reflects the situation of black musicians across genres, from jazz and blues to rock and roll.[150] Institutionalized racial exclusion has continued to be a major factor in the absence of black copyright ownership, despite the significance of black Americans in the production of popular American music, in both performance and recording.[151]

Some have proposed redefining copyright in order to support African-American creative traditions, and the dignity of authorship.[152] This consideration would constitute an important intervention into the often overly race-neutral analysis of copyright. However, copyright law may not be effective in supporting such a goal, especially given the interest groups that affect how it might be enforced in practice. Broader social and institutional problems still persist that promote white supremacy in positions of power in both the music industry and law, those which a redefinition of copyright may not be able to reach.

It is also not clear that copyright is effective at promoting cultural survival of communities that have historically operated outside its reach. Scholarship on indigenous creative practices has begun to grapple with this question of the role and reach of copyright law in relation to questions of dignity and cultural survival. Many scholars, activists and policymakers

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"Don't Have to DJ No More""; Self, "Digital Sampling"; Robert M. Szymanski, "Audio Pastiche: Digital Sampling, Intermediate Copying, Fair Use," *UCLA Entertainment Law Review* 3 (1995): 271–332.

[145] Arewa, "From JC Bach to Hip Hop."

[146] McLeod, *Freedom of Expression*.

[147] Hines, "Black Musical Traditions and Copyright Law"; Kartha, "Digital Sampling and Copyright Law in a Social Context."

[148] Greene, "Copynorms, Black Cultural Production"; Troutt, "I Own Therefore I Am.""

[149] John Ryan, *The Production of Culture in the Music Industry: The ASCAP-BMI Controversy* (Lanham, MD: University Press of America, 1985); Greene, "Copynorms, Black Cultural Production."

[150] Kartha, "Digital Sampling and Copyright Law in a Social Context," 218; Johnathan Z. King, "The Anatomy of a Jazz Recording: Copyrighting America's Classical Music," *Copyright Law Symposium (ASCAP)* 40 (1997): 277–330; Note, "Jazz Has Got Copyright Law - and That Ain't Good," *Harvard Law Review* 118 (April 2005): 1940–1961; John R. Zoesch, III, "Discontented Blues: Jazz Arrangements and the Case for Improvements in Copyright Law," *Catholic University Law Review* 55 (2005): 867.

[151] See also Aoki, "Distributive and Syncretic Motives."

[152] King, "The Anatomy of a Jazz Recording: Copyrighting America's Classical Music"; Zoesch, III, "Discontented Blues"; Troutt, "I Own Therefore I Am."

have debated, on similar terms, the value of inclusion, exclusion, or in changing the terms of inclusion in relation to indigenous people.[153] Some writers have proposed the property-like protection of culture in order to prevent exploitation by the developed world, or to force exploitation on terms more amenable to local practices.[154] These ideas are often linked to concerns for protecting indigenous culture understood broadly as including scientific, informational, artistic, genetic, biological resources, and land. For many indigenous people, land cannot be separated from other cultural resources—land is essential to their survival as a culture and a people.[155] All of these questions were raised first by indigenous spokespeople, and followed by legal scholars, anthropologists, postcolonial studies scholars, along with a host of other fields, in numbers too vast to be addressed here.[156] My dissertation's empirical approach seeks to address the question of dignity and respect for marginalized communities, and incorporates a synthesis of the analyses from scholarship on indigenous culture. This synthesis suggests that copyright law is one possible mechanism for shaping cultural expression that should be examined alongside other mechanisms and dynamics from the specific social context of the culture under study.

Scholarship on land, indigenous culture, dignity and access to cultural resources converges directly in the path of legal anthropology. Although not a major focus of the field, anthropologists have provided some important accounts of property as a social relation. From the 1960s onward they have delineated the complex and reflexive relationship between people and property rules, although this approach has not had much definitive influence in other spheres of

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[153] Elizabeth Povinelli, "At Home in the Violence of Recognition," in *Property in Question: Value Transformation in the Global Economy*, ed. Katherine Verdery and Caroline Humphrey, 2004, 185–206 Povinelli warns that participation in property systems defined by the West pressures indigenous peoples to transform themselves into the kind of native that colonial attitudes see as deserving of legal protection; See also Michael Rowlands, "Cultural Rights and Wrongs: Uses of the Concept of Property," in *Property in Question: Value Transformation in the Global Economy*, ed. Katherine Verdery and Caroline Humphrey (Oxford; New York: Berg, 2004), 209 who also raises concerns regarding "the essentializing claim of a politics of recognition."; And see Madhavi Sunder, "Intellectual Property and Identity Politics: Playing With Fire," *Journal of Gender, Race & Justice* 4, no. 1 (Fall 2000): 69–98.

[154] Chander and Sunder, "The Romance of the Public Domain"; Keith Aoki, "(Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship," *Stanford Law Review* 48, no. 5 (1996): 1293–1355; Vandana Shiva, *Protect or Plunder?: Understanding Intellectual Property Rights* (London: Zed Books, 2001).

[155] UN Declaration on the Rights of Indigenous People, United Nations, September 2007. Article 26, sections (1), (2) and (3), that assert cultural survival as dependent on access to land, as well as on states respecting "the customs, traditions and land tenure systems of the indigenous peoples concerned." Document ID A/RES/61/295, available online at http://www.un.org/documents/instruments/docs_en.asp.

[156] A sampling of relevant legal scholarship would include Keith Aoki, "Neocolonialism, Anticommons Property, and Biopiracy in the (Not-so-Brave) New World Order of International Intellectual Property Protection," *Indiana Journal of Global Legal Studies* 6 (1998): 11–58; Michael Blakeney, "The Protection of Traditional Knowledge Under Intellectual Property Law," *European Intellectual Property Review* 22, no. 6 (2000): 251–261; Anne Barron, "No Other Law? Author-ity, Property and Aboriginal Art," in *Intellectual Property and Ethics*, ed. Lionel Bently and Spyros Maniatis, 1998, 39–87; Peter Drahos and Ruth Mayne, *Global Intellectual Property Rights: Knowledge, Access and Development* (Basingstoke: Palgrave Macmillan, 2002); Marilyn Strathern, *Property, Substance, and Effect: Anthropological Essays on Persons and Things* (London: Athlone Press, 1999); Madhavi Sunder, "Intellectual Property and Identity Politics: Playing With Fire," *Journal of Gender, Race & Justice* 4, no. 1 (Fall 2000): 69; For a good summary of many of the basic concerns raised by these and more scholars, see Jane Elizabeth Anderson, *Law, Knowledge, Culture: The Production of Indigenous Knowledge in Intellectual Property Law* (Cheltenham, U.K.; Northampton, MA: Edward Elgar Publishing, 2009).

study.[157] Scholarship on property rights in land also provides a basis for examining how ownership is shaped by and contingent on the existence of various institutions, and for highlighting the multifaceted nature of property arrangements, i.e. that ownership has different meanings among and between different peoples.[158] Anthropologists have raised concerns that IP, as defined by the global North and formalized in a legal regime, might harm the social relations and practices that created and also maintain those traditions as living cultures.[159] However, anthropologists have also suggested, like Sunder and Chander, that an open-access "commons" will not well serve indigenous and marginalized communities.[160]

Another proposed solution, alongside redefining copyright, has been a sui generis legal category for certain kinds of knowledge.[161] Although this has been argued most strenuously in relation to scientific and medical, rather than artistic knowledge, the battles over protecting such knowledge reveal how assigning property-like rights can create controversy.[162] Many indigenous peoples have local knowledges about medicinal use of plants, which they rely on and develop over time. Much of this knowledge fails to meet the categories of patentability, being widely known but often not written down. However, such expertise has the potential to be valuable to anyone who wishes to exploit it in order to make use of certain plants. Faced with the prospect of foreign companies seeking to profit from local knowledge (as well as the plants themselves), many within and outside indigenous communities have argued that indigenous people ought to own that knowledge. In response to this concern, the category of IP called "Traditional knowledge" (TK) was developed.[163] As a legal form, it was intended to grant some autonomy and control to indigenous peoples, who could then negotiate with corporations over access. Pharmaceutical "bioprospectors" were willing to grant local actors some control and reward over their plant knowledge, even if that knowledge did not meet international definitions of patentable information. While the TK system attempted to dodge the concern about incommensurability of IP regimes and local practices through creating a locally specific form of knowledge, a study of the first use of this legal instrument reveals that it has led to deeply problematic results. TK relies on a fixed set of contractual relations, according exclusive control of a specific kind of knowledge and resource to a particular entity. However, as Boaventura De Sousa Santos points out, "what is 'traditional about traditional knowledge is not the fact that it is old, but the way it is acquired and used, that is the social process of learning and sharing knowledges, which is unique

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[157] Hann, *The Tragedy of the Privates? Postsocialist Property Relations in Anthropological Perspective* Hann describes how anthropologists maintained a account of diverse property arrangements against "European" and "Cold War" focus on either-or visions of property as wholly private or wholly state-owned.
[158] Charles Geisler, *Property and Values: Alternatives to Public and Private Ownership* (Washington, D.C.: Island Press, 2000); Franz von Benda-Beckmann, Keebet von Benda-Beckmann, and Melanie G. Wiber, eds., *The Changing Properties of Property* (New York: Berghahn Books, 2009).
[159] Brown et al., "Can Culture Be Copyrighted? [and Comments and Reply]"; Boateng, *The Copyright Thing Doesn't Work Here*; Kimberly Christen, "Gone Digital: Aboriginal Remix and the Cultural Commons," *International Journal of Cultural Property* 12, no. 03 (2005): 315–345; Shane Greene, "Indigenous People Incorporated? Culture as Politics, Culture as Property in Pharmaceutical Bioprospecting," *Current Anthropology* 45, no. 2 (2004): 211–237.
[160] Anderson, *Law, Knowledge, Culture*.
[161] Shiva, "The Need for Sui Generis Rights."
[162] Cori Hayden, *When Nature Goes Public: The Making and Unmaking of Bioprospecting in Mexico* (Princeton, NJ: Princeton University Press, 2003).
[163] Greene, "Indigenous People Incorporated?".

to each local culture."[164] This social practice may not accord with definitions of ownership the law is capable of enforcing. In fact, anthropologists have raised many concerns that echo critiques from other disciplines above: property rights' exclusion and enclosure can seem arbitrary or at worst tainted with the interests of Western exploitation. Local knowledge may be collective, fluid, and noncommodified and thus incommensurable with individualized, exclusive Western property laws. Lastly, the political question persists of who had the right to license—and thus collect royalties for use of—that knowledge. TK did not prevent strife or exploitation, it led to political upheaval, as rival indigenous groups competed for the reward, and used up their own and others' resources in doing so. Greene's conclusion was that assigning property rights is a political act that requires a politically viable infrastructure in order to determine allocation.[165] The question of who decides the viability or desirability of the political system adjudicating rights remains external to the property rights question.

As described in Section V, attempts to "protect" musical and other cultural practices can give rise to similar difficulties with incommensurability, and also with the politics of administration.[166] Ethnomusicologist Mark Perlman, in discussing protection of traditional culture (analogous to traditional knowledge, but in the realm of cultural works or folklore), calls this situation "the paradox of empowerment" whereby incorporation into a global legal regime forces a new kind of discipline on local social relations, a result that can have effects beyond the intended goal of policy or the interests of the participants.[167] Von Benda-Beckmann, Mosse and Gana go further still, to suggest that the perceived value of policy to empower or support local actors in the global context (especially in the interest of "development") has been vastly overstated,[168] while James Scott argues that the function of such policies of inclusion or representation is simply to incorporate resistant communities into the administration of the state, forcing them to transform themselves into subjects in exchange for the material advantages of participation.[169] My work has brought me to similarly skeptical conclusions of the power of

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[164] de Sousa Santos, *Toward a New Legal Common Sense*, 478; Madhavi Sunder, "The Invention of Traditional Knowledge," *Law and Contemporary Problems* 70 (2007): 97–124.

[165] Greene's conclusion is paralleled by the accounts of how formalization of property rights can be culturally destructive, as discussed above in relation to Maori and Hopi property. Banner, "Two Properties, One Land"; Richland, "What Are You Going to Do"; See also Christen, "Gone Digital" for a discussion of similar concerns regarding indigenous cultural works and intellectual property law.

[166] Brown et al., "Can Culture Be Copyrighted? [and Comments and Reply]"; Kathryn Wells, "Indigenous Copyright: The Cosmic Irony of Intellectual Property and Indigenous Authenticity," *Culture and Policy* 7, no. 3 (1996): 45–68; George P. Nicholas and Kelly P. Bannister, "Copyrighting the Past?," *Current Anthropology* 45, no. 3 (2004): 327–350; Martha Mundy and R. Alain Pottage, *Law, Anthropology, and the Constitution of the Social: Making Persons and Things* (Cambridge: Cambridge University Press, 2004); Haidy Geismar, "Copyright in Context: Carvings, Carvers, and Commodities in Vanuatu," *American Ethnologist* 32, no. 3 (2005): 437–459.

[167] Marc Perlman, *The Paradox of Empowerment: Traditional Music Between Stewardship and Ownership in International Intellectual Property Law*, Unpublished Paper (Berkeley: University of California at Berkeley, April 18, 2008).

[168] Franz von Benda-Beckmann, "Scape-Goat and Magic Charm - Law in Development Theory and Practice," *Journal of Legal Pluralism and Unofficial Law* 28 (1989): 129; Franz von Benda-Beckmann, "Scape-Goat and Magic Charm - Law in Development Theory and Practice," *Journal of Legal Pluralism and Unofficial Law* 28 (1989): 129–148; David Mosse, "Is Good Policy Unimplementable? Reflections on the Ethnography of Aid Policy and Practice," *Development and Change* 35, no. 4 (2004): 639–671; Ruth L Gana, "Myth of Development, the Progress of Rights: Human Rights to Intellectual Property and Development, The," *Law & Policy* 18 (1996): 315.

[169] James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999).

policy to change daily life, especially in the context of a weak and parasitic state, and informs my goal, to eschew specific policy solutions in favor of providing analytical tools for policy makers and the 'subjects' of policy to use.

Some recent scholarly works have drawn together some of the implications raised by the anthropological challenges to the value and effect of copyright. For example, Keith Aoki's powerful syncretic analysis of IP law, he draws on recent works by scholars who focus on the distributive effects of IP regimes.[170] Identifying the inequality between North and South as a major factor in IP effects, this analysis also address the inequalities within nations that structure different experiences with copyright law. Aoki suggests that the best way to reconcile the different practices and relations people have to IP is to not try too hard to resolve them, but instead to allow for different solutions and practices at the local level.[171] One aspect of Aoki's analysis, implied rather than made explicit, intimates that IP law may have a rather smaller role to play in relation to these larger inequalities than scholars and practitioners of IP law have assumed.[172] This implication is relevant especially to situations where social conditions are directly structured by broader systems of inequality. Such situations shape power relations at basic levels in ways that copyright cannot helpfully address; as discussed above, no alteration of copyright law would have benefitted black American artists who ASCAP denied membership because of their race. Similarly, in Jamaica, and in many places, ownership of copyrights rests with particular entities as a result of power relations or cultural ideas about creativity, determined by factors outside of copyright. An analysis that is concerned with substantive outcomes must account for these external factors, best examined through empirical evidence on local social relations of power and creativity.

V. Legal Pluralism and coloniality

As discussed above, anthropology and sociolegal studies have revealed cultural faultlines in copyright law's relationship to the public interest, through its effects on music-making and cultural practices. In addition, the case studies from ethnomusicology, as well as legal anthropology suggested that in many instances the success or failure of a particular endeavor in relation to copyright is dependent on broader social relations than copyright is designed to address. To evaluate law, policy, or musical practices requires a sense of these broader social relations: between people, the law, and other normative systems that structure their engagement with culture.

Many empirical and theoretical discussions described above critique a universalistic conception of standardized copyright law. Scholarship on legal pluralism supports this decentering of law, countering a hierarchical analysis that marks law as more powerful or more

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[170] Story, "Burn Berne"; Aoki, "Distributive and Syncretic Motives"; Chon, "Intellectual Property and the Development Divide"; Chander and Sunder, "The Romance of the Public Domain."

[171] Conversely, in relation to Jamaica, Johnson Okpaluba accepts the existing conditions of inequality, but argues that given the existence of a capitalist industry with powerful players, artists need to engage with industry on its own terms, and thus should be supported as copyright owners. Johnson Okpaluba, "'Free-riding on the Riddim'? Open Source, Copyright Law and Reggae Music in Jamaica," in *Copyright and Piracy*, 374–386.

[172] See, for example, the section titled "The operation was a success, but the patient died" which suggests that the patient's "illness" may lie elsewhere than where the operators of law and policy are busy working.

sophisticated than other normative systems.[173] These works have come especially from studying law in the global South. As such locations had a history of colonization, they have provided examples of laws from foreign sources against which local traditions could be contrasted. However, scholarship on peasant land use suggests that law is plural even in places without a history of colonial domination, as people and communities constantly renegotiate their relationships with formal law.[174] Examining the plurality of law can reveal the ways in which formal legal regimes take root, or affect local practices. Studying local traditions has also provided evidence of how social groups generate and enforce their own rules in a manner in some ways autonomous from, or at least in dialogue with, formal law.[175] Sally Merry describes this process as "vernacularization," describing how transnational legal regimes, like human rights law, are translated into local terminology, reframed by intermediaries and by locals in relation to local contexts. Merry suggests this vernacularization is necessary for such laws to be effective.[176]

In Merry's analysis, protecting human rights is generally desirable.[177] But is the same true for copyright? The previous sections have outlined serious empirical and theoretical challenges to any universal appeal of copyright as it is currently defined, for example, in the TRIPS agreement. On what basis should we evaluate the desirability of a particular law, and what is the role of that law in relation to local practices?

To the extent that some form of copyright is desirable, the criteria for its desirability may have to be vernacularized. To some extent anthropological examination of law in the global South, has begun to influence sociolegal scholars to develop new criteria for evaluating copyright policy. This injection of local and specific information, concepts, and priorities is a step towards vernacularization, or at least toward a more specific and empirically informed basis for copyright enforcement. Margaret Chon proposed "substantive equality," as the standard by which policy ought to be evaluated.[178] I see this proposal as a step forward for scholars and policymakers who have struggled to use the tools at their disposal, such as copyright law, which seem to embody multiple contradicting logics. In relation to specific cases, however, substantive

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[173] John Griffiths, "What Is Legal Pluralism?," *Journal of Legal Pluralism & Unofficial Law* 24 (1986): 3 Griffiths writes that "A key debate among the scholars after this addressed the question of whether particular sets of rules were really law or not, with various scholars suggesting definitions of law that sort out categories of regulatory social norms from each other. One response (from Tamanaha) was to simply say, if people call it law, then it is law. Another goes rather further, saying people have to call it law and also act as if it's law."; See also Brian Z. Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global," *Sydney Law Review* 30 (2008): 375–411; Paul Schiff Berman, "Global Legal Pluralism," *Southern California Law Review* 80 (2007 2006): 1155.

[174] Sally Engle Merry, "Human Rights and Transnational Culture: Regulating Gender Violence Through Global Law," *Osgoode Hall Law Journal* 44 (2006): 54; Sally Falk Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study," *Law & Society Review* 7 (1972): 719–746; Thompson, *Whigs and Hunters: The Origin of the Black Act*; Kingston-Mann, "The Romance of Privatisation and Its Unheralded Challengers."

[175] Moore, "Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study."

[176] Merry, "Human Rights and Transnational Culture," 54.

[177] cf. Mark Fathi Massoud, *Who Rules the Law?: How Government, Civil Society, and Aid Agencies Manipulate Law in Sudan*, PhD Dissertation (Berkeley: University of California, Berkeley, 2008) Massoud suggests that in some cases the definition and enforcement of human rights can have social costs.

[178] Chon, "Intellectual Property and the Development Divide," 2831; Aoki, "Distributive and Syncretic Motives," 738. Also see Chander and Sunder, "The Romance of the Public Domain"; Sunder, "The Invention of Traditional Knowledge," 97.

equality requires a more specific dimension: equality in relation to whom, and in resistance to what dynamics that create inequality? In a small way, I am attempting to function as the intermediary Merry describes, except not only will I translate transnational concepts into local terms, I also use local terms to challenge and reframe transnational concepts. Substantive inequality is a concept that can be informed by the historic and material concern faced by Jamaicans on the ground, and that which Jamaicans often articulate (although not usually in relation to copyright). Thus I provide empirical evidence in this dissertation for a kind of vernacularization that more deeply challenges the assumptions of the legal form to be vernacularized.

My analysis focuses on a primary dynamic against which advocates of substantive equality in Jamaica must pit themselves: colonially informed inequality. The colonial experience is a global experience that shapes all aspects of life in relation to the colonizing and imperial missions of the UK and Europe in India, Africa, Asia, and the Caribbean including Jamaica.[179] Inequality in these regions (and arguably in the global system) derives from "the transhistoric expansion of colonial domination and the perpetuation of its effects in contemporary times," or "coloniality."[180] From its inception, copyright law was colonial in Jamaica, because it was written by its British colonizers and identical to the British Copyright Act. Copyright remained colonial even after formal independence, as it was unchanged until 1994. Even after 1994 many of its central tenets, categories and mechanisms are still colonially constructed, which means it still reinforces coloniality. Scholars of coloniality also emphasize it is revealed in the way trade routes, communications infrastructure, languages, class, gender and racial relations are informed by colonial history and traditions. Coloniality's symbolic aspects are as important as the material, for it requires that people "naturalize the European cultural imaginary as the only way of relating to nature, the social world, and their own subjectivity."[181] In Jamaica, this is illustrated by the fact that everyone officially speaks English, but the upper classes speak English in a manner not dramatically different from middle-class people in England, while the poorer classes speak patois (or “patwa”), a dialect with a grammar influenced by various African languages.[182] English is the marker of civilization, modernity and reliability, while patois associates the speaker with lower-class status. Patois is discouraged in business and government settings.[183] This separation of language demonstrates how culture is still inflected with colonial hierarchy even today.

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[179] Said’s analysis identifies the lines along which flows as set out by colonial interests, and sees cultural practices as (among other things) the site of battles over representation and performance of identities more or less resistant to colonially-defined inequality. Edward Said, *Orientalism* (New York: Vintage Books, 1978).

[180] Said’s analysis identifies the lines along which flows as set out by colonial interests, and sees cultural practices as (among other things) the site of battles over representation and performance of identities more or less resistant to colonially-defined inequality. Said, *Orientalism*.

[181] Moraña, Dussel, and Jáuregui, *Coloniality at Large*, 281.

[182] J.M. Iseke-Barnes, “Politics and Power of Languages: Indigenous Resistance to Colonizing Experiences of Language Dominance,” *Journal of Thought* 39, no. 1 (2004): 64; John McWhorter, *The Word on the Street: Debunking the Myth of “Pure” Standard English* (Cambridge, MA: Da Capo Press, 2001), 157, 182.

[183] Mark Campbell describes how “the English language works to make the native believe in a fabricated cultural hierarchy.” Mark Campbell, “Indigenous Knowledge in Jamaica: A Tool of Ideology in a Neo-Colonial Context,” in *Anti-Colonialism and Education*, ed. George J. Sefa Dei and Arlo Kempf (Boston: Sense Publishers, 2006), 197; “Jamaican newspapers. . . are full of denunciations of Jamaican patois by educators, politicians and other people in power.” McWhorter, *The Word on the Street*, 46.

The concept of the coloniality of power provides a useful metric for understanding in what ways copyright law can (re)produce inequality in Jamaica. Coloniality explains the ways that legal institutions are able to respond and recognize people's needs only to the extent that they conform in particular ways the law's understanding of a citizen.[184] The shape of that conformity is dictated by colonial history and colonial interests—resembling the colonizer is the priority. This coloniality exists even after the literal colonizer is long gone, as dominant groups' ability to rule and historical legacy are inherited through that same resemblance.[185] But coloniality does not only act in the global South, or in countries that have been colonial subjects. Instead coloniality informs the differing relationships to power experienced by people depending on characteristics such as race, gender, language, skin color, religion, that have been informed by the experience of global colonialism. Coloniality is not a unitary concept, and is not everywhere the same, but it is a useful analytical lens that reveals the ways local inequalities are part of a global system.

As described above, a universalistic understanding of property rights (with colonizers' norms at the center) has been a fundamental tool of colonial power within and outside the global North. The language of formal equality has masked or exacerbated material inequality arising from the differences in resources and cultural practices. These inequalities are becoming increasingly visible and troublesome in the global system, especially as law and technology knit together regions in ways that make them more visible to each other. Thus, as Paul Berman argues, "we will need to develop a jurisprudence for an increasingly hybrid world where cultural conceptions [of law] remain crucial, but are in flux."[186] Berman's use of the descriptor "hybrid" could connote merely a mixture and cultures; I extend this definition to say it is a mixture within which there are markedly different relationships to power, and those relationships are informed by dynamics of coloniality. I contribute to the project outlined by Berman, but in service of the goal defined by Chon: drawing on the literatures above and empirical work to follow, to synthesize a decolonized jurisprudence of copyright. I begin in the next chapter by historicizing current dynamics in Jamaican musicking, in order to understand the roots of these practices in material and political conditions and thus better understand how these dynamics respond to cultural, political, economic and technological changes.

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[184] Mark Campbell describes how "the English language works to make the native believe in a fabricated cultural hierarchy." Mark Campbell, "Indigenous Knowledge in Jamaica: A Tool of Ideology in a Neo-Colonial Context," in *Anti-Colonialism and Education*, ed. George J. Sefa Dei and Arlo Kempf (Boston: Sense Publishers, 2006), 197; "Jamaican newspapers. . . are full of denunciations of Jamaican patois by educators, politicians and other people in power." McWhorter, *The Word on the Street*, 46.

[185] Quijano, "Coloniality of Power, Eurocentrism, and Latin America"; Moraña, Dussel, and Jáuregui, *Coloniality at Large*; Escobar, "Beyond the Third World"; Walter Mignolo, "Introduction: Coloniality of Power and De-Colonial Thinking," *Cultural Studies* 21, no. 2/3 (May 2007): 155–167.

[186] Paul Schiff Berman, "The Enduring Connections Between Law and Culture: Reviewing Lawrence Rosen, Law as Culture, and Oscar Chase, Law, Culture, and Ritual," *American Journal of Comparative Law* 57, no. 101 (2009): 257.

Chapter 2

A History of Jamaican Musicking

Introduction

In the following brief history of Jamaican musicking, I will highlight key aspects of Jamaican musicking evident within and throughout its different eras. While not comprehensive, the history below shows how cultural contexts shape specific responses and practices, and how those responses and practices aligned along principal characteristics: Jamaican musicking has had, at least since the era of the radio, a global, syncretic practice with distinctive methods of technological engagement, and a complex relationship to state power.

A Glossary of actors

For clarity, I offer the following rough glossary of musickers for the history discussion below. Although various musickers at various times have been recognized by legal or commercial entities as authors and owners, the ability to claim copyright ownership depends on musickers' changing relationship to law and power, rather than due to anything intrinsic about their creative practices. Categorizing musickers is useful for situating them in relation to particular traditions and material relations. But we must not reify these categories into fixed relationships to rights and creativity. For example, I use the term "instrumentalists" to describe those who use traditionally defined musical instruments such as guitar, bass, or drums, while applying the term "DJs" and "soundmen" to those who use turntables, CD players, laptops and mixing boards to make a live performance (and to manipulate sounds during the recording process). Although all are musicians, in the sense of having technical expertise and artistic voice, I separate the DJs and soundmen because their instruments rely on creative elements (sound effects, speed, pitch, and selection of recordings) that easily bring them into contradiction with copyright law. However, the conceptual separation is not inherent to their creative practice, only in relation to specific definitions of copyright.

The following terms do not define or justify a particular relationship to copyright or to the ownership and control of the music they help to create. All of these roles may overlap, and creativity cannot be understood as de facto associated with any one role.

- "Instrumentalists" - people who play traditionally defined musical instruments such as the guitar, bass, keyboards, or percussion.
- "Vocalists" - people who sing, chant, or rap
- "Artists" - instrumentalists and vocalists
- "DJs" - people who use pre-recorded songs to make a live performance using a device like a CD player, laptop, or turntable
- "Soundmen" – the owner-operators of the soundsystems on which DJs perform. "Soundman" is a title, and a position of authority in Jamaican culture. A soundman can

sometimes also be a DJ or an engineer himself, but the term denotes ownership or control and expertise with respect to the sound system.

- "Engineers" – the technicians in recording studios or at live musical events who are in charge of the mixing board (a device that processes audio signals from turntables or instruments). An engineer uses the mixing board to adjust volume or other qualities of various audio signals simultaneous with live broadcast or recording.

- "Dancers" - While many audience members dance, I use the term "dancer" to describe someone known for dancing, or who is paid or receives material rewards for dancing[1]

In addition to all these musical contributors, prestigious audience members may themselves be paid or otherwise compensated for attending events; this includes audience members who are respected instrumentalists, vocalists, DJs, fashion designers, models or other persons that event promoters consider important to musicking. Although there are a wide range of roles for musickers, and varying levels of prestige and power within the music scene as well as outside, differences among people and practices are deeply structured by Jamaica's particular race and class politics as defined through the lens of colonialism.

Jamaican Music and the poor

The poor, particularly the urban poor, are the primary creators and audience for Jamaican popular music,[2] musicking's social meaning through its interactions with formal institutions reflects class and race dynamics in every arena of life. From the earliest era of Jamaican recorded music in the 1940s, the island's musical talent has come from "downtown" in the neighborhoods of the urban poor majority.[3] For example, in Kingston (Jamaica's capital) in the 1940s through the 1960s, the Alpha Boys School, an orphanage for troubled youth, was the home and training ground for a majority of instrumentalists who defined Jamaican music for well over a generation, some of whom are still performing today.[4] In fact, Alpha and another reform school, the Stony Hill Reformatory for Boys, trained youths in musicianship skills, and remain the longest-running (and for many years the only) music schools on the island. Musicking's association with reform schools added to its disreputable air among the Jamaican upper class.[5] Of musickers who did not come from reform schools, the majority of vocalists, instrumentalists, dancers, nightclubs, and street dances originate from poor communities in Kingston, while the wealthy live "uptown" in secluded, gated, guarded areas.[6] The sites and technologies of recorded music production, i.e.

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[1] Jeff Todd Titon and Bob Carlin, *American Musical Traditions: African American Music* (New York: Schirmer Reference, 2002), 117.
[2] Dennis Howard, "Punching For Recognition: The Juke Box as a Key Instrument in the Development of Popular Jamaican Music," *Caribbean Quarterly* 53, no. 4 (2007): 42; Bradley, *Bass Culture*, 279; Katz, *Solid Foundation*, 31; Stanley-Niaah, *DanceHall*, 1.
[3] Stanley-Niaah, "Kingstons's Dancehall," 102; Stolzoff, *Wake the Town & Tell the People*, 62, 147.
[4] Martin Mordecai and Pamela Mordecai, *Culture and Customs of Jamaica* (Westport, CT: Greenwood Publishing Group, 2001), 140; Katz, *Solid Foundation*, 39–40, 61, 117, 156, 158; Bradley, *Bass Culture*, 122.
[5] Stolzoff quotes Jamaican musician Hedley Jones, "It was generally understood that boys who emerged from these institutions because… they "had nothing better to do." Stolzoff, *Wake the Town & Tell the People*, 37.
[6] Alhough, like many Jamaicans and scholars of Jamaican culture, I use "uptown" and "downtown" as conceptual shorthand for upper class and poor Jamaicans, and this terminology also reflects a geographical division within

recording studios, have historically (and currently remain) concentrated in the poor neighborhoods on the island.[7] Lastly, in terms of sonic references[8] and subject matter, the lives and experiences of the poor dominate Jamaican popular music, and patois (the dialect spoken by the poor majority) continues to dominate lyrics.[9]

The association between Jamaican musicking and the poor reveals a key aspect of the social function of musicking in Jamaican society. Since the 1950s, musicking has helped Jamaicans "formulate responses to the pressures of urban Jamaica, poverty, ghetto survival, the prevalence of the gun, and the sociological impact of the transnational politics of the drug trade."[10]

To understand how law affects musicking requires a basic familiarity with the role of law in Jamaican life, especially in relation to the poor. As we will see below, many official cultural institutions have been hostile to poor people's culture. But the Jamaican state has had a more complex relationship with poor people, at once validating and denigrating their outsider status with respect to law. This relationship helps to explain why the Jamaican poor might not believe in the law as an impartial system to be trusted in allocating benefits based on written policy.

The law is written and enforced by elected officials who in Jamaica have come from the two political parties, the Jamaica Labour Party (JLP) and the People's National Party (PNP). Well before independence in 1962, the JLP and PNP would recruit party members and reward them for their support with government jobs.[11] These clientilistic relationships developed at the neighborhood level as well. Party allegiance meant that when a particular party was ascendant, its members (or their neighborhood) would more likely receive services like running water and paved roads.

The connection between parties and neighborhoods also had more bloody significance. Both parties recruited from the Kingston poor, armed disaffected young men and sent them to violently disrupt rallies and party meetings of the opposition. As poor neighborhoods aligned themselves with one party or the other and armed themselves accordingly, these neighborhoods

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Kingston, Robotham points out that mapping of class did not really solidify until the 1960s and 70s. Robotham, "How Kingston Was Wounded."

[7] The "Big Three" recording studios that dominated Jamaican music for several decades were all located in poor neighborhoods (Studio 1 on Brentford Rd, and Prince Buster's Studio in downtown Kingston, while many of the historic studios such as King Tubby's and King Jammy's were in "garrison" communities–poor areas often dominated by gangs originally armed by rival political parties in the political unrest of the 1970s. Katz, *Solid Foundation*, 341.

[8] I use the term "sonic reference" to describe an audible recreation of a sound one has heard before, so that the listener makes a symbolic or emotional association between the memory and the current experience of hearing the sound. A reference could evoke emotional responses based on the memories on has had of hearing a sound before, or based on shared musical knowledge between the listener and the producer or performer of the song. It also can function like a reference or citation in a scholarly work – making explicit a connection with a tradition, identity, or community through naming or evoking someone that already represents it.

[9] Bradley, *Bass Culture*, 306; Chang and Chen, *Reggae Routes*, 74, 94; Stolzoff, *Wake the Town & Tell the People*, 3, 67, 98, 141, 147, 233; Katz, *Solid Foundation*, 31; Kozul-Wright and Stanbury, *Becoming a Globally Competitive Player*, 18.

[10] Collins, "Raggamuffin Cultural Studies," 71–2.

[11] Gray, *Demeaned but Empowered*, 27, 32; George. E. Eaton, *Alexander Bustamante and Modern Jamaica* (Kingston, Jamaica: Kingston Publishers, 1975), 123.

developed into "garrisons" or "garrison communities."[12] Such militaristic language evokes inhabitants' function as the de facto armies of the political parties, who saw their own neighborhoods as part of the battlefield. Although levels of violence have fluctuated, it has often been unsafe for a resident from a JLP area to cross the street to a PNP area. Inter-neighborhood factionalism regularly exploded into murderous violence, peaking around election time, with each party decrying the other for its unruliness and violence.[13]

Despite the state's reliance on the poor for political power, Jamaican elites: wealthy, usually lighter-skinned Jamaicans, united in denigrating culture associated with the poor, primarily dark-skinned Jamaicans.[14] Elites associated popular music and its musickers with moral failings quite consistent with colonial hierarchies of power and taste, doing so consistently over time with whatever music was popular among the poor.[15]

This hostility was evident in Jamaican radio and mass media, as well as Jamaican public education and other state-run interventions into Jamaican cultural life.[16] The remnants of a colonial attitude in which many elites strove to imitate colonial values and associate themselves with colonially defined identity meant that upperclass Jamaicans "sought to define [themselves] on the standards of a global bourgeois class, [which] meant adopting the consumption patterns of the West and acquiring its cultural capital."[17] If radio programmers had wished to appeal to the widest possible audience based on existing tastes, they would have broadcast local sounds much earlier. Instead, government radio programming avoided the music associated with the poor.[18]

Lyrics portraying experiences and attitudes popular among the poor spurred condemnation in bastions of middle-class respectability such as The Daily Gleaner, Jamaica's national newspaper. Whether in relation to depictions of alienation from police ("What The Hell The Police Can Do," 1986) or of expressive sexuality ("Fat Pumpum," 1965 ["pumpum" being slang for women's genitalia]; "Ramping Shop," 2009 [containing explicit descriptions of sexual acts from male and female perspectives]),[19] Popular music continually generated outrage from from ministers, government officials, professors, and other elites criticizing popular music as degenerate. The outrage continues to the present day: one dramatic letter from 2009 specifically

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[12] Aldrie Henry-Lee, "The Nature of Poverty in the Garrison Constituencies in Jamaica," *Environment and Urbanization* 17, no. 2 (2005): 120.
[13] Gray, *Demeaned but Empowered*, 7.
[14] Stanley-Niaah, *DanceHall*, 114.
[15] Dennis Howard, "Setting the Record Straight on Slackness," Music Journalism and History, *Kingston Outpost*, March 2009, http://dennishoward.blogspot.com/2009/03/setting-record-straight-on-slackness.html.
[16] Stolzoff, *Wake the Town & Tell the People*, 233; Hintzen, "Reproducing Domination: Identity and Legitimacy Constructs in the West Indies," 70.
[17] Kamugisha, "The Coloniality of Citizenship in the Contemporary Anglophone Caribbean," 20, 25, 49.
[18] Hintzen describes the colonial politics of taste in the Caribbean. "To critique the desire for those tastes from a cultural nationalist position quickly risks being fruitless, as 'such tastes are no longer understood as "foreign," "white" or "colonial." They are the "styles" and "tastes" of development, and modernity's prerequisites for equality." Percy C. Hintzen, "The Caribbean: Race and Creole Ethnicity," *A Companion to Racial and Ethnic Studies* (2002): 493.
[19] Roderick Hewitt, "Slackness and the Moral Order in Jamaican Culture," *Jamaica Gleaner Online* (Kingston, Jamaica, September 4, 2004), http://www.jamaica-gleaner.com/gleaner/20010904/cleisure/cleisure4.html; Stolzoff, *Wake the Town & Tell the People*, 223.

condemns academics for lending popular music unwarranted credibility through pursuing it as a subject of scholarly research.[20]

Upper-class hostility to popular music even led pioneers in performance and recording to downplay their association with local music (including potential copyright ownership), so as to maintain association with uptown musical institutions. For example, guitarist Ernest Ranglin is widely credited with inventing the hugely influential "ska" guitar style, precursor to reggae and foundation of a musical genre; however, the recording in which the sound was debuted ("Shuffling Bug") did not credit Ranglin. Rather than bemoaning this fact, Ranglin later said:

> I didn't want to front it [claim authorship]. It was ghetto music and in Jamaican they used to put that music down…there were so many tunes I was responsible for but I didn't go in front of them because I also had to be playing up at the society functions and the hotel dances, and there they would be looking down on me. Maybe I wouldn't get enough work.[21]

Jamaican bands made money primarily by playing music to elites, who were, at best, uninterested in the music of the poor, or at worst actively excluding it from venues over which they had control.[22] As we will see, the results of this exclusion have not been entirely negative, and have led to sites of creativity not as closely aligned with the interests of the elite. The urban poor majority became the arbiters of their own kind of respectability, not dependent upon the upper classes for approval.[23] Poor communities' relative cultural autonomy from colonial elites was and remains a contributing factor to the way that popular culture has functioned as a site of repair and resistance for socially marginalized people.[24]

Pre-1954: The early era of diasporic expression

While the colonial elite amused themselves mainly with music reflecting upper-class English tastes, the poor majority, comprised of African-descended people, plus a tiny middle class of Chinese, Indian, Lebanese and light-skinned people of mixed descent, were developing popular music informed by their experiences. The sonic roots and tendencies in popular music arose from the realities of Jamaican life since its creation as a British colony.

Out of Many (musics), one music: Centering syncretism

Early Jamaican musicking combined instrumental, drumming and singing practices that drew on many traditions, including African music, the culture of the British enslavers, the Indian

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[20] Daraine Luton, "On the Dancehall Bandwagon - Local Academics Being Blamed for Falling Standards," *Jamaica Gleaner Online*, December 27, 2009, http://jamaica-gleaner.com/gleaner/20091227/lead/lead4.html.
[21] Quoted in Bradley, *Bass Culture*, 55.
[22] Mordecai and Mordecai, *Culture and Customs of Jamaica*, 140.
[23] Cooper, *Noises in the Blood*, 41 The dancehall creates a "radical underground confrontation with the patriarchal gender ideology and the pious morality of fundamentalist Jamaican society."
[24] "Whatever influence the materially deprived and socially marginal urban lower class exercised in the society… came largely from the group's historical occupancy and creative use of what may be termed exilic social space… a social site for dissidence and the repair of cultural injuries." Gray, *Demeaned but Empowered*, 92.

and Chinese (who first came as indentured servants and whose children often became shopkeepers and later studio owners), as well as religious music— both British Protestant and various African traditions. Even as the first Jamaican-identified genres developed, they had within them the seeds of Jamaica's colonial past and present. For example, historically the first identified Jamaican music is called *Mento* (dating back to the 1920s) which incorporates acoustic instruments such as a banjo, as well as the Mbira or Rhumba Box (a large thumb piano of African origin) a fife or pennywhistle from British military band tradition, and hand drums all played alongside witty lyrics in Jamaican-inflected patois, also informed by Trinidadian calypso.[25]

As radios and record players began to spread across the globe and reached the island, they remained relatively expensive in Jamaica, and appeared first in the houses of the elites and only in social spaces for the poor, where many people could gather around a single speaker or set of speakers.[26] At first, recorded music was played to audiences on no more than a radio at a house party, bar, or shop. Shop owners in particular were vectors for social enjoyment of musicking, as in order to attract customers they invested in radios and quickly expanded their capacity to include larger speakers with which to entertain more customers.[27] Clement Dodd, who became one of the most important studio owners in the history of Jamaican music, began operations in his mother's grocery shop. Dodd relates:

> We had a very big Murphy radio…so what I did was bought me a Garrad changer; plug it into the radio, make and extension box from our room to the front of the shop. On account of that we had to stay open late, and my mother did a lot of business.[28]

Duke Reid, who later established one of the other biggest studios (Trojan records), began by playing records in the parking lot of his liquor store. As people gathered to drink and enjoy the music, they also danced.[29] Alongside liquor stores, these social events occurred in yards, driveways and lawns in the late 1930s, primarily in the poorer neighborhoods, where one could take up space and make noise without being shut down by police. Uptown, dances occurred in private venues, more often accompanied by live bands, and usually not playing the same music as was popular downtown.[30]

Radio on the island from the 1930s to 1950 was entirely foreign-owned and did not reflect the tastes of those on the island.[31] The poor chose to look elsewhere for cultural influences, which was then possible as soon as Jamaican radio receivers could pick up broadcasts from Louisiana, Texas, as well as neighboring islands like Trinidad (shortwave radio owners could also receive broadcasts from New York). Country, calypso, New Orleans-style and big

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[25] G. White, "The Evolution of Jamaican Music, Part I:' Proto-Ska' to Ska," *Social and Economic Studies* (1998): 9; Witmer, " Local' and' Foreign."
[26] Katz, *Solid Foundation*, 99, 116; Paul Kauppila, "'From Memphis to Kingston': An Investigation into the Origin of Jamaican Ska," *Social and Economic Studies* (2006): 75–91; Stolzoff, *Wake the Town & Tell the People*, 38.
[27] Katz, *Solid Foundation*, 3.
[28] White, "The Development of Jamaican Popular Music, Part 2. Urbanization of the Folk: The Merger of Traditional and Popular in Jamaican Music," 50.
[29] Katz, *Solid Foundation*, 4, 20.
[30] Bradley, *Bass Culture*, 61; Katz, *Solid Foundation*, 56.
[31] Witmer, " Local' and' Foreign," 8.

band jazz, along with (R&B), became popular with the island's poor majority.[32] Eventually local bands developed. In the beginning they played "covers" (instrumentalists and singers replaying the songs exactly) of radio hits, but soon developed local genres: Mento and an adaptation of R&B called "Blue Beat."

Jamaican live bands made less money playing for the poor than for the upper class. As illustrated by Ernest Ranglin's comment, venues for live music were uptown in hotels and at formal dances. The upper-class interest in live music shaped how recordings came to be used in Jamaican popular music. Hiring an entire band was expensive but as people wished to engage with music socially, musical entrepreneurs and promoters continued a focus on broadcasting or replaying recordings, first via larger radios, and eventually investing in turntables that played vinyl records, and finally, increasingly impressive speaker systems.[33]

The international reach of radios, and the popularity of foreign music was supported by Jamaicans' migration patterns. The era immediately following World War II saw massive migration from Jamaica, as postwar labor shortages inspired the UK to offer colonial subjects free transport and jobs. The first ship to the UK arrived in 1948, laden with Jamaicans and their musical tastes. This expatriate community formed the basis of what became a sizable British-Jamaican community, and a future market for Jamaican recordings.

Copyright Law in the early era

While it remained a colony of Britain (until 1962), Jamaica was bound by the British Copyright Act of 1911, which defined ownership of copyright as dependent on a work in fixed form (i.e., written or recorded in an unchanging format), to be owned by someone who was identified as "the creator or someone who caused the recording to happen" and specified that the work had to be "original." The Act also required a license for derivative works, defined as works of creativity that incorporate pre-existing copyrighted works. Because practices popular among the Jamaican poor were often collective, collaborative and iterative (revisiting and reusing the same musical elements repeatedly over time), copyright enforcement would have been very difficult, had it been attempted. Conversely, if copyright had been enforced, popular traditions of Jamaican musicking would have become difficult to maintain or simply illegal.[34] Practices such as playing recordings at a dance would have required a license from the copyright owner. In addition, any recording that made use of a copyrighted work, for example as a backing track for a new artist to sing over, also required a license from copyright owners in that recording.

The one entity on the island, which received the task of making copyright work for copyright owners was the Performing Rights Society (PRS) a British organization that tracked performance rights at official venues and Jamaican radio. They expended little energy on their task. The PRS had begun by managing the rights to already-copyrighted music originating mainly outside of Jamaica, as few locally produced musical recordings appeared until 1954. Even after local recording took off in the 1950s and 60s, the PRS did not focus on Jamaican

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[32] Stolzoff, *Wake the Town & Tell the People*, 36, 38; Grant Fared, "Wailin' Soul: Reggae's Debt to Black American Music," in *Soul: Black Power, Politics, and Pleasure*, ed. Richard C. Green (New York: New York University Press, 1998), 68.
[33] Stolzoff, *Wake the Town & Tell the People*, 42.
[34] Toynbee, "Reggae Open Source."

artists as potential members.[35] The rights management agency functioned mainly to transfer money off the island. Because of low membership of Jamaican artists and the fact that their recordings were not well represented in venues likely to be tracked. even had the PRS been more energetic or focused on enforcement in the early era, it likely could not have served to collect and distribute much income to local musickers. In the absence of a close relationship to copyright, Jamaican musickers developed traditions of reuse without considering that permission was required.[36]

1954-1970: The rise of phonographic orality

1954 marks a key landmark in Jamaican musicking in the context of copyright. In 1954, local entrepreneur Ken Khouri founded Federal Records, the first Jamaican music studio and pressing plant.[37] Since Jamaican copyright attaches to musical works in fixed form and Jamaican music-making was not centered on written music,[38] the advent of the recording studio marks the moment when Jamaicans might sensibly see copyright law as relevant to their interests.

Before a local recording studio existed, recordings circulating on the island would have primarily been copyrighted to the foreigners who made them, and copyright enforcement would have simply transferred more money away from Jamaicans. In fact, Khouri had been an importer of foreign music, and he created Federal Records principally to save himself the cost of importing foreign records. (Such an operation involved obtaining a mechanical license from foreign copyright owners to press their music to vinyl in Jamaica.[39]) Thus the first Jamaican pressing plant did not contribute initially to local copyright ownership.

Alongside ongoing material limitations on Jamaicans' ability to monitor or control music use, longstanding creative practices meant monitoring and control were irrelevant to local musickers' interests and traditions, or at least irrelevant in terms of copyright law. The early dominance of broadcast and playback technology as a site of public engagement made possible a key characteristic of Jamaican musicking that continues to this day: what Jason Toynbee has called "phonographic orality,"[40] or the incorporation of recordings into a live, social, interactive performance. The phenomenon of phonographic orality arose out of moments when people gathered around, danced to, and sang along with radios and jukeboxes.[41]

This distinctly Jamaican cultural practice was developing alongside a changing political climate. In the years before independence in 1962, a growing movement began to explicitly resist British colonial power. This movement influenced the local Jamaican government to found a

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[35] Heather Royes and Tom Tavares-Finson, "Current Status of Copyright Legislation in Jamaica," *Jamaica Journal* 16, no. 1 (1983): 14–18.
[36] Kozul-Wright and Stanbury, *Becoming a Globally Competitive Player*, 31; Krister Malm and Roger Wallis, *Media Policy and Music Activity* (Taylor & Francis, 1992), 57.
[37] Khouri partnered with future Prime Minister Edward Seaga. Katz, *Solid Foundation*, 13; Derné and Nurse, *Caribbean Economies and Global Restructuring*, 17; Seaga's savvy with respect to the importance of music to the Jamaican poor is relevant to his success as a politician. See also Gray, *Demeaned but Empowered*, on the importance of poor people's culture to the Jamaican State.
[38] However, some musicians did sell printed song scores. Stolzoff, *Wake the Town & Tell the People*, 37.
[39] Bradley, *Bass Culture*, 24.
[40] Toynbee, "Copyright, the Work and Phonographic Orality," 2.
[41] Howard, "Punching For Recognition."

local radio station in order to promote national consciousness. In 1959 the government founded the JBC and began two radio stations, one of them "independent" but in a minority of shares, and a station that was fully state-owned. Both stations espoused a noncommercial, cultural mission. Norman Manley, Premier of Jamaica argued that:

> There are definite limitations to the service that can be rendered by a privately owned broadcasting company operating primarily as a profitable enterprise and depending entirely on commercial revenue to finance its operation… [There are] special needs…in the fields of self-expression, culture, information and entertainment that require a less commercial format.[42]

However, the changing political climate failed to align Jamaican radio broadcasting with the majority of people on the island. Again, class concerns, defined on colonial terms, put white Britain and those who most resembled it at the top, politically, economically and culturally. The more formal, "uptown" and official venues for enjoying live music, such as hotels and concert halls continued to avoid music associated with the poor.[43]

Without official support, Jamaican popular music spaces and events—at least partly controlled by the poor and marginalized in Jamaican society—reflected local tastes. Small-scale businesses housing jukeboxes or turntables (owned by those at the margins of upper and lower classes) hosted social events, which grew in popularity and soon necessitated larger speakers and more elaborate sound equipment—and thus the soundsystem was born.[44]

The Soundsystem: a Cluster of technosocial energy

Over the 1960s and 70s, the use of radios and jukeboxes developed into the more powerful entities of music-making, called soundsystems. Soundsystem is a complex term denoting a collective entity consisting of both the technology and the human beings who use it. The technological aspect of the soundsystem is the collection of devices for playing back, amplifying, singing over and manipulating musical recordings. Initially the machinery of a soundsystem consisted of the standard components of turntable (for playing recordings) and an amplifier and speakers with which to broadcast the sound. But the full meaning of the soundsystem also includes the actual "soundman," responsible for building and maintaining the technology, and the "selector" (or DJ) who selects and plays the records.[45] DJs added another layer of interactivity in music-making at dances by speaking or chanting over the music using a microphone, as well as sometimes interacting with the recording itself by manipulating the turntable or the record. In Jamaica the term "soundsystem " can also connote a collective entity,

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[42] Quoted in Hopeton S. Dunn, *Globalization, Communications, and Caribbean Identity*, 1st ed. (New York: St. Martin's Press, 1995), 201.
[43] White, "The Development of Jamaican Popular Music, Part 2. Urbanization of the Folk: The Merger of Traditional and Popular in Jamaican Music," 50–2; Katz, *Solid Foundation*, 174; Hebdige, *Cut'n'Mix*, 45.
[44] Katz, *Solid Foundation*, 3, 116; Julian Henriques, "Sonic Diaspora, Vibrations, and Rhythm: Thinking Through the Sounding of the Jamaican Dancehall Session," *African and Black Diaspora: An International Journal* 1, no. 2 (2008): 455.
[45] Katz, *Solid Foundation*, 3.

which includes other people associated with the system alongside the DJ and the soundman, such as dancers, and nowadays, videographers (although they can be freelance as well).

Soundsystems as collective entities formalized and developed phonographic orality to new heights, by incorporating recordings into live performance through the use of turntables. As Simon Jones puts it: "the technological means of musical reproduction … have been humanised and transformed … as musical instruments in themselves."[46] Recordings were also transformed: into materials for DJs, vocalists, and dancers to work with, rather than as finished musical objects for the purchasing public.[47] Soundsystems existed for the purpose of these performative moments, and the rest of the music industry grew around them. Scholars of Jamaican music have focused on the soundsystem as a cluster of equipment and expertise that is crucial to understanding Jamaican musicking.[48] Soundsystems are a logical unit of study, as concentrations of technology, expertise with a collective public persona.

With evocative names like Merritone, Voice of the People, or Kilimanjaro, soundsystems have competed with each other at events called "sound clashes," dramatic events at which rival systems set up in the same space, alternating tunes or selections of tunes (similarly to jazz performances, also called "sets"), competing for crowd response. This rivalry has kept the focus on innovation, as soundmen's "survival and keeping ahead of one's opponents depended on wits, originality and improvisation."[49]

A soundman uses turntables and mixing boards to improvise, display their skill and to communicate. However, contrary to ideas of conventional music-making in the West, where a composer writes something wholly new, in this case of "originality," the soundman does not create the songs used in the performance—instead the term describes how and what he adds to existing recordings with the performative tools at his disposal. Soundsystems, then, incorporate the technological aspects of phonographic orality: devices that play, manipulate and broadcast recorded sound, and highlight the creativity inherent in playing recordings, even as this kind of creativity remains outside that rewarded by copyright law.

Originality, in the Jamaican context, depended on subverting technology intended for transmission-only into an interpretative and creative tool, making creative decisions about how one interacts with recordings, and about how one engages with an audience. This definition of originality persists today: whether playing turntables or CD players, the DJ's creativity comes from the order and choice of particular recordings ("track selections"), and the ways she or he combines songs—sometimes layering and overlapping songs together, manipulating recordings so as to make different sounds or sound effects (a skill that led to the creation of "scratching" in hip-hop), speaking or singing along with recordings, offering commentary, or interrupting the music in order to engage with or educate an audience.

That said, soundsystems do not fully capture the dynamic of Jamaican creativity. Audiences have also been integral to the musical creative process, as active participants in a

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[46] Jones, *Black Culture, White Youth*, 30.
[47] White, "The Development of Jamaican Popular Music, Part 2. Urbanization of the Folk: The Merger of Traditional and Popular in Jamaican Music," 50.
[48] "Sound systems . . . are still the primary mode of musical dissemination." Chang and Chen, *Reggae Routes*, 175; Katz, *Solid Foundation*; Stolzoff, *Wake the Town & Tell the People*; Witmer, " Local' and' Foreign," 15.
[49] Jones, *Black Culture, White Youth*, 19.

cycle of sharing, judging, consuming, and influencing music production and performance. Bunny Lee, a popular producer, described how

> Producers, including myself, would have to stay around a lot of soundsystems to see what people were doing, which records, or bits of records, the crowds were reacting to.[50]

Although Lee identifies soundsystems as entities producers want to follow, his reference to "people" and "crowds" reveals that the other important element in soundsystem performance is the audience response. A poor audience response could prevent a record from being released, while a good response benefitted the DJ, enhanced producers' and studios' reputation, and sent valuable feedback to producers and DJs that they incorporated into future creative decisions.

One example of audience interaction that provided immediate feedback as well as becoming a creative contribution is the practice of demanding a DJ "lick back" a tune (spin the record backwards on the turntable in order to restart it from the beginning) Derrick Harriot, a Jamaican musician, described a scene from his musical experiences in Jamaica in the 1960s. Having recorded a tune that took off: "[the tune] became such a hit that frequently the operator [soundman] would have to lick it back ten times before the people let him take it off."[51] Practices such as "licking back" or "pulling up" became part of the DJ's repertoire in response to crowd demands. Eventually some producers would incorporate the sound of a record being licked back into a recording, as an assertion of a tune's intrinsic value.

Licking back is but one of a DJ's repertoire of skills. I provide an example from my fieldnotes at a popular street dance that reveals the various artistic choices a DJ makes, as well as revealing and the crowd response as part of an interactive, dynamic experience. I had watched the night develop and saw the DJ demonstrate the skills of song selection in a way that evoked a particular response from the crowd, but was also responsive to the crowd's expectations and signals:

> At the beginning of the night, the DJ was playing mostly American R&B and pop, familiar songs but nothing wildly popular with the audience. As the crowd began to filter in, he began to switch to different kinds of music, songs that referenced earlier Jamaican musical history – especially songs from the early1990s – the era when Jamaican dancehall music reached global popularity. It was older music, and the content and sonic qualities were very different than the smooth, slick, bright layers of 2000s hip-hop and R&B. I felt the music was signaling its Jamaican-ness through its inclusion of songs and samples from an earlier era. The audience members around me had seemed to know and like the R&B well enough, dancing and nodding along, but they responded more energetically to the change in sound as it shifted to recordings crafted and popular in Jamaica. At a certain point the DJ brought in another song that had been a hit in the 90s – probably around the time that

[50] Bradley, *Bass Culture*, 203.
[51] Quoted in ibid., 40.

> most of this late-20s crowd had first started to hear popular music. In response quite a few people waved their hands in the air and imitated gunshots (waving "gun hands" in the air and shouting "blaow blaow" to imitate the sound of a gun fired in the air in appreciation). At this audience outburst, the DJ "pulled up" the record for the first time that night, spinning it so that it ran backward for a moment with a distinctive sound and dramatic gesture, arm raised high. He then restarted the song. The DJ also spoke over the microphone, boasting about his knowledge compared to other DJs – while demonstrating his access and familiarity with classic tunes. The audience's energy continued to build, and then the DJ hit what felt like the first peak of the night, played a more classic – sounding tune, but an update of an old song - it actually combines an instrumental that was first recorded in the 1970s and remains wildly popular, with Bounty Killer, a currently respected vocalist, singing new lyrics on top of it. That felt like the DJ was bringing it up to the present, since Bounty Killer was big in the news around the time that this event was happening.
>
> Field notes, January 2009

Many elements of the DJ's musical creativity demonstrate values unconcerned with those of performance on traditional musical instruments or instrumental virtuosity. But this DJ performed like a virtuoso with the materials at hand: turntables, microphone, and effects (sometimes simply by adjusting volume, treble and bass levels). He had also mastered interjecting live performative elements, and most importantly of all, he demonstrated great skill in strategically juxtaposing songs to create a narrative and interactive musical experience, which reflected an awareness of popular news and controversies of the day, as well as of Jamaican musical history and the collective memory of the audience. Thus his songs resonated with his audience. Many aspects of this performance style date back to the early soundsystem era as described above by Bunny Lee and Derrick Harriott.

As well as being integral to the creative process, the audience has been integral to soundsystems' financial survival. Audiences spent money on liquor and related goods at the dance, from which soundmen either directly profited (in the case of Duke Reid's liquor store, mentioned earlier) or received a percentage.

These relationships between audience, soundman, and the community reveal how the street dance crystallizes musicking as a source of social power on several axes. Economically, street dances were events at which people could pursue economic interactions framed by local, personal relationships, which were generally more equal (because the majority of people there were poor), and also more flexible than in the formal economic system. Culturally, because street dances centered on downtown tastes, they became places to affirm poor people's culture in the

face of discrimination and exclusion by elites. Poor people's culture, as made in the dances, was also particularly syncretic.[52]

Soundsystem DJs capitalized on the local tastes for jazz, R&B, country and calypso, remaining under the official radar and showing little allegiance to the cultural concerns of Jamaican elites. While "official" respectability turned on foreign and upper-class tastes and sounds, the public became increasingly focused on downtown locations. This strengthened denizens of poorer communities' role as arbiters of popular music.

By 1960, rock and roll began to dominate the US airwaves, pushing off the R&B, jazz and soul favored by Jamaican listeners. Jamaican soundmen branched out into recording studios and record labels, beginning to record Jamaican artists.[53] At first they mainly recorded Jamaican versions of foreign tunes, reusing foreign-made recordings in the studio, with local vocalists singing over imported instrumentals.[54] However it did not take long for studios to hire local instrumentalists. As instrumentalists and audience tastes developed together, eventually the sound began to change.

Local instrumentalists, as well as vocalists, had begun by replaying versions of foreign songs,[55] and, over time, began adding their own compositions, while incorporating quotations and sonic elements of local and foreign origin.[56] These new compositions, and the growing number of Jamaican-trained instrumentalists, notably graduates of the Alpha Boys school, took on a distinctive sonic character that developed into its own genre: ska.[57] Instrumentalists' training in jazz, US marching band music and R&B, and locally popular sounds like Mento (see p. 87 for definition) shaped the sound of ska. A generation of instrumentalists developed, recording ska in the downtown studios while still playing jazz, calypso and other music not associated with the poor in uptown hotels.

These artists grew into a common pool of talent on which various studios drew. Virtually the same instrumentalists played on tunes in rival studios tunes, and the "band" was identified usually with the name of the soundsystem, the exact line-up often shifting from song to song. Instrumentalists were paid according to the number of songs they could produce in a studio session, or paid wages for time in the studio.[58]

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[52] Stanley-Niaah, *DanceHall*, 119; Cooper, *Noises in the Blood*, 11, 123,141; Cooper also evokes exilic space when describing the lyrical practices of Jamaican popular music as "verbal marronage"–marronage is the practice of slaves escaping from their enslavers and forming independent communities. Carolyn Cooper, "Slackness Hiding from Culture: Erotic Play in the Dancehall," *Jamaica Journal* 22, no. 4 (1989): 12.

[53] Fared, "Wailin' Soul," 68.

[54] Manuel and Marshall, "The Riddim Method," 449; Katz, *Solid Foundation*, 28, 74.

[55] Mark Slobin, *Subcultural Sounds: Micromusics of the West* (Middletown, CT: Wesleyan University Press, 1993), 64.

[56] The Gaylads. "ABC Rocksteady" incorporates lyrics and melody from "Simple Simon" and "Georgie Porgie." ABC Rocksteady, Gay Feet, 1968

[57] Garth White, "The Evolution of Jamaican Music, Part 1:' Proto-Ska' to Ska," *Social and Economic Studies* (1998): 5–19.

[58] Some historians suggest there was a transition from studios paying per song to paying wages. See Bradley, *Bass Culture*, 99 Bradley describes how Coxsone Dodd "took the unprecedented step of putting the nucleus of the island's best musicians on wages, rather than hiring them as'n'when and paying them per side cut [per side of a vinyl record that was recorded]."; See also Okpaluba, "'Free-riding on the Riddim'? Open Source, Copyright Law and Reggae Music in Jamaica," 376.

Musickers fused various influences together to create the upbeat sound of ska in which instrumentalists showcased their virtuosity, while DJs presented the sound, via recordings (and sometimes accompanied by a dancer to demonstrate the latest steps) to the dancing crowds.[59] This meant that ska recordings within Jamaica were directed primarily at soundmen and the dance, rather than private homes and individual purchases. By contrast, the expatriate community in England became an important market for Jamaican recordings, as soundmen quickly set up soundsystems there for a public who could afford to buy recordings and the hi-fi systems on which to play them. By the late 1950s, a network of small, mainly white-owned businesses had developed in the UK that specialized in wholesale importing and retail of calypso and Jamaican R&B.[60] Island Records, founded by white upper class Jamaican Chris Blackwell (who would go on to work with Bob Marley),[61] and based in London, was the largest.

At the same time that Jamaican music was making its mark overseas, the music was also being influenced by the rise of Jamaican national consciousness.[62] This happened primarily through the demands soundsystems began to make for Jamaican music. For example, soundman Prince Buster broke away from Clement Dodd's soundsystem to found a specifically pro-Jamaican-music and pro-music-of-the-poor system. "When I start making records, the chief idea was to start making Jamaican records, and push out that American thing."[63] Prince Buster's own Voice of The People soundsystem perhaps more effectively fulfilled the cultural mission espoused by the JBC, as Buster promoted ska music that was actually played by Jamaicans. Although local bands were increasingly the source of Jamaican recordings, the music's popularity and familiarity was spread by soundsystems, more so than by live performances. This meant that soundsystems influenced the musical choices bands made about what to record.

Continuing Musical syncretism

As the 1960s brought a strong Jamaican identity-building project, studios drew heavily on Jamaican folk traditions and proverbs. At the same time, musickers reworked music drawn from Jamaica's diverse cultural contexts.[64] Representing Jamaica musically, however, did not mean solely using sounds or songs originating in Jamaica. Rather, Jamaican-ness was evoked through a way of engaging with music, even music that was not Jamaican. Ska music, particularly its backbeat guitar technique (involving strumming on the upbeat of every measure), was perfectly suited for reinterpreting soul and rock-and-roll classics, as the guitarist simply strummed the same chords in a different rhythm.[65] Alongside songs penned by Jamaicans, the era saw continual releases of US pop tunes in a ska style which were seen as equally popular as Jamaican-penned tunes, and could evoke Jamaican pride through asserting Jamaican-ness against

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[59] Katz, *Solid Foundation*, 66.
[60] Jones, *Black Culture, White Youth*, 39.
[61] "Chris Blackwell Biography: The Rock and Roll Hall of Fame and Museum," *Rock and Roll Hall of Fame and Museum*, n.d., http://rockhall.com/inductees/chris-blackwell/bio/.
[62] "While the island's inhabitants were struggling to free themselves of their colonial shackles, its musicians were striving to establish a popular music they could truly claim as their own." Katz, *Solid Foundation*, 37.
[63] Bradley, *Bass Culture*, 57.
[64] Stolzoff calls this mixing of cultural references "creolization." Stolzoff, *Wake the Town & Tell the People*, 15; One striking example of creolized culture is "Always together" a Chinese folk tune, sung in Chinese, by Stephen Cheng, a Jamaican-chinese vocalist. Kerry-Ann Morris, *Jamaica* (Milwaukee, WI: Gareth Stevens, 2003), 21.
[65] Bradley, *Bass Culture*, xv.

or in dialogue with pre-existing tunes from the US (see Chapter 3). Such remaking could be in homage, or simply a wish to capitalize upon a pre-existing song's success and familiarity.

Ska music began to mutate into a new genre called rocksteady in the late 1960s. The story of rocksteady origins also highlights how dance events and dancers shaped Jamaican musicking. Rocksteady brings out some of the music elements that would develop into reggae: a slower speed of music with an emphasis on the third beat in the measure, prominent basslines and rhythm section while the guitars and keyboards receded further in the background.[66] The tradition of covering foreign songs continued, with a firm focus on American Soul music.[67] Some instrumentalists describe audiences as complaining at ska's relentlessly upbeat pace, and demanding that music "cool down" (other accounts emphasize an actual heat wave in 1966 as part of this impetus).[68] Bunny Lee, a pioneering producer of rocksteady albums, describes how DJs responded by creating what they called a "Midnight Hour slowdown session" to satisfy the audience. As he related to Lloyd Bradley:

> There was a guy named Busby in Kingston, he was a famous guy…*and him could dance*. Whole heap of people used to follow him to the dance, but when he was in the dance, a whole heap of girls used to go crazy over him because him so good. When the Midnight Hour start up he used to stan' up and just rock steady. Literally. He used to call his dance "the rocksteady" and it was an announcer at [Jamaican radio station] RJR that heard this and pick it up to go with the slower tunes. He used to introduce them by telling listeners, "Now I'm going to play you a brand new rocksteady," and other people used to talk about the dance like, "I see a guy doing the rocksteady the other night." The name jus' catch like wildfire..."[69]

Phonographic Orality in the studio

Phonographic orality involved recording and broadcast technology in a way that dispersed the creative input across the recording and broadcasting process. Rather than music being written first, then recorded, then broadcast, creative input occurred in a cyclical, reflexive way. In the recording studio, instrumentalists and singers' performances were often not written beforehand, but recorded live and etched directly onto an acetate,[70] which could then be played like a record—except that it would wear out more quickly. However the speed of acetate production, and the centrality of the dance meant that many acetates were played out as soon as

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[66] Ibid., 158, 165.
[67] Ibid., 170.
[68] Heathcott, "Urban Spaces and Working-Class Expressions," 196"The frenetic ska beat only exacerbated tensions in the poorly ventilated dance halls. One clever strategy pursued by top ska musicians to curtail the violence involved tinkering with the very sound of ska—the musical accompaniment to working-class youth discontent. That summer, ska outfits began to slow down the tempo of the tunes in order to promote a more harmonious dance floor, often reducing the beats per minute by half. This practice swept rapidly across the island, and by mid-summer, recording studios were cranking out slow-tempo singles that would eventually be called rocksteady records."
[69] Bradley, *Bass Culture*, 160.
[70] An acetate is the first recording made of an audio performance in the era of vinyl records. Acetates were the first, or "master" recording from which a "stamper" or metal plate was made which could be used to press more records.

they were pressed.[71] Audience response would dictate when (if ever) a recording would go to mass production, and would also influence whether any further changes would be made to the song. For mass reproduction, an acetate would be cut onto a metal plate (a "master"), which could then stamp the recorded information onto vinyl. The engineer in the studio was responsible for arranging the sound recording equipment to get the best sound. There were not many studios in the early era, and even fewer that had their own "stamper" or pressing equipment.

Since the demand for recordings came mainly from soundmen, who used records in live performance to "'beat down" rivals; studios did not focus on producing recordings for sale. While mass audiences were crucially important to the experience of musicking and to the creative process, they were not necessarily expected to pay for control over individual recordings, especially in Jamaica. These limited editions called "specials" or "exclusives" were usually commissioned by soundmen, and were not played anywhere but at dances: their exclusivity raised the soundmen's status and attracted a discerning audience.

Jamaican Music goes global

1954 also saw the first wave of sustained emigration to Britain, which brought Jamaicans and their music into broader circulation. The expatriate community in England provided an early base for Jamaican music outside the island. Although at first fairly small-scale, a UK network began to emerge in the late 1950s: that of small, white-owned businesses that specialized in wholesale importing and retail of calypso, Jamaican R&B and early ska. In 1962, Chris Blackwell had founded Island records in London, to capitalize on this trend. By 1963, some sources report 15,000 Jamaican records per month imported to England.[72] These also reached a crossover audience of white working-class youth, as would happen repeatedly with Jamaican music over the years.[73] Chris Blackwell's label, with its international base but local connection, led to a Jamaican record's first international hit: "My Boy Lollipop," sung by Millie Smalls reached number one on the British charts.[74] The overseas connection actually reinforced a taste for specifically Jamaican sounds. The expatriate community, chiefly in the UK, wanted sounds from home, and because they worked in stronger economies, they could pay for recordings.[75] The Jamaican domestic recording industry grew due partly to overseas record sales, either to soundmen in the UK or to record dealers who sold to Jamaicans abroad. For the most part, studio owners paid singers and instrumentalists a wage or a one-time fee for recording, and simply charged directly for sales of records as any other product.[76]

Just as recordings of American R&B, country, and soul music, circulated in Jamaica under the official radar through Jamaican travelers—sailors and visitors carrying albums from

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[71] Katz, *Solid Foundation*, 168.
[72] George Lipsitz, "Immigration and Assimilation: Rai, Reggae, and Bhangramuffin," in *Dangerous Crossroads: Popular Music, Postmodernism and the Poetics of Place* (London: Verso, 1997), 127.
[73] Michael Veal, *Dub: Soundscapes and Shattered Songs in Jamaican Reggae* (Middletown, CT: Wesleyan University Press, 2007), 221; Jones, *Black Culture, White Youth*.
[74] Fared, "Wailin' Soul," 68; "My Boy Lollipop" was a cover song of a US pop tune sung by Barbie Gaye in 1956. Robert Spencer and Johnny Roberts, Darl Records 1956. Katz, *Solid Foundation*, 57.
[75] Louis Chude-Sokei, "Post-Nationalist Geographies: Rasta, Ragga, and Reinventing Africa," *African Arts* 27, no. 4 (Autumn 1994): 80–96.
[76] Katz, *Solid Foundation*, 105; Okpaluba, "'Free-riding on the Riddim'? Open Source, Copyright Law and Reggae Music in Jamaica," 376–7.

overseas—Jamaican-made recordings began to circulate widely between the expatriate communities in the UK and Canada and the US.[77] This circulation meant that copyright enforcement outside the island could generate some royalties for copyright owners, however on the island the law remained fairly remote, both in terms of its relationship to creative practices and in terms of the state interest in enforcing it.

Copyright in 1954-70

Even after independence, Jamaican copyright law was the same as the British Copyright Act of 1911, and was not revised (as it was in Britain) to keep up with developments in technology and practice. Enforcement, by all accounts, was not a government priority. Although the text of the 1911 law describes "originality" as a prerequisite for a work being covered by copyright,[78] this did not mean that originators of musical ideas had a particularly strong likelihood of owning the rights to music in the way the law seemed to support. The UK Act had been interpreted in the courts to grant record labels a general copyright for sound recordings, since it allocated copyright ownership to those "by whom the arrangements necessary for the making of the recording ... are undertaken"[79] Since many songs were not written before they were recorded in the studio, and were composed live by a configuration of local instrumentalists that might change from song to song, the first actual fixation of a song might be in the studio with no underlying composition.[80] This privileged studio owners as likely owners of songs even under formal law. While the labels may have formally owned copyrights, in most cases they did not seem to assert ownership of particular songs in the way that copyright ownership would require, and instead focused on controlling the physical master recordings in order to maintain control.[81] However, local power relations and social interactions privileged owners in any case. Studio owners tended to pay artists based on time spent in the studio, and artists did not necessarily see money again. Local power relations may have provided a limit on studio owners' discretion: many accounts (as well as my own interviews) reveal musickers' expectation that if a song did well overseas a producer ought to share some of the profits as a matter of simple morality. Historically and in my interviews, this expectation was sometimes met.[82] While by no means a utopian equality, there is evidence of some sense of mutual or community-defined obligation.

In Jamaica after independence, local studios grew in number and size, which meant more chances to generate royalties for Jamaicans, but several conditions limited this possibility. First, Jamaican popular musicking still occurred primarily in unofficial spaces unmonitored by copyright enforcement, which rendered impossible the extraction of royalties from venues or participants. Second, although soundsystems and artists proliferated, the actual number of studios in that era remained relatively small, and any possible royalties would have had to "trickle

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[77] Adrian Boot and Michael Thomas, *Jamaica: Babylon On a Thin Wire* (New York: Schocken Books, 1976), 34; Radio in the UK and Canada did not play Jamaican music either: smuggling, in the service of soundsystem culture, spread the music. Walker, *Dubwise*; Bradley, *Bass Culture*, 111; Jones, *Black Culture, White Youth*, 39.
[78] UK Copyright Act of 1911
[79] Jamaica Copyright Act, Part 1 Section 2(iii)(e)
[80] Witter, *Music and the Jamaican Economy*, 51.
[81] Bradley, *Bass Culture*, 41.
[82] Katz, *Solid Foundation*, 167.

down" through the hands of the label owners. Because music was not generally produced for mass sale domestically (instead going to soundsystems), domestic royalties were not an issue, but the widespread popularity of Jamaican music overseas would raise this question more seriously.

Even as Jamaican music grew in local and global popularity, the Performer's Rights Society (PRS), an organization representing artists, was apparently uninterested or unable to assist Jamaican instrumentalists and vocalists in retaining copyrights. Tracking and monitoring musicking in the streets and yards of poor neighborhoods would have been a daunting task, and, following that, the still more daunting question of how you force soundmen to pay the fees. In order for royalty collection to benefit Jamaicans, Jamaican artists would also have had to be members. But many artists and researchers of Jamaican music have questioned the PRS' level of commitment to Jamaican artists. A Jamaican government official, who had been on one of the government Commissions to reform copyright law in the 1970s, and who went on to head the Jamaican Association of Composers Authors and Publishers (JACAP, which ultimately replaced the PRS), suggested in a 2000 interview that the PRS in the past "did not go out of its way to capture new artists."[83] Abundant evidence exists that artists themselves were not aware of copyright law or the possibility they could draw on it, even had it imperfectly represented their creative practices.[84] Even after local recording sprang up, there was little pressure on the PRS to enforce copyright domestically.

The class divide in Jamaica also influenced the way people claimed ownership. Many Jamaicans collectively claimed ownership of music, especially the popular music associated with the poor, in which songs, albums, and artists consistently claimed the music as "ghetto music" or "sufferahs music." This collectivity emerged as a way to claim respect for membership in a downtrodden class, reversing the dominant language in which the poor, or ghetto music, was seen as base and undesirable. But collective claims were also a way to subvert the disadvantage an individual might face if identified as a "ghetto person." Without the force of a self-identified community, individually identifying oneself with poverty, or the music of the poor, would be a vulnerable or limiting position in negotiation with the powerful.

1970-1980 Reggae politics : global audiences and local conflict

By 1970, reggae music had emerged out of ska and rocksteady. Still associated with the poor in content and main sites of production, and in enjoyment, reggae took on a more explicitly political tinge in the local context of economic collapse and the rise of Rastafarianism; this in the global context of rising indigenous and anticolonial activism and resistance to Western dominance. Two aspects of the social context of reggae intensified Jamaican musicking's oppositional relationship to law and colonial power. One was Rastafarianism, a religion that is rooted in anticolonial politics; the other was the Jamaican state's increasing involvement with violence and clientilism.

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[83] Personal Interview with Tony Laing, 2000,
[84] Bradley, *Bass Culture*; Stolzoff, *Wake the Town & Tell the People*, 59.

The Social Context from Independence to 1980

Rastafarianism had spread among the rural poor in the 1950s and 60s. As the rural poor came to the cities in the late 1960s, they brought the religion of Rastafarianism to the poor urban areas in which they settled. By the rocksteady era, Rastafarianism was a significant influence in popular music. Rastafarians were a vocal minority in Jamaica, whose critique of the status quo was rooted in a militant, pan-African philosophy and included biblical and African-religion-influenced spiritualism. 'Rastas' resolutely constituted and aligned themselves with the poor and disenfranchised, which reinforced the association between popular music and the lower classes. This alignment gave the poor a voice and also had spiritual and political dimensions. The Rasta worldview held the wealthy and powerful to be corrupt, identified with "sufferahs" (sufferers), and tied this judgment to a pan-African worldview in which faith aligned one with anticolonial politics through veneration of Haile Selassie as a god based in Africa, but also based on Ethiopia's ousting of Italian colonizers.

Rastafarian linguistic idioms were increasingly predominant in reggae lyrics, as were Rasta-associated drum patterns and sounds, while growing numbers of artists "locked up" their hair in the distinctive Rasta style. Initially, everything about Rastafarianism was condemned by Jamaican mainstream society – to the extent that the police would apprehend and forcibly shave off the hair of Rastas they found in Kingston.[85]

Rastafarianism connected to the spirit of the 1970s more broadly as global indigenous resistance movements began to flourish. Reggae music, (also called "Roots Music" which evoked a connection to the African roots of Jamaican culture), more directly expressing a broadly Afrocentric spirit of resistance and critique of the Western world, hooked into the energy of anticolonial movements and spread Jamaican music farther abroad. Reggae was the first postcolonial music genre, arising from a diasporic community and asserting its resistance to the old colonial order.[86] Anticolonial resistance movements in the global South, antifascists in Europe and the UK, and punk scenes in the UK and beyond embraced reggae with recordings, and to a lesser extent musickers from Jamaica traveled to far-flung places to reach audiences already familiarized with the music through grey-market, bootleg, or pirate distribution.[87]

From Rasta to the rule of law: local politics in the music

The history of Jamaican musicking has dramatized the intimate, violent, and multifarious relationship between the urban poor and the rule of law through the way Jamaican state actors made use of musickers in electoral politics. From the first post-independence election, both political parties exploited popular song lyrics in their campaign slogans. Clever politicians quickly recognized the value of staying connected to social, interactive music and dancing. Arguably the first dance space for the poor not located in a street or parking lot was Chocomo

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[85] Stephen A. King, Barry T. Bays, and P. Renée Foster, *Reggae, Rastafari, and the Rhetoric of Social Control* (Jackson, MS: University Press of Mississippi, 2002), xxi.
[86] Louis Chude-Sokei, "'Dr. Satan's Echo Chamber': Reggae, Technology, and the Diaspora Process," *Emergences: Journal for the Study of Media & Composite Cultures* 9, no. 1 (May 1999): 47–59.
[87] Ajay Heble and Daniel Fischlin, *Rebel Musics: Human Rights, Resistant Sounds, and the Politics of Music Making* (Montreal: Black Rose Books, 2003); Hebdige, *Cut'n'Mix*; Malm and Wallis, *Big Sounds from Small Peoples*.

Lawn, founded by future Prime Minister Edward Seaga, a rising star in the JLP.[88] This former owner of West Indies Records made use of his connections to set up free concerts under the party's auspices. Seaga had also been influential in the previous years in aiding ska artists to receive airplay and in defusing some of the resistance to ska music on the part of the government, although his support stopped short of endorsing Rasta-influenced reggae. In the 1970s party politics influenced political leaders' sympathies towards particular musical content. Seaga was the candidate for the JLP party, oriented more towards free-market policies, friendlier to the US, and less invested in ideologies that valorized the poor than the PNP. Seaga's concerts at Chocomo Lawn avoided presenting Rastafarian artists or bands. In contrast the PNP, espousing a socialist agenda, was more likely to incorporate these themes and the popular music of the poor into their social events and campaigns.[89] However, neither party escaped what have tragically become central features of Jamaican domestic politics: factionalism, patronage and party-based violence among the poor.[90] As described at the beginning of this chapter, both parties became inextricably bound up in increasingly violent competition, in which they rewarded poor Jamaicans for their support on a neighborhood basis, but also armed their supporters—creating the "garrison communities" that lent them a kind of inconsistent autonomy from state power, for better or worse.[91]

Despite the Jamaican state's regular use of "law and order" rhetoric, both parties, their agents, the police and the army "have systematically contravened law, order and democracy in the quest for political dominance. Thus at one moment, criminal gunmen are defended by state agents as untouchable heroic protectors of their ghetto neighborhoods, while during a subsequent period they might be regarded as social pariahs to be summarily hunted down and killed by the state."[92] In this context, poor Jamaicans' ambivalent attitudes toward law and order comes not from unfamiliarity with the concept, but from their memory of the ease in which the powerful have used such language for their own interest.

Moreover, the connection between clientilism, violence and outlawry is complicated by the importance of local authority figures, sometimes called "dons," or (only partially euphemistically) "area leaders" or "community leaders." These figures have often been involved in the drug trade, simultaneously being points of contact between local politicians and the neighborhoods.[93] Positioned at the crossroads between the state, illegal drug trade and poor communities, dons were also sources of economic support for the poor, which included their paying for water, school fees, and providing food, as well as underwriting recording studios.[94] The dons illustrate one of the ways that, for decades, the urban poor's experience of the benefits of government is based solely on personal relationships. Illegal or extralegal actors, such as the

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[88] Katz, *Solid Foundation*, 20.
[89] Anita M. Waters, *Race, Class, and Political Symbols: Rastafari and Reggae in Jamaican Politics* (Piscataway, NJ: Transaction Publishers, 1989), 85, 129, 130.
[90] Stolzoff, *Wake the Town & Tell the People*, 171–3.
[91] While this may seem remote from the concerns of Jamaican radio and copyright policy, when considering the way poor Jamaicans felt about relying on the state for enforcement of rights–the fact that every aspect of state function could be allocated based on allegiance to parties, or because garrison leaders could also negotiate for them suggests that poor Jamaicans have good reason to doubt even facially neutral declarations of rights.
[92] Gray, *Demeaned but Empowered*, 7.
[93] Ibid., 28; Eaton, *Alexander Bustamante and Modern Jamaica*, 139–49; Maingot and Lozano, *The United States And The Caribbean*, 140.
[94] Bradley, *Bass Culture*, 516; Stanley-Niaah, *DanceHall*, 43, 73.

dons, could be at least as reliable, and perhaps more responsive to poor people's needs as could police or politicians. The history of political violence also complicates the poor's relationship to the state, as political parties relied on the urban poor to literally fight for them in election season. Dons were also important to the music scene, sponsored street dances and other musical events: reflecting a similar political awareness and social role as future Prime Minister Seaga (or vice versa, since he claimed the nickname "One Don" in the 1980s),[95] they made use of musicking's social power and were simultaneously bound up in the interests of the urban poor.[96]

But music stayed closer to the dons than to the state. After the PNP victory in 1972, the decade saw more public debates over how to promote Jamaican culture that included attention to the music popular in poorer areas. The two national radios stations began playing more local music content, although they still avoided the new sounds of downtown: reggae and DJ-style riddims. Gussie Clarke, a producer, relates:

> The radio [stations] were never going to play roots music or that kinda cultural deejay toasting. Because of this, the soundsystems get big again. Bigger than they were in the sixties. People were flocking to the dance to hear *new* records … the soundsystems were the only place to hear them.[97]

As the soundsystems remained the dominant local institution supporting Jamaican popular music, they kept musicking rooted in communities still remote from the concerns of copyright law, and continued their distinctive creative traditions.

Syncretism and phonographic orality in the reggae era

Reggae was a new genre, with a different rhythm, made with different instrumentation with cultural meanings borrowed from ska and rocksteady. But the earlier music did not simply vanish. Reggae songs incorporated lyrics, basslines, melodies, and drum patterns from the earlier genres, reinterpreting them alongside new sounds and references. Sometimes producers and performers re-used actual recordings, while in other cases instrumentalists replayed, or vocalists re-sang the musical elements themselves. Increasing sophistication of studio recording and reproduction technology meant that when a recording was re-used, not only could vocals and instrumentals be separated, but also shorter snippets or separate track could be separated and reused. In the same way that DJs would select a particular song (or part of a song) to elicit a desired crowd response, a producer could now select a musical excerpt (a bassline, a lyrical interjection, a three-second drum roll).

Reusing familiar sounds or collections of sounds facilitates an interactive and social musical experience, drawing together musickers—instrumentalists, voices, and dancing feet—into a coordinated but flexible moment of interaction.[98] This reuse also contributed to a common

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[95] Donna P. Hope, *Inna Di Dancehall: Popular Culture and the Politics of Identity in Jamaica* (Kingston, Jamaica: University of the West Indies Press, 2001), 98.
[96] Gray, *Demeaned but Empowered*, 288.
[97] Quoted in Bradley, *Bass Culture*, 305.
[98] Ibid., 504; J. M Chernoff, *African Rhythm and African Sensibility: Aesthetics and Social Action in African Musical Idioms* (Chicago: University of Chicago Press, 1979), 111–2.

culture of shared knowledge and experience.[99] Many songs to this day are collages including verbal quotations, musical quotations or actual pre-recorded selections ("samples") from existing songs, commercials, and sounds from radio, TV and film.[100]

The recording techniques that had become prevalent by 1970 emerged from the development of multi-track mixing, where different instruments could be recorded separately and layered together afterwards. Initially, studios could only record on two tracks, and usually separated the vocals and the instrumentals. This practice encouraged what became a defining feature of Jamaican musicking—the "riddim."[101] The instrumental track, separated from the vocals, took on a life of its own, whereby if a vocalist heard a song he or she liked, that vocalist could sing their own lyrics and melody over the same instrumental track. This practice was called "singing on a riddim." Studios commonly recorded multiple different vocals over one riddim and distributed records with the full song on one side and the riddim on the other (both to the public and to soundsystems). In this way phonographic orality became embedded in the material production of the record, because anyone who had a record could sing over the instrumental. In live performance, DJs lined up songs on the same riddim, one after the other, so even as the music stayed the same a given singer could demonstrate his or her virtuosity in re-using the same musical element. In this practice riddims become tools that allow for greater interaction—because the DJ and the audience recognized a familiar riddim even if the vocals differed, and their understanding of what was going to happen in the song could allow for carefully timed interactions, from dance moves to vocal additions in the performance. Reusing riddims also added meaning for listeners over time as the riddims became associated with specific historical moments in which they had become popular. For example, in the 1970s a police siren—a reflection of the political unrest of the 1970s—began to signify as a musical element, initially evoking the emotional response to a genuine emergency. As Jamaican musicking developed over the years, sirens become a sonic punctuation signaling a high point in the music itself. The dynamic interplay of musical references became central to how Jamaicans have historically constituted Jamaican identity.[102]

Dub Music: creativity contradicting copyright

During the 1970s, a new musical genre rose out of the new technologies available to studio engineers. This genre, called "dub," embodied the distance between musical practices and copyright in a different way from soundsystem's phonographic orality. Dub emerged out of the work of sound engineers on the mixing board, in the tasks through which audio recordings were processed before being recorded or broadcast. The mixing board became an instrument for live performance and creative manipulation, which brought the tradition of phonographic orality from the turntable to the mixing board. Audio engineers came out of the background, where they had been relegated as technical experts for improving sound recording quality, and in dub were recognized as artists in their own right. Dub transforms the instrumental version of a song (with

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[99] "These [repetitive] musical relationships … condens[e] social and cultural relationships both in time and over time through invention and musical allusion." Ingrid T. Monson, "Riffs, Repetition, and Theories of Globalization," *Ethnomusicology* 43, no. 1 (Winter 1999): 46.
[100] Manuel and Marshall, "The Riddim Method," 448.
[101] Ibid., 447; Jones, *Black Culture, White Youth*, 39.
[102] Louis Chude-Sokei, "Post-Nationalist Geographies: Rasta, Ragga, and Reinventing Africa," *African Arts* 27, no. 4 (Autumn 1994): 81–2; Gray, *Demeaned but Empowered*, 44.

the vocals removed) as a musical framework against which a sound engineer manipulates the mixing board and various effects in order to create a new musical experience.[103] An engineer might add in an audio effect, like an echo, or drop in selections from the vocals or other recordings, alter the volume and other sound frequencies, like the bass or treble, or otherwise manipulate the broadcast or audio recording through a multitrack mixing board. Dub music situates authorship in the engineer; when one buys a dub album, the cover of album names the dub engineer—for example Lee "Scratch" Perry, King Tubby, or Scientist—as the artist. Dub dislodges the common assumption that an author must be a composer, lyricist or a more familiar instrumentalist. At the beginning of dub music's introduction outside Jamaica, a contemporary American music critic commented: "one of [dub's] major principles is the denial of the right of the musician to control completely his own output."[104] This statement only makes sense if one assumes the engineer is not an artist, although it also assumes that artist should have the right to control their own output, an ideal that was never the case in Jamaica (but was also uncommon for American artists).[105]

The techniques pioneered by dub producers have been widely influential in many genres beyond dub, however dub only had a small window of popularity in Jamaica in the 1970s, although it has reached a wider audience outside of Jamaica.

Jamaican Music's popularity abroad

The interest in reggae generated grew apace in the 1970s, so that by 1978, Bob Marley, whose "rebel music" was well suited to the indigenous and anti-colonial movements of the era (and had crossed over into a broader counterculture radicalized also by the Vietnam War), could play a sold-out show at Madison Square Garden in New York. It is interesting to note that for the most part, his fame grew without major multinational record corporations' assistance. The fluidity of association between artists and producers, and the plethora of copyrights for various master tapes, discouraged most multinational companies from investing in artists, including promotion. However coloniality was still present —for artists, like Bob Marley who did achieve a global reach, colonial power was instrumental in shaping access to the broader world. Chris Blackwell was instrumental in establishing Marley internationally.[106] Blackwell's marketing savvy, combined with the resources he had as an elite Jamaican with a base in London, ease of travel (sans the visa problems poor black Jamaicans routinely faced), and better business connections, made him a powerful influence in music. Reflecting this, Blackwell came to own the rights to much of the music Marley played.[107] In those days, people like Blackwell, who had good international connections, profited handsomely from the marketing of Jamaican music

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[103] Veal, *Dub*.
[104] Chris Potash, ed., *Reggae, Rasta, Revolution: Jamaican Music from Ska to Dub* (New York: Schirmer Books, 1997), 145.
[105] McLeod et al., *Creative License*, 78.
[106] Stratton, "Chris Blackwell and 'My Boy Lollipop'," 436.
[107] David Vlado Moskowitz, *The Words and Music of Bob Marley* (Westport, CT: Greenwood Publishing Group, 2007), 131; Stratton, "Chris Blackwell and 'My Boy Lollipop'"; Jon Masouri, *Wailing Blues - The Story of Bob Marley's Wailers* (London: Music Sales Group, 2009).

abroad, the few formal connections between local and foreign actors, and lack of local infrastructure meant that copyright remained irrelevant to the poor majority.[108]

As the music gained in popularity locally and abroad, pirate reproducers often stepped in where legal distribution networks failed to reach. It is unlikely that many artists could have negotiated—or local labels to afford—a distribution agreement that brought their music to as many places as pirated music. Broadening audiences made it easier for artists to tour, and also enhanced reputations so that artists might negotiate better deals with labels, promoters or other powerful actors in the industry.

Despite its threatening relationship to Jamaican elites, reggae in the 1970s attracted the attention of non-Jamaican artists and broadcasters, and a few Jamaican elites with more cosmopolitan tastes. A few local entrepreneurs like Chris Blackwell had already set up distribution networks to capitalize on ska's popularity in expatriate communities, but they were also interested in marketing Jamaican music to mainstream audiences. Along with the legal copies, illegal (bootleg) copies of Jamaican music were carried in great numbers across the ocean, particularly to the UK and to America.

Copyright in the Reggae era

The 1970s saw a series of international conventions for multilateral enforcement of copyright, which Jamaica did not sign. These conventions coincided with concerns in the global North over the artistic works reproduced in countries where copyright laws differed (including the countries in the global South). Some have argued that Jamaica's refusal to sign was based on advice from American "experts," who influenced the Jamaican government into a situation that would legitimate the plunder of local music for foreign exploitation and reproduction.[109] But this argument does not address the possibility of local losses due to royalty payments overseas. Even if Jamaica's fantastically high productivity of music meant it could be a net exporter of copyrighted works (unlike the majority of countries in the global South), several factors meant that copyright enforcement might result in a net loss. First, most music exports were unofficial and difficult to track for enforcement purposes. Second, official music venues and radio, where recordkeeping might have been slightly more systematic, still focused on foreign sounds over local productions.[110] Third, since local music often used and re-used copyrighted works from abroad, this hybridity would require licenses costly to negotiate, even if payment was eventually agreed on. Thus, the government did not see enforcement as a priority.

Even as reggae boomed internationally, the PRS did not increase its representation throughout the 1970s. Many scholars and others in Jamaica have argued that the PRS did not take its Jamaican operation seriously, which seems to have been the case. For example, in 1984 the PRS reported that, in cases where they could not locate artists who had earned royalties, "50 percent of net distributable revenue is voluntarily paid to a fund established for performers"; yet music researchers Malm and Wallis could find no evidence of such a fund.[111] Such a discrepancy

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[108] Toynbee, "Reggae Open Source," 369; David Throsby, "The Music Industry in the New Millennium: Global and Local Perspectives," *Prepared for the Division of Arts and Cultural Enterprise, Paris: UNESCO* (2002): 13.
[109] Malm and Wallis, *Big Sounds from Small Peoples*, 179.
[110] Michael Witter, *Music and the Jamaican Economy* (UNCTAD/WIPO, 2004), 52.
[111] Malm and Wallis, *Big Sounds from Small Peoples*, 178.

between the stated function of an artists rights agency and what it seems to be doing simply reinforces local expectations that formal institutions provide ways for foreigners or elites to profit off of poor Jamaicans.

In fact, it may be very difficult to craft an effective copyright law, even if "effective" simply means enforceable on its own terms in local context. Certainly the Jamaican government has found this to be the case. When the government attempted to revamp its copyright law in the late 1970s, one participant, Tom Tavares-Finson, later explained that "there was never a complete understanding of precisely what was involved in operating effective copyright legislation" and, particularly, that "the infrastructure necessary for copyright legislation was never put into effect."[112] The new Copyright Act, then, was passed but never enforced.[113] Jamaican history suggests that the law depends on the local situation, in which many social and institutional factors influence copyright's relevance.

As in earlier eras, the immediate concerns of living in poverty and power-relations with the studios often outweighed more far-reaching goals. Artists had little experience with royalties, but were paid for labor they did in the studio or onstage (which was easier to keep track of). Recording more songs, or getting more performances, was the only clear way to earn more money. As vocalist Dave Barker put it:

> We wasn't used to this copyright thing…even if you had a family member here [London]… who told you about it, there was so much crap you had to go through to attain some sort of recompense. What most of the artist would do… was to go, "Oh Eff it," just leave it and go record somewhere else. Because they still have the way of thinking that said if you want more money you got to record more song.[114]

Barker continues by pointing out that local social relationships influenced many musickers against claiming copyright: such claims might be the source of conflict, especially if a musicker claimed ownership in a song that a producer wished to claim:

> Also, they [artists] didn't want to fall out too badly with the big-time producers.[115]

However, studios also needed to maintain friendly relations with their artists, in order to maintain access to a wide pool of tale to benefit by association with artists' reputations as well. Especially if an artist was internationally famous, or locally respected, he or she would revisit the studio, demanding more money or other support, in exchange for their contribution to the studio's fame and the money the studio might be getting overseas. Vocalist U-Roy recounts his generally positive relationship with Duke Reid in this way:

> He was giving me some money all right at that time, and we have an agreement that, when everything is kind of cropping up I'm

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[112] Quoted in Royes and Tavares-Finson, "Current Status of Copyright Legislation in Jamaica," 15.
[113] Ibid., 17.
[114] Quoted in Bradley, *Bass Culture*, 253.
[115] Ibid.

> going to want a little house out of my royalty. And he did do that. I used to go to him for any money I want during the weekend for running my house.[116]

U-Roy's use of the word "royalty" shows he is aware of the concept of royalties as money earned by artists from their music making. However, he does not describe the specifics of the agreement he had with Reid. As he tells it, U-Roy's method of receiving payment is decidedly informal, unlike the regular distribution mandated by formal rights management systems. Such informality suggests a more personal, or possibly community-based set of norms and expectations around payments. To date, no study has shown the value of these informal payment structures; however, some research emphasizes how much poor Jamaicans rely on mutualist and collective understandings about the distribution of wealth.[117] While not romanticizing a decidedly unequal relationship between powerful studio owners and poor artists, both parties appear somewhat bound in a network of mutual obligation. As it appears from these accounts, what U-Roy calls "royalties" represent an alternate normative system to copyright law in terms of how, when, how much, and to whom recompense is owed for what kind of musicking. I will discuss that system further in Chapters 3 and 4.

Absent evidence about the reliability of informal payments, it seems likely a good degree of uncertainty persisted in this informal system. However uncertainty is also a major factor in music industries based on enforced copyright. The moment of negotiation over licensing occurs before a song has been commercially released, and, of course, no one knows whether a song will make money for anyone at that stage. Thus artists cannot rely on copyright as a source of income. Even if a song eventually generates royalties, which happens over time, more time passes before they are distributed to the copyright owner. This delay between recording and receiving royalties may often be insufficient for poor musickers' survival. For artists with plenty of energy and not much else it makes economic sense to build their reputations and enhance social connections by performing and recording as often as possible, collecting one-time fees at the point of performance and recording. This focus on constant performance may be a factor in Jamaican musickers' impressive productivity.

Reggae's increasing international popularity did lead to some Jamaicans making their fortunes off of foreign audiences eager for Jamaican sounds. Often they would establish themselves within a formal copyright system outside Jamaica, a pattern still followed to some extent today: Jamaicans who reach a certain level of fame often join ASCAP, BMI or the British PRS in order to capitalize on the better infrastructure for monitoring the sale or use of recordings outside Jamaica. In the reggae era, this was effective in limited and contradictory ways. Not every Jamaican artist was big enough or connected enough to participate outside Jamaica. To move effectively among the more formal, and foreign copyright regimes required skill and connections, and participation in the international music scene was still structured along unequal lines. Because those regimes were not in effect inside Jamaica, Jamaican musicking could flourish on its own terms in ways that copyright enforcement at the time would not have allowed.

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[116] Quoted in Katz, *Solid Foundation*, 167.

[117] Recent research describes how poor Jamaicans survive and manage risk by relying on social norms of mutual obligation. Anne M. Galvin, "Sharing the Wealth: Community Development and the Dancehall Music Industry in Contemporary Kingston, Jamaica" (New School University, 2006).

It is impossible to judge different regimes' overall productivity. The much wealthier US and the UK, have larger markets, better infrastructure and more resources, and whatever scheme artists used (within or outside copyright) would generate more money than it would in Jamaica. Within Jamaica, attempting to rely on copyright while operating in the some overall system of inequality would not have been as effective in terms of productivity and survival among the poor as the systems they developed.[118]

By the end of the 1970s new technology of cassette tapes simultaneously facilitated phonographic orality while contradicting copyright through their decentralization of the ability to record, copy and distribute.

1980-1993 Global digital sounds, local authority: hybridity and phonographic orality abroad

In the 1980s Jamaican phonographic orality, carried to the US by Jamaican émigrés like DJ Kool Herc, played an important part in developing American hip-hop, which is similarly centered on live interaction with recordings.[119] By 1990 Jamaican musicking hybridized reggae with American hip-hop to create the genre "dancehall."[120] Dancehall combined the digitally generated and sampled sounds and more minimal production style of early hip-hop instrumentals with patois vocals and Jamaican musical references.

The content of the music also shifted. Moving away from the global and Afrocentric focus of reggae and 1970s Rastafarianism, dancehall focused more on specifically local Jamaican experiences. Scholars suggest some interlinking reasons for this shift in content. First, the increasing numbers of economic migrants in the US increased expatriate Jamaicans' desire for connection to their Island home.[121] Second, the failure of the Manley government's projects for the island, due to the depredations of the International Monetary Fund (IMF) against the Jamaican economy, discredited its language of socialism, pan-Africanism and its echoes in reggae music. Thus, Jamaicans turned to new ways of constructing an identity based on the harsh realities of life in the "yard" (the Jamaican ghetto).[122]

The change in content did not end Jamaican music's global popularity, although it did change its meaning and its audience. Although not necessarily linked with specific movements of political resistance, the youth who also gravitated to hip-hop's rebellious stance found dancehall appealing. Dancehall's spread was not as shaped by Afrocentric politics, but the more general rebellion of youth culture, reaching as far as Zimbabwe and Japan.[123] Riddims circulated with dancehall recordings, spreading phonographic orality to new places, as people learned to

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[118] Toynbee, "Reggae Open Source," 359.
[119] Jeff Chang, *Can't Stop Won't Stop: a History of the Hip-hop Generation* (New York: Picador USA, 2005), 21–2, 313.
[120] "Dancehall" is the second truly global wave of Jamaican popular music after Reggae. The term "dancehall" can also refer to an enclosed location where dancing occurs. Stanley-Niaah, *DanceHall*.
[121] Chude-Sokei, "Post-Nationalist Geographies."
[122] George Lipsitz, "World Cities and World Beat: Low-Wage Labor and Transnational Culture," *Pacific Historical Review* 68, no. 2 (May 1, 1999): 213–231.
[123] Louis Chude-Sokei, "The Sound of Culture: Dread Discourse and Jamaican Sound Systems," in *Language, Rhythm, & Sound: Black Popular Cultures into the Twenty-first Century*, ed. J. K Adjaye (Pittsburgh, PA: University of Pittsburgh Press, 1997), 185, 197.

participate by "jumping on the riddim." This spawned new recordings from all over the world, in which local DJs and vocalists incorporated sonic references from Jamaican music. New hybrid musics sometimes filtered back to Jamaica and sometimes brought foreign musickers and their skills and tastes along. For example Germaican records, based in Leipzig, Germany, opened a Kingston office, while German pop-dancehall bands like Seeed invited Jamaican vocalists to sing over their riddims, and also had some popularity in Jamaica. Others, like Italian vocalist Albarosie, eventually relocated to Jamaica, temporarily or permanently.[124] Japan's Mighty Crown sound system, founded in 1991, developed their skills in the Jamaican idiom to the extent that they eventually won soundclashes in Jamaica, and also developed a Japanese market for Jamaican music.[125] These distant audiences in turn inspired Jamaicans to engage with a global network of listeners and performers in their lyrics and with audiences when on tour.[126]

> Me ragamuffin' and me international... (*I'm poor/tough and internationally known*)
>
> Say galang Cutty Rankin' gwaan go kill them with the culture… (*People say to me: go on, Cutty Ranks, use Jamaican practices to dominate other DJs*)
>
> London Paris, and even California,
> Down a Japan or me gone down a Africa
> Down a New Zealand or even inna Canada
> Yes, Cutty Rankin a go kill you with the lingua (*my lyrical skills/use of Jamaican patois will defeat others in musical competitions*)
>
> --Cutty Ranks, "The Stopper"[127]

Despite dancehall's global reach, foreign musickers continued to respect its Jamaican source. Some, seeking inspiration, or symbolic stamps of Jamaican approval, recorded or collaborated with Jamaican musickers, usually paying one-time fees rather than negotiating future rights.[128] Many tunes popular in the 1980s were layered over riddims almost 20 years old, while the first big all-electronically generated hit, "Under Me Sleng Teng" (1985) had over a hundred versions in Jamaica, and countless more abroad, ushering in a new era of electronically-

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[124] Another example of a foreign artist asopting the island is German reggae singer Gentleman has said he "calls Jamaican his second home" although his official residence is Cologne, Germany. Baz Dreisinger, "Non-Jamaican Reggae: Who's Making It And Who's Buying It : NPR," *The Record* (National Public Radio, November 12, 2011), http://www.npr.org/blogs/therecord/2011/11/17/142254188/non-jamaican-reggae-whos-making-it-and-whos-buying-it.

[125] Marvin Sterling, *Babylon East: Performing Dancehall, Roots Reggae, and Rastafari in Japan* (Durham, NC: Duke University Press, 2010).

[126] Chude-Sokei, "Post-Nationalist Geographies," 92–3; Chude-Sokei, "The Sound of Culture," 187; Monson, "Riffs, Repetition, and Theories of Globalization," 43, 46.

[127] Cutty Ranks, The Stopper, Fashion records 1990.

[128] Chang and Chen, *Reggae Routes*, 375.

based riddims.[129] The reuse of classic Jamaican themes and riddims may have reinforced the importance of the island itself in the eyes of the global music audience.

In the 1980s, the Jamaican government undertook a wave of deregulation and privatization, and radio was no exception. Irie FM, the first all-reggae station, eradicated the difficulties listeners had continually faced when trying to find reggae on the air, and gave further opportunities to artists who desired airplay. Four island-wide stations dominated the airways through the 1980s, in addition to smaller regional ones (whose broadcast was somewhat erratic). There were various different influences that shaped radio stations play lists including "payola," producers' presentation of gifts and money to radio DJs for playing their records. Although radio was overall more friendly to music of the poor, a study of the music industry conducted in the 1980s reported that many artists felt that getting their songs aired required substantial influence with radio DJs.[130] Deregulation removed or weakened some cultural gatekeepers, but also made gatekeeping a function of wealth and influence.

Copyright Law from 1980-1993

Although the content and structure of the music changed between the 1980s and 1990s, copyright law did not, although the Jamaican government began to be more responsive to pressures from within and without. The Jamaican government launched campaigns aimed at educating and transforming the practices of local musickers to better conform to copyright law. 1991, for example, saw a government education campaign called "All T'ief is T'ief," ("All theft is theft"), which emphasized the ownership and individualist aspects of music making. Through radio spots, posters, and official events sponsored by the government, the campaign attempted to reach the public. This campaign gained much of its moral urgency from the experience of past Jamaican musickers, when songs became international hits but left them with little to show for it. While many Jamaicans feel foreigners profit handsomely and unjustly from Jamaican music, there is little examination of how foreigners come to own so many copyrights (which is not a problem copyright enforcement can address). Nor is it clear whether Jamaicans see this campaign as linked to their own creative practices. The campaign did not, for example, account for the way Jamaican creative practices themselves may run afoul of copyright as it is currently written.

1994-present. New technologies, new laws, old practices and prejudices

In the current era the material conditions of musicking shifted somewhat, particularly by incorporating a wider community of musickers more easily reached by new technologies.

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[129] Stolzoff, *Wake the Town & Tell the People*, 106.

[130] Deanna C. Robinson, Elizabeth B. Buck, and Marlene Cuthbert, *Music at the Margins: Popular Music and Global Cultural Diversity* (New York: Sage Publications, 1991), 193. Also see Cuthbert and Wilson, "Recording Artists in Jamaica"; However, this financial concern may not always have aligned with the cultural concerns asserted by the British-facing elites. Payola shapes culture in ways that accord with wealth and influence, but also tempered by DJs' personal allegiances and interests. Popular music scholarship suggests, for example, that in the early era of rock'n'roll payola furthered rock'n'roll on the airwaves in the era before it had been welcome. Joeri M. Mol and Nachoem M. Wijnberg, "Competition, Selection and Rock and Roll: The Economics of Payola and Authenticity," *Journal of Economic Issues* 41, no. 3 (2007): 10.

However the urban poor maintained cultural authority on the island, which remained a center of musical production. Dancehall continued to dominate Jamaican musicking styles the 1990s, although older genres continued to have pockets of local and foreign support.[131] US and European pop and dance music influences also continued to be important, and were incorporated into Jamaican musicking through imitation as well as reuse of recordings. Sonic references incorporated even farther-reaching musical styles: many popular tunes involved sounds like Indian tabla.[132] While riddims written or played on synthesizer and drum-machines made less use of local instrumentalists or samples, riddims themselves were still the basis for musical involvement.[133] The Jamaican tradition of musickers using pre-recorded music as a main source of raw material for creative performance has continued.[134]

Recording studios still draw on hundreds of shared riddims and samples, including riddims derived from foreign songs.[135] The six older, more established studios I visited were piled high with tapes, vinyl records and CDs, and most housed computers with regularly updated databases, while newer and smaller studios might hold only a well stocked hard-drive and a pile of CDs.[136] US hip-hop recordings also facilitated the reuse of instrumentals as performance elements by distributing separate vocal and instrumental tracks.[137] These traditions of reuse now have over forty years of Jamaican recordings to draw on, a rich musical history that, as I will show in Chapter 4, musickers continue to engage with.

Digital technology has, since the 1990s begun to lower the class-based barriers to studio production and distribution. Home studios have proliferated, continuing and extending traditions of musical reuse as new technology enables cheap duplication, sampling, and editing. The lower classes still generate the majority of popular music and continue to be the arbiters of musical style and popularity, as well as the model for what a Jamaican "star" looks like. Although foreign and local, as well as uptown and downtown, people mix to some extent at street dances, upper-class Jamaicans, and white (or Chinese—who are as prevalent as whites in Jamaica) faces are rare among popular vocalists, dancers and instrumentalists,[138] remaining better represented in studio production, management, distribution and promotion.

Advances in copying technology sped up recordings' circulation, locally and internationally, which is still dominated today by unauthorized circulation of recordings. One source asserted that piracy accounted for thirty percent of the music transported in and out of Jamaica.[139] The term "piracy" is widely used, but not defined clearly—often it is difficult to pinpoint whether its use might refer to the smuggling of legally produced recordings (to avoid taxes, for example), the unlicensed pressing of recordings for local sale (to avoid import costs),

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[131] Stolzoff, *Wake the Town & Tell the People*, 3.
[132] Diwali Riddim, 2002. Greensleeves Records. Producer Steven "Lenky" Marsden
[133] I observed DJs playing multiple vocalists over single riddims, and also witnessed the recording process in which vocalists would stride into a studio and demand the producer "give me the riddim" associated with a hot tune or a historic tune, on numerous occasions in 1999, 2007, 2009 and 2011.
[134] Robinson, Buck, and Cuthbert, *Music at the Margins*, 89.
[135] Witter, *Music and the Jamaican Economy*, 34.
[136] I observed nine studios that held one or two computers and a CD-burner, with no older media in sight.
[137] Manuel and Marshall, "The Riddim Method," 467.
[138] Stolzoff, *Wake the Town & Tell the People*, 147.
[139] Tony Laing, personal Interview, April 2000.

or file-sharing of unauthorized copies, although all these definitions transgress on the artist's potential earnings.

Copyright after 1993

Jamaica joined the TRIPS agreement in 1993, and its new Copyright Act was passed in 1994, although this passage should not be construed as the government finally "coming around" to copyright's universal beneficiality. There had been strong internal and external pressures. On the external side, intellectual property (not specifically related to music) has become more of a focus of the WTO and other large NGOs. Most importantly, the WTO requires members to sign this agreement as a condition of receiving other trade benefits, and includes enforcement and monitoring as part of its obligations. The form of law as enforced in TRIPS relies mainly on a vision of copyright shaped by US legal concerns, and generally relies on concepts of fixed individual ownership, originality, and exclusive rights.[140] The local Jamaican law is fairly consistent with TRIPS, with a few local variations that do reflect some suitability for local practices.

Despite the TRIPS enforcement requirements, the actual mechanism for enforcement has remained hazy. One example of how slowly such enforcement works lies in the compulsory license instituted in the Jamaican Copyright Act of 1994. Although the compulsory license has been on the books since that time, when the newly founded Jamaica Association of Composers And Performers (JACAP) took responsibility. As of 2010 JACAP had not collected any royalties for this license in Jamaica, although its director asserts that collection of royalties has begun internationally, due to mutual agreements with foreign rights management organizations.[141] Many members continue to be dissatisfied with JACAP, which is reported to spend 52% of its budget on administrative costs.[142] This may explain the reportedly low numbers of Jamaican producers registering their works.[143] These difficulties suggest that enforcement is a thornier problem than can be solved by carefully crafted policy. (In Chapter 3 I will describe some of the reasons this may be the case, which have as much to do with local attitudes towards law and surveillance as they do the ignorance of the law. Chapter 5 also suggests that as the international market for Jamaican music expanded to be larger than the domestic one, membership in domestic agencies becomes less attractive.)

Within Jamaica, copyright remained irrelevant to practices of collaborative or flexible authorship, or the reuse of recordings and riddims. However, this situation may change when it comes to the interests of foreign copyright owners. One recent example shows that foreign copyright holders are willing to attempt to interfere in local Jamaican musicking practices: American hip-hop artist Ne-Yo's 2007 song "Independent woman" was widely available online with an instrumental version, as well as several "remixes" that incorporated various US singers and rappers. But when Jamaican artist Vybz Kartel added vocals over the American instrumental, the combination of Jamaican content with a US-originated tune became hugely

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[140] Silke Von Lewinski, *International Copyright Law and Policy* (Oxford: Oxford University Press, 2008), 33–4.
[141] Okpaluba, "'Free-riding on the Riddim'? Open Source, Copyright Law and Reggae Music in Jamaica," 384.
[142] "Jamaican Artistes Sing the Blues," *Jamaica Gleaner Online* (Kingston, Jamaica, 12 2010), http://jamaica-gleaner.com/gleaner/20101220/lead/lead1.html.
[143] Informal conversations with two entertainment lawyers in Jamaica, one engineer and four vocalists. 2009-2010

popular at Jamaican dance events.[144] Ne-Yo's record label (EMI) eventually demanded that Kartel destroy all copies of his version.[145] This demand would have been extremely difficult to enforce locally, although possible perhaps in relation to formal and international networks of distribution like iTunes, which are susceptible to legal threats from EMI. Even if musickers in Jamaica were still free to engage with the "Independent woman" riddim, their ability to circulate the music internationally might suffer, which would make copyright enforcement a disadvantage to Jamaicans. In addition, if EMI could embed copyright enforcement in technology that Jamaicans use, it could foreclose on their creative practices automatically. (I discuss this possibility further in Chapter 2 and Conclusion.)

The relatively recent instatement of the compulsory license for reuse of recordings might suggest a hope for a broader number of Jamaicans by preventing the kind of haggling which would slow musical circulation, and also by shifting costs to soundmen or others better able to pay royalties. JACAP's above-mentioned 10-year failure to collect royalties suggests that the difficulty may lie outside the realm of copyright policy and in the institutional conditions that in which the law must operate. The compulsory license also differs from musical practices outside of Jamaica, which could lead to more conflict at the international level where Jamaicans remain at a disadvantage.

Alongside a growing recognition of Jamaican musicking's economic impact, the local awareness and organization of interests in favor of increased copyright enforcement has increased pressure on the Jamaican government to make more public statements regarding copyright. Alongside JACAP, other rights management entities like JAMCOPY (The Jamaican Copyright Licensing Agency) and the Jamaica Federation of Musicians, have all increased pressure on the government from within Jamaica. The government has responded to this interest in copyright enforcement from within and without in several ways. The Jamaica Intellectual Property Office (JIPO) which is responsible for education and enforcement of copyright has launched several educational campaigns (discussed further in Chapter 3). In terms of legal prosecution, government attention has apparently focused on unauthorized sales of CDs and DVDs, or unauthorized duplication and sale of CDs and DVDs. In three years of copyright disputes on record at the JIPO offices not a single case exists of copyright infringement in the creative process of performance or studio recording.[146]

For the majority of musickers, then, copyright remains generally irrelevant. The attraction of royalties is dimmed by the difficulty in actually making or collecting them, while other career-making resources remain based in what musickers can control—their bodies, skills and personality in live, real-time activity. Musickers primarily use recordings and performances to enhance their reputations, producing music quickly and performing it often. Vocalists depend primarily on payments for live performances or for custom recordings advertising shows or

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

[145] Krista Henry, "Stop Order on 'Rampin Shop' - Ne-Yo's Publishing Company Writes Kartel," *The Jamaica Star*, January 29, 2009, http://jamaica-star.com/thestar/20090129/ent/ent1.html.

[146] Government of Jamaica, "Copyright Documents | JIPO," Government Website, *Jamaica Intellectual Property Office*, 2010, http://www.jipo.gov.jm/?q=node/69.

studios.[147] Engineers and producers are paid for studio time; instrumentalists are paid for performance or studio sessions; all can become "personalities" whose endorsements are commercially valuable. Thus Jamaican musickers capitalize on Jamaican music's global reach as well as its local power. However, the means by which they develop the skills to do so are still mainly self-generated.

Musicking Still marked by official neglect

The lack of formal institutions to foster and develop the impressive talents of Jamaican musickers reveals the Jamaican government's continuing unease with musicking as a respectable occupation or site of advancement. This is in stark contrast with the way the state deals with sports, for example.

> MB: It [music training] should be like we do with sports.. from the tender age of five or six people start to watch your progress. You move from prep school to high school. If you can run, your peers know you can run, teacher know you can run. so when you go to school "he can run!" so sports day - people gonna take a note of it "okay how fast you can run. well if you can get the speed down to 12 second, you can make the team... there are these goals set, and to make it there is a prescribed training situation.
>
> MB, interview 2009

I asked the same question in all my interviews, near to the end of our conversation: "What is one thing you would like the government to do to make things better for Jamaican music?" MB's response was the most common: a desire that the government would invest in music education and training—not usually with respect to copyright, but rather to provide classes, rehearsal spaces, equipment in schools and communities. Music education does not appear to be a priority in the Jamaican education system.[148] Those who mentioned musical training in school often said they didn't enjoy it, and didn't see how it was relevant to the music they cared about.[149]

In the epigraph above, MB, a middle-class producer and studio owner who has situated his studio in a downtown area and sees it as a site of education, argued that music should be as valued as sports. He argues that the government invests heavily in spotting and developing that talent in relation to sports, which leads to Jamaican success. Although Jamaican musicking occasionally producers superstars MB is blunt about continuing failure to convert this into broader prosperity for artists:

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[147] James, *The Caribbean Music Industry Database: A Report Prepared for the United Nations Conference on Trade and Development (UNCTAD) and the World Intellectual Property Organization (WIPO)*, 19.

[148] Church appeared to be the main institution in which interviewees, especially those from poorer communities, received any musical training in church. Churches have space, equipment, music teachers, and just as importantly a community of participants in the congregation and musical traditions on which to draw.

[149] In one case a vocalist described learning the recorder in school, not an instrument connected to Jamaican musical traditions since the Mento era in the 1940s.

> We did not capitalize on all the superstar thing that we had. There is Bob Marley, there is Shaggy, but we did not know to convert all of that excellence and achievement and motivation… A lot of that is a racist and a class thing. Bob was a Rastaman and from Trenchtown [a historically poor neighborhood] and ting.
>
> MB, interview 2009

MB's language slips between past and present, between 1980s Bob Marley and 1990s global pop star Shaggy, which appropriately represents the ongoing hostility of the Jamaican state and upper classes to music of the poor. This hostility complicates the possibilities of policy, and is a key factor why copyright law has been problematic in both definition and enforcement.

This brief history describes several aspects of Jamaican musicking that have remained incompatible with copyright law for most of the law's existence. Practices in traditions of hybridity, repetition, and phonographic orality, contradicted many assumptions in the law. Just as importantly, the social relations between rich and poor, and between recording studio and musician also limit the ability of copyright to serve the majority of musickers in a reliable or systematic way. In the remainder of this dissertation I explore how current conditions, traditions and practices suggest ways we might evaluate copyright law as it is reshaped and enforced in the digital era. In Chapter 3 I begin with the creative moment at the heart of Jamaican musicking practice, in which the traditions outlined above are fostered and supported. This moment—the street dance—is the main source of social power for musickers and their community, and no analysis of musicking is complete without accounting for its particular constitutive power.

Chapter 3

The Street Dance: At the Center of Musicking

Street dances reveal Jamaican musicking in its complexity and dynamism. They foster both creativity and community through relying on practices of musical reuse and other creative acts that run in contradiction to formal law. In this chapter, I describe street dances s important sites for creative, economic and community advancement, serving this function in three ways: by fostering cultural and social authority among the poor, by fostering creativity, and by fostering a modicum of material self-sufficiency. All three of these means of advancement are possible because street dances reside on the periphery of law. Because street dances are a social institution that fosters creativity via a set of practices ignored or denigrated advocates of copyright, they provide a useful ground in which to base a critique of copyright on both normative and practical terms. Such a critique is useful in the context of current disputes over copyright outlined in the introduction. These disputes arise from copyright law becoming a global phenomenon (via international treaties), and from copyright law increasingly infiltrating daily life through being embedded in technology.

In the following analysis I provide vignettes drawn from field notes at the street dances, primarily Boasy Tuesday,[1] Passa Passa[2] and Bembe,[3] which are set apart in block text, and include the date of attendance at the event they describe. In a year of fieldwork, I attended fifteen street dances, as well as various other sound-system and DJ-centric music events, and from those experiences I have formulated the central arguments below. Through these observations I identify several dynamics central to understanding the relation between law and musicking in Jamaica.

Street dances are sites where one can observe how Jamaicans engage with law in social context. Examining Jamaican musickers' use of land, buildings, recordings, and their own bodies at street dances reveal how musickers use many other mechanisms than copyright law to achieve their goals. Examining the other mechanisms for gaining prestige or wealth involving existing creative traditions, and networks of communication that might enhance an artist's reputation, makes it possible to evaluate when, if, or how copyright is relevant and useful.

Street dances also demonstrate the importance of the urban poor as a participatory audience to Jamaican musicking. As will be shown, street dances' location in time and space

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[1] "Boasy" is slang for "boastful" but with a more positive connotation: in the sense of being brash, well-dressed, proud and flamboyant. See "Boasy" in WIWords, the West Indian dictionary. http://www.wiwords.com/word/boasy The term has class implications, especially as a street dance, because it implies one who has humble background but is not intimidated into remaining meek and quiet. A local celebrity who rose to fame in the same moment as Boasy Tuesday rose in popularity was named "Poor and Boasy," with a rags-to-riches (or at least to fame) story that caught the attention of the Jamaican public. Field notes, February 2009.

[2] The term "Passa Passa" is a patois idiom meaning "gossip-worthy drama." http://www.wiwords.com/word/passa+passa.

[3] The term "Bembe" has several possible meanings, including the name of an Afro-Cuban drum rhythm (bembé), or a set of hand drums. See http://www.descarga.com/cgi-bin/db/glossary

(late night/early morning on public streets and sidewalks) directly associates them to poor neighborhoods where such activities are acceptable, although not legal.

Lastly, observing street dances, but also the context of Jamaican daily life (and life in the Jamaican diaspora), reveals how they exert a powerful cultural authority.[4] This authority contributes to the reality of street dances as exilic spaces: engines of creativity, as well as of social and economic power for marginalized people.[5]

In this chapter I will explore a cultural activity that raises many complex questions about social practices and their relationship to law. My priority is to provide a careful, empirically grounded analysis of the central concerns and dynamics of Jamaican musicking. In doing this, I lay groundwork for future policy discussions rather than make specific policy recommendations.[6]

How Do street dances act as exilic spaces?

Jamaican political theorist Obika Gray asserts that exilic spaces arise from a "parallel process of cultural formation in the ghetto" where "whole areas of shared customs among the poor existed beyond the reach of state predation."[7] My observation of the street dance has led me to identify it as just such a site of shared customs, centering on the practices of musicking. The economic and creative significance of Jamaican musicking at moment of the street dance includes the sound system[8] and all the other musickers present. As an economic happening outside the state, many entities take advantage of the gathering attendees as a market for goods. Money comes from the unlicensed sale of liquor, food and drink, from selling media artifacts generated at the dance, such as video DVDs or audio recordings. Both the input and the output of economic activity are diverse and diffuse, and in both cases centers on the urban poor, due to the location of street dances in poor neighborhoods. Similarly, the inputs and outputs of musical creativity are diffuse and diverse but centered on the urban poor. As I will discuss below, the

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[4] Historian David Katz identifies “Soundsystem culture” as “the perpetual arbiter of Jamaican musical taste.” Katz, *Solid Foundation*, 2. I take the inclusion of ”culture” alongside the institution of the soundsystem to be a gesture towards the moments of performance and the cluster of musickers that I argue is exemplified in the street dance.

[5] Gray, *Demeaned but Empowered*, 91.

[6] The inconsistent, personalized, violent and party-driven dynamics of the Jamaican state make policy recommendations and enforcement, especially in relation to Jamaica’s poor majority, a thorny proposition. The local connections of government ministers, for example, can affect the way Jamaican musickers view government policies coming from that ministry, or party allegiance can overrule support for a policy developed by the opposition.

[7] Gray, *Demeaned but Empowered*, 91.

[8] As discussed in Chapter 2, the term “soundsystem” describes both the cluster of technologies for playing recordings in a live setting and the men who control it. Chang and Chen, *Reggae Routes*, 175 Many scholars have examined Jamaican musicking by emphasizing the role of the soundsystem at the center of Jamaican music. Chang and Chen describe soundsystems as “an almost unique Jamaican phenomenon [that] are still the primary mode of musical dissemination.”; While Stolzoff asserts that “for the past fifty years, the sound systems have been the driving force behind Jamaican popular music culture.” Stolzoff, *Wake the Town & Tell the People*, 4. Also see Witmer, “ Local‘ and’ Foreign,” 15; Katz, *Solid Foundation*, 1. However, focusing on soundsystems risks minimizing the extent to which audience approval and interaction (including other technical knowledge, like dancing) is part of musicking’s meaning. For example soundsystems do not directly organize or control musicking’s financial significance for all musickers. Stanley-Niaah, *DanceHall*.

exilic aspects of street dances have particular significance both for fostering creativity and financial gain and for linking those benefits to urban poor communities.[9]

The following vignettes focus on Boasy Tuesday and Passa Passa, two significant street dances from 2009. The vignettes, taken from my field notes, set the stage for my discussion of social dynamics; highlighting how locations and the actions within them transgress formal property law. Street dances violate, or at least strain, the exclusivity and licensing aspects of property law, since few participants gain permission for use of property from the official owners.

Setting the stage: Street dances rely on transgression of property and other formal law

While peripheral to formal law and rooted in an officially denigrated population, street dances are anything but peripheral to Jamaican daily life. On the island, street dances are impossible to ignore, even if one never attends. Jamaican mass media, from national television, radio, the national daily newspaper (*The Jamaica Gleaner*), tabloids, and commercial radio all discuss street dances regularly. Events at street dances are discussed at work and on the bus as news, gossip, or examples of the heights or depths of society. Celebrities are made and broken there; drama abounds from the domestic to the military. Street dances presence also affects daily life in material ways: some last long enough through the night to affect the early morning commute and traffic patterns. Their presence can also be heard almost every night of the week: the boom of their bass speaker towers can be heard across Kingston, even from the hills of the Blue Mountains overlooking the city, and in the smaller cities and towns as well.

Although I was aware, before my arrival in Jamaica, of various street dances, when I arrived in the winter of 2009, I quickly heard that Boasy Tuesday was "the hottest dance in town." I heard it mentioned by DJs on local radio broadcasts, I saw reference to it in the local tabloids, and several of my Jamaican contacts had mentioned it as "the place to be." It occurred on Tuesday nights (through Wednesday mornings) in a neighborhood of Kingston called Ken Cot. Ken Cot is marked at the main road into its interlocking streets and gullies by two large commercial bakeries that employ many people in the area. Before heading over at night, I investigated the neighborhood in the daytime, on foot.

> The smell of bread filters over the streets during the early morning hours and much of the day. Behind the bakeries, the neighboring streets are paved unevenly and full of potholes. One or two-story houses face the street, with dusty but carefully kept front yards (when visible); many are behind walls. On some streets the walls are too high to see over, on others they are knee- or waist-high. At 9am a lone coconut seller stands beside his cart piled high with coconuts, machete leaning against the wall. Restaurants, bars, and auto body shops, identified as such by hand-painted signs or murals depicting food or cars, intersperse with homes. Other businesses infiltrate the homes themselves: some houses sport a narrow door with a window cut in it where a resident can lean

[9] Stanley-Niaah, *DanceHall*, 4.

> through to sell soft drinks and phone cards out of their kitchen. Later in the day, I walk past Ernie's, a legendary natural fruit juice shop run by the son of a local Rastaman, who does a quiet but steady trade in the afternoon hours. At low parts of the roads, trash piles up in the gutters, although trash bins encased in lockable metal cages sit in front of many front gates as well.
>
> Field notes, 2009

Much about the physical layout of the neighborhood suggested its lower-class status. I found one could often differentiate between neighborhoods depending on how physical property is delineated and used. Some of the main signs of a poorer neighborhood appeared to be, first, the mix of residential and commercial activity (often in a single house), as well as modest- sized homes (usually one or two-floor), and inexpensive construction. In contrast, wealthy areas in Kingston appeared, to my eyes, to be armored enclaves, with thick, tall, usually blank and undecorated walls, except for occasional signs advertising the presence of large aggressive dogs and armed security.[10] My walks through Ken Cot revealed a less rigid physical demarcation of property as I approached the street where Boasy Tuesday occurred. Although I saw some walled-off homes and businesses, the walls tended to be more symbolic demarcations of space rather than actual barriers to sight or entry: a knee or waist-height cinderblock affair, beyond which a lawn and the front of a house might be visible. This difference in walls suggests that class may involve different relationships to property: it appeared boundaries between private and public, as well as between residential and commercial were more blurred.[11]

This blurring was even more dramatic when I returned at night to the Boasy Tuesday, organized weekly in Ken Cot by the Fire Links soundsystem.[12]

> At 12:30am on a Tuesday night/Wednesday morning, January 2009, I walked with a friend who lived in the neighborhood through the streets of Ken Cot. Far fewer people are visible than in the daytime, and more of them are young and male (late teens to early twenties). At this time the smell of the bakeries has usually dissipated, overcome by the diesel fumes of traffic and the often

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[10] Road quality did not directly correlate with class position–uptown neighborhoods often had potholes or unpaved stretches, and wealthy people simply drove luxury sport-utility vehicles (despite paying a 100%import tax rate). This inconsistent public infrastructure hints at the lack of uniformity in the Jamaican state projects that contradicts easy assumptions about the "rule of law" and its ability to solve social problems.

[11] The absolute poorest urban areas have uneven zinc sheets shielding most living spaces (which may not be finished houses–they often lack running water and thus require outdoor spaces for washing and bathing. Thus, privacy is only afforded by a zinc exterior wall). People are also more crammed together in the poorest area, so that the zinc walls sometimes create the feeling of hot metal tunnels where the zinc leans together overhead. The slightly less poor areas, where people can afford relatively solid homes, have fewer high fences and walls between residences and the street. Diane J. Austin-Broos and D. J. Austin, *Urban Life in Kingston, Jamaica: The Culture and Class Ideology of Two Neighborhoods*, vol. III, Urban Studies (Montreux, Switzerland: Gordon and Breach Science Publishers, 1984), 35, 42.

[12] Stolzoff, *Wake the Town & Tell the People*, 119. Soundsystem crews include "five to fifteen men, with two to five selectors (DJs) and three to ten ... roadies and technicians."

> fetid water of the gully running alongside the main entry road. Doors and gates facing the streets on the way to the dance are tightly closed. Streetlights only intermittently cast dim circles of light through which skinny feral city dogs wander singly and in packs. From blocks away the bass boomed; as we rounded a corner we were joined by other people in twos and threes, and down the road could see two massive black walls of speakers on the right sidewalk. Roadside vendors were selling bottles of beer, mostly from the front yards of the houses lining the street, and the smell of hot oil wafted out as we walked past a thin man setting up a fried-fish stand. Later, I saw another man moving through the crowd, balancing piles of snacks and cigarettes on his head, held together with a wire, from which he would tear off a bag of peanuts if you paid him a few Jamaican dollars.
>
> As the night went on, the crowd deepened on each side of the street, attendees generally facing each other across the street, until the crowds grew too thick and began to converge in the middle. Alongside one of the speaker walls, a raised stage held several DJs behind a large table holding CD players and a mixer. One of the DJs was exhorting the crowd through a microphone, and a cluster of other DJs, soundmen, vocalists and local celebrities, male and female, crowded the stage, dressed in the latest fashions.
>
> By 2am the whole street was packed with people in their most outrageous outfits, the throng parting reluctantly to allow cars to drive slowly through at occasional intervals, and once to allow a stream of young men on expensive motorcycles.
>
> Field notes, 2009.

At the dance, the boundaries of the social space overlapped and transcended private property even further: people spilled over from the sidewalks to the lawns, or spilled out onto them from their homes. Houses' private yards were visible to all, and apparently available to some for dancing and watching as well, in contradiction of the norms in more wealthy neighborhoods as well as common assertions of property rights (for at other times of day the yards were not so open to nonresidents). Crowds also redefined the public space of the road as a space for performance, creative expression, romantic and sexual flirtations, and socializing. These blurring boundaries also challenge laws defining public space, by blocking the flow of traffic in public streets.

Another popular dance, Passa Passa, equally dramatically demonstrates the blurring of public, private, and commercial space.

> Coming in to Passa Passa l at 3:30 am on a Thursday morning. Many people have come here after an earlier event hosted by the legendary Stone Love soundsystem a mile away. A few farmers and merchants from far across the island are trickling into the area in trucks, vans, or even pushing a cart or two, bringing their wares

> for the daytime market at which shopping begins at 6am. By 4:30, a lively crowd filled much of the pot-holed street from both sides, where shop fronts turn their blank and dusty windows to the street of Tivoli Gardens. Truck drivers resignedly or even cheerfully carrying eggs, melons, greens, or peppers force their way slowly through the slowly parting dancers. The street, a busy thoroughfare in the daytime, is wider than Boasy Tuesday's more residential avenue, and provides more room for dancing en masse but also a slightly more exposed feeling when the crowd is not full enough to fill it. The sound is no less deafening, coming from still more towers of speakers lining the side of the road.
>
> Field notes, 2009

Alongside a characteristic reconfiguration of public and private space, Passa Passa the most famous street dance in Jamaica (and possibly the world) also reveals the way street dances reconfigure social power and authority.[13] Passa Passa takes place in Tivoli Gardens, which is also famous for having the largest open-air farmers' market in Kingston: Coronation Market. However, "Tivoli" has been best known for its role as a contested neighborhood in Kingston, suffering from poverty and partisan violence. Tivoli is a "garrison"—a neighborhood that had developed into an armed area supporting a particular political party.[14] Only in the past 10 years has Tivoli developed a new claim to fame: the internationally famous street dance Passa Passa.

Street Dances' function #1: Sites of extralegal authority

Even though the mostly middle-class students and faculty I spoke with at the university carefully instructed me on how to remain safe at Coronation Market in broad daylight, they didn't seem as concerned about my safety while attending the outdoor, unlicensed dance that only begins after 3am.[15] Despite its location, it is relatively safe to go to Passa Passa, but not because there is increased police presence—in fact, I never saw any police at Passa Passa.[16] Rather, the garrison community has recognized Passa Passa's positive contribution to the

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[13] Sadeke Brooks, "Italian Takes Passa Passa Photos to the World," *Jamaica Gleaner Online* (Kingston, Jamaica, August 28, 2011), http://jamaica-gleaner.com/gleaner/20110828/ent/ent5.html "Passa Passa's crowd might also include visitors from the U.S., Canada, Australia, Israel, Ireland, Sweden, Austria, Germany, England and Japan."; Passa Passa is also popular across the Caribbean. See Camille Hernandez-Ramdwar, "Shottas and Cubatoneros: Badmanism, Bling and Youth Crime in Trinidad and Tobago and Cuba," *Caribbean Journal of Criminology and Public Safety* 14, no. 1 (2009): 308.

[14] Hope, "Passa Passa," 129 and n. 8.

[15] Responses in conversation ranged from amusement to distaste. Two people I spoke with implied that foreigners like to go see parts of Jamaica that decent Jamaicans avoid. I was warned during election season that it would not be wise to cross town even in a taxi to get there, due to the risk of being caught in crossfire–not necessarily at Passa Passa, but in driving through other garrison neighborhoods on the way. Personal conversations, February, 2009.

[16] The lack of police presence during my attendance at Passa Passa was an interesting contrast to Boasy Tuesday, which is in a less notorious neighborhood. At Boasy, police were a fairly regular presence, even if not explicitly enforcing the laws being broken in front of them.

community and keeps the peace.[17] Many assert that the don, rather than the state guarantees safety at Passa Passa.[18] The dance has a reputation for scandal, but not violence. The increasing respect that the Passa Passa event has garnered in Jamaica no doubt comes from its ability to generate money and interest from locals, and from foreign music fans, but also from its ability to provide safety at least during the moments of the dance. An exilic space can develop into a kind of institution in which order is maintained to some extent outside the law.

Alongside the obvious physical transgressions of property rights, street dances dramatically transgress property laws around using sound. Audible for blocks, or on a still night sometimes for miles, a street dance might utterly blast through any official attempt at zoning for noise. Jamaican laws regarding noise in residential areas include the most recently passed Noise Abatement Act of 1997, which requires volume reduction after 12am on weekdays and after 2am on weekends (though permits for later performance can be obtained on certain occasions).[19] In 2009 and 2010 there appeared to be an upswing in enforcing the Act.[20] I attended several street dances at which police forced the soundmen to shut down their systems. However, on other nights, the same dances ran until 4am or later without incident—even when the police came through. In one case—at Boasy Tuesday—I recognized the same police officers who had shut down the event on a previous occasion. This time they simply drove through the crowd slowly in their battered Toyota compact car bristling with automatic weapons, without enforcing the Act or stopping the music. Nobody, not the DJ, the soundmen, the vendors, nor anyone in the audience appeared particularly concerned about police presence apart from a few marijuana smokers casually tucking their hands behind their backs. I believe they felt reasonably secure that they would not be arrested—in other words, they felt the law did not define police behavior. When I asked my companions about why or when street dances were shut down for noise, several people suggested rival soundsystems make complaints in order to shut each other down. Such testimony suggests that people believe that law enforcement is shaped by local concerns and rivalries. It wasn't clear the extent to which people were personally familiar with individual police officers, or whether that played a role in police discretion. A more salient factor would be the threat of collective resistance and even uprising should the crowd judge police to overstep their bounds.[21]

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[17] Hope, "Passa Passa," 130.

[18] Mattathias Schwartz, "A Massacre in Jamaica," *The New Yorker*, December 12, 2011, http://www.newyorker.com/reporting/2011/12/12/111212fa_fact_schwartz; Matt Willen and Ian Thomson, *The Dead Yard* (New York: Nation Books, 2011), 41. However, see the Jamaica Gleaner's public apology for asserting a direct connection between Passa Passa's founders George Miles and O'Neill Miles and the local don. "Apology to Organisers of Passa Passa," *Jamaica Gleaner Online* (Kingston, Jamaica, August 2, 2010), http://jamaica-gleaner.com/gleaner/20100802/lead/lead8.html.

[19] Noise Abatement Act of Jamaica, 1997

[20] Mel Cooke, "Living by Law ... Fletcher's Land Missing 'Dutty Fridaze'," *Jamaica Gleaner Online*, October 31, 2010, http://jamaica-gleaner.com/gleaner/20101031/news/news1.html.

[21] Not only have whole neighborhoods risen up against police, but on occasion they have been better armed. Gray, Demeaned But Empowered, 197, 218–20, 285. Also see L. Alan Eyre, "Political Violence and Urban Geography in Kingston, Jamaica," Geographical Review 74, no. 1 (January 1, 1984): 24–37. Although the most common spark has been related to elections, there is general resentment and lack of intimidation among the poor, based in a long history of conflict in which the police have not always won. Gray, *Demeaned but Empowered*, 197, 218–20, 285. Also see L. Alan Eyre, "Political Violence and Urban Geography in Kingston, Jamaica," *Geographical Review* 74, no. 1 (January 1, 1984): 24–37. Although the most common spark has been related to elections, there is general

It was striking, as a foreigner, to see police—still menacing, with automatic weapons and stony faces—making their presence known but not actually enforcing the law being broken in front of them by hundreds of people. This moment embodied the street dance's negotiated authority.[22]

Street dances' transgression of property law shifts a fair amount of authority, responsibility, and vulnerability from the individual to the collective musickers. When a street dance redefines public spaces, no individual owner is easily responsible for what happens in it, nor is there any one entity that can completely control what happens at the dance—even were a soundsystem to shut down its equipment, that choice would have to be gauged against the possibility of alienating the audience. By contrast, a dance indoors gives the building owner a greater measure of control and responsibility for what happens in the space. An owner, however, is a potential target for law enforcement with more to lose than any individual at a street dance (although soundsystems have more to forfeit than the dancing crowd). The relatively free flow of entrance and exit, and the lack of formal control at street dances, allows for a wider variety of activities to take place, including unlicensed or illegal practices, but also, as will be discussed below, moments of creative risk-taking.

The street dance violates or provides space for people to violate laws regarding drug use, laws and licenses regarding sale of food, drink, and property rights both physical and intellectual. Because street dances are sites where locals redefine their practices against those embodied in the law, and against social norms associated with upper-class values, they exemplify Gray's concept of exilic spaces, described in Chapter 1.[23]

Street Dances' function #2: Sites of creativity

Characteristics of exilic spaces such as extralegality, collective authority rooted in the urban poor, and room to experiment all contribute to the street dance's ability to foster creativity.

Certain creative acts may be proscribed from indoor locations for purely physical reasons: one street dance organizer forced to move to an indoor location described how the dancers "could not do some of the things they did outdoors, as that would be destructive to the building."[24] Jamaican dance moves are often extremely athletic and acrobatic. I witnessed dancers climbing atop 10-foot-tall speaker towers or hanging upside down from the light posts. These acts add to the dance's (and the performer's) notoriety and spur performative creativity where dancers attempt to outdo each other. The ability to engage with the physical structure of the performance space requires flexibility in its regulation that may transcend the laws of property (as well as, seemingly, of gravity!).

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resentment and lack of intimidation among the poor, based in a long history of conflict in which the police have not always won.

[22] In addition, neither food nor alcohol licensing law is enforced. Even more strikingly, given that marijuana is illegal and not decriminalized in Jamaica, the common presence of smokers, even hawkers of marijuana–often carrying forearm-sized branches of the plant in large bundles–never appeared to excite a response even when police were present. I never saw a police officer address any vendor of food, beverage, cigarettes or marijuana, despite regular, if temporary police presence. In several cases marijuana vendors strolled quite casually past the police cars driving through the crowd.

[23] Gray, *Demeaned but Empowered*, 91.

[24] Cooke, "Living by Law."

Alongside the dancers' physical creative expressions, there are also sonic creative expressions that require room to breathe without being unduly restricted by regulations, costs, or permission.[25] Intentional engagement with existing recordings or recorded elements is a central aspect of Jamaican musicking; in the next chapter I describe more fully how musickers' creative reuse of recordings in live and studio settings allows them to assert cultural values and engage with culture in a democratic, participatory way. More generally, space for flexibility, experimentation, serendipity and play are argued by many to be necessary for a healthy creative environment.[26] Street dances are sites of learning for aspiring musickers, where audience feedback forms an important part of the learning process. Imitating or repeating a copyrighted work can be limited by copyright enforcement, which requires a license for performance or re-recording a copyrighted work. Copyright law enforcement would restrict these possibilities.

Reuse of existing works is also an important aspect of learning for Jamaican musickers.[27] Alongside the creative value of participatory culture facilitated by these flexibility spaces is an aspect of creativity with political overtones, also the Jamaican tradition of reinterpreting existing works in a new idiom. As will be discussed in detail in the following chapter, when Jamaicans do "Jamaican-style" versions of foreign songs, or incorporate foreign songs into their productions they are expressing their democratic engagement with popular culture and sometimes articulating a resistant identity and a kind of political dissent. These are practices that can occur in the recording studio but also on the fly, at the street dance. In this way street dances transcend intellectual property law, as well as physical property law, in ways that make them sites of autonomous cultural formation at least partly independent from colonially defined artistic practices.

Phonographic orality: the street dance as collective author

At the street dance phonographic orality, the dynamic interplay between recorded musical element and live performance, includes DJs playing, manipulating or combining recordings, adding vocal performances or interjections to the audio experience. The DJ's creative input is matched by –and in response to– the input of dancers and other audience members. A vignette from Passa Passa reveals one way this works.

> My companion tells me this is a less-crowded night than he has seen before, and I estimate 400 people or more gathered between the speakers (popular nights have reportedly attained attendance of over 1000). As the crowd energy picks up, people begin to talk more animatedly and dance more expressively. More people couple up, dancing together with increasing vigor, while a few

[25] Liu, "Copyright and Breathing Space," 123. Also see Cohen's discussion of "degrees of freedom" in Cohen, "Creativity and Culture in Copyright Theory," 1190–1.

[26] See, e.g. Cohen, "Creativity and Culture in Copyright Theory," 1190, suggesting that "serendipitous access to cultural resources and facilitat[ing] unexpected juxtapositions of those resources" is crucial to the heart of creativity, "increas[ing] the likelihood that someone will see, hear, or think the world differently."

[27] Ernest A. Edmonds et al., *Creativity and Cognition: Proceedings of the Fourth Conference on Creativity & Cognition* (Loughborough, UK: Association for Computing Machinery, 2002), 173, http://isbndb.com/d/book/creativity_and_cognition; Bjorn Alterhaug, "Improvisation on a Triple Theme: Creativity, Jazz Improvisation and Communication," *Studia Musicologica Norvegica* 30 (2004): 98, 111, 114.

> dance crews begin to make short bursts of synchronized dance moves before breaking apart into individuals in the crowd. The DJ begins playing tunes of increasing "hotness" –which means tunes that have a certain buzz or popularity about them – familiar already to the crowd.[28] A DJ's skill is partly in the selection of the vocals, as well as knowing when it is time to switch to a new instrumental riddim. One riddim is especially popular this season – for the past 2 months I have heard "Hold Yuh" by Gyptian, at dances, on the radio, in shops, restaurants, as a ringtone. The instrumental version has also provided a backing track for at least fifteen other singers. It isn't until later in the night (or morning) that Hold Yuh's instrumental comes over the soundsystem. When it does, there is a rush of excitement in the crowd, but also expectation – what is the DJ going to do with this? It is evident when the DJ gets around to playing Gyptian's vocal because people scream as the vocals come in. Couples break apart and people rush towards the center of the street and the thickest part of the crowd. Others are literally jumping up and down, and in a few places I see young men lean back and use a can of hairspray and a lighter to improvise a homemade flamethrower that they shoot into the air to symbolize that the tune is "fire"! Next, the DJ drops a new vocal from another of the most popular vocalists of the season on the "Hold Yuh" instrumental. The combination of the familiar riddim and the new vocal from a famous vocalist brings people to a fever pitch – responding so energetically that the DJ "pulls up" the tune, rewinding it to the beginning to start it over again. I recall seeing a time when a DJ did not pull up the tune when the crowd "demanded a rewind from the selector" and a crowd member ran up and physically did it for him, pulling back the song to the beginning again so the crowd could experience the buildup and release again.
>
> Field notes, 2009

The dynamics of interactivity between musickers at a dance, and the specific role of DJs and recordings will be explored further below. While not every moment of audience interactions is as dramatic as that described above, the level of interactivity appears regularly high compared to other concerts or dance events I have attended. A street dance crowd has a striking amount of power to encourage or discourage DJs, performers and producers. Audiences may demand the

[28] Because Jamaican tunes tend to share instrumentals (called "riddims," addressed in Chapter 4), it's common to hear the same riddim multiple times with different singers recorded over it

DJ play particular songs or otherwise perform musical actions. I witnessed another "rewind" on another street dance called Bembe, around 5am:[29]

> The DJ, Tony Matterhorn (named after his favorite brand of cigarettes) was building up suspense by delaying the sonic entrance of a particularly popular song. Baseball cap askew on his head, massive silver chain glinting at his neck, he smirked and watched the crowd. Matterhorn played version after version of other songs that made use of the same instrumental, building expectation and tension in the crowd. When the most acclaimed version finally "dropped," people erupted with vast enthusiasm, banging on the zinc walls lining the streetside edge of the dance floor, jumping on the stage, beating and stomping on the ground, calling out at top volume, and setting off their homemade flame-throwers into the air. The uproar continued, overwhelming even the massive amplified soundsystem, until Matterhorn rewound the track[30] to play it again.
>
> Field notes, Thursday, April 23

The crowd has tremendous influence over the atmosphere of the night. Its authority is reflexive in relation to its own membership: other attendees may wait to see whether an event is truly "hot" before they contribute their own energy, but it is everyone's energy that helps make it hot. As the above vignettes illustrate, the DJ's authority is equally reflexive: he is not controlling the audience, but collaborating with them and sometimes subject to their will. A DJ's skill at negotiating this dynamic creates his or her reputation.

Audiences also punish DJs who fail to impress them. An unimpressed audience at a street dance is serious business: one might face a stone-faced crowd of unmoving people, sucking their teeth and rolling their eyes—a daunting prospect for any DJ. Unhappy or hostile audiences also shout insults or throw bottles at the DJs. I have heard stories of DJs receiving physical beatings from displeased audience members.[31] Even the simple humiliation of a "flop," where the audience turns away in disgust, can follow a DJ or other performer for some time, affecting his future work prospects. The audience's power to build or demolish reputations is significant.

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[29] I have heard audience members and other DJs criticize a DJ for playing a hot tune "too early" in the night. Field notes, February, 2009. Simply playing the tune might not trigger the crowd response. One has to attend to the energy of the party in a dynamic and reflexive process. The audience recognizes when the DJ has played the hot tune at the proper time in relation to the energy of the night. This does not mean a DJ cannot positively surprise a crowd, but the interaction must be carefully gauged otherwise the DJ may "flop" i.e. fail at his task.

[30] The sound of the "rewind" itself, of a record being pulled back to the beginning in order to be played again, has also been incorporated into recordings, so that a song may have a built-in rewind in an attempt to build or assert the kind of response that can be seen at the dance.

[31] "Bottle-throwing Bouts Smash 'Extravaganza'," *Jamaica Gleaner Online* (Kingston, Jamaica, December 24, 2004), http://jamaica-gleaner.com/gleaner/20011224/ent/ent1.html.

Producers and vocalists are also dependent on audience input. Studio producer CM describes how he and his soundsystem crew would test their recordings by learning from audience feedback.

> [When] We have new songs we play them and watch the response of the people and know which songs would be.. the songs to hit. So we develop that sense from doing that,
>
> CM, interview, March 2009

This time-honored practice illustrates how phonographic orality displaces the authority of the composer and the musician, the producer, the soundman, and the DJ, as the audience engages, responds, judges and shapes musicking at the dance.[32] To properly understand the incentives and dynamics of creativity, the audience must not be discounted as an input. Attending to the collective aspect of phonographic orality also reveals gender dynamics in the street dance: because soundsystems are staffed almost entirely by men (except for the occasional vocalist) while audiences often reflect a more equal mix of men and women, and many have testified to the importance of female importance and authority on the dancefloor. Further, because the audience at street dances includes predominantly the urban poor, phonographic orality maintains Jamaican musicking's reflection of the poor and the practices they favor. All of these facts affect how copyright law could affect the dance. Any recording of a musical performance becomes a derivative work whose creation must also be licensed from the copyright owner of the musical recordings involved. As I discuss further below, many musickers derive benefits from the wide and speedy circulation of these recordings, which would be limited if the cost of circulation increased. Lastly, because live performance or broadcast of a recording is an act requiring a license in Jamaica (and internationally), enforcing copyright would raise the cost to soundsystems, which could affect their access to particular music and affect their relationship to the audience.

Street Dances' function #3: Alternate paths to getting paid

"Even the man that clean up the floor deal with the Red Bull can!"

> Glen Bartley, organizer of the Dutty Fridaze event 2010.
> (Referring to the fact that people glean empty bottles of popular drinks like Red Bull, redeemable for cash at recycling centers.)[33]

Street dances are sources of money for a wide range of participants, most clearly for the soundsystem crews. Soundsystems are the most visible forces for convening and advertising the dances, and they provide speakers, DJ equipment, lights, engineers and DJs. While they do not

[32] Like other performers DJs also educate audiences through exposing them to new sounds. CM describes how it can take time for audiences to get into it (when they aren't actively hostile): "sometimes people will grow on a song you know, probably it's the first they are hearing it so they have to take their time." Interview, May 2009.
[33] Cooke, "Living by Law."

charge admission, soundsystems crews often get a percentage of alcohol sales, and these days make money from selling DVDs of the event on the internet and internationally. Videographers play increasingly important roles in Jamaican musicking, shaping performances, song lyrics and the actions of other musickers such as the dancers. Videographers may be paid by soundmen, local media, or by those who sell the DVDs, or they may document events in order to make their own reputations as cameramen.

The presence of street vendors, food stalls and bars of varying levels of formality is a time-honored aspect of street dances. These nonmusical goods such as alcohol, snacks, cigarettes and prepared food appear to form the bulk of economic activity at street dances. The relationship between alcohol and the dance goes back to the foundation of Jamaican musicking: one of the first studios and soundsystems began as the front-yard entertainment for a liquor store that profited from attendees drinking while they danced. In general, even now money payments are not tied to exclusive control over musical works, but rather depend on these ancillary sales. This means that street dances are sites where small-scale business flourishes, and as described above, even the alert individual can even profit from redeeming the discarded cans for a recycling deposit. Many residents and members of the local community, which includes musickers and their families, profit from street dances. The extent to which these events lie outside of formal systems of legal regulation facilitates more informal moneymaking by a wider (and poorer) segment of the population. For those concerned with the distribution of money associated with musicking, this more diffuse financial gain, spread among the local community of the urban poor, evokes a different outcome than that derived from a royalty received by a single owner of a copyrighted work. Those owners, as discussed in Chapter 3, are more likely to be upper class, and the more concentrated flow of wealth accrues disproportionately to them.

Jamaican musicking's global popularity has also attracted foreign attendees and their money to street dances, which is a kind of tourism that more directly benefits more Jamaicans than the officially sanctioned tourism in resorts. So far, the attraction of Jamaican popular music has not encouraged much investment or support from the mainstream tourist industry or the Jamaican government.[34] Street dance's transgressive practices and association with the poor still create conflict with the state. Recently, foreigners visiting Jamaica in order to enjoy Jamaican music were moved to complain publicly about police shutting down a street dance. In their complaint they emphasized their potential economic value for Jamaican musickers:

> What differentiates us from the average tourist is that we spend our money with the locals…our money stays in Jamaica unlike the money the tourists spend in all-inclusive American owned resorts. We stay in smaller local hotels, use taxis, eat, drink and party in restaurants and shop at local stores. Also to be taken into consideration is the promotional value we have on the export of Jamaican dancehall culture, many of us are influential promoters,

[34] Some experts on Jamaican music have recently argued that this should change, although focusing more on roots reggae than dancehall. See, Niaah and Stanley-Niaah, "Bob Marley, Rastafari and the Jamaican Tourism Product"; Promoters of the most established street dance have argued for its recognition as a tourist site. "Passa Passa, the Authentic Tourism Experience."

> radio selektors and entertainers promoting and booking Jamaican dancehall artists and dancers internationally.
>
> --Riina Asamoa[35]

Some large, international corporations currently invest in street dances, paying organizers to post advertisements or selling their products directly to the crowd. Major sponsors include international brands like Guinness beer, or the Digicel mobile phone company. The soundsystems may receive direct payments in exchange for their contribution, or sponsors may reduce costs by supplying free products. Sponsors also extend support beyond the soundsystem to local residents, either through direct distribution of free products, or, for example, by leaving a few extra cases for the small bars to sell.[36]

All of these economic activities redistribute money in the community in ways that are significantly more diffuse and immediate than are the potential royalties of copyright that could accrue to individual musickers. But another kind of value that street dances help generate—reputation—has both social and economic effects, but need not rely on the exchange of commodities.

The street dance is a venue where musickers can gain indirect benefits by participating in street dances in order to enhance their reputation. These benefits have not been accounted for in traditional analyses of musicking's value, but Jamaican musickers themselves have a sophisticated understanding of social status whereby enhanced social standing leads to material and social advantages.

Defining reputation: the currency of currency

Alongside music, money and goods, street dances generate and define the currency of an artist's or soundsystem's reputation.[37] Reputation plays a vital role in the economic and cultural dynamics of musicking, with multiple financial and social effects for various musickers.

> At around 11:30 pm, I wait at the bar with a 25-year-old female vocalist with several local and internationally popular tunes to her name. Like everyone I see, she is carefully dressed in casual but stylish clothing. She's wearing a tightly fitted buttoned-down shirt open at the neck, new-looking jeans and large sparkling earrings. Her close-cropped hair is bleached yellow and fire engine red, and

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[35] Published on http://www.dancehall.mobi/2011/01/04/a-letter-from-a-dancehall-tourist-police-keep-locking-off-the-dance/

[36] These companies act quite different from the many international music labels that attempt to sue for every unlicensed use of recordings! Both Digicel and Guinness increase brand awareness and popularity through circulating their names and (in the case of Guinness) their physical products. Cooke, "Living by Law."

[37] I do not use the term "social capital" although that term does capture some aspects of reputation's value. But reputation is not something that can be accumulated by an individual. Nor can reputation be invested in through private or personal action. Reputation requires that knowledge be circulated among *other people* in order to be valuable. Reputation –being known– can have positive or negative effects for an individual, but it cannot be the product or responsibility of the individual alone. Without others to do the knowing (and beyond that, to circulate the knowledge among each other), reputation is without value.

> her impeccable makeup combines to makes her look glamorous and slightly doll-like, given her delicate features. We stand among about seventy-five people, clustering at the bar of the restaurant next to the parking lot that hosts "Mojito Mondays." This is a relatively new event that several people told me to check out. Rolling her eyes in mock-frustration, she described to me her hectic nighttime schedule. "Tonight it's Mojito Mondays and maybe Hot Mondays. And there's so many dances later this week! Sometimes I just want to stay home… But…" as she trailed off, she shrugged, giving a dazzling smile. As she spoke to me, a photographer from a local newspaper came to snap our picture, which I saw the next day in the "out and about" section of Jamaica's second-largest newspaper.
>
> Field Notes, 2009

In the photograph of us that circulated in the local newspaper, both of us publicly demonstrated our association with one of the new and popular dances, enhancing our reputations as people in the know about what's hot in Jamaica.[38] The vocalist's need to be visible was constant and urgent: she must regularly be seen—and seen looking good—at multiple events of sufficient prestige so as to enhance her career. Her reputation required staying current through circulating her image at the event, or at least circulating knowledge that she was there.

Respect has many material consequences for many kinds of musickers. Everyone must stay current and known through regular performance at street dances to be accepted as part of Jamaican musicking. For soundsystems, their reputation affects access to musical recordings, which are important parts of a soundsystem's ability to perform and compete against others. Because studios and artists use soundsystems to promote their recordings before taking the financial risk of a commercial release, popular soundsystems are inundated with free recordings from artists and studios. At the same time, soundmen from less established soundsystems might work harder to ingratiate themselves with artists and studios in order to get recordings. In some cases a soundsystem might pay for recordings when they are commercially available. However, tastes in the music scene change much faster than the recordings could be licensed, and the latest tunes may not be commercially available. Some Jamaicans I spoke to, who were associated with soundsystems, downloaded music, but often they could not get suitable quality for live performance from download sites. In addition, since a tune's popularity in Jamaica is mainly decided at weekly dances, staying current requires constant engagement with the street dances and the media surrounding them.

For the dancers in the audience, the energy they devote to their own visibility on video and camera reveals the urgency of this constant engagement:

> The audience begins to thicken around 2am. There is room for multiple crews, and the energy is more diffuse because it is less

[38] My reputation was enhanced by showing both my knowledge of where to go, and my willingness to go there, as well as my proximity to a respected artist, who was willing to be photographed with me in a public setting.

> packed together. Some more formally organized dance crews begin to appear around 3am, notable first for their brightly colored matching outfits. Fashion appears especially important to dance crews (although many attendees are at similar levels of effort): all of them sport elaborate hairstyles, often bleached, dyed, shaved and braided into intricate patterns, sparkling jewelry often including massive neck chains or pendants, other accessories like hats, scarves (multiple) belts – often all worn at once. I couldn't be sure a fabulous looking audience member was a dancer until he began to break out, alongside others, into impeccably performed synchronized dance moves. However, the slick steps of the dance crews occasionally degenerated into a full-on scrum for central position in the area illuminated by the camera's attached spotlight.
>
> Field Notes, 2009

The battle for the video light can be ferocious, in some cases even leading to arrests.[39] Much of Jamaican musicking is highly competitive—what happens within the street dance is not an enactment of perfect equality. There are often winners and losers in a particular competitive moment, whether in competition between rival sound systems or a moment in which dancers compete for attention and try to avoid mockery. But the terms of these competitions are not the same as colonial terms. A notable example of the latter would be the 2009 "dancehall queen" competition, which was won through a dynamic performance by Kristal Anderson, a young, short, dark-skinned woman who weighed 200 pounds—a stark contradiction to dominant Jamaican media (and much international media) beauty definitions that focus on slenderness and light skin. Although more scholarship might penetrate the gender dynamics within these spaces, in various ways male-dominated, the hierarchies and inequalities within the dance do not align the dance directly with colonial power. This is due to the dance's location among the neighborhoods and bodies of the urban poor whose values are defined in part by rejection or reinterpretation of upper-class attitudes. While one could (and many do) critique the physical performance of dance moves that men and women enact that appear to be highly sexual, the context in which they are performed—a poor neighborhood dominated by poor people of African descent, framed by music that valorizes them at the center of the musical world—means that such acts take on different meanings than if they were carried out by other bodies, or even by similar bodies in different contexts. Carolyn Cooper and Bibi Bakare-Usuf suggest that the centrality of women's bodies and sexuality in the dance is a radical re-envisioning of dignity and priorities centered on non-Western values focusing on fertility and sexual autonomy.[40] Thus the borders around musicking may protect or provide space for alternate performances of gender and

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[39] "Women Fight for Video Light: Three to Be Sentenced After Brawl at Dance," *The Jamaica Star*, August 12, 2008, http://jamaica-star.com/thestar/20080812/news/news1.html.

[40] Cooper, *Noises in the Blood*; Bibi Bakare-Yusuf, "'I Love Myself When I Am Dancing and Carrying On': Refiguring the Agency of Black Women's Creative Expression in Jamaican Dancehall Culture," *International Journal of Media and Cultural Politics* 1, no. 3 (December 2005): 263–276; Tracey Skelton, "Ghetto Girls/Urban Music: Jamaican Ragga Music and Female Performance," in *New Frontiers of Space, Bodies and Gender*, ed. Rosa Ainley (London: Psychology Press, 1998), 142–54.

sexuality. While centering women's sexuality and celebrating the body can play into western concerns of commodification, that commodification is less likely to happen at the dance because of its specific context: the non-monetary reputational currency that circulates does not follow the same logics as would monetizing women's dancing or their bodies. The 'protection' afforded by the material reality of street dances affords a kind of cultural intimacy or sovereignty in which these other values can be maintained.

The struggle for visibility dramatizes reputation's importance to street dance participants. Most of the resources (described below) circulating at the street dance are provided to participants based on their standing; outsiders and newcomers are forced to pay for things that insiders and stars have thrust upon them. For example, vocalists, dancers, and "mogglers" (models)[41] are usually unpaid, attending in order to build their reputations by being seen. Enhanced reputation increases their chances to be hired to perform elsewhere, or to get free entrance at formal venues, to endorse a product, or become a TV or radio personality. Because recording studios are closely connected to soundsystems, making a good impression could potentially lead to studio time or a stronger association with a particular studio. If a performer should become famous, those relationships can reverse: soundsystems may cajole, barter with or even pay a local celebrity to lend his or her presence to an event.

Street dances are notable media events that invite professional and amateur documentation and commentary and the local and international level. Locally, Jamaican TV and radio news report regularly on street dances (sometimes from the scene), and events occurring there form part of Jamaican mass media discussion. Newspapers treat the hottest street dances as newsworthy events where photographers may be detailed to report on the fashions and gossip of the hottest dances. In addition, newspapers encourage "citizen reporters" to submit their own photographs to the editors, who may publish them in print or on the website. Because street dances mainly occur "downtown" in poorer neighborhoods, their newsworthiness subverts the colonial disrespect that the poor often face in elite Jamaican society. While the dances are not always praised, they cannot be ignored. And on occasion, they gather enough respect locally and internationally that they begin to change the terms of discourse. For example, while on the one hand, the national newspaper, in letters to the editor, opinion pages, and the occasional editorial, regularly expresses concern and disapproval over street dances as sites of immoral behavior, on the other, one of the main organizers of Passa Passa recently argued for its official recognition as a site of tourism and local economic development.[42]

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[41] "Moggle" is a Jamaican patois term derived from the English word "model," as in "fashion model." However "moggling" includes connotations such as focusing on striking poses dramatically in order to be seen in any social setting, and not only to sell products. Several interviewees mentioned "moggling crews." These groups of women are invited to grace dances with their presence, lending prestige and glamour to the occasion, and occasionally receiving payment or getting free drinks. Although several interviewees mentioned that such women were hoping for a modeling contract, I was not able to find any accounts of this having occurred. However, their aspirations appear to mimic the hopes and experiences described by Nash and Marvin, as described in the main discussion below.

[42] If Passa Passa were to become a fully legal and licensed event, this would not be a pure victory for Jamaican musickers. Instead, the same analyses that I put forth here ought to be applied to evaluate what this would mean in terms of equality and creativity. If copyright law were enforced, if a cover charge was instituted, if foreign attendance was made a central component, all of these could render the space less exilic. This would impose a

Reputation depends on the constant circulation of music and information, a point I discuss further in the following section. Although money and material goods, in poor neighborhoods are often redistributed via an ethic of mutual aid, reputation is more fluid still. It is not a characteristic or resource belonging to an individual that can be accrued and hoarded over time. Nor can it be built up through simple exchanges—it is rather embedded in a fluidly defined community through ongoing social relationships.[43] Circulation is supported by Jamaican musical traditions that avoid permission-based restrictions. The increasing integration of the street dance into communications networks like social media also enhances the ability of musicking to circulate, and has the potential to increase the reputation-building audience, although it could also reshape it depending on the dynamics of media circulation on those networks.

Media Convergence on the street dance—benefits and risks

> At Boasy Tuesday, a German film crew (mostly short-haired white men in dark t-shirts and jeans) brandish expensive video and audio gear, while several Japanese women in outfits fully as extreme in color and style as the most daring Jamaican dancehall queen "profiled" for the cameras. A photographer from Yardflex.com was there snapping shots of the event with a large expensive camera, and two other folks with notably expensive cameras were identified to me as local newspaper reporters. Two video men whose cameras plugged into the soundsystem circled, illuminating the crowd with bright lights on their cameras. Around 2:30am the DJ played the tune "Video Light," one of many songs that acknowledges the video camera (behind the "light") presence and power in the dance.
>
> Field Notes, 2009

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

different cost for certain kinds of participation. For example a new official street dance might connect to different networks of circulation and reputation –it's possible that cultural authority and creative control would shift away from the urban poor.

[43] Graeber discusses value arising from a "timeless commitment," although he also warns that these relationships can slip into patronage or exploitation. David Graeber, *Toward An Anthropological Theory of Value: The False Coin of Our Own Dreams* (Basingstoke: Palgrave Macmillan, 2001), 225 I suggest that equality among the interacting parties mitigates the chance of exploitation, with the caveat that equality can be on the level of community rather than individual.

(*To the girls, for the girls, for the video light girls, all right then,*
walk in front of the video camera because you are cute,
stand up tall in the video because you are cute)[44]
Mr. Vegas & Lexxus "Video Light"(2002)[45]

The video light depicted in the vignette and song above dramatize the street dance's role as a nexus of globally networked technologies. In recent years, visual recording of street dances has become ubiquitous, especially as mobile phones increasingly include cameras.[46] Digital photographs have become easier to upload and share online. Meanwhile digital video cameras have more recently become affordable, and videos have entered the circulation of street-dance related media, which reaches beyond local news and television to online sites, social networks, blogs, and international networks of Jamaican music fans and musickers. These developments have increased the visual record and the audio record of the dance.

The online presence of street dances further marks them as translocal spaces. While literally focusing on the bodies of people in a specific locale, the images and sounds circulate among a national and international audience joined by common culture even without a direct physical connection.[47] On social media sites participants upload images; music blogs and portals also report on the musical events and gossip, and music websites advertise the street dances or the DVDs associated with them.[48] DVDs released for sale weekly (at record shops in Jamaica and beyond) also catalog the most outrageous dances, fashions, and moments. These DVDs circulate all over the world –centering first on Jamaican immigrant communities, but also wherever Jamaican musicking has found a foothold. I have found them in every neighborhood with a Jamaican presence in the US or Europe – across the US, to London and Toronto, as well as record shops that stock current Jamaican music in Berlin, Brussels, and Amsterdam.

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[44] Although these lyrics encourage women to show off, I observed men fighting as hard or harder for the video light.
[45] Mr. Vegas & Lexxus, Video Light (Greensleeves Records 2002).
[46] Most research on the penetration of technology in Jamaica has been done about cellular phones. See Heather A. Horst, "The Blessings and Burdens of Communication: Cell Phones in Jamaican Transnational Social Fields," *Global Networks* 6, no. 2 (2006): 143–159. Although internet access is officially low (10% of households in 2008), see Information and Telecommunications Department Office of the Prime Minister, *Information and Communications Technology (ICT) Policy* (Kingston, Jamaica: Government of Jamaica, Jamaica Information service, March 2011), 12, http://www.jis.gov.jm/pdf/GOJ_ICTPOLICY_March2011.pdf I observed the internet as increasingly a fact of life for middle-class Jamaicans, and not out of reach for some of the poor, although its access appeared centered on institutions like libraries, schools, and to some extent recording studios.
[47] Bennett and Peterson describe how "A translocal scene… serve[s] to produce affective communities that transcend the need for face-to-face interaction as a requirement for scene membership."Andy Bennett and Richard A Peterson, *Music Scenes: Local, Translocal and Virtual* (Nashville: Vanderbilt University Press, 2004), 9; See also David Laing, "Rock Anxieties and New Music Networks," in *Back to Reality? Social Experience and Cultural Studies*, ed. Angela McRobbie (Manchester: Manchester University Press, 1997), 116–132.
[48] "Boasy Tuesday 17 (DVD) Dancehall Reggae CD, Reggae DVD, Reggae Music and Dance Hall.", n.d., http://cdselectaz.com/boasy-tuesday-p-4026.html; "DANCE n STAGESHOW DVDs DOWNLOADS," Online store, *Outtaroad - The Dancehall Mix CDs/DVDs Store*, n.d., http://www.outtaroad.net/shop/index.php?_a=viewCat&catId=8.

The Benefits of media convergence

Media convergence benefits everyone at the dance especially because of its ability to enhance reputations and pave the way for social and material advancement. Presence at popular dances is important for aspiring artists, as described above.

The most direct material profit from media convergence comes from DVD sales.[49] Although the event organizers and soundmen are not the only people in charge of video recording,[50] there will often be official video recorders who plug their cameras into the central power line and are generally given pride of place and attention, by DJs and organizers. Currently, DVDs circulate mainly as burned copies. As increasing bandwidth and storage allows the easy duplication and circulation of DVD-length videos online, soundsystems in Jamaica will have to grapple with finding a new, controllable source of revenue.

> Later in the night at Boasy Tuesday I saw the arrival of teams of dancers. Mostly these were all-male groups of four to seven, looking to be between sixteen and early 20s. They were clad in flamboyant outfits involving rings, neck chains, scarves, tight brightly colored pants and patterned shirts. Once they made their way towards the center of the crowd, dancers would individually or collectively vie for attention in the video light.
>
> Field Notes, 2009

As well as enhancing musickers' ability to build their reputations, globally networked technologies reveal new performative identities to a wider audience. Local and international news, gossip and other communication networks fueled by the kind of extreme hijinks that are more possible in the street, improve the reputation of dances and their participants still further. The increasing visibility of the dance in turn heightens visibility of hitherto under-examined musickers: the dancers that have become famous, individually or as part of a dance crew. Dancing has always been a key aspect of Jamaican musicking.[51] In Chapter 1, I described how dancing crowds were crucial to the development of musicking institutions and traditions. In songs today there has been a new flurry of songs explicitly about dance moves, and many lyrics refer to dances as places where an artist is popular, in order to demonstrate their credibility and authenticity as Jamaican artists.

The particular contribution of dancers was less visible to outsiders before the circulation of video and photographs, and the 'video light' has led to dancers' increasing significance as an economic as well as creative force. Most importantly, dancers appear to be reaching greater levels of international fame, developing names for themselves individually and as "crews" or teams of dancers. In an interview between an unnamed writer for a New York –based dancehall

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[49] Cooke, "Living by Law."
[50] It's possible to take video footage on mobile phones, and I observed this on numerous occasions.
[51] Peter Manuel, Kenneth Bilby, and Michael Largey, eds., *Caribbean Currents: Caribbean Music from Rumba to Reggae* (Philadelphia, PA: Temple University Press, 2006) "Most Caribbean popular music is dance music."; Cooper, *Noises in the Blood*, 5, 142; Stanley-Niaah, *DanceHall*, 21, 47, 106.

website called BADH and Nash & Marvin, two dancers who are most known for their presence in videos at Passa Passa (here spelled, by BADH, Pasa Pasa), the dancer describe their rise to international fame:

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

Nash: When I was shopping in Pavilion Mall and some girls just start scream. I was wondering what they were screaming about. And they were like 'we watch you on Pasa Pasa!' For real, that's when I know Pasa Pasa gone worldwide. I felt like a king without a throne.[52]

"Buss" (short for "bust out" or "burst out:) is a Jamaican patois term that translates as "to make famous."[53] BADH asks when the dancers knew that the dance event had made them famous, and Nash describes being recognized at a Jamaican shopping mall. The phrase "watch you" suggests the excited girls had seen them on a screen, rather than from attending the dance itself. Marvin next explains how foreigners watch their videos overseas and come to Jamaica to experience the street dance, and how the dancers get booked in Canada and in New York.

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

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

Marvin: (laughing) *Even in Kings Plaza the girls just go crazy.*[54]

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[52] "Hot Interviews with Dancehall Reggae Stars: Nash & Marvin," *Brown Angels Dancehall Heaven*, n.d., http://www.badh.biz/index.php?interview=jermaine_squad_nash_and_marvin&pageid=hot-interviews.
[53] Mel Cooke, "Rupert Davidson Plans to 'Buss Out' Jamaican Talent," *Jamaica Gleaner Online*, February 3, 2012, http://jamaica-gleaner.com/gleaner/20120203/ent/ent1.html.
[54] "Hot Interviews with Dancehall Reggae."

This exchange reveals the material effects of media circulation: the ability to travel, to get paid and to parlay that into a career through connections made along the way. This fame facilitates the interest and financial support of local and foreign potential employers.

DVDs of popular dances enhance musickers' reputations at home not only among music fans, but also in the halls of immigration officials who have the power to decide whether a Jamaican should be allowed to leave the country at all. As one of the promoters of Dutty Fridaze, another popular dance, said: "When Dutty Fridaze is up (generating news and DVDs), the work permit [for musickers to go overseas] is easier."[55] The local authority of the street dance casts a shadow visible even to employees in the US Embassy.[56]

None of these effects require exclusive rights in the recordings, nor of the dances themselves. However, attribution and identification remain important for reputation to circulate.

Transcending technical and social gatekeepers

Globally networked technology can weaken traditional gatekeepers to global audiences. Camera phones, affordable video cameras, and networked platforms like YouTube increase the dance's visibility beyond traditional media institutions, and beyond national boundaries. In previous eras international fame required significant dependence on upper-class gatekeepers who restricted not only the number but also the type of musickers along colonial definitions of taste.[57]

In addition, this new technology distributes reputation-building capacity more widely. Musickers can reach overseas publicity and distribution networks with fewer middlemen. The wider accessibility of fame has social significance. Outside Jamaica, Jamaicans are often portrayed as uncivilized, dangerous, and "low."[58] On the island, poor Jamaicans are specifically stereotyped this way. In both instances, claiming respect and fame is a way for poor Jamaicans to defend their identities. The street dance matters not only for individual opportunities to gain fame or prestige, but also for its role as a place where Jamaican musicking collectively celebrates Jamaican-ness in the face of international denigration, and celebrates the urban poor in a class-bound society.[59] Someone ignored and marginalized in daily life, for example, can claim respect as a personage known internationally through the spread of videos.[60]

One interesting aspect of the media convergence, however, is the fact that while fans and musickers are by no means local, the street dance's location is still a key factor in it remaining a site of cultural authority within Jamaica and beyond. "Street credibility" arises from the reality of street dances existing in poor neighborhoods beyond the direct reach of law: the dances' exilic

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[55] Cooke, "Living by Law."
[56] Ibid. "[N]ewspaper reports legitimized the dancers and made proving that they were bona fide entertainers much easier."
[57] Benkler discusses how bottlenecks limit individual freedom. Benkler, *The Wealth of Networks*, 147 Bottlenecks can be specifically limiting to marginalized communities.
[58] Gray, *Demeaned but Empowered*, 93.
[59] Ibid., 110; Stanley-Niaah, *DanceHall*, 15, 60.
[60] Hope, "Passa Passa," 137.

nature contributes to the dominance of the urban poor in matters of fashion and flamboyance, keeping all eyes downtown.[61]

Flourishing in the margins of law has also shaped the ways musickers attain financial success. Street dances have historically been outside of formal venues, unlicensed, and frequented by people who do not claim ownership of music in a fixed, exclusive way. People made money not through exclusive licensing but through enhancing reputation, and through selling associated goods. As described above, dancers' experiences are consistent with the Jamaican tradition of musickers profiting indirectly from the copying and distribution of recordings. Although as performers they could theoretically negotiate ownership for recordings of their performances,[62] they do not appear interested in exercising those rights. Instead they focus on building their reputations, relying on fast and broad circulation of their images.

Dancers and other musickers are also shielded from the eyes of the state because fewer people call on police or other agents in these exilic spaces.[63] Even when police appear, they do not always enforce the law.[64]

The Risks of media convergence

Increasing exilic spaces' visibility has a negative side. Visibly illegal acts like marijuana smoking could become public in ways that risk the smokers' reputations or jobs. A similar concern could arise for audibly illegal acts like copyright infringement. In live performance, DJs or soundsystems infringe the public performance directly in songs they play without

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[61] The global visibility and popularity of scenes associated with the poor is not necessarily liberating. Such images can be a voyeuristic way to reinforce racist assumptions about sexuality and propriety that fetishize black people as hypersexual and aggressive. Although I agree with Cooper and Bakare-Yusuf that the dances in their local context to some extent reinscribe sexualized or physical performance on local terms, media representations of the dancing can strip this context away. The dynamics of this deserve much closer study, especially because they shape reasons why particular kinds of musicking become popular in different venues. Based in my observations of street dances' power to root meaning in lived experience, I would argue that the specific nature of specific global audiences affects music's meaning. Skelton's work on black women and dancehall in London, for example suggests that when dancehall is centered in black communities, it still serves a celebratory purpose for black women. In my approach, I would ask: What happens to the meaning when dancehall is not physically centered in black communities? However, for the purposes of this research, I focus on the issue of creative control of musicking and musical authority, where the DVDS, even lacking a certain context, still rely on their downtown sources in ways that maintain their authority at least to some extent on their own terms.

[62] The Jamaica Copyright Act has a performance right, although ownership rests in the person who "by whom the arrangements necessary for the making of the recording .. are undertaken" which means ownership could be a negotiation between soundman/promoter, videographer and possibly the dancer. Jamaica Copyright Act, Part 1 Section 2(iii)(e)

[63] Gray, *Demeaned but Empowered*, 109.

[64] This is borne out by the recent events of Jamaican police attempting to extradite a local "don," Christopher Coke, who was wanted by the US. The entire neighborhood of Tivoli (the site of Passa Passa) rose up in arms, and made it extremely costly for the state. A standoff ensued for some days. Schwartz, "A Massacre in Jamaica"; However, when the police and army invaded, they killed over 80 locals under conditions which local and international rights organizations have condemned. Jamaicans for Justice, *Jamaica: A Long Road To Justice? Human Rights Violations Under The State Of Emergency* (London, UK: Jamaicans for Justice/ Amnesty International, May 31, 2011), http://jamaicansforjustice.org/nmcms.php?snippets=docmanager&p=docresults.

permission.[65] Videotaping DJ and dancer performances creates a derivative work of the audio recordings played on the video soundtrack. Such a work, according to Jamaican Copyright Act, requires a license from the owner of the original work. Distributing that video might infringe the distribution right in the underlying works. Additionally, videos could reveal how a studio that generated the underlying works included unlicensed content. A credited author, owner or performer might be liable for any unlicensed reuse of music in that recording.

Videos in which DJs, dancers, vocalists, producers and other musickers interact with recordings are potential documentation of infringement, while copying and circulating the videos infringes the reproduction and distribution rights. Copyright enforcement could restrict the videos' circulation, which as the discussion above suggests would work against many soundsystems, dancers, DJs, aspiring vocalists and other attendees. For example a vocalist's primary source of income is earned from fees for live performance and from creating "specials," customized recordings for soundmen to play at street dances and other soundsystem events. This means that vocalists also depend on reputation via circulation rather than royalties, because one cannot be in demand as a performer or singer of specials unless one is known and respected.

The main defense against infringement would be to gain permission, through contractual agreements, with copyright owners. However, several factors work against acquiring licenses. The breakneck pace of musical production and popularity means that vocalists and producers must constantly engage with new sounds to keep themselves in the public eye. It would be costly to wait for permission in order to engage with popular tunes in the Jamaican tradition. As will be discussed further in Chapter 4, the logic behind re-using existing recordings directly contradicts the logic of exclusive ownership: it would be like asking permission to participate in one's own culture. Discussed further in Chapter 6 is the fact that for Jamaican musickers, relying on legal formalities has costs as well as benefits, of which many musickers implied they were aware.

I asked vocalists, musicians, producers and engineers—musickers most targeted by copyright law and theoretically best positioned to make use of it—when, in dealing with other musickers, they used contracts: The most common response was "I'm not at that level."[66] The phrasing suggests musickers believe legal formalities are not for everyone, or not for everyone all the time.

In general, the poor face systematic disadvantages in formal legal arenas in relation to middle-class or foreign claimants. When I asked what people meant by "not at that level", one said that the song hadn't made any money yet, another that he didn't have a lawyer, and yet another said he wasn't connected. Although most respondents identified things that are systematically less common among the poor, from capital to professional or social connections among lawyers, they related these to themselves as a personal characteristic—defining their own level. The fact that individual artists frame participation with formal law as a personal goal suggests they have to some extent naturalized their unequal status.[67]

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[65] JA Copyright Act, Part V Section 31(6) and (7)

[66] Eleven out of fifty-three interviewees said they had been presented with a contract in the course of their musical career, and three of those only once.

[67] Patricia Ewick and Susan Silbey, "Common Knowledge and Ideological Critique: The Significance of Knowing That the Haves Come Out Ahead," *Law & Society Review* 33 (1999): 1026, 1039.

Factors external to the question of legality, such as one's wealth, access to education, and social position contribute to one's level of using contracts. It would not be a simple task to prepare musickers to better define and enforce their rights. This is not only because many of the definitions of rights contradicts the creative process, but also because the most significant obstacle to flourishing is colonial inequality. On a material level, colonial inequality's main effect is lack of money and lack of access to infrastructure. On a cultural level, colonial inequality's main effect is lack of respect and lack of support for expressing one's identity and culture. This is not an individual problem that can be solved by leaflets or workshops; it is a problem that reflects the social position of the urban poor. To most poor Jamaicans, the ability to understand and enforce a contract may seem more remote than relying on local reputation and social connection for information and enforcement of agreements.

While Jamaican musickers are disadvantaged in relation to law, this does not mean they lack norms and traditions that shape their behavior. Moreover these norms and traditions are not simply weaker versions of law; they are organized in ways that reflect and foster creativity and community among the poor. Thus, a musicker's level, in relation to law, is not "below" but outside, or at the margins. In the street dance, the law's absence as much as its presence enables Jamaica's musical heart to beat.

Jamaican copyright law vs. the street dance

> At Boasy Tuesday I watched the DJs play music from several piles of CD books — all the CDs appeared home-burned or non-commercially released, and many had hand-inked words on them or a scrap of paper taped to one side. The night began with older Jamaican music and American hip-hop, and R&B, but it peaked with the latest hits from Jamaica – Videographers recorded the DJs actions, on occasion, especially if they interacted with the music by singing or talking over it.
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> Field notes, 2009

The above description reveals a common scene from a street dance. Not only do DJs make use of unlicensed, hand-copied CDs of music, but the dance generates further recordings of those reuses. Because the public performance of copyrighted recordings technically requires a license, any audio or visual recording depicting an artist publicly performing an unauthorized copy of a recording, may both depict copyright infringement and be a potentially infringing derivative work in that recording. However, if the musical recordings included in street dance DVDs are entirely produced within the Jamaican tradition and remain circulating within the Jamaican music scene, the infringement they represent may not inspire anyone to sue. Currently most Jamaican musickers appear focused on gaining fame, and producers focus on popularity in the street dance, rather than royalties or money derived from controlling circulation of copyrighted material. Musickers may sometimes act "in the shadow of law,"[68] when they

[68] Robert H Mnookin and Lewis Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," *Yale Law Journal* 88 (1979 1978): 950–997.

publicly state they are suing, or planning to sue others for copyright infringement.[69] These threats have not led to many legal cases. JIPO's list of the past three years of cases regarding copyright infringement only reveals lawsuits over unauthorized commercial sales of CDs and DVDs (and not, for example, infringement by producers, artists or other musickers reusing recordings in creative practice).[70] It is also not clear that artists mean by "ownership" exactly what the law means by ownership, or that they would apply the criteria of copyright equally to others practices and to their own, or apply rules of ownership and permission equally to different kinds of people.

Thus, the shadow that law casts over Jamaican musical practices is not a clear outline of the law. Instead, Jamaicans vernacularize legal forms, using the terminology of copyright in local contexts, among local power relations. The following is a dramatic example of how this works:

In January 2009, I watched, via broadcast on local television, a Jamaican vocalist take his turn on the stage at a singing competition.[71]

> A DJ cued up a CD handed to him by the vocalist named Tanto Blacks. After the DJ hit "play" Tanto leapt into action—striding across the stage, gesturing to the audience, singing and swaying to the music. As had happened to all the previous singers, after only two verses of the song, the DJ cut the music, and it was time for feedback. First, Miss Kitty, a local TV and radio personality, praised his energy and his attitude. But then another judge, the internationally respected Jamaican producer Skatta,[72] offered his commentary on the music. Skatta said: "That riddim, it LAME." Shaking his head, he continued, speaking to the other judges: "I wish he use a more original riddim. Not one that they make themselves… use one more established riddim that been tested! Not this amateurish thing! One that has passed the test already, been played out [in public]."[73]

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[69] Krista Henry, "Dancers to Copyright Moves," *The Jamaica Star* (Kingston, Jamaica, September 19, 2008), http://jamaica-star.com/thestar/20080919/ent/ent1.html. Despite the title, the article describes only one instance of legal action out of many public disputes.

[70] Government of Jamaica, "Copyright Documents | JIPO."

[71] Jamaican television features many musical competition shows. The "Magnum Kings and Queens of Dancehall" competition, sponsored by a local energy and male potency drink called Magnum, hosted the interchange described above. Like similar shows in other countries, the competition is between vocalists, who sing songs over pre-recorded music played by a DJ (who is provided by the competition and does not have a creative or performance element during the vocalists performance). None of the participants are signed or recorded before this event. Similar to American Idol, the shows are framed as opportunities for small-time artists to make it big. Filmed before a live audience in Kingston, the performers compete in front of three judges, usually one media personality, one producer from the music industry and one famous or historic performer. After each performance, the judges give feedback and commentary to the artist and their TV audience. "Magnum Kings and Queens of Dancehall Off to a Good Start," *Jamaica Observer* (Kingston, Jamaica, December 16, 2009), http://www.jamaicaobserver.com/entertainment/Magnum-king-and-queen.

[72] Cordel "Skatta" Burrell. Producer and writer at Downsound Records, Kingston, Jamaica. http://downsoundrecords.com/producers.html.

[73] Field Notes, January 27, 2009.

Skatta's use of the word "original" here bears close attention. He compares the artist unfavorably to other performers who had sung their vocals over riddims that were already known to the audience and the judges. Tanto Blacks had composed a riddim himself, or had one composed for this performance. By legal definition, as well as by the definition assumed by many US musicians, as well as in the understanding of many current American and European musical traditions (although not necessarily in earlier eras), this made the song "original."[74] However, Skatta uses the word differently, whereby 'original' is a value judgment, or a term that links a song to a tradition, or to a "respected" origin.

Skatta places the onus of judgment on the public—noting that one discerns a riddim as original when it has been "played out" in front of an audience, and "established." This makes central the audience's role in musicking. Music cannot be considered original until the audience has given its input. In this usage, "originality" contradicts the meaning most often supported by law, or more accurately, it vernacularizes the concept in relation to local traditions. Understanding "original" as Skatta does, musickers might wish to claim legal protection and legal rights, however an enforcement of the formal definition of copyright would likely not serve their purposes.

Skatta's statement reveals how the riddim can overrule the creative contribution of the vocalist.[75] Skatta's critique, along with its challenge of many of our understandings of originality, also reveals the importance of pre-recorded music for creative acts, tools in an interactive creative and performative process widespread in Jamaica.[76]

Another example arises from the way that Jamaican musickers deal with the idea of ownership. Although Jamaican musickers may claim ownership over particular musical works, permission is shaped by dynamic social relationships. Soundsystems don't need to ask permission for musical reuse because they are important links to street credibility that few producers will wish to alienate. However, Jamaicans may wish to restrict use by foreigners who are not embedded in the social relations that Jamaican musickers are invested in, including transnational social relations enabled by mediation and circulation, as discussed further in Chapter 6.

Jamaican copyright law cannot be understood as simply domestic. The law was rewritten in order for Jamaica to be in compliance with international agreements like TRIPS and the Berne Convention for the Protection of Literary and Artistic Works.[77] Because the WTO requires members to demonstrate compliance and enforcement of TRIPS as part of membership, there is significant external pressure to enforce copyright.[78] The Jamaican government has responded in several ways. JIPO (see above and Chapter 1) was created in response. In recent years JIPO has

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[74] See discussion in Chapter 2, and Rose, *Authors and Owners: The Invention of Copyright*.
[75] Jones, *Black Culture, White Youth*, 26.
[76] Manuel and Marshall, "The Riddim Method," 447.
[77] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments–Results of the Uruguay Round, 33 I.L.M. 1125 (1994). Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as revised at Paris on July 24, 1971, and amended on Sept. 29, 1979, 25 U.S.T. 1341, 828 U.N.T.S. 221 [hereinafter BERNE]
[78] Okediji and Prosser, *The International Copyright System*.

launched initiatives that encourage artists and venues to enforce copyright.[79] Such initiatives take the form of special events such as "Intellectual Property Day" or pamphlets entitled "P®otect, Collect, Respe©!"[80] So far, these initiatives tend to endorse copyright enforcement as de facto benefitting Jamaican creators and the industry more broadly. Few of these attend to the complexities of the musicking process, and few of the government-generated research documents upon which they address non-royalties-based musicking.[81] None of the documents JIPO addressed to artists mentioned street dances, riddims, or YouTube, or otherwise accounted for the value that musickers get from circulation rather than restriction of music.[82] Instead, the primary focus of the initiatives was in enforcing owners' exclusive rights. However, few pay attention to the process by which musickers become (or don't become) owners of rights. As was described in Chapter 2 and will be explored in Chapters 4 and 5, musickers' ability to claim ownership depends on broader social factors that copyright does not engage with. JIPO's current approach limits the usefulness of copyright policy for the majority of Jamaicans, and limits it more for poor Jamaicans, who are less likely to have exclusive rights over recordings.

International copyright owners vs. the street dance

Copyright's clash with Jamaican musicking also arises out of Jamaican syncretic practices. As discussed in Chapter 2, Jamaican musicking incorporates music from musickers' current and historical musical context. Syncretism reflects Jamaicans' diasporic identity and, as will be discussed in Chapter 4, also allows the urban poor to insert their own voices and narratives into the foreign music that still dominates the airwaves and official music venues. Syncretic practices may especially lead to conflict when Jamaican musickers incorporate foreign-owned audio recordings into new productions and performances. As Jamaican musicking circulates on global media networks, street dances are increasingly visible on the global stage. This increased visibility may up the risk of engagement with international copyright holders who until recently have been unaware of Jamaican practices.

Many major copyright-owning corporations in the US and international music scene have already made attempts to monitor music use on new technologies, and some have already directed threats at Jamaican musickers.[83] These threats may not immediately stop local

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

[80] Jamaica Intellectual Property Office, "P®otect, Collect, Respe©!", 2009.

[81] It is difficult to measure informal activity, which makes it even less likely to be accounted for. Witter, *Music and the Jamaican Economy*, 42, 54; James, *The Caribbean Music Industry Database: A Report Prepared for the United Nations Conference on Trade and Development (UNCTAD) and the World Intellectual Property Organization (WIPO)*.

[82] *See*, *e.g.* JIPO, *Copyright and You* (2009); JACAP, *Know your rights* (2009), on file with author.

[83] Carmen Kate Yuen, "Scuffling for a Slice of the Ringtone Pie: Evaluating Legal and Business Approaches to Copyright Clearance Issues," *Vanderbilt Journal of Entertainment and Technology Law* 8 (2006 2005): 545; Electronic Frontier Foundation, "ASCAP Makes Outlandish Copyright Claims on Cell Phone Ringtones: EFF Argues Phones Ringing in Public Do Not Violate Copyright Law", July 2, 2009, http://www.eff.org/press/archives/2009/07/02; Henry, "Stop Order on 'Rampin Shop'."

circulation, but they can shape access to online platforms for music circulation and thus disadvantage musickers seeking international audiences.

These disadvantaged are already embedded, although imperfectly, in US media platforms subject to the US Digital Millennium Copyright Act (DMCA).[84] The DMCA requires sites that host uploaded media to have a system in place for removing content a copyright owner alleges to be infringing. Many sites now use scanning software ("Audible Magic") that automatically removes a file if the software detects a soundwave too similar to that of a copyright owner's recording.[85] Such filters could limit Jamaican musicking's global reach.

Pressure from US based copyright holders, including threats like EMI's stop order to Jamaican vocalist Vybz Kartel over his reuse of elements from the American pop song[86] could limit available music for use in future recordings or performances. Copyright enforcement could interfere with local production techniques if copyright-specific filters were embedded in studio computers or mixing boards. Corporations in the US content industry have already attempted to install such software on personal computers,[87] as well as mandate its installation on networks and platforms.[88] Automated restrictions on music reuse in the process of composition would chill creative practices that rely on repetition and reuse even in the composition process.[89] Since the Jamaican musical tradition involves a collage-like incorporation of existing musical, sonic and lyrical elements, limiting syncretism could encourage homogenization of Jamaican music, or the privileging of Jamaican music that does not engage in syncretic creativity.[90]

Conclusion: Enforcement, evasion, exilic space

Despite such vulnerabilities of musicking practices, poor Jamaicans are not wholly at the mercy of law, the legal infrastructure, the state, or multinational corporations. Legal institutions remain porous, flexible, and overlaid by networks of personal relationships, while physical infrastructure (roads, electricity, mail), lack consistency. The Jamaican state is not powerful

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[84] Digital Millennium Copyright Act, 112 Stat. 2860 (codified as amended at 17 U.S.C., 28 U.S.C. and 35 U.S.C. The Act protects hosting platforms like YouTube from infringement liability if they comply with copyright owner's requests to remove items identified as infringing. However, the original uploader is entitled to dispute the removal on various grounds.

[85] Lee B. Burgunder, *Legal Aspects of Managing Technology* (Mason, OH: South-Western, Cengage Learning, 2011), 311.

[86] "Independent Woman" EMI, 2007

[87] Mulligan and Perzanowski, "The Magnificence of the Disaster"; In 2005, Sony installed software compromising the security of up to two million people's computers, attempting to enforce copyright protection on Sony CDs. Samuelson and Schultz, "Should Copyright Owners Have to Give Notice of Their Use of Technical Protection Measures."

[88] Benkler, *The Wealth of Networks*, 383.

[89] Morea, "Future of Music in a Digital Age," 218; Lawrence Lessig, "Re-Crafting a Public Domain," *Yale Journal of Law & the Humanities* 18 (2006): 60.

[90] See Mirra Burri in Mirra Burri, "Enquiry into the Notion of Cultural Protectionism in the Media and Its Dimensions in Cyberspace," in *Bits Without Borders: Law, Communications and Transnational Culture in a Digital Age* (Cheltenham, U.K.: Elgar, 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1777040, for an overview of culturally protectionist arguments that echo the valuation of culturally homogenous content. Although Jamaica's diasporic reality means that multifarious sources are also essentially Jamaican. See, e.g. Chude-Sokei, "'Dr. Satan's Echo Chamber'," 47, 58.

enough to directly control daily life with police or legal institutions, or indirectly control it through material or technological infrastructure. The Jamaican government has been aptly described as inconsistent, flexible, and parasitic.[91] Because the state fails to achieve a consistency of influence in society, it must depend in part on the poor majority for its legitimacy, and cannot compel them to move wholly against their interests or desires. This has two results: most Jamaicans do not see the state as something to be relied on, and marginalized Jamaicans draw strength from exilic spaces and outsider status.[92] On occasion, Jamaicans use the language of legal rights, but as I will discuss further in Chapters 4 and 5, the context in which this language is used suggests that musickers vernacularize the meaning of legal rights into local discourses of power, respect, identity and mutual obligation.

If law can reach into creative practices, then the law can change the creative choices that musickers make, as well as shifting the allocation of benefits that derive from musicking. Even if the law does not totally enforce copyright, law can limit musickers' autonomy through its normalizing logic.[93] So long as it is able to normalize particular behavior against deviant or marginalized behavior, the law perpetuates a tiered system of participation. If copyright raises rewards for normalized behavior, or raises the costs of deviating from formal law, compliance with copyright requires that musickers stay close to their traditions and communities, or move away from their culture and bet on the support of the formal system.

There may be policy justifications for encouraging a community to abandon or revise its traditions, or encouraging individuals to abandon their traditions and their connection to their community. But any such policy should address several concerns. First, local traditions may be valuable in themselves; they may foster connection and social cohesion, or otherwise prove a heritage worth preserving. In addition, local traditions have proved directly useful to the poor, providing avenues to some material gain, even if only in the short term. A policy that encourages people to separate from their communities and their traditions could be costly for artists who, for example, cannot afford to wait and see if royalties may come at a future date. In addition, if copyright law enforcement relies on contracts and a legal system to enforce them, then musickers would need to learn legal language and the skills of negotiating within the legal system in order to make informed decisions. Many established artists, lawyers, and businesses recommend that artists who currently fail to benefit from copyright enforcement embark on a project of self-improvement. While such projects may benefit some artists, they burden artists with the obligation to meet the law in its own domain: courtrooms, paperwork, and legal terminology. The burden of negotiating within this domain becomes more and more costly the farther musickers are from it in their own lives.

To the extent that networked technology could embed a particular kind of copyright law; for example, in mixing boards, cell phones or personal computers, the domain of formal law comes closer to musickers' creative practices, without necessarily providing any additional tools for negotiating with law. In fact, technology can further disempower musickers by automatically enforcing a particular constraint without any chance for negotiation. Technologies do not have to define the repercussions brought by purported copyright owners, or define precisely what harm

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[91] Gray, *Demeaned but Empowered*, 9, 12, 324.
[92] Chude-Sokei, "The Sound of Culture," 191.
[93] Cohen, "Creativity and Culture in Copyright Theory," 41.

has been incurred, because many software companies are simply avoiding lawsuits by passing the risk of infringement on to the user. The major global copyright owners have shown themselves willing to prosecute alleged infringement at great expense, and to press for technological measures of enforcing their interests.[94] For example, in 2008, Sony embedded software onto CDs that installed itself on people's home computers without permission, in order to monitor people's use of copyrighted software. This software also turned out to be a serious security risk for computer users, who were unaware that Sony had made it so it would self-install if you played a CD.[95] Sony's action reveals that allowing copyright holders to define their own interests and enforcement mechanisms is problematic. However, even the simple gap between copyright law and local practices also could lead to problems if copyright-monitoring software on one's mixing board, laptop, or CD player shuts down the event or fails to save a recording session because it has recognized a copyrighted work in the audio files played. A similar concern arises from YouTube's content monitoring—any community that has phonographically oral practices is likely to have their videos flagged by YouTube's "Audio Magic" software, which analyzes audio waveforms and matches them to a database of copyrighted works.[96]

By foreclosing on specific creative choices, technology can shape musicking practices. Although copyright law can be the mechanism or excuse for limiting creative and communicative acts involving technology, the limitations can have broader effects on people's ability and right to communicate and engage creatively.[97] The spread of globally networked technologies could lead to the rise of pervasively distributed copyright enforcement.[98] Compliance with law has several costs, to creativity, to security, and to autonomy.

Several scholars have recently put forth arguments for copyright's effectiveness and social value based on its ability to provide "breathing space"[99] or to allow for "degrees of freedom" and "contextual play,"[100] preventing the law from "freezing the play of signification"[101] in the creative process. If copyright enforcement is dominated by the cultural assumptions in current copyright law, and susceptible to the influence of transnational and

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[94] Gregory Bonzer, "RIAA's Landmark Lawsuit-Virgin Records American Et Al. v. Thomas," *Entertainment & Sports Law* 25 (2007): 23.
[95] Mulligan and Perzanowski, "The Magnificence of the Disaster."
[96] Catherin Applefield Olson, "Audio Magic's Capabilities May Charm the Industry," *Billboard*, January 11, 2003, http:// www.audiblemagic.com/news/articles/art-2003-01-11-Billboard.pdf Olson describes new software available to websites that host audio. The software analyzes audio waveforms and matches them to a database of copyrighted works, reporting any matches to the website for flagging or removal.
[97] Aaron Hess, "Resistance Up in Smoke: Analyzing the Limitations of Deliberation on YouTube," *Critical Studies in Media Communication* 26, no. 5 (2009): 426, 429.
[98] Cohen, "Pervasively Distributed Copyright Enforcement."
[99] Liu, "Copyright and Breathing Space."
[100] Julie E Cohen, "The Place of the User in Copyright Law," *Fordham Law Review* 74 (2006 2005): 349 "The success of a system of copyright depends on both the extent to which its rules permit individuals to engage in creative play and the extent to which they enable contextual play, or degrees of freedom."
[101] "The Law freezes the play of signification by legitimating authorship, deeming meaning to be valued properly redounding to those who 'own' the signature of proper name, without regard to the contributions or interests of those others in whose lives it figures. This enables and legitimates practices of cultural authority that attempt to freeze the play of difference…in the public sphere." Coombe, *The Cultural Life of Intellectual Properties*, 8.

multinational copyright owning corporations, it will be harmful to local interests.[102] In places directly affected by colonial power, it is important to recognize the specific histories and traditions by which people disadvantaged in the global system have gained the levels of success they have been able to achieve, and to consider the possibility that these strategies continue to serve the interests of the disadvantaged in ways that dominant practices may not. Given the various values of street dances that have been outside the scrutiny of law, any policy that seeks to shape local practices ought to weigh the advantages of inclusion against the advantages of exclusion. It may be that certain events or practices deserve to be protected from copyright rather than protected by it. If technology reveals to law (and to copyright owners) creative practices that contradict copyright, the technology could shut down those practices or trigger state intervention.[103] The Jamaican social practices of hybridity and phonographic orality may especially require some protection from permission-based copyright surveillance.[104]

Technologies that take the structure and function of copyright for granted may harm or reshape, rather than foster, creativity. If the law does not reflect or engage productively with the local institutions, creative processes, and priorities where the technology is used, it may serve to perpetuate the further marginalization of those already shoved aside in the current system. In

Chapter I have argued for dual goals of creativity and equality, both of which require that technology not perpetuate the problematic aspects of copyright. While there may be times when fostering creativity and equality must be balanced against each other, the colonial context for copyright makes equality an urgent concern: colonially-informed disdain for creative practices of the poor have meant that their persons and creativity have already been discounted against colonial concerns for cultural flourishing. Attending more to equality also fosters creativity associated with communities that have previously been under-supported.

Addressing the problematic aspects of copyright first requires examining the ways technologies currently co-exist with musicking in daily life regardless of whether they fit or clash with existing copyright, and then considering the reevaluation of copyright policy so that technology and local practices can be mutually supportive. Understanding the Jamaican street dance as the creative center of musicking reveals the intricate dynamics between communities, material and social resources, state power and international markets. These dynamics can be made vulnerable to interference or, conversely, fully expressed and supported, depending what kind of surveillance and restrictions are embedded into networked technology. In addition, the translocal nature of street dances, with its foreign participants, and its global visibility via television, DVD, online media platforms and social networks, suggests that surveillance and restriction could serve interests outside Jamaica, including those that already shape many of the terms of Jamaican economic and social autonomy. An important lens by which we should examine any system, whether legal or technological, in relation to Jamaican musicking ought to

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[102] Ibid., 215 "Challenges that postcolonial struggles pose… may not be appropriately met by habitual reliance on categories of thought inherited from the colonial era."
[103] Tehranian, *Infringement Nation*, 187.
[104] Geiger, "Promoting Creativity Through Copyright Limitations."

be how that systems affects the ability of music to continue to "challenge the oppressive limits of a colonial and neocolonial sociopolitical structure."[105]

Within and outside the moment of the street dance, Jamaican musicking relies on creative traditions that further a social goal hitherto neglected by international and local copyright policy: democratic participation in public discourse. In Chapter 4 I examine two traditions that evoke this public interest and argue that their support requires a rethinking of copyright.

[105] Chude-Sokei, "The Sound of Culture," 191.

Chapter 4

Answers, Riddims and Musical Conversation

"Let me go, girl" – Slim Smith,

"I'll let you go boy" – Dawn Penn

"What the hell the police can do?" – Echo Minott

"Tell you what the police can do" – Lady Junie

"(In love with a man who is) Twice my age" – Lady Saw

"(My girl is) Half my age" – Admiral Tibet

"(Want someone) Exactly my age" – Max Romeo[1]

The above Jamaican song titles depict works in conversation with each other. In each example, drawn from the extensive catalog of Jamaican music from the 1960s to the 1980s, after a song has been met with a response, Jamaicans call the first song an "original" and the second or subsequent songs "answer tunes."[2] Even the simplest and most literal reading reveals each title as an element in a larger conversation. Entirely representative (although not exhaustive) of Jamaican popular music preoccupations, the song lyrics above discuss issues ranging from romantic disputes to the appropriate role and power of the police, to the appropriate age differences in a relationship. The patois grammar ("what the hell the police can do" rather than "what the hell can the police do"), and the sonic and musical accompaniments arise primarily from the world of Jamaica's poor majority, and signal the existence of a broader public discourse in which recorded songs are a crucial element.

These songs are a method of public engagement in ongoing and timely debates about politics, morals, taste, and desire. It is the population and social institutions of the urban poor that lead to the practices generating the vast majority of musical works, performances, and recordings in Jamaica. Unfortunately, copyright law, which attempts to define and shape relationships between people engaging with culture and cultural artifacts, thus attempts to regulate participation in public discourse, for the most part does not recognize the way music is generated and functions in relation to these goals.

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[1] Slim Smith "Let Me Go Girl," Dawn Penn "Me Never Hold You." Striker Lee Records, 1968. Echo Minott "What The Hell" Jammy's Records, 1986. Lady Junie. "Tell You What" Jammy's Records, 1987. Max Romeo Cocoa Tea, Papa San, Admiral Tibet, Lady G, Twice My Age & More Showcase 91 Pow Wow Records, 1990

[2] Sometimes the second song is called a "counteraction." See "Busy Christmas Schedule for Chris Martin," *Jamaica Gleaner Online* (Kingston, Jamaica, 24 2011) The article quotes Jamaican vocalist Cecile expressing her happiness at touring with singer Chris Martin and "getting the chance to perform my counteraction to [his song] Cheater's Prayer."

As discussed in the Introduction, current copyright law in Jamaican and at the international level relies on and reinforces three aspects of creative practice:

1. Fixed authorship

2. Fixed, discrete works

3. Bounded by a system of permission or license[3]

The law assumes the existence of categories of authors, things that can be defined as separate works, and a clear conceptual division between consumption and production of music that is demarcated by permission.[4] Jamaican musicking, as I have stated elsewhere, has throughout its history confounded all of these assumptions; its dynamic, interactive nature reveals individual songs as elements in a larger conversational project. A closer examination reveals that these songs include smaller elements that are themselves drawn from other sources or are being incorporated into a larger musical conversation. Conversations do not have owners (although they may require a kind of intimacy or mutual understanding in order to flourish), and even if participants feel a strong connection with a conversation, that connection is based on participation rather than limiting access for others. Participants inhabit a conversation that encompasses the lives of the communities it arises from and refers back to, using a vocabulary of references to shared lived experiences. Understanding the music within such a dynamic, interactive process has political, economic and social implications, as well as implications for copyright.

In this chapter, I demonstrate how answer tunes, alongside other creative traditions in Jamaican musicking, exemplify democratic practices that ought to be actively fostered even as that may require altering or limiting copyright law. Otherwise copyright law will serve mainly to solidify and increase inequality and stifle democratic participation in culture.

"Answer Tunes": Non-commodified, Living musical dialogue

Answer tunes form a musical tradition that at first glance may appear more consistent with copyright law's concepts of ownership, because each tune usually represents a particular voice, and can appear like a unitary work with that voice as the author.[5] However, the purpose and function of answer tunes still confound the individualistic and permission-based focus of copyright, because they come into being as part of a larger dynamic interaction, and by their existence encourage and invites further interactions.

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[3] Jamaica Copyright Act of 1993 Part I Section 2 (2) (b). An author is "the person who creates it, being in relation to… a musical work, the composer." Jamaica Copyright Act of 1993 Part II Section 6 (2). Copyright subsists in a work "recorded in writing or otherwise."

[4] Copyright Unit of Jamaica, *The Copyright Act of Jamaica*, 1993, section 2; Toynbee, "Copyright, the Work and Phonographic Orality," 78.

[5] Technically, the musical background is often a separate composition from the vocals, and can be owned by someone else. However, most Jamaican musicians don't own the tunes they sing or perform on unless they also own the studio where it was recorded. Ownership has tended to track power, and studio owners generally have more power than musicians.

An answer tune's essential characteristic is that it is a response to a previous musical work. Answering is not confined to lyrical content, however; the response can happen on the level of a musical reference in which a particular song responds by reusing musical vocabulary instead of, or alongside, lyrics. So, for example, Artist A records a song, consisting of a bassline, drums, guitar and/or keyboard parts, the sung melody, and other sounds; the song can be divided into sections such as verse, chorus, bridge. The song also consists of lyrics that put forth an opinion or embody a perspective. When Artist B makes an answer tune, the way in which she signals to listeners and Artist A that her song is related to Artist A's song usually involves tying it sonically and textually to Artist A's song. She may reuse the bassline or the entire backing track, she may sing her own lyrics on the same melody, she might reuse the chorus' lyrics or melody, or repeat/recontextualize fragments of lyrics, but a response requires re-using elements from the previous song in order to create a dialogue.

The term "answer" suggests that the over-arching way of thinking about this practice is as a conversation, an interaction between multiple speakers.[6] However, the answer tune also implies the presence of listeners beyond the performers, listeners who share at least some of the vocabulary performers employ—in order that the audience understands a tune as an answer. An answer tune also faces the public, it is not directed solely at the tune or performer to which it responds (which could be done by private communication). Producing and performing an answer tune signals the presence of a wider discursive community that participates in the conversation.

Because music pervades Jamaican daily life in a way that invites participation from the schoolyard to the recording studio,[7] the shared cultural references from all aspects of daily life in Jamaican music heighten the flow of interaction and commentary, as any experience might form a subject or a response to a song. Even in performance, the audience contributes to an interactive experience.[8] A shared musical vocabulary develops from these interactive practices—the vocabulary of song elements is created and shared among the artists but also the audience (which also includes future and past artists). This vocabulary is not a static resource—it is a way of understanding and interacting with the symbolic world—if a song plays on the radio, it can enter the musical vocabulary of all who hear it. Part of what occurs in music-making is an act of contributing to and creating to a shared vocabulary of musical elements.

This chapter categorizes several kinds of answer tunes that in reality are not separable or categories defined by people in Jamaica, but they provide a rough taxonomy for the kinds of musical conversations one can find in Jamaican music. This taxonomy reveals both the variety of musical interactions and their collective significance for understanding creativity and culture. The classifications below are partial and for the purpose of description and analysis, and should

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[6] In one of many similar articles, the national newspaper discusses an artist famous for answer tunes/counteractions. "New Dancehall Acts," *Jamaica Gleaner Online* (Kingston, Jamaica, July 30, 1999), http://jamaica-gleaner.com/gleaner/19990730/news/n7.html "Gringo, the 'champ of counteractions,' achieved some amount of success in 1995 with a popular reply to Beenie Man's Big Up and Trust and is now gaining notoriety in the dance halls with two new counteractions. One is to Bounty Killer's Bulls of Chicago and the other, a scathing but popular reply to Baby Cham's 'Anywhere De Money De Mi A Go Fah.'"; also see "Killing a Sound," *Jamaica Gleaner Online* (Kingston, Jamaica, July 25, 2001), http://jamaica-gleaner.com/gleaner/20010725/star/star1.html.

[7] In Jamaica, a small island permeated with a powerful interest in music-making, the schoolyard was not always separate from the recording studio. One Jamaican musician I interviewed described being "discovered" as a singer by a studio owner who visited his school and heard him singing. Interview, February 2009.

[8] See discussion of audience's creative role in the street dance in Chapter 3.

not be understood as hard-and-fast categories, or categories internal to Jamaican musickers. I divide conversations into two main categories of conversation, with two sub-categories in each. These are not separate kinds of songs, and may occur simultaneously, but I separate them here conceptually in order to clarify the different kinds of interactions that occur within music.

The first category is textual conversation, in which the text and lyrics of different songs dialogue with each other at the level of words. For example, in a song called "Ring the Alarm" the singer Tenor Saw asserts that one should ring an alarm because his soundsystem was so powerful it would "kill" a rival soundsystem:

> "Ring the alarm, another sound is dying"
>
> Tenor Saw "Ring The Alarm", 1985[9]

In response, another singer, Nitty Gritty, recorded a song entitled "False Alarm" that warned of the dangers of overstating one's power when the soundsystem one has is not really powerful enough to win a battle.

> "False alarm, [to] talk about the sound dying"
>
> Nitty Gritty, "False Alarm", 1985[10]

Nitty Gritty's response to Tenor Saw conceptually ties his statement to Tenor Saw's by re-using words and phrasing.

Some conversations reflect actual relationships or differences of opinion that exist in the world beyond that of rival DJs, soundsystems, or producers. These songs engage with the court of public opinion, to mobilize audiences in supporting one side or the other in ways that reach beyond the musical moment. Other songs are part of conversations between fictional or archetypal characters such as a mistress, a landlord or a judge, and explore questions about love, relationships, politics, law or economics.

Another conversational category is symbolic conversation, which occurs when the sonic or musical elements of different songs (such as a bassline or melody) are shared in such a way as to suggest a relationship between the two songs. A recent example of this is the Jamaican artist Elephant Man's recording of "Bless We More" (2009), which reused the melody and music of a US pop tune by Beyoncé, substituting his own lyrics. Elephant Man, by evoking the Beyoncé tune, which most of his listeners would have heard, made his tune a kind of response that commented on Beyoncé's tune through the contrast between his lyrics and hers. Several musical practices can be interpreted as symbolic conversations. Riddims (discussed in detail in Chapter 2) are musical elements drawn from the instrumental track of a song that sonically tie together many, sometimes hundreds, of songs in a symbolic relationship. Vocalists also reuse the melodies of other songs, including those from other venues familiar to the audience, such as TV commercials, radio jingles, nursery rhymes or folk tunes. In addition, sampling, or the reuse of shorter segments of a song or other audio recording, can also evoke a relationship between the sampled work and the work incorporating it. Symbolic and textual conversations can occur

[9] "Ring The Alarm," produced by Winston Riley. Techniques Records, 1985.
[10] "False Alarm," produced by Lloyd "King Jammy" James, Jammy's Records, 1986.

simultaneously, “False Alarm,” for example, also re-used the melody and backing track of “Ring the Alarm,” which makes an audible connection to the initiating song on the conversation.[11] Below I examine these different practices in more detail, drawing out their significance in the context of Jamaican musicking.

Textual Conversation, type 1: Reflecting a lived personal relationship

In 1962, the year of Jamaican independence, Prince Buster co-wrote a song with teenaged singer Derrick Morgan, called "They Got to Go." This song criticized the corruption he saw in the nascent music industry in Jamaica. Catching the spirit of a rising nationalist consciousness that emphasized the corruption of the powerful and contrasted authentic Jamaicans’ moral purity, this tune became a hit, and made Derrick Morgan a rising star in the Jamaican music scene.

Shortly afterwards Morgan left Buster to work with a rival producer, the Chinese-Jamaican Leslie Kong.[12] Buster took umbrage when Morgan and Kong recorded “Housewife's

Choice,” which allegedly re-used part of a tune associated with Prince Buster (as we will see below the sense of ownership Buster asserts is in itself interesting). The story has it that Morgan and Kong’s reuse was the tipping point for Buster, who then came out with a tune called “Blackhead Chinaman:”

> You stole my belongings and give to your chiney man
> God in heaven knows, he knows that you are wrong
> Are you a chinaman, or are you a black man?
> It don't need no eyeglass to see that your skin is black
> Do you prefer your chineyman to your fellow black man
> Speak up friend, it's plain to understan'
> It won't be very long, they'll have a change of plan
> To use you to use you and use you, then refuse you
> Cause you are the first blackhead chineyman
> I did not know your foreparents were from hong kong
> Every man has a right to where he belong
> So declare yourself and tell me where you are from[13]

Buster claims ownership by referring to his "belongings," which he says Derrick Morgan has stolen. No account mentions any material theft, so Buster is likely talking about a different kind of property. One account suggests that the theft was actually a solo performed by

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[11] As will be discussed below, the response tune was on a different label, with a different producer, and thus technically violated the copyright held by the original producer.

[12] Chinese Jamaicans have been involved in the music industry from its earliest incarnation. Stolzoff, *Wake the Town & Tell the People*, 43; Stanley-Niaah, *DanceHall*, 68 This may partly be because Chinese Jamaicans form a middle class who have the capital to invest in music, in combination with the fact that denied membership in the very top of the colonial hierarchy because they were not white, and possessing an alternate source of identity as Chinese, they were not as concerned as upper class Jamaicans with separating themselves from downtown people.

[13] “Black Head Chinaman” Dice Prince Buster, 1963,

saxophonist Headley Bennett on an earlier song, "They Got To Go," which Bennett also performed on a track produced by Kong.[14] If this is the case, Buster is claiming ownership in another person's musical work, which Bennett chose (or was asked) to re-perform in another recording. But Buster accords the acts of ownership to himself. He also addresses the thief as Harriott, rather than blaming Bennett. Buster's concept of ownership of musical elements appears to be at the very least confusing—and a copyright-centric analysis, could it be ascertained, would not clarify much. It is compounded by the fact that the reuse of musical elements practice was extremely common among all the recording studios and among many musicians, and did not always trigger such a response. It is unlikely that infringement as defined by law is the reason for Buster's vehement response, the language of theft may be best understood as a metaphor for several kinds of disrespect that Buster felt he was facing. One source of Buster's outrage may have arisen from the context of the reuse. In 1962, the year of Jamaican independence, Buster had a Jamaican nationalist sensibility—his "Voice of the People" soundsystem, including Derrick Morgan, was the first self-consciously Jamaican soundsystem, playing predominantly Jamaican music rather than covers or tunes brought in from overseas. Buster may have seen Morgan allying himself with the Chinese-Jamaican Kong as an insult to Buster's vision of Jamaican nationalism and to a narrower, ethnically based claim to ownership of Jamaica music. Alternatively, Buster may have made use of racialized or nationalistic language to dramatize his anger over a more personal situation. Morgan and Kong's activities might also have harmed Prince Buster in other ways. Buster and Morgan had build up a reputation together, and by leaving the duo Morgan capitalized on some of that reputation in his subsequent collaboration with Leslie Kong. It is likely that Buster also felt betrayed by the fact that Morgan abandoned him, ending their musical relationship.

Although he uses the language of theft, Prince Buster did not actually mobilize the force of law, but instead mobilized the force of public opinion. His claims to ownership are complicated by the way that those claims are in themselves a symbolic assertion in the context of a larger conversation. Claiming ownership is a rhetorical device an artist uses to assert his or her position vis-à-vis another person (or group of people). This is not to say that artists expect those claims to be backed up absolutely by law—this is not even the case for real property in Jamaica.[15] We should be careful then, in ascribing a fixed legal support for ownership claims before learning more about the social dynamics in which ownership is understood.

The dense network of social relationships in music-making, made visible through their breach in the Blackhead Chinaman affair, functions to constrain behavior, enforce obligations and otherwise act in the way that the law might, although not necessarily along the contours of copyright law. Certain kinds of loyalty are generally expected between artists and studios, and there are also points at which either side would consider separation.

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[14] Katz, *Solid Foundation*, 43.

[15] "In 2008, there were 754 squatting communities scattered across the island, comprising 0.6–0.9 million people; that is, some 25% to 33% of the population." Barry Wade, *Environmental Justice and the Poor in Jamaica* (United Nations Development Programme, December 16, 2011), 8. In some cases whole communities survive by living on land they have not rented, which is often owned by people who cannot afford to develop it. Victor Cummings, "The Problem of Squatting in Jamaica," *Jamaica Gleaner Online* (Kingston, Jamaica, May 24, 2009), http://jamaica-gleaner.com/gleaner/20090524/news/news1.html.

Kong and Morgan answered Blackhead Chinaman by recording "Blazing Fire" (which re-uses the melody of another Buster-released tune, "Madness," and also references "They Got to Go," Buster's first big hit). In "Blazing Fire," Morgan sings

> You say I am a blackhead chiney
> but when I go with you I was like a bull in a pen...
> Live and let others live, and your days will be much longer [16]

Morgan asserts that working for Buster infringed on his freedom, and he advises Buster not to interfere with his professional and creative choices. In his response, he ignores the race-baiting, and reaches for the moral high ground, including biblical-sounding language, a common practice in Jamaica. When he says "When I was with you, I was like a bull in a pen" Morgan also suggests that his own sense of freedom, or perhaps his career interests require that he switch professional allegiances.

Prince Buster, Leslie Kong and Derrick Morgan rallied their own supporters who condemned the other side and defended their own, in conflicts that were enthusiastic enough that the state got involved. Contemporary reports describe the results:

> The Government did have to intervene, because the fans were getting outraged…They would cause a war over it. Prime Minister Shearer had to come in and we had to take pictures in the paper, showing that we are the best of friends, just to cut down on the consequences.[17]

That the outcome of this dispute involved the public, and eventually the state, gives a hint as to the broader social context for music, significant to Jamaicans as a social force beyond the strictly artistic; to this day it is headline news when artists and producers feud, and unfortunately those feuds occasionally become fodder for violent confrontation. Government officials, up to and including the Prime Minister, remain involved in prolonging or reconciling these disputes.[18]

Rivalry is also a feature of the social relations of musicking itself. Soundsystems compete for audience attention, sometimes literally in an event called a "soundclash." At a soundclash, rival soundsystems set up near each other and compete for audience attention, both through the selection of songs they play and also the quality and quantity of sound their system is able to produce. A soundclash involves DJs playing pre-recorded tunes, speaking into a microphone to introduce the tune and explain its significance to the audience, while heaping scorn on the opposing soundsystem. Soundclashes were a key impetus for the production of answer tunes that performed the soundsystems rivalry. Tunes were often specially written and recorded for soundsystems or events: sometimes customized versions of already popular tunes, or wholly new ones for a one-time special event. Any tune that became popular in the soundclash became part of the common vocabulary of tunes used in future soundclashes. A clever reference or reuse of

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[16] "Blazing Fire" Derrick Morgan, produced by Leslie Kong. Beverly's Records 1963.
[17] Derrick Morgan, quoted in Katz, *Solid Foundation*, 43.
[18] The dancehall stars used a meeting with three government ministers at the Office of the Prime Minister (OPM) to announce an end to the derogatory lyrics they have traded, while calling on their supporters to end the fuss. "DJs Mavado, Vybz Kartel Pledge to End Lyrical Feud," *Jamaica Gleaner Online* (Kingston, Jamaica, December 9, 2009), http://jamaica-gleaner.com/gleaner/20091209/ent/ent5.html.

an earlier tune's lyrics or music was a respected rhetorical move within the context of the musical "argument" between soundsystems.

Within the category of textual conversation outlined at the beginning of this Chapter, Soundclash tunes simply represent a soundsystem's response to another soundsystem claim of superiority. The conversation between Tenor Saw and Nitty Gritty mentioned above is an archetypal example. The lyrics to Tenor Saw's "Ring The Alarm" begin,

> Ring the alarm: another sound is dying
> Whoa, hey, ring the alarm: another sound is dying
>
> Some sound sounds like a big drum pan
> Listen: the sound like a champion
> Ram the dance in any session
> Rock up the woman, rock up the man[19]

When Tenor Saw talks about "a sound" he is referring to a "soundsystem." The line at the beginning of the second paragraph uses the word "sound" in two ways, the first to mean soundsystem, the second as part of the verb "to sound like." The first line expresses the theatrical concern for a rival soundsystem's symbolic "death"—losing a competition for audience attention with the Tenor-Saw-endorsed soundsystem. The last two lines describe the evidence for his sound's dominance; it makes people dance, and crowd tightly into the event (ramp up the dance). A competing soundsystem would have a few options for how to respond to a rival playing this tune in a soundclash. Rival soundsystem singer Nitty Gritty's response begins (as described above). "False alarm, talk about the sound dying"[20]

Nitty Gritty's reuse of the language, while arguing against it, directly engages Tenor Saw's lyrics, but his response goes beyond the lyrics. The identical instrumental track ("backing track" or "riddim") of "Ring the Alarm" also plays underneath Nitty Gritty's singing, and he sings a nearly identical melody to Tenor Saw. The music provides an added level of interaction and intensity of engagement. Using the same instrumental track also demonstrates an artist's attempt to better the work of another artist using the same materials. Nitty Gritty recorded this song for a rival studio, King Jammy's, on the label run by that studio owner, Lloyd "King Jammy" James. Neither was the first to use the instrumental track, which had been produced ten years before and was circulating as its own musical element.

Textual Conversation type 2: Expressing theoretical, archetypal or fictional relationships

Other answer tunes engage in a more fictionalized disagreements that call on archetypal experiences or issues for the audience. One longstanding musical tradition is for a singer to narrate one side of a romantic relationship, and another singer records a response taking the part of the other side. A close reading of a series of tunes from the 1980s in Jamaica reveals how such a musical interaction provides a platform for performers and listeners to raise issues of social importance, from physical violence to the role of police and the legal system in daily life.

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[19] Tenor Saw, "Ring the Alarm" produced by Winston Riley, Techniques records, 1985.
[20] Nitty Gritty, "False Alarm" produced by King Jammy, Jammys records, 1986.

Sugar Minott, a popular singer since the 1970s, achieved further fame in 1986 with "What the hell the police can do?" The song was considered on the cutting edge because his vocal is sung over music produced on an electronic synthesizer rather than an accompaniment performed on an amplified instrument. It was also controversial because it expressly portrayed a vision of life in the ghetto, with ambivalent relationships to both violence and the police:

Me an my girl was fighting	
It happens to be a misunderstanding	
I accidentally tump har in she face	[I accidentally thump her in her face]
She run go di police station	[she ran to the police station]
To tell the police fi true.	[To tell the police, it's true]
"Gal after me feed an clothe you	
Give yu everyting yu have to comfort you	
Leave the house gone look money fi me an' you	
When mi come back yu gone wid Bwoy Blue	[when I come back you've gone with Boy Blue]
Tump yu in yu eye an' it black an' blue	[I thump you in your eye and it's black and blue]
Run go to di police go tell dem fi true	
But what the hell the police can do?[21]	

Although the song was a big hit, the JBC declared it "not fit for airplay."[22] The state radio station's censorious response was probably due to its depiction of casual violence, the word "hell" in its title and chorus, and the protagonist's attitude towards the police. This vision of life was very different from contemporaneous music promoted through official channels like Jamaican radio (which at that point still refused to play most Jamaican music if it was associated with the poor). Although songs about romantic disputes were common enough, this song's reference to physical violence caused controversy among upper-class Jamaicans.

Upper-class tastes and a top-down, "civilizing" mission have dominated radio for much of Jamaican musical history. In such an environment, the lives and experiences of poor people were generally not considered fit for airplay, especially if they involved conflict or disrespect for authority.[23] Their exclusion from dominant media has made songs about struggle and conflict, and songs critiquing authority, doubly popular among the poor majority. Even in recent years, when a much broader set of perspectives representing the poor have been evident in Jamaican radio, a strong critique from Jamaican cultural elites, denigrating the baseness of popular culture, still gives artists added rebellious cachet as voices of the ghetto.

Despite the tune's popularity, not everyone found Sugar's narrator (who hit his girlfriend in the face) to be sympathetic. Some apparently thought the story needed another side. Another

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[21] Echo Minott, "What the Hell" Jammy's Records, 1986.
[22] Mel Cooke, "Echo Minott Asks 'What the Hell the Police Can Do?'," *Jamaica Gleaner Online* (Kingston, Jamaica, November 15, 2009), http://www.jamaica-gleaner.com/gleaner/20091115/ent/ent4.html.
[23] White, "The Development of Jamaican Popular Music, Part 2. Urbanization of the Folk: The Merger of Traditional and Popular in Jamaican Music," 52; Lloyd Bradley, *Bass Culture: When Reggae Was King* (London: Penguin Books, Ltd UK, 2001), 305.

talent, Lady Junie, followed up with a response, "Tell you what the police can do," released on the same label in the same year.

> Man, after me wash an cook for you
> me press out your shirt make it look bran' new
> give you lots of loving that's romantic fi true
> when me take a sec you gone with Mary Lou
> me puff out mi face, get jealous and a screw[24]
> me run go to the police an tell them fi true
>
> but me a go tell you what police can do
> me ago tell you what police can do
> cuz them will:
>
> wine yu up [wind you up] and make you move like robot,
>
> wine yu up and make you move like robot
> box you in the face and kick you inna the gut
> grab you in the collar an tear up your shirt
> take out them weapon and give you gun-butt![25]

Lady Junie sings over the same synthesized instrumental track and uses the same melody as Sugar Minott to telling the woman's side of the story. She adds a new twist —the character of "Mary Lou," with whom she asserts Minott's character is having an affair, and she emphasizes her own efforts to be a good partner who takes care of her man's domestic life. This contrast highlights the beater's unjust behavior. Junie asserts the police's right to intervene in their dispute, including a rather gleefully violent catalog of acts that she wants the police to visit on her boyfriend. Any listener might have suspected another side to the story, Lady Junie went a step further, furthering the conversation and demonstrating her ability and her right to publicly participate in Echo Minott's story.

But the story didn't stop with Lady Junie. Another artist, Lovindeer, then already known as a comedy musical act who commented in song on many issues of the day, made a smashing entrance with a song from the police officer's point of view. Lovindeer announced himself as "Constable Brown," the illicit lover of the woman beaten by Sugar Minott, and also the police invoked by both earlier songs:

> I am constable Brown, them call me boy blue
> I have here a warrant to arrest you
> cause you beat up your girl till she black and blue
> and ask what the hell the police can do
> I come to show what police can do,
> I going to show what the police can do

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[24] The word "screw" here probably denotes a Jamaican term "screw-face," which describes a facial expression conveying extreme displeasure or disgust.
[25] Lady Junie, "Tell the police fe true" Live and Learn Records, 1987.

> I have a baton --- I going to introduce it to your jawbone
> box out your teeth give you moan and groan
> Make your ears dem ring like a government phone
> broke up your nose and bust up your looks
> cause you shouldn't call me Babylon boops![26]

Lovindeer's character argues he should be taken seriously as an authority, on pain of extreme violence, and explicitly rejects the name-calling implied by the song: “Babylon boops” a slang term meaning "corrupt police sugar daddy." "Babylon" was popular slang for the police (coming from the Rastafarian use to implying their corruption), and "boops" is a term meaning rich boyfriend. However, despite the character in the song rejecting the nickname, Lovindeer titles the song "Babylon Boops," applying the nickname to himself. Lovindeer's interjection was wildly popular, both for its addition of a new voice to the popular and ongoing story, and because of the frisson of publicly portraying a police officer as caught up in this kind of dispute, and of the disrespectful nickname. In fact, Lovindeer eventually released an entire album called "Government Boops," in which he plays the comic figure of a corrupt official abusing his power for the sake of love. Lovindeer's character also wittily portrays the idea that law enforcement is not outside the disputes that they may be called to settle.

These songs and their interactions reveal a great deal about the attitudes and experiences of the urban poor, but also the democratic value of interacting musically in this way. Taken together, the songs reveal a much richer interaction, in which more participants claim a public hearing, than might be possible if interactivity were limited by requiring permission for reuse of the musical elements like instrumentation or melody.[27]

A musician making unexpected use of a listener’s deeply familiar memory creates a shock of recognition or even delight. Both emotions are of paramount importance in building positive interactions with an audience. As suggested by the above examples, Jamaican music is full of interactive moments, which rely on existing knowledge while also contributing to new reserves of shared knowledge on which to build.

The audience also constitutes an important participant in musical interaction. A vocalist records a song not only to interact with another, he or she records and releases music publicly to engage the audience in the conversation. Traditionally, in Jamaica, this was done through the song's performance on the radio and at dances.[28] Therefore, a vocalist rallies a living audience with words and references, and calls on cultural resources the audience is already familiar with. This is a profoundly democratic creative practice—but one that can be at odds with copyright’s restrictions on unpermitted reuse of copyrighted material.[29]

Re-using musical elements plays an important role in tying various musical pieces together. Lady Junie re-used Minott’s exact words, in several places of his song, to place herself

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[26] Lovindeer, “Babylon Boops” TSOJ Records, 1988.
[27] In comparison, for jazz in the US, copyright law in the 1940s prohibited use of melody but not chord changes. King, “The Anatomy of a Jazz Recording: Copyrighting America’s Classical Music.”
[28] As described in Chapter 2, few Jamaicans owned personal record players, especially in first 20 or so years of the Jamaican recording industry. See n. 30, Chapter 2.
[29] Larisa Mann, “If It Ain’t Broke... Copyright’s Fixation Requirement and Cultural Citizenship,” *Columbia Journal of Law & the Arts* 34 (2011): 201.

in immediate conceptual proximity to him, inhabiting the story of his earlier song. An added layer of significance comes from the fact that she is contradicting him using his own words. Repetition here is criticism and resistance, a way of throwing his words back in his face (and the faces of those who would subscribe to his point of view). In Lovindeer's case, repetition of words is an explicit parody for comedic effect.

Conversation doesn't have to be oppositional, it can also be celebratory. It can be a compliment to a vocalist's lyrical skill when someone reuses lyrics in a new song.

> That song did really really well. In fact [my song] became an anthem in dancehall, up to this day people are still using that line!
>
> SN 2009

Up-and-coming Jamaican vocalist SN described to me how a catchphrase she created for a song became so popular that other vocalists incorporated it into their lyrics. While it would not be a compliment if someone attempted to pass it off as their own creation, SN is happy for the enhancement to her reputation that comes from people seeing her lyrics as good enough to be repeated.

A shared musical element puts the incorporating songs in conversation with each other. This is also true for non-text-based musical elements that create a kind of semantic proximity between songs that share them. This proximity evokes memories of and comparisons between songs, evoking shared meanings and associations that put songs into symbolic conversation.

Symbolic Conversation type 1: Riddims

I defined and described the riddim and its use in musical practice in Chapter 2, where I discussed riddims' origins in the beginning of Jamaican recordings. Some of those first riddims remain popular today, having been incorporated into Jamaican shared cultural knowledge.[30] Riddims reveal how musicking can be understood as an oral tradition. Oral cultures use techniques, like those popular in Jamaican musicking, to solve the problem of retaining and retrieving complicated ideas or creations. In an oral tradition, ideas "come into being in heavily rhythmic, balanced patterns, in repetitions or antitheses, in alliterations and assonances, in epithetic and other formulary expressions."[31] This description applies well to many of the linguistic and sonic practices that dominate Jamaican musicking, including that of the riddim: a short, repeated musical pattern that facilitates learning and memory without relying on writing.

Within the Jamaican oral tradition, recorded music is still "the principle source of raw material in a complex process of creative improvisation in which new texts are continually being produced and reproduced, and new meanings wrung from them."[32] The sheer familiarity of a popular riddim (which can have hundreds of versions) can be a source of meaning. For example, "False Alarm" and "Ring the Alarm" both use the "Stalag" riddim, which has 279 versions of an

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[30] Jones, *Black Culture, White Youth*, 26.
[31] Walter Ong, "Psychodynamics of Orality," in *Perspectives on Literacy*, ed. Eugene R. Kintgen, Barry M. Kroll, and Mike Rose (Carbondale, IL: SIU Press, 1988), 34.
[32] Robinson, Buck, and Cuthbert, *Music at the Margins*, 89.

instrumental recorded in 1974 by Ansel Collins.[33] The significance of reusing a popular and historic riddim will be discussed further below.

In the early years, soundmen who ran the dances tried to control the physical circulation of riddims, to attempt to maintain exclusive control over the ones that were the most popular, and thus maintain dominance among soundsystems. Soundmen mainly enforced control over riddims was enforced hiding the identity of the tune itself so that nobody else could purchase a copy. As local pressing developed, listeners had an easier time identifying local artists –who also wanted to make their name. Anonymity became less useful, so soundmen sought a different kind of control through building associations with vocalists and musicians. This centered power in musickers' bodies and physical locations, rather than in media. In this way both soundmen and musicians profited from controlling access to live performance virtuosity and prestige, rather than through recordings.

In performance DJs "run the riddim"—play a series of vocals on the same riddim, one after the other, sometimes including an instrumental for vocalists to sing over in live performance. When DJs still relied on vinyl, this practice was extended to anyone who had access to a record player and record that had an instrumental. By the 1970s, Jamaicans released records with just the riddim on one side so if you bought the tune you could perform your own version by singing over it, or record your own version.

Riddims reinforce shared cultural competency through the repeated experience of hearing, identifying and anticipating musical elements. The repetition of these references contributes to a shared sense of identity, helping to build a sense of common culture.[34] Alongside the symbolic or lyrical references to shared experience, riddims draw musickers together into coordinated but flexible interactive moments in the dance. For marginalized social groups who are denied access to other kinds of public representation, these shared physical and social experiences are vital to building a sense of community.

Symbolic Conversation type 2: Remixes and cover songs

Remixes and cover songs also embody symbolic conversation. A producer makes a "remix" by altering an existing song, adding and/or subtracting elements including basslines, vocals, instruments or drum patterns. Cover song are when an artist and instrumentalists replay an already existing song (using their own instruments to replay the instrumental parts). Cover songs do not reuse recordings of the song being covered, while remixes usually do incorporate recordings of the song being remixed, or recorded elements of the song. Both practices of musicking are an interactive experience—interactive not only for the singer and the remixer but for the audience whose intellectual and physical knowledge of the previous song is stimulated by hearing the remix or cover.

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[33] "Riddimbase.org," *Riddimbase: a Dancehall & Reggae Riddim Database & Search Engine*, n.d., http://www.riddimbase.org/riddimbase.php.

[34] Monson, "Riffs, Repetition, and Theories of Globalization," 36 "The sociability of these [repetitive] musical relationships has been widely observed as condensing social and cultural relationships both in time and over time through invention and musical allusion."

Such interactions show how musicking reflects and reshapes the cultural landscape in ways that have social and political significance. The Jamaican cultural landscape has been permeated with music from the US, the UK and farther abroad from before independence to the present day, which means that music from outside is often incorporated into Jamaican popular music. In many cases Jamaicans are well aware of the historical references embedded in the music of music they choose to reuse (whether through covering, remixing or sampling), thus many re-uses reflect not only Jamaicans' interactions with artists or concepts, but also interactions on a geopolitical level.

A recent example of musical interplay highlights this kind of symbolic interactivity. The original tune, by a US artist named Mims, is called “this is why I’m Hot.” It was a hit in the US (reaching the Billboard Charts) and popular in Jamaica, ubiquitous when I was there in 2007. The Jamaican remix, called “the Blackout remix,” incorporates multiple new singers and samples of Jamaican music into the Mims tune while still retaining much of its original structure. Most of Mims’ lyrics except for the chorus were removed, and Jamaican singers Junior Reid and Baby Cham sing instead.

In the following table, I have divided the song into “parts” which each represent a musical moment in the song, in order of their appearance. Part I is the first twenty seconds of the song, Part II takes place from 0:20 to 1:10, and after that each Part is a different length of time. The division is conceptual, more than temporal; each Part has a different set of meanings associated with it as a new musical element is introduced. For reasons of space I do not transcribe all of the lyrics in Parts V and VI only identifying them as Jamaican vocalists. The terms “JA” and “US” in the third column of the chart signify that the sound is referring to Jamaica or to the United States (US). For example, Mims’ vocals evoke the US through his identifiable voice and accent, while Junior Reid’s vocals evoke Jamaica due to his voice and use of patois. Following the table is an extended discussion of each Part and its significance.

Table 4.1 : A diagram of “This is Why I’m Hot (Blackout Remix”

US - sound of US origin and/or reference. JA - sound of Jamaican origin and/or reference.

	Music	Musical significance	Lyrics	Lyrical significance
Part I/	Minimal synthesized melodic line in minor key	US Intro to hip-hop track, already famous	Mims: "This is why I'm hot"	US hip-hop vocalist, boasting about his fame
Part II:	Introduced by siren Continuing the same as the Mims tune, same melody, with drums and bass	JA (siren is a common sound-clash tool, evoking live performance in a Jamaican setting) US	Junior Reid: "tu-tu-tweng!" Reid re-sings Mims' lyrics with a slight change: "This is why we hot"	JA, Reid himself Many artists create meaningless signature phrases sung for emphasis, to signal the artist's identity on a track. This would be instantly familiar to people who know Reid’s music. JA "We" suggests a collective answer, contrasting Mims' individualism
Part III	Instrumental intro for "No No No"	JA. A 1974 Jamaican hit still popular today, most listeners wouldn't know it was actually a cover of a US tune from the 60s	No lyrics	-
Part IV	Return of Mims backing music (synthesizers, drums and bass)	US	Junior Reid: "This is why we hot, this is why we hot, this is why we ho-o-ot" (drawing out the vowel sound)	JA translating US lyrics into patois, showcasing vocal virtuosity, building up suspense
Part V	One bar switches to horn playing a simple solo line, then back to Mims backing music	JA from "Stalag riddim" discussed above, popular in Jamaica from 1974 to the present.	Junior Reid continues	JA - Singing in patois
Part VI	Mims backing music continues	US	Babycham (JA): Another Jamaican vocalist	JA Re-uses lyrics from one of his big hits already on the radio

The song begins with the musical introduction of the Mims tune and Mims’ opening line. This is interrupted, in Part II, by the sound of a siren, a common punctuation in Jamaican music, drawn from the live experience of the street dance. Junior Reid marks his vocal entrance by interjecting the phrase “tu-tu-tweng” which is a catch-phrase he has sung in many previous songs. Such a catch-phrase is a tool that identifies him to the educated Jamaican listener, without him saying his name. Then Reid recasts Mims' main line into a simultaneously individual and collective statement of Jamaican greatness, by saying “This is why we hot.” The use of patois grammar (“we hot” instead of “we are hot”) also evokes a Jamaican speaker. Many of Reid’s turns of phrase explicitly reference both local and international stardom, and also demonstrate his vocal ability as a singer that contrasts with Mims’ American hip-hop vocal style.

Part III of the song is introduced with a sample—a quotation of a popular and historic song in Jamaican and abroad: "No No No (You Don’t Love Me)." Even as the actual origins of the song are American, the Jamaicans hold such respect for this popular and now famous tune (in Jamaica and beyond) that they claim it as part of their musical history, and therefore likely to be understood as a Jamaican reference.[1] For contemporary listeners, the Blackout Remix producers have inserted a "classic” Jamaican reference into this new pop song.

In Part IV, Reid’s vocals return, continuing to layer Jamaicanized Mims lyrics in his own vocal style, followed by Part V when another classic Jamaican instrumental is also inserted into the song, the "Stalag riddim," discussed above. Both "No No No" and several versions of the Stalag riddim have been wildly popular in Jamaica and in the reggae scene internationally. Thus they assert local history and the prowess and popularity of Jamaican music as a globally popular force that has withstood the test of time.

In Part VI a new vocalist enters: Baby Cham, who sings lyrics from another song of his, which was already popular and familiar to a Jamaican audience.

The overall blending of Jamaican with foreign materials, in both cases familiar tunes, cannot be understood only as piggybacking onto an already famous song—although indeed that is one part of the musical goal. “Stalag” and “No No No” are such well-known moments from Jamaican history as to be generic references to Jamaican musical culture as a whole. This heightens the significance of the song’s blending references. The dance floor experience of the song demonstrates the way Jamaican audiences respond positively to hearing Jamaican voices framed in the context of an international pop hit.

It is possible to read multiple meanings into the audience response, some of which are more anti-imperialist, and others more celebratory. As a Jamaican intervention into a narrative of Jamaican-US cultural relations, the anti-imperialist reading starts with the common knowledge that the US towers economically and culturally over Jamaica. Jamaicans are intensely aware of their position as a small nation with a history of economic and cultural domination by neighboring powers like the US. Many Jamaicans migrate temporarily or permanently to the US

[1] Although most people know the song through Jamaican singer Dawn Penn’s recording from 1967, the earliest known performance of the lyrics is by American R&B guitarist Willy Cobb in 1961. “You Don’t Love Me” Vee Jay Records, 1961 (although one commentator suggested “Bo Diddley wrote a similar tune before.” See http://ww.youtube.com/watch?v=a05_zcIMo9w). This chain of references reveals the music’s intertextuality.

to work, sending money back to their families.[2] Jamaicans circulate through the US while American music inundates Jamaica on all major media channels (partly as an aspect of American global media dominance). Jamaicans express concerns over cultural imperialism and the survival of Jamaican culture in venues from government studies to the popular press.[3] Within the community of Jamaican musickers in the urban poor, this concern is exacerbated by Jamaican elites' hostility to local music. In that context, taking and re-working US pop tunes inserts Jamaican voices into foreign music, and inserts the voices of the urban poor into a global conversation. As well, musickers may simply be excited to hear their favorite local star alongside a US one. But in either case, the delight in asserting Jamaican culture's importance on local and global stages goes beyond a quest for market dominance.

Market interests still matter, especially because the US music market (including Jamaican expatriates and their descendents) dwarfs Jamaica's. Interactions with US music bring Jamaican voices closer to US tastes, in ways that might translate into overseas fame. This argument is the most difficult to make on traditional copyright grounds. Should US or international copyright law support Jamaicans who wish to profit from US markets (including royalties from the US) by allowing them to violate US copyright law? In the conclusion of this dissertation I suggest some rationales for why this might be desirable from the perspective of substantive equality.[4]

Another Contradiction with copyright: Permission vs. participation

From the long tradition of Answer tunes to the dominance of riddims, to the Blackout remix, reuse of musical elements is intrinsic to Jamaican musicking. Generally, a piece of music or musical recording is widely understood to be a constituent element in a larger conversation. This conversation goes beyond people known as artists or musicians to include the broad community of Jamaican musickers. In the dispute between Prince Buster, Derrick Morgan and Leslie Kong, the discussion both arose from and spilled back out into the wider public who took sides in their dispute. Sugar Minott, Lady Junie and Lovindeer's interactions reveal how each song evoked a response from a listener as a commentary on the previous account, echoing the practice of popular discussion and highlighting how any participant could be expected to interact with musical works, and perhaps enter into the public conversation as well.

Interactivity is fundamental to musical enjoyment and to its integration into popular imagination and discourse. The following discussion of Jamaican music fans around the

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[2] Much of this work happens without work permits, under the radar of the formal legal system. Official accounts place remittances as the single greatest contributor to GDP, higher than tourism. Planning Institute of Jamaica, *PIOJ Annual Report 2004*, Annual Reports (Kingston, Jamaica: Planning Institute of Jamaica, 2004), http://www.pioj.gov.jm/ResearchandData/tabid/82/Default.aspx.

[3] Chang and Chen, *Reggae Routes*, 3; Ian Boyne, "Betrayal of 'Emancipendence'," *Jamaica Gleaner Online* (Kingston, Jamaica, August 3, 2009), http://jamaica-gleaner.com/gleaner/20080803/focus/focus1.html "We have replaced British colonialist mentality with American cultural imperialism…our young people…know more about American culture than their own - and they are proud of that."; Bradley, *Bass Culture*, 56, 351.

[4] Chon proposes that in intellectual property disputes, the "decision maker should accord much less deference and exercise much more skepticism towards the proposed government action (in this case, the regulatory intervention by the state in the form of the grant of intellectual property protection) in the context of the provision of a basic human development capability…in a norm-setting context the decision maker should err on the side of creating a norm that maximizes the access to the public good by the most needy" Margaret Chon, "Intellectual Property and the Development Divide," *Cardozo Law Review* 27 (2005): 2836–7.

Lovindeer tune, even twenty-five years later, reveals enjoyment including interaction and reenactment:

> I used to have Babylon Boops on vinyl...ah used to perform dat tune in meh living room all de time when ah was small."[5]
>
> I remember dem Lovindeer vibes in class boy, we used to be reenacting the intro to Babylon boops and all![6]

These quotes from music fans echo statements of many artists in which re-enactment and imitation of popular tunes and events of the day play an important role in how people understand the music's significance. Some reenactments expand or spill over into new recorded works, as with Lady Junie and Lovindeer, while others simply enter public consciousness and debate, and become part of shared memories.

Had copyright law, which requires permission for reuse, been enforced, many of these engagements with music would be limited or restricted. This would narrow public participation in the discussion, most dramatically for communities who do not have access to other public fora. Although reenactments and interactions occur in a context many have assumed to be outside the music industry (such as living rooms or classrooms), nowadays people might find their social practices restricted, or even their access to digital media platforms restricted, if copyright law was strictly enforced. In Jamaica as well, daily life is increasingly intertwined with networked technology—from living rooms to classrooms. YouTube, mobile phones that record and broadcast video and audio, and other networked devices that play an important part in Jamaican interactions with each other and with the world. A search on YouTube for any song currently popular in Jamaica brings up hundreds of home-made videos using the song as part of broader conversations. In addition, given Jamaica's wide-spread diasporic community, much socializing and re-affirming of a diasporic Jamaican identity occurs online. As will be discussed in Chapter 4, the Jamaican diasporic community engages with cultural works associated with Jamaican culture and narratives in order to stay connected to their cultural roots in often-hostile new environments. Were these platforms to limit and enforce certain kinds of musicking, this community would also be affected.

The Blackout remix also shows how copyright enforcement could favor foreign interests in several ways. Both Jamaican traditions, and the less-centralized nature of Jamaican musicking, militate against copyright being enforced locally. Not only does the logic of local traditions make it unlikely that a Jamaican would attempt to assert exclusive rights against an attempted answer, it is currently difficult to monitor recordings and live events in a place where recordkeeping is spotty and circulation happens informally. While Jamaicans might not try to collect, the presence of large corporate interests in the US hip-hop industry suggest a greater likelihood of enforcement on behalf of American artists, at least those signed on major labels.

In a legal contest between US and Jamaican interests, US actors are usually more powerful. Traditionally Jamaican musickers have resisted or avoided pressure from outsiders by

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[5] "Original Soca Songs From Jamaica - Page 2," Caribbean Entertainment platform, *Islandmix.com*, July 23, 2005, http://www.islandmix.com/backchat/f16/original-soca-songs-jamaica-79576/index2.html.
[6] http://hr-hr.facebook.com/topic.php?uid=34854672920&topic=5075 last visited May 11, 2010

working within informal spaces. If the law is to play an active role in supporting local traditions, its specifics would need to carve out a similar space for local practices of reuse to flourish—perhaps through redefining copyright to allow remixes and sampling, or through allowing certain kinds of locations and practices to be excepted from copyright enforcement. The law may be an imperfect tool for facilitating these informal and decentralized practices, and the costs of relying on law ought to be weighed against the benefits.

The Value(s) of conversation

The elements of interactivity that foster creativity in Jamaican musicking arise out of a playful approach: flexible, contingent, often spontaneous, involving imitation, innovation, criticism and celebration from a wide range of participants. Many scholars argue that this kind of creativity is consistent with democratic values such as broad participation in culture and the possibility for dissent.[7] In this view, flexibly spontaneous creative practices help to prevent "established ways of seeing, hearing, and thinking the world from becoming calcified.”[8] However to sustain this kind of creative play in a community, cultural institutions must be in themselves flexible. Legal scholar Julie Cohen uses a metaphor from physics, “degrees of freedom,” through which we evaluate legal and cultural institutions in light of "the extent to which they permit purposive creative experimentation, but also the extent to which they enable serendipitous access to cultural resources and facilitate unexpected juxtapositions of those resources.”[9] The value of unplanned, serendipitous moments is also limited by permission-based interaction. Creativity is not hindered merely because creators don't know who to ask, but also because asking permission requires premeditation and a different understanding of the social relations surrounding musicking.

Intellectual property law, as applied to culture at least, ought to take account of the various values societies, communities and individuals require. The traditions that bring answer tunes into being, the resources that their creators draw on, and the value that they create, is broadly democratic. The ability to engage with each other in discussion, disagreement, commentary and praise is part of what builds not only a discursive community, but also contributes to a sense of interrelationship, which forms part of a healthy society.

Copyright law can foster community building and democratic practice. Even in the US, copyright has goals beyond the strictly economic;[10] its constitutional purpose is "to promote the progress of science and the useful arts”[11] Beyond even that utilitarian goal, its enforcement has cultural effects, whether intended or not. This becomes a more serious concern if copyright enforcement is delegated to personal technological devices, which can govern our lives much

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[7] Yochai Benkler, “Free as the Air to Common Use: First Amendment Constraints on Enclosure of the Public Domain,” *New York University Law Review* 74 (1999): 354; Neal Weinstock Netanel, *Copyright’s Paradox* (New York, NY: Oxford University Press, 2008)“Freedom of speech requires interplay from among a wide variety of speakers.”

[8] Julie E. Cohen, “Creativity and Culture in Copyright Theory,” *UC Davis Law Review* 40 (2007): 1192.

[9] Ibid., 1190.

[10] Neal Weinstock Netanel, “Copyright and a Democratic Civil Society,” *The Yale Law Journal* 106, no. 2 (1996): 376.

[11] U.S. Const. art. I, sect. 8, cl. 8.

more intimately than formal law. If the law affects how culture develops, then cultural concerns are important to keep in mind when designing and enforcing the law.

Copyright and First Amendment scholar Neal Netanel argues that “a democratic order depends upon a domain in which citizens develop the independent spirit, self-direction, social responsibility, discursive skill, political awareness, and mutual recognition.”[12] Music, an important part of the cultural landscape, can be seen as a potentially democratic pluralistic behavior, in that shared language and collaborative practices cement communities through reinforcing shared values. But shared values do not always point to uniformity. When the practical realities of musicking facilitate certain kinds of musical engagement, they can lead to plural and flexible participation in discourse. Jamaican musicking practices (alongside other creative traditions like jazz improvisation) suggest that such a plural and flexible participation is possible.[13] Jamaican musicking values reflect an engagement with culture where the musicker takes an active, indeed, interactive role, which allows a broader swathe of participants (including those from marginalized or subordinated groups) to participate. This suggests a state interest in a more equal and diverse participation in public discourse.

Such a definition of public interest also relates to the fostering of creativity. Popular culture can be seen as "both a resource and a playing field for the exercise of democratic culture and civic association.”[14] We can also find popular music scholarship that focuses on creativity in some similar terms such as "cultural citizenship," "the process of bonding and community building, and reflection on that bonding, that is implied in partaking of the text-related practices of reading, consuming, celebrating, and criticizing…”[15] Netanel specifically argues that

> [T]he autonomous creation, critical interpretation, and transformation even of works of pure aesthetics or entertainment helps to support a participatory culture. Citizens who engage in these activities gain a measure of expressive vitality and independence of thought that may carry over into matters of more unequivocal public import as well.[16]

By any stretch, the above is a desirable outcome for cultural policy. Copyright can limit this resource and tilt the playing field through reinforcing a "permission culture” that hinders our ability to draw on or play in musical discourse.[17] Such rules create a hierarchy between participants that may be contrary to democratic values.

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[12] Netanel, “Copyright and a Democratic Civil Society,” 356.
[13] Mann, “If It Ain’t Broke...”
[14] Netanel, “Copyright and a Democratic Civil Society,” 356.
[15] Joke Hermes, *Re-reading Popular Culture* (Hoboken: Wiley-Blackwell, 2005), 10; Burgess, Foth, and Klaebe, “Everyday Creativity as Civic Engagement: A Cultural Citizenship View of New Media.”
[16] Netanel, “Copyright and a Democratic Civil Society,” 351.
[17] Cohen, “Creativity and Culture in Copyright Theory,” 1193; Patricia Aufderheide et al., *Untold Stories: Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers* (Washington, DC: Center for Social Media, 2004), 29–40; See generally Marjorie Heins and Tricia Beckles, *Will Fair Use Survive? Free Expression in the Age of Copyright Control*, Free Expression Policy Project (Brennan Center for Justice: NYU Law School, 2006), http://www.fepproject.org/; Lawrence Lessig, *Free Culture: The Nature and Future of Creativity* (New York: Penguin Books, 2004).

At the very least, any changes to a legal regime that have the potential to introduce new sets of permissions and restrictions should be analyzed in the context of their effects on interactivity and play.[18] Taking seriously the value of less-restricted interactions should encourage us to recognize the modest role that copyright law plays in the creative process.[19]

If musicking can be an exercise of democratic culture and civic association, we ought to think carefully about the preconditions for that exercise. The term "association" in this case denotes both physical association and conceptual association. Not only do musickers require physical spaces in which to associate themselves and their performances, a healthy creative culture requires the freedom to associate lyrics, and sonic references, with each other, and with different peoples. Those associations exist both in the intent of those recognized as creators and performers, but also in the experience of people usually identified as listeners –all the participants in the full range of Jamaican musicking.[20] To that end, musickers must have access to both physical and discursive space in which to play, both of which current copyright law has the power to limit or support.

The Harms of privatization

Copyright is able to privatize culture by transforming a musical element into a commodity, with fixed boundaries and rules governing how people engage with it. By focusing on a more individualistic and rigid definition of ownership, copyright may contradict social interests in musicking that define ownership in different ways. In Jamaica, the collective social experience of a song marks a kind of ownership. In the same way that a jazz musician is sometimes said to "own" a song although simply playing a vibrant and creative cover version of it, Jamaican musickers feel ownership of music at least partly through the depth of their association with it, whether or not they actually penned the lyrics or composed the melody. Many cases echo the example (discussed above) of the song "No No No," incorporated into the Blackout remix: Jamaicans feel a song is truly Jamaican because of its importance to Jamaican musical history even if it is not, according to law, owned or authored by Jamaicans. This vernacularization of the basis of ownership, contradicts the definitions assumed by formal law. A legal system that contradicts Jamaican understandings of ownership may ignored or dodged by Jamaican musickers who see it as irrelevant, or, if unavoidable, hinder collective practices that have social value.

Shubha Ghosh characterizes privatization as "a shift from the centrality of the political and civic spheres to the centrality of the market and individual experience."[21] Overemphasizing the individual's role in creativity and culture-making undermines the social goals that copyright law is supposed to further. Individualism reinforces the idea that a "copyrighted work is a good in and of itself."[22] Analyzing copyright only in terms of its effect on individual creators obscures

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[18] Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*; Geiger, "Fundamental Rights, a Safeguard for the Coherence of Intellectual Property Law?," 268; Netanel, "Copyright and a Democratic Civil Society," 351.
[19] Cohen, "Creativity and Culture in Copyright Theory," 1193.
[20] Jessica Litman, "Creative Reading," *Law and Contemporary Problems* 10, no. 2 (2007): 179–80.
[21] Shubha Ghosh, "Deprivatizing Copyright," *Case Western Reserve Law Review* 54 (Winter 2003): 395.
[22] McDonald, "Copyright for Sale: How the Commodification of Intellectual Property Distorts the Social Bargain Implicit in the Copyright Clause," 544.

the full spectrum of human creative practices, and their interrelationships in communities. Focusing entirely on individual artists also obscures the value interrelationships generate for society as a whole, as well as for the specific communities in which creators reside.[23] Beyond that, focusing on the exclusive aspects of copyright law obscures the value generated by fluid and dynamic relationships.[24] By restricting the dynamic interactive social experience in which musical works are only a part, the law harms or at least alters some communities' cultural practices. If the law is to play a role in altering cultural practices and identities, the public interest in fostering political and civic spheres requires limiting copyright's scope.

Towards Framing a democratic and expressive copyright regime

As discussed in the previous chapter, the role of policy in current musical practices in Jamaica is complex and fractured, reflecting the relationship that most Jamaican musickers have to law in general. Any policy that is set into motion will be defined and enforced by state agents and enforcers already bound up in a set of relationships that render them less-than-impartial, and enforcement inconsistent. This practical concern discourages Jamaicans from participating in the formal copyright system, and are borne out by recent developments: the fourteen-year failure of JACAP (the Jamaica Association of Composers Artists and Performers) to collect royalties from the 1993 compulsory mechanical license while continuing to collect dues has spurred musickers' criticism and suspicion.[25]

However, one place that policy might have more purchase is at the international level, where it affects globally networked technologies and the other means by which the biggest players in the global music industry interact with Jamaican musicking. My research in this chapter supports other arguments that countries in the global South ought to consider the value of limitations as well as the so-called "protection" of copyright.[26] The traditions and values enacted by answer tunes, and the interests they represent, particularly in relation to democratic participation in public discourse, should inform the evaluation of any copyright policy. An example is in the way new technology enabling the tracking and monitoring of copyrighted audio recordings shows no understanding or acknowledgement of how little the Jamaican creative tradition supports the practice of seeking permission. Altering these traditions would require a substantial re-educational process that would directly contradict central features of Jamaican musicking history and identity, would be difficult to enforce, and would raise costs for Jamaicans musickers with few discernable benefits to them. Permission-seeking would also slow the circulation of musical works and limit artists participation, and the fostering of new artists. Policy that requires permission for reuse should be weighed carefully against these concerns.

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[23] See Chapter 3, where I discuss the collective creativity that street dances embody, and how it shapes musicking, as the non-individualistic ways street dances create benefits for musickers that would be reduced by an individualistic focus on royalties.

[24] Elkin-Koren, "What Contracts Cannot Do: The Limits of Private Ordering in Facilitating a Creative Commons," 35 "Reliance on property rights may weaken the dialogic virtue of information that is a key to individuals' participation in the creation of culture."

[25] Okpaluba, "'Free-riding on the Riddim'? Open Source, Copyright Law and Reggae Music in Jamaica," 387; "Jamaican Artistes Sing the Blues."

[26] Okediji and Prosser, *The International Copyright System*; Geiger, "Implementing an International Instrument for Interpreting Copyright Limitations and Exceptions."

Any alternate system, however, such as compulsory licensing, or blanket exceptions to copyright for certain uses, ought also to be evaluated in the light of these concerns for participation and expression, grounded in the experience of the musicking majority that is denied other venues for expression. The introduction of new costs, such as taxes or fees that could be tied to music use, must be carefully evaluated in relation to existing inequality that could reinforce or increase the marginalization of poor musickers.

Interactivity and musical conversation, seriously considered, destabilizes the assumption that social benefit comes first from ensuring that intellectual property owners obtain royalties. Changing this focus away from royalties and copyright owners would likely be controversial in Jamaica, especially given a justifiable sense that non-Jamaicans have gained much more from Jamaican music than have Jamaicans, and that many Jamaicans feel their contributions to culture have not been sufficiently recognized. If copyright law as written has not solved this problem, any alterations to it must take into account the concern for fair allocation of wealth and recognition. The discussion above, of the vernacular concept of “originality” in Jamaican musicking suggests that underlying assumptions about the best way to make music are different in Jamaica even when Jamaicans use the same language. There is little evidence that reuse of riddims, for example, is seen as unfair, or free-riding by Jamaican musickers—instead this longstanding tradition of musical reuse suggests that Jamaican concepts of fairness do not track the same ideas about creative contribution and ownership that currently inform copyright.

Thus, a successful policy must make use of the dominant practices of interactivity, rather than penalize musickers who persist in it. Such policies might better support democratic participation in culture and also render copyright law more relevant to Jamaican musickers. So far, discouraging musical conversation has not been a successful tactic, either within Jamaica or globally. In fact, Jamaican recordings, and even more so Jamaican musicking practices (including riddims), have spread throughout the diaspora and beyond. How do these democratic and dialogic values matter outside the island in terms of what they hold for copyright decisions? I explore this question in the following chapter.

Chapter 5:

Reports from the Jamaican Diaspora: Musicking in Toronto and London

> I don't like contracts, no no no no!
>
> BR, interview, Jamaica 2009

> I saw [DR, a female, Canadian-Jamaican engineer], she was walking around, talking to someone on her cell phone. I heard her before I saw her and I noticed she had a Canadian/US accent. She was complaining about dealing with people, I couldn't tell who, but she said "they don't realize, music decisions are business decisions." Then she said, "In Jamaica, it's not—it's all culture and tradition."
>
> Field notes, 2009

In this chapter I examine musicking in the Jamaican diaspora through the experience of Jamaican musickers in the Commonwealth, specifically Toronto and London.[1] Jamaica has a special relationship to Canada and the UK as fellow Commonwealth countries, and as two of the oldest sites of Jamaican migration.[2] Both locations offered Jamaicans potential business advantages and cultural disadvantages: greater chance to access money alongside status as a minority nationality and race, with local variants of colonial inequality that exclude or disadvantage Jamaicans. I explore how colonial inequality sets Jamaican cultural practices outside and against institutions for advancement such as copyright, and how Jamaicans instead have carved out exilic spaces for musicking in order to preserve and support their practices.

While London and Canada also provided formal institutions that could have served Jamaican musickers' interests in some respects, the ability to engage with them successfully has been dependent on material security and social capital that Jamaicans have troubled access to. As I discuss below, Jamaicans drawing on formal institutions are sometimes set outside of their own community and identity. I describe below how diasporic Jamaicans used exilic spaces to explore and resolve these tensions through developing syncretic identities. Although copyright law still contradicts many of the same cultural practices in the Jamaican diaspora, it takes on a different

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[1] I have narrowed the scope rather than attempting to tell the story of the Jamaican musical communities encompassed by the UK and Canada, or even by London and Toronto. I do not address the Jamaican musicking community in the United States, focusing instead on the Commonwealth connection. However, the insights gained here lay the groundwork for future work in that direction.

[2] This, in contrast to the US, where people of African decent born in the US are the majority of the black population. J. Heathcott, "Urban Spaces and Working-Class Expressions Across the Black Atlantic: Tracing the Routes of Ska," *Radical History Review* 87, no. 1 (2003): 198 The UK, Canada and the US are the oldest and most popular destinations for Jamaican migrants. Every person I interviewed in Jamaica, and in fact nearly every person I met there, had family in either London or Toronto, and many had traveled or lived there themselves. Future analyses would be well-served by including the largest, if not oldest, sites of Jamaican migration in Miami and New York.

significance, I argue, due to Jamaicans improved material situation; rather than the cause of musickers' economic advancement, the ability to make use of the law is a possible result.

The Diaspora

> The local and the transnational are inextricably linked by regimes of production and consumption as well as by systems of thought and meaning.[3]

I use the term "Jamaican diaspora" to describe the relevant areas of my research, albeit narrowed her to apply to the UK and Canada. The term "diaspora" describes both a process and a condition, existing within global hierarchies of race and gender.[4]

"Diaspora" in this context describes communities of African descent dispersed originally by the slave trade and connected by that shared past across national boundaries.[5] This diaspora, does not center on Africa (or nations within Africa), but is made up of lateral and decentered connections built around the common experiences emerging from that history.[6] By attaching the term "Jamaican" I focus on the connections that include the island in the Caribbean Sea, along with the waves of outmigration from Jamaica to other countries. While Jamaican musicking has played a role in a great many musical and cultural traditions, especially in the UK, those influences lie beyond the scope of this dissertation; instead this chapter provides concepts and questions that ought to inform future studies of diasporic musicking.[7]

The Jamaican diaspora follows the colonial history in which those closer to the center of colonial power are privileged in relation to the periphery. These privileges mean that Jamaicans in the UK and Canada face exclusion and hostility on a formal and informal level from mainstream society and its formal institutions. The official and unofficial exclusion of Jamaican musicking from dominant media illustrates this dynamic, although it had different effects in Jamaica, than those of London and Toronto. In response, Jamaican and Jamaican-descended communities in the diaspora ("diasporic Jamaicans"), similar to those in Jamaica, created their own spaces for their creative practices. In some cases diasporic Jamaicans were able to use these to make inroads into mass media, in others not. Below I explore the extent to which Jamaicans and Jamaican communities continued to work outside of formal legal systems even in these new locations, relying on their own norms and practices to manage their obligations to each other and

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[3] Heathcott, "Urban Spaces and Working-Class Expressions," 183.
[4] Tiffany Ruby Patterson and Robin D. G. Kelley, "Unfinished Migrations: Reflections on the African Diaspora and the Making of the Modern World," *African Studies Review* (2000): 1.
[5] The term diaspora originated and has been applied in other contexts, but for the purposes of this project, the racial and colonial analysis required is best encapsulated by the definition centered on the history of enslavement framed by skin color.
[6] Clifford suggests that "decentered, lateral connections may be as important as those formed around a teleology of origin/return. Shared ongoing history of displacement, suffering, adaptation or resistance may be as important as the projection of a specific origin."James Clifford, *Routes: Travel and Translation in the Late Twentieth Century* (Cambridge, MA: Harvard University Press, 1997), 249–50.
[7] Other notable sites are street festivals, Caribbean-themed outside events approved by local government, and rave culture–outdoor parties or parties in warehouses featuring DJs and connected both to youth subculture and radical political movements. Hebdige, *Cut'n'Mix*, 76; Kwesi Owusu, *Black British Culture and Society: A Text Reader* (London: Psychology Press, 2000), 9; Simon Reynolds, *Generation Ecstasy: Into the World of Techno and Rave Culture* (London: Psychology Press, 1999), 77, 247.

their flexible relations.[8] My observations also suggest that non-Jamaicans wishing to work with Jamaicans can be drawn into these informal practices, finding it easier to work outside the law alongside Jamaican musickers.[9] Many of these obligations and informal practices serve the functions that legal formalities such as licensing are intended to serve; however, my research suggests that this alternate set of practices also gives diasporic Jamaicans an alternate basis for cultural authority. While Jamaican musickers can sometimes take advantage of the greater material resources available to them in the global North, my research suggests that this can be a trade-off. Individual musickers may gain some material advantage but they do not necessarily gain cultural authority as Jamaicans (which could improve the cultural position of Jamaicans more broadly). My research suggests instead that material or cultural advancement for a particular Jamaican in the diaspora may not advance the Jamaican diasporic community unless it is tied to anticolonial institutions or exilic spaces.

Overall, my investigation was organized around the following questions: How does the "friction" between law, local practices and material conditions shape diasporic pathways to survival and success? How do Jamaicans in the diaspora relate to the cultural practices associated with the island? How do we evaluate diasporic practices in relation to substantive equality?

In addition to different cultural environments, Jamaica, Toronto and London provided different material and institutional configurations. I examined how musickers operated in relation to these configurations at sites such as radio, social dance events, record shops, recording studios and audio supply stores. I begin by drawing out several concepts useful for analyzing Jamaican diasporic musicking that arose through the reflexive process of ethnographic and historical research. Then describe some central dynamics that influenced Jamaicans to leave Jamaica for the UK and Canada. Following that, I explore Jamaican musicking in the UK, followed by a discussion of Jamaican musicking in Canada. I begin each regional discussion with a brief history of Jamaican musicking, and explore how the central analytical concepts play out in local and historical context. While not a comprehensive analysis of diasporic musicking, this chapter identifies dynamics in musicking that take on a particular shape in the diaspora and it also examines their significance in relation to musickers' ability to flourish.

Concepts for use in analysis

The history of Jamaican diaspora outlined above lays out concepts that came to light though my fieldwork in 2010 that proved to be useful points of analysis and comparison across and within diasporic locations.

[8] The alternate normative order defined by Jamaicans in the diaspora provides a shelter from a legal system that does not recognize the specific material and cultural situations Jamaicans face.

[9] It is not clear whether non-Jamaicans rely on informal networks in the same way as Jamaicans do, or whether they simply reap the advantages of informality while not attending to the obligations Jamaicans feel toward each other.

Concept 1: Phonographic orality

Phonographic orality,[10] the central aspect of Jamaican musicking, transcends the island culture, fostering creativity and simultaneously creating and maintaining decentered creative authority over creative practices. It has also been used as a tactic for appropriating, as well as appreciating dominant culture.[11] Yet, even in locations where Jamaican culture is not particularly present and DJ practices prevalent, similar tensions arise between phonographic orality and copyright law, due to DJ practices that appear to suit marginalized communities and clash with copyright law. As described in Chapters 1 and 3, those tensions include clashing with permission-based regulations of creative practice, decentering a single entity like the producer, vocalist, or DJ from an authoritative position in the creative act, and re-casting dancing to music or playing records as creative acts—despite being understood by dominant culture (and most interpretations of copyright) as consumptive acts.

In the diaspora, playing records as a creative and social act appears intrinsic to Jamaican émigrés and descendants' self-concept (as well as some definitions of black culture).[12]

> What happened was, 'cause I'm a black man, I started playing records at home. We all did! As a kid playing records I was like everyone else.
>
> Don Letts, transcript of interview at Red Bull Music Academy, 2010.[13]

Letts responds to a question about how he began DJing. He does this by situating himself in a tradition of phonographic orality that transcends even the informal performance space of the street dance. When Don Letts describes himself as "playing records," he is evoking an interactive relationship with recordings that goes beyond passive consumption. Playing records at home, framed as Letts did in relation to black culture, is still phonographic orality.

If phonographic orality is linked, as Letts (and others) suggest, to race or to particular communities this suggests that those communities will find themselves particularly in tension with copyright law.

Concept 2: Informality

> I've never seen a contract... not for any of that work!
>
> -DJ, interview (Toronto), 2010

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[10] As discussed in Chapters 3 and 4, also see Jason Toynbee, *Making Popular Music: Musicians, Creativity and Institutions* (London; New York: Arnold; Co-published in the U.S.A. by Oxford University Press, 2000).
[11] For example see Veal on the spread of Jamaican-style DJ and production techniques. Veal, *Dub*; Chanan, *Repeated Takes*. Also see Chang on the importance of Jamaicans to the birth of hip-hop, saying "the Blues had Mississippi, Jazz had New Orleans, hip-hop had Jamaica." Chang, *Can't Stop Won't Stop*, 22.
[12] Paul Gilroy, *"There Ain't No Black in the Union Jack": The Cultural Politics of Race and Nation* (Chicago: University of Chicago Press, 1991).
[13] Don Letts, "Don Letts at the Red Bull Music Academy," Video, 2010, http://www.redbullmusicacademy.com/lectures/don-letts-punk-politics?template=RBMA_Lecture%2Ftranscript.

> Just because of the way our life is, and musically.. the reality of our situations... and because with most Jamaicans there's always some something going on in terms of immigration or some shit with Jamaicans you know not all of them, not all of us you know, but usually sometimes there's always some kind of like... *scenario* going on in terms of legality and blah blah blah
>
> -MCI, interview (London), 2010

In every interview, I asked, "When was the first time you saw a contract?" and followed up with questions that drew out my subject's experience and attitudes towards contracts. I would then initiate a discussion about how people made agreements and promises. Hardly anyone I spoke with used formal contracts or signed paperwork in the process of music-making.[14] As will be discussed below, interviewees' accounts of the conditions under which they would use contracts illustrated that they believed formal legal instruments are useful only if one is already in a good position to confront existing power. This attitude is the response to the coloniality of power reflected not only by the formal law (as in copyright's definition), but also by the realities of who can afford to rely on the law.

Coloniality is also implied by the fact that many interviewees saw informality as a characteristically Jamaican approach to the law and to daily life. According to the second Jamaican expatriate musicker quoted above, informality is a feature of the uncertain and complicated situations Jamaicans find themselves in, which he identifies as a condition of being Jamaican. MCI, in the opening epigraph and elsewhere in our conversation, stated that Jamaicans tend to be disempowered and caught up in uncertain situations where they are unable to call on the law. For example, many Jamaican musickers he knew were not in the country legally and could not claim copyright ownership in work they did, or sue over violations of contracts or promises, for fear of discovery.[15] Informality can provide a kind of shelter from scrutiny by a system where many musickers are not powerful enough to assert themselves.

Many Jamaican musickers in the diaspora, as in Jamaica, relied on informal social relationships in order to manage their business decisions around music:

> LM: Have you ever chosen not to sign a contract?
>
> AC: Yes.. the logics about it were not good. If somebody gwine [is going to] sign a contract with you and take your songs and just go away and deal with it and you are not around to know what is going on… and it doesn't give you any money, you can't!
>
> AC interview, July 2009

AC describes "logics" around a contract that do not include the actual text of the document itself. Instead, he describes a web of activity and relationships that help him evaluate a

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[14] Twenty percent of interviewees said they had ever used contracts, and only one said that he used them regularly.
[15] James C. Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven: Yale University Press, 1999).

contract. One undesirable aspect of a contract AC describes is if it comes from someone not local—who might "go away" without leaving information about future whereabouts or activities. Another undesirable aspect centers around money up front. To receive advances is not intrinsic to all contracts, even a contract that stipulates an advance isn't in itself the act of giving money. AC asserts that in an uncertain context and without money in hand, a contract is by definition a bad deal.

Other interviews linked informality with authentic Jamaican-ness, but noted that there are positives and negatives about informality:

> In Jamaica we have a way of life of being very casual. I think that in itself it brings a lot of niceness to the music but at the same time it can be a downfall; you can't have a casual approach in the business you have to be very in point which I really want to make an effort to speak to you. Even though in itself the casualness does have a feel to our whole, our whole swagger in our music.
>
> -FN interview, Jamaica 2009

For Jamaicans, informality also included such attitudes and practices as focusing on personal and social rather than formal and legal relationships, and having a loose relationship to clock time. Being on "Jamaican time" was a joke that every Jamaican, and nearly everyone who worked with Jamaicans, made at one point or another—this meant that you would probably show up on the day you made an appointment, but that it would be pointless to attempt to predict exactly how late you would be.[16]

The stark contrast between "business" and culture/tradition is evident in any comparison of Jamaican and American musicking practices as well as among Jamaicans uptown and downtown, Jamaicans and non-Jamaicans in London and Toronto. One of the uneasy trade-offs Jamaicans face when they attempt to be more businesslike involves the feeling that they are abandoning their cultures and traditions. While nobody said this explicitly, many Jamaicans described how being late, hard to pin down to a commitment, constantly on the move, or unprofessional was "a Jamaican t'ing" [thing] in rueful or laughing tones. They did not sound wholly dismissive or critical; rather, often somewhat affectionate. The rueful tone of voice was especially evocative—suggesting to me that they recognized the double bind they were in. Being late, unreliable, and risky evokes both feelings of being a problem and of being a victim of circumstance. This attitude masks the reality of historical inequality that continues to limit Jamaicans mobility and access to resources.[17] The laughter also suggests a bit of rebellion against those who expect exactitude and punctuality, as lateness can demonstrate one is not fully constrained by others' expectations.

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[16] See "Jamaican Time," http://www.urbandictionary.com/define.php?term=Jamaican%20time "When you tell someone that you are going to be somewhere at a certain time but show up hours later;" or, for example, numerous hotel reviews in Jamaica that describe slow service as the hotel running "on Jamaican Time" See also "Riu Montego Bay Hotel: Traveller Reviews," http://ur1.ca/914vw, "Hedonism II Adults Only All Inclusive in Negril: Hotel Rates & Reviews on Orbitz," http://ur1.ca/914wg

[17] Gilroy asserts that "the oscillation between 'black as problem' and 'black as victim' has become, today, the principle mechanism through which 'race' is pushed outside of history." Gilroy, *"There Ain"t No Black in the Union Jack'*, 12.

Concept 3: the nexus of commerciality, popularity and authenticity

Popularity and commerciality carry different meanings in Jamaica, London and Toronto. I observed a tension between the desire for authenticity and the desire for popularity: concepts that were not separate in Jamaica but were, to different degrees, in the diaspora. As discussed in Chapter 2, in the Jamaican street dance popularity is rooted in value systems associated with the communities of urban poor. In Jamaica it is possible to be both widely popular and perceived as authentically Jamaican, because musickers come from a numerical majority—the urban poor. Interestingly, many musickers identified the techniques of performance valorized in Jamaica as techniques that lead to general commercial success. The following moment was repeated more than once in my observations of recording studios in Jamaica.

> JD, a bald man in his 40s in a striped button-down shirt, stepped into the recording booth to record a vocal track over a riddim. On the first take, he sang through the complex lyrics, full of wordplay and allusion, also incorporating some familiar melodies that sounded like a nursery rhyme. I watched him through the thick Plexiglas, as I sat on a bench flanked on either side by other Jamaican men: a younger vocalist, and another a young man in his teens who seemed to spend as much time as he could at the studio, doing errands and watching. The men laughed at a particularly clever lyrical reference, and nodded affirmation of his skill After JD completed the first take without a hitch, the engineer raised his hand to indicate he was done and JD came out of the door beaming. The singer on my left called out the word "commercial!" to him, in a praising tone of voice, nodding his head.
>
> Field Notes, April 2009

I saw the epithet “commercial” applied in Jamaica either as a term of praise for a producer’s recorded riddim, or, as in this instance, for a vocal performance in the studio.[18] With respect to live vocalists, its use appeared to coincide with a performer who did not falter in performance, had assertive stage presence, did not require multiple takes, remembered or easily improvised lyrics. It did not necessarily coincide with musical choices accessible to non-Jamaicans. Nor was it in line with an individualistic aesthetic that did not make use of pre-existing texts, such as would align more with copyright. JT’s performance was entirely in patois and made use of many puns and lyrical quotations of specifically Jamaican cultural context, such as incorporating a local business’ advertising jingle into a lyric as a rhyming punch line. When I heard the term “commercial” applied to a riddim, I was not able to discern anything sonically distinct about it, except that I only heard the term among dancehall producers and not among reggae producers.

[18] I heard the term "commercial" used approvingly among dancehall artists in Jamaica. However not all Jamaicans used the term in such a positive way – among reggae and Rastafarian artists I rarely heard the term used at all and when it was used it was to denigrate music deemed not sufficiently spiritual. In the studio, producers and engineers who used the term tended to qualify it in terms of different audiences or markets in way that vocalists mainly did not.

Within Jamaica, the majority of Jamaicans enjoy dancehall: it is mainstream culture, even if officially denigrated, and Jamaican-centric creative elements are likely to lead to local success. However, it is not clear how far this success can spread outside the island while still retaining its Jamaican characteristics and content. The large expatriate communities outside Jamaica, including significant music scenes centered solely on Jamaican musicking for Jamaican audiences in London and Toronto, suggest that success in Jamaica can reach abroad among those who identify with Jamaican or Caribbean culture.[19] But this success is reconfigured in the diaspora where Jamaican musicking denotes minority culture. Dominant cultures in the colonial center (such as the UK), and places influenced by that colonial heritage (as in Canada) have been actively hostile to Jamaicans and their cultural practices. Traits fostering popularity within Jamaican musicking may not translate into broader popularity. Instead, popularity may require that musickers alter the specific markers of Jamaican identity in order to appeal to a broader audience. Simply asserting Jamaican culture's right to take up space in dominant culture has undertones of resistant or subversiveness in light of colonial hierarchies of taste. Jamaican musicking has been adopted and adapted by other marginalized communities, due to its assertive resistant voice. This, and a pan-African outlook, fueled reggae music's global popularity in the era of indigenous resistance movements. More recently, diasporic Jamaicans and their descendents have dealt with tensions over identity by forging syncretic identities engaged more with their immediate locale, in spaces that also foster and influence youth culture beyond Jamaican expatriate communities. These syncretic identities and communities often also have a vexed relationship to copyright, and make use of their own exilic spaces.

However popular Jamaican musicking becomes, its difficulties with the formal commercial system continue to the extent that it maintains practices of phonographic orality, syncretism and links to exilic spaces. In each historical moment and location, the specifics of class and community affect how and when these clashes with copyright are likely to happen.

Diasporic Beginnings: from Jamaica outward

As Jamaicans circulated from the island to the various temporary or permanent diasporic locations, their culture came with them, including their cultural artifacts and practices. The dramatic increase of Jamaicans living outside Jamaica meant that musickers and their musicking practices were now living in a legal context in which, at least in theory the law could be enforced more fully. Just as significantly, the material security arising from a global-North country, including better paying jobs, roads, electricity, and other amenities not regularly available to the Jamaican poor, allowed Jamaicans to spend more money on musicking. Regardless of copyright enforcement, Jamaicans (and non-Jamaicans, as we will see) in the diaspora had more cash to spend on musicking, including record players, and a greater interest in buying recordings. The sheer availability of money helped to make the diaspora a significant part of the Jamaican musical economy fairly early on.[20]

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[19] Witter, *Music and the Jamaican Economy*, 27 "A recording that sells well in Jamaica acquires a stamp of social approval that increases its attractiveness to the ethnic markets overseas, and in turn to the wider market for Jamaican music."
[20] Ibid., 12, 25.

Although Jamaicans had been moving abroad in search of employment for hundreds of years, the migratory waves most significant to the spread of musicking in the English-speaking world began in the 1950s.[21] Dramatic drops in world sugar prices (one of Jamaica's primary exports), led to multiple recessions, which spurred the much of the population to leave the island for employment elsewhere.[22] Economic factors have generally been an engine of migration with later recessions triggering new waves of emigrants. In the 1970s and 1980s the massive political violence (of? Briefly describe/remind) was also a factor in people's decision to leave.[23]

Jamaicans destinations were affected by geopolitics as much as geography. As colonial subjects, Jamaicans had been in England from the turn of the nineteenth century and did not need a visa to emigrate.[24] However, not until after World War II did they move en masse. Postwar England, facing a labor shortage, invited workers—at first male workers and soldiers who had fought for England during the war—to supplement the English labor force. Migration to the UK increased throughout the 1950s as Jamaican independence loomed on the horizon—after which Jamaicans would no longer have access to England without a visa. Between 1955 and 1968, around 200,000 Jamaican moved to Britain, over 10% of the island's population.[25] In contrast, Canada in the 1950s stipulated racial quotas limiting black Jamaicans' entrance. Thus before 1962 Jamaicans looked first to England as a destination when seeking opportunities abroad.[26]

After Jamaican independence, Britain restricted Jamaican immigration, while Canada and the USA loosened many of their restrictions, although retaining selective policies and a complicated path to legal residency and work permits. After the 1960s Canada and the US became more important destinations for Jamaican migrants.[27] Although migration numbers have decreased in the last decades, Canada remains the third most popular destination, after the US and the UK.[28]

Although Jamaicans came in increasing numbers to both destinations, racism and social exclusion prevented them from full participation in the cultural life of their host countries: radio stations would not play their music, and racism led to formal and informal bans of black people

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[21] There had been earlier migrations to Central America, but the Latin/reggae world is beyond the scope of this dissertation. See, Lara Putnam, *The Company They Kept: Migrants and the Politics of Gender in Caribbean Costa Rica, 1870-1960* (Durham, NC: The University of North Carolina Press, 2002).

[22] Heathcott, "Urban Spaces and Working-Class Expressions," 60–2.

[23] Davison, *Black British*, 118.

[24] Before Somerset v. Maugham free Jamaicans could have emigrated to England had they the resources, enslaved Jamaicans would have come as property of their enslavers. After Somerset, enslaved Jamaican would have become free upon arrival in England. However after Somerset there were still not many Jamaicans on English soil until after World War II.

[25] Nancy Foner, "West Indian Identity in the Diaspora: Comparative and Historical Perspectives," *Latin American Perspectives* 25, no. 3 (May 1, 1998): 174; Statistical Institute of Jamaica, "Jamaica Population Statistics," *Statistical Institute of Jamaica: STATIN*, April 2012, http://statinja.gov.jm/Popcensus.aspx.

[26] Economic reasons were a primary motivation for emigration. Foner, "West Indian Identity," 173.

[27] The Jamaican diaspora is not simply an outward journey from Jamaica: many people return to Jamaica or move to another diasporic location over the course of their lives, circulating among various locations following economic, familial and cultural flows. Ibid., 175; Heather A. Horst, "'You Can't Be Two Places at Once': Rethinking Transnationalism Through Jamaican Return Migration," *Identities* 14 (February 5, 2007): 63–83.

[28] In 2005, 160,000 people of Jamaican descent resided in Toronto, which is the center of Jamaican migration in Canada. Around 231,000 people of Jamaican descent lived in Canada at that time. Statistics Canada, *An Ethnological Portrait of Canada* (Statistics Canada, 2006), http://www.statcan.gc.ca/resource-ressource-eng.htm#ActiveTab.

(which was the vast majority of Jamaican) from nightclubs and music venues. As will be discussed below, this led Jamaicans to form their own alternate musicking events, shaped by the possibilities available to them and their own desires for cultural expression, which were different in different times and locations.

In the 1960s, after the UK tightened its limits on Jamaican immigrants, many more came to Canada. By this time soundsystem culture was in full swing, alongside the peaking ska and rocksteady music scene. Jamaicans came to Canada as artists and soundmen, alongside other skills. Soundsystem culture flourished in Canada and the UK through the 1960s and 70s, attracting musickers from Jamaica who made money performing and, in the UK, selling recordings. Copyright was similar in both countries, but in Canada copyright remained virtually irrelevant to Jamaican musickers, as sales of recordings were low and recordings were not broadcast in any venues that paid royalties.

In the UK, Jamaican music became popular enough—including some white audiences—that a network of distributors and labels began to spring up, of which many worked directly with Jamaican artists in Jamaica or in the UK. This growth was fueled by local sales of records, more possible in the relatively cash-rich UK environment. However, although sales could run in the tens of thousands, these were largely informally managed, unaudited transactions.[29] That Jamaicans were making more money from recordings in the UK had little to do with changes in the legal environment; rather it emerged through a threefold situation: the high demand from a larger audience than was possible in Jamaica, more people able to pay for individual recordings, and the presence small-scale record labels and distributors in the UK interested in maintaining good relations with Jamaican artists that local audiences wanted to support. These distributors were bound up in a web of diasporic social relations among musickers that exerted its own pressure. One example is instructive. In the early 1960s, Prince Buster confronted Emil Shalit, a UK distributor Buster had learned was pressing and selling a Prince Buster record without permission. Buster praised Shalit's response:

> He could have just ignored me, or gone on bootlegging my stuff, but he told me he wants to deal with me legally, so I did a deal with him.
>
> Prince Buster, quoted in *Bass Culture*, 1998[30]

Buster here describes the law as something you choose to engage with, not something that constrains behavior. In fact, little could have forced Shalit or other distributors to pay artists in Jamaica, given the impossibility of monitoring, let alone policing from afar (by poor Jamaicans) the huge numbers of transactions of record sales in this informal industry.[31] Apart from Shalit's well-regarded moral character, he also likely wished to maintain good relations with Jamaican musickers, and had extra incentive to deal with Buster. This example depicts the way mutual obligation could on some occasions regulate behavior similar to law. In the

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[29] Bradley, *Bass Culture*, 128.
[30] Ibid.
[31] Bradley, *Bass Culture*. Also see Michael De Koningh and Laurence Cane-Honeysett, *Young, Gifted and Black: The Story of Trojan Records* (London: Sanctuary, 2003).

following analysis of musicking in various diasporic contexts, I draw out the costs and benefits for various musickers choosing between law or social norms of mutual obligation.

Destination 1: Jamaican musicking in London

> Back in that time my mate used to say "is England we gonna go to first man" because England has always had more connection with reggaeand more, like, people of Jamaican lineage doing music in England and stuff. So, you know, I was pleased we were gettin' opportunity to go to England[32]
>
> MCI interview, London 2010

In 2010 I asked a Jamaican vocalist who had lived in England for 12 years why, when he first left Jamaica in 1989, he chose England rather than America or Canada. Despite the fact that far more Jamaicans reside in the US than in England, my interlocutor still identified England has having "more of a connection with Reggae."

Jamaicans form a significant presence in England's capital: in 2010, 7% of London's population was Jamaican and another 2% were of mixed Jamaican descent (many more likely undocumented Jamaicans also reside in London, unaccounted for by the census).[33]

In the diaspora, different types of musicking developed in relation to the local context. In London I identified four distinct kinds of musicking related to Jamaicans. First, Jamaicans musicked at events centered on the British-Jamaican community, at which white Britons are not much present. These events focus on DJs and live performers from Britain's home-grown British reggae scene, as well as providing audiences for Jamaican artists on tour. A great many Reggae, dancehall and Caribbean music events are aimed at predominantly white college audiences. Some of these are organized by middle- or upper-class white British soundmen, although often in collaboration with Jamaican vocalists. Second, many dance music events occur at which Jamaicans are not necessarily a dominant presence, but whose musical roots lie in Jamaican music, and at which many familiar scenes of phonographic orality, from "rewinds" to air horns, are commonly in evidence. Lastly, pirate radio (unlicensed radio stations) has been important to Jamaican communities in Britain and the communities of musickers influenced by Jamaican musicking that have arisen from second and third-generation Jamaican-British youth mixing with London's cosmopolitan atmosphere. In the remainder of this chapter I discuss each of these in greater detail. I first set the stage by discussing one microcosm of Jamaican history in London that illustrates the deep and ongoing connections between London and Jamaica

Brixton in 2010

Brixton has been a heavily Jamaican community since the 1940s—although more recently it has become a more diverse immigrant community. One symbolic connection between Brixton and parallel poor Jamaican communities elsewhere is revealed by the fact that one part

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[32] MCI, personal interview Jan 2010, London

[33] International Organization for Migration, *Jamaica: Mapping Exercise* (London, UK: International Organization for Migrations, July 2007), http://www.iomlondon.org/doc/mapping/IOM_JAMAICA.pd.

of Brixton was called Little Tivoli" after "Tivoli Gardens," the notorious garrison community in Kingston (also famous as the location of the street dance Passa Passa discussed in Chapter 2).[34] Alongside the symbolic (and literal) links to Jamaica (and the music, drugs and gun violence evoked by that name), Brixton is also a cultural and commercial center arising from its location as a crossroads for immigrants from the West Indies and far beyond.

Brixton houses a historic open-air market on Electric Avenue,[35] which includes several record shops, and over a hundred shops offering fashion and videos for sale; the bustling market area around the market is multiracial, but the majority are of African descent. When I visited, people were wearing and buying a variety of fashions that illustrated connections with various African and Jamaican countries as well as multiple subcultures within London and beyond. Walking between the stalls and under the arches of the bridge, I heard new dancehall tunes, as well as classic reggae from the 1980s, mixed with other musics I did not recognize. Baskets of fruit and vegetables—often from climates quite far from England—filled many of the stalls, signaling Brixton's historical and current role as a crossroads of cultures via its former colonies. The market also represented its postcolonial aspect more explicitly, by means of the numerous flags representing many nations who had been granted independence. Alongside the West Indies, items from Ghana and Nigeria were also visible. Several shops sold CDs as well as other cultural goods and fashions, from baseball caps to Kente cloth, from Djellabas to Rastafarian caps of leather and fabric, from jeans to saris. A wide variety of London's immigrant communities, most visibly those of African and West Indian descent, appear to shop or sell on Electric Avenue.

As I wound through the paths between the rows of stalls and shop entrances, I found Blacker Dread records, a Jamaican record shop that has been in the same spot on Coldharbour lane for at least forty years.[36] A ledge by the front window was piled with flyers advertising dances taking place in Brixton or farther out in suburbs, with Jamaican and UK-based performers in equal number, although most sound-systems appeared to be based in London. I saw a counter with DVDs of street dances and documentaries about reggae at the back of the store, and on the back wall were vinyl records, from counter-height to the ceiling, organized by riddim.

This scene reveals the Brixton market as a hub for immigrant cultures, with an established Jamaican presence threading through it.[37] Immigrants and their descendants who shop here for a literal taste of home also seek the flavors of music and fashion that signal their allegiance to cultural identities. Music audibly marks the space as different from other areas, including other shopping areas, signaling specific immigrant communities through the choice of music played and sold. The only physical stores (as opposed to temporarily rented stalls) that sold music were Jamaican music shops, a fact that suggests at a more established Jamaican presence in the area compared to other immigrant groups.

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[34] "Yardie Gangs Control Cocaine Network in Britain," *Jamaica Gleaner Online* (Kingston, Jamaica, February 25, 2002), http://jamaica-gleaner.com/gleaner/20020225/lead/lead2.html.

[35] Memorialized by Jamaican Brit Eddy Grant in a famous pop-reggae song of the 1980s. "Electric Avenue" ICE, 1984.

[36] Punk and reggae DJ and journalist Don Letts, introduced above, recounts buying records there in the 1970s. Letts, "Don Letts at the Red Bull Music Academy."

[37] Coombe, *The Cultural Life of Intellectual Properties: Authorship, Appropriation, and the Law*.

The establishment of Jamaicans in the UK was concomitant with the establishment of musical institutions that fostered their sense of community, and these institutions began in neighborhoods like Brixton, outside of formal or official British cultural events.

History of Jamaican musicking in England: from blues dances to soundsystem

Jamaicans arriving in Britain in the 1950s were faced with racism and hostility, including an outright ban on black entrance at nightclubs. Jamaican musicking centered on Jamaican neighborhoods.[38] In the neighborhoods, people would host musical events in their homes—these unlicensed house parties ("blues dances" or "shebeens") were where British-Jamaican musicking began in Britain.[39] Although the dances were the focal point of musical experience, they also led to a demand for the recordings heard there. The dances also helped to support the rise of record importers and eventually local recording studios. Because musicking centered first in homes, the events eluded the scrutiny of formal law, and an incubator for a British-Jamaican music scene that was insular at first but later became influential beyond geographic and cultural borders.

In the early days, the DJ-centric blues dances reinforced Jamaican community musicking in the UK, and soon soundsystems began to take hold. Sometimes an emigrant would bring the entire technological apparatus of a soundsystem to England with him from Jamaica, as did the father of MD, one of the British-Jamaican soundmen I interviewed. MD was born in England to Jamaican parents and below describes how he got involved with music as a youth in the 1970s:[40]

> You have the Metronome guys from all over east London, you know, and King Edwards and them. That is your schooling. You just sit down and just watch.... They were people who come from Jamaica and build up a sound system in England. They were the type of people who me and Shaka used to. Metronome used to school Shaka. I used to go into these guy's houses and see all the speakers and amplifiers
>
> MD, interview, 2010

In this narrative, the people, their expertise and equipment came from Jamaica to England, and the young British-Jamaicans learned from them. Music recordings came over in great numbers as well, from the 1950s onward.[41] MD describes how it happened:

> A lot of tunes used to come from Jamaica, we'd get the master tapes and cut the dubs here. So [someone from Jamaica would] come with a pile of tapes, and then known sounds -- known big

[38] Barbara Bush, "African Echoes, Modern Fusions: Caribbean Music, Identity and Resistance in the African Diaspora," *Music Reference Services Quarterly* 10, no. 1 (2007): 23; Bush, "The Dark Side of the City," 187.
[39] The word "shebeen," still used by some of my interviewees to describe informal house parties in black neighborhoods where DJs played music of Jamaican or black US origin like R&B, is a Gaelic word originally referring to a place that sells bootleg liquor. It is also used in South Africa and Ireland. The word "Blues" in the term "Blues Dance" refers to the R&B music often played in the parties, but they played ska and rocksteady as well. Peter Childs and Mike Storry, *Encyclopedia of Contemporary British Culture* (New York: Routledge, 1999).
[40] "The connection is that my old man had it [the system] in Jamaica, and built it up from there and carried it here." MD, Personal interview, January, 2010.
[41] Lipsitz, "Immigration and Assimilation," 127.

> sounds -- used to come and link them at the airport and take them down to the studio and cut a pile of dubs what just been made in the last few months.
>
> MD, interview, 2010

MD is describing how musical recordings circulated in the form of "master tapes," the final product of a recording session, from which further recordings are made (in the 1970s, as MD describes, these were vinyl records). These tapes are not for sale to the public, but neither are the recordings made from those tapes, according to MD. Instead they are 'dubs' to be played in a soundsystem environment. MD, a soundman, is not concerned with records for sale to the general public, although this market is much more significant in the UK than it is the UK. But MD's narrative still emphasizes the centrality of soundsystems to the recording process.

Soundsystems, first centered on these imported songs (cut to vinyl locally), became a feature of working class neighborhoods where massive sounds could be played at late hours without neighbors calling the police. Out of these soundsystems, local, UK-centric variants of Jamaican musicking arose, which served the British Jamaican community. One such genre was "Lovers' Rock"—sentimental ballads, often performed by male-female duets. This genre was never as popular in Jamaica as in England, but was popular enough in England to attract Jamaican musickers who made their names on this romantic style.[42]

One might expect that copyright law could better serve Jamaican musickers in an environment where the state infrastructure is more established and powerful. Private copyright-related organizations like the PRS (Performers Rights Society) in its UK home environment and therefore is theoretically more able to monitor, enforce and distribute royalties to members. Social and institutional racism kept Jamaican cultural practices underground and marginalized, preventing Jamaican musickers from taking advantage of the potential benefits of copyright.[43]

Musicking by Jamaicans and Jamaican-descended British citizens contributed to a particular syncretic identity not centered on the current realities of Jamaica or the history of enslavement and roots in Africa, nor on identification with white British culture, instead partaking of all. Lovers' rock combined elements of the diasporic experience in this way, but the syncretic identity developed in the soundsystems as well. In 1982 a dancehall artist named Ranking Ann, asserted:

> Mi seh [I say] don't call me no English gal
> Just call me by name,
> because Mi seh mi mama an mi papa [I say my mama and papa]
> seh dem born in Jamaica [they were born in Jamaica]
> Gimme roots'n'culture [give me roots and culture]

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[42] Bradley, *Bass Culture*, 148; Owusu, *Black British Culture and Society*; Simon Jones has suggested that the changing demographics of Jamaican migration supported the rise of Lovers' Rock, because after an initial wave of male immigrants, England saw more female than male immigrants. Jones, *Black Culture, White Youth*, 52.

[43] Foner describes the surprise West Indians felt on arrival in Britain, believing themselves to be British only to be treated as second class citizens or foreigners. Foner, "West Indian Identity," 176; Bush, "African Echoes, Modern Fusions," 23; Patterson, *Dark Strangers; a Sociological Study of the Absorption of a Recent West Indian Migrant Group in Brixton, South London.*, 127.

seh dem gone inna Africa' [they go into Africa]
Mi seh mi born inna Englan"[44] [I say I'm born in England]

Ranking Ann, 1982

Ranking Ann claims a shifting identity, linking herself to roots and culture based in Africa to Jamaica via her parents, and asserting that she is born in England but doesn't want to be called an "English Gal." In spite of this last demand, Ranking Ann titled this song (and the entire LP) "A Slice of English Toast." "Toasting" refers to speaking lyrics over a melody, a Jamaican musical practice. Her song and album title punningly combine Jamaican and English cultural reference, forging a shifting claim to authenticity based not on any one geographic, familial, or musical location.

This syncretic identity, woven from a variety of diasporic sources, suggests a complex relationship to law. Resident vocalist (and sister to the soundman) of the "Black Rock" soundsystem,[45] Ranking Ann was also embedded in a phonographic orality in which, at least while soundsystems remained outside of institutional settings, kept them outside of copyright.[46]

In my fieldwork I saw evidence of at least three musicking scenes that developed out of Jamaican diaspora, all positioned differently with respect to Jamaican identity, and to law. First, a relatively separate scene of Jamaican musicking centered on current popular Jamaican music and events in Jamaican neighborhoods with mainly Jamaican and diasporic Jamaican audiences. I saw evidence of this via flyers at Blacker Dread and other record stores, and this was confirmed by a conversation with several Jamaican-British record store owners. Second, a "British Roots and dub" scene appeared to be popular among older British–Jamaican audiences and also highly popular in Europe. MD ran a soundsystem that was central to that scene, which regularly toured the Continent and beyond. Third, not exactly a single scene, but instead a dynamic that continually generated new music scenes every decade or so whereby Jamaican musicking brought together diasporic and black British youth with other youth subcultures—from ska to punk to more recent electronic dance music like jungle, garage, grime, and dubstep. In many cases these started in marginalized working-class black and mixed-race communities, and eventually, with varying levels of success, crossed into mainstream youth culture in the UK.[47] For example, ska music in Jamaica was financially fueled not only by its popularity among expatriate Jamaicans, but also a sizable white British "skinhead" fan base, who identified with the counterculture attitude and sharp style associated ska.[48]

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[44] Ranking Ann. A Slice of English Toast. Ariwa, 1982
[45] "Ranking Ann," *Encyclopedia of Popular Music*, Oxford Music Online (Oxford University Press, 2012).
[46] Ibid. However Ranking Ann also claimed a working-class identity in songs like "Militant Style" in which she proclaimed sympathy for striking miners with lyrics like "All Dem Want Is Coal Not Dole." .
[47] This crossover dates back to the 1960s, when Jamaican ska music was financially fueled not only by its popularity among expatriate Jamaicans in the UK and beyond, but also a sizable white working class British fan base, who identified with the counterculture attitude and sharp style associated with ska. Heathcott, "Urban Spaces and Working-Class Expressions"; Veal, *Dub*, 239; Julian Henriques, *Sonic Bodies: Reggae Sound Systems, Performance Techniques, and Ways of Knowing* (New York: Continuum International Publishing, 2011).
[48] Heather Augustyn, *Ska: An Oral History* (Jefferson, NC: McFarland & Company, Inc., 2010), 58, 61–63; Hebdige, *Cut'n'Mix*, 82.

Over a brief time in London I was unable to gain access to the first, more separate diasporic Jamaican sites. My fieldwork allowed me to examine the other two dynamics in action in several ways.

British Roots: Purer than Jamaica

Despite the syncretic tradition, MD, a primary soundman in London claimed a kind of cultural purity, when he explained to me what he saw as a significant difference between Jamaican and British reggae sounds:

> [In Jamaica now] they always follow an American tune and try to do over an American tune. You would never hear them tunes play in a roots sound system dance in here. The difference is sound system in England and sound system in Jamaica you can hear the difference in what we play. They would tend to go for the dancehall the bashment thing [49] where we tend to stick to the roots, the Rasta ting the heartical [soulful, originating, authentic] thing.[50]
>
> MD, interview, January 2010

MD's use of the word "roots" evokes a spiritual conception of Jamaica (and by implication Africa as well) that he differentiates from the musicking actually popular on the island. The son of a Jamaican soundman who took over his father's soundsystem in the late 1970s and performs with it to this day, MD describes British-Jamaican roots soundsystems as "keepers of the flame":

> When you hear the reggae artists from Jamaica coming over, and they're on dancehall tunes, they're on music that they think will sell, you know crossover, they've come with softer Jamaican things... we going to the more hardcore roots tings… that's what the soundsystem in England does.[51]
>
> MD, interview, January 2010

MD criticizes current Jamaican music in Jamaica for diverging from authentic roots themes. MD focuses on local British-Jamaican productions (which hit their peak in the 1980s but still dominate the roots soundsystems), which he says do not circulate back to Jamaica. But MD suggests that his music is not hybrid, but pure, at least in the context of current popular Jamaican music. By criticizing "crossover" approaches as softer or more diluted, MD defines purity in a

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[49] A "bashment" refers to a rowdy party or club night in the context of Jamaican musicking; it has connotations of alcohol use and dancing and also a kind of pop sensibility. Bashments are not usually discussed as sites of educational or uplifting cultural experiences, but instead are associated with "low" culture. In England perhaps more than Jamaica, the term "bashment" itself has become associated with a musical genre, like "dancehall," which comes from a particular location and experience but also means a genre. James McConnachie and Rough Guides (Firm), *World Music: The Rough Guide* (London: Rough Guides, 2000).

[50] MD, Personal interview, January 2010

[51] Ibid.

particular way: not rooted in a geographic or historical experience, but in a relationship to a pan-African concept of "roots."

MD sets himself against Jamaican pop audiences. Although his soundsystem grew to prominence out of the Jamaican-centric blues dances, he rejuvenated the soundsystem in the 1980s and 90s playing at colleges and universities where, he said, there was a "completely different audience to the shebeens."[52] When I asked how they were different, he replied that the audiences were more white and middle class. MD's soundsystem also has a sizable following in Europe, touring to large audiences over many locations on the continent.[53] His focus on "roots and culture" not based in geography or specific Jamaican experience but instead on a more abstract or philosophical approach appears to appeal to a wide range of non-Jamaicans and white Europeans. While asserting his narrow focus on a particular style is pure, MD's approach to musicking engages with a diversity of audiences.[54] In contrast, the Jamaican vocalist MCI describes a different allegiance to Jamaican musicking as he relates his experience in the 1980s and 90s after emigrating to the UK:

> Compared to the Jamaican roots, which was more musically articulate, in terms of comparing to British UK scene, I found it really boring. The dubs, a lot of the dubs were really monotonous and all of it pretty much sounded the same. Yeah, so it was like there was a point in time when I was feeling very p'd off [pissed off] with the English roots scene. It just sounded really like monotonous and boring. That was another reason why I was thinking "Shit, I'm gonna go chill in a different scene."
>
> MCI, January 2010

What MCI describes as "boring" is the very consistency and musical purity that MD champions. The split between British-Jamaican and popular Jamaican music maps onto the divide described by Louis Chude-Sokei. He argues that Jamaicans who leave Jamaica, and to some extent their descendants, become focused on Jamaica as a kind of symbolic homeland linked with an equally symbolic Africa.[55] However, this vision of Jamaica becomes increasingly separated from the current realities of daily life on the island and leads to tensions where British soundsystems claim to be more "authentic" than Jamaican ones.

MCI didn't talk specifically about authenticity, but discussed his musical interest and excitement, or more precisely his lack of interest and excitement in the English roots scene.

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[52] MD, Personal interview, 2010

[53] MD website, Archived, on file with the author.

[54] Whether the "roots and culture" sound in a European setting serves a similar function as Jamaican musicking in Jamaica is a topic for further research. My preliminary observation suggests some complex issues at play: first, many Europeans see roots music as embodying a definite oppositional, if not revolutionary language. Earlier research I did in Germany suggests that when reggae music first became popular in the 1980s it was as part of the Antifascist and punk movements. Whether this meaning has continued through the 1990s and 2000s, and how roots music relates to the popularity of dancehall, is yet to be explored. In neither case does this suggest to me that roots music in Europe functions (or functioned) necessarily as an exilic space supporting the survival of marginalized people, although it may have functioned as a method of political critique.

[55] Chude-Sokei, "Post-Nationalist Geographies."

> Another reason I left the reggae scene, yeah, or decided to come out of it a bit, because at the time like during like the early 90s mid 90s, there was this, like, the UK roots scene. And the dub scene. And a lot of the music, like [for me,] coming from Jamaica where we were more articulate with music compared to the British dub scene. I found it pretty boring...
>
> MCI , January 2010

MCI uses the word "articulate" to evoke the concept of music as conversation and musical elements as vocabulary (discussed in detail in Chapter 4). To be articulate requires having a mastery of a wide vocabulary, over a broad spectrum of musical elements. MCI suggests that being connected to Jamaican musicking involves more than "keeping the flame." Articulating with music is an activity that involves more than preservation, and instead suggests ongoing communication and interaction through the medium. Articulating with music also implies that music is something used for a larger purpose, and that the multiple elements within it can be put in conversation with each other. This approach invokes both phonographic orality and syncretic practices that continually incorporate new cultural artifacts and references.

MCI, in contrast to MD, works with numerous syncretic musical scenes that involve Jamaican musicking more focused on London and the UK (not “roots” but actual local identity). He is a vocalist, rather than a soundman, which may also dictate a different avenue towards success, but his account of identity is still revealing. MCI has found that his Jamaican heritage and performance style is an asset in this scene, rather than the new environment moving him away from Jamaican-ness:

> [Doing music] In England, obviously there is a certain level of respect that is shown to you because you're from Jamaica, you've just come over, you're a musician, so you get a more respectable reaction from the people around you, you know?
>
> MCI interview, 2010

MCI suggests here that the more recently arrived one is from Jamaica, or the more embedded one in is current Jamaican culture, the more respected one might be. This meaning holds a distinctive contrast to a colonial hierarchy of taste. However, the way MCI’s identity is embedded in Jamaican culture, compared to that of MD, has also has had repercussions for his ability to flourish.

MCI and MD describe different relationships to material resources available in England, and to the rule of law more generally. Below, I contrast MD’s account of how he learned to market his soundsystem to MCI’s more unstable, marginalized experiences of seeking out certainty as an artist.

Encountering Formal institutions: MD in the library, MCI in the train station

> I went into the library during the week, and stay there, and sometimes I'd be the last one in the library

MD interview, 2010

> ....So [when it came time to sign] I remember we met up with the guy who was responsible for the label... I remember meeting him in a train station called King's Cross... I had a quick read-through of the contract, but like I said it was nothing official, not in an office, sit down check stuff out, you know… it was like woooshwoosh woosh quick quick!

MCI interview, 2010

These epigraphs describe differences in how two Jamaican musickers engaged with formal institutions in Britain; the first coming from a conversation I had with the established soundman MD. In our conversation, MD described how he had been able to survive as a soundman even when the peak of reggae's popularity in England had died down in the late 1980s:

> What I did was contact most of the students unions, in the universities... that's how [my soundsystem] started coming around again. Instead of fighting for a venue, on the street, I sat down for hours, in libraries night after night, getting all contacts of student unions up and down the universities, in England...

MD interview, 2010

Here, MD describes how he uses library research to find out more about the places in London that he can try to get himself booked to perform. Both the library, and the universities he learns about in the library, are much more available to him in London than they would be in Jamaica. [56] Only those who have access to the institutions, possessing the knowledge that relevant information could be found in a library, as well as the confidence, demeanor, and perhaps visual attributes of respectability that make one's entry into such places possible. Such factors (understanding what information is available in libraries, understanding how to get access to that information, and being able to successfully negotiate the physical and social geographies that make such places more or less welcoming) are distributed unequally along colonial lines

MD credits his research as the source of his success:

> For about 10 years I was playing mostly in universities, colleges, polytechnics, whatever, then... with that you start to get a reputation. I started to play with bands like Aswad, Mystic Roots, these type of bands what was only going into university circuit.

[56] For example, London has 403 public libraries, http://www.librarytechnology.org/publiclibraries-uk.pl?City=London, while the Jamaican parish of Kingston/St. Andrew has five public libraries http://www.jls.gov.jm/Parish%20Libraries/Kingston/Lib_Branches.htm.

> There was no sound system except me was going and doing the university circuit. You think smart, you say, well look you do it and you get more money than when you are playing with another sound system on the road.
>
> MD interview, London 2010

I asked MD when he used formal agreements while musicking. He described the beginning of his engagement with universities as the time when he "started to see a lot of contracts." As institutions, universities require formal legal instruments, but also have systems in place to regulate their own behavior: regular oversight by funding bodies (whether public or private), grievance procedures, and other institutional and legal constraints. Thus they are bound by a system that regulates their behavior and to which MD could appeal. MD did not describe any bad experiences in his dealings with university contracts.

While MD found more formal institutions that supported his musical content, brought him to national and eventually international audiences, and made use of formal legal agreements, the testimony of Jamaican-born vocalist MCI illustrates the difficulties but also some advantages of remaining outside the system.

MCI told me that in the many years he had been in the UK, he had only signed a contract once, in what seems like odd circumstances:

> The only one [contract] I ever saw, actually, was from [NAME] records which was the people who were responsible for the release of our album. Because when we came over in '89 immediately we started to make an album, me and my mate, yeah?... So when that was finished, and they decided that they gonna put it in an album and stuff, that was the first time I saw a contract. Even though the contract wasn't -- I don't think it was worded properly. Or in the way I would have liked it to be worded. But obviously because it was the first contract we have seen, and there was nothing to compare it against so we were just hoping that yeah certain aspects of it would reveal that we were not actually being robbed. And um. I think we were. Yeah I think we were robbed a little bit. But obviously they expected us to be going back to Jamaica after 6 months. So it got a bit funky. in terms of they what they were meant to pay us, and how much we eventually, or initially got.
>
> MCI interview, 2010

Although it is often argued that contracts are an artist's protection, a contradiction arises in MCI's experience, looking over his first ever contract, having already recorded the music. In his case, the contract appeared part of a "dodgy" relationship in which he had very little power and information, and not many avenues towards getting it. Signing a contract becomes an act of hope, rather than the concretizing of a set of commitments.[57] The English label-owner appears

[57] Mark C. Suchman, "The Contract as Social Artifact," *Law & Society Review* 37, no. 1 (2003): 91–142.

not to feel bound by any sense of obligation to MCI, hence the formality has little power to constrain the label-owner. By contrast, if one is in a relatively empowered relationship to formal institutions, and those institutions are themselves constrained by a system of law (such as MD and the universities), contracts may be more empowering between individuals or much smaller, less formal organizations.

Absent these external constraints, a sense of obligation or its lack, whether due to personal ethics or shared culture, affects the outcome of agreements more so than does the presence of law.

There are several reasons why contracts may be unattractive from the beginning, Access to the mechanisms of contract enforcement such as a lawyer, or being able to go to court on one's own behalf, is costly and intimidating. Enforcement may not be possible if there is a breach, if one cannot afford to sue over breach of contract. The language of formal contracts can itself be complex and daunting, and requires that one to understand what one is signing—absent that understanding it makes sense musickers would be wary.[58] Contracts can symbolize a kind of inequality in which one must possess a certain level of social, intellectual and material capital in order for them to be useful.

But although contracts may be unappealing or without much use for MCI, they are not necessarily as out of reach for the people he works with. In this way he does not depend on the actual Jamaican poor or working-class communities. Instead, MCI has connected with white British fans of reggae and dancehall as well as the syncretic music genres in London that draw on these (already syncretic) musical tradition. I met him because he was associated with another event promotion and DJ crew that I had come in contact with, and which consisted primarily of middleclass white men associated with diasporic Jamaican music events.

I had several informal conversations with white British promoters and DJs involved in Jamaican musicking, during which they asserted that it was difficult to sign contracts with Jamaicans because they were unable to force them to honor the contracts. My research revealed reputation and mutual interest a countering force to the appeal of contracts. If a musicker wishes to stay connected to the traditions and material realities of Jamaican musicking, even a white, middle class British person can be lured to work with Jamaicans outside of formal systems .[59] British promoters needed to maintain a good relationship with the Jamaican artist, they knew it would be expensive and difficult to get a Jamaican artist into court, and the artist lacked money so suing them was not an option.[60]

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[58] Several interviewees indicated that they were not comfortable signing contracts that they did not understand, and described choosing to work without one instead. Interviews, Jamaica 2009, London 2010.

[59] Working outside of formal agreements is not necessarily liberating for either side, and does not erase inequality. The more powerful, well-off and connected side of the informal agreement has many advantages, not least of which may be more money and security to fall back on if an agreement is broken. However, I spoke with many of the middle-class British people involved in music who repeatedly described, with varying levels of amusement, frustration, or resignation, their inability to force Jamaicans to follow through on agreements. Jamaican collaborators might simply not show up, might disappear for hours or days at a time, might not respond to phone or other communications, or otherwise confound expectations and control. None of the ostensibly more powerful actors described calling a lawyer or otherwise bringing in formal authorities for disagreements related to musicking. This suggested to me that they felt constrained, to some extent, by the social relationships they were working within.

[60] Personal conversations with three promoters, January 2010

It is possible that these complaints simply mask the reality that British musickers take advantage of Jamaicans and leave them unprotected. White, middleclass musickers are clearly better situated in relation to colonial power and authority. However, both the British promoters and MCI's account suggest that it was because Jamaicans are in a weak position they are also not targetable as easily by law. Being mobile, including internationally mobile, and having no steady work means one can be hard to locate. While contracts are supposed to enforce good behavior by both parties, if the powerful figure in a contract wishes to behave honorably, he will have to ensure a contract is transparent, understandable, and enforceable on both sides. The level of goodwill required for a British promoter to make a contract transparent and understandable may perhaps be high enough to transcend the need for a contract at all: someone who makes that much of an effort has already demonstrated the kind of good faith a contract is intended to enforce. On both the side of the artist and of the promotee, incentives to rely on trust center on reputation and mutual interest rather than formal legal instruments.

Some evidence suggests that changing material conditions can lead to a contracts becoming more relevant or useful. Interviews in Jamaica and the Diaspora revealed how Jamaicans saw contracts as something that happened when they reached a certain "level." The following interview provides evidence that some musickers balance the circulation-based values of musical access and reputation against the more formal restrictions of contractual obligation and copyright enforcement. I interviewed FTS, a Jamaican-British vocalist who grew up around soundsystems and now performs in a London-centric genre of music called "grime" that is influenced by Jamaican music and dominated by black working-class British youth. When I asked him if he relied on contracts and licenses to further his musical career, he responded:

> In the grime thing and in underground in general … I still do a lot of things that I love just to keep the name moving and alive. and if things blow up [become financial successful] well…. we're business men we know how to deal with with.. we know how to handle it…. your work is worth something, but it's only once it's surfaced past a certain level, really. Like, if the money is *there*, know what I mean?
>
> FTS interview, 2010

When FTS mentions the things he does "just to keep the name moving and alive," he refers to releasing music for free, or collaborating with others without requiring payment. He emphasizes the importance of circulation—"keeping the name moving"—as another kind of compensation. His concluding argument asserts a crucial dynamic for understanding the value of copyright law: the presence of money makes engagement with formal law more appealing to musickers, but they do not necessarily see the engagement with law as a prerequisite for musicking.

Jamaican musicking in British culture: mixed audiences and crossover

When FTS described his music "blowing up" he was talking about reaching a mass audience beyond the core of fans who currently enjoy his recordings. However so long as music plays on pirate radio or for an audience that is connected to the community, it appears to

circulate without much money changing hands—a fact that he regrets. FTS described his frustration that his own community did not spend directly money on his music.

> I've realized that real record buyers are into the "top forty" [mainstream commercial radio charts] those people buy records, if you can make a tune that gets into the top forty, not necessarily super pop or commercial, then that's where those people buy records.. But pleasing the people who see me on that road out there [points out to his neighborhood] and tell me "safe" and say "yo" [slang associated with his community].. it's not necessarily for them.
>
> FTS interview, 2010

While FTS his own community to pay directly for music, the question remains unaddressed as to the difference—besides cultural difference—between mainstream audiences his own community. FTS produces music from and among working class black British youth. However the mainstream radio audience is overwhelmingly white, and also middle class.[61] While there are surely cultural preferences at play in whether particular music from particular communities reaches mainstream popularity, the desire to pay for recordings is also shaped by the ability to pay for them. If working-class, black youth had the money that middle class white youth did, would they buy FTS' records? Would copyright ownership be more rewarding? It is not clear from the history of copyright in Jamaica and beyond that enforcement benefits the poor or extracts more money from them, thus we put the cart before the horse if we focus first on the law and not on the material conditions that shape whether the law is relevant.

The sociocultural difference between audiences is also evoked by MD's success in the university setting. Once MD's musicking is taken out of the street and into the university, the sounds may not be exclusively or intrinsically associated with an urban poor community. One question that arises is whether these new spaces and kinds of musicking (in university events) supports Jamaicans or the urban poor or working class. As I have argued, one of the historic values of Jamaican musicking has been its ability to support marginalized communities. In the diaspora, FTS and MD's accounts suggest that even individual musickers' success may not translate into a broader kind of success on those grounds.

But Jamaican musicking has, in some cases, fostered marginalized communities in the diaspora. For example, Jamaican musicking has at various times helped to foster some moments of cross-cultural collaboration that forge new concepts of syncretic British identity. Many of these cross-cultural moments of solidarity, from ska to punk to rave culture, connected working class whites and black British (and, with rave culture, South Asians as well).[62] These crossovers occurred because these marginalized groups were drawn together by a syncretic musical style

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[61] OFCOM, *Illegal Broadcasting - Annex 1 : Listening to Illegal Broadcasting in London* (London, UK: UK Office of Communications (OfCom), April 19, 2007), http://stakeholders.ofcom.org.uk/market-data-research/other/radio-research/illegal-broadcasting/; OFCOM, *Illegal Broadcasting - Understanding the Issues* (London, UK: UK Office of Communications (OfCom), April 19, 2007), http://stakeholders.ofcom.org.uk/market-data-research/other/radio-research/illegal-broadcasting/.

[62] Lipsitz, "Immigration and Assimilation."

that evoked all of their experiences in a celebratory way. In addition, the spaces that fostered these syncretic styles were often outside of the scrutiny of the state, as will be discussed further below.

As mentioned in chapter 2 Jamaican music in different iterations became popular among white working-class youth, leading to syncretic styles of music (including multiracial bands and performers) in different eras dating back to at least the 1970s. This syncretic music has since the 1980s, included a London-centric and highlight prolific and influential "DJ culture" –an electronic dance music culture distinct from hip-hop in the US (there is also a UK hip-hop scene). Similar to US hip-hop, successive waves of UK dance music and DJ culture have relied on Jamaican turntable techniques, musical recordings, and vocal and instrumental styles.

Non-Jamaican musickers in England have engaged in practices of phonographic orality in live performance (those practices form the center of dance music DJ culture), and also in making new recordings that make use of previous works—including but not limited to Jamaican works. In dance music scenes from the 1980s to the present, similar dynamics of building familiarity and shared culture through reuse meant people drew on the culture from the streets the audiences grew up on, which often included Jamaican sounds. In addition, these references were sometimes infused with explicitly politicized multicultural goals, bringing together musickers of diverse backgrounds in ways that necessitated the reuse of musics associated with those diverse backgrounds.[63] Non-Jamaicans could also signal solidarity with Jamaicans in England through incorporating Jamaican music from the past and present into performance and recordings. In many cases the incorporations were unlicensed reuse, which one could read as denying Jamaican musickers (or those who own the copyrights of the recordings) their due—something which could even be read to reinforce colonial inequality. However such a reading denies the non-economic significance of reuse, which is important in itself and meaningful for many Jamaicans in the UK as well as in Jamaica. Because mass media is still hostile to Jamaican or black British voices, reinserting them into public consciousness serves to enhance Jamaica's reputation collectively and validate Jamaicans' presence in the physical as well as sonic landscape of London.

During my fieldwork in 2010, I attended a music night for a genre called "dubstep," inspired by and taking sonic references from Jamaican music.[64] Many of the social interactions in the dance event itself are familiar from street dances. Although a mainly white crowd, at this particular event all of the DJs were white except for one who was black (I could not tell if he was of Jamaican descent).

In the cavernous nightclub in the middle of a harsh London winter, I observed musical interactions between the audience and the DJs that recalled Jamaican street dances. DJs "pulled up" tunes in response to audiences screaming their approval (or verbally demanding a "rewind").

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[63] Ibid. The dance music of proto-Rave group Soul II Soul explicitly drew on music from London's immigrant communities to create an atmosphere of racial harmony. .

[64] Henriques, *Sonic Bodies*, 6; For example, Marvin Sparks recently interviewed prominent UK Dance music producer Wiley, who said "I am technically on earth and doing music because of reggae and dancehall. If they didn't exist, neither would I. And neither would anyone else ... [popular dance music genres] grime, jungle and garage wouldn't exist." Marvin Sparks, "Now Things: Talking Grime and Bashment with Wiley," *Largeup.okayplayer.com*, n.d., http://largeup.okayplayer.com/2012/02/23/now-things-talking-grime-and-bashment-with-wiley/.

In addition, conversations with dubstep DJs and producers revealed similar production practices: most songs are released to DJs in small batches, and tested in performance, on pirate radio or on this dancefloor. Copyright and royalties do not appear to be relevant unless a song crosses onto a mainstream radio station or to an audience that is broader than the core audience for dubstep.

An analysis taking account of coloniality would suggests that existing social and economic practices will not necessarily facilitate more equal access to wealth and infrastructure. As the following discussion will argue, in communities that lack wealth and infrastructure, unregulated networks and spaces, through which unmonetized recordings circulate, are important resources for musickers, and may provide an alternate to the system that currently disadvantages marginalized people.

Exilic airspaces: Jamaican musicking and pirate radio

Pirate radio is an important feature of UK music, one that FTS and other dance-music DJs, producers and vocalists have credited with fostering creativity. It is relevant to this chapter as an early site for Jamaican musicking, and because it functions as an exilic space in relation to UK musical culture. The experience of Jamaicans with UK radio provides an example of how operating outside of law—both broadcast regulation and copyright law—allowed a space for marginalized communities to support their own cultures.

It was likely a combination of racism and the smallness of the Jamaican audience (at least at first) that made the British Broadcasting Corporation refuse to license stations catering to West Indian audiences, or to hire West Indian DJs. Incorporation into the colonial motherland was intended to give Jamaicans the benefits of British high culture, rather than to force British cultural forms to adapt to the styles and concerns of its colonies. As a result, the BBC did not represent or play Jamaican music for at least thirty years after the largest influx of Jamaicans into Britain in the years between 1950 and 1980.[65]

However, while UK laws required that all radio transmitters be licensed it remained physically possible to build a transmitter and transmit over the radio waves. Thus "pirate radio," broadcasting (without a license) has been immensely important to the development of UK musicking generally, because of the restrictions associated with broadcast licenses. Broadcast licenses granted by the BBC included oversight of copyright enforcement and strict programming requirements. By remaining unlicensed, pirate radio has been a site of musical experimentation and of support for creative communities, especially for those marginalized in society. Initially, the music marginalized out of licensed radio included rock-n-roll and music associated with youth culture. Some of the earliest pirate radio stations started on ships off the English coastline, just outside its legal border, to avoid the licensing process and regulation programming that was included. Others, like the Dread Broadcasting Corporation, founded in 1981, played reggae music from undisclosed locations.[66]

Pirate radio stations historically have been funded by a combination of advertising and subscriptions themselves: radio DJs pay for a chance to be on the air, in order to promote music

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[65] Anthony Marks, "Young, Gifted and Black: Afro-American and Afro-Caribbean Music in Britain 1963–88," in *Black Music in Britain: Essays on the Afro-Asian Contribution to Popular Music*, ed. Paul Oliver (Buckingham, UK: Open University Press, 1990), 106.
[66] McConnachie and (Firm), *World Music*, 458.

they care about, serve communities they are connected to, and enhance their own reputation within those communities. Pirate radio stations also serve an important promotional function even for copyright owners, who must weigh the costs of promotion without royalties against the costs of more limited publicity but the chance for royalties. (This is similar to the calculation that leads many artists and musicians to assign or sell copyrights to studios.) [67] Remaining outside the licensing system allowed music to circulate more freely, whether on pirates or even on smaller radio stations unable to afford licensing fees. Research on the UK music industry has shown how even some small record labels deliberately avoided registering their works with the Phonographic Performance Ltd. copyright collection agency, which licensed music with major radio stations. The small labels knew that "BBC local radio and the smaller stations...[were] hungry for non-PPL product" (which would not entail licensing fees).[68] Sometimes even copyright holders or potential copyright holders choose to work outside the system.

Pirate radio's parallels to street dances are striking—pirate radio too functions as an exilic space. By virtue of their location outside of official systems of monitoring and regulation, the broadcasts engage with communities unrespected by dominant society, and in creative practices that enable them to intervene and shape the culture dominant society surrounds them with. Working outside the system allows those involved to build up communities of support grounded in community-based definitions of success.

As recently as 2007, an impressive 40% of black radio listeners listen to pirate radio, much more than the general population of listeners.[69] This percentage suggests that pirate radio, outside the licensing system, still serves particular communities (including Jamaican-British ones). That community function is also reflected in the fact that many DJs using pirate radio pay in order to play.[70] But pirate radio is also reasonably popular among the broader listening population in the UK: in 2007, 16% of all London's radio listeners said they listened to pirate radios stations.[71] This fact suggests another value of exilic space—as providing conditions for creative experimentation from which the broader culture can draw. Pirate radio's space for experimentation as well as representation has been a source for new music and new creative actors who eventually do reach official media. Miss P., originally a DBC radio DJ who later became the DJ for the first reggae show in BBC Radio 1, asserted that DBC's format had allowed its DJs to play music "that would otherwise never be heard publicly. We create movement within the industry."[72] Miss P. is not an anomaly: the BBC and other licensed stations regularly hire DJs from pirate stations. In addition, artists and genres that build up audiences on pirate radio sometimes form musical movements that achieve broader success. Exilic spaces like pirate radio have the power to confer a countercultural authority on musickers to which mainstream

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[67] Simon Law and Eric Lives, *Keep Music Legal!: From the Manuscript to Mass Production* (London: Sea Dream Music, 1982), 15 "Many small independent labels are, initially, more interested in exposure on radio than in any possible royalty income."
[68] Ibid.
[69] OFCOM, *Illegal Broadcasting - Annex 1 : Listening to Illegal Broadcasting in London*, 6.
[70] Miranda Sawyer, "You May Think They're a Bunch of Amateurs...," *The Guardian*, November 2, 2008, http://www.guardian.co.uk/culture/2008/nov/02/radio-radio.
[71] OFCOM, *Illegal Broadcasting - Annex 1 : Listening to Illegal Broadcasting in London*, 6.
[72] Hebdige, *Cut'n'Mix*, 155–6.

purveyors eventually bow or attempt to engulf.[73] Pirate radio continues to be a vital force in London and UK music more generally.[74]

A striking feature of Jamaican musicking in the UK is its influence on popular culture specially the continuing ability to spawn syncretic, mixed Jamaican-British musical genres and scenes. While faced with hostility and exclusion from many institutions, musickers in the UK appeared able to carve out exilic spaces for themselves that have helped foster these cultural movements. Jamaican musickers in Canada appeared to have had much less success in influencing musical culture, and to some extent this derives from a greater difficulty in carving out these spaces. The evidence discussed below suggests that both cultural and policy factors contributed to the rarity of exilic spaces.

Jamaican Musicking in Canada

Despite longstanding presence in Canadian urban centers, Jamaican music such as reggae and dancehall has not gained a solid foothold in Canadian mainstream media. State broadcasting specifically limited non-Canadian content, while pirate radio has never really been a strong musical force. Nobody I spoke with, Canadian or Jamaican (or Jamaican-Canadian) could point me towards anything like street dances, at least none that they had heard of in the central areas of the city. I did find considerable evidence of a Jamaican population in Toronto, and was easily directed to one of the oldest Jamaican neighborhoods in Toronto: Eglinton-Dufferin.

The scene in Eglinton, Toronto

Toronto's, most central Jamaican neighborhood and business district of "Eglinton," at the crossing of Eglinton Avenue at Dufferin, north and west of the city center,[75] immediately demonstrated a stronger West Indian presence than anywhere else I visited in the metropolis. On the bus to Eglinton, the accents I heard were increasingly Jamaican as we left the city center. On Eglinton Avenue, shop signs displayed the flags and colors of Jamaica, Trinidad, and other Caribbean countries. It was an unseasonably warm day in April, and I walked past many restaurants with doors open and dancehall and other Caribbean music playing out the front door, although at a less booming volume than in Kingston. Every person I saw, in the shops or on the street, was of African descent. As I walked towards the record shop I had seen from the bus, I passed another record shop, this one's front window was crowded with T-shirts and the floor stacked with piles of CDs and DVDS, which also lined one wall. Across the street I saw an audio supply store called "Sunshine" advertising DJ turntables for sale. Through the window I could see a wall of CDs, neatly shrink-wrapped and carefully organized. Sunshine had been one of the big soundsystem in Canada in the 1980s. When I later went inside the owner confirmed he had run that soundsystem. A few doors past Sunshine I passed a beauty supply shop that had a vinyl

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[73] Although countercultural artists and scenes do not unproblematically reach the mainstream, which still filters according to dominant principles on many grounds. A hierarchy of race, gender and class is still in effect as far as the music and the presenters on BBC and licensed radio.

[74] Justin Schlosberg, "Transmit/Disrupt: Why Does Illegal Broadcasting Continue to Thrive in the Age of Spectrum Liberalization?," *Radio Journal: International Studies in Broadcast & Audio Media* 9, no. 1 (2011): 7–24.

[75] Jamaican-Canadian activist Bromley Armstrong is quoted as saying "I could watch the industry of my community take shape in Bathurst Street, Eglinton Avenue West, and in many other parts of Ontario and Canada." in Mains, "Hurricanes in Toronto," 223.

record shop at the back. A later conversation there revealed that the owner had been a soundman in the 1980s and he was selling off his records. I arrived at my destination record shop, which had Jamaican colors and Rastafarian imagery on a large sign over a large window. Inside, a long counter lined the left side, behind which were T-shirts hanging on the wall. A table by the front door held piles of flyers for local events, mainly in suburbs outside of Toronto that I had been told were Jamaican communities, featured performers I recognized from Jamaica, others I was not familiar with, and others identified as based in Toronto or Canada. A bookshelf in the back stocked comic books populated with black characters, books on herbal medicine and the occult, and on Jamaican cuisine and climate.

These brief glimpses suggest the concentration, at least in this neighborhood, of Jamaican-Canadian culture and history and the importance of musicking to Jamaican-Canadian life. A Jamaican neighborhood at least since the 1970s (as a later interview would attest), many people in the area had been part of Jamaican musicking from that era and earlier. On another visit I spoke with a Jamaican barber in his 70s, working in a tiny shop across the street from Sunshine Audio, who had been a skasinger in Jamaica and Canada in the 1960s. While the street did not have the same audible signature as a Jamaican neighborhood in Jamaica (fewer cars and buses with booming soundsystems, far fewer shops playing music out the front door), a great many shops sold CDs or records alongside their other goods. The destination record shop was also clearly a social center for people of Caribbean descent, and provided various cultural links both to Jamaica and to non-mainstream cultural resources relevant to the black Canadian community (like comic books and herbal medicine).

History of Jamaican musicking in Canada - Soundsystems came first

Because the first wave of Jamaicans in Canada in the 1960s, arrived later than they had in the UK, soundsystem culture was already well-developed. Jamaican musickers enjoyed and expected large soundsystems in larger spaces than the basement blues dances that had proliferated in England 10 years earlier.[76] Soundsystems played US hip-hop and other music associated with North American black culture, rather than exclusively Jamaican-centric sounds.[77] This parallels the greater intertwining of Jamaican music with American black culture in Canada, which will be discussed further below.

To date, not enough evidence exists to suggest whether soundsystems were less prevalent in Toronto than, for example, in London. The relative silence of the historical record on this point is not conclusive, although it does suggest that soundsystems may not have been as widespread as in London.[78] If there were fewer soundsystems that suggests Jamaicans were not

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[76] Harold Martin Troper and Morton Weinfeld, *Ethnicity, Politics, and Public Policy: Case Studies in Canadian Diversity* (Toronto: University of Toronto Press, 1999), 80; Tristan Keefe, "Yardtapes: History, Identity and Diaspora in a Dancehall Style" (University of London: Institute for the Study of the Americas, 2010), 10, http://sas-space.sas.ac.uk/2435/; Remi Warner, "Hiphop with a Northern Touch**!?** Diasporic Wanderings/Wonderings on Canadian Blackness," *TOPIA: Canadian Journal of Cultural Studies*, no. 15 (2006): 45–68.

[77] Warner, "Hiphop with a Northern Touch**!?** Diasporic Wanderings/Wonderings on Canadian Blackness," 52.

[78] Unfortunately, overall historical accounts of Jamaican musicking in Canada do not attend enough to dances. Most historians of Jamaican music in Canada have focused on live performance and recordings. This silence in the formal historical record should not translate to an absence of these practices. The climate of discrimination Jamaicans and Jamaican culture continually faced in Canada, including at the level of access to mass media, suggest one reason

able to carve out exilic spaces in the same way as in London. Soundsystem culture was important to Jamaican-Canadians, but did not appear to have given them the cultural influence that Jamaicans enjoyed in England. Compared to Jamaica's street dances and the UK's pirate radio scene and history of Jamaican-influenced subculture, Jamaican-Canadian musicking remains less significant to Canadian media landscapes. It may be that the lack of exilic spaces plays a role. [79]

Two branches of live music: Diasporic reggae and "the circuit"

Many Jamaican musickers found employment as musicians in a scene that was not focused specifically on Jamaican music. The 1970s saw a vibrant music scene centered on the Midwestern North American continent, which many called "the circuit."[80] In my interviews with two older Jamaican musicians, one described finding musical employment playing funk and soul music as members of touring bands that worked in Minneapolis, Detroit, Chicago, Winnipeg and Toronto, as well as various towns across Canada. One interviewee, TO, explained,

> So when I come to Canada... I meet some other musicians here, some musicians who was big in the industry from Jamaica too..... and then we jump onto the circuit, so when you on the circuit, you do all the Holiday Inns, all the Ramada Inns…
>
> TO interview (Toronto), 2010

TO, a Jamaican who came to the US and then Canada specifically to play music, also describes a division between Jamaican and non-Jamaican audiences. The following quotation, drawn from his experience touring Canada with an R&B band through the 1970s, describes how these audiences existed simultaneously, but at least to an outsider they did not necessarily overlap:

> TO: So when I come to Canada....I did not know Canada because I didn't live [there] -- because I am in Vancouver for a week, I am in Calgary for a week, then I am in Halifax for a week I never knew --and I'll be honest with you, I knew Halifax from my history, about blacks in Halifax and stuff like that. but everywhere I go it was just whites. So I never knew it was a black population in Canada! I didn't know that!

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why accounts of dances are thin: It is difficult to make claims of DJs, dance and nightclub culture's validity in terms that mainstream media and music scholarship can recognize. Live instrumental performance by singers and bands evokes the same concepts of originality and individual creativity that are enshrined in Canadian, as well as US, mainstream culture (including in copyright law). Singing and playing traditional musical instruments are easier to examine as creative acts in which an audience is secondary (unlike dance music and club culture), and also legally and culturally distinguished from musickers who use turntables to reuse recordings of music performed or written by others. Thus a DJ and soundsystem might have an uphill battle for respect, having to challenge the terms on which respect is gained.

[79] Further investigation of this question could begin with the ability of Canadians to control space or own property in their neighborhoods, the effectiveness and regularity of policing and enforcement of entertainment licenses in Canada, as well as investigating the density of population in Jamaican neighborhoods and local attitudes towards music and cultural events.

[80] Kevin Howes, "Liner Notes. Summer Records Anthology 1974-1988" (A Light in the Attic Records, 2007).

> LM: so all the funk and R&B and stuff you were playing was to white audiences?
>
> TO: you got a few black couples comes in and they tell you about it [that there were black people in Canada]... but when I play in Toronto I didn't see nothing... and then I met a drummer, two drummers, they saw us playing.. they saw us playing funk and stuff like that. Then we did two Bob Marley tunes. They were blown away! They come and say "you're from Jamaica.. you play funk like that? And then they say "Listen: I wanna take you to Oakwood, Eglinton....I said "there's blacks there?" And he said "I'll surprise you, you just come." So he came and picked me up from the hotel and we go. I was blown away. I said "look at this!" I never knew -- I was all over Canada and never knew

The music scenes were separate enough that it was possible for a musician to travel the breadth of Canada playing soul and funk music in bars and hotels, and not be aware of a local black or Jamaican population.

At the same time, Canadian-Jamaican musicians, at least, seemed more tied to non-Jamaican popular music than in the UK. For example, one of the only Jamaican-owned record labels in Canada was Summer Records, founded by Jerry Brown in 1974. While never a profitable business, it was an important place for Jamaican musicians to record. Summer Records released music of Jamaican origin played in a Jamaican style, such as ska, dub or reggae. However, it also released singles and albums of Jamaican musicians playing soul, funk and R&B. These forays into other genres were not anomalies or experiments: its "greatest hits" album, re-released in 2010, reveals that only about three of the twelve hits identified were recognizably reggae, and the remaining nine were soul or R&B numbers. Although most of the musicians playing on the album were Jamaican, or of Jamaican origin, some of them even known as reggae or ska artists in Jamaica, they were mainly playing music in a style that did not directly reference Jamaica.

In addition to playing the circuit, Jamaican instrumentalists began to form their own reggae bands in Canada. Their sound was influenced by the soul and funk music many musicians were already playing, and also oriented towards the more globally popular roots reggae sound, even through the 1980s, rather than keeping step with specifically Jamaican-centric musical trends.[81] Such a focus on a more Pan-African reggae sound is similar to what I observed of UK roots music and soundsystems.[82] Canadian reggae historian Klive Walker called the Canadian reggae bands' music "diasporic reggae."[83] Diasporic reggae drew inspiration from a Jamaican musical and stylistic framework, but also found a distinct character in the musical environment and social conditions in which the diasporic reggae artists lived. This distinct character was affected by the specific experience of cultural marginalization in Canada, as well as the musical traditions that Jamaican musicians could make a living at. Jamaican musicians often played in

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[81] Walker, *Dubwise*, 160–1.
[82] Chude-Sokei, "Post-Nationalist Geographies."
[83] Walker, *Dubwise*, 161.

funk and soul bands, and Canadian artists from outside the reggae tradition collaborated with Jamaicans in the first Canadian reggae bands, which led to a strong influence of funk and soul in the diasporic reggae sound.[84] Recording began much later in Canada than in the UK (or Jamaica), with Summer Records (the first Jamaican-music centered recording studio) releasing its first single in 1974.[85]

Jamaican musicking and Canadian Radio: content rules it out

Canada took a more specifically exclusive stance towards its cultural policy than did the UK. "Canadian content" laws enacted in 1970 required that at least sixty percent of music played should be of Canadian origin.[86] While some Jamaicans reached the airwaves through playing in bands that made music that wasn't recognizably Jamaican, otherwise few sounds associated with Jamaica were heard on Canadian airwaves.[87] Even when Jamaicans received airplay, broadcasters played music associated with North American black culture, rather than Jamaica or elsewhere in the Caribbean.[88] Until 2011 no Canadian radio station focused much on Jamaican music, and while college radio has been the most welcoming to Jamaican sounds, in general its radio presence has been low. No pirate radio movement has appeared in Canada akin to the one in the UK. Radio DJ and music journalist David Dacks describes the situation:

> There is no pirate radio to speak of in Canada, not in the same sense that it existed in the UK. In general, the Canadian Radio and Television commission, while more controlling than the FCC, tends not to get in the way of unlicensed small wattage broadcasters, but these are almost all sound art practitioners. College radio and to a lesser extent a late night radio show called Brave New Waves on CBC which ran for 15 years from the 80s to the early 00's broke new sounds, though nothing in terms of Jamaican music. In Toronto, a "community 1.0" radio station called CHIN [founded in 2003] does feature pay-to-play shows and had a number of West Indian hosts (still does, in fact), but it's very small.[89]

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[84] Ibid. Canadian folk artist Bruce Cockburn collaborated with some of the first wave of Jamaican musicians, while the (Canadian) lead singer of Blood Sweat and Tears collaborated with Canada's earliest reggae band: Ishan People.
[85] Howes, "Liner Notes."
[86] In 1971, the Canadian Radio-television and Telecommunications Commission established a rule regulating content on all Canadian broadcast networks requiring a "minimum 60 per cent" Canadian content rule for public and private television broadcasters in Canada. In 1975 the Commission introduced Canadian content regulations requiring a minimum of 30 per cent for AM radio stations. Jody Berland, "Free Trade and Canadian Music: Level Playing Field or Scorched Earth?," *Cultural Studies* 5, no. 3 (1991): 321.
[87] Walker, *Dubwise*.
[88] Fitzroy Gordon, who in 2011 founded Canada's first Jamaican-run radio station, had hosted a radio show in the 1980s "playing R&B music and discussing issues affecting Toronto's growing West Indian population. Gordon said the Dr Love Show "was one of the few alternatives to mainstream Toronto radio's traditional diet of rock and country music." Howard Campbell, "Jamaican Gets Radio Station in Canada," *Jamaica Gleaner Online* (Kingston, Jamaica, August 16, 2011), http://jamaica-gleaner.com/gleaner/20110816/life/life2.html.
[89] Personal Interview, 2010

Overall there has been little exilic airspace for Jamaican-Canadians to engage in community-based broadcasting. Such a space appeared to be important to supporting British-Jamaican communities, and also the syncretic subcultural communities supported by Jamaican musicking. While there are many differences between Canada and the UK that are likely salient, including very different class and racial politics, these politics also shape the differing abilities to define exilic space. Broadcast and other culture policy plays a role as well, through the regulation of airspaces and property. The possible correlation between exilic spaces and cultural autonomy, as well as in the creation of syncretic subcultures where different marginalized communities meet in the diaspora is worthy of further consideration.

Authenticity and identity for Jamaicans in Canada.

Despite Canada's prominence as a destination for Jamaican immigrants, and a site through which many Jamaicans (including famous Jamaican musicians) circulated, music recorded in Canada apparently faced an authenticity stigma. Kevin House, a Canadian radio DJ, described how, in the 1970s, the owner of Summer records marketed his music:

> Jerry even had to go to the lengths of putting a "made in Jamaica' stamp on the records or having it written on the label, to try to compete with the stuff that was coming from yard [Jamaica] instead. Instead, you know if you put Malton on the record it just didn't seem to make sense to the record buying public.[90]

Canadian Jamaicans appear to face a cultural double bind. Those based in Canada were disadvantaged in claiming Jamaican identity in relation to music. But it was equally impossible for them to fit into Canadian narratives of Canadian authenticity. Rinaldo Walcott argued that the recent focus on "multiculturalism" in Canadian cultural policy has not solved this problem because the policy encourages Jamaican Canadians to identify themselves as "not coming from Canada."[91]

However, black Canadians have often asserted Jamaican identity as a way of claiming blackness.[92] Similar to Ranking Ann, Canadian rapper Michie Mee's first album, which was also Canada's first rap album, celebrated a complex, syncretic identity, even in its title: "Jamaican Funk Canadian style."[93] The small Canadian hip-hop scene reveals how Jamaican Canadians negotiate their identity. In contrast to the US where foundational hip-hop artists were of Jamaican descent but did not emphasize it, from the beginning black Canadians like Michie Mee emphasized their Jamaican roots in their music.[94] This might have been a method of claiming Canadian-ness in the face of US hip-hop domination of the airwaves and music-television—since the Jamaican presence in Canada is a product of an explicit, formal relationship shared between

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[90] Kevin House, in "Right, Right Time: The Summer Records Story" (Canada: Canadian Broadcasting Corporation Radio 2, September 17, 2009) at 23:11.
[91] Rinaldo Walcott, "Caribbean Pop Culture in Canada: Or, the Impossibility of Belonging to the Nation," *Small Axe* 5, no. 1 (2001): 123–139.
[92] So suggested Canadian-Jamaican radio DJ and music journalist in a conversation. Personal communication, April 2010
[93] Michie Mee. Jamaican Funk Canadian Style, First Priority Music, 1991
[94] Kool Herc, credited with inventing hiphop, was Jamaican and describes adapting Jamaican techniques of phonographic orality - using turntables as a performance instrument. Chang, *Can't Stop Won't Stop*, 22.

Jamaica and Canada in relation to the UK. However, this diasporic identity is still not welcomed in mainstream Canadian culture. Because the Canadian music scene focuses on Canadian-ness as centered in the descendants of white settlers, Jamaican musickers lack the authority to claim Canadian identity in way that many Canadian institutions recognize.[95]

Jamaican Musicking in Toronto

Overall Jamaican musicking is most visible in Toronto's musical life via the network of clubs and events centered on Jamaican communities, and to a lesser extent in more mainstream clubs or influences other subcultures and youth cultures. Despite this presence, Jamaican musickers have never developed an established network of record labels or local production studios, nor do they currently have a broad audience beyond Jamaican communities. Although dance music culture, with its influence of Jamaican musicking practices centered on DJs, has a clear presence, Jamaican voices and performers have not made much headway directly into Canadian mainstream musical culture.

Many of the venues to which I had easiest access as an outsider, staying in central or downtown Toronto, appeared to have a majority non-Jamaican audience, except for one club owned by a Jamaican. At this club, different nights had different audiences, but a Wednesday night reggae event I attended twice usually had a majority of Jamaican or Jamaican-Canadian attendees. At the same time I saw printed advertisements, heard radio advertisements and online advertisements for large events outside the center and in several suburbs (namely Scarborough and Brampton). Many of these events appeared to regularly bring Jamaican stars of past and present, and advertised themselves in a manner very similar to Jamaican advertisements I saw in Kingston, London and New York. My impression, from observation and conversation with musickers, was that the audience at these events were predominantly Jamaican or West Indian. Many of the neighborhoods were considered entirely West Indian neighborhoods where no white Canadian would be expected to go. My own difficulties in reaching these locations were exacerbated by this fact, because few people I met were willing or able to take me. White Canadians didn't seem easy with the idea of going, and Jamaican Canadians seemed uneasy as well. In addition, public transportation only seldom reached these places, and none ran late enough at night to enable my return on my own initiative. Those suburban locations of musicking appeared centered on diasporic-Jamaican communities, well separate from mainstream Toronto music life.

Even in Toronto's most central Jamaican neighborhood,[96] those I interviewed could point to very few local productions of Jamaican musical recordings. It appears that the music sustaining these separate spaces comes from outside Canada. There was little evidence of an exilic space that sustained Jamaican musickers enough to give them a claim on mainstream attention, in the way of street dances in Jamaica, or pirate radio in the UK. On one day I came across an example of a practice of creative intervention into Jamaican musicking (although not unique to Canada): the production of compilation CDs. I came through the local Jamaican record

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[95] Even Caribana, the 25-year-old festival celebrating West Indians in Canada, avoided Jamaican dancehall, and ultimately banned it from the festival. Walcott, "Caribbean Pop Culture in Canada," 439.

[96] The neighborhood is also one of the most established Jamaican neighborhoods, housing the headquarters of the Canadian branch of the *Jamaica Gleaner*, the islands largest daily newspaper.

shop in Eglinton where an associate of the owner, a black woman in her twenties with thin dreadlocks tied back from her face, sat with a stack of CDs. When asked she said the CDs were compilations of songs put together by DJs in Jamaica, Miami and New York. She was selecting from them the tracks she was going to put on a compilation CD to be sold at the shop.

> After watching her for about 10 minutes, I asked her how she decides what to put on the CDs. She said "I just listen to it, put on what I like. I look at all the other compilations, see what's on there… or if I hear it and like it, I put it on. I don't care whether anyone else does [like it]." She elaborated "if a tune is on a lot of other compilations, I will check it out. If it's a hot tune." She waved her hand at the CDs of them spread around the laptop on the counter as she listened, headphones on but pulled off one ear.
>
> Later she said "normally I don't put riddims on [by this she meant several songs on the same riddim], only singles. Because if it's out on a riddim we want people to buy the riddim CD. (points to the book of home-burned CDs that were each compilations of a single riddim). But.. [she pointed at track number 17 on the list] this one is a riddim, but the riddim already came out and Bounty Killer wasn't on it so now I put this one with Bounty Killer on here. I have one—two riddims on here, but it's because they weren't on the riddim when it came out.
>
> Field Notes, April 2010

The record shop (and the compiler)'s reputation was based partly on the weekly availability of CDs with "hot" (i.e. popular) tunes. But "hotness" is a reflexive condition, partly determined by the amount of radio play and partly the popularity the tunes achieve in various contexts. Gossip, music press, and popular opinion in conversation and mass media also likely play a role in determining which songs are hot that week. Thus hotness involves a translocal popularity, as these conversations occur in global networks of communication.

These CDs circulation and creation have aspects of exilic practices, and their circulation still provides advantages for many musickers it promotes. However, they do not appear as grounded in as fertile a musical tradition as pirate radio, and do not appear to be contributing to a Jamaican-Canadian cultural authority, although they do suggest a syncretic identity in dialogue with tastes of New York and Miami. it

Even so, selecting and promoting particular tunes through these compilation CDs contradicts copyright's requirement of licensed reuse, as the compilation was not approved or cleared by the labels or copyright holders in the songs included. Copyright enforcement in this context would limit and reshape the circulation of music through the diaspora and shift authority over selection first to those who can afford to register or license the songs.

Jamaican-influenced Dancing and musicking in Canada, 2010

In Canada, I attended several dance music events that were influenced by Jamaican and Caribbean music (and made use of samples and vocalists from Jamaica), as well as musical events that were dominated by Jamaicans and Jamaican Canadians. One location was a bar owned by a Jamaican expatriate who had reggae most nights and other dance musics that also relied on DJing. Close to the center of Toronto, in an area historically known for a high concentration of nightclubs and bars, this place had been a reggae club for 20 years. With a capacity of 200 people, the long, dimly lit room had a bar at the back half, down the right-hand side, lined with wooden stools, and some of the largest speakers I had seen in a club that size since I came to Canada. The first time I spoke to the Jamaican owner, I said to him, jokingly, that as soon as I saw the speakers I knew a Jamaican owned the place. He nodded and said "we take the music more serious."[97]

However, my introduction to the place was through a DJ crew who played dubstep.[98] The crew consisted of four white Canadians (their guest was another local DJ and producer of Guyanese-Canadian descent). The audience was primarily white and Canadian, and primarily in their twenties and thirties, and a majority appeared to be male. Dubstep songs in many case sample Jamaican sounds and songs, but the aspect of Jamaican musicking that is most evident is the social interaction between DJs, audiences and vocalists. On the dubstep night, there was a local vocalist (another white Canadian) who performed vocally over the music or interrupt, commenting on it, and occasionally demanding a "rewind" from the DJ (something quite common in Jamaica). Interestingly, the vocalist's accent often approached Jamaican patois, and included slang terms from Jamaican music and Jamaican-British dance music, providing a further sonic reference to Jamaican diasporic tradition.[99] The DJs were quite responsive to audience reactions, occasionally altering their musical choices based on the crowd's cheer or surge towards the DJ booth. These too paralleled Jamaican street dance practices and those I saw in the UK dance music scene.

While certain aspects of Jamaican practices were visible, they did not appear to be serving the primary purposes that they had in the street dance. Although the creativity and flexibility inherent in phonographic orality were visible, they did not serve representational purposes that pushed back against colonial power. The space in which musicking happened was somewhat marginal, as a nightlife venue where one might expect a slightly more flexible attitude to law, however it did not have many of the transgressive qualities that render a space exilic and thus a site of social power for marginalized people.

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[97] In talking with the white Canadian DJs of the dance music night, they also emphasized the sound system's size and power as a rarity in a club this size and ascribed this fact to the Jamaican influence.

[98] As described earlier, dubstep originated in the cross-cultural musical ferment of London among a mixed audience of white British, Jamaican-British and African-British producers and DJs. Dubstep reached Toronto via London and US-based DJ communities of musickers. Its residency in the reggae club signals some of the cultural congruence between dubstep and more specifically Jamaican genres. All other genres played in the nightclub represented music popular in the Jamaican Diaspora.

[99] In several conversations and interviews, Canadian DJs and music fans emphasized their familiarity not only with Jamaican music but with UK club musics that had incorporated Jamaican sounds and vocalists.

Formal institutions in Canadian narratives

At the club, Jamaican musicking interacted with Canadian cultural practices in ways that represented the cultural double bind facing many Jamaican musickers. This double bind was also represented by the complex ways Jamaican musickers found themselves engaging with Canadian institutions of material support. In a conversation with JJ (a radio DJ and sound engineer born in Jamaica), he described his entree into Jamaican music in Canada, after emigrating at age 10, in the early 1980s. Once in high school, he found himself as part of a program for supporting young people's job prospects.

> I was taking up a "Futures" program, basically the program was to place you in a [professional] field of your choice. So obviously music broadcasting [was my interest]… so I got a placement in a community radio station.... I went in as an assistance program director. I'd learned the ins and outs of a radio station before, actually.[100]
>
> JJ interview, 2010

Neither JJ's advancement into formal radio broadcasting, nor his many accomplishments and technical skills appeared to situate him in a community of musickers. JJ's isolation was a contrast to many of the engineers appearing to have similar skill that I had met in Jamaica, or in London.[101] JJ's skills instead linked with more formal, state-sponsored support not available to Jamaicans in Jamaica. JJ described his background as "middle class," and his class background likely influenced his ability to take advantage of certain advancements within Canada—like MD, he may have known where and how to look. My own experience as a researcher supports this interpretation, as my own class race and nationality-based networks made it difficult for me to access the more close-knit Jamaican expatriate communities I was made aware of through flyers and posters for musical events and conversations about the neighborhoods they occurred in. My access to Jamaican engineers was also limited - although I heard about other Jamaican engineers in Canada who were described as more embedded—part of "crews" or associated with soundsystems—the people who I met first, or who responded most quickly, were mainly white middle-class Canadians, and none were closely affiliated with any of the big soundsystems or suburban Jamaican communities.

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[100] JJ. Personal interview, April 2010

[101] Although three of the more established engineers I met in Jamaica had had training in the US or the UK, they appeared to be much more embedded in a community of musickers–other engineers, aspiring engineers, and musicians whom they mentioned or in passing or who interrupted our interview with visits and phone calls. While JJ's experience may not have been the norm, it is suggestive. His middle class status may also be a factor in his seeming isolation. Indeed, the middle-class engineers I met in Jamaica also seemed a bit more separate from a community of musickers, which supports an analysis focusing on coloniality–both class status and a foreign context closer to the colonial center would separate a musicker from the heart of Jamaican musicking.

Technology in the Diaspora

Developments in technology have from the outset shaped the play of Jamaican diasporic culture, although always in relation to pre- existing relationships and historical connections that have shaped migration and communication patterns. Jamaican musicking has always been influenced by communications technology: Jamaican tastes were influenced by radio from the US and beyond even before any local Jamaican music production appeared.[102] Thus even Jamaicans who never left the island engaged with music that was part of an international network of communication and circulation. Digital media technology is in some ways merely the latest development in a system that was global from the beginning.[103] New technologies of communication and cultural transmission have brought to light musical practices that were formerly invisible to outsiders and non-immigrants. Such visibility may not always be desirable, especially if it triggers restrictions or legal repercussions.[104]

The DVDs visible in every record shop, and the mix CDs sold and compiled there, exemplify how technology fuels and blends the flow of cultural products from Jamaica to Canada and the UK and back. These weekly CDs, informed by what must be a constant stream of information about new songs, popularity and publicity, are facilitated by the ease of digital communication and the networked nature of daily life in the Diaspora. It is now relatively cheap and easy to check in with friends and family in Jamaica on a daily basis, and to have access to the major Jamaican radio stations (who all have online versions).

As discussed in Chapter 2, new technology has led to other sites of engagement with the Jamaican Diaspora, especially online media platforms and social networks. Jamaicans are reasonably well connected technologically and are increasingly taking advantage of social media sites to enhance connections across the Diaspora. Jamaican musickers and those directly involved in the music industry have also been quick to take advantage of these new networks. These developments could equalize musickers' access to overseas audiences, as well as making monitoring of overseas audiences easier. In the past, distribution and marketing were bottlenecks for Jamaicans on the island whereby the poor faced great disadvantages, and middle- and upper-class Jamaicans were able to act as gatekeepers.[105] And technology can become another bottleneck due to copyright enforcement. Although currently unlicensed circulation and copying of music is widespread on global networks, the various content industry companies in the global North are increasingly pressing for filtering mechanisms to be embedded in technology. Some of the most draconian attempts have been at the national level.[106] If such bans were enforced at the international level, Jamaican musickers creative practices could be hindered, partly due to the

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[102] Fared, "Wailin' Soul," 66.
[103] Veal, *Dub*.
[104] See Chapter 2 for other detailed examples of this
[105] Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (New Haven: Yale University Press, 2007), 383, 418.
[106] In 2008, France created the Higher Authority for the Distribution of Works and the Protection of Copyright on the Internet (HADOPI), a government agency which initially had the authority to ban a user from internet access if a copyright owner reported that user as an infringer more than twice. (French Constitutional Council: Decision no 2009-580 of June 10th 2009: Act furthering the diffusion and protection of creation on the Internet. in English). 10 June 2009. At French Constitutional Council, Available at http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2009-580DC-2009_580dc.pdf

reliance on circulation with diasporic communities, but also because of creative practices that challenge copyright law.

Implications of the Diasporic experience

My research affirms that Jamaican musickers in the Diaspora face trade-offs when engaging with formal legal institutions—both participation and remaining outside the system have costs as well as advantages, and the presence of other resources appeared to be a deciding factor. For MD, the resources of the library and the university granted success in finding new markets, shored up by the formal infrastructure and material investment of the British State that created those institutions. MCI appeared caught between the practices that relied on mutual obligation and personal connections, and that British people did not necessarily respect those in relation to business dealings. However, those Jamaican informalities made him appear more authentically Jamaican, which may have given him some cachet. I have outlined above some of the specific institutional and cultural constraints that have shaped the ways in which musickers in Canada and the UK engage with Jamaican musicking; I draw three main conclusions from my observations.

My first conclusion confirms my observations from Jamaica. In the diaspora as well. Jamaican musicking both creates and reinforces a set of norms around managing music-making and social obligation, that run parallel to copyright. People generally rely on contracts to make a desired outcome more likely, usually in the light of uncertainty about the future.[107] However the practices described here have functioned in a way similar to contracts. Alongside the importance of social connection, which inspires people to avoid a reputation for unfairness, specific practices emerge around sharing wealth. Ethnographer Anne Galvin describes poor communities in recent years as having a norm of mutual aid, whereby when one lacks money, one asks friends and neighbors, and when one has it, one shares it.[108] My interviews abound with examples of Jamaicans who voluntarily shared money with their musical collaborators if a song they worked on became a hit, regardless of any formal agreement. For instance,

> CM: I wrote one song for an artist … And that song really sell a lot. As I know it's still selling. And it was the first song that, you know, bring attention, more, to the studio. But I don't get songs released that I really have control over. So the other day I was reasoning with him and him say "OK, CM, I never really sign up for the publishing for this so it's really yours.
>
> L: So he came to you?
>
> CM: Well, I would say, we come from the same community, we grow up together, my soundsystem was really one of the first that play the sound and develop the artist so that relationship growing in the music and him as a man coming have a distribution, a record

[107] Marc Suchman describes how contracts "establish intricate frameworks of procedures, commitments, rights and incentives –all in order to accomplish practical objectives in the governance of human interactions."Suchman, "The Contract as Social Artifact," 99.
[108] Galvin, "Sharing the Wealth."

> distribution and knowing all about this copyright and publishing ting [thing,] I tink [think] even that is enough fi show him [enough to show him] dat well (tsks)—make CM a piece of the pie, too! Cah [because] he has been successful over di years.[109]

The practice of mutual aid may be rooted in longstanding tradition. CM echoes Prince Buster in seeing law not as a regulation on people's behavior; CM states outright that he has no control over songs, even as technically he might be the owner according to copyright law on the books. He does not see, in this moment or perhaps even otherwise, the law as granting him power directly to enforce behavior, or as something he can rely on to regulate behavior. Despite this CM describes "knowing all about" copyright and publishing as something that can educate the artist into feeling he ought to share his royalties. CM suggests that simply being familiar with copyright will cause one to behave more fairly.

However, as I have shown, actual copyright does not, and has not historically, functioned in a way that Jamaicans recognize as fair. There is little in Jamaican copyright law that automatically requires royalties to be shared among contributors, absent a specific agreement by participants to do so. Such agreements appear to be rare, as shown by interviewees' testimony and the historical evidence in Chapter 2. In fact, several aspects of Jamaican copyright enable the most powerful actor to own copyrights in musical recordings regardless of his creative contribution.[110] My reading of CM's statement is that he discusses knowledge of copyright in idealized terms, because he believes copyright ought to function in this way, while in fact he relies on a sense of morality that has more to do with Jamaican concepts of the distribution of wealth. Much of Jamaican musical history, as I have understood it, attests that the few have legally owned the copyrights of the many. There is nothing in the law that provides a compunction to spread the royalties around to musical collaborators.[111]

My second conclusion was that, to the extent that musickers wished to connect to current Jamaican musicking, a certain amount of authoritative power still appears centered on the voices, bodies, and geographies defined by the Jamaican experience. For example, the primacy of patois for signaling Jamaican authenticity also sets urban Jamaicans at the top of a hierarchy even as, everywhere else, they may be disadvantaged. As MCI described, real Jamaicans, with real Jamaican accents, are respected more within Jamaican-influenced music scenes. The authority of the accent reaffirms the importance of time spent on the island or embedded in Jamaican communities.

In the diaspora the importance of bodies as a locus of power has been heightened in the most direct relationship between non-Jamaican and Jamaican musickers: that of Jamaican vocalists being hired or commissioned. Even when white, middle-class British people play the

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[109] CM describes knowledge of the law as something that dictates he should share the proceeds of his song, even if no prior agreement has been obtained. Jamaican law is ambiguous around publishing rights—if the song was not written down before it was recorded, the law says it belongs to the person who "caused the recording to happen." This definition is contingent on a narrative of power that usually favored the studio against the artist, although in CM's case it did not. CM also describes the social connection between him and the artist as a factor in the artist's decision to contacting him about further reimbursement without a legal agreement.

[110] See Chapter 2's discussion of Jamaica Copyright Act asserting musical recording copyrights are owned by the person who "caused the recording to happen."

[111] See above, and Chapter 1

records, they often work with Jamaican or Jamaican-British vocalists whose bodies and voices signal a cultural and historical relationship to the island.

My third conclusion was that most of the differences between musicking in the UK, Canada and Jamaica did not appear to depend on differences in legal regimes. In fact, copyright regimes in relation to music are not dramatically different, which, given their shared legal history, is not surprising. What generates the differences appears to be both the cultural context of Jamaican musicking, the different material resources available in each location, and the role of cultural policy more broadly than copyright law. In the UK the fact that more people had more money to spend appeared to shape musicking more than the particular constellation of rights or their formal enforcement.[112] FTS' account of the conditions under which he can expect royalties affirms both the class and cultural divide that separates those who generate money within the copyright system and those who do not. However, the relative wealth of Canada did not have a similar effect. Although both places appear to have a thriving, if rather segregated Jamaican musicking scene, those scenes have not necessarily become bases for changing the terms on which Jamaican musickers engage with the broader society. Exilic spaces are a key factor in that possibility. My study of Jamaican musickers in the diaspora reveals the common dynamic of continuing, colonially-informed inequality and the continued importance of exilic spaces as sites of resistance and negotiation.

[112] Ostrom, *Governing the Commons*, 8, 14.

Conclusion

Jamaican and international copyright policy technically requires musickers to change their practices in order to engage with new technology, or with global platforms for communication that have become significant to musicking. This cultural and economic policy decision has serious implications for Jamaican musickers' ability to flourish. Within Jamaica, as long as it lacks infrastructure and resources, musickers' fractured and complex relationship to law is likely to continue, with local culture flourishing in the cracks of the formal system. As the formal system becomes integrated with, or overlaid by, a new system of copyright via globally networked technology, new and powerful interests can express their wishes in the local context. At the same time, Jamaican musicking practices have particular significance for marginalized communities lacking material resources that digital technology does not necessarily provide. Since the interests represented by the system of international copyright law are culturally and historically at odds with the Jamaican poor, it is important to learn as much as possible from the practices that flourished outside that system, in order to inform, limit or resist it when necessary. Thus the importance of understanding the relationship between copyright law and global systems of power, and the ways that such a relationship structures the horizons of possibility for musicians.

Is Vernacularization enough?

Sally Engle Merry has suggested that the concept of human rights must be reinterpreted into a "vernacular" local meaning, in order to become meaningful in a local setting.[1] Jamaicans vernacularize the language of copyright in ways that sometimes alter its contours and implications for enforcement. The vernacularization of copyright concepts has led to a convergence in language, if not in interest, between the Jamaican state—the Jamaica Intellectual Property Office, the WTO, and the Jamaican lower classes. The language of copyright is still the dominant policy language for discussing Jamaican musicking's legal environment and for possible solutions to its problems.

The confluence in language masks the vernacularization of meaning that was necessary for copyright language to be relevant to Jamaican musickers. This vernacularization explains why Jamaican musickers do on occasion assert their support for copyright enforcement, despite the historical experience of copyright ill serving marginalized communities.[2] As has been discussed in previous chapters, local definitions of ownership, authorship and originality inform their expectations of what enforcement will do. When discussing copyright, Jamaican musickers do not usually address riddims, sampling, and other traditions of reuse that copyright formally restricts. Jamaican musickers also use the language of copyright to make claims for Jamaica's position in relation to the global music industry. Many Jamaicans expressed pride and a sense of

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[1] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2005), 219.

[2] Chon, "Intellectual Property and the Development Divide"; Aoki, "(Intellectual) Property and Sovereignty"; Aoki, "Distributive and Syncretic Motives"; Ruth L. Okediji, "The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System," *Singapore Journal of International & Comparative Law* 7 (2003): 315–385; Story, "Burn Berne."

ownership in Jamaican music that included pride in its global popularity, and were dissatisfied at the relative lack of reward reaching the island. Most musickers believe that foreigners and upper-class Jamaicans have profited disproportionately from Jamaican musicking. In this context, Jamaicans use the language to assert ownership over their culture, collectively, and assert that copyright enforcement will ensure that foreigners' money reaches Jamaica and make sure that poor artists can get paid.[3] However, given the difficulties described in this dissertation regarding the form of the law itself and the social context on which it relies, as well as the scholarship on copyright in the less developed world, demonstrate that many factors would prevent such a redistribution of wealth from North to South. While vernacularization may work within the island to maintain local traditions in dialogue with copyright, as copyright enforcement mechanisms draw closer to Jamaican musicking via technology and via increased pressure from international interests, copyright concepts may be de-vernacularized by technology or other enforcement that does not recognize or respond to local contexts. To prevent this, Jamaican musickers would benefit from using terminology more directly informed by local, vernacular practices of creativity

Terms of Analysis and tools for argument

Musickers have a variety of strategies for negotiating the sometimes profoundly unequal playing field they find themselves on in Jamaican society and in the global system. The longest-running strategy has been to create a different playing field centered in exilic spaces, not wholly dependent on colonially allocated resources.

These exilic spaces and strategies have proven somewhat resilient, but when recognized by local and global elites, have often been seen as a threat and a negative influence on Jamaican life and Jamaica's global position.[4] In the following section I recommended that elites, or those policy makers concerned with equality and the flourishing of culture, ought to recognize the importance of these spaces and strategies for those goals and suggested some ways forward. But just as important, and perhaps more so, this project can provide some ways for Jamaican musickers themselves, as non-elites, to make claims on their own terms, rather than the terms handed to them by a colonial system. To that end this project speculates on some terms that might be helpful in describing existing practices:

I have mapped the contours of exilic space in Chapter 2 and Chapter 4, in order to assess how we might recognize or even help to foster them. Exilic spaces are not commons in the sense of either land communes or uncontrolled fisheries. However they may are sites of refuge, imagination and survival and the birthplace of new identities, not only because they were

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[3] See Foga and Montague, "Electronic Commerce and Music Business"; Witter, *Music and the Jamaican Economy*, 53; Lehman, *Modernizing Jamaica's Intellectual Property System*; Cuthbert and Wilson, "Recording Artists in Jamaica"; Kozul-Wright and Stanbury, *Becoming a Globally Competitive Player*, 14, 19–20. Also see sympathetic non-Jamaicans such as Malm and Wallis, *Big Sounds from Small Peoples*; Power and Hallencreutz, "Profiting from Creativity?".

[4] Foreigners may not always be threatened by the same local practices as are local elites. For example, foreign elites are far less reluctant to support Jamaican musicking practices that involve performing sexual and stylistic flamboyance, even though these practices are still regarded as undesirable by locals. However, foreigners are not always as enthused about Jamaican practices of phonographic orality which have been discussed as undisciplined and ignorant of intellectual property or artistic integrity.

inaccessible or hard to monitor, but because the practices of the people who lived there allowed them to slip beyond the gaze of the state and to survive without being wholly dependent on state-controlled infrastructure.[5] The inconsistencies of the Jamaican state, the poor fit of the law with local practices, and the value of practices like creative reuse, circulation, and collective forging of identity demonstrate that inclusion in state institutions is not the only way to power and autonomy. Thus the crucial starting point for recognizing an exilic space is that it is understood to be outside the law. Naming the space and validating its exilic nature reshapes the analytical framework by which we understand social value.

Future work on exilic spaces should analyze the divisions and inequalities within them and how they relate to broader concerns with equality. Just as commons were not utopias but were rife with social inequality, so too the street dance is not a site of internal equality. Many activities at the dance are competitions that create winners and losers, and in the future the stakes of those competitions and the ways they affect participants' ability to flourish ought to be further explored. However, the terms of competition continually remain aligned with values not shaped by colonial power. International policy concerns raised through technology as well as trade agreements, inform the urgency of the current debates over copyright.

Also useful in these debates is the concept of "Phonographic orality," which highlights a central aspect of (Jamaican) musicking deserving more respect. Future discussions of policy and of local practices could better describe and defend local practices by accounting for how policy will affect phonographic orality and the specific values that it affirms. More broadly still, the term "DJ culture" evokes crucial aspects of phonographic orality: the focus on using recordings as elements in a live performance or creative conversation, and the fact that it is a living, community practice. DJ culture easily evokes vocalists, DJs and soundsystems and could be a rallying cry for their musicking practices. Alongside promoting terminology that could help in both analysis and advocacy, this research suggests a reframing of policy in order to support Jamaican musickers practices and capitalize on their very real successes in terms of productivity and cultural influence.

Approaches to Policy in Jamaica

Three avenues along which Jamaican policy could be argued are in relation to democratically expressive practices, in relation to Jamaica's position as a country in the global South, and in relation to the existing successes of Jamaican musickers' on their own terms.

The Jamaican Constitution of 1962, asserts a right in freedom of expression (although it can be limited to protect the rights of others).[6] A deeper recognition of the democratic value of popular culture practices in Jamaica would inform a more nuanced interpretation of this right. As Jamaicans become increasingly active on the Internet, it appears that some policymakers at the regional level are taking seriously the question of censorship and freedom of expression online.[7] However, the case made for limiting copyright in the interest of freedom of speech in Jamaica

[5] James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009).
[6] Jamaica Constitution 1of 1962 Chapter II, 22(2)(a)(ii)
[7] "Rapporteurs Want New Laws for Freedom of Expression on Internet," *Jamaica Gleaner Online* (Kingston, Jamaica, Summer 2011).

has not yet been made, as far as I have been able to learn, in relation to musicking in the online environment.

As a country with a history of disadvantage on the global scene, Jamaica might make use of a more protectionist attitude in relation to its cultural practices. Carol Rose terms a "limited commons" a property system in which access is based on membership in a limited community, beyond whose boundaries access is restricted.[8] This idea builds on the historical commons at the center of peasant life, in which members were close enough to each other to negotiate social norms to govern behavior. Jamaican musicking practices have always followed a different set of rules for those beyond Jamaica's borders, especially those in the global North, based on local musickers' cultural and institutional capacities. Thus, formalizing distinctive rules might provide some security for creative practices within Jamaica to continue to flourish. Within these limited commons some kinds of inequality will persist; as I have shown, Jamaican musicking is not a homogenous or non-hierarchical set of practices.[9] But there is little evidence that the class-based inequality arising from the wealth disparity between middle-class soundmen and poor attendees (for example) would be less harmful outside the street dance.

The question of what happens when foreign works or actors cross those borders would then be addressed with a clearer acknowledgment of the different position of non-Jamaicans, rather than being masked by the false (non-substantive) equality of neutral policy. So far, the trend in international intellectual property law has been to heighten pressure to enforce copyright, increase minimum standards of copyright enforcement, and increase surveillance and enforcement without attending to local needs. As these trends are embedded in technologies intimately connected with musicking, copyright's reach expands via the digital environment.[10] As copyright law increasingly crosses Jamaican borders its impact must be carefully weighed, more so than has yet been done as international copyright regimes continue to definite and enforce copyright in a top-down way.[11]

Jamaica's music industry and the community from which it springs holds insights for the future of musicking in the global North and beyond. As many forecast the possible demise of institutions of the past forty years that underpinned and profited most from copyright law (multinational music labels and distributors whose depended on exclusive rights), the practices and sites of Jamaican musicking might hold lessons for the rest of the world in new ways of obtaining financial returns on creative works. One way to analyze Jamaican musicking's economic value is to consider musicking as a low-equilibrium IP system such as the fashion industry, where speed, change, first-mover advantage and reputation are crucial to success.[12] In a system of low-equilibrium copyright, the scope and duration of copyright would be narrowly limited. This could allow greater circulation of musical works, foster freedom of expression and economic expansion, and capitalized on the ways that media circulation contributes to economic

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[8] Carol Rose, "The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems," *The Minnesota Law Review* 83 (1998): 129, 132.

[9] Unfortunately to date no work has addressed the gendered rule of law, or the gendered economy of the music industry in Jamaica.

[10] Chon, "Intellectual Property from Below," 841; Okediji and Prosser argue that copyright "constitute[s] a dead weight loss on already fragile economies."Okediji and Prosser, *The International Copyright System*, 243.

[11] Chon, "Intellectual Property from Below," 805; Arewa, "Piracy, Biopiracy and Borrowing."

[12] Kal Raustiala and Christopher Sprigman, "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design," *Virginia Law Review* 92, no. 8 (2006): 1687–1778; Anderson, "'Criminal Minded?'".

survival (through enhancing musickers' reputations) as described in Chapter 4. As a lesson for the broader world, the aspects of Jamaican musicking that have been successful reinforce the interest in a limited copyright system.

However, because Jamaica faces significant disadvantages in the global economy, it requires (along with other nations similarly disadvantaged) particular consideration in international copyright policy.[13] Such a protectionist argument may be uncomfortable for policymakers that favor facially neutral policies. As discussed above, formal equality and substantive inequality have been the rule for marginalized communities within the global North as well as for the global South.[14] A "capabilities approach" or an outcomes-centered approach is necessary to remedy this situation.[15] In either case of a limited commons or a low-equilibrium IP approach, Jamaica might be set against other countries in the WTO that wish copyright to be enforced differently. However the continuing momentum of the Development Agenda (outlined in the Introduction) does suggest some hope for a global movement to redefine copyright in order to serve the specific needs of marginalized communities.

Beyond Copyright policy

Looking broadly at the situation requiring remedy, the most salient force hindering Jamaican musicking has been poverty and colonial inequality. Many interviewees had clear views on the role of government that suggest interventions that addressed both problems, and go beyond the scope of copyright. Interviewees asserted that the government should invest in the poor areas that have fostered Jamaican musicking, such as the still-poor Trenchtown, the neighborhood of Bob Marley's musical awakening, or the Alpha Boys' school that has no formal recognition as one of the wellspring of music most Jamaicans and thousands of foreigners know and love.[16] Revitalizing such places could foster respect for and revitalize the poor communities that support such musical talents, and foster new talent.

Investment in General welfare

The most significant policy to further musicking and support their communities would be simply to support local conditions of life in a way that provided more security. No matter how creative Jamaicans are, royalties are not a guarantee of steady income, nor will they necessarily

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[13] Aoki, "Distributive and Syncretic Motives," 771; Chon, "Intellectual Property and the Development Divide."
[14] Kevin J. Greene, "Stealing the Blues: Does Intellectual Property Appropriation Belong in the Debate Over African-American Reparations?," *Thomas Jefferson School of Law Research Paper* (n.d.): 343; Aoki, "Distributive and Syncretic Motives," 717; Okediji, "The International Relations of Intellectual Property," 333; Graeme B Dinwoodie and Rochelle C Dreyfuss, "TRIPS and the Dynamics of Intellectual Property Lawmaking," *Case Western Reserve Journal of International Law* 36 (2004): 120.
[15] The "capabilities approach" is associated with philosopher Amartya Sen, in relation to welfare economics, and Martha Nussbaum, from the philosophical approach to human freedom, focuses on the outcomes of policy in terms of human being's actual capacity to flourish – it encompasses material security, political and expressive freedom, and equality as affirmative values towards which policies should be directed. Sen, *Development as Freedom*; Nussbaum, "Capabilities and Human Rights," 300. Also see Chon, "Intellectual Property and the Development Divide," 2874–5.
[16] As described in Chapter 2, the orphanage that gave rise to four generations of instrumentalists that formed the backbone of Ska and Reggae and continues, albeit in dire financial straits, to this day.

bring even minimal reward to many of the urban poor communities that foster musickers. Supporting the poor communities that give rise to the majority of Jamaican music will especially contribute to their ability to remain creative, to flourish and to contribute and benefit the economy more equally.

Investing in roads, water, and other infrastructure as well as education and health care would all contribute towards musicking. While this may sound rather far afield from copyright law, the material conditions of life are a powerful factor in the amount and sustainability in creative expression. Focusing on conditions of life is also desirable because broad investments in these are simpler to carry out than in those which fine-tune specific legal instruments, which must then be interpreted and administered or enacted by a wide range of actors.

Negotiating with Colonial copyright and the (parasitic) state

As we saw with the police presence at Boasy Tuesday, disciplined as much by the dynamics of the street as by the dynamics of the law, a parasitic state (as I, following Gray have described Jamaica's governmental bodies), makes reliance on "the rule of law" a complex situation. It remains unclear whether Jamaica has experienced the rule of law in the way that even the most trenchant sociolegal critics of its value, from Laura Nader to E.P. Thompson, could argue.[17] While both acknowledge the history of law as an expression of power used to dominate the weak, they also suggest law can also be used by the weak to limit the depredations of the powerful. But how likely is law to limit power, when the system that enacts it is weak, partial or unreliable?[18]

Jamaican musicking, then, cannot be relegated to the confines of an interesting case study for copyright law; it has to be continually studied for its evidence of how marginalized people, in a country disadvantaged in the global system, develop strategies and norms that enable them to be enormously creative without being wholly dependent on structures of power that have served to disadvantage them. Some scholars and musickers suggest that copyright law is crumbling in the digital era.[19] While copyright is not evaporating just yet, it has not always served the needs of those marginalized in society. The same can be said for the state itself –most tragically when it

[17] Mark Goodale, "A Life in the Law: Laura Nader and the Future of Legal Anthropology," *Law & Society Review* 39, no. 4 (December 1, 2005): 7, 39, 49; Thompson wrote in defense of law that "the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power's all-intrusive claims, seems to me to be an unqualified human good."Thompson, *Whigs and Hunters: The Origin of the Black Act*.

[18] Mark Massoud recently asked this question most poignantly in relation to the Sudan: "Who rules the law?"Mark Fathi Massoud, *Who Rules the Law?: How Government, Civil Society, and Aid Agencies Manipulate Law in Sudan*, PhD Dissertation (University of California, Berkeley, 2008).

[19] John Perry Barlow, "The Next Economy Of Ideas," *Wired*, October 2000, http://www.wired.com/wired/archive/8.10/download.html; Nicholas Negroponte, *Being Digital* (Random House Digital, Inc., 1996), 228; Lange, "At Play in the Fields of the Word," 151; Bruce A. Lehman, *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights* (DIANE Publishing, 1995), 130–1, suggesting that different national definitions of rights could render copyright essentially meaningless.

has come to defining property law.[20] What can enable the poor, the propertyless, and the excluded to use law to limit the depredations of the powerful?

James Scott has suggested that the law requires people who invoke it to rewrite themselves into the kind of actors the law can recognize.[21] Many of the trade-offs faced by Jamaican musickers reflect this dilemma: law reads their practices as unruly, disorganized, *uncivilized*. Even as Jamaican musickers also suffer under tremendous pressures and depredations, they have created and maintained a global network of musicking traditions and products under their own creative authority, and contributing significantly to the cultural economic life of Jamaica and the world.

In this dissertation I have shown extensively that not enough attention has been given to the affirmative value of practices that occur outside of law's reach, and that these values cannot be served simply by redrawing the boundaries of law so as to encompass them. At its best a street dance is a triumphant assertion of cultural power by the poor. But not as a place of peace, equality, and harmony—rather as a place where people struggle and experiment with the resources available to them. The point of engagement into the national and global system at the street dance for poor Jamaicans is not more disadvantaged than a poor Jamaican in the US immigration system, the unemployed dairy farmer rendered destitute by IMF structural adjustment policies that led to the destruction of the domestic dairy industry,[22] or indeed more than the forty residents of Tivoli Gardens alleged by Amnesty International to have been "extra-judicially executed" by Jamaican security forces in 2010.[23] Jamaican dancehall singer Vybz Kartel (Adidja Palmer) has embodied the complexity of the troubled relationship between the state, the poor, and concepts of morality and propriety with his enormously popular songs, which were banned from the radio by the government for their explicit sexual content, after which he wrote an open letter published in the national newspaper pointing out that sexual or even violent lyrics are less harmful to the nation than the poverty, lack of opportunity, and government corruption (including its fostering of gun violence).[24]

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[20] The case of indigenous land rights provides ample support for the ways property rights are used to dispossess. "Johnson v. Macintosh stands for the principle that the extinguishment of the Indian title in North America was the sole prerogative of the appropriate Euro-American sovereign through either a purchase or conquest," Howard R Berman, "Concept of Aboriginal Rights in the Early Legal History of the United States, The," *Buffalo Law Review* 27 (1978 1977): 637; But the study of peasant land rights in the West also provides some support. See Polanyi, *The Great Transformation*, 35; Thompson, *The Making of the English Working Class*, 218.

[21] Scott, *Seeing Like a State*; Perlman, *The Paradox of Empowerment: Traditional Music Between Stewardship and Ownership in International Intellectual Property Law*.

[22] Joseph E. Stiglitz, *Globalization and Its Discontents* (New York: W. W. Norton & Company, 2003), 17; Benjamin F. Timms, "Development Theory and Domestic Agriculture in the Caribbean: Recurring Crises and Missed Opportunities," *Caribbean Geography* 15, no. 2 (2008): 101.

[23] Jamaicans for Justice, *Jamaica: A Long Road To Justice? Human Rights Violations Under The State Of Emergency*.

[24] Vocalist Adidja Palmer wrote in an open letter "the devastating impact on the psyche of Jamaican children is not caused by daggerin' [violent/sexually explicit] songs but rather by socio-economic conditions which leave children without free education, with single-parent homes (or shacks), lack of social infrastructure in ghetto communities, unemployed and disfranchised young men with no basic skills who are caught up in the 'gun culture' cultivated by our politicians in the 1960s/'70s"Adidja Palmer, "Censorship vs. Free Expression - Critics Are Social Hypocrites," *Jamaica Gleaner Online* (Kingston, Jamaica, February 9, 2009), http://jamaica-gleaner.com/gleaner/20090209/letters/letters8.html Palmer is currently in jail on charges of murder. But while not weighing in on his personal responsibility for that act, if convicted, I will point out it proves little about respect of

Boaventura de Sousa Santos argues for "counter-hegemonic globalization," whereby movements and communities marginalized by global colonial capitalism can coordinate on the global stage as usefully as do multinational corporations and governments. To do this, he says, requires "articulating struggles and resistances, as well as promoting ever more comprehensive and consistent alternatives."[25] The struggles and resistances of Jamaican musickers, in the face of ongoing colonial inequality reinforced by laws written through the lens of western cultural practices, points the way towards a better, more comprehensive alternative.

law, or respect for life that could not also be said about the Jamaican police force. The 2010 incursion into Tivoli Gardens was not an anomaly.. See Jamaicans for Justice, *Jamaica: A Long Road To Justice? Human Rights Violations Under The State Of Emergency*.

[25] Boaventura de Sousa Santos, "The World Social Forum: Toward a Counter-Hegemonic Globalisation (Part I)," in *World Social Forum: Challenging Empires*, 2004, 342–3; Boaventura De Sousa Santos, "The Future of the World Social Forum: The Work of Translation," *Development* 48, no. 2 (June 2005): 17.

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Appendix: Methods

> In the face of scholarly and civic traditions that find difference so vexing that they frequently can only offer us an unsatisfactory choice between disembodied universalism on the one hand and parochial particularism on the other, ethnomusicology enables us to imagine a third option: a universalism rich with particulars grounded in the dialogue of all, the dignity of each, and the supremacy of none.
>
> Lipsitz, "Midnight at the Barrelhouse: Why Ethnomusicology Matters Now" 2011

Using Ethnography to explore copyright law

At present, legal scholarship lacks data about how copyright affects musical creativity in practice, or about its impact in daily life.[1] Studies of musicking and copyright have focused on record sales, number of files downloaded, and the circulation of money within the music industry. My research questions arose partly from questioning how we define the boundaries of an industry and what actually motivates people to participate in musicking within and across those boundaries. Many studies have looked at the numbers of recordings produced, or the amount of money generated via the sale or license of recordings, in order to gauge the effect of copyright law. But what if musickers do not see recordings as the primary source of their musicking income? Live performances and creative acts that make use of recordings, including pre-existing recordings as raw material, and practices of creativity that rely on continuous access and reuse, cannot be tracked as sales or licenses add yet shape a demand for recordings and contribute to the production of new ones. Understanding the role of recordings in this larger context of reuse requires a more holistic approach to musicking. Examining how copyright law affects musickers also requires an understanding of ther ole of law more broadly.

Creativity and daily life are both socially constructed activities, engaged in by people in relation to each other. Therefore, to better understand what role copyright law plays in communities, it is important to investigate, empirically, how those communities both enact and understand the creative practices that copyright law regulates.[2] Such open-ended questions are best investigated using ethnography, which can also provide the kind of specificity that can challenge conventional wisdom.[3] Ethnographic methods also help us understand processes that are multidimensional and reflexive, such as the relationship between people, culture and law. In order to better understand the dynamic of creativity in relation to law, we need to look (at the

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[1] Anne Barron, "Introduction: Harmony or Dissonance? Copyright Concepts and Musical Practice," *Social & Legal Studies* 15, no. 1 (2006): 25.
[2] See Erik Gilbert Jensen and Thomas C. Heller, *Beyond Common Knowledge: Empirical Approaches to the Rule of Law* (Stanford University Press, 2003).
[3] See James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1987).

very least) at physical, temporal, geographical, cultural, as well as legal contexts in which it occurs.

Sally Merry suggests that the globalized world requires practicing "deterritorialized ethnography"—studying "a disembodied space of social life, one that exists in various spaces but is not grounded in any one of them."[4] While some concept of deterritorialization is necessary to account for the flows of culture and people, particularly in relation to diasporic peoples and practices, my object of analysis is not fully deterritorialized. Instead, my object is what anthropologist George Marcus would call multisited. Multisited ethnographic analysis reveals important dynamics of power and negotiation over law and culture as people, ideas and money travel.[5] Rather than compare separate locations, one engages ethnographically with sites understood as fragments of a broader system, although a system not completely coherent or totalizing.[6] This approach suits the realities of Jamaican music as a translocal phenomenon. Jamaican musicking is simultaneously local and translocal (in which musickers are connected through musical, stylistic, and shared culture across dispersed geographies).[7] Jamaican music and musickers circulate through networks defined by ethnicity and by musical taste, through Jamaican communities and music fan communities in global networks of communication, travel and production. These attributes led me to conduct research in two locations outside the island: Toronto and London. In these cities I sought out people involved in Jamaican musicking, and conducted interviews and participant observation at multiple sites of musical engagement.

Although copyright as a term is frequently used in sites of deterritorialization such as NGOs, international treaties and academic and policy conferences,[8] it would be a mistake to treat copyright as wholly deterritorialized. Both the mechanics of interpretation and of enforcement shape how copyright effects daily life: different contexts ascribe different meanings for the same words, and also shape enforcement in different ways. Law only comes into effect when it is enforced on and by particular actors who bring their own interpretations to it.[9]

My research was primarily executed bottom-up, focused on the practices, experiences and opinions of everyday people in Jamaican society. Until now, such evidence has not been well integrated into accounts of Jamaican musicking that address policy concerns. Especially since the legal system is inflected with colonial approaches, even in the present day, the way in which the law constitutes daily life may be in opposition to the interests and the realities of the poor majority.[10] Thus any analysis that accounts for the widest spectrum of understanding about the lived realities of creative communities must begin with everyday people in those communities. An analysis that puts first the needs and interests of everyday people in the legal regime being examined must begin with their experiences, in order not to misinterpret their interests. This is also a counterweight to the numerous official studies and government policies

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[4] Sally Engle Merry, "New Legal Realism and the Ethnography of Transnational Law," *Law & Social Inquiry* 31, no. 4 (2006): 986.
[5] George E. Marcus, *Ethnography Through Thick and Thin* (Princeton, NJ: Princeton University Press, 1998), 91.
[6] Ibid., 79–104.
[7] Bennett and Peterson, *Music Scenes*.
[8] Merry, "New Legal Realism and the Ethnography of Transnational Law," 922.
[9] For a brilliant examination of this process in relation to the concept of "human rights," see Massoud, *Who Rules the Law?*.
[10] Scott, *Seeing Like a State*.

that articulate an unexamined copyright-centric approach (and generally omit examinations of the dynamics of the incentive model and the role of reuse in creative practices).

The Value of historical context

Every social practice is shaped by the current moment and the dynamics that surround its enaction in that moment. However, each enaction of that practice is also shaped by the currents, meanings, and material realities that have gone before it. Because "what is studied in the field is only an episode of social processes on a wider temporal and spatial scale,"[11] historical context aids in interpreting the significance of ethnographic data. This is especially true in Jamaica, where copyright enforcement is a relatively new discussion. Interviewees themselves contextualized their experiences and knowledge not only within personal histories, but within a history of Jamaican music and society of which they all were acutely aware. In addition, because the language and grounding assumptions of copyright permeate legal, policy, and business-oriented discussions of creativity in Western contexts, it would be dangerously easy to import those specific ideas about authorship, ownership and creativity into an analysis of local practices where they may not apply. This is especially risky because the language of copyright is expressly promoted to Jamaicans by the state and international agents as the "professional" and "serious" way to think about musicking. To avoid "constructing the past through the grid of the present"[12] I drew on interviews and oral histories from earlier eras of Jamaican musicking.[13] I strove to find accounts of musicking that addressed copyright concepts in the course of conversation about music-making, when copyright had not been addressed specifically as well as places where copyright appeared to be the subject under discussion. I historicize to some extent the practices under examination through comparing accounts across interviews as well as across time, and also including the history embedded in recordings themselves and what they reveal about creativity practices.

Grounding this work in a historical account of Jamaican musicking permitted me to consider the roots and dynamics of many practices found in the present day. I have also made use of secondary research from the voluminous literature on Jamaican musical history, including multiple oral histories, government and NGO reports. I have compared these materials with my interviews. I use history to ground traditions and practices in the ongoing material realities that shape daily life. While I tend to emphasize continuity with the historical past, I do not intend to suggest that Jamaican culture is stagnant. I address the historical past in order to demonstrate the contingency of particular practices on specific historical moments, material and cultural realities. Traditions and practices have persisted, not because they were immovable, but because the conditions that produced those traditions and gave them meaning still exist in some form.

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[11] Franz von Benda-Beckmann, "Riding or Killing the Centaur? Reflections on the Identities of Legal Anthropology," *International Journal of Law in Context* 4, no. 02 (2008): 85–110.
[12] Jean Comaroff, *Body of Power, Spirit of Resistance: The Culture and History of a South African People* (Chicago: University of Chicago Press, 1985), 14.
[13] Augustyn, *Ska*; Bradley, *Bass Culture*; "Right, Right Time: The Summer Records Story" (Canada: Canadian Broadcasting Corporation Radio 2, September 17, 2009), http://podcast.cbc.ca/clips/on/itm/Summer.mp3; Letts, "Don Letts at the Red Bull Music Academy"; Katz, *Solid Foundation*; Stolzoff, *Wake the Town & Tell the People*.

Data Collection

In preparation for field research, I completed the Internal Review Board (IRB) requirements whereby I committed myself to protecting the identities of project participants. The names of people I interviewed and of the private places I observed have been changed. I also drew on already-published sources in which names were already included, in which case I did not change names or details. In addition, I received informed consent for participation in the project from each interviewee. I opted not to use written informed consent forms, due to local literacy issues and the potential for such a document to create a sense of intimidation among participants. Instead I received verbal approval to use the collected material from each interview. I explained to each participant how I would use individual contributions. I also explicitly requested permission to audio record each interview. At times interviewees denied my request to record our conversations, but agreed to allow me to take detailed notes. I also engaged in numerous unstructured conversations about music, with most people I met in Jamaica, after which I would take detailed notes.

The IRB process encourages thinking about the ethics of research projects involving human beings. I also addressed this more deeply and reflexively by attending to the social and historical context of my interactions with Jamaicans. For Jamaicans, the stakes in interacting with me, an American researcher and musician, are inflected by my own position in relation to power. The US stands in a dominating economic, political and cultural relationship to Jamaica. Thus when present in Jamaica, I represent that power and those interests whether I choose to or not. My ability to profit from my research is directly related to those inequalities, and to my access to networks of power and communication that are less accessible for Jamaicans. That I am also a DJ involved in music internationally means I was also intimately connected with networks that many Jamaican musickers were interested in accessing. Thus Jamaicans saw me as both a potential avenue to a broader audience, and as a potential exploiter of local knowledge and culture. Neither of these are fully incorrect assessments of my position. To some extent, my responsibility in relation to that is a question of my own ethics. I found that the two most effective ways to assure people of my good faith were to explain the goal of the project as one that enabled Jamaican voices and experiences to be heard and respected (a goal that is fully integrated into this dissertation). Equally important was my willingness spend time with interviewees and potential interviewees without forcing a particular agenda, especially to spend time learning what people considered good manners.

As a foreigner in the Jamaican music scene, I was a familiar sight to many musickers. Because I was mainly in Kingston, which is not a tourist destination, I was not usually read as a tourist but rather as one of the many interested foreigners that regularly interact with musickers. Most studios regularly see foreign music journalists and musickers, from fans to producers, DJs and studio owners, as well as the occasional scholar, policy analyst or occasional NGO worker. This differentiates my research engagement from places where a researcher is a more remote or unusual actor—most Jamaican musickers likely assumed a narrative for why I might be there as someone interested in them. In some ways this likely eased my entrance into the field, although I also used my personal social resources to gain access to various people and locations of study.

Into the Field: Networks of knowledge, authority and connection

My entrée into the field was facilitated in several ways.

As a DJ who has played Jamaican music and interacted with Jamaican musickers for over 13 years, I was already familiar with Jamaican music and many of the local and international "players" on the scene, from studios, producers, and vocalists, to some of the events (festivals and dances), those whose fame has made it into musical lyrics or reporting overseas. In addition, many of my music contacts in the US were themselves well connected with Jamaican people and institutions, and served as points of introduction. For example, through one fellow musicker in San Francisco, I met a US entertainment lawyer who worked with a respected Jamaican recording studio (affiliated with one of the top artists in the Jamaican pop scene). Through that connection, I was able to spend a substantial amount of time at the studio.

My artistic knowledge and skills also helped me build a rapport with local musickers. Several times, in recording studios, a producer or engineer challenged me to describe or explain a particular musical practice associated with DJs or Jamaican music, and upon my response, gave a nod and granted of some kind of access into the space or musical moment. This once happened on the phone, with a producer who kept a small but very well connected recording studio. He refused to make an appointment with me until I had demonstrated my understanding of certain Jamaican traditions. For example he quizzed me on the significance of a recurring phrase in Jamaican lyrics: "killing a soundboy." I described the phrase as a metaphor for a soundsystem defeating another soundsystem in a musical competition. He said "yes, it isn't about actual killing, you understand that?"[14] And when I assured him that I did, he granted me greater access to his studio. This anecdote also demonstrates how my knowledge also gave me certain interpretative advantages. I was often able to contextualize and compare the musical references, names and factual assertions with my pre-existing knowledge of Jamaican music and history.

As a relative insider to the Jamaican musical world, I also have an ingrained set of attitudes and expectations about Jamaican music that comes from my DJ experience. My analytic approach as a researcher was shaped in several ways by this experience. However, developing my own creative practices as a DJ, I believe, has led me to a good analytic stance as a researcher, rather than compromising my ability to clearly analyze my setting.

As a DJ, I began by playing Jamaican music to non-Jamaican crowds. However, I quickly became dissatisfied with an approach to Jamaican music that seemed disrespectful of the history and symbolism of Jamaican musicking in Jamaica. My goal became to engage with music in a way that both highlighted what I felt was unique about Jamaican music, allowed me to experiment with its sonic and symbolic capabilities, while staying true to what appeared to be essential aspects of its power. I found I was more successful when I was able to connect with multiracial audiences that included Jamaicans and Jamaican-diaspora people alongside other nationalities and backgrounds. “Success” in this case meant both that audiences responded positively by dancing, and also that the audiences I connected with included Jamaicans. In order to be a better DJ, I had to learn patois, learn the history of Jamaican music so as to understand musical references. As I learned to understand lyrics I had to think carefully about what it meant to bring language and images into a new context (a dancefloor in Boston, New York, San Francisco, or Berlin) in a way that did not flatten or reduce Jamaican music to a caricature, especially of masculinity or of “ghetto life.” At the same time I had to engage with the realities

[14] As the *Jamaica Gleaner* newspaper explains, “In boxing, when the sound of the bell signals the end of a bout, a judge decides the winner. Well, when two sound systems face off in the dancehall, it is the reaction of the crowd that decides the fate of one sound….The best dub-plates are vital to ‘kill’ an opponent.”“Killing a Sound.”

of Jamaican music that involves violent language, sexual language, and homophobic and sexist slurs. What I came to realize is that there is a multilayered symbolic interaction between language that reflects reality of lived experience in Jamaica, and language that reflects a symbolic and political stance—and that those meanings can shift when imported into new contexts. This is exactly the kind of realization that informs my research practice. It is my responsibility as a scholar to present a valid interpretation of musicking that does not disrespect or reduce the culture and experiences it represents. This comes about through analyzing music within its specific physical, geographical and temporal context, and taking careful note of the ways changing contexts changes music's significance. The advantage of learning this through DJing is that feedback on my relative success was constant, instantaneous and often vigorous. While many DJs and music fans discuss Jamaican dancehall in reductive terms, if one is performing before an audience including Jamaicans, in my experience the audience will bodily demonstrate to you your failure to understand the music which includes its social context. I take these insights and responses with me into the field, and I recognized, while there, similar responses to my tentative conclusions when I proposed them in conversation. This is not to say that I am wholly ruled by the people that I engaged with. As with DJing, the successful work comes from a constantly negotiated balance between my own, hopefully unique viewpoint and those with whom I engage.

Alongside my artistic connections and networks, I also made use of my connections as a law student. Through networking in the course of my academic and professional career I have made substantial personal connections to call on within the realm of music law. When the time came to prepare for fieldwork, I was able to obtain introductions to some government officials and lawyers within Jamaica. My relation to a law school also shaped responses from musickers that ranged from suspicion to hope, as many people asserted a need for legal advice in relation to law. The range of responses itself was instructive, in terms of revealing more about what law and legal expertise meant as they saw it in me. To overcome suspicion, and to avoid false hope of my being able to provide legal aid, I carefully explained my project goals. When I described it as a scholarly work with policy implications, and also a chance to spread more knowledge about Jamaican practices, this usually appealed to my subjects, although some understandably were roundly cynical about my ability to make their voices heard.

My reception by Jamaicans was also shaped by other personal experiences. In 2007, I had stayed in Jamaica for 3 months as part of a law, technology and music-related project called Students Expressing Truth. At that time I volunteered in the Jamaican prison system while living in Kingston. Through this experience, I learned the geography of Kingston and began to get to know the customs and manners of various Kingstonians. In my spare time, I began to explore the local and national music scene, as well as gaining some interesting observations about Jamaicans relationship to law and the way the criminal justice system operated in Jamaica. This experience proved to be helpful in building rapport with local musickers. My local knowledge was helpful, but also many Jamaicans were pleased to hear that I had volunteered my own time on behalf of Jamaican prisoners, and also were impressed that I had put myself in what they saw as a dangerous place like South Camp or Tower Street Penitentiary. Especially in the poorer parts of Jamaica, this commitment of energy and assumption of risk, however temporary, on my part, appeared to be quite meaningful.

Lastly, while in Jamaica as a volunteer in 2007 I made the acquaintance of a singular person, a Jamaican woman who had worked in the music industry in England and Jamaica for 30

years, with a wide range of contacts, and yet unaffiliated with any of the major studios. She shared considerable time, energy, wisdom, and personal connections with me over my 9-month stay. She drove me around Kingston and across the island, and provided advice about local politics that were vital to my understanding of the geography and of my personal safety (which sometimes depended on understanding the relationships between garrison communities). My association with her, including her willingness to publicly vouch for me upon my entrance into any number of complicated social settings, smoothed and granted me access into many studios and creative environments. Our interactions were mutually sustaining in a number of ways. For example, as a manager of several artists, she allowed me interview them. This opportunity generated data for me, but also helped to train the participants in the experience of being interviewed, and demonstrated to them that she had access to an American writer and thus international connections. Our interests converged in many respects, although she helped me incalculably more than I could have helped her.

I generated lists of people from the various contacts described above, engaged in snowball sampling where I asked my interviewees and anyone else I spent time with if they could recommend someone else to speak to. This often led to a list of names, occasionally a phone number or an address that I could investigate further. I wished to engage with a wide range of musickers, across varying sets of skills, ages, locations, musical styles, and across a range of levels of establishment in the music industry.

In Canada and the UK, my visits were more attenuated, and this shaped my access to musickers in the diaspora. As a foreign, white, middleclass musicker and researcher, I relied mainly on more immediate personal contacts (from my DJ experience), as well as any contacts suggested by people I had met during my fieldwork in Jamaica. These contacts proved to be mainly middleclass, and none of my personal contacts were Jamaican. Neither set of contacts, in either location (UK or Canada) connected me to Jamaicans in the more segregated Jamaican-descended musicking communities. Instead, I mainly had access to mixed Jamaican- and non-Jamaican scenes, except when I personally investigated a Jamaican neighborhood, as I did in Canada. The way my own access shaped my results confirms my analysis of what kind of networks are available to what kinds of people. Even the geography shaping my access suggested that there was segregation between certain Jamaican communities of musickers. In Toronto, it was difficult to get to Brampton, the suburb that appeared to be a center for Jamaican culture. In London, while Jamaicans were more visible in more parts of the city, getting personal access to musickers was difficult, while some of the most heavily advertised Jamaican musical events were also difficult for me to physically attend. In both cases, where I chose to stay while in the country shaped this access, but that choice was shaped by my own social and economic realities. The fact that my social and economic realities did not place me geographically near Jamaican expatriate communities also confirms the way race and class shape access to these communities in the diaspora.

The Issue of interviewees' reliability

I believe my interviewees were aware of how they presented themselves to me, but not in a way that compromised their accounts of themselves and their actions. Jamaican musickers have developed extremely sophisticated approaches to representation that make use of dominant and resistant language and imagery, as well as making use of exilic spaces and the language of authenticity or “realness” to center their own experiences and views in their representations.

Representation is a reflexive process in which Jamaican musickers simultaneously create and integrate others' responses into ongoing practices of performance and recording. I could not stand outside this process and it would be impossible to try. However, the narratives, opinions, and analysis put forth in interviews did not necessarily differ from what musickers said among themselves or in other contexts.

I presented my aims, truthfully, as similar to interviewees in a general sense—that I wished to improve the situation of musickers in Jamaica. This allowed me to frame our interviews as part of a broader social conversation already occurring among Jamaicans, one I did not need to initiate but observed in many contexts. I also described my research goal as one of learning from Jamaican practices and local knowledge. I did not identify what those practices were, or say whether I thought they were good or bad. I did, on occasion, say I planned to argue for greater respect for local realities at the level of national and international law. I am comfortable with how this sets up a dichotomy between law and daily life because, in my observation and research, everyone involved in music already, or likely would have, asserted such a dichotomy. Although some Jamaicans argued that what was needed was more "education" of their fellow musickers in order to bring them in line with copyright, or help them do better with business, I was wary of putting myself in the position of saying such things about Jamaicans. Rather than possibly reinforcing a colonial narrative whereby I framed local people as needing guidance, I preferred to let Jamaicans discuss what ought to happen and frame my own contribution in terms of questions or problems that musickers tend to face.

Methods

Alongside the historical approach outlined in part 1 of this Appendix, my ethnographic practice included 1) formal and informal interviews, 2) participant observation in social, studio, concert, festival and competition settings, and 3) building an archive of recordings centered on those given to me by artists in the course of my research, but also including songs that were popular during the time of my stay and songs that were historically important to the development of Jamaican music. In addition, during my fieldwork, I also 4) tracked debates around music and certain legal policies in Jamaican media, particularly in the national newspaper the Daily Gleaner and on local television, 5) DJ'd four musical events, and 6) presented a paper to graduate students and professors at the University of the West Indies' Reggae Studies Unit. Many valuable insights came from interacting with musickers informally, with people unaffiliated with any formal musicking practice, and also from simply living daily life in Jamaica, and experiencing its sounds, its geographies, flavors, and seasons. Below I describe in more detail the methods that formed the basis for my analysis.

Method 1: Interviews

Format and content

I conducted fifty-eight structured and unstructured interviews across three sites, interviewing people in ages from about eighteen to sixty-eight. The sample of interviewees was overwhelmingly male, which reflected the majority of actors in the music scene to whom I had access - only eight women out of 58 interviews. I conducted forty-five interviews in Jamaica, eight interviews in London (two Jamaican-descended MCs, one Jamaican MC, one British-

African sound engineer, two white British promoters and DJ), and five interviews in Toronto (a Jamaican born bassist, a Jamaican-Canadian studio owner, a Jamaican record store owner & DJ, a Guyanese DJ playing Jamaican-British dance music, a Canadian reporter & author, lived in Jamaica, and a Jamaican-Canadian author & former DJ). I spoke with vocalists, instrumentalists, engineers, producers, DJs, radio personalities, record storeowners and employees, members of the press, journalists, and scholars. In each interview, I asked questions along six central themes: how they came to be involved in musicking; what was their first experience in a studio; when was the first time they saw a contract and how often did they use them after that; how they defined "Jamaican" music-making and whether they noticed differences between Jamaican music-making and they way people made music elsewhere; and what they saw as the main source of conflict among music-makers. In the course of these sometimes wide-ranging discussions, I became comfortable with allowing narratives to unfold and to follow up on new information, as long as each of the central themes was addressed at some point.

I would begin by asking for a narrative of how the interviewee first got involved in musicking. I allowed the respondents to define "involved in music-making" as they might, because I was interested in how they framed themselves in relation to musicking. I have been careful to note that interviewees' framing was not at all absolute—their depiction of themselves was informed by many factors, especially if they were artists who had been interviewed before and were familiar with interviews as part of a promotional activity, or as part of other formal situations.

Rapport

I built a rapport with interviewees most commonly by not interviewing them right away but spending time with them and others in social spaces, and demonstrating that I was willing to share information about myself or be observed as I was observing others. In some cases interviewees and others wanted to know my interests or my reasons for being there. As described above, I found it best to respond honestly, both about my personal gains as well as how I saw it giving back to the community—through representing Jamaican practices fairly and in suggesting ways for government to be responsive to musicians needs. In other cases people asked me about my understanding of Jamaican music, to which I answered as well as I could. At the end of each interview, I usually asked people if they had any questions for me, which often revealed something to me about who they thought I was or their vision of the purpose of this project. Sometimes they asked me what the interview was *really* for, other times they asked for legal advice, or asked me a personal question, and sometimes they seemed surprised at my interjecting myself into their story of themselves.

Method 2: Participant Observation

I observed certain moments and locations as particularly concentrated sites of musicking. First, formalized performances (by which I mean those identified as events with a beginning and an end, advertised in some way with audiences that intend to be there, as compared to a street preacher singing to a busful of passengers), and recording studios. Alongside being logical places for study, my attendance and participation was also noticed and appreciated, or simply expected, by many interviewees in exchange for the time, information and friendship they shared with me. Second, I observed music in recording studios. Third, I observed the role of music in daily life.

Formal performances

I concentrated particularly on performances those that involved sound systems such as street dances, nightclubs, concerts and "stage shows" (large showcase events featuring a long roster of live performers, usually vocalists with the occasional comedy or novelty act, either backed by a live band or by a DJ playing instrumental CDs). I attended four stage shows in Jamaica, seventeen street dances, twelve club nights. In Toronto I observed a radio show (inside the studio), three reggae nights in one club, one reggae night in a warehouse, and three dance music nights that incorporate phonographic orality and references to Jamaican recordings. I also DJ'd two club nights at the same club in which the reggae nights occurred.

In London I attended three club nights put on by British promoters that featured Jamaican music, one club night put on by a black British promoter who is not of Jamaican descent but whom I had met in Jamaica. I attended three dance music events in clubs that similar to Toronto drew on practices and sounds of Jamaica but were not explicitly Jamaican.

Recording studios

During my nine months in Jamaica I visited twenty-nine studios, for a total of 220 hours of focused observation. In Toronto I gained access to one recording studio, and in London, two. My access to Jamaican studios was facilitated in a two ways: first, my main contacts were already known and respected by many people in recording studios; second, Jamaica's long history (and prevalent current reality) of foreigners being a source of publicity and money for local artists and studios likely made me more welcome than in London or Toronto. In Toronto I observed one recording studio owned and run by a Jamaican. In London I observed one recording studio run by a Nigerian-British engineer, and one home studio run by a Jamaican-British soundman (sound system owner).

Music in daily life

Particularly in Jamaica, musicking also permeated daily life in ways that have been described above. My own experience of music in daily life was an intense education in the geographies of Jamaican class politics. I lived in an apartment on the University of the West Indies Mona campus, which is an upper-class enclave, surrounded by a tall wall and 24-hour armed security guards. While on campus, whether at home or walking to the library or the bookstore I could spend hours or even days without hearing music. However, as soon as I crossed through one of the gates, I entered into public spaces in which music was audible from passing cars, buses, from shops or roadside food stalls, or from radios in the hands of people walking to the local market. I could not help but notice that these public spaces were dominated by a less wealthy, darker-skinned set of Jamaicans than was the quiet campus. Many students and staff expressed shock at my interest in setting out on foot, using public transportation, or mingling in these public spaces. However much of my commuting, exploring, shopping for groceries, and relaxation provided me with rich details about how, when and why Jamaicans engage with music. For example, Kingston's semi-private transportation system includes cars and vans that take multiple passengers along pre-arranged routes ("route taxis" and "mini-bus"). These are heavily used by the public, and all of them blast music from radio or CD players at top volume all day. At any time on the road one might witness an impromptu "sound clash" of systems between cars and vans. Thus whether one chooses to follow music or not, anyone taking

inexpensive transportation is simply inundated with it. This simple fact highlights both the importance of radio and the taxis own sound systems as promotional tools (one producer told me he always gives free music to the mini-bus drivers because it is good promotion), and confirms that lower class Jamaicans are more deeply and constantly engaged with popular music than are the upper classes—as the mini-bus and route taxi are primarily used by the lower middle class and poor in Jamaica.

Method 3: music collection and analysis

I amassed a collection of music from various musickers who gave me CDs or sent audio files. This happened not only when I was acting as a researcher but also when I would tell someone (such as my taxi driver) that I was a Jamaican music fan and had come to Jamaica to learn about it. More than once, my taxi driver produced a CD of his own singing for me to take with me. I supplemented this collection with about 500 songs I have compiled from across various eras of Jamaican musicking. These were chosen partly through my knowledge of Jamaican music over the past seventeen years researching and playing for fans of Jamaican music in the US, the UK, Canada and Europe, combined with information from the many histories of Jamaican music that I read in preparation for my fieldwork, in which specific songs and artists were mentioned.

Data Analysis

Analyzing interviews and field notes

After listening to the interview audio I took additional notes and transcribed key sections, writing dozens of research memos in which I described what interviewees identified as key issues. I identified recurring phrases and themes, such as "I'm not yet at that level" (when asked about contracts, or the various ways people used the word "original." These issues, phrases and themes gave rise to hundreds of codes. Once I had generated codes from the transcripts and field notes, I revisited the audio to listen for those codes again, transcribed further sections and added further codes to the transcripts.

I follow Idit Kostiner in focusing on society, rather than law, to guide my understanding of crucial categories of analysis, including musical elements, musical actors, and traditions.[15] As she points out, many scholars of legal consciousness have argued for shifting attention to society rather than law, but still rely on law to frame their analysis. Especially in a postcolonial context where law was originally aligned with the interests of a minority whose explicit aim was to exploit the majority, it would be deeply problematic to rely solely on the categorizations and assumptions of formal law. There are, or course, other experiences and approaches than the majority, and within specific communities there were internal divisions with majority and minority interests. Although I did not have space to explore these complexities in great detail, I remained aware of the risks of assuming class and coloniality to always be the determining frame of analysis, and the risks of assuming that I would always know what class and coloniality looked like even when it was the determining frame.

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[15] Idit Kostiner, "Evaluating Legality: Toward a Cultural Approach to the Study of Law and Social Change," *Law & Society Review* 37, no. 2 (June 2003): 323–368.

Analyzing recordings

I listened to hundreds of hours of audio recordings, notating key lyrics, recurring themes, and musical motifs. I supplemented the listening research with research on existing databases of Jamaican music that identifies musical elements, such as "riddimbase.org" and "whosampled.com" both of which identify samples and repeated motifs in Jamaican popular music.[16]

To analyze musical recordings, I drew from historical and ethnomusicological research on music to attend to both the structure and organization of music, and the lyrical and sonic contents and references. For the most part, little reliable quantitative data is available about the music—everything from copyright ownership, authorship, and the year released is contested terminology with multiple conflicting reports, while the informality of production means quantitative data about production, distribution and sales is also rather sketchy. Thus, I made use of historical accounts by cultural studies scholars and social historians to identify key musical genres, themes, and elements, and drew on my own knowledge and personal music catalog as well.

Because I have no training in the elements of music in terms of pitch, timbre, or other acoustic qualities, I have left musical and audio analyses for other scholars. I am confident that the insights gained by studying other musical elements provide a rich field of analysis in themselves. I examined the physical aspects of any recordings (where evident), such as album cover art, liner notes, song and album titles. In addition I analyzed the lyrics, melodies, and instrumental compositions, in terms of their content and symbolism. I paid special attention to the ways musical recordings related to each other both across similar musical moments and across history, and the way they related to the experience of live musical performance.

Historical analysis

I contextualized my field data in relation to histories of Jamaican musicking. This process was also reflexive, in the way I generated codes from field notes and transcripts: I did not rely on history to provide schema for analysis, nor did I only read schema that arose from data analysis back into history. Instead I looked for points of corroboration and points of conflict between the historical narratives (especially the oral histories) and my own data.

The literature review in Chapter 1 demonstrates a similar dialogue between fields of scholarship on Jamaica in which no one analysis is complete but something new arises out of the conversation between them. To this conversation, I add my data and my own analysis. The key themes I identified though this reflexive process are those discussed in the Introduction, and developed throughout the remainder of the investigation and conclusions.

[16] “Riddimbase.org,” http://riddimbase.org; “Whosampled.com,” http://whosampled.com