

**The Mass Collaboration of Digital Information:  
An Ethical Examination of *YouTube* and Intellectual  
Property Rights**

**Sandra Pitcher  
(204507016)**

**Supervisors:  
Dr Nicola Jones  
Dr Lincoln Michell**

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## **DECLARATION**

I affirm that this is my own work and that all references to other sources have been duly acknowledged.

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Sandra Pitcher

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## Abstract

The Internet has been lauded as an open and free platform from which one is able to engage with, and share large amounts of information (Stallman, 1997). As one witnesses the shift from analogue media to digitalism, so too is it possible to note a change in cultural practices of media consumers. Users of the media can now be viewed as “prosumers”, producing as well as consuming media products (Marshall, 2004). Digital media users have been given the ability to engineer their own unique media experiences, especially within the realms of the Internet. However, this process has seemingly led to mass copyright infringement as Internet users appropriate various movies, music, television programmes, photographs and animations in order to create such an experience. The art of digital mashing in particular, has been deemed an explicit exploitation of intellectual property rights as it re-cuts, re-mixes and re-broadcasts popular media in a number of alternative ways. *YouTube* especially has been at the forefront of the copyright furore surrounding digital mash-ups because it allows online users the facility to post and share these video clips freely with other online users. While *YouTube* claims that they do not promote the illegal use of copyrighted material, they simultaneously acknowledge that they do not actively patrol that which is posted on their website. As such, copyright infringement appears seemingly rife as users share their own versions of popular media through the art of digital mashing. This dissertation however, explores the concept that the creation of mash-ups is not undermining intellectual property rights, but instead produces a new avenue from which culture can emerge. It highlights how Internet users are utilising the culture which surrounds them in an attempt to navigate the new social structures of the online, subsequently arguing that mash-ups are an important element of defining a new postmodern culture, and that the traditional copyright laws of analogue need to be modified in order to secure the development of new and emerging societal structures.

## CONTENTS

<b><u>Chapter One – Introduction</u></b> .....	p. 1
<b><u>Chapter Two – Literature Review</u></b> .....	p. 8
<u>2.1 Introduction</u> .....	p. 8
<u>2.2 Intellectual Property Rights</u> .....	p. 9
2.2.1 Defining Intellectual Property .....	p. 9
2.2.2 Introducing and Defining Copyright .....	p. 12
2.2.3 A History of Online Intellectual Property Rights .....	p. 15
<u>2.3 Online Culture and the Ethics of Mass Collaboration</u> .....	p. 19
2.3.1 The Rise of Postmodernity, Globalisation and the ‘Prosumer’ Culture .....	p. 19
2.3.2 Postmodern Identity .....	p. 22
2.3.3 The Public Sphere and Mass Collaboration .....	p. 26
2.3.4 The Political Economy versus the Knowledge Economy: Who is In Control? .....	p. 29
2.3.5 The Right to Free Speech and Creativity .....	p. 34
<b><u>Chapter 3 – Defining Copyright Law</u></b> .....	p. 38
<u>3.1 Introduction</u> .....	p. 38
<u>3.2 The South African Copyright Act</u> .....	p. 38
<u>3.3 Copyright Law of the United States – Title 17 of the US Code</u> .....	p. 41
<u>3.4 The Role of International Policy in Copyright Law</u> .....	p. 43
<b><u>Chapter 4 – A Philosophical Approach to Intellectual Property</u></b> .....	p. 47
<u>4.1 Introduction</u> .....	p. 47
<u>4.2 Originality: Fact or Fiction?</u> .....	p. 48
<u>4.3 Copyright: Corporate Control or Individual Growth?</u> .....	p. 52
<u>4.4 YouTube: Communication Network or Pirate Ship?</u> .....	p. 59

<b><u>Chapter Five – Research Methodology</u></b> .....	p. 66
<u>5.1 Introduction</u> .....	p. 66
<u>5.2 The Benefits of Interpretivism</u> .....	p. 67
<u>5.3 Case Sampling</u> .....	p. 68
<u>5.4 Analysis</u> .....	p. 70
<b><u>Chapter Six – Data Analysis</u></b> .....	p. 72
<u>6.1 Introduction</u> .....	p. 72
<u>6.2 Early Mash-ups</u> .....	p. 72
<u>6.3 The Emergence of Film Mash-ups</u> .....	p. 79
<u>6.4 New Narratives and Popular Culture</u> .....	p. 83
<u>6.5 Satirical Mash-ups</u> .....	p. 93
<u>6.6 Copyright and New Media in the 21<sup>st</sup> Century</u> .....	p. 96
<b><u>Chapter Seven – Conclusion</u></b> .....	p. 102
<b><u>Primary Sources</u></b> .....	p. 110
<b><u>Bibliography</u></b> .....	p. 112

## GLOSSARY

- BitTorrent: A peer-to-peer file system which allows users to break large files into smaller files in order to download information faster.
- Digital Mash-up: Process whereby media consumers “cut” various pieces of media and remix them into a coherent narrative whole.
- Interactivity: The two-way participation of online users with digital technology.
- Peer-to-peer network: An online communication network which allows Internet users the ability to share and manage files collectively.
- Sampling: Process whereby a musical artist takes aspects of another song and integrates it into their own music to enhance their music.
- User: A person who uses digital technology; usually associated with Internet use.
- Video Sharing: Online videos which are shared openly and freely among Internet users.
- Viral Video: An online video which has amassed large popularity through e-mails and video sharing sites.
- Web 2.0: Second generation of Web development; focuses on the interactive participation of users through visual and aural cues.

## **Chapter One – Introduction:**

As the Internet becomes more and more interactive in terms of usability, it has seen the rise of an online ‘prosumer’ culture whereby users have become both producers and consumers of online content (Marshall, 2004). Sites such as *YouTube* have epitomised this online behaviour by allowing users the opportunity to broadcast their own various forms of digital video ranging from eyewitness quasi-journalistic coverage of real events, through personal videos of family occasions, to purely creative output. The latter, however, incorporates a wide range of material, and most often utilises some sort of material developed by others, invariably soundtracks, but often movie or video footage which has been reworked in some way, sometimes as a form of social parody, and at other times as sheer entertainment. While this can be seen as a positive expansion of digital media in terms of speeding up the globalisation process and giving users the platform to display various aspects of their creativity and points of view (Friedman, 2006), it does have massive implications in terms of intellectual property rights. This type of freedom has led to many users taking existing media forms and manipulating them to form what can be termed a unique artistic creation. However, one must question what effect this type of artistic creation is having on traditional intellectual property rights, which look toward ensuring the financial security and control of intellectual authors (Wirtén, 2004).

Since its commercial inception in the early nineties, the Internet has become a contentious environment in terms of copyright protection. During this time, much research was dedicated to exploring the notions of open-source software and its effects on the global political economy, as well as the newly emergent cyber-culture (Ermann et al, 1995). Historically, the Internet was seen as a tool “to disseminate and acquire information” (De Villiers, 2000: 37), and not as an instrument from which one was able to create or maintain an income; consequently, it was never seen as a threat to intellectual property rights. However, “the economic potential of the Internet was [soon] realised” (De Villiers, 2000: 37), with many utilising it for its economic gains, through both artistic and practical means. The economic gains that the Internet has to offer were further bolstered by the introduction of Web 2.0 in the early part of the new millennium, and the increased features of interactivity that it allows.



However, possibly the most important principle concerning the success of Web 2.0 and the interactive features that it offers, is its ability to “harness collective intelligence” (O’Reilly, 2005). Web 2.0 users aim to utilise existing knowledge of the Internet, in order to appropriate it in their own particular means as well as build upon that existing knowledge (O’Reilly, 2005). In the case of *YouTube*, for example, users take existing media forms which are available to them from the site and manipulate it in such a way that they are able to create a ‘mash-up’ of various media forms resulting in their own unique perspective of each individual medium. However, this does raise questions surrounding intellectual property rights and copyright infringement. Therefore, this research will attempt to identify what these questions are and try to come up with a viable solution aimed toward solving them.

As previously mentioned, the early part of Internet research concentrated on identifying the negative effects of open-source and shared online knowledge. This generally resulted from users not acknowledging the source of the knowledge that they were using to build their own ‘unique’ forms of digital media (Ermann et al, 1995). The main issue that arose out of this, was the reality that many digital designers were not being credited for the work that they had done, and so were losing out financially to designs and ideas that they normally would have been able to gain a livelihood from (Ermann et al, 1995). However, with global consumerism, this type of thinking seems to have become outdated with the advent of Web 2.0, with most writers concentrating heavily on the benefits that increased interactivity and open knowledge sharing has brought about (Coombe, 1998; Friedman, 2006; Poster, 2008). While it is true that the features of Web 2.0 have been beneficial to global communications, it has also been seen as having a detrimental effect on the global attitude toward copyright law and intellectual property rights, because information present online is digitised, and as a result makes “the copying and distribution of such works virtually effortless, instantaneous and perfect” (De Villiers, 2000: 39), with many users now believing that it is acceptable to copy freely and distribute the intellectual works of others. In order to balance these two opposing positions, one should take a traditional ethical standpoint in order to negotiate this dilemma, and in so doing, reach a convincing conclusion regarding the mass collaboration of online information, intellectual property rights and copyright law.

Many may disagree with this course of action because one would assume that when addressing an issue such as the infringement of copyright, one would confer with the appropriate law in order to reach a viable solution. However, one of the major problems in terms of protecting the copyright of one's artistic work is that copyright is entirely territorial in nature. This means that copyright laws are completely dependent on the country of origin of each specific work (Cornish, 1989; De Villiers, 2000), and because the Internet is free from control from any one nation state, it cannot be governed in the same way as traditional copyright law dictates. Subsequently, discussing this issue through ethical theory, in consultation with the specific laws pertaining to copyright, becomes the most pertinent way in which to solve this contentious issue. Therefore, this research aims to explore three key areas in order to determine in what ways these rights can still be protected, or if otherwise, how they can be re-negotiated, within a virtual and "lawless" environment.

Firstly, this research will explore and discuss general cyber-ethical theory before branching into the debate surrounding intellectual property rights. One of the main issues which will be addressed is the idea that general ethical codes have always dictated that one of the most "fundamental and longstanding ethical traditions is to recognise the social value of free [...] access to information" (Alfino, 1991). This statement validates the notion that information and knowledge should be openly shared with one another, and thus could be argued to encourage a concept such as the open-source collaboration of online information. This branch of thinking also highlights that the copying and sharing of knowledge cannot be deemed as theft because it does not "involve the removal [of] property" (Alfino, 1991). While this could be seen as a valid argument in some regard, a problem arises if one considers that intellectual property has never been an actual physical entity, and so cannot be protected by the same laws that govern the protection of physical objects.

In fact, if one was to adopt a socialist approach, as proposed by thinkers such as Prudhon (Templeton, n.d), one could argue that the ownership of property in itself is theft. This stems from the thinking that if one owns something and has control over it, it deprives the rest of the world of that object. However, this is a rather idealistic approach if one considers the capital-centred economy of most modern democracies. The creators of intellectual property have traditionally, in these societies, been

employed and paid in exchange for their ideas. This makes defending the mass collaboration of knowledge within a free social space problematic because this reward system has become the social norm of intellectual property development. As such, a balance needs to be found between the free exchange of knowledge that cyber-culture promotes, and that of protecting the financial rights of intellectual authors.

However, the Internet and the information contained therein can be seen as free from the control of any one nation state, and so it becomes difficult to protect intellectual property rights under any one common law, resulting in a number of international treaties. This introduces the second key area of this research, which will assist in reaching a viable equilibrium between protecting copyright and protecting the general ethical morals surrounding the distribution of online knowledge. Through the exploration of both South African and American copyright law, as well as the many international agreements surrounding intellectual property that each of these countries adheres to, it will be determined how viable this type of law is within an ever-evolving cyber-culture of shareware (Gitelman, 2006). These countries have been chosen specifically because firstly, South Africa is the country of origin for this research and so the results will be of most use in the South African context, and secondly, the United States is the mass media entertainment capital of the world (Poster, 2008), and can be used as a good comparative example to South African legislation in order to determine what measures should be taken to protect a country so economically dependent on its intellectual property.

As previously discussed, much of the protection involving intellectual property has to do with the control of information, and so one must also consider the concept of the political economy within the online world. Marshall (2004) has indicated that cyber-culture today is controlled and maintained by each individual user, who customises their experience to their own specific means. However, Friedman (2006) has indicated that corporations, whilst simultaneously crying foul to these users, are utilising these users' abilities in order to bolster their own products and services. Therefore, one needs to explore if the traditional lines of cyber-culture control are shifting toward a new type of ownership, or if those who were originally in control are still manipulating and playing a major role in the production of digital media, and if this type of manipulation is ethical in terms of individuals losing what

would have been revenue, were they not promoting and practicing a free knowledge economy online.

This research does not propose to solve the problems surrounding intellectual property infringements by new media users, nor does it seek to reach an ethical judgement surrounding these users' online collaborative behaviour. Instead, it aims to determine whether the laws surrounding intellectual property itself are ethically coherent in a cyber-culture which has formulated itself on the free exchange of knowledge and information, as well as delve into the political economy of the Internet to establish who should be in control of specific intellectual properties. Therefore, this research hopes to determine if there is still a place for intellectual property laws within a digitised culture, or if it has become obsolete within a global culture in which free knowledge collaboration is becoming the norm.

In order to reach a conclusion surrounding this issue, four key questions need to be answered. Firstly, it must be determined what the ethical implications involved within the formation of intellectual property rights are. In answering this question, this dissertation will attempt to identify and explore general theories surrounding copyright ethics. One should then be able to examine the general ethical issues surrounding information creation and its distribution, in terms of its role in the formulation of intellectual property rights.

Secondly, this research will seek to answer what concerns there are regarding the ownership of knowledge within the digitised world. Generally, the ownership of intellectual property is concerned with the control of information, rather than the possession of information itself, and so it is important to establish, through marketing theorists such as Tapscott et al (2005) and Friedman (2006), who can be accredited with the control of the political economy within the digitised environment.

Thirdly, this research will investigate various collaborated videos found within the video sharing site *YouTube*, in order to determine if the use and manipulation of information is ethically sound in terms of intellectual property rights. The ways in which users appropriate existing digital media to create their own digital media will be explored, and the ethics behind the 'mashing together' of various digital media to

create one's own unique digital creation critically assessed. Finally, after addressing each of the above issues, this research will attempt to answer its primary research question, and determine if there still is a place for intellectual property laws in cyberspace, and if so, to what extent they can play a role within an online world which promotes and facilitates the free exchange of knowledge and information.

In order to answer these key questions, this research will concentrate on taking a qualitative approach, dealing with the conceptual analysis of intellectual property rights and ethical theory in terms of the mass collaboration of online digital information. However, to give this research balance, it will require having to engage with a certain amount of empirical data. Using selected videos from *YouTube* which highlight the practice of 'digital mashing', a form of textual analysis will be conducted in order to examine the issues surrounding the expropriation of digital images by *YouTube* users.

The samples which will be discussed shall only include user videos which have been made up entirely of other mainstream media forms in order to conduct a comparative study between digital mashing and the original art forms. This will help to determine to what extent these videos are infringing on intellectual property rights by consulting the appropriate territorial laws. Samples will only feature South African and American users, thus allowing a comparative study to occur between the two countries, both in terms of content and of the respective national laws governing intellectual property. This research will attempt to analyse the context in which a specific user has changed digital media into their own unique art form, and to what extent, if at all, such cases may have infringed traditional intellectual property law.

However, as mentioned previously, this will only occur after a thorough conceptual analysis of general cyber-ethical theories. These theories will be discussed in detail during the course of the following chapter. This chapter, as an introductory literature review, will revolve around identifying and explaining critical theories and ideas that have been written about intellectual property rights, cyber-ethics, postmodern culture and the Internet, as well as focussing on the political economy of digital online culture. Chapter 3 will concentrate on exploring and detailing the specific laws of South Africa and the United States, with regard to copyright law,

through a detailed analysis of each respective country's copyright Acts in an attempt to ground this work in more practical terms, rather than remaining at a purely philosophical level of discussion. This chapter will also expand on the information presented within Chapter 2, in regard to international policy concerning these two countries, in order to contextualise such activity within the territorial laws of the two selected countries.

Chapter 4 then provides a deeper theoretical framework in order to contextualise the primary ideas introduced within Chapter 2, and outline how this research intends to utilise the latter information in conjunction with specific *YouTube* case studies. Chapter 5 will outline the methodology, and determine how specific case studies were chosen from the *YouTube* site, in order to validate the contextual evidence presented within the previous three chapters. This practical thrust is further endorsed by the inclusion of *YouTube* videos as case studies. Chapter 6 will act as the discussion point for the results of the research. This chapter will analyse each video individually, whilst simultaneously utilising the information discussed throughout the rest of the dissertation to validate and conclude the proposed research question – do copyright law needs to be revised within the newly emergent ‘prosumer’ online culture? Finally, the concluding chapter will sum up the problems examined throughout this dissertation, and outline the results which have been achieved. This final chapter will also suggest ways in which the concept of intellectual property online could be clarified and what steps, if any, should be taken in order to protect such property in the future.

## **Chapter Two – Literature Review:**

### **2.1 Introduction**

In order to confirm the proposed research question, one must address and understand the many facets of theory within the fields of media, ethics, and copyright law. This chapter aims to discuss the most pertinent areas of writing which have been done in relation to these issues. These concepts will form a versatile base from which to analyse the problems posed by this dissertation. This chapter will discuss two key issues over three sections and eight sub-sections. This section will discuss intellectual property rights. Firstly, it will define what constitutes intellectual property as well as clarify various types of intellectual property in order to draw attention to copyright in particular. Secondly, a brief overview of copyright law will be undertaken in order to establish the context of this research in terms of what is stipulated by individual countries and international conventions. Finally, this section will contextualise intellectual property, copyright and the Internet within a historical perspective. Only once it has been established how these subjects have evolved over time, will it be possible to determine how they should continue to evolve.

The next section will consider the media in terms of political economy and globalisation. Initially this section will discuss how the Internet has contributed toward the rise of a ‘prosumer’ culture, whereby users have become both producers and consumers of digital media. This sub-section will also look at how this new emergent culture has affected the globalisation process and to what extent it has contributed to the global expansion of media. This introduces the next sub-section, which discusses how the mass collaboration of knowledge and digital media are contributing to and/or detracting from a global public sphere. This section then continues to investigate various ideas concerning the ownership and control of the knowledge economy online, in an attempt to determine how intellectual property online can be governed without disadvantaging new types of creative authors.

The concluding section of this chapter will address ethics in terms of intellectual property and digital media. It aims to discuss general ethical theory surrounding the role that creativity plays in the expansion of culture through

intellectual property, and what role ethics plays in formulating various forms of intellectual property rights. This section also touches on the importance that free speech plays in the creative process and its necessity within the cyber-world. The conclusion reached in this section should facilitate the analysis and formulation of the problem to be investigated in Chapter Three.

## **2.2 Intellectual Property Rights**

### 2.2.1 Defining Intellectual Property

Generally when one speaks about intellectual property there are three main branches with which it is associated: copyright, patents, and trademarks. For one to adequately grasp the overall issues that this dissertation presents, it is of vital importance to clarify and define what constitutes intellectual property. According to Cornish, “[i]ntellectual property protects applications of ideas and information that are of commercial value” (1989: 4). However, there are many forms in which these ideas can appear, and so each specific format is in need of specific attention and protection. While this dissertation is only focused on the field of copyright as a form of intellectual property, it is imperative that one is aware of other forms of intellectual property as well, in order to clarify what each specific branch of intellectual property constitutes, thus ensuring that there is no confusion.

The problem with trying to separate various forms of intellectual property is that they often seem to overlap with one another, and at times, it becomes difficult to determine which form of intellectual property needs to be protected. Trademarks, however, are perhaps the most unique of all intellectual property because they “have a less finite character than the information protected by patents, copyright and confidence” (Cornish, 1989: 391). A trademark can be described as “any mark used or proposed to be used by a person in relation to goods or services for the purpose of distinguishing that person’s goods or services from those of another” (Viljoen et al, 2000: 71); or in other words, a trademark is any unique “device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour, container for goods or any combination of these” (Viljoen et al, 2000: 72), with which a company or individual wants to be associated. It therefore becomes the most easily distinguishable form of intellectual property because it becomes a symbol of specific



companies, with the general populace identifying a specific trademark with a specific company, preventing other companies from using a similar mark which may confuse this identification (Viljoen et al, 2000).

As stipulated by Viljoen et al:

The proprietor of a common law trademark is entitled to prevent another person from passing-off goods as being associated or connected, in the course of trade, with the proprietor or the proprietor's goods. In this regard, the proprietor has to prove two things:

- 1) that he has used the mark to such an extent that he has acquired a reputation and goodwill in the mark
- 2) that the other person's conduct is likely to cause deception or confusion among customers

(2000: 74)

However, one of the major concerns when considering trademarks is that at times, companies do not register them due to the assumption that their brand is well-known (Viljoen et al, 2000). This often occurs when "a trader has acquired the necessary reputation to succeed" (Viljoen et al, 2000: 72) within a market which they have yet to enter, as occurred in the late nineties, when McDonalds entered into the South African market for the first time (Viljoen et al, 2000). At times this may seem contradictory to the law; however, a trademark need not be registered if the mark has become so intertwined with a company image that consumers cannot mistake that with which it is associated. Subsequently, trademarks which are well-known can be protected "against the unauthorised use of a reproduction [...] if the use is likely to cause deception or confusion to consumers" (Viljoen et al, 2000: 72). Accordingly, trademarks can be manipulated and used by individuals, provided that it does not confuse the consumer into believing that it is associated with the specific company. However, this type of thinking cannot overflow into the other two branches of intellectual property.

The protection of patents and copyright can be seen as far more tangible forms of intellectual property, primarily because they are not hypothetical symbols

associated with a brand or corporate ideal, but the protection of the manifestation of specific individual ideas. Patents exist to “to give temporary protection to technological inventions and design rights to the appearance of mass-produced goods” (Cornish, 1989: 3). In other words, a patent is the protection of ideas which act as the blueprints for formulas and designs of various inventions and discoveries, in order to grant a monopoly to the inventor of a specific design or invention. However, whilst a patent gives the inventor a monopoly, it also encourages the sharing of a technology, in order to better society (Domanski, 1993). Ultimately, society wants free use of an invention that allows it to move forward technologically, and this is achieved by allowing the inventor a monopoly for a limited period of time, after which the patent falls into the public domain, and can be used without restrictions by the greater public (Domanski, 1993). Therefore, whilst simultaneously granting the inventor a period from which to profit from their work, patent law gives society the opportunity to benefit from the invention, without paying exorbitant fees by curtailing the inventor’s monopoly.

Generally, an invention needs to fulfil three requirements to be registered as a patent; it must be novel, have some form of practical use, and be inventive (Domanski, 1993). Firstly, for an invention to be novel and qualify for a patent application, it must be a new idea which has in no way been made available anywhere else in the world (Domanski, 1993). Secondly, an invention must be useful in the sense that it works; it does not have to be the most practically useful tool for a specific job, but must function as it is prescribed to do (Domanski, 1993). Finally, for something to be granted a patent, it must be inventive. This is often the most common reason why a patent is not granted. An invention needs to be something that a practitioner within the field for which it was made, has no prior knowledge of (Domanski, 1993). It is also required to represent an advancement within a field, and not be an obvious solution to a problem (Domanski, 1993). In other words, if a person, who is skilled in the area that an invention is aimed at is able to come to the same solution using their own common knowledge and intellect, it does not qualify for patent protection, because the inventive dimension falls away.

### 2.2.2 Introducing and Defining Copyright

Copyright is possibly one of the most fervently protected forms of intellectual property, and one of the most complicated in terms of the law. It was formulated in order to protect the artistic creations of various intellectual authors, and to help ensure that authors were able to guarantee financial reward for their various works. As defined by Cornish, “copyright [is] a practical expression of reverence for the act of artistic creation” (1989: 249), and as such, is something that deserves reward and protection. Whilst many are under the impression that copyright is solely used as a way of protecting an author’s fiscal rights in terms of their artistic creations, it can also be seen as a way of protecting “the expression of an idea” (Cornish, 1989: 268), more than mere financial stability. However, there is a number of ways in which an artistic work is determined to be in contention of copyright protection. Cornish (1989) explains that the courts must determine if the work contains sufficient skill to warrant copyright fortification. This standard is established in numerous ways, but mostly a work must contain a “distinctive element of creativity” (Cornish, 1989: 272) in order to gain copyright protection, an aspect which will be discussed further in Chapter 3.

However, one of the major problems in terms of protecting the copyright of one’s intellectual property is that copyright is entirely territorial. This means that copyright laws are completely dependent on the country of origin of each specific work (Cornish, 1989; De Villiers, 2000). This has led to a number of international agreements being signed in an effort to help protect intellectual property within the global market. The most important agreement known as the Berne Convention, formulated in the late 19<sup>th</sup> century, sought to establish “a multi-national system of equality” (Cornish, 1989: 249) in which members of the convention were able to secure protection under both their home country as well as other member countries. However, it has only been in the recent past that the United States has become a member state of the Berne Convention; and with many developing countries either not being members as of yet, or, in the case of those who are, being given special allowances to translate copyrighted works without corporate permissions, it has been difficult to give intellectual property adequate protection within the spectrum of the full global market.

Whilst first formulating the laws which aimed to protect copyright within the United States, the latter sought to “[underline] their independence from Britain by confining copyrights to citizens and residents” (Cornish, 1989: 249). This helped to ensure that Americans were given proper protection for their works, whilst simultaneously encouraging artists who were not part of the United States to become citizens of the newly formed democracy. Later, these ideals were re-formulated so as not to alienate foreign artists, and “Congress required all legitimate copies of various types of work to be produced in the United States” (Cornish, 1989: 249), rather than those works created exclusively by American citizens. Recently though, the United States has joined alliances such as the Berne Convention and The Universal Copyright Convention so as to ensure that the works of their own nationals will be protected globally, whilst simultaneously offering the same rights to authors of other member states (Cornish, 1989).

However, protecting copyright so fervently can be seen as problematic for developing countries. Because developing countries require specific knowledge in order to develop their education and skills-based systems, they are required to publish and re-work intellectual property in a way that bridges the knowledge divide between themselves and the developed world. But few developing countries are able to afford the high price involved in gaining legitimate reproduction rights of copyrighted works (Cornish, 1989). By becoming global players and joining alliances such as the Berne Convention and The Universal Copyright Convention (UCC), developing countries are given protection, but are also required to adhere to global policies regarding intellectual property rights in terms of paying for the reproduction of works. This has seen many developing nations refusing to join such agreements, and so intellectual property theft is rife within developing nations (Cornish, 1989).

However, concessions have recently been made within these alliances, specifically aimed at assisting developing nations to bridge the knowledge divide. It has been acknowledged that developing nations require many copyrighted works from the developed world in order to develop both their education systems and their economy, therefore “copyright was the first field of intellectual property in which the developing countries sought to have their needs recognised as a special case” (Cornish, 1989: 252):

The concessions in favour of developing countries were originally moulded into a Protocol to the Berne Convention at the Stockholm Revision in 1976 [...] The Protocol allowed developing countries to reduce the term of copyright in their national law; to authorise translation into their national languages; to authorise publishing for educational and cultural purposes and to exclude from the scope of infringement reproduction for teaching, study or research; and to limit the scope of the right to broadcast.

(Cornish, 1989: 252-253)

These concessions were, however, not supported by all member countries because it was thought that they were too lenient and could open the door to ‘legal piracy’, therefore this Protocol was revised to create two limitations on how and when a developing country was able to use these concessions:

First, once three years have passed since first publication, a competent authority in the country may be empowered to license a national to translate a printed work into a national language, and publish it, for the purpose of teaching, scholarship or research; in the alternative, the country may take advantage of an older Convention provision allowing the termination of the translation rights, once 10 years from first publication have elapsed without the copyright owner publishing his own translation. Secondly, if the copyright owner or an associate does not publish the work in a country within a set period after first publication, the competent authority can license a national to publish. But the copies in both cases must be confined to the national market.

(Cornish, 1989: 253)

This revision helped to ensure that developing countries were able to utilise copyrighted works without infringing on each author’s intellectual property rights, whilst at the same time guaranteeing an affordable way to benefit from these works. The most important clause, however, is the one guaranteeing that the translated copies to be utilised within a specific developing country, stay confined to that specific national market, thus ensuring that the author is not losing reward elsewhere. However, this type of protection is becoming more difficult to control with the constant increase in digital technology and the Internet. It has become difficult to determine what borders to enforce as the global market is no longer defined by physical borders or nation-state governments.

As previously noted, the Berne and UCC Conventions seek to secure copyright protection for authors in both their home country and all other member countries which have signed these agreements (Cornish, 1989). Because both South Africa and the United States are member states, they are each required to conform to the rules stipulated by these Conventions. Therefore, to understand the copyright laws of each country, one must first identify the governing ideals formulated within these international agreements.

Possibly the most “quintessential purpose of the Berne and UCC Conventions is to secure the principle of national treatment: the works of authors connected with any one member state and to receive the same copyright under the law of each other member state as do the work of authors connected with the latter state” (Cornish, 1989: 279). While it has been established that copyright law is entirely territorial in nature, the ideals stipulated within these agreements, highlight how many countries are beginning to conform to the same basic ideas concerning copyright. Perhaps due to the changing nature of the global economy, copyright law will eventually become a wholly international agreement instead of national law. This idea is already evident when one considers that member states of the Berne Convention have all written into national law that the classic form “of copyright is the author’s life and 50 years thereafter” (Cornish, 1989: 283).

### 2.2.3 A History of Online Intellectual Property Rights

As the Internet has evolved from its inception during the eighties and early nineties as a public information system, so have the ideas surrounding intellectual property online. The Internet was initially designed during the seventies as a “decentralised routing system [...] to carry messages from point to point even if intermediate communication exchanges [were] blocked, damaged, or destroyed” (Goldsmith & Wu, 2006: 3). The main premise on which the Internet was built, encouraged the free-flow of information between users, as a way in which to disperse knowledge openly and to communicate easily and affordably with one another (Goldsmith & Wu, 2006). However, the effect that this type of communication had on those who sought to protect intellectual property rights after the Internet went public in the early nineties, was unforeseen (Bowyer, 1995).

Firstly, because of the ease with which information can be communicated and copied, “anything that anyone has come up with in virtual reality can be infinitely reproduced” (Tribe, 1997: 214). However, whilst this is true of the Internet, the infringement of intellectual property was far more easily monitored during the early part of the Internet’s development than it is today, partly due to the Internet being used by a far smaller number of people, and partly because of the simplistic nature of the Internet when compared to the array of online features available today (Rose, 1997). It was well-known that those who infringed upon copyright would face severe legal action, consequently discouraging “organised copyright infringement, [...] especially infringements out in the open” (Rose, 1997: 222). While one could argue that only large piracy sites were targeted fairly easily by copyright enforcers due to their size, one could also assume that individual infringers were protected due to the anonymity that the Internet provided. However, during this period, as Rose has described it, “anonymous infringements [would] arc across the Net like shooting stars, and disappear from sight just as quickly. Those who [wanted] the latest freebie [would] have to scramble for it before the cops and their software agents [went] out to sweep up the mess” (1997: 223), because most were too scared to face the expensive legal teams of the large corporations which represented creative artists and authors.

Therefore, whilst writers and researchers believed that even though the Internet was an environment in which copyright could be infringed upon quite easily, it was still possible to protect creative works through thorough legal action against infringers. In 2003, the recording industry finally reacted to their diminishing control over music sales, and embarked on a mass prosecution of individual illegal downloaders. One of the most famous documented cases was that of “Brianna LaHara, a twelve year old girl, who was sued for several hundred thousand dollars for downloading songs like, *If You’re Happy and You Know It Clap Your Hands*” (Goldsmith & Wu, 2006: 115). While corporations knew that they would not be able to prosecute every illegal downloader, they believed that legal actions, such as that taken against LaHara, would help marginalise the society which partook in the practice, in an attempt to lessen the number of users participating in illegal downloading. However, there were still other aspects which creative artists had to contend with in terms of their works being openly shared and used amongst online

users. One such area was the development of the GNU operating system during the latter part of the eighties.

The GNU software system was designed with the sole intention of providing online users with a free operating system that was openly collaborated on and freely shared online (Stallman, 1997), consequently epitomising the original ideals of software distribution amongst the founders of the Internet. The basic premise behind the GNU software system was that it allowed users to download the operating system's software and be "permitted to modify and redistribute GNU, but no distributor [was] allowed to restrict its further redistribution" (Stallman, 1997: 231). Therefore, GNU was open-source software that allowed users the opportunity to collaborate, and make changes that would advance the usability of the software, on condition that if one was to contribute to the collaboration, one was firstly not able to profit from their contribution, and secondly, that one was satisfied with other users manipulating and building onto their advancement.

Critics of GNU stipulated that the reason software programmes had to be bought and sold, and the copyright of such programmes protected, was that designers and programmers deserved to be rewarded for their creativity and efforts of design, and more importantly, that those that worked on such programmes had a right to control how their creativity was used (Stallman, 1997). However, as pointed out by Stallman in "The GNU Manifesto", "[c]ontrol over the use of one's ideas' really constitutes control over other people's lives" (1997: 235), and invariably copyright is a relatively modern practice without much historical support. If one looks at history, ancient scholars would copy vast amounts of each other's works in order to both build on their findings, as well as ensure that their work was in part preserved as long as possible (Stallman, 1997).

So in essence, copyright protection in terms of early digital technology was under constant pressure from various software designers, who believed that online software and creativity should be openly shared with one another, in an attempt to bolster the development of online technologies, and as a way of creating a virtual world of camaraderie amongst users (Stallman, 1997). Problematically, during this period, efforts by authorities to monitor those users who engaged in the unlawful



distribution and display of various copyrighted works online, were often undermined by many of the architects of the Internet. These programmers and designers were intent on fulfilling “the Internet’s founding vision of an open, non-commercial network run by selfless experts for the benefit of all” (Goldsmith & Wu, 2006: 30). However, what made copyright even more difficult to protect online during the early days of the Internet, was a feature that is still perplexing intellectual property rights activists today: the realisation that the Internet is without borders, and consequently one is unsure of which laws to follow.

As has already been discussed, copyright is an entirely territorial law, and therefore falls under the jurisdiction of the specific country in which a work originates. This has been a difficult issue to overcome, and one which is still ongoing. However, “[i]n the late 1990’s, there was broad agreement that the Internet’s challenge to government’s authority would diminish the nation-state’s relevance” (Goldsmith & Wu, 2006: 3). Because of the simplicity of the Internet at that time, Internet service providers (ISPs) and Internet hosts were unable to identify where in the world many of their users were from, and thus had little ability to control their actions in terms of copyright infringement due to each country having a different stance on what constitutes copyright theft (Goldsmith & Wu, 2006). Therefore, what has emerged due to the ubiquity of the Internet is the idea that the territorial laws governing copyright, need to be “supplemented, and eventually replaced, by global governmental institutions” (Goldsmith & Wu, 2006: 25). This has been achieved, in part, with the signing of the Berne Convention as mentioned previously in this chapter. However, what was seen to be a problem was the realisation, during this deliberation period, that “due to the widely varying ethical and legal standards among cultures, as well as [the] sharp differences between lesser developed and more developed countries” (Bowyer, 1996: 257), it would be difficult to determine which countries’ ideals, with respect to intellectual property, should become the global norm.

Two important advancements have been made since the mid-nineties which have somewhat eased this problem. Firstly, with the invention and introduction of *Google* came the technology to determine where in the world a user was from, in an attempt to directly market toward users’ individual niche tastes (Goldsmith & Wu,

2006). Therefore, Internet service providers and Internet hosts no longer had the excuse that they could not determine where a user was from, and so could not determine which law they should be following. Secondly, and possibly the most important advancement, was the introduction during the early 2000's of the Web 2.0 (Friedman, 2006). The Web 2.0 introduced users to a far more interactive and user-friendly Internet, in which users were able to send larger files far faster and more cheaply than ever before (Tapscott & Williams, 2005). The invention of fibre-optic cables, which have quickened the informational exchange when compared to the dial-up connections of the past, has allowed companies the opportunity to spread globally into untapped markets, collaborating easily from one continent to the next, quickly and efficiently (Tapscott & Williams, 2005). However, what is just as pertinent to this research, is that these technological advancements have also led to users actively producing and consuming their own digital content, which can be hosted online for other users to interact with at little or no cost at all, resulting in the rise of a somewhat unified global 'prosumer' culture (Marshall, 2004).

### **2.3 Online Culture and the Ethics of Mass Collaboration**

#### 2.3.1 The Rise of Postmodernity, Globalisation and the 'Prosumer' Culture

Within the last few decades, the Internet has evolved into a more user-friendly environment, and has, in so doing, propelled the rise of Internet usage by companies and individuals around the world (Friedman, 2006). The expansion of new media technology has given users an unsurpassed gateway to different world cultures, as well as the opportunity to communicate faster and more efficiently than was ever thought possible a few decades ago. It has always been an historical fact that cultures grow and change through interaction with one another; however, it has never seemed to move as quickly as it is doing during the current information age (Gupta & Ferguson, 1992; Castells, 2004). Due to this, many writers are indicating that the world is developing a type of hybrid culture, in which societies are adopting a more Westernised view of culture through the use of modern media technologies (Castells, 2004; Friedman, 2006; Flew & McElhinney, 2002).

According to Mark Poster (2008), hybridity has in large part been a result, firstly, of media being distributed globally, and its interaction with varying cultures around the world; the resultant media being a merger of local culture, and Western culture. Secondly, he argues that mass migrancy of people around the globe has also played a large role toward influencing the way in which traditional cultures are being formulated. He explains that “contemporary migrants maintain multiple, partial commitments to their adopted location but also to the land of their origins” (Poster, 2008: 697), and one of the most pertinent ways in which migrants are able to do this, are through the systems of new media. This is further supported by Gupta and Ferguson (1992: 10), who describe that the increasing diaspora of cultures, and the mass movement of populations, can no longer be mapped by geographical boundaries because these attempts “are bewildered by a dazzling array of postcolonial simulacra”. Consequently, this combined with globalisation, stops cultural products and practices from cementing themselves in one specific territory, erasing any true forms of geographically territorial roots or places (Gupta & Ferguson, 1992).

As Flew & McElhinney (2002: 304) have also stipulated, globalisation has occurred for a number of reasons, including:

- the rise of Internet-based electronic commerce;
- international communication flows, delivered through telecommunications, information and media technologies such as broadband cable, satellite and the Internet, which facilitate transnational circulation of commodities, texts, images and artefacts;
- the global circulation of ideas, ideologies and ‘keywords’, such as the so-called export of ‘Western values’, democratic aspirations or environmental consciousness; and
- the establishment of international regimes in intellectual property which entrench the enforceability of ownership of knowledge and information.

Therefore, one can conclude that a major factor contributing toward globalisation is the role played by media technologies. However, what has also resulted from the expansion of media technology and globalisation is the rise of the ‘prosumer’ culture (Marshall, 2004). It has already been stipulated that the Internet can be seen as a tool which is threatening the role of traditional laws of many nation-states. But one can also note that “global media are seen as playing [a part] in the cultural weakening of the bonds which tie people to nation-states” (Flew & McElhinney, 2002: 305). The borderless nature of the Internet, and the ability it offers users to transcend spatial and temporal limits, has helped to develop a culture of online users who are actively engaging in both the consumption and production of this technology (Marshall, 2004). As Tapscott and Williams put it, “this new generation of prosumers treats the world as a place for creation, not consumption” (2006: 127), indicating how media is no longer a one-way process, but an instrument to be manipulated and designed specifically by each individual user for each of their own unique online experiences. In doing so, the new emergent politics of global culture not only loosens its control of the nation-state as a cultural centre, but also assists in producing “more individualizing, multiple figures of the self” (Poster, 2008: 697).

Users now often take existing online media and adapt it to their own personal tastes and designs, thus becoming indicative of the complex nature of the postmodern self, in which individuals are seen to be layered, inventive, and active within their everyday practice (Poster, 2008). This was originally met with resistance from large corporations, who viewed this as a breach of intellectual property rights, but it has slowly become the norm for companies to offer products which can be customised by individual buyers (Tapscott & Williams, 2006). What results is that “people who stretch the limits of existing technology and often create their own product prototypes in the process – often develop modifications and extensions to products that will eventually appeal to mainstream markets” (Tapscott & Williams, 2006: 128). This type of development and culture, therefore, has large benefits for companies who gain valuable developmental ideas on products, without having to invest time or money in a product’s creation. This “deployment of new communication technologies offers new social movements [...] in particular through the radicalisation of production, to a degree not seen in previous manifestations of social-movement media” (Atton, 2007:

63). What can be noted is the progression of a global social movement toward the collaboration and distribution of knowledge and creativity, rather than the strict control and limitation of ideas that has occurred in terms of intellectual property rights protection of the past. As Atton suggests, it is “these initiatives, in their intertwining and redefining of media forms, in their blurring of creator, producer and distributor, [which have resulted in the] hybridised forms of media production particularly well suited to the multimedia possibilities of the Internet and the World Wide Web” (2007: 65).

Importantly, it is the culture of ‘prosumers’ which are challenging the old assumption that “information must move from credentialed producers to passive consumers” (Tapscott & Williams, 2006: 146). Online users have redefined the meaning of an active audience, with users no longer being limited merely to consume and react, waiting for producers to change media to those reactions. What one is seeing in today’s online media landscape are users who actively change what they do not like about media to suit their own preferences; users *are* becoming the media (Tapscott & Williams, 2006).

### 2.3.2 Postmodern Identity

Throughout the course of the 20<sup>th</sup> century, society has continually been developing and evolving into a more visually aware culture. Beginning with the development of photography, which allowed the working class population the opportunity to actively construct the identity they wished to portray to larger society, one could see the slow emergence of this visual culture (Swanepoel, 2005). With each new development within the media, new practices of representation have emerged, and so too have the ways in which one creates their identity. Today the Internet offers a revolutionary way of creating identity, least of which is the opportunity to play with and construct not only one, but an endless multitude of identities.

Initially the Internet was characterised by user anonymity, an aspect which led to extensive research being conducted in order to establish and understand the role that this played within the formation of online identity. As Nancy Baym puts it: “the

reduction of physical appearance cues [...] opens the potential for a multiplicity of identities, a high degree of privacy, and a lower sense of social risk” (2002: 64); subsequently users felt more comfortable expressing various aspects of themselves online, due to the anonymity which was offered by the Internet. But with the advent of a more visual Internet and a greater number of users using it to further offline social relationships through social networking sites, such as *YouTube* and *Facebook*, much of the anonymity associated with user identification has fallen away. However, this type of identity formation has paved the way for an “increasingly rapid pace of social structure and cultural change [in] which it becomes increasingly difficult to construct stable identities” (Levine, 2005: 175).

Manuell Castells defines identity as the process of internalising and making meaning from the roles that we play within society. Every person in society plays a number of roles which help to order the function of each individual within different social situations (Castells, 2004); however, it is only when a person internalises a role in order to make meaning of it, does it become an aspect of their identity. This implies that whilst individuals are required to act out a specific role within certain social situations, it does not reflect upon a person’s identity unless they feel that it is a part of what defines them, and ultimately that they internalise that role into their being. However, with this said, it is also important to recognise that no identity is fixed, and it is constantly changing based on a person’s interactions within different social circles. As Charles Levine (2005) indicates, identity formation is an on-going, life-long process which is always in a state of flux, continually being constructed, broken down, and re-constructed.

Due to this constant state of fluidity, identities are thought not only to change, continuously adapting, but that also due to the multitude of roles that must be navigated, multiple identities have started to emerge in order to adapt. As such, one can note that “the task of acquiring and maintaining coherent identities has become increasingly difficult” (Levine, 2005: 175). Zymaut Bauman (2004: 15) speculates that because of this, identity needs to be thought of “as something to be invented rather than discovered”. Not only do individuals construct identities based on different social situations, but also on different cultural attributes (Castells, 1996; Levine, 2005). Therefore, this recognises that one cannot only look at how identities

are personally invented, but simultaneously how they are socially determined as well. Identity is therefore the internalisation of social roles that help to make sense about a person's place in the world, based on their personal cultural ideas, as well as the those ideals which are deemed important by society. Because society and culture change continually over time, individuals have become "forced to twist and mould [their] identities" (Bauman, 2004: 90) in order to make sense of their place in the world.

In the early 1990s, Internet users began utilising the virtual space of the online as an arena in which to create alternate social networks known as Multi-User Domains (MUDs). MUDs allowed users the opportunity to create their own unique identities with which to interact online due to the lack of physical presence (Turkle, 1995). During this period, the Internet was primarily text-based and users were required to create identities through language and without any form of visual cues (Baym, 2002). It has been determined, by theorists such as Sherry Turkle, that individuals began creating different identities within the online world as a way in which to create meaning and find a distinct place for themselves within this landscape (1995). It is also possibly to associate the formation of identity online as a way in which to "experiment with other parts of ourselves, take risks or express aspects of our self that we find impossible to live out" (Lister et al, 2003: 167) in the offline world. However, the MUDs of the past have also been linked to assisting in the preservation and strengthening of identity (Castells, 1996). This has stemmed from the belief, as already mentioned, that identity is no longer a stable entity with clear-cut boundaries created by the individual, but instead is an ever-changing aspect of oneself controlled by the commodification of society. Mark Poster acknowledges that "the virtual invokes the ethical duty to maintain one's identity" (2006: 153) and so online identity is assumed as a way in which to gain back some control over the creation of one's identity.

Within a postmodern context, identity is seen as highly fragmented due to the many roles that individuals assume within the many social and cultural forms of today's society. The variety of social and cultural forms that individuals are confronted with seems to have stemmed largely from globalisation. As a variety of cultures and societies are brought together through telecommunications, media, and trade, so people are engulfed and more regularly involved with cultures and societies

that, in the past, they would normally not have been aware of (Marshall, 2004). This has contributed to the fragmentation of identities as individuals try to find a place in this highly global society and in so doing create a number of identities on order to adapt and make meaning of their place within it.

In conjunction with globalisation, the commodification of culture must also be looked at in terms of the postmodern society. Frederic Jameson (1991) identified that within the postmodern context, identity is no longer made up of a coherent historical process whereby an individual uses their past social knowledge to affect their present and build their future. Instead, within a postmodern society one experiences the commodification of the historical in order to shape society and an individual's thinking of a specific time. In other words, people are influenced in terms of specific temporal aspects of culture based on the way in which it is commodified and marketed; consequently, people are no longer seen to construct their identity around a coherent past, but rather from a commodification of aspects from a variety of times. As such, Jameson describes that identity formation within the new postmodern social context no longer depends on the traditional, and historical formulation of society through "the omnipresence of class struggle" (1991: 190), but instead one is required "to seek History by way of our own pop images and simulacra" (1991: 193).

Firstly, this concept highlights why identity within postmodernity is fragmented, as it forces one to "share marginalised relational, rather than either taken-for-granted or merely given identities" (Zelevich, 2004: 80), whereby one's identity was established based on one's birth within the social hierarchy. Secondly, it draws attention to the notion that identity is now, more than ever, established "in relation to otherness actualized in persons and culture in the sacred time of existence" (Zelevich, 2004: 79). In other words, identity is that which organises one's relations to the social world. As such, Zelevich (2004: 193) explains that the shift in the way identity is formulated has marked the "end of the distinctive individual brush stroke" as individuals are required to internalise a variety of "norms" which help to justify the current social landscape.



### 2.3.3 The Public Sphere and Mass Collaboration

Many have proclaimed that the Internet is the new public sphere, because it gives users the opportunity to interact within “an open forum in which ideas can generally be communicated freely and easily” (Tavani, 2004: 289). The Internet has been built upon the presumption that it is an environment that embodies “the principles of free speech, individualism, equality, and open access” (Jankowski, 2002: 39). Therefore, the Internet can be seen as the foundation that has assisted in the emergence of a multitude of online communities. These communities group like-minded individuals together in an attempt to collaborate and share information that they deem to be important, and, “as a result of [these] technological developments [...] contemporary life is a swirling sea of social relations (Gergen, 1997: 138).

Drawing on the theories of Jürgen Habermas, Marshall highlights that the public sphere was first visualised as the “conceptualization of sites for the development of a public discussion” (2004: 52), in which bourgeois society could debate and discuss various issues concerning public interest. Neo-liberal political philosophy argues that the Internet “has found a comfortable berth in an intellectual stream of postmodern thought that denies the possibility of an institutionalised representation of common or collective interests” (Gandy, 2002: 449), thus indicating that the Internet is a completely open forum for individual creativity which cannot be cordoned off by the traditional controlling forces of society. Therefore, it can be argued that what has resulted from the introduction of the Internet, is a much purer form of the public sphere, and one which ultimately captures Habermas’ vision of an idealised public sphere which was “thought to be a fundamental resource for the evolution and growth of democracy” (Gandy, 2002: 449). Consequently, what can be noted is that emerging Internet culture is a highly discursive and interactive environment which “is valued for its role in the development of public will and its expression [of] public opinion” (Gandy, 2002: 449).

This idea is further supported by many non-democratic, foreign governments investing millions into surveillance, and limiting what many of their citizens are able to access (Friedman, 2006). China is just one of many countries which monitor, and restrict, both the content used and the content produced by Internet users within their

borders. In 2002, the Chinese government arrested Liu Di, a university student, for hosting a website which criticised the fundamental workings of the Chinese state. When other Chinese users protested her arrest, the Chinese government swiftly arrested a further five people. She was charged with promoting material detrimental to state security, forced to serve a year prison sentence, and is now subject to a life of constant surveillance with no opportunity to leave the city of Beijing (Goldsmith & Wu, 2006). While this case demonstrates the power that governments can have over users' interactions online, it more importantly indicates that users have the ability to freely and openly discuss, and criticise the society in which they reside. Governments are fearful because not only do they face the possibility of the decline of the nation state, but also a decline in the laws which keep the nation state intact, and as has been discussed previously, is resulting in the "emergence of a new form of 'global citizenship'" (Gandy, 2002: 450). However, the idea of a new, almost utopian public sphere can be seen as somewhat problematic. Gandy highlights that "the movement into what we refer to as an information age has also been shaped in large part by the transformation of information into a commodity" (2002: 450).

In the past, the public sphere was seen as an environment in which the citizen was able critically to discuss society, while in conjunction with the idea that information has become a commodity, critics have indicated that the problem with the Internet and new media in general, is that it is "widening the distinction between the citizen and the consumer" (Gandy, 2002: 448). The Internet cannot be deemed the ideal new public sphere because one cannot gauge users as citizens, but rather as consumers: as previously mentioned, Internet users have become both producers and consumers of digital content. The work of Jean Baudrillard has highlighted the idea of the hyper-real, in which an environment becomes "a play of illusions and phantasms" (1988: 169). It is the idea of a hyper-real atmosphere that has inspired writers such as Gandy to describe the Internet as a public sphere which "[shifts] away from engagement with serious topics toward an emphasis on sensationalism and escapist fare" (2002: 452). Thus the Internet becomes a contentious arena, in which one finds it difficult to separate the concerned citizen aiming to better society, and the consumer who seeks reward for the skill and creativity which guides them through the never-ending hyper-links of the online world, consequently observing that "the division between the realm governed by citizens or members of society and the realms

governed by consumers in markets is widened by the wedge of information technology” (Gandy, 2002: 450).

Apart from the difficulty arising in distinguishing between the citizen and the consumer, one is also faced with the reality that the Internet encourages users to create their own unique digital experience (Tavani, 2004). If one was not faced with the reality that users have become consumers rather than critical citizens, another issue that questions the validity of equating the Internet as the new public sphere, arises from the fact that users actively choose what they wish to engage in. Rather than be faced with new and alternate social views which could broaden users’ understanding, most would rather create an online environment which reinforces and confirms their existing prejudices (Tavani, 2004). No user has to engage or acknowledge any viewpoint that does not match their own; and so one could argue that instead of creating the idealised public sphere that Habermas first envisioned as originating in the late 18<sup>th</sup> century, in which individual citizens discussed a variety of social issues openly and freely, the Internet is actually creating a somewhat closed-minded culture in which users only engage with other like-minded individuals.

However, whilst this may seem to be true to some extent, one must also be aware that through the combination of like-minded individuals, one has the opportunity to create, discuss, and continue to develop those areas which interest them (Gandy, 2002). Importantly, the participation within these groups “involves reference to personal experience, and discussions involve the reformation and interpretation of information provided by traditional mainstream media” (Gandy, 2002: 455). Therefore, one’s interaction within these groupings assists in the sharing and collaboration of individual knowledge, which has been acquired through traditional media forms as a way in which to further understanding of various issues, resulting in the mobilisation of a social collective which “will come together to build a new global public sphere” (Gandy, 2002: 458).

Apart from building a new public sphere, this interaction can also be viewed as creating a new type of social culture. Within the last century, the visual image has dominated our views regarding society, ranging from the saturation of advertising, magazines, movies, television, and the Internet. As such, Rosemary Coombe (1998:

50) has argued that society's collective sense of reality "owes as much to the media as it does to the direct observation of events and natural phenomena". As such, this supports aspects of postmodern culture, in which the plethora of mass-mediated imagery assists in creating a culture not confined by geographical communities, but instead by an ever-expanding world of signs and symbols which only have meaning within the globalised spectrum of the online public sphere (Coombe, 1998).

#### 2.3.4 The Political Economy versus the Knowledge Economy:

##### Who is In Control?

One of the most pertinent areas of discussion that has emerged since the advent of the Web 2.0, is that it has the ability to undermine traditional institutions of power, through its user-friendly and continually expansive interactive features (Webster, 2002; Stein & Sinha, 2002; Verhulst, 2002; Goldsmith & Wu, 2006). There are growing fears among critics of the Internet, that because of these qualities, traditional power relations will be eroded in favour of an anarchist cyber-world, in which users will fervently dismiss those laws which have helped to protect intellectual authors for the past few centuries. Stefan Verhulst describes how "the locus of power has shifted from the service or content provider to the user, creating a many-to-many communications environment" (2002: 435). In addition to this, the seemingly borderless nature of the Internet is making it increasingly difficult for governments to govern and protect those areas of law dealing with intellectual copyright. However, there are a number of arguments which contradict this statement, and it is necessary to explore what, if anything, has changed in terms of intellectual property control online, when compared to its control within the analogous world prior to the Net.

During the early part of the twentieth century, Edwin Howard Armstrong invented one of the most fundamental tools in radio broadcasting, that of FM radio. At the time, he was employed by the Radio Corporation of America (RCA), which was the main powerhouse company behind the then dominant form of AM radio. Armstrong was commissioned to invent something that would help remove the static of AM and create a more clarified listening-experience; instead, he developed FM, which utilised a far broader frequency spectrum than afforded by AM. As a result, the RCA viewed his invention as a threat to their dominance within the broadcasting

market and the president of the corporation, David Sarnoff, tried to curtail the introduction of FM because, as Lessig (2004: 5) notes, if FM was “allowed to develop unrestrained, [it] posed a complete reordering of radio power and the eventual overthrow of the carefully restricted AM system on which [the] RCA had grown to power”. Unfortunately for Armstrong, most of the world were distracted by World War II and did not notice the way in which the RCA worked with the Federal Communications Commission (FCC) to “assign spectrum in a way that would castrate FM” (Lessig, 2004: 5).

One of the ways in which this was achieved was by restricting FM radio producers the right to transmit signal between different parts of the country. This endeavour was further supported by the American Telephone and Telegraph Company (AT&T) which benefited from the loss of radio relaying FM stations as FM broadcasters were now required to buy wired links from AT&T to maintain their transmissions. All of these factors helped to curb the expansion of FM radio for a number of years, and as a result, Armstrong was never able to defend his patent for the technology, and ultimately never rewarded for his work – he committed suicide after being offered a settlement which did not even cover his legal fees in his patent quest (Lessig, 2004). This example demonstrates that intellectual property, whilst theoretically designed to protect creators, is often at the mercy of those who are dominant players within society. The individual creation of intellectual property is often not rewarded or protected unless it is seen as propagating some form of advantage for those already in power. That which challenges the *status quo* of financial powerhouses is often stunted and undermined in an attempt for dominant forces to maintain their superiority. However, as previously mentioned, many critics claim that the Internet gives creators the opportunity to by-pass this control, and for the first time one is able to challenge the established norms of the traditional *status quo*.

This raises two important issues which need to be examined. Firstly, one must explore the concerns that a borderless world raises, and secondly, whether the knowledge economy of the Internet is really relinquishing power to the common user. As has been mentioned previously, copyright is a territorial law which is controlled by each individual nation state, and as Andrés González has indicated, places nation-state

governments in the precarious position of “putting a leash on the chaotic and anarchic nature of cyberspace” (2007: 1298). This seems to negate the idea of the Internet becoming a new form of the public sphere, open to the free distribution of knowledge and ideas. Governments around the world have attempted a mass clamp-down on the exchange of intellectual property online, even striking deals with search engines such as *Google* to block specific links which lead users to sites which could be viewed as harmful to the protection of copyright (Goldsmith & Wu, 2006). A recent example of this, is the blocking a number of custom search functions which have been utilised by torrent tracker sites (Masnick, 2009). These sites assist users in finding torrents: files which have been split into a number of pieces over a number of servers, in order to break large files into smaller ones, helping to decrease download times. Users then use torrent software to interpret these smaller pieces of data, putting them back together and making up a coherent whole file. This is especially useful for those users who wish to download movies or games which often take hours to download due to their sheer size. However, torrent technology breaks these files into smaller, more manageable files, which take mere minutes to download and re-structure back into full movies and games; therefore making the process of sharing this information far quicker than would generally occur without the introduction of torrent software. By preventing users from finding these sites, *Google* has taken a step toward assisting copyright authorities stop mass illegal sharing and downloading.

However, one of the most difficult battles that governments have been faced with is the rise of peer-to-peer sharing networks, whereby users share various media forms found within their personal hard drives within virtual online platforms. This is done by “indexing sites [informing] sharers of what is available, [then] client programs search the hard disks of other users to obtain copies” (Poster, 2008: 693), thus allowing users to share information peer-to-peer. The most famous of these networks was *Napster*, which found notoriety in the late nineties amongst record labels (Vaidhyathan, 2001; Friedman, 2006; Goldsmith & Wu, 2006; Tehranian, 2007). Shawn Fanning revolutionised the way in which users could share information with the design of his peer-to-peer sharing programme known as *Napster*. This programme allowed users to search, and copy media files from the hard drives of other users who had also downloaded the *Napster* programme, creating a network of consensual mass file-sharing (Tapscott & Williams, 2005). Sharing, and copying

music has always been a common occurrence; however, this network, most popular with university and high school students, allowed an easier way for music to be shared with one another, on a much larger scale, and without actually having to buy anything. Record labels and copyright enforcers saw this not as a revolutionary way of sharing knowledge, as many Internet enthusiasts did, but instead as a mass act of piracy, which could lead to the mass downfall of the music industry (Vaidhyanathan, 2001; Goldsmith & Wu, 2006). After all, why would one pay for music if it was possible to download and share it free of charge online?

This led to mass legal action in the late nineties, by record labels and various copyright authorities, to shut down file-sharing sites, and prosecute those users who actively participated on these sites (Goldsmith & Wu, 2006). After all, artists were protected by copyright to ensure that they were sufficiently rewarded for their works, and protected “against those who would steal the fruits of their efforts” (Rønning et al, 2006: 6). However, critics of this approach, argue that the original ideals regulating copyright protection have been eroded (Rønning et al, 2006; Woker, 2006; Goldsmith & Wu, 2006; González, 2007). Copyright, as with any regulatory regime, aims to “create a balance between the rights of creators and the needs of society to be able to develop both culturally and economically (Woker, 2006: 36); and if implemented correctly, copyright does achieve this. But because of the freedom which the Internet allows in the transmission and sharing of intellectual property, protectors of copyright have somewhat stifled those ideals of copyright which were implemented to create a balance between the rights of the public and creators (Rønning et al, 2006).

Originally, many thought that the empowerment that the Internet allows users, would shift the control of copyright from large institutions to that of the user (Verhulst, 2002); and the seeming panic that emerged among copyright authorities with the introduction of file-sharing programmes such as *Napster*, and the quick action taken to shut these services down, assisted in validating these views. However, recent study has shown that this is not the case. Quite the opposite in fact has emerged within Internet technology (Wirtén, 2004; Pistorius, 2006; González, 2007). Artists, publishers, and intellectual property authorities are making it more and more difficult for the common public to access and share copyrighted works illegally in digital

format. Apart from prosecuting and shutting down any sites that are found to contain or distribute copyrighted works illegally, publishers and record labels began to install 'locks' on much of the digital content that they produced. These 'locks' were able to monitor and limit what users did with the various copyrighted works that they bought (Goldsmith & Wu, 2006). One such product is the *Apple I-Pod* which is locked to recognise and play only a specific music file type, a file type which is only compatible with the *I-Pod* itself. Therefore, users who do not buy legitimate music from *Apple's I-Tunes'* download site, have to convert their MP3 files through a specialised *I-Tunes'* programme, which is able to monitor the sources of users' various MP3 files (Goldsmith & Wu, 2006).

Whilst this may seem unethical in terms of privacy laws, it is not unethical for *Apple* to restrict access to their products through encryption, as many consumers believe. Most users seem to be unaware that even when they buy specific media forms, they do not own that information, and therefore feel that they may share and re-distribute the material which they have bought (Woker, 2006). In reality, one is only buying the licence to view and use that information for private use:

A licence is the means whereby the owner can obtain remuneration by permitting another to use his or her rights. The extent of the licence's rights is stipulated in the licence agreement. The remuneration paid is usually in the form of a royalty and the licensor retains ownership of the copyright. This distinguishes licensing from assignment, where ownership in the right actually passes to another person.

(Woker, 2006: 42)

Therefore, owners of intellectual property have the right to know how their work is being distributed and used by consumers. Most users also do not regularly read the fine print of the terms and conditions which accompany online media, which often stipulates how users are entitled to use the digital information that they download (Goldsmith & Wu, 2006). Whilst this embodies two of the four cornerstones of copyright as defined by Pistorius (2006), this type of control seems to undermine the other two ideals of copyright, that of creating the incentive to create, and that which aims to advance the knowledge of culture. With the heavy control that



seems to encompass copyright, it becomes difficult for future creators to adapt the knowledge that they see in front of them into something new, many fearing prosecution for copyright infringement (Goldsmith & Wu, 2006).

### 2.3.5 The Right to Free Speech and Creativity

Ultimately, knowledge grows from the ideas of others and “is always built on and inconceivable without the prior work of numerous people” (Martin, 1995: 11). The primary principle from which copyright was constructed, is the perception that authors should be given a limited monopoly over their work before intellectual property fell into the public domain (Pistorius, 2006). This provided authors with an incentive to create further works, through the royalties gained during this monopolistic period, as well as ensure that the greater public would not be deprived of intellectual property over time. However, what seems to be emerging, as the technologies of the globalised economy grow, is a tighter control over the monopolistic period, and less consideration for the cultural development of society (Goldsmith & Wu, 2006).

There seems to be less acknowledgement that intellectual property is the result of an ever-growing process of learning and adapting; “we consume what we encounter, and it is logically untenable to assert that we are capable of distinguishing a particular idea-source from what lights up in our own minds” (Samuels, 2002: 358). Therefore, every idea that we have, has an origin within something that we have encountered in our own lives, and it becomes impossible to credit any idea with having its authentic and full origins within one’s own mind. However, the way in which modern law has been structured, maintains that authors are able to create complete original thoughts (a concept which will be discussed further in Chapter 4), and so these ideas should be acknowledged by others and rewarded as such, thus limiting the amount of knowledge that can be manipulated and adapted to form new forms of intellectual property (Samuels, 2002; Martin, 1995, Merret, 2002).

It would be more accurate to think of intellectual property as a constant cycle of learning and exchange of knowledge between different authors, rather than one holistically created work by one individual author (Samuels, 2002). This would assist

in the expansion of culture, by permitting users to utilise various forms of intellectual property to create something new, and perhaps improve upon that on which it is based. Robert Ostergard points out that “the right to property is granted based on maximising the benefits society can obtain” (1999: 156). Therefore, if one creates a complete monopoly over specific works, it limits the possibility of building onto existing knowledge, ultimately undermining the development of global culture and creativity.

Problematically, the rules of copyright “seem to change every few years, [remaining] a step behind the latest cultural or technological advances” (Vaidhyanathan, 2001: 3). This has become very evident with the advent of the Internet and digital media products. In terms of media production, one of the best ways in which the rules of copyright have been flaunted, is the practice of sampling (Vaidhyanathan, 2001). This practice began in the early nineties when rap musicians would lift samples of other artists’ music “to weave new montages of sound” (Vaidhyanathan, 2001: 3), seemingly embodying the idea of utilising existing knowledge to adapt and build intellectual property. However, copyright authorities labelled these creations as stolen ideas, from which rap artists were financially benefiting, eventually shutting down this practice with the help of the American Constitutional Court (Vaidhyanathan, 2001).

This furthers the point that copyright has become more the property of corporations, than that of the public for which it was originally intended, because as it seems in the modern world “the law has lost sight of its original charge: to encourage creativity, science and democracy, [and instead] rewards works already created and limits works yet to be created” (Vaidhyanathan, 2001: 4). However, through the “intertwining and redefining of media forms, in their blurring of creator, producer and distributor” (Atton, 2007: 65), the Web 2.0 has allowed users the opportunity to re-introduce the art of sampling in a new way, known as digital mashing. Whilst sampling of the early nineties focussed on the combination of various music samples, mashing is the collaboration of both visual and aural media samples, highlighting the vast amount of hybridisation and convergence that has become the norm through the varying interactive qualities offered by the Internet and online culture (Atton, 2007). However, the key difference between these two art forms, is that unlike samplers of

the early nineties, mashers do not usually look to profit from their creations; instead it is seen as a purely creative outlet (Goldsmith & Wu, 2006).

Generally, “groups that are stigmatised or that lack power seldom have their viewpoints presented” (Martin, 1995: 13), but the Internet allows these groups, along with everyone else, the opportunity to air their specific viewpoints, and mashing offers an unsurpassed opportunity to air the creative ideas of the individual. Digital mashing is a relatively new innovation, whereby individuals take various video and audio files, and combine different parts of each format to formulate a new video. Initially, individuals concentrated on cutting music videos together, often using the base line from one video, the lyrics of another, and a combination of the visuals, to make up their own, new style of video. However, Internet users are no longer limiting themselves to creating distinct music videos, but are now also manipulating movie images, television programmes, and other digital images. Research has shown that there are a number of reasons why users of digital media are engaging with existing media to create these works. Aufderheide and Jaszi (2008) have indicated that users look to pay homage to various media forms, which resonate on a personal level. As Coombe indicates, the experience of “social reality is a constellation of cultural structures that we ourselves construct and transform” (1998: 44), and as such, social spaces such as *YouTube* play a vital role in helping users create new avenues through which to interact with the postmodern culture. This is further supported by the work Aufderheide and Jaszi (2008), who have found that many users are mashing media together in order to create satirical critiques of both the media itself, and various social issues, ranging from governmental policies to popular culture.

However, this has led to an outcry from copyright authorities that Internet users are infringing upon copyright laws, as occurred when sampling came to the forefront of media production during the early nineties, but because most users are not looking to profit from these creations, it raises questions concerning freedom of speech (Goldsmith & Wu, 2006). Martin describes copyright as “one technique used to keep information away from the public” (1995: 9), and argues that the concerted effort to stop users using various copyrighted works for non-profit purposes demonstrates that authorities are more concerned with maintaining control of information than protecting the interests of the authors of intellectual property

(Alfino, 1991; Templeton, n.d). However, this is not without controversy. As Goldsmith and Wu (2006) have quite rightly indicated, the concept of free speech is a wholly Western ideology, and one which does not correlate with many other cultures globally. Consequently, this leads one not only to question the laws and regulations which govern users' online practices, but also to question if the implementation of these laws is creating an imperialistic culture of Western ideals, rather than a global partnership of cultures.

## **Chapter 3 – Defining Copyright Law:**

### **3.1 Introduction**

The previous chapter introduced both the history and a number of ideas concerning copyright within the online realm. The purpose of this chapter is not only to expand on these writings, but also to create the primary legal theoretical framework in which to formulate the main argument for this dissertation. The primary concepts of intellectual property and copyright laws have already been introduced. This chapter furthers this discussion, and explains the most relevant sections of these laws with regards to the case studies to be used in subsequent chapters of this research. Contained within the first sub-section, one will be introduced to the South African Copyright Act and the sub-sections within this Act which focus on the laws regulating sound recordings, cinematography, and computer programmes. Secondly, these will be juxtaposed against similar laws taken from Title 17 of the United States Code, highlighting the most palpable differences between the laws. Thirdly, this section will conclude with a discussion of the Berne Convention, an international treaty ( which both South Africa and the United States have signed) citing the international policies on the protection of copyright abroad, as well as determining the role that the World Intellectual Property Organisation (WIPO) plays in the implementation of these policies.

### **3.2 The South African Copyright Act\***

Before one can engage in a discussion of the Copyright Act, it is first necessary to understand and grasp a number of definitions used within the Act, in an effort to relate them to the most fundamental issues of this dissertation. The most important terms in regard to this research include that of the author, cinematographic film, a computer program, the adaptation of copy, and the infringement of copy. Prior to determining if a site such as *YouTube* is infringing on the rights of intellectual authors, one first needs to verify what type of media is being broadcast and distributed. Because of the digital nature of the media present within the site, it needs

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\* All references in this section unless otherwise indicated refer to the South African Copyright Act 98 of 1978 – see <http://www.gpa.co.za/pdf/legislation/Copyright%20Act.pdf>

to be investigated whether *YouTube* videos are classified as films or computer programs. Only once this has been determined, will it be possible to discuss what type of infringement, if any, is taking place.

In accordance with the Copyright Act of South Africa (1978), a cinematographic film is defined as:

any fixation or storage by any means whatsoever on film or any other material of data, signals or a sequence of images capable, when used in conjunction with any other material, electronic or other device, of being seen as a moving picture and of reproduction, and includes the sounds embodied in a soundtrack associated with the film, but shall not include a computer program.

This definition is clearly problematic because before one can judge if a user is infringing on the creative rights of filmmakers in terms of cinematography online, what constitutes a computer program needs to be established, considering that it is cited as being significantly different from a cinematographic film. However, the definition of a computer program is highly ambiguous because it refers to any form of online activity as a:

“set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result.”

Therefore, within the interactive Web 2.0 of the current online realm, every action taken by a user which results in an output of some type could be seen as a computer program, resulting in a distinctive blur between that which is an actual intellectual work and that which is a due process of interaction. Consequently, this dissertation will need to take this into consideration and examine each example as a specific individual case, rather than to group all *YouTube* creations as the same.

More problems arise if one considers that when examining film in the context of copyright, the author is seen as “the person by whom the arrangements for the making of the film were made”, thus generally seen as the producer or production house. However, in the context of any material that is made through computer

generation, the authorship is awarded to “the person by whom the arrangements necessary for the creation were undertaken”. While these definitions seem to be similar in terms of rewarding those who implemented the organisation of the work, digital design is unique because it usually only involves one individual in the production process with very little cost, unlike the hundreds contracted to work on a film. Problematically, once a film enters the digital realm to be manipulated by a user, it seems to become a grey area of authorship which makes it difficult to conclude where authorship rests.

However, whilst there are these discrepancies within these South African legal terms as to whom a work should be accredited with regard to digital works, the definition of infringement is far more comprehensible. As stipulated by the South African Copyright Act, an infringement of copyright occurs in both cinematography and computer programmes when a copy is made of either, without express prior consent from the author. And whilst digital mashing does not attempt to copy the work of another author explicitly, it does “borrow” significant portions to create something new. Importantly, this leads one to consider various general exceptions made within South African copyright law with regard to the reproduction of works. The Act states that reproductions are permitted, in terms of South African law, so long as the reproduction is not in direct conflict with “a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright”; therefore, if one chooses to utilise the work of another, it cannot be in direct competition or take away any of the benefits that such a work could create for the original author.

It is not only the manipulation and copying of work that can be seen as infringing on intellectual property rights. Technically, a work which uses the creations of another artist has to be seen in a public forum before one can propose copyright theft. In accordance with South African law and with regard to digital mashing, one can only be held accountable for their actions if that creation is broadcast publicly. With regard to the issues discussed within this dissertation, this too becomes problematic. This arises due to the confusion between publication of film in terms of broadcast, and the transmission of information through a diffusion service. A diffusion service is understood as “a telecommunication service of

transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public”, whereas a broadcast is “a telecommunication service of transmissions consisting of sounds, images, signs or signals which – (a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and (b) is intended for reception by the public or sections of the public, and includes the emitting of programme-carrying signals to a satellite”. Overall, publication and broadcast do not include transmission through a diffusion service; subsequently one could argue that digital mashers are not infringing on copyright within South Africa because they are not publishing or re-publishing the works of other artists, only transmitting information.

With regard to this dissertation, it is also important to acknowledge copyright protection in terms of moral rights, which guards an author’s work from being distorted, mutilated, or modified in any way which could damage their dignity or reputation. This clause ensures that the intellectual works of authors does not lose respectability, which could result in a loss of revenue. This is the main concern as termed by the Copyright Act of South Africa, as the primary reasoning for protecting one’s intellectual property. In terms of Section 27, which outlines all penalties and proceedings dealing with copyright infringement, it is the extent to which an author loses out financially, that determines the extent of infringement; therefore, South African law is primarily concerned with protecting the economic welfare of authors.

### **3.3 Copyright Law of the United States – Title 17 of the US Code\***

Whilst the definitions regarding computer programs and film are relatively similar to that of the South African Copyright Act, one of the most notable differences between the United States and South Africa is that the United States considers the collection and assembling of pre-existing intellectual property into a cohesive whole as an original work of authorship, a clause which South African law ignores. This section of law acknowledges that in certain instances, authors will use and build on the works of others to compile variants of intellectual property, ultimately creating

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\* All references in this section unless otherwise indicated refer to Circular 92 – Copyright Law of the United States Title 17 of the US Code – see <http://www.copyright.gov/title17/circ92.pdf>



what can be deemed an original work in itself. In addition to the idea of compilations, Title 17 also serves to protect derivative works, which are deemed to be artistic creations “based upon one or more pre-existing works [...] in which a work may be recast, transformed or adapted.” Yet, as these definitions stand, compilations and derivative works do not “extend to any part of the work in which such material has been used unlawfully”; therefore, before artists can change or manipulate older creations to create their own formulations and adaptations, they are required, as per any other use of copyrighted material, to gain permission from the original author or they lose the right to protection over their newer formulation of creativity.

Apart from this aspect, American law, unlike South African law which distinguishes the difference between publication and transmission, regards any display or performance of work as a form of publication. It does not separate the ways in which a work is communicated, and the publication of an artistic creation is conveyed “by means of any device or process” to the public, regardless of the medium. Therefore, those users bound by American law cannot manipulate or build on older intellectual works and display them publicly within a forum such as *YouTube*, without gaining express prior consent from the original author, in fear of infringing upon copyright laws.

However, one of the most important exception clauses, which falls under American copyright law, states that any modification to a work of visual art is permitted if that newer modification is seen as being part of the “inherent nature of the materials”. One could therefore argue that within the Web 2.0, interactivity and continual user adaptations of online material forms part of the inherent nature of online user behaviour, and so the manipulation of visual art online is the most natural way in which to expand and grow user creativity. Yet a problem arises if one considers that not all material found online was initially formulated within the online realm, but rather within the scopes of cinematography and sound recordings.

While each of these clauses are very important in determining if one is infringing on copyright law, one of the most important dilemmas that arises within Title 17 regarding the protection of copyright, is the description of what constitutes a criminal copyright offence. Problematically, the law stipulates that one can only be

found guilty of criminal infringement if either one of two criteria is filled. Firstly, a person can be held liable for criminal prosecution if the purpose of their act was to gain “commercial advantage or private financial gain”, or secondly, if the reproduction or distribution of material has amounted to the equivalent of one thousand dollars or more in retail loss within a 180 day time period. Under this section, it becomes clear that the protection of copyright hinges primarily on the economic control of production, because if neither of these criteria are met, the only viable action courts can take is to impose an injunction, preventing further distribution or publication of this material. Therefore, unless one financially benefits, or prevents the original author from making a profit, there is very little incentive to ward off copyright infringement in terms of American copyright law.

Apart from the minor penalty of an injunction against further reproduction and distribution, American law is not very restrictive in terms of imposing this injunction. According to Section 502 (b) of Title 17, any injunction served by an American court can only be enforced within the borders of the United States. Therefore, users can only be found in contempt of the court’s ruling if they ignore the injunction against them whilst in the United States, and consequently it does not prevent them from distributing and reproducing content elsewhere in the world. It is this issue which has led many countries worldwide to sign international copyright and intellectual property agreements and treaties, in an effort to combat this type of activity.

### **3.4 The Role of International Policy in Copyright Law**

As has been discussed in Chapter 2, copyright law is difficult to protect on an international scale due to its territorial nature. Possibly one of the biggest dilemmas facing copyright in terms of the Internet, is that as a network connected to many other networks, it is never “terminated by frontiers” (van Dijk, 2006: 128), consequently leaving the jurisdiction for the prosecution of offenders indeterminate. As already stipulated, the laws of most countries are often only concerned with infringement that occurs within their borders, and subsequently both the United States and South African Copyright Acts are very restrictive in terms of punishing copyright infringers on a global scale. Apart from this, current laws have often had difficulty grasping the notion that online behaviour is often a mixture of both the public and the private,

resulting in “solutions that not only control but also help online actions to move in the [wrong] direction” (van Dijk, 2006: 127). These dilemmas have resulted in both countries signing various international treaties, which aim to develop international policy, rather than creating new laws which become outdated abruptly and constantly. One of the most important treaties that the United States and South Africa have signed is the Berne Convention, and both countries have in recent times also become members of the World Intellectual Property Organisation (WIPO).

The Berne Convention is considered to be the most important international treaty with regard to copyright protection. It considers those countries which have agreed to sign the Convention, as members of a Union to protect the rights of authors to their artistic and literary works (Berne Convention, 1979), and as such, agree to adhere to the policies stipulated in a unified manner. In so doing, those within the Union agree that foreign authors are granted the same protection as national authors, and are given a minimum copyright term of the author’s life plus fifty years thereafter. However, in relation to cinematographic works, “countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making” (Berne Convention, 1971). This agreement also ensures that authors have the scope to protect their moral rights, even if they have transferred their economic rights. This ensures that an author is able “to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation” (Berne Convention, 1971). Furthermore, copyright comes into effect automatically once the requirements, as stipulated in the Convention, are met: hence “no formal procedures are required for registration” (D’Amato & Long, 1996). This often problematises the protection of film because there is “no obligation on a copyright owner to register the copyright” (Ibid). This makes it far more difficult to litigate against infringers because without registration, it becomes far more difficult to establish and claim authorship over a production.

The way in which this agreement is utilised, is monitored and administered by the World Intellectual Property Organisation (WIPO). WIPO, as an agency of the United Nations (UN), acts to promote the protection of intellectual property globally,

and is devoted to developing cooperation between developed and developing nations (WIPO, 2008). WIPO is responsible for the administration of various treaties and agreements, all of which fall into three varying categories: treaties that establish international protection, those that facilitate international protection, and those which establish classification systems for intellectual property and the procedures which aim to improve said systems. Under each of these sections fall hundreds of various treaties, which aim to improve intellectual property policy and law, but require continual international interpretation and negotiation to ensure that they uphold the basic premise of WIPO: to ensure that the knowledge economies of the 21<sup>st</sup> century shall be driven responsibly by intellectual property to benefit the welfare of humanity (WIPO, 2002).

The preamble of the WIPO agreement stipulates that the main ideals of the organisation aims “to contribute to better understanding and cooperation among states from their mutual benefit on the basis of respect for their sovereignty and equality; [aiming] to encourage creative activity, to promote the protection of intellectual property; [and aiming] to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions” (WIPO, 1967). However, as with any international agreement, that which is agreed upon has to be interpreted within the basic laws of a specific nation state. Subsequently, the member states of WIPO have to recognise and respect those decisions in which nation states do not adhere to the policies stipulated within the Berne Convention. Often this results from a conflict of interests between international policy and national law.

As van Dijk points out, “international regulation usually stops at general declarations and basic principles agreed upon by international institutions. No matter how important these declarations and principles are as an impetus to international legislation, they do not themselves have any real practical meaning” (2006: 128-129). Problematically, every country has built their laws upon varying “philosophical foundations” (D’Amato & Long, 1996) themselves based on the role played by a “nation’s culture and history [regarding] the protection of expression, ideas and invention” (Ibid). However, the territorial variability that this implies, proves why

there is such an imperative need for countries to adopt international legislation as a practical solution to the borderless realm of the Internet. Ultimately, a “separate jurisdiction is no longer adequate for integrated networks” (van Dijk, 2006: 129) like the Internet, because one cannot justify the viewpoint that one nation state’s ideas of intellectual property and copyright are of more value than those of any other. Whilst there is a need for territorial laws with which to govern the offline world, the online poses new and unique problems in the formulation of governance. Therefore, member states of an organisation such as WIPO, need to acknowledge that in a continually growing virtual global environment like the Internet, territorial laws have become somewhat obsolete.

The policies formulated under the Union of WIPO should accordingly carry more weight with regard to international protection and negotiation of intellectual property and copyright enforcement. Importantly, these treaties, and the WIPO agreement itself, should not attempt to instil the values of individual nation states, like that of individual laws, but rather aim to discuss and negotiate the varying ideologies and beliefs, with regard to copyright protection, of all the member nations. Whilst one cannot assume that there will be absolute agreement between member nations, the negotiation of these ideals will highlight the areas in which stricter policies should be implemented, and at times, where the protection of copyright can be relaxed to promote in the development of knowledge within developing nations. The only way in which this can be achieved is through negotiation and consultation between the various cultures, needs, and histories of individual nations with regard to knowledge dissemination. Importantly, a distinction needs to be made between claiming copyright control as a development tool, on the one hand, and as a reward for artistic creativity on the other. This distinction, moreover, can only be made once one has addressed the philosophical and ethical aspects of the control and implementation of copyright and the conceptualisation of intellectual property.

## **Chapter 4 – A Philosophical Approach to Intellectual Property:**

### **4.1 Introduction**

This chapter acts as the most pivotal philosophical and ethical theoretical component from which to trace conclusions for this dissertation. Drawing on the works of a number of theorists, this chapter aims initially to discuss the viability of claiming originality when looking to protect intellectual works via copyright. It explores the concept that all knowledge is built upon previous findings and works of older authors and creative artists, thus questioning the ethical and moral issues associated with limiting the availability of knowledge by means of monopolising creative exploits. Secondly, this chapter will discuss how monopolisation is of greater benefit for those looking for institutional control over creative works, rather than guaranteeing financial rewards for artists and protecting the individual creative mind.

This chapter will consequently explore the concept that copyright, as an ideal of Westernised thinking, is a way of ensuring the political and economic control of developed countries over developing nations. Furthermore, this chapter will explore how current Internet technology is beginning to challenge this control, and subsequently why institutions are fervently trying to undermine the basic premise of an interactive Web: freely and openly to exchange knowledge online. However, one cannot dismiss the notion that individual creativity should be rewarded in some way, thus this chapter explores varying types of intellectual property and their uses within global society, in an effort to distinguish between that which is needed to ensure development, and that which is wanted for entertainment.

Finally, this chapter concludes by looking at *YouTube* itself, and the rules and regulations which supposedly govern the behaviour of users. By establishing these norms, along with the ideas surrounding intellectual property and copyright proposed by the previous sub-sections, one should then be able to draw conclusions from the case studies, to be used later on, as to whether or not there is still a place for copyright within the online realm, or if sites such as *YouTube* are creating cultures of collective creativity and sharing with no need for the binding constraints of copyright protection.

## 4.2 Originality: Fact or Fiction?

All mankind is of one author, and is one volume, when one man dies, one chapter is not torn out of the book, but translated into a better language; and every chapter must be so translated

- John Donne

The Internet has evolved into the biggest social network ever known, and in so doing has created a home for the quick and effective exchange of knowledge. The way in which users utilise the Internet is continually changing, growing from basic written interaction of e-mails, to live video streaming and many other varieties of interactivity, aiding in communication. However, it is the underlying technology of the Internet which makes copyright holders resent the innovations of a networked world. As technology in the online realm becomes more and more interactive, so it increases the temptation and ease with which users are able to manipulate digital material (Akester, 2004). Therefore, copyright holders invest a great deal of time and money to ensure that their works are not used in any way that could deprive them of their right to protection.

However, the problem with this way of thinking is that if one investigates the principles behind copyright, one discovers that it “is a ‘right’ in no absolute sense; it is a government-granted monopoly on the use of creative results” (Lethem, 2007). Much emphasis in protecting intellectual property stems from the belief that copyright gives artists the freedom to develop wholly original thought. If one is rewarded for intellectual property, it then stands to reason that an artist will feel the security to develop further new and innovative ideas. Paul Saint-Amour highlights that originality is the pillar of intellectual property law, but that it in no way aims to protect the “ideas, procedures, processes, systems, methods of operation, concepts, principles, facts, discoveries, or pre-existent expression incorporated into the work” (2003: 2). Problematically, however, it is difficult to justify the notion of complete original thought, because ultimately, not only are all creative ideas inspired or influenced by those which preceded it, but knowledge is fragmentary, reduced to varying pieces of a much bigger puzzle, subsequently diluting the original work into a pool of collaboration (Capurro, 2000). This especially seems to be evident within the media landscape of the postmodern era, in which many genres and media styles have

emerged from what has been termed the *MTV* aesthetic, “characterized by the hallmarks of hybridity, multiplicity and fragmentation” (Bolter, 2006: 109).

Lisa Samuels indicates that “intellectual property is transhistorical” (2002: 358), building on the ideas and knowledge from the past. The human mind is continually adapting and assimilating that which it encounters, consequently creating a memory bank of intellectual property. These memories become so well embedded within the human psyche that often we are unaware from where creative inspiration derives. This type of memory has been termed *cryptomnesia*, which acknowledges the presence of a hidden, and unacknowledged memory; a collection of thoughts which is intrinsically part of any creative process (Lethem, 2007). If one considers the history of literature, it is somewhat impossible to consider that an author has never engaged with any other form of writing, and yet most authors would consider their creation as a wholly original piece of work. However, “all ideas are secondhand, consciously and unconsciously drawn from a million outside sources [...] there is not a rag of originality about them anywhere except the little discolouration they get from [an author’s] mental and moral caliber” (Lethem, 2007), and even that, according to Jonathan Lethem (2007), is a remnant of outside influence.

He also proposes that intellectual property is like language, and as such, should be considered as a vast commons, “altered by every contributor, [and] expanded by even the most passive user” (2007). Overall, the way in which a piece of work is interpreted is determined by each individual. Every person has a unique perspective on the meanings found within a creative work, and subsequently will build upon that idea in conjunction with that which is already embedded in their memory, because one’s understanding and interpretation of knowledge depends in part on the individual’s own prejudices and “on the knower’s frame of reference” (Capurro, 2000: 79). Therefore, one can note that the expansion of knowledge occurs through an author’s expression of that which they have encountered, and subconsciously incorporated into their thought patterns. Whilst the outcome of an author’s creative process may be a new piece of knowledge, it cannot be deemed as a fully original piece of work because one cannot justify the belief that creative thought is “conjured out of thin air, [or are] fruits of individual imaginations” (Hafstein, 2004: 308), but rather a reflection of that which preceded it. Just as the moon glorifies the



night sky, it only does so through the reflection of something far greater than itself; “a human being is not an isolated inquirer trying to reach others or the outside world from his or her encapsulated mind/brain, but is already sharing the world with others” (Capurro, 2000: 80).

Traditionally, knowledge has been understood as the “result of creation and innovation by a collective originator: the community” (Hafstein, 2004: 300). It has only been through the rise of industrialisation that intellectual property and knowledge have become overt commodifications of the individual. In order to investigate the history of knowledge formation, one only needs to look at the abundance of indigenous knowledge developed within global oral cultures. Subsequently, one would discover that not only is it derived from “communal effort” (Oguamanam, 2004: 142), but that it has developed “in an incremental fashion” (Ibid: 143) from a history which is immemorial. It is precisely through this reasoning that Oguamanam is able to argue that knowledge is continually growing within “the public domain as [a] common heritage of mankind and ought to be freely available to all people” (2004: 143). Yet, this common heritage has become a site of contentious debate as authors and Western powers claim it as their own, aiming to reward the individual rather than the culture from which it was established. If one was to investigate the works of Oscar Wilde, it would become apparent that much of what he profited from was not original thought, but instead the transcription of traditional Irish folklore into printed copy (Saint-Amour, 2003). His example led to many more authors pilfering traditional works which Wilde himself never published, but had recited orally to others, thus assisting in the creation of “a community of plagiarists” (Saint-Amour, 2003: 96). Wilde’s open discussion of literary ideas and expressions united writers in what could be termed, under modern copyright law, as a culture of theft, but in reality, he had given authors an opportunity to relay and communicate ideas which otherwise may have disappeared from modern life. This way of thinking is something that should be considered further within today’s society of copyright enforcement, especially when considering one of the most contentious areas of copyright law, that of musical creation.

Whilst exploring the history of music, one would discover that “[b]lues and jazz musicians have long been enabled by a kind of ‘open-source’ culture, in which

pre-existing melodic fragments and larger musical frameworks are freely reworked” (Lethem, 2007). They themselves have acknowledged that “creativity is a social process” (Hafstein, 2004: 307) and that music can only grow through the adaptation and absorption of communal development; consequently strengthening the “idea-expression dichotomy” (Vaidhyathan, 2001: 15). Muddy Waters, described as one of the greatest blues artists of all time, has acknowledged that his own creations were influenced and built from old slave songs, as well as other blues musicians of the time (Vaidhyathan, 2001). Without frameworks to work from, and to incorporate into his own work, he would never have been able to create any of the music for which he is most famous. Some of his work was adapted by Elvis Presley to formulate the revolutionary and ‘original’ sounds of modern day rock ‘n roll (Wall, 2004). Ironically, it is the music of Elvis Presley that has become world-renowned by Western standards, deeming that his work is of more worth than that which preceded it, consequently deserving more stringent control in terms of its use and distribution.

It could be argued that the work of Presley does not infringe, or even detract from the older works it has derived from, based on the doctrine of fair use. It could be argued that this type of appropriation is transformative in nature, subsequently nullifying accusations of copyright theft. By transforming those works which have inspired or assisted in the creation of Presley’s works, many would argue in favour of a Lockean theory, which states that one should be rewarded creative rights, if they have added value to a work through individual labour (Tushnet, 2007). While this reasoning could be used to protect the credibility of an artist such as Presley, the law itself implies that it is the innovation of originality that is of the most value, ultimately proving through this example that intellectual property rights are no more than “capitalist creations, designed to serve the market economy and advance commercial interests” (Oguamanam, 2004: 145), rather than a reward for innovation. It becomes difficult to argue against the fact that the work of Presley is so ardently protected because of how successful an artist he was. Had he not become one of the most iconic figures of commodified music history, it is most likely that his work would have faded into the recesses of hidden memory. Yet some of his work, as previously mentioned, was crafted by Muddy Waters, who in turn took parts of other musical works to create pieces – pieces which have been sidelined by the ideals of Western copyright law to further the monopoly of record labels over the music industry,

ultimately proving that “Western intellectual property rights [are] essentially the practice of theft” (Oguamanam, 2004: 147).

This point is further emphasised if one considers that when up-and-coming rap artists, in the early nineties, lifted “samples of other people’s music to weave new montages of sound” (Vaidhyathan, 2001: 15) they were often met with contempt, and accusations of compromising copyright law. This was due to the fact that very few rap artists would pay or credit those from whom they copied. Yet, this type of activity was ultimately the foundation for the success of Elvis Presley and many other so-called pioneers of the rock ‘n roll culture in the 1950’s – the only difference being that the work of Presley and the like, were derived from the cultural collaboration of slave ancestry, and not the conglomerates of the recording industry, as with modern rap montages. However, as Jonathan Lethem indicates, “appropriation, mimicry, quotation, allusion, and sublimated collaboration consist of a kind of *sine qua non* of the creative act, cutting across all forms and genres in the realm of cultural production” (2007).

Some may argue however, that it was legitimate for Presley to borrow the aspects of music that he did because it was derived from that which was in the public domain, just as many borrow aspects from famous literature whose copyrights have expired and fallen into the public domain. Based on this argument, it is reasonable to propose that the work of Presley and the like too should fall into the public domain to be used freely and openly by today’s new creative artists, and not monopolised by corporate powers. This therefore leads one to question if the ethics behind copyright law actually aim to benefit individual artists, or if it is instead a hegemonic manipulation of the human conscious by a powerful elite, in an effort to control culture.

### **4.3 Copyright: Corporate Control or Individual Growth?**

One of the primary pillar stones of copyright, as already mentioned in previous chapters, aims to allow authors a monopoly over their work in order to create an incentive for further creation. However, in order to guarantee that this monopoly does not limit the advancement of public knowledge, it is supposedly only granted for

a limited period of time. This ideally aims to reward creative practice without “overtaxing the collective” (Saint-Amour, 2003: 4), but problematically, in the modern era, this balance seems to be tilting toward undermining the collective in favour of the individual; and even then, one begins to question if it is really the individual who is being protected, or instead, the corporations of the global economy.

As stated by the Copyright Acts of both South Africa and the United States, as well as according to the Berne Convention, copyright should be held for fifty years after the death of the author before entering the public domain. However, in 1998, the United States introduced the Sonny Bono Copyright Extension Act, which allowed authors a further twenty years of protection after their death (Saint-Amour, 2003; Woker, 2006). This Act has coined the phrase “copyright creep”, implying that copyright is slowly becoming a permanent fixture within artistic creations, rather than one of limited time. Conveniently, the Extension Act coincided with the expiration of Disney’s copyright over Mickey Mouse, subsequently giving Disney another twenty years of control over their most famous cartoon (Saint-Amour, 2003). One cannot deny the example of “relentless corporate domination” (Wirtén, 2004: 100) that this renewal has allowed within the global knowledge economy. Ultimately, Disney is not wary of losing financial gain from the likes of Mickey Mouse falling into the public domain, but realistically, it is the fear of losing outright control of the cartoon image that they are attempting to curb. If Disney allowed the likes of Mickey Mouse to fall into the public domain, it is unlikely that they would see a massive decrease in their financial standings if one considers the abundance of media that they currently own and create; however, it would give their competitors the opportunity to utilise the character and create direct competition for the Disney corporation. Thus the introduction of the Extension Act has emphasised the monopolistic tendencies of Western capitalism which aims to curb open competition.

One may dismiss this as an entirely American issue, but, since corporations realised the potential of the Internet in the early nineties, American policy makers have continuously attempted to convince the World Intellectual Property Organisation (WIPO) signatories (unsuccessfully so far) to adopt policies which would hand over greater control to corporations with regard to copyright (Litman, 2001). Apart from this, one of the most telling issues facing ethics in regard to copyright, is that the

majority of lobbyists and senior staff with whom Congress have worked to draw up revisions to copyright laws, are directly related to and working with the music, publishing, film and computer industries (Ibid). The current copyright bills were only drawn up and submitted “after private stakeholders agreed with one another on their substantive provisions” (Litman, 2001: 71), ultimately indicating that it is the private interests of corporations, and not that of the individual artist, which current copyright law has been designed to protect. As Mark Poster (2008) has described, if the ideals of the nation-state prevail, American forms of copyright will dominate global institutions, and culture will become an ever-increasing commodified item. One can therefore conclude that copyright has evolved from its initial principles, to a new line of thinking, focussing more on controlling the consumption of creative works, rather than fostering an environment of incentive to produce (Litman, 2001; Templeton, n.d).

Vaidhyathan (2001) has outlined that the change in the interpretation of law has created an environment in which that which has already been created is rewarded, consequently limiting that which is still to be discovered and crafted. As corporations build greater barriers in terms of copyright protection, the result becomes alarmingly negative for public good. The shift in copyright protection that has emerged during the twentieth century has guaranteed that it is about protecting the “rights of the publisher first, authors second, and the public a distant third” (Vaidhyathan, 2001: 11), a contradiction which should not be ignored, if one considers that intellectual property protection was initially introduced during the 19<sup>th</sup> century, as a way in which authors were able to gain some form of autonomy from both patronage and publishers (Wirtén, 2004). Therefore, copyright protection is not enforced to protect authors, and create incentives for them to produce, but instead it has become “an incentive to bribe publishers to invest in finding authors” (Litman, 2001: 104). Only once a publisher has elected to invest in an author, does it become possible for authors to be financially rewarded for their work, and even then, they are not rewarded full financial gains; only a small portion of the profits are filtered down to them, whilst publishing corporations see both the greatest gains, as well as the right to control all distribution and reproductions.

Apart from this, when the US Constitution was drafted, James Madison was adamant that copyright should only be protected as an instrument for progress and learning, to promote an informed citizenry (Vaidhyathan, 2001). But what one can note, is that copyright has shifted away from promoting the development of knowledge, to a closed law, protecting those in control of global knowledge. A country like South Africa, which is plagued by the inequalities created during its turbulent history, should aim to fervently develop public knowledge in order to create an informed society; however, the reproduction of knowledge still aims to protect the informed far more than promoting its free exchange among its citizens. One such example are the complex structures surrounding the expropriation of intellectual capital and the political economy of academic publishing.

Helge Rønning indicates that “information needs to circulate easily in a liberal democratic polity in order to facilitate innovation” (2006: 25). And yet, what one notices whilst attempting to gain access to true developmental knowledge, based on research aimed to further the ideas of society, is a wall of capitalism, forcing one to pay exorbitant fees. Academic research is strictly controlled by publishers, thus only allowing the financially elite access to information. As Christopher Merrett (2006) points out, publishers worldwide look to make huge financial gains from research which is administered by institutions of higher learning. Many academics are forced to accept a once-off fee for their works, whilst simultaneously forfeiting their individual copyrights to journal publishers, in order to further their careers. Journal publishers then sell back these works to tertiary institutions at highly inflated prices, arguing that doing so assists in ensuring a high quality of peer-reviewed research (Merrett, 2006). This practice has led to extensive problems for poorer developing nations, because they are generally unable to afford the subscription fees for many of these academic works.

One could therefore argue that this aims only to fulfil the premise that “property rights have always worked in favour of the colonizer” (Wirtén, 2004: 101). By limiting the access that developing nations can gain over intellectual property, the West ensures their economic grip on world markets, because the power of the West will only come to an end once developing nations are able to compete with the knowledge development of Western forces. Many believed that with the advent of the

Internet and communicative technologies this power would begin to shift, giving developing nations the opportunity to gain free access to important knowledge which could aid in their development. However, developing countries now seem to be at an even greater disadvantage, due firstly to limited Internet connectivity, and secondly to the move by publishers only to offer many of their journals in a subscription-based online format (Pistorius, 2006), ultimately limiting access to physical works, as well as creating a temporal limit on the availability of works, before requiring one to renew their subscription of a work that has already been paid for.

Global organisations have however recognised this problem, and so have proposed a number of ways in which to solve this dilemma. Organisations such as WIPO and the World Trade Organisation (WTO), have acknowledged that developing countries need to be given special concessions in terms of intellectual property laws, because they often require specific knowledge in order to develop their education and skills-based systems. It is of the utmost importance that they are able to publish and re-work intellectual property in a way to help bridge the knowledge divide between themselves and the developed world. As indicated by Cornish, concessions were “moulded into a Protocol to the Berne Convention at the Stockholm Revision in 1976” (1989: 252), which gave developing nations the right to decrease the terms of copyright in order to “authorise translation into their national languages; to authorise publishing for educational and cultural purposes and to exclude from the scope of infringement reproduction for teaching, study or research; and to limit the scope of the right to broadcast” (Ibid). However, as discussed, few developing countries are able to afford the high price involved in gaining legitimate reproduction rights of copyrighted works and most developed nations are pushing for concessions to be removed from developing nations.

One cannot dismiss the fact that intellectual property laws are of some value to authors; however, to limit the exportation of necessary information to developing nations could be viewed as a violation of basic human rights. As Ostergard explains, “if certain individuals have exclusive control over established technologies, other individuals may be deprived of basic products that could contribute to their betterment” (1999: 158). By limiting the amount of information that a country can use to assist in the betterment of society, overall disadvantaging the well-being of

citizenry in order to maintain profit, violates all ideals of human rights which states that every person be given:

a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.

(Universal Declaration of Human Rights, Article 25)

As a result, information is needed in order to procure these types of conditions, and should be exchanged and built upon consistently by both developed and developing nations. Yet as already mentioned, resources of developing nations are often limited, consequently hindering efforts “to aid those in need of product access” (Ostergard, 1999: 162), subsequently placing responsibility on developed countries to advocate the growth of knowledge. By limiting the amount of knowledge that is shared with developing nations, developed countries create even greater dilemmas for global markets, because as under-developed countries seek constant foreign assistance and investment to sustain their economies, they, in turn, in fact weaken Western economies.

Ironically, those nations which are the strongest supporters of intellectual property protection – including the United States – were themselves initially reliant on the adoption of many “foreign inventions, creations, and ideas” (Ostergard, 1999: 177) during their developmental stages – ideas which they were able to adapt to promote “their continued growth and development” (Ibid). This again emphasises the point that developed countries are overzealous in terms of intellectual property protection in an attempt to maximise their own market potential within the ever-expanding competition of the globalised economy. But this type of thinking is rather short-sighted if one considers that it is the global economy that these nations wish to engage in. After all, if “developed countries delay the creation of markets that could support entry of technologically advanced [intellectual property, they would cut] short the potential profits that could be obtained if the developing countries could sustain themselves” (Ostergard, 1999:177); hence they should be looking to promote development as much as possible in order to guarantee their own market potential for the future. If developed nations were concerned with long-term economic benefits



they should look to increase their market base for the future. Isolating and disadvantaging the entry of these countries into the global intellectual market, further cements Western ideology as the dominant culture, thus undermining any other cultural viewpoint, and inevitably destabilizes any prospect of a true global economy.

It is understandable that developed nations would be reluctant to give up their dominance within the global knowledge economy. However, as Ostergard (1999) proposes, global entities need to acknowledge that varying forms of intellectual property need to be utilised and protected in varying ways. The problem with fervently protecting all forms of intellectual property is the reality that not all intellectual property constitutes the same value in the progression of developmental structures. For example, it can be argued that academic writing advocating the advancement of democratic structures, are of far more importance in terms of development than the latest Hollywood blockbuster; subsequently, this means that definite lines need to be drawn up by international organisations in order to determine the difference between intellectual property which is needed for advancement, and that which is wanted for personal enjoyment. However, this line is not clear-cut, as many individuals see the Internet as providing a platform to exploit and manipulate entertainment media into their own unique artistic creations, especially when one begins to analyse a site such as *YouTube*.

As already mentioned, knowledge development is highly dependent on that which came before it. Not only do we witness the unique transformations of older creative forms, but it has also been acknowledged that artistic inspiration can be derived from many different avenues. Therefore, it becomes far more problematic to determine, in terms of entertainment copyright, what should be protected to reward the investment of publishers, and that which allows new artists the opportunity to create from entertainment media. Overall the “hyperstrict measures to restrict use of copyrighted materials [could] squelch an emerging phenomenon that is full of potential both for business and for democratic civil society” (Aufderheide & Jaszi, 2007).

#### 4.4 *YouTube*: Communication Network or Pirate Ship?

*YouTube* has exploded into the largest online video sharing site, whereby users are able to upload and share personal video creations with other online consumers. Whilst some use the site to upload clips of personal home movies, news events, and mainstream media, many users post creative interpretations of other media formats. Many have claimed that these types of sites promote piracy and copyright infringement, whilst its advocates believe that it promotes user creativity, and assists in elevating the knowledge economy (Aufderheide & Jaszi, 2008). However, whilst this dissertation is still in the process of determining the outcome to this argument, one has to acknowledge that which ever way one turns, sites such as this have assisted in evolving fan consumerism into a fandom of production. The creators of *YouTube* itself are very aware of the dangers that a site such as theirs poses to the legal battle surrounding copyright. However, as with copyright law itself, the regulations which govern the site are convoluted, contradictory, and open to individual interpretation.

As with most online service providers, *YouTube* renounces any responsibility for the content which their users upload, stating that it is entirely up to the individual user to gain permission and licenses for any material that may require such. This in itself is not a difficult rule to follow, and as such *YouTube* could quite easily censor those who do not abide by this regulation. However, problems arise when one further investigates the requirements laid out by the site regarding user submissions. Once a user posts any form of content, they “grant *YouTube* a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform User Submissions [as well as] grant each user of the *YouTube* website a non-exclusive license to access User Submissions through the website, and to use, reproduce, distribute, display and perform such User Submissions as permitted through the functionality of the website” ([www.youtube.com/t/terms](http://www.youtube.com/t/terms)).

As a result, if a user chooses to ignore the rules of the site, and posts copyrighted material without permission, other users can still use this material legally: providing that a user does not look to profit financially from using another subscriber’s material, they have been granted legal license by the site to re-use any

material that they may find within the site. It then becomes a challenge to determine which users are actually infringing on copyright, and those who are legitimately using content found within the site. Apart from this dilemma, as already stated, once a user submits a work, *YouTube*, too, has license over works, which means it is able to distribute and broadcast various works for promotion and advertising purposes. Whilst site regulations protect users from *YouTube* and its affiliates profiting directly from these works, it does not take into consideration the indirect benefits that they are able to achieve, such as in-site advertising. This advertising has in recent times, become so lucrative that some copyright holders no longer attempt to block content, but instead have negotiated that *YouTube* pay them a portion of the revenue generated from popular user creations (Howard, 2008). However, none of this would be relevant to the argument surrounding copyright, if corporations and legal systems acknowledged the primary objectives of why users initially utilised the site.

Research has shown that in general, users are not looking to infringe upon copyright, profit from their submissions, or claim original authorship from works which utilise protected content (Tushnet, 2007). One needs to acknowledge that the utilisation of these works has generally been an act of critique or celebration by the fan, and that consumer culture is witnessing a shift in power; what was “yesterday’s fan culture is now today’s popular culture” (Aufderheide & Jaszi, 2008: 1). Obviously each case needs to be investigated independently, but the general trend is that users offer alternative or celebratory interpretations of the original works that they engage with. As already discussed, each individual will interpret a text in a unique and different way from any other reader. So by making any text public, an author “cedes some control over it” (Tushnet, 2007: 67), because it is not necessarily read in the way it was originally intended. A site like *YouTube* consequently gives fans the opportunity to express their interpretations of various works, in an open forum which encourages further interpretation and open sharing.

Many promoters of participatory video indicate that this type of media should fall under the doctrine of fair use (Tushnet, 2007). Generally, users who are able to prove that their work adds new insight into the material to which it refers, are able to claim fair use of the material. Critics of this argument state that manipulating copyrighted material in various ways, could harm the author’s moral rights, because

viewers could not only incorrectly interpret the work as being associated with the original author, but that this interpretation could defame the moral character of the author. However, it has been discovered that this is hardly ever the case, because “the fan makes no ownership or authorship claims to the characters or situations” (Tushnet, 2007: 66). It could be argued that at times, corporations treat users as passive absorbers of content, rather than critical and educated media consumers. But this type of interaction by media consumers indicates that those who consume these newly edited varieties of copyrighted content are well aware that they are linked to the creative mindset of individual users, and not the corporation or individual who owns the copyrighted work.

Manipulated and collaborated videos should rather be seen as the ability of the consumer “to express their own identities through association and transformation” (Aufderheide & Jaszi, 2008: 6). As with so many new media technologies, the opportunity to share and collaborate leads users toward creating an online identity with which to interact. It only stands to reason that in a world which is defined by the media which we consume, individuals feel the need to incorporate various media formats into their online personas. Participatory video ultimately allows users the opportunity to express fully who they are by displaying that which has shaped their overall being. Therefore one should question how it is possible to copyright, and grant a monopoly, over something that moulds persona, and is so intrinsic to the postmodern identity.

Some have argued that participatory communication within the online realm has helped create vast imagined communities with whom individual users are able to interact (Howard, 2008). By doing so, users are required to find their own unique vernacular with which to navigate this new society. There are a number of different ways in which users are contributing to the “multiplicity of voices speaking in the non-institutional discursive spaces of quotidian life” (Howard, 2008: 493). One of the most evident ways that this is being achieved is through the process of digital mashing, and their display within sites such as *YouTube*. Some may argue that these hybrid forms of media are merely gross mutilations of popular culture; however, before one begins to criticise the action of users, one should acknowledge that this type of hybridisation has become a natural occurrence within most aspects of digital

life. Technology itself has become hybridised (think of the convergence between cellular phones, digital cameras and personal digital assistants to create the *Blackberry*); therefore it only becomes natural that that which digital technology communicates becomes hybridised (Bolter, 2006).

This adheres to the idea that when examining postmodern culture, the traditional rules which govern community spaces have reconstituted themselves, and been re-territorialised in ways which do not conform to the norms stipulated by high modern society (Gupta & Ferguson, 1992). As such, users need to find new ways in which to navigate these new territories, in ways which mimic the institutional structures of the postmodern. Rosemary Coombe (1998) argues that all individuals are bound by the cultural contexts in which they find themselves to exist, and as such, will adapt to the convergence of technologies, and the hybridisation of global cultures, by adopting these traits into their day-to-day existence. One can observe through current cultural trends, that globally individuals are relating more closely with the images of popular Western culture than their own as these “images so pervasively permeate all dimensions of our daily lives” (Coombe, 1998: 52). Consequently, identities are being shaped by the popular more so than the traditional national ideologies of the past. Therefore, one could argue that the collaboration of online digital media, on a site such as *YouTube*, is no more than an expression of identity within the newly emerging social culture of convergence and multiplicity.

Apart from the revelation that a site such as *YouTube* encourages individual identity formation, is the more prevalent argument that it provides a platform to openly share individual interpretations of various works, as well as allowing users an open forum to disseminate ideas, which previously would have remained unheard. In previous eras, this type of exposure “has been the preserve of marketers and political consultants” (Aufderheide & Jaszi, 2008: 2), and yet *YouTube* has enabled individuals the opportunity to air various works which contain important cultural messages. Many would declare that this is an outlandish statement to make; however, if one considers that the majority of *YouTube* videos which contain copyrighted material are satirical in nature (Aufderheide & Jaszi, 2008), it becomes a very relevant point. For centuries, satire has been a tool implemented by various commentators to create a critical inquiry into various forms of society, using varying degrees of “mockery,

ridicule, and wit to make a moral point” (Navratil 2007: 215). Consequently, *YouTube* has given online users the opportunity to take various pieces of popular culture, and transform them into something which in turn, comments on the culture from which it originated.

The strict implementation of copyright on *YouTube* could be viewed as denigrating the role of satire within the cyber-realm, in a sense undermining the basic premise of the Internet – that it acts as a free and open democracy. Satire is an important component of any democracy, and “unlike traditional news, which claims an epistemological certainty, satire is a disclosure of inquiry, a rhetoric of challenge that seeks through the asking of unanswered questions to clarify the underlying morality of a situation” (Baym, 2005 cited in Navratil, 2007: 215). Whilst many may argue that the Internet is free from any form of governance, thus negating any need for satirical comment, the Internet is still strictly controlled and monitored in a number of ways. It is true that the Internet is not owned or governed by any one nation state. However, because global corporations have made this virtual world the home of consumerism and popular culture, it could be argued that these corporations are the governance which control online user behaviour and content.

It therefore only becomes natural human reaction to formulate ways in which to comment upon this culture and governance. As is the norm for those in power, there is an attempt to stifle that which is critical of their power and control. One could argue that the use of copyright in modern times has shifted toward a type of hegemonic battle between those in control of knowledge, and those attempting to curb the monopolisation of intellectual property. It has been established that users of *YouTube* do not look to profit from mash-up productions, and yet many creators of popular culture criticise these productions as infringing upon traditional intellectual property rights. Ultimately, copyright has become a tool to censor the voices of those who attempt to unbalance the axis of intellectual control, and is most visibly noticed when videos are pulled from the site, citing copyright infringement as a reason. For example, one of the videos analysed in Chapter 6 of this dissertation, *Toy Story 2 Requiem*, was pulled from the site and a message was displayed stating that it had been removed due to issues of copyright – it has subsequently been reinstated.

One of the greatest tools that *YouTube* uses in order to prevent piracy among its users is to limit videos to a maximum of ten minutes per clip, in an attempt to thwart users' from broadcasting full copies of movies and television programmes. The few users who still attempt to broadcast illegal versions of mainstream media, are forced to upload these videos in a multitude of parts, generally a practice which is too demanding and time consuming for users to undertake (Aufderheide & Jaszi, 2008). As a result, companies and owners of various popular media are protected, for the most part, from online pirates who may undermine the profits that could be made by authentic owners and broadcasters. This leads one to question, if copyright owners are protected from mass piracy in an environment such as *YouTube*, why has it become an almost incessant need, by these owners, to block individuals from creating and sharing short pieces of collaborated media?

As previously mentioned, the issue surrounding copyright is not one of maintaining profits, but one of maintaining control over popular culture. Forcing *YouTube* to remove short satirical clips containing copyrighted material could be interpreted as censoring those who wish to comment on the role of popular culture within society. Even those clips which are not satirical in nature, but which contain aspects of other material, often point to interesting aspects which reflect postmodern society. Such an example would be the video clip *Mika – Relax take it easy (Michael Prince & Klash-E Mix)* which highlights the fragmentation of identity which has resulted from postmodernity, as it cuts and remixes a variety of different animated movies, such as *Madagascar*, *Chicken Little*, and *Happy Feet* to name a few, into a larger more complex musical clip. This will be discussed in more detail in Chapter 6.

Currently, if a user chooses to utilise media taken from mainstream popular culture, such as Disney cartoons for example, Disney will attempt to gag its broadcast. This ensures that they do not have direct competition, whilst simultaneously guaranteeing that any production which appears to deviate from the ideologies that Disney present are undermined and deemed to be illegal practice, such as *Toy Story 2 Requiem*, thus reinforcing the Disney monopoly and downplaying those ideologies which may displace current dominant ideals. By instilling copyright too harshly and thereby censoring these creations, one could argue that society is not only being continually shaped and maintained by those in power, but that the voices which could

assist in moving society in a different direction, are being drowned out, and carefully manipulated to appear as deviant behaviour, thus ensuring that global society adheres to the ideologies of capitalism and the consumerist manifesto.



## **Chapter Five – Research Methodology:**

### **5.1 Introduction**

This research has already outlined many arguments surrounding copyright and intellectual property rights within the online realm. These arguments, and the methods outlined in the following chapter, will be used in conjunction in an attempt to answer the main research question of this dissertation: has copyright become an unethical and obsolete practice within the culture of new media technologies and mass collaboration? Using a number of digitally mashed videos found on *YouTube*, this dissertation hopes to shed light on this very contentious issue. However, due to the highly philosophical nature of the proposed question, one cannot explore this problem through any one form of standard media research. Therefore, this chapter will examine various aspects of standard research theory, in an attempt to outline an appropriate methodology. This methodology should aid in determining if the videos discussed in the following chapter, are infringing on copyright, or if they are a necessary cultural development within postmodern society.

Therefore, this chapter begins with a discussion of the benefits of using interpretivism as the primary methodological approach, in an effort to highlight how knowledge cannot be understood without understanding the societal consciousness from which it emerges. Once this has been established, this chapter will continue by outlining the way in which sample cases were chosen. In an attempt to explain the significance of the material used by *YouTube* users within each mash-up, this chapter will proceed to discuss aspects of textual and discourse analysis. By doing so, it will establish an explanation of how these videos can be viewed and interpreted by viewers, as well as theorise why this type of content is significant within the postmodern culture. Therefore, the analysis to follow in Chapter 6, and the conceptual research discussed in previous chapters, should provide a solid framework from which to draw viable conclusions in relation to the proposed research question.

## 5.2 The Benefits of Interpretivism

In order to help strengthen and justify the theoretical research already undertaken, this sub-section will explore interpretivism, which has been deemed to be the most relevant methodological approach in terms of this dissertation, thus one should be able to identify how the case studies used within this dissertation are a result of the social culture with which users find themselves to be interacting. However, prior to the discussion concerning the selection of case samples, it is imperative to discuss this approach, in order to explore how, through a process of social inquiry into *YouTube* users, one is able to validate their online social action, as well as determine the social context of this interaction (Sarantakos, 2005).

Interpretivism is a philosophy which explores how the construction of society is “a social creation, constructed in the minds of people and reinforced through their interactions with each other” (Denscombe: 2010: 121). It has been decided, that in terms of this research, interpretivism is the most useful methodological orientation, because it effectively contributes in determining how digital mash-ups add to the social creation of culture. However, this methodology has certain drawbacks which limit the scope that social structures themselves play in the formation of cultural thinking. As such, one must also keep in mind that the “media are central to the organisation of meaning at both a social and a personal level” (Deacon et al, 1999: 8). Importantly, one must firstly acknowledge that social structures “are always enabling as well as constraining” (Deacon et al, 1999: 9), meaning that these structures provide both resources and an environment which are be utilised by society; yet, simultaneously, these structures are limited through both feasibility and what is realistically possible. Secondly, it must be highlighted that all “relations between situated actions and general formations, local choices and prevailing circumstances are dynamic and two-way” (Deacon et al, 1999: 9), indicating that interaction is determined by social structures, whilst concurrently demonstrating that these social structures are in turn determined by various forms of communication.

Using this approach, the researcher aims to understand how people make sense of the world, and how they assign meanings to that which they find within it (Sarantakos, 2005). Therefore, needs to be investigated how various conditions,

cultural beliefs, and varying social orders, play a part when attempting to understand how social structures and situations are created and expressed through language, imagery, and social rituals (Deacon et al, 1999). As such, one of the most important ways in which one is able to achieve this, is by taking a reflective approach to these constructs, and assessing people's "reconstructed impressions of the world" (Sarantakos, 2005: 39). One must be aware of the underpinning influences that social structures play in shaping one's subjectivities, and as such this research aims to construct a reflective interpretation of the ways in which these subjectivities are displayed and integrated into the phenomena of digital mash-up. Interpretivism can be viewed as the most useful methodological approach in determining this because, as Crotty (1998: 67) indicates, it aims to explore the "culturally derived and historically situated interpretations of the social life-world". Therefore, one needs to explore how a person creates meaning regarding their social world through their own interpretations of various institutional structures, and acknowledge that these structures cannot be interpreted as independent entities. This research, consequently, attempts to identify and understand *YouTube* users' perspectives and engagement with their social reality. It assumes that there is a commonality amongst users and their experiences and as such, aims to explore that which "is invariable across all manifestations of the phenomenon" (Tesch, 1994: 147 cited in Ertmer, 1997: 162). As such, this research explores the engagement of users within the postmodern social structures of the online, identifying how they have internalised these ideals, and highlighting how users have created videos which epitomise and match the norms of these structures.

### **5.3 Case Sampling**

It has been established that interpretivism will be the most beneficial method to use whilst investigating the various case studies. However, in order to qualify this approach, very specific samples must be examined. Therefore, it has been determined that the most apt sampling technique to use is that of non-probability. Non-probability, or non-random sampling, aims to investigate a number of cases which display distinct characteristics of the issue being investigated (Sarantakos, 2005), as well as being non-restrictive in the number of samples which one can use in the study. There are a number of varying techniques which fall under this category; however,

due to the link which has been drawn between this research and interpretivism, it has been decided that the most relevant method to use is that of purposive sampling. As such, “researchers must learn to take their own cues from the participants’ expressions, questions, and occasional sidetracks” (Ertmer, 1997: 162).

Purposive sampling, also known as typical-case sampling, seeks to explore cases which epitomize the key features of that which is being investigated (Deacon et al, 1999). In order to do this, the first thing which must be established, is what typical behaviour actually constitutes. Only once this has been identified does it become possible to choose which samples will be the most beneficial to the study. Ideally, this dissertation wants to explore the art of digital mashing and the variety of ways in which it is undertaken in an attempt to determine how it corresponds and relates to the larger social discourses within postmodern society. Subsequently, the videos which have been selected are those which try to de-stabilise the primary meanings of copyrighted works through the process of digital mashing. In terms of this research, the aim is to investigate if users are infringing on copyright by using the work of mainstream media, in an attempt to create their own new digital mash-up.

Therefore, the videos which have been selected had to contain various copyrighted media which have been used without authorisation from copyright holders. However, apart from this, the videos chosen could not just be those which infringed upon copyright, such as full extracts from movies; instead they needed to demonstrate that they utilise at least two different types of copyrighted media to create a new variation of video. Added to this, because this research concentrates on the intellectual property laws of the United States and South Africa, it was decided that the samples to be examined should, therefore, only be those which had been designed by users from these two countries; thus allowing a comparative study to occur between the two countries, both in terms of their sample content, and in terms of the respective national laws governing intellectual property.

However, this non-random sampling served only to formulate the frame from which to draw a number of randomly selected samples. Random sampling, unlike non-random sampling, “is where each sample element is selected on a random basis from the sampling frame” (Deacon et al, 1999: 48). In terms of this research, a

variety of examples were selected from the designated pool through the *YouTube* search engine using the keywords “mash-up”, “movie”, “cartoon”, and “collaboration”. The results from this search, which corresponded correctly with the frame established through the non-random sampling, were then used to establish viable case studies for this dissertation. As with most qualitative research, this dissertation is concerned more with illustrating broader social and cultural processes than with establishing a representative sample of *YouTube* users. As such, the sample size will be determined as the analysis progresses, stopping once a saturation point has been reached; ultimately once the data stops revealing new information, and results begin to repeat themselves (Deacon et al, 1999). However, due to the wide variety of mash-up videos which are available, four separate categories of videos will be examined to ensure a depth of information. These categories include videos which mimic the formula of traditional music videos, those which incorporate film clips into their production, ones in which alternative narratives are created, and those which incorporate satire and parody.

#### **5.4 Analysis**

While it has been determined how the empirical data for this research will be selected, it is only through the analysis of this information that any valid conclusions can be drawn. It was established earlier in this chapter that the aim of this dissertation is to analyse both the structures involved in the production of samples, as well as the way in which *YouTube* users employ these structures, in an attempt to explore if there is a social need for copyright laws to change. The samples selected will be analysed in a number of different ways in an attempt to draw a viable and valid conclusion to the overall research question of this dissertation. Initially, a structural analysis will be done. This process will explore the basic patterns and trends inherent within each video in an attempt to identify commonalities between each video (Sarantakos, 2005). This opening analysis will in no way aim to evaluate the meanings or messages contained within each text, but instead will concentrate on identifying the common structures within each case, as a way of examining that which ties each of the samples together.

This will be followed by a latent content analysis which, unlike traditional content analyses that concentrates on identifying the number of times a specific phenomenon occurs, investigates the way in which messages are deconstructed and reconstructed, in an attempt to explore and understand both the meanings of the work, as well as the impact that the structures, identified during the course of the structural analysis, have had on the construction of the case studies. Once this has been established, a basic discourse analysis will ensue. In accordance with Deacon et al (1999: 152), “discourse analysis can be understood as an attempt to show systematic links between texts, discourse practices, and sociocultural practices.” Consequently, a discourse analysis will investigate the relationship between the data uncovered during the course of the prior two analyses, and determine what impact, if any, postmodern culture has had on the formation of these videos. Once all of this has been investigated, one should have a viable platform from which to formulate credible conclusions concerning the issue of copyright in connection with these types of digital creations, subsequently determining if they are indeed infringing upon the rights of authors, with swift protective action needed in the event of such infringement, or whether they are an important social aspect of postmodern culture.

## **Chapter Six – Data Analysis:**

### **6.1 Introduction**

As outlined in the previous chapter, there are a number of varying factors which play a role in shaping and constructing all forms of media. This chapter aims to take the various conceptual analyses outlined in earlier chapters, along with the methods outlined in chapter five, and determine if digital mash-ups found within the *YouTube* site are indeed infringing upon the traditional copyright laws of South Africa and the United States, or if based on these analyses, whether or not copyright law needs to be thought of in a new way. This will be done through an exploration of the evolution of digital mash-ups within four discrete sections. Firstly, it will start with an analysis of videos which relate closely to the sampling techniques of rap artists during the early nineties. These videos highlight how users began creating clips using various parts of music videos to create their own rendition of popular music videos and songs. Secondly, it will move toward highlighting videos into which movie clips have been incorporated, whilst discussing the ramifications that this plays on the traditional discourses associated with such media. Thirdly, this chapter will examine those videos which have developed their own unique storylines by utilising various parts of mainstream media clips, in order to create an alternative reading of traditional media discourses. Finally, this chapter will explore the role of parody and satire within digital mash-up, in order to demonstrate the importance that this type of video plays within the commentary of postmodern society and culture. Each of these sections will attempt to determine why creators have chosen to link various videos together, and if they have used sound skilled knowledge in doing so, thus justifying the infringement of traditional intellectual property laws; or if each of the videos examined are just haphazardly put together without any real meaning or reasoning, apart from infringing on copyright laws.

### **6.2 Early Mash-ups**

As mentioned in chapter two, music sampling began in the early nineties whereby, rap artists would often use the melody of established songs to create a starting point from which they would rap their own lyrics, in order to create “new

montages of sound” (Vaidhyanthan, 2001: 15), such as Vanilla Ice’s *Ice Ice Baby* which utilises the music from Queen’s *Under Pressure* to underline his lyrics. At this stage in music sampling, original artists were not consulted or paid for the use of their music, and as such, music sampling was deemed to be copyright theft. Digital mashing, however, is rooted in this tradition. When one begins to examine the origins of video collaboration, it is evident that users were inspired in similar ways, utilising the music from one video, and then incorporating the lyrics and images from another. One of the best examples of this, is taken from the video *Smooth Buster*, in which Michael Jackson’s video *Smooth Criminal* is injected with the melody from the *Ghostbusters* title track. The lyrics of the song *Smooth Criminal* are then matched with this music, in order to create a new variation of the song and video.

Initially this type of mashing was celebrated by music critics, often finding a niche audience on television stations such as *MTV*, which will be discussed in more detail at the end of this chapter. However, as this newly emergent art form began to gain popularity amongst audiences, music corporations deemed many of the videos to be illegal, and like non-credited music sampling, had most digital mash-ups pulled from commercial television (Aufderheide & Jaszi, 2008). Reasons often cited were, as with sampling, that these videos were in no way original, and merely copied two already established music videos. However, if one examines the *Smooth Buster* video, there is evidence that even in early forms of digital mash-ups, creators were not trying intentionally to infringe upon copyright, but rather wanted to create intertextual links between various videos, and in turn, create their own distinct take on various forms of popular culture. Still 1 is a clip taken from the *Ghostbusters* music video which has been edited into the *Smooth Buster* video.





Still 1

One of the first noticeable things about the clip is that the *Ghostbusters* characters, and the lead singer in the video, are mimicking aspects from the well-known Michael Jackson *Thriller* video. The *Ghostbusters* movie came out during the height of Michael Jackson's success during the late eighties, and so one can assume that the viewers who saw the *Ghostbusters* video initially would have understood the meta-narrative created by the video directors. In the *Thriller* video, Michael Jackson is seen leading a group of zombies and other supernatural beings in a dance sequence, and consequently this clip portrays the Ghostbusters, in a sense, parodying that which was associated with the celebration of paranormal beings in *Thriller*.

This video can be interpreted in three distinct ways, either of which could justify the apparent infringement of copyrighted material. Firstly, it must be considered that the mash-up being examined was produced in 2006, over ten years after the production of both *Ghostbusters* and *Smooth Criminal*. As such, it can be argued that the creator has a somewhat high degree of historical knowledge pertaining to Michael Jackson and popular music culture by utilising videos so long after they were initially made. The creator must also be accredited as having sound musical knowledge, in order to create any form of melodic cohesion between the two soundtracks. Therefore, it could be said that this type of mashing demands a user to be somewhat proficient in sound engineering, just as those who engaged in sampling techniques during the early nineties were.

Secondly, as was explained earlier through the work of Aufderheide and Jaszi (2008), many creators of digital mash-ups are often part of a fan culture, who aim to celebrate various performers and aspects of popular culture through their digital creations. One could argue that defining this video as an example of fan culture, is a somewhat tenuous claim to make. After all, just placing a music video online does not make one a fan. However, some may argue that because of the links identified above, in which the user chooses to incorporate clips which make reference to the Michael Jackson *Thriller* video, this particular user is in part celebrating the influence that Michael Jackson has had not only on him as a fan, but on popular culture at large. This is further emphasised by the portion of the clip which shows a young boy emulating Jackson's dance moves, thus demonstrating how Jackson has become an inherent cultural figure.

Whilst it is true that the *YouTube* user who created this video has utilised large portions of well-known established musical works, there are a number of arguments which can be drawn out by the above discussion to justify their doing so, and in turn, undermine the illegality of producing such a video. As was discussed in Chapter 3, infringement occurs when anybody copies and uses a copyrighted work without the express prior consent of the author, and whilst it is evident that this user has done so, they are well within their rights to do so due to the doctrines of fair use, found within both South African and American law, which outlines a number of exceptions in terms of the use of intellectual property.

Both South African and American law stipulate that a person is allowed to utilise the works of others, provided that they are not in any direct competition with the original artist. American law, specifically, deems the use of others' intellectual property without their consent to be legal, provided that the use of their work did not result in any form of retail or financial loss. Included in this clause, the person who has appropriated the copyrighted material should not have found any personal financial success from the production of their work. It would be rather presumptuous to assume that the creator of the *Smooth Buster* video would have profited from his work in any way. If he was aiming to achieve some form of financial success from his mix, it is doubtful that he would have freely and openly shared his video on a site such as *YouTube*. This is emphasised by research done by Aufderheide and Jaszi

(2007), who found that many *YouTube* users do not place work online unless they are prepared for their work to be shared and copied by other users. Therefore, it could be postulated that this video was created by a user who was celebrating Michael Jackson as both a performer and artist.

Finally, however, it can be argued that this video has far more intrinsic value in terms of social commentary than mere fandom. As mentioned, this video was made in 2006, a year after Jackson was embroiled in a legal battle regarding child molestation, an accusation that had surfaced before during the mid-90's. It could be theorized therefore, that *Smooth Buster* is making direct commentary on these issues. In the *Smooth Criminal* video, Jackson can be seen as adopting the role of the hero. He stands out in a white suit – a colour generally associated in film with the light, pure character of the hero – as he defends the women in the club from the darkly clad mafia-type men. The words of the song seem to reinforce the notion that Jackson is the hero, as he describes how an intruder attacks the title female character, and how he proceeds to question the nature of her attack in an attempt to avenge her.

Therefore, it can be speculated that, in light of the allegations brought against Jackson, the creator of the *Smooth Buster* video is playing on the irony of Jackson being depicted as a vigilante hero. However, one would be unaware of this without the inclusion of a number of important elements. Firstly, by juxtaposing *Smooth Criminal* with images and melody from the *Ghostbusters* music video, the creator appears to be highlighting the role that the *Ghostbusters* play, that of catching and detaining evil spirits. As such, one could assume that by combining these images, the creator is playing on the idea of Jackson being “bust” by the authorities. Secondly, the character played by Jackson in the *Smooth Criminal* video cannot be viewed as wholly good, but more as a vigilante with sinister undertones. While Jackson is depicted wearing white, it is still in the same style as the other gangster figures depicted in the video, thus indicating that he is still part of the gangster underworld. He appears to be a leader within this underworld, with whom all control rests as he directs attention, as seen at the beginning of the clip in which the club only “comes alive” after he arrives. Even when engaging in a bar brawl, he is not threatened by any of the other male figures, thus indicating his power and their respect for him.

Finally, the most important element of this video which highlights and reinforces the creator's notion of Jackson's sinister and corrupt nature, takes place at the beginning of the clip. As already mentioned, as the video cuts from the shot of the Ghostbusters to Michael Jackson the creator has inserted a brief clip taken from Jackson's *Black and White* video, in which a young boy can be seen emulating his dance moves. This could be interpreted as a direct reference to the molestation charges brought against Jackson. Because the clip is situated between that of the Ghostbusters clip and the introduction of Jackson, it seems to infer that is the boy which links the good of the Ghostbusters to the sinister underworld that Jackson is found in. It can be argued that the emulation of Jackson by the boy, is an example of how Jackson has infiltrated the psyche of the boy, and demonstrates his influence over the boy. The video informs the audience of Jackson's sinister nature by placing him within a gangster underworld, most commonly associated with prostitution and extortion, and as such, it becomes the role of the Ghostbusters to expel Jackson's corrupting spirit from the boy.

Therefore, this video creates an important social comment in regard to one of the most affluent figures within popular culture. In light of this, it becomes difficult to claim that the protection of copyright is of greater importance than the right of the author to make a creative, but valid contribution to the public sphere of cultural knowledge. Both the United States and South Africa are democratic nations which should ideally aim to promote free speech amongst their citizens. If one was to stifle this type of work, and not allow citizens the opportunity to interact with the knowledge that popular culture provides, would in effect be an infringement of free speech, thus resulting in void democracies.

Aside from the issue of free speech, American law stipulates that artistic creations are permitted to be modified if it is deemed that the newer creation is part of the "inherent nature of the materials" (Circular 92 – Copyright Law of the United States, Title 17 of the US Code). This, in part, appears to validate the practice of digital mashing because the process of producing and consuming digital media has become an inherent quality of the Internet and the development of digital culture . Therefore, one cannot stifle this type of creation as it undermines the basic premise of online development. Apart from this, if one examines the clause which defines

copyright in both laws, one finds the word “originality”. As aspects of this dissertation have already stated, it becomes very difficult to pinpoint much within popular culture that is wholly original, and the creator of the *Smooth Buster* video has highlighted this point quite sufficiently, if unintentionally. Still 1 has already demonstrated the intertextuality between the itself and the *Thriller* video, but if one examines Still 2, a second clip taken from the *Smooth Buster* video, you can see that much of the *mise-en-scène*, such as the smoky bar atmosphere, and suits, have been inspired by early gangster film.



Still 2

To take this point even further, the *Thriller* video which is parodied within the *Ghostbusters* video, was a parody itself in regard to the horror movie industry. However, no one would question the legality of ‘borrowing’ these ideas and structuring them around these mainstream videos. Popular culture is based on the understanding of various meta-narratives and intertextual references (Coombe, 1998), a point which was emphasised while exploring the nature of Disney cartoons in Chapter 2. Therefore, one can argue that this early digital mash-up is merely an extension of this type of created culture, lending itself to the formation of today’s more complex and fragmentary postmodern society.

### 6.3 The Emergence of Film Mash-ups

Before one can start exploring the notion of today's postmodern culture, however, it is first necessary to examine those videos which have transcended from the pure synchronisation of music videos, to those which mesh music soundtracks and video images to create a user's own brand of music video. Some may argue that merely placing a soundtrack over a number of video clips, which have been edited together, does not constitute skill or originality, and subsequently infringes on copyright. This would be the case, if not for a number of other factors which play a part in the creation of such mash-ups. Two variations of these types of videos will be looked at: *Mika – Relax, take it easy (Michael Prince & Klash-E Mix)* and *Michael Jackson – Thriller (Monster Mash-Up)*. Each video is a combination of images and clips taken from a number of movies and viral Internet videos<sup>1</sup> which have been overlaid with a song, in order to create a video which is different from that which was originally made for that specific piece of music.

However, it can be argued that the creators of these videos were not always intentionally trying to create new music videos. One could presume that the music used within each video aims to emphasise the visuals within each of the clips, in turn aiding in celebrating the movies from which they have utilised various images. When examining the *Mika – Relax* video, for instance, each of the clips, used by the creators, are from a variety of animated films, such as *Madagascar*, *Chicken Little*, *Shrek*, *Happy Feet*, *Barnyard*, *Flushed Away*, *Ice Age 2*, and *Over the Hedge*, as well as a handful of other viral online animations taken from *YouTube*. The clips have been edited together in such a way that it appears as if the characters are dancing along with the music chosen by the video creators, as seen in Still 3.

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<sup>1</sup> A video clip which has amassed widespread popularity through the process of online sharing, usually through the use of e-mails and video sharing sites such as *YouTube*.



Still 3

Andrew Goodwin (1992) indicates that a music video is a medium generally driven by the way in which the visuals interact with the music being played, usually illustrating, or amplifying the words of the song. Through illustration, visuals within music videos tend to match the lyrics and general tone of a song, in order to tell a story which link directly to the lyrics, whilst amplification, on the other hand, attempts to develop the visuals beyond the basic meaning of a song, and create greater meaning for the music. If one chooses to apply this theory to the *Mika – Relax* video, it becomes evident that there is very little which makes it a music video, apart from the fact that it has a song overlaying the visual images. One could replace this music with any multitude of other songs, and the result would be the same: a montage of dancing animated characters.

Therefore, it can be concluded that the creators were not trying to design a true music video, and one should rather concentrate on identifying what other reasons may exist for such a work to be made. One such reason, as already mentioned, is that this video was created to celebrate the vast number of animated works displayed within it. As discussed when looking at the *Smooth Buster* video, creators of such videos must have considerable knowledge of a specific genre or aspect of popular culture, in order to create a meaningful form of fan culture. In regard to the *Mika - Relax* video, it can be acknowledged that the creators of the video display a depth of knowledge in relation to digital animations. One would need to know each of the movies and animations used within the video fairly well, in order to arrange such specific scenes

into a coherent whole. Certain clips contained in this video, for instance, are often taken from extended versions of movies found only within DVD editions, such as Still 4, which is an additional cartoon taken from the DVD version of *Madagascar*.



Still 4

It could be argued that the concept of fan culture driving individuals to make these types of videos is further emphasised if one examines the *Monster Mash-Up* video. This video appears to commemorate the horror genre, with a number of extracts taken from an abundance of horror movies, such as *Frankenstein*, *Halloween*, *Chuckie*, *Wolf*, *The Exorcist*, *Dracula*, *Psycho*, *Scream*, *Silence of the Lambs*, *The Birds*, *Nightmare on Elm Street*, *Ghostbusters*, *Gremlins*, *One Missed Call*, *I Know What You Did Last Summer*, *Jaws*, *It*, *An American Werewolf in Paris*, *Identity*, *Sleepy Hollow*, *Arachnophobia*, *Lake Placid*, *Alien*, *The Shining*, *Predator*, *The Others* and *30 Days of Night*. The video also uses the song *Thriller* for its soundtrack, which as already discussed, celebrates the horror genre within its own music video, and the creator has inserted a “Happy Halloween” graphic at the end of the video. Unlike the previous video however, the music used within *Monster Mash-Up* helps to illustrate the words of the song, so in essence does conform to the structure of a traditional music video, as outlined by Goodwin (1992), such as matching the line “There ain’t no second chance against the thing with forty eyes” with images from *Arachnophobia*, and “It’s close to midnight and something evil’s lurking in the dark” with an image of a Gremlin closing a sewer cover as it escapes underground.



However, unlike early mash-ups, which concentrated primarily on creating a new soundtrack amplified by the visuals of original music videos, videos like *Monster Mash-Up* are far more concerned with creating new visuals which are amplified by the music in order to create some form of social commentary. While it can be argued that the song *Thriller* could have been replaced by any number of similar themed songs, such as *Monster Mash* and *Highway to Hell*, the way in which the creator has linked the visuals to the lyrics makes it difficult to assume that another song would create the same effect. Apart from this, this video can also be interpreted as playing on the sinister undertones of the media in regard to Jackson and child molestation. Therefore, this video is not solely concerned with being a music video, but can also be interpreted as creating a comment on popular culture.

In the initial music video created for *Thriller*, Michael Jackson is seen transforming into a monster. It can therefore be argued that the creator of the *Monster Mash-up* video plays on the irony of this depiction because it was after charges of molestation were brought against Jackson that many media outlets labelled him as a “monster” of society (Glaister, 2005). This irony is further emphasised when one investigates the overall meaning of the *Thriller* lyrics. The song implies that everyone has a dark side which cannot always be resisted, as emphasised by the line: “For no mere mortal can resist/The evil of the thriller”. Therefore, *Monster Mash-Up*, while highlighting aspects of fan culture which can justify its use of various media, more importantly demonstrates its importance as a social tool aiding in the process of designing a democratic online public sphere. However, these are not the only factors which determine the legality of digital mash-ups.

Within American law, one of the most overriding factors which influence the use of copyrighted images, is if whether or not using these images or sound recordings create a financial disadvantage for the original creator. It is unlikely that the creation of either of these two videos would have undermined the profits from any of the production houses responsible for the creation of the movies and musical soundtracks used within them. It is more likely, as Vaidhyathan (2001) claims, that this type of interaction with popular culture has revitalised interest in older forms of media, such as the popularity regained by Aerosmith after Run-DMC sampled their song *Walk this Way* in 1986. Based on this premise, it can be assumed that these

videos have helped elevate “lost” media back to the forefront of modern society, and overall helped to increase the financial rewards for those that own the copyrights, as they regain popularity amongst media consumers. Apart from this, the manner in which users are interacting with culture, in terms of the way in which they design mash-ups, does seem to fall within the exceptions of copyright, especially in terms of American law. If one consults this law, it can be noted that copyright was designed not only to reward authors for their work, but also as a way in which members of society were able to “encourage the production of culture” (Aufderheide & Jaszi, 2008: 2). As such, these mash-ups can be seen as an example of how users are utilising existing popular culture to create different variants of established norms, in an effort to navigate and create a space for themselves within the plethora of cultures displayed online (Aufderheide & Jaszi, 2008). This is even more apparent when one begins to investigate current videos, in which users have moved away from creating musical montages, and who now often create new narratives through the combination of different forms of popular culture.

#### **6.4 New Narratives and Popular Culture**

As with early mash-ups, which focussed on re-sampling various music videos to create new variations, those which create new types of narratives began in a similar way. Users began by isolating the sounds of a specific scene, and then incorporated them into a scene from a different television programme or movie; usually a number of scenes are required to be edited together in order for the sound to “fit” cohesively. *Super Friends* is one of the more basic examples of this practice, as it does not attempt to change the overall meaning of the narrative, but rather takes one of the most famous scenes from the television series *Friends* – in which the characters create a quiz to decide who knows each other the best – and incorporates the dialogue into the cartoon series, *The Justice League*, creating the effect that the characters from the cartoon are participating in the competition.

Again, this mash-up illustrates that users require specific knowledge surrounding that which they choose to manipulate. However, unlike the mash-ups which have already been examined, the knowledge displayed by this user seems to be rather rudimentary. Whilst it is possible to see that a number of scenes have been

taken from *The Justice League* and edited together so that the action in the clip appears sequential, it seems that it does not highlight the same depth of knowledge displayed by those creators examined earlier. Unlike the previous videos, in which each user displayed a vast amount of understanding in terms of specific genres of popular culture, this video merely matches a random sequencing of scenes taken from the cartoon series, provided that it corresponded with the dialogue associated with specific characters, such as matching Monica’s dialogue with images of Wonder Woman when speaking.

However, there are some elements contained within the video which negates this premise to a small degree, demonstrating that the user has simple knowledge in relation to *The Justice League* cartoon series. One such example would be when Superman (Ross) tells The Flash (Joey) to “stop it”, as The Flash spins wildly in one place. The creator of this video would have had to know where to find this specific visual in order to match it with the dialogue. Another example is shown in Still 5, in which Superman is seen holding a number of cards which helps to anchor the dialogue to the visuals, as he is seen as the quizmaster in the contest the characters are competing. This indicates that the creator has taken time and effort in selecting and editing specific visual clips together, in order to help emphasise and drive the narrative created by the dialogue; however, time and effort do not highlight in-depth knowledge with regard to popular culture.



Still 5

This video becomes a very difficult case to defend in terms of its infringement of copyright, because the creator does not attempt to change the dialogue in any way, and also does not attempt to create anything that is radically different from the scene from which the dialogue is appropriated. Barring the fact that they are superheroes, they are still a group of friends attempting to answer questions about each other, in order to prove who knows more about whom. Had the visuals been well-known super-villains fighting against an assortment of superheroes, for instance, instead of just a group of heroes, it would have created more depth to the storyline, making the quiz seem more bizarre, and ultimately creating an alternative take on the rivalry between superheroes and their enemies. Therefore, one could suggest that this is infringement because so little has been changed by the creator; however, this type of video has in fact facilitated the creation of more sophisticated narratives found within mash-up videos. This video, whilst simple and rudimentary, can be seen as an important stepping stone in terms of mash-up video narratives. Without this type of video, many users may not have realised the potential for creating alternative renditions of existing narratives; thus *Super Friends* helps to emphasise the idea that, at times, copyright needs to be waived in order for culture to prosper and develop, as was originally envisioned by those who designed copyright law during the 19<sup>th</sup> century (Vaidhyathan, 2001).

*Reservoir Turtles* and *Toy Story 2 Requiem* are two examples of videos whereby the creators have altered the overall meaning of the narrative through the juxtaposition of dialogue and visuals containing oppositional values to one another. Each video has been designed in a similar fashion to the *Super Friends* video, in which dialogue has been taken from one media format and incorporated into the visual scene of another. However, unlike *Super Friends*, in which the creators aimed to complement the dialogue by matching it with corresponding visuals, the creators of these two videos have edited the clips together in such a way that they have created alternate movie trailers which aim to alter the interpretation of the initial narratives contained within the appropriated movies.

*Reservoir Turtles*, for example, brings together the dialogue from the *Reservoir Dogs* movie trailer, and meshes it with the visuals from the *Teenage Mutant Ninja Turtles* movie trailer. This culmination of media is one which ultimately

subverts the meaning behind the *Teenage Mutant Ninja Turtles* movie. This movie is based on the highly popular animated children's television programme in which mutated turtles fight crime in New York guided by their leader, a mutated rat called Splinter, whereas *Reservoir Dogs* is a movie which focuses on a criminal gang attempting to pull off a large diamond heist, initiated by their leader, Joe. The creator of this clip therefore negates the *Turtles* traditional role of being crime fighters, and creates a trailer in which they are seen as the criminals. This has been achieved firstly, by associating the dialogue of Joe, in which he outlines how the heist is going to take place, with visuals of Splinter talking to the Turtles, thus creating the impression that they are led by a criminal boss, rather than a wise ninja master. Secondly, the creator relates each of the turtles with specific characters from *Reservoir Dogs* – Mr Blue, Mr Orange, Mr Purple and Mr Pink – based on the colour of their bandanas, again aiding in the construction of a consistent and believable narrative in which the Turtles belong to a criminal gang. Added to this, the video creator has ensured that the viewer is made aware of the Turtles' callous criminal nature through a sequence of dialogue in which Leonardo (Mr Blue) and Michelangelo (Mr Orange) discuss how they will cut off the pinkie finger of the jeweller, if he refuses to "hand over the diamonds".

Each of these elements has helped to create a narrative which destabilizes the traditional meanings that one would associate with the *Teenage Mutant Ninja Turtles*. However, the significance of this interpretation would be meaningless if those who viewed it did not have some form of understanding of the media from which it has been utilised. One would also have to be familiar with the plot of *Reservoir Dogs* in order to appreciate how the dialogue has been integrated with the visuals. As such, viewers of this clip would project their own preconceived interpretations of *Reservoir Dogs* and *Teenage Mutant Ninja Turtles* onto this video, and would therefore negotiate the meanings surrounding this clip with far greater clarity than one who had no prior knowledge of either *Reservoir Dogs* or *Teenage Mutant Ninja Turtles*. Based on this argument, one can therefore presume that the creator of this video must have good knowledge in regard to the culture which surrounds each of these movies; otherwise they would not have been able to subvert the traditional meanings with such sophistication and depth.

This argument is further supported when examining the video *Toy Story 2 Requiem*. *Toy Story 2* was made by the *Disney* digital animation production house *Pixar*, and as such contains the traditional wholesome family values associated with the *Disney* brand. However, it has been matched with dialogue from *Requiem for a Dream*, a movie which deals with the effects of various addictions. This immediately seems to undermine those values generally associated with *Disney* movies, but this alternative view is further emphasised by the specific dialogue chosen by the creator to work in tandem with the visuals. The most obvious way in which this is achieved is by creating the effect that the *Toy Story 2* characters are swearing, thus destabilising the wholesome nature of the *Disney* characters. The next aspect which aids in the creation of an alternate narrative is the link created between the toymaker in *Toy Story 2*, and the drug dealers in *Requiem for a Dream*.

The toymaker is shown creating the character Woody, which is followed by a verbal exchange between the characters Woody (Harry) and Buzz (Tyrone), as they discuss the benefits of entering the drug trade. Overall, this sequence seems to imply that Woody has been made to become a toy of the drug trade, rather than just a child's toy to be played with, as prescribed by the *Disney* movie. Another important aspect which the creator has attempted to explore in this video is the concept of entering a drugged world of delusion and chaos; however, only if one is familiar with *Requiem for a Dream* is one able to fully understand this metaphor.

Apart from addressing various forms of addiction, *Requiem for a Dream* explores the way in which each character's addiction forces them into a delusional and dream-like world, which ultimately leads to their downfall. Because this is a state of mind, and an experience which becomes very difficult to explain through dialogue, the creator of *Toy Story 2 Requiem* has carefully edited various visuals together in slow-motion, in order to try and create a dream-like atmosphere. Many of the clips which have been edited together during this sequence show the characters falling in some way, as seen in Still 6, highlighting their fall from reality. Even more fitting however, is that the scene ends with Woody falling into a garbage can, with the lid closed on him, thus indicating he has fallen to the lowest possible low, with reality being closed off from his psyche.



Still 6

More importantly, however, Still 6 depicts Woody falling amongst a number of Ace of Spades cards. The Ace of Spades is often referred to as the death card (Friedman, n.d), and as such it can be theorised that the dream-like state which each character enters leads to death of reality, which in turn results in their own tragic demise. In addition to the connotation of death, cards are also often associated with fragility, as a sudden failure is often compared to a falling house of cards. This metaphor emphasises each character's fragile state of mind, and how their world is seen to crumble around them as they fall deeper into addiction-fuelled delusions.

Again, this accentuates the point that for one to have a full understanding of mash-ups of this nature, one is required to have in-depth knowledge surrounding each of the media formats. One could argue, however, that in this instance, one is able to understand the alternative meanings created through the dialogue and effects, without in-depth knowledge of either medium. However, only if one is fully aware of the main story contained within *Requiem for a Dream* is one able to identify the significance that the game show shown at the beginning of the video has on the overall narrative. In the movie, it is the prospect of participating on a game show which sends Sara, the mother of the main character, into a downward spiral of prescription drug abuse, as she drives herself to lose weight before appearing on television.

If one was not familiar with the movie, one would not be at liberty to understand the foreshadowing associated with the game show at the beginning of the video. Her abuse leads to nightmarish hallucinations, and ultimately prevents her from seeing that her son and his girlfriend have become heroin addicts and dealers. Eventually, this behaviour puts her in a mental hospital where she lives out her dream – appearing on the game show and seeing her son as a successful businessman, happily married to his girlfriend. This seems to imply that it is only within the dream-like utopia of Disney ideology that one is able to truly “live happily ever after”. It must be noted that the creator will assume that those who consume these videos will have a certain educational level of understanding in terms of popular culture and society, especially in South Africa where most users of new media are affluent and well-educated members of society. Therefore, creators have the luxury of knowing that most of their audience will have the cultural understanding needed to negotiate the basic principles associated with popular media. So whilst someone who has general knowledge in regard to popular culture has the capacity to understand the subversive nature of this mash-up, it is only those viewers who have intrinsic knowledge of each media format that will understand the preferred interpretation offered by the creator.

Overall, this helps to emphasise the point that popular culture is shaped by the audiences which engage with it. Users, who take uniform media products and transform them into new renditions, ultimately undermine the traditional dominant readings and institutions that are responsible for the creation of mainstream media (Fiske & Hartley, 1996). Consequently, this helps to explain why these institutions are so overzealous in regard to copyright protection – without it they lose control, not only of the media which they produce, but also in regard to the construction of culture, as audiences now have the means to transform it to suit their own needs. The analysis of these videos has shown that media consumers are negotiating the construction of culture through the self-conscious play on established dominant media in order to produce a variety of oppositional readings. This practice could be viewed as the natural progression of postmodern popular culture, in which audiences are continually expected to understand intertextual links between various media forms (Poster, 2008). Therefore, mash-ups of this nature are not infringing on copyright, but



are merely aiding in the development of meta-narratives, and re-conceptualising the way in which popular culture is created.

Whilst these mash-ups aim to create alternative readings of particular movies, they still inherently follow the formulated narrative of another movie through its dialogue. However, this type of video has seen the emergence of works which have developed completely independent narratives, such as *Buffy vs Twilight*. While the creator of this video has utilised a variety of scenes from *Twilight*, *Harry Potter and the Goblet of Fire*, and *Buffy the Vampire Slayer*, he does not follow an established narrative from any of the productions. Instead, he concentrates on formulating a “what if” scenario, in which he hypothesises what may have ensued if Buffy were to meet Edward Cullen. However, in doing so, it is imperative that the audience has preconceived knowledge about each of the characters. For instance, the clip loses meaning if one does not know that Edward Cullen is a vampire, and Buffy is a vampire slayer. This information is crucial in terms of understanding the overall narrative.

This narrative concentrates on exploring what may have happened had Edward Cullen pursued Buffy in the same way in which he pursued Bella (his love interest) in the *Twilight* saga. The two characters appear to meet officially for the first time during a sex education class in school. In this scene, the teacher explains how the sex drive in humans is animalistic in nature, and so sets up the idea that Edward’s pursuit of Buffy is one driven by animalistic obsession. He is portrayed as a stalker who lusts after Buffy, harassing her at school, in the local club, and at home. Initially, however, Buffy does not view Edward as anything more than an admirer, as discussed in the cafeteria with her friend Willow, in which she says she thinks that the way in which he watches her is “nothing serious”. This viewpoint changes however, once she is made aware that he is a vampire. As the video progresses, one is made to see Edward in a more threatening role as he declares that he is desperate for Buffy’s blood, and that she is his own “personal brand of heroin”. His desperation is further emphasised as he tells Buffy that he does not “have the strength to stay away from [her]”, and ultimately drives Buffy to make the choice to slay him. What ensues is an animalistic battle between the masculine predator and his feminine prey, with roles ultimately

being reversed, as the prey becomes predator, and slays the demonic Edward Cullen, as seen in Stills 7 and 8.



**Still 7**

**Still 8**

The creator of this video has claimed that he has abided by Section 107 of the US Copyright Act, which allows one to utilise copyright protected works based on the doctrine of fair use. However, as per the findings of Aufderheide and Jaszi (2009) on participatory media, one notes that the user does not seem to have a firm understanding of what constitutes fair use. This section of the Act states that copyrighted work may be utilised for purposes such as “criticism, comment, news reporting, teaching, or research”, whilst simultaneously stating that these reasons are subject to scrutiny based on whether it is for commercial use, non-profit educational use, and the effect that this appropriation may have on the potential market of the copyrighted work.

Based on this understanding, the creator is correct in assuming that his work constitutes fair use on the grounds that he is not producing it for commercial gain. However, the general reasoning for fair use to exist is based on the right for direct social commentary, and to utilise various works for teaching and learning purposes. It is highly improbable to assume that this video was created as a teaching aid, and it does not appear to contribute much in relation to the critiquing of society. Problematically, legal jargon is intended to be read literally, and as such, the commentary surrounding the issue of gender and the empowerment of the female character made by the creator in this video is one which is implied rather than distinctly overt. Therefore, one can argue that this video does not engage with any form of direct social commentary, and subsequently cannot be protected by the

doctrine of fair use; however, by claiming that this video has no direct impact on social culture, negates the importance that popular culture plays on formulating the ways in which society is formed.

It may not fall under the protectorate of fair use, but this does not provide a sound enough argument to declare that this video is infringing upon copyright because one can argue that this video does possess significant cultural value. As suggested by Rosemary Coombe (1998), individual identity is shaped and formed by the cultural context in which one finds themselves, and as global cultures merge within online arenas it becomes natural for one to adopt specific traits and practices associated with interactive media, in an attempt to navigate this new social environment. One of the most fundamental traits of online behaviour that was established by Internet pioneers, as discussed in an earlier chapter of this dissertation, was the prospect that the Internet provided a forum for the open and free exchange and sharing of ideas, technology and information (Stallman, 1997). Therefore, one can propose that a video such as *Buffy vs Twilight* is merely the projection of this mindset and culture.

Added to this argument, is that as borders blur and national territories are lost through the expansion of the online, social identities are more often formed by what one sees being transmitted through popular culture than through the traditional channels of nation and territory. *Buffy vs Twilight* is therefore an exploration of the fusion of two popular cultural icons through an hypothesised scenario, in which the resultant conclusion can be viewed as a victory for one particular brand of culture over another – the cultural values associated with *Buffy the Vampire Slayer*, such as promoting a strong independent female character, are seen to be triumphant. One could consider that these types of imagined cultural battles, as portrayed within this video, are similar to those played out in the press through satirical imagery and parody in which different oppositional parties are often seen battling for political or social control. Therefore, the manufacture of mash-up videos in which alternative narratives are created, can be viewed as important tools in regard to understanding the cultural viewpoints and identities of online users.

## 6.5 Satirical Mash-ups

This does not mean that satire has lost its place within the realms of postmodern culture. Satire has long been a tool for social commentators to poke fun at those in power, and the rules governing the conventions of society (Navratil, 2007). Digital mash-ups have only helped to increase the platform from which satire and social commentary can take place. Today, we see a plethora of satirists who attempt to destabilize traditional discourses and ideologies surrounding a number of socio-political issues, through the many facets of interactive, digital media. Consequently, users are able to make bold social statements, such as *Bush Does Teletubbies* and *Coffee with Chou*, without the traditional confines of established institutional media.

One must be aware that satire is a unique form of social commentary which gives political and social critics the opportunity to “keep a jaundiced eye on democracy” (Lamb, 2004: 4). This is especially true when exploring the video *Bush Does Teletubbies*. Within this clip, the sun rises over a peaceful Teletubbyland, but the usual baby’s face contained within the sun has been replaced by the face of George W Bush. As he looks down on the grazing rabbits and serene landscape, his gaze fires missiles onto the ground below, killing the rabbits and exposing an oil field below the surface of the valley. Overall, it appears that the creator of this video is passing comment on Bush and his militant invasion tactics to acquire oil in foreign lands. It can be argued that democracy is only able to truly flourish if those in power are continually held accountable for their actions (McIntyre, 2005; Treiger, 1989). In this video, Bush is shown as a violent tyrant destroying a peaceful and harmless environment. As the video continues, oilrigs become apparent within the landscape as the oil rises from the missile craters, drowning the rabbits and wiping out the vegetation, as seen in Still 9, thus forcing one to question Bush’s suitability as a leader.



Still 9

It is also interesting to note that the creator of the video chose to leave in the laughter which usually emanates from the baby, creating the effect that the infantile sounds were made by Bush as he razed the land below. This, firstly, implies that Bush seemed to revel in the destruction that he caused, but secondly, and perhaps more importantly, highlights the idea that Bush is a foolish and child-like person, not equipped with the maturity to hold any position of power. This mash-up therefore, aims to take a variety of media clips and create a narrative which critically engages with social issues. As such the user is well within their rights in terms of fair use to appropriate the media which they have because the aim of the clip is not to gain commercial success, but rather offer critical social commentary.

At times, satire borders on a socially unacceptable rhetoric, often being labelled as profane, defamatory or discriminatory. However, it is precisely this distortion, and its intentionally false stereotypes of society, that help fuel debate surrounding various issues. It works “through distortion of the familiar – while at the same time pretending to depict reality – in order to level criticism” (Treiger, 1989: 1216). This is especially true when examining the video *Coffee with Chou*, whereby Paris Hilton is interviewed on a morning talk show by two rabbits. During the course of this video, Paris Hilton is outwitted by the rabbits and exposed as a mindless socialite who has only gained fame through her sexual antics. In doing so, the creator of the video raises questions as to why society elevates the social and cultural importance of various people. It can be argued that this video highlights the absurdity of giving a person such as Paris Hilton social respect, who, during the course of the

video, admits to considering prostitution as a profession, as well as agreeing to a statement in which she her mental capacity is compared to that of a “sack of hammers”. Added to this, the creator inserts a picture of the desert over Paris’ head to indicate that her mind is barren and lifeless, as well as implying that Paris’ signature catchphrase, “That’s hot”, is a reflection of her mentally deserted mind.

David Pritchard (2000: 1) emphasises that in “a variety of direct and indirect ways, media content influences what people believe, what they think about and how they act”. Most mainstream media do not offer sufficient social commentary on various actions taken by public figures, often due to an overload of information within today’s postmodern world (Friedman, 2006; Mirzoeff, 1999). However, sites such as *YouTube* have given online users a platform from which they are able to share and broadcast their own interpretations and satirical works, which otherwise would never have been seen. Therefore, as with traditional forms of satire, these videos aim to “explode constraints and add a vital dimension to public discussion of issues” (McIntyre, 2005: 4). However, in order to achieve this and allow for critical satirical comment, there are a number of conditions which need to be met. Chris Lamb (2004) indicates that the most important condition needed before satire can be implemented is that of free speech. Without this fundamental stepping stone of democracy, satirists would face authoritarian prosecution. Therefore, it can be argued that by restricting the flow of information by too fervently protecting copyright, one would not have the opportunity to manufacture satirical videos, such as the ones discussed, thus undermining important public debate.

Secondly, Lamb (2004) indicates that those consuming satirical work need to have a firm understanding of that which is being parodied. Therefore, audience members need to be somewhat educated regarding political and social affairs, or else the work would lose all meaning. This further emphasises the point, as discussed earlier, that mash-ups require some understanding of the material that a user chooses to utilise, in order to understand the inherent meanings contained in them. Importantly, viewers and creators need must be aware of the general meanings associated with various popular cultural formats, in order to navigate the interpretations offered by mash-up creators surrounding popular culture. Mash-ups are an art form which rely upon shared assumptions between creators and viewers in

regard to popular culture's various signs and symbols, and consequently if one does not possess the same shared knowledge in relation to these indicators, they can appear to be merely infringing on copyright and traditional intellectual property rights, rather than offering alternative viewpoints and interpretations of the structural confines of postmodern society and popular culture.

## 6.6 Copyright and New Media in the 21<sup>st</sup> Century

As one explores the analyses of each video, it becomes clear that users have concentrated on developing their own alternative renditions of traditional media. As discussed, mash-ups initially concentrated on creating new variants of pre-existing music videos. At that time, these videos were celebrated by music enthusiasts and found a niche audience on the television channel *M-TV*. Provided creators gained the proper permissions and licences from music producers to use established music videos, they were viewed as ingenious new musical products. However, music moguls did not foresee the emergence of video sharing sites and the monumental developments within digital technology. Internet users soon had the means to digitally alter any piece of digital media that they were able to gain access to, usually without any permissions or licences granted, and due to the popularity of video mash-ups that music enthusiasts saw on *M-TV*, began mimicking the practices of those digital DJ's who had gained the necessary licences to utilise such work (Montgomery, 2005).

However, these artists were obviously unable to gain any exposure through formal media channels, such as *M-TV*, due to the supposed illegality of their creations, and subsequently found a home on Internet sharing sites such as *YouTube*. As previously mentioned, before one is able to upload any form of video on the *YouTube* site, one is expected to register with the site, and in doing so, is required to read the terms of use and accept the rules imposed by the site. Consequently, by agreeing to these terms when one registers, as with many online service providers, the responsibility of monitoring what users engage with falls under the auspices of other users and not with the site itself (Goldsmith & Wu, 2006). Sites such as *YouTube* claim that they merely provide a service, and that it is not their responsibility to monitor how users choose to use such a service ([www.youtube.com/t/terms](http://www.youtube.com/t/terms)). Apart

from this argument, *YouTube* does stipulate that users who are reported three times for uploading videos which do not have the correct licences and permissions will have their accounts suspended indefinitely, and have all of their videos, not only the ones to be deemed illegal, blocked from the site.

Problematically, there are two main issues which underline this practice. Firstly, *YouTube* relies solely on the reportage by other users of infringing material because, as mentioned, they do not patrol what users choose to upload, because realistically it becomes practically impossible to monitor the millions of users (72 million in 2006\*) who use the site. Therefore, this creates an environment which does not actively condemn copyright infringement, and so gives the impression that uploading copyrighted material is fair, provided one does not get caught. This leads onto the second problem with this attitude, in which users who have had their accounts suspended are not prevented from re-registering with the site using a different user name, and re-posting the infringing material. As such, users are never actually punished for their actions, and because they do not look to profit from their work cannot be prosecuted by the state.

In fact, the only entity which does seem to profit from these videos is *YouTube* itself, as they sell advertising space around those videos which garner the most views. However, this is not deemed illegal because *YouTube* has the luxury to claim that they are not profiting from the content directly, but merely from the Internet traffic which visits their site. Copyright holders such as Warner Music are now beginning to take note of this, and as such have entered into agreements with *YouTube* to garner a percentage of the profits taken from advertising from videos revenues in which users have appropriated their copyrighted material (Van Buskirk, 2009). What is interesting to note is that this resolution was made because Warner Music found that they lost more revenue by not allowing their music to be seen online than if they continued to allow it to be hosted by *YouTube*.

This seems to strengthen the arguments discussed earlier in this dissertation, in which writers such as Alfino (1991), Vaidhyathan (2001) and Pistorius (2006)

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\* Weber, 2006. Available from: <http://news.bbc.co.uk/2/hi/business/6036023.stm>



indicated that copyright is more concerned with protecting the control of ideas rather than the protection of creativity itself. The videos discussed may have appropriated material from other sources, but it is those who traditionally maintain control within the media environment that are still being rewarded financially. Because companies such as Warner Music are profiting from user collaborations, it becomes difficult to argue that users are infringing on intellectual property rights or undermining the profits which could be made by various media corporations. One cannot argue that the creations which are showcased on *YouTube* are illegal if one is happy enough to accept the profits made on the advertising which supports it.

This argument is supported by television programmes such as *Clipz* in South Africa, which concentrates on broadcasting any online video which they find to be popular on a variety of video sharing sites. They do not pay any of the creators for the use of these videos, but the programme itself does bring in advertising revenue for the network on which it is stationed. Therefore, what can be noted is that if copyright were instilled by the same standards as media corporations, these mainstream media networks would be liable for copyright infringement themselves. As both American law and South African law discuss, copyright is infringed upon when creative works are broadcast without permission, apart from when one “borrows” material to create an alternative rendition.

However, one could argue that because these users have chosen to publicly display their work in an open forum aimed at freely sharing information, they do in some respect forfeit the control surrounding their intellectual property rights. This may be the case, and one could argue that the utilisation of material which was not put online in the same manner is infringement, because the original author did not consent to sharing their work in the same manner as users who willingly post videos online. Problematically though, the media which is so fervently protected is that which is the most integrated into culture. Much of the way in which society makes sense of the world is through its interaction with the media and the values associated with these media forms. Therefore, it becomes an important tool which people use in order to make sense of the world around them.

Each of the videos discussed in this chapter have utilised media in a variety of ways, for a number of reasons. However, one common theme which seems to arise is that the creation of these collaborations is driven by two distinct factors. Firstly, many videos seem to celebrate the media from which it has been appropriated in some way, often highlighting those scenes which have made the most impact on society, or that which is the most well-remembered by viewers of popular culture. Secondly, and possibly more importantly, is that users need to require an in-depth technical and cultural knowledge of that which they are utilising. Without such knowledge, each of these videos would not carry the alternate meanings which they demonstrate and therefore could be deemed as copyright theft. However, because the varied interpretations of these videos do in a sense make them new, they themselves are merely contributing to the extension of culture.

One could argue that simply creating new meaning for something does not excuse users from taking the creative work of another for their own personal benefit. Problematically though, if one gauges media history, one would find that most of that which is found in popular culture has been appropriated from some earlier format. *Disney*, for example, who is one of the most stringent enforcers of copyright, has based many of their characters on old medieval fairytales, such as *Snow White*, *Cinderella*, and *Sleeping Beauty*. Scrooge McDuck, the uncle of the famed Donald Duck, is based on the character Scrooge, unceremoniously lifted from Charles Dickens' classic novel *A Christmas Carol*, and even *Steamboat Willie*, the cartoon which launched Mickey Mouse, was "a direct cartoon parody of *Steamboat Bill Jr.*" (Lessig, 2004: 22) – the last silent film made by the comic Buster Keaton. Each of these examples demonstrates that *Disney* has maintained many of the same storylines which are associated with these characters, and yet they claim to have authorship and full intellectual property rights over their renditions of these non-original creations.

No-one can deny that these characters have become intrinsic figures within popular culture, and it therefore stands to reason that creators today should be given the same allowances to manipulate those creations which have shaped their understanding of society. Social culture cannot grow without direct interaction by those who inhabit it. This becomes even more relevant in today's postmodern world, in which cultural identities are becoming more fragmented, as national boundaries

become less relevant and one is influenced more by the values of popular culture. As such, one cannot deem digital mash-ups as the illegal act of copyright infringers, but should rather acknowledge that is simply a new way in which popular culture is developed and commented upon.

The initial argument for the protection of copyright was to grant authors a limited monopoly over their work in order to produce an incentive to create more artistic works. While this worked for many years, it became more of a detriment for artistic creation as companies aimed to extend their monopoly periods, so as not to forfeit control of their industries (Woker, 2006). The only incentive that began to drive various artists was the need to gain employment from these production houses. However, the idea that artists would not create without some form of incentive seems to have been lost if one examines the massive pool of digital mash-ups within the online realm. Most of these videos have been created, not for money or incentives, but merely out of artistic passion. Users are more interested in allowing their works to be seen, than being rewarded for them. Obviously through the power of the Internet, some do gain fame and can make money from their video, but none seem to set out to do this initially.

Therefore, it becomes possible to argue that the role of copyright has changed from when it was first conceptualised. No longer are artists bound by incentive rules to showcase their work, but instead have the opportunity to share their work through sites such as *YouTube*. Copyright, while not redundant, needs to be thought of in new ways, in order to protect artists while simultaneously promoting the development of culture. One needs to recognise that mash-up videos, such as the ones analysed, are not threatening the livelihoods of artists by undermining their financial rewards, or even their moral rights. Instead, these creations are providing important commentary on a society which has become deeply indebted to the influence of popular culture. These videos aim to re-conceptualise mainstream media, and in part try to make other users re-think aspects of the world in which they find themselves interacting.

Copyright has become a law which is so focussed on allowing those in power to maintain control over the development of culture, that one forgets that it was originally formulated to propel culture forward through the advancement of ideas.

Gaining financial reward was only a small part of the process, and aimed to protect individual authors, not multi-billion dollar corporations. However, what has emerged from modern society is the protection of these giants so that their ideologies and belief systems stay at the forefront of society. The introduction of sites such as *YouTube*, which allow users to question, change and manipulate these ideals, has led to a contentious hegemonic battle in which dominant culture is being reassessed, and ultimately redeveloped by users. No longer are consumers of media passive in its production (Marshall, 2004). Instead, media consumers have become their own producers of content as well; however one cannot expect any creative depth in production unless Internet users are given some leeway in terms of interacting with that which is already exists within cultural products. As such, copyright experts and lawmakers need to be made aware of the importance that online user/media collaboration plays in the development of both popular culture, and in societal culture. If Internet users are not allowed to utilise that which permeates their everyday existence, it undermines free speech and ultimately creates a totalitarian rulership over the formation of society, culture and identity.

## **Chapter Seven – Conclusion:**

Copyright and intellectual property rights have always been protected on the grounds that they helped to secure financial security for one's artistic creations. Problematically, as the Internet evolved and digital technologies became more interactive it allowed users the means to share information freely and openly online. This led to a number of media corporations launching lawsuits against users who shared various forms of media without ever having to buy any media products. One of the most famous cases was the prosecution of Shawn Fanning, who through the development of the peer-to-peer sharing site *Napster*, gave Internet users the facility to download vast amounts of music free. Whilst it was acknowledged that borrowing and sharing music amongst one's peers was legal, it was not legal to share information with such a vast quantity of users. Record companies claimed that a site like *Napster* would severely cut their profits, and ultimately they would lose millions from the practice of file-sharing (Goldsmith & Wu, 2006). The courts agreed, and so *Napster* was shut-down, and file-sharing became an illegal and taboo practice.

While it appeared that record companies would maintain control over the industry, they failed to see the impact that digital technology would continue to play in the consumer market. As the Internet grew and digital connections became faster, it soon became possible to share video files. Initially users concentrated on uploading and sharing home-movie type videos, however some realised the potential that the service could play in showcasing their artistic digital creations. Inspired by the techniques of early DJ's, in which they would mix a number of musical pieces together (Vaidhyathan, 2001), online users began mixing various forms of sounds and images in order to make their own renditions of various music videos, movie trailers, and narratives.

These mash-ups soon gained in popularity and eventually became commonplace among video sharing sites. However, many users chose to utilise pieces of media from well-known and established record labels and production houses, and so an ensuing copyright battle began. These media corporations have cited that utilising media which they own is infringing on their copyright, and have attempted to block sites such as *YouTube* from hosting such videos. Nevertheless,

users continue to manufacture mash-ups, citing fair use as a protectorate for their actions. Problematically though, many users do not understand what is actually meant by the term fair use, and so often this argument is null and void (Aufderheide and Jaszi, 2009).

This dissertation has attempted to investigate if copyright law is too strict in the way that it is implemented, and as such, whether creations such as digital mash-ups can prove that copyright needs to be re-thought. What has emerged are a number of important trends. One of the most important aspects to be highlighted is the wording of copyright law, in which it is claimed that for a work to be granted copyright it needs to be original. Obviously in terms of digital mash-ups, none can be deemed original; however, this is not where the problem lies. The issue is contained in the fact that media corporations claim originality for their work, and as such, others cannot gain access to it without express prior consent. However, when examining a variety of mash-ups in the last chapter, one can note that much of the media which has been utilised has itself drawn from a variety of older media forms. The *Ghostbusters* music video, for example, directly played on Michael Jackson's *Thriller* video. The media of popular culture has become popular precisely for its ability to make intertextual references and to be self-reflexive. Therefore, it seems like a foolhardy argument to state that one should be granted copyright based on a product's originality.

The main reason for granting copyright is that it is supposed to reward the author for their work, and in so doing allow them the opportunity to produce other creations. However, what has been highlighted is that it is no longer the individual who is protected; instead, copyright seems to favour protecting the acquisitions of large corporations (Pistorius, 2006). Consequently copyright has become a tool used not for creating incentives, but rather as something which helps to maintain the control of dominant corporations. As such, what one notices when investigating why mash-ups have become such a contentious media format, is that users often create alternative scenarios to that which the owners of the work initially created. This in turn undermines the values and ideologies which have been instilled within society and culture through mainstream popular media, and consequently supports the claims

made by Alfino (1991), who stated that the control of knowledge through copyright is ultimately the control of culture.

What one notices emerging through a creative form such as mash-ups, is the gradual shift that has begun to happen in terms of culture construction. Consumers are no longer at the mercy of mainstream media, but are now able to interact far more easily with that which they consume. Mash-up videos allow users the opportunity to pass comment on that which is embedded into the make-up of postmodern society. The way in which culture and identity are formed is becoming a more interactive practice, whereby one is able to produce and personalise specific media experiences to their own tastes. Therefore, *YouTube* has become a type of battleground for hegemonic warfare in which users are undermining and re-developing the ideologies which have been instilled through mainstream media. A video such as *Toy Story 2 Requiem* is one in which the user contradicts the innocence usually associated with *Disney* productions, and subverts it by turning it into a narrative filled with drugs and prostitution. This downplays the innocence of *Disney* and creates a more realistic impression of the world in which everything does not always have a happy ending.

All interpretations regarding each of the mash-ups examined in this dissertation is purely subjective, and as such proves the importance of such creations within society. Each video possesses a different angle from which one is able to comment on society and culture. Without such works it is possible that individual critique would be slowly eroded by the dominant forces within the media industry. Without interactivity, and the opportunity to engage with mainstream media as the creators of mash-ups do, there would be little which either contradicted or commented upon popular culture. As such, mash-ups can play an important role in holding those in power within the media, accountable for that which they produce, and subsequently provide an alternative view to dominant culture.

It would be naïve to suggest that online users do not partake in genuine copyright theft, and this dissertation does not suggest that this type of practice should be condoned. What it does suggest, however, is that creations such as mash-ups have become important tools within the public sphere with regard to commenting on popular culture. One cannot make sweeping statements assuming that all users who

utilise the work of contemporary media in order to create their own variations are engaged in copyright theft. As this dissertation has demonstrated, each video needs to be examined individually in order to negotiate the meanings crafted by various users, and to determine if theft has inordinately occurred. Generally, what one finds is that these users have created meaningful interpretations of popular culture, and as such should not be condemned for using that which they comment on as a creative base.

Instead, these users have taken the public platform of the Internet to a new dimension, evolving from the distribution of written information and knowledge toward more visual and interactive formats through which one is able to critique the formation of society and culture. One needs to acknowledge that the Internet itself has changed and grown in the ways it expects online users to interact – changes which these users have embraced as a means to express themselves. One could argue that it is important to think of the online world as its own definitive culture in which users need to follow the societal structures of interaction. Just as one needs to follow the rules of specific cultures to be understood and accepted in the “real” world, so do users who engage within the medium of digital technology. Importantly, this leads one to assume that the reason users have invested so heavily in the art of digital mash-ups is that firstly, it is a way in which they are attempting to navigate a new social structure, but that secondly, it is the actually the structures created by the digital environment which have made users interact in this way.

If the Internet had not evolved in the ways in which it did, users would be engaging in other forms of communicatory practices in order to make sense of their environments. As such, it becomes difficult to justify prosecuting those users who are appropriating media in an attempt to communicate a wide array of ideas within an environment which continually expects users to interact and be social. Therefore, this dissertation proposes that whilst copyright is not an obsolete practice, as many artists’ livelihoods still depend on the monopolies of their works, some aspects of copyright law do need to be relaxed. As mentioned, one cannot make generalisations claiming that all appropriation is theft, undermining the works of paid creative artists. Instead, these acts need to be examined individually, and considered for their social commentary and worth.



What is even more crucial, however, is the acceptance that copyright law has become a conundrum within the online world. Due to the borderless nature of the Internet, and the territorial nature of copyright, it becomes very difficult to control the practices of users who are situated all over the world. Each country has its own unique set of copyright laws, and whilst many have now entered into international agreements in an effort to curb piracy and information theft, users are still bound by national laws. Even laws that are as similar in nature as South Africa and the United States, have fundamental differences between them. South Africa, for example, has very limited structures in place with regard to online practices – the most recent addition being made in 1992 – which makes it very difficult to determine what course of action should be taken in terms of Internet sharing, as these laws were developed before the Internet was even introduced into the country. Even the United States, which has some of the most up-to-date copyright laws, is outdated in terms of the Internet – the last addition was made in 2001.

This dissertation thus suggests that due to the changing nature of global communicatory practices, copyright should begin to be thought of not as independent, national law, but instead as global agreement. Whilst currently various nations have entered into such agreements, they still do not hold as much weight as national laws because they function as mere guidelines, and are not instilled as global policy. However, to consider global agreements on this scale may be a rather utopian ideal because it then asks nations not only to agree, but to determine which aspects of their own laws should fall away in order to create consistent policy. Even more problematically, however, is that those countries which do not possess as much power as more dominant global players, may be forced into agreements which undermine their needs, and ultimately reinforce the power of dominant entities (Litman, 2001). Highlighting the idealistic nature of such agreements helps to affirm the claim that digital mash-ups are an important addition to global society, because they give many who are not in dominant societal positions the ability to engage critically with that which surrounds them. It is evident that those who have dominant positions within society often dictate the laws and structures of a society, and as such it is understandable why those in power so fervently protect that which allows them such dominance.

Therefore, one can view mash-ups as an important element of free speech which allows common citizens the opportunity to hold those in control of popular culture accountable for their actions. It is unlikely that this type of interaction is going to topple those in power; however, it does help to ensure that such power does not become a completely authoritarian dominance. This dissertation has argued that copyright may become a tool of dominant cultural corporations to maintain control over society, and as such, claims that its infringement in fact constitutes a certain loss of this (dominant) control, thus verifying that copyright, as traditionally conceptualised, no longer protects the individual artist, but instead proposes to protect large capitalist corporations and dominant power players from competition in an effort to help to expand their control (Lessig, 2004).

It appears that the law no longer seems to recognise the distinction between those who re-publish the work of the author without permission, and those which build upon creative work in order to further the development of society (Lessig, 2004). This dissertation has established that this is an important distinction to make as more Internet users create important social and cultural commentary through mediums such as digital mash-up. Therefore, it must be noted that this is a key issue which needs to be discussed and recognised when devising amendments to copyright acts. It can be acknowledged that the Internet has played an important part in changing the way in which citizens engage within the public sphere. Consequently, law-makers need to recognise this and adjust copyright laws and agreements as such to protect democratic development and free speech. Currently the laws of South Africa and the United States are dismally outdated with very few amendments having been made since the inception of the Internet, or even more problematically, since the transformation of media from analogue to digital.

This research has shown that large corporations such as Disney are quick to defend their copyrights, often claiming that any form of unauthorised use of copyrighted material is unlawful. However, this dissertation has also highlighted how culture can only grow if citizens are given the opportunity to both engage with it, and to challenge the culture which surrounds it. It was this type of interaction that allowed the Disney corporation to grow as immensely as it did. Without the influence and utilisation of past cultures into the work of Walt Disney, it is unlikely that he

would have formulated such an intrinsic aspect of modern day popular culture. As Lawrence Lessig (2004: 24) describes, “Disney ripped creativity from the culture around him, mixed that creativity with his own extraordinary talent, and then burned that mix into the soul of his culture”, just as modern day creative artists “rip” digital media into “pieces”, re-mix it into the form of a mash-up, and then “burn” these creations to disc to be uploaded onto video-sharing sites. Therefore, it can be argued that online mash-up artists are the new creators of popular culture who need to be acknowledged as such, and not labelled as thieves or deviants. This argument does not propose, however, that all mashers intend to create work which will be of benefit for cultural development, and as such, more ethnographic research should be done to explore why mashers choose to engage with media in the ways that they do. Consequently, it would be of interest to determine if online users are aware of the role that they are playing in cultural development, or if in fact they are subscribing to this behaviour based on the structures which they find themselves to be a part of.

This dissertation has limited itself in terms of the type of medium investigated, and further study with regard to intellectual property rights is needed to determine the role that online technologies can play in societal development. This research has been important in developing the idea, through the investigation of video mash-ups, that intellectual property rights need to be re-thought in order to protect the future development of culture; however, the use of photographs, music and video to develop online personas in environments such as *MySpace*, *Facebook* and *Digg*, are themselves important tools when attempting to address the issue of cultural and identity formation within postmodern society.

Apart from this, one of the most interesting issues which this dissertation was unable to explore in detail, but which needs to be investigated, is an ethical examination surrounding the exploitation of online users’ intellectual property by large media corporations to supplement their own production needs. This would help supplement the argument that copyright laws have shifted to protect capitalist conglomerates rather than individual artists. With this said, however, this research has been able to establish the continued dominance of mainstream media corporations through their stringent control over copyright, and in doing so, demonstrated the need for ideologies, with regard to copyright and intellectual property rights, to change.

Society needs to recognise the value that certain types of copyright infringement can have in terms of its own cultural progress. It is often debated whether the media shape society, or if society shapes the media, but whatever the answer, this conundrum recognises the importance and power of media consumers. The introduction of mashers into the media landscape cannot be dismissed as deviants aimed at toppling the control of dominant ideologies, but instead should be seen as just another team of players within the hegemonic battle of culture.

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