

Spring 2022

Copywrong: Intellectual Property as a Weapon Against Black Musicians and The Efforts Made to Combat it Through Community Education

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Recommended Citation

Thiam, Maty, "Copywrong: Intellectual Property as a Weapon Against Black Musicians and The Efforts Made to Combat it Through Community Education" (2022). *Senior Projects Spring 2022*. 207.

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Copywrong:
Intellectual Property as a Weapon Against Black Musicians and The Efforts Made to Combat it
Through Community Education

Senior Project Submitted to
The Division of Social Studies
of Bard College

by
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Annandale-on-Hudson, New York

May 2022

I dedicate this thesis to my family. I would not have survived without you. Bilal and Mom,
Grandma and Grandpa, Miles and Ruby, Judy and Tony. Thank you.

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I . Introduction

The United States is a playground for the consumption of land, goods, and ideas. There is a natural essence to the concept of ownership because of how it dominates our day to day lives. How much clothing you own, how many cars you have, how much money you make; all of these things are status symbols in American society. Western traditions, specifically in America, have adopted ownership and turned it into a major life practice. From owning land to owning people, the United States has never shied away from using its legal institutions as a means of control. It seems as if the more we own the more power we have and there is no limit to how much one wants to own. We come to believe that the more money you have and the more property you own, the more successful you are. Every commercial industry functions off this value system.

The American dream, informed by capitalism, has led the general public to believe that everyone has the same ability to accumulate wealth if they work hard. This has come to be understood as the Bootstraps theory. However, “pulling oneself up by the bootstraps” becomes harder in a society struggling with economic inequality. According to the 2020 United States census, 32.7 million people in America suffer from poverty (Bureau, 2022). There is a major disconnect in the lifestyle we are sold and the reality that many people currently exist in.

Intellectual property (IP) brings in new possibilities and challenges for how we imagine ownership. It allows us to claim ownership over more than just tangible items. Its relevance comes in the form of copyrights, patents, trademarks, and trade secrets (Ford 2021). With intellectual property there becomes a legal way to express one’s ownership and possession over intangible creations. This can range from written theories and ideas to music and images.

Intellectual property has become increasingly relevant in recent years due to the increasing popularity of the internet and our ability to access all types of information in the palm of our hands. Now our thoughts and ideas can spread quickly across the globe like a wildfire and give any person the opportunity to create, but also to steal. Although intellectual property has existed long before the age of the internet it is relatively new and becomes more relevant by the day.

For someone entering the music world as a creative musician, the challenge is to retain control over their own work, both so that they can ensure an adequate financial return and so that they can exercise agency over their creation. Intellectual property can help with this, but only if the musician is able to retain the copyright. Financially, the best option is to protect music with a copyright because it allows the copyright owner to legally control how the music is utilized. The issues begin to arise when we dissect who exactly owns the copyright. While some independent musicians are willing to risk going into debt staying independent, others rely heavily on music labels to provide funding for their career.

In the current age we live in, the internet has become the main stage for buying, selling, and sharing music. While some people just want to post freely to the public domain, others use streaming services to be compensated for their work.

1.1 What is Intellectual Property?

How would you feel if you made a song so good that everyone in the world can't stop listening to it, but nobody knew you made it? People are posting your song on their social media accounts, they're playing it in restaurants, and they're blasting it in their cars with the windows

down. Imagine that people are using your song in commercials and their products are gaining popularity because of it, but nobody is giving you credit for this masterpiece. Not only are you not getting acknowledged for your musical talents, but you're not getting financially compensated for the work you produced either. You want the world to enjoy your creation, but you feel empty without the recognition. This unfulfilling experience is the essence of a world without copyright.

This hypothetical scenario is a nightmare for most musicians and something that happens more frequently than it should. Megan thee Stallion, a Black, Grammy award winning rapper faced conditions similar to this scenario, and in March 2020 she sued her former record label, 1501 Certified Entertainment, because of it (Wu 2022). She initially sued 1501 for fraud, breach of contract, and negligent misrepresentation amongst other abusive practices (Wu 2022). Megan claims that the last straw was the label not letting her release music at her own will, but she had also signed a 360 deal, an extremely predatory contract, that stated Megan would make 40% of her profits while her label would make 60% (Wu 2022). During this period of time, Megan was extremely popular as an up and coming artist. Her music was all over social media and topping music charts. This success has led her to be awarded Grammy awards in both 2021 and 2022. And yet, with the copyrights to her music being possessed by 1501 Certified Entertainment, her level of newfound success did not match the income she was receiving. Today, two years later, Megan thee Stallion is still fighting this legal battle with her former label (Wu 2022).

On the National Public Radio website, a 360 deal is loosely defined as a contract that gives record labels a portion of all the profits that an artist makes (Cole 2010). This goes beyond just record sales, it includes touring, merchandising, and any other profits that this artist makes

while signed to this company (5 Reasons Sign a Record Deal 2020). In Megan's case, this was the 40/60 deal she made with 1501 Certified Entertainment.

Many musicians, especially rappers have spoken out against 360 deals in their music. In "What's Free" by Meek Mill featuring Rick Ross and JAY-Z, these rappers are critiquing modern ideas of "freedom" and the way society for African Americans truly lacks freedom (Mill et al. 2018). JAY-Z, the rapper responsible for helping Megan thee Stallion break her contract with 1501, mentions his disdain for 360 deals and predatory music labels in this song. JAY-Z raps, "We made the project the wave, you came back reinvented and gentrified it. Took nigga's sense of pride, now how that's free? When them people stole their soul and hit niggas with 360's" (Mill et al. 2018). JAY-Z, Meek Mill, and Rick Ross are directly addressing white supremacy and the symbolic chains that IP institutions have placed on them. Kendrick Lamar, an extremely popular and influential rapper, has also used his music to speak out against the way music corporations prey on up and coming, Black artists. In his song "For Sale? (Interlude)" Lamar addresses music corporations by equating them to Lucy (a euphemism for Lucifer, the devil) and the evil temptations that come with signing contracts (Lamar 2015). Kendrick Lamar raps, "Lucy gon' fill your pockets, Lucy gon' move your mama out of Compton, Inside the gigantic mansion like I promised... All your life I watched you and now you all grown up to sign this contract, if that's possible" (Lamar 2015).

The reason these rappers are able to speak out against these music giants is because they are signed to artist owned labels created by themselves or their Black peers. When music labels have control over what music is getting produced and distributed, it's easy for them to silence artists who might feel trapped, and in some cases enslaved, in their contracts. When Megan went

public with her lawsuit on social media in 2020, she claimed that when she signed her contract with 1501 she was only 20 years old, still in college, with little to no guidance on what the contract entailed financially (Wu 2022). These instances of exploitation and predatory behavior enacted by these powerful corporations illustrate the importance of education on intellectual property, and especially of copyrights, for Black musicians.

Copyright is just one type of intellectual property, but the most important type when it comes to the music industry. Although each type of intellectual property serves a different purpose, they all offer legal protections for an individual's original creations. The four types of intellectual property are trade secrets, patents, trademarks, and copyright (Ford 2021). I plan to focus on the latter to understand exactly how we can imagine a progressive future for musicians, intellectual property, and the public domain.

Essentially, a copyright is the legal right of a creator to control the reproduction of their own intellectual creation (Greene 1998). Copyrights protect creative forms of expression that are fixed in a tangible medium (for example a CD or streaming service) (Greene 1998). For musicians there are two main types of copyrights: ordinary copyright and sound recording copyright (Wang 2018). Ordinary copyrights protect the author's rights in written expressions of the music, for example lyrics and musical scores (Wang 2018). On the other hand, sound recording copyrights cover the actual audio recording of the song and can be owned by the recording artist, as well as their label (Wang 2018). Sound recording copyrights can often include performance rights (control over how the song is played), sync rights (control over how the song is used in media e.g. movies and commercials), and reproduction rights (control of the sale of physical CDs or music files) (Wang 2018).

These different allocations of copyright will organize how royalties are distributed and who they get distributed to (Wang 2018). These protections add major financial value to an artist's music by clearly defining the ways in which they are compensated for their work. Copyrights allow not only for the financial foundation of careers for musicians, but for the existence of the music industry as a whole. Specifically, they provide the legal foundations for the music industry as they create incentive for artists to produce new music (Faulk et al. 2005). Faulk, Lambert, and Rolston state that, “The first group to commercialize copyright protection were music publishers, who profited from the sale of sheet music to the public... The record label in particular became the driving economic force in the commercialization of music” (Faulk et al. 2005).

Megan thee Stallion, JAY-Z, and Kendrick Lamar are some of the biggest names in music and each of them has had a predatory experience where a music corporation has attempted to weaponize copyright against them. Until these music giants are willing to hold themselves accountable, Black people need to empower themselves with the knowledge and power to not fall victim to this exploitation. If Black people have access to a legal resource that can provide an equitable approach to understanding intellectual property rights, it's possible Black musicians can end the copyright regime these corporations have benefited from.

In this project I will be examining the ways that social justice focused organizations can help address such inequalities. By selecting an organization and studying their website, I will be able to understand exactly what is being done to progress IP rights and what work still needs to be done. Hopefully, more focus on providing free resources that specifically target Black creatives, artists, and entrepreneurs will allow for more independence within the general

entertainment industry. If we empower individuals with negotiating power and IP literacy, signing to a label can be less threatening and more financially beneficial than it is for counterparts that don't have exposure to IP.

I.II Research Question

How does a social justice focused organization create community by addressing racial inequalities in intellectual property rights (specifically copyright) in the music industry?

I.III Methods

If Black people are to empower themselves with their intellectual property rights it is imperative that there is proper education and community support that offers Black artists and entrepreneurs free knowledge about the IP legal sphere. I will be focusing specifically on The Institute for Intellectual Property and Social Justice (IIPSJ), which does exactly that. They combine activism and social justice with the legal sphere, advocating for major protections for creatives of color. Using a content analysis approach to flesh out and examine the efforts from the Institute, we can unearth the ways Black creatives, specifically musicians, have to work from the ground up to protect their property within the copyright regime.

IIPSJ actively fights for Black creatives through legal institutions and promotes the idea that all people should be knowledgeable about legal issues, not just lawyers. Although my point of reference into this legal sphere is the institute's website, it quickly became clear to me in the course of this analysis that what the institute is doing is much more than just "a website." It is

building a coalition of predominantly Black lawyers who are looking for a way to share their knowledge, craft, and resources with an audience larger than their immediate community.

In studying this website, I have realized that what I am really studying is a process of social capital formation, which implicates the inequalities of information about law and legal institutions in our broader society. There is a major disconnect between lawyers and the rest of society. Lawyers possess knowledge from law school and practice within the field, and yet, the people who lawyers are actually serving do not share this same access.

Bearing this in mind, as I have been studying the content of the website, I have also been seeking to reflect on the ways that social capital and symbolic capital are connected. Intellectual property helps us to see that knowledge is power. I have kept this in mind in the ways that I have selected content from the Institutes website.

While scouring IIPJSJ's webpage, I began documenting everything that was free and accessible to anyone with access to the internet. This led me to journal articles, YouTube videos, podcasts, interviews, and even free legal advice from lawyers that offer pro-bono services. There were free conferences and networking events that centered race and social justice in their goals. I noticed that the founding team for this organization was extremely diverse with strong backgrounds in the legal field and intellectual property. This entire website is a common ground for beginners to IP as well as long term advocates for social justice within intellectual property. It was important that I contemplated the ways this website was bringing people together beyond short term, immediate interactions. They provided curated guides for beginners, access to their event archives, contact information for every single professional listed on their website. And while IIPJSJ emphasizes equitability for Black people within IP, they make sure they open their

doors to other non-white communities as well. These forms of outreach within Latin America, Africa, and Asia bestows IIPJS users with a global perspective and access to ideologies and practices that are not entirely Western.

In American society, it is not expected (or required) that musicians know the laws surrounding intellectual property, but it is expected that these same musicians will copyright their music and protect their creative talents. Not everyone can afford a lawyer, especially at the start of their careers, to explain contracts and their rights as a musician. And while the internet is a great source, it is very vast, and contains lots of conflicting information. IIPJS recognizes this need for a compilation of resources and therefore created their program to combat this issue. I plan to use IIPJS's social justice approach of free access to knowledge about IP rights to argue that the only way for the general public to access legal resources and knowledge is for legal professionals to commit to sharing their legal knowledge and experiences for free in accessible domains.

The IIPJS website has tons of free articles and resources for people who are interested in the interaction between property and creation. I want to focus on understanding exactly how these resources can inform the public and what that means for the future of our society. If more legal organizations are interested in sharing resources regarding their fields it can revolutionize how we approach the law. Lawyers are extremely important as they act as guides and informants. They are trained in specialized areas (for IIPJS it's intellectual property), but they do not need to be gatekeepers of these fundamental Western institutions. Everyone that participates in society should know how to approach the law and feel comfortable doing so, regardless of their social identity or wealth.

II. Literature Review

The music industry is a powerful source of entertainment within many cultures across the globe. Together musicians, music corporations, and legislative governmental bodies have established a musical market where music can transform from a phenomenon of sounds to a commodity meant to be distributed, purchased, and shared (Roy and Dowd 2010). Many scholars have attempted to understand the ways in which music is treated as an object and its effect on society.

Some people (define who is people) simply want to understand the structures and hierarchies of the music industry, and some are investigating the way music ownership can stratify artists, while others are looking at the way music has been regulated through legislation put in place to promote ethical spaces for music ownership. All of these approaches to the music industry allude to the fact that when music is treated as an object it can steer in an oppressive and exploitative direction. Time and time again there are artists of all backgrounds and levels of popularity addressing the issues they have faced when it comes to controlling their intellectual property. Music corporations¹ often play a major role in the foundational legal process that is required to turn sound into valuable property. Many legal scholars and sociologists have attempted to break down the exploitative aspects of intellectual property within the music industry. Although each scholar has taken their own approach, we can combine their valuable contributions to further understand why programs like IIP SJ need to exist. The existence of a

¹ This is an all encompassing way to refer to record labels and music publishers.

program like IIPJS is inherently battling against the greed and domination that is attached to musical property.

II.I Literature on the Significance of Property and Ownership in the West

There is a well-developed scholarship exploring the significance of property ownership in western culture, and particularly in America. Giving credit and taking ownership is a quintessential part of the American experience. Every inch of land in the United States is accounted for. Whether it be for public or private use, there is someone or some “body” that is accredited with owning all American properties. The law is used as a way to regulate these practices to make sure everyone has an equal chance at participating in this exchange of whatever one considers property. While actively participating in American society it is hard to see how deeply ingrained property and ownership is in our daily lives, but when you step back and focus on every interaction you have from the moment you wake up to the time you go to sleep, you begin to realize how important ownership is to society. This is not by mistake.

The men considered American revolutionists and founding fathers, such as Thomas Jefferson, had very purposeful intentions regarding the documents that constructed American philosophy. Drawing from social contract theories, Jefferson, and men like him, found themselves writing the documents that would be dominating American society for hundreds of years to come. One of the philosophers Thomas Jefferson was deeply influenced by was John Locke. Writing during the late 17th century, Locke was a Western pioneer of ideas regarding natural law, social contract, religious toleration, and the right to revolution (McDaniel 2009.

In his book, *Second Treatise of Government*, Locke argues that all individuals are equal and have the natural right to, “life, liberty and the pursuit of property” (Locke 1980). Does that sound familiar to you? It is almost the exact phrasing in the United States Declaration of Independence stating that, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” Although the wording is slightly different, with property being substituted for happiness, there is a direct link between American practices and Locke’s philosophy.

American revolutionists like Thomas Jefferson were open about the inspiration they drew from Locke. Heavily influenced by Christian faith, the concept of natural rights given to man by birth was central to Locke’s work (Locke 1980). In his chapter, “Of Property,” he explains how ownership is a natural right granted to us by God when God gave humans Earth. Locke argues that, “God, who hath given the world to men in common, hath also given them the reason to make use of it to the best advantage of life, and convenience” (Locke 1980). According to Locke, the relationship between our own physical bodies and property is ruled by consent (Locke 1980). Locke’s concept of consent is not a verbal transfer, but a physical and mutual one based on labor (Locke 1980). If a man tended to an object, whether that be a house he built or a farm he planted, that object is naturally his (Locke 1980). This logic of consent is also applied to the use of money. Locke sees exchanges of money and goods as a form of mutual consent (Locke 1980). While two people might not be saying outwardly that they consent to this exchange, the transfer of money would suggest that both parties are in favor of this transaction. This social

contract theory suggests ways for governments to determine how they would deem someone an “owner” for a range of exchanges.

There are many social theorists like Locke who found great importance in understanding society’s relationship to property. Max Weber was a prominent Western sociologist that also contributed greatly to the discourse of property and ownership. Weber was a German sociologist, historian, jurist, and political economist committed to building foundational theories regarding the development of modern Western society (Kim 2017). Writing during the late nineteenth to early twentieth century, Weber’s literature has continued to influence social science well into the twenty first century.

II.I Sociological Literature on the Objectification of Music

As opposed to studying music as an institutionalized system of tonality like some sociologists, many others have looked at music as an object meant to be commodified (Roy and Dowd 2010). In this case we’ll understand an institutionalized system of tonality to be pitch, tempo, structure, and all other physical characteristics of music. This has allowed people to categorize music and with that categorization comes deeper understanding of our own society. For every genre, there is a subgenre relying on this method of distinction. In their article “What’s Sociological about Music”, Roy and Dowd explain how certain musical structures have been tied with gender expression and other forms of expressions (Roy and Dowd 2010). They point to Walsner who once argued that the musical structure of heavy metal can be tied to broader notions of masculinity (Roy and Dowd 2010). By separating music into categories and relating it to characteristics of humans (E.g. rhythms being linked to a specific human gender), we are able to objectify and commodify it. This is why sociologists also approach the study of music as an

object, and not just a practiced phenomenon. It is of utmost importance that we as a society do not leave the systems of the music industry untouched. Like many institutions and markets, the industry regarding music has the ability to take advantage of the people who interact with it.

II.II The Commodification of Music and Marketable Value

As a major cultural phenomenon, music exists with the possibility and intention of being shared. Music has the ability to inform us about our society and influence our behavior. It is extremely expressive not only for the people who create music, but for the people who consume it as well. For example, a love song played at a wedding might affect the listeners differently than someone listening to the same song during a break up. This is the beauty of music. It's extremely malleable and adaptable. Constantly being produced and reproduced for the world to consume. This is not to say that many musicians make music only for the sake of their own consumption, but there is an extremely valuable market for music. Roy and Dowd explain how music professionals in Great Britain were more successful when they made music that appealed to an audience (Roy and Dowd 2010). If you can target an audience, financial success is extremely possible. The rate of consumption at which people are willing to pay for access to music has always been extremely high and therefore profitable for the music corporations that want to control their careers.

II.III Relating Bourdieu's Theories of Capital to Power and IP

There is a lot of meaning that is applied to an artist's copyright. Having produced an original work is something to be proud of and can be extremely lucrative. If ownership over the

rights of an artist's work was not valuable, music labels would not be paying high prices to secure the copyrights for themselves. This is because copyright is able to signify a person, or persons, power and status.

French Sociologist Pierre Bourdieu's concepts of social and symbolic capital have provided a way to understand exactly why ownership signifies power and success. Symbolic capital acts as a signifier of an individual's place in society. According to Bourdieu, through recognition it provides us with a way to exist socially without explicitly saying who we are and what we do (Richardson 1986). When a popular artist is signed to a major label, it signifies to others their value as a musician. It tells you that they are seen as an asset to the corporation's brand and that their music is potentially profitable. When an artist is not signed, though it leaves more up to interpretation, it signifies their independence. For example, Chance the Rapper, an extremely successful, independent artist that has worked with major names in Hip-Hop such as Kanye West, often boasts about how he has turned down multiple offers from labels (Rys 2016). Chance the Rapper has been approached by both Columbia Records and Sony and turned them away. This emphasis on not needing a label signifies his confidence in himself as an independent artist. By turning away these labels he is acknowledging his own self worth and telling the public to treat him with such respect because of it.

Regardless of who owns the copyright, a copyright itself can function as symbolic capital because it shows others that a sound or lyric is worth protecting. The same way some high end purses can signify someone's class status, a copyright can signify an artist's value within the industry. Someone posting their music for free on SoundCloud or YouTube may not be revered as highly as someone copyrighting their music then posting it on a streaming platform such as

Spotify or Apple Music. By providing this form of symbolic capital a copyright is essentially legitimizing an artist. A copyright costs money to acquire, and through this process you are guaranteed protections on a government level. For an artist to copyright their music, it means they have something valuable worth protecting.

Social capital is also an important concept introduced by Bourdieu because it speaks to the ways in which musicians create community through intellectual property. Social capital is a type of social currency acquired through knowing people, also referred to as social ties Richardson 1986. It is a sociological way to approach the idea of networking. Networking can help someone find jobs, enter new social environments, and even acquire knowledge. In the music industry, but really any industry, networking is one of the most important things you can do to help build your career. For many musicians, music labels play an integral role in providing social capital because they have ties to a diverse range of artists. Imagine a small indie band that gets signed to Columbia Records. They now have entered a community that is directly affiliated with major musicians like Adele, Beyonce, and John Mayer. This will provide the small band with opportunities from within the label, but also from outside corporations that seek affiliation with up and coming artists.

While social capital is so important to building a career, there are also downsides for musicians that rely on social capital to build their careers. Music labels are able to provide social capital, but social capital is not financial compensation. While a label is able to share music with musical elites and provide an artist with global exposure, through intellectual property they are able to be the sole profiteers of someone's music. This is exactly why we saw Megan thee Stallion speaking out against her ex-label, 1501 Certified Entertainment (Wu 2022). Even though

her label was able to push her music on social media, sell merchandise with her popular catchphrases on it, and finance her tours across the country, Megan herself was not making money (Wu 2022). Megan thee Stallion became so successful that when she spoke out against her label, major celebrities listened. Jay Z's legal team at Roc Nation was able to help her leave her exploitative contract (Wu 2022). 1501 *did* provide Megan with social capital, but they did not provide money, which is really what she needed. To her benefit, she was able to acquire enough social capital to throw it back in their faces and defend herself. While Megan thee Stallion was able to leave 1501 Certified Entertainment, not all artists are offered this opportunity. While social capital is enticing, not everyone can rely on social capital alone to be successful in their careers. After a musician signs a contract it becomes really expensive and time consuming to break up. This is why education about intellectual property and rights as a musician should be accessible and free.

II.IV Legal and Jurisprudential Approaches to Intellectual Property

Legal scholars have contributed greatly to the study of intellectual property within the music industry. Intellectual property, specifically copyright, has played an integral role in shaping our current music industry. It has allowed artists to share their music with the world and be compensated for their original works while doing so.

Although there is vast amounts of literature regarding IP in the United States, it is only in the past 50 years that there has been scholarship regarding the racialized origins of the music industry and its relationship to property. Legal scholars interested in social justice have begun to

acknowledge the fact that without Black Americans, the success of the American music industry would have come much later, if at all (Greene 2008).

In the West, the United States has a unique approach to copyright law, as opposed to their European counterparts. This is due to America's emphasis on economic protections and economic incentive theory (Greene 1998). Under capitalism, economic incentive works to help musicians build their wealth because creating music will essentially lead them to greater financial opportunities. While European governments also emphasize financial gain for creators, at the root of their copyright law is the protection of personal rights of artists (Greene 1998). For France this is regarded as "moral rights" (Greene 1998). Moral rights are interested in making sure authors get the proper claim to recognition for their works and the ability to prevent alterations for their work (Greene 1998). When comparing France's moral rights approach to the United States' economic incentive approach it becomes clear that the United State's is not actually interested in the artist, but in the product that an artist can produce for sale. Economically this approach is sound, but it is also extremely dehumanizing and can become exploitative.

It is crucial to recognize that when the Copyright Act of 1790 was written into the United States Constitution, most Black people in America were still enslaved, and were not considered when this clause was enacted (Greene 1998). At the time, America's concept of property still included ownership of people, thus allowing no room for Black creators within the legal parameters of intellectual property.

When studying the origins of the American music industry, it becomes apparent that slavery, Black culture, and Black Americans contributed greatly to its creation. Music

corporations exist today because of their intrinsic role in the distribution of music, specifically sound recordings (Gitelman 1997). This may seem obvious, but what was so racist about this was the music they were distributing. By the late 1890's, the music that was deemed most popular, were "coon songs" (Gitelman 1997). These were songs based on stereotyping and making a mockery of African Americans (Gitelman 1997). When the phonograph was introduced these songs were able to be reproduced and shared more broadly (Gitelman 1997). The distributors of these songs are what we would now recognize as a musical corporation. Columbia Records, one of the world's most powerful record labels, was once called the American Graphophone and contributed greatly to the development of copyright law during the late 19th century(Gitelman 1997).

The American institutions of copyright are inherently racist because racism is what fueled their development. When human enslavement is one of the country's biggest forms of capital, the concept of economic incentive is directly tied to racist practices. Slavery sells. That is why coon songs, and similar racist media such as minstrel shows, were so popular amongst American consumers.

One legal scholar that has shifted the literature surrounding IP is K.J. Greene, an American law and professor of contract and music law at Southwestern Law School. Across many journal articles, Greene has argued for critical race theory (CRT) to be applied in analyses of IP law and the music industry (Greene 2008). Greene argues that CRT allows us to properly analyze IP law in a way that has been ignored by scholars before the 1980s (Greene 2008). It assumes that racism is inherent in American normative order and it establishes that American legal systems exist in a space that constructs race and race relations in support of white

supremacy (Greene 2008). CRT also brings to light the fact that colorblindness in legal jurisprudence has allowed legal scholars to ignore racism within the American legal sphere (Greene 2008). Furthermore, CRT advocates for a rejection of neutral accounts of government legislation (Greene 2008).

This last point is crucial when critiquing IP because on the surface the Copyright Clause reads as equal for everyone who takes part, but it ignores the experiences and perspectives of subordinated Americans that don't have the same resources to participate in copyright law (Greene 2008). In modern markets, Black and brown Americans can only be equal to their white counterparts if they are equipped with the financial and social capital necessary to own business assets (Greene 2008). While white musicians, such as Eminem, can easily enter the music industry and top charts, especially in genres created by Black artists, Black people have to put in so much more work and effort to gain success and wealth within the industry (Greene 2008). And as we saw with Megan the Stallion, sometimes breaking into the industry and gaining major recognition is not enough to acquire the wealth that the copyright clause is incentivizing artists to chase.

Greene actually asserts this idea that economic incentive is not even close to a dominant motivator of creative output for Black artists (Greene 2008). Greene states that from slave songs and spirituals to jazz and blues, Black artists have been exploited financially and through all these hardships they continued to create music (Greene 2008). Keeping in mind that American copyright was not established with Black people in mind, it becomes clear that economic incentive, along with other structures of IP, actually disadvantage Black cultural production

(Greene 2008). If the founding fathers actually valued originality and the rights of the artist they would not base their entire system of cultural production on finances.

This exact dilemma of financial incentives to create is why legal scholars and musicians focused on reformation of the music industry have argued that major corporations force artists to produce music that will sell, not music they feel passionate about (Rosenblatt 2020). Elizabeth L. Rosenblatt, a visiting professor of Law at U.C Davis' School of Law, focuses on California native and rapper Nipsey Hussle to argue against the current state of copyright law. Rosenblatt finds that copyright is too expensive and inaccessible for independent artists and that copyright law favors corporate interests, as opposed to the interests of an individual artist (specifically musicians in racialized genres such as hip hop) (Rosenblatt 2020).

Nipsey Hussle dedicated the last decade of his life to owning his masters, releasing his music in the public domain, and giving back to his community through social justice advocacy (Greene 1998). Rosenblatt highlights how in 2013 Hussle released a mixtape entitled "Crenshaw" that he sold physical copies of for \$100 or it could be streamed online for free (Rosenblatt 2020). Hussle described "Crenshaw" as a, "rebellion against an industry that has tricked us all into making products that have no soul for fear of not being heard if we don't" (Rosenblatt 2020). When an artist signs their IP rights away to a label, they can control exactly what that artist produces and sells. Hussle is touching on the failure of economic incentive for Black artists that Greene was arguing against. If musicians don't take musical risks at the fear of their music not being heard, there will never be musical progression. This is why Greene argues African Americans do not subscribe to this form of copyright. While white musicians were becoming popular for "coon songs", a racist imitation of Blackness, Black people were focused

on creating original sounds for the sake of creating. Eventually, they created Spirituals, Jazz, Blues, Hip-Hop, Rock, and so many more genres (Greene 2008). None of these genres were created at a time when Black musicians were greatly profiting off of their art, which means one can only assume they were born from pure passion.

Kimberle Crenshaw coined the term “intersectionality” in 1989 to discuss how single axis frameworks of social justice often exclude the less privileged members of an oppressed group (Bartlett 2018). Her work speaks directly to the legal experiences of Black women and how issues pertaining to gender or race will often exclude Black women because they are not privileged as Black people or as women. In this case, a white woman is recognized before a Black woman and a Black man is recognized before a Black woman. Crenshaw’s revolutionary concept of intersectionality fights against dominant conceptions of discrimination by forcing society to reconsider how they imagine oppressed groups of people.

K.J. Greene adopts Crenshaw’s concept of intersectionality to address the ways in which Black people, specifically women, have been historically oppressed by proprietors of copyright (Greene 2008). While Black people are all oppressed under the copyright regime, Black women are always going to have to deal with the burden of being not only Black, but a woman, operating within institutions established by white men. To understand this further, Greene turns to the mistreatment of the Black women who brought blues into the mainstream, but never received compensation for their talent & cultural contributions (Greene 2008). Two of the most influential American blues singers were Ma Rainey and Bessie Smith (Greene 2008). During the early 1920s, both women composed original songs, wrote lyrics, and did the vocals on blues songs that would sell millions of records (Greene 2008). Instead of receiving ongoing royalties

for the millions of records they would sell, record industry executives would pay them a flat fee for their recording sessions (Greene 2008). Their music was copyrighted, but the copyright would be owned by the recording companies that distributed the records (Greene 2008). By not allowing these women to receive royalties, these corporations were able to not only deny these women access to wealth, but their families for generations to come. As Greene previously stated, Black and brown individuals can only enter the modern music market and benefit from IP if they have the private power (financial and social capital) to own and control business assets (Greene 2008). If Black women are being denied the ability to profit off of their own creations, they can never build the wealth needed to support their family's future generations.

II.V Legislation Adapting to Match the Music Industry's Technological Advancements

Technology has played a major role in the way we listen to music, thus calling for constantly updated legislation that protects artists and consumers. Computers and smartphones have allowed for instant access to entire musical libraries and archives at the push of a few buttons. While this innovation has provided the general public with easy access to music, it has brought about issues of piracy and copyright infringement for many musicians and their labels. The copyright clause in the United States Constitution has been updated many times since its original enactment to match societal shifts in music distribution and consumption.

In place since 1790 under the US Constitution, the Copyright Act has been amended to establish laws that fit all genres of property and ownership (Gitelman 1997)). The music industry regularly invokes these documents to legally protect artists and control the distribution and use of their creations. As Callender states, "The Copyright Act and DMCA [The Digital Millennium

Copyright Act of 1998] protect the rights of the music industry” (Callender 2005). The Digital Millennium Copyright Act of 1998 was enacted by congress to bridge the gap between the internet’s quick advancements and the legal protections of the Copyright Act (Callender 2005). Within the DMCA, the section relevant to Callender is Section 512 that was established to give copyright holders the power to control the use of their work online, while also limiting the liability of online service providers (Callender 2005).

This late 20th century example of new technology shifting American society’s legislation represents the strength of the role legislation plays within the world of IP. If copyright law was not updated, many musicians would have lost their agency over the way their music was used. It is important that legislators are in conversation with the current cultural producers of society so that people can feel comfortable sharing their work with the world. This is why social justice approaches need to be infused in these conversations of legislative ruling.

The development of music distribution has been evolving since the 1450s with the introduction of the printing press (Albinsson 2013). From there we see the invention of the phonograph in the 1880s, the radio in the 1920s, the television in the mid 1930s, the tape recorder in the mid 1940s, the Personal Computer in 1980s, and eventually internet streaming becoming our current dominant method in 2005 (Albinsson 2013). All these advancements have benefited both music distributors and music consumers. For music corporations they have provided faster and cheaper ways to distribute music. For the music listener it's provided a more instantly rewarding experience when it comes to listening to music (Albinsson 2013).

Although this copyright legislation does support the goals of a copyright holder, it’s important to remember that it’s not always the artist of the music that holds the copyright.

Staffan Albinsson, an American legal scholar, points out that oftentimes this reproduction of copyright law is only to serve the content distributors, not the artists themselves (Albinsson 2013). This is where American copyright lacks the “moral rights” approach that European countries have adopted in their copyright legislation. This lack of legal protections for the artist themselves is why Nipsey Hussle advocated strongly for independence in his rap career. The United States’ current approach to copyright is interested in keeping money in the hands of distributors, but not actually in ending the predatory behavior these music monopolies exhibit on their clients.

If there is another major shift in the way society consumes music, hopefully individual artists will have a way to protect their rights as the creators of the product being distributed. Social justice through a CRT approach will hopefully provide the equitable support minority artists need to take back the power within their intellectual property rights, regardless of the state of technology.

III. Building an IP Coalition for Black Creatives: IIPPSJ

The Institute for Intellectual Property and Social Justice (IIPPSJ) was established by Lateef Mtima during his time as a lawyer practicing intellectual property and commercial law (Mtima 2022). During the time when Mtima had developed the idea for this program in 2001, issues of social justice relating to intellectual property (IP) were seen as social welfare problems (Mtima 2022). But Mtima had begun to realize that there was a disconnect between lawyers and social deficiencies of intellectual property that came from within the legal field (Mtima 2022). The IIPPSJ website states that:

“In the field of intellectual property, social justice includes the ability to enjoy the fruits of others at some base level of procedural equality (equal access) and the ability to have some base level of substantive equality in the beneficial impact of intellectual property created by others. Even more importantly, social justice in the area of intellectual property extends beyond mere access and beyond mere passive observation or enjoyment of others’ works (e.g., listening to a recording or seeing a movie) to include the ability to participate in the creation and exploitation of intellectual property both in a procedurally fair way and substantively significant way.”

Equal access is a very imperative part of IIPJSJ’s statement because it is at the core of their beliefs. They are breaking down the walls of legality surrounding IP that have excluded marginalized communities from fairly participating. As a creative of any kind, how you interact with intellectual property will be very influenced by your social identity and the privileges (or lack thereof) that come with it. Although American law, such as the Constitution, is available in the public sphere, legal interpretations and interactions often require outside resources such as legal teams and advisors. This can be something as simple as understanding a contract from a music label. An issue like this can be persistent for anyone who is low income trying to enter the music industry and can’t afford to outsource legal support. IIPJSJ recognizes that while everyone is allowed to protect their property, not everyone has the financial resources to obtain these protections.

IIPJSJ functions as a domain for social justice within intellectual property. It is for lawyers, students, creatives, anyone interested in intellectual property. By exposing lawyers to injustices within intellectual property, while also offering solutions for these issues, it interrogates problems whilst offering solutions (Mtima 2022). In order to go beyond just

addressing the issue Mtima brought together a team of attorneys that could help establish his program. Tom Irving, a partner in the international IP law firm of Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, helped Mtima develop the program further and by 2003 they were working out of the Howard University School of Law (Mtima 2022). As a historically Black university, Howard University has been dedicated to educating and producing young black professionals of America.

The work that IIPJS is doing connects directly with Kimberle Crenshaw's legal theory of intersectionality (Bartlett 2018). This idea of a lack of financial accessibility is the single axis that Crenshaw is noting. Where that second axis comes in for IIPJS is by directly targeting people of color and Black people. Race and poverty are constantly intersecting within Western society. In a 2016 study done for Brookings, a nonprofit public policy organization, it was found that in regions with the highest poverty rates in the United States, the majority of the population suffering from poverty were Black or Latinx (Kneebone and Reeves 2022). This is a pattern all across America, low income communities being inhabited by Black and brown people. Brookings also found trends regarding lack of education and access to health resources in these communities (Kneebone and Reeves 2022) .

Education is an important resource for understanding the law as it offers the tools to approach and analyze complicated texts. Non-white people who struggle with financial burdens cannot be expected to have the means to successfully interpret and interact with intellectual property. Despite Americans having equal access to legal protections, there is a lack of equitable access to resources that minorities need to actually be equal to their more privileged counterparts.

According to their statement featured above, it is important to IIP SJ that any person is able to go beyond viewing other's works and can actually begin to interact with it. They're working towards a legal sphere where creators—musicians, for example—would no longer be blocked from protecting their property simply because they can't afford it. This is why IIP SJ targets audiences of color and makes legal resources accessible for free on the internet. By not gatekeeping information, they are creating a foundational groundwork for racial minorities that allows them to participate in intellectual property. Mtima and his team are focused on spreading the fundamental function of copyright: the idea that intellectual property functions as a tool so people can share their information and knowledge (Mtima 2022). It is not about gatekeeping content, but more specifically about finding ways to protect individuals so they can share their work while still owning the rights to it (Mtima 2022).

III.I Creating Community for the Public

By beginning his program within an HBCU, Mtima was able to begin reforming the legal practices of intellectual property directly within marginalized communities. As an organization that believes in prioritizing Black legal professionals, it only makes sense that they started within a predominantly Black institution. As IIP SJ grew, Mtima and his team began to hold Think Tanks and Symposiums to spread their beliefs regarding the changes lawyers needed to make when approaching intellectual property. Thus, shifting the discourse surrounding the legal frameworks of IP Social Policy. Now, almost 2 decades after the organization's creation, IIP SJ has developed beyond the doors of Howard University. They have 4 programs: Tech Summit and CLE, IIP SJ International, Take Creative Control (TCC), and IP Mosaic.

III.II Tech Summit and CLE Seminar

During March of 2022 IIPJSJ held their fourth annual HBCU Tech Law Summit and decided to combine it with their 19th Annual IP and Social Justice CLE Seminar². This decision was made because they saw it as the best way to benefit all their attendees. The website states that the summit “aims to educate minority legal professionals on the issues and opportunities in the tech industry in an effort to help infuse the legal workforce with a diverse pipeline to ensure fair, transparent and accountable development of AI as a service and other new technologies that empower everyone,” (Mtima 2022). Considering how quickly technology is advancing, it is crucial that IIPJSJ arranges a network of legal professionals that can target the social justice issues that may arise in the future.

The 2018 Music Modernization Act is a modern sign of America’s governmental legislation quickly advancing to match society’s technological progression. The integration of art and technology is something that IIPJSJ is working to ensure happens with social justice in mind. They want everyone to have a fair chance at benefiting from these new protections, not just privileged members of society.

Technology has completely revolutionized the way we interact with music in only a few decades. Although the Tech Summit is focused broadly on artificial intelligence and other forms of developmental technology, it's only a matter of time before these inventions merge with the way we consume music.

² <https://iipsj.org/programs/2022-program/>

The IP and Social Justice CLE seminar works to provide a broader approach to social justice education about IP within the legal sphere. They have a panel of federal judges that partake in discussions of social justice with IP attorneys and scholars in their CLE program. CLE stands for “continuing legal education” and consists of professional education for attorneys that occur after they are admitted to the bar (CLE Accreditation 2022). Together the Tech Summit and CLE seminar create a space for networking amongst the American legal sphere and bring social justice issues to the forefront of American legal policy.

The website does state that there is a fee for attendees, but it is a sliding scale based on need. With \$250 being the basic entry fee for the general public, it decreases to \$100 for HBCU alumni, \$50 for government attorneys, and free for non-profit, academics, & need-based requests. This pricing really expresses IIPJSJ’s goals through the program. They want to reach people who are passionate about IP law, whether that be through their legal career or community interests. These are not programs for beginners, but more so for legal professionals who want to see a real change in the way lawyers and legislators are approaching intellectual property. By having the highest fee for the general public and no fee for people who may not have the financial capacity, but are dedicated to the topic, IIPJSJ is creating an equitable approach to education within the legal field.

III.III IIPJSJ International

Even with the foundation of their program being in the United States, IIPJSJ has created accessible networks beyond the borders of North America³. Their international programs have

³ <https://iipsj.org/programs/iipsj-international/>

extended their legal community all over the world, with collaborative programs through universities in the Caribbean, South Africa, and Japan. Reaching international audiences and including them in their mission is a great way for IIP SJ to spread progressive practices within a greater legal community.

Considering that the world's most powerful music corporations are based in the United States, yet function on a global scale, it is important these global affiliates of IIP SJ are included in the social progression of intellectual property (Smith and King 2021). If IIP SJ is spreading internationally, they are deterring the possibility of exploitative practices of music labels to take place abroad. Instead, we'll see lawyers and creatives outside of America prepared to fairly negotiate contracts and understand their rights as property owners.

III.IV Take Creative Control

IIP SJ's Take Creative Control (TCC)⁴ is less of a program and more of a community. One that consists of lawyers, creatives, inventors, entrepreneurs, and academics who are interested in protecting and advocating for the creative rights of people of color everywhere (Mtima 2022). Its goal is to give everyone in the business of creation the tools to "take creative control" of their property. TCC takes an equitable approach by specifically targeting Black and brown individuals. They understand that while everyone deserves equal access to resources, people of color have been marginalized much more than others, thus needing more targeted support.

It is important to create a community of creatives who understand each other's experiences and struggles. Regardless of their professional backgrounds, all the people that work

⁴ <https://iipsj.org/programs/take-creative-control/>

with TCC have 1 thing in common: an interest in protecting IP rights fairly. While lawyers are interested in guiding these creators and entrepreneurs, the clients are interested in networking with people who will support them and help their business flourish. This exchange is extremely important in upholding the community aspect of TCC. By joining the community you are actively fighting against the exploitation of independent creatives. These people are equipped with the knowledge of their constitutional rights as creators that can empower them to fight against dominant forces in the industry. Suppose a songwriter is looking to get a composition copyright, TCC would not just set them up with a lawyer, but they would also connect them to other musicians and people who could support their career, financially or emotionally.

Take Creative Control has two main team members, Kim Tignor and Stephanie Santiago-Rolón. Kim Tignor is the creator and founder of Take Creative Control and executive director of IIP SJ. She works alongside Stephanie Santiago-Rolón who developed the Latin branch of TCC and sits as the director. While they both have different backgrounds—Tignor has a legal background and Santiago-Rolón has an entrepreneurial background—both women are interested in advocating for people of color and their intellectual property rights on a global scale. Tignor started TCC in 2018 by hosting legal clinics where artists, entrepreneurs, social justice activists could network and connect with top IP professionals to collectively push for creative rights for all. As the community grew, Santiago-Rolón joined the team and continues to fight for gender equality and inclusivity within the Latin entertainment and tech industry. Both women want to ensure that independent artists and creatives will be properly equipped with the tools to protect their work and be compensated for their work fairly.

A portion of the work TCC does does not directly involve social justice within entertainment or business, but it speaks to a much bigger goal. Their organization is alluding to the idea that nobody is free until everybody is free. There is no way we can protect the rights of musicians if there is no clean air to breathe or resources for young students struggling in the public school system. This is where their advocacy and Creative Partnerships come in. TCC has argued for or against policies regarding President Biden's Bipartisan Infrastructure Plan, the CASE act, the Earn IT act, and The Music Modernization Act. As different as these legal battles are they all have one thing in common; they all greatly impact the future of generations to come. For example, the Infrastructure Plan is looking to provide tons of useful resources such as more public transportation and free broadband service. Both of these things would be greatly beneficial for people such as independent musicians. It could provide transportation to jobs and service to create music on the go, but there is a downside that TCC wants to bring to the forefront. The plan does a poor job of acknowledging the toll that this will take on our already crippling environment. TCC is advocating for President Biden and legislators to consider that more is not always better. It does not matter how good a musician can sing if there is no air for them to breathe when performing. Although this is a drastic version of our climate's future, it is one we, as a society, must take into account with every decision we make.

“What's better than one billionaire? A successful community, good schools, healthy children, emotional support, financial stability for all.” This quote, spoken by YouTuber Jouelzy, comes at the beginning of one of TCC's Creative Partnership videos. These Creative Partnerships were created to create an inspiring and empowering portfolio that emerging activists could reference when approaching issues of social justice. While TCC understands getting creatives

and entrepreneurs of color paid equally and fairly, they are not solely interested in for profit ventures. They are interested in human rights, in fighting against racism, and empowering the people. And one of the ways they can do this is by providing legal representation and sources for independent artists and entrepreneurs.

Take Creative Control has built their own community of creatives, entrepreneurs, and lawyers through networking events, partnerships, and government advocacy. By bringing like minded creatives together they are able to work towards a future that will guarantee equal rights and opportunities for the generations to come. Before Covid-19 TCC would host Creative Clinics. These clinics would consist of entrepreneurs, creatives, innovators, attorneys, and policy experts that would convene to discuss all types of issues within the world of intellectual property. Their website states that these topics could range from online free expression to monetizing and protecting intellectual property. TCC would also provide legal sessions for free on site. They would average about 300 attendees of color who would network and work to mobilize the community. Now, with Covid-19 they are no longer able to host these events in person, but they continue to organize virtual talks with producers, lawyers, and other people they see fit to guide their growing community.

On their own organization website, TCC states that their mission is to, “connect creatives and entrepreneurs to intellectual property lawyers and resources to help you exercise your intellectual and creative rights.” They are directly interested in protecting people of color’s intellectual property because of how it has been taken advantage of historically. TCC believes that it is only worsening in today’s digital age and shares personal testimonies throughout the website to back this claim up.

One of these testimonies comes from Quetzal Guerrero, also known by his artist name, QVLN. In his video series, Guerrero talks about how Covid-19 had impacted his ability to perform in 2020. Entire tours he had scheduled had been canceled when the United States went into lockdown. When an opportunity arose to perform digitally he was ecstatic, but quickly realized how expensive this shift would be for an independent artist. To perform virtually you need proper equipment, such as video cameras and microphones, which can be extremely expensive. Another issue he saw musicians facing was the lack of financial compensation artists received when performing online. Popular streaming platforms benefit greatly from artists performing on their websites, but they pay the musicians a one hundredth of a cent to host and perform their shows.

Each video series is paired with a written report, Guerrero's discusses the fast pace at which the music industry has become digitized. Written by Kim Tignor and Channing Gatewood, this report titled "Breaking Down Barriers for Musicians of Color" is a great resource for independent artists, specifically people of color, looking to utilize streaming services to share their music. The article is short, but filled with very accessible legal information regarding copyright legislation and the exploitation of musicians of color. It introduces the historical context of the digital age regarding musicians and then breaks down the legal legislation that has been established to support them. The Music Modernization Act of 2018 is explained in this article and broken down in a very straightforward manner. Tignor and Gatewood also critique the way social media platforms have silenced people of color and question if their algorithms are racist.

As we learned from Faulk et. al, technological innovation has boosted the music industry greatly by providing more revenue for major corporations (Faulk et al. 2005). When the world went into lockdown, technology allowed us to socialize without making physical contact. With artists like Guerrero moving online, it is important the public is aware of the challenges they are facing and have resources such as TCC to combat them.

TCC is free because IIP SJ acknowledges the high costs regarding IP and its resources. By directly offering resources to Black and brown creatives, TCC is able to help create a base foundation for the visions these creatives want to build. Black and brown creatives have contributed greatly to Western arts, sciences, and overall culture, but have been exploited greatly due to not being able to afford it.

Social justice within IP is not exclusively for people of color, but as we see in the frameworks of Crenshaw's theory, race and class are constantly intersecting (Bartlett 2018). It is impossible to address issues of class within this industry without acknowledging the social groups that are most negatively affected by class.

Take Creative Control does a great job of diagnosing an issue and offering affordable solutions. Being able to connect creatives with IP lawyers for free is extremely beneficial for the public and extremely empowering for people of color. I believe there is an importance to acknowledging issues that minorities face within any industry, but especially the music industry. It can be scary to trust the internet with your creations as it is a domain for theft and plagiarism, but with these resources independent artists no longer have to fear being overlooked. Instead they can take pride in their originality and protect it as well.

III.V IP Mosaic

IP Mosaic⁵ is a conference based program that connects IP scholars with political activists, practicing attorneys, community organizers, and policy makers. Their intentions for coming together are based on the idea of change through activist scholarship. These people are attempting to shift the discourse surrounding social justice in IP that will ultimately end in policy change and legal reform. The traditional notions of IP protections are no longer serving our society enough to justify not challenging them.

IIPJSJ has sponsored this conference since 2014. Through this sponsorship, IIPJSJ is able to collaborate with law schools that host these conferences. It is important for their venue to be a place where academia meets legal scholarship. These meetings are a hub for theory and praxis, giving IP scholars and lawyers the knowledge they need to pursue their careers with social justice at the forefront.

Much of the work IIPJSJ does begins with law schools which is not by coincidence. Instead of approaching older generations of lawyers who may not be able to unlearn the oppressive aspects of their education, IIPJSJ and IP Mosaic work with young lawyers who have yet to finish their educational career. With minds like sponges, ready to soak up all knowledge, IP Mosaic is able to provide an activist lens for the future generation. By doing this they can stop issues of discrimination or exploitation within IP before they even start.

Due to IIPJSJ's emphasis on education, it is imperative that a program like IP Mosaic exists because it is generating the future of scholarship surrounding activism and social justice.

⁵ <https://iipsj.org/programs/ip-mosaic/>

Instead of simply working with what scholarship already exists, IP Mosaic is pushing people to think about creating new literature that fits our society's constantly evolving legal sphere.

This conference exists to create the tools for a progressive future for IP. The IP Mosaic website states that their program works to, “explore the social ordering function of IP protection in the total political economy, particularly the law’s social justice obligations in promoting human rights and actualization, cultural and technological progress, and self-determination and nation-building” (Mtima 2022). The political economy they are referring to is one that every creative, but especially musicians, exists in. This is where we see major corporations employ the copyright regime to exploit legally inexperienced musicians. If the future of IP is one that promotes human rights, we will begin to see the end of the monopolization of the music industry.

Furthermore, the IP Mosaic website talks about how American legislators and policy makers traditionally value scholarly analyses in order to interpret and develop new approaches to IP. This is why IP Mosaic puts an emphasis on scholarship as a form of social justice. If they were to solely create blog posts or use social media, it is unlikely that their work would be taken seriously in the political sphere. Although IIPPSJ offers a diverse range of platforms, it is important that they have a traditional conference that caters to the expectations of our modern policymakers.

III.VI Social Justice Advocacy

While the IIPPSJ programs stand at the forefront of their efforts, their website has a multitude of free resources for people interested in IP protections. All these resources can be easily accessed directly from the website and are listed under their “Social Justice Advocacy”

section⁶. This is where the website immediately begins community building by organizing. Giving people access to the content that can explain the structures working against them, the ways they can protect themselves, and connecting them to scholars and legal professionals who are passionate about IP social justice within non white communities. The two places to directly find these resources are the “Beginner’s Guide” and the “Pro Bono & Affordable Services”⁷ links.

The Beginner’s Guide⁸ headline states that, “[IIP SJ] realizes that many entrepreneurs, creators, and inventors may not have a lot of time to research and understand Intellectual Property (IP) law. These IIP SJ programs and resources serve as a foundation for advancing the cause of social justice through intellectual property laws.”

The Beginner’s guide is categorized into 6 categories: Access to Equal Knowledge, IP Empowerment, IP Mosaic, IPSJ Filings, IPSJ Scholarship, and IPSJ Law Library. Some of these links, such as IPSJ Filings and IP Mosaic, are already available within the “Programs” and “IIP SJ Filings” sections of the website. It’s important that these program resources are repeatedly linked throughout the website so that an IP novice does not miss a potential business opportunity or resource.

In 2009 IIP SJ held their Access to Equal Knowledge panel at Howard University’s School of Law and Google Inc. The website acknowledges that this event is over a decade old, but they find importance in how it represents IIP SJ as a convening organization. Occurring during the dawn of Google, this panel discussed Google’s efforts to digitize books and how they interact with social justice. Today, Google Books is a popular source of information about books

⁶ <https://iipsj.org/what-we-do/>

⁷ <https://iipsj.org/pro-bono-affordable-services/>

⁸ <https://iipsj.org/beginners-guide/>

and offers lengthy excerpts, reviews, synopses and more. The Google platform offered today is free, accessible, and easy to navigate because of organizations like IIP SJ.

It is important for beginners in the IP world to see how change can be enacted over a long period of time. A panel in 2009 has managed to stay relevant a decade and a half later because of its push towards a progressive and inclusive future. IIP SJ is not *just* trying to fix issues in the present, they are trying to help businesses avoid problems of the future as well. For Google Books this could look like not establishing a paywall or making their service compatible with any device with wifi.

The next section in the Beginner's Guide is IP Empowerment. Occurring in 2010, IP Empowerment seems like the stepping stone to IIP SJ's current events such as IP Mosaic and the Tech Summit and CLE Seminar. The national IP Empowerment summit worked to connect the general public and IP professionals with the goal of empowering minority artists, inventors, entrepreneurs, and other IP supporters in underserved communities. These networking tactics, pairing creatives of color with IP professionals, are the same foundational approaches that we see used in IP Mosaic and Take Creative Control.

The deeper you dive into the event archives of IIP SJ, a story begins to unfold. You see the events of the early 2000s concerned with involving POC in their IP movement and getting a hold on the early tech giants (e.g. Google). Now, jump ahead to the 2020's where we see IIP SJ focused on not just including voices from Black and brown individuals, but empowering and employing them. They can now offer free legal services, showcase artists to promote the work of their community members, and, due to their strong reputation within the legal sphere, can create political momentum by filing for or against major legislation. IIP SJ has worked for years to build

a like-minded community that prioritizes social justice. By starting small and having patience they were able to grow into a powerful organization that will be pioneering the future of IP social justice.

The IPSJ Scholarship⁹ and IPSJ Law Library¹⁰ both provide legal support for the general public in the form of documents, articles, and literature. While both of these categories are presented under the Beginner's Guide, they also have their own major "Resources" section on the website. The Beginner's Guide is purposefully a concise look at IP, but it easily directs viewers to more in depth areas such as this one.

The "Resources" section has three categories intended to inform the website's audience: IIPJSJ Library, IIPJSJ Scholarship, and IIPJSJ advocacy. Each section focuses on a wide range of topics relating to IP such as music, technology, patents, and general information for creators that particularly pertains to social justice. Some articles aim to advise creators about how to approach IP in a socially informed way while other pieces of work discuss major historical events within IP that were influential in progressing our legal sphere.

My first site of exploration was the IIPJSJ Library. It covers a range of topics regarding IP and is neatly organized so that anyone interested can participate. There are currently 10 pieces of information in the library. Some are brochures for past summits hosted by IIPJSJ, others are articles, or notes and comments regarding legal practices surrounding IP. I was easily able to find one regarding my topic of interest which is music. This piece in particular was a note and comment by Racquel C. Callender titled "Harmonizing Interests on the Internet: Online Users and the Music Industry". Copyrighted in 2005 at Howard's University School of Law, this article

⁹ <https://iipsj.org/iipsj-scholarship/>

¹⁰ <https://iipsj.org/iipsj-library/>

presents a bit of an outdated perspective of the relationship between online music users and the music industry. I loved reading this note and comment in 2022, 17 years after its publication, because it creates a foundational perspective for the industry we are currently experiencing today.

Callender is addressing a society before the time of music streaming providers like Spotify or Apple Music. When music was first introduced to the internet and users of the internet were able to buy and share music without many restrictions, there was a sort of anarchist approach to music sharing (Callender 2005). Internet users could download music and upload it as an MP3 to a public website that anyone else could access and download. This time, before online legal restrictions were established, was not ideal for anyone looking to profit off of the music they were sharing. The late 20th century was a major turning point for music sharing because of the rise of the internet. Being that music could now be shared instantly and for free, musicians and music corporations no longer controlled how music was distributed. The Copyright Act was amended to keep up with our ever advancing society. Therefore, punishments for copyright infringement, such as removal from the website, legally falls on the user that uploaded the content, not the website that it was shared to. You may have seen the DMCA enacted in real time when using content sharing platforms like YouTube or TikTok. For instance, some songs you may have been able to download and stream 5 years ago on YouTube, now say “this video was removed due to copyright infringement”. This means the owner of the copyrighted content reported the incorrect usage to YouTube and YouTube removed the content to protect the rights of the owner and avoided further infringement. Callender’s note and comment goes on to discuss the origin of online music sharing platforms, specifically with a

service called Napster. Napster revolutionized the experience of acquiring music because now anybody with an MP3 could upload music to this database and/or download it to their computer for free (Callender 2005). In the fall of 2003 this triggered the first ever lawsuit against music users for illegally sharing music files on the Internet (Callender 2005). The initial lawsuit was against a 12 year old member of Napster (Callender 2005). There is still a mass amount of digital piracy that takes place on the Internet, but this case set the legal precedent for what to expect if a musician, or a music corporation, decides to take action against an infringer.

Callender's note and comment is important to IIP SJ's website because, while it takes a neutral stance on digital piracy and the IP legislation, it exposes the predatory nature of the unforgiving music industry. It critiques the ways the music industry is willing to attack people, even 12 year old boys, who engage in digital piracy. This gives the reader insight into how copyright can protect some, but hurt others. Although it is supposed to act as a secure way to share your creations, weaponized by the wrong people, IP can be extremely violent and controlling,

While I do think IIP SJ remains mainly interested in empowering people of color with legal knowledge, there is an underlying effort in all of their work. What happens when you empower the entire public? You dethrone the people who have been hoarding the knowledge, wealth, and power to be the proprietors of IP. Within the music industry this is not done by lawyers, this is done by the major music corporations who convince individuals to sign their creative rights away and use lawyers as scapegoats for their exploitation. As we learned from TCC's literature, hip hop/rap artists—predominantly Black people—are leading the streaming

industry. By targeting these individuals and giving them free access to legal representation and IP resources. IIPPSJ is indirectly undermining the copyright regime.

After perusing the IIPPSJ Library, I began to analyze the content under “IIPPSJ Scholarship”. It works similarly to the IIPPSJ Library as it provides insight into the world of IP through a social justice lens. This looks like published articles regarding topics such as adjusting copyrights laws to coincide with technological advancements, questions of how social justice interacts with IP, and the lack of recognition Black composers received for creating new forms of music.

Many of the articles under IIPPSJ Scholarship are written by, or in part by, Lateef Mtima. The critical lens Mtima and his peers use in their writing, critiquing the way IP has been exploited for major profit or weaponized negatively against minorities, sets the standard for how IIPPSJ works towards their goals. It is clear that Mtima is a passionate leader through his commitment to furthering the literature surrounding social justice. He has built this platform to inspire others and uses his own work as a guide. His writing is cutthroat and forgiving at the same time. While Mtima is dedicated to protecting the rights of creators, he addresses the importance of the public domain and the Free Use doctrine. Instead of simply attacking America’s current government and their policies that may favor the copyright regime, he is offering his skills and solutions to inspire a movement that encourages equitability and accessibility within the world of IP.

The Pro Bono Services and Affordable Legal Services section provides a hands-on approach to social justice and individual empowerment. This is where IIPPSJ can go beyond the internet and actually begin to connect individuals with professionals. As important as scholarship

and literature are, establishing a professional relationship with people within the IP world helps individuals build social capital within their community.

Within this section, IIPPSJ catalogs all their participatory resources such as legal clinics and law resources to guide and educate individuals through the website. Their content includes content that is based in academia, advocacy, CLE, blogging, federal, IPSJ, nonprofit organizations, policy, and some uncategorized information.

This domain helps connect real people with real people and go beyond the realm of the internet. For example, they have an archive of past internships that Howard law students have participated in that can encourage others to seek the same career opportunities. One highlighted internship was one completed by Tameka Simmons in 2005. Although this internship took place almost two decades ago, it is notable due to the fact that Simmons was awarded a Jan Jancin Award. This is a highly prestigious, merit based scholarship awarded by the American Intellectual Property Law Association for law students of diverse backgrounds pursuing a career in intellectual property. This speaks directly to the audience of Black and brown IP legal scholars seeking financial support and a recognition of excellence in the field. Winning this award is a great signifier of one's institutionalized symbolic capital and will allow students to access higher paying jobs and opportunities after graduation.

III.VII Creating a Progressive Community for Lawyers

There is an important distinction to make when analyzing the goals of IIPPSJ and that is the fact that they are creating two types of communities, one for creatives and entrepreneurs and

another one for lawyers. And while in a lot of ways these efforts may overlap method-wise, they manage to serve these two groups in different ways.

While we understand that everything IIPPSJ has done has been to serve the general public, they are also creating a new thread of opportunities for IP lawyers and offering a new perspective for young minds to use when they begin to practice. Although it's ultimately music labels who decide exactly what goes into a contract, lawyers still play a major role in drafting contracts. As legal advisors, lawyers have a moral responsibility to help a business understand if what they are offering is justified or not. Any lawyer with a critical lens based in social justice would know a 360 deal, while extremely profitable for a major corporation, is detrimental to the financial success of a small, independent musician. And while signing to a corporation would remove the stress of being independent, they also risk losing direct income from their tours, music sales, and merchandise profits.

If IIPPSJ wants to see lawyers of the future advocate for copyright rights for marginalized individuals, there must be a shift in the way these lawyers are taught about IP. This is why IIPPSJ has so many programs and opportunities for lawyers to involve themselves in IP social justice that are based within law schools. They went straight to the source of their legal knowledge. Mtima and his team are writing scholarships for not just the public, but for students and lawyers.

IP Mosaic particularly stands out as it is a program by legal professionals for legal professionals. The most recent IP Mosaic conference took place in October 2021 and was held remotely by the Mitchell Hamline Law School in St. Paul, MN. Although IIPPSJ is based at Howard University, they have outsourced their program to other law schools around the United States. By doing this they were able to further diversify their community of IP professionals.

This is important because it allows them to get a broader sense of what issues need to be addressed and what the experiences of IP lawyers are beyond Washington, DC.

The theme of the 2021 conference was “IP As Protest, Change, and Empowerment”. There were a handful of panelists who practice or teach IP law all across the country. Some of these legal scholars include Christine Farley, a Professor of Law at American University Washington College of Law & a Faculty Director, Scott Wilson, a senior IP advisor for the Senate Judiciary Committee, and Dr. Eden Sarid, an assistant professor at the University of Essex’s School of Law. All these panelists have really different relationships with IP which allows IIP SJ to provide an all encompassing perspective on issues of IP as social justice. Not only are these professors, lawyers, and government officials educating each other within the conference, but they are also now equipped with the skills needed to see a shift in their personal and professional communities.

III.VIII The Website as Social Justice Resource

Something I really treasure about IIP SJ’s website is that it is free to be used by the public and the layout is accessible. Analyzing and learning about IP through my research was extremely straightforward and easily accessible. It is important for information on a website like IIP SJ to be readily available. It is not expected of anyone in society to understand the law regarding intellectual property, and yet so many of us come into contact with it everyday. In a society where property is a priority, we must support each other in understanding how exactly it is used. It is not only established artists who utilize intellectual property within the entertainment industry, it is also the teenager that posts their music on streaming services like Spotify, it’s the

commuter that blasts music in their headphones for their train ride to work, or the venue owner that hires musicians to play live music, and so many more. Technology has allowed us to interact more with the sphere of intellectual property, especially regarding the music industry and being informed about the legality of IP has become extremely important. I strongly believe that by having an easily navigable website, IIPPSJ is authentic to its cause. There are no pay walls, no hard to read fonts, and the layout is extremely straight forward. Social justice within IP can be as simple as having a website accessible to the everyday user. Everything is neatly organized and there are search bars throughout the website to locate specific information. The IIPPSJ website is also up to date, with their own copyright (easily located at the bottom left corner of the page) being from 2022. This organization clearly wants to advance alongside society, making sure they are staying accurate to our culture. For someone with no professional legal experience, this website is approachable. All their guides for beginners and resources are linked in very obvious places and can be reached from any page you venture to. Although the scholarship itself on the website may be challenging to understand due to the academic jargon utilized, it is still organized with simplification in mind. The titles of articles stand alone, which makes it easy to know what you are looking at, and, being that this is an organization regarding IP, there are neatly listed citations attached to each document.

Lawyers are a really integral part of Western society, but there is no reason they should be the sole proprietors of legal knowledge. Instead, by bridging the informational gap between lawyers and everyday citizens, IIPPSJ is shifting the role of lawyer away from gatekeeper and into the realm of legal advisor and guide. IIPPSJ offers many resources for people seeking information about their topics of interest regarding IP. I favor this organization because they have a general

approach to activism, while still working in very specific realms of intellectual property. By hosting events with experienced speakers catered to professionals and creatives, IIPSIJ has created a space for members of all industries to approach the legal sphere regarding IP.

IV. Conclusion

It really disgusts me to think about how capitalism has turned musicians into products. When I think about marketing and branding of major musicians, it's often to sell the general public a product. Often times, it's hard to not compare these practices to that of chattel slavery within the US, the same way JAY-Z did in "What's Free". Instead of empowering musicians to be independent and trust in their artistic direction these corporations want to limit artists and churn out popular hits. But not every Black artist is interested in creating music to be popular, but instead to partake in their own personal cultural production.

I imagine cultural progress is where we see this shift from music labels dominating the industry to independent artists equally taking up space. IP scholars are empowering people through this acknowledgement of what needs to shift for there to be a progressive future. Our current copyright legislation fails to provide equitable access for marginalized American musicians and entrepreneurs.

Due to how hard it is to turn a profit as an independent artist, many musicians are encouraged to sign to music corporations to share and monetize their music. The truth is, there needs to be more options beyond independence or signing to a label. This illusion of personal responsibility for taking on the financial burden of independence is exactly why we need more

community based initiatives that are focused on educating marginalized creators and musicians about their intellectual property rights.

IIPSJ is directly targeting Black and brown musicians, some of the most trailblazing groups in the music industry. There needs to be a major shift in how we imagine the groups of people responsible for providing us with the most original musical content. What happens when Black people begin to protest by not releasing music for the sake of gaining back their power as creators. Would we see a major decrease in the rate of new ideas in our music. It's no secret that African Americans are musical trailblazers. If there was a way for all Black musicians to come together and speak out about the lack of access and inclusivity around intellectual property, maybe there could be a major shift in the institution as a whole.

Owning the copyright is extremely important if you want to protect the music and I don't think we should get rid of the concept of copyright. I think there needs to be more access and education to copyright within Black communities, where original music is being produced at an extremely fast rate. IIPSJ is bringing together this community starting with the Black lawyers that can provide the knowledge and building out from there.

If the power in the music industry changes from the major corporations to the individual creators, and pulls away from the sole prioritization of economic gain, it's possible that we could actually see more original art being produced. Who knows exactly how much music has never seen the light of day because the music label thought it didn't fit the sound or image they were looking for. And truthfully Black people thrive when they stand out, not when they stand in.

By empowering Black musicians and entrepreneurs, IIPSJ is working towards a larger shift in these industries for everyone, not just Black people. If you can empower the most

oppressed group by taking away financial burdens and providing necessary education, you change the game for everyone. If our legislators truly want copyright to be neutral and equal for everyone it needs to be free and it needs to be known.

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