

The Value and Ownership of Art in a Digital Age

by

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Dedicated to Don Grady

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Abstract

This thesis examines three key research questions, including: How are artists making art and making a living? How do they use the Internet in their artistic practice? How do they use and understand copyright? These questions are designed to address current gaps in copyright research and discuss the Canadian case by highlighting the opinions of artists and the role of the Internet. Analysis includes 15 interviews with musicians, authors, visual artists, and filmmakers. The majority of participants needed to work another job to financially supplement their art. They also felt that the current Canadian system functioned well, but is underfunded, and art is under-appreciated at a broader social level. Participants felt that the Internet allows artists to circumvent some of the established curatorial institutions, but institutional support is still important. They also noted that systems like Creative Commons licensing, and websites like Bandcamp and Vimeo work well for artists.

List of Abbreviations Used

CARFAC – Canadian Artists’ Representation / Le Front des artistes canadiens

DIY – Do it yourself

FACTOR - The Foundation to Assist Canadian Talent on Records

PIPA – Protect IP Act

SOCAN - The Society of Composers, Authors and Music Publishers of Canada

SOPA – Stop Online Piracy Act

UNESCO – The United Nations Educational, Scientific and Cultural Organization

Glossary

Bandcamp – A music streaming website that allows musicians to upload music, sell music, and set sliding-scale prices for downloads.

Do it yourself (DIY) – An ethic and practice that includes self-promotion, self-publishing, self-recording, and other practices independent of art institutions and corporations.

Soundcloud – Music streaming website.

Stop Online Piracy Act / Protection of IP Act – Two bills put forward in the United States in 2011, designed to allow for immediate shutdown of websites at a copyright-holder's request. Significant backlash from sites like Wikipedia, as well as the broader public and political community resulted in the dismissal of both bills.

Tumblr – Photo blog website.

Vimeo – Video streaming site that allows creators to upload videos, and set flexible license / use settings, including options for full-use and non-commercial use by other users. Similar to Bandcamp.

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Chapter One - Introduction

Since the popularization of the Internet, the rights of the consumer and the rights of copyright holders have been at odds. This is the result of digital copying and sharing technology becoming more powerful, easier to use, and less expensive. These changes to technology and law require close examination to ensure intellectual property laws such as copyright continue to reflect the commonly held values of Canadian society. Copyright encompasses the legal rights of a creator to copy their work and/or receive reimbursement for this work, but copyright law reflects a deeper, cultural definition of art, and how art is valued in a society. Copyright is based on philosophies of authorship, individual creation, and the value of art. As copyright law has become more applicable to the average citizen, discussion around the ethics of copyright enforcement has increased. Prominent news stories and events that demonstrate the importance of copyright include protests against the Stop Online Piracy Act (Southey, 2012), an American bill designed to reduce piracy but deemed overly strict, and the suicide of Aaron Swartz (Chiose, 2013), known for his release of thousands of pirated academic articles. Copyright restrictions like these are often defended by media conglomerates like The Walt Disney Company, with reference to protecting artists' intellectual property, and providing a means for their work to be remunerated. However, these claims are rarely supported by commentary from artists.

Existing academic, editorial, and legal literature examines copyright law, corporate perspectives, consumer interests, and pirate culture, but the interests of artists have been under-represented. Groups such as the Canadian Independent Music Association have increased their media exposure and voice in parliament, but they are a quiet voice in comparison to corporate lobbyists. The Canadian context is also missing from the discussion of copyright, which primarily focuses on US and

European cases. Canada has a significant artistic community, and arts industry. In addition, Canadian law is unique from both the United States and the European Union. Bill C-11, introduced in 2012, now defines Canadian Copyright. This bill addresses previous technology-specific gaps in Canadian copyright law, but it is unclear if this bill meets the needs of Canadian artists.

As a contribution to this discussion, this thesis project explores how copyright enhances or restricts artistic practices and how artists conceptualize art in relation to copyright. A key component of contemporary art and copyright discussion is the role of the Internet and other digital technology. Contemporary art and copyright are difficult to separate from overlapping discussions of technology use and regulation. As Healy (2002) states, “our treatment of cultural goods is now implicated in much wider questions of regulation” (482), including the regulation of consumer technology, the commercialization of the Internet, and Canada’s role in international trade and security agreements. To address this overlap, this thesis will also examine the uses of digital technology by artists, focusing on the role of digital technology in their artistic practice.

Chapter Two explores the existing discussions surrounding copyright, including academic literature, editorial and other non-academic critique, and legal issues. The chapter begins with the history of copyright and the early philosophies that form the basis for copyright discussion. Copyright emerged under unique circumstances, influenced by a combination of Romantic philosophy and industrialization. I discuss how, from the very beginning, copyright was subject to criticism and debate. I then move on to examine the history of academic writing on the ownership and industrialization of art and culture, focusing on Marxist academics from the Frankfurt school, including Benjamin (2004), Adorno (1941), and Horkheimer (1993). For these

scholars, industrialized art was inherently lesser than what they saw as the unique experience of pre-industrial art. I highlight the continuity and change between this critique of industrialized art and later academic writing on do-it-yourself (DIY) culture by Frith (1983, 2006; Frith and Marshall, 2004), and the emergence of network technology and society examined by Manuel Castells (2000). This latter scholarship addresses a changing set of circumstances, characterized by consumer-level digital technology that has effectively democratized the technological means of production. Finally, drawing on the work of Canadian legal scholar Michael Geist, Chapter Two outlines the current state of copyright in Canada. This chapter concludes by identifying the primary gaps in copyright research: the Canadian context, combined with artist perspective, taking into account Internet technology. Existing literature examines some of these variables, but not all. The perspective of artists is the greatest gap in the discussion, especially given that copyright is often defended as legal protection for artists.

Given the established research gaps, this thesis asks: How are artists making art and making a living? How do they use the Internet in their artistic practice? How do they use and understand copyright? To answer these questions, 15 artists participated semi-structured interviews. All of the participants are from Halifax, Nova Scotia, and represent a diverse sample of disciplines and professional backgrounds including musicians and visual artists, student artists and full-time professionals. Qualitative interviews are well-suited for gathering the nominal views and practices of artists, the primary gap in the current copyright discussion. The nominal views of artists, connected with details on their artistic and professional practices, provide insight into how artists use copyright, and what is working for them. Chapter Three outlines the research methodology for this thesis project in further detail, providing

justification for the sampling frame, recruitment, data gathering, and analysis methods conducted for this project.

Chapter Four addresses the first set of interview questions, examining the practices of participants. The chapter begins by addressing who can be defined as an artist, using the definitions put forward by the participants themselves. There is also an overview of the types of art and artists included in the sample. Artists who participant in this project worked in a variety of disciplines including visual arts, music, and writing, and these categories often overlapped as artists made art in multiple disciplines. Following this descriptive overview, Chapter Four examines how artists earn a living, both through their art and in their professional lives. Participants ranged from full-time artists, who made art as their primary profession, to artists who worked full-time jobs unrelated to their art. The chapter also details how artists sold their art, and the issues that arose while selling or promoting their art. This includes their use of online and offline networks and tools, and what worked for them. Some artists were compensated directly for their artistic pieces, while some made money from performance, or other related aspects such as teaching. Finally Chapter Four discusses artist encounters with copyright and piracy. Participants described their encounters with copyright, both their own copyright and other artists', and their experiences with piracy. Piracy is often discussed in the context of the music and film industries, but this chapter will show the importance of piracy in the visual arts community. As photography and scanning technology has developed, the ability to pirate books, sculpture, or design patterns has increased (Murray, 2007, 105). Overall, Chapter Four provides a descriptive overview of the sampled artists and their practices, laying the groundwork for the discussion of their philosophies and views in Chapter Five.

Chapter Five examines the nominal views of artists, including their definitions of art, and their descriptions of an ideal copyright system. This data had more variance, and was more difficult to categorize than the previous section, but commonalities became apparent during analysis. The chapter explores how artists define the word art, and how they relate their conceptions of art to ideas of property and ownership, which I then compare to the definitions of art that underlie copyright law. In addition, the chapter outlines how artists perceive copyright law and whether or not it serves their needs and interests. Artists cited numerous positive benefits from copyright law, including the ability to protect authorial intent, and the flexibility of Canadian Creative Commons Licensing, a system that allows for non-commercial use of art, but restricts commercial use. This chapter also analyzes the limitations of copyright, as described by artists, and outlines some alternate approaches that could potentially change the foundation of the arts industry in favour of artists. Copyright played a small role in how artists were compensated, and in some cases was restrictive. More important was the protection of moral copyright, and the social value of art. I go on to outline artist ideals around research, collaboration and exchange, and how these practices interact with copyright. The limitations of the granting system, and the integration of art into institutions were both important topics for participants, particularly visual artists.

Copyright law can be seen as a representation of how Canada values art. Close examination of copyright law reveals numerous questions. For instance, is art a communal good? Is art a commodity to be bought and sold? Does the value of art come from its sale value? How should artists make a living? Many of these questions have had seemingly obvious answers for decades, even centuries. The Internet has helped to break-down some of these assumptions about authorship, ownership, and

the value of art. The Internet allows iterative art, art based on other art, to be created rapidly and at low-cost. In fact, the ability of art to become popular or “go viral” on the Internet is often the unit of measuring artistic merit. Popularity and the clever use of post-modern iteration take precedence over unique experience, or acceptance by elite critics.

These new ways of assigning value appear to be in conflict with the existing arts economy and copyright law; this thesis intends to shed light on whether or not this is, in fact, the case. If copyright law is intended to balance the rights of creators and consumers, artists can offer important insight into the efficacy of copyright. The efficacy of copyright determines if Canadian law is meeting the needs of its citizens, or if limited interests guide it. This thesis will test the efficacy of Canadian copyright in microcosm, and provided new data for research-based policy.

Chapter Two: Literature Review

This chapter outlines the existing scholarship on copyright, including the academic, legal, and journalistic views that provide a basis for this thesis. The chapter will examine the early history of copyright, the academic study of artistic reproduction, the changes brought about by digital technology, and the state of copyright in Canada. Scholarship and policy on copyright has followed changes in technology. With technological developments, analysts from John Locke to Michael Geist have examined the social significance of copied art. Common to the historical discussion of copyright is the belief that policy reflects social conceptions of art, but that it also imbues art with value. From the early industrial implementations of copyright to the current implementations of digital copyright, legal policy reflects the values of a society (such as a nation), but also structures those values, sometimes changing them to fit a new mould. The feedback loop created by that relationship makes the efficacy and ethics of copyright implementation difficult to analyze.

Early conceptions of art and ownership

Copyright is a set of rules that determines who owns art and what can be done with that ownership, but the interpretation of this basic precept has changed over time. The ownership of art became important as technological developments allowed art to be replicated on a large scale. According to Marshall McLuhan (1964) the industrialization of art can be traced back to the invention of the Gutenberg printing press in the 15th century. The introduction of the Gutenberg printing press fundamentally changed the world as all human interaction, including art, came to reflect the qualities of the printing press; namely, its ability to replicate existing material (McLuhan, 1964). Art and written knowledge was no longer confined to the

hand-copied manuscripts of religious scholars, shifting the power of knowledge from cloistered elites to the lay population.

McLuhan suggests that “it is the [technological] medium that shapes and controls the scale and form of human association and action” (McLuhan, 1964, 9). In the case of the printing press, the shift of consciousness was so great that McLuhan (1964) refers to this post-press period as “The Gutenberg Galaxy,” implying a technological development so grand that it defines worldview. Technological replication of art allowed an art industry to emerge to create, buy, and sell copies of art, shifting the arts economy from the early modern period onward. This ability facilitated the rapid and cost-effective dissemination of information, but also allowed for new forms of ownership. Coupled with “a period of rapid economic expansion carried by a new class of international merchants,” (Kretschmer and Kawohl, 2004, 22) copying technology redefined culturally held views of art. The printing press changed the nature of literature, education, and language, but it also changed the idea of authorship. The printing press allowed the rapid and cost-effective copying of text, which also meant that the original author of a work was not always paid or credited for his or her work. When a text was repeatedly copied, it became easy for the copier to claim authorship, or for a new author to claim the art of another as his or her own (Murray, 2007). Coupled with a new “sense of individualism (realised in the art of Italian painters and sculptors),” (Kretschmer and Kawohl, 2004, 22) the importance of attributing authorship increased. This problem of authorship created a need for discernible copyrights and ownership (Murray, 2007).

Introduction of copyright and philosophical basis

Copyright is legally defined as protecting the interests of a creator of information, technology, or art, but in practice it has often been used to protect the profit-driven interests of large production companies. Towse (2004) traces the roots of copyright to the transition from medieval to industrialized societies: “Copyright law is a development of market economies which gradually replaced the medieval guild system” (55). Similar to the guild system, copyright law gave supported artisans and businesses functioning within certain constraints, and outlawing unsanctioned practices. A clear example of this was the 1710 *Statute of Anne*, established by the British crown, which “granted a publishing monopoly to the Stationers' Company, a group of London printers and booksellers who could be relied upon to censor works in exchange for large profits” (Murray, 2007, 2). This was the first recorded copyright law and it was designed to protect the needs of printing companies, not artists or creators of information.

The political argument for the statute was based on the work of John Locke, who believed that the crediting of authors, not producers, was the essence of copyright. For Locke, there is a natural law of authorship and that “law exists independently, separate and apart from legislation that has been posited by any particular state” (Murray, 2007, 9). Locke also believed that there should be utilitarian limits to copyrights in order to preserve innovation and prevent monopolies like that granted by the Statue of Anne (Murray, 2007, 10). Limitations on ownership were necessary because, for Locke, “in a state of nature, goods are held in common through a grant from God” (Kretschmer and Kawohl, 2004, 25). Copyright law, for Locke, protected the natural rights of an individual creator, but balanced with service to the greater good of a society; it was a social contract.

However, the introduction of copyright law faced opposition from contemporary philosophers and economists including Adam Smith, Jeremy Bentham and John Stuart Mill. (Towse, 2004, 54) According to Towse (2004) Smith, Bentham, and Mill “opposed copyright law as unnecessary and damaging to competition, and claimed that there were other ways to stimulate creativity and artistic innovation” (54). They saw copyright as a restriction to the free market, and inherently “corrupt and anti-competitive” (Towse, 2004, 56). This was in stark opposition to the ideas of spontaneous inspiration and innate authorship that Locke and the Romantics held in common (Belyaeva, 2012, 482). Belyaeva (2012) notes that with the Statute of Anne, “Plagiarism turned into the illegal act and moral evil [and from] that moment the prohibition on attributing the authorship of someone’s ideas became the basic norm” (482). The previous belief that intellectual and artistic work built upon the historical work of others was replaced with new concepts of unique individual, and ironically paired with monopolized ownership in the emerging industrial capitalism.

Art in the age of mechanical reproduction

Cultural theorists responded to the industrialization of art through a Marxist lens, noticing that the increasing technical capacity to replicate pre-existing works had transformed art into something new (Horkheimer and Adorno, 1993; Adorno, 1941; Benjamin 2004 [1934]). With industrialization, culture entered into the capitalist system of production and consumption identified by Marx (Benjamin, 2004 [1934]). Before the industrial revolution art, such as statues and paintings, could be commissioned, bought, sold, and owned, but there are notable differences for art created through the industrial process. Theodor Adorno, Max Horkheimer and Walter Benjamin of the Frankfurt School believed that compared to “the organic pre-

capitalist past” (Horkheimer and Adorno, 1993 [1944], 35) the industrial process of reproduction rendered art homogeneous and shallow. The owners of the means of production (i.e. film studios and record companies) had the primary goal of profit and this fundamentally changed art. At the time, the technology to create and distribute a music recording, or film a movie was so expensive that musicians and filmmakers relied upon the major companies. These companies held all the cards and could promote their interests over the interests of the artists (Herman and Chomsky, 2002). In order to maximize the profitability of art, it was necessary for art to be created quickly, and distributed widely. Walter Benjamin (1935) believed that art is meant to be a unique, sublime experience, and that replication took away this fundamental quality. For Benjamin, artistic creation becomes labour and art becomes a commodity when art is combined with mechanical reproduction and capitalism (Benjamin, 1935). Art, post-industrialization, is no longer a unique, sublime experience, but instead a commodity or product to be bought, sold, and owned.

The Marxist approach of the Frankfurt school, represented by these scholars, does not seamlessly apply to the study of art because personal or social value cannot be directly correlated with economic value (Bolin, 2009, 349). While the Marxist approach helps to identify the structures of the arts industry, these theorists tend to oversimplify the role of the audience, and neglect artists who remain independent of major art and media companies. For Benjamin, Adorno, and Horkheimer, the audiences engaging with industrialized art were passive consumers, absorbing the capitalist values of simplicity, replication, and profit. For instance, Adorno believed that when audiences purchased pop music, and listened to it on their record player or radio, they were “kneaded by the same mode of production as the artcraft material foisted upon them” (Adorno, 1941, 219). There was no stage at which the proletariat

consumer stopped and criticized this media in the same way these theorists did, or found another meaning entirely. In contrast to this passivity, Andy Warhol showed that art that while industrialized art is indistinguishable from a commodity, this art-commodity could also have merit as a means of reflection (Baudrillard, 2001, 147). Warhol popularized the idea that the mundane, modern world of brands and advertising had an aesthetic beauty that could be critiqued, reworked, and enjoyed as much as the high-art that Adorno preferred. For Warhol, the means of production did not limit the interpretation and use of cultural products.

Do it yourself – an exception to the Marxists

Since the *Statute of Anne*, copyright law has developed alongside the technological advancement of radio, television, film, and now the Internet and social media. The increasing fidelity of copying technology, from VCRs to DVD players, paired with the increasing affordability and availability of these devices, created more and more problems for copyright holders. Contemporary copyrights have come to reflect such technological development. For Warhol and those who came after, new means of reproduction informed the nature of art in the same way the Gutenberg Press had reshaped medieval society. McLuhan (1964, 291) theorized that film would someday be available to the individual consumer, and this medium was popularized with the VHS player. However, the VHS player, like the cassette player also popularized recording and copying technology. Frith and Marshall (2004, 3) state that “In retrospect it seems technologically inevitable that machines to play CDs would eventually be replaced by machines to play and write CDs, [and then] by devices to retrieve information for new uses,” but this technology marks a significant shift in the history of art ownership. Previously copying technology was held by those with the

capital to invest in the means of production including manufacturers, merchants, and political groups. For instance, during the industrial era, the US government sanctioned unlicensed reprinting of English literature as a means of building the American economy and snubbing the British (Towse, 2005, 55). With individual consumer copying technology, consumer piracy and breach of copyright became an issue. Consumers had gained access to the means of production and could create industrialized art at low cost.

The potential of consumer copying technology is exemplified in the do-it-yourself movement of early underground punk and hip-hop musicians. In the 1970s and 1980s, punk and hip-hop musicians who were unable and, often unwilling to appeal to major labels, produced and promoted their content themselves. These musicians emphasized “do-it-yourself, on seizing the technical means of music production” (Frith, 1983, 158) and do-it-yourself [DIY] culture affects the nature of the music (Frith, 1983). Underground music and DIY culture value independent production and exchange, and a close relationship between audiences and performers. Independent bands do not have the resources of large labels and, as a result, they “produce more specialised material on a lesser scale with a consequently small market share” (Rowe, 1985, 58). Originally, such music appealed to only a small number of people, so it was not as valuable to major labels. Doing it yourself, moreover, meant that musicians had greater control over “the final product” (Frith, 2006, 231) and how it was presented compared to musicians who worked for major labels. Musicians were not acting alone and “network of independent record labels, self-published fanzines, college radio, and small venues for live performance” emerged (Moore, 2007, 2). DIY networks still exist and continue to use collective participation, allowing independent artists to have resources they would not otherwise have access to.

McLuhan to the network age

Contemporary life is defined by Internet technology, in the same way that the printing press and the television defined earlier periods. The move towards the Internet began in the post-war period, when Marshall McLuhan described life as being defined by the electric idiom (McLuhan, 1964). For McLuhan, “Once a new technology comes into a social milieu, it cannot cease to permeate that milieu until every institution is saturated” (McLuhan, 1964, 177) and electric technology changed the industrial, mechanical world of Marx into something new. Electric communications technology like the telephone and the computer changed the basic reality of the world similar to the change brought about by the Gutenberg printing press (McLuhan, 1964, 7).

McLuhan points out that “One of the most startling consequences of the telephone was its introduction of a “seamless web” of interlaced patterns in management and decision-making” (McLuhan, 1964, 271). Telephone, telegraph, and radio networks were precursors to what has become known as the Internet, and they had a similar effect. Business could now be conducted rapidly, over long distances and social relationships did not require spatial proximity. On the phone, social relationships were linear and hierarchical, (McLuhan, 1964, 272) while Internet technology promotes more horizontal command and knowledge (Castells, 1996, 2000). Computers accelerated the functions of existing technology exponentially, to the point where “we see ourselves being translated more and more into the form of information, moving toward the technological extension of consciousness” (McLuhan, 1964, 57). Unlike previous communications technology, computers and the Internet aggregate multiple mediums together, displacing earlier mediums.

The ubiquity and connectivity of computer technology has developed to a point where some argue that world is now in “The Network Age” (Castells, 2000). For Castells, “we are living through one of those rare intervals in history” (Castells, 2000, 28) that is “at least as major an historical event as was the eighteenth-century industrial revolution” (Castells, 2000, 29). Network technology marks a fundamental change from the mechanical industrialization of the world before and the disconnected isolated worlds of early computers. In Canada, “In 2012, 83% of Canadian households had access to the Internet at home [and] A high-speed connection was reported by 97% of households with home Internet access” (Statistics Canada, 2013). The use of information and communications technologies (ICTs) is growing across demographics, and young people “are out in front of social change,” (Agger, 2011, 119) growing up with smartphones, tablets, laptops, and Facebook. For Castells, the network age is defined by: information as the “raw material” for communication, development, and production; the “pervasiveness of effects of new technologies”; the “network logic” of relational organization; “flexibility” as the unit of measurement and value for technology, business, and personal life; and the “growing convergence of specific technologies into a highly integrated system” (Castells, 2000, 70-72). Contemporary life is defined by network logic in both the micro and macro, from individual interpersonal communication to the organization of global corporations. Global life is now organized according to the qualities of network technology - connected, mixed, and flexible. Now art and media are often multimedia and “the Internet is unique because it integrates both different modalities of communication [...] and different kinds of content [...] in a single medium” (DiMaggio et al., 2001, 308). Art, like all aspects of life in the network age, is mediated by digital technology.

A major criticism of recent copyright law proposals is that Internet technology has grown and spread so fast that the behemoths of industry, law, and legislation are several steps behind the technology. Channelling McLuhan, Castells believes that with the Internet, “the message is lagging the medium” (Castells, 2000, 398). Internet-based multimedia is particularly problematic for copyright because the line between the audience/consumer and the producer of a work is blurred. Manuel Castells states that “unlike television, Internet consumers are also its producers, by providing content, and shaping the web” (Castells, 2000, 382). In this state where the author and audience-consumer are difficult to distinguish, “regulation and growth must be balanced” (Murray, 2007, 13-14) because regulation of audiences may reduce the creative process of these audiences. Free distribution of art allows art to reach more people, in less time, at a low cost. It also means that artists can create referential works, or remixes, without the risk of breaching copyright. But, free distribution can mean that artists are not directly reimbursed or credited for their work. This can mean that an artist's work could be used commercially without reimbursement. As Healy notes, “the Internet’s technical capacity to move [goods] around does not mesh easily with established legal practice, government policy or commercial interests” (Healy, 2002, 479). The dissonance between law and technology has created a need for new digital copyright law in Canada and abroad.

Public discussion and law in Canada

Contemporary forms of copyright in Canada emerged from the *Statute of Anne*, but copyright law has developed much further as it adapted to, and continues to adapt to, technological changes. At its most basic level, copyright is a group of legal rights that provide the holder with the right to copy an original work in various ways. However,

as Laura Murray clarifies, “Copyright does not apply to ideas or facts: it applies to the way they are put into place” (Murray, 2007, 45). Ideas cannot be copyrighted, but the implementation of ideas can be (Murray, 2007). For example, the individual notes of a song cannot be copyrighted, but the arrangement of these notes can. What has been debated, and remains unclear, is how much work constitutes an original arrangement, and this assessment has become more difficult with advancements in digital technology (Murray, 2007). Besides the reproduction right, copyright also includes performance rights, translation rights, exhibition rights, rental rights and a myriad of additional rights and clauses (Murray, 2007). Initially copyright protects the author of an original work, but in practice, copyrights can be transferred. This means that copyright law often protects the companies and corporations who hold the copyrights rather than the producer of what is protected. Additionally, as Murray (2007) describes, copyright has a time limit, which in Canada is the life of the creator plus 50 years. This expiration date is the reason some works enter the public realm, such as the classic books that are available for free in a digital format. The copyright on these books has expired so they become available for free through vendors, libraries, and personal websites.

The efficacy of copyright as a means of representing common social values has been particularly contentious in recent years. While copyright provides monetary reimbursement for creators, some say that copyright is too restrictive, and not balanced in favour of consumers. This debate between the regulation and deregulation of digital copyright has been a prominent feature in journalistic media over the past three years. Primarily, the discussion has been based around prominent piracy cases. In 2012, the Stop Online Piracy Act and Protect IP Act gained wide public interest, including a day of web protest when multiple prominent sites like Wikipedia shut off

to raise awareness of the Acts (Southey, 2012; Stroumboulopoulos, 2012). The Acts, which soon died after mass public opposition, would have allowed the automatic suspension of any website deemed to be hosting copyrighted material. The peak of public copyright discussion followed the suicide of computer programmer and social activist Aaron Swartz. In 2011, Swartz was arrested and charged hacking the JSTOR journal archives at MIT and distributing the material for free online. Facing a 50-year prison term and a one million dollar fine, Swartz committed suicide (Chiose, 2013). Swartz's case increased media coverage of copyright issues and further publicized the debate between copyright reformists and copyright regulators. While some writers criticized the limitations of copyright law and the severity of its enforcement (Chiose, 2013; Geist, 2012c), others saw his case as a just application of ethical laws and an example of overly-relaxed public practices (Tossell, 2013). One Globe and Mail author wrote of Aaron Swartz, "His family and supporters blame overzealous prosecutors for his death; the prosecutors insist – again, quite rightly – that "stealing is stealing" (Tossel, 2013, para. 4). Current copyright continues to frame creative work as property analogous to a home or a car, continuing the logic of the original *Statue of Anne* to protect the individual and failing to also recognize its regulation to also protect the common good. In this American model, breach of copyright is stealing and punishable as a form of theft. Key cases like Swartz's raise questions about how intellectual property is treated, especially how copyright affects consumer rights, and how copyright reflects social values in a digital age.

State of copyright in Canada

In Canada, new copyright laws were developed to address the increasingly digital nature of intellectual property. The first major step in the regulation of copyright on

the Internet was the US Digital Millennium Copyright Act enacted in 1998 (Murray, 2007, 113). The DMCA introduced laws that cover the digital reproduction of art as a breach of copyright. Similar bills, such as Bill C-60 and Bill C-32 have been put forward in Canada since 1998, but due to the repeated dissolution of government, none have come into law (Murray, 2007, 4). On June 29, 2012, Bill C-11 was passed, which brought many new changes to copyright law in Canada. Specifically, the bill seeks to bring Canada in line with international copyright law, which is dominated by US interests (Murray, 2007, 31). Canadian copyright law follows American law because “countries like Canada who import more cultural content than they export [are] more burdened by increased international copyright protections” (Lott, 2003, 37). However, copyright law researcher and critic Michael Geist has noted that Bill C-11 meets neither the requests of critics, nor those of lobbyists (Geist, 2012a). C-11 allows for non-commercial mash-ups and limited use of copyright material for satire, research and education, but does not allow the breach of digital encoding mechanisms to obtain this material (Geist, 2012b). One of the primary goals of the new copyright legislation was to regulate significant breaches of copyright, while minimizing the impact on the individual consumers (Geist, 2012b). However, as time goes on, the implementation of the laws will determine their efficacy and impact. It remains unclear whether the new bill balances the rights of consumers, artists, and corporations. It is also unclear whether it will restrict individual rights to the point of limiting artistic expression.

Some examples have already been set for implementation of the new laws. In one recent case, artist Claude Robinson claimed Cinar plagiarized his idea for a children's cartoon, and won an award of \$3,250,000 (Geist, 2013; *Cinar Corporation v. Robinson*, 2013). Michael Geist notes that this was a key case in the application of

the new copyright laws, and it “emphasizes the importance of copyright balance” (Geist, December 23, 2013). While this case represents the enforcement of copyright restriction, it is the favour of content creators similar to the local artists interviewed for this project. Other key cases have played out in the favour of corporate interests, but the limitations of Canadian law impose a balance not found in the US or Europe. In 2011, Voltage Pictures, the producers of the film *The Hurt Locker* sought to sue roughly 2,000 Canadians who had pirated the film (Geist, 2014a). However, Geist notes, “file sharing lawsuits against individuals in Canada do not make economic sense if the goal is to profit from the litigation” (Geist, 2014b). Under the new Canadian laws, individuals can only be liable for up to \$5,000 of copyright infringement, and it is unlikely that they will be liable for even that amount (Geist, 2014b). The Voltage picture case is also significant because of the intersection between privacy rights and copyrights when dealing with digital copyright. “Voltage Pictures sought an order requiring TekSavvy to disclose the names and addresses of thousands of subscribers” (Geist, 2014c) in order to pursue the individuals who pirated *The Hurt Locker*. Previously, Canadian courts had measures to prevent such individual pursuit (the balance between individual citizens and institutional interests), but privacy legislation such as Bill S-4 could swing power back into the hands of corporate prosecutors (Geist, 2014c). The overlap between copyright and privacy increases the need for public awareness and involvement in digital copyright. More people are becoming aware of copyright issues as it overlaps with other communications and technology law and allow a legal back door for surveillance and monitoring.

Conclusion

Early conceptions and applications of copyright are echoed in contemporary Canadian law and practice. Copyright continues to function as a means of attributing authorship, and controlling who profits from art. The industrial age was when copyright reigned supreme because business owners also owned the means of copying writing, music, and print; if they wanted to sell their art, artists such as musicians and authors were required to agree to the terms of the publisher, record company, or patron. Now, with the Internet, it is easier for artists to produce and distribute their own work, but harder to make money in conventional ways as the culture of free content has become ubiquitous. In Canada, new laws seek to address the Internet and other digital technology, balancing the rights of the consumer and the copyright holder. However, these new laws have not yet solidified, and it is unclear who will benefit from them, and in what ways they will benefit.

Much has been said in terms of piracy, industry economics, and consumer rights, but the perspectives of artists have been under-represented. Both public and academic analysis has focused on consumers, technology, companies, and legal policy. In practice, rights-holders are often companies, especially rights-holders who pursue legal action. As a result, artists are often out of the copyright discussion, except as an abstracted ideal to defend copyright restrictions. Yet artists are the originators, creators, and initial rights-holders for art; art begins with artists and would not exist without them. Additionally, there is little research on Canadian artists, and much of the research on artists is out-dated (Frith, 1983) and disconnected from copyright. This project focuses on the nominal views of artists to address this gap, and provide groundwork for future artist-based research. In terms of population and sample, most of the existing research and debate has focused on European and

American cases. Within this international research, the focus has again been on policy and legal analysis, technological innovation and increasing constraints, and consumer perspectives. The global and national copyright debates need empirical research on Canadian artists from the perspective of the artists themselves. Future research can then expand on this initial project to cover a broader segment of the Canadian population.

Chapter Three: Methodology

For my undergraduate thesis (MacLeod, 2011), I conducted research on independent musicians in Halifax, Nova Scotia. This undergraduate project examined the uses of Internet resources by independent musicians and their views on free-distribution of music (both illegal and legal). It also provided experience in the ethical design of research projects, data gathering, and data analysis, as well as expanding my knowledge of this subject area. This MA project expands the sampling frame of my previous project to cover a broader variety of artists, and addresses copyright and compensation in more detail. Specifically, this thesis project addresses three research questions: How are artists making art and making a living? How do they use the Internet in their artistic practice? How do they use and understand copyright? These research questions are designed to connect the practices and ideals of artists to the legal framework of the arts economy in Canada. In addition, these questions address existing research gaps such as artist perspective, and Canadian research in the academic and public discussion of copyright policy.

Sample and population

To address the research questions above, this project sampled 15 artists working in multiple areas, at multiple levels in Halifax, Nova Scotia with inference to the greater artist population of Halifax. Given the exploratory nature of this project, and resource constraints, this study takes qualitative approach (Bryman, Teevan, and Bell, 2002; Miller and Salkand, 2002), and the target population for this project is limited to artists living and working in Halifax Regional Municipality. Researching Halifax-based artists was feasible with my resource constraints, yet still provides insight into Canadian artists and policy, as artists from any area in Canada are subject to the same

laws and regulations, and use many of the same popular web resources. However, there is variability in provincial level funding, and municipal resources, and the effects of these regional differences could be addressed with large-sample, national-level research.

For selecting participants, those who self-identified as an “artist,” as well as those who were referred as an “artist” by others were included in this study. In general, the participants in this project were working with multiple art forms and mediums. The artists I interviewed defined themselves as visual artists, writers, filmmakers, musicians and producers, with many artists claiming multiple practices. Initially this project was designed to focus solely on independent artists, who are defined as artists working outside of mainstream corporate production systems. These systems include large institutions and companies such as studios, labels, galleries, broadcast providers or publishers. Independent artists “produce more specialized material on a lesser scale with a consequently small market share” (Rowe, 1985, 58). While independent artists remained the focus during my data gathering, during the sampling process, it turned out that the line between independent and non-independent was blurry, with some participants having a foot in each realm. Some have been independent in the past, and some artists maintain both independent work and mainstream work. All the participants had some experience with independent-level art, and most participants have only worked in the independent sphere. Although it deviates from the initial design, including participants with experience as both independent and non-independent artists allows for comparisons between different types of art, and means of making a living. Chapter Four contains more detail on the overlapping labels and practices of the participants.

Recruitment

Initial recruitment used convenience sampling and subsequent snowball sampling. The first round of participants were recruited from personal networks or contacts and through cold contact requests. Additional recruitment took place in the non-profit Khyber Arts Centre, located in downtown Halifax, Nova Scotia. I had connections to the Khyber through volunteering and working as a doorman and busboy. A letter of permission was used to obtain written permission for recruitment at the Khyber.¹ Rather than asking every person I met, I only asked artists to be potential participants if the topic arose during normal conversation. Discussions of copyright and art are common parts of conversation at the gallery, so this approach would not draw attention. After interviews, participants recommended other possible participants. This snowball sampling allowed me to contact artists working outside of the immediate Khyber sampling frame, but within the same Halifax networks. This sampling method also created a diverse sample that included Khyber attendees, but was not exclusive to the Khyber community. Alternatively, I asked friends and coworkers if they knew anyone who may be interested and would contact these suggested participants via e-mail. Initial contact was either made in person or via e-mail and interviews were arranged through e-mail or phone. When participants suggested that I meet with a new contact, I extended my contact information for them to pass along to the new contact. This action protected participants from acquiring knowledge about another participant's responses. All participants were given a letter of introduction that outlined my research project, ethical considerations and provided my contact information.²

Data gathering

¹ See Appendix A – Khyber Permission Letter

² See Appendix B – Letter of Introduction

Data gathering for the project consists of 15 semi-structured, open-ended interviews with artists living in Halifax, Nova Scotia. The sample size was set at a minimum of 15 participants or until saturation was reached. In support of this approach, Marshall (1996) states that in qualitative research, “the number of required subjects usually becomes obvious as the study progresses, as new categories, themes or explanations stop emerging from the data (data saturation)” (523). Mason (2010) supports this open approach to assessing saturation, saying a set sample size represents a “pre-meditated approach that is not wholly congruent with the principles of qualitative research” (1). Saturation was reached at 15 participants, with a variety of artists representing multiple disciplines; participants had been repeating the same beliefs and practices and patterns had emerged. New information was uncommon in the later interviews, and often tangential to my primary research questions. This final sample includes two or more artists representing each of the primary disciplines represented in the copyright discussion: music, visual art, writing, and film. This sample size was also feasible for an independent thesis project given time and financial restraints.

I was the sole investigator and conducted all of the interviews face-to-face. Semi-structured interviews were used because they fit the nominal and exploratory nature of my research (Miller and Salkand, 2002, 143). Allowing participants to answer any way they wished provided me with unexpected answers including unanticipated definitions, terms, and concepts. Participants were given the option to choose the interview location, as long as it was quiet and private, but the multipurpose room used by the Sociology and Social Anthropology department (room 2138 of the Dalhousie McCain building) was also offered as a private, neutral location. Interviews were conducted in a variety of locations, including homes, offices, and the multipurpose room. Interviews were intended for one hour, participants were

informed that interviews are open-ended and may run longer. The mean interview time was 43:48, with the longest interview running 1:09:23, and the shortest interview lasted only 20 minutes. All of the interviews were recorded with a digital voice recorder and stored on a password protected USB stick and a password protected laptop.

I explained the nature and intention of my research to participants through a project introduction letter, and during the oral consent process.³ Participants were also informed of the process for recording and storage of information during this oral consent process outlining the nature of the project and ethical considerations. Oral consent encourages anonymity, as there is written record of the participant's identity, and interview data will be aggregated. Participants were given the option to withdraw their consent to be recorded in any or all forms before, during, or after the interview. If a participant agreed to participate, their consent was recorded on the audio recording of the interview. My contact information, the contact information of my supervisor, and that of the Dalhousie REB were also provided with the letter of introduction.

Analysis method and justification

All of the interviews conducted were transcribed in full and randomly assigned a number from one to fifteen to improve confidentiality. Transcriptions did not include excessive use of 'so' and 'like,' except when these words necessary for comparison, or when they were used sparingly. If a participant began speaking in one direction, then immediately restarted their thought, the 'false start' was often omitted. Participants' names were not attached to either the audio files or transcripts, and the number did not

³ See Appendices B and C.

correspond to the chronological order of the interviews. Transcriptions were stored on a password protected laptop and password-protected portable USB stick. Audio recordings were analyzed using Rhythmbox and iTunes. Transcribed data was analyzed using Open Office Writer and Calc software – equivalent to Microsoft Word and Excel. Direct quotations from participants are used sparingly and any quotations are anonymous. Identifying information (such as band names, website names, group or affiliation) has been omitted or changed. Information publicly provided by arts groups is used, but information connecting this public information to participants has been omitted. In general, interview data have been aggregated and general statements and references made to avoid identification of participants.

Interviews were analyzed using open coding, based upon the interview questions and emergent topics.⁴ For example, to address the research question “How do artist use the Internet in their artistic practice and uses of copyright?” I asked participants “How do you use the Internet in relation to your art?” However, participants addressed this research question at other times during the interview, as well. To organize these responses, I took note of key words used by participants as I transcribed the interviews, and indicated each use of the key word with brackets and an ampersand. Responses were coded based on the various hardware and software that were used, such as *[#bandcamp]*, and terms that they used for specific practices: *[#money]*, *[#compensation]*, *[#sell]*. This allowed me to make quick reference back to the original use of key words and analyze the broader context for usage. I also maintained a frequency count of the interviews that used these key words to identify patterns and outliers at a glance. In total I used 89 codes, with synonyms and conjugations listed together. For example, uses of the words ‘rules, law, and legal’

⁴ See Appendix D – Interview Guide

were all coded as *#law*, while ‘produce’ [*#produc*] and ‘reproduce’ [*#reproduc*] were coded separately despite the overlapping use of these terms. All of the codes were then arranged into categories of *general terms*, *website/tool/software*, *compensation*, *audience exchange*, and *practices* (the artistic practices of the participant) to connect this data back to my research questions: artistic practice, methods of compensation, use of the Internet, use of copyright, and ideals for compensation. Some cases fell outside of these codes, and I made note of these edge cases. For instance, one artist did not make films, but had experience licensing music for films. In general, codes helped to identify key topics, key terms, and bookmark these discussions for comparison to other interviews.

For some of the more nebulous concepts, such as the relationship between art and property, or the participants’ ideal reimbursement systems, coding by the use of terms was not sufficient because artists often expressed multiple ideas in abstract ways. For some topics, I went back through each interview and compared every response to specific questions, taking quotes from each interview, and then comparing these larger blocks of text. This was specifically helpful for the question “what is your ideal reimbursement system?” Responses to this question varied greatly, and many artists expressed several different ideas at once. In addition, artists did not address this question during other parts of the interview and it was manageable to analyze on its own. The comparison of large block quotations, combined with identifying and numerating key terms, and the structure of the interview questions facilitated a grounded approach that remained linked back to my initial research questions.

Chapter Four: Artistic Practices

This chapter will outline artist practices, examining their definitions of art and artist, and how their artistic practice fits into their daily lives. Analyzing artistic practice provides a good base for comparing artist experiences with copyright policies. This chapter begins with an overview of the artistic practices of participants. This includes artist definitions of who is an artist, and a description of the various arts included in the sample. Next is an overview of artist compensation and reimbursement. Artists made a living in various ways, often overlapping with their art, and reimbursement methods for art varied across the arts. Reimbursement was often tied to online sales or promotion, and this chapter also examines the ways artists use the Internet; what works for them, and what does not. Artists used various sites and tools to promote their art, perform research, gain inspiration, communicate with other artists, and sell their art. Finally, this chapter will examine participants' experiences with copyright. Artists used copyright in their own work, and in some cases enforced their own copyright, but they also experienced copyright as audience members when they made reference to other artistic work, or when they observed copyright issues arising amongst their peers and the broader community. Overall, this chapter describes artistic practice and the ways in which artists make a living. The Internet informs both contemporary copyright policy and artistic practice in significant ways, changing the ways artists create art, and the ways they make a living from their art.

Describing artistic practice

Before examining copyright in detail, it is important to consider how the words *art* and *artist* are defined by artists. This thesis project seeks to describe the nominal views of artists, including their definitions of themselves, and descriptions of their

artistic practices. These definitions will provide a basis of comparison against the basic assumptions of authorship and ownership inherent to copyright. As described in Chapter Two, this project included anyone who defined themselves as an artist, but this definition had variation. One participant referred to United Nations Educational, Scientific, and Cultural Organization (UNESCO) definition of artist, which states,

‘Artist’ is taken to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association. (UNESCO, 1980)

This combination of self-definition and peer-recognition was key for many participants in their definition of what artistic practice means for them. However, there was variation in definitions among participants who defined art from the very broad to the very specific. One participant defined art as a means of communication comparable with other languages. This definition has been put forth by philosophers and critics, including Tolstoy who saw the best art as universal communication based on Christian egalitarianism (Tolstoy, 1904). Another artist spoke without sarcasm when referring to subway sandwich artists as an example of mundane, but valid art. The other end of the spectrum was presented by one artist who saw their own daily practice as work and not creative: “It's work. It's not creative; I don't just get to be liberated and creative.” This participant drew portraits solely for commercial purposes, and for her this commissioned work did not have the same quality as more free-form creative endeavours. Using the UNESCO definition however, both commercial and non-commercial practice can be included as art, without any form of hierarchy. The nebulous range of definitions in the sample indicates the limitation of deductive research when studying artists. Clear definitions and categorization of art

leaves out some artists; whether the casual, the professional, the mundane, or the celebrated.

Among the artists sampled, many artists practice a variety of overlapping disciplines. As one participant said, “really since the sixties and seventies, it's become pretty interdisciplinary. It's no longer pigeon-holed as, you know, you're a painter, you're a sculptor, you're a performer, you're a narrator, you're [an] author.” The culture of post-modernity is dominant in contemporary visual art, as artists combine traditionally segmented disciplines, and move fluidly from practice to practice. Each participant was asked to define their artistic practice and many provided multiple or vague interdisciplinary practices. One participant used to paint but primarily did musical work, and another participant combined sculpture with painting. The crossover was clearest among self-defined visual artists, but while five artists were primarily musicians, nine participants claimed to have some form of musical practice. The following table outlines the artist practices of participants:

Table 4.1 – Artist Practices

Artistic practice	Number of artists (not mutually exclusive)
Music	9
Visual arts	8
Writing	7
Painting	6
Film and Video	6
Drawing	4
Performing	4

Artistic practice	Number of artists (not mutually exclusive)
Community work	3
Academic / Teacher	3
Producing	3
Sculpture	2
Print-making	2
Photography	1
Textiles	1

Among those creating visual art, many used film and video, music or writing as part of their art. As one artist stated, “I use printed matter a lot...and language – yeah, maps. Basically, kind of exploring forms of representation in language and logical structures.” The combination of mediums both online and offline was a key component of artistic practice in the sample. Notably missing from the sample are artists claiming acting or dance as a practice and future projects should address this gap.

The UNESCO definition of artist is also useful because it allows the inclusion of artists ranging from casual hobbyist to professionals earning a living from their art. My sample included a range of incomes and scope of artistic practices. Similar to the diversity of disciplines above, occupations were also varied among participants. Artists worked in both unrelated wage work and in occupations related to their artistic practice. Occupations in the arts industry included video and audio production, academics, promotions and gallery operations. Outside of art-related work, artists worked in service industry positions, labour work, corporate environments, were enrolled as full-time students, or retired. Often these positions were temporary, or had

changed throughout the participant's working life. One participant had previously worked part-time as a student, earned grants to supplement this work and was now permanently employed in arts education. Other artists were employed through contract positions, and many artists with practices supplemented part-time or temporary work with grants. Employment was not limited by practice, as participants with full-time art-related work included musicians, visual artists, writers, and filmmakers. All fields of practice also included participants who were not part of arts institutions or companies and who worked day to day in unrelated fields. Artists for this project reflect the range in the UNESCO definition of art from the weekend artist, to the student, to the institutionalized artist. All artists had at some point practised independent of institutions, and the majority of participants created art that was not directly related to their occupation.

Compensation and reimbursement

Every participant spoke about money, but their means of obtaining compensation and their thoughts about this compensation was varied. Unlike the Lockian Romantics, many artists did not adhere to the belief that there is a natural law of authorship and authorship was a unique, spontaneous occurrence (Murray, 2007, 9), a belief that is still embedded in contemporary copyright law. Similarly, many artists did not share the view that art is a limited commodity, and a natural fit for capitalism. Instead, artists often saw art as iterative, collaborative, and social; their methods of seeking compensation for their art reflected these views. The clearest form of artistic compensation is the sale of a piece of physical art, but that transaction is less clear when the art is a performance, digitized, the use of the art is temporary, or the artist is paid to make art that is not for sale. Because of these caveats, compensation also

included work in or around the art industry. Artists earned money through wage-work in positions both unrelated and related to their work. For the majority of artists, this wage-work was their primary means of income. As one participant said, “You have to pick and choose what you do and in order to have the time; you need to have money rolling in. Otherwise you need a job to pay the bills, on top of this other job.” Work often overlapped with artistic practice, but it also filled the gap when it came to material necessity. Compensation also included sales of things *around* the art – merchandise, presentations, and performances. Artists often deliberately offered the art for free, while selling live performance and merchandise like shirts and vinyl records, as these things could not be digitized. In these discussions of compensation, other issues arose such as the value of art, the ethics of compensation, and the role of art as property. These questions fundamental to the nature of art was correlated with artist practices, as artist practices informed their concepts of compensation, and their concepts of compensation informed their artistic practice.

Direct sales of art included offline and online sales. Musicians in particular used the online service Bandcamp to stream and download music for free, while also offering paid purchases. Bandcamp allows musicians to offer music on a sliding scale, where the purchaser can pay a range of prices for the music. Three of the artists I spoke to mentioned use of a sliding scale or pay-what-you-can approach. Musicians receive some compensation from the people who are willing to buy the song or album, and expand their audience through the free downloads. By expanding their audience, musicians can tour more easily and sell more merchandise like tee-shirts at live shows. Other artists rely upon direct sales as well. Two authors spoke about the sale of books, and one author sold e-books through online services, as well. Every visual artist had sold some of their work, through the amount varied. For most, work

such as teaching and compensation from galleries were more lucrative than the sales themselves. Some pieces may sell, but it was more about having a presence in the community, presenting in galleries, and working in related fields based on this exposure. One filmmaker was the only artist who subsisted entirely on his art including sales and licensing. While this did take the form of selling individual copies of films, compensation for this artist generally took the form of more nebulous licensing and copyright. Overall, direct sales did provide some additional income, but were not the primary means of reimbursement. Again, most artists had multiple practices, and many artists had multiple jobs, and this overlap of practice and profession meant that compensation usually came from various means. Additionally, direct sales are harder to implement in a digital context because of the lack of a tangible, piracy, and overall culture of expecting free content on the Internet.

Artists also received compensation for art through the sale of merchandise related to their practice. Five artists described the sale of merchandise as a means of compensation, and this merchandise sale was discussed primarily in relation to music, though visual artists also discussed the sale of prints and screen-printed shirts. With merchandise, the line between the sale of art itself and related products is blurry. As one participant said,

...the live performance and the merchandise seem to go hand in hand. People would, hopefully, buy something at the show because they enjoyed the performance. It's almost as if they're paying for the performance, and they're getting a free thing or something, they're paying it in respect.

Giving away music for free fuels performance attendance, which then fuels merchandise sales. Also, merchandise such as a tee-shirt may not be designed by the musician themselves, but made in collaboration with other artists. In addition, merchandise was described as secondary to the primary production – whether it was

an original drawing or painting, or music. The line is blurry as an album is both the primary creation of the artist, but sometimes conceptualized by participants as merchandise secondary to the live performance. With this overlap, the categorization of art as a unit for sale runs into fundamental issues because identifying the limit between what is a product and what is not becomes difficult. While music and film in particular have systems in place to organize art in product units, even these industries have difficulty dealing with the overlap between merchandise, performance, public service and other forms of compensation. Compensation then comes from multiple directions instead of one primary revenue stream like the sale of CDs as a primary revenue stream for musicians in the 1990s.

One primary form of compensation comes from selling the presentation of the art, whether it is a play, a reading, a music show, a gallery show, or a film screening. For musicians and visual artists, presentation sometimes provided more revenue than sales of their art. Musicians often used recordings as promotional material by giving music away for free to increase attendance at live performances. In the words of one participant, “I do think that [because] so much is based on live shows and stuff like that these days, that if you have that many people stealing music, that's a positive thing now.” In addition to this model of reimbursement, musicians also received compensation through the Society of Composers, Authors, and Music Publishers of Canada (SOCAN). SOCAN is a non-profit organization that reimburses its members for radio play and other public presentations of their musical art (SOCAN, 2015). Multiple musicians spoke to the role SOCAN played in their artistic practice and while the compensation was often negligible, SOCAN provided some compensation where there would otherwise be none.

Visual artists also addressed compensation for artistic presentation in detail. One visual artist primarily did commission work and did less work with galleries, but five artists spoke about gallery reimbursement and two other artists spoke about reimbursement through Canadian Artists' Representation (CARFAC) explicitly. For visual artists, CARFAC provides a reimbursement system for visual artists working within the gallery system. This system provides legal and economic support for artists, and sets a minimum wage equivalent for artists based on an established fee schedule (CARFAC, 2015). One artist spoke in-depth about the use of CARFAC fees, saying, “I've sold very little work – I've only really ever made money, through my art, through solo exhibitions and group exhibitions, and it's just that CARFAC fee again.” CARFAC organizes the compensation of artistic presentation in a way similar to labour unions, allowing artists to have a more tangible base for compensation in the gallery setting. Artists are also encouraged by CARFAC to ask for additional compensation when showing work in a gallery (CARFAC, 2015).

Participants made money from art sales, presentation, and performance, but almost every artist had some form of a day job in addition to their artistic practice. At least nine out of fifteen artists interviewed earned a living in professions related to their artistic practice. This included artists involved in video and audio production, academics, promotions and gallery operations. However, this artistic employment did not directly equate to earning a living from their artistic products or pieces. Instead, work in the arts often used related skills including conceptual and technical knowledge. Two artists in particular spoke to the balance of work and artistic practice. One of these artists earned a living in a related field, and the other worked in an unrelated occupation. For these two participants, wage work was a means of supporting themselves while still pursuing artistic practice. Both spoke of a desire to

earn a living from art full-time, but questioned whether such work would be good for their art:

Participant 1:

So as an artist, I want to [make good art]; [make art] as best I can. But I have a family and I have kids and mortgages and everything, so I personally, couldn't put the pressure to sustain my whole family on my [art]. Not because, and this is where it gets really cruel – not because it would be bad for my family, but because it would be bad for my [art].

Participant 2:

...when I was in school and I wasn't working and I was just making art all day long, I was like, 'who are the people?' I just am alone all day with myself making paintings and that's really weird when I'd go out into the public and be like, 'hello.' But maintaining this sort of social job at [redacted]. I feel like it helps me in more ways than one. It helps me be social and maintain a grip of some weird system that I may not agree with, but it's everywhere – that's inescapable.

These artists questioned whether being an artist full-time would be good for their art.

The first participant spoke of the need for more income than art provides, or at least the kind of art s/he wanted to make, while the second participant spoke of the need for life experience outside of art. Would being born wealthy and not needing to work still allow the circumstances necessary to create good art? Is the need to work a reflection of the devaluing of artists, or is the experience of work good for the art itself? Even in professions overlapping artistic practice did not necessarily allow time for the artist to work on their own projects. This dual-life of artistic practice and wage work arose many times in the interviews for this project and was described as a key component of contemporary life as an artist.

The majority of artists employed in the arts industry worked in larger established institutions or companies. Three participants earned a living independently from their art or companies that they owned. Only one participant earned a living

primarily from their art. But even this categorization is problematic, because the crossover between one's art and one's occupation was not always clear. If an artist is hired based on their experience as an artist but their day-to-day work does not involve making art, is their art receiving direct compensation? One artist spoke to this blurry line with reference to artists working in education and academics:

You might have a history professor, who's written nine books, and seven hundred articles, and if you were to say, 'how much have you been paid for this?' they would say, 'nothing.' They never received a single royalty cheque in their thirty-year career. But, they do get paid 150,000 dollars by the University of Toronto because that is being monetized, but not at the unit of the thing.

In the institutional arts setting the criteria for compensation can be abstract and the line between personal and work creation unclear. The identity as a member of an institution can be both beneficial and detrimental. On the one hand, institutional environments provides compensation, collective bargaining, and social support, but they can also restrict freedom. Even in the non-profit space of galleries, groups, collectives and unions, compensation and identity are still issues; even time can become a resource when an artist spends more time volunteering for committees and events than working on their own art. Compensation groups like the Directors' Rights Collective of Canada (DRCC) and CARFAC can also bring wholly independent artists into the institutional sphere.

Participants also used grants, internships and government funding as reimbursement for their art. Three participants said they used grants, internships and government funding for support while working on artistic projects, supplement other forms of reimbursement, or fund higher cost projects such as recording and touring. Both visual artists and musicians claimed to have used grants, and in similar ways. One visual artist said, "Pretty much any major project that I've ever done – it's been funded in some way by a grant or a residency." Grants allowed artists to work on

bigger projects while spending more time working on their art and less time in unrelated wage work. However, the granting system also seemed to be based on previous opportunities so that larger, more recognized artists were more likely to receive grants. In addition, receiving grants increased artists' visibility and the likelihood of receiving more funding, or employment in art institutions. Granting organizations used by artists included The Foundation Assisting Canadian Talent on Recordings (FACTOR), residency programs and Tourism and Culture Nova Scotia. Akimbo was also mentioned as a means of finding grants, jobs and residency programs for visual artists. FACTOR, and Tourism and Culture Nova Scotia were mentioned explicitly in terms of music funding. These organizations had strict guidelines for applying, and generally awarded more money to popular artists. Artists funded by FACTOR were also expected to promote products and ideals in line with FACTOR'S goals. One artist claimed that criteria such as 'Twitter followers' are used to determine whether an artist or group is a level 1, 2, or 3, with three being the most popular and commercially viable. The metrics used by granting boards were viewed as superfluous by participants, and representative of a greater disconnect between artists and the arts industry. One participant said that "If you get a lot of funding from FACTOR, for example, they expect you to make money in Canada, and make most of your money in Canada, and do the things that promote the things that they vouch for." Money from FACTOR and similar organizations is intended to be used for increasing the commercial viability of musicians, whether through recording, networking, touring or marketing/promotion. Grants are an important resource for artists, but they are very limited, and come packaged with specific expectations about the commercial viability of the art.

Overall, artists saw money and compensation as a major factor in their artistic practice. While many claimed they would still create art without compensation, money often constrained their practice. The views of participants differed slightly from both the capitalist and Marxist theories of artistic creation and ownership. Artists did not see their work as commodities to be owned, bought and sold; the view put forth by Locke and embedded in the earliest forms of copyright, such as the Statute of Anne (Murray, 2007; Belyaeva, 2012). The time investment for touring, writing, or creating a visual art piece had to be balanced with wage work and the creative choices of the artists themselves. In addition, several artists spoke about the perception of art as 'not real work,' and how this patronizing attitude toward art downplays the day-to-day labour of artistic practice and the social role of art. When art is not seen as real work, artists need to work in other occupations or make art that is deemed commercially viable. Grants and art-related occupations were seen as vital, but limited resources for the provision of time and money to work on one's art. Artists also perceived that most available grants tend to be given to established artists or organizations that are deemed commercially viable. On the other hand, some artists felt that work outside of the arts gave them experience or inspiration for their art; Working in day jobs provided experience, artistic inspiration and grounding with life outside of the art bubble. The idea that work enhances art contrasts with the views of the Marxist Frankfurt School, who believed that art reflecting industrial life was objectively worse than the pre-industrial classical styles of music and art (Horkheimer and Adorno, 1993; Adorno, 1941; Benjamin 2004 [1934]). Art as a reflection of life in a capitalist society can have tremendous value, as it connects to the lived experience of many people, and provides grounding for reflection. Throughout all of the interviews, the balance between desire and reality was apparent. The need for

sustenance had to be balanced with the need to create art, and both practices informed one another.

Use of the Internet

All of the artists interviewed used the Internet in relation to their art, but to varying degrees. Each participant was asked the question: How do you use the Internet in relation to your art?⁵ Every artist used the Internet in some way relating to their art. This ubiquitous use by the participants reinforces Castells' claim that "we are living through one of those rare intervals in history" that is "at least as major an historical event as was the eighteenth-century industrial revolution," and contemporary society is now defined by the "network idiom" (Castells, 2000, 28-30). Some uses were explicitly related to their artistic practice, like selling art online, presenting or showcasing online, performing online, collaborating online, using online tools, actively using the Internet as a research tool, and making their music and video available for online streaming. These straightforward practices were easily recognized by artists as usage relating to their art, but there were also more subtle uses of the Internet. Some of the participants did not claim to use the Internet in relation to their art, but when questioned further, saw connections between their Internet use and artistic practices. These subtle uses included online discussion, promotion, day-to-day conversation, and passively gaining inspiration from online media. Both subtle and explicit use of the Internet differed based on artistic practice – musicians used different tools than visual artists and vice-versa. However, the overlap between practices meant that many people had experience with multiple tools and websites.

⁵ See Appendix D – Interview Guide

Age was not a factor, as all ages used online media in relation to their art, and used similar tools and sites. Internet use allowed low-level artists in particular to access free or inexpensive tools for promoting, selling or creating their art. Previously these tasks would have required specialized knowledge or resources, but now independent artists could do more with less and on their own. Multiple artists addressed the fact that this ease of use was not a total shift of consciousness because established industry powers still had influence and DIY artists had been doing similar ground-level work before the Internet.

Selling art was one of the primary uses of the Internet in relation to artistic practice. Of the fifteen artists interviewed, nine artists had put art for sale online, but this sale had variation. Art for sale online may be music or a painting the artist made, or it may be a video project they were a part of. The video, song, album, or painting may have been purchasable through the Internet, or it may have required an in-person transaction. Again, musicians were the dominant example of online use, with sales of music and merchandise online. Musicians used Bandcamp to sell individual tracks and albums, with both physical and digital recordings. In addition, musicians were the most likely to sell merchandise such as tee-shirts, pins, or artwork through online stores. As mentioned before, this sale often took the form of sliding-scale downloads, where listeners could name their own price for digital music, download it for free, or get a free download with the purchase of other merchandise, like a tape or record.

In this way, online and digital music did not completely replace physical media and merchandise, but rather complemented them, using the culture of piracy and free content to promote more tangible products and experiences. This method of offering sliding-scale downloads, complemented by collectible, physical merchandise demonstrates Castells' concept of "flexibility" as the most valuable quality for

technology, business and users in the network age (Castells, 2000, 70-72). One artist spoke to the downside of this free content approach, saying, “it's really hard to get people to take stuff for free these days” because people are so inundated by free content. Visual artists, writers, and filmmakers also sold content online through private sites, Facebook, and established online stores, such as Amazon and iTunes. Two visual artists spoke about selling work through private sites and Facebook, and one artist said that online sale was their primary means of selling work. Online sales of art complemented offline sales and presentation, as well as other forms of online interaction, and were never the sole online practice of an artist.

Artists often present work online without the explicit intention for sale.

Whether music and video for streaming, or visual art works-in-progress, online art was often available for free. Artists used private sites, Tumblr, Facebook, Bandcamp, Vimeo, and YouTube to allow for free presentation of art. Often this online presentation wasn't the only form of presentation. For instance, movies made available for free online were also screened in festivals and available as hard-copy recordings, and visual art showcased online, could be viewed in person in a gallery. One artist spoke about online presentation and its role, saying,

For me, it was stuff like that where I'm not expecting to make any money off of it, I just want people to see it, and I'm trying to get as many hits as I can; 'cause that's sort of how the Internet works now. Your success isn't necessarily based off of how much money you made, but just how popular what you made is.

Generally, online presentation is good for making a name for yourself and promoting your work, it isn't necessarily profitable in and of itself. However, there are emerging exceptions. As video streaming sites like YouTube and Twitch become more popular, more and more people are making a living as stars on these mediums. For instance, PewDiePie, a popular YouTube personality who plays and discusses video games,

made approximately seven million dollars in 2015 (Crecente, 2015). However, this is the exception, and for most independent artists, YouTube is not always a viable way to get compensation for art. Its interface and popularity, however, make it perfect for free presentation. Another artist spoke about the ways in which Bandcamp has streamlined the dissemination of music and allowed for increased independence from major labels:

...what they offer is a graphic interface, or whatever you want to call it, of a very clean slate, very bare bones set-up where you can add an image or change the colour, that sort of thing; they provide templates. Then you just upload your songs, it converts it into a high quality mp3 or .WAV file, or FLAC file for you, without doing anything. It titles all the tracks for you. Like, before sites like Bandcamp, this was kind of a pain in the neck.

Both of these artists want to be compensated for their art, but compensation isn't the only goal. Exchange with the audience – just getting it out there – is also good. With or without compensation, these artists would still be making and presenting their work, and Internet based tools allow for low-cost presentation.

Artists use the presentation and sale of art online to promote their work, but also used the Internet explicitly for marketing and promotion. Artists use Facebook, Twitter and online blogs as these platforms have multiple tools designed for reaching a wide audience and are free to use. One artist discussed their method of promotion, saying,

I use Facebook a lot, there's lots of people on there. You can create an event, and all that sort of thing – we know that's easy. I use Twitter to promote. I find with Twitter, I reach people I don't reach with Facebook and other people I would never reach otherwise. I used to use Halifax Locals, and a lot of bulletin boards.

Each platform has a particular strength, so artists need to use everything available to reach the widest audience. Sites like Facebook integrate the functionality of messageboards, blogs, online photo sharing, and e-mail into one hub. Facebook and

Twitter function as platforms for multiple tools and functions, rather than individual sites. In the past, promotion was more segmented with independent artists promoting their work through posterings, radio, zines, and online messageboards. Now, it is easier for individual artists to promote their work and communicate with fans, other artists, and industry professionals.

The Internet allows for inexpensive or even free marketing, but is more press necessarily good? Or does the press need to be of a certain quality, a certain brand, in a certain hub? In the words of one artist, “The downside would be: not relating to a certain image anymore, and wanting to curate that space again because the images – they can get lost in the Internet, and you can no longer be credited for a thing that you did and that's weird.” With so much art on the Internet, it is easy for an individual artist to get lost in the noise. Wikipedia has an entry devoted to humorously discouraging garage bands from creating Wikipedia pages for themselves (“No one cares about your garage band,” 2015). Established media hubs like The New York Times, Pitchfork, and Vice site still have a role to play in directing audiences towards media. These established hubs rely on their established reputation and brand to curate the dearth of available content to their select subcultural audience. Even more niche subcultures have hub websites for curating content for Horror movie fans or industrial noise music. Also, for some, the Internet removes the need for PR or management, but more and more online specialists are working for musicians, especially big names. One of the artists interviewed said, “bands are just not into the whole social media thing. So, we could get them fifty stories, and it feels like we got them ten.” Twitter accounts are often run by media specialists who control the message and image of their clients. Online doesn't necessarily mean direct contact, but those maintaining direct contact often have the most success.

Using Facebook, e-mail, Google Docs, and Dropbox, artists also collaborated with other artists and non-artists in ways that informed their work. For instance, one artist was creating music with another via e-mail. Sending recordings back and forth to each other, they were able to collaborate over long-distances and with a flexible schedule. The Internet facilitates long distance collaboration without the need for in-person meetings. Artists can send components back and forth to each other, or even work on one editable master copy kept in cloud storage. An artist working primarily with film and video spoke in-depth about using Gmail, Google Docs, Dropbox and Google Drive to make film and video projects:

A lot of the work that would have been done on paper, and via couriers and things like that, is all done online. You meet your contacts online and you organize a crew online, and in the post process you're sending your files back and forth through Dropbox, or Google drive, or whatever. So all your media, even before it's intended to be online, it's floating in cyberspace, and you rely on the fact that those sites you're using are secure and nobody's going to get there. And you also rely on the fact that you're not a big business; so nobody's really looking to steal your rough cuts, 'cause they don't know who you are.

With film and video work multiple users can edit online storyboards and scripts simultaneously, and video files can be easily exchanged through cloud storage. While there are security concerns with this type of work with cloud storage, the advantages in terms of collaboration tend to be greater than the risks. This usage reflects the earliest uses of the Internet by the military and academics as a means of exchanging research over long distances. Content can be made faster, at a lower cost and without the need for everyone to be in the same room on the same schedule.

Artists often spoke about their use of the Internet as a fan, audience member, or researcher of other work. "Users and doers may become the same" (Castells, 2000, 31) on the Internet because of the iterative nature of post-modern art, and the cyclic nature of the Internet. Artists were inspired by online art both consciously and

unconsciously, in formal training and in their own fan practices, and through explicit art discussion and mundane daily discussion. The art they created could then go on to inspire similar artists to create referential or iterative work, or even work on a collaborative project. For instance, eight artists spoke about Google images as an incredible source for research and four artists mentioned Tumblr, an online, image-centred blog platform. Images and videos allowed artists to study objects that would otherwise be difficult or impossible to access, and Google images provided incredible breadth and detail for research. Another key aspect of this type of use was the ability to quickly link from image to image, or video to video. The speed, size, and connectivity of Internet archives like Google and YouTube allow users to quickly move between related content and reach a point they did not expect. In the words of one artist,

There are little niches with certain aesthetics and ideas and you can just link and link and link and link. I find so much that way. It's great because – a library's good because there's all these books and all these images and they're in your hands and it's physical, but I've thought a lot about the dissemination of images and how they're getting out and I can't imagine – like, it's just – you curate your own experience, I think with the Internet.

This aspect of agency or specificity is important because it allows artists with niche interests to find content suited for them. One artist watches video software tutorials on YouTube to expand their skill set, and they described the incredible knowledge base this provided. In this way, the Internet also functions as an archive or library. As Healy (2002, 479) states,

It turns out that one of the main attractions of the Internet to ordinary users is its ability to deliver content over the network quickly and at zero cost. Literature, images of all kinds and archival materials are accessible to anyone with a network connection.

This usage of the Internet as a multimedia library goes back to the libertarian, academic roots of the Internet, and is one of the key ideological pillars for those who oppose increased digital copyright restrictions.

Internet use varied among participants, but promotion, sales, and research were the three uses highlighted by participants. Most of the artists interviewed sold art through the Internet, and those who didn't used the Internet to facilitate other means of earning income with their art. The communicative capabilities of the Internet allow artists to do work that previously required middlemen like PR firms or managers, who are now replaced by automated sites like Bandcamp. These sites allow artists to promote their work and events at low-cost, high-speed, and with a wide reach. Internet use also facilitates research and collaboration, and Manuel Castells states that "unlike television, Internet consumers are also its producers, by providing content, and shaping the web" (Castells, 2000, 382). On the Internet, the line between audiences and artists becomes even more unclear, and the community is more identifiable than any of the individual auteurs. Castells points out that these "virtual communities' do not need to be opposed to 'physical communities': they are different forms of community, with specific rules and dynamics, which interact with other forms of community" (Castells, 2000, 387). Physical communities like the visual arts community in Halifax overlap with online communities, and these online communities create networks to other physical communities. This online-offline synergy strengthens the promotion of physical art, and real-world events on the Internet. Finally, the Internet fundamentally speeds up everything. You can contact people quicker, sell items quicker, release music quicker, and find inspiration sooner, reach broader audiences quicker, and become delocalized. The Internet as "a new communication system, increasingly speaking a universal, digital language, is both

integrating globally the production and distribution of words, sounds and images of our culture, and customizing them to the tastes of the identities and moods of individuals” (Castells, 2000, 2). Niche art and independent artists have access to a worldwide communities and subcultures that may not be prevalent in their physical space. Artists can connect with other artists and audiences quickly, and with ease.

Encounters with copyright

As previously stated, existing research is either out-of-date, or focuses on consumers, pirates and corporations. Susan Lott (2003) conducted a study of consumer views of copyright in Canada, but did not survey artists. Simon Frith (1983, 2006; Frith and Marshall, 2004) has researched independent artists, but without a focus on Canada, contemporary law, and with only marginal exploration of Internet technology. Thus, there is a need to address how artists use copyright in Canadian society. To address this gap, every artist was asked the question: “What is your understanding of copyright or intellectual property.” This question was designed to gather the nominal views of artists on the topic of copyright. This question was changed to include intellectual property, as the first participants connected copyright with intellectual property. Commonly, responses were in line with the following: “My understanding of copyright...legal permission to reproduce the images that have been by artists, whether that's a writer, visual artists, or audio artist; so it's connected to permission.” Participants had varying degrees of copyright knowledge based on their need to deal with it, meaning those who dealt with copyright as part of their artistic practice or profession had more detailed knowledge.

Generally, copyright operated in the background of artist practices. To address usage of copyright, each artist was asked, “How have you engaged with copyright in

your artistic practices?” These encounters with copyright can be divided into two primary scenarios: using copyright for their own work, and encountering copyright in others’ work. In addition to these two experiences, many artists spoke about key copyright cases in their field and the arts in general. No artist had been involved in any scenario where legal action was taken; instead, most encounters were casual, or passive. The type of artists familiar with copyright was cross-sectional: sound technicians, filmmakers, and published writers had encountered copyright explicitly through their work. Many artists experienced encounters with copyright, but few had explicit legal issues. Several visual artists also spoke in depth about copyright in the visual artists, though they had not had a case where it affected their own work. Instead, copyright functioned in the background as a hypothetical, or an unspoken guideline. Participants tended to underestimate their usage or knowledge, and when questioned further revealed more day-to-day use. The details of copyright were less important to daily practice than the broader concepts of artistic property and authorship.

Eleven artists from all practices spoke about using copyright for their own art. This usage included licensing art for use in other media, earning money for presentation from CARFAC and SOCAN, publishing content online, and preventing piracy. CARFAC and SOCAN royalty fees were the most discussed use of copyright. As discussed earlier, CARFAC standardizes compensation from gallery exhibition for visual artists. In the words of one visual artist, “what they fundamentally represent is copyright payment, which is kind of strange. It's an exhibition, it's a fee; it's an artist fee, but it comes out of copyright payment; So, public presentation of your work is considered under this really large umbrella of copyright.” CARFAC encompasses a number of functions, including legal advice and setting the ‘minimum wage’ for

visual artists, but the primary function discussed by participants is gallery reimbursement. When asked, “How have you engaged with copyright in your artistic practices?” other artists including musicians, film-makers, and writers also claimed copyright remuneration or royalties as a primary experience with copyright use. For musicians, this took the form of SOCAN royalties, which function similar to CARFAC: artists become members of SOCAN and the organization provides legal support and compensation for use of that artist’s work. Both musicians and film-makers discussed copyright in the context of Bandcamp and Vimeo. These two sites allow the artists to determine how audiences can use the artist’s work, with options ranging from open access and creative commons licensing to more restricted use requiring compensation. Artists can make their work available in ways that limits their copyrights and promotes re-mixing, satire, iteration and collaboration.

The line between audience and artist is increasingly difficult to discern in a post-modern, digital world and during the creative process, participants often encountered other people’s copyright. Thirteen participants spoke about their encounters with other people’s copyright in the context of research, public discussion, and direct use of other people’s art. Multiple artists used both offline and online research for creating their art, but this research had to be done carefully to avoid copying the reference piece wholesale, which would change the use from fair dealing for the sake of research into a breach of copyright (Copyright Act, Section 29). One approach used by a visual artist was to use photos from Google images for reference when it came to drawing and sculpture. While the image was not copied wholesale, the reference photo was used as reference for a component of the piece, such as the wing of a bird. Other artists’ encountered copyright through explicit reference to other work. A playwright described a play they had written that made direct reference to a

written piece. While this usage would fall under 'fair use,' the playwright had contemplated the possible copyright ramifications from this work. Similarly, a film-maker discussed the use of licensed and unlicensed music in video projects. To avoid copyright royalty payments, the film-maker would score the music, or have a friend score the music for a film. One artist worked as a co-writer on songs, where copyright and royalties were shared with other artists. This was similar to a film-maker who discussed the complexity of royalties and copyright ownership with larger projects. None of these uses led to legal action, but they did walk the blurry line of parody, pastiche, and educational purpose. Previously, under Canadian law parody, pastiche, and educational purpose were unclear and limited, though courts tended to move in favour of consumer rights. Now, remixing and parody has been expanded under Canadian law, allowing for more freedom and lighter penalties in scenarios like amateur YouTube videos. This reflects the increasingly blurry line between content creators and audiences, and the fast pace of producing art online.

Some of the artists had experiences with online piracy. As mentioned before, some participants thought that this was beneficial, as it was a form of free marketing, but not everyone agreed with this. Especially egregious was when pirates were *selling* the pirated music:

It was like 2004, 2005 and there was some Russian MP3 website that had my stuff up and I e-mailed them. I was like, 'can you take that down?' And they were like, 'you haven't sold any yet anyway.' And I'm like, 'well, what does that matter?' I didn't even know what was on here. I Goggled it, and found my music on your site, and his attitude was: 'doesn't matter, I haven't sold any of it. Doesn't matter I have it for sale to make money of your stuff, I haven't sold it.'

Another issue was when unreleased promotional material was leaked. This type of piracy was particularly problematic because it was a breach of confidentiality and trust between the artists and the promotional and editorial outlets. Overall, musicians

felt that piracy was beneficial at the independent level, but in some cases it was still problematic.

Piracy and breach of copyright is often presented as a product of the Internet age, but some of the participants shared their experiences with copyright before the Internet. Visual artists pointed to key artists who used piracy and breach of ownership to create new, provocative art. One participant discussed the work Richard Prince, Sheri Lavigne, Guy Debord, Asger Jorn, John dos Passos and Louis Lawson in detail, describing how these artists use appropriation, parody and pastiche to create their art. This participant described how artists like Guy Debord “used a term called *detournement*. To *detourner* [is] basically to subvert some else's work slightly, or quite a bit.” This offline, pirate practice has become a key influence for many contemporary visual artists who make post-modern work.

Another participant experience with offline piracy was a film producer who had experience with their films being pirated in the VHS-era. In their words:

In the early days we made documentary films that we sold directly to school boards and libraries; they were made for use in the classroom. So, your access was either big distributors that had those contacts, or you made them yourselves and you went to meetings, and you hustled to sell a print. When video came along, and it became so accessible, our films were duplicated and used in the classroom, but no revenue coming. You'd go and try to make a sale and [the schools would] say, 'oh, we've already got it. One of the teachers recorded it.' And you would go, 'how do you deal with that?' But then, how would you feel if you're an author and you'd written a book, and a teacher photocopied some pages of it to use, right? I would say...if you use a little bit as an example of something, you're using it in context – yes, ask for permission, but go ahead and do it.

This experience with piracy directly influenced this filmmaker. While the film was popular, not of the money was coming back to the creators. Instead, this participant relied on broadcast royalties from film and television work. This experience with piracy shows that the issue goes back further than the Internet. Also, this took place in

an educational context, raising questions for the participant about whether this piracy was caused by malicious, agent action or by greater institutional constraints.

The encounters with piracy that artists experienced are more nuanced than the common rhetoric around piracy. Academic and public discussion often focuses on pirate culture (Hinduja, 2006), consumer rights (Lott, 2003; Geist, 2014b), or corporate interests (Tossel, 2013). Very little attention is paid to the interests of the individuals creating art, writing academic pieces, or writing code. The Internet disrupts commonly-held views of ownership and criminality, and affects a broad number of communities. Murray (2007, 105) discusses the wide-reaching effects of Internet piracy, saying

The Internet has offered new possibilities for trading methods, patterns, ideas, and advice, and at the same time (not coincidentally, surely) the commodification of patterns for knitting, embroidery, or woodworking has increased. In the United States, “cease and desist” letters have been sent to those buying 'pirated' patterns on eBay.

Piracy has moved from being a music and film issue, to an issue that affects all aspects of creative work. Among the sample for this project, most artists were opposed to piracy that either profited from their work, or violated their moral copyrights. Piracy for individual consumer use was seen as less a violation, or in some cases even beneficial to the artist. Many musicians had experienced their music being pirated, but felt this was promotional and helped them to tour. Additionally, adjustable pay scale models like Bandcamp interacted well with pirate culture because audiences could access the art for free, and pay the artists what they felt the art was worth, and what was affordable. This is not to say that piracy is wholly good for artists either, but their experiences are more nuanced than the RIAA rhetoric: “It’s commonly known as “piracy,” but that’s too benign of a term to adequately describe the toll that music theft takes on the enormous cast of industry players working behind

the scenes to bring music to your ears” (RIAA, 4, 2011). The RIAA view of strict anti-piracy is often expressed in public discussion and journalism, but was not in line with the experiences of artists (Tossel 2013). Artists’ experiences with copyright fell somewhere into the middle of the discussion, and bring attention to areas of copyright that need more focus, such as the balance between corporate uses of copyright, and artist uses of copyright.

Conclusion

The artists interviewed encompass a wide range of artistic practices and lifestyles, from student artists to full-time professionals who had found employment relating to their art. The breadth of this sample allows for comparison between different disciplines and industries. Artists often made significant income for work *around* the primary artistic practice, such as a band selling a t-shirt, or a painter receiving CARFAC fees. Only one artists fully supported themselves with their artistic practice, without a need for another job. Education, promotion, and production are three fields related to artistic practices that allow artists to apply their creative practice, and still make a living. It is of note that these fields reflect the intersection between art and industrial interest. Curators, producers, and educators are often able to make more from art than the artists themselves. This raises questions about the balance between the different components of the arts community and industry. Internet technology had varying influence on artists, with musicians and film artists using the Internet the most. Use amongst other disciplines included research, promotion, and communication, but music and film had clear tools designed for digitizing, sharing, and selling art. However, these lines between disciplines are less significant than the arts economy reflects, as many of the artists interviewed are multi-disciplinary,

combining visual art with musical practice and video work. As expected, filmmakers and musicians were again more likely to have direct encounters with copyright, including breach of their own copyright. This can be attributed to the ease of copying digital work, and the availability of tools for copyright music and video.

Unexpectedly, painters, writers, and other artists also had implicit experiences with copyright, including the structure of compensation through organizations like CARFAC and royalties for published work. Additionally, all of the artists interviewed had experienced copyright through their discussion with other artists. Visual artists, in particular, discussed the nature of post-modern visual art and the intentional transgression of copyright as subject matter. Copyright was closely tied to revenue through formal organizations like CARFAC and SOCAN, but more often copyright law operated in the background and artists rarely had direct encounters with copyright issues. The following chapter will discuss artist ideals around copyright, artistic ownership, and artist perspectives on the Canadian arts economy.

Chapter Five: Concepts of art and ownership

This chapter addresses artists' perceptions of art, copyright, and the Internet. This includes views on the relationship between art and property, their thoughts on the implementation of copyright, and descriptions of their ideal reimbursement system. The goal is to compare artists' views with their practices and Canada's copyright law. In some cases, participants answered questions without prompting, such as defining their conceptions of art while describing their artistic practice, which suggested that these were topics that they frequently thought about and discussed. The second half of the interviews began with the question "what is your definition of art?" Participants were then asked to draw a comparison between the two concepts that frame copyright: *art* and *property*.⁶ This comparison addresses the concepts of authorship, ownership, and production that are the basis of copyright law.

Some artists thought about the relationship between art and property regularly, often because they encountered them in their artistic practice or occupation. Others stated that they spent more time concerned with the artistic practice itself than the arts economy. Compensation was either a secondary or tertiary motivation for most. While some participants said they would make art without compensation, the majority believed that art was undervalued and under-compensated overall. Multiple artists saw art as undervalued at a systemic level, including arts policy, grant programs, and public opinion. Participants likewise discussed the ways that copyright was working for them, and the ways it either fell short of ideal, or clashed with their concept of art. Overall, copyright provides protection that many artists saw as necessary, but its implementation was often a poor fit for their ideals, their conceptions of art, contemporary technology, and contemporary artistic practice.

⁶ See Appendix D – Interview Guide

What does the word 'art' mean to you?

Each artist that participated in my research was asked, “What does the word 'art' mean to you?” The goal of this question was to compare artists’ conception of art to the definition and regulation of art through copyright. This question was intentionally vague to allow for a wider range of responses, and participant responses fell into a few categories. One of the primary responses was to say that art is self-defined; anything someone calls art is art. One participant explained, “Art is - if somebody says it's art, it's considered to be art.” Individual determination of art is key in an age of mash-ups, found art, and performance that can be deemed as 'not art' according to a strict canon. Relying on traditional, or even more contemporary categories of art inevitably misses something, particularly the most cutting edge, or technology-driven art. Another participant responded by saying, “I don't think that art as a word holds so much meaning, and I think that it's really up to the individual to learn for themselves what their conception of art might be, what it is to them, 'cause everyone's is going to be different.” This raises a key component of individual definitions of art: it obscures or even erases the need for 'art' as a concept. This issue was raised during multiple interviews as artists searched for their definition of art. Since many had been formally trained, they had discussed this issue in school as well, and the question “what does art mean to you?” had become cliché.

Multiple artists made reference to the established definitions of art from academics, philosophers, or public institutions. As previously stated, one participant coupled their self-definition of art with the UNESCO definition of artist, which uses self-definition in conjunction with peer recognition to define an artist. According to UNESCO (1980):

‘Artist’ is taken to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association.

The word ‘status’ signifies, on the one, hand, the regard accorded to artists, defined as above, in a society, on the basis of the importance attributed to the part they are called upon to play therein and, on the other hand, recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy.

This combined definition recognizes the broad, vague nature of art, and the need for self-definition. The inclusion of peer recognition as part of the definition of art gives the definition some limitation to distinguish art from other objects or forms of communication. It is also in line with the fundamental concepts of moral and economic authorship that are the basis of copyright. This UNESCO definition is also very broad, but the goal of organizations like UNESCO is to be, or appear to be, as broad as possible. Urry (1999) notes that global organizations often “legitimate their interventions which often deploys the discourses of rights (organizations include UNESCO, ILO, World Bank, IMF, WHO)” (173). UNESCO are part of a greater structure of organizations that seek to standardize law and social discourse on a global scale. However, this standardization often functions as an intervention, or disruption of non-conforming groups. The UNESCO definition of art is a very good starting point because of its flexibility and breadth, but a singular definition of art/artist should not be relied upon, as it is inherently limited. Instead, this chapter will describe the nominal views of artists as a comparison, or compliment to institutional perspectives.

Other artists were more specific in their responses. Many described art as an object or practice, or they perceived this to be a common definition of art. For instance, a musician responded to this question saying, “I think that visual art comes

to mind, I think. I have an initial question when I hear *art*, or we're talking about it, like, are we talking about visual art or is it the broader art is all the different media?"

The word art is often used interchangeably with visual art – painting, sculpture, and drawing. Less often is art used interchangeably with music or writing although these practices are seen by many to be art. The object and practice of visual art is often clearly defined because it is often an individual creating a piece. Where the word becomes even more confusing is when art is directly related to product and consumption. Another participant said, “But is *Harry Potter* art or *The DaVinci Code* art? I feel like probably yeah.” Popular media still involves artistic practice, though popular and art are used as dichotomous terms in discussion of art such as film. Similarly, the art used for a coke ad is often not placed in the same realm as a Tom Thompson painting; there is a critical consensus that works as a gatekeeper for what is discussed as art. A visual artist described this subjective component, saying, “There is bad art, plenty of bad art – there's awful art. There's taste, taste is huge. Do you have the same sensibilities as the art you're looking at? Do you even recognize it to be art?”

Definitions of art are often limited by form and taste, and key critics and curators often define taste. Even digital art has a physical form and involves physical process, but may be seen as outside the artistic canon. Digital art requires action and physicality to exist, while the pixels on a screen seem like abstract, virtual objects, they have physicality. Without action, there is nothing to self-define or to be peer-reviewed. The definition of art as an object or practice highlights the action and physicality that are key components of art.

A third common response to the definition of art question was that art is a form of communication, language or interpersonal expression. In this broad, linguistic view of art “is a language that is potentially universal in that anyone can experience it

in some way and it can something to anybody, and I think that that to me is what the root of what it is.” Art is an expression, a means of social communication, whether or not it involves monetary value or reaches a broad audience. Its value is in expressing thought and often communicating these thoughts with others. For theorists like Tolstoy, the best art was art that moved from limited, provincial language to universal expression (Maude, 1924). The more that art could represent a basic human experience, the broader its reach, the better it was. I would argue that this universality is not obtainable – there will always be someone with a different experience or perception due to socialization, ability, culture, or individual mental state. However, art can range from being communicable across a broad swathe of people or valued by minute subcultures. Art can also be made for oneself and never seen by anyone. As an example, in the film *Cast Away* Chuck Noland (as played by Tom Hanks) creates an image of a person using a volleyball and his own blood (Zemeckis, 2000). This expression is not shared with anyone else, but conveys Chuck's feelings of loneliness and provides value as an object for communication. Art as communication or expression does not necessarily even require an audience. The perception of art as communication recognizes the interpersonal exchange is part of art, and fits well with digital technology where the physical art object or unique experience is harder to define.

Finally, the broadest definition of art offered by participants was that anything could be art. This definition captures the vague, arbitrary nature of artistic practice, and the self-referential quality of attempting to define art. In fact, many respondents said that they had addressed this question in school, and some expressed that the question 'what is art' has become a cliché. A painter / visual artist responded by saying, “I think I've learned that everything is art. I think that you can make anything

art. I was just reading a quote from earlier today by Susan Sontag and it was, like, 'Is a work just a work until time passes and then it becomes art?'" This participant's practice reflected this view, combining disciplines, techniques, and concepts in unconventional ways. Defining art inherently limits a very nebulous idea. Even broad definitions and categories impose regulations onto the concept of art. Another participant refined this concept of anything as art by saying,

Yeah, that's a very good question because part of me wants to say all *statement* is art. Any statement you make can be [art]. It's perceived as a performance, even. So I guess art is the thing that...so, you're moved to creation – you're moved to create something. It's when you bring something new and original into the world, whether that be a new performance, whether that be a new painting, a new image, a new concept; whatever it is.

This definition of art is very broad and includes the ideas of art being a communicative process, an object, an emotional or intuitive act, and the creation of something unique. Several interviews highlighted the multi-faceted nature of art that is hard to pin-down. Most participants did not have a single definition of art, but moved through a series of ideas during their response. This process often passed through some or all of the definitions highlighted in this section. The intangible, abstract nature of art makes its measurement and definition difficult.

Art and property

After participants spoke about their definitions of the word *art*, they were asked how they would relate their idea of art to their idea of property. The implication of copyright law and inherent authorship is that all art is a piece of personal property that has an owner. One artist described how art functions as commodity, saying,

...best-selling [pieces of art] are commodities, like the best-selling microwaves, or the best-selling minivans. And guess what? They're all in the same house. The best-selling book is in the same house as the best-selling minivan because it's been commoditized – it's been turned

into a thing; and in order to be successful at selling things, you have to sell them to the world's best buyers.

In a capitalist society, art is a product to be bought and sold, and successful artists are often appeal to broad, marketable tastes, or in rare cases are supported by the elite through patronage. In popular distribution and private collecting, the monetary value of art is always in the forefront. In this relationship, copyright functions as the legal basis for standardizing the idea of art as sellable, consumable property. It attributes authorship so that ownership is clear and art can be valued, bought and sold. But does this economic model mesh with artists' values?

For many artists, the connection between art and property was rough and heavy handed, and while the financial component was always present, it was usually secondary. For these artists, reimbursement is necessary because that income is necessary for survival and is a tangible way of valuing art. One visual artist, who had experience with grant-paid visual art, explained this art-property relationship by saying, “I do expect to be – I want to be paid for my work. I do, I think artists do provide – okay, to kind of go back, to answer my question – I think that artists do provide an incredibly important service to their community.” The creative component of art does not need to be reliant on the economic component, but in a capitalist society, economic reimbursement shows that art is valued; the financial and creative components of art are always intertwined. Another artist described how ignoring their financial needs would be both harmful for their personal wellbeing and the quality of their art. The stress of barely scraping by would not help the creative process, as financial goals intertwine with artistic deadlines. The need to finish something can be helpful. Another agreed with this view, saying, “I find that I do my best work when – the pressure of coming up with the content or the idea – that’s not on me.” For these

artists, compensation can be a powerful motivator that improves the quality of art, and demonstrates the communal value of art.

For some, the moment of selling art imbued that art with the qualities of a commodity. For these artists, art is not inherently a commodity to be bought and sold, but becomes one at the moment of sale. One artist described how they related their ideas of art and property by saying “It's kind of jarring, a bit. It's a bit jarring. Mostly because, like, the art that I've sold or something like that, that's now somebody else's property. But I still made it, and I still consider it mine. So, in that sense it's my art, but it's somebody else's property.” For many of the artists interviewed, the creative process is not inherently linked to the point of sale. Their decisions in creating art and why they make art are not dictated by the need to sell art. At the point of sale, however, the relationship between art and property became much more apparent. A portrait artist who did mostly commission pieces saw their own art as *only* work, only a commodity, though they believed the work of others did not fall under this definition: “I'm not really that charming when I'm in the middle of my work. Cause it's work. It's not creative; I don't just get to be liberated and creative.” Their practice involved using their specific skill set only to make products for sale and supplement their income. However, they went on to say that this is not the case for all artists, and not an ideal scenario. This artist's only artistic practice was one that constantly involved selling work and being contracted for work. In this case, a piece of art was always for sale, from the moment it was conceived to the moment it was completed. This meant that she saw her art as only work, and not a creative endeavor.

Many participants felt that the connection between art and property is an artificial, imposed one. These artists felt that art and the concepts of property or ownership were not natural pairings, and the arts economy is at best a necessary evil.

One artist described the relationship between art and property in their life as “very fragile.” This artist went on to say “I’ve sold very little work – I’ve only really ever made money, through my art, through solo exhibitions and group exhibitions, and it’s just that CARFAC fee again. So my relationship to art and to money is basically non-existent.” For this artist, performance or presentation-based compensation was different than selling art as a product, a commodity. The exchange of gallery or concert space was seen as different than the sale of a unit. Other artists described art as a form of communication, or dialogue rather than a service or product. For many of the artists interviewed, making art is enriching beyond and independent of monetary compensation. Money is often a means to an end in a society that requires money to live:

It’s just another form of communication for me, and it’s just something that I need to do. In order to not do it – it just wouldn’t work for me; I would be miserable or something. So that’s why it’s not about making money; it’s just having the ability to do it, and time.

For this artist, the drive to create art was not based on money at all; money was an aside. The value of creating art was personal and interpersonal. One musician saw property and ownership as limiting art “Yeah, ‘cause property and ownership kind of – it goes against it a little bit. It’s one of those factors that narrows your capabilities as an artist.” These artists felt that money is disconnected from art, or even limits it. The economic variables of art are not inherent or beneficial, but negative. However, reimbursement was still seen as important given structural constraints.

Copyright: the good

Overall, artists saw copyright as having both benefits and restrictions to their artistic practice. Some artists saw it as a good system, some saw it as flawed but functional,

and some saw it as discordant with artistic practice. In many ways, copyright does provide protection and a standardized system to reimburse artists. This system places value on the copyright holder, which may not necessarily be the artist or creator, but in many cases copyright does provide protection for independent artists. According to one participant, in the arts economy “copyright negotiates the gap between the material comfort of the artist and the material comfort of the audience.” Art in its industrialized state requires some sort of standardized model to avoid exploiting any part involved in the exchange of art as a commodity. While art and property may not be an ideal fit together, art does function as property in contemporary, capitalist society. Creating art also takes time and material resources at the artist’s expense. While artists can create art without financial intent, their lives require income in some form. Several of the artists I spoke to received reimbursement through royalties or fees as a result of copyright claims. Additionally, copyright law and litigation ideally allows the rights of the audience and the artist to be balanced and in Canada, policy has generally taken this approach. The individual penalties for consumers are limited in Canada, focusing on large scale distribution combined with profit.

Copyright protects artists in terms of reimbursement, but it also allows them to protect the intent and qualities of their work. The majority of artists I spoke to were in favour of authorial protection or moral copyrights. Moral copyrights⁷ are particularly important when artists want to *keep* their art from being used for profit-driven action, such as advertising. In 1983, Michael Snow won a suit against the Eaton centre regarding the alteration of a commissioned sculpture (Vaye, 1983), claiming the addition of Christmas scarves transgressed the intent of his work, and was a breach of his moral copyright. This is a key case in Canadian copyright, because it represents

⁷ Moral copyrights are the rights of an artist to be attributed authorship and the right to prevent misuse or damage to their work.

the successful use of moral copyright by an artists against a large corporation. Other artists are able to use copyright to negotiate more reimbursement from large companies who wish to use their work. This method of negotiation again balances the material scales in the arts economy. One artist discussed this priority of authorship, saying:

Copyright, it has a financial element, which – I'll always say, in an ideal situation; the financial is secondary, or perhaps tertiary. The secondary is that 'this is mine, it should be credited to me that I've done this, and the glory, all the glory shall go to [me] for whatever I made, or something like that; and the primary is that the art itself is for its own sake, and it should be as much from the heart, and trying not to let other things - calculations or anything - get in the way.

For this artist and others, credit is more important than reimbursement. While copyrights can be transferred, copyright initially lies with the creator of a work. This gives artists inherent authorial control from the moment they create something. Artists then have some control about how their art is presented and for what reasons.

In Canada, copyright can mesh with free distribution through creative commons licensing, and websites like Vimeo and Bandcamp. As previously discussed, this allows artists to control a sliding scale for access to their work, and for the cost of this access. They can allow non-commercial use of their work, and mesh the ethics of free distribution with moral copyrights. In this way, copyright can be flexible, particularly at the independent level, but it requires the holder to desire flexibility. Some copyright holders, such as Disney, Nintendo, and Voltage Pictures are very restrictive in their exertion of copyright. Others promote the free use of their content. Others still, such as Michael Snow, are concerned with use that infringes on the *intent* of the piece.

Canadian artist Peter von Tiessenhausen has copyrighted his Alberta land as a means of preserving it from development by oil companies (Keefe, 2014), using copyright as a form of resistance against capitalism when other laws and treaties were disregarded.

One artist discussed how the ethic of free distribution in Internet culture could be traced back to the early use of Internet technology by universities. The academics using early versions of the Internet developed libertarian ideals surrounding free exchange and communication that has been imbued into the nature of the Internet (Hoffman, 2010, 4). On the one hand this ethic of free access to content can be seen as naive or unrealistic, given the financial needs of artists; on the other hand, it can be seen as a system of community exchange that is more egalitarian and democratic, that may give rise to other systems of support for artists. The individualized, capital-driven structure is present in the media industry but more broadly, it is the basic social framework of occidental life. Artists who resist this structure in their artistic practice can use copyright to their advantage as a means of resisting appropriation.

Copyright: the limits

Participants also discussed some of the ways copyright is not working for them, particularly how it does not always mesh with their conceptions of art. Copyright is intended to attribute authorship and ownership for the sake of reimbursement, but participants used collaborative terms like communication, sharing, or culturally enriching to describe art. These responses reflect current postmodern views in art, where music, visual art, and film highlight iteration, reference, parody and collage. In the Renaissance, Medieval Period, and Classical Period art was often overtly iterative or collaborative, with artists like Shakespeare referencing key stories or authors, but the values of authorship and ownership have been prevalent in industrial age onward. This view of art as collaborative or iterative fits with the values imbued in digital copying and distribution technology. With more artists using the Internet in their daily life or in their practice, copying and do-it-yourself has become the norm (Jones, 2000;

Kusek, D. and Leonard, G. 2005). Copyright is then seen as something that benefits big companies or mainstream artists.

Among participants, one of the primary limitations of copyright was that it limits the availability and use of art. Many of the artists interviewed stated that they support free access and free distribution of their art. While copyright allows artists make their art freely available, current laws limit use of copyrighted material by audiences and iterative artists. The law in Canada is designed to balance the rights of the consumer-audience with the copyright holder, but the ability of an individual to copy, share or remix art is still limited. Recently, Internet service providers (ISPs) have been charged with sending copyright infringement notices to customers who download content monitored by copyright holders (Geist, 2015). While the ISPs are not able to reveal the identity of customers, copyright holders can request this information if they choose to go to court (Geist, 2015). Notices have been sent to customers that are intentionally misleading, if not fraudulent, but as of yet there is no precedent for action against either consumers or copyright holders (Geist, 2015). This balance between the consumer and the artist in Canada was raised in many interviews. Multiple artists pointed out that they are not only creators but also a member of an artistic audience or community. One participant who worked in music promotion addressed their mixed feelings about piracy, and their desire for an alternative system of reimbursement:

To artificially block people from getting it – I understand that they have to, but it would be nice not to, or it would be nice if everyone could share it; and if there were alternative ways to make money, it would be great because I benefited personally so much from just having access to whatever I wanted.

In other words, the more available art becomes, the wider its audience, and the more likely someone can be enriched by it. Another participant who supported free

distribution linked their beliefs to the history of authorship by saying, “Throughout the early centuries of Christian thought, many of the theologians pretended that they were other theologians and continued their work.” Historically, creative thought and art was collectively held and it was important to keep ideas in circulation to preserve and develop them. In the Renaissance, artists like Shakespeare were praised for reimagining classical art, and the creative use of the familiar was deemed high art. But in an industrialized art society, control over the means of producing and distributing art is key. If audiences are able to hear, share, and repurpose the latest Nicki Minaj album for free, it limits the profits Virgin / EMI are able to make. However, limiting the availability and use of art means fewer artists are exposed to it and fewer still are able to be inspired by it or repurpose it. With Creative Commons licensing and sites like Bandcamp, artists have more control over how their art can be used, but copyright of popular art in particular limits the overall pool of low-cost / free art and limits the exchange of ideas. Art becomes gated by wealth and copyright holders (usually companies) charge what the market will allow.

One of the key issues raised by artists was that copyright is part of a broader culture of valuing profit above all else. Copyright benefits those who own the most copyrights and who can lobby for changes to copyright law. In a culture where art is understood as part of an arts economy, art is often assessed as good or bad based on its viability for profit. More well-known artists and organizations are more eligible for grants and support, and copyright laws reflect the values of the largest players in the market. In the words of one participant, “I know a lot of times that copyright laws are not just looking out for the interests of artists, they're, in a big way, looking out for the interests of the distributors and what not, who are making off of art.” Artists either saw this situation as inescapable, ‘it is what it is,’ or as something that should be

contested. Among participants here was a gradation of views ranging from ‘the system is good as it is’ to ‘the system is faulty and must be overturned to a more communal practice.’ These views were often connected back to personal experiences with copyright and broader social trends. One artist addressed the issue of working for corporations for free in order to gain experience and exposure, while another addressed the expectation of artists in academia to not seek compensation outside of their wage as academics. Another still discussed the profit made by tech intermediaries like Internet Service Providers and online retailers like iTunes. Companies like iTunes often pay even less than traditional media companies, and ISPs have profited from both sides of the coin - increases in piracy and increased media streaming allow them to sell more bandwidth at higher cost to consumers. Only one artist believed that things were skewed in favour of consumers. In all these cases, the power relationship was viewed as skewed and most participants saw copyright as something that benefitted corporate interests or at best, popular mainstream artists.

Free distribution meshes with post-modern views and practices that are currently in vogue in many forms of art. Contemporary music, visual art, film and writing are often making reference to references, parodying genre tropes, and mixing and mashing pieces and forms of art. This referential creation and repurposing requires access and use of existing art to function. Multiple artists I spoke to had made parody or referential art, and had met with copyright issues or worries in the process. One visual artist used the work of Asger Jorn, Sheri Lavigne, Richard Prince, and John Dos Passos as examples of visual artists who rely upon breach of copyright to create postmodern work: “Sheri Lavigne's a good example – she's a photographer, mainly, and she'll take a photograph of an existing photograph, and show that work as her own work, and then say, 'after (someone)' in brackets. So that'll be the title – the

same title, but (after (that other artist)).” This post-modern work can often be problematic where it intersects with patriarchal or post-colonial relationships, but this practice represents a broader trend of thought and practice in all forms of art. Often the power relationship is reversed, where the artist is less powerful than the owner of the art they are appropriating. One artist interviewed had created parody works of famous paintings, while another had made videos and music sampling copyrighted work. In both of these cases, reference to and use of other work was essential to the work itself. Engaging with contemporary art theory and practice requires broad knowledge of existing work, and reference that falls on the borderlines of copyright. In Canada, the law has been designed to allow for parody, pastiche, and mash-up, but in practice the access and use of this work is still limited because corporate ownership skews the power dynamic of copyright. A few participants were keenly aware of what they could and could not do under copyright law, but most were unclear about what was permissible in Canada.

Many artists discussed how the nature of contemporary technology clashes with copyright. Internet technology promotes postmodern beliefs and behaviours, facilitating the dissemination, reference, re-use, and pastiche of art. Even non-referential work on a site like YouTube’ can be subsequently referenced, re-referenced, and redone. As Belyaeva notes, “The information environment provokes the creation of not the new knowledge, but of its entertaining expression, which is able to draw the audience’s attention” (Belyaeva, 2012, 483). Users are able to quickly turn around art and discussion so that art is never outside of the iterative loop. On the Internet the line between artist and audience, copyright holder and consumer become blurred. Parody and pastiche are promoted by the inherent qualities of Internet technology. Several artists pointed to these aspects of contemporary

technology saying that they were in conflict with copyright (for better or worse based on their views of piracy). In addition, the Internet is also rooted in the ethics of free content and distribution from the early days of open source exchange between universities. One participant discussed the message imbued in the Internet medium, saying, “that's one of the problems, is that those people now, because of the Internet, believe in free content; believe in it as an article of faith.” Piracy and free exchange comes out of the academic system, the research system, where you are reimbursed for services, not individual units of a product. Authorship, not reimbursement, was important in the early days of network technology where ideas were being exchanged for the sake of research. As discussed earlier, many of the artists interviewed share this view, saying authorship and seeing art as a service to society are important to them. The values of free exchange and iterating on others’ work is essential to Internet technology but in conflict with the basis of copyright.

An ideal system

The rhetoric of copyright policy has been that, beginning with the Statute of Anne, copyright was designed to provide compensation for artists and attribute authorship. However, since the Statute of Anne, copyright policy has had very little input from artists. Instead, it has functioned primarily as a means of protecting companies like publishing houses working in the arts industries (Murray, 2007). If the current system is a mix of good and bad for artists, what would their ideal system be? Partway through the interviews, I reassessed my interview guide to see if it was addressing my research questions. I realized I need a question to extrapolate how artists would like copyright to function. I added the question, “What does your ideal reimbursement system look like?” This question was added to better extrapolate the ideals of artists

and gain a vague idea of what an artist-based system would look like. Eight of fifteen participants were asked this question and two others addressed this topic without being asked. The prevalent response was that the current system is okay, but it needs to be adjusted to provide more support to artists. Multiple artists said that systems like CARFAC, SOCAN and Creative Commons were good and new software and websites allowed them control how they wanted to distribute their art. However, almost everyone felt that the arts were undervalued, and did not feel that copyright was the system that would provide this value. Multiple artists said the current system is good, but it needs more, that the social value of art needs more recognition and reimbursement needs to be higher. One artist articulated this view by saying, “The granting system is great, more support for the grants; More support for artist run centres, who can then offer more artists more exhibitions, more CARFAC fees.” Others echoed the belief that the current system is okay, but “underfunded.” Art grants are a means of collective recognition of the value of art, but are very limited. The majority of grants go to established artists and artists that *appear* to appeal to broad audiences. The appearance of appeal is key, because the decision to fund artists is always subjective. Another artist said, “I think, honestly, the pay-what-you-can, or just total donation-based reimbursement [is ideal].” For this artist and some others, their use of copyright is less about reimbursement and more about access as an audience. Free access to art and the free use of that art encourages further creative work. In this model, reimbursement is voluntary and may increase if more people were involved in art. For all of these artists, copyright and reimbursement were on a good track, but needed to go further to support artists.

Three artists stated that the system now is good, but their ideal would involve more money going to the artists themselves and artists having more control. Similar to

the 'system is good but underfunded' ideal, this view seeks reform instead of a complete overhaul of the arts economy. In the words of one artist, this ideal reimbursement system would involve "as much of the revenue coming back to me, with as few middlemen as possible; creaming it off." This view was echoed by another artist who said they wanted a system that gave them as much money as fast as possible, in a systematic way similar to the GST rebate. This artist believed that art was not universally *entitled* to reimbursement, but the capitalist system of rewarding popular artists was ethical. However, they believed there should be tweaks to move the focus and the revenue towards artists as independent entities over corporations.

Other artists saw it less as an issue of revenue than a desire for artist control and input. The artists articulating this view had also mentioned their current issues with property and their support of free exchange, but believed the system needed tweaking to focus on artists instead of corporations. In a common theme of all these interviews, the connection between property and art was seen as problematic, but inescapable: "Property is a weird word to me; I think it's silly altogether, the whole concept of property. But I think the idea of a copyright law would sort of protect people from being oppressed and slighted, which they inevitably will be." This artist also highlights again the previously discussed importance of authorship over ownership, and points to the way copyright can protect artists against misuse of their art by more powerful entities.

Two artists said that their ideal system would be completely open and the exchange of art would be free. Multiple artists, particularly musicians, stated that they give away at least some of their art for free and support this method of exchange, but did not see this as a universalized ideal. For most people reimbursement was secondary, but still important. For these two artists, copyright and the current arts

economy restricted artistic practice by limiting access and use of art. These artists saw the Internet as an important tool for the exchange of ideas and limiting access would limit the possibilities of artistic creation. One artist said, “I think people should be able to share on the Internet, and I do and won't stop; it's an important part. I think it's one of the best things that the Internet has to offer.” For this artist, Internet technology undermines copyright and ownership of art, but it's a good thing for art overall. Their artistic knowledge and artistic practice were enhanced by free exchange. These artists aligned with the assertion that ownership of art is artificial and limiting and the communal exchange of art is where you see interesting things arise. For these artists, the ideal recognition and reimbursement of art requires a shift in public consciousness: “I think what would create a better system is more understanding about the importance of culture, and the importance of art.” When art is viewed as important to society outside of its economic viability, it can grow.

The implementation of this ideal can already be seen in systems like Bandcamp that allow for a sliding scale. The music on Bandcamp can be made available to everyone, but there are still ways for artists to make some money. One artist said that their ideal system was what they've already been doing: “putting songs on the Internet for free, but also leaving that option of donation, or 'pay-what-you-can'-style thing has at least been successful for us – made a little bit of money that way, and that sort of seems like the best money.” While the broader arts economy is still oriented toward a purely capitalist model, there are already changes being made towards a new middle ground between the access and protection of art.

Conclusion

Regulation such as copyright begins with defining art, but this definition is inherently limiting when *anything* can be art. Copyright functions best when art is a measurable unit that can mesh with capitalism, a tangible object to be manufactured and sold. Since all artists interviewed live in a capitalist world, their means of survival depends upon their ability to work. If they are unable to sell their art, they must find work in other areas to sustain themselves. Copyright allows artists gain some reimbursement for their art, but is not always the most important form of recognition. Reimbursement is secondary to the individual need for creation, and the social reach of art. Copyright does not always mesh well with the view that art is a means of communication, a healthy form of social interaction and cohesion. This type of communal exchange is harder to value, and harder to regulate than approaching art as a commodity, an industry. Many of the artists interviewed sought a system where they were able to sustain themselves with their artistic practice, without compromising their ethics and creativity. Creative commons licensing, grant programs, residencies, and gallery fees are successful means of promoting artistic practice with fewer limitations on creative license. However, these resources are limited, and often benefit established artists that are deemed ‘marketable.’ Music is particularly industrialized, and it is difficult to separate the support for music from for-profit industry. At the same time, musicians also have the most tools for alternative means of reimbursement with sites like Bandcamp integrating creative commons licensing to allow musicians to share their music for non-commercial use. In general, artists need more recognition as contributing to a societal good, and the financial support that comes along with this recognition.

Chapter Six: Conclusion

This project is a preliminary investigation into the lives of Canadian artists, providing new data on how artists earn income, use the Internet and view copyright law in Canada. The goal of this thesis was to address three questions:

- 1) How are artists making art and making a living?
- 2) How do they use the Internet in their artistic practice?
- 3) How do they use and understand copyright?

Although some aspects of these questions have been addressed by existing literature, there is still a need to bring the different components of the copyright discussion together, and provide the perspective of artists. Artists are often forced to earn income outside of their artistic practice, but the Internet provides new ways for them to independently sell and promote their art, as well as communicate and collaborate with other artists. Uses of the Internet vary by discipline, but all artists reported using the Internet in relation to their art. Musicians, in particular, are able to sell their art directly over the Internet, and newer websites like Bandcamp allow for sliding scale pricing, and allow artists to choose how other people use their work. Many artists feel that the current copyright system, and the broader arts industry are working, but the arts need more social recognition and economic support. This support includes direct funding of the arts through more grants, and systemic shifts towards integrating art into education and community programs. Copyright was not artists' primary means of earning income from their art, and in some cases was an impediment. Instead, most artists work in secondary professions, often related to their art, rather than making a living from their art alone.

Only one artist made money from their art alone, but the majority of artists worked in fields related to their artistic practices. Older, more established artists were

more likely to have work related to their art including work in the music and film industry, galleries, and work as academics. Unexpectedly, artists from all backgrounds were employed in fields related to their art, not just film artists and musicians. Visual artists and writers were able to find employment related to their artistic skill set, but they were not necessarily being paid for their art itself. Additionally, sales of art accounts for very little of artists' income. Musicians, as an example, found that performance, and the sale of other merchandise, like clothing, provided more income than music sales. For artists overall, employment, grants, performance and sales of related merchandise are more lucrative than the sale of art. This indicates that the use of copyright to regulate the *piece* of art as a unit of sale overlooks the dominant means of compensation for artists. This is in line with Kretschmer and Kawohl (2004) who found that "For 90 per cent of authors, the copyright system did not provide a sufficient reward. The creative base of a modern society is supported by other means" (44). Copyright is not the primary means of compensating individual artists, though it does provide some supplemental income through CARFAC and SOCAN fees. It is unclear whether this is indicative of issues with copyright, issues with broader arts policy, or the demand for art is simply limited.

Every artist interviewed used the Internet in some way related to their art. Research and communication are the primary uses, including using the Internet to book events, communicating with other artists, collaborating with other artists, finding images and other source material for work, and even iterating on others' work. In line with Castells, "Computer-mediated communication begets a vast array of virtual communities" (Castells, 2000, 21-22) wherein artists can communicate with each other, and their audiences. The Internet allows for independent artists to find

niche audiences, and fellow like-minded artists to work with. A key component of these digital communities is the iterative cycle between audience and artist, with the rapid exchange and turnover of online art, it becomes meaningless to distinguish an audience member from an artist. Baudrillard predicted this postmodern exchange, stating, “Benjamin and McLuhan saw that the real message, *the real ultimatum*, lay in reproduction itself” (Baudrillard, 2001, 138). Unexpectedly, visual artists used the Internet significantly in their artistic practice, discussing the iterative, referential nature of contemporary art, and citing artists like Richard Prince, who create appropriative work.

Copyright was not in the forefront of participants' lives, but many artists had experiences with copyright. Very few had issues with their copyright being breached or violated, and none described situations where the moral copyright of their work was violated. Copyright for visual artists was more important than expected due to the CARFAC compensation structure, and digitization of mixed media work. Three artists mentioned direct experiences with piracy that were negative, and other artists cited encounters with piracy that they felt were either positive, or neutral. The artists who had negative experiences of piracy cited cases where their work was being sold without their permission, or where the sale of their work was the only means of compensation. One artist described experiences where their art was sold without permission, and others described issues with music being leaked before release. Overall, piracy was not a huge threat to participants; they either found work-arounds, or in some cases piracy was beneficial, as it provides free promotion. This contrasts with the popular claim that piracy is inherently and universally unethical (Tossel, 2013). “Early in their careers, many creators wish to become known by all available means, including being copied without permission” (Kretschmer and Kawohl, 2004,

44). Piracy has less of an effect on independent artists who benefit more from free exposure. Piracy is often analyzed in a binary, where it is either an unethical act of theft, or a revolutionary act in the interests of free information. For artists, piracy functions on a continuum, where it can be beneficial, exploitative, or somewhere in between.

Copyright discussion, and broader discussion of the arts industry tends to focus on film and music due to their commercial viability, and large market share. This overlooks the social value of art in favour of its economic value. This approach to art policy and support also overlooks the economic value of art as it contributes to the overall health of a society. Amongst participants, there was a major concern that art is undervalued in Canada, and the social benefit of art is overlooked. This includes the belief that there are not enough grants, not enough support for community art, not enough support for non-commercial art, and art is not seen as valuable unless it can be profitable. In terms of direct support of art, artists expressed a need for more grant money, especially grants that address broader segments of the artist community. Grant funding allows artists to dedicate more time to their art, but these grants often go to established artists, or 'sure things.' These established artists are usually already successful, with their success serving as an indicator of a safe investment. Investment in this small segment of established artists creates a situation where “all mass culture is identical, and the lines of its artificial framework begin to show through” (Adorno and Horkheimer, 1993, 30). Gillespie address the commercialization of art at a systemic level, saying, “what is overlooked here, and regularly ignored by commercial media producers, is that culture cannot be just another commodity, because our relationship to it must be more than that of a consumer” (Gillespie, 2007, 277). Many artists echoed this view that art is more than its commercial value; art has

a social value, a human value that is often overlooked in policy decision. One artist described the value of art in their life:

Well, my view of all that stuff is the long, historical one that I really, almost like religion believe, [is I] believe in the value of art. I believe in it, like it's the important thing that human beings do. I believe that my own everyday life is enriched by Euripides. It's enriched by Shakespeare.

For many artists, the value of art is that it connects people, and enriches our lives.

Policy-makers need to address this social value of art to meet the gap in the needs of Canadian artists. Current policy is better than global counterparts, with many provisions for artists and consumers, but Canadian policy, and broader discussions of art have adopted business viability as the norm for valuing art in Canadian society. Creative commons licensing is an example of a step in the direction of supporting the social value of art, as it allows for the protection of moral copyright, but the free distribution of art for collaboration and iteration.

Overall my thesis shows that artists have a unique perspective toward copyright and the rise of the Internet. Interviews with artists in Halifax show that they tend to rely on outside employment to make ends meet, and do not perceive themselves as victims of copyright infringement, the way some industry lobbyist would suggest. Instead, they have a mixed relationship with copyright and see the Internet as a tool to gain greater exposure, and the flexibility of copyright as means to circumvent institutions that would otherwise shut them out.

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Appendix A - Khyber Permission Letter

Dear Khyber management / director,

The reason I write is to seek your permission to ask artists, volunteers, and people who work at the Khyber to participate in my Master's Sociology thesis research. Participants will be asked to participate in a face to face interviews lasting approximately one hour. These interviews will allow me to gather insight into the perspectives and practices of local artists. I expect to conduct fifteen interviews in total. The recruitment of participants for my research involves approaching patrons, and politely asking if they would be interested in participating in my research. Participants unknown to me will be approach based on the advice, or introduction of other acquaintances. Participants will be given a letter of introduction outlining the full nature and intention of the project. Interviews will not be conducted in the gallery and will be done at Dalhousie University.

Attached is an outline of the project's research ethics package to offer more detail about it.

If you consent to allowing me, Lachlan MacLeod, to recruiting participants for the project described above please sign below:

_____ (sign)
_____ (dd/mm/yyyy)

_____ print)

Thank You,

Lachlan MacLeod
Dalhousie University
lachlan.macleod@dal.ca
(902) 719-3254

Dalhousie University Research Services (and Ethics)
6299 South Street, Room 231
PO Box 15000
Halifax, NS, Canada B3H 4R2
(902) 494-8075

Appendix B - Letter of Introduction

Dear Participant,

You are being asked to participate in Lachlan MacLeod's Master's of Sociology thesis project examining the use and meaning of digital copyright for artists in Halifax, Nova Scotia. Participants will be asked to participate in face to face interviews lasting approximately one hour. These interviews will allow Lachlan MacLeod, the researcher, to complete his Master of Arts degree and provide insight into the perspectives and practices of local artists. Fifteen interviews are expected to be conducted in total. There are no significant risks associated with participation, but there is the risk of identification of participants. To minimize this risk, your contribution will remain anonymous and no identifying factors will be linked back to you. Your contribution will provide new information regarding the state of copyright in Canada from an artist's perspective.

Please note the following:

1. Participation in the interview is entirely voluntary and you may withdraw from the interview at any point. You may also decline to answer any particular question(s).
2. Your anonymity will be protected. No names or other identifying details will be used in the final report and you are advised to avoid the use of these details during the interview. Interview results will be grouped to avoid identification of individuals.
3. Interviews will be recorded with a digital voice recorder and sections of the interviews will be transcribed. Data will be stored on a password-protected thumb drive in a locked personal storage box.
4. Should you have any questions about the research project or your involvement in the project, please contact Lachlan MacLeod with the information provided below. If you have questions regarding the ethics of this project, please contact the Dalhousie Research Ethics Board with the information provided below.

Thank You,

Lachlan MacLeod
Dalhousie University
lachlan.macleod@dal.ca
(902) 719-3254

Dalhousie University Research Services (and Ethics)
6299 South Street, Room 231
PO Box 15000
Halifax, NS, Canada B3H 4R2
(902) 494-8075

Appendix C - Oral Consent Script

I am going to read information regarding the nature of my project. Afterwards, I will ask if you consent to participation in this project. I will then turn on the voice recorder and we will record this consent orally without the use of any names or pseudonyms.

You are being asked to participate in Lachlan MacLeod's M.A. Sociology thesis project examining the use and meaning of digital copyright for artists in Halifax, Nova Scotia. You will be asked to partake in a face to face interview lasting approximately one hour. The interviews will allow me to complete my Master of Arts degree and provide insight into the perspectives and practices of local independent artists. There are no significant risks associated with participation, but there is the risk of identification. To minimize this risk, your contribution will remain anonymous and no identifying factors will be linked back to you. It would also be good for you to keep in this in mind an avoid using identifying information. There is also a risk that you may speak about violations of copyright and this could impact you if you are identified. As I mentioned I will not refer to you in my thesis and this risk is minimal.

Please also note that:

1. Participation in the interview is entirely voluntary and you may withdraw from the interview at any point. You may also decline to answer any particular question(s).
2. Your anonymity will be protected. No names or other identifying details will be used in the final report and you are advised to avoid the use of these details during the interview. Interview results will be grouped to avoid identification of individuals.
3. Interviews will be recorded with a digital voice recorder and sections of the interviews will be transcribed. Data will be stored on a password-protected thumb drive in a locked personal storage box.
4. Should you have any questions about the research project or your involvement in the project, please contact Lachlan MacLeod with the information provided below. If you have questions regarding the ethics of this project, please contact the Dalhousie Research Ethics Board with the information provided below.

Please let me give you a card with that information, as well as the information of my supervisor.

If you agree to participate in my research, your contribution will provide new information regarding the state of copyright in Canada from an artist's perspective.

Do you have any questions about the project?

Do you consent to participate in this interview for the project entitled, "Independent artists and the ownership of art online"?

Do you consent to being recorded?

Do you consent to direct quotes being used in the thesis or other publications?

If yes, ask the following =>

Do you consent to being recorded?

If yes, turn on voice recorder and repeat last two questions while recording.

Appendix D - Interview Guide

Initial:

1. What is your artistic practice?
2. What is your understanding of copyright and/or intellectual property?
3. Have you engaged with copyright with your artistic practice?
4. What does the word 'art' mean to you?
5. How would you relate your idea of art to your idea of property?
6. How do you use the Internet in relation to your art?
7. How have you engaged with artistic copyright online?

Adjusted:

1. What is your artistic practice?
2. What is your understanding of copyright and/or intellectual property?
3. Have you engaged with copyright with your artistic practice?
4. How do you use the Internet in relation to your art?
5. How have you engaged with artistic copyright online?
6. What does the word 'art' mean to you?
7. How would you relate your idea of art to your idea of property?
- *8. What does your ideal reimbursement system look like?