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### Copyright and the Conditions of Creativity: Social Authorship in Reggae Music and Open Source Software

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# Copyright and the Conditions of Creativity: Social Authorship in Reggae Music and Open Source Software

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## Abstract

Against the orthodoxy that copyright is an aesthetically neutral means of providing an incentive for the production of culture, this paper proposes that intellectual property regimes strongly shape the way culture is made. Three cases are examined. The first is rock music whose emergent Romantic mode of creativity in the 1960s was strongly reinforced by copyright law. The second, countervailing example is that of reggae music in Jamaica where, in the absence of effective copyright, a form of social authorship emerged, albeit a strongly entrepreneurial one. The open source software movement, with its explicit repudiation of copyright, provides the final case. Like reggae music it is socially authored. However reggae's first-to-market business model and entrepreneurial culture actually make it a better guide to how cultural production might be organised in a market system, but without the economic and cultural costs that attach to copyright.

## Copyright and the Conditions of Creativity: Social Authorship in Reggae Music and Open Source Software

Copyright is usually considered to be an institution that comes into operation after the creative moment. Cultural producers make new texts, performances and objects to which intellectual property rights then apply. This paper argues differently, however, and suggests that forms of creativity depend, *ab initio*, on specific copyright regimes. Indeed, using a case study of reggae music,[1] it shows that that this genre would never have emerged had there been an effective copyright regime in Jamaica. The claim is made on the grounds that local forms of creativity and the nature of the labour process, as well as the larger political economy of music in Kingston, were inimical to any system of intellectual property. There are lessons to be learnt from this as we will see. That is to say, creative practice in Jamaica has been based on principles which may well apply in other territories and to other forms of culture choked by the constrictions of the contemporary 'Big Copyright' regime.

To make the initial argument is not going to be straightforward though. With the empirical approach to explanation generally used in the social sciences one gathers evidence in order to show how two factors are correlated. But here the problem is of a different kind. It consists in explaining one factor (the existence of music in Jamaica) in terms of the *absence* of a second factor (copyright). Still, there is a way of meeting such a challenge. We can use a contrastive methodology. This involves identifying significant variation between the case in question and another case in which 'standard' conditions of correlation between the two factors apply (Lawson 1998). For the present argument we will use the case of British rock music and its copyright regime in the 1960s as the standard case, and then look for illuminating contrasts with reggae and its economic and legal infrastructure in Jamaica.

If we can establish these contrasts, the question still remains of how to characterise the sort of economic model represented by Jamaica's 'no rights' system. It has some things in common with the open source software system it will be argued, in particular a collaborative approach to innovation and a conception of music as continuous process rather than a set of discrete works. But the Jamaican system also involves classical market principles, albeit in a situation where competitive advantage depends on swift and decisive entrepreneurship so as to come first to market (Boldry and Levine 2005). It seems, then, that the making of reggae music, even more than the relatively 'cosy' world of open source software, encapsulates what are generally taken to be antithetical economic codes of collaboration and competition.

### From Denmark Street to Orange Street

In 1960 in Britain solo vocalists, both male and female, dominated the sales chart. US influence was considerable in the form of American recordings and songs. But there were also many British artists singing material written by song writers in London's thriving Tin Pan Alley – Denmark Street. Although sheet music was still a significant product, record sales were now much more important as a source of revenue in the music industry. An indication of this can be seen in the post-War fortunes of the major British record company, Decca. As Simon Frith reports, its 'turnover increased eight-fold between 1946 and 1956' (1988: 20). Meanwhile, broadcasting was becoming an increasingly powerful means of disseminating popular music. The BBC's Light Programme, as well as BBC and ITV television, broadcast concerts and records. We might call this a corporatist regime (Lash and Urry 1987) where there was broad agreement between musicians and employers, and between music producers and end users in media. One striking instance was the 'needle time' convention, whereby the BBC as monopoly radio broadcaster agreed with the Musicians Union and the recording industry to limit recorded music play in the interests both of preserving live performance, and avoiding the substitution of broadcasts of records for record sales (Barnard 1989: 26-8).

Underpinning this peculiarly British form of music capitalism was a comprehensive system of intellectual property. In relation to the musical composition, rights extended to public performance of works (whether live or recorded) and also their mechanical reproduction on recordings or film soundtracks. Rights owners, chiefly publishers, had long standing distribution-collection societies for each of these kinds of music use; respectively, the Performing Rights Society (PRS)[2] and the Mechanical Copyright Protection Society (MCPS).[3] In relation to recordings a performance right applied, which derived originally from the Copyright Act of 1911 and a test case of 1933.[4] As a result of the latter the major record companies set up their own distribution-collection agency for phonographic rights revenue; Phonographic Performance Limited (PPL). Significantly, phonographic rights were consolidated in the Copyright Act of 1956.

In sum, the British music industry was a multi-media system based on a strong local repertoire, and in which revenue streamed from end users to rights owners according to law, and well established institutional arrangements. What then happened during the 1960s was that a new kind of music making and market very quickly became hegemonic. Crucially, though, this emergent rock music scene was built on that same corporatist industrial system which we have just been examining. How did the rock revolution take place then?

In 1960 popular music in Britain was still quite parochial and conservative. Songs often derived from stage and screen musicals, and they generally used the standard AABA, thirty two bar form which had become dominant in the 1920s. Orchestrations were lush, and were typically played by dance bands augmented with strings while among singers crooning – an innovation in 1930 – was still the most popular style. Although rock'n'roll from the US, including a domestic variant, was starting to break through, British popular music was very much a local affair. Its sales overseas were negligible.

Four years later the situation had changed dramatically. Spearheaded by the Beatles, a British translation of American rock'n'roll and rhythm and blues called beat music was in the ascendant both in Britain and in the US. Change was now happening very fast. By the end of the decade the new form had mutated into Anglo-American 'rock', and this was on the verge of becoming a global mainstream style (Toynbee 2004). Two major changes in music production underpinned these transformations. First, there was a new labour process. Instead of a complex division of labour with separate roles for singers, musicians, songwriters, arrangers and so on, rock ushered in a regime where the functions of authorship and realisation were conflated. The rock band was a combined writing-recording-performing unit in which, ideally, all music making functions were carried out by members of the band. Singer-songwriters represented the same tendency towards self-sufficiency, but on a solo basis. Secondly, the long playing record (LP) supplanted the single as the most important means of expression and therefore the most important commodity produced by the music industry. From a cultural perspective, the LP became a vehicle for long form programmatic works, a tendency most full realised in the 'concept album'. In term of economics, the LP with its relatively long period of gestation reduced the rate of innovation, and to some extent too the endemic uncertainty of music markets (Straw 1990).

Both developments, rock band and album, reflected a developing cult of the rock *auteur* which was strongly influenced by the Romantic movement.[5] Accordingly, creative acts should originate within the mind, or even the soul, of the rock musician, and ought not to be tainted by the influence of another. This notion of the inviolability of autonomous creation found expression in the phrase, 'cover version'.[6] In the earlier Tin Pan Alley system songs (written by song writers) came first, then interpretations on record. These might be more or less acclaimed, but by definition could not be original. With rock, however, songs were only fully realised in the creative act of recording. As such they were completely identified with a rock *auteur*, whether individual or, as in the case of a band, collective. Subsequent versions of rock songs by other artists thus inevitably took on the character of 'covers', derivative of an

original moment of creation. All this is to suggest that rock's system of production was eminently compatible with the music industry and copyright regime which had emerged in the previous era. What mattered was that the new culture valued authorship and original expression, and thus tacitly endorsed copyright principles.

Emblematic of this alignment between rights and rock authorship was the formation of the publishing company Northern Songs in 1963. This was set up by the doyenne of Denmark Street publishers, Dick James together with the Beatles' manager Brian Epstein in order to exploit rights in the works of Lennon and McCartney. The song writers each had one fifth stakes in it (Salewicz 1986: 144). Five years later the Beatles themselves led by Paul McCartney attempted to take control of recording rights too with the incorporation of their – ill fated – Apple venture.

The situation in Jamaica could hardly have been more different. In 1960 the music industry was still at an embryonic stage. The main form of popular music entertainment was the sound system, a mobile apparatus for the presentation of recorded music at dances. It consisted of a record deck, amplifier and large loud speaker boxes, together with operating crew. The 'sound' had first appeared at the end of the 1940s. By 1960 there were four large units working around the Kingston area on Friday and Saturday nights, as well as some smaller outfits. Their 'selectors' (disc jockeys) played sequences of mostly US rhythm and blues (R and B) singles to large audiences in dance halls and outdoor 'lawns' across the city. The sound systems constituted a highly competitive market, where what counted most was the playing of new and exclusive records from the US. Audiences provided immediate feedback in the form of getting up to dance – or not – and the fortunes of a sound depended on its ability to keep audiences moving. Competition was then codified in periodic sound system battles, whereby two sounds would appear at a single venue, each attempting to 'flop' the other. Again, audience approbation was the deciding factor (Stolzoff 2000: 52-3).

In order to ensure exclusivity sound system operators often scratched out the labels on new records to prevent competitors from finding out their provenance, and then acquiring copies for themselves (Stolzoff 2000: 51). Significantly, the practice has some of the same functions as copyright. Both institutions represent the imperative to exert monopoly control over new products in cultural markets where innovation is at a premium. However in Jamaica copyright proper was never enforced in relation to the commercial exploitation of music. True, UK copyright law did apply in name across the British West Indies. And after Independence in 1962, the British Copyright Act of 1911 and a local statute for implementing it from 1913, were received into Jamaican law (Daley and Foga 2007). But, quite unlike the case of the UK, no infrastructure for the exploitation of rights developed until the new millennium. Even today copyright is implemented in a very patchy way.

The explanation lies in the first place with the leading role taken by the sound systems in the early Jamaican music business. Crucially, they depended on US repertoire, in other words on works and recordings whose rights were owned by others and sourced from elsewhere. In this context exclusivity was inevitably a matter of securing control over a given recording through secrecy rather than intellectual property. Still, the key point for the present argument is that this initial orientation of the Jamaican music scene, shaped by intense competition in the highly innovative primary market of the sound system, persisted even after domestic record production took over. That is, a specialised form of end use, public performance of records for dancers, has strongly determined the organisation of the industry and the practices of music making. We ought to examine how this has been so.

By the late 1950s sound system operators were encountering a repertoire shortage. As gospel influenced styles came to the fore in the American R and B market, the sound system operators, or their scouts who were sent over to the US to scour record shops, found it increasingly difficult to find new recordings in the older jump style that had remained popular

in Jamaican dancehalls. So the operators began to turn to local musicians in order to replicate this style on record. Suitably trained musicians were present on the island for two contingent reasons. One was the US tourist trade on Jamaica's north coast. This boosted the market for live music in this small and poor island, particularly for dance bands on the US model. The other reason had to with music education. A Catholic, endowed school for wayward boys in downtown Kingston called Alpha trained its pupils in brass and sight reading (Williams 2006). The unintended consequence was a continuous supply of musicians, first for the bands and then for the studios. As for recording facilities, in 1960 there were two studios. RJR was a commercial radio station which incorporated a small studio. Ken Khouri owned the other one. From the mid-1950s he recorded, pressed and released mostly mento, the national 'folk' music style related to calypso, at his Federal studio. By the start of the new decade the sound system operators, Khouri himself, and a handful of independent producers including Chris Blackwell and Edward Seaga were recording tunes in a local variant of jump R and B. Two years later, at the time of independence, making records for the dance hall had expanded exponentially. In terms of style, the music had taken on a distinct local inflection and been given a name – ska. By mid-decade labels, recording studios and record shops were starting to spread along the Orange Street corridor at the Western edge of downtown Kingston (Cooke 2007).

There are strong parallels here with the emergence of rock , as well as significant divergences. In both cases new musical forms were built upon thriving new markets and ways of consuming music. In both, recording took a much more important and autonomous role than previously when its function had been merely to document live performance. And in both rock and reggae, musical sources beyond the home culture were hugely important. The divergences have to do with the way in which economics and aesthetics intersected quite differently in each case around problems of creativity and innovation. Whereas copyright, a corporatist industrial structure and the cult of the *auteur* governed innovation in rock, reggae was characterised by a dynamic blend of informal economic competition and co-operation, together with a much stronger emphasis on the social character of authorship. Indeed, the reggae system of production existed not merely absent copyright, it functioned in a way which was antithetical to the individualism on which copyright is premised.

## Social authorship (i): intensification and the division of labour

We can hear this right from the start of domestic recording for the sound systems. What was at stake was a form of social authorship (Toynbee 2006) where continuity between recordings was much more important than originality. Yet this did not prevent innovation; far from it. The transformation in style between 1960 and 1962 was both radical and coherent. Its single most important element was a change in rhythmic accent. Built on a 4/4 rhythm, the favoured jump R and B idiom featured a 'walking' bass line and snare drum backbeat on beats 2 and 4. Many of the most popular tunes in the dancehall also featured an accent on the offbeat voiced by piano or guitar; namely, '1 and 2 and 3 and 4 and', where the off beat is represented by 'and'. What Jamaican musicians then did as they started recording in this idiom at the end of the 1950s was to slightly emphasise the offbeat. The result is clear enough on a seminal recording from 1958 or '59: 'Easy Snappin' by Theophilus Beckford (Beckford 2002). A twelve bar blues performed at a lazy 105 beats per minute the tune features mid-register piano chords on the offbeat. Beckford plays these quite loudly. After the trombone and guitar solos towards the end of the record, guitar chords are added to strengthen the accent on the offbeat. Beckford also sings in a recognisably Jamaican accent. This is not yet ska, but it certainly qualifies as 'proto-ska' to use Garth White's (1998) suggestive term.

If we jump forward to early 1962 and 'Judge Not', the first recording by a sixteen year old Bob Marley (1996), we can hear ska almost fully formed. There is still the walking 4/4 bass line and snare backbeat as heard in jump R and B, but the accent on the offbeat, voiced by

piano and saxophone, dominates the rhythm completely: '1 **ska** 2 **ska** 3 **ska** 4 **ska**'. By the time of 'Don't Throws Tones' [sic] by Prince Buster (2000), probably from 1965, the style has been consolidated. The core musicians on this recording are the Skatelites, the leading group of session musicians in Jamaica. They deliver what might be called high ska. The offbeat accent is now voiced by piano, guitar, brass section and harmonica, but with an articulation that is both complex and highly evocative of groove. Key here is slight sustain on the harmonica such that it can be heard immediately after the other instruments have stopped playing in a reedy echo of the tight ensemble sound.

Let's call the process at stake in the development of ska, *intensification* (see Toynbee 2007: 87-94). By this is meant collective production of change through the identification of an aesthetic zone – here, the accent on the offbeat – and then the making of this zone more and more salient over a cycle of recordings. It is difficult to assess how far intensification is a self-conscious process. Probably, the process begins in a relatively unreflexive way, being expressed in musical practice much more than commentary upon it. The changes are then progressively codified. So with ska, the term itself wasn't coined until 1962.

For the present argument the significance of intensification lies in its essentially collective nature. Change was generated collectively in that the whole cohort of musicians in Kingston was involved as a group in the research and development of the new sound. Certainly, there was intense competition, particularly among producers and sound system operators. Nevertheless music makers contributed to stylistic innovation as artisans rather than heroic individuals as in the case of rock. Across all roles – musicians, vocalists, engineers, producers – and notwithstanding different interests and contractual relations there was in effect a common culture and practice of making new: taking things a little further than last time, picking up on a trope used on that record, copying but varying what someone else has been doing … .

The fluid, collaborative yet competitive structure in which this kind of innovation flourished depended on a particular kind of political economy. At the top of the hierarchy producers (the most powerful of whom owned sound system operations too) called the shots, arranging recording sessions, hiring musicians and named artists, and then organising distribution. At first distribution simply meant record play at sound systems – the primary commodity was a whole evening's selection of records played in the dancehall. Then during the early 60s a retail record market began to take off though one which was always dependent on the dancehall for the presentation of new tunes and the consecration of successful ones.

This was 'primitive accumulation' (Marx 1976: 873-940) – tough small scale capitalism based on the charismatic power (sometimes backed by violent coercion) of the producers. Nevertheless, the labour process was shaped very much by labour market conditions. Most significantly, session players in Kingston were able to work for different producers with impunity. So although the Skatalites have sometimes been described as a house band for Coxsone Dodd's Studio One operation, they actually made many recordings for others, for instance Buster in the example just described. Coxsone himself testifies to this mobility of labour in an account of the way his rival Duke Reid would often outbid him.

> Whatever it costs, Duke would find the money. Even if I had a contracted artist, Duke would still insist and use them, like Don Drummond and Roland [Alphonso – both from the Skatalites] was contracted to me, but after a while you realise the man is a musician and that's the only way he could really earn, so you let him play, which is different from vocalists'
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> (quoted in Katz 2003, 61).

Dodd emphasises his own altruism here. But probably what wanted counted much more was the nature of the labour market. Voracious demand for new recordings for the sound systems,

and by the mid-sixties the developing retail singles market, gave the relatively small number of skilled session musicians a strong bargaining position. Singers, on the other hand, even extremely successful one like the Wailers at Studio One, could be contracted on the basis of a small retainer (White 2000, 160). Quite simply, demand uncertainty in respect of the recordings of 'name' solo artists or vocal groups, together with oversupply of singers themselves, made them weaker as labour market players. As regards the role of 'song writer', this was much less important in reggae than in rock. But to the extent that there were song writers, they tended to come from the ranks of the singers. Writing was simply another duty to be performed. Producers paid no royalties and often claimed writing credits for themselves when work was issued overseas.[7]

As for the function of producer, s/he (there was one female producer in the 60s and 70s - Sonia Pottinger) was by no means just a hirer of labour, but also took on the function of marque, becoming identified with a certain quality of sound, stable of singers or stylistic inflection. Producer-artists like Prince Buster, and later on Lee Perry, also released records under their own names. Even in such cases, though, producers were hardly *auteurs* on the model of rock. Their creativity was much more a matter of co-ordination, the putting together of a specific combination of musicians, singers and material in order to realise a certain sound. And their extravagant and flamboyant gestures belonged much more to a Caribbean tradition of shamanistic performance than the sort of expression-from-within favoured in rock.

Perhaps the general conclusion to draw is that in the Jamaican system the division of labour meant that creative input, and just as important the *attribution* of creative input, were spread across the various roles. In other words authorship was profoundly social even though it was far from being organised on a mutual basis. In this context copyright was simply beside the point. For the petty capitalist producers at the top of the chain, the priority was to ensure a constant supply of new records for the sound system, not to stop others from exploiting their product over the long term. Crucially, to be the first with a new sound gave producers competitive advantage. In other words, speed was of the essence. Even when the retail market grew during the Sixties, the economic imperative remained the same: to come first to market. We know that there *was* some piracy. Bob Marley complained about it during the brief period in 1966-67 when he and his wife Rita ran their own label, Wail'n'Soul'm (Farley 2006: 130). But it is likely to have affected smaller, weaker producers such as Marley rather than the Big Three of Dodd, Reid and Buster whose charismatic power ensured monopoly control over their recordings. The point is that, brutal and exploitative though the system could be, it worked extremely efficiently to generate a high rate of musical innovation in the absence of intellectual property.

## Social authorship (ii): translation, origination and re-use

The process of intensification which we have been examining in the development of ska was a key part of the social authorship which flourished in Kingston during the 1960s. Critically, it became important again in the emergence of later styles such as rocksteady, reggae and dub. However, there was another significant aspect of Jamaican social authorship, which although complementary to intensification involved a quite different creative principle.

Intensification is an endogenous process of innovation. It depends on identifying a salient zone within a larger musical code, and then research and development of the aesthetic possibilities which emerge from this initial step. As we have heard, in the case of ska such possibilities centred on the accented off-beat. Conversely, in what might be called *translation*, the animating principle is lateral reference to that which is notionally outside a given musical code, rather than vertical reference to what precedes it. Translation involved broadening (rather then deepening) musical signification through the re-framing of existing musical

materials. Of course in Jamaica translation, like intensification, was underpinned by a combination of collaboration and intense competition. But translation was also a response to a particular problem generated by the high rate of stylistic innovation. This was the need to constantly produce new 'record-texts' for the 45 rpm singles which were reggae music's staple medium of reproduction. Re-use of existing texts, or the production of same-but-different ones, represented a highly efficient means of solving the problem.

This economic factor in reggae translation then converged with a more properly cultural one, namely the tendency in Jamaican, and more generally Caribbean, culture to hybridity (Puri 2004). As Shalani Puri explains this should not be treated as a matter of straightforward resistance, or unalloyed celebration as is so often the case in cultural studies (19-41). For with hybridity what counts in cultural-political terms is how it is mobilised, and specifically the extent to which it is used to oppose domination, to affirm equality, to establish 'our' identity, or refuse the name which 'they' call us … . In the case of Jamaican popular music, hybrid tropes of translation represented a powerfully demotic and autonomous drive towards the making of a black people's music (Toynbee 2007: 77-80). That is to say, reggae was a self-consciously working class idiom which incorporated both music and dance of African origin, and musics brought by the British colonisers or beamed in by the 'Yankees'.

Actually, we have already examined one instance of reggae translation, namely the importation of R and B. Effectively what initiated the cycle of intensification that culminated in a ska was a lateral move; the bringing across of the popular music of African-America. This was a relatively gross form of translation in that a whole genre – jump blues – provided the source code. However translation in reggae music occurred across a broad spectrum, from genre through oeuvre (where the source was the music of a single artist or group) to the version (for which the basis was a specific record-text).

Let's consider some examples; first, from somewhere in the middle of the spectrum, the extensive use made by reggae artists during the 1960s of the work of US soul group, The Impressions. The characteristic tenor-to-falsetto voice of many Jamaican singers in this period is clearly copied from the Impressions' lead singer and guitarist, Curtis Mayfield.[8] This is not only a matter of vocal register though. It also has to do with the quality of voice, accompaniment and production values. Critically, such translation is not at all a static or unresponsive form of copying. Rather it represents a sideways development of musical codes into new areas of semiotic possibility. Many aspects of the work of Bob Marley and the Wailers between 1964 and 1967 demonstrate this. Indeed, translation of a whole variety of traits from the Impressions' oeuvre arguably provided the most important means by which the Wailers extended their signifying range in this period, enabling the production of a sophisticated yet earthy, tough but tender, local while also cosmopolitan musical style (Toynbee 2007: 94-8).

Translation of this kind is of course perfectly permissible under copyright law – probably everywhere around the world. Timbres and textures, patterns of antiphony, phrasing, a characteristic guitar sound – all of which were at stake in the Wailers' appropriation of the Impressions – do not reach the threshold of what may be protected in the musical work (for discussion of which musical parameters are protected in law see Bently 2005 and Barron 2006). Melody and lyrics, on the other hand, are commonly agreed to be at the core of the musical work as it is constituted by copyright statutes and case law. Yet in respect of these elements, as much as with the idiomatic traits and tropes we have just been discussing, Jamaican musicians were profligate copiers. What's more, they were quite open about their imitation, and understood it to be a perfectly legitimate method for the generation of new recordings.

This point is critical for the present argument. There was (and indeed still is) no distinction within the musical culture between licit and illicit translation, between, at one end of our

spectrum, the bringing across of generic traits and at the other end, the importation of melodies, lyrics, substantial motifs or even whole songs made by others – in other words, work elements whose re-use would constitute infringement of copyright law. This is not at all to suggest that translation was an indiscriminate process. But it does mean that it took place without any recognition either of the norms of copyright, or of the codes of authorship in rock culture which converged with these norms. In what kinds of way, then, were copyrighted work elements translated into reggae in the 1960s?

First, there is the re-use of an existing song – what would be termed in rock, the cover. Derrick Harriot's 'Do I Worry?' (1998) from 1966 is a good example. This is a version of the song written by Stanley Cowan and Bobby Worth in 1940. It was a big hit for African-American vocal group, the Ink Spots, in 1941, and it is probably in this form that Harriott first heard the song. His own rendition is pure rocksteady, that is to say it's in the much slower and sparer style which succeeded ska in the summer of 1966. In copyright terms, of course, it is simply a version of a work written by others and whose rights were owned (at the time and place of issue of my CD copy) by Peer Music (UK) Ltd. It is reasonably safe to assume that no publisher information would have been shown on the original Jamaican release, nor that there would have been any recovery of royalties in respect of mechanical reproduction of the work at that time.[9]

A second type of translation of a work element is the cover which uses the same title, but then deviates far from the musical form of the original. An example is the Wailers' (1991) recording of 'Rolling Stone' from early 1966. Clearly inspired by the Bob Dylan song, the Wailers' version nevertheless has a completely different harmonic and melodic shape. The Skatalites play the 'Hang On Sloopy' chord changes, using a relaxed and funky ska rhythm that owes much more to New Orleans R and B than it does to Dylan's organ based, rock angst. On the verses Bunny Livingstone doesn't just sing a different melody, he has written different words, and while the lyrics of the chorus remain the same, the melody only approximates Dylan's. In any event, the unvarying three chord pattern undermines the verse-chorus structure of the original based as it is on different chord changes across verse and chorus. This is, in effect, another song; re-engineered for another context – the dancehall.

In a third type of cover, a different title is used from the original. However, either the whole song or its melody are adopted. 'Don't Throws Tones' by Prince Buster (2000) discussed earlier is a good example. It features a spoken word introduction by Buster, a warning to rude boys, and then an instrumental version of the tune, 'Quizás, Quizás, Quizás', written by the Cuban songwriter Osvaldo Farrés in 1947. Buster and the Skatalites would almost certainly have heard Doris Day's version from that singer's very popular *Latin for Lovers* album, released in the US in March 1965. Entitled 'Perhaps, Perhaps, Perhaps', this used English lyrics by Joe Davis. On my CD copy of the Buster track, however, writing credits are shown as 'C. Campbell' (Cecil Campbell is Buster's birth name), and the publisher is given as 'Prince Buster Music (BMI)'. There is, to put it mildly, something of a contradiction here. Still, at the time it was released the absence of a copyright regime in Jamaica suggests that the use of an alternative title (very likely 'Don't Throw Stones' on the original single) was not motivated by intent to deceive so much as Buster's desire to rejoin the ongoing rude boy controversy. The 'Quizás … / Perhaps …' melody and chord changes simply provided a vehicle, albeit a sublimely ska-able vehicle, for doing this.

Another example of a cover with a different title to the original is 'Darker Shade of Black' (Mittoo 2004), released as a Studio One single in 1967. The artists credited on the original single are Sound Dimension, the group of session musicians led by Jackie Mittoo at that time. The composer, very typically on Studio One releases, is shown as the producer; 'C. [for Clement] Dodd'.[10] However, the melody taken by Mittoo's organ consists in the verse part of the Lennon and McCartney tune, 'Norwegian Wood'. This is repeated over an extraordinary 'riddim' which was to become a standard in Jamaican music, being re-recorded by Mittoo

himself in the late 70s, and then revived by Frankie Paul for his hit, 'Pass the Tu-Sheng Peng' in 1983 (this version also included the 'Norwegian Wood' motif, but now voiced by a brass section). As recently as 2007 Chuck Fender employed the riddim on the single, 'So Many Girls'. Indeed, the online directory *RaggaeID* lists a total of 183 recordings up to that date based on 'Darker Shade of Black'.[11]

In the case of 'Darker Shade of Black' although the keyboard melody is derivative and would undoubtedly be considered to infringe copyright in any court, the most significant aspect of the recording, and what has given it such enormous longevity, are the bass line and guitar riff. These each consist of a three note pattern. Notwithstanding their extraordinarily effective combination in the riddim, this would be very unlikely to reach any threshold of substantiality currently being used in a copyright court (for discussion of this issue in the US see Toynbee 2006 and Korn 2007).

## Riddims, open source and coming first to market

The institution of the riddim is perhaps the most graphic example of the way that social authorship in Jamaican popular music operates at a complete tangent to the norms of copyright law. As Peter Manuel and Wayne Marshall explain,

> [f]rom the early 1970s reggae music – whose most popular form since around 1980 has been called 'dancehall' – has relied upon the phenomenon of the 'riddim', that is, an autonomous accompanimental track, typically based on an ostinato (which often includes melodic instrumentation as well as percussion). While a dancehall song consists of a deejay singing (or 'voicing') over a riddim, the riddim is not exclusive to that song, but is typically used in many other songs
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> (2006: 447).

In an important sense, the riddim represents a synthesis of those processes of intensification and translation which we have been examining over the previous two sections. It involves intensification in that the repetition of a melodic/percussive pattern over many recordings provides a medium for the micro-phonic development of sonority and therefore too of emotional connotation. In other words, the many tunes released 'pon a riddim' may constitute an aesthetic exploration in *depth*. Equally, though, the successive manifestations of a riddim can signify in *breadth*, with each one a translation of some or all of the others by dint of the different words and delivery used by each deejay or singer. This is a profoundly dialogical form of music making.

But in all cases what is surely at stake is a continuous process of music-*ing* rather than the production of the individual works that are the object of copyright law. No doubt specific incarnations of a riddim may shine. In particular, the 'original' (for instance, the Sound Dimension cut of 'Darker Shade of Black'), tends to take on iconic status in reggae culture. Yet this iconicity actually reinforces the riddim's status as a public good, as belonging to a common stock of symbolic forms, not something to be owned by its notional creators. So, the 'Darker Shade of Black' riddim doesn't belong to Jackie Mitto, the Sound Dimension – or even Clement Dodd despite the fact that his name is shown as composer on that Studio One single from forty years ago.

Perhaps it might be said to belong to the Jamaican people. Arguably, the *de facto* common ownership at stake in the 'riddim method' (Manuel and Marshall 2006) derives as much from long established folk traditions as it does from recording for the dance hall. As we heard above, a national style, mento, was popular in Jamaica during the 1950s. But its origins go back much further. Ken Bilby suggests that mento encapsulates strong African retentions yet also 'elements of a variety of European social-dance musics' (1993: 193). In the period of

proto-ska, mento singers recorded R and B material too, while the dance bands performed mento tunes among the American standards and Cuban mambos that otherwise formed their repertoire (White 1998, Knibb 2005). So, mento was a familiar form among Jamaican music makers in the early 1960s. And it seems likely that its characteristic accent on the offbeat (most often voiced by a banjo) contributed to that process of intensification in ska which we identified earlier. Much more recently, there has been a mento revival in dancehall music. Among other examples, the 'Chaka Chaka' riddim was hugely successful in 2004. It featured 'harmonica, banjo, fiddle swoops (though played on guitar), a bass line simple enough for a rumba box, and a pre-reggae beat, dancehall style' (Garnice 2008).

As well as mento, another older form of people's music that continues to feed into the development of reggae is nyabinghi. This is the drumming used at Rasta rituals. It seems to have emerged as a specific style, and with a particular set of drums, towards the end of the 1950s. The most notable practitioner was Count Ossie whose group was based in a Rasta camp in the Wareika hills above Kingston. Nyabinghi was itself built on rural drumming idioms with strong African retentions (Bilby 1993). Significantly for the present paper, it has been constantly translated into reggae. The original 'Darker Shade of Black' riddim, for instance, has hand drumming which is strongly influenced by nyabingi.

These examples of 'folk continuity' in reggae bring out a key point about the hybridity at stake in Jamaican music making. Little heed is paid to precepts of authenticity and cultural autonomy. Whether a musical trope derives from a notionally domestic or foreign culture is less important than the fact that it is woven into something which becomes 'ours' through the synthetic act of translation. This suggests that the concept of collective indigenous ownership of reggae music by the Jamaican people is ultimately as unsustainable as the ownership of individual rights in specific reggae 'works'. The point is that the radically diverse provenance of reggae's sources, both oral *and* phonographic, simply doesn't fit current conceptions of 'indigenous culture'. In any event, as Joseph Githaiga (1998) argues, enormous problems arise when one attempts to map existing forms of copyright law on to indigenous cultures, even when such a culture is clearly defined.

It appears, then, that reggae exists outside any recognisable political economic context. Its codes of social authorship, and the continuity between recordings and songs which derive from its 'phonographic oral' practices (Toynbee 2006), seem on the face of it to make this music a pariah form. Of course, institutions of copyright can perfectly well handle it when it is exported to the core of the world system. The huge revenues earned by Bob Marley's songs and recordings testify to this, not to mention the court cases in which ownership of the rights has been contested.[12] Still, the key point for the present argument is that in Jamaica, reggae's system of production has continued to break not only with principles of copyright, but also the economic logic which underlies it. The question is, then, if copyright prevents free riders from exploiting the all too copy-able work of others, if it generates an incentive where none would otherwise exist, how can we account for the vitality of Jamaican music making?

Actually, a couple of counter-intuitive approaches to symbol production suggest themselves in relation to this problem. The first comes out of research into the creation of open source software. This has focused on the abnormal political economy through which sophisticated computer programmes like Linux have been developed by geographically and organisationally separated programmers. These software designers not only work without a hierarchical structure of co-ordination, but fail to assert intellectual property rights and therefore receive no remuneration in respect of them. As Steven Weber (2000: 5) notes in an influential paper, three central issues arise as a consequence: how to understand the motivation of the individuals concerned, the co-ordination that is achieved among them, and the complexity that inevitably arises in large software projects.

For all the apparent distance between reggae and open source, there are good reasons to believe that the problems that Weber identifies in relation to the latter actually apply very much to the former too. It might be useful, then, to examine Weber's arguments. First, in relation to motivation, he suggests that there is intrinsic interest and enjoyment in solving software design problems. This is supplemented by the desire to enhance one's reputation since a good piece of work will be acclaimed by other programmers in the software community. Lastly, there is a shared altruistic culture which helps to motivate individuals (2000: 25-7). Overall, the economic logic is one where software becomes an 'anti-rival good'. Even ostensible free riders contribute by reporting bugs, and the more people there are involved the greater their interest in achieving good software design (2000: 28-9).

These motivational factors all apply to reggae. With intrinsic interest and enhancement of reputation this might be obvious. But surprisingly, perhaps, reggae music can also be seen an 'anti-rival good'. Competing musicians and producers tend not to object to others using 'their' songs, sounds or riddims because they understand the result will be better music and a bigger market for everyone. That is to say, the more translators the better. We shouldn't take this argument too far though. There *have* been plenty of disputes over the ownership and use of musical materials from the early years of ska (Katz 2003: 41-3) to today when (probably as a result of Jamaica's new more vigorous copyright regime) disputes over riddims sometimes take a litigious turn (Manuel and Marshall 2006: 464-6). But the fact remains that, in general, economic actors not only tolerate the open nature of reggae, they recognise its centrality to the system of production.

As for the problem of co-ordination in open source, Weber's focus is on why 'forking' does not occur, that is, why at any given moment individual programmers do not work on their own and pursue developments which lead away from the collectively produced code. One answer is that forking leads to a smaller 'audience' and therefore lower potential acclaim for the 'forker'. Another is that cultural norms of responsibility and leadership reinforce a congruent understanding of technical excellence. Forking isn't such a critical issue in reggae because discontinuity and sideways moves (usually deriving from translation rather than intensification) are not merely tolerated, they may sometimes lead to successful aesthetic developments. Nonetheless, the factors Weber describes do have considerable force, and as a consequence reggae is an extremely coherent, well co-ordinated genre. Actually, this issue should be posed in a different way, the way we have approached reggae music making in this paper: reggae is characterised by strong 'social authorship'.

Finally, on complexity Weber discusses the received wisdom according to which increases in the division of labour lead to decreases in efficiency as communication becomes more complex, and organisational structures have to be built in order to compensate for this. In open source software development, however, 'modular design' tends to obviate these problems. As he puts it, '[a] large program works by calling on relatively small and relatively self-contained modules' (Weber 2000: 33). Once again, there are uncanny parallels in reggae. Riddims are small units of musical code. Likewise vocal timbres, characteristic patterns of phrasing, metres … . All may be developed relatively discretely, yet easily combined in the meta-module that is the reggae record.

The model of open source software thus offers a highly illuminating way of conceiving the reggae mode of production. Nevertheless, it cannot account for the way the music realises exchange value at point of sale. This is the pertinent comparison. Open source products are sold on the basis of the consumer support that is provided for them rather than the unprotected software itself. But reggae records are sold on 'their own'. How can this be so given the absence of copyright which might prevent those who are not the producers of a new record selling copies on free ride terms?[13] One answer is that producers often acquire proprietary control through custom and convention, backed up by force or the threat of it. But another factor is the sheer competitive advantage derived from coming first to market.

We have already hinted at this. But the work of Michele Boldrin and David Levine (2005) can help to explain what's at stake here. The main thrust of their argument is that symbolic goods – the objects of intellectual property law – are actually much less different from non-symbolic ones than is normally suggested. The writers confront the free rider argument by suggesting that in most markets significant 'first-mover' advantages apply before IP is factored in. In effect, the original creator is a monopolist up to the point that re-sellers are able to get their hands on a copy of the artefact, tool up for replication and then enter the market. Certainly, there will be competition at this point, but – absent IP – sufficient returns over and above the 'opportunity cost' of creation will already have been achieved on the part of the originator (2005: 1254). This factor certainly applies in reggae, whose political economy has been shaped by the imperative to be first in delivering new sounds to the dancehall audience. More research is needed to show distribution of revenue over the period of a record's release, but it seems highly probable that most money is made in the very early stages as a tune becomes acclaimed in the dancehall.

As a corollary to first-mover advantage Boldrin and Levine point to the negative effects of IP on innovation. What happens when copyright is enforced is that costly and lengthy processes of rights clearance have to be negotiated with damaging consequences for innovation (2005: 1255). Imagine a situation in which clearances had to be obtained for all riddims. Actually, we need go no further. The whole reggae system of innovation - and therefore reggae itself - would collapse at this point. Over the longer term, Boldrin and Levine highlight the problem of rent seeking which is endemic under any IP system. 'Monopoly creep' occurs as governments tend to respond to the lobbies of rights owners and increase 'the scope and duration of monopoly power' (2005: 1255). In Jamaica the 1993 Copyright Act and the post-2000 creation of a state and para-statal copyright regime (Daley and Foga 2007) indicate the international power of this lobby, given expression most recently through TRIPS. Arguably, and only time will tell, this new regime threatens the political economy of music in Kingston on which the extraordinary achievements of reggae music makers have been built.[14]

## Conclusion

We began by arguing that the production of rock music depended on a romantic discourse of authorship together with self-sufficient production practices. These were entirely complementary to copyright law as it had developed by the mid-twentieth century. Conversely, reggae music was premised on social authorship and the absence of copyright, albeit in a context of vigorous competition. On the basis of the contrastive methodology employed here it now seems reasonable to say that we have confirmed our original claim that popular music in Jamaica would never have emerged under the legal and institutional conditions which enabled the development of rock. Copyright is indeed inimical to the production of reggae.

However, we can go further. If reggae has flourished absent copyright then perhaps there is something about it which is not merely idiosyncratic. Could it be that principles of the political economy of reggae have wider application? Research on open source software (Weber 2000) and modelling of the markets for symbolic goods without state granted monopolies (Boldrin and Levine 2005) suggest that this is the case. In the reggae system of production strong collaboration, efficient co-ordination and complex creative processes seem to be combined with a competitive market system. This is encouraging – it shows that similar modes of symbol making to open source can emerge in a completely different economic and cultural context.

Might the lessons of reggae even be applied to rock? As we have just been reminded, historically rock has been based on a completely different cultural and economic model. But in fact there are good reasons to think that rock music today would benefit from the abolition

of copyright. Arguably, rock is in a profound crisis. Aesthetically conservative and obsessed with pastiche of its own narrow past it would surely benefit from the translation, intensification and freeing up of innovation which are likely to follow the suspension of rights.

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[1] Reggae is used here as the generic term for Jamaican popular music after around 1962. However, it's worth pointing out that it originally referred to a sub-genre which developed from 1968 onwards.

[2] PRS had, and still has, authors as members and beneficiaries in addition to publishers.

[3] A statutory mechanical royalty of 6.25% on the sales value of recordings of works was established by the 1956 Copyright Act.

[4] Gramophone Company v Cawardine and Company. The latter, a restaurant, had played records to its customers produced by the former. The decision by the court to uphold the Gramophone Company's right in the performance of its recordings established a wide ranging phonographic performance right and enabled the new PPL to license not only of restaurants and shops, but also broadcasters, specifically the BBC.

[5] Frith and Horne (1987) show how discourses of art were imported into rock via the art schools in which many British rock musicians spent their formative years.

[6] The term was already current by the mid-1960s. The earliest reference to it the present author can find is from 1967.

[7] For instance, see the account by singer and song writer Bob Andy of his dealings with Coxsone Dodd at Studio One (Andy 1983).

[8] Apart from the evidence provided by recordings, Jamaican music makers have themselves pointed out the near ubiquitous influence of Curtis Mayfield, for instance Derrick Harriott (2005 personal communication) and Pat Kelly (quoted in Katz 2003: 88).

[9] Jamaican singles from the 1960s invariably show song title and artist. Sometimes composer information is included, but the present author has not seen any reference to publishers or to copyright among the fifty or so such pressings he has examined. For a collection of images of Jamaican record labels from the 1960s see, Collingwood 2005.

[10] An image of the label can be seen at http://www.soundsoftheuniverse.com/releases/?id=9442.

[11] ' (see, http://www.reggaeid.co.uk/riddims.php?show_letter=D&PHPSESSID=0f92e1db4965be5a10188aa0cb baa983, accessed on 01/04/08).

[12] The most recent of these is Barrett v Universal Island Records (2006) where a plaint by the Wailers' bass player, Aston Barrett, which asserted his joint authorship of certain songs, was thrown out. Generally, Mr Justice Lewison found attribution of sole authorship to Marley much more plausible than any notion of collective creation, suggesting perhaps that the figure of the rock *auteur* still looms large in the imagination of High Court judges of a certain age.

[13] In fact, the new, and strengthening, copyright regime in Jamaica is now beginning to result in the prosecution of piracy (Daley and Foga 2007).

[14] Though for an argument which makes the opposite case, in other words for the benefits of introducing a comprehensive IP regime in Jamaica, see Power and Hallenkreutz (2002).

**Discography (all in CD format)**

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