

Music & Fashion:

The Balancing Act Between Creativity and Control

By Aram Sinnreich
and Marissa Gluck



A Norman Lear Center Conference

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USC Annenberg School for Communication

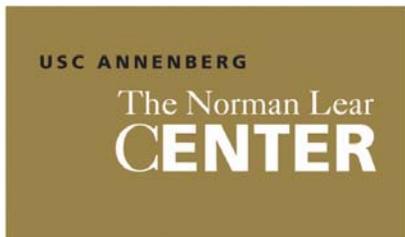
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The Norman Lear
CENTERTAINMENT
Exploring Implications of the Convergence of Entertainment, Commerce, and Society

The Norman Lear Center

Founded in January 2000, the Norman Lear Center is a multidisciplinary research and public policy center exploring implications of the convergence of entertainment, commerce and society. On campus, from its base in the USC Annenberg School for Communication, the Lear Center builds bridges between schools and disciplines whose faculty study aspects of entertainment, media and culture. Beyond campus, it bridges the gap between the entertainment industry and academia, and between them and the public. Through scholarship and research; through its fellows, conferences, public events and publications; and in its attempts to illuminate and repair the world, the Lear Center works to be at the forefront of discussion and practice in the field.



Ready to Share: Fashion & the Ownership of Creativity

On January 29, 2005, the Norman Lear Center held a landmark event on fashion and the ownership of creativity. "Ready to Share: Fashion & the Ownership of Creativity" explored the fashion industry's enthusiastic embrace of sampling, appropriation and borrowed inspiration, core components of every creative process. Presented by the Lear Center's Creativity, Commerce & Culture project, and sponsored by The Fashion Institute of Design & Merchandising/FIDM, this groundbreaking conference featured provocative trend forecasts, sleek fashion shows and an eclectic mix of experts from fashion, music, TV and film. Discussion sessions covered fashion and creativity, intellectual property law, fashion and entertainment and the future of sharing.

Creativity, Commerce & Culture

When art is created for commercial purposes, who owns it? Once it's in the hands of consumers, what rights do they have to change it? Headed by Lear Center senior fellows David Bollier and Laurie Racine, Creativity, Commerce & Culture explores the new digital environment and the impact of intellectual property rights on innovation and creativity.



The Fashion Institute of Design & Merchandising/FIDM

The Fashion Institute of Design & Merchandising/FIDM is an internationally recognized college that prepares students for leadership in the global industries of Fashion, Visual Arts, Interior Design and Entertainment. As an accredited institution granting Associate of Arts degrees and providing Advanced Study programs in 14 industry-specific majors, FIDM has equipped more than 30,000 students over the last 30 years to become skilled professionals. FIDM is headquartered in a state-of-the-art campus in downtown Los Angeles, with additional campuses in Orange County, San Diego and San Francisco. The FIDM Museum houses one of the nation's finest costume collections dating from the 18th century, as well as ethnic costumes and selections from top fashion designers.

Author Biographies



Aram Sinnreich

Aram Sinnreich is a writer, speaker and analyst covering the media and entertainment industries, with a special focus on music. Named "Innovator and Influencer" by *InformationWeek*, Sinnreich frequently is quoted in publications such as *The New York Times*, *Forbes*, *Billboard* and *The Wall Street Journal*, and has appeared on *ABC World News Tonight*, *The CBS Early Show with Bryant Gumbel*, CNN, CNBC, BBC Radio and Fuji TV. He presented prize-winning research at the annual conference of the National Communication Association in Chicago and at the 32nd Research Conference on Communication, Information and Internet Policy (www.tprc.org/TPRC04/2004.htm) in Arlington, Virginia. Sinnreich has served as an expert witness in court cases including Metro-Goldwyn-Mayer Studios, Inc., et al. v. Grokster, Ltd., et al. (now before the U.S. Supreme Court) and RealNetworks, Inc. v. MLB Advanced Media, L.P. He has written about music and the media industry for publications including *The New York Times*, *Billboard* and *Wired*, as well as the academic journal *American Quarterly*. As a Senior Analyst at Jupiter Research in New York (1997-2002), he produced research reports covering the online music and media industries, and provided hands-on strategic consulting to companies ranging from Time Warner to Microsoft to Heineken. Sinnreich writes and performs music as bassist for groups including ska-punk band Agent 99 and dancehall reggae queen Ari Up, and as co-founder of NYC soul group Brave New Girl, jazz band MK4, and Los Angeles dub-and-bass band Dubistry (www.dubistry.com). Two songs he composed for Brave New Girl were licensed to MTV's animated series *Daria*. Sinnreich earned a B.A. in English at Wesleyan University and received an M.S. in journalism at Columbia University. He is currently a doctoral fellow and lecturer at the USC Annenberg School for Communication.



Marissa Gluck

Marissa Gluck is a Principal in Radar Research, providing marketing insights and consulting services to the media, entertainment and technology industries. Prior to co-founding Radar, she was the Senior Analyst at Jupiter Research in the advertising and marketing practices, covering advertising technologies, email marketing, agencies and media buying. In addition to conceiving and producing studies focused on online marketing and revenue strategies, she led strategy sessions with senior executives from clients such as Interpublic, Doubleclick and CBS. Before joining Jupiter, Gluck was the research and emerging technologies specialist at online advertising agency i-traffic, producing strategic analysis of potential client partnerships and integrated sponsorships for clients such as Eddie Bauer, HSN and Disney. Frequently quoted in publications such as *The Wall Street Journal*, *The New York Times* and *Ad Age*, Gluck has appeared on CNN, CBS and NPR, among other media outlets. She earned two master's degrees in global communication from the London School of Economics and the University of Southern California, and received a B.A. in art history at SUNY-Binghamton.

Music & Fashion: The Balancing Act Between Creativity and Control

In June 2002, underground music phenomenon DJ Z-Trip signed a recording contract with Hollywood Records, home to teen pop sensation Hilary Duff and veteran television personality Regis Philbin. While there is nothing new or unusual about underground musicians making uneasy alliances with mainstream record companies, this was a notable event for two reasons. First, Z-Trip's music was made entirely from samples of other songs, none of which had been licensed prior to the signing of the record contract. Second, Hollywood Records is a division of the Walt Disney Company, which arguably has been the most aggressive proponent of intellectual property control in the entire media and entertainment sector.¹



A single mash-up can incorporate samples from hundreds of songs



Z-Trip is one of the pioneers of the mash-up, also known as "bootleg" or "bastard pop." This new musical style, which emerged only in the last five years or so, has two basic rules: First, all the source materials must be recycled. Vocals, accompaniment, ambient noise and anything else that goes into the mix must be sampled from an already existing piece of recorded music. Often, this means the vocal track from one song is "mashed" with the instrumentation from another. However, a single mash-up can incorporate samples from hundreds of songs.² The other rule of mash-ups is that the samples must be combined to make something new and surprising. In the words of one bootleg artist, "A good mash up / bootleg is a culture clash ... styles that shouldnt [sic] work together but do."³

Predictably, things have not gone smoothly for Z-Trip's music at Hollywood Records. After years of legal acrobatics, the company was able to license only a handful of the dozens of samples on Z-Trip's album. There are many reasons why the record label may have failed to obtain the blessings of these copyright owners. Some may have had a strict "zero sampling" policy, prohibiting derivative works of any sort to be created. Others may not have understood what a mash-up was, and weren't willing or able to take the time to learn. Some copyright owners may have been difficult or even impossible to track down. Ironically, all of these hurdles can be traced to the system of rigid copyright control that the Walt Disney Company successfully has lobbied to create over the past several decades. In other words, it was hoisted by its own petard.

Hollywood Records finally did release DJ Z-Trip's major-label debut album, *Shifting Gears*, in April 2005 – after a lag of nearly three years from the artist's initial signing date. In that time, mash-ups progressed from underground art form to mainstream fare distributed by MTV, Lollapalooza, and *Wired Magazine*. These newer mash-ups differ from Z-Trip's underground work in one respect: They are comprised of a small pool of sanctioned, *pre-licensed* samples, which were given to the artists with the express purpose of being mashed. Gone is the innovation, the "culture clash" that defined the form in the first place. In its stead is an often predictable, homogenous product that arguably functions more as a marketing pitch for the source materials than as a new and independent work of art. In the words of French economist and music theorist Jacques Attali, "inducing people to compose using predefined instruments cannot lead to a mode of production different from that authorized by those instruments."⁴ Or, as *The New York Times* recently predicted, "the mainstreaming of the mash-up ... may end up killing the genre."⁵

Z-Trip's record for Hollywood, indeed, more closely compared to these newer mash-ups, and likely lacked the samples the company was unable to license. Before its release, music journalist Bill Werde, who has reported extensively on mash-ups for *Rolling Stone* and *The New York Times*, speculated, "This album will not resemble anything Z-Trip has built his following on. Whatever does come out will be a very sanitized version."⁶ In his later review of the album, Werde noted, "*Shifting Gears* doesn't have the novelty of Z-Trip's earlier work."⁷

Intellectual property laws theoretically are supposed to encourage innovation, prevent theft and reward artists.



Fashion depends on a primitive but highly functional watchdog – shame.

The moral of this story is fairly straightforward. Intellectual property laws theoretically are supposed to encourage innovation, prevent theft and reward artists. However, in the case of DJ Z-Trip, they did just the opposite. An innovative musician was delayed for years from sharing his work with the market, and in order to do so, he had to change it to make it more derivative and less original. As we shall discuss in this paper, such outright dysfunction is the norm, rather than the exception, in the music industry today.

It would be difficult to find a case analogous to DJ Z-Trip's in the world of fashion. In the fashion industry, sampling, derivation and reappropriation all are accepted and common forms of creative innovation. Indeed, the creative process today is almost wholly reliant on forms of reuse and has deftly avoided the kind of fracas the music industry faces over intellectual property protections. However, there still are powerful institutions that help navigate the murky waters that separate legitimate influence from theft. Without the "thick" copyright protection afforded to the music industry,⁸ fashion depends more heavily on social regulation and a primitive but highly functional watchdog – shame.

Fashion is perhaps the most cyclical of all design industries. As with music, ideas and aesthetics constantly have been recycled, particularly from the 1930s to the present. Sleeves, collars, skirt lengths, patterns, fabrics, buttons and hems all are elements with seemingly infinite permutations, but in reality there is a fairly limited aesthetic vocabulary, with the proven successes cropping up again and again. What makes fashion distinct from other culture industries, however, is its willingness – perhaps its imperative – to acknowledge sources of inspiration. Inez

Brooks-Myers, curator of costume and textiles at the Oakland Museum of California, explains:

Designers will say they were inspired by the gingham that Adrian used or inspired by the patchwork skirts that Rudi Gernreich did. They will acknowledge inspiration, copying and borrowing heavily. There is a nuance of change but they acknowledge the source of inspiration. I don't know if that happens in other industries.⁹

On rare occasions, a fashion designer will cross over the invisible line separating influence from theft. One example is particularly illuminating. In 2002, Nicolas Ghesquière, head designer of couture house Balenciaga, produced an embroidered patchwork vest for its spring collection. Not long after it hit the market and the fashion magazines, fashion Web site Hintmag.com revealed it to be a stitch-by-stitch replica of a design created in the 1970s by a then-young, somewhat obscure Chinese American designer in San Francisco, Kaisik Wong. The vest originally was produced in 1973, and was photographed and included in the 1974 book *Native Funk and Flash*. Mr. Ghesquière claims that at the time he produced the vest he was not familiar with Kaisik Wong or his designs and has said in interviews he thought the original vest that influenced him was from a theatrical costume.¹⁰ When Balenciaga produced the imitation, Mr. Wong had been dead for more than a decade, minimizing the risk of exposure or legal action against the company.

Ghesquière is one of the few designers ever to be criticized for copying, and perhaps was singled out only because he failed to state the source of the original design. "Giving credit where credit is due" is one of the unwritten maxims of the fashion world. By not crediting the source of his design, Mr. Ghesquière risked the scrutiny of the fashion community; suddenly his talent – and therefore his livelihood – was called into question. While this sole misstep has not hurt his career in the long run, the murmurs of doubt about his credibility unquestionably served as a warning against repeat offenses – as well as a warning against theft to the fashion community as a whole. As Cameron Silver, fashion expert and owner of high-end vintage store *Decades* cautions, "The incident doesn't die. When Ghesquière passes away, his obituary will mention two things: the bag [he designed] and the Kaisik scandal."¹¹

This example underscores the subtle yet effective way in which the fashion community regulates the industry through social mores, codes and conventions, in contrast to the dense copyright protection and brute legal force that characterize the music industry. This difference is not simply a matter of preference or predilection; as we will discuss later, there also are structural features specific to fashion that regulate copying. These include the pace of innovation (which generally renders legal actions moot); the fairly fixed number of garment genres and styles (which virtually requires that copying be allowed lest a genre or style be monopolized); and the philosophical refusal of copyright law to protect functional items.

But is this a meaningful comparison? Are there significant similarities between the creative communities and social forces that drive fashion and music? If so, what accounts for the drastically different industries that have emerged to enable and profit from them? Why is it that, despite its stringent approach to intellectual property, sales of music in America dropped by 6 percent in 2003, while fashion sales in the U.S. grew by 5.4 percent?¹² And, given the pace of technological change and the ever accelerating cycles of innovation and obsolescence, is there any lesson the music industry can learn from fashion's success in balancing creative demands against market forces? These are the questions we aim to address in the following pages.

Music and Society

Music is so deeply entrenched in our lives that we tend to take it for granted. It is an intrinsic part of our environment, either as the focal experience (i.e., listening to a CD, going to a concert), as background noise (i.e., waiting rooms, parties) or as an enhancement to visual information (i.e., movie soundtracks). Music is so common in these contexts that its absence can be disturbing. People in silent waiting rooms often can be heard humming to themselves or tapping their feet to compensate for the quiet. Similarly, a movie devoid of music, such as Alfred Hitchcock's classic 1963 thriller, *The Birds*, can be far more unsettling than one with a normal soundtrack.

Music's ubiquity can be traced to two defining features: its invisibility and its power. All sound is, of course, invisible by definition. It vibrates at a different range of frequencies, and acts upon different sensory organs than visible information. Its technical invisibility also gives it a social invisibility. This is especially true in our ocularcentric culture, which prizes the eyes over the ears.¹³ We devote so much of our attention to what we see that we rarely think about what we hear. Thus, music becomes a kind of stealth agent, influencing our thoughts and feelings while it hides in plain "sight."

This stealth would be meaningless, however, without the power that it helps to obscure. The power of music has been extolled, debated and exploited at least since the beginning of written history. In *The Odyssey*, Circe warns Ulysses of the dangers of the music of the Sirens:

If any one unwarily draws in too close and hears the singing of the Sirens, his wife and children will never welcome him home again, for they sit in a green field and warble him to death with the sweetness of their song.¹⁴

Today, music's power is still in abundant evidence, from the tens of billions of dollars Americans spend on CDs each year to the focal role music plays in social and political change, such as the civil rights movement. This power can be traced to three spheres of human life in which music exerts a phenomenal degree of influence: cognitive, social and commercial.

Recent research has established that music is a vital factor in the cognitive development of children, and even may have played a central role in the evolution of the human mind.¹⁵ This finding is no doubt evident to readers in their own lives. From the traditional "Alphabet Song" to the current craze for Baby Einstein products, music has been linked inextricably with the process of imparting knowledge and values to children from infancy onward.

Similarly, researchers have identified numerous ways in which music both produces and reflects social structures. Attali writes that "all music, any organization of sounds is ... a tool for the creation or consolidation of a community."¹⁶ Music serves less grandiose social purposes as well. Media research has identified scores of different "uses and gratifications" for people's interaction

with music, ranging from social lubrication to political message dissemination to personal mood management.¹⁷

Finally, music has become a commercial entity – a development we will examine at length in this paper. For now, suffice it to say that music is both a product in itself (when distributed via CDs, radio or downloads, for instance) and an essential component of our commercial system (in the form of advertising jingles, theme songs, etc.).

Fashion and Society

While music derives much of its power from its invisibility, fashion is one of the most visible markers we have in contemporary society to express affiliation, lifestyle choice and identity. Yet paradoxically, its utter ubiquity also affords it a status – similar to that of music – beyond questioning or criticism. We may make decisions about what clothes to buy, or what shoes to wear, or cattily dismiss someone's choice of apparel, but few of us ever stop to wonder why fashion exists, why it changes so rapidly or what those changes mean about our society.



A hat is never just a hat.



Consequently fashion, like music, enjoys a social power that far exceeds its apparent role in our lives. A hat is never just a hat, and we rarely wear one simply to guard against the cold. Arguably fashion is *by definition* the symbolic coding of social power through apparently innocuous means such as shape, texture or color. This is evident in the breadth and scope of its social functions. It has been used as an index of social rank in Victorian England, and as a gauge of social mobility in 20th century America. It has been used to express ideological conformity and allegiance, as in the case of the Mao Suit, and social unrest or

nonconformity, as in the case of the 1960s Flower Power movement. Throughout time, fashion has been used to communicate a dizzying array of social signifiers, such as class, gender, occupation, regional identity and religion.¹⁸ The brilliance of fashion is that, for the system to work, all people have to do is wake up in the morning and get dressed. Although fashion may seem innocuous and simple on an individual level, religions, governments and other large organizations long have seen the value of fashion as a form of social control, dictating uniforms and dress codes, and prescribing and proscribing everything from shoes to hats to underwear. In the Middle Ages in England, for example, livery – uniform clothing or the badge or cloak color of the lord's family – was heavily regulated. If a person took a nobleman's livery, he became his servant and owed him loyalty and other required services. A liveried servant also shared his nobleman's identity to a certain extent, granting him legal privileges he would not have enjoyed otherwise.

Similarly, during Elizabethan times, Sumptuary laws restricting lavish dress were passed in order to maintain the boundaries between the nobility and the rising bourgeoisie. Elizabethan lawmakers feared that "letting anyone wear just anything must lead inexorably to moral decline. If you couldn't tell a milkmaid from a countess at a glance, the very fabric of society might unravel."¹⁹

Fashion, like music, was redefined by the advent of modern capitalism. In contemporary society, fashion serves as a commercial entity, driven by the same forces of manufactured demand and planned obsolescence that characterizes everything from movies to breakfast cereals to presidential candidates. This commodification of fashion historically has interacted with America's social mobility and class competition, in effect producing an almost feverish obsession with fashion among many Americans, particularly women.

In the last few decades, as more traditional notions of social class have given way to increasing fragmentation based on cultural interest, consumers have had greater freedom to construct their social identities based on other parameters, such as participation in certain fashion-related lifestyles. Leather-clad dominatrix, polo-wearing Connecticut preppie and So-Cal surfer all are accessible identities to anyone with a credit card. To paraphrase *Hamlet's* Polonius, "the clothes

make the man." This change, from class identification to lifestyle articulation, suggests that fashion offers a greater level of individual agency today than in earlier eras. In contemporary culture, "consumption is conceptualized as a form of role-playing, as consumers seek to project conceptions of identity that are continually evolving."²⁰

Thus, both music and fashion act as social stealth agents, regulating and reflecting cultural roles and expectations while eluding scrutiny through their ubiquity. Music's stealth is aided by its literal invisibility, while fashion functions in spite of, and because of, its hypervisibility. In contemporary society, both music and fashion generally are regarded in primarily capitalistic terms. Songs and apparel are conceived of as products, and most people relate to them as consumers. However, both music and fashion originate within creative communities, which are built on a different kind of relationship: that between an artist and a work.

Musical Community and Commons

Most everyone can agree that, as Leonard B. Meyer puts it, "music has meaning and ... this meaning is somehow communicated to both participants and listeners."²¹ In other words, music, like all activities that come under the rubric of "art," is a fundamentally communicative and therefore social act.

As Meyer observes, music can be addressed to two kinds of audiences: "participants" and "listeners." Although this distinction may seem intuitively obvious, there is an immense gray area between these two extremes. Dancers, people clapping in time to the beat or musicians playing along with recordings all are difficult to categorize according to this dichotomy.

There are social, political and economic reasons for the existence of these two opposing roles. As Attali argues, the distinction of musicians as a separate category of individual originally served to strengthen and legitimize hierarchical social and political structure during Europe's feudal era.²² Later, of course, the musician-listener dichotomy would come to echo and reinforce the producer-consumer relationship that drives the capitalist system. As we will argue later in the paper, we

believe this distinction has ceased to be useful (if it ever was), and actively is preventing our society from allowing music to progress in the current era.

As a social phenomenon, music takes place within communities. From the collective worship of a church choir to the performance of the national anthem at a baseball game to a freestyle competition at a hip-hop club, music often serves to define and unite a group of people with one another and with other groups of people. Like fashion, it is an essential element in social identity, both a bonding ritual and a kind of aesthetic shorthand for categories ranging from age to ethnicity to sexual orientation.

But if music occurs within communities, it is also rooted within Community. Music is an ever evolving language, the lexicon and grammar of which constantly are being updated and negotiated by musicians around the world. This ongoing dialogue constitutes a community that transcends the boundaries of region, style and even period. Practicing musicians, for instance, tend to have knowledge of and expertise in a range of styles far broader than the ones they typically perform.²³ Thus, music can have meaning or power only in the context of other music. Put another way, music dwells in the differences between sounds, not in the sounds themselves.

If difference is the mark of music, then innovation is the engine that drives it. Difference can only exist by dint of innovation. Despite the resistance of some academics, critics and other purists to change and attempts to confine music within known parameters,²⁴ it is amply clear that one of the characteristics all music shares – from the traditional songs of Tuva²⁵ to the most synthetic products of the American pop market – is an ever changing nature, fueled by the mechanisms of reinvention, reinterpretation and recombination. As music sociologist Hugo de Jager writes, "The sum total of available elements in a society (which is called its 'cultural base') influences the number – and perhaps the kind – of innovations a composer living in that society can make."²⁶

Thus one may argue that innovation springs from collective access to the creative commons in music, as in other creative communities.²⁷ This means that all musicians may draw on a common

set of ideas and materials, and that each new composition or performance instantly joins that commons as soon as it becomes publicly available, by whatever means.

In some cases, this is a subtle and sweeping process that sets the rules for all who follow, as when J.S. Bach redefined Western harmony, or when Charlie Parker revolutionized improvisation in American music. In other instances, the process can be more visible and less widely influential, as when one musician reinterprets or samples another's work. Either way, every musician is engaged in an ongoing dialogue with all other musicians, past, present and future. This truth has been acknowledged frequently by musicians themselves. As jazz saxophonist John Coltrane once said, "It's a big reservoir, man, that we all dip out of."²⁸ Similarly, musicians ranging from Hungarian classical composer Zoltán Kodály to world-famous Pakistani Qawwali singer Nusrat Fateh Ali Khan to American jazz drummer Buddy Rich all have been quoted independently as saying: "Music belongs to everybody."²⁹

■ ■ ■
Every musician is engaged in an ongoing dialogue with all other musicians, past, present and future.
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Fashion Community and Commons

As with music, fashion encompasses a large gray area between the extremes of consumers and producers. This gray area, in which creative thinkers draw upon an ever growing and constantly circulating pool of common memes, is arguably the source of new ideas and trends within the fashion industry. Sociological literature on innovation describes it as an interactive process, dependent upon cumulative knowledge and the capacity for interchange between individuals, institutions and organizations. Academic research on fashion echoes this definition. As Vincent B. Leitch writes, "innovation in fashion is less a matter of creativity ex nihilo than of mutation and pastiche."³⁰ In fashion today,

innovation continues to thrive as its central practices – foresight, flexibility and cooperation – flourish in a fairly open and unfettered creative commons.

While fashion, like music, is a global community – fragmented, multifaceted and highly stratified – it also is tied to an industry that reaps the benefits of agglomeration economies, or the types of spatial concentration that create advantageous economic conditions, resulting in sustained or increased concentration.³¹ Thus, Paris has remained a central node in the global fashion economy, along with New York and Milan, and London, Tokyo and Los Angeles serve as a second tier. Designers tend to live and work in one or more of these cities, as do buyers and merchandisers, and design schools such as Parsons School of Design in New York and College of St. Martin's in London are located in these fashion centers. Of course, the actual production of most clothing, with the exception of haute couture or signature collections, is outsourced to the third world, mainly to Asian countries.

The career of most designers is a peripatetic one, moving between companies every few years. Fashion design, like entertainment, depends more and more on blockbusters. One bad collection can sink a design team. As Richard Wheeler, an accessories designer at Ann Taylor, commented, "Teams don't stay in place for more than a few years. If there is a bad season, it's always seen as the designer's fault. You fire the designer and hire a new team."³² This approach helps to create a community that is fairly fluid, with talent, ideas, individuals and aesthetics constantly recirculating within a relatively limited sphere.

Both music and fashion owe their existence to globalized creative communities, which thrive on the continual circulation of ideas and mining of the creative commons. Unlike technological or industrial development, in which new objects and ideas may be discovered (e.g., Neptune, penicillin) or invented (e.g., airplanes, zip codes), both music and fashion rely on innovation – the reshuffling of known elements into unique and surprising patterns – for creative advancement.

Thus, in order to innovate effectively, musicians and fashion designers *must* operate within environments that grant them access to ideas and the permission to use them in new and creative

ways. Neither community exists in a vacuum. Both function within highly structured industries that have emerged over the years to enable and exploit the fruits of creative endeavor. These industries have a constraining effect on the creative communities by continually pitting the financial, legal and structural imperatives of their own continuance against the needs of the artists themselves. Often, this means restricting access to the creative commons. In order to understand how market forces came to exert such control over music and fashion, it is useful to examine the histories of these industries.

Music Industry History

The history of the music industry is, arguably, one of increasing institutional control, narrowing access to the means of production and distribution, and a widening gap between music's social origins and its commercial role.

In early traditional societies that lacked the capacity to turn music into a static object, either through the printed score or through recording technologies, music was synonymous with live performance. This living music was, by and large, integrated into the fabric of life and shared among the community in a way people in our society scarcely can understand. As Attali writes of music in the Middle Ages, "The circulation of music was neither elitist nor monopolistic of creativity ... music in daily life was inseparable from lived time, in which it was active and not something to be watched."³³ Similarly, music historian Eileen Southern writes that "for every activity in the life of the individual or the community there was an appropriate music; it was an integral part of life from the hour of birth to beyond the grave" in West Africa during the slave trade years of the 17th through the 19th centuries.³⁴

Despite the vital role music played for members of traditional society, there was often what amounted to a class of professional musicians – composed of individuals assuming inherited positions – whose job was to serve not only as entertainers but also as traveling cultural historians, news distributors and political propagandists. The griots of West Africa, jongleurs and troubadours of Western Europe and bards of Ireland all fit this description. These professional musicians became more and more estranged from society, however, as centralized political and

religious powers arose and put a stop to their itinerancy. In Europe during the 16th century, Attali writes, "musicians became professionals bound to a single master." The feudal courts "banished the jongleurs, the voice of the people, and no longer listened to anything but scored music performed by salaried musicians."³⁵ This officially sanctioned professionalization was the beginning of a long process by which powerful interests gradually would remove music from the public sphere and control its distribution for religious purposes or political or financial gain.

The next major development along these lines was the creation of the printing press, and with it, the idea of copyright. This concept has been a double-edged sword for musicians and musical culture since its inception. Although it provided an opportunity for composers to achieve both cultural renown and financial compensation for their work, it also is evident that "in the beginning, the purpose of copyright was not to defend artists' rights but rather to serve as a tool of capitalism in its fight against feudalism."³⁶ In other words, the benefit accruing to musicians was incidental to the primary aim of establishing a financial system based on the control of creative expression. Media scholar Siva Vaidhyanathan reminds us this set-up is still very much in place since "copyright issues are now more about large corporations limiting access to and use of their products, and less about lonely songwriters snapping their pencil tips under the glare of bare bulbs."³⁷ As we will discuss, this function of copyright is especially problematic when it comes into conflict with the mechanism at the heart of any creative community, namely the free flow of ideas.

With the development of the printed score, music became a commodity that could be bartered for cash, akin to food or clothing. This commodification was reflected in performed music as well, with the development of concert halls and ticket sales. Music was removed from its function at the heart of everyday life and placed on a shelf, or behind a proscenium, where only those who were willing and able to pay could access it. Meanwhile, the music of the streets atrophied, as new musical traditions rooted in professional expertise and requiring the use of expensive equipment overwhelmed the old aesthetics.

With the advent of sound recording at the end of the 19th century and radio broadcasting at the beginning of the 20th century, the encapsulation of music within a capitalist framework was completed. A new class of organizations, such as record labels and radio networks, emerged to monopolize the channels of distribution between musical performers and their audiences, now two separate social categories. New and more elaborate conceptions of intellectual property emerged to protect the interests of these organizations, and new financial structures based on the economies of mass production emerged to support them.

These developments affected people's relationship to music. One effect of the emerging mass market music economy was that the cost of manufacturing products was eclipsed by the cost of manufacturing demand.³⁸ Today, the majority of expenditures by record labels are related to marketing and promotion, rather than production and distribution. Music sellers now spend billions of dollars each year attempting to persuade customers to purchase something they used to manufacture freely for themselves and for one another. Ironically, music becomes even more peripheral through this process, as songs essentially are sales jingles advertising the discs on which they are recorded. Similarly, live performances primarily have become showcases for recorded music, an inversion of their original relationship.³⁹

This situation reflects another, larger inversion at the center of musical culture today. If the music industry originally developed as an ancillary to musical community, today the community serves as an ancillary to the industry.

Fashion Industry History

For centuries, clothing design and production were under the purview of mostly anonymous dressmakers and seamstresses, and were not yet dictated by the proclamations of famous, individual designers. In the 18th and 19th centuries in the U.S. and Europe, clothes had not only symbolic influence but also economic currency. For many working-class families, clothing comprised a significant percentage of their material worth. In France, a suit purchased at the time of a young working-class man's marriage literally was expected to last a lifetime, and worn to

church, weddings and funerals. In England, clothing was somewhat limited to the working classes, and low income families formed clubs to save enough money to purchase clothes.⁴⁰

Until the 18th century, fashion was the province of the upper class, and production was done by hand. Advances in technology and industrial manufacturing in mid-18th century Europe engendered the rise of the textile and apparel industries. The industrial revolution also meant a rising standard of living for the working and middle classes, suddenly allowing them to buy much less expensive, mass-produced versions of Parisian haute couture.

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By the early 20th century in America, consumers were buying haute couture copies in the recently founded department stores and retail catalogs.
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At the end of the 19th century, with the advent of mass production, clothes became even cheaper and more accessible to the working classes. As a result, clothing and fashion first became democratized, and, as Diane Crane argues, this evolution was most evident in the United States because of its fluid social structure.⁴¹ By the early 20th century in America, consumers were buying haute couture copies in the recently founded department stores and retail catalogs. Some were sold as approved "reproductions" of European designs but the majority consisted of unauthorized knockoffs.

Despite France's dominance in the decorative arts (e.g., furniture, porcelain and silver), it was Charles Frederick Worth, an Englishman living in Paris in the mid-19th century, who first established the concept of the fashion designer as an autonomous artist. Worth founded his *maison couture*, the House of Worth, a name that simultaneously established the centrality of the designer to fashion and conferred brand-name status on the designer himself.

Succeeding Worth at the forefront of fashion design was Paul Poiret, who not only waged war against the corset but also established what is now thought of as haute couture. In the 20th century, many of today's most famous and most expensive brands were established, including Chanel, Balenciaga and Dior. As with Worth and Poiret, these brands almost were inseparable from the designers, who often expanded beyond haute couture into other artistic disciplines and entertainment endeavors. For example, Coco Chanel often dabbled in costume design. She designed the costumes for Jean Cocteau's 1924 operette-danse, *Le Train bleu*, and again for Gloria Swanson in the 1931 film *Tonight or Never*. She also collaborated with Jean Renoir in 1938, designing the costumes for *La Marseillaise*.

Thus, like music, fashion design is an aesthetic practice taking place within artistic communities. However, unlike most music, fashion must meet the added requirement of functionality.⁴²

Over the past century, fashion has undergone a transformation in everything but name. The history of the fashion industry in the U.S., in contrast to that of music, reflects a continuing resistance to oligopolistic control and strict intellectual property controls. While there is a widening gap between music's social origins and its commercial role, in fashion the two coexist in relative peace.

For many decades, haute couture dictated fashion trends as designers, on high, came down from the proverbial mountain twice a year to dictate to their upper-class customers, decreeing the height of their hemlines, the silhouette of their shoulders, and the appropriateness – or not – of pleats. Design houses usually were owned by their designers, clothes were still produced by craftspeople domestically and the fashion community was fairly small, centered in Paris. Thus, while styles changed from season to season, the fundamental structure of the business remained stable.

By the 1960s, haute couture's stranglehold on fashion was beginning to weaken. Hollywood films, television, rock music, youth culture, the women's movement, revolutionary politics all served to destabilize the top-down fashion paradigm, with trends generated by consumers

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The fashion industry consistently and intentionally has been denied the legal protections afforded to other design industries.
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(particularly the younger ones) rather than the large couture houses. The further democratization of fashion during this time could be seen in the establishment of numerous casual wear companies such as the Gap (1969), Ann Taylor (1954) and J. Crew (1983). Such changes in the fashion industry were precipitated by the underlying cultural, political and social shifts following World War II. American consumers, finally liberated from the shackles of the Great Depression and infused with a sense of self-sufficiency and national pride, adopted a far more active role. They no longer were content simply to accept the dictates of Paris, Milan and New York. Consumers were usurping the autonomy of producers, and the relationship between the two has been complex and tenuous ever since.

If these changes reflected social evolution, they also were enabled by legal developments. During the 1940s in the United States, several crucial legal decisions established the validity and value of knockoffs, sampling and reappropriation in the fashion industry in the name of healthy competition. For instance, in 1940 the *Millinery Creators' Guild v. FTC* decision determined that piracy in fashion triggers a downward force on pricing, making it a socially desirable form of competition. Similarly, a year later, the judge in *Cheney Bros. v. Doris Silk Corp.* rejected a request to prohibit design piracy on the grounds that such a prohibition would grant a de facto monopoly to designers, who formally are denied patent and copyright protection. Thus, the fashion industry consistently and intentionally has been denied the legal protections afforded to other design industries, in order to maintain a healthy creative ecosystem and the continuing availability of diverse, inexpensive products to the American consumer base.

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Fashion is a chaotic if highly stratified industry, and the directional flow of aesthetics is now top-down, bottom-up and side-to-side.

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The changes in the fashion industry during the mid-to-late 20th century contributed to a creative climate in which designers influence and draw influence from one another. Fashion is a chaotic if highly stratified industry, and the directional flow of aesthetics is now top-down, bottom-up and side-to-side. Ideas flow in every direction, so any attempt to pinpoint the creative forbears of any given garment (unless it is an *exact* copy) is an exercise in frustration and futility.

The advent of the modern media system in the 20th century also had an enormous impact on dictating fashion. Cultural icons such as musicians, actors, celebrities, royalty and political figures came to influence trends. Today, newspapers, magazines and Web sites report daily on what Beyoncé, Cameron Diaz and the Bush Twins are wearing. The role of media and entertainment as mediators between designers and consumers, in the form of the myriad magazines, TV shows and even films about fashion, cannot be understated. While the aesthetic inflection points between celebrity and fashion are beyond the scope of this article, suffice it to say that the constant flood of entertainment-focused media has turned celebrities (and their stylists) into the new authorities on fashion trends.

Thus, the music and fashion industries evolved quite differently, despite their similar origins. The music industry grew to exert ever more rigid and consolidated control over musical expression, to such a degree that the creative needs of musicians and music listeners have taken a back seat to the financial needs of the marketplace. The fashion industry, however, has evolved with a healthier balance between creative and economic demands, offering consumers and aspiring designers a greater degree of control and agency than they enjoyed a century ago. These

divergent paths have produced significantly different legal, economic and organizational structures, which we will now examine.

Legal Structures

The legal structure of both the music and fashion industries is contingent upon the notion of intellectual property, which Vaidhyathan refers to as "the murkiest and least understood aspect of American life and commerce."⁴³ By this, he means that intellectual property laws are complex, difficult to police and enforce, always changing, and often out of step with the latest trends in technology and culture.



Copyrights protect the expression of an idea, rather than the idea itself.



Despite their nebulous quality, one thing is clear and consistent about the collection of rights, privileges and practices commonly grouped together under the heading of intellectual property law: They all were founded on the premise that democratic society and creative cultures thrive on the free flow of ideas, and that remunerating people for sharing their ideas is the best way to keep them flowing. This notion can be found in the origins of traditional forms of intellectual property, such as copyrights, patents and trademarks, as well as newer alternative models such as GNU and creative commons licenses.

Copyrights give "authors" the exclusive power to control a "work" fixed in a tangible medium. The tangibility is important: Copyrights protect the expression of an idea, rather than the idea itself. In practice, this generally means a person or company possesses the rights to copy, perform or sell a book, song, software program or some other creative work. American copyright law is based on a constitutional mandate that Congress give creators an incentive to create, for the good of society. Consequently, copyrights always have had built-in limitations, such as a

fixed expiration term and specified "fair use" exclusions for journalists, educators, critics and other contributors to the public sphere. However, such restrictions have been scaled down significantly over the years, as media and software companies have lobbied successfully Congress to push back expiration terms,⁴⁴ limit fair use in new legislation, and include a growing range of categories as "works" that can be protected under copyright.⁴⁵

Copyright traditionally has been the principal form of intellectual property law applied in the American music industry. This application has broadened considerably over the years. Printed material, such as scores, was covered first in 1790. Public performances were not covered until 1889. Mechanical reproduction, a right currently applied to songs on CDs, first was introduced in 1909 to cover piano rolls. In 1972, nearly a century after the invention of recorded sound, a new kind of copyright was developed to describe the performances (rather than the compositions) captured on records. Television broadcasts and jukebox playback first were added in 1976.⁴⁶ Today, all of these copyrights and more commonly are used in the music industry, creating a dense web of overlapping and interweaving protections that constantly is tested and renegotiated through legislation, litigation and contractual bickering.

As this brief overview demonstrates, copyright changes historically have lagged significantly behind technological innovations. As the pace of technological change continues to accelerate, it is becoming more difficult to apply existing copyright laws in a meaningful way. This is a problem we will address further in the next section of the paper. In the fashion industry, copyright typically has been denied to apparel design, due to the idea that apparel consists of solely useful articles. Useful articles, under the Copyright Act of 1976, have only limited protection – there must be elements of a "pictorial, graphic, or sculptural work that may be identified separately and can exist independently of the utilitarian aspects of the article."⁴⁷ Little has changed since the act was passed, despite the 1977 claim by former Register of Copyrights Barbara Ringer that design protection was "one of the most significant and pressing items of unfinished business" of copyright revision.⁴⁸

Unlike in other industries, which are increasingly oligopolistic, the denial of copyright protection in fashion effectively has prevented monopolistic or oligopolistic control. Legislators and judges consistently have concluded that the public interest would be served best by denying copyright protection to designers, in effect promoting the free exchange of fashion ideas among a broad community of participants.

Like copyrights, patents were developed at the behest of Congress in order to spur creativity by granting a degree of control and remuneration to creators. Patents, known as the "law of invention," generally apply to ideas or processes. Unlike copyrights, patents cover both an idea and its execution, and their terms are not extended to a functional infinity; currently patent terms last for 20 years.⁴⁹ The three standards generally required to obtain a patent are usefulness, novelty and nonobviousness. As a consequence of these features, patents have found little use in the music industry outside of recording technologies and business practices.

Patents play a limited role in the fashion business, as well. Besides the three general patent standards, fashion law has added supplemental criteria. According to a historic court ruling on the subject, "the conception of the design must require some exceptional talent beyond the range of the ordinary designer familiar with the prior art."⁵⁰ In other words, innovation isn't enough – invention *ex nihilo* is the bottom line.

Apparel designs consistently have failed to meet these requirements, for obvious reasons. However, there are other good reasons for the paucity of patents in fashion. It commonly is believed that even if patent law were modified to accommodate the unique needs of the fashion industry, the lengthy patent approval process would render its protection useless. Patent protection is most useful for articles and inventions that are used repeatedly and have a long shelf life. Fashion, with its abbreviated time spans and ephemeral nature, would have to rely on protection retroactively. The cycles of production and distribution, accelerated in the fashion industry, make litigation over IP infringement ineffectual and unwieldy. Thus, there has not been an aggressive push within the U.S. by apparel designers or manufacturers for more rigorous patent protection.⁵¹

Trademarks, which protect the commercial reputation or "goodwill" of a company or creator, play less of an immediate role in ensuring innovation and market diversity. Yet an argument can be made that it is easier for companies to market and sell a unique product with a unique brand attached to it. Trademarks, which are protected for infinitely renewable 10-year terms, generally are used within the music industry only to protect label names and unique artist names. However, they play a far more central role in the fashion industry.

According to current trademark law, marks or brands that are descriptive, such as a designer's name, must gain a "secondary meaning" in order to qualify for registration. Thus, designers who intend to trademark their name, such as Calvin Klein or Donna Karan, must prove they've established a reputation in the marketplace – one in which their name has achieved a separate, qualitative significance. Obviously, a great deal of money must be spent to establish a brand that is distinct and recognizable, so it is no surprise that companies guard their trademarks aggressively.

Trademark law, while protecting designers from the unauthorized use of their registered marks (usually their labels), does not extend to the actual design of a garment itself. Thus, it is legal for a manufacturer to make an exact reproduction of another company's apparel design "without suffering any repercussions under trademark law."⁵² To combat this standard, designers have sought protection under claims of unfair competition. If a designer can demonstrate the sale of a reproduction is likely to confuse the public, she may be afforded greater protection. This point is especially salient for design houses that consistently use their trademarks in their fabric patterns, such as Chanel, Gucci and Louis Vuitton, and therefore have a better chance of proving an unfair competition claim. However, the majority of fashion companies would not benefit from such litigation, given the seasonal and ephemeral nature of fashion, which makes pursuing such claims burdensome.

As technology has advanced in recent years – producing new creative products such as computer software and variations on older creative products such as recorded music and video – patents, trademarks and copyrights no longer represent a flexible and robust enough framework for

control over intellectual property. The all-or-nothing approach embodied by traditional intellectual property law, which assumes a strict dichotomy between producers and consumers, lacks the capacity to cope with the vast and expanding gray area between the two roles.

Consequently, a variety of new models have been put forward to strike a better balance between the needs of creators, the public and the industries that connect them. For example, the GNU project was launched in 1984 in order to encourage information sharing and innovation among the software community.⁵³ Participating software developers use a "copyleft" instead of a copyright to designate their work. In the words of GNU founder, Richard Stallman, the idea of copyleft is:

[W]e give everyone permission to run the program, copy the program, modify the program, and distribute modified versions – but not permission to add restrictions of their own. Thus, the crucial freedoms that define "free software" are guaranteed to everyone who has a copy; they become inalienable rights.⁵⁴

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Creative Commons, launched in 2001, aims to apply the same kinds of freedoms to a broader range of creative works.⁵⁵ The organization offers creators the ability to assign four conditions to their works that offer more freedom than traditional copyright but more control than a work ceded to the public domain. An "attribution" condition allows others to copy, distribute or perform a work as long as the original creator is given credit. A "noncommercial" condition allows others to copy, distribute or perform a work for free. Under this condition, commercial users need to pay a negotiated fee. A "no derivative works" condition allows others to copy, distribute or perform a work, as long as it appears (or sounds) exactly like the original. Under this condition,

derivative works like samples or collages can be produced only with the original creator's permission. A "share alike" condition allows others to distribute their own derivative works only under a license identical to the one that governs the original work. Millions of works have been released under Creative Commons licenses to date, including works by thousands of musicians, including the Beastie Boys, the Talking Heads and Gilberto Gil.

Organizational and Economic Structures

Like its legal structure, the music industry's organizational and economic structures are a somewhat hodgepodge result of historical changes in technology, power struggles and market forces. The industry can be seen as an ongoing response to a single challenge: How can music be channeled from performers to consumers in a profitable way? The financial component of this challenge traditionally has conflicted with, and generally trumped, the creative component. In other words, the music business has been most focused on maximizing revenues, rather than maximizing exposure for musicians, for example, or increasing access to music for consumers.

Despite the music industry's emphasis on profit at the expense of musical community, musicians typically do not receive much of the money spent by consumers on their music. According to entertainment law attorney and author Chris Taylor,⁵⁶ the breakdown of revenue distribution from a typical CD sold at \$19.95 is as follows:

- Record label: \$6.17
- Retailer: \$5.95
- Manufacturing: \$1.00
- Distribution: \$4.39⁵⁷
- Producer(s): \$0.44
- Songwriter(s): \$0.69
- Artist: \$1.31

Thus, the creative progenitors of a record – the performing artists and composers – are entitled to only a combined 10 percent of the total money spent on their music by consumers.

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Don't record labels need musicians at least as much as musicians need them?
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While these numbers are an accurate average, they sadly overestimate the true revenue potential for most recording artists under the major label system. This is because a few artists sell extremely well, while most others sell extremely poorly. Of the 35,000 albums released in 2002 by the recording industry, fewer than 5,000 sold over 1,000 units.⁵⁸ According to the Recording Industry Association of America (RIAA) fewer than 10 percent of albums released ever recoup record label expenditures,⁵⁹ meaning that 90 percent of recording artists never see any royalty checks beyond their initial advances. Many recording artists are debited tens of thousands of dollars for each month their albums are completed after their contractual deadlines. Also, under certain circumstances, some major labels require their artists to repay recording costs if their projects are canceled.⁶⁰ Stacking the cards even further against musicians is the fact that many expenditures – from the producers' royalties to promotional expenses to the cost of creating a music video – are deducted routinely from the artists' royalties, rather than from the record labels' piece of the pie.⁶¹

How can the power balance between musicians and the music industry be so one-sided? Don't record labels need musicians at least as much as musicians need them? In a broad sense, the answer is yes. However, the balance of power is tipped by the vast number of musicians hoping to make a living through their music, and the relatively small number of firms providing opportunities for them to do so.

Every major conduit between musicians and music listeners in America currently is dominated by an oligopoly. The recording industry, radio, music television, concert venues and music retail each are controlled by a handful of companies commanding the lion's share of audience and revenues. This trend only is accelerating with time. While six "major"

record labels accounted for roughly 85 percent of American record sales a decade ago, today there are only four.⁶² Radio giant Clear Channel, taking advantage of a 1996 law that exponentially multiplied the maximum number of radio stations one company could run, currently owns approximately 1,200 stations throughout the United States, including stations in 89 of the top 100 markets.⁶³ General merchandiser Wal-Mart, which operates over 3,000 stores in the U.S., is responsible for selling approximately one-fifth of all CDs sold in this country each year. The massive consolidation in the music industry is compounded by a degree of vertical integration. All of the major record labels are part of larger corporate organizations that own music publishers, CD manufacturing plants, electronics manufacturers, distribution companies and other vital elements of the music supply chain. In addition to its radio-station holdings, Clear Channel owns SFX, the largest chain of live event venues in the country. Viacom, another media conglomerate, owns Infinity Radio (with 185 stations) as well as MTV, VH1 and BET – creating a near monopoly on cable television music programming. With such entrenched economic and organizational structures commanding a firm grip on the means of production and distribution, it is easy to see why the needs of the music community come as a distant second to the needs of the industry.

The global fashion industry accounts for \$495 billion in the international trade of textiles and apparel.⁶⁴ Like the music industry, it has endured some consolidation as competitive pressures have forced manufacturers and retailers to seek economies of scale. This is especially true in the case of high-end, luxury manufacturers such as LVMH, Gucci and Richemonde, all of which have experienced rapid consolidation in the past decade. The fashion retail sector also has seen a great deal of recent merger and acquisition activity as companies aim to diversify their portfolios. As a result there are some unlikely pairings, such as the 2004 acquisition of high-end retailer Barneys by mass consumer brand Jones Apparel for \$400 million. Manufacturers also are starting to integrate vertically, citing better profit margins. Thus, apparel brands as diverse as Elie Tahari, Juicy Couture and Oscar de la Renta have started to experiment with retailing.⁶⁵

However, in contrast to the music industry and despite these developments, the apparel industry still is fairly distributed and diverse, and remains horizontally structured, with the continued separate manufacture of textiles and the manufacture of clothing. There is no such thing as a

"typical" fashion enterprise – the sector consists of a broad spectrum of companies in apparel, textile and accessories ranging from the high-end couture houses down to mass-produced, low-priced commodity goods.⁶⁶

The supply chain in the fashion industry also is somewhat complicated, with multiple layers and organizational inefficiencies. In the transformation from design and product development to raw material to fabric to the apparel manufacturer to wholesale distributors and finally to retailers, there are multiple points for conflict and redundancy, often causing problems for manufacturers and retailers, such as the overstocking and understocking of items. As a result, the response to market needs traditionally has been somewhat slow.

There is not a single standard supply chain for the fashion industry. Manufacturing and distribution methods vary depending on the type of product. For example, haute couture designers such as Chanel or Yves Saint Laurent choose the fabric and design of their collections, which then are produced in relatively small quantities in their own workshops. Distribution also is limited and controlled, usually through the designer's own retail outlets or small, independent fashion boutiques.

In contrast, for more common mass brands, as well as the bridge lines⁶⁷ from designers, the design and manufacture processes are more industrial and prices tend to be much lower. Distribution takes place through high-end specialty chains and some department stores. Basic commodity apparel tends to be designed, produced and marketed for a mass audience through distributors such as general retail chains like Wal-Mart, lower-end department stores like JC Penney and specialty chains like the Gap.

In an effort to be more competitive and responsive to consumer desires, vertically integrated specialty chains such as H&M and Zara recently have emerged. The concept – sometimes called "fast fashion" (an allusion to both the standardized supply chain and a degree of disposability akin to fast food) – was developed in Europe to boost consumption while hedging against uncertain consumer demand. The goal is to produce short-cycle fashion products as quickly as

possible in relatively small quantities. The products are often trendy and typically aimed at teenagers and young women, although this demographic may change with the recent success of Karl Lagerfeld's collection for H&M.

The critical component of fast fashion is the ability to identify and track apparel trends quickly and marry this knowledge to the supply chain, producing new products in an abbreviated time frame. Zara's headquarters in Spain house its designers, factories and distribution center all in one space. Thus the company is able to respond to consumer demand immediately, turning over its inventory in a matter of weeks rather than months. As a result, the Zara shopper drops into the store an average of 17 times a year, resulting in added sales.⁶⁸ Digital technologies, just-in-time manufacturing techniques and vertical integration of the supply chain all are vital to the success of fast fashion.

In summary, despite the fundamental similarities between the creative communities at the heart of music and fashion, the two industries have evolved very differently, producing radically divergent legal, financial and organizational structures. Music has become a highly speculative industry, depending upon a fraction of its products to generate the vast majority of its revenues and all of its profit margin. Consequently, it has had to reduce risk through massive corporate consolidation, limited product diversity and a broadening array of intellectual property controls. In contrast, fashion, with a lower cost of doing business and a shorter lag time between conception and execution than music,⁶⁹ benefits from the diversity of products engendered by a decentralized industry. Additionally, the industry largely eschews the costly and cumbersome apparatus of intellectual property litigation in favor of a reputation-based system to ensure "fair play."⁷⁰

Yet many of the most ingrained aspects of the music and fashion industries exist as a result of the technological and economic realities that shaped them. As we have mentioned, one of the most-used copyrights in music still is referred to as a "mechanical," although the mechanical piano, for which it was named, waned in popularity nearly a century ago. With continued technological and social advancement, will these industries have an opportunity, or even a mandate, to undergo

fundamental structural changes? In order to answer this question, we must examine the ways in which forces like digital technology and globalization are influencing music and fashion today.

Music in the Digital Age

Digital technologies have had a monumental impact on music culture and the music industry. Indeed, the advances made over the last 10 years are perhaps the most revolutionary of any since the advent of recorded sound more than a century ago. The primary change is the fact that, for the first time in history, music can be produced, distributed and consumed all on the same platform – the personal computer. Within the digital universe comprised of PCs, the Internet, mobile phones, MP3 players, CD burners and other related technologies, music has become almost completely free and unfettered, a species of pure information that can be audited, edited and redistributed with the click of a button. This fact challenges nearly all of the assumptions previously held about music as a creative community, a commercial product or a system of institutions.

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The digital music revolution has had a profound effect on the way music as an art form is conceived and created. All musical expression is comprised of a unique sequence of fundamental sound elements, much as a sentence is a unique sequence of words. Typically, the sound elements define the limits of musical expression, while the sequence is the locus of innovation. For the last four hundred years, nearly all music in Western society has been based on a set of elements called the tempered chromatic scale – the notes described by the keys on a piano. Until recent decades, every song in every style – from Bach's fugues to Miles Davis' extended improvisations – relied upon new reconfigurations of this now-ancient musical lexicon.

Today, the musical lexicon has broadened far beyond the limits of the piano keyboard to encompass the universe of recorded sound. Audio samples have augmented and replaced musical notes as the new building blocks for composition and improvisation, astoundingly expanding music's aesthetic horizons. To be sure, this advancement preceded digital technology by a few decades. Academic musicians like John Cage and Alvin Lucier, as well as pioneering dub reggae and hip-hop producers such as Lee "Scratch" Perry, DJ Kool Herc and Grandmaster Flash, used analog recording technology to paint sound pictures with samples. However, until the advent of digital music, these were fairly arcane practices, requiring a degree of interest and expertise beyond the scope of more traditional instruments.

Today the tools of audio sequencing and remixing are as accessible as the keys of a piano or the strings of a guitar. With minimal effort, any PC owner can use free and intuitive software to make new music entirely from pieces of other music and sound. This fact has changed the shape and practices of the creative community. As we argued earlier, there always has been a significant gray area between the opposing roles of producer and consumer. However, the limitations of pre-digital music technology reinforced this distinction, defining producers as those with the instruments and recording studios, and consumers as those with discs in their hands and electronic devices with which to listen to them. The digital age has brought about a collision of production and consumption technologies and the liberation of music from physical products. These developments have in turn enabled a consequent collision between the roles of producer and consumer, and the liberation of the musical community from the strictures of these roles.

We don't mean to suggest that digital technologies have returned us magically to a pre-feudal communitarian state in which everyone was a musician. Clearly this is not the case. On the whole, the changes have been more subtle. For many music fans, digital technology simply means greater access to a larger library of music, and more control over how to listen to it. However, the power of digital technologies enables "creative consumption," in which consumers apply aesthetic skill and discretion to such activities as constructing the perfect playlist or recommending music to other fans.

For many musicians, digital technology paves the way to improve the sound of their traditional instruments in the recording studio and to lower the cost of the recording process. And for everyone involved in music, the bottom line is the same – digital technology allows more people to have more access to more music, and more power over it. In other words, it has created a vaster, exponentially richer music commons.

These changes also represent a challenge to the traditional ways in which the music industry has conducted business. When recorded music was attached to physical objects like CDs and cassettes, it possessed two qualities that economists refer to as rivalry (meaning only one person or group can use one resource at a time) and excludability (meaning that a person or group can be prevented from accessing a resource). According to standard economic theory, resources that are both rival and excludable fall under the category of "private goods," best treated as property and exploited through the market system. However, when music was decoupled from physical delivery mechanisms, it ceased to be either rival or excludable, recategorizing it as a "public good." Public goods notoriously are difficult to profit from via traditional market practices; rather, they tend to be managed by governmental or non-profit entities.^{lxxi}

It is easy to understand how the traditional music economy suddenly has been rendered obsolete. The best strategy the music industry can follow if it hopes to continue profiting from the distribution of music somehow is to tie its newly non-rival, non-excludable goods to other rival and excludable goods or services. This is no doubt the rationale behind the music industry's well-advised recent support for new distribution models like online music subscriptions and its increased enthusiasm for licensing popular songs to video games and other entertainment product categories.^{lxxii}

The industry's loss of physical control over the distribution and use of music has had other significant effects as well. One major development is a renewed focus on intellectual property as a blunt but powerful instrument of legal control, which has reached its most visible – and possibly the most absurd – in the prosecution of music consumers who share files over the Internet. At the time of this writing, nearly 7,000 individuals have been targeted by the Recording Industry

Association of America (RIAA) for participating in peer-to-peer communities,^{lxxiii} one of the most prominent manifestations of the new digital music commons.

Ironically, as intellectual property has played an increasingly central role in the music industry's control apparatus, copyright law also has become increasingly difficult to apply to music. Remember that copyright only protects the expression of ideas, rather than the ideas themselves. As Vaidhyathan argues, the digitization and networking of music undermines this central "idea/expression dichotomy,"^{lxxiv} raising questions about what protections legitimately can be enforced.

There also has been an erosion of the concept of a copyrighted "work." Copyright originally was conceived as a way to protect entire compositions or scores. Even with the advent of the sound recording copyright in 1972, the law commonly was applied to complete songs or albums. With the rise of sampling as a compositional technique in recent decades, the American legal system has struggled to maintain a clear sense of where public goods end and distinctive property begins.

Two recent court decisions demonstrate the lack of resolution of these issues. In September 2004, a federal appeals court judge ruled that a song by N.W.A.,^{lxxv} which included an unlicensed two-second sample of Funkadelic's "Get Off Your Ass and Jam," violated the sound recording copyright. This ruling overturned a lower court decision that had argued the sample was so short it didn't constitute theft.^{lxxvi} However, in November 2004, another federal appeals court judge addressing a different suit supported the argument that a six-second sample of a James Newton song by the Beastie Boys was "not sufficient to sustain a claim for infringement" of a composition copyright.^{lxxvii}

How can it be that the two-second sample violates copyright while the six-second sample does not? Theoretically, the distinction exists because one case is based on the sound recording copyright, while the other is based on the composition copyright. But does it make any sense for a fragment of a recording to constitute infringement, while a fragment of a composition does not? This inconsistency perfectly demonstrates the difficulty (perhaps the impossibility) of applying laws

based on an analog universe to the new digital reality. As scholars such as Vaidhyanathan and Lawrence Lessig have argued, this ambiguity actually may work to the benefit of the music industry and to the detriment of musical culture. The threat to traditional business practices provides a convenient rationale for corporations that thrive on intellectual property protections to push for ever tighter controls over the use of creative material – essentially shrinking the size and scope of the commons.

Fashion in the Digital Age

If digital technology defines the current era for music, globalization defines it for fashion. The growing web of communications networks bringing the world closer together radically has redefined the ways in which fashion designers interact, trends spread throughout the world and the fashion industry organizes itself.

The impact of digital technologies has been far less earth-shattering on the fashion industry than on the music industry, as digital advancements drastically have eroded the music's economic and organization structures. Digital technologies have made the distribution of fashion design images instantaneous, and broadened their reach. They also have helped accelerate the production and distribution cycles for lower-priced, trendy, commodity goods, as evidenced in the discussion of H&M and Zara. However, unlike music, which now is divorced from any physical product, apparel and accessories have not entered fully into the virtual realm (thankfully, we've heeded our childhood morality tales of emperors and their clothes). Certainly, some avant-garde designers and computer engineers are attempting to fuse apparel and consumer technology, but these experiments still are relegated to the margins, more at home in museums and universities than on the street.

Thus, while music has been transformed from a tangible product into a digital one, fashion remains a utilitarian, physical good. Technology may accelerate fashion's business processes, produce new ways of cutting patterns or develop a more breathable alternative to polyester, but it doesn't divorce the expression of the design from the design itself. Fashion is tactile and physical, necessarily rival and excludable, an indelible fact of its creation that separates it from music.

Technology also creates a living archive of design, ideas and styles in the microscopic chronicling of the fashion industry by the media. It creates the opportunity for broader "sampling," as seen in the rapid production of Academy Awards dress knockoffs, but it is also a valuable tool for the social regulation of "theft," as described in the case of Nicolas Ghesquière at Balenciaga. As one journalist notes:

Designers have always looked to the past for inspiration; most famously, Christian Dior based his landmark New Look collection on memories of his mother, but in those days the past was not so minutely archived by the media and he could pass the belle époque off as his own.^{lxxviii}

The major change caused by digital technologies in fashion today is its globalization, which has drastically increased the already high tempo of the fashion world – accelerating production and consumption, and shortening the shelf life of trends. However, digital technologies also have a paradoxically inverse effect – sustaining the long-term shelf life of products and designs that may have disappeared much more quickly into fashion's fickle ether. Also thanks to new technologies and communications networks, the traditional dichotomy between consumer and producer, already fragile in America since the 1960s, has deteriorated even further. Fashion consumers, like music fans, have become much more adept at creative consumption, mixing high and low to create new street trends. Fashion consumers today think nothing of combining a Chanel jacket with Levi's jeans, Converse sneakers and a Hermès Birkin bag. Similarly, music fans increasingly are likely to combine several songs and albums into larger playlists, often played in "shuffle" mode,^{lxxix} creating a controlled chaos in which R&B, opera and Celtic jigs may rub shoulders, producing unexpected and often aesthetically gratifying results.

Clothing at one time served the exclusive purpose of shielding people from the elements – keeping us warm in colder climates, protecting us from the sun in tropical climates. With our current control over our physical environment – thanks to air-conditioning, indoor heating and commuting – our exposure to the elements is greatly reduced. As a result, traditional designs originally produced to protect their wearers, like those with socially denotative functions from

other cultures, can be appropriated in new reconfigurations, detached from their original meaning or intent. Globalization, with its ever expanding circulation of images, defines this practice. Suddenly, images of apparel, both traditional and new, high end and low, are available effortlessly and instantaneously. The fashion industry and community borrow freely from this global circulation of images, remixing and reconfiguring them in a persistent and expanding commons.

Conclusion

Music and fashion, two creative communities that share much in common, have evolved over time to produce drastically different industries. Both communities thrive on innovation and change, spurred by the mechanisms of reconfiguration, reinterpretation and reappropriation. Both are sustained by an ever growing commons, a living archive of all that has come before. Yet music suffers from a fundamental schism separating many of the needs of the creative community and consumers from the needs of the industry that enables and exploits it. Fashion, by contrast, has succeeded in brokering a working balance between aesthetic and financial mandates.

The causes for music's malaise can be traced to the industry's economic foundations and are compounded by the changes wrought through new digital technologies. An exceedingly high cost of doing business, low success rate and disproportionate balance between the cost of producing demand and supply all have conspired to make the industry risk-averse.¹⁰⁰⁰ The industry currently operates through concentrated ownership structures, vertically integrated business organizations and fiercely protective attitudes toward intellectual property rights. In an age when new technologies have lowered the costs of production and distribution while decoupling musical expression from any physical media, the industry must re-evaluate its most deeply held practices and assumptions or face almost certain dissolution.

Fashion provides a tantalizing example of what the music industry could be under different circumstances. In the absence of thick copyright protection, the dividing line between influence and theft is maintained through a social apparatus of shame and an aesthetic tradition of transparency. Meanwhile, with historically lower barriers to entry, the fashion industry has proven resistant thus far to corporate consolidation on the scale of the music industry.

Given its present imperative to reassess its core principles, what, if anything, can music learn from fashion? The answers have ramifications far beyond the scope of the music industry, if, as some suggest, music represents the proverbial canary in the coalmine for similar industries ranging from film to television to computer software.^{lxxxii}

During the 1990s, many hoped the efficiencies of digital distribution would provide an opportunity for new and innovative companies to pose a significant challenge to the established record labels. However, these dreams were dashed by the growing expense of marketing and promotion in the face of new communications channels and the resolute inflexibility of a music industry wary of change. In the subsequent years, the only large-scale solution the music industry has sought for its social, economic and organization problems has been the increasingly stringent interpretation and enforcement of intellectual property rights.

Clearly, this policy cannot continue without dire consequences. At some point, the aggressive controls the music industry seeks over the behaviors of both musicians and listeners will stifle aesthetic innovation (or force it entirely underground), and alienate its own consumer base. In order to avert such a catastrophic turn of events, the music industry would do well to heed some of the fashion industry's basic creative, organizational and legal tenets. Specifically, the industry could adopt thinner copyright protections, vertically disintegrate, and work with the creative community to inculcate a culture of transparency and accountability. In an environment tailored to innovation and change, rather than enforced inertia, perhaps products and services could emerge that would appeal to consumers despite the non-rival, non-excludable nature of digital music.

To be sure, the music industry already has made some intelligent moves in this direction. Labels and publishers recently have increased their efforts to license recorded music to movies, television, video games and other secondary media channels, effectively shifting a larger portion of their revenues from a business-to-consumer model to a more reliable business-to-business model. Additionally, after years of institutional resistance to new consumer-oriented business models, the major labels recently have exhibited enthusiasm for digital music services, following the

unexpected consumer success of Apple's iTunes Music Store. While it is a move in the right direction, this was a reactive, rather than a proactive change. A major structural reorganization and consumer education marketing campaign would have to be undertaken before digital music subscriptions and other service-based alternatives to traditional music products can achieve dominance in this industry.

Unfortunately, the music industry is unlikely to undergo such major structural change until it is forced. Vested interests tend to entrench themselves even as the ground they stand on turns to quicksand. A more likely future for the music industry is increasing antagonism between sellers and buyers, and increasing homogeneity in the music market, until the entire system breaks under the strain. If and when this finally comes to pass, the musical community may have an unprecedented opportunity to start over from scratch, building a new industry on the ashes of the old. Fashion provides a promising, if imperfect, blueprint for the job.

¹ Much of the information on DJ Z-Trip's relationship with Hollywood Records was relayed personally by current *Billboard* journalist Bill Werde, who at the time of publication was in the process of reporting and writing about the story for *Rolling Stone*.

² Mash-up artist Osymyso, for instance, has produced a popular track called "Intro-inspection" that incorporates samples from 101 separate songs.

³ Personal communication with mash-up artist, October 2003. He asked to be quoted anonymously.

⁴ Jacques Attali, *Noise: The Political Economy of Music*, translated by Brian Massumi, original work published 1977 (Minneapolis: University of Minnesota Press, 1985), 141.

⁵ WM Ferguson, "The Mainstream Mash-Up," *New York Times*, Dec. 12, 2004.

⁶ Bill Werde. Personal email communication, December 2004.

⁷ Werde, "DJ Z-Trip: Switching Gears," review of *Shifting Gears* album by DJ Z-Trip, *RollingStone.com*, April 21, 2005. [www.rollingstone.com/reviews/album/_id/7237718/djztrip]

⁸ Siva Vaidhyanathan, *Copyrights and Copywrongs* (New York: New York University Press, 2001). According to the author, "thick" copyright law prizes protection over accessibility with features such as long durations, stringent prohibitions and harsh penalties. "Thin" law, by contrast, takes the opposite tack, emphasizing accessibility over protection.

⁹ Inez Brooks-Myers. Personal telephone communication, November 2004.

¹⁰ Cathy Horyn, "Is Copying Really a Part of the Creative Process?" *New York Times*, April 9, 2002.

¹¹ Cameron Silver. Personal interview, December 2004.

¹² Fashion sales figures for 2004. *Apparel Magazine*, 2004. Retrieved online Jan. 12, 2005.

Subscription-only link; "The Recording Industry of America's 2003 yearend statistics." RIAA Website, 2004. Retrieved online Jan. 12, 2005.

www.riaa.com/news/newsletter/pdf/2003yearEnd.pdf

¹³ Anthony McCann, "Beyond the Term 'Music'," presented at the annual conference of the American Anthropological Association, New Orleans, November 2004; Walter J. Ong, *Orality and Literacy* (New York: Routledge, 2002).

¹⁴ Samuel Butler, *The Odyssey of Homer* (New York: Classics Club by W. J. Black, 1944).

¹⁵ Ian Cross, "Music, Cognition, Culture and Evolution," *Annals of the New York Academy of Sciences*, 930, 2001: 28-42; Yim-Chi Ho, Mei-Chun Cheung and Agnes S. Chan. "Music Training Improves Verbal But not Visual Memory: Cross-Sectional and Longitudinal Explorations in Children." 17(3) *Neuropsychology*, 2003, 439-450.

¹⁶ Attali, 6.

¹⁷ Keith Roe, "Swedish Youth and Music: Listening Patterns and Motivations," 12(3)

Communication

Research, 1985, 353-362; Peter. G. Christenson and Donald F. Roberts, *It's Not Only Rock & Roll: Popular Music in the Lives of Adolescents* (Cresskill, NJ: Hampton Press, 1998).

¹⁸ Diana Crane, *Fashion and Its Social Agendas* (Chicago: University of Chicago Press, 2000).

¹⁹ Maggie Secara, *Elizabethan Sumptuary Statutes*, 2001. Retrieved online Nov. 11, 2004.

[\[www.renaissance.dm.net/sumptuary\]](http://www.renaissance.dm.net/sumptuary)

²⁰ Crane, 11.

²¹ Leonard B. Meyer, *Emotion and Meaning in Music* (Chicago: University of Chicago Press, 1961),

1.

²² Attali.

²³ Lucy Green, *How Popular Musicians Learn* (Burlington, VT: Ashgate, 2002).

²⁴ For a thorough and hilarious review of reactionary screeds in the world of European classical music, see Nicolas Slonimsky, *Lexicon of Musical Invective*, 2nd ed. (New York: Coleman-Ross, 1965).

²⁵ CD liner notes for Tuvan vocal group Huun-Huur-Tu. [\[www.huunhuurtu.com/CDliners.html\]](http://www.huunhuurtu.com/CDliners.html)

²⁶ Hugo de Jager, "Some Sociological Remarks on Innovation in Music," 3(2) *International Review of the Aesthetics and Sociology of Music*, 1972, 252-258.

²⁷ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (New York: Penguin, 2004); David Bollier, *Silent Theft: The Private Plunder of Our Common Wealth* (New York: Routledge, 2002).

²⁸ Thomas Owens, *Bebop: The Music and Its Players* (New York: Oxford University Press, 1995).

²⁹ Chris Dobrian, *Music and Language*, University of California, Irvine, Dept. of Music Web site, 1992. Retrieved online Nov. 15, 2004. [\[music.arts.uci.edu/dobrian/CD.music.lang.htm\]](http://music.arts.uci.edu/dobrian/CD.music.lang.htm); Tony Brown and Les Tomkins, "Summit Meeting – Parts 1 and 2," transcript of an interview with Buddy Rich, Maynard Ferguson and Jack Parnell, conducted in London, England, in 1970, *JazzProfessional.com*, undated. Retrieved online Nov. 15, 2004.

[\[www.jazzprofessional.com/Summit/RichParnellFergusonSummit_1.htm\]](http://www.jazzprofessional.com/Summit/RichParnellFergusonSummit_1.htm); Alexandra A. Seno,

"Unforgettable," *Asia Week*, Aug. 29, 1997. Retrieved online Nov. 15, 2004.

[\[www.asiaweek.com/asiaweek/97/0829/nat7.html\]](http://www.asiaweek.com/asiaweek/97/0829/nat7.html)

³⁰ Vincent B. Leitch, "Costly Compensations: Postmodern Fashion, Politics, Identity," *Modern*

Fiction Studies, Spring 1996, 111.

³¹ Saskia Sassen, *The Global City* (Princeton: Princeton University Press, 2001).

³² Richard Wheeler. Personal telephone communication. October 2004.

³³ Attali, 15.

³⁴ Eileen Southern, *The Music of Black Americans*, 2nd ed. (New York: Norton, 1983), 7.

³⁵ Attali, 15.

³⁶ Attali, 52.

³⁷ Vaidhyanathan, 12.

³⁸ Kim Cascone, "Laptop Music – Counterfeiting Aura in the Age of Infinite Reproduction," 107 *Parachute*, 2002, 52-59; "Cost of a CD." RIAA Web site, 2003. Retrieved online Nov.15, 2004. [www.riaa.com/news/marketingdata/cost.asp]

³⁹ Attali.

⁴⁰ Crane, 4.

⁴¹ Crane, 5.

⁴² There are some exceptions: The more extreme haute couture, experimental fashion and wearable technology could be argued to serve no functional requirement and make the claim of "art for art's sake."

⁴³ Vaidhyanathan.

⁴⁴ Originally, copyrights were granted for 14-year terms, with the potential for a single 14-year renewal. Currently, copyrights are granted for the life of the author plus 70 years – a potential term of 150 years or more.

⁴⁵ James Boyle, "The Second Enclosure Movement and the Construction of the Public Domain," 66(1) *Law and Contemporary Problems*, 2003, 33-74; Lessig; Vaidhyanathan.

⁴⁶ M. William Krasilovsky and Sidney Shemel, *This Business of Music*, 7th ed. (New York: Billboard Books, 1995).

⁴⁷ Jennifer Mencken, "A Design for the Copyright of Fashion," posted to the Intellectual Property and Technology Forum at Boston College Law School Web site, Dec. 12, 1997. Retrieved online Nov. 19, 2004. [www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/1997121201.html]

⁴⁸ Barbara Ringer, "The Unfinished Business of Copyright Revision," 24 *UCLA Law Review*, 1977, 951-976.

⁴⁹ This is the result of a single extension in 1995, from an original term of 17 years.

⁵⁰ *Gold Seal Importers v. Morris White Fashions, Inc.*, 124 F.2d 141, 142 (2d Cir. 1941).

⁵¹ There have been some notable exceptions engendered by technological development. Thus, certain components of garments, such as zippers and Velcro closures, have been awarded patents, but these components are considered enabling technologies with uses beyond fashion, rather than the product of fashion's creative community.

⁵² Mencken.

⁵³ GNU Project Web site. [www.gnu.org]

⁵⁴ Richard Stallman, "The GNU Operating System and the Free Software Movement," from *Open Sources: Voices From the Open Source Revolution*, eds. Chris DiBona, Sam Ockman and Mark Stone (Sebastopol, CA: O'Reilly, 1999), 59.

⁵⁵ Creative Commons Web site. [www.creativecommons.org]

⁵⁶ Chris Taylor, "Where The Money Goes: A Breakdown of the \$19.95," published on Sanderson

Taylor Web site, undated. Retrieved online Nov. 15, 2004. [www.sandersontaylor.com/article_load.php?id=t14]; for an entertaining and detailed analysis of record industry revenue breakdown, see Steve Albini, "The Problem With Music," published on NegativWorldWideWebLand Web site, undated. Retrieved online Nov. 15, 2004. [www.negativland.com/albini.html]

⁵⁷ Manufacturing and distribution companies often are owned by the same corporate parent as the record label.

⁵⁸ Peter Spellman, "The Future of Music Careers: Quantum Career Development in an [sic] Transforming Industry," published on Future of Music Coalition Web site, March 2003. Retrieved online Nov. 15, 2004. [www.futureofmusic.org/articles/spellmanmusicianbiz.cfm]

⁵⁹ RIAA, 2003.

⁶⁰ Personal email communication with music industry attorney Jonathan Zavin, December 2004.

⁶¹ Andrea Goode Barber, "Analysis of a Recording Contract," published on StarPolish Artist Advice Web site, undated. Retrieved online Nov. 15, 2004. [www.starpolish.com/advice/article.asp?id=113]

⁶² Today's four major labels are Universal, EMI, Warner and Sony BMG. Universal acquired a fifth major label, Polygram, in 1998. Sony BMG is a joint venture between two previously separate major labels.

⁶³ "Clear Channel Radio Fact Sheet," published on Clear Channel Web site, undated. Retrieved online Nov. 15, 2004. [www.clearchannel.com/fact_sheets/radio_factsheet.pdf]

⁶⁴ Elizabeth Becker, "Textile Quotas to End Soon, Punishing Carolina Mill Towns," *New York Times*, Nov. 2, 2004. The fashion industry's decentralized structure, diverse product range and idiosyncratic practices make it far more difficult to detail financially than the music industry. Consequently, this figure conflicts with some other published estimates. This also has prevented us from providing a detailed breakdown of fashion revenue distribution akin to our music industry analysis.

⁶⁵ "Berns Communications Group Unveils 2005 Retail Strategies Noted by Leading Industry Experts," Berns Communications Group press release, published on *Business Wire*, Dec. 6, 2004.

⁶⁶ Peter Doeringer and Sarah Crean, *Can Fast Fashion Save the US Apparel Industry?*, unpublished manuscript, 2004. This section is highly indebted to the authors for their thorough explanation and analysis of "fast fashion."

⁶⁷ Bridge lines are the lower-priced, higher sales-volume (and generally more profitable) lines by higher-end designers. Some examples of popular bridge lines include Ralph Lauren's Polo, Donna Karan's DKNY and Calvin Klein's CK.

⁶⁸ "Store Wars: Fast Fashion," report related to three-part special featured on the BBC 2 television series *Money Programme*, published on *Money Programme* Web site, Feb. 18, 2003. Retrieved online Nov. 20, 2004. [<http://news.bbc.co.uk/2/hi/business/3086669.stm>]

⁶⁹ The music industry's longer lag time compared to fashion is due to its disproportionate investment in the production of demand (i.e., marketing and promotion) and its lack of seasonal and cyclical deadlines, rather than any complexity regarding production or design processes.

⁷⁰ We do not mean to suggest this system is without its flaws. Like any of system of regulation, it can suffer from an asymmetrical balance of power and in many cases lesser-known, independent designers are not afforded the same privileges as established designers.

^{lxxi} Paul M. Johnson, *A Glossary of Political Economy Terms*, published on Auburn University Web site, 1994-2005. Retrieved online Nov. 15, 2004. [www.auburn.edu/~johnspm/gloss]

^{lxxii} Aram Sinnreich, "File Sharing: To Preserve Music Market Value, Look Beyond Easy Scapegoats," (New York: Jupiter Research, 2002).

^{lxxiii} David McGuire, "D.C. College Students Targeted in Piracy Suit," *WashingtonPost.com*, Nov. 18, 2004. [www.washingtonpost.com/wp-dyn/articles/A60606-2004Nov18.html]

^{lxxiv} Vaidhyanathan.

^{lxxv} The song initially was released in 1990. This considerable legal lag time further demonstrates the inadequacy of the legal system to cope with accelerating technological and aesthetic changes.

^{lxxvi} Susan Butler, "Court Ruling Could Chill Sample Use," *Billboard*, Sept. 18, 2004. Available on *MSNBC.com*. [www.msnbc.msn.com/id/5964507]

^{lxxvii} "Beastie Boys Win Court Ruling," *Los Angeles Times*, Nov. 10, 2004.

^{lxxviii} Charlie Porter, "Darling, You Look So 1973," *The Guardian* (London Edition), April 10, 2004.

^{lxxix} This trend has become so mainstream that Apple recently released the iPod shuffle, a portable music player tailored to this behavior.

^{lxxx} This description characterizes the music industry as embodied by the major labels and their chief distribution channels. It is important to note that an entirely different calculus may be applied to truly independent record labels and musicians, who often achieve economic sustainability on a far smaller scale and are consequently far more willing and able to take aesthetic and legal risks.

^{lxxxi} Historically, the low file size and high consumption rate of songs have interacted with the Internet's limited bandwidth so that cutting-edge music applications (such as peer-to-peer file sharing) have predated similar applications for larger, less wieldy media.