The Cultural Capital Project:
Towards Digital Music Monetization Based on Shared Culture

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Part 1 - Intro and Context - Brian

Slide[1]

Greetings, we're here today to discuss a collaborative research endeavour that the three of us are working on, the *Cultural Capital* Project, a project that responds to what we consider to be a **fundamental flaw** with current attempts to monetise digital music – that is the insistence on treating **music solely as a commodity**

Industrial Context

Mass produced music has assumed a **dominant** position in popular culture, and its status as an industry is now commonly held to be under attack from **piracy**. The viability of digital music exchange has major labels struggling to find ways to ensure the same degree of profits that they previously received from the sale of physical objects, namely CDs.

Slide[2] -Michael Masnick and Michael Ho's "Sky is Rising" report from January 2012

However, the global music industry has increased by more than thirty-five billion dollars between 2005 and 2010, the total overall sales transactions have more than doubled in the past decade, and artists' revenue share is increasing especially in touring, merchandise, licensing.

Rather than re-evaluate themselves in this new paradigm, the traditional cultural industries

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have crafted a narrative in which "pirates" have stolen their property. By confining the argument to one of rights and property, they have prevented the consideration of the shifting ontological nature of recorded music.

Slide[3]

Our Goal:

Our goal is to incorporate the multitude of individuals who propel the cultural industries, including fans, photographers, labels and others, and to argue for the establishment of a "radical monetisation" of the music industry based on equity, connectivity and sharing. This would be done through the creation of an online, non-profit patronage system and social network that allocates equitable **compensation** via micro-payment

Conceptual Inspiration

Our praxis is informed by theory, and numerous key thinkers, although three individuals have been particularly influential:

Slide[4]

Jacques Attali:

In *Noise: The Political Economy of Music*, Jacques Attali outlines three cultural stages in history and presages a fourth, each linked to a mode of production and cultural logic of music: Sacrificing, Representing, and Repeating; and then the stage of "Composing".

Our contemporary copyright laws and economic paradigms still operate and perpetuate the constraints of the repetition stage, in which music is mechanically reproduced, commodified, and stockpiled.

In his final chapter on "Composition", Attali begins outlining the technologies for which to facilitate an era that involves the making of music for one's own pleasure and he argues that devices like the tape recorder and photography will mutate the consumer to a producer. Nowadays, there are countless ways that listeners and music fans "produce" music and culture, and we need a model that recognizes and allows for this renewed

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participation.

Bourdieu and "Cultural Capital"

Our project derives its name from Bourdieu's notion of "Cultural Capital." However, where he believes cultural capital to be part of the **system of oppression that stratifies society**, we look at cultural capital from the **opposite perspective** to consider the **ways it creates alternative values**.

We argue for making codes of distinction transparent and trackable, so they can be leveraged to finance and support artistic production and the sharing of cultural products.

Yet leveraging cultural capital requires us to re-think the circulation of copyrighted materials in the digital age.

Lawrence Lessig:

As one of the founders of the Creative Commons (creativecommons.org), Lawrence Lessig justifiably serves as a guiding legal inspiration for the *Cultural Capital* project.

For our intervention, two of his principles are integral. First, his assertion that code is law guides our mode of intervention. Lessig explains that building infrastructure by code regulates online behaviour, and so code can be used to promote social aims and values, structuring our inter-relations as law does.

Second, his characterization of the potential value of hybrid economies, the coming together of commercial and sharing, suggests the model for our intervention.

We argue for constructing economic infrastructure both to give sharing economies legal and cultural validation, and to render them sustainable and just. By adding this dimension, the cultural work of sharing takes on a hybridised character, the economic reflecting and adding to the value of the shared, rather than acting as a gatekeeper to it.

The Great Library

We see our intervention as working towards the legitimation of The Great Library of Recorded Music.

Slide[5]

Sandy Pearlman has proclaimed that online digital music is in a state he refers to as "asymptopia" (2011). Online music's expansion, he says, charts like an asymptote – a line that, while never quite reaching an axis, approaches closer and closer towards it ad infinitum. Pearlman also speaks of the unique utopian character of file sharers, who are happy to upload and share music consistently and spontaneously with no immediate or potential financial reward.

The sum of asymtopia is The Great Library, a sprawling, openly accessible monument to the recorded musical creativity of humankind, the ultimate public cultural good, without gatekeepers.

Arguably, copyright has strongly hampered the possibility of such a service. However, online extra-legal networks that facilitate the sharing of vast amounts of music between users have succeeded in collecting and maintaining the functional equivalent of all recorded music online. Access to The Great Library is limited to those who have the technical knowledge required to share files extra-legally, or who have received an invite to a torrent sharing site, and these users show an impressive normative, librarian-like commitment to its maintenance. The problem has been that any attempt to monetize digital music has always implied the tearing down of the extra-legal Great Library. Cultural Capital's challenge is to make The Great Library just and sustainable as it is.

Part 2 - Platform - Andrew

Now that we have a brief summary of the industrial and theoretical premises, I will outline the software design aspect of our project, which has two components:.

Slide [6]

1) social network & content aggregation
2) tracking software & micropayment
which I will outline in turn. Influenced by what:

Slide[7]

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- Bruce Sterling calls Design Fiction
- Julian Bleecker calls Object-oriented Futuring, and
- Johanna Drucker calls Speculative Computing

our project considers design as a means to interrogate new ideas and possibilities, as well as a mode of critique. The Cultural Capital platform, then, uses design to speculate how a non-profit infrastructure for the music industry might function, one based on stewardship, sharing, and equity.

Slide[8]

- What if commodity logic was not the organizing principle of the music industry?
- Rather than the shopping mall as a model, with financial transaction as its core, what if digital music economies were organized like libraries, with stewardship as its logic?
- And like libraries, what if both the author and the librarian were paid? In the digital music economy, we are all librarians.

The Cultural Capital project aims to realise the capital in this relationship, in both a listener's capacity for connection and desire to share music culture. No excess capital would be wasted on industrial middlemen, and artists would decide their relationship with record labels, producers and other intermediaries. Most importantly, no power would be granted to gatekeepers. There would be no corrupting influence of advertising nor profit in the infrastructure. Rather, generated profits would be redistributed directly to artists *and* the fans whose cultural labour propels them.

As mentioned, the Cultural Capital platform operates on two fronts. First, it is a network where users interact and social data about music consumption is aggregated.

Slide [9]

Rather than the multitude of corporate walled-garden interfaces that currently dominate the digital music economy, such as iTunes and Spotfiy, CultCap would be a community-based, non-profit interface of aggregation, generated dynamically for both artists and users from publicly available web data. For artists, these pages would include playable media files,

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but they would not be hosted by the Cultural Capital platform, thus sidestepping the thorny issue of intellectual property rights. Rather, music, video and other media files and data would be embedded by legal external services, countless of which now exist, each with unique characteristics.

Slide[10]

- Table of services:
    - Streaming: Soundcloud, Spotify, Rdio, Grooveshark
    - Radio: Pandora, Live365, Jango
    - Video Distribution: YouTube, Vevo, Vimeo
    - Social Media: Twitter, Facebook, Google+
    - Listener Data: Last.fm, Libre.fm
    - Tour Data: Songkick, Pollstar, Bandsintown, JamBase
    - Crowdfunding: Kickstarter, IndieGoGo
    - Micropayment: Flattr, FundRazr
    - Fan Art/Photography: Flickr, Instagram, deviantART
    - Remix: Legitmix, HypeMachine, ccMixter.org
    - Info: Wikipedia, AllMusic, discogs.com

The curation of this aggregated data would be handled by a community of dedicated members, not unlike Wikipedia. Anyone could contribute, and the community would assure its quality. Rather than a market-based approach to selling fans a product through branded websites, artist pages on the Cultural Capital platform would reflect the true dynamism of music in the digital age: mixed, discussed, curated, intermedial, and above all, shared.

Our designer has produced some preliminary mock-ups of how the platform might operate.

Slide [11]

Here, we see how artist profile pages would embed media, aggregate data, and catalogue social engagement.

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And here, we see how the user profile pages index listening data, display recent social

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engagement, and at the top here we see a gesture toward the display of cultural capital, with quantifiable categories such as listens, community, shares, production, etc.

Which leads us to the second front of the Cultural Capital platform, which is the specific focus on indexing a fan's engagement with their favourite artists and their broader music community, and linking it to a more equitable payment scheme. Every time a user shared a new playlist on Facebook, embedded a new song on Soundcloud, or uploaded concert footage to YouTube, it would be catalogued on their profile page and count toward their cultural credit. An explicit reflection of Bourdieu's notion of "cultural capital", these user pages would provide the data for the radical gesture at the heart of the Cultural Capital project:

Slide [13]

- opt-in tracking software would monitor the musical consumption and sharing of users and then suggest equitable payment through a micropayment subscription fee.
- Instead of being treated as mere consumers, forced to pay for a commodity and take part in an inequitable regime, users would be encouraged to participate in the stewardship of their favourite artists, with whom a more intimate connection would be forged.

The Cultural Capital platform would utilise listener data in order to provide the user with a fully customisable and flexible payment method with which to support their favourite artists. Payment would be entirely in the hands of the user; they might decide to contribute as little as a few dollars a month, to be distributed to their favourite artists and songs based on their listening data. Ideally, once an equitable relationship was demonstrated, based on transparency through sharing rather than profit through exploitation, the users would increase their micropayment contribution. Suggested prices would be matched to a user's income bracket.

For instance, a user may wish to base their payment on the artists or songs they individually choose to support (their "Likes" and "Favourites"), or they might prefer to let an algorithm allocate funds based on specific properties, such as

Slide [14]

13

14

- ○ "most listened",
- ○ "most local"
- ○ "most shared in my social network" or
- ○ "most in need of funding for their next recording"
- ○ A combination of any of these properties would also be possible and codes of conduct for cultural stewardship would be encouraged, promoting ethical consumption by users and ethical production/distribution by artists.

Slide [15]

Here is our mock-up of the payment dashboard, where users would control sliding scales that visualise their payment distribution. On the right, we can see this user's distribution of his subscription fee being divided up according to certain properties, their favourites, their local musicians, their most in need, etc. On the left, we can see suggested "recipes" for how to divide up the pie, equal increments, community centered, etc.

One of the reasons why such a system has not yet been created is that the technology for diffused distribution and micro-payment is still in its infancy. Micropayment refers to an online, financial transaction of a small sum of money, as low as a fraction of a penny, which adds up when enacted in scale. Recent innovations have brought down the transaction costs of micropayment, resulting in 'micro-donation' systems such as Flattr and fundRazr, systems comparable to an internet tip jar. However, these systems still operate under the logic of the creator/consumer divide.

Slide[16]

Rather than a mode of production and consumption, the Cultural Capital platform advocates a model based on creation and circulation, where fans are considered participants. Rather than a shopping mall, CultCap advocates for a library. Rather than commodification, CultCap advocates for a model of stewardship. On that note, I will pass it over to Ian who will discuss the legal aspects of the Cultural Capital project.

Slide[17]

Part 3 - Legal - Ian

15

16

17

The final dimension of the *Cultural Capital* project concerns intellectual property law; or, as we are fond of saying, *CultCap* is a legal intervention. But such a claim begs two key questions, which will form the structure of my section: first, *how* is *CultCap* a legal intervention, and second, *what* law does it assert? Drawing on Lawrence Lessig and the insights of legal pluralism, we claim that *CultCap* is a legal intervention because new law is being created online. It justifies a new normative relationship, thus showing alternate ways copyright law can achieve its aims. It has the potential to pave the way to new, state-based intellectual property regimes. In contrast to the current private property regime, the law *CultCap* develops for digital music is one of cultural stewardship, where custody of a piece of digital music implies a duty to make such control just and sustainable. We assert that users should be treated as stewards of cultural goods rather than trespassers of a property that, in practice, is never private.

Slide[18] (Code is Law)

Inspired by Lawrence Lessig's 1999 classic *Code*, the form of *CultCap*'s legal intervention is code. First published when a utopian view of cyberspace as beyond regulation predominated, *Code*'s contrarian message was simple: code is law, its architecture is regulation, and freedom on the internet is a result not of immanence but structure. The internet has no essential nature, but rather, online "we are nature". And if we do not see that code is law, an architecture targeted by both business and government to control behaviour, then we risk our values playing no role in these foundational choices.

Strangely, Lessig's development of the concept operates almost entirely from the top down. Lessig specifies four modalities of regulation - market, norms, architecture, law - which are experienced by a subject as constraints. However, as to the relation between modalities, he only develops examples as to how law effects constraint either directly or indirectly through the other three modes.

Slide[19]

What is lacking from his substantive analysis, but implicit in his construction, is that if code is law, then code can be written to effect new law. Certainly Lessig recognises that a value can be implemented from the bottom up: to quote, "the law could be rebalanced to encourage the freedom thought important, or this property could be redeployed to effect the

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18

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freedom thought important". Redeploying of property by code is most properly understood as a legal intervention; Lessig's Creative Commons is an obvious example. A code which enables behaviour, embraces and validates a normativity, and facilitates the flow of capital is effecting legal change. It proposes alternative legalities. And by doing so, new code can render its values intuitive to a legal imagination in the legislative branch.

Slide[20] (Stewardship Law)

Cultural Capital aims to restructure the property in sharing digital culture so that it is just and sustainable. As such, *Cultural Capital* users are conceptualized not as consumers, not as pirates, but as cultural stewards. Their possession of digital music comes with a duty to guarantee its sustainability and justice, and that is accomplished by using the infrastructure of *CultCap*. The focus is on a relationship with an extended temporality of management, not a one-off transaction and indefinite prohibition.

Slide[21]

Taking a step back, we should keep in mind the purposes of copyright law, that is what exactly we hope to achieve with the regime. In 2002, Justice Binnie of the Supreme Court of Canada did just that, writing in the case *Théberge* that copyright must strive to balance its twin goals: "promoting the public interest in the encouragement and dissemination of works of the arts and intellect; and obtaining a just reward for the creator". This phrase has quickly become a doctrinal, foundational statement in Canadian copyright law, forming the bases for major developments ever since.

Returning to the Great Library, its users accomplishes the dissemination of works in spades, but it clearly falls short on obtaining just rewards for creators. But recall the normativity of users in The Great Library; they undeniably demonstrate a significant dedication to music and its public maintenance. There is a potential here for the law to pursue the teleology of intellectual property by drawing the already-ethical normativity of the administrators and patrons of the Great Library towards its own explicit purposes. And by leaving the Great Library intact, the law can regain legitimacy it has lost over the last two decades

Slide[22]

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21

22

CultCap's legal intervention thus works towards a *sui generis* stewardship property regime for digital music. Much like the Judeo-Christian concept of stewardship, where god entrusted humanity with creation but demanded its equitable care, the legal relationship *CultCap* fosters is between user and artist with the aim of the aforementioned purposes of copyright - dissemination of works and just reward for artists. The steward thus has a unique blend of rights to the work and duties for its preservation. Rather than the model of control and violation that results from a private property regime, *CultCap* asserts a stewardship relationship as a workable and just alternative to private property which can accomplish the goals of copyright. We think it will be embraced precisely because it derives from the already existing normativity online.

Importantly, in no way does the Cultural Capital platform violate copyright law. Circulation, or the 'making available' of digital files and copies, is a phenomenon that occurs outside Cultural Capital's confines and is independent of its encouragement. Cultural Capital doesn't care from which sources - legal or extra-legal - users are interacting with music; it merely tracks that interaction. As such, Cultural Capital enables users to assert a different legal imagination buts steer clear of current legal entanglements. It is a voluntary, community-based step towards an alternative digital music legality.

Slide [23]

Part 4: Conclusion - Brian

We believe there to be a number of benefits for users participating in this system. Including:
- cultural sustainability (most people want to support artists, just not the exploitative practices of an unfair oligopoly)
- status and distinction (a motivating factor in the consumption of music)
- social connection (cultural consumption being a key medium for contemporary interpersonal relationships)
- and a subsequent addition to the system would be establishing a credit system that rewards users for their cultural labour. For example, access to exclusive material supplied by participating artists and record labels can be offered to users who have been particularly active in sharing an artist's music.
- But it is artists and creators who have the most to gain from the Cultural Capital interface. They will be compensated by receiving capital directly from users,

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[23]

circumventing industry intermediaries of the outdated big music industry model.

Initially, the Cultural Capital system would actually realise surplus profit for the current record industry, but it would slowly shift the rules of the game; users and artists would become both distribution and promotion, legitimising the unacknowledged roles which they already play.

Slide [24]
- website
    - cultcap.org

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- publication

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[24]

[25]