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Editorial Introduction
Digital Nation: Copyright, Technology, Politics

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Introduction: Kim Dotcom

In December 2011, Megaupload, the now-defunct New Zealand-based file sharing and storage site, released a video for their tune "Megasong" (YouTube 2011), featuring appearances by artists and pop music icons such as will.i.am, Macy Gray, Kanye West, Mary K. Blige, Jamie Foxx, Russell Simmons and others who touted the virtues of its services. The video was initially posted on YouTube, but was quickly removed at the request of Universal Music Group (UMG), who applied the Digital Millennium Copyright Act (DMCA), as well as a prior special agreement with YouTube, which allowed them to remove any content deemed to be copyright infringing (Mills 2011). In this case, the reasons for the initial takedown were vague, but it was later alleged by UMG that one of the artists included had not consented that his likeness be used. Noting that the song was in fact an original composition, one of the key defence lawyers in the Megaupload case, Ian Rothken, noted: "What's going on here is that Universal Music Group is gaming the DMCA system to try to chill free speech when they disagree with the artists" (Hutchison 2012). As UMG could not fully and reasonably justify their rationale for the takedown, the video has since been re-uploaded and is currently available for viewing on YouTube and other video sites.

One month later, January 2012, Megaupload's founder, German-born Kim Dotcom (née Kim Schmitz), and one of the primary vocalists on "Megasong", was arrested, along with three of his colleagues, in a dramatic raid on his mansion just north of Auckland. The scale of the arrest, which included members of the country's special elite squad, two helicopters, attack dogs, and seventy police officers, some heavily armed with assault rifles, was a spectacle rarely seen in New Zealand. Looking very much like a paramilitary raid, conducted by the New Zealand police at the behest of the FBI (who were in the country and on the ground the day of the raid), it was later revealed that they had been working closely with information garnered from copyright watchdog groups in The Netherlands, Hong Kong, Canada, France, Germany and the UK that represented various music and film industry interests. Dotcom was threatened with extradition, along with his co-workers, to the United States, charged with racketeering, money laundering, and online piracy, but the case is still ongoing at the time of publication of this issue.

These two related events are germane to the themes of this special edition of *IASPM Journal*, dedicated to exploring the nature of copyright and intellectual property in national and international popular music contexts and how they intersect in a shifting mediascape. The first of these events is notable, from one perspective, for presenting a number of artists celebrating a new model of distribution and storage options that is celebrated here as emblematic of an ascendant digitally networked creative economy. This has been framed by Megaupload defenders as the site's primary, more benign and beneficent function in providing a service that artists could use to cheaply and efficiently store and distribute musical works beyond the recording industry's oversight. It is also significant for demonstrating the speed and righteousness with which the recording industry can set upon alleged infringement. In this particular case it was misplaced, as the video and song was entirely original content (a fact that allowed it to be re-uploaded on YouTube and other video sites not long after its initial takedown). This second event highlights the point at which the interests and investments of the various stakeholders within the recording industry violently diverge over ownership and distribution.

Together, these two events, the song and the arrests, speak to a host of intellectual property and industry issues that have become an increasingly familiar part of the experience and discursive framing of popular music in the contemporary mediascape. They instantiate a convergence of technological, social, cultural, economic, and legal forces and practices that have worked, sometimes in concert and often in conflict, to impact upon the production, distribution and consumption of popular music around the globe. Framed broadly, included here is the rise of the Internet as preferred portal for distributing and consuming music, along with the dominance of new media formats, new business models, the fraught relationship between national, transnational and supranational juridical apparatuses, and the muscular attempts of the recording industry and its watchdogs to ensure their interests are not trespassed upon. These are bound together in a complicated nexus of interests and investments that have given new shape to popular music.

In this context, it is worth noting that the police invasion of Dotcom's mansion, while remarkable as a piece of theatre, is neither unique nor unprecedented. There have been other moments where music piracy, policing, new media and intellectual property matters have converged, some of which relied on the dramatic flare of the spectacular raid to help make a point. One of the most significant of these happened at the turn of the 19th century in the UK, a moment when the recording industry was in its infancy, where one musical medium, sheet music, was about to cede its dominance to a new one, the flat disc recording, and when changes to copyright law were also under parliamentary and legal deliberation. As Adrian Johns (2011) outlines in his book *Piracy: The Intellectual Property Wars from Gutenberg to Gates*, on Christmas eve in 1903, in a number of warehouses near Hackney, in London, a large-scale raid was conducted by the police that netted over 75 000 sheets of pirated sheet music. The trade in illegal sheet music was at the time a massive industry, an underground economy spread widely across England, located at market stalls and warehouses, usually close to the railway terminals they relied on for distribution. The central figure and mastermind of this particular illicit operation was James Frederick Willetts (not unlike Dotcom, he had many aliases). Willetts was brought to trial, where he mounted a number of arguments, many of which were eloquently put and not easily refuted. The music industry had proven itself quite resistant to demands on the part of consumers and musical artists and performers alike to alter its business model to make it more equitable for performers, musicians and consumers. Not dissimilar to Dotcom, Willetts argued against the then structure of the music industry and made appeals to "principals of musical creativity" (Johns 2011: 342) claiming they were of such a primordial nature that they fell outside the purview of any existing legal system. He also emphasized, as Johns (2011: 346) notes, the reluctance of the industry of the time to change, related to

their evolution "into a cozy, familial trust-a 'ring'- dedicated to maintaining high and uniform prices by means of confidential collaboration". More notably, Willetts highlighted an arrangement in which publishers made much of the importance of the authors and composers having sacrosanct rights but it was not the authors and composers who decided how those rights were exercised; nor did they decree their rates of return; instead, the publishers determined how the copyright system worked in practice.

What Willetts proposed was an alternative system of compensation, one in which the artists would in fact see more equitable returns, which would be tied also to cheaper and more widely diffused systems of distribution. As Johns suggests, what Willetts was doing was attempting to "recalibrate commercial propriety around a new kind of mass market and a new kind of moral norm" (2011: 348). Willetts's case exemplified the music industry's intransigence and its power, at a moment during which a once-dominant sheet music industry had entered its twilight phase, shortly to give way to the flat-disc record. His arguments mattered little, as he was eventually convicted of piracy and sent to prison for nine months. The publishers won, and other infringers were brought down in the wake of his imprisonment. By 1906 a new music copyright law further entrenched the interests of the publishers over artists and performers. As Johns notes, shortly after Willetts was sentenced, the price of sheet music rose – by fifty percent (ibid: 352).

As contemporary examples, and in being made an example of, Megaupload and the arrest of Kim Dotcom reveal the powerful legacy left by this old paradigm, which speaks to the litigious and recalcitrant character of the music industry in the face of new media technologies. It also foregrounds dilemmas specific to the contemporary digital paradigm, all of which have given new contours to the production, distribution and consumption of popular music. The "Megasong" video, as well as Megaupload's advocates, echo Willett's claims about providing a service that ostensibly frees creative expression from the middlemen and record labels that otherwise stifle musicians, instead allowing musical texts to circulate outside traditional distribution and promotion networks. Now, as was much the case then, these sorts of claims sit uneasily alongside industry logics and bottom lines. In this contemporary example, we have left behind national railways and markets as respective modes of distribution and storage and points of sale, and in their stead have appeared cyberlockers and globalized digital distribution networks; yet many of the old tensions persist.

As in the past, in current case, distributed content has been deemed illegal, with both Willetts and Dotcom arrested and cast as pirates. However, while much of what was digitally stored was movies and music, photos and documents, a smaller percentage of these files were uploaded for personal access, for backup purposes, or to be shared with friends, many of which included self-produced and self-distributed independent music and media files. The status of Megaupload as one of the web's most popular file storage and sharing sites no doubt flagged it as worthy of being on the FBI's radar. According to Kim Dotcom's "Megasong", at its height the site claimed to accounted for nearly 4% of all Internet traffic, with an estimated 50 million users a day, and over a billion users in its short lifespan. Its primary source of revenue was advertising and premium subscriptions, and high-end users could also receive payment for premium uploads (*M.* 2012). This last point, that uploaders were benefiting economically from the fruits of other people's labour and intellectual property, put Megaupload in the lines of sight of not only the recording and motion picture industries, but also of a number of artists. The storage and distribution model that Megaupload created, its rise and fall, and the issues cited here offer a number of provocations for popular music studies, and points to other, more troubling, developments.

The case made against Kim Dotcom is significant not only for the display of force with which his arrest unfolded, but for a litany of other concerns it raises with regard to copyright law and intellectual property. The global scope of the takedown and matters

of jurisdiction put into relief the nature of national legal frameworks relating to copyright and extradition laws, many of which have later been undone under the auspices of international trade agreements. The latter have become a more pronounced feature of the contemporary globalized mediascape and make manifest a number of concerns relating to contemporary popular music. The tension between a national focus on intellectual property, for example, with appeals often made to protectionism and cultural nationalism, and the international interests of the recording industry, raises questions of juridical independence at the level of the national, but evocatively begin to open outwards to the waning of the nation-state as arbiter of intellectual property in a global marketplace. In this respect, the Dotcom case speaks acutely to the rise and reach of supranational groups that cut across and through national boundaries. As Michael Hardt and Antonio Negri (2000: 336) point out in *Empire*, this development is symptomatic of the increasing irrelevance of the nation as a bounded sovereign entity:

> (T)he decline of the nation is not simply the result of an ideological position that might be reversed by an act of political will: it is a structural and irreversible process. The nation was not only a cultural formulation, a feeling of belonging, and a shared heritage, but also and perhaps primarily a juridico-economic structure. The declining effectiveness of this structure can be traced clearly through the evolution of a whole series of global juridico-economic bodies, such as GATT, the World Trade Organization, the World Bank, and the IMF. The globalization of production and circulation, supported by this supranational juridical scaffolding, supersedes the effectiveness of national juridical structures.

The events that occurred in January 2012 in New Zealand touch on many of the points Hardt and Negri outline here. The New Zealand situation is instructive as it clearly shows that the enforcement of copyright law in the global marketplace requires porous borders, primarily in terms of surveillance and prosecution, as well as extradition. The role of copyright in shaping trade policy, as well as national policing and international surveillance has been an important part of the brokering process, often at the insistence of rights holders and monitoring bodies such as the MPAA (Motion Pictures Association of America) and the RIAA (Recording Industry Association of America).

However, the withering of the nation-state in the wake of supranational policing bodies is not a *fait accompli*. There have been heated debates and points of resistance found in a range of national and transnational contexts regarding the global scope of a host of US-initiated copyright acts, such as SOPA (Stop Online Piracy Act) and PIPA (Protect Intellectual Property Act) in 2011, as well as the multi-national and multi-lateral treaty ACTA (Anti-Counterfeiting Trade Agreement). Each of these proposed acts and proposed bills represents an attempt to standardize and codify intellectual property rights across various national contexts, and, in the case of SOPA and PIPA, were designed to allow US copyright holders to pursue foreign websites seen to be infringing on their intellectual property. ACTA gained notoriety for the lack of transparency in its early drafts (no discussion or consultation with the public, for example), its scope and reach; although first signed internationally in 2011 it was then undermined when it was voted out by the European Union in 2012 (Whittacker 2012). Importantly, each of these acts insists upon some form of locally based surveillance apparatus as well as punitive measures, such as fines and/or imprisonment, designed to discourage copyright infringement. However, alongside a host of voices of resistance, including the Electronic Frontier Foundation (EFF) and other civil liberties organizations in a number of countries, and in the wake of dozens of protests that took place around the globe, various governmental bodies, the US House of Representatives in the case of SOPA and PIPA, and the EU Parliament in the case of ACTA, opposed key points of the bills due to concerns about infringing on civil rights and privacy. These objections ensured that also none of the proposed acts were ratified.

New Zealand has played a privileged role in this changing global copyright landscape for a number of reasons. Beyond being the adopted home of Kim Dotcom,

New Zealand is one of the few signatories to ACTA and is also currently in negotiation with the US in the latter's attempt to broker the Trans-Pacific Partnership Agreement (TPP). The TPP is seen by some us a more insidious version of ACTA in terms not only of its treatment of intellectual property rights, but, once again, the surveillance and punitive measures which are expected to be put in place as well as the right of multi-national corporations to sue governments which may be deemed to limit access to local markets. Like ACTA, this is being talked about at the level of corporate interest, with little local government knowledge, let alone public input, into negotiations; only recently has civil input been sought, and only after portions of the agreement were leaked.

Beyond the goodwill gesture of signing to ACTA and being a compliant partner in formulating the TPP, New Zealand has already made itself amenable to multinational interests regarding intellectual property. The US took particular interest in how New Zealand would enforce its recently amended Copyright (Infringing File Sharing) Amendment Act, 2011, even offering to subsidize its implementation.[1] It is also one of the countries that instituted a graduated response to copyright infringement, otherwise known as the "three strikes" law. Variations of the graduated response have been tried in France and are soon to be adopted in the UK. The onus in the New Zealand example is on Internet service providers (ISPs) to monitor user activity and to send warning notices to infringers and, after their third warning, bring offenders to a copyright tribunal, which, if found guilty, would result in fines and/or Internet service termination. Rights owners are required to file a notice with ISPs, at a charge, which the Recording Industry Association of New Zealand (RIANZ) has deemed too high (at $25 NZD per notice), which they are currently seeking to reduce.

The story of copyright, intellectual property and popular music will no doubt provide future examples elsewhere of many of the issues currently at play in New Zealand. The local, global and transnational impact of supra-governmental bodies such as those listed above exert themselves in ways which demonstrate an inflexibility as well as indiscriminate. The Kim Dotcom case may well prove a litmus test for how these new surveillance and punitive strategies attached to emergent transnational organizations will recalibrate the production, distribution and consumption of popular music.

Digital Nations

The complexity of digital distribution and regulation is reinforced by the individual studies in this issue, and a reminder that tensions between the national and international remain firmly predicated upon local contexts. The global perspective offered here is also a forceful reminder that sophisticated digital music technologies are not uniformly applied: the 'digital divide' in terms of music-media infrastructure is clearly still evident, resulting in a range of creative solutions to production and copyright interpretations and applications.

In their examination of funk carioca performance circuits in Brazil, Simone Pereira de Sa and Gabriela de Oliviera Miranda reveal a music genre that is distinct to Rio de Janeiro and surrounding suburbs. As a form of DJ- and MC-based electronic dance music, funk carioca is a series of recorded portable sounds that enable it to be performed and heard in neighbourhood dance halls and street parties. In more organised forms, it has become a commercial proposition for song writers, sound crews and circuit managers, where sales are made at the live gig, and a much lesser emphasis upon traditional recording sales. De Sa and Miranda describe a loose system of rights, where authorship of lyrics or sounds remains very much in contestation along the chain of production, distribution and consumption. Reminiscent of earlier recording industry periods, composers may forfeit their rights (and revenue) in favour of exposure and longer-term success. In this sense, a business model of sorts is proposed that involves a new meaning of 'independence', with live performance at the centre of local industries. It reveals a set of industry practices that are deeply connected with the

wider practicalities of urban living in Brazil, where flexibility and negotiation are daily occurrences.

Martin Zeilinger considers the chipmusic community, a transnational set of artists who appropriate and re-use sounds and older music technologies that often involve early video game hardware. The intent is not simply to endlessly play upon and with existing and older forms, but to also pass comment on licensing rights within the music industries. This community is an excellent example of contemporary music-makers extending open source software and ideologies to their legislative limits. In this sense it is argued that it constitutes less of a genre, and more a set of practices with Creative Commons often the default licence for interaction. In exploring the flaws in systems such as Creative Commons for the chiptune community, Zeilinger reveals a broad consensus about codes and ethics policed through blogs and other online forums, rather than through the courts. The underlying ethic of appropriation and re-use has ironically produced various problems when commercial artists have freely drawn upon lesser known chiptune artists. In this clash of moral and legal economies, the article raises several interesting questions about what happens when copyright is not a fixed term, but subject to a specific set of amateur and semi-professional attitudes designed to foster shared sounds and nostalgic production.

Similarly, Ian Dahlman, Andrew deWaard and Brian Fateux explore the time-honoured tensions between music as social practice and as commodity. They argue that traditional copyright systems, with its reified status of the copy, have been shattered by contemporary practices, "sharing, discussing, recommending, cataloguing, citing, curating" (38) that have fundamentally changed cultural value. The slippery nature of the digital copy, then, provides no fixed point for cultural-economic value. Drawing on authors such as Lessig, the authors have created the *Cultural Capital* project that is designed to provide a system of sharing of works with less (or no) gatekeeping. It is an online network of music that shares and distributes artist data, while also co-opting fans to literally buy in to a micro-payment system according to their preferences and priorities. Here, the explicit intervention of the consumer is designed to provide an alternative model to the more rigid digital music systems offered by the larger streaming/music companies. This model, with some similarities to others such as *Kickstarter*, reveals the possibilities of more community-minded digital distribution that allows explicit participation and consumer patronage.

The fetish of the copy is also taken up by Justin Morey in his examination of sampling in UK dance music, and his interviews with key British dance music artists and industry figures. It is no surprise that the influence of US hip hop sampling practices is evident in British practices, yet with very different legal precedents for what constitutes a ‘substantial’ sample from another’s work, as defined by the UK Copyright Designs and Patents Act 1988 (CDPA). What follows is a series of interesting sampling case studies that reinforce the laissez-faire attitude of the music industries, where permission is often only sought if it is demanded. Given the number of ways that it is now policed by the major labels, Morey argues that artists have shifted to creative play of often iconic riffs/verses/choruses that produce ghost sounds of the original hit. There is joy and method, too in working within the constraints of both the UK courts and the sampling technologies of earlier periods. Morey raises questions about how courageous future artists may be if copyright law continues on its current trajectory of increasing regulation.

Ryan Skinner explores a very different national context for copyright structures: that of post-colonial Mali, and the precarious existence of its musicians and composers. The article details a creative culture in which copyright systems are absent, filled by ubiquitous copying, sharing and small market piracy. Skinner offers a useful history of Mali’s governance, from French rule (with codification of rights) to minimal rights granted at the discretion of the state. This history is important for also tracing the challenges faced by small music trade nations in terms of support for local artists,

especially in a country facing more serious economic and regulatory problems. This has involved clear divisions between private or commercial enterprise, and a declining public music sector buffeted by budgetary whim. In the digital age, cassette piracy remains a major obstacle for Mali musicians, despite government attempts to uphold the legitimacy of the original.

Finally, Ilkin Mehrabov studies a Turkish copyleft music collective,, Bandista, formed in Istanbul in 2006, which provides a useful case study of the ways in which alternative copyright practices have emerged in Turkey. Drawing on internal and external leftist politics, with a dose of punk's structures of feeling, Bandista's starting point is an affront to the local recording companies: that creativity, and its subsequent output, is a social exercise. As such, the collective encourages the use of their DIY work in a range of DIY contexts designed to disrupt traditional distribution methods. As Mehrabov argues, the subsequent infrastructure (primarily a sophisticated open source online system) to fully follow through on the copyleft agenda is lacking in Turkey. However, it is an important step in the local music economy's diversification into new layers of independent labels and bands, who are prepared to openly challenge the existing copyright strictures.

The music industries—including their distribution, revenue, rights management and production systems—clearly remain in a state of flux. We hope that this issue, and its many national contexts and case studies, provides further debate about these much larger questions of consumer and artist sovereignty.

Endnote

[1]It is worth noting the local irony here. Under an amendment to New Zealand's Copyright (Infringing File Sharing) Amendment Act 2011, which came in to effect in September of that year, the use of cyberlockers and streaming of copyrighted material is not covered under the three-strikes law. Though it is still covered under the full Act, the Amendment only covers peer-to-peer file sharing at the moment, though suggestions have been made that it will be further changed to cover streaming and cyberlockers in the future. This amendment is colloquially known as the "SkyNet" law. The onus in this context is upon the Internet Service Providers (ISPs) to monitor illegal activity and send out notices of infringement to offending users. The cost of the notices is set at $25/customer, a fee that the Recording Industry Association of New Zealand (RIANZ) sees as prohibitive in terms of properly targeting offenders. At the time of writing, no infringer has been prosecuted under the law.

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