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Citation

Toynbee, Jason (2010). Reggae open source: how the absence of copyright enabled the emergence of popular music in Jamaica. In: Bently, Lionel; Davis, Jennifer and Ginsburg, Jane C. eds. Copyright and Piracy: an Interdisciplinary Critique. Cambridge Intellectual Property and Information Law (13). Cambridge: Cambridge University Press, pp. 357–373.

URL

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Reggae open source: How the absence of copyright enabled the emergence of popular music in Jamaica

in L. Bently, J. Davis & J. Ginsburg (eds.) *Copyright and Piracy: an Interdisciplinary Critique*. Cambridge: Cambridge University Press, pp. 357 - 373 (2010)

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Since 1960 a highly innovative form of music making has developed in Jamaica in the effective absence of copyright. Over the first two thirds of the chapter I argue that in fact reggae music¹ would never have emerged had copyright been implemented on the island. Quite simply, local forms of creativity and the nature of the musical labour process were inimical to intellectual property (IP). In the last section, I go a step further by suggesting there are wider lessons to be learnt here. Creative practice in Jamaica has been based on principles which may well apply in other territories and to other forms of culture choked by the constrictions of the contemporary copyright regime. A comparison with open source software reinforces this case.

On Orange Street: political economy at the birth of reggae

In 1960 the music industry in Kingston, Jamaica was still at an embryonic stage. The main form of music entertainment, however, was distinctly modern. Across the city black working class people danced to recorded music. This was provided by mobile sound systems, consisting of a record deck, amplifier and large loud speaker boxes, together with operating crew and truck to carry the equipment. The sound systems constituted a highly competitive market, where what counted was the playing of new and exclusive rhythm and blues records from the US. Audiences provided immediate feedback in the form of getting up to dance – or not – and the fortunes of a sound depended on its ability to keep audiences moving (Stolzoff 2000: 52-3).

¹ Reggae is used here as the generic term for Jamaican popular music after around 1962.

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

The explanation lies in the first place with the leading role taken by the sound systems in the early Jamaican music business. This initial orientation of the Jamaican music scene, shaped by intense competition in the highly innovative primary market of the dancehall, persisted even after domestically produced records replaced US repertoire. That is, a specialised form of end use, public performance of records for dancers, has strongly determined the organisation of the industry and forms of innovation. It is perhaps worth sketching the history of the 'sounds', then, and their role in the political economy of Jamaican music.

By 1960 sound system operators were encountering a repertoire shortage. As gospel influenced styles came to the fore in the American R and B market, the sound system operators, or their scouts who were sent over to the US to scour record shops, found it increasingly difficult to find new recordings in the older 'jump' style that had remained popular in Jamaican dancehalls. So the operators began to turn to local musicians in order to replicate this style on record. In 1960 there were two studios. RJR was a commercial radio station which incorporated a small studio. A local entrepreneur, Ken Khouri, owned the other one. From the mid-1950s he recorded, pressed and released mostly mento, the national 'folk' music style related to calypso, at his Federal studio. By the start of the new decade the sound system operators, Khouri himself, and a handful of independent producers including Chris Blackwell and Edward Seaga were recording tunes in a local variant of jump R and B (White 1998). Two years later, at the time of independence, making records for the dance hall

had expanded exponentially. In terms of style, the music had taken on a distinct local inflection and been given a name – ska. By mid-decade labels, recording studios and record shops were starting to spread along the Orange Street corridor at the Western edge of downtown Kingston (Cooke 2007).

There are parallels here with the emergence of rock music in Britain and the US, as well as significant divergences. In both cases new musical forms were built upon thriving new markets and ways of consuming music. In both, recording took a much more important and autonomous role than previously when its function had been merely to document live performance. And in both rock and reggae, musical sources beyond the home culture were hugely important. The divergences have to do with the way in which economics and aesthetics intersected quite differently in each case around problems of creativity and innovation. Whereas copyright, a corporatist industrial structure and the cult of the *auteur* governed innovation in rock, reggae was characterised by a dynamic blend of competition and co-operation, and the absence of effective IP.

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

We can hear this right from the start of domestic recording for the sound systems. What was at stake was a form of social authorship (Toynbee 2006) where continuity between recordings was much more important than originality. Yet this did not prevent innovation; far from it. The transformation in style between 1960 and 1962 which led to the ‘birth of reggae’, was both radical and coherent. Its single most important element was a change in rhythmic accent. Built on a 4/4 rhythm, the favoured jump R and B idiom featured a ‘walking’ bass line and snare drum ‘backbeats’ on beats 2 and 4. Many of the most popular tunes in the dancehall also featured an accent on the offbeat voiced by piano or guitar; namely, ‘1 and 2 and 3 and 4 and’, where the off beat is represented by ‘and’. What Jamaican musicians then did as they started recording in this idiom at the end of the 1950s was to slightly emphasise the offbeat.

If we jump forward to early 1962 and ‘Judge Not’, the first recording by a sixteen year old Bob Marley (1996), we can hear ska almost fully formed. There is still the

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

Let’s call the process at stake in the development of ska, *intensification* (see Toynbee 2007: 87-94). By this is meant collective production of change through the identification of an aesthetic zone – here, the accent on the offbeat – and then the making of this zone more and more salient over a cycle of recordings. For the present argument the significance of intensification lies in its essentially collective nature. Change was generated collectively in that the whole cohort of musicians in Kingston was involved as a group in the research and development of the new sound. Certainly, there was intense competition too, particularly among producers and sound system operators. Nevertheless, music makers contributed to stylistic innovation as artisans rather than heroic individuals as in the case of rock. Across all roles – musicians, vocalists, engineers, producers – and notwithstanding different interests and contractual relations, there was in effect a common culture and practice of making new: taking things a little further than last time, picking up on a trope used on that record, copying but varying what someone else has been doing

The fluid, collaborative yet competitive structure in which this kind of innovation flourished depended on a particular kind of economic organisation. At the top of the hierarchy producers (the most powerful of whom owned sound system operations too) called the shots, arranging recording sessions, hiring musicians and named artists, and then organising distribution. At first distribution simply meant record play at sound systems – the primary commodity was a whole evening’s selection of records played

² Groove refers to the dimension of rhythmic propulsion in music (see Keil 1994).

in the dancehall. Then during the early 60s a retail record market began to take off, though one which was always dependent on the dancehall for the presentation of new tunes and the consecration of successful ones.

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

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

Dodd emphasises his own altruism here. But probably what counted much more was the nature of the labour market. Voracious demand for new recordings for the sound systems, and by the mid-sixties the developing retail singles market, gave the relatively small number of skilled session musicians a strong bargaining position. Singers, on the other hand, even extremely successful ones like the Wailers at Studio One, could be contracted on the basis of a small retainer (White 2000, 160). Quite simply, demand uncertainty in respect of the recordings of 'name' solo artists or vocal groups, together with oversupply of singers themselves, made them weaker as labour market players. As for the role of 'song writer', this was much less important in reggae than in rock. But to the extent that there were song writers, they tended to come from the ranks of the singers. Writing was simply another duty to be performed.

Producers paid no royalties and generally claimed writing credits for themselves when work was issued overseas.³

As for the function of producer, s/he (there was one female producer in the 60s and 70s - Sonia Pottinger) was not just a hirer of labour, but also took on the function of *marque*. That is to say Jamaican producers became publically identified with a certain quality of sound, stable of singers or stylistic inflection. Producer-artists like Prince Buster, and later on Lee Perry, even released records under their own names.

Perhaps the general conclusion to draw is that in the Jamaican system the division of labour meant that creative input, and just as important the *attribution* of creative input, were spread across the various roles. In other words authorship was profoundly social even though it was far from being organised on a mutual basis. In this context copyright was simply beside the point. For the petty capitalist producers at the top of the chain, the priority was to ensure a constant supply of new records for the sound system, not to stop others from exploiting their product over the long term. Crucially, to be the first with a new sound gave producers competitive advantage. In other words, speed was of the essence. Even when the retail record market grew during the Sixties, the economic imperative remained the same: to come first to market. The point is that, brutal and exploitative though the system could be, it worked extremely efficiently to generate a high rate of musical innovation in the absence of IP.

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

³ For instance, see the account by singer and song writer Bob Andy of his dealings with Coxson Dodd at Studio One (Andy 1983). It might seem that this dual system of copyright abroad/no copyright at home was iniquitous: producers benefited while songwriters and performers were denied the full fruits of their labour. But there is no reason to believe that formal attribution of rights to artists would have reduced the economic exploitation at stake here. For copyright hardly changes the nature of cultural labour markets where over-supply (many want to become symbol makers) is combined with uncertainty of demand (Towse 2006). This combination radically reduces the bargaining power that can be brought to the table by artists (see the discussion above of singers, song-writers and session musicians in Kingston). And that in turn means that cultural intermediaries are able to demand the assignment of artists' rights on terms favourable to themselves. To put it succinctly, what counts in the cultural economy is not initial ownership of rights but rather the power to exploit them.

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

Intensification is an endogenous process of innovation. It depends on identifying a salient zone within a larger musical code, and then research and development of the aesthetic possibilities which emerge from this initial step. As we have heard, in the case of ska such possibilities centred on the accented off-beat. Conversely, in what might be called *translation*, the animating principle is lateral reference to that which is notionally outside a given musical code, rather than vertical reference to what precedes it. Translation involves broadening, rather than deepening, musical signification through the re-framing of musical materials. No doubt there was an aesthetic of hybridity at play here (for the significance of hybridity in Caribbean culture see Puri 2004). But translation was also a response to hyper-innovation – the need to constantly produce new ‘record-texts’ for the 45 rpm singles which were reggae music’s staple medium of reproduction. Re-use of existing texts, or the production of same-but-different ones, represented a highly efficient means of solving the problem.

Actually, we have already examined one instance of reggae translation, namely the importation of R and B. Effectively what initiated the cycle of intensification that culminated in a ska was a lateral move; the bringing across of the popular music of African-America. This was a relatively gross form of translation in that a whole genre – jump blues – provided the source code. However translation in reggae music occurred across a broad spectrum; not just genre but also oeuvre (where the source was the music of a single artist or group) and the version (the basis of which was a specific recording).

Let’s consider some examples; first, from somewhere in the middle of spectrum, the extensive use made by reggae artists during the 1960s of the work of US soul group,

The Impressions. The characteristic tenor-to-falsetto voice of many Jamaican singers in this period is clearly copied from the Impressions' lead singer and guitarist, Curtis Mayfield.⁴ This is not only a matter of vocal register though. It also has to do with the quality of voice, accompaniment and production values. Critically, such translation is not at all a static or unresponsive form of copying. Rather it represents a sideways development of musical codes into new areas of semiotic possibility. Many aspects of the work of Bob Marley and the Wailers between 1964 and 1967 demonstrate this. Indeed, translation of a whole variety of traits from the Impressions' oeuvre arguably provided the most important means by which the Wailers extended their signifying range in this period, enabling the production of a sophisticated yet earthy, tough but tender, local while also cosmopolitan musical style (Toynbee 2007: 94-8).

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

This point is critical for the present argument. There was, and indeed still is, little distinction within the musical culture between licit and illicit translation, between, at one end of our spectrum, the bringing across of generic traits and at the other end, the importation of melodies, lyrics, substantial motifs or even whole songs made by others – in other words, work elements whose re-use would constitute infringement of copyright law. This is not at all to suggest that translation was an indiscriminate process. But it does mean that it took place without recognition of norms of copyright,

⁴ Apart from the evidence provided by recordings, Jamaican music makers have themselves pointed out the near ubiquitous influence of Curtis Mayfield, for instance Derrick Harriott (2005 personal communication) and Pat Kelly (quoted in Katz 2003: 88).

or of codes of authorship (as in rock culture) which converged with these norms. In what kinds of way, then, are copyrighted work elements translated into reggae in the 1960s?

First, there is the re-use of an existing song – what would be termed in rock, the cover version. Derrick Harriott's 'Do I Worry?' (1998) from 1966 is a good example. This is a recording of the song written by Stanley Cowan and Bobby Worth in 1940. It was a big hit for African-American vocal group, the Ink Spots, in 1941, and it is probably in this form that Harriott first heard the song. His own rendition is pure rocksteady, that is to say in the much slower and sparer style which succeeded ska in the summer of 1966. In copyright terms, of course, it is simply a version of a work written by others and whose rights were owned (at the time and place of issue of my CD copy) by Peer Music (UK) Ltd. However it is reasonably safe to assume that no publisher information would have been shown on the original Jamaican release, nor that there would have been any recovery of royalties in respect of mechanical reproduction of the work at that time.⁵

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

⁵ Jamaican singles from the 1960s invariably show song title and artist. Sometimes composer information is included, but the present author has not seen any reference to publishers or to copyright among the fifty or so such pressings he has examined. The fact that Jamaica was not a signatory to international copyright conventions provides the overarching explanation here. (For a collection of images of Jamaican record labels from the 1960s see, Collingwood 2005.)

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

Another example of a cover with a different title to the original is ‘Darker Shade of Black’ (Mittoo 2004), released as a Studio One single in 1967. The artists credited on the original single are Sound Dimension, the group of session musicians led by Jackie Mittoo at that time. The composer, very typically on Studio One releases, is shown as the producer; ‘C. [for Clement] Dodd’.⁶ However, the melody taken by Mittoo’s organ consists in the verse part of the Lennon and McCartney tune, ‘Norwegian Wood’. This is repeated over an extraordinary ‘riddim’ which was to become a standard in Jamaican music, being re-recorded by Mittoo himself in the late 70s, and then revived by Frankie Paul for his hit, ‘Pass the Tu-Sheng Peng’ in 1983 (this version also included the ‘Norwegian Wood’ motif, but now voiced by a brass section). As recently as 2007 Chuck Fender employed the riddim on the single, ‘So

⁶ An image of the label can be seen at <http://www.soundsoftheuniverse.com/releases/?id=9442>.

Many Girls'. Indeed, the online directory ReggaeID lists a total of 183 recordings up to that date based on 'Darker Shade of Black'.⁷

In the case of 'Darker Shade of Black' although the keyboard melody is derivative and would undoubtedly be considered to infringe copyright in any court, the most significant aspect of the recording, and what has given it such enormous longevity, are the bass line and guitar riff. These each consist of a three note pattern.

Notwithstanding their extraordinarily effective combination in the riddim, this would be very unlikely to reach any threshold of substantiality currently being used in a copyright court (for the US see Toynebee 2006, and Korn 2007).

Riddims, open source and coming first to market

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

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

In an important sense, the riddim represents a synthesis of those processes of intensification and translation which we have been examining over the previous two sections. It involves intensification in that the repetition of a melodic/percussive pattern over many recordings provides a medium for the micro-phonic development of sonority; an aesthetic exploration in *depth*. Equally, though, the successive manifestations of a riddim can signify in *breadth*, with each one a translation of some

⁷ (see, http://www.reggaeid.co.uk/riddims.php?show_letter=D&PHPSESSID=0f92e1db4965be5a10188aa0cbbaa983, accessed on 01/04/08).

or all of the others by dint of the different words and delivery used by each deejay or singer. This is a profoundly dialogical form of music making.

But in all cases what is surely at stake is music-*ing*, in other words the continuous and always unfinished performance of a tradition, rather than the production of the individual works/recordings that are the object of copyright law. So, the ‘Darker Shade of Black’ riddim doesn’t belong to Jackie Mitto, the Sound Dimension – or even Clement Dodd despite the fact that his name is shown as composer on that Studio One single from forty years ago. And it clearly doesn’t belong to the writers or publishers of ‘Norwegian Wood’ either, despite its provenance.

Perhaps it might be said to belong to the Jamaican people. Arguably, the *de facto* common ownership at stake in the ‘riddim method’ (Manuel and Marshall 2006) derives as much from long established folklore as it does from recording for the dance hall. As we heard above, a national style, mento, was popular in Jamaica during the 1950s. But its origins go back much further. Ken Bilby suggests that mento encapsulates strong African retentions yet also ‘elements of a variety of European social-dance musics’ (1993: 193). It seems highly likely that its offbeat accents contributed to the development of ska. Another older form of people’s music that has fed reggae is nyabingi. This is the drumming used at Rasta rituals. It seems to have emerged as a specific style, and with a particular set of drums, towards the end of the 1950s. The most notable practitioner was Count Ossie whose group was based in a Rasta camp in the Wareika hills above Kingston. Nyabingi was itself built on rural drumming idioms with strong African retentions (Bilby 1993). Significantly for the present paper, it has been constantly translated into reggae. The original ‘Darker Shade of Black’ riddim, for instance, has hand drumming which is strongly influenced by nyabingi.

These examples of ‘folk continuity’ in reggae bring out a key point about the hybridity at stake in Jamaican music making. Little heed is paid to precepts of originality. Whether a musical trope derives from a notionally domestic or foreign culture is less important than the fact that it is woven into something which becomes ‘ours’ through the synthetic act of translation. However this suggests that the concept of collective indigenous ownership of reggae music by the Jamaican people is

ultimately as unsustainable as the ownership of individual rights in specific reggae 'works'. The point is that the radically diverse provenance of reggae's sources, both oral *and* phonographic, simply doesn't fit current conceptions of 'indigenous culture'. In any event, as Joseph Githaiga (1998) argues, enormous problems arise when one attempts to map existing forms of copyright law on to indigenous cultures, even when such a culture is clearly defined.

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

A comparison with the production of open source software may provide some answers. Here sophisticated computer programmes (like Linux) are developed by geographically and organisationally separated programmers. These software designers not only work without a hierarchical structure of co-ordination, they use IP rights to invert notions of property so as 'to protect distribution and access rather than restrict access' (Jordan 2008: 107). Consequently, developers receive no remuneration in respect of rights. As Steven Weber (2000: 5) notes in an influential paper, this raises three problems from the perspective of orthodox business models.

First is the issue of what might motivate individual programmers. Weber suggests it is the intrinsic interest and enjoyment in solving software design problems. This is supplemented by the desire to enhance one's reputation since a good piece of work will be acclaimed by other programmers in the software community. Lastly, there is a

shared altruistic culture which helps to motivate individuals (2000: 25-7). Overall, the economic logic is one where software becomes an ‘anti-rival good’. Even ostensible free riders contribute by reporting bugs, and the more people involved the greater their interest in achieving good software design (2000: 28-9).

These motivational factors all apply to reggae, including the fact that reggae music can be seen as an ‘anti-rival good’. Competing musicians and producers tend not to object to others using ‘their’ songs, sounds or riddims because they understand the result will be better music and a bigger market for everyone. That is to say, the more translators the better. We shouldn’t take this argument too far though. There *have* been plenty of disputes over the ownership and use of musical materials from the early years of ska (Katz 2003: 41-3) to today when (probably as a result of Jamaica’s new more vigorous copyright regime) disputes over riddims sometimes take a litigious turn (Manuel and Marshall 2006: 464-6). What’s more whereas open source programmers tend to have day-jobs which sustain their ‘hacking’ (Jordan 2008: 112-17), reggae music makers are often impoverished, belonging to the marginalised ‘precariat’ (Wacquant 2007). These caveats noted, the fact remains that, the parallels between reggae and open source regarding motivation are strong indeed. In each case, economic actors not only tolerate the open nature of the system, they recognise its centrality for their *modus operandi*.

The second problem raised by open source has to do with co-ordination. Weber reflects on why, at any given moment individual programmers, do not work on their own and pursue developments which lead away from the collectively produced code. One answer is that such ‘forking’ leads to a smaller audience and therefore lower potential acclaim. Another is that cultural norms of responsibility and leadership reinforce a congruent understanding of technical excellence.⁸ Forking isn’t such a critical issue in reggae because sideways moves (usually deriving from translation rather than intensification) are not merely tolerated, they may sometimes lead to successful aesthetic developments. Nonetheless, the factors Weber describes do have considerable force, and as a consequence reggae is an extremely coherent, well co-

⁸ These values are enshrined in the GPL licence which specifically prohibits forking (Jordan 2008: 107-112).

ordinated genre. In the terms we have been using here, reggae depends on strong ‘social authorship’.

Thirdly, Weber discusses the received wisdom according to which increases in the division of labour lead to decreases in efficiency as communication becomes more complex, and organisational structures have to be built in order to compensate for this. In open source software development, however, ‘modular design’ tends to obviate these problems. As he puts it, ‘[a] large program works by calling on relatively small and relatively self-contained modules’ (Weber 2000: 33). Once again, there are uncanny parallels in reggae. Riddims are small units of musical code. Likewise vocal timbres, characteristic patterns of phrasing, metres All may be developed relatively discretely, yet easily combined in the meta-module that is the reggae record.⁹

The model of open source software thus offers a highly illuminating way of conceiving the reggae mode of production. Nevertheless, it cannot account for the way the music realises exchange value at point of sale. Open source products are sold on the basis of the consumer support that is provided for them rather than the software itself (the copyright protection of the GPL licence used by open source programmers specifically precludes restrictions on copying). But reggae records are sold on ‘their own’. How can this be so given the absence of copyright which might prevent those who are not the producers of a new record selling copies on free ride terms?¹⁰ One answer is that producers often acquire proprietary control through custom and convention, backed up by force or the threat of it. But another factor is the sheer competitive advantage derived from coming first to market.

We have already hinted at this. But the work of Michele Boldrin and David Levine (2005) can help to explain what’s at stake here. The main thrust of their argument is that all kinds of symbolic goods – the objects of IP law – are actually much less different from non-symbolic ones than is normally suggested. The writers confront the

⁹ Interestingly in one way copyright with its privileging of expression over function offers a higher level of proprietorial control over musical ‘modules’ rather than those found in software. That said, ‘click-wrap’ restrictions on ‘reverse engineering’, and the ‘digital circumvention’ provisions in recent legislation such as the DMCA in the US make the copyright owner’s grip on software just as strong.

¹⁰ In fact, the new, and strengthening, copyright regime in Jamaica is now beginning to result in the prosecution of piracy (Daley and Foga 2007).

free rider argument by suggesting that in most markets significant ‘first-mover’ advantages apply before IP is factored in. In effect, the original creator is a monopolist up to the point that re-sellers are able to get their hands on a copy of the artefact, tool up for replication and then enter the market. Certainly, there will be competition at this point, but – absent IP – sufficient returns over and above the ‘opportunity cost’ of creation will already have been achieved on the part of the originator (2005: 1254). This factor certainly applies in reggae, whose political economy has been shaped by the imperative to be first in delivering new sounds to the dancehall audience. More research is needed to show distribution of revenue over the period of a record’s release, but it seems highly probable that most money is made in the very early stages as a tune becomes acclaimed in the dancehall.¹¹

As a corollary to first-mover advantage Boldrin and Levine point to the negative effects of IP on innovation. What happens when copyright is enforced is that costly and sometimes lengthy processes of rights clearance have to be negotiated with damaging consequences for innovation (2005: 1255). Imagine a situation in which clearances had to be obtained for all riddims. This might not wipe out the riddim method, but it would almost certainly lead to atrophy.¹² Over the longer term, Boldrin and Levine highlight the problem of rent seeking which is endemic under any IP system. ‘Monopoly creep’ occurs as governments tend to respond to the lobbies of rights owners and increase ‘the scope and duration of monopoly power’ (2005: 1255). In Jamaica the 1993 Copyright Act and the post-2000 creation of a state and para-statal copyright regime (Daley and Foga 2007) indicate the international power of this lobby, given expression most recently through TRIPS. Arguably, and only time will tell, this new regime threatens the political economy of music in Kingston on which the extraordinary achievements of reggae music makers have been built.¹³

Conclusion

¹¹ True, in a digital environment of almost instantaneous copying and re-dissemination first-mover advantage is reduced. But in such an environment copyright hardly works either, or at least only for mainstream cultural products where makers and (sometimes users too) opt into the copyright system. Increasingly the norm is one of free-entitlement to music in the digital domain.

¹² In a similar situation, the free use of samples in hip hop music in the US was controlled through a clearance system in the late 1980s. This drastically curtailed the use of samples by small scale producers as well as leading to a shift towards ‘softer’ aesthetic norms (Toynbee 2006: 96).

¹³ Though for an argument which makes the opposite case, in other words for the benefits of introducing a comprehensive IP regime in Jamaica, see Power and Hallenkreutz (2002).

I began by arguing that reggae music was premised on social authorship and the absence of copyright, albeit in a context of vigorous, petty-capitalist competition. In the last section I went further, suggesting that if reggae has flourished absent copyright then perhaps there is something about it which is not merely idiosyncratic. Could it be that principles of the political economy of reggae have wider application? Research on open source software (Weber 2000), and modelling of markets for symbolic goods without IP law (Boldrin and Levine 2005) suggest that this is the case. In the reggae system of production strong collaboration, efficient co-ordination and complex creative processes - all features of open source - seem to be combined with a competitive market system. This is encouraging. It suggests that copyright's grant of monopoly might not be a necessity in market economies after all. Or to put it more facetiously: the pirates of the Caribbean turn out to be good neighbours and role models.

Discography

- Buster, Prince (2000) 'Don't Throws Tones', *King of Ska*. Jet Star PBCD 11.
- Harriott, D. (1998) 'Do I Worry', *Trojan Rocksteady Box Set*. Trojan TRBCD 003.
- Mittoo, J. (2000) 'A Darker Shade of Black', *The Keyboard King at Studio One*. Universal Sounds USCD 8.
- The Wailers, (1991) 'Rolling Stone', *One Love at Studio One*. Heartbeat 617611.

Bibliography

- Andy, B. (1983) 'Interview with Ray Hurford and Colin Moore', *Small Axe* (accessed at <http://www.bobandy.com/int-smaxe2.htm> on 31 March, 2008).
- Barrett v Universal-Island Records (2006) HC 02 C00043.
- Barron, A. (2006) 'Introduction: harmony or dissonance? Copyright concepts and musical practice', *Social and Legal Studies*, 15/1, pp. 25-51.
- Bently, L. (2005) 'Authorship of popular music under UK copyright law', *E-Journal of IP Rights*, Oxford IP Research Centre (accessed at <http://www.oiprc.ox.ac.uk/EJWP1005.pdf> on 28 March, 2008).
- Bilby, K. (1993) 'Jamaica' in Manuel, P. with Bilby, K and Largey, M. *Caribbean*

- Currents: from Rumba to Reggae*. Philadelphia: Temple University Press.
- Boldrin, M. and Levine, D. (2005) *Proceedings of the National Academy of Sciences*, 102, pp. 1252-6.
- Collingwood, J. (2005) *Bob Marley: His Musical Legacy*. London: Cassell.
- Cooke, M. (2007) 'No preservatives on reggae history', *Jamaica Gleaner*, February 25 (accessed at <http://www.jamaica-gleaner.com/gleaner/20070225/ent/ent1.html> on 19/03/2008)
- Daley, D. and Foga, N. (2007) 'Jamaica: Beyond the TRIPs agreement', *Managing IP*, Americas IP Focus 2007, 3rd edition (accessed 28/03/08 at <http://www.managingip.com/Article.aspx?ArticleID=1450368>).
- Githaiga, J. (1998) 'IP law and the protection of indigenous folklore and knowledge', *Murdoch University Electronic Journal of Law*, 5/2 (accessed at <http://www.murdoch.edu.au/elaw/issues/v5n2/githaiga52nf.html> on 28 March, 2008)
- Harriott, D. (2005) Interview with the author, Kingston, Jamaica, 28 July.
- Jordan, T. (2008) *Hacking: Digital Media and Technological Determinism*. Cambridge: Polity
- Katz, D. (2003) *Solid Foundation: an Oral History of Reggae*. London: Bloomsbury.
- Keil, C. (1990) 'Motion and feeling through music', in C. Keil and S. Feld *Music Grooves: Essays and Dialogues*. Chicago: University of Chicago Press.
- Knibb, L. (2005) Interview with the author, Warwick University Students Union, 8 November.
- Korn, A. (2007) 'Issues facing legal practitioners in measuring substantiality of contemporary musical expression', *The John Marshall Review of IP Law* 6/3, pp. 489-500.
- Manuel, P. and Marshall, W. (2006) 'The riddim method: aesthetics, practice, and ownership in Jamaican dancehall', *Popular Music*, 25/3, 447-70.
- Marx, K. (1976) *Capital, Volume 1*. Harmondsworth: Penguin Books.
- Power, D. and Hallenkreutz, D. (2002) 'Profiting from creativity? The music industry in Stockholm, Sweden and Kingston, Jamaica', *Environment and Planning A*, 34, pp. 1833-54.

- Puri, S. (2004) *The Caribbean Postcolonial: Social Equality, Post-Nationalism and Cultural Hybridity*. New York: Palgrave Macmillan.
- Stolzoff, N. (2000) *Wake the Town and Tell the People: Dancehall Culture in Jamaica*. Durham: Duke University Press.
- Towse, R. (2006) 'Copyright and artists: a view from cultural economics', *Journal of Economic Surveys*, 20/4, 567-585.
- Toynbee, J. (2006) 'Copyright, the work and phonographic orality in music', *Social and Legal Studies*, 15/1, 77-99.
- Toynbee, J. (2007) *Bob Marley: Herald of a Postcolonial World?* Cambridge: Polity.
- Wacquant, L. (2007) 'Territorial stigmatization in the age of advanced marginality', *Thesis Eleven*, 91, 66-77.
- Weber, S. (2000) 'The political economy of open source software', *BRIE Working Paper* 140 (accessed at <http://economy.berkeley.edu/publications/wp/wp140.pdf> on 02/04/08).
- White, G. (1998) 'The evolution of Jamaican music pt. 1: "proto-ska" to ska', *Social and Economic Studies*, 57/1, 5-19.
- White, T. (2000) *Catch a Fire: The Life of Bob Marley*. London: Omnibus Press.