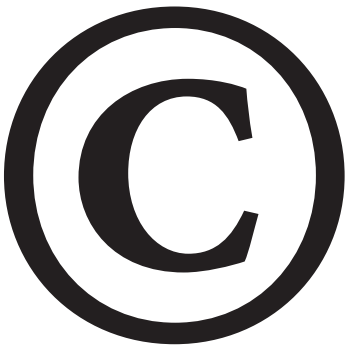
BETHANY KLEIN • GILES MOSS • LEE EDWARDS

UNDERSTANDING COPYRIGHT

INTELLECTUAL PROPERTY IN THE DIGITAL AGE



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CONSUMERS, CRIMINALS, PATRONS, PIRATES: HOW USERS CONNECT TO COPYRIGHT

LOCATING USERS

So far, this book has considered the positions and perspectives of a range of parties invested in debates about copyright, from cultural industry representatives and internet intermediaries to creative workers at all levels. But we have not yet looked at the positions and perspectives of the largest group with a relationship to copyrighted material: everyday users.

Firstly, it's important to clarify what we mean by 'users'. The term 'users' is employed here to represent those whose primary relationship to copyrighted material is as fans, purchasers, downloaders and sharers. They may also produce their own media content, but their role as media producer is secondary to that of user. Users may have worried about receiving a letter warning them to cease their infringing behaviour after downloading a television programme that is not available where they live or through their service. Users may have laughed at the anti-piracy campaigns aired before a DVD or film showing or they may have wondered about the legality of peer-to-peer (P2P) and streaming platforms. Or they may have never considered the role of copyright in their or anybody else's lives. Whatever the case, the fact remains that users are the most important party in the copyright debate: they are the focus of legal and policy reform, the target of industry appeals, the judges and supporters of creative workers. Indeed, users are present in one form or another throughout the book, often through characterizations that serve the needs of the groups articulating justifications. More often than not, users are characterized narrowly as consumers, perhaps not so surprising from commercial industries, but possibly worrying from policymakers, who we might expect to understand the population they represent primarily as citizens.

In this chapter, we explore the ways that users have been positioned in copyright discourse and how they have been studied by scholarly and industry researchers. We examine user practices as one strategy for understanding user perspectives before going straight to the source and looking at how users describe their own behaviour and views towards copyright. The chapter concludes by considering the role that users have played in the copyright debate (minimal) and where they might fit in a more democratic and deliberative process of consultation and policymaking.

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FRAMING USERS

From the advent of copyright through to the present, users have been categorized and framed in legal, policy, popular, and industry discourses. Our understanding of the role of users with respect to copyright has been shaped by shifting and competing characterizations. We explore four key frames that position users as the public, as pirates, as partners, and as amateur producers, and consider how the choice of frame can alter the terms of the debate.

The public

You could say that users in the modern sense — those who use and consume the creative work protected by copyright — were present in the very earliest discussions of copyright as the beneficiaries of laws formulated to serve the public interest, one of the goals of copyright legislation, as noted in the brief history of copyright presented in Chapter 2. The role of the 'public interest' in early copyright debates and laws demonstrates the importance of users from the start.

Users, as we understand them in the modern sense, were initially visible as the 'public' in public interest: the end consumers who would benefit from the creation and circulation of copyrighted material such as literature and music scores. Users were present in early copyright debates through appeals to the 'public interest' directly, as the beneficiaries of laws to facilitate 'fair use' and 'fair dealing' and to encourage availability and accessibility of creative works. For example, the interest of the public was put forward as an argument against a temporary decision in 1768 to grant copyright in perpetuity: Joseph Yates argued against a common law copyright and claimed that the focus on the 'rights of the author as central protagonist' overlooked the interests of all others (Deazley, 2004: 177). Giving the author/proprietor such rights in perpetuity could lead to suppression of works or exorbitant prices, both of which would discourage propagation of learning for the general public. Users were also present in early debates indirectly, through the claim that a copyright system that rewards creative workers for their labour will encourage more creative production, ultimately benefiting the public as end-user. In other words, copyright must protect creative workers in order for the public to benefit from the production of creative work. As Davies explains, public policy must 'find a balance between two aspects of the public interest inherent to copyright: copyright as driving creative activity and thus promoting learning for the benefit of the public and exceptions to copyright that offer the widest availability of copyrighted material for the public' (2002: x).

Public interest arguments have continued to play a key role, as seen in the debates around open rights, more equitable pricing structures, new exceptions and extensions of copyright terms. In each of these cases, proposed changes are based in part on perceived benefits to the public, whether those benefits involve easier or more affordable access or providing an incentive to creators to produce more work to be enjoyed by the public.

Pirates

When users have infringed copyright, they are located in the copyright debate in an entirely different way: as pirates! The language of piracy has long had a place in the copyright debates, and became prominent especially in discussions of international copyright protection. In her chapter on nineteenth-century Anglo-US copyright relations, Seville considers 'the variations in the language of piracy as circumstances change through the century, and the debate progresses. What is revealed is an increasingly subtle and sensitive use of such language, as awareness of the complex issues underlying the international copyright question increases' (2010: 20). In this period, the label of pirate was applied to publishers who had not paid to reprint material, whether or not the law of a particular country required payment, depriving copyright holders of income and undermining publishers who had paid to reprint the same material. While some publishers and authors defended the activities of such pirates, by the end of the nineteenth-century, and with the passing of international copyright acts, any ambiguity around the morality of literary piracy was largely put to rest.

Whereas in the past infringement would necessarily have been undertaken on an organized scale and for commercial gain, today it is often carried out by ordinary users, enabled to produce and share illegal copies through technological advances (David, 2010). Users of P2P networks have inherited the pirate metaphor, which is as likely to be employed to describe individual copyright users as organized groups. From the British Phonographic Industry's 1980s *Home Taping is Killing Music* campaign, which replaced the skull of the Jolly Roger symbol with a cassette, to the 'Piracy is Theft' slogan used by the Federation Against Software Theft from the 1980s onwards and the *Piracy. It's a Crime* campaign used by the Motion Picture Association of America (MPAA) in the 2000s (see Chapter 3 for an analysis of campaign discourse), shifting technology and mass individualized reproduction have revived the discourse of piracy and have been central to industry representations of infringement. The use of the term 'pirate' to describe users engaged in media-sharing activities has been criticized for conflating very different types of infringement and for pushing the boundaries of the legal meaning of 'piracy'. Birmingham and David (2011), for example, note the difference between copyright infringement and criminal piracy, criticizing the application of the term to activities like P2P sharing. They also suggest 'this "success" in extending the term "piracy" beyond its legal meaning, may have been the content industry's worst mistake. The term "piracy" now confers a degree of rebel cool on practices that might otherwise be seen as simply penny pinching. From Jack Sparrow to The Pirate Bay, being labelled a pirate is not seen as a bad thing' (2011: 75). Indeed, some ordinary users responded to industry campaigns with parodies, highlighting the failure of the label to frighten many P2P platform users into legal behaviour (see Box 6.1).

Box 6.1
'You wouldn't steal a baby'

Media users and creators have produced parodies of anti-piracy campaigns which highlight the failure of the messages to result in the desired response. David (2013) considers how representations of file sharing as theft or piracy have failed or backfired, noting the parodies produced in response to anti-piracy campaigns and circulated on the internet: the hyperbole of the MPAA's *Piracy. It's a Crime* campaign, which compared piracy to stealing cars, handbags and televisions ('You wouldn't steal a car'), was met with faux-hysterical parodies. As well as user-created responses, parodies of the campaign were featured for the enjoyment of users in an episode of British comedy *The IT Crowd* and as a DVD extra for the American animated series *Futurama.* If viewers weren't already suspicious of the crime analogies employed by the campaign, *The IT Crowd* challenged the comparison by escalating the authoritative statements ('You wouldn't steal a handbag. You wouldn't steal a car. You wouldn't steal a baby. You wouldn't shoot a policeman', and so on) and setting them against absurd, dramatic imagery, including the downloader seizing a baby from its pram (see Figure 6.1) and using the hat of the intervening policeman as a toilet. The *Futurama* example similarly parodies the campaign through the robot pirate's disagreement with statements like 'You wouldn't steal a spaceship' and 'You wouldn't steal a human head'. The acronym of the campaign tagline – Downloading Often Is Terrible – is accentuated by the spacing between the characters (see Figure 6.2) and suggests the creators view piracy as undeserving of serious crime comparisons. (Though they would presumably prefer viewers to purchase the DVD on which the parody features.) Cvetkovski explores online parodies of anti-piracy campaigns, including examples in media, like the *IT Crowd* episode, and argues 'that anti-piracy parodies symbolize resistance to centralized and corporate control of popular culture' (2014: 248). Reflecting on the widespread participation in and circulation of such parodies, he suggests, 'Piracy spoofs invariably attract much attention on the internet because they reflect just how consumers resist having their attitudes shaped or influenced by corporate citizens' (2014: 254).

Figure 6.1

Figure 6.2

Partners and legitimate consumers

The normalization of everyday infringement, encouraged by the increased ease and speed of copying introduced by digitization, has resulted in new conceptualizations of users in more recent campaigns, as outlined in Chapter 3's illustration of cultural industry perspectives and communication. Industry and government communication for and about users has started to eschew criminalization frames in favour of discourses of humiliation, where accessing copyright material illegally is shameful; education, in which users simply need to learn how and why to behave properly; and, most recently, responsibilization, suggesting creators and users alike are responsible for the success or failure of the cultural industries.

The 'consumer' language sets the terms of the debate because it suggests that the job of users is not to participate in discussions of policy, not to challenge the law and not to debate ideas about creative work and reward. To be a good consumer means to support the creative economy through legal and sanctioned activities and purchases. In trying to understand why consumers veer from this path, other parties have often described them as lacking the knowledge required to understand (and abide by) copyright. Anti-piracy campaigns and educational programmes designed for school use rely in part on the assumption that greater clarity and knowledge of copyright law will result in better behaviour. We return to the question of what users understand about copyright below.

Amateur creators

This book began with the premise that digitization has changed the role of and debates about copyright among a range of invested parties through the ability of consumers to make and distribute near exact copies of copyrighted work. The digital age has been heralded as bringing with it another new opportunity for users: the opportunity to generate and distribute their own creative contributions, often involving the use of manipulable platforms and sometimes involving re-working of copyrighted material. Indeed, interactive and collaborative activities are the cornerstone of what became

known as 'Web 2.0'. Therefore, at the same time as users have been framed as pirates or as partners of industry, they have also been positioned in a different way as amateur creators themselves and encouraged to produce and share content online: to 'broadcast yourself', as the YouTube slogan put it. The emergence of Web 2.0 interactive technologies which encourage mass participation, cultural collaboration, and content creation has resulted in celebratory discourses of users as producers in their own right. By 2006, such was the pervasiveness of Web 2.0 technology that *TIME* famously named 'you' — the ordinary media users empowered to produce — person of the year 'for seizing the reins of the global media, for founding and framing the new digital democracy, for working for nothing and beating the pros at their own game' (Grossman, 2006).

To summarize, across legal, policy, and industry discourses, users have been characterized in various and sometimes conflicting ways: as the public, as pirates, as legitimate consumers, and as creators themselves. They have also been characterized as confused and in need of education. If this is how users have been framed discursively, what does research tell us about what people actually do in relation to copyrighted material and about how they understand and justify their own practices?

USER PRACTICES

Many researchers — academic, market, commissioned by governments — have been involved in investigations into user practices and behaviour around copyrighted material, including research on the extent of piracy versus legal consumption. Such studies range from large, quantitative surveys that seek a global picture of activity to smaller, qualitative projects that focus on the detail of particular activities and populations. This section explores a range of approaches in order to better understand what users do and what users think about copyright.

Legal consumption and piracy

There have been some major surveys conducted to understand internet user (and non-user) practices and attitudes on a global scale. The World Internet Survey includes 39 partner countries to study the social impact of the internet, though issues of illegal access or copyright are outside its broad scope (see World Internet Project, 2013, for the most recent report). On the other hand, The Research Bay project, which collected survey answers from 75,000 users visiting the temporarily renamed The Pirate Bay website, focused specifically on users visiting one of the most well-publicized sites of illegal sharing, telling us a lot about P2P users, but less about users more generally (www.thesurveybay.com/). Recent, large-scale surveys have sought to establish the role of unauthorized access in the activities across a more general population: for example, surveys of German, American and British users have suggested that many users access media through both authorized and unauthorized services and those who use illegal platforms spend the same amount or more money on legal media than their P2P-avoidant counterparts (Ofcom, 2012; Karaganis and Renkema, 2013).

Meanwhile industry groups continue to investigate user behaviour. For instance, PRS (Performing Rights Society) and Google published research in 2012 into business models for copyright-infringing sites. The report noted that although 'a large amount of quantitative and qualitative data has been collected in the past through

consumer surveys into why people use these sites, there is insufficient data-driven analysis of the sites that are considered to facilitate copyright infringement' (2012: 3); of course, users still feature heavily, from how they access sites (directly or through links on social network or other sites), to how they should be differentiated into unintended, casual and regular users of infringing sites (PRS and Google, 2012). Research commissioned by industry groups tends to focus, unsurprisingly, on understanding the user for the purpose of improving enforcement or encouraging legal and profitable activities. Piracy is taken for granted as having swept the globe, with differences in national contexts irrelevant to parties intent on curbing illegal access wherever it takes place (see Box 6.2).

Box 6.2
Media piracy around the world

The 'problem' of piracy is repeatedly framed as a global one requiring international regulation and enforcement approaches. However, the situation of media users, and their relationship to pirated media, varies across the globe. In a report edited by Karaganis, *Media Piracy in Emerging Economies (2011)*, researchers explore the context of piracy in a range of countries, including South Africa, Russia, Brazil, Mexico, Bolivia and India.

While each country has its own particular context — with different successes and challenges — the studies taken together paint a more complex picture of the nature of piracy and the barriers to legal consumption than a one-size-fits-all model allows. Karaganis notes, 'High prices for media goods, low incomes, and cheap digital technologies are the main ingredients of global media piracy. If piracy is ubiquitous in most parts of the world, it is because these conditions are ubiquitous' (2011: i). No amount of education or enforcement can solve a problem that is caused by a lack of affordable access for most people and the framing of piracy as leading to a global loss hides the variation in impact on national economies. The report highlights the 'countervailing benefits of piracy to both industry and consumers in any model of total economic impact and, consequently, the importance of treating piracy as part of the economy rather than simply as a drain on it' (Karaganis, 2011: 13). In developing markets, the money that is not spent on legal media products (often a loss to US companies) will be spent on other services and products that support local and national economies: this 'consumer surplus from piracy might be more productive, socially valuable, and/or job creating than additional investment in the software and media sectors' (Karaganis, 2011: 16).

As well as examining the economic and industry contexts that frame media piracy, the report draws on surveys, focus groups and interviews with users. Strong user views reflected a clear understanding of the wider inequalities fuelling the battle over copyright: 'The consumer surplus generated by piracy is not just popular but also widely understood in economic-justice terms, mapped to perceptions of greedy US and multinational corporations and to the broader structural inequalities of globalization in which most developing-world consumers live. Enforcement efforts, in turn, are widely associated with US pressure on national governments and are met with indifference or hostility by large majorities of respondents' (Karaganis, 2011: 34). The user research conducted for the report demonstrates that users around the world have savvy and important views to contribute to the copyright debate.

Against the backdrop of attempts to capture, predict and control user behaviour, academics too have sought to understand users through various disciplinary lenses, including approaches from criminology, law, behavioural psychology, and media and communication. While scholars across these disciplines have shared an interest in better understanding users, specific research questions are driven by the objectives of the field: to position infringement within or against the context of criminal behaviour; to evaluate user practices in terms of the law; to understand the decision-making processes behind user choices; to consider infringing behaviour as one aspect of wider media use and media culture. The following section considers an area of activity that has been of particular interest to media and communication researchers and that highlights a key tension around users' creative engagement with copyrighted material.

Infringing creative practices

A range of scholars have studied a variety of related activities that have collapsed the boundary between users and creators, some of which activate issues involving copyright law's limitations in dealing with creative acts that are akin to fine art practices like collage (see McLeod, 2005, and below discussion of McLeod and Dicola, 2011), and others of which relate to issues addressed in Chapter 4 about contests over P2P distribution platforms (when does fan sharing become distribution?). Not all copyright infringement reflects the more typical representation of piracy as straightforward copying and sharing of copyrighted material. As noted above, one of the ways ordinary users are positioned within the copyright debates is as amateur producers or contributors to creative processes. A number of terms have been used and adopted by industry and scholars to capture such users and their activities: pro-ams (professional amateurs) (Manovich, 2009); produsers and produsage (Bruns, 2008); co-creators (Potts et al., 2008); user-generated content (van Dijck, 2009).

Amateur creative production, as indicated by the various phrases that have been introduced, takes many different forms. Scholars have explored how 'Co-creative media production is perhaps a disruptive agent of change that sits uncomfortably with our current understandings and theories of work and labour' (see overview in Banks and Deuze, 2009: 419) and we address some of the concerns around labour which affect both amateur and professional artists in the context of copyright in Chapter 5. However, for the present chapter, we focus specifically on those activities which highlight intersections of creative and infringing approaches to production.

Users participate in lots of activities which could reasonably be called 'creative' and which relate to copyright in different ways. Users contribute to open source software and Creative Commons content through websites like Wikipedia. They also contribute as co-creators of commercial media products like games, both illegally through 'modding' (making modifications not intended by the designer) and legally as invited contributors to game development, the latter of which prompts its own ethical questions: 'For waged labour, there is the threat of displacement by unpaid amateurs and the loss or redefinition of work. For amateurs, there is the question of whether pursuing their passions through creative production is something to be constructed as

"enabled" by commercial entities or "exploited" by commercial entities' (Banks and Humphreys, 2008: 415).

Other activities relate directly to debates about copyright infringement. For example, a culture of subtitling and sharing has sprung up in response to the circulation of television programmes in markets where there is a long delay before broadcast or where the programmes are not broadcast at all. As Hu describes of fan cultures in China, activities range from sharing sources for copies and copies themselves (physical and torrents) to subtitling. Noting one subtitler's style, Hu writes, 'Her subtitling is an individual display of her mastery of language in articulation with her love for the drama' (2005: 177), a description which recognizes subtitling as a fan activity and creative act, not simply a technical skill. She draws attention to the statement included by the subtitler: 'This version is only for the purpose of friendly exchange. The copyright remains the property of Fuji TV station in Japan. Those who attempt to illegally market this product for commercial purposes must be responsible for possible outcomes' (2005: 178). While such activities are no doubt infringing copyright, the culture surrounding them seems far from the stereotypical image of piracy. Furthermore, research into infringing creative activities has suggested that the circulation of such material may in some cases offer benefits to the cultural industries. Erickson et al.'s study of parody music videos on YouTube, for instance, found that 'There is no evidence for economic damage to rights holders through substitution: The presence of parody content is correlated with, and predicts larger audiences for original music videos' (Erickson et al., 2013: 3). (Parody is often covered under a copyright exception if particular criteria are met, though in practice interpretation of permitted and non-permitted uses have varied within and between countries (see Erickson et al., 2013).)

Even in the face of conflicting evidence, cultural industries and intermediaries, including online platforms and companies such as Facebook and Google, tend to take a conservative view towards amateur creative production and copyright. Rather than modifying their practices around copyright to reflect the growth of user-driven creative activities, platforms have placed increasing restrictions on the creative practices of users. Burgess describes YouTube's changing copyright policy:

> Earlier phases of YouTube saw the rise and fall of a series of hugely popular UGC genres and fads that were rife with the reuse of professional media content — including home-made music videos and rapidly mashed up or wittily quoted clips from popular television shows. The innocent days where tween fans of teen idols could cut a rip of their favourite track to their favourite ripped images of the singer are, thanks to YouTube's copyright protection technologies, and automated takedowns, fading fast. (Burgess, 2013: 56)

Users can draw on and reflect on their involvement in creative processes online, and the obstacles they face, to form opinions about copyright issues. Amateur creative production reminds us that users have multiple identities, multiple purposes and multiple modes of interacting with copyrighted material and as a result cannot be boxed in, categorized and regulated in the way that policy and industry may want to do.

The international examples outlined above also highlight the importance of cultural context in understanding the role of copyright in the age of digitization, particularly in terms of user activities and perspectives. As copyright policy is increasingly proposed and approved on a global scale, differences between user activities and views in various cultural contexts offer the opportunity to broaden policy possibilities. While we can learn a lot about users through their legal and illegal activities, to really understand what users believe and communicate about copyright issues, we need to examine user comprehension, perspectives and discourses: the following section gathers together some of what we know about user views.

USER PERSPECTIVES AND DISCOURSES

Despite scholarly interventions challenging characterizations of users as deviants to be corrected or misinformed consumers lacking required knowledge, the cultural industries and the policymakers they influence continue to frame copyright infringement through powerful and entrenched ideas. These ideas have structured the development of copyright throughout history, making it difficult to re-imagine file sharing as pointing towards more open models of distribution or to see pirates as thoughtful contributors to a wider debate about the suitability of copyright law and regulation.

Even as space for alternative characterizations of users has been opened, the foundation of good versus bad behaviour persists in most government and cultural industry approaches: users tend to be implicated as either law-abiding or criminal, ethical or unethical, or as good or bad fans, with notions of piracy and the public interest continuing to constitute good or bad use. While any or all descriptions of users may be true of particular users in specific situations, they elide the complexities inherent to user attitudes and behaviour or make assumptions without empirically-grounded data. To get a clearer picture of how users understand copyright and their relationship to it, media users must be recognized, like the file sharers surveyed by Caraway, as 'knowledgeable social actors capable of furthering our understanding of the conditions under which their activities occur' (2012: 566). Commonsense or reductive characterizations of media users are challenged by research into the perspectives of users themselves, which offers detailed accounts of the varied behaviour and related justifications attached to file sharing (Kinnally et al., 2008; Cenite et al., 2009; Caraway, 2012; Edwards et al., 2013b).

What do users understand about copyright?

Some surveys of the general population have investigated the characterization of users as possessing limited knowledge of copyright and confused by distinctions between legal and illegal access and use of copyrighted material. Findings have offered support for the characterization: for example, in their 2012 online copyright infringement tracker benchmark study, the UK Office of Communications (Ofcom) found that 44 percent of internet users 'aged 12+ claimed to be either "not particularly confident" or "not at all" confident in terms of what is legal and what isn't online' (Ofcom, 2012). A German survey of digital content usage, also published in 2012, found that, while awareness of the illegality of P2P and sharing has grown over time, younger users

and users of illegal platforms are more likely to believe that illegal platforms and options are legal (GfK, 2012). Karaganis and Renkema's *Common Culture* report, based on a survey of American and German users, also highlights the inability of users to accurately differentiate legal from illegal platforms, noting that surveying the issue of unauthorized streaming 'is difficult because of the lack of clear differentiators between many legal and unauthorized services' (2013: 26). Such findings have similarly been borne out through qualitative research which has given a platform to the voices of users themselves, an approach explored in greater detail below.

It seems that users are confused because copyright is confusing. One reason is that the language of law and policy requires specialist knowledge and terms. Another is that users are rarely exposed to the history, detail and purpose of copyright, which tend to be taken for granted in user-directed campaigns that link consumer behaviour to criminal activity or to financially-threatened cultural industries (see Chapter 3) and which tend to be absent in other arenas of public discussion. As Frith and Marshall note, 'Copyright is not normally taken to be a topic of political or public interest. It is rarely written about in newspapers or featured in policy debate', which explains in part how 'the rationale of copyright laws and why they matter tends to be determined by the interest of the corporate lobbyists' (2004: 4).

There are exceptions to this tendency, however, when copyright becomes the focus of news stories or educational curricula, offering rare opportunities for users to encounter, and possibly reflect on, key issues. In this way, users may learn about copyright through particular controversies, lawsuits, and policy reviews, as well as formal educational initiatives.

Copyright and the Beatles: learning through controversy

In order for an advertiser to use a pre-existing song in a commercial, the song must be licensed from the copyright holder. Nowadays, many commercials use pre-existing songs by well-known and unknown artists, but in the 1980s such uses were less common and some resulted in heated public debates. As Klein (2009) describes, a 1987 Nike commercial featuring The Beatles' 'Revolution' introduced the public to aspects of US copyright law when the living members of the band objected to the use of the song. Many Beatles fans were surprised to discover that the Beatles themselves did not control the licensing of the track. Like most music released by major record labels, the recording was owned by the label that financed the recording (in this case, Capitol-EMI). And the rights to the composition — which are originally assigned to the songwriter/s — had been purchased by Michael Jackson, who had been previously advised by his friend Paul McCartney to invest in music publishing. The use of 'Revolution' by Nike was legal, but didn't sit well with fans who felt that the band should have a right to reject such uses on moral grounds (and, as noted in Chapter 2, other countries do acknowledge varying degrees of moral rights). This case underlines a contradiction between a public sense of moral rights, expressed through the debate over the commercial, and the actual system of music copyright, where an author may have no control over licensing.

Almost two decades later, the Beatles found themselves again at the centre of a debate about uses of copyrighted material, although this time in favour of an unsanctioned use. McLeod and Dicola (2011) look at the history of sampling in popular music, lawsuits that resulted from cases of sampling and how these have shaped copyright law. According to McLeod and Dicola, the current system of copyright is inefficient and stifles creativity: they demonstrate how some classic hip-hop albums would not be made today because of the constraints of copyright. One example they analyse is Dangermouse's 2004 *The Grey Album*, a mash-up of Jay-Z's *Black Album* and the Beatles' *White Album*, made without licensing either album. *The Grey Album* was both popular and critically acclaimed despite EMI issuing cease-and-desist orders around the world. They argue that 'EMI are reacting to the fact that digital technologies help level the playing field between individual artists and the culture industry machine' (McLeod and Dicola, 2011: 177) and that the industry reaction is disingenuous, and overprotective of a system that has served them well in the past. This case illustrates the way that the public views mash-ups as creative acts in and of themselves, like montage or sound collage, an approach which, ironically, already had a precedent in popular music with the Beatles' own use of sound and recording samples.

They fought the law: learning through lawsuits

Details of copyright have also emerged for users through the press coverage and publicity surrounding high-profile lawsuits against owners of websites that encourage P2P sharing of media. Previous chapters have documented a range of lawsuits related to such platforms and the infringing activities involved, though two, bookending the 2000s, have proved most significant in terms of publicity and results. Filed in December 1999 and decided in February 2001, *A&M Records, Inc. v. Napster, Inc.* was the earliest legal case to deal with copyright law and P2P downloading. As detailed in Chapter 4, it brought together Recording Industry Association of America (RIAA) plaintiffs who argued against the fair use claims asserted by Napster representatives, with the RIAA ultimately prevailing. For many users who had accessed media through P2P platforms, this case removed any ambiguity about how their activities would be viewed through a court of law, even if the arguments in favour of file sharing seemed persuasive. It's worth noting that a consortium of 18 copyright law professors responded to the outcome, explaining that they were 'concerned that the District Court's approach to these issues would, if followed by other courts, significantly impede the deployment of useful technology that could greatly enhance the value of the Internet for copyright owners as well as consumers' (Litman et al., 2000). In other words, the copyright law professors noted that copyright law is not meant to protect business models at the risk of preventing new models from developing. Their intervention also demonstrated that it was not simply ordinary users who supported Napster, but experts as well.

In 2009 The Pirate Bay Trial in Sweden revived some of the same debates and, like the Napster case, the platform can be understood as standing in for the ordinary, file-sharing user. The defendants in this case were found guilty of being accessories

to crimes against copyright law. Critiques regarding the role of copyright law in innovation followed, alongside some approving responses from artists: Paul McCartney, for example, responded to the verdict: 'If you get on a bus you've got to pay. And I think it's fair, you should pay your ticket … Anyone who does something good, particularly if you get really lucky and do a great artistic thing and have a mega hit, I think you should get rewarded for that' (quoted in McKenzie and Cochrane, 2009). Again, the view of the law is revealed through the lawsuit outcome, though users were able to poke holes into the assumptions and arguments underpinning the prosecution's case, questioning the applicability of theft analogies for non-physical property; raising an eyebrow at claims about the suffering of creators; and insisting that not all P2P activities are the same. Knowledge that platforms can be used to access out-of-print material, material outside the user's market and to replace media purchased in an analogue form can form the basis for challenging a legal approach that does not differentiate. Even for users who have generally supported the outcomes of legal action, the punishment of platform owners and ordinary users may seem over-the-top: The Pirate Bay defendants were initially given prison sentences and ordered to pay fines of $1million each and, following its successful lawsuit against Napster, the RIAA did not curry favour with the public when it prosecuted grandparents and children.

Copyright revisited: learning through policy reviews

Reviews of and changes to copyright law also attract press coverage and can highlight for users antiquated or inconsistent aspects of copyright, which are often the aspects that result in recommendations for change. Users who pay close attention to such coverage may notice that actual changes to copyright law, following government-commissioned reviews, are sometimes at odds with the recommendations or that the least controversial recommendations, from a user's perspective, take longer to implement than the more contentious recommendations.

As we describe in the following chapter, there have been a number of government-commissioned consultations and reviews of copyright in the United Kingdom over the last decade, with the most recent reported in *Digital Opportunity* (Hargreaves, 2011). The report acknowledged the modern British copyright system as complicated and complex, and recognized that those without institutional support or training, such as users and independent creators, can be easily left confused by the detail of copyright law.

The recommendations, which included updates to copyright law intended to increase consumer confidence, were generally supported by the relevant government committees and the government's formal, published response. In June 2014, three years after the report was published, the recommendation to make format shifting of CDs and e-books legal was implemented (to much bewilderment: few users realized the everyday activity was *not* legal) (Arthur, 2014).

On the other hand, within a few months of the report's publication, another change to copyright seemed to contradict the report, suggesting that the modifications to copyright law are the result of competing interests. The review had concluded, supporting the findings of the 2006 UK review, that there was no evidence to support an extension

to the rights of owners of sound recordings and that proposals should be based on economic evidence, yet an extension was approved soon after.

Copyright in the classroom: learning through formal educational initiatives

As copyright's role in the lives of everyday users has grown more significant through digitization, so too has its presence in educational curricula. Because educational programmes are often produced and provided by bodies located within or linked to the cultural industries, their orientation towards copyright and evident objectives are pretty obvious. Yar (2008) examines educational campaigns about intellectual property (IP) produced by the Copyright Society of America, the Software & Information Industry Association (SIIA), the Business Software Alliance (BSA), the MPAA and the Government of Western Australia's Department of Education and Training, in order to identify the common themes.

He organizes the identified themes under four key myths, which will not be new to readers of this book. The first is the myth of property as a natural right, by which Yar means the tendency of programmes to treat the notion of individual property rights in the context of copyright as normal and uncontested. The second, the myth of equivalence between tangibles and intangibles, highlights the way the educational programmes treat IP as the same as material property, avoiding the obvious differences (for example, that a 'stolen' intangible good can still be used by other parties). The myth of individual creativity is the third: the programmes thus rely on the Romantic notion of the individual creator, ignoring the centrality of borrowing (of generic and narrative conventions, for instance) to much creative and copyrighted work. The fourth, the myth of harm, emphasizes the material damage caused by infringement to individual creators and damage caused to cultural production by removing incentives, despite evidence to the contrary on both counts.

What the schoolchildren who encounter these classroom programmes don't get, however, is any sense of alternative perspectives. As Yar puts it, 'From a critical perspective, one must note the absence of any acknowledgement that the concept of intellectual property is itself contested and contestable, or any consideration of alternative views about how access to cultural goods might be organized' (2008: 619). The contested nature of IP represents a missed opportunity to encourage participation in the debate over copyright, though probing questions no doubt emerge organically in lessons.

These examples suggest that learning about copyright — through particular controversies, lawsuits, policy reviews, and formal educational initiatives — does not simply fill a gap in knowledge, which will necessarily lead to law-abiding behaviour. Instead, users enter into unresolved debates about why copyright law is what it is, whom it serves and how it fits, or doesn't fit, with social norms. The examples also demonstrate the limited information about copyright that most users have available to them: in Chapter 7 we consider how users have managed to mobilize against particular policies despite their disadvantageous position and in Chapter 8 we return to the possibility of education as an intervention and consider what an effective approach might entail.

In sum, it is probably fair to say, as industry and government representatives have, that many users have minimal understanding or misunderstanding of the formal system of copyright and its attendant issues. And yet, even users who are hesitant to make claims about the content of copyright law and who are confused about what constitutes a legal use of copyrighted material, are willing and able to challenge industry claims regarding piracy and to debate issues relevant to the cultural industries and copyright.

What do users have to say about copyright?

Explorations of media users, especially those that have been commissioned by the cultural industries or that have fed policy consultations, have been largely quantitative in nature. As Freedman notes, 'The policymaking process continues to privilege quantitative data and large-scale statistical evidence' (2008: 101). While the surveys mentioned above offer some useful statistics for understanding what users do, multiple choice questions and short answers are less successful in identifying *why* users do what they do. A preference for large-scale surveys thus ignores the rich data and complex picture that can be achieved through qualitative approaches such as open-ended surveys, focus groups or interviews. A qualitative approach can encourage engagement with users as citizens with valuable voices, and their own (legitimate) perspectives and justifications on copyright, in a way that quantitative data simply cannot. The belief that users offer worthy views and valuable contributions to the larger policy discussion was a basis for the focus groups conducted by Edwards et al. (2013b) (see Box 6.3).

Box 6.3

Communicating copyright: users in their own voices

By giving user voices a platform, we are able to examine and challenge the assumptions that sustain characterizations of users present in the discourse of other groups, such as rights holders or policymakers. Edwards et al. (2013b) conducted focus groups in the UK which illustrated media users as complex, contradictory and conflicted, but also, at times, understandably cynical and acutely rational.

Users presented a complex combination of behaviour and views with respect to copyrighted material, often describing patterns of use that included both legal and illegal access: a student described, 'A film comes out in the movies. And if it looks really good, I'll go watch it. And then, I dunno, a couple of weeks go by, and you can get a relatively good quality [copy] online and download it illegally. And, I'll do that so I can watch it at home. And then another few months go by and I can buy the DVD for a quid.'

Users displayed some awareness of industry structures, which informed their views of copyright: some users were suspicious that many creatives do not receive a substantial share of copyright revenue (such as newer artists reliant on the promotion of large media companies) and this concern was paired with the widespread belief that some creatives receive too

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much reward. As a retiree noted, 'I think it's fair to protect the income stream of the property owner to a point. I mean, there comes a point where you might even say, do you know what, I think the world has paid you amply for your intellectual property, and you should now say, thank you very much, world, and hand it over.'

Users of P2P networks expressed specific and rational justifications for behaviour, from the belief that such behaviour was temporary (relating to income, employment and age) to the recognition of new social norms that sanction the breaking of copyright law in this way: a member of a mother's group explained, 'I understand why people who ... who spend the time to create these things need paying for them, but if I buy an actual book or a CD, you don't think twice about lending it to a friend for a couple of weeks. ... I think once I've purchased it, I now think it's mine to do with what I wish.'

Ordinary users may deploy their awareness of the role of power in the cultural industries to contest claims that piracy is damaging to artists, by rightly pointing out that many of the normal practices of recording companies — for example, the percentage of music sales that goes to the artist — can also be viewed as damaging to artists. At the same time, users may accept the basic tenets of copyright as being rooted in common sense: for instance, expressing a belief in or sympathy for the underlying principles of copyright as providing an incentive to produce creative work and as a reward for creative labour. Finally and unsurprisingly, users form perspectives on copyright in terms of the relevance of copyright to their own lives, and it is through this process that the gap between the law and everyday behaviour is revealed.

Marshall and Frith describe the predictable consequence of a law that is out of alignment with everyday behaviour: 'There currently seems to be a radical disjuncture between the law and the social practices it supposedly governs. … If copyright law is counter-intuitive, if it contradicts widely-held beliefs about the avaricious nature of the recording industry, then it is unlikely to be followed' (2004: 213). More recently, Hargreaves acknowledged in the *Digital Opportunity* report, 'The copyright regime cannot be considered fit for the digital age when millions of citizens are in daily breach of copyright, simply for shifting a piece of music or video from one device to another. People are confused about what is allowed and what is not, with the risk that the law falls into disrepute' (2011: 5).

If we locate piracy within our ordinary, everyday cultural lives, as Marshall did in his consideration of music 'infringers' (2004), we must accept social practices as following rules, patterns and rationales that deserve exploration, not simply regulation. What goes unacknowledged by many industry and policy voices is that user behaviour towards copyrighted material is guided by a logic, just not the same logic embedded in the law. For instance, users have views on when creators have been adequately rewarded for their creative endeavours and what material should be freely available to end users, with such opinions driving the actions of internet activists (see Box 6.4).

Box 6.4
The case of internet activist Aaron Swartz

The line between ordinary user and activist is a fluid one, and many users have been galvanized into activism by strong convictions and the desire for change that emerged through their own online experiences. The internet has also made it easier than ever for like-minded users to come together as a movement, with extraordinary results. As Sell notes of the defeat of the Stop Online Piracy Act (SOPA) and PROTECT IP Act (PIPA) in 2012, 'While US private rights holders powerfully have shaped the global intellectual property system (projecting their preferences globally), this time a transnational network of Internet users altered domestic intellectual property outcomes in the United States' (2013: 68). One of the activists opposed to the bills, and a key proponent of the campaign to defeat them, was computer programmer Aaron Swartz, whose suicide in 2013 was a tragic example of the unintended consequences of criminalizing infringement regardless of context.

In 2010 and 2011 Swartz, a longtime advocate of open access, had downloaded a large number of academic journal articles from the digital library JSTOR and was charged by federal authorities, who claimed that Swartz intended to distribute the documents to unauthorized users via P2P platforms (Swartz himself was authorized to access the articles through a university affiliation). Following an increase in the number of charges and with the threat of severe penalties, including 35 years in prison, 26-year-old Swartz took his own life. Many felt that the prosecution was attempting to make an example of Swartz and that the charges were inappropriate and excessive for actions that were rooted in a belief in open access rather than personal gain. Swartz's death served as a catalyst for a proposed bill (known as 'Aaron's Law') that limits the scope of the Computer Fraud and Abuse Act and its application to everyday activities. The case is relevant to our exploration of the copyright debate as comprising competing justifications and uneven platforms to voice positions: ordinary users, including the activists that speak on their behalf, have limited opportunities to communicate their perspectives and influence policymaking, forcing them to rely on alternative methods. That these alternative methods are met with criminal prosecution illustrates how those in power are effectively shutting down any possibility of productive deliberation.

Indeed, in the early days of file sharing, Vaidhyanathan (2001) celebrated P2P networks and the MP3 movement as a 'rational revolt' and an example of citizens challenging the control of the music industry that prompted conversations about the relevance of copyright. While some of Vaidhyanathan's predictions are less convincing today (for example, he suggested that people would continue to buy media because official releases are higher quality or more convenient), his characterization of such activities as a 'rational revolt' gives users a metaphorical seat at the table. But who could be assigned the seat to speak for all users? Various political and activists groups, including The Pirate Party, Electronic Frontier Foundation, Open Rights Group, Creative Commons, are often assumed to have this responsibility, 'representing' the voices of users and acting as visible and audible sources of user discourses. Lindgren (2013)

analyses the pro-piracy discourses of blogs in Sweden in order to capture the views and voices of pirates and pro-piracy actors; while pro-piracy bloggers can hardly represent all users, they can be seen as representing the interests of file sharers and they illustrate how 'moral entrepreneurship may be exercised not only by traditional actors such as politicians, educators, news institutions, or representatives of churches and the legal system, but also by online grassroots organizations, mobilized subcultures or digitally literate individuals' (2013: 3).

The following chapter will explore the perspectives and roles of some of the organized groups in greater detail. For now, it is worth noting that activism has had some success in resisting certain policies such as SOPA and PIPA, but this is different from users (activist or not) having a constructive influence on the policymaking process. As we discuss in the following chapter, there are serious limitations attached to what Rosanvallon (2008) describes as a 'democracy of rejection' rather than 'democracy of proposition', where ordinary citizens only have the choice to say no to what those in power propose, rather than the ability to propose alternatives.

WHERE'S THE CONSULTATION?

This chapter has drawn attention to the gulf between users, as imagined in the communications and campaigns of the cultural industries and the policies of government, and the complex reality of the end-user experience of copyright in the digital age, where ideas of pirates and the public meet and clash with everyday activities. As the section on user research demonstrated, the importance of identifying what users understand or don't understand about copyright has entered the agenda of researchers from a broad range of perspectives and with various objectives. However, while some voices have expressed that the disjuncture between user experiences and copyright law requires legislative reforms, there continues to be an emphasis on influencing user behaviour through enforcement, industry campaigns and narrow educational aims. Organizations like the Electronic Frontier Foundation have offered alternatives to traditional educational campaigns — their *Teaching Copyright* curriculum provides the balance that Yar (2008) identified as missing in mainstream campaigns — but they lack the access and funding that powerful cultural industries have to insert them into classrooms or beyond.

Consumer and educational campaigns about copyright have concentrated on communicating the laws and the morality of abiding by them, with the expectation that users will then follow them. Clearer communication of the history of copyright and the claims that lead to policy change or policy challenges would better position users as partners in deliberation who, with industry and policymakers, can map a way forward. Educators have often turned to media literacy to equip people to critically analyse media production, distribution and reception: in Chapter 8 we consider the possibilities and limitations of a literacy approach to media policy.

This chapter has highlighted the voice of consumers as offering a contribution to the debate, but one that would be enhanced through the encouragement of a more

informed public and a more deliberative policymaking process, where the interests and values of all groups are represented and reflected upon equally, marking a return of the public interest to the heart of copyright legislation. Whether the policymaking process is able or willing to include user voices remains to be seen. In the next chapter, we turn our attention to the policymakers whose role is to balance the various interests and perspectives that contribute to the copyright debate.