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Same as it ever was: The Canadian and American music industries' responses to digitization and the circulation of "piracy panic narratives"

Kaitlyn Kribs
Joint Program in Communication and Culture
York University/Ryerson University

Abstract
In this paper, I outline how the "piracy panic narrative" (Arditi, 2015) has repositioned the fan/musician dynamic in the digital era, from one between maker and listener to one between labourer and thief. The paper questions if the press has fairly assessed the fan/musician dynamic in the digital era and examines who has directly benefited from the reorganization of the relations between producer and consumer. The article provides a contemporary history of the American and Canadian music industries' response to file sharing, crisis and piracy. Drawing on data from the 2017 Music Canada report on the Value Gap, the essay ultimately concludes that those most affected by the repositioning of the producer/consumer dynamic are not the various stakeholders whose voices are most frequently heard, but actually the musicians. The piracy panic narrative is thus nothing but an exercise in creating smoke and mirrors; music industries depict themselves as victims, all the while quietly rearranging their business practices to maintain a long-held position as gatekeeper.

Keywords
Digitization, Music Industries, Value Gap, Piracy, MP3.

Corresponding Author: Kaitlyn Kribs – kkribs@yorku.ca

On May 27, 1997, *USA Today* published what is now known to be the first media account of the unauthorized downloading of MP3 music files. In the article, journalist Bruce Haring (1997) recounts the ease with which young people enter queries into an "internet search engine" and locate websites offering (free) sound files "using a technique called MPEG Audio Layer 3". He reveals that the popularity of such sites has "mushroomed on the Net" over the past few months, particularly among college students. Yet in spite of widespread industry misgivings about the circulation of MP3s (which to many key players at that time signalled a burgeoning sect of pirates-cum-entrepreneurs), Jim Griffin, then-director of technology at Geffen Records, is quoted as commending the MP3, arguing that despite current limitations, the online circulation of MP3s represents the "future of music distribution" (Haring, 1997).

So, what went wrong? In the intervening decades, scholars and critics have engaged in lively debates regarding the central post-Napster proposition: "the recording industry is dead." In 2002, Steve Jones urged readers to consider why claims about the death of the Music Industry even seem possible, and to reflect on why such claims are often made with relish. As music industries rallied against file-sharing platforms and their alleged ability to supersede their long-standing gatekeeping initiatives, discourses from popular, trade, and critical press were chiming the death knell of the industry, and decrying fans as bootlegging thieves. This widely circulated "piracy panic narrative" reconfigured the relationship between producers and consumers, from musician and fan to victim and criminal (Arditi, 2015). But is that really a fair assessment of the fan/musician dynamic in the digital era? Who actually stands to benefit from this reorganization of the relations between producer and consumer?

In what follows, I provide a close examination of the American and Canadian music industries' responses to digitization and, more specifically, their hostile aversion to the availability and free circulation of MP3 files via peer-to-peer file-sharing networks. To begin, I define the Music Industry, and provide a brief overview of the history of panic and piracy in contemporary music industries. The remainder of the article explains David Arditi's (2015) "piracy panic narrative" and assesses the implications of its repositioning of the fan/musician dynamic.

Overall, this essay[1] charts the decades wherein the MP3 went from internet novelty to mainstay format. It begins with the American context because Napster is *the* emblem of the digital zeitgeist of the 1990s, and because it is in the United States that Napster was created (and ultimately dismantled). The remainder of the article conceptualizes the various industry responses to digitization as a play in three acts. Act One covers the period where the piracy panic narrative emerges and when efforts to quash file sharing begin in earnest. Act Two focuses on the moment those efforts turned from stopping the sites that enable peer-to-peer file sharing to suing citizens characterized as prolific pirates. Finally, Act Three sees the revivification of the piracy panic narrative in Canadian cultural policy after several years of dormancy. Drawing on on data from the 2017 Music Canada report on the Value Gap and the 2019 Shifting Paradigms Report from the Standing Committee on Canadian Heritage on remuneration models for artists and creative industries, I ultimately conclude that those most negatively affected by the repositioning of the producer/consumer dynamic continue to be musicians. The piracy panic narrative is therefore nothing more than an exercise in creating smoke and mirrors: music industries depict themselves as victims, all the while quietly rearranging their business practices to maintain their long-held position as gatekeeper.

[1] This article is an early iteration of what has since developed into two chapters of my dissertation. In one chapter, I offer a more detailed account of the legal proceedings surrounding industry efforts to quash file-sharing practices between 1997 and 2007, in both the United States and Canada. I begin with the proceedings initiated by the Recording Industry Association of America (RIAA) that followed the popularization of Napster mentioned above and then cover the Canadian Recording Industry Association's (CRIA) venture at an RIAA-style shutdown of peer-to-peer file sharing. This includes the BMG Canada Inc. v. John Doe lawsuit, Judge von Finckenstein's contentious ruling, the CRIA's appeal, and the CRIA's eventual takedown of BitTorrent Tracker Demonoid. The second chapter is an in-depth examination of the key policies and reports that emerged in Canada between 2008–2019 to address changes wrought by digitization. In addition to the documents already mentioned in this article, I examine the Creative Canada Policy Framework (2017); Music Canada's report on Closing the Value Gap (2019); and the Statutory Review of the Copyright Act (2019). The key themes discussed include copyright, safe harbour exemptions, the definition of a sound recording, and the radio royalty exemption.

Defining the Field

Jacques Attali's (1985) core argument in *Noise: A Political Economy of Music* is that music, as a cultural form, is intimately tied up in the modes of its production. These modes, he argues, are bound to structures that both enable and constrain creativity, and these structures shape the conditions of production experienced by the musician as well as the conditions within which relationships are created between musicians and audiences (Attali, 1985, p. 9). Jonathan Sterne (2012) explains that it is *through* the industrialization and commodification of music that the aforementioned relations are transformed from that of musician and fan into one between records and cash (p. 190). This relationship, of course, is exemplified by the Music Industry/musician/consumer dynamic.

Ordinarily, evoking the term "music industry" conjures a mental image of a giant corporate monolith, one fixed in form and function—but it's far more complex than this. Trying to make sense of these complexities, Matt Jones (2012) helpfully delineates the nuanced differences between three specific yet interrelated concepts: music industry, music industries, and the Music Industry. For Jones (2012), it is important to distinguish among these three ways of conceptualizing the production, circulation, and consumption of recorded music. *Music industry* is the "unstable mixture of entrepreneurial instinct" combined with "industrial and business latitude" held together by a "legal framework of contract and intellectual property law" (Jones, 2012, p. 5). The term "music industry" best captures "the mass or repeated actions made by record companies, music publishers, and live agents" (Jones, 2012, p. 5). It is, in essence, the business *practices* and procedures that make up the industry devoted—at least in some way—to music production, distribution, and consumption. The term indicates the doing of actions and processes by music industries *and* the Music Industry (Jones, 2012).

Narrowing his focus somewhat, Jones (2012) uses *music industries* to recall the specific practices and products of the music industry. The term encapsulates recording, publishing, and live performance; music commodity forms that can, and do, vary; and licenses (Jones, 2012). Music industries thus refers to the particular *businesses* involved in producing and distributing music commodities, and also those involved in licensing music and putting on shows.

Finally, Jones (2012) characterizes the commonly shared perspectives and practices among industries involved in the publishing, recording and live

performance of music as *the Music Industry*. This term expresses the interactions and interdependencies among these three distinct industries as both necessary and commonplace. Echoing what Max Horkheimer and Theodor Adorno long ago recognized, Jones (2012) argues that "the Music Industry exerts a standardizing cultural force" (p. 175); its impetus is the preservation of the Music Industry "standard" of expertise and the maintenance of the formulae that demonstrate guaranteed returns on investment.

Some scholars attempt to eschew the invocation of such an ambiguous term by focusing on what they deem "the recording industry"—that is, those industries concerned exclusively with the sale and circulation of recorded music. However, within the era of 360-degree contracts and a waning dependence on physical music commodities, the notion of "the recording industry" fails to fully capture the complex actions and interactions concurrently taking place (Meier, 2017). Consider, for example, this shift in Canada: during the early aughts, the pre-existing Sound Recording Development Program changed its name to the Canada Music Fund (CMF); and the Canadian Recording Industry Association likewise changed its name to Music Canada. While seemingly minor semantic differences, these changes speak to a wider shift in the understanding and expectation of what constitutes music commodities: the recordings, the performer, and the licensing rights.

Music Industries, Crisis & Piracy

The history of music industries reveals battles over playback formats and tensions between recording companies and consumers who demand cheap or free music (Sirois & Wasko, 2011). These battles tend to disrupt the status quo, receiving an exorbitant amount of media attention and are regularly framed as moments of crisis.[2] In 1983, for instance, *Rolling Stone* printed an article titled "The Digital

[2] The concept of moral panic fits logically enough into a conversation about the piracy panic narrative, especially when considering the role of the news media and popular press in circulating these narratives. Indeed, the piracy panic narrative could be read as a form of moral panic, as the press and relevant corporate stakeholders consistently frame the issue of piracy as a matter of morality (e.g. "stealing music is theft and theft is bad"). However, moral panics are most often generated from issues that incite fear in the public (e.g. fear of muggings, terrorism, gangs, shootings, tainted Halloween candy, etc.); by contrast, the piracy panic narrative generates fear of the public. The piracy panic narrative is the most effective way to understand this particular issue because it recognizes the fact that, in this so-called crisis of industry, it's the public who are characterized as "pirates" of intellectual property—a faceless mass to be feared.

Revolution: Will the Compact Disc Make LPs Obsolete?" (Knopper, 2010). Swap the words "MP3" and "CD" for "compact disc" and "LP", and the article could easily be read as if it were written in 2003 — even 2013. Cognizant of the industry's flair for the dramatic, Simon Frith (1988) argues that "there is more to be learnt from the continuities in pop history than from the constantly publicized changes" (p. 12). Similarly, David Hesmondhalgh (2019) stresses the importance of recognizing contradictions within the cultural industries, of recognizing the presence of continuity *and* change; of structure *and* agency; and of exploitation *and* pleasure. While it is undeniable that change within cultural industries—including music industries—regularly occurs, it is important that we ask the extent to which these changes are actual epochal shifts, as there are many continuities that remain alongside much-celebrated change. Hesmondhalgh urges that scholars be wary of falling into a neophilic trap of innovation idolatry and, like Frith, encourages his fellow researchers to stay grounded by keeping a strong eye toward patterns of continuity *and* change throughout the history of specific cultural industries, such as music industries.

Most often, these so-called crises are nothing more than the industries' failure to respond to the ebb and flow of industry and innovation. It is understood that changes in technology are what incite much of the piracy panic narratives that circulate in and among popular discourses about technology, digitization, and the music industry. Despite the music industries' ability to overcome and adapt to many of the changes they've faced, technology nevertheless remains a steadfast contradiction within music industries as it simultaneously helps to propel the music commodity to the far reaches of the globe at the same time as it seeks to "destroy it from its material core" (Sirois & Wasko, 2011, p. 338). While technological innovations have never fully or fundamentally reconfigured the interdependencies of music industries, digitization has arguably been the most transformative (Jones, 2012).

Digitization has had significant repercussions for the nature of the music commodity, and the Music Industry is therefore reconfiguring itself around the distribution, circulation, and presentation of digital music via online retail outlets, file-sharing services, and streaming platforms (Morris, 2015). Digitization therefore demands a sea change in the modes of selling music and compensating artists, as well as the policies and regulations for managing sound recordings. A key issue that

repeatedly inspires panic among the music industries, but one that has come to a head in the digital era, is their ability to maintain a monopoly over the means of distribution (Jones, 2002; Sirois & Wasko, 2011). Because music industries profit greatly by intervening in the exchange of music commodities—while at the same time investing little into the creation of those commodities—they have amended their approaches in the digital era to ensure they maintain their rent-seeking[3] returns. As Leslie Meier (2017) explains, "the business logics and tendencies inherited from the old music industries still play a vital role in shaping the asymmetrical distribution of risks and rewards found in the contemporary music industries" (p. 53). They have reinserted themselves in the supply chain by shutting down or buying up existing (illegal) distribution platforms, receiving exorbitant licensing fees to allow access to their catalogues (i.e. Spotify), or by creating entirely new platforms (i.e. Tidal or Vevo).

Ultimately, the technological changes undergirding the production, distribution, and consumption of sound recordings have not profoundly disrupted the steadfast economic practices of the old recording industry (Meier, 2017). Consequently, while the Music Industry spent significant resources decrying file-sharing and digital distribution for posing a threat to the value of recorded music, the reality of the situation is that inequalities have intensified in the presence of digital distribution, and that it's often the musician that suffers, not the industry (Morris, 2015). As such, the Music Industry is still a field of—and site for struggle over—power: "the power to decide who controls effort and decides what efforts are appropriate to market success" (Jones, 2012, p. 204).

Piracy Panic Narrative: A Play in Three Acts

Simply put, the piracy panic narrative suggests the following: file sharing is piracy, piracy is stealing, and stealing hurts artists and labels; ergo, fans who download shared files are not simply accessing free music but rather stealing potential revenue from their favourite artists (Arditi, 2014). "By labelling file sharers as property thieves," Arditi contends, "the piracy panic narrative constructs a

[3] Ursula Huws (2016) explains that, under the structure of platform capitalism, capital intervenes by taking a rent. That is to say, it takes a small percentage of profits from the exchange of goods on its platform. The platform is therefore an intermediary that links producers to consumers, but one that does very little active work beyond facilitating this link (e.g. Uber, Apple Music, Postmates, etc).

victim—the artist—and a victimizer—the fan" (p. xxii). But in so doing, musicians are pitted directly against their audiences, fans, and consumers; "that is, the people who already support [them]" (p. xxii). Meanwhile, the Music Industry assumes the role of empath, and positions itself as speaking to the needs of the affected parties—musicians. In reality, however, musicians are put in the uncomfortable position of, on the one hand, being forced to condemn the actions of fans who are freely (though illegally) circulating their music—and, on the other hand, being required to actively cultivate a monetizable fanbase via social media platforms in order to make a living. If the music industries hadn't been given a platform by news outlets to lambaste file-sharers and denounce the illegality of file-sharing, "the discourse over whether file sharing is illegal may be different structurally. The problem is that the idea of piracy has become naturalized" (Arditi, 2015, p. xxiii).

These digital production, distribution and consumption systems have actually enhanced, rather than undermined, the commercial position of most music industries firms; this reality directly contradicts the music industries' claims, reflected in the "piracy panic narrative", that they are experiencing financial turmoil. Arditi (2015) suggests that the piracy panic narrative was put forth by the Recording Industry Association of America (RIAA) in an effort to create political will for the state to regulate cultural production in favour of big business and was widely and uncritically circulated by mainstream news outlets. In the proceeding section, I describe the two major litigious initiatives undertaken by the RIAA to thwart the free circulation of MP3s and unpack some of the implications that have arisen as a result of the Value Gap this has generated.

Act 1: RIAA vs. Napster

On June 1, 1999, Shawn Fanning debuted Napster, an independent peer-to-peer file sharing service that allowed users to upload and download MP3s via a user-friendly interface (Witt, 2015). That same summer, Frank Creighton, then-head of the RIAA's anti-piracy division, was first within the organization to officially recognize online file-sharing after being shown Napster at a board meeting. By October 7, 1999, there were 150,000 registered users trading 3.5 million files, and by October 27, Hilary Rosen, then-head of the RIAA, instructed the association's lawyers to draft a complaint to Napster (Knopper, 2010). The RIAA then filed its first official copyright-infringement lawsuit against Napster in the US District Court in San Francisco on December 6, 1999. For its defence, Napster attempted to use the 1992

Audio Home Recording Act[4] and the 1984 Supreme Court precedent, Sony Corp of America v. Universal City Studios, "The Betamax Case"; if Sony can sell VCRs for people to record TV, Napster argued, the same logic should apply to their case. Judge Marilyn Hall Patel, however, disagreed with their argument, and Napster lost the case (Knopper, 2010).

By July 2000, Napster was hosting almost 20 million users, and by October Fanning had struck a deal with German media giant Bertelsmann for $60 million dollars (Knopper, 2010). In the meantime, while Napster continued to face litigation, the company attempted to appeal Judge Patel's verdict. In February 2001, the US Court of Appeals for the Ninth Circuit upheld Patel's decision and the site was officially declared illegal (Knopper, 2010; Witt, 2015). Napster engineers then began blocking file names according to a list provided to them by the RIAA in March 2001, and by May 14, 2002, Napster had officially declared bankruptcy (Knopper, 2010).

Throughout this time, the RIAA was given uninterrupted access to mainstream media to circulate their piracy panic narrative. Napster, unsurprisingly, was not. Without adequate opportunity to meaningfully engage with the RIAA, Napster was silenced out of the debate—and so, too, were fans and musicians alike. Without a competing voice in the argument, the RIAA received staunch political and legal support. Yet, after pushing around its weight to block the largest file-sharing site from continuing to operate, the RIAA hadn't grown tired. Instead of adapting or amending their business models according to the technological changes occurring in front of them, they continued to rail hard against this cultural movement; the RIAA then shifted its attention from file-sharing sites to the individuals responsible for sharing them.

[4] The Audio Home Recording Act 1992 was designed to prohibit the unlawful recording of media by consumers, but lawyers for computer companies demanded an exemption, stating that consumers should have the right to back up material via CD-Rom. The exemption was fiercely opposed by the Music Industry but the lawyers representing them realized that the AHRA wouldn't pass without the compromise, so they made it. Therefore, IBM and its ilk pay no royalties to the music industries for enabling users to record media files on their devices, nor did they install a chip to restrict the number of copies one can make. This was a crucial oversight, of course, and can be pointed to as one of the key reasons the Music Industry temporarily lost its stronghold over music circulation/distribution/consumption (Knopper, 2010, 160).

Act 2: RIAA vs. Consumers

When Apple debuted iTunes on January 9, 2001 at MacWorld San Francisco, it created a viable space for record labels to sell digital music to eager consumers. Yet, in March of 2002, just five months after iTunes' stable release date, the RIAA began suing its own customer base (Knopper, 2010). Uncomfortable with the turn that the war on piracy was taking, Hilary Rosen openly disagreed with the lawsuits, refusing to be the face of the campaign, and on September 7, 2003 she resigned in protest after 16 years of heading the organization (Witt, 2015). The RIAA then proceeded with "Project Hubcap," a series of "educational lawsuits" designed to teach file-sharers that music piracy hurts the industry and, most importantly, musicians (Knopper, 2010; Witt, 2015).

The lawsuits were futile, misguided and unproductive, doing little to deter piracy and recoup supposed losses. The RIAA initially targeted 261 individuals, requesting damages of up to $150,000 per song (Witt, 2015). These individuals included: single mothers, families without computers, senior citizens, children, the unemployed, and "people who'd been dead for months" (Witt, 2015, p. 160). One case in particular received significant media attention: Brianna LaHara, a 12-year-old girl who lived in a New York City housing project, downloaded the theme song to *Family Matters*, and was then subsequently sued and forced to settle for $2000 (Witt, 2015). These educational lawsuits were brought against a total of 16,837 people, almost all of whom were average citizens with absolutely no connections to elite or entrepreneurial pirates (Witt, 2015).

As of 2006, the industry had settled approximately 6000 suits, each averaging $3000-$4000 (Knopper, 2010, p. 351). While the RIAA and IFPI (the International Federation of Phonographic Industries) were publicly blaming file-sharing as the cause for a dramatic decline in CD sales, as early as 2005, the IFPI's own annual report acknowledged that the "free market," a recession, and a buying cycle were what contributed to the overall decline in revenues (Arditi, 2015). By forcefully shutting down peer-to-peer file-sharing programs and suing the average citizens who used them, the RIAA demonstrated that what was at stake was not the availability of music online and the fair compensation of artists, but rather maintaining the existing "structure of profit-making in the recording industry" (Arditi, 2015, p. 116). Stephen Witt (2015) argues that the war on piracy ended up looking a lot like the war on drugs: "costly and probably unwinnable, even in the face of felony prosecutions" (p. 226). In the end, the lawsuit campaign had little

impact on the amount of copyrighted music that is illegally downloaded (Knopper, 2010).

Act 3: The Value Gap

Steve Knopper (2010) suggests that it was the piracy panic narrative and the American industry's litigious responses that were the real causes of the 2000s crash, reflecting a common pattern of resistance to change within music industries. "If we are to reimagine an alternative, better world for musicians and listeners," writes Jonathan Sterne (2012), "we will need to look past both the old monopolies over distribution and exciting practices of peer-to-peer file-sharing for new models that support a robust musical culture, one not just based on buying and selling" (p. 28). He argues that piracy was a productive economic force and, while the recording industries frame it as a threat to capitalism, other industries benefit handsomely—consider consumer electronics, broadband, internet service providers, and other kinds of intellectual property rights holders (Sterne, 2012). The industry's inaction up to 1997 is crucial, he continues, as it allowed other industries such as Apple to develop and organize around the online media environment. "In many respects," notes Leslie M. Meier (2017), "the power structure inherited from the 'old' music industries remains intact in the era of digital distribution" (p. 154). In other words, while the industry cried poor, citing declining CD sales and the widespread circulation of illegally downloaded music, the music industries more broadly continued to reap the benefits of a system rigged in their favour. The piracy panic narrative actively pitted musicians and fans against one another, obfuscating the ways in which the Music Industry quietly benefited from the chaos.

According to Jonathan Sterne (2012), the short-term loss of compact discs as property was overcome by music industry players who sought to maintain ownership and control over the means of distribution; after all, distribution is the main model for profit generation (Sterne, 2012). By 2009, the global music industries were in complete disarray, but at the same time were also beginning to capitalize on digital distribution. Sirois and Wasko (2011) identify this as yet another example of the Music Industry following rather than leading trends. In our current day, music industries actively exploit "new music through digital sales, including satellite radio and webcasting, ringtones, iTunes sales and subscription services" (Sirois & Wasko, 2011, p. 350). As artists and labels seek new directions

for revenue, the importance of viral videos, publishing rights, streaming services, and the festival touring circuit continue to grow (Witt, 2015).

It is now commonly understood that streaming has become the official alternative to physical music sales and downloading; and as of 2018, streaming accounted for 60% of the music marketplace in Canada (Music Canada, 2019). Consequently, streaming platforms are fundamentally changing the way that consumers use and access their music by limiting users' ability to share music and stopping them from playing it on an unlimited number of devices. While the industry is enthusiastic about the potential for the closed circulation and revenue generation offered by streaming, it has become quite clear that streaming didn't solve everything. According to Stephen Witt (2015), music streaming platforms remain "perpetual money-losers," spending unsustainable amounts to license content to attract early users. And despite all this spending on licensing, artists with millions of plays earn royalty cheques only in the hundreds of dollars—this is a Value Gap (Witt, 2015).

According to Music Canada (2017), the core problem of the Value Gap is "a failure to provide fair compensation to creators for the use of their work", and this has a significant and direct impact on the livelihoods of all musicians. "The Value Gap," they continue, "is the result of how government policies were implemented around the world as part of [the] early digital landscape two decades ago" (p. 10). In other words, the rule books that govern the contemporary digital marketplace were drawn up "when it was virtually impossible to foresee how [things] would unfold and what consequences the new rules would have" (Music Canada, 2017, p. 10). Ultimately, Music Canada argues that there remains a gulf between the revenues derived from online platforms/services and the revenue returned to recording artists and labels. Their major complaint is not with illegal downloading services, however, but rather with services that enable user-uploaded content for streaming: YouTube.

The most salient issue raised by Music Canada (2017) in its Value Gap report is that of the Safe Harbour Laws and Protections. The 1996 World Intellectual Property Organization (WIPO) treaties introduced Safe Harbours to exempt internet service providers (ISPs) and online service providers (OSPs) from liability when third-party users infringe on copyright through their services. The Safe Harbours were adopted in the 1998 U.S. Digital Millennium Copyright Act (DMCA) and in the 2012 Canadian Copyright Modernization Act. These provisions were put in place to

protect an unwitting ISP/OSP from being sued for enabling copyright infringement, as they are unaware of what takes place via their services. Ultimately, sites like YouTube and the internet providers that enable them to argue that they cannot be held responsible for what takes place on their networks/sites. In reality, however, they are fully aware that these practices are taking place, and they are more than happy to reap the benefits. YouTube, for example, allows user-uploaded copyright-infringed material to freely circulate on its sites, and it thereby generates massive advertising profits. Likewise, the ISPs selling high-speed bandwidth capabilities for the uploading, downloading, and streaming of copyright-infringed material also yield significant revenues. Music Canada (2017) rightly insists that these provisions possess the unintended consequences "of allowing a massive relocation of economic value from copyright ownership to ad-supported online platforms that purport to qualify for the hosting exemption" while in reality functioning as streaming services (p. 74); musicians forego copyright royalty payments to which they were entitled.

Music Canada (2017) stresses that despite the fact that "more music than ever is being streamed", musicians and other rights holders "are demonstrably worse off than they were in the pre-digital marketplace" (p. 12). In the 1970s, for example, roughly 4000–5000 new albums were released per year; by 2008, at the height of the Music Industry's cry for help, approximately 105,000 new albums were released (Meier, 2017). A 2011 study conducted by Nordicity on behalf of the Canadian Independent Music Association (CIMA) found that individual artists in Canada earn an average of $7,228 per year from 29 hours per week of music-related work—that's less than $4.80/hour (Music Canada, 2017). Therefore, despite an exponential increase in the output of new music, the average Canadian musician—and musicians more broadly, we can assume—continue to receive measly, unlivable wages.

A large part of the problems stemming from the Value Gap are attributed to the adoption of digital media policy long before the digital media environment had fully crystallized. For example, consider WIPO's 1996 Copyright Treaty and Performances and Phonograph Treaty. These treaties translated longstanding copyright protections for the digital environment but did so more than two years before either Google (1998) or Napster (1999) existed; YouTube didn't even come along until 2005 (Music Canada, 2017). Additionally, the 1997 Copyright Act poses significant problems for musicians, and Music Canada (2017) has proposed that it be amended. The Radio Royalty Exemption, carved out in the Copyright Act, frees

commercial radio stations from paying royalties (other than a $100 nominal fee) to artists and/or record labels for "the public performance and communication of their sound recordings" on the first $1.25 million in advertising revenue they make (Music Canada, 2017, p. 7). Music Canada estimates that between 1997 and 2016 the exemption cost artists and labels in Canada close to $140 million on lost potential revenue, and these losses will continue. Additionally, the definition of a sound recording as currently defined in the Copyright Act, "effectively exempt royalty payments to performers and creators (other than songwriters, composers, and the music publishers they partner with) when the recordings are included in a television or film soundtrack" (Music Canada, 2017, p. 7). As such, artists and record labels in Canada lose approximately $45 million in annual revenue as a result of this "legislative anomaly" (Music Canada, 2017, p. 7). It is important to note, however, that both the radio exemption and the contested definition of sound recording are indeed problems contributing to the Value Gap, but that these issues existed before the rise and fall of Napster and have little to do with digitization or file-sharing.

But whose interests does Music Canada really represent? While it often sounds as though they're coming from a position of artist solidarity, giving a voice to the otherwise voiceless musician, the input from and experience of the average Canadian musician is largely absent from these discussions. Over the past year, the Standing Committee on Canadian Heritage conducted a study on remuneration models for artists and creative industries, including rights management and the challenges and opportunities provided by new points of access for creative content. While it's promising that artist remuneration models are getting their due attention, it was largely industry perspectives represented in the report. According to the Cultural Capital Project —one of the few non-industry participants actually invited to speak to the Standing Committee on Canadian Heritage—the evidence and perspectives of participants outside of the industry were not well represented (de Waard, 2019). The Cultural Capital Project (CCP) report insists that the critical ethos of their submission was largely absent from the Shifting Paradigms report, a report that the CCP maintains "prioritizes the status quo recommendations that were collectively put forward by music industry representatives and lobbyists" (de Waard, 2019). The interests thus being served by the recommendations made in the report are, by and large, those of the industry. And let us not forget: as Michael Jones (2012) explains, the impetus of the Music Industry is always to preserve its standard of expertise.

Finally, and, to me, most troublingly, is the revivification of the piracy panic narrative that has been circulated in these contemporary industry accounts. The Shifting Paradigms (2019) report paints the portrait of an industry still very much in crisis. It contends that "the rise of illegal file-sharing software and the advent of online streaming platforms have changed the ecosystem", and these changes require action. It also insists that there is a somewhat urgent "need to combat piracy" within music industries, but also within the cultural industries more broadly, "by creating new rules and enforcing those already in place in the Copyright Act" (Canada, 2019, p. 16). I find it more than flummoxing that the powers that be are still flagging the issue of piracy more than 20 years after the RIAA began their fruitless litigious battles. Despite the report's thoughtful reflection on the need to amend existing policy structures to support the creation and remuneration of Canadian music, its conception of the core problems appears deeply flawed. So, while the Value Gap is a very real issue for musicians, the solutions put forward by the likes of Music Canada and the Shifting Paradigms report unfortunately reflect a desire to maintain the deeply entrenched gatekeeping mechanisms that the industry has used to create exorbitant profits for decades.

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