Open Media Remixing and Sharing

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Abstract / Introduction

With the notable successes of software open-source projects including Linux and the Apache Web Server, questions arise about the adaptability of open-source development and licensing models to the domains other than software alone. Namely, can a community of users leverage the Internet to freely share source material and the finished product so that society as a whole can reap its benefits? This paper attempts to examine how the open-source development and related licensing models are applied to the production of electronic music and imagery. Three online communities involved in the production of electronic media are examined and compared across their licensing practices, their community norms, as well as any economic factors that may motivate or otherwise affect these communities. This paper will also explore factors involving the cultural significance of the source material and how this affects sharing and licensing in electronic media.

Overview of the Projects

The first of the projects that we examine in this paper is ccMixter. The goal of ccMixter is to aggregate a common pool of audio samples that musicians and sound artists can share and distribute under one of the many Creative Commons (CC) licenses. The site is organized so that users can quickly and easily determine how they may or may not use a sample in their creations and where and when the sample was previously used. Users may also download, stream, and rate samples in addition to uploading their own creations. A De.licio.us-like tagging system is also deployed to aid users in categorizing and browsing samples. The ccMixter website features a forum with 2700 registered users.

Affiliated with ccMixter is the small independent record label Magnatune. Bearing banners and slogans that read "We are not evil" and "Internet Music Without the Guilt," Magnatune advertises itself as the "open music label." Magnatune, through contests advertised to the ccMixter community, aims to sign independent talent onto its label, which features a Creative Commons compatible recording contract. To recording artists, Magnatune promises a 50/50 split with the artists on music and merchandise, non-exclusive rights, no future obligations, and distribution under a Creative Commons Attribution-NonCommercial-ShareAlike license. Magnatune is also very clear about not accepting tracks that are created with copyrighted samples.

Soulseek, the second project examined in this paper, in many ways resembles ccMixter. Soulseek was originally a P2P file-sharing network founded in 2000 by Nir Arbel, a former Napster programmer. Built around members of the [IDM] mailing list, Soulseek was able to leverage that existing community to create a vibrant core community that remains active to this day. Like ccMixter, Soulseek features an independent music label that is associated with the main project. Soulseek Records, founded in 2001, is currently run by volunteers and regularly hosts contests that elicit creations from the Soulseek community. One such regular contest, the Soulseek Sampling Series, encourages members to gather and/or create and release sample sets that other users are to remix into their own tracks. Unlike ccMixter, however, these contests do not explicitly require members to reveal the origins of these samples. These sample packs feature no attribution information and this paper will examine how this is one of the properties of Soulseek that places in a less than lucid legal light. Oddly enough, Soulseek Records does make the claim that they release their content under the Creative Commons license.

The final project that this paper will examine is the community surrounding the FARK.com Photoshop contests. Like the other two projects, FARK.com also includes a contest-like feature that encourages members of the community to share their creations. The

contests are regularly held several times a day starting with a member or forum moderator posting a picture or theme that the other members are to remix and modify. Often these remixed photos are humorous in nature and regularly include imagery of (copyrighted) contemporary pop culture icons juxtaposed with imagery from the original picture or imagery representing the posted theme. Unlike the previous two projects, FARK.com makes no claims about the legality of the content in its forums and users never include any attribution information with their postings.

Regulation and Licenses for Open Media

Each individual site subscribes to licensing models and norms in determining the scope of usability of content. With respect to copyright, these sites fall on a spectrum, with ccMixter being the most copyright-centric and Fark.com the least. ccMixter, as promulgated in the homepage's opening line, relies heavily on the CC license, to which it strongly, through multiple bolded links, encourages user compliance. In contrast, Fark.com adopts a free-for-all approach in which users liberally post creative works– a famous movie scene, newspaper photos, magazine clips, etc. – irrespective of their copyright, manipulating and layering them in ways that give the protected work new significance. In between these two extremes, resides Soulseek, operating as a file-sharing service that enables users to swap mp3 music files, some of which may have been exchanged without the permission of the copyright owner. Soulseek identifies itself as a "Creative Commons netlabel" despite the fact that the set-up of Soulseek, as a file-sharing network hosting material whose origins and legality are unknown, is fundamentally at odds with objectives of the CC licensing model. Although Soulseek admonishes its users to not pirate copyrighted works, its warnings ring hollow given that Soulseek makes no effort to police samples exchanged on its site and imposes few, if any penalties on copyright infringers.

Just as there are gradations in conformity to copyright laws among the sites, so is there a range of methods they use to deal with rule-breakers, i.e., copyright infringers. ccMixter goes great lengths on its site [endnote: http://ccmixter.org/media/viewfile/isitlegal.xml] to explain the legal/illegal uses of samples; it places the onus on the ordinary contributor or copyright owner to report infringers. The link, "let us know," transports the reader directly to the "Creative Commons Notice and Take Down Procedure" page, which describes the process of filing a notice of infringing material pursuant to the Digital Millennium Copyright Act (DMCA).

Invoking less authoritative legalese, Soulseek tells users to refrain from doing what copyright law prohibits – copying, reselling, or assigning copyrighted creations. However, the lack of reference to a legal provision may lead the casual file-sharer to believe that these prohibitions are not actual law, and thus, unenforceable. Possibly seeking to give its regulations some teeth and to instill fear in those that may disobey the ground rules, Soulseek promises to provide no assistance to a violator faced with prosecution.

Finally, there is Fark.com, which stays silent on copyright infringement –it only makes explicit its prohibition on morally inappropriate content –, but the DMCA should still apply if a copyright owner resorts thereto. Despite the absence of link to the DMCA or some other copyright provision, an imperceptible copyright doctrine is at work here - with the artful configurations these original works assume, it does not seem preposterous at all for a contributor to claim fair use against a copyright holder's infringement allegation.

While ccMixter painstakingly abides by copyright law, the other two sites have a paradoxical relationship with IP laws; on the one hand they make little effort to protect the interests of copyright holders by taking sterner measures against infringement, and on the other, they jealously guard their own IP assets. No where more can this be seen than with Soulseek: on its homepage it places the trademark symbol

next to its name in seven incessant instances; yet there are no corresponding measures to minimize or discourage pirating. Fark.com exercises its IP rights in a slightly different manner. Any time a contributor posts an object on its sight, the copyright in the work (considered a "work for hire") is automatically assigned to Fark.com, while the contributor receives a royalty-license to exploit the work in various media. It is a striking contradiction that Fark.com provides the platform for the illicit posting of copyrighted images, and then asserts ownership over the final imagery, concocted by the user, under copyright law.

While the license reigns supreme in the ccMixter kingdom as far as regulations are concerned, Soulseek and Fark.com implement other norms that keep users from engaging in unacceptable conduct. For example, Soulseek may terminate the account of those that abuse the server or chat room – it never defines "abuse," so users must resign themselves to accepting this vaguely drafted policy. Fark.com, on the other hand, provides specific guidelines about what is inappropriate material – images not safe for work ("NSFW"), which includes nudity and other "graphic" content; it also forbids various posting abuses. A moderator will remove the offensive material when it appears; subscribers who contravene the rules forfeit their right to a refund.

In sum, the copyright regime assumes varying degrees of importance for ccMixter, Soulseek, and Fark.com. For ccMixter, adherence to the Creative Commons license is just as important as offering a legally sanitized space for music-lovers to remix songs. While Soulseek and Fark.com seem far less worried about copyright law and more concerned with checking internal user-behavior: their regulations seek to prevent users from harassing each other and engaging in other conduct detrimental to the community.

Remixing and Culture

None of these products are particularly culturally innovative, existing as digital riffs upon the well-established practice of the remix. Musical

remixing is a particularly prominent art form with a rich history, which products and services like ccMixter and Soulseek hope to enhance by judicious application of internet technology and open source ideology.

Particularly in the case of ccMixter, however, the relevance of the service to the larger culture of music remixing is questionable. ccMixter is largely motivated by the desire "to promote the use of Creative Commons license to musicians who have not yet been exposed to them," and generally by a strong belief in the importance of the license. Tracks posted to ccMixter must be solely composed out of CC-licensed materials, which greatly restricts the field of choice for component samples. This preoccupation with legal sampling and remixing is interesting - what ccMixter represents is a solution to a legal problem, enabling an artist to legally use pieces of other works in their own creations, and it does this quite elegantly. An important question, however, is whether or not this was a problem that the remixing community was particularly worried about addressing. In discussion with local DJs Kid Kameleon and DJ Ripley, the question of the legality of sampling seemed to be fairly irrelevant. Except in situations of a relatively few DJs signed to major labels who had to be careful about the legality of their samples, they expressed, most working or hobbyist DJs choose music without giving any thought to the legality of their usage. This largely springs, they suggested, from the fact that until the very recent and limited emergence of CC-style licenses, basically no sampling was 'legal', and so this never became a point of choice. Appropriation and reuse of existing materials was how they created art, and as there was no clearly legal way to do that, and enforcement was extremely limited, legality was presumed **not to matter**. While the DJs we interviewed were sympathetic to the goals of ccMixter, they did not think that it was a project which was likely to succeed.

So, even if the legality of the source material is not important, should not ccMixter remain valuable to a remixer as a powerful technological tool for discovering and searching for sounds and music? Perhaps yes,

but likely not in the way that ccMixter hopes to be used. Many DJs seek out components for their works that will not only **fit** sonically, but will reverberate culturally in a listener's ears. The use of an instantly recognizable sample is an important tool for DJs, and the amateur nature of most ccMixter sounds means that regardless of how acoustically pleasing they may be, an audience will have absolutely no familiarity with them. ccMixter samples may have some value to artists as a simple repository of sounds - if a DJ needs a sample to fill a spot in a song, they may check ccMixter as one of many sources - but this is a use relatively unconcerned with the licensing as well, simply choosing a sound because it fits, not because of the legality of it. Basically, it seems that while ccMixter may serve the purpose of being a well-organized library of sounds, outside of a small group of those who are engaged in trying to prove the efficacy of the license, ccMixter is not particularly relevant to the average DJ or remixer.

In contrast, the works in the Fark Photoshop contests prove to be far more similar to the traditional remix/DJ community norms. They are almost completely agnostic as to the legality of their source components, relying on a vague sense of security from prosecution instead of working within a legal framework. This is reminiscent of the discussions of traditional DJ culture - material is used because of its appropriateness in the context of the work created, without regard for its legal availability. Components may be creator owned - using a photo taken by oneself - or a direct copyright infringement, but there is little concern at all about this. As in the discussion of ccMixter, often images are chosen because of their cultural resonance, either globally or within the particular subculture of the Fark Photoshoppers. Famous movie scenes may be used, or copyrighted photos from magazines, for example, as they provide valuable fodder for mockery or repurposing. Certain images (some possibly CC licensed, but some definitely not) have become common Fark cliches as well, signifying meaning beyond that of their original uses, once again without reference to their legal origins. Even more so than in DJ culture, the culturally referential value of certain images goes beyond their recognizability as being

from a particular popular work - many images exist that users might be hard-pressed to identify the origin of, but that are copyrighted and not released by their owners for these uses.

Business Opportunities and Motivations with Open Media

Although ccMixter doesn't have a clear and distinct business model , CcMixter certainly provides an avenue for economic development in an open source environment. The Creative Commons licenses used by ccMixter enable new intermediaries to create new business models for the distribution of creative works by professional authors.[1] Most notably, the successful distribution of creative works can be seen through the online record label Magnatune.

Magnatune is an independent record label that promotes its musicians through its website, streaming online radio programs, and music communities such as ccMixter. Magnatune utilizes the Creative Commons license to allow users to listen to music from their site before they decide to buy. Once a listener is interested in purchasing music, the listener can purchase full albums by selecting a price that they are willing to pay for that particular album. Album prices range from $5 - $18. (Currently the average purchase price is $8.67.) Also, all profits from sales of the album are split 50/50 between the artist and Magnatune. (Traditional record labels split sales by 70/30 in favor of the record label).

Magnatune has been able to create a successful business by affiliating themselves with a strong music community such as ccMixter. Magnatune uses the ccMixter site to promote and advertise its signed musicians and at the same time it uses the community to find new and emerging artists that **can be signed** to their label. An example of the synergy of the two sites can be seen in the remix contests that Mangantue recently held on the ccMixter site . The objective of the contest was to remix tracks from a signed Magnatune artist. The winner would receive a record contract and all of the winning tracks

would be included on a CD and sold commercially. CEO, Paul Brindley of Magnatune had this to say about the contest:

"I'm pretty excited by how the contest has been going -- over 7,300 people have come to the Magnatune site via the contest, and the quality of the submissions is way better than the average. The contest is our first attempt to really drive remixing of Magnatune's material, and to get some tangible reuse benefit from the Creative Commons license we use."[2]

Another example of where economics are in play for ccMixter can be seen in the example of how artists have been directly contacted by independent record labels interested in licensing their contributions or even signing the artist to a full record contract. [3] At the same time, artists can use the ccMixter site for self promotion and free advertisement of their work.

On the other hand "SoulSeek has a remarkable business model: You can 'donate' $5 and in return you get preferential downloads for 30 days -- that is, if you're trying to get files from a user with a long queue, you're put at the top (or after the next user with preferential downloading)." [4] The revenue generated from the "donation" is not significant but supports the application development and pays for the server costs.[4]

Although the amount of revenue generated from donations is minimal it helps SouldSeek branch out into other directions that helps build its music community. An example of a subset of SoulSeek that exemplifies the building of a community can bee seen through SoulSeek's sister site SoulSeekRecords.net. SoulSeekRecords[?].net is a site where users can participate in musical undertakings of remixing and production that include remixing contests. The objective of SoulSeekRecords.net contests are to elicit content from the community and compiles work into free "record" releases. To date, seven "records" have been released, including 2 which were commissioned by a lounge and a restaurant.

There is no direct commercial or economical gain from holding the contests, however the running of these monthly events helps cultivate and enhance the SouldSeek community which can help keep the open **music** movement alive. At the same time, as seen in ccMixter, musicians can promote and advertise their musical skills in hopes of gaining recognition and use the work generated to help their music careers.

Again, in contrast to ccMixter, Fark seems to have a very concrete business model. Fark's business model is to generate revenue from online advertisement by providing funny and interesting content to their users free of charge. The brilliant aspect of Fark's business model is that they don't actually provide any of the content that is contained on their site, rather they provide the tools that allow users to add their own content that they find interesting. Fark averages over 1,600,000 impression a day and close to 50,000,000 per month.[6] Fark's regular banner add rate is $40 for 40,000 impressions.[7]. Therefore with a little math and some assumptions it is very simple to see **that Fark is drawing $1,600 per day for each banner spot. From an economic standpoint, it's not doing badly.**

Looking at the large number of daily impressions it is clear that Fark is very dependent on producing captivating content that compels users to return on a regular basis. The Photoshop contest is a great example that accomplishes Fark's goals for two reasons. First, the content that is provided comes from the users of the site themselves. Therefore, Fark doesn't have to generate new content for this section. Secondly, users who participate in the PhotoShop contest or are just interested in the project will return periodically throughout the day to see the latest submission. This return visit from users and visitors of the site continually generate revenue for Fark.

In conclusion, it seems that for each model ccMixter, SoulSeek, and Fark the economic commonality is a strong community and participation that lead to economic gains in one fashion or another.

The power of collaboration is clear and has a significant impact on a direct or indirect economic business model. At the same time, the economic benefit for users is not the only driving force behind the motivations of users to contribute to any of these sites. Many of the **non-economic** motivations we've attributed to open source software developers such as growing a reputation amongst peers, the joy of creating, practice or gaining experience, and ideological goals are also reasons artists contribute to open media.

Yes, But Is It Open Source?

Now that we have examined some of the details of these projects, we can ask whether they are open source in nature. Although these three projects differ from one another in significant ways, they do share some common threads that allow us to characterize them all as "Open Media." Based on the analysis and observations presented above, we can ask how similar Open Media as a phenomenon is to Open Source Software.

There are a number of similarities between Open Media and Open Source Software. One of the most prominent is that both endeavors revolve around creative works that are subject to copyright and mass-market licenses. Software, music, and images are all regulated by the law of copyright rather than patent or other intellectual property statue. As such, the same concerns over permission for use and creation of derivative works apply to all of them. Contributors should consider the same factors if they think of licensing or releasing their creations in an open way. This is most evident in the ccMixter project, where promotion of open licensing is a primary goal, but it is relevant for Soulseek and Fark even if they choose to ignore or flaunt copyright concerns.

In addition, the motivations that lead people to contribute to Open Source Software projects are likely the same ones that drive

development of Open Media projects. Just as in software, there is a diverse set of motivations and each contributor has their own particular combination. Nonetheless, the economic and non-economic motivations described above apply to both types of open endeavor.

Exposure to a large audience is one reason open software and media developers are able to practice their craft effectively or increase their reputations. For both open media and open source software, freeriders - people who use or consume the product without contributing to its development - are not a problem. Instead, freeriders simply provide a larger audience for the developers and may even provide constructive feedback. While media doesn't have "bugs" to fix the same way that software does, feedback and audience are still important to developers' egos.

Though this is not an exhaustive list, a final similarity between Open Media and Open Source Software has to do with the communities that support these projects. In both cases, the contributors are mostly volunteers that have self-selected the projects to which they contribute. There is also, often, a common enemy that serves to hold these communities together, shape their goals, and motivate the contributors. For many of the high profile Open Source Software projects, like Linux and Mozilla, Microsoft is the enemy that developers rally against. For at least the music-oriented Open Media projects, the Recording Industry Association of America (RIAA) fills that roll. Creative Commons is very consiously developing a collection of music outside of the RIAA's control. Soulseek, by way of its (often) illicit P2P music-sharing network and the un-mainstream nature of the music on its record releases, draws people who also dislike the RIAA.

Despite these similarities, though, there are significant differences that set Open Media projects apart from their software counterparts. Open Media products, so far, are generally smaller in scope and man-hours of development time than sofware products. The collaborative nature of Open Media is also very different from what happens in software

development. Rather than all contributing pieces to a large code-base, Open Media contributors sample other authors' works to create a new work. This is usually an individual process, even though it is enabled by the community. This process requires different leadership and coordination talents than in Open Source Software projects.

As discussed above, cultural references can have great value in Open Media projects. In fact, with the Fark Photoshop Contests, pop-culture icons and community in-jokes constitute the majority of creative input. In contrast, sofware code doesn't have much use for cultural references. Hacker history is a rich culture to be sure, but code is meant to be run while media is meant to be consumed against a backdrop of shared cultural experiences.

This functional difference between the nature of media objects and software programs makes a difference in the way that Open Media and Open Source Software projects approach distribution. Because software can be compiled and distributed in an unchangable format, the "source" part of Open Source Software is of high importance. The GNU Public License, for example, makes a big deal about ensuring the availability of source code for a good reason. Without it, continued open collaborative development is impossible. With media, on the other hand, the artefact *is* the source-code. Digital Rights Management software aside, if a person can see or hear the work, he or she can sample or remix it. This makes licensing of Open Media more of a purely punitive legal concern than the practical one it is in software.

Questions For Further Research

We have only scratched the surface of Open Media. Even after considering licenses, cultural remixing, and contributor motivations, there are a lot of unexplored aspects of this phenomenon. The relative youth of Open Media projects compared to both mass-media distribution and to open source software development adds to our sense that there is still much to be learned from this topic. Below are a few suggestions of directions for further research about Open Media.

These are by no means exhaustive, but are meant to suggest the breadth of questions it might be fruitful to ask.

Our first suggestion concerns one of the important differences between media and software discussed above. What is the role of successful leaders in Open Media projects? Leaders of the ccMixter, Soulseek, and Fark Photoshop projects are conspicuous by their absence. The low coordination requirements suggest that Open Media leaders' most valuable contribution may be an original vision. More thorough leadership research and analysis needs to be done.

The communities that develop around these projects are also ripe for exploration. Time and scope constraints prevent this paper from surveying contributors to these three projects. One might ask whether placing an emphasis on licensing and copyright limits the development of a community spirit. Is there a similar tradeoff in each community, or do historical details shape each community's flavor? In a related question, what are the community norms that most strongly influence each project? How did they develop and are they specific to media endeavors?

Future research could also investigate the effect that successful Open Media projects may have on traditional media distribution enterprises. As the Public Library of Science free publishing experiment has pressured some traditional scienctific journals to make their archives available to the public, can ccMixter change the way major label music publishers deal with sampling and remixing?

Finally, a logical next step for Open Media research is to explore how other types of media fit into the analyses presented in this paper. Does collaborative video production exist, for example, and what do those projects look like?

Final Thoughts

These three projects, ccMixter, Soulseek Records, and the Fark.com Photoshop Contests, represent an interesting emerging phenomenon in media production: Open Media. Open Media projects are collaborative volunteer efforts, are enabled by the internet, and have a non-traditional relationship with the legal structure of copyright. There is significant diversity among the Open Media projects we studied: in their goals and the structure of their communities, as well as the legal, social and technological means they employ to produce digital music and images. Still, there are a number of themes that tie these projects together and make for a fruitful comparison to the development of open source software.

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