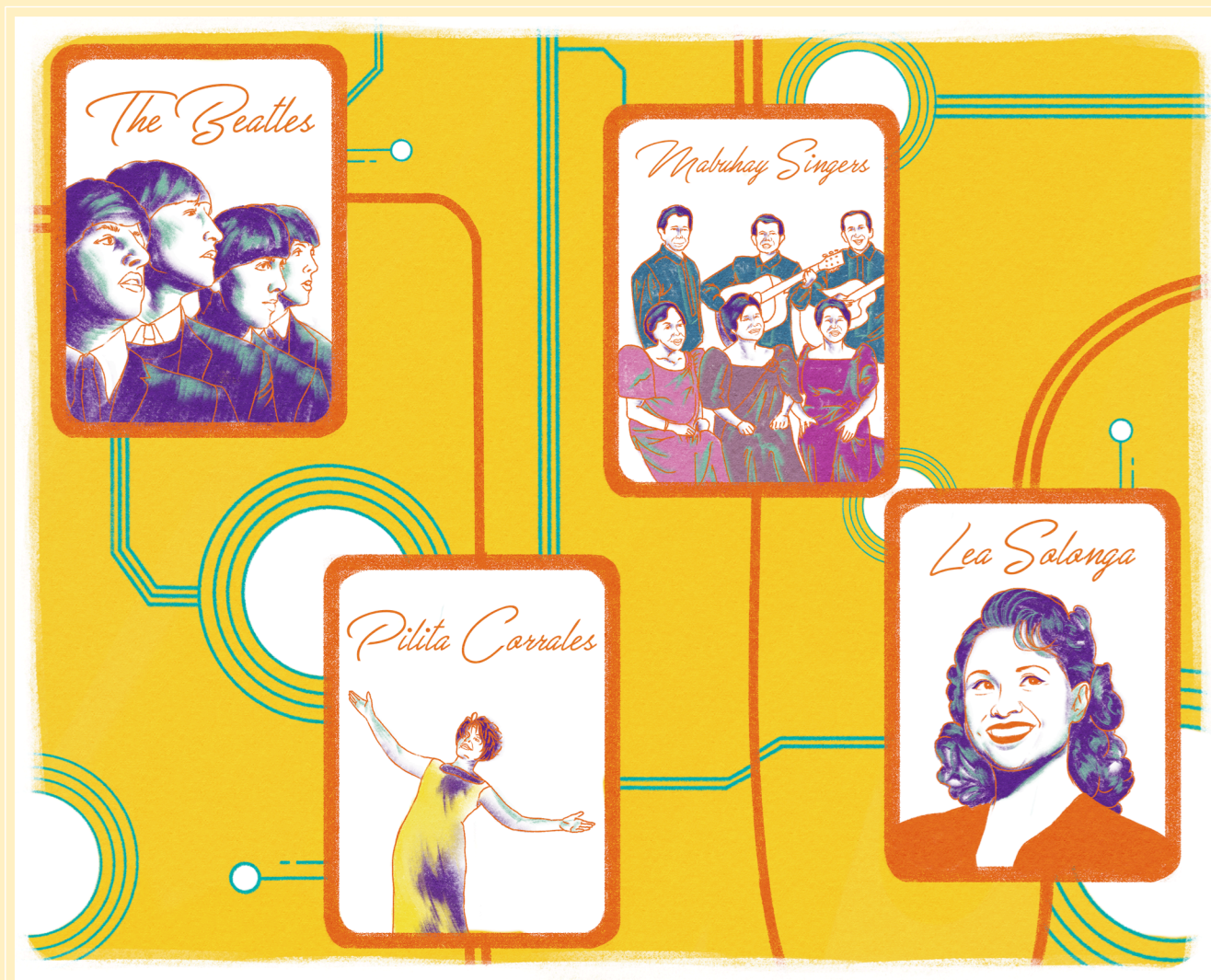


LEARNING RESOURCE

SPA - MUSIC



INTELLECTUAL PROPERTY RIGHTS

Grade 10 – Quarter 1 & 2

the
PerfLab
INCORPORATED

GOVERNMENT PROPERTY
NOT FOR SALE

LEARNING RESOURCE for MUSIC

INTELLECTUAL PROPERTY RIGHTS Quarter 1 & 2

Republic Act 8293, section 176 states that: No copyright shall subsist in any work of the Government of the Philippines. However, prior approval of the government agency or office wherein the work is created shall be necessary for exploitation of such work for profit. Such agency or office may, among other things, impose as a condition the payment of royalties.

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FOREWORD

Welcome to this Learning Resource for Music.

This Learning Resource was developed by experts from the National Commission for Culture and the Arts as a reference to aid you in developing rich, meaningful, and empowering learning in the creative fields. Every effort has been exerted to produce a Self-Learning Learning Resource that incorporates the most fundamental elements and principles of each discipline, while providing a spiraled, scaffolded, and multi-sensory approach to allow you to explore your innate creativity while building discipline and rigor in your chosen discipline.

Each lecture, activity, or reflection here is designed to be meaningful. Each one designed to build from the previous one, and each one with the objective of building up for the next skill or competence. We hope that you will find these activities challenging but empowering, and that your potential as a Filipino artist and Creative is further enhanced and inspired.

These Learning Resources take into consideration the various limitations and challenges brought about by the current situation and provide you with the flexibility to manage content and pace to your individual needs while maintaining standards for creativity, embodying 21st Century skills, and aspiring towards artistic excellence. Beyond compilations of dry information, these Learning Resources seek to develop *Higher Order Thinking Skills* of Analysis, Evaluation, and Creation.

If you are planning to use this Resource as a facilitator or teacher, you are expected to guide and orient your learners in the proper and efficient use of this Learning Resource. Most, if not all activities, will entail exploration, investigation, and experimentation, as such it is imperative that you, as the facilitator, establish the guidelines which will allow your students to be creative but within responsible, safe, and academically-sound limits. Your guidance and mentorship is expected and encouraged throughout the learning process.

We look forward to your journey as an artist, MABUHAY!

INTRODUCTION AND OBJECTIVES

What constitutes original thought and idea? At this time and age when the world has shrunk into a barrio linked inescapably by technology, is there still a thing as an original creation? Many great composers have made their mark in the minds of music lovers and in the world of music itself. Who does not recognize Beethoven's fifth symphony or his epic ninth symphony? Who will mistake Mozart's Eine Kleinenacht Music or Johann Sebastian Bach's inventions for someone else's? Great composers probably have no problem being copied because the whole world will surely protest.

In the arena of popular and commercial music, younger composers and artists do not fare better. When the financial stakes are high, there are those who will not stop at copying but who will even appropriate a music piece as their own. What is an artist's protection?

In this Learning Resource, we will study intellectual property rights. We will learn about the provisions of international and local laws that were formulated in the desire to protect creative rights and to encourage the development of creative thought. We will study how disregard of the IP laws affect the music profession.

At the end of this Learning Resource, you will be able to:

1. explain Intellectual Property Rights and how it protects the music profession
2. evaluate the issues that beset the music profession at present
3. suggest ways and means to address issues involving Intellectual Property Rights

This Learning Resource may be used for and is applicable to DepEd Code

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INTELLECTUAL PROPERTY RIGHTS

On October 11, 2011, singer and dancer Beyonce was accused of plagiarism by Belgian choreographer Anne Teresa De Keersmaecker. The latter accused Beyonce of appropriating dance moves and visual concepts from Keersmaecker's work 1983 piece "Rosas danst Rosas," as well as elements from 1990's "Achterland." Beyonce's team readily admitted that the works were part of the "inspiration" for Beyonce's music video for her single "Countdown." Keersmaecker complained about the watering down of her ideas and she thought it was rude that the theft of her ideas was done blatantly and unapologetically.

In 2018, the Angono Band#1 heard a band from another province play one of the compositions of Maestro Lucio D. San Pedro during a rehearsal. When curious spectators checked on the music sheets, the credits for the music were given to someone else.

In the same year, a Music teacher realized that the school song that was being used for more than 50 years and credited to a local musician was actually a copy of a march by Bonifacio Abdon.

Still in the same year 2018, in a school party for graduating students, the Physical Education teacher diligently trained the students for their social dancing. He used the waltz from Beauty and the Beast when Belle finally danced with her human Prince Charming. After the party, the teacher shared a video of the dance on Facebook. What came out however was a dance without music as Facebook claimed the music was not authorized for use.

Recently, on November 23, 2020, Miley Cyrus and Dua Lipa were accused of copying the video So When You Gonna by a London-based punk band Dream Wife. Dream Wife posted side-by-side images from So When You Gonna and Cyrus and Lipa's Prisoner music video to point out the glaring similarity to prove their point.

More recently and more seriously, the U.S. and its allies called out China for systematic theft of scientific designs and secrets through state-approved hacking of important agencies of the free world.

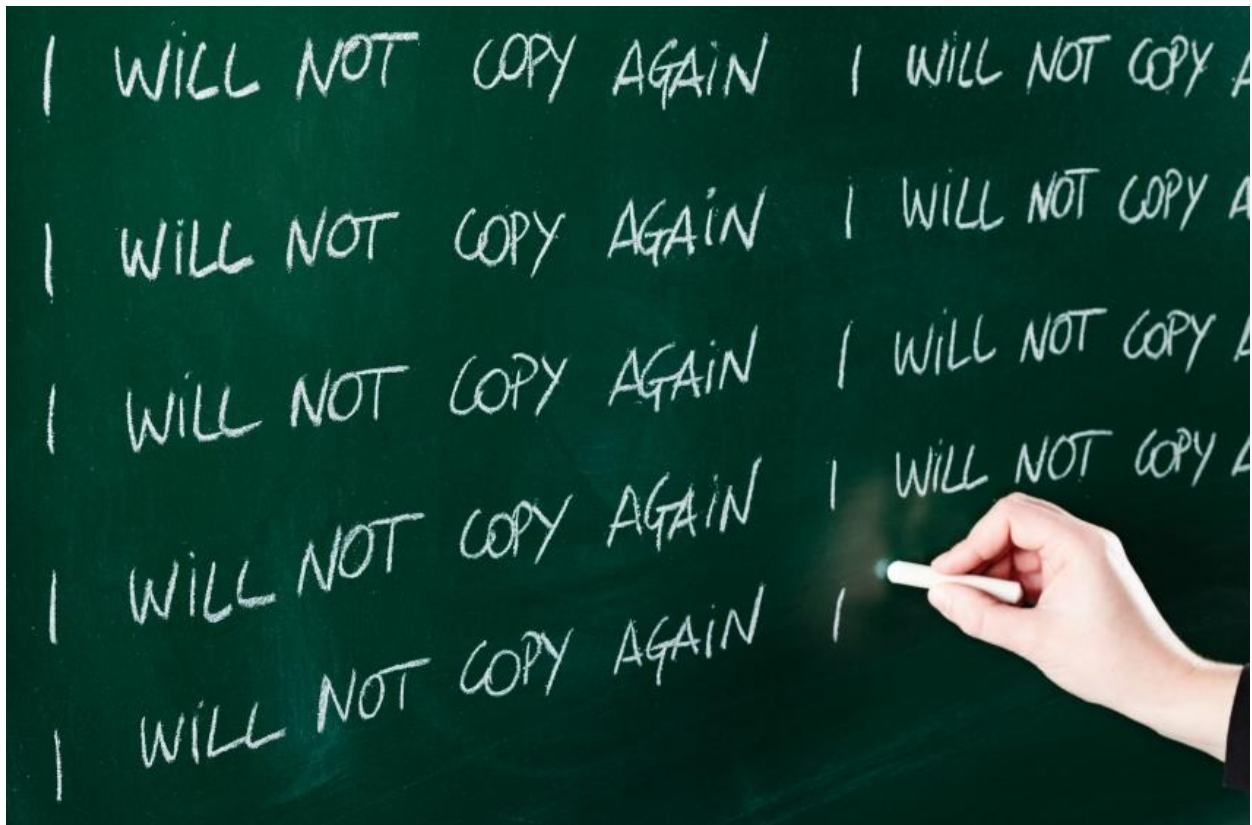
These are examples of infringements of intellectual property rights albeit resolved differently. While music produced commercially have immediate recourse to control or censorship, even sanctions, the lesser known have to contend with outright piracy and appropriation. When the stakes are higher, even governments act with decisive measures to punish guilty parties.

The connection of the world in cyberspace has become a boon and a bane for intellectual property rights. While the world has become a village, the village is also filled with opportunists and rapacious thieves who will do everything to gain financially and gain power.

WHAT IS INTELLECTUAL PROPERTY?

Intellectual Property refers to any product of the mind of such creative people as writers, artists, composers, inventors, scientists, designers, and the like. Such property includes literary works of all types, art works, compositions, symbols, signs, images, computer codes, trademarks, trade secrets, formula, and many more.

Recognition of the rights of the originators protects such property from being used in total or in part, revised or interpreted, for profit without due authorization from and compensation for the owners.



From Johns, Flaherty & Collins, SC

WHAT IS THE ORIGIN OF COPYRIGHT?

Copyright began in England. With the invention of the printing press in the 16th century, it became very easy for anyone to print and reprint materials. Demand for such materials was on the rise because the people of Europe, and England in particular, have become highly literate. At first there was no need for copyright as writers would churn out materials as soon as the public patronized the latest. The publication of scandalous materials led the English parliament to pass

the Licensing of the Press Act 1662, that would control and require publishers to register all intended publications with the British government for censorship and control.

In 1710, the British parliament passed the Statute of Anne which protected the authors of books from reprinting of their materials without permission. The statute, however, did not cover reprinting of materials in the United States of America. It was not until the Berne International Copyright Convention of 1886 that copyright was agreed upon among the countries who signed the agreement. The countries who joined and signed the Berne Convention treaty on 9 September 1886 were Belgium, France, Germany, Great Britain, Haiti, Italy, Liberia, Spain, Switzerland, and Tunisia.

The US joined the Berne Convention only in 1989 because they had their own copyright laws. Before 1989, the U.S. required original works to display the copyright symbol © or the symbol *CopR* or the word *Copyright* and the year of its effectivity. The phrase *All rights Reserved* was also used. The U.S. also had its own agreement with other nations.

By the turn of the second millennium, the World Trade Organization adopted the provisions of the Berne Convention treaty protecting intellectual property rights all over the world. Countries in Asia that have not adopted or drafted their own intellectual property rights laws have accepted most of the conditions of the Berne Convention treaty when they became members of the World Trade Organization.

WHAT IS THE SITUATION OF IP IN THE PHILIPPINES?

In the Philippines, the Intellectual Property Code of the Philippines was signed in 1997 and became effective on January 1, 1998. However, it must be stated that even before the passing and promulgation of this code, the Philippines already had a law to protect intellectual property rights. In 1879, the Spanish Law on Intellectual Property was approved. By 1880 it was in full effect. It was the first recorded copyright law in the Philippines that deemed copyright as a property right and covered by civil law but with special legislative provisions.

Even earlier, the Spanish patent law of 1826 was administered and adopted in the Philippines which ensured that the question of patents was placed under the jurisdiction of ordinary tribunals in the Philippines. Patent applications from the Philippines had to be sent to Spain for examination and grant.

Spain and the United States of America signed the Treaty of Paris in December 1898. It signaled the ceding of the Philippines to the United States. Part of the treaty document was Article 13 of that made specific mention of the existent intellectual property system in the Philippines:

“The rights of property secured by copyrights and patents acquired by Spaniards in the Island of Cuba and in Porto Rico, the Philippines and other ceded territories, at the time of the exchange of the ratifications of this treaty, shall continue to be respected...”

In 1913, the Philippine legislature passed Act No. 2235 making United States' patent laws applicable in the Philippines. Act No. 3134, entitled, "An Act to Protect Intellectual Property" was passed in 1924 making it the main intellectual property law in effect until after Philippine independence from the US in 1945. Act. No. 3134 was based on the U.S. Copyright Law of 1909.

Other laws enacted to further protect intellectual property include:

1. Republic Act 165 establishing a patent office in 1947
2. Republic Act 166 allowing for registration and protection of trade marks, trade names, and service marks in 1947
3. Presidential Decree No. 49, which governed copyright works in 1972
4. Republic Act 8293, the Intellectual Property Code in 1998 which was in keeping with the spirit of Article XIV, Section 13 of the 1987 Philippine Constitution which states:

"The State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law."

In the Philippines, copyright is applied for at the Intellectual Property Office. The Philippines also entered national conventions and organizations that laid out the foundations of the intellectual property system we know today including:

1. the Berne Convention for the Protection of Literary and Artistic Works (1951)
2. the Rome Convention of International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1964)
3. the World Trade Organization in 1995



From Google Images

From Cambridge University Press

Under Philippine law, copyright protection is provided by law to books, pamphlets, articles and other writings; periodicals and newspapers; lectures, sermons, addresses, dissertations prepared for oral delivery; letters; dramatic or musical drama compositions; choreographic works or entertainment in television shows; musical compositions; drawing, painting, architecture, sculpture, engraving, lithography; models or designs for works of art; original ornamental designs or models for articles of manufacture; illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science; drawings or plastic

works of a scientific or technical character; photographic works including works produced by a process analogous to photography; lantern slides; audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audio-visual recordings; pictorial illustrations and advertisements and computer programs.

WHAT IS THE LANGUAGE OF INTELLECTUAL PROPERTY?

INTELLECTUAL PROPERTY RIGHTS refer to the protection afforded by the law to the owners to use or profit from the use of their creations that are intangible in nature such as the products of human intellect and artistic creations. These include **patents** for products, inventions, and designs, copyright of an original work, industrial designs rights, and even trade secrets. IP laws give owners the exclusive rights to profit from their creation for a determined period of time.

For copyrighted material, the exclusive right lasts for 70 years after the death of the author. For patents, the length of the right can vary but it lasts for 20 years in most cases. Trademark rights are exclusive for ten years and can be subsequently renewed for ten-year periods.

IP laws ensure originators of their right to seek redress in court in case their rights are violated, to seek damages or punitive sanctions according to the seriousness of the violation. There are no known violators jailed in violation of Intellectual Property Rights. Most, if not all, are made liable for damages.

However, IP laws also require that the property protected by the law is in tangible form. Ideas verbalized in discussions cannot be protected by IP laws. A melody has to be committed in audio file or written in recognizable notation before it can claim copyright protection. A formula or device may receive patent protection only if it has been presented in whole to the Patent Office and has passed several tests to qualify. A symbol may not receive trademark protection unless it has been placed on goods or used in connection with services.



Some trademark knockoffs seen in China from Pinterest

COPYRIGHT refers to the legal right of the owner of intellectual property. In simpler terms, copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work. Only expressive pieces, or writings, may receive copyright protection. A news report based on events of the day is not an expressive piece and cannot be copyrighted. Paintings, sculptures, and other art works are covered by copyright laws. In principle, ideas cannot be copyrighted but

only the personal expressions of such ideas are protected by law. These expressions may be on paper, in audio files, videos, or any other form that is capable of being reproduced. Copyrighted properties must also be original or a sufficient to marked departure or variation from the original. The latter provision of copyright is a bone of contention. How original is an idea? How much variation merits copyright or how little variance is a knock-off?

Copyright protection gives the copyright holder the exclusive right to (1) reproduce the copyrighted work; (2) create derivative works from the work; (3) distribute copies of the work; (4) perform the work publicly; and (5) display the work. The first two rights are infringed whether they are violated in public or in private. The last three rights are infringed only if they are violated in public. *Public* showing is defined under the Copyright Act of 1976 as a performance or display to a "substantial number of persons" outside of friends and family (17 U.S.C.A. § 101).

What are the important provisions of the Intellectual Property (IP) Rights Law?

1. The IP Rights Law protects owners of patents, intellectual and artistic works, trademarks, industrial designs, and even trade secrets.
2. It provides that owners, inventors, or originators of such intellectual and artistic works have exclusive rights to their property in their lifetime and their lawful heirs gain rights to gain from use of sale of such properties 50 – 70 years after their death.
3. After the limitations have been satisfied, the intellectual property will enter the public domain and may be used freely.

The table below shows the copyright limits set of certain intellectual properties.

	COPYRIGHT LIMITS
1. Anonymous work	50 years after publication
2. Applied art	25years after the date of creation
3. Artistic work	50 years after the death of creator
4. Audio-visual works (published)	50 years after the date of publication
5. Audio-visual works (unpublished)	50 years after the date of creation
6. Broadcast	20 years from the date of the broadcast
7. Joint authorship	50 years after the death of last surviving author
8. Literary works	50 years after the death of author
9. Performances not incorporated in recordings	50 years from the end of the year the recording was published
10. Performances, images, sound incorporated in recordings	50 years from the end of the year the recording
11. Posthumous works	51 years after the death of creator
12. Derivative works	50 years after the death of creator

The copyright law allows what it calls FAIR USE. What constitutes FAIR USE?

1. The use of original material for criticism, comment, news, and reporting
2. The use original material for teaching including multiple copies for classroom use
3. The use of original materials for scholarship, research, and similar purposes

FAIR USE dictates, however, that the authors, owners, or creators of original works be properly acknowledged and that profit is not made from use.

INFRINGEMENT OF COPYRIGHT is defined as the use of works protected by copyright law without permission for a usage where such permission is required, thereby infringing certain exclusive rights granted to the copyright holder, such as the right to reproduce, distribute, display or perform the protected work, or to make derivative works. With the advent of the technological age, many forms of copyright infringement have also come of age. Some forms of copyright infringement are as follows:

1. **Plagiarism** involves stealing and passing off (the ideas or words of another) as one's own using another's production without crediting the source; committing literary theft, or presenting as new and original an idea or product derived from an existing source

This is probably the simplest form of copyright infringement. Many students use this in the school papers, copying and pasting paragraphs, even complete works to fulfill their requirements in research. Well-known personalities have also been called out for delivering speeches prepared by their speechwriters but ripped off from somewhere and someone. Business mogul Manuel V. Pangilinan, resigned as Ateneo de Manila's chairman of the board when the graduation speech he delivered in 2010 was called out for unattributed quotes from well-known personalities. Senate President Vicente Sotto to this day refuses liability for parts of his speech his ghostwriter copied from a U.S. blogger.

Some companies have made a fortune to check on plagiarism. In the net, some of the best picks for plagiarism checker of 2021 are:

- a. Turnitin
- b. Grammarly
- c. PlagScan
- d. Paper Rater
- e. Unicheck
- f. Writer.Com
- g. ProWritingAid



From infokik.com

2. **Piracy** may sound like something done in the high seas and most people who photocopy printed originals do not think they are pirating. Since the development of photocopying machines, copying printed original works has become easy. Before the internet, copying works of composers from other countries went unreported and with impunity. Many choirs all over the Philippines share copies of works arranged for the choir that have been photocopied many times over. Nowadays, when the world has

become interconnected, people find ways to access new materials found in the web or they would brazenly print materials marked with DO NOT PHOTOCOPY. Music manuscripts are already being sold at very affordable prices from as low as PhP150. To make matter worse, when people photocopy, they will only purchase once and share with other potential buyers. If composers and arrangers do not gain from the practice of their profession, there will come a time when people will no longer compose or arrange. At present, very few people are in this profession.

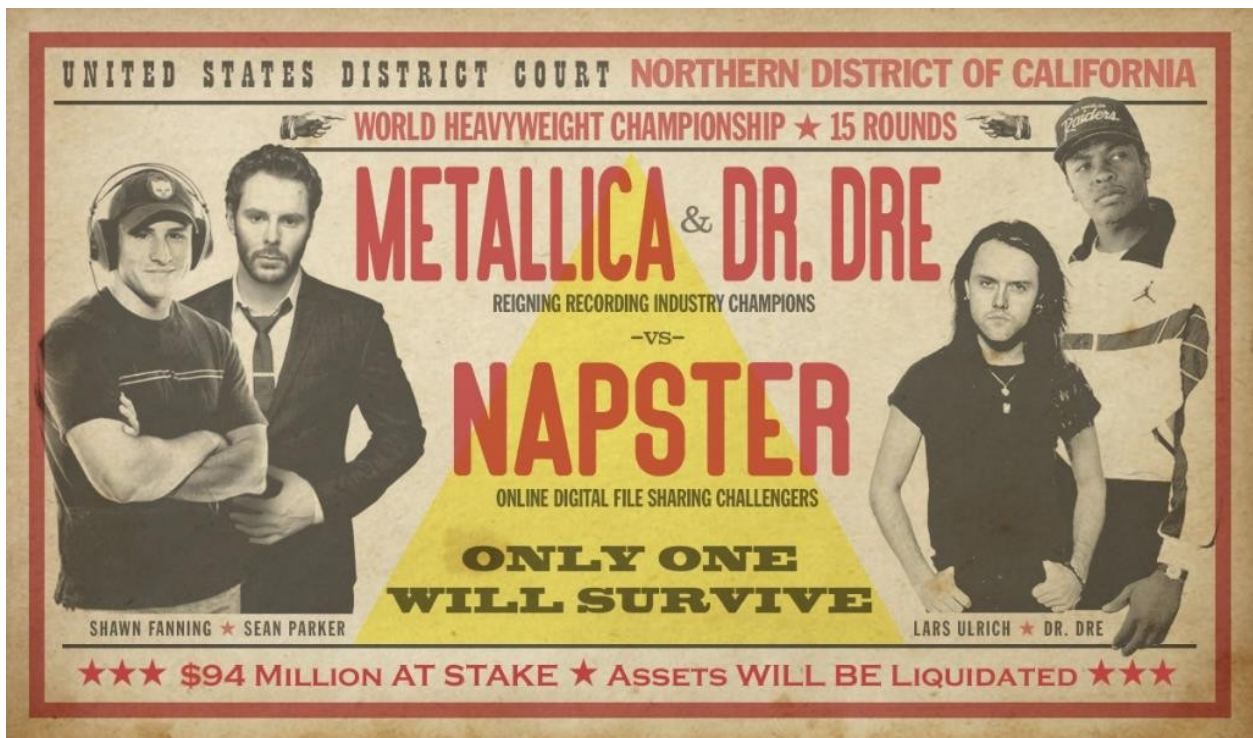
In the record, video, and film industries, it is something done in broad daylight. Piracy started crudely. Cassette tapes were recorded on blank cassettes. The first pirated films were ripped off in movie houses with all the noises and movement of handheld devices. Later on, piracy was done by technical people running the projection booth in movie houses. More seriously, the invention of laser-recorded CDs made copying faster. Sometimes on the day a new CD is released in record bars, pirated versions are already being hawked in the sidewalks of the city. The same happened with the film industry. Piracy has bled industries of much needed revenue and has given rise to underground economies that prey on established artists and companies.

Certification of sales of vinyl records and CDs is done to declare the success of marketing and determine the royalty of artists. Gold records marked 15,000 units while platinum records marked 30,000 units sold. As the sales steadily declined, Gold Records were pegged at 10,000 units and platinum 20,000. Sadly, it now stands at 7,500 units for Gold Records and 15,000 for Platinum Records. This is due to many developments in technology including copying machines that are able to capture sounds with considerable fidelity and the internet that has allowed users and owners to simply exchange audiofiles.



Pirated CDs From The Jakarta Post

3. **Music file sharing and exchange** is the practice of distributing or providing access to digital media, such as computer programs, multimedia (audio, images and video), documents or electronic books. File sharing may be done through manual sharing utilizing removable media, centralized servers on computer networks, World Wide Web-based hyperlinked documents, and the use of distributed peer-to-peer networking. At first exchanging CDs was quite simple. Person A wants a copy of this rare music and Person B sends it to him electronically through the internet in exchange for another. Since both persons own the CDs, the exchange seemed innocent enough. When companies such as The Napster and LimeWire entered the exchange, music started flying in cyberspace stolen and redistributed for minimal subscription fees. In April 2000, Metallica a rock band from the U.S.A. hauled Napster and several American universities to court for copyright infringement. Metallica claimed the universities aided and abetted Napster from accessing and illegally trading their music through the university servers. Napster used the Fair Use provision of the law to defend its business. However, it lost the case and eventually ceased operations. Many companies believe the loss of revenue ran into billions of dollars but it also opened a new profitable way to sell music.



From The Museum of Portable Sound

4. **Streaming** is a method of transmitting or receiving data (especially video and audio material) over a computer network as a steady, continuous flow, allowing playback to start while the rest of the data is still being received.

Before the advent of streaming, a television company would bid for the rights to broadcast a Manny Pacquiao fight for millions, billions of revenues. To earn, the television company would

pack the fight with commercial spots paid for by business companies who have products and services to sell. Sometimes institutions would pay for the right to stream the fight in a large venue where people pay to enter and watch. These arrangements have been supplanted by pay per view where viewers subscribe by paying a certain amount to be able watch the full duration of the fight over a designated channel. This is live streaming. Pay per view boxing fights have been around since 1960 when American subscribers paid two dollars via mail to watch the rematch fight between Ingemar Johansson and Floyd Patterson. Since then, pay per view has been a preferred mode by boxers because it ensures earning for them. It is estimated that Manny Pacquiao fights shown via pay per view have grossed more than a billion dollars.



From Business Korea

Audio and video streaming also allows subscribers to choose the songs they want to access without having to buy whole albums as in the case of vinyl long playing records and CDs. DSPs have become almost like a virtual audio and video library. Producers of records and videos can drop their work through these platforms under agreements that determine sharing of revenues. These platforms earn from subscribers who pay on an annual basis. The advantage is that the intellectual property rights are protected by the platforms who use algorithms to track use. Another advantage is that using technology, new artists can actually premiere their works on the platforms and by positive reviews, gain patronage and establish a following.

In the Philippines, streaming came in 2014 when Spotify partnered with Globe Telecom. Spotify partnered with local record labels to distribute 90% of Filipino songs. The Philippine record industry saw this as away out of the slump that the industry was experiencing. This ushered the new era that made it easier for audiences to access music. Music from past eras resurged as they are introduced to young audiences. Filipino artists were able to compete on an international platform. Break out artists recording in their home studios using technological tools such as Adobe Premier Pro and BandLab benefitted from streaming and independent production.

However, with control of the airwaves in their hands, the streaming apps can dictate what kind of music they will sign up. For example, it has been found that most of the artists signed up by SoundCloud come from London and New York instead of catering to all nationalities. Well-known artists still enjoy the most advantage while struggling new artists resort to other marketing strategies and count on their lucky stars to break into the mainstream.

Many recording artists in the United States and lately Korea have resorted to live streaming to premiere an album, a single, or a video on the worldwide web. On December 10, 2020 in the midst of the pandemic, Taylor Swift premiered *Evermore*, her second album for the year on YouTube. Many other artists have done this, using platforms such as Youtube, Spotify, Apple Music, Amazon Music Unlimited, Sound Cloud and many more. These are called Digital Streaming Platforms (DSP) and through them, songs and songs with videos can be watched in real time during a premiere or upon demand.

There is also what artists suspect is a “value gap” between what the streaming apps earn and what the artists receive. When Google talks of how it is stemming piracy, monitoring agencies assert that their figures are different. How much is lost and how much is declared remains to be reconciled. Moreover, streaming contributed to the decline of record labels and the rise of more sophisticated piracy techniques.

5. **Stream-ripping** is obtaining of a permanent copy of content that is streamed online. The process can be carried out on audio and audio-visual content and, in either case, it is possible to create an audio-only copy of the music.



From Digital Music News

In a study conducted by PRS for Music, a British music copyright collective, more than 50 sites that offer music downloading service have been identified. Youtube is the favorite site for stream-ripping. This site is where people from all walks of life appropriate all sorts of videos and audio files for all sorts of purposes. Music can be ripped for personal use and enjoyment, for celebration of special occasions, for background music, and many more. Videos suffer the same fate; even teachers rip off videos to use for education.

While this may constitute fair use, the lack of credits sends a message to students that the practice is acceptable and legal. The economic loss to artists and people involved in production is also of great concern.

WHAT ARE OTHER FORMS OF INTELLECTUAL PROPERTY PROTECTION?

Patent is a rigorous way of protecting intellectual property. This is because a patent grants the originator the exclusive right to an invention or new technology and prohibits all others to produce or distribute such. A patent lasts for only 20 years but before it is granted, the patent applicant must prove the novelty of the product and its beneficial use. Patents contribute to the growth in new technologies. For businesses, a patent ensures a great market advantage over competitors. Just like copyright, patents are handled by the IPO.

Trademark is a symbol, phrase, or word that represents a specific product, company, or service. It makes distinct a product and immediately recognizes a company's ownership of a brand. Successful companies protect their trademark by securing registration from the government. Other trademarks can go unregistered for a long time. The symbols ® and ™ denote trademark. The good thing about trademarks is that they do not expire. However, if use is discontinued, protection is also lost. Moreover, the smaller the area where the trademark is recognized, the less protection it will receive. Punctuality in applying for intellectual property rights must be observed because these are granted on a first come, first serve basis.

Reflections on the Reading:

Instruction: Read each question thoughtfully and write down your responses on your notebook.

1. Why did composers allow the free use of their compositions in the past?
2. What are the positive and negative effects of photocopying?
3. What are the advantages and disadvantages of technological advancement?
4. In your opinion, have the copyright laws deterred unlicensed use of intellectual property?
Explain your answer
5. How much more can be done to improve the law protecting intellectual property?
6. As a student of art and an aspiring artist, what is your obligation in terms of the economic and moral rights of authors and creators?

Things to Do:

A. Watch the following videos. Answer the questions that follow.

1. Beyonce's official video "Countdown" on <https://www.youtube.com/watch?v=2XY3AvVgDns>.
2. Anne Teresa De Keersmaecker's "Rosas danst Rosas" <https://www.youtube.com/watch?v=XaiffARSNm0>
3. Anne Teresa De Keersmaecker's "Achterland" <https://www.youtube.com/watch?v=mTCIVAXDstk>

* What, if any, are some of the elements of Anne Teresa De Keersmaecker's choreography that Beyonce used? Is it fair to say that Beyonce plagiarized Anne Teresa De Keersmaecker's choreography? Why or why not?

B. Make a suggestion on how the laws on IP can still be improved

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