

Nashville in Africa

Culture, Institutions, Entrepreneurship and Development

Mark Schultz & Alec van Gelder

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Executive Summary

The Nashville Story

Nashville, Tennessee, was once a struggling city in one of the poorest regions of the United States. Like much of sub-Saharan Africa today, early 20th century policymakers pinned Nashville's economic hopes on industrial development founded on access to raw materials and large, government-funded public works projects. These hopes were never fully realised, but Nashville found success anyway – from its creative industries.

Three ingredients led to the emergence of a country music industry in Nashville:

- Strong and unique cultural traditions, particularly in musical story-telling;
- A strong and stable legal institutional environment, which offered protection to property rights, including copyright;
- Conditions which provided the prospect of financial return for the investments of forward-thinking entrepreneurs.

The unique talents and abilities of local artists were overlooked when government planners sought to invigorate Nashville's economy. These skills were ridiculed at the time and local output was pejoratively referred to as "hill-billy" music.

Nevertheless, it was this talent that convinced entrepreneurs to make the significant investments that were required to bring modern recording and production technology to Nashville-based artists. The popularity that resulted from an early recording session, the "Bristol Sessions", piqued widespread interest in country music, which drove further investment into the Nashville economy. The rest is history.

Today, Nashville enjoys enviable economic success as "Music City, U.S.A." It is home to a multi-billion dollar country music industry and a thriving, diversified economy. Popular music creates billions of dollars of wealth for Nashville's economy, employing tens of thousands of people in the music business and even more in related businesses.

Without the stable legal environment that existed in the United States at the time of the "Bristol Sessions", the entrepreneurs involved would certainly not have invested in country music. Copyright was the foundation for Ralph Peer, the architect of the pioneering "Bristol Sessions", and proved the key that opened the door for country music – and transforming Nashville into an economically vibrant city.

Creative clusters and economic development

Developing countries have many lessons to learn from Nashville's success. Creative clusters, such as Nashville's country music industry, can be powerful drivers of development for several reasons.

- They play to local strengths, taking advantage of knowledge, skills and forms of expression that arise from local culture, and are thus, by definition, largely unique and non-duplicable.
- For the most part they do not require cutting-edge technology, large capital investments, or a robust infrastructure.
- Although creative work often requires a significant personal investment in training and development, it typically does not require the sort of extensive formal educational system that still remains

unavailable to the poor in many less developed countries.

Vibrant creative industries can provide benefits beyond the economic activity they create directly. A thriving creative cluster stimulates investments elsewhere. For example, Nashville's music industry has engendered a substantial tourism industry, with the additional transportation and lodging infrastructure that come with it. For the music industry, Nashville proved to be ideally suited to the spontaneous emergence of a creative cluster, despite its apparent "underdevelopment".

Nashville in Africa

African creators are justifiably celebrated around the world, but outside of a few areas, they are not thriving in their home countries as they should be. Most African music is recorded in either London or Paris.

Several important lessons can be learned from the emergence of a creative cluster in Nashville.

Many African nations benefit from strong cultural traditions that have helped develop and sustain universally-appreciated talent. This key ingredient is already in place: there is an abundance of creativity across Africa. However, Africa's institutional environment fails the entrepreneurs and creators that are essential to the development of creative clusters. Levels of piracy are crippling across the continent, effectively preventing the emergence of Nashville-style creative clusters.

In order to ensure strong and credible institutions that support the emergence of local creative industries, we recommend that governments:

- Enact, implement and enforce effective copyright laws;
- Reduce government intervention in royalty collection;
- Reduce taxes and regulatory burdens.

Generally speaking, civil enforcement by private parties ought to remain the first and foremost means of defence

against piracy. Those with the greatest interest in stopping piracy – the creative industries – are likely to be most effective in monitoring and halting the trade in pirated goods. However, existing copyright laws must be well equipped to provide creators with the best opportunities to combat piracy. Moreover, the courts must be well-prepared to enforce them.

That means that copyright laws must provide for swift and affordable means of immediately halting the distribution of pirated works. The potential losses from engaging in piracy should also be made clear enough to the pirate that he would stand to lose significantly more than the potential gains of infringing copyrighted works. Additionally, extending the right to bring action to a wider range of potential litigants, especially to trade associations, would greatly aid the battle against piracy. In cases of large-scale commercial piracy, the role of law enforcement authorities is essential.

In order for the licensing system in Africa to function effectively and support creators, political control over state-owned or state-supported collective rights organisations (CROs) must be relaxed. Artists in Africa routinely complain that royalties collected on their behalf are often diverted by political interests. This discourages the productive relationship that should exist between CROs and creators. Increasing the private sector's responsibility to collect royalties would free up scarce resources for the local government and, crucially, improve the accountability between competitive CROs and local artists.

Reducing the high levels of taxation on the private sector is essential to encouraging entrepreneurs to contribute to local economic activity. This applies to the economy as a whole, but there are particular areas where taxation has held the creative sector back. These include unnecessarily high levels of taxation on live performances and importing recording equipment and production technology. We recommend reducing – or eliminating – these burdensome interventions, which inhibit the development of the creative sector.

Conclusions

Nashville's ascent serves as an encouraging example of how creative clusters can make much from little. Its

success did not require extensive education, sophisticated infrastructure or the successful execution of large, complicated development projects.

The central role of private action to building creative clusters in Nashville and elsewhere is both bad news and good news for policymakers. The bad news is that there is little governments can do to ensure success for the creative industries. The good news is that these risks can be placed on the shoulders of private parties rather than resource-strapped governments. Provided they can foresee rewards, the entrepreneurs and artists in the creative industries willingly take these risks themselves.

Governments play a lesser – but essential – role in providing the right institutional framework for creative industries through the enforcement of contracts and institutions, such as copyright. These were the conditions that led a handful of risk-taking entrepreneurs to invest in what was an un-exploited resource in the Nashville area – the talents and abilities of local creators.

The development of creative sectors is not a panacea for all less-developed countries. However, the Nashville story illustrates how expansion in the creative sector can contribute to growth elsewhere, which fosters a vibrant and diverse economy.

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Introduction

Nashville, Tennessee, was once a struggling city in one of the poorest regions of the United States. Early 20th century policymakers pinned the city's economic hopes on industrial development founded on access to raw materials and large, government-funded public works projects. These hopes were never fully realised, but Nashville found success another way – through its creative industries.

Today, Nashville enjoys enviable economic success as “Music City, U.S.A.” It is home to a multi-billion dollar country music industry, employing tens of thousands of people, and a thriving, diversified economy.

Nashville's ascent serves as an encouraging example of how creative industries can make much from little. Creative industries offer considerable potential as drivers of economic development, since they require relatively low levels of technological, physical, educational, or financial infrastructure.

In this monograph, we consider how Nashville might serve as a model for cultural and economic development in Africa. Like Appalachia and the Southern U.S.A. in the early 20th Century, many African countries have rich musical traditions and abundant talent. The popular music industry in Africa has vast potential, but there are not yet “African Nashvilles.” We consider the barriers to their development and how they might be removed.

Although the presence of a successful creative industry is neither sufficient nor necessary to a thriving economy, it is an example of the type of private, locally-based entrepreneurial effort that poor economies need to foster. We begin by examining how “Music City U.S.A.” emerged from circumstances that in some ways are similar to those that persist in parts of Africa today. We then seek to explain Nashville's success, drawing on the

literature on creative clusters. We then consider whether modern day Africa could achieve similar success, considering both the great promise and difficult circumstances of the African music industry. We conclude by offering some suggestions of the kinds of reforms that might help establish creative industries and thereby promote economic and cultural development in sub-Saharan Africa.

I. Popular music as a grass roots economic development strategy

The city of Nashville is nicknamed “Music City U.S.A.” for good reason.² While the United States is blessed with several locales where popular music thrives both creatively and financially, there is no other city or region where music is more central to the local economy and identity.³ A recent study estimates that music contributes over \$6 billion a year to the local economy.⁴ According to the same study, 20,000 jobs in the Nashville area are directly related to music production, accounting for over \$700 million in annual wages, with Nashville home to “80 record labels, 130 music publishers, more than 180 recording studios, 40 national producers of advertising jingles, 27 entertainment publications and some 5,000 working union musicians.”⁵ The study estimates that 35,000 additional local spill-over jobs exist because of the music industry in fields such as music-related tourism.⁶ Since Nashville is a relatively small city, with a population of 1.2 million people, the music industry’s benefits to the local economy are particularly significant.⁷

The Nashville story

Nashville’s country music success was not part of any grand centrally-orchestrated blueprint. Rather, it resulted from the actions of a few early 20th century music business pioneers – the sort of grass roots entrepreneurs who the more forward-looking development economists would laud.⁸ Important lessons can be drawn from their actions and from the conditions that aided their success.

In the early twentieth century, Nashville and its surrounding region faced economic challenges similar to those faced by today’s poorest countries. During the first part of the 20th Century, the American South was far less developed than other regions of the United States.⁹ The South’s industries were significantly less advanced, with economic activity focused mainly on agriculture or local industry.¹⁰ “Nashville shared the South’s dilemma of

being unable to move beyond local resources and local markets.”¹¹ Conditions in the rural regions outside of Nashville were particularly daunting. In the early 1930s, per capita incomes in the Tennessee Valley were about 40 percent of the U.S. national average.¹² Subsistence, tenant farming was still common. As one scholar recently noted, the South’s socio-economic system was considered so backward that the contemporary mass media “casually referred” to it “as ‘feudalism.’”¹³ “The low incomes and general economic distress of the South made it impossible to develop educational institutions and public health facilities to the standards attained in most other sections of the United States.”¹⁴ In fact, 30% of the population in the Tennessee Valley was infected with malaria in the early 1930s.¹⁵

Nashville initially pinned its economic hopes on easy access to natural resources, hoping that it would become a major manufacturing centre for steel and textile production.¹⁶ Yet these aspirations were never fully realised: the mere presence of raw materials did not translate into hoped-for manufacturing prowess.¹⁷

Hopes for Tennessee’s development then turned to the sort of grand projects that have been so favoured by Western development agencies in Africa. In 1933, the Tennessee Valley Authority (“TVA”) was established to build massive infrastructure projects to promote development in the Tennessee region. The TVA built dams, power plants and other public works, while promoting agricultural and educational programmes. For decades after WWII, the TVA was enthusiastically

embraced as the model for development projects around the world – from Aswan Dam in Egypt to the Three Gorges Dam project in China, cement factories in Nigeria, and aluminium smelters in Ghana, governments have seen TVA-style massive public works as a development panacea. Since then,

the development community’s enthusiasm for the TVA and its descendents has declined precipitously, because, as one scholar observes, many experts now “find these efforts questionable, if not dangerous... Too often ... these vast undertakings hurt the people in their path as the grand, ‘high modernist’ visions at the core of these

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programmes ignore people's needs, values, experience, and knowledge."¹⁸

Compared with the grandiose TVA, Nashville's "Music City" grew from far more modest seeds. The development of the country music business was not the product of detailed plans orchestrated by a centralised authority. Rather, initial events hinged on the private actions, skills and insights of a handful of individuals: the musical talents of country music pioneers such as Jimmie Rodgers and the Carter Family and the business acumen of entrepreneurs such as Ralph Peer, a record producer and aspiring music publisher. Their success may seem almost accidental, a case of enterprising performers and businesspeople being fortunate enough to find and shape an untapped popular taste for their product. But there is far more to the story than luck.

The initial factor in Nashville's musical success was the unique musical tradition of the rural south and nearby Appalachian region. Music was an essential part of people's daily lives. Folk music was one of the chief forms of family and community entertainment and central to religious worship in the region's many, diverse Protestant religious denominations.¹⁹ A mix of history, geographic isolation, and culture had combined to foster a musical heritage that was both unique and popular.

By the mid-1920s, people were beginning to see that this folk music tradition might be converted into a more commercial art form. Some performers, such as Jimmie Rodgers, were playing engagements throughout the region, and a few, such as "Uncle" Dave Macon, had broken out of local engagements to tour the East Coast.²⁰ Two high-powered radio stations that reached large parts of the country, WLS in Chicago and WSM in Nashville, began broadcasting weekly live country music shows that quickly proved to be very popular. (WSM's *Grand Ole Opry Radio Show*, is still running today.) Perhaps most consequentially, a New York record producer, Ralph Peer, co-produced what is known as the first commercial

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country music recording, Fiddlin' John Carson's "That Old Hen Cackled and the Rooster's Goin' to Crow," for Okeh Records.²¹ Despite the poor quality of the recording, it quickly sold out, convincing Peer of the potential popularity of country music.²²

Fortunately for him and the musicians whose careers he launched, Peer was able to secure the financial backing to pursue his insight that there was a market in country music. He left Okeh, formed his own publishing company, and entered into a joint venture with the Victor Talking Machine Company.²³ In the summer of 1927, Victor supplied Peer with US\$60,000 in financing for an expedition to the American South to record country music.²⁴ Up to that point, few rural, Southern artists had been recorded, as the then-current analogue recording equipment was bulky and impractical to move, thus necessitating a prohibitively costly trip to New York.²⁵ With the advent of electronic recording technology in the late '20s, Peer was able, at a significant but feasible cost, to take the equipment closer to the talent. Peer used the money to send out a team of advance scouts to find musicians and ship recording equipment to Bristol, Tennessee, where he set up a temporary recording studio.²⁶

Peer's recording session in Bristol established the commercial viability of country music. Johnny Cash called the Bristol Sessions "the single most important event that ever took place in the history of music."²⁷ Over the course of 15 days, Peer and his crew recorded a total of 76 songs performed by 19 different acts, capturing "an almost perfect representation of early country music: fiddle and banjo tunes, old traditional ballads, gospel music, old popular and vaudeville songs, and rustic comedy."²⁸ The recordings quickly turned into commercial success, leading to the discovery of both a mass market for the genre and the first country music superstars, Jimmie Rodgers and the Carter Family. "In a 3-month span a year after the Bristol sessions recordings first went on sale, Peer's Southern Music publishing company earned \$250,000 in royalties."²⁹ Later that year,

Peer recorded Rodgers singing *Blue Yodel (T for Texas)*, a huge hit selling a million copies.³⁰

While the Bristol Sessions were a gold mine for Peer and the most successful performers, they were an important economic opportunity for everybody involved, especially as few other opportunities existed in Nashville. When Peer used stories in the local media to advertise the amounts he was paying performers,³¹ the response was overwhelming. Peer “was deluged with long-distance calls from the surrounding mountain region. Groups of singers who had not visited Bristol during their entire lifetime arrived by bus, horse and buggy, trains or on foot.”³² The royalties that Peer and Victor paid were substantial by the measure of incomes of the day: Peer typically paid a recording fee of \$50 per song and a royalty of about 2.5 cents per record side sold.³³ By comparison, one of the major local industries, coal mining, then paid about 76 cents an hour.³⁴ Thus, a single recording session paid far more than an average week’s wages for a coal miner, and sales of fewer than 6000 copies of a record would produce royalties equivalent to a month’s wages.³⁵

Once the Bristol Sessions established the commercial viability of country music, other music business entrepreneurs seized upon the opportunity Peer had uncovered. They observed that Nashville offered the advantage of local talent and expertise.³⁶ Pioneers such as Roy Acuff, Harold Rose, and Owen and Harold Bradley set up publishing houses, recording studios and record labels in Nashville.³⁷ In their wake, even more music-related businesses flocked to Nashville: other record labels, recording studios, and music publishers; collecting societies; record stores; and performance venues; and other essential institutions. By the 1950s, these businesses were so heavily concentrated in one of Nashville’s neighbourhoods that it became – and remains – known as “Music Row.” Those early institutions started a helpful dynamic of competition, cooperation, and shared expertise that continues to this day.

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The lessons of Nashville for less developed countries

What country wouldn’t envy the economic benefits provided by Nashville’s music industry? Indeed, a team of World Bank staffers created the Africa Music Project to promote the African music industry with Nashville partly in mind, saying that their “dream” was that “African countries would create their own Nashvilles.”³⁸ Creating such centres of economic activity is more than just a dream; it can also be a viable development strategy given the right circumstances. Although Nashville’s success cannot simply be transplanted wholesale to different countries and times, it does yield compelling lessons.

Just as the early country music recording industry offered an attractive alternative to Tennessee’s workers, today’s creative industries offer a similarly alluring alternative to workers in poor countries. Most jobs in poor countries are labour-intensive and relatively unproductive; for example, 70 per cent of employment in sub-Saharan Africa is agriculture-related, much of it subsistence farming.³⁹ Moreover, much agricultural work is seasonal and weather-dependent. Work in creative industries such as the recording business is likely to yield a much higher return, as the productivity and profitability advantages are vast. There is thus ample opportunity, in principle, for talented individuals to increase their income by investing some or all their labour in creative fields such as music.

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Recent work on economic development has focused attention on the importance of local centres of excellence and expertise to the economic prospects of a region. As Michael Porter has written in his widely-heralded work on competitive strategy and economic policy, regions and nations are most likely to prosper in the global economy if they foster strong “clusters” of economic activities, such as the country music “cluster” in Nashville.⁴⁰ According to Porter clusters are

“geographic concentrations of interconnected companies, specialised suppliers, service providers, firms in related industries, and associated institutions (e.g., universities, standards agencies, and trade associations) in particular fields”⁴¹

Clusters of economic activity provide a sustained competitive advantage through a self-reinforcing dynamic of cooperation and competition among related businesses. They exploit economies of scale and build up networks of skills, knowledge, and business relationships. Both employees and ideas circulate among competitors, building up a collective advantage over firms from outside the region. In addition to Nashville, other well-known examples include the microelectronics industry in Silicon Valley, high-performance auto companies in southern Germany, high-end fashion shoes in Italy, and wine industries in South Africa, France and New Zealand.⁴²

Celebrated examples such as Nashville and Hollywood show that clusters of competitive advantage can form around creative industries. However, there is no reason to believe creative clusters are merely the product of wealthy societies. Indeed, Tyler Cowen has documented how specific cultural sectors in poor countries can thrive under globalisation, as local creativity benefits from exposure to new technology, wealth, and outside creative influences.⁴³ Examples he cites include Congolese soukous music, Haitian painting, Jamaican Reggae, Persian textiles, Cuban music, and amate painting from Guerrero, Mexico.⁴⁴

Creative clusters can be particularly powerful drivers of development in poor countries for several reasons. First, they play to local strengths, taking advantage of knowledge, skills and forms of expression that arise from local culture, and are thus, by definition, largely unique and non-duplicable. Second, for the most

part they do not require cutting-edge technology, large capital investments, or a robust infrastructure.⁵³ Third, although creative work often requires a significant personal investment in training and development, it typically does not require the sort of extensive formal

educational system that still remains unavailable to the poor in many less developed countries.

Vibrant creative industries can provide benefits beyond the economic activity they create directly. A thriving creative cluster stimulates investments elsewhere. For example, Nashville’s music

industry has engendered a substantial tourism industry, with the additional transportation and lodging infrastructure that come with it.⁵⁴ For the music business, Nashville’s advantages outweighed any challenges presented by how backward Nashville may have been at that time. Nashville thus became the home of a thriving creative cluster.

Success also provides a large morale boost to people, economies, and cultures. Nashville’s success provided such a benefit to a downtrodden region, giving credibility to an obscure, once-dismissed type of music. As Peer wrote of Jimmie Rodgers, the “impetus which he gave to so-called hillbilly music ... set in motion the factors which resulted in making this sector of the amusement business into a matter of world-wide importance and a source for a high percentage of our popular hits.”⁵⁵ This is the same boost that resulted from the actions of artists and

entrepreneurs that helped to kick-start the development of the reggae industry in Jamaica.

Entrepreneurship is at the centre of the Nashville story. The large government-directed projects of the era, such as the TVA, played little role in the growth of Nashville’s

creative industries. Instead, the birth of Music City depended far more on the talents and efforts of

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Case study: The evolution of reggae in Jamaica

The story of reggae music in Jamaica provides a useful additional example of the potential benefits of creative clusters in less-developed countries, and further illustrates the conditions required for their development. Just as in Nashville, the triumvirate of creative talent, entrepreneurship, and favourable institutions enabled the development of a hugely successful creative cluster. By the 1950s, Jamaica had developed a strong tradition of music as a centre of community and commercial life, as entrepreneurs set up extremely popular public sound systems.⁴⁵ Many sound system owners expanded into record production, notably Clement “Sir Coxson” Dodd, who established a record label in 1959 and the famed Studio One recording studio in 1963.⁴⁶ Another important pioneer was Chris Blackwell, who established Island Records in Jamaica in 1959. In 1964, Blackwell demonstrated the potential of Jamaican music with Millie Small’s “My Boy Lollipop”, an international hit that sold 6 million copies.⁴⁷ That same year, one of Dodd’s early signings, Bob Marley, had his first number one hit in Jamaica with “Simmer Down.”⁴⁸

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Jamaica’s music industry became a true international phenomenon once Blackwell signed Marley to Island Records in 1971 and brought him to a worldwide audience by broadening the appeal of reggae.⁴⁹

Blackwell added guitar riffs and altered the songs, while retaining their integrity, to overcome “the predisposition that reggae was not serious music.”⁵⁰ The result was one of the most well-loved and commercially successful musical genres of the late 20th Century. Marley’s success pointed the way, and artists (such as Peter Tosh, Jimmy Cliff, Burning Spear, and Sly & Robbie) combined with entrepreneurs (such as Dodd, Blackwell, and artist-producer Lee “Scratch” Perry) to make the recording studios and dancehalls of Kingston the centre of a creative cluster that has lasted for decades.

By the late 1990s, Jamaican musicians, producers and songwriters were earning as much as \$300 million per year from worldwide reggae sales.⁵¹ The Jamaican music industry employs some 2,500 musicians, 1,700 sound system operators and a further 600 studio performers while the island is home to as many as 200 recording companies.⁵²

individuals such as Jimmie Rodgers, Ralph Peer, and the artists and entrepreneurs who followed in their footsteps.

The central role of private action to building creative clusters is both bad news and good news for policymakers. The bad news is that there is little governments can do to ensure success for the creative industries. The good news is that these risks can be placed on the shoulders of private parties rather than resource-strapped governments. Provided they can foresee rewards, artists and creative industries

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willingly take these risks. Governments play a lesser – but essential – role in providing the right institutional framework for creative industries through the enforcement of contracts and institutions, such as copyright.

Copyright was an essential ingredient in Nashville’s success. For Peer, it was the very foundation of his entire Bristol enterprise. Peer left his job with Okeh records to found his music publishing business, while convincing Victor to invest a huge sum in the Bristol Sessions. Peer took only US\$1 a year in salary from Victor, but in

exchange he obtained the right to control the copyrights in the compositions he recorded. The property rights created by copyright enabled these transactions, giving Peer and Victor a reason and focus for their entrepreneurial activity.⁵⁶

Peer understood – and helped establish – the entrepreneurial and cultural value of copyright to the young recording industry. He was among the first in the pop recording industry to see the win-win potential created by copyright: “Peer’s genius lay in structuring his publishing company based on royalties, making copyrights profitable for the artist as well as himself – the financial model of the modern music industry.”⁵⁷ He was also the first record executive to encourage his performers to avoid old, copyrighted standards and public domain works in favour of new compositions.⁵⁸ The new compositions had the dual virtues of being copyrightable and more culturally relevant (and thus more commercial) than older works.⁵⁹ Indeed, once Peer and others showed the value of new, copyrightable material, commercial incentives motivated rural Southern musicians to abandon folk music for royalty-producing works.⁶⁰

The story of Nashville shows just how much a region’s culture can aid its economic development, given enough talent, adequate incentives for entrepreneurs, the right laws and supporting institutions. Although Nashville resides in one of the world’s wealthiest countries, it was once a struggling city in the U.S.A.’s most underdeveloped region. Nashville now has a thriving, modern economy. The country music industry played an essential part in Nashville’s transformation into a world-class city, sustaining it through difficult times and contributing enormously to its modern economy, cultural identity, and business reputation.

The question, then, is what it will take to create other “Music Cities” in less-developed countries. As the example of Nashville illustrates, certain conditions must be met before local talent and entrepreneurship can result in creative success and economic development.

II. Where are the African Nashvilles?

While Nashville provides an encouraging example of how creativity and entrepreneurship can help lift people out of poverty, one might reasonably ask whether it can be replicated in Africa and other poor parts of the world.

Some of the ingredients are certainly present in Africa: rich musical traditions; entrepreneurs who have sought to develop those musical traditions into a profitable business enterprise; and most of

Africa has copyright laws. Unfortunately, realising the dream of creating African Nashvilles has proven challenging.

Abundant talent, abundant potential

Nashville is hardly the only, and certainly not the greatest, concentration of musical talent on the globe. For example, a popular guide for adventurous tourists touts Bamako, the capital of Mali, as one of the world's "musical hot-spots": "The West African city's anarchic collection of neighbourhoods sprawls from the Niger river in Mali, filled with single-story dwellings and women cooking in their courtyards on charcoal braziers. The place feels like one big village, with music everywhere."⁶¹ The guide continues, "none of this should be surprising, given Mali's 600-year-old musical tradition. And in the last 15 years, artists like singer Salif Keita and singer-guitarist Ali Farka Touré have shot to international fame, making Mali the centre of West African music and Bamako one of the premier places on the planet to hear it live."⁶²

While Mali's musical traditions may be unusual in their richness, many African nations have their own traditions that can be traced back decades if not centuries, from Rai music in Algeria to Highlife and Afrobeat in Nigeria and Ghana; from Mbablax in Senegal to Soukous in Congo and the Democratic Republic of Congo; from Township jive in South Africa to Chimurenga music in Zimbabwe.⁶³ So great is the influence of African creativity that many of the world's most popular forms of music, from blues and

jazz to gospel and reggae, from soul and funk to R&B and hip hop, rely heavily on the rhythms, melodies, and musical traditions of Africa.⁶⁴

The potential of Africa's music industry is widely recognised. As a recent report from the United Nations Conference on Trade and Development (UNCTAD) observed, the creative industries offer some of the best prospects for high growth in least developed countries.⁶⁵ One researcher estimated that the Ghanaian music industry alone could generate US\$53 million a year from foreign sales if local conditions were more amenable to supporting creativity.⁶⁶

In a few spots in Africa, this potential is being realised, at least partly. South Africa's music industry is strong and diverse, with internationally-known musicians such as Hugh Masekela, Miriam Makeba, Ladysmith Black Mambazo, Ray Phiri, and the Soweto Gospel Choir. Elsewhere in Southern Africa, the Zambian music industry is being revived after a near-total collapse in the 1990s.

The Zambian experience illustrates how pioneering entrepreneurs can ignite a creative industry, given the right conditions. First came a new copyright law in the mid-'90s.⁶⁷ Then, in 1999, a new Zambian record label, Mondo Music Records, sparked a revival. Much like Ralph Peer showed the way for Nashville's early country music pioneers, Mondo showed the way for other entrepreneurs.⁶⁸ "[T]here has been exponential growth in the amount of Zambian music being produced in the last seven years, and also in the consumption and the appreciation of it. Right now, Zambian music dominates ... local radio, and [is] also becoming a little bit noticed outside of the country."⁶⁹ Mondo's founder, Chisha Folotiya, recognises the potential value of a creative industry to his country's economy and to creative individuals. He says "we want Zambian music to contribute towards the economic development of our country. On a small level, as individual artists, retailers, producers, choreographers, dancers who are involved in

"... many African nations have their own traditions that can be traced back decades if not centuries ..."

"The Zambian experience illustrates how pioneering entrepreneurs can ignite a creative industry, given the right conditions."

the music itself, and also at the macro economic level, the entire retail sector, and manufacturing sector.”⁷⁰

Such bright spots in African popular music show what is possible if the right conditions are created. The possibilities for creative industries are both readily visible and seemingly endless. Such creative clusters present the sort of grass-roots opportunity that is increasingly seen as fundamental to economic development.⁷¹

The reality

Unfortunately, these hopeful examples remain isolated. Despite widely acknowledged potential, the music industry remains beleaguered in most African nations.

Bamako, Soweto and Lusaka notwithstanding, there are as of yet no Nashvilles in Africa.

African creativity remains an underappreciated and underexploited resource. Rarely do creative sectors contribute more than 1 per cent of the relatively low GDPs of any African country.⁷² Africa’s share of trade in cultural goods constitutes less than 3 per cent of the global total.⁷³ One researcher estimates Africa’s share of the world market for sound recordings at a mere 0.4 percent.⁷⁴ By comparison, creative industries in wealthy countries employ millions and contribute significantly to national economic production in – over 11 per cent of GDP in the United States, for instance.⁷⁵ European creative industries are the fastest growing industries across the continent, and employ over 4.7 million people, according to 2005 figures from UNCTAD.⁷⁶

Despite a few celebrated examples on the world music scene such as King Sunny Ade, Ali Farka Toure, and Youssou N’Dour, African music has yet to become a successful export industry. For example, Senegal is justly celebrated for its illustrious artistic history and for relatively well-known stars such as N’Dour who have been able to transform their musical roots to

“Bamako, Soweto and Lusaka notwithstanding, there are as of yet no Nashvilles in Africa ... most African music is recorded in either London or Paris”

“... in Senegal only ‘one dozen of the estimated 30,000 artists enjoy international sales and publicity’ ... The estimated average income for musicians in Senegal was \$600 per year – fifteen per cent lower than the country’s GDP per capita”

international success in “outside markets.”⁷⁷ However, the Africa Music Project estimated that in Senegal only “one dozen of the estimated 30,000 artists enjoy international sales and publicity.”⁷⁸ Another study attempted to gauge the number of “internationally recognised [music business] celebrities” in other African countries (with “international” connoting success anywhere outside of their home country, rather than global stardom).⁷⁹ The relatively successful South African music business boasted a high of 22 percent, but the next most successful country was the Democratic Republic of Congo with only 8 percent.⁸⁰

To the extent that African creators do succeed, their success often fails to produce economic benefits for their home countries. For example, most African music is recorded in either London or Paris – largely depending on where the artist in question originates.⁸¹ Those products are also most often consumed in Western countries as well. The situation is similar for other creative sectors: “Half of a Yellow Sun,” a tale of a bloody civil war in the early 1970s written by Chimamanda Adichie, is one of the most popular African books in the first decade in the 21st century. But it has sold just 5,000 copies in the author’s native Nigeria, as opposed to at least a quarter of a million in Britain, where Adichie has won critical acclaim.⁸²

In stark contrast to the high incomes earned by many musicians in wealthy countries, African musicians are often poorer than their fellow countrymen. The Africa Music Project estimated average income for musicians in Senegal was \$600 per year – fifteen per cent lower than the country’s GDP per capita.⁸³ The study further observed that “eighty per cent of Senegalese musicians are either unemployed or underemployed.”⁸⁴

What’s missing

The failure of Africa to produce healthy creative clusters

is disappointing – and may in part explain their lack of economic development. It is certainly not for a lack of entrepreneurial talent. As we noted above, the African Ralph Peers exist, but most are hampered by local policies and practices.

Among the major obstacles to the emergence of successful creative clusters in Africa are:

- Difficulties enforcing copyrights against piracy;
- Government control of copyright collection agencies;
- Irrational, burdensome taxation.

We now consider each of these in turn.

Difficulties enforcing copyright against piracy

Piracy of music is a serious problem in sub-Saharan Africa. Pirated versions of creative works represent *at least* 25 per cent of the entire marketplace across Africa.⁸⁵ That figure is as high as 90 percent in some West African countries.⁸⁶

Piracy deprives creators and legitimate distributors of sales. As we discuss below, by undermining the potential for downstream revenue, it also prevents creators from securing capital to finance their work – and, indeed, undermines the emergence of a local recording industry.

In spite of nominally strong copyright laws, enforcement is a major problem.⁸⁷ According to Nwauche, this results from a combination of: “Inadequate funding of enforcement agencies; lack of trained and properly motivated staff [of copyright offices]; stakeholder apathy in the enforcement of their rights; a weak institutional base; poorly trained and paid enforcement (police, customs, and specialised institutions) agents; a cumbersome and tardy judicial systems; and unorganised stakeholders.”⁸⁸

The lack of enforcement has effectively empowered the pirates, who are better organised and more successful than their victims and probably act in cahoots with the public enforcement agencies. In Senegal, the Africa

Music Project observed that “pirates have more means at their disposal than those responsible for policing them.” They further observed that “criminals guilty of wide scale commercial piracy are often pardoned because of well-placed connections within local government.”⁸⁹

In places where life is already hard, such conditions are not merely unfair – they have tragic consequences. Alhaji Sidiku Buari, President of the Musicians Union of Ghana, has described how all of these unfortunate realities conspire against creators in Ghana: “A musician

will do his music and somebody else reframes it and gets all the money in his pocket... . Our musicians have no social security, no insurance, no pension scheme and most of them die as paupers.”⁹⁰ Creators’ hard work and talent is betrayed by a poor institutional climate. As Orrack Chabaagu,

Director of EMI South Africa has observed, “It is unfortunate that after one has gone through thick and thin to produce his music, he does not live to enjoy its results because of piracy.”⁹¹

Piracy also hampers individual musicians from securing capital to finance their creative work or other ventures. Their primary potential assets – their copyrights and the revenue streams that should result from them – are effectively worthless. As a result, musicians are unable to obtain loans from local financial institutions, thus forcing them to pay for instruments, recording time and other business expenses up front and out of their own pockets.⁹²

The problem is the same one recognised by Hernando De Soto in his *Mystery of Capital*: without clearly defined, readily enforceable property rights, the poor have no assets with which to secure loans and other capital. They are thus prevented from climbing the economic ladder.⁹³ The experience of

African musicians shows that De Soto’s insight regarding physical property applies to IPRs as well.

Ineffective enforcement of copyright has led to a host of

“Pirated versions of creative works represent at least 25 per cent of the entire marketplace across Africa. That figure is as high as 90 percent in some West African countries.”

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other unintended consequences, including pushing the production of African music out of Africa. For example, in the late 1980s most legitimate music businesses in Ghana, including production houses and record factories, were shut down due to competition from piracy. Moreover, “Ghanaian musicians fled to other countries, thereby creating a vacuum in the industry.”⁹⁴ Zambia’s experience was the same, where a once “massive music industry” faded to almost nothing in the early ‘90s, as local record production shut down because of pirated cassette tapes from abroad and a shortage of capital.⁹⁵

There are many factors that might weigh towards local production, including lower labour costs, local knowledge and familiarity with local tastes, the existence of some production infrastructure, and convenience. Yet in spite of all of these potential advantages, recording and production in the UK or France is often still the wiser choice, which exacts a further opportunity cost to local economies in lost jobs, lost local income, and lost spending on related goods and services.⁹⁶

The tolerance of rampant piracy also thwarts the development of regional markets for music. Piracy not only deters non-African companies from investing in the development of the African marketplace, but also acts as a barrier to intra-Africa trade as well.⁹⁷ Kenyan copyright experts estimate that of all the content emanating from creators across the border in Tanzania, material from just two artists is legitimately sold in Kenya, despite both countries sharing at least two common languages, English and Swahili.⁹⁸ The forgone investments represent an important loss for two creative cultures that could potentially feed off each other in order to develop new techniques, styles, and markets. The missed opportunity suppresses the creation of jobs and wealth in desperately impoverished East Africa.

Another consequence of the inability to enforce

copyright in Sub-Saharan Africa is the lack of downstream royalty payments, which seriously undermines long-term investment. While there is a place for one-hit-wonders, most artists and record labels are motivated to produce, market, and distribute well-crafted recordings that will sell for years to come. The

motivation comes in large part from the ability for copyright holders to earn royalties on the sale of recordings.

The inhospitable environment created by piracy for the music industry in Africa leads to a short-term focus.⁹⁹ Outside South Africa, there are few substantial, financially stable record labels.¹⁰⁰ The recording industry tends to be a fragmented,

fly-by-night business with irregular distribution. In Ghana the consequence has been a “peculiar and unique” distribution system, whereby many retail outlets sell the work of only one particular record label, making it frustratingly difficult for fans to find recordings.¹⁰¹

Recording artists respond to this lack of stability by trying to collect as much revenue as possible in the short-term, exchanging their future (and largely theoretical) royalties for one-off payments from record

companies.¹⁰² They then offer very similar work to other recording companies in exchange for further one-off payments. Record companies in turn anticipate that duplicative output and competition with piracy will lead to a brief sales cycle, and thus tend to underpay artists for their work, which further perpetuates the supply of largely

unimaginative material. While this vicious cycle of deteriorating quality may seem to be against the interests of all those involved, the institutional environment makes for little alternative.

Government control of and interference in copyright collection agencies

A well-functioning, robust music industry provides

“... in spite of all of these potential advantages, recording and production of African music in the UK or France is often still the wiser choice, which exacts a further opportunity cost to local economies in lost jobs, lost local income, and lost spending on related goods and services.”

“... many CROs are not doing their jobs well in Africa. There are widespread complaints that royalties bear no relation to the actual frequency of play by radio stations or other public venues.”

many creative and financial opportunities for creators besides selling recordings and earning royalties from sales. Many of these opportunities are facilitated by licensing. For example, composers and musicians often license their work for broadcast on radio and television, for cover versions, for inclusion in movies, television shows, and advertisements, and increasingly, for derivative uses, such as rap songs, re-mixes and ring-tones. All of this activity expands creative clusters, making them even more significant and beneficial to creators and the local economy.

Unfortunately, most African musicians are not able to enjoy the benefits of such downstream uses of their creations. Some of this failure results from shortcomings in the legal system already discussed, but this is exacerbated by the lack of effective, dependable collective rights organisations (CROs). In most wealthy countries, CROs secure payment to artists for various small uses of their works, such as when records are played in nightclubs or on the radio. The small size of each potential transaction makes it uneconomic for individual parties to pursue agreements or to enforce their rights on a case-by-case basis. CROs remedy this problem by granting blanket licenses in exchange for aggregate subscription fees, which are then allocated to copyright owners in proportion to the use of their works.

Unfortunately, it appears that many CROs are not doing their jobs well in Africa. There are widespread complaints that the amounts bear no relation to the actual frequency of play by radio stations or other public venues.¹⁰³ For example, in Senegal, royalties are supposed to be collected by the Bureau Sénégalais du Droits d'Auteurs (BSDA), but it rarely succeeds in rewarding artists appropriately, as royalty payments are inconsistent at best.¹⁰⁴ In part the problem is that radio stations and other music distributors in Senegal withhold sales information from the BSDA, making it impossible to determine how to allocate royalties.¹⁰⁵

“As the authors of the Africa Music Project observe, ‘distribution [of royalties], when it takes place, is a political process rather than an objective one.’”

“Anecdotal evidence from the Africa Music Project illustrates how complicated tariffs were levied on imported musical instruments, pushing the cost of putting on live performances out of reach for artists struggling to make it from one show to the next.”

Artists also accuse the BSDA of over-charging for its services.¹⁰⁶

Similar problems plague musicians in both Ghana and Kenya.¹⁰⁷ Meanwhile, musicians claim that officials of the Copyright Society of Ghana (the Ghanaian CRO) and the government copyright office have corruptly diverted the royalties they do collect.¹⁰⁸

A significant part of the problem is that many CROs are run by the government or are government-sanctioned monopolies. Such arrangements undermine the effectiveness of CROs by making them less accountable to their members. Such is the case in Senegal, where the Ministry of Culture controls the BSDA, and in Kenya, where the “Music Copyright Society of Kenya” is the only collecting house sanctioned by the Kenya Copyright Board.¹⁰⁹ CROs in Nigeria can only operate with the explicit approval from the government-controlled Nigeria Copyright Commission¹¹⁰

Such restrictions on competition undermine the incentives for collecting agencies to respond to artists’ concerns. As the authors of the Africa Music Project observe, “distribution [of royalties], when it takes place, is a political process rather than an objective one.”¹¹¹

Government involvement with CROs can also threaten the independence of musicians. Artists in Ghana have accused the Chairman of the Ministry of Culture-controlled Copyrights Office of withholding payments from artists in an attempt to influence the content of their music.¹¹² Such actions amount to a gross violation of the right to free speech. Similarly, a station manager for a radio station in Dakar has said government stipends earmarked for local radio stations tend to arrive “only during election time.”¹¹³

Perhaps it is not surprising that African governments should use their power in this way. According to the most recent Freedom House ranking of political

freedom, just eight African countries were classified as “free”.¹¹⁴

Burdensome taxes

Many governments in Africa impose taxes specifically targeted to musical instruments and other aspects of the music industry.¹¹⁵ These taxes make a tough business that much tougher.

One particularly troubling target of taxation is live performance. Because of the other difficulties faced by the music business in Africa, musicians often have no option but to scrape a living from live performances. Unfortunately, the very nature of live performances (at least those that have some chance of success) is that they are centrally organised and well publicised. That makes them natural targets for the tax collectors.

One example of such burdensome taxation comes from Ghana, which has recently introduced an arbitrary and confusing tax on tickets sold for live performances. Previously, a 25 per cent surcharge was imposed on ticket sales. Now, an indeterminate Value Added Tax is levied.¹¹⁶ The situation is similar elsewhere: a hefty 25 per cent duty and an additional 16 per cent Value Added Tax is levied on live performances in Kenya.¹¹⁷ The results are predictable and are well described by “Dou Dou” Sow, a Senegalese musician, “there are fewer live performances today than in the old days because there isn’t enough money [to perform].”¹¹⁸

Anecdotal evidence from the Africa Music Project illustrates how complicated tariffs were levied on imported musical instruments, pushing the cost of putting on live performances out of reach for artists struggling to make it from one show to the next.

Various other government-imposed barriers prevent small-scale entrepreneurs with few resources – the epitome of the African artist – from engaging in productive economic activity. Long waiting times and overly complicated requirements put what should be simple tasks, such as registering property and trading with foreigners, out of reach for poor, struggling artists. These frustrating realities are quantified by Doing Business, a World Bank project that measures the difficulty of engaging in entrepreneurial activities. Doing Business estimates that it takes an *average* of 33

procedures and 780 days to enforce a contract in Senegal. It takes a further 6 procedures and 114 days just to register a property.¹¹⁹ Clearly these barriers affect the entire economy, but they are nevertheless particularly pernicious to artists who already scrape by with fewer resources than the average citizen.

III. What to do? policy recommendations

Africa's experience bears out Nobel laureate economist Douglass North's truism that "institutions matter." Creative clusters require not only talent and entrepreneurship, but also effective institutions that enable the talented and the entrepreneurial to flourish. In this monograph we have identified a number of institutional failings which, if corrected, would, we believe, lead to the flourishing of creative industries in Africa. In order to ensure strong and credible institutions that support the development of local creative industries, we recommend that governments:

- Enact, implement and enforce effective copyright laws;
- Reduce intervention in royalty collection;
- Reduce taxes and regulatory burdens.

Enact, implement and enforce effective copyright laws

Property rights are generally far more effective when people are able to demonstrate ownership easily and potential licensees and buyers can locate owners quickly and at low cost.¹²⁰

One of the simplest and most effective steps that can be taken to improve conditions for musicians and other creative artists would thus be to establish a simple means of registering ownership of creative works, as well as for recording assignments, licenses and other transfers. There is much to learn from the experience in wealthy countries, as they often have complicated and inefficient systems for tracking ownership, but are able to afford the sizeable costs of overcoming these defects.¹²¹ People in less-developed countries are less likely to be able to afford the costs of investigating ownership through these archaic systems so the best option would be to employ modern information technology to ensure titling systems are quick and easy to use.¹²² Registering and tracking ownership through a

system that uses this modern technology may perhaps be more costly initially, but will likely reap significant rewards in the cost and time saved for all those involved in creative production.

Aside from employing the optimal system for tracking and registration, copyright laws should also be well equipped to provide creators with the best opportunities to combat piracy. As we have noted, this has a devastating impact on creators in less-developed countries.

Generally speaking, copyright laws must provide for swift, affordable means of immediately halting the distribution of pirated works. Laws should provide for preliminary or "interlocutory" injunctions – in lay

terms, this means copyright owners can force the pirates to cease distribution at the start of the case, rather than waiting for a trial and its conclusion. In some cases, it is necessary to provide swift, temporary emergency relief, even if the alleged infringer cannot be found or is absent from court. For example, if an imported shipment of pirated CDs is about to flood the market, the copyright owner should not be required to find the foreign infringer before obtaining any relief. For these remedies to be effective, copyright owners require the cooperation of law enforcement to seize and impound the infringing products. These remedies stop pirates from making money and evading liability while the IP owner suffers lost sales and the cost of litigation while attempting to find infringers and prove liability.

Copyright laws should provide for (and courts should routinely award) financial remedies that make piracy too financially risky. In many cases, remedies that merely deprive the pirate of profits or even of gross revenue are not useful deterrents. In such situations, damages are merely an additional business risk, calculated against the likelihood of getting caught and thus are not an effective means of tackling the critical problem.

The potential losses should be made clear enough to the pirate that he would stand to lose significantly more than the potential gains of infringing copyrighted works. Laws thus should provide for payment of the copyright

“One of the simplest and most effective steps that can be taken to improve conditions for musicians and other creative artists would thus be to establish a simple means of registering ownership of creative works ...”

owner's attorneys' fees and either a multiple of actual damages or what are known as "pre-established" or "statutory" damages – significant amounts set by statute that aim to exceed the typical value of an infringement.¹²³ If sufficiently sizeable, the threat of such compensation should act as a deterrent to potential pirates.

Additionally, copyright laws ought to enable trade associations to combat infringement on behalf of their members. Sometimes, copyright owners cannot afford to pursue legal action. In other instances, a pirate might be infringing the works of many different copyright owners, with each individual infringement too small to pursue. To address such problems in many jurisdictions trade associations are able to act on behalf of their members.¹²⁴

However, in some African countries, only registered collecting societies can bring such suits on behalf of members,¹²⁵ while in others only the copyright owner can bring suit.¹²⁶ These restrictions make it more difficult to tackle piracy. Extending the rights to bring action to a wider range of potential litigants, especially to trade associations (with the consent of the allegedly affected party), would greatly aid the battle against piracy.

Civil enforcement by private parties ought to remain the first and foremost means of defence against piracy.

Those with the greatest interest in stopping piracy – the creative industries – are likely to be most effective in monitoring and halting the trade in pirated goods. However, they do require help from law enforcement in doing this job as they play a limited but essential role in combating copyright piracy.

To be safe and effective, the seizure and removal of pirated goods from channels of commerce often requires the backing of police or other law enforcement personnel.

The state's most important direct role in preventing copyright piracy is in investigating and stopping large scale commercial piracy of CDs and other copyright material. Where criminal gangs conduct piracy, individual copyright owners are often no match

(especially where trade associations are barred from acting on behalf of copyright holders). Local creative industries also find it particularly hard to combat piracy where foreign counterfeiters flood the market with pirated copies of local creative works. In such situations, government can help by providing and coordinating credible enforcement.

Crucially, any criminal penalties must be appropriate. More is not always better where criminal penalties are concerned. For example, the Chinese head of the Food and Drug Administration was recently executed on

grounds of the continued prevalence of counterfeit medicines in China – and under pressure from the flow of sub-standard goods into the United States.¹²⁷ While such actions create a strong impression, they likely are counterproductive. If penalties seem

excessive to local sensibilities, then local law enforcement and courts are less likely to apply them, thus making the laws less of a deterrent in reality.¹²⁸

Regardless of the content of IP laws, the courts must be well-prepared to enforce them. As Robert Sherwood says, "until judicial systems in developing and transition countries are upgraded, it will matter little what IPR laws and treaties provide."¹²⁹ Judges thus must understand and have the right tools to adjudicate the claims of creators. One way to improve the efficiency of courts would be to allow one or a few judges in each

court of general jurisdiction to volunteer to take all of that court's IP cases. This proposal is currently being considered in the United States¹³⁰ and has also been advocated for courts in poor countries.¹³¹ The advantage of this proposal is that scarce training resources and

experience can be focused on a smaller number of judges.

More generally, all participants in the system – law enforcement, private parties, and judges – would benefit from education. They need both technical training regarding the law and a better understanding of the significance of the creative industries and the importance of their enforcement efforts.

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An offshoot of this would be through highly visible and credible anti-piracy campaigns, coordinated by industry and in some cases, government. In part, the objective of such campaigns is to convince offenders they are likely to be caught.¹³² Ideally, they would also change public perceptions of the morality of piracy, change buying habits and make the business of piracy less socially acceptable.

In addition, the other parts of the legal system need to function well. Much of the effective use of IP is based on contracts, so a well-functioning IP system depends on enforceable contracts. In turn, that enforceability depends on courts being independent from political forces, since politicians are subject to intense lobbying from vested interests. Only when courts are independent are they able to apply the rule of law; that is to say, apply clear, abstract principles of law to all parties in a non-arbitrary, non-discriminatory manner.

Remove state intervention in royalty collection

A healthy music industry does not exist in a vacuum. Many other industries are to a degree symbiotic, including radio, mobile telephony and the movie industry.

Unfortunately, in many African countries the licensing market does not work well, if at all, making such symbiosis difficult. Below, we outline some changes that would reduce the barriers to establishing effective licensing systems – beyond the observations already made about copyright law and contracts.

As noted above, in many instances licensing is administered by collective rights organisations (CROs). An alternative to the ineffective and often corrupt CROs that currently exist in Africa would be the establishment of independently audited, private, competing CROs.¹³³ Such independent, competing CROs exist in other countries, including the United States.¹³⁴ Private entities are particularly desirable in less-developed countries, as they relieve resource-starved governments from chores

such as rate-setting and royalty collection and place the responsibility on the beneficiaries, who have the greatest incentive to expend resources efficiently to get the job done right. Private CROs are also more likely to remedy many of the complaints of African musicians regarding the ineffectiveness and improper influence of government-run or government-sanctioned CROs.

One problem that many African artists have complained about is poor, over-priced service from state controlled CROs.¹³⁵ If CROs were privately controlled and subject to

competition, they would have stronger incentives to serve their clients responsibly.

Another problem of which African artists complained is that CROs are influenced by political forces when collecting and paying out royalties.¹³⁶ By contrast, privately operated CROs, subject to competition and external auditing, would be less inclined to engage in such corrupt activities. Any CRO found to be corrupt would immediately lose its business to competitors, thereby undermining any benefits from such corruption.

In a deregulated environment, it is possible that pan-African or other international forms of CRO would emerge, providing creators with

benefits in terms of wider reach and lower costs.

Reduce taxes and regulatory burdens on the music industry

Governments in poor countries sometimes impose excessive and regressive taxes and regulations on creative and innovative activities. While they are hardly alone among the governments in the world in pursuing such policies, the effects in Africa are especially pernicious. As noted above, artists report high taxes on musical equipment and public performance.¹³⁷ Such burdens should be reduced or scrapped altogether.

Lower taxes on these activities directly related to the arts incentivise more artists to create and to promote their

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work directly to the public. Since innovation and creative work have such tremendous positive ripple effects, it is important not to burden their creation, lest one lose the many downstream benefits.

Generally speaking, reducing the overall burden of taxation will be a significant boon for creators, but it is important to note that a more favourable business environment across Africa will reap massive dividends for the world's most regulated region. In terms of cultural output, a glance at the top of the World Bank's Doing Business rankings identifies all the countries that are currently thought of as cultural hotspots. From vibrant London in the 18th century to Hollywood today, freer economies with credible, stable, and decentralised institutions foster creativity and tend to attract bright talent, regardless of its original location.¹³⁸ With brain drain a growing concern, African economies would do much to stop their loss if talented local creators and innovators were able to secure more benefit from their work at home.

IV. Conclusions

Creative industries are an important opportunity for less-developed countries. In particular, those creative endeavours that tap into existing local talent and skills, such as music industries in Africa, represent low-hanging fruit. While thriving music industries clearly require considerable individual skill and training, they do not require extensive formal education or the development of sophisticated physical infrastructure.

Prioritising creative clusters requires political will and a commitment to legal and institutional reform. What is required is the right legal environment – no simple task, but one that is more manageable when focused on empowering specific industries.

While governments sometimes devote extra resources to enforcement in order to mollify trading partners, we advocate a greater, sustained effort to ensure that the copyright system is supportive of *local* creators.¹³⁹ In the case of African music industries, we believe that the relatively modest investment is warranted by the likely economic and social payoff.

Devoting specific resources to the creative industries can provide a strong foundation for spill-over growth in other sectors by providing quick growth and demonstrating that local industry can thrive in less-developed countries without government or donor subsidy. Creative industries are among the fastest-growing economic sectors in *both* rich and some poor countries.¹⁴⁰ Not only will the early growth of creative industries benefit creators and the local economy, it can provide a moral victory, showing that home-grown industries and home-grown culture can compete and thrive.¹⁴¹ Such proof of the benefits of markets is essential.

However, creative industries are unlikely to prosper in the long run if the rest of the economy is not liberalised. Ultimately, the creative sector alone cannot drive the economy, nor can it flourish without financially healthy

local customers and investors. Many of the policies we suggest here – e.g., greater enforcement of property rights, more effective courts, and regulatory and tax reform – would benefit the economy if applied generally across all sectors. And they should be.

Collective action and international organisations

Above we noted some of the importance of allowing more effective enforcement of rights and collection of royalties through collective rights organisations. Perhaps more important even than CROs, however, are other cooperative efforts and informal social networks.

Economic clusters thrive on the cross-pollination that occurs from business collaboration, shared expertise, and employees switching jobs. In the music business, this kind of networking results in creative innovation, technical refinements in recording, and innovations in financing and marketing.

The area of private capabilities is one where developed world donors, civil society organisations, and specialised agencies such as the World Intellectual Property Organisation can provide helpful technical assistance. Each country has its own unique circumstances, but there is much to learn from the experience of successful business models, technical issues like recording, standard form contracts, marketing, combating piracy and other business issues.

This kind of grass-roots, demand-driven assistance is exactly what is called for by the mandates of various international organisations. For example, article 67 of the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) calls upon wealthy countries to provide assistance in implementing the agreement.¹⁴² Meanwhile, the general consensus resulting from the “Development Agenda” talks was that World Intellectual Property Organisation should increase and improve its technical assistance to less-developed countries. While some of

“Given slightly better conditions, creative and entrepreneurial individuals can and will do most of the hard work of building a prosperous industry.”

“Not only will the early growth of creative industries benefit creators and the local economy, it can provide a moral victory, showing that home-grown industries and home-grown culture can compete and thrive.”

these activities may be profitably focused on government officials – for example sharing best legal practices – private sector actors such as creative businesses and individual artists should receive much of the attention.

However, the most productive assistance is likely to result from helping successful businesspeople to share their knowledge and expertise with their counterparts in the less-developed world. There are a number of salutary examples of such programmes. One project used experienced world music industry marketing professionals to train a group of African musical professionals before sending them to pursue opportunities at MIDEM, a large international trade fair for music.¹⁴³ Another project assisted the organisers of the “Festival in the Desert” music festival in Mali by bringing in successful festival professionals to “twin” with the local staff members who hold equivalent jobs.¹⁴⁴

The impact of technology

Many see the advance of technology as an additional enforcement challenge. The ease of digital copying, networked connections, and consumer electronics innovations such as the iPod all have combined to make file-sharing the bane of the music industry in wealthy countries. One might ask what chance a music industry has in poorer countries in the face of such challenges. We see plenty of cause to answer this question optimistically. First, something that is a challenge in most contexts works to the benefit of the music industry in poorer countries. As a recent study of file-sharing in Vietnam showed, on-line piracy has yet to become a serious issue for creators in less developed countries because of the relative dearth of Internet penetration in these areas.¹⁴⁵ By the time broadband access improves, creative industries in wealthier countries likely will have shown the way to co-exist successfully with new technologies.

In fact, we see something better than mere coexistence with technology as the future of the music industry. New technology is drastically reducing distribution, production, and marketing costs. These changes are empowering smaller businesses and individual creators, as they can now reach fans and markets inexpensively and without reliance on major labels and other intermediaries. These new, more streamlined, less cost-intensive business models will particularly suit creative industries in poorer countries, where the margins are thinner and resources more scarce. For these creators, the opportunity to disseminate their own material poses a significant opportunity to capture new marketplaces. This opportunity, we argue, is more significant and will have more of a positive impact than the potential threat posed by file-sharing.

Nashville in Africa

Nashville’s unlikely emergence as a multi-billion dollar hub for country music provides important lessons for establishing and supporting the potential growth of African creative industries. Without the likes of risk-takers such as Ralph Peer and seminal moments such as the “Bristol Sessions”, “Music City U.S.A.” might never have been. Without the conditions that paved the way for Peer, and the artists that contributed to the “Bristol Sessions”, to turn country music into a popular genre, “Music City U.S.A.” certainly would not be what it is today.

Africa’s experience with intellectual property rights is yet further confirmation of the fact that institutions – the laws, customs and norms within which people act and interact in any society – matter. The right institutions allow knowledge industries to prosper. They empower creators through an enabling environment that allows them both to compete with one another and to co-operate to undertake mutually beneficial activities. The wrong institutions can cause

“New technology ... will particularly suit creative industries in poorer countries, where the margins are thinner and resources more scarce.”

“Africa’s experience with intellectual property rights is yet further confirmation of the fact that institutions – the laws, customs and norms within which people act and interact in any society – matter.”

creativity to wither. The trying experience of African musicians is a testament to this fact.

Yet their experience need not be so painful. Creativity is mankind's most abundant resource but it does not represent a free lunch. Protecting property rights is an essential component to the development of knowledge-intensive industries, regardless of where they are based. (But they are only one component.) No matter how much production and distribution costs may fall, creators still need to make a living.

Creative industries, particularly popular music, are "low-hanging fruit" that could greatly benefit African economies if the right circumstances were achieved. Their development requires relatively little investment and almost no government oversight. Given slightly better conditions, creative and entrepreneurial individuals can and will do most of the hard work of building a prosperous industry. The reforms suggested here would help countries take the essential next step beyond stronger IP laws to build institutions that competently employ the IP Africans already create to foster creativity, innovation and economic growth.

Although a thriving popular music industry would help only a small proportion of Africans lift themselves from poverty, its success would be an important moral, economic and cultural victory for African entrepreneurs. Moreover, the success stimulated by these reforms will generate stable conditions for other entrepreneurial efforts based on local talents and tastes to follow.

They would also hopefully lead to increased support and demand for the rule of law throughout society. That would truly benefit all.

Notes

The ideas and proposals discussed in this paper are further developed in an academic paper published by the authors in the Kentucky Law Journal. See Schultz, M. & van Gelder, A., “Creative Development: Helping Poor Countries by Building Creative Industries” 97(1) (forthcoming 2008).

1 Mark Schultz is a visiting professor at DePaul University College of Law in Chicago, Illinois, U.S.A. and an Assistant Professor at the Southern Illinois University School of Law in Carbondale, Illinois, U.S.A. Alec van Gelder is Network Director at International Policy Network, London. The authors wish to thank Steve Margolis, Paul McGreal, Susan Liemer, Julian Morris, the participants at the 2008 Society for Economic Research on Copyright Issues Annual Conference and Mark Schultz’s seminar at DePaul for their helpful comments. Special thanks to our colleagues Mike Andrews and Franklin Cudjoe who provided insights into local conditions in Africa. All opinions expressed herein are those of the authors.

2 For a history chronicling how Nashville became “Music City”, see Kosser, M. “How Nashville Became Music City U.S.A.: 50 years of music row” Hal Leonard Corporation, 2006

3 Other U.S. musical hotspots include Seattle, Austin, Memphis, and the state of Georgia. A recent study estimates that Nashville’s local music industry contributes twice as much to Nashville’s local economy as all those other places combined contribute to their own local economies. Raines, P., & Brown, L., (2006), *The Economic Impact of the Music Industry in the Nashville-Davidson-Murfreesboro MSA 4*, Nashville Area Chamber of Commerce, available at <http://www.nashvillechamber.com/president/musicindustryimpactstudy.pdf>. While New York and Los Angeles also have very large music industries, they do not define the local identity as they span more genres and are less central to the local economy.

4 *Ibid* p.4.

5 *Ibid* p.6, pp. 15–20

6 *Ibid*

7 *Ibid* p.6. Nashville has a diversified economy, with the music industry at least the second-most important industry (depending on how one accounts for the impact of music-related tourism and other music-related economic activity), and healthcare, higher education, and the automotive industry also playing a role.

8 See, e.g., Easterly, W., (2006), *The White Man’s Burden: Why the West’s Efforts to Aid the Rest Have Done So Much Ill and So Little Good*, Penguin, Easterly lauds modest projects with measurable, accountable goals that involve locals.

9 Curtis, H.A., (1952), “The TVA and the Tennessee Valley – What of the Future?”, *Land Economics*, 28(4), p.333.

10 *Ibid*, p.333.

11 Kyriakoudes, L.M., (2003), *The Social Origins Of The Urban South: Race, Gender, And Migration In Nashville And Middle Tennessee, 1890–1930*, The University Of North Carolina Press, p.39.

12 Cole, W.E., (1950), “The Impact of TVA Upon the Southeast”, *Social Forces*, 28, pp.435, 438.

13 Ekbladh, D., (2002), “‘Mr. TVA’: Grass-Roots Development, David Lilienthal, and the Rise and Fall of the Tennessee Valley Authority as a Symbol for U.S. Overseas Development, 1933–1973”, *Diplomatic History*, 26(3), pp. 335–374, (quoting Hutchinson, P., (1934), “Revolution by Electricity”, *Scribners Magazine*, Oct 1934, pp.193–200).

14 Curtis, H.A., (1952), “The TVA and the Tennessee Valley – What of the Future?”, *Land Economics*, 28(4), p.334.

15 U.S. Department of Health and Human Service, Center for Disease Control, *The History of Malaria, an Ancient Disease*, available at <http://www.cdc.gov/malaria/history/index.htm> (last accessed January 15, 2008).

16 Kyriakoudes, L.M., (2003), *The Social Origins Of The Urban South: Race, Gender, And Migration In Nashville And Middle Tennessee, 1890–1930*, The University Of North Carolina Press, pp.31, 33, 37.

- 17 "The hopes that Nashville would emerge as the South's leading iron or textile center were never realized. While the city did develop other industries based upon access to the raw materials and markets in its hinterland – lumber, wheat, and livestock – these resources did not develop the city into a great manufacturing center." *Ibid*, p.39.
- 18 Ekbladh, D., (2002), "'Mr. TVA': Grass-Roots Development, David Lilienthal, and the Rise and Fall of the Tennessee Valley Authority as a Symbol for U.S. Overseas Development, 1933–1973", *Diplomatic History*, 26(3), p.336. The TVA built a great deal of impressive infrastructure, improved economic conditions in the Tennessee Valley, and unambiguously succeeded in some of its ancillary programmes like eradicating malaria. Over the years, however, it has come to be criticized by some as an inefficient wealth transfer programme that may have impeded the growth of the region. See, e.g., Chandler, W.U., (1984), "The Myth of the TVA: Conservation and Development in the Tennessee Valley, 1933–80", *Journal of Policy Analysis and Management*, 4(1). Chandler contended that the TVA would have been more successful if it had focused on projects with more direct, immediate benefits to local people rather than massive projects.
- 19 Raitz, K.B., et al., (1984), *Appalachia: A Regional Geography*, Westview Press, pp.138–140.
- 20 Macon was a regular on the East Coast vaudeville circuit. *Uncle Dave Macon*, Country Music Hall of Fame and Museum, available at <http://www.countrymusicHalloffame.com/site/inductees.aspx?cid=142> (adapted from Kingsbury, P. (ed.), *The Encyclopedia of Country Music*, compiled by Country Music Hall of Fame and Museum, Oxford University Press).
- 21 See Peer Music's "Company History", available at <http://www.peermusic.com/aboutus/companyhistory.cfm>
- 22 *Ibid*
- 23 Peer, R., (c.1953), *Ralph Peer Remembers Jimmy Rodgers*, available at http://www.peermusic.com/news/press_detail.cfm?announcement_id=273&back=press (last visited August 19, 2007) (the article was written by Peer circa 1953, according the Bluegrass West site, <http://www.bluegrasswest.com/ideas/jr-rpeer.htm>).
- 24 Maeder, J., (2003), "Bristol Celebrates Birthplace of Country Music", *The Appalachian Voice*, available at <http://www.ncpress.net/cgi-local/search.cgi?gffd=774>
- 25 A number of country musicians did make the trip to New York, experiencing enough early success to indicate the existence of a market. For example, "Uncle" Dave Macon, a successful performer on the East Coast vaudeville circuit, had a number of hits recorded by New York labels in the mid to late '20s. *Uncle Dave Macon*, Country Music Hall of Fame and Museum, <http://www.countrymusicHalloffame.com/site/inductees.aspx?cid=142> (adapted from Kingsbury, P. (ed.), *The Encyclopedia of Country Music*, compiled by Country Music Hall of Fame and Museum, Oxford University Press). But the country music market fully materialized once the Bristol sessions brought performers together with recording technology, finally giving them a national audience.
- 26 *Ibid.*, and Wolfe at 21.
- 27 Wolfe, C.K., (2005), "The Legend That Peer Built: Reappraising the Bristol Sessions", in Olson, T., & Wolfe, C.K., (eds.), *The Bristol Sessions: Writings About the Big Bang of Country Music*, p.18.
- 28 *Ibid*, p.31.
- 29 Maeder, J., (2003), "Bristol Celebrates Birthplace of Country Music", *The Appalachian Voice*, available at <http://www.ncpress.net/cgi-local/search.cgi?gffd=774>
- 30 Available at <http://www.alamhof.org/rogersj.htm>
- 31 Peer, a consummate salesman, persuaded local newspapers to assist him with recruiting acts to record. As he later recalled: "I then appealed to the editor of a local newspaper, explaining to him the great advantages to the community of my enterprise. He thought that I had a good idea and ran a half column on his front page. This worked like dynamite" Peer, R., (c.1953), *Ralph Peer Remembers Jimmy Rodgers*, available at <http://www>

- peermusic.com/news/press_detail.cfm?announcement_id=273&back=press (last visited August 19, 2007). Newspapers noted the relatively princely sums earned by other recording artists previously recorded by Victor: “[Ernest] Stoneman [received] \$100, and each of his assistants \$25 per day. Stoneman ... received from the company \$3,600 last year as his share of the proceeds on his records.” Wolfe at 25.
- 32 Wolfe, C., (1987), *Liner Notes of The Bristol Sessions*, Country Music Foundation, available at <http://www.birthplaceofcountrymusic.org/node/32>
- 33 *Ibid.*
- 34 The 1928 Statistical Abstract of the United States 336, United States Government Printing Office. The .76 number is the general average hourly wage for all jobs in the bituminous coal industry.
- 35 See *ibid.* The numbers are based on the assumption that workers worked 48 hour work weeks as mines operated on a 48 hour work week, although the Statistical Abstract notes that many miners worked fewer hours.
- 36 Nashville was home to the *Grand Ole Opry* Radio show and other important early country music institutions. Kyriakoudes, L.M., (2003), *The Social Origins Of The Urban South: Race, Gender, And Migration In Nashville And Middle Tennessee, 1890–1930*, The University Of North Carolina Press, p.18. Country music talent came to Nashville to play the show, which drew record producers, which in turn drew more talent.
- 37 Acuff and Rose established the future powerhouse of music publishing Acuff-Rose in the 1940s, and the Bradleys founded the first recording studio on what was to become Nashville’s famous “Music Row,” where they recorded Patsy Cline and many other legends. See Kosser, M. “How Nashville Became Music City U.S.A.: 50 years of music row” Hal Leonard Corporation, 2006, 10 – 14; 19 – 26.
- 38 Penna, F., Thorman, M., & Finger, J., (2004), “The Africa Music Project”, in Thorman, M., & Finger, J. (eds), *Poor People’s Knowledge*, World Bank and Oxford University Press, p.97. We take inspiration from the Africa Music Project’s enthusiasm for “African Nashvilles” and share its promoters’ belief in grass-roots efforts. We depart from and elaborate on their analysis, however, in our views of the primary benefits from local music industries and the way to achieve them. While the Africa Music Project sought an export market via the Internet, we see great benefits from the establishment and support – through very specific and defined terms – of local and regional markets. We also map out specific legal and institutional reforms focused on the industry and private capacity building, which we believe should take precedence over particular marketing schemes.
- 39 *Office of the United States Trade Representative*, “The Benefits of Trade for Developing Countries” Trade Facts, June 2006. <http://usmission.ch/Press2006/0701TradeFacts.pdf>.
- 40 Porter, M.E., (1998), *The Competitive Advantage of Nations*, Free Press.
- 41 Porter, M.E., (2000), “Locations, Clusters, and Company Strategy”, in Clark, G.L., Gertler, M.S., & Feldman, M.P. (eds.), *Oxford Handbook of Economic Geography*, Oxford University Press, p.253.
- 42 Porter, M.E., (1998), “Clusters and the New Economics of Competition”, *Harvard Business Review*, 76(6).
- 43 Cowen, T., (2002), *Creative Destruction: How Globalization Is Changing the World’s Cultures*, Princeton University Press.
- 44 Cowen, T., (2005), *Markets and Cultural Voices: Liberty vs. Power in the Lives of Mexican Amate Painters*, University of Michigan Press. The World Intellectual Property Organisation has similarly recognised the possibilities of creative clusters as part of development efforts. See e.g. http://www.wipo.int/ip-development/en/creative_industry/creative_clusters.html ,
- 45 Lloyd Bradley, *This is Reggae Music: The Story of Jamaica’s Music* (2001). As Bradley describes, the sound of music being played through loudspeakers at community gatherings or to attract business to commercial establishments was a ubiquitous part of life in parts of 1950s Jamaica. *Id.* at 3–6.

- 46 At the time, Jamaica's copyright law was based on the 1911 British Copyright Act, which protected sound recordings and accorded ownership to the financier, thus making record production an attractive option – for record producers. Manuel, P. and Marshall, W., "The Riddim Method: Aesthetics, Practice, and Ownership in Jamaican Dancehall," *Popular Music* vol, 25, 447, 463–464 (2006). Most musicians were happy to accept a flat fee at the time, although some, notably Lee Scratch Perry, started their own businesses in reaction to poor treatment from powerful producers. *Ibid.* As the "riddims" on early recordings became more valuable, pioneers such as Dodd sought to protect them. *Ibid.* However, unauthorised versioning (a.k.a. sampling), copying and piracy were very common, although often the subject of bitter complaint." *Ibid.* at 463 – 466.
- 47 See Chris Blackwell Biography, Musician Guide, <http://www.musicianguide.com/biographies/1608002382/Chris-Blackwell.html>. Others had recorded the song before, but Small and Blackwell employed a Jamaican ska style that was then unfamiliar to mainstream international audiences.
- 48 Timothy White, *Catch a Fire: The Life of Bob Marley* 138–140; 157–58 (1998).
- 49 *Id.* at 234 – 41.
- 50 Dan Daley, *Chris Blackwell: From LP to DVD, Still Living the Island Life*, Mix: Professional Audio and Music Production, December 1, 1999 (available at http://mixonline.com/mag/audio_chris_blackwell_lp/). As Blackwell further said, "the whole process of that first record was to present Bob and the Wailers as a band, a black rock band... . There's always a system you have to face when it comes to new music." *Id.* Blackwell's Island Records, by then based in the U.K., offered the added benefit of international copyright protection, since Jamaica was not then the member of any international copyright convention.
- 51 Jamaica passed a modern copyright act in 1993 and joined the Berne Convention in 1994. Since then, musicians and DJs have come to share in a greater portion of royalties from their work, and copyright practice with respect to high-profile commercial work has become more regular. Manuel, P. and Marshall, W., "The Riddim Method: Aesthetics, Practice, and Ownership in Jamaican Dancehall," *Popular Music* vol, 25, 447, 464–466 (2006).
- 52 Henry, R., "Jamaican music is a multi-billion business, but tax avoidance high", Sunday Observer, 22 January, 2006, accessed at: http://www.jamaicaobserver.com/news/html/20060121T200000-0500_97063_OBS_JAMAICAN_MUSIC_IS_A_MULTI_BILLION_BUSINESS_BUT_TAX_AVOIDANCE_HIGH.asp
- 53 As Keith Maskus has observed, most economies in poor countries are unlikely to reap the rewards of capital and knowledge-intensive industries immediately. In order for countries to benefit from these types of industries they need to enhance capacity in three areas to benefit from IPRs: First, they need "strong levels of educational attainment and sizeable endowments of human capital;" second, local firms must invest in research and development; and third, "financial markets [must be] capable of managing the significant risks involved in technology development." Maskus, K.E., (2000), "Intellectual Property Rights and Economic Development", *Case Western Journal of International Law*, 32, pp.471,497.
- 54 See Raines, P. & Brown, L., (2006), *The Economic Impact of the Music Industry in the Nashville-Davidson-Murfreesboro MSA 4*, Nashville Area Chamber of Commerce, available at <http://www.nashvillechamber.com/president/musicindustryimpactstudy.pdf>
- 55 Peer, R., (c.1953), *Ralph Peer Remembers Jimmy Rodgers*, available at http://www.peermusic.com/news/press_detail.cfm?announcement_id=273&back=press (last accessed August 19, 2007).
- 56 Copyright per se did not play as direct of a role in Victor's financing of the Bristol Sessions, as sound recordings were not then protected by U.S. copyright law, but rather by a patchwork of state laws. Still, Victor's rights in these recordings was effectively protected by law and the difficulty of copying at the time. In 1972, sound recordings were

- brought under the U.S. Copyright Act in reaction to the growing problem of piracy.
- 57 Maeder, J., (2003), "Bristol Celebrates Birthplace of Country Music", *The Appalachian Voice*, available at <http://www.ncpress.net/cgi-local/search.cgi?gffd=774>
- 58 Georgia Music Hall of Fame, "Ralph Peer Biography", available at <http://www.georgiamusicstore.com/artist/P219557/> .
- 59 For example, Jimmie Rodgers' first big hit, *Blue Yodel (T for Texas)*, was one of six songs that Rodgers recorded during his first two recording sessions with Peer. Comber, C., & Paris, M., (1975), "Jimmie Rodgers" in Malone, B.C., & McCulloh, J. (eds.), *Stars of Country Music*, University of Illinois Press, pp.127 – 128. Of the six, only *Blue Yodel* was completely original. *Ibid.*
- 60 Kyriakoudes, L.M., (2003), *The Social Origins Of The Urban South: Race, Gender, And Migration In Nashville And Middle Tennessee, 1890–1930*, The University Of North Carolina Press, p.8. The Southern traditionalist intellectual Donald Davidson bemoaned the abandonment of folk music in favour of "new songs – quasi folk songs or frankly popular ditties – which will bring [the musician] royalties from phonograph records and music sheets." Davidson, D., (1957), "Current Attitudes Toward Folklore" in *Still Rebels, Still Yankees and Other Essays*, LSU Press, p.134.
- 61 Editors of *Travel and Leisure Magazine*, (2007), "100 Greatest Trips", American Express Publishing Corporation.
- 62 *Ibid.*
- 63 We are grateful to Julian Morris for his insights into African music. See also, e.g. Cowen, T., (2004), *Creative Destruction*, Princeton University Press.
- 64 See Floyd, S.A. Jr., (1995), *The Power Of Black Music: Interpreting Its History From Africa To The United States*, Oxford University Press, and Maultsby, P.K., (2005) "Africanisms in African American Music", in Holloway, J.E., *Africanisms In American Culture*, (2nd ed.), p.326
- 65 UNCTAD, (2008), "Background Paper for Secretary-General's High-Level Panel on the Creative Economy and Industries for Development", TD(XII)/BP/4, available at http://www.unctad.org/en/docs/tdxiibpd4_en.pdf
- 66 GhanaMusic.com, (2007), "BUSAC Support For Ghana's Music Industry", June 23, 2007, <http://www.ghanamusic.com/modules/news/article.php?storyid=1754> (quoting Professor John Collins, a Lecturer at School of Performing Arts of University of Ghana).
- 67 Elyn Hament, *Zambia: A Melting Pot of Musical Styles*, Exploratorium <http://www.exploratorium.edu/eclipse/zambia/music.html> (2001).
- 68 Eyre Banning, *Interview with Chisha Folotiya*, Afropop, <http://www.afropop.org/multi/interview/ID/102/Chisha+Folotiya-2006> (2006).
- 69 *Id.*
- 70 *Id.*
- 71 Easterly *supra* note at 4. See also Laurie Garrett, *The Challenge of Global Health*, 86 FOREIGN AFFAIRS (Jan/ Feb 2007). Garrett chronicles the sadly disappointing results of the extraordinary rise in public and private donations directed to public health spending in the developing world in recent years. The fundamental problems of lack of trained health professionals, shortcomings in sanitation and infrastructure, and corruption have frustrated much of this generosity
- 72 UNCTAD press release, "Creative Industries Emerge As Key Driver of Economic Growth With Trade Nearly Doubling in Decade", January 14, 2008, available at <http://www.unctad.org/Templates/webflyer.asp?docid=9467&intItemID=1528>
- 73 *Ibid.*
- 74 Tchewba, M. (2005), *African Music: New Challenges, New Vocations*, UNESCO.
- 75 Siwek, S. "Copyright Industries in the US Economy; The 2006 Report", Economists Incorporated, prepared for the International Intellectual Property Alliance. Available at http://www.iipa.com/pdf/2006_siwek_full.pdf

- 76 UNCTAD press release, "Creative Industries Emerge As Key Driver of Economic Growth With Trade Nearly Doubling in Decade", January 14, 2008, available at <http://www.unctad.org/Templates/webflyer.asp?docid=9467&intItemID=1528>
- 77 The popularity of Youssou N'Dour is undisputable, but it should be known that what many consider to be his breakthrough album, *The Lion*, released in 1989, featured a popular song he recorded with already hugely popular Englishman Peter Gabriel.
- 78 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 79 Letts, R., (2006), *The Promotion of Musical Diversity*, UNESCO, available at http://www.unesco.org/imc/programmes/imc_diversity_report.pdf
- 80 *Ibid.*
- 81 Creative industries in Paris tend to support francophone artists, whereas London is more typically suited to Anglophone musicians and filmmakers.
- 82 *The Economist*, (2007), "Bleak Publishing Houses", November 22nd 2007.
- 83 World Development Indicators, World Bank
- 84 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press, p.98.
- 85 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 86 *Ibid.*
- 87 Nwauche, E.S., (2003), "Intellectual Property Rights, Copyright and Development Policy in a Developing Country: Options For Sub Saharan African Countries", Copyright Workshop at Zimbabwe international Book Fair, presented June 30th, 2003.
- 88 *Ibid.*
- 89 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 90 Ghana Billboard, Interview with Alhaji Sidiku Buari, Ghanamusic.com, http://ghanamusic.com/artman/publish/article_1309.shtml (December 4, 2004).
- 91 Government Urged to Enact Tough Laws to Address Piracy in Music Industry, Ghanamusic.com, http://ghanamusic.com/artman/publish/article_1809.shtml (April 28, 2005).
- 92 *Ibid.*
- 93 De Soto, H., (2000), *The Mystery of Capital*, Basic Books.
- 94 Norley, N., (2007), "Musicians Bemoan Fall of Industry", *Ghanaian Chronicle*, Feb 7th, 2007, available at <http://allafrica.com/stories/printable/200702070880.html>
- 95 *Interview with Chisha Folyiya*, Afropop, <http://www.afropop.org/multi/interview/ID/102/Chisha+Folyiya-2006> (2006). As discussed earlier, the Zambian industry revived at the turn of the century after the efforts of pioneering entrepreneurs and passage of a copyright law.
- 96 It should also be noted, however, that large expatriate communities, originating from the same countries where many African creators come from, now reside in the UK and France. These communities constitute a growing market demanding "home-grown" music.
- 97 The Africa Music Project notes that non-African copyright owners are still largely unwilling to license their property to the African marketplace. Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 98 Wabala, D., "Kenya: Illegal Trade in Pirated Music Gets Bloody As Dealers Scramble for Control" *The*

- Nation, 25/03/2007 <http://allafrica.com/stories/200703260049.html>, accessed 28 March 2007.
- 99 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 100 Tchebwa, M., (2005), *African Music: New Challenges, New Vocations*, UNESCO, 2005. pp.52–53. .
- 101 *The Ghanaian Chronicle*, (2007), "Carlos Sakyi Slams Ghana's Music Distribution System", July 6th, 2007, available at <http://news.thinkghana.com/entertainment/200707/6540.asp>
- 102 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 103 "Ghanaian musicians are worried!", <http://www.myjoyonline.com/tools/print/printnews.asp?contentid=1407>. Accessed Mar 20th, 2007.
- 104 Ibid.
- 105 Afrik.com, (2001), "Les radios sénégalaises ne paient pas leurs artistes", July 10th 2001, available at <http://www.afrik.com/article3021.html>
- 106 Ibid.
- 107 See, e.g., GhanaMusic.com, (2008), "Carlos Sakyi returns Sidiku's fire", Jan 12th, 2008, available at <http://www.ghanamusic.com/2008/01/12/carlos-sakyi-returns-sidikus-fire/>
- 108 The charges are hotly disputed, as Alhaji Buari who is Acting Board Chairman of Copyright Society of Ghana has filed a libel suit against a newspaper that repeated the charges. Ghanamusic.com, (2007), "Alhaji Sidiku Buari Sues Weekly Fylla", April 4th, 2007, available at <http://www.ghanamusic.com/modules/news/article.php?storyid=1368>
- 109 <http://www.mcsk.or.ke/>
- 110 For a complete description of the Nigerian Copyright Commission's responsibilities, see: <http://www.nigeriafirst.org/cgi-bin/artman/exec/view.cgi?archive=1&num=6616&printer=1>
- 111 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 112 The Chairman of the Copyright Office of Ghana, Alhaji Sidiku Buari, is allegedly withholding more than US\$6 million that is owed to musicians. He is accused not paying artists and attempting to exert influence over their content. Personal communication on March 3rd, 2008 with Franklin Cudjoe, Executive Director, IMANI, Accra, Ghana
- 113 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press..
- 114 Freedom House Map of Freedom in the World, available at <http://www.freedomhouse.org/template.cfm?page=363&year=2007>
- 115 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 116 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 117 Personal correspondence with Michael Andrews, Managing Director, Kenya Association of Producers & Videograms.
- 118 Penna, F., Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press.
- 119 Doing Business Database, World Bank, available at <http://www.doingbusiness.org/ExploreEconomies/?economyid=164>
- 120 De Soto, H., (2000), "The Mystery of Capital", Basic Books.
- 121 Thus the discussion in the United States about the "orphan works" problem, where users and potential

- licensees find it impossible to track down owners of many older works.
- 122 The current international copyright system created by the Berne Convention is not amenable to such formal titling requirements. The U.S. had to give up its registration and notice requirements to join Berne in 1989. Nevertheless, there are ways to encourage them without requiring them.
- 123 Article 45 of TRIPS requires only compensatory damages and the availability of expenses. It also permits, but does not require, attorney fees and payment of pre-established damages. Copyright laws in several African countries give courts discretion to award “additional damages ... as the court may consider appropriate in the circumstances” where the infringement is flagrant. While this approach could be helpful, its utility is limited because it is confined to special cases at the court’s discretion. Kenya, South Africa, Zimbabwe, and Nigeria all employ this language in their copyright acts in nearly identical provisions.
- 124 In many wealthy countries, business rivals pool their efforts to combat the collective problem of piracy through a number of trade associations such as the International Federation of Phonographic Industries (IFPI), International Publishers Association, Recording Industry Association of America (RIAA), Motion Picture Association, Business Software Alliance, and the Industry Trust for IP Awareness. Pirates typically do not specialise in the works of any one business, so it is more effective to pool private resources in order to combat them collectively. Moreover, these organisations develop specialised knowledge and skills in combating piracy that is best housed and shared in one place, rather than scattered among many players.
- 125 See, e.g., Copyright Law of Nigeria, Sections 15, 15A, available at http://www.wipo.int/clea/docs_new/en/ng/ng001en.html#P203_18719
- 126 See, e.g., Copyright Law of Mozambique, Section 59, available at http://www.wipo.int/clea/docs_new/en/mz/mz002en.html#P386_36415
- 127 *Associated Press*, (2007), “China executes former FDA chief amid product safety crisis”, July 10th, 2007, available at <http://www.cbc.ca/world/story/2007/07/10/china-tainted-products.html>
- 128 See Mark F. Schultz, (2007), “Copynorms: Copyright Law and Social Norms”, in Yu, P.K. (ed) *Intellectual Property And Information Wealth v01.1*.
- 129 Sherwood, R.M., (2002), “Some Things Cannot Be Legislated”, *Cardozo Journal of International and Comparative Law*, 10, p.42.
- 130 See “An Act to establish a pilot programme in certain United States district courts to encourage enhancement of expertise in patent cases among district judges”, H.R. 34, 110th Congress, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:h34>.
- 131 Sherwood, R.M., (2002), “Some Things Cannot Be Legislated”, *Cardozo Journal of International and Comparative Law*, 10, p.42.
- 132 Mark F. Schultz, (2007), “Copynorms: Copyright Law and Social Norms”, in Yu, P.K. (ed) *Intellectual Property And Information Wealth v01.1*, pp.201, 217.
- 133 We also think that private, competitive CROs would work best in rich countries as well, but that is a discussion for another day.
- 134 For example, in the United States, composers’ rights are administered by three competing, private organisations: The American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.
- 135 See Section III(C)(iii).
- 136 Ibid.
- 137 See Section III(C)(iv).
- 138 See Cowen, T., (1998), *In Praise of Commercial Culture*, Harvard University Press.
- 139 TRIPS compliance merely sets minimum standards, largely focused on treatment of foreign IP owners. It does not require a special effort with respect to IPRs – as Article 41(5) of TRIPS makes clear, countries are not required to prioritise IPR

enforcement when allocating judicial and enforcement resources.

Article 41(5) states:

It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

TRIPS, Article 41, available at http://www.wto.org/english/tratop_e/trips_e/t_agm4_e.htm

140 *Ibid*

141 Penna, F, Thorman, M., & Finger, J., (2004), "The Africa Music Project", in Thorman, M., & Finger, J. (eds), *Poor People's Knowledge*, World Bank and Oxford University Press, p.97.

142 Article 67 states:

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

TRIPS, Article 67, available at http://www.wto.org/english/docs_e/legal_e/27-trips_08_e.htm#art67

143 http://portal.unesco.org/culture/en/ev.php-URL_ID=28581&URL_DO=DO_TOPIC&URL_SECTION=201.html

144 *Ibid*.

145 Domon, K. and Nakamura, K. (2007), "Unauthorized Copying and Copyright Enforcement in Developing Countries: A Vietnam Case Study," *Review of Economic Research on Copyright Issues*, 2007, vol. 4(1), pp. 87–96. The authors found that despite high levels of CD piracy, file-sharing was not a significant phenomenon in Vietnam. In fact, interview subjects noted that most people did not know how to use P2P programs. *Ibid* at 92. The authors attributed this lack of file-sharing to conditions common in most poor countries: most internet access was through internet cafes, as the price of home computers and internet access was prohibitive; few people had MP3 players as they were too expensive; and the use of internet cafes was not conducive to P2P usage, because connections were slow, few computers had CD burners or USB ports, and the charge for access was metered according to time. *Ibid* at 91–92.

Nashville, Tennessee, was once a struggling city in one of the poorest regions of the United States. Like much of sub-Saharan Africa today, early 20th century policymakers pinned Nashville's economic hopes on industrial development founded on access to raw materials and large, government-funded public works projects. These hopes were never fully realised, but Nashville found success anyway – from its creative industries.

Nashville's success could never have occurred without the region's rich musical heritage. But without the stable legal environment that existed in the United States at the time, the world would never have come to know country music. In particular, copyright was an essential ingredient in turning this under-appreciated talent into a marketable product. Copyright was the foundation for Ralph Peer, the architect of the pioneering "Bristol Sessions", and proved the key that opened the door for country music – and transformed Nashville into an economically vibrant city.

Many parallels can be drawn with modern Africa. Music from Africa is justifiably celebrated around the world, but Africa's musicians are not thriving in their home countries as they should be. A weak institutional environment has paved the way for rampant piracy and lost economic opportunities. African creative industries contribute little to local economic output. Most African music is recorded and produced in London or Paris.

Africa can draw lessons from Nashville. If we wish to see Nashvilles in Africa, policy-makers should aim to ensure intellectual property rights are protected. However, the mere presence of laws is not enough unless they can be enforced. While there is a role for legal authorities, the primary means of tackling piracy must be through civil enforcement. Additionally, governments must remove the unnecessary restrictions on trade associations and must also resist the temptation of interfering with the management of collective rights organisations, which has undermined royalty collection and hindered the development of a licensing market.

"Creative clusters" may not be a panacea for less-developed countries, but the development of Nashville's country music industry shows how creative industries can stimulate economic development in other sectors. The good news is that governments need not get involved in complicated planning or costly investment: they simply need to ensure the legal environment is right. Given the right conditions, entrepreneurs and local creators are willing to do the rest.

