

Ethical Considerations of Reproduction Technologies in the Music Industry

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Advances in reproductive technologies have given more control to prospective parents. Characteristics, such as the gender, physical features and intellect of children are becoming technologically enabled choices. While far from settled, the ethical considerations of these choices have become part of the public consciousness.

More recently, a different type of reproductive, or more appropriately, reproduction technology has received increasing attention – the unauthorized reproduction of recorded music or peer-to-peer “file sharing”. In general, copyright law does not permit copies of recorded music to be made, except for one’s own personal use. In this instance, the enabling technological changes have been the digitization of music, that is turning recordings into a series of 0’s and 1’s that can be decoded with appropriate devices to produce sound quality that is virtually as good as the original, sometimes called the “master”, recording. This was not really possible in the good old days when it was common to copy vinyl records to, for example, cassette tapes. Anyone who remembers doing this will also remember the reduction in sound quality of the copy compared to the original.

The other key enabling technological change that has encouraged unauthorized reproduction of music is the internet. While opening up the sharing of information, it has also provided a conduit for sharing music files. Increases in the speed at which digital files can be transferred, extremely efficient file sharing software, and the widespread penetration of the internet into homes, schools and businesses together result in the reality that with a little effort, it is possible to find almost any recorded song and

download it to one’s own computer free of cost. These factors also make it difficult, though not impossible, to detect the unauthorized transfer of music files.

When recorded music is not paid for, there are clear and obvious implications for those who create the music – songwriters, performers and the record companies that make the actual sound recording. Consequently, since the rewards to the production of music has gone down, it would seem reasonable to conjecture that the result will be less music, and less diversity of music, in the future. At a minimum, the possibility of recording artists and songwriters earning a living from selling their music is diminished. It is difficult to compete with “free”.

The research firm POLLARA administered a telephone survey of a random sample of Canadians 18 years of age and older in December 2005, and asked the following question:

Generally, the work of musicians, artists, composers, authors and others is protected from unauthorized copying by Canadian and international law. This is called COPYRIGHT and ensures that artists will be paid for copies of their work. Would you agree or not agree that the work of these persons should be protected in this way?

In response, 91% of Canadians agreed that musicians, artists and composers authors and others should be protected by copyright to ensure they get paid for their work. Only 5% disagreed. The remainder were either unsure or did not know.



Ethical Considerations of Reproduction Technologies in the Music Industry

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Another POLLARA study from the fall of 2005 asked Canadians over the age of 12 about their legal and illegal downloading activities. The survey indicates that 3.1 million Canadians, or 11.4% of

those over the age of 12, illegally downloaded music over the internet during the month prior to the survey. On average, those illegally downloading music retrieved 76 tracks (individual songs) during the month. When taken together, these figures suggest that Canadians illegally downloaded over 238 million tracks of music in a month. Assuming 14 songs per album, this is equivalent to about 17 million full CDs. For perspective, 4.3 million CDs were sold in Canada on an average month in 2005.



Legal downloading sites have been operating in earnest in Canada since 2004. The POLLARA study also asked respondents about purchases from these services. In the month prior to the survey, 4.7 percent of Canadians 12 years of age and older downloaded an average of 19.2 songs, or about 17.3 million tracks in total for the month. Only 1 song was purchased for every 14 songs that were downloaded illegally.

In response to the apparent loss of sales due to illegal downloading, music rights holders have taken a number of actions including suing downloaders and limiting the ability to copy music files using so-called digital rights management techniques. Both of these approaches are effective to some degree, but this limited success comes at a cost. While serious studies show some impact of legal actions on reducing downloading, music fans have reacted negatively. Digital rights management places limits

on the number of copies the legal music purchaser can make, or on the types of devices, such as portable players, on which the music can be played, another irritant to music consumers.

Some argue that file sharing is actually good for artists, because it is in effect promoting their work. Indeed, there are a number of new and emerging business models, advanced largely by independent record companies that are based on the free distribution of music and encouraging music fans to use the music in a number of different ways, including remixing it into other music. These developments are welcome, but may or may not prove to be effective for developing the careers of some artists. However, the creation of intellectual property, including songs requires that the creators ultimately be compensated for their work. It is often suggested that artists would probably work for free. That may well be true, but that does not mean that it is fair and equitable.

Illegal file sharing demonstrates the common reality of technological change. New rights and obligations arise from technological change for those who use the new technologies and those who are directly affected by it. Technologies that enable unauthorized sharing of files places an ethical obligation on users to recognize the implications on the livelihood of those whose intellectual property is being used without payment. The creators of music who wish to have their right to payment respected also have obligations in the world of file sharing technologies. Among them are ensuring that reasonable use can be made of legally purchased music, that the rules of licensing are clear, and that copyright protection should not be used to preserve indefinitely out-dated business models. *

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EDITORIAL

If the Shoe Fits The Ethics of Hiring Decisions

The recruiter's face told the familiar tale when he first met John. "Do Not Pass Go" yet again. John knew that he would need to continue his job search. Was it because the applicant pool was simply too talented? Or that John lacked the necessary credentials and experience? Far from it. Despite his excellent qualifications and related work experience, John could not get past a different kind of glass ceiling every time he went to a job interview. John was significantly overweight. Clinically he was obese, with a Body Mass Index (BMI) of more than 30. His interviews rarely lasted beyond 30 minutes, although some recruiters went through the motions in a weak attempt at due diligence. John sensed their post-interview debriefings: "He must be lazy and have a poor work ethic." "We can't hire him – he'll make the staff feel uncomfortable." Above all, the all-too-familiar concern: "Think of the soaring costs from his diabetes, hypertension and depression down the road. He'll have too many sick days."

Are obese individuals being shunned in a society – Canada – that appears to worship leanness and fitness? And if so, is it unethical or, as some employers might plead, simply good business sense? If the medical realities about obesity include a serious compromise to health risks, aren't employers ethically screening out obese candidates? Given that many of us hire in our own image, would a skinny recruiter ever consider hiring an obese candidate, regardless of qualifications and experience?

There is an ethical underpinning inherent in the decision as to whether or not to hire John. An employer should hire based on the applicant's current ability to perform the essential duties of the job. Focusing on the "what ifs" of possible

events tomorrow, six months or 10 years into the future does not meet the ethical test. John may well be at a higher statistical risk of certain serious illnesses. Yet, does an employer look at Ian – a young, slender and energetic candidate – and think "What if he breaks his neck rollerblading at the weekend"? "What if his passion for motorcycles lands him in an accident that requires lengthy rehabilitation?" The assumption that John will become a burden to the company while Ian would not represents not only an ethical shortfall, but also a severe lack of moral imagination.

Have the recruiters exposed their company to legal action by brushing John aside because of his obesity? This of course assumes that John can prove that obesity lies at the root of his unsuccessful bid for the position. Let's assume that John elects the feisty route and challenges his non-selection. He will discover that he has little or no recourse to human rights legislation to achieve a level playing field. Obesity is not a recognized ground of discrimination under any human rights legislation in Canada. John gets creative and files a human rights complaint under disability, a protected ground. Enter the Catch-22. By claiming that his obesity is a disability, John essentially positions his weight as a barrier to sound job performance.

The plot thickens. By claiming obesity as a disability, he would also need to claim that he requires accommodation for that disability from the prospective employer. In some jurisdictions John would be required to prove a causal effect between his obesity and a bodily injury, birth defect or illness. Even if a potential trump card, definitely not a positive start to the employment relationship. It's little wonder that a small number of cases involving



obesity as a disability – between five and 10 – are filed each year.

Where does the slippery slope begin and end? To what extent is it permissible for a company to exclude candidates for their personal lifestyle decisions, including cigarette smoking, which is significantly less socially acceptable than several decades ago? Based on anecdotal "evidence", I suspect that this type of employment screening is likely a daily occurrence. Surely more than one good soul has been knocked off the short list because he/she doesn't play golf?

Many people in North America and in Europe would appear to have become obsessed with weight and dieting. The media and fashion industries fuel the obsession while presentation of gourmet foods plays Faust. Fish 'n' chips, lagers and lime, and cream teas aside, the U.K. ranks a surprising second on the list of obese countries, after the United States. Canada is close behind and ranks fifth, after Australia and New Zealand. The 2004 Canadian Community Health Survey: Obesity Among Children and Adults illustrates a staggering growth in obesity, particularly among Canadian adults. Between 1978 and 2004, the percentage of obese children in Canada rose from three to eight per cent, while the statistics for age-adjusted adults moved from a rate of 14 per cent to 23 per cent, or 5.5 million.

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Legislative Watch

An End to Mandatory Retirement

In November 2005, the federal government introduced Bill 211, the Ending Mandatory Retirement Statute Law Amendment Act, 2005. Bill 211 received Royal Assent on December 12, 2005. It takes effect on December 12, 2006, allowing for a one year transition period for workplaces to prepare for the new provisions. Bill 211 amends human rights codes and other legislation so as to generally prohibit employers from implementing mandatory retirement. The degree of likely impact upon employers and employees depends on several factors, of which changing demographics - described by Foot and Stoffman in "Boom, Bust and Echo 2000" - is key. The nature of the industry, specific sector, type of work and job position, will also result in different experiences with Bill 211.

In Canada, "mandatory retirement" is neither legislated nor do labour laws specify a retirement age for employees. Instead, many corporations have elected to develop human resources policies requiring employees to retire at age 65. At the federal level, it is currently not a discriminatory practice under the Canadian Human Rights Act to terminate employment when an individual reaches the normal age of retirement for those working in similar positions. In Quebec, forcing employees to retire because of age (absent bona fide reasons for dismissal, suspension or transfer) is considered discriminatory under the Charter of Human Rights and Freedoms.

Human rights legislation in other provinces and Territories contains varying provisions; see www.hrsdc.gc.ca (Human Resources and Social Development Canada) for details. In some provinces, human rights legislation allows for mandatory retirement where there are bona fide and reasonable occupational requirements relating to age. Ontario, British Columbia and Saskatchewan provide legislated protection against discrimination based on age but only for individuals between the ages of 18 and 65. In the past this has meant that a person who is forced to retire at age 65 cannot rely on a human rights claim of age discrimination.

"Mandatory retirement" remains controversial because of the need to balance the rights of older workers with those of employers as well as the community at large. It raises complex social, economic and human resources issues as well as fundamental human rights. The Ontario Human Rights Commission's 2001 public consultation report on age discrimination - *A Time for Action* - concluded that older workers face negative stereotypes and assumptions and that they are often perceived as less productive, less committed to their jobs, less dynamic, less innovative and unreceptive to change. The report recommended that the Ontario Human Rights Code be amended to extend protection against age discrimination to employees over 65.

What are the implications of Bill 211 for employers' human resources policies, collective agreements and recruitment and retention processes? Until the legislation comes into effect, employers can require employees to retire at age 65. The legislation is not retroactive; employers are under no obligation to give such individuals their jobs back when the legislation takes effect. Collective agreements will no longer be able

to contain mandatory retirement provisions. Some employers argue that younger workers are more energetic, more "malleable" and less costly and that older workers will now overstay their welcome. Empirical studies are inconsistent in their findings with respect to the relationship between age and job performance. Some studies suggest that job performance decreases with age while others have arrived at the opposite conclusion. Studies do show that there are more significant performance differences within the same age group than among different age groups. If older workers require accommodation to perform the essential duties of their jobs, an employer's duty to accommodate remains the same as for other protected groups.

The Ontario Human Rights Commission supports Bill 211's general intent but has "grave concerns" about access to benefits and workers' compensation. Bill 211 allows employers to discriminate against employees who are age 65 and older when providing medical, dental, life and disability insurance benefits. Provision of these benefits will be at the discretion of employers, suggesting different entitlements based on company policy and willingness/ability to pay. From an employer's stance, these costs are spiraling and need to be contained. Statistics show that while older workers do not get injured more frequently, they do generally take longer to recover and are more prone to certain age-related conditions. Bill 211's approach to workers' compensation essentially permits the workers' compensation scheme to be exempted from all requirements of the Code regarding age. It amends the Workplace Safety and Insurance Act, 1997 (WSIA) allowing for a distinction because of age. This approach to benefits and workers' compensation is not only inconsistent with the spirit and intent of the legislation; it raises ethical concerns

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because these aspects differentiate solely on the basis of age. The message sent reinforces negative stereotypes and fails to recognize the contribution of older workers and the value that they place on work. It is likely that these provisions will be challenged under the Charter.

Will the elimination of mandatory retirement add a significant burden to a company's human resource planning? After a period of experience with the Act, certain occupations may be designated for mandatory retirement, if compelling health and safety concerns exist or where being younger is a bona fide occupational requirement. Yet, estimates of future retirement flows inherently involve uncertainty that is unlikely to change when flexible retirement policies come into effect. Trends indicate that while people are living longer, those who are able to, are retiring earlier. Removing mandatory retirement is

unlikely to change that picture. Experience in jurisdictions and with employers that do not have mandatory retirement suggests that only a small percentage of older workers opt to stay beyond age 65. It is therefore unlikely that opportunities for younger workers will be significantly diminished by the end of mandatory retirement across Canada. Indeed, for some sectors, including federally-regulated, private sector and public sector organizations, mandatory retirement was not the norm prior to the introduction of Bill 211.

Employers can continue to offer early retirement incentives when the Act comes into effect. Many employers introduced early retirement and voluntary severance programs within the past few years as a means of restructuring, "right sizing" and to manage costs. Many subsequently experienced intellectual property loss along with skilled labour shortages. The net result; retirees were

hired back on contract. These employers have had to manage younger workers' reactions to the financial "double dipping" by pensioned or severed retirees.

From an ethical stance, employment is central to many individuals' sense of self-worth and self-actualization through economic status, security and promotion of independence. Adverse effects of mandatory retirement are particularly severe for women and recent immigrants, often as a result of limited employment history and associated affects on retirement income. These employees may face poverty as a result of mandatory retirement. Another key ethical consideration is that mandatory retirement also imposed an end to employment based solely on age and reinforces negative assumptions about older workers. Ability to do the job, or individual interest in continuing with employment, did not enter into the equation. ✱

If the Shoe Fits - The Ethics of Hiring Decisions Continued from Page 3

Obesity has helped to expand existing industries while ushering in the alleged saviors - the fad diets, "fast-results" weight loss products, "easy" exercise regimes and health club memberships that lapse with New Year Resolution. Do these industries serve an ethical purpose by assisting obese individuals or are they essentially revenue-producing vehicles that exhibit unethical behaviors above and beyond other enterprises within the free market system? One is left wondering what constitutes an "acceptable" level of corporate responsibility. Where does personal responsibility for one's health fit into the equation, particularly when some companies and multinationals - offer us healthy choices alongside patently not-so-healthy menu picks? Some would appear to double dip by managing companies designed to delight us with calories and fats while also making

acquisitions of companies engaged in weight loss and nutrition. While such Jekyll and Hyde behaviors might support an individual's right to choose, are some corporations simply dressing the wolf in sheep's clothing by re-dubbing corporate responsibility as "personal responsibility"? That said, the crisis in obesity suggests that Government may need to assume a stronger interventionist role on the basis that quality and safety controls are ethically insufficient because they fall short of reducing the increasing costs to society. If some readers are contemplating a round of applause, re-enter the slippery slope. Such a strategy might only serve to eliminate chocolate, brie and prime rib from your supermarket's shelves.

Often times we appear to be focusing on cure - often with a pill or two - rather than on prevention. There are mixed message to our

youth; positive adjustments to school cafeteria offerings alongside counter-intuitive cuts to school Phys Ed programs. Canadian children - our future Johns and Ians - are watching fewer hours of television a day but let's not forget video games, internet surfing and computer chat lines. National and corporate health care costs do not appear to be heading for a downward tail-spin anytime soon.

Of course, the irony is that if the statistical trends continue, future recruiters may end up to be 30+ BMI Johns who may in turn screen out the lean and fit Ians. ✱

Comments to the editor are welcome at editor@ethicscentre.ca with your views and recommendations: "Should employers hire only clones of Ian while rejecting clones of John"?



Ethics still un-addressed in pandemic preparedness: Possible planning guideline

On January 19, 2006, UN Secretary General Kofi Annan warned of the possibility of human-to-human transmission of the Avian Influenza virus unless the international community pulled together in a massive effort to combat the virus. Michael Chertoff, Secretary of Homeland Security in the U.S., Carlos M. Gutierrez, Secretary of Commerce, and Michael O. Leavitt, Secretary of Health and Human Services appealed to the American business community on December 6, 2005: 'We are requesting that you, as a business leader, focus on the need for planning within your organization for the possibility of an influenza pandemic...your business should develop specific plans for the ways that you would protect your employees and maintain operations during a pandemic.'

However, only 15 per cent of large American companies had a bird-flu plan, according to a survey in March, 2006, by management consultancy Watson Wyatt Worldwide. A June, 2006 survey by The Conference Board of Canada showed that while 80 per cent of respondents' executives were concerned about the impact of a pandemic on their organization, only four per cent had developed a preparedness plan. Key issues for survey respondents were employee health and welfare (100 per cent) and operational continuity (96 per cent). The survey also indicates that although respondents aimed to protect their organization from the effects of a global epidemic, they have not tackled 'the full range of challenges' they might face during a pandemic. Key areas that appear to be gaps in current planning efforts include compensation for those individuals covering for absent employees and responding to employee refusals to work in an unsafe environment. The most significant concern was, however, the lack of coordination with the public sector. The Conference Board survey found that 94

per cent of participating companies reported that they had not as yet had discussions with any level of government.

Effective planning for an influenza pandemic not only requires compliance with relevant legislation but also constructive partnerships among business, communities, and governments to maximize survival and socioeconomic functioning. As well, preparedness planning needs to factor in appropriate management of the range of ethical implications that are associated with a flu pandemic.

Legislative Compliance

Organizations must ensure that they meet all relevant laws and regulations. With regard to health, most fall under provincial legislation. In Ontario, for example, the Ontario Occupational Health and Safety Act (OHSA) and its Regulations provide the central legislative framework governing workplace safety. Because it was not possible to specify all possible workplace hazards, a very broad clause was created in section 25 (2)(h) of OHSA, which reads: Without limiting the strict duty imposed by subsection (1), an employer shall, (h) take every precaution reasonable in the circumstances for the protection of a worker. Employers therefore have a legal obligation to protect worker health and safety in all situations--and not just those specified. Section 25(2)(h) of OHSA will therefore be important for employers who are reviewing their compliance, particularly regarding non-traditional hazards. It is advisable for employers to engage legal and professional experts to determine what constitutes 'every precaution reasonable'. That said, the law prescribes moral minimums, but ethics may require greater commitments, such as attending to the most vulnerable.

Ethical Considerations

The need for a widely accepted, pre-pandemic ethics approach was highlighted during the 2003 SARS crisis, when difficult ethical choices rapidly arose. In the future, whose values should prevail? How should individual freedoms be balanced against the common good, or economic losses against the halting of disease? A sound ethical framework will help guide organizational policies concerning such issues as benefits and compensation packages, decisions to close a site, evacuation of employees working in or near an affected area, financial assistance, flexible worksite and work hours, preventive medical opportunities, etc.

Addressing ethical issues in pandemic influenza planning is new territory for the World Health Organization (WHO). The Ethics Team of the Department of Ethics, Trade, Human Rights and Health Law is currently studying the ethical issues raised by a potential pandemic; a technical meeting was held in May 2006, and the recommendations of the meeting are now being prepared for international consideration at the end of October. WHO then expects to provide Member States with practical guidance to incorporate ethical considerations into pandemic plans.

There are currently four working groups:

1. equitable access to therapeutic and prophylactic measures;
2. isolation, quarantine, border control, and social-distancing measures;
3. the role and obligations of healthcare workers during an outbreak of pandemic influenza; and
4. issues that arise between governments when developing a multinational response.



Unfortunately, no working group exists to specifically address business' ethical concerns regarding a pandemic. Review of the ethical plans currently accessible in Canada, the United Kingdom, and the United States of America raises alarm: for example, scarcity of human and material resources is assumed to be severe, yet resources needed to reduce death and other consequences are not identified.

The good news is that ethics is increasingly being addressed (for example, by the Canadian College of Health Service Executives, Center for Infectious Disease Research and Policy, and the University of Toronto Joint Centre for Bioethics). That said, questions largely focus on health-care workers, scarce resources, and social-distancing measures. Information can, however, be gleaned from these health reports, which openly discuss moral concerns. However, at the present time, many companies appear to be highly reluctant to share planning details. This in turn makes it extremely difficult to develop a best practices database and to coordinate efforts.

After assuring legal compliance, companies might want to consider four aspects in their pre-crisis planning and also incorporate the following principles and values in their planning:

- **First**, the Precautionary Principle, 'Where an activity raises threats of harm to the environment or human health,

precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.' The Precautionary Principle can be likened to the common sense idea behind many deep-rooted axioms, such as 'better safe than sorry', and 'first do no harm'. Key elements of the Principle include taking precaution in the face of scientific uncertainty, and using democratic values to carry out and enforce the Principle.

- **Second**, businesses might want to survey their employees, management, and unions – making sure that the appropriate members of the community are given the opportunity to give their perspectives. Employers need their staff's advice, help, and most important, buy-in. If there is no compliance, even a flawless plan cannot be implemented.
- **Third**, companies might want to determine or re-visit their guiding principles/ethical values so that plans will reflect what most people will accept as "fair" for employee and organizational health during a possible pandemic. Values might include beneficence, individual liberty, non-maleficence, privacy, solidarity, stewardship, and trust.
- **Fourth**, companies need to determine an inclusive process for addressing ethical decision-making. Adherence to laws, regulations, and ethical principles and values during planning or crisis will allow companies to make difficult decisions such as: duty to work during a disease outbreak, measures to prevent stigmatization (of those affected or quarantined), and allocation support for those in quarantine, stockpiling of anti-viral drugs, and travel bans. The University of Toronto's Joint Centre for Bioethics (JCB) suggests that ethical decision-making should be accountable, inclusive, open and transparent, reasonable, and responsive. While some companies will

already have a code in place, together with principles and possibly an ethical decision-making framework, applying existing business frameworks to a possible flu pandemic will likely be a difficult transition.

Ignorance regarding pandemic flu and worst-case scenarios is no longer an acceptable defense. Companies need to also recognize that choosing the least cost, effort, and time is a choice. They must decide how much information regarding pandemic preparedness to release to civil society and to government. Moreover, businesses need to recognize the moral distress employees might experience in choosing between family and work, and in making difficult decisions repeatedly over extended periods of time.

Lastly, according to Peter Singer, Director of the JCB, 'Afterwards, history will judge today's leaders on how well they took decision on the ethical challenges they faced in the midst of the crisis.' Therefore, how do you want your organization to be judged following a disaster by your employees, shareholders, local communities, and indeed, the global community? *

Dr. Kirsty Duncan is a medical geographer, Adjunct Professor, and author of 'Hunting the 1918 Flu, One Scientist's Search for a Killer Virus'. Her second book, 'Environment and Health: Corporate Contributions to Our Common Future', will be published in fall 2006.

For downloadable version of this article including additional information a possible ethical framework and guidelines for possible pandemic planning, please visit the Resources section of the Centre's website at www.ethicscentre.ca.



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NEWS AT ETHICS CENTRE CA



EthicsCentre launches new website at www.ethicscentre.ca.

With more interactive elements, more resources and an improved search function, EthicsCentre CA's new website enhances the Centre's role as a forum and catalyst for constructive discussion and debate on current ethics issues. Please visit the improved site for more information on other new projects, events, and information from the Centre.



Three new directors elected.

The Board of Directors are pleased to welcome: Louise Cannon, Senior Vice President, Group Programs and Domestic Bank Compliance, Scotiabank; Jim Christie, Chairman, Blake, Cassels & Graydon LLP; and Blair Peberdy, Vice-President, Marketing, Communications and Public Affairs, Toronto Hydro Corporation. Please visit the new website for more information on these and our other Board members.



Staffing Changes

It is with regret that the Board has accepted the decision of our Executive Director, Tracy Parker, to leave the Ethicscentre CA this fall when her second child is born. On a positive note, we are delighted to announce that H el ene Yaremko-Jarvis, a long-standing member of the Board, will be assuming the role of Executive Director. Best wishes to Tracy and congratulations H el ene!