



---

Indigenous Music and the Law: An Analysis of National and International Legislation

Author(s): Sherylle Mills

Source: *Yearbook for Traditional Music*, Vol. 28 (1996), pp. 57-86

Published by: [International Council for Traditional Music](#)

Stable URL: <http://www.jstor.org/stable/767807>

Accessed: 18/06/2013 09:13

---

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



*International Council for Traditional Music* is collaborating with JSTOR to digitize, preserve and extend access to *Yearbook for Traditional Music*.

<http://www.jstor.org>

# INDIGENOUS MUSIC AND THE LAW: AN ANALYSIS OF NATIONAL AND INTERNATIONAL LEGISLATION<sup>1</sup>

*by Sherylle Mills*

Western music<sup>2</sup> is regarded as a piece of individual property, performed to entertain and appeal to the listener's emotions. With this conception of music, it is understandable when Westerners fail to comprehend, or even openly ridicule, the regulation of music's "power." Traditional communities, however, frequently ascribe vast powers to their music: the power to heal sickness, create bountiful game, cause lightning to strike, kill, and, in one case, free a man from prison (Von Sturmer 1987). With such immense powers, it is logical to carefully restrict and regulate the use, rather than financial profits, of music. Western law, however, has evolved in tandem with Western music, focusing primarily on the protection of individual property rights and financial profits. Thus, traditional music and Western law clash at the most fundamental level.

To understand the ethnocentric nature of modern intellectual property law, it is helpful to examine the evolution of Anglo-American copyright principles. The printing press was created in 1476, inevitably followed by mass publishing and the first official complaint of plagiarism in 1553 (Bowker 1912:20-21). The Crown's first attempt to regulate the duplication of literary works occurred in 1557 with the creation of the Stationer's Company, a printer's guild. The Stationer's Company was granted a monopoly over the entire printing industry of England and was responsible for policing plagiarism among its members (Gasaway and Wiant 1994).

The Stationer's Company did not manage to curb piracy. As a result, the first modern copyright statute, the Statute of Anne, was created on April 10, 1710, by Queen Anne of England. A literary work was considered the author's personal property for the first time. In addition, a monopoly over the use of the work was granted for a limited duration: 21 years for works in existence at the statute's induction, 14 years, plus one renewal term of 14 more, for works created after the Statute was adopted. To obtain protection under the statute, the work had to be officially registered with the Stationer's Company. These basic principles, a property interest of limited duration and governmental registration, remain unchanged in the copyright laws of today (Gasaway and Wiant 1994).

The Statute of Anne did not include music within its ambit until 1842, when music was added into the definition of "books." Music was not treated as a separate art form until 1882. The United States, which adopted the basic rules of the Statute of Anne after achieving independence, did not extend protection to music until 1831. Thus, the formative years of copyrights were based primarily on books, textile patterns and sculpture<sup>3</sup> (Gasaway and Wiant 1994).

The main development of modern copyright law, in the 18th and early 19th centuries, occurred while Western culture remained either relatively

isolated or the “colonial power,” and it was not necessary to defer to the needs of other cultures. As a result, the laws became narrowly tailored to serve the role artistic works play in Western society. Thus, modern copyright law remains ill-equipped to provide cross-cultural protection when non-Western music is thrust into the commercial music industry (*see*, Firth 1978; Seeger 1992; Wallis and Malm 1984).

Ethnocentric copyright laws had few practical ramifications prior to the 1970s and 1980s. At that time, however, communication systems quickened, portable recording technology blossomed, and travel to “exotic” cultures became commonplace. Digital sampling developed, allowing captured sounds to be permanently stored for later manipulation. These advances laid the technological groundwork for the explosion of “world music” in the 1990s.

As the technological ability to capture and manipulate exotic sounds grew, the commercial music industry gained political and financial clout, rendering the protection of the nonfinancial aspects of music difficult. In 1993, for example, the United States music industry cornered about one-half of all world-wide prerecorded music sales, grossing over 12 billion dollars (Dept. of Commerce 1994:31-3-4). That same year, the sales of music and music videos within the domestic United States hit the \$10 billion mark, an 11.3% increase from 1992 (Brown 1995:7). Piracy, however, was estimated to cost the United States music industry around 1.5 to 1.8 billion dollars in 1992 (Dept. of Commerce 1994:31-3-4). The profits have continued to climb with world-wide sales of music reaching 30.5 billion dollars in 1994 (Tai 1995:160). With enormous sums at stake and a healthy export business, politicians are quick to protect music industry profits from harm. Further, because the top six companies are located within Western culture,<sup>4</sup> hefty lobbying powers have assured that contracts and recordings are governed by financially advantageous laws and concepts.

In addition to becoming economically and technologically feasible, “world music” has captured the public’s interest. Paul Simon’s *Graceland*, in 1986, and *Rhythm of the Saints*, in 1990, using African and Latin American music, respectively, exposed the formidable profits available when Western pop stars incorporate non-Western music into their songs. *Graceland* spent 31 weeks on the “Billboard” top album list and has sold over 3.5 million copies world-wide (Billboard 1993; Knoedelseder 1987). *Rhythm of the Saints* sold 1.3 million copies in the first four weeks of its release alone (Holden 1990).

Technological breakthroughs in recording techniques, the rise of the music industry and the public interest in “world music” are combining to create an immense market for new, diverse sounds. Unfortunately, as the cultures collide, respect for the needs and beliefs of non-Western communities continues to lag behind and non-Western music remains unprotected and exploitable under the intellectual property laws of most Western nations.

Paul Simon treated the musicians of *Graceland* well. Simon hired African musicians, as opposed to sampling field recordings, and paid the musicians triple American scale for their labor (Knoedelseder 1987). He also granted liberal co-credits which resulted in the payment of significant royalties to the traditional artists (Knoedelseder 1987). The musicians themselves were already active recording artists in their own countries, and most were represented by record companies. Although Paul Simon was generous to the

African performers, the current copyright laws would not have prevented unfair contracts or blatant appropriation of less sophisticated artists' music. The enormous success of Simon's albums, however, exposes a formidable market for non-Western sounds and provides an incentive for other recording artists and companies to exploit the lack of legal protection for non-Western music.

The album, *Deep Forest*, provides a haunting example of how non-Western music can become prey for the commercial music industry. In 1992, two Frenchmen, Michael Sanchez and Eric Mouquet, created an album which fused digital samples of music from Ghana, the Solomon Islands and African pygmies with "techno-house" dance rhythms. Although the album trumpets that it received the "support of UNESCO and two musicologists, Hugo Zemp (sic) and Shima Aron (sic)," Zemp gave his permission only after he was told that the composers sought his recordings from the Ivory Coast to create an "Earth Day album" (Zemp 1996). He was not told that his recordings from the Solomon Islands, not the Ivory Coast, would be used to create a widely disseminated commercial "house" album (*Id.*). Further, the album's lining solemnly asserts that

Universal rites and customs have been profoundly marked by the influence of the forest, a place of power and knowledge passed down from generation to generation by the oral traditions of primitive societies. The chants of *Deep Forest* . . . transmit a part of this important oral tradition gathering all peoples and joining all continents through the universal language of music. *Deep Forest* is the respect of this tradition which humanity should cherish . . .

(Sanchez and Mouquet 1992). Despite the album's proclaimed respect for the rites and customs of "primitive" societies, it fails to credit the Solomon Islands as the source for the music sampled in "Sweet Lullaby," one of the album's most successful singles (Sanchez and Mouquet 1992; Zemp 1996). Ironically, however, the album does carry the following caveat: "WARNING: All Rights Reserved. Unauthorized duplication is a violation of applicable laws" (Sanchez and Mouquet 1992).

*Deep Forest* has been enormously successful. It remained on Billboard magazine's "top album" chart for 25 weeks, sold over two million copies by May, 1995, and received a Grammy nomination (Billboard June, 1994; Borzillo 1994). Profitable royalties have undoubtedly accrued as Porsche, Sony TV, Coca-Cola and other major companies incorporate music from *Deep Forest* into advertising campaigns (Sweeney 1995; Borzillo 1994). As a result of this success, a second album was released in May, 1995, entitled *Boehme*. The new album incorporates digital samplings from Eastern European, Mongolian, East Asian and Native American music into similar techno-house grooves (Sanchez and Mouquet 1995).

It is highly unlikely that the musicians who were sampled received any compensation from the use of their music. Although United States album linings tout that a portion of the proceeds from *Deep Forest* are donated to the "Pygmy Fund," to "help save African pygmies and preserve their unique rain forest songs" (Sanchez and Mouquet 1992), there are several problems with this seemingly altruistic gesture. The Pygmy Fund is a legitimate charitable corporation, established in 1977, but created only to "preserve

the Efe Pygmies of the Ituri Forest, Zaire.”<sup>5</sup> The Articles specify that the fund raises money to provide land, tools, food and medical care to the impoverished Efe people and undoubtedly provides valuable aid. The recordings the *Deep Forest* composers sampled, however, were not from the Efe people.<sup>6</sup> Any money that *Deep Forest* has contributed to the Fund is benefiting the wrong people, musical tradition and performers. Thus, *Deep Forest* remains an excellent example of the alarming vulnerability of non-Western music in today’s commercial music world.

As the fate of the sampled music in *Deep Forest* reveals, current Western copyright schemes are inadequate for the protection of non-Western music and, consequently, are in desperate need of updating. The first section of this article will use the United States copyright scheme to delineate the fundamental clash between Western legal ideology and non-Western music. An examination of United States copyright law reveals that because the copyright statutes focus on the financial value of music, they require music to contain specific characteristics in order to obtain protection. Non-western music frequently fails to meet these requirements, relegating the music to the public domain where it may be freely used without legal restraints. Conversely, recorders may copyright their recordings of traditional music and obtain *de facto* control over its use and dissemination. Finally, significant exceptions to the exclusivity of copyrights results in only porous protection of the music that manages to qualify for protection. Thus, United States copyright laws exacerbates, rather than mitigates, the exploitation of non-Western music.

The second section of this article will focus on counter-attacks initiated by source countries to protect their traditional music. The laws of Senegal and Brazil are examined to reveal the polarized directions legislation has travelled to protect traditional music. While Senegal nationalizes traditional music, protecting the music to preserve the nation’s “cultural identity,” Brazil has embraced the concept of “cultural self-determination,” surrendering ownership and control over traditional music to its originating community. The section will discuss the inherent strengths and weaknesses of each approach.

The third section examines current international law that alludes to the protection of non-Western music. After an analysis of the Universal Declaration of Human Rights, the Berne Convention and the General Agreement on Tariffs and Trade (“GATT”), the section reveals that international legislation which directly concerns traditional music is rare. The only provisions on point merely place the decision of how and when to protect traditional music at the discretion of each national government, thus placing the protection of non-Western music in the hands of potentially overloaded, insincere or unstable government regimes.

Particular attention is paid to GATT’s recent adoption of the Berne convention as it affects non-Western music. Examination of the adoption reveals that there is a fundamental clash between GATT’s focus on free economic trade and the needs of non-Western music. Ultimately, non-Western music must be taken out of the commercial sphere and control over the music’s dissemination must be vested firmly within the originating community.

Finally, the article proposes reforms in domestic intellectual property laws

to effect the legitimate protection of non-Western music, considering the limitations on a traditional community's political power. Current copyright laws could be modified to incorporate a system of "secondary registration," where the recorder gains the protection of copyright laws and the community retains ultimate control over the music's use. Further, potential problems can be circumvented by requiring full disclosure of possible dissemination in mandatory "field contracts" prior to the recording process. By encouraging a formal dialogue over the recording process, both parties will understand the other's expectations and there will be an incentive to provide for mutual protection and benefit.

This article is limited to the unique problems faced by non-Western communities that do not employ extensive written notational systems. The problem of protecting the music which originates from primarily oral traditions remains particularly poignant because there is no tangible representation of the music "to own."

## I. INDIGENOUS MUSIC AND UNITED STATES LAW: A PRESENTATION OF THE PROBLEM.

### A. *Introduction*

In the United States, a "copyright" is the primary mechanism that controls the use of music. A copyright is considered a property interest in the musical work, granting its owner the exclusive right to perform, copy, record, display or distribute the copyrighted work. Third parties must secure permission from the copyright owner to use the piece of music in these manners and must pay financial compensation ("royalties") for the use. Otherwise, the third party "infringes" the copyright and suffers legal consequences.

Any work that is not eligible for copyright protection is considered unowned and lies in the "public domain." Public domain music may be freely used by anyone, without legal limitations or royalty payments. Even works that receive copyrights are not perpetually protected; a copyright is valid only for the life of the composer, plus fifty years. Upon the copyright's expiration, a work moves into the public domain and cannot be recaptured. United States copyright law, therefore, remains a fragile barrier between exclusivity and commonality.

This section exposes fundamental clashes between the financially-oriented United States copyright law and the varied purposes of non-Western music. The United States copyright scheme is predicated upon the American legal conception of music. As a result, only music with specific characteristics, such as an "author," tangibility and originality will be eligible for copyright protection. Non-western music seldom meets all the copyright requirements; thus, it becomes summarily relegated to the public domain.

### B. *The Purpose of American Copyrights*

Copyright protection in the United States begins with Article I, § 8, cl. 8 of the United States Constitution ("Copyright Clause"), which grants Congress the power "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and inventors the exclusive Rights to their respective Writings and Discoveries . . ." The words of the Copyright Clause immediately reveal the pragmatic, economically-oriented attitude of the United States towards its art. The Copyright Clause imposes fundamental

limits on exclusive ownership — only “useful”<sup>77</sup> arts are protected and then only for a limited time to “promote” cultural progress. With these word choices, the drafters of the Constitution evidenced their underlying disbelief in an inherent “natural” ownership over music. Rather, the drafters granted artists a carefully crafted “artificial” ownership over their creations, through narrowly drawn language, to assure the continual production of American art.

The United States Supreme Court clearly supports the drafters’ limitations of music ownership. In *Goldstein v. California*,<sup>8</sup> the Supreme Court held that the Copyright Clause used the phrase “to promote” as synonymous with “to encourage” or “to induce.” The Court reasoned that in order to “encourage people to devote themselves to intellectual and artistic creation, Congress may guarantee . . . a reward in the form of control over the sale or commercial use . . . of their works.”<sup>9</sup> This position was reinforced in *Twentieth Century Music Co. v. Aiken*,<sup>10</sup> where the Court declared, “[t]he immediate effect of our copyright law is to secure a fair return for an ‘author’s’ creative labor. But the ultimate aim is, by this incentive, to stimulate artistic activity for the general public good.”<sup>11</sup>

In the United States, therefore, a proprietary interest in music is not recognized because the musician created the song through privately owned resources and individual effort. Rather, the words of the court reflect a much broader American sentiment. The underlying assumption of United States copyright law is that no person will labor productively without the promise of potential financial gain. With this assumption, it is necessary to promise commercial profit to assure that people continue to compose music for the nation’s benefit. The United States copyright law focuses, therefore, on protecting the financial fruits of music.

Because United States copyright law strives to protect the financial aspects of music ownership, it is ill-equipped to protect many non-Western traditions. To many non-Western communities, the concepts of music and material profit remain unconnected. In order to provide effective protection for these musics, therefore, the law must protect both non-monetary and monetary concerns.

The Pintupi people of Australia provide an excellent example of the division between music and material wealth. The Pintupi use songs to curse their enemies, initiate youth, prepare to avenge deaths and heal sickness inflicted by malevolent spirits (Moyle 1979). The protection of music with such immense powers must focus on the restriction of its use, not the protection of material profit. In contrast, however, United States copyright law focuses exclusively on the protection of financial profits and thus, is not prepared to protect the powers of Pintupi music from misuse.

Financial incentive is also irrelevant for assuring the creation of Pintupi songs. Using a hunting metaphor to describe the compositional process, the Pintupi believe that songs are captured, not composed, by a man’s spirit while he sleeps. During the night, the spirit slips out of the man’s body to wander the earth. As part of these wanderings, the spirit searches for new songs to capture. At the end of the night, the spirit, with its successfully captured song, reenters the sleeping man. The man awakens to remember every detail of the song and is able to mimic the spirit’s music (Moyle 1979).

It would be illogical to attempt to promote Pintupi composition through the United States’ method of financial incentives. How can a financial reward

entice a spiritual force to leave the body? Will the promise of money ensure the spirit's technical success in its task? The very purpose of United States copyright law — to encourage compositional labor through dangling a financial “carrot” — is fundamentally at odds with traditional Pintupi beliefs. If Pintupi music were recorded and brought to the United States, however, future uses of the recordings would be governed by United States law, not Pintupi customs.

The underlying policy of United States copyright law, to protect an author's financial interests, is infused into every provision of the copyright scheme, leaving fierce safeguards for profits and little or no regulation of non-commercial utilization. Thus, the laws are stubbornly ethnocentric, which is reflected in the musical characteristics required to obtain copyrights, the permitted uses of copyrighted material without the author's consent, and other aspects of music ownership.

### C. *Copyright Requirements Under United States Law*

The underlying financial motivation of United States copyright law is perhaps the most innocuous clash between this legal scheme and non-Western music. As a general concept, a nation's legislation is built to protect what its society considers the most important. An examination of the construction of United States copyright law reveals that the commercial orientation of the society is reflected in the copyright eligibility requirements, aimed at granting copyright protection only to individually owned “objects.” In order to properly identify the “objects” to protect, United States copyright law requires music to have a specific author, to be captured on a tangible medium and to be “original.” Non-western music seldom meets these requirements and thus, will be deemed “public domain” music. As a result, with increased communications between cultures and portable recording technology, United States copyright law functions to declare the musics of entire cultures uncopyrightable “free fodder” for the American music industry.

#### 1. *The author requirement*

The United States Constitution only grants copyrights to the “writings” of “authors.” The term “author” is defined, for the purposes of copyright protection, as “the originator” or “he to whom anything owes its origin.”<sup>12</sup> Only authors or employers of authors can secure a copyright. For example, if a scholar were to locate a lost Mozart symphony, he would be denied a copyright over the pages because he was not the actual creator of the symphony or physical manuscript (Nimmer 1995:2-10). While requiring the existence of an author imposes a minimal burden on Western music, where the composer affirmatively asserts individual authorship over creations from the first “world premiere,” this rigid rule may impose a nearly impossible burden on traditional cultures.

In many non-Western or traditional communities, music is passed through generations, owned “temporarily” by certain individuals or groups. The song controller of each specific generation is not considered the “author,” or creator, of the song. Rather, the controller is more akin to the song's “keeper.” The songs frequently owe their origin to either spirits or ancestors from decades earlier. Because there is no living “author,” these songs lack a basic requirement necessary to receive copyright protection under United States law.

Admittedly, the United States does allow corporations or the employers of authors to hold copyrights for works (Nimmer 1995). Corporations are owned by multiple shareholders, suggesting that it is possible to assert the group ownership of music under United States law. An argument could be asserted that the “author” of a traditional work was a quasi-employee of the whole community. Unfortunately, however, it is still necessary to identify the original creator and designate him or her as the community’s “employee” to obtain any measure of protection. Because a copyright is only valid for the life of the author plus fifty years, ancient songs will be long past the post-mortem limit, whether or not the ancestor is designated an “employee.” As a result, the music will remain in the public domain. Under United States law, only living authors receive substantial copyright protection.

The Suyá people of South America typify a second obstacle to finding “authors” for non-Western music. The Suyás believe that plants and animals compose music, not people. Essentially, under Suyá lore, witches live in the forest, snatching men’s spirits and flinging them into animal communities, plants or other natural objects. If the spirit does not free itself and return, the man becomes a “person without a spirit.” He will continue to live in the Suyá village, but will be able to hear the spirit singing the songs of its host. By mimicking his spirit’s singing, the man can teach new songs (Seeger 1987).

The Suyás would not designate this man as the “creator” of songs. He is learning by rote, merely repeating the songs taught by animals or plants (Seeger 1987). Because Suyán songs, according to the Constitutional definition, are “authored” by animals and plants, Suyán beliefs would compel their songs into the public domain. The Constitutional requirement of an “author” before granting a copyright may render much non-Western music uncopyrightable.

## 2. *The tangibility and originality requirements*

The second basic requirement imposed by the Copyright Clause is that a work must be the “writing” of an author to receive protection. For the purposes of copyright law, a writing must meet two requirements. First, it must be a “physical rendering.”<sup>13</sup> In other words, the work must be written, recorded, videotaped, or otherwise reduced to a tangible form. Second, the writing must be “original.” An original work is the result of “independent creation plus a modicum of creativity,” or, is “founded upon the creative powers of the mind.”<sup>14</sup> Once both the tangibility and originality requirements are met, a writing will qualify for copyright protection.

### a. *Tangibility*

While it is traditional for Western music to be reduced to written or recorded tangible memorializations, music from oral traditions is rarely crystallized into fixed forms. Of course, once someone records the music, the recording becomes a tangible “physical rendering.” Presuming that the other requirements are present, the originating community could copyright the song through field recordings. Isolated communities, however, are not in a position to actively pursue a copyright in foreign Western countries. The protection of recorded music, therefore, will rest exclusively on the

recorder's discretion. While an ethnomusicologist seeking purely academic knowledge may make an effort to pursue a copyright on behalf of the community, a member of the commercial music industry has other primary concerns: marketability and profitability. A community-held copyright only inhibits dissemination and profit. The tangibility requirement places the protection of music from oral traditions at the whim of the recorder.

b. *Originality*

To be considered a Constitutional "writing," the work must also be the original product of an author's intellect. The originality requirement, dubbed the "touchstone of copyright protection,"<sup>15</sup> serves an important function in American culture. A bedrock principle of American society is the freedom of speech. To assure this freedom, the United States fosters a "marketplace of ideas," where everyone is free to express, refute or build upon any opinion or idea. By granting copyrights which prohibit everyone but the owner from using words or sounds in a particular combination, the government is arguably infringing on the First Amendment freedom of speech. To mitigate this effect, the statutory code explicitly declares all ideas, principles and facts uncopyrightable (Nimmer 1995:1-64).

Although the originality requirement admirably balances free speech with the monopolistic tendencies of copyrights, it is in direct conflict with the needs of some non-Western music. In many traditions, sacred songs stem from ancient spirits or gods. The songs are potent because they represent the actual words and melodies from ancient times. As the song is passed to various song keepers, the purity should be maintained. The job of the keepers is to accurately reproduce the ancient song, not necessarily to add "original" intellectual modifications. The song, therefore, is not "founded upon the creative powers" of the keeper's mind, to qualify as an "original" work, nor is the initial "author" alive to ascribe creation. In order to meet the originality requirement, the keepers would have to revise the ancient words or music, even though the power of the music may be undermined by the modification. If the song keepers refuse to add these "original" touches, the song will lose a basic Constitutional requirement and will remain "uncopyrightable" under United States law.

3. *Potential indirect protection from the new anti-bootlegging laws*

On December 8, 1994, non-Western music received unexpected new help within the United States legal scheme: "anti-bootlegging" laws.<sup>16</sup> As a result of the United States' effort to comply with the GATT Uruguay Round Agreement, it is now illegal to record, transmit, or disseminate recordings of live performances without the consent of the performers involved.<sup>17</sup> The characteristics or copyrightability of the music performed is irrelevant — all recordings of any live performance require proper consent. If the performer's permission is not obtained, both criminal and civil liability attaches.

The same basic remedies available to copyright infringements may be levied against unauthorized recorders. The violator may be required to spend up to five years in prison for a first offense, pay significant fines, surrender all profits to the infringed performers, and compensate for other civil damages.<sup>18</sup>

In addition, the offending recordings may be impounded and destroyed. While the new laws were intended to curtail the piracy of popular music, which costs the American music industry billions of dollars a year, the statute will clearly impact the protection of traditional music. Through its performers, unprotected non-Western music may indirectly enjoy nearly the same level of protection from infringements as copyrighted works.

The new statutes allow non-Western music important protection from digital sampling and clandestine recording both within and beyond the borders of the United States. Regardless of where the initial recording occurs, the new laws will be triggered through the distribution, as well as physical creation, of even one copy of an unauthorized recording within the United States' borders. With about one-half of all prerecorded music sales worldwide occurring in the United States (Dept. of Commerce 1994:31-3-4), it is likely that offending albums will eventually target the United States, exposing the producers to liability.

Despite the potential power of these new statutes, several problems remain. While Congress expressly applied basic copyright remedies to bootlegging, they were silent as to whether the traditional exceptions to the exclusivity of copyrights, such as fair use and compulsory licenses, apply to recordings of live performances. In addition, the laws are not self-policing. The community, or an interested party, must discover the violation and initiate legal action. Otherwise, violations will occur without subsequent legal responsibility. If interpreted correctly by the Courts, however, the "anti-bootlegging" laws are a substantial weapon for protecting the unauthorized sampling or recording to non-Western music.

It is important to caution that the anti-bootlegging provisions affect both the music industry and ethnomusicologists. Because the statutory language is simple, prohibiting "any" unauthorized fixation of dissemination of a live performance, field tapes clearly fall within the new provisions' reach. Researchers must now carefully obtain written proof of every performer's consent, or face potential legal struggles with disgruntled informants. In addition, if a researcher is interested in releasing older field tapes to the general public, through ethnomusicological record labels or the general commercial music industry, the anti-bootlegging statutes may assign legal liability if the performers' consent was not secured. The act of distributing an unauthorized recording may be sufficient to violate the statute, even if the tape was recorded years before.

In sum, while the requirement of authors, tangibility and originality are able to distinguish between facts and protected expressions, serving American ideology, they frustrate the protection of non-Western music. The anti-bootlegging provisions unintentionally gave non-Western music a modest weapon against exploitation, yet, United States law continues its refusal to recognize ownership rights in music unless specific eligibility requirements, created to serve one conceptualization of music, are met. The music of communities such as the Pintupi and Suyas, therefore, are doomed to remain in the public domain and experience exploitation. United States law functions to allow the music of entire cultures, both within its borders and thousands of miles outside, to become an unfettered source of new, profitable sounds.

D. *Researchers, Producers and Their Ability to Copyright*

Not only is the United States copyright scheme inadequate to protect the needs of non-Western music, it also grants recorders *de facto* control over the recorded music. Although the non-Western songs themselves are frequently considered “uncopyrightable,” recordings, videotapes and transcriptions of the music are able to secure full copyright protection. This result is possible because the music itself and the recording produced are considered separate creations. This distinction allows interested recorders to visit communities and record performances of their music. After returning to the United States, the recorder may copyright the tapes and gain exclusive control over how and when the recordings are used. If the tapes are transcribed, reducing the songs to written form, the transcriptions will also be separately copyrightable. Unless the recorder pursues a separate copyright over the songs, themselves, in the name of a traditional community, the actual songs will remain in the public domain. With copyrights securely in place on the recordings, and the songs in the public domain, the recorder may freely use the recordings without consulting the community.

The recordings of non-Western songs themselves fully meet the Constitutional and statutory requirements of an author, originality and tangibility. The actual field recordings “owe their origin” to the producer who pressed a “record” button, therefore, the producer is the author in the Constitutional sense. The recordings are physical renderings of music, fulfilling the tangibility requirement. The recasting of pre-existing works through “editorial revisions, annotations . . . or other modifications,” are considered original “derivative works” under United States copyright laws, and are able to obtain full copyright protection.<sup>19</sup> Sound recordings are even expressly included into the statutory definition of “derivative works.” Through the simple process of recording and transcribing, a recorder exerts enough intellectual effort to secure a copyright over field recordings. The traditional community, however, is denied ownership rights over their music if they cannot produce the requisite “writing” and “author.”

The moment a copyright over recordings of non-Western music is granted, *de facto* control over their dissemination is functionally vested in the recorder. Non-western societies are not frequently involved in mainstream Western culture, and many reside in remote settings. Even if the recorder successfully pursues a copyright over the music on the community’s behalf, therefore, it would be extremely difficult for the community to actively monitor the music’s use. There is no policing structure within the Federal copyright scheme; unless the copyright holder discovers a violation and initiates an infringement suit, the violation will not be vindicated. Even if the community secures a copyright, therefore, recorders may decide to include copyrighted music in film tracks, commercials or pop songs with little risk that the community will discover the use and initiate legal action for copyright infringement. With a copyright over field recordings, and little chance of policing, a recorder gains almost exclusive *de facto* control over the dissemination of recorded music.

In addition to controlling dissemination, the recorder also gains a monopoly over the pecuniary worth of the copyright. A copyright over the recordings renders it the exclusive personal property of the copyright holder.

As personal property, the recorder may sell, assign, or lease the copyright over his or her tapes to any third party and collect all royalties. If a copyright is not obtained on the songs, they will remain in the public domain. The recorder will be the only party who can reap financial profit from the music.

To an American, the gravest injustice may appear to be the denial of monetary compensation to the community for the song's use. However, even if the royalties were voluntarily relinquished to the originating community, the misuse of spiritual songs can create far greater damage than lost financial opportunities. The Kugu-ngancharra people of Australia provide a powerful example of the potential for severe, non-monetary injuries. Songs are potent within the Kugu-ngancharra culture and are used to communicate with ancestral spirits. Spirits, and only spirits, have the power to manipulate the environment and provide bountiful game or temperate weather. While these powerful spirits are protective of their living kin, they are dangerous to strangers and must be carefully introduced. When a singer dies, songs closely associated with him are banned because they will attract the singer's newly deceased spirit to camp. New spirits are erratic and frightened. Fear, when combined with the spirit's inherent powers, creates a potentially disastrous situation. Not only may the ignorant recorder deprive the Nugu-ngancharra of financial profits through copyrighting recordings and pocketing royalties, uninformed use may create disastrous effects on the indigenous community through the misuse of these songs (Von Sturmer 1987).

The Western world, including the United States, predominately regards music as a piece of entertaining property. With this conceptualization of music, it is appropriate to commercialize and widely disseminate songs. The copyright laws reflect these cultural beliefs by focusing on the protection of the financial fruits of music. To traditional societies, however, the use of music is a powerful, complex and potentially disastrous project. The community members are able to accurately distinguish sacred songs from harmless entertainment pieces and understand appropriate performance restrictions. Western law should securely vest control over the dissemination of traditional songs within the originating community. By declaring tribal music "unownable," the United States emasculates the originating communities' internal regulatory schemes and laws, causing one culture's power to degenerate into another's profit.

#### E. *The Non-Exclusive Nature of Copyrights*

Frequently, non-Western music will be studied and recorded by researchers who are eager to respect both the sounds and beliefs associated with the music. The community may also wish to disseminate appropriate music in order to share its culture and build financial resources. The communities and researchers, therefore, may decide to copyright and publicly disseminate the music, either commercially or academically. Although imperfect, copyrighting the recordings provides a modicum of control through its right of exclusive reproduction, but significant loopholes to its exclusivity remains.

Analysis of the United States copyright law exposes the surprisingly porous nature of Federal copyright protection. Although a copyright grants an owner the exclusive right to copy, perform or distribute recordings, there are several significant exceptions which allow copyrighted music to be used without the

permission of the copyright owner, and, in many instances, without the payment of royalties. As discussed earlier, the primary purpose of United States copyright law is to protect the composer's financial stake in creations. Because of this bias, copyright statutes frequently allow non-commercial third party use without prior approval.

The most relevant exclusivity loophole is the archival exception, which is applicable to both sound recordings and written transcriptions.<sup>20</sup> When a researcher deposits field tapes into a public archive or library, that institution is granted limited distribution rights. Upon a user's request, the archive can reproduce one partial copy of sound recordings and distribute it to the user as long as it was not reproduced for the archive's "direct or indirect commercial advantage," the reproduction is an isolated transaction, and the archive provides the user with notice of applicable copyrights.<sup>21</sup> In other words, the archive's participation in the transaction cannot be commercially motivated or used to justify the distribution of multiple copies to one user or group. Any copyrights a researcher obtained over the field tapes remain binding on both the user and the archive.

Archives may reproduce these copies, at its discretion, as long as the copies become the property of the requesting user and the archive has "no notice" that the copy will be used for anything but private study or research. The consent of the depositing researcher is not necessary. The archive is not required to investigate the user's request or motivations through even the most basic interrogation. As long as the archive does not inadvertently uncover any facts suggesting the potential for misuse, its distribution right remains untouched.

Ordinarily, under the archival exception, the archive is only granted the right to reproduce *portions* of a complete work. If the archive determines through "reasonable investigation" that a copy of the recording or written transcription is not available for a "fair price," however, a complete copy of the field tapes can be produced and distributed to any user.<sup>22</sup> For field tapes, which frequently represent the only recordings of specific songs or cultures, there will rarely be any recordings in the marketplace, much less one available for a "fair price." As a result, most field tapes can be legally reproduced and distributed in their entirety.

The dangers of the archival exception do not lie in the isolated reproduction of one copy of a field recording to the occasional researcher. Instead, the archival exception may actually contribute to the wide distribution of non-Western music. Once the archival exception is used to obtain possession of a recording, further copyright loopholes may be bootstrapped onto this exception to obtain wide-spread involuntary dissemination.

The most common copyright exception is referred to as the "fair use" doctrine.<sup>23</sup> Under the fair use doctrine, copyrighted music may be used for news reporting, teaching, research and other non-commercial means. The statute lays out a test to determine whether a specific use is allowed through the fair use doctrine, based on the purpose of the use (commercial or non-profit) and its effect on the potential market. The doctrine, therefore, mirrors the American belief that the most important property interest in music is economic. Because of the fair use doctrine, the researcher who deposits recordings of sacred songs in a national archive could find these recordings

played, analyzed and criticized in the media and institutions throughout the country. For communities that ascribe broad, potentially destructive, powers to music, its dissemination, not profit, must be controlled. The fair use doctrine directly undermines this need.

The researcher's control over the dissemination of copyrighted field recordings is further attenuated through the similar use, or "compulsory license," provision of United States copyright law.<sup>24</sup> The community may wish to record and distribute appropriate songs to build worldwide recognition and financial resources. The accuracy of these albums can be assured by recording on labels that strive to protect the purity and authenticity of traditional music. Once the record is distributed to the United States public, however, the compulsory license right is triggered.

The compulsory license exception allows third parties to make recordings of their own performances of any song which is publicly distributed, despite valid copyrights in either the songs or recordings. The second recorder need only send a notice to the copyright owner and pay statutorily mandated royalties. The compulsory license statute also expressly grants the second recorder the right to adapt or arrange the copyrighted work to fit a conceived interpretation or medium, as long as the melody and "fundamental character" of the work are not altered. For cultures that construct music with other primary identifications, such as rhythms, timbres or special instruments, it may not be enough to simply protect the "melody" or "fundamental character." Once again, the United States copyright scheme undermines the needs of non-Western music.

While increasing attention is given to the misuse of cultural artifacts, the creeping, involuntary dissemination of non-Western music remains largely ignored. It is difficult for the music to meet basic eligibility requirements. Recorders are increasingly placed in *de facto* control of music, yet must frequently accept sparse communications with the originating community. Even with copyrights secured, loopholes allow potentially wide spread, involuntary dissemination. Copyright laws should be modified to balance this inequity and to assure that traditional cultures have legitimate control over the music's context and profits.

## II. CURRENT DOMESTIC APPROACHES TO THE PROTECTION OF INDIGENOUS MUSIC.

### A. Introduction

As non-Western music grows in marketability and Western culture threatens to usurp local ethnic identity, there is an increasing trend among nations to legislate for the protection of their folklore. As of 1992, fourteen countries had enacted legislation designed to control the dissemination of their traditional music (Puri 1992:36). Brazil has also constructed proposed legislation, which is moving through the political processes. Predictably, all fifteen nations are "source" countries, or, countries where marketable non-Western music is created.

Source countries have moved in two distinct directions in the protection of their traditional music. The first approach regards traditional music as a "national resource," in which the music's value lies in its ability to unite a diverse nation and build one "cultural identity." This approach involves the nationalization of traditional music, relegating it to government property.

The second approach embraces the concept of “self-determination.” The self-determination ideology asserts that traditional music is a type of property, which should be controlled by the originating community, and focuses on legal mechanisms to assure such control.

The acceptance of folklore as a national resource, or, more broadly, the “universal heritage of mankind”<sup>25</sup> seems inherently flawed. Reducing traditional music to a national resource results in treating cultural creations as equivalent to forests and mineral deposits. There is a crucial distinction between the two categories. Forests and minerals are created by the world’s natural ecosystems and processes. Because the definition of a “nation” classically includes dominion over a specific portion of the earth’s surface, it is logical for the world community to recognize a nation’s ownership over ecosystems created by that surface. Music, however, is not created by the world’s natural processes, but by people. It is an artificial artifact built by a distinct, individual community. It is no more the nation’s “natural resource” than a handmade shoe or tool. The self-determination approach embraces this logic, with an underlying policy of granting individuals and groups ownership rights over their creations.

The legislations of Senegal and Brazil provide polarized examples of folklore protection and suggest clues toward the direction direct legislation should move. Senegal approaches traditional music as a national resource subject to governmental control, while Brazil has taken the position that its traditional art belongs to the originating community. The effect on the originating communities varies considerably.

### B. *Senegal*

Senegal is considered a forerunner in the protection of folklore, establishing legislation for its protection in 1973. The legislation, embodied in Article 9 of Law 73-52 (“Article 9”), was an attempt to combat the “cultural invasion” of rising technologies such as satellites, televisions and cassette tapes which infused Senegal with Western pop culture through mass marketing and broadcasting. Law 73-52’s objective is to protect Senegalese folklore from these “foreign attacks” and to undo the effects of assimilationist policies during the colonial era (Ndoye 1989).

The definition of folklore in Article 9 includes all literary or artistic works, passed down through generations, by authors that are presumed to be Senegalese. Thus, the Senegalese legislation’s net captures both oral and written traditional music, with no particular distinction between the two.

The Senegalese government views traditional music as an “important link in national unity,” which binds together the diverse Senegalese nation (Ndoye 1989). This attitude is evident throughout the folklore legislation. Most strikingly, the first sentence of Article 9 of Law 73-52 declares that “all folklore shall belong *originally* to the national cultural heritage” (emphasis added). This language decrees that all traditional music, from its birth, belongs to the entire Senegal nation. The individuals and communities that first created the folklore are ignored. In effect, traditional music is nationalized into a governmental resource.

Following this presumption, Article 9 requires anyone who seeks to publicly perform or fix folklore, with a “profit-making” intent, to gain authorization

through the Bureau Senegalese Droit d'Auteur ("BSDA"), the national government's copyright office. The consent of the originating community is not necessary. If the BSDA authorizes the music's use, the office will collect a percentage of all future royalties. The percentage varies according to the collector's contribution to the final product. If the collector adapts or arranges recorded music, the BSDA collects 25% of all royalties earned. If the collector markets the recording without contributing artistic labor, the BSDA collects 50% of future royalties.

The last paragraph of Article 9 specifies that royalty payments are collected and managed by the BSDA for "cultural and welfare purposes for the benefit of authors." Although this statement implies that authors will experience some material benefits from commercialization, the language is too vague to discern whether Senegalese authors as a whole or the specific originating individuals and communities will receive a "benefit" from the song's use. Further, the word "benefit" is left undefined, providing no assurance that the royalties will be distributed in a usable medium. In fact, much of the royalties collected are used to sponsor literary and musical competitions (Ndoye 1989). While a competition may provide some composers with career boosts, other composers may find monetary compensation much more important.

Law 73-52's vague language delegates broad discretion to the BSDA. If the BSDA is responsible, allocations will benefit all artists and communities. Conversely, however, the BSDA's broad powers are easily manipulated and potentially allow the denial of usable benefits to politically unpopular communities. While it is admirable that the Senegalese government seeks to actively protect folklore from Western exploitation, "nationalizing" indigenous music under a government office's exclusive control creates a dangerous system. It is important to focus on monitoring the transactions between the originating communities and recorders to assure fairly negotiated agreements, rather than asserting authoritarian or paternalistic governmental control.

### C. *Brazil*

Recently, Brazil drafted legislation to establish intellectual property laws which effectively address the protection of its indigenous communities.<sup>26</sup> The legislation was presented to Congress in October, 1991, and, at last word, is still under consideration.<sup>27</sup> The proposed laws are divided into two distinct chapters. Chapter II, entitled Intellectual Property, addresses the protection of indigenous knowledge from patent misuse by pharmaceutical and industrial companies. Chapter III, Authorial Rights, focuses on the protection of indigenous art, including "musical compositions, with or without lyrics" and musical-dramatic works. The main thrust of Chapter III is to create laws that eliminate the traditional requirements which frequently render indigenous music uncopyrightable. Chapter III also creates a governmental department which functions as a "buffer" between the indigenous communities and Western users.

Article 31 of Chapter III eliminates the need for an author of indigenous works and spiritual creations, allowing animals or spirits to "compose" protected works. Individual and collective authorships are recognized, which

enables clans, genders or entire communities to share ownership of specific songs. Thus, the legislation defers to traditional cultural beliefs about ownership and control. Proof of authorship is also addressed in the provisions. Article 35 specifically states that photos, recordings, publications or other records from private or public institutions “shall constitute” sufficient proof of authorship to qualify for protection under Chapter III. Field studies of Brazilian indigenous peoples, therefore, are able to directly benefit the studied communities by proving ownership claims.<sup>28</sup>

There is also no tangibility or originality required to invoke Chapter III’s protection. Article 31 states that works are protected “regardless of their time of creation,” “even if transmitted through oral tradition.” Thus, it is not necessary to prove that the music was originally composed or “creatively modified” by a member of the current generation. To gain Chapter III protection, all an indigenous community must prove is that the music was created through their community or a member, whether ancient or living.<sup>29</sup>

The problems of indirectly capturing indigenous music in the public domain, as well as the prevention of nationalization by governmental bodies, are both expressly addressed in Article 36 of Brazil’s new provisions. Article 36 states that “intellectual works and spiritual creations, under no conditions, shall enter the public domain or become the property of the Union, States, Federal District or Municipalities, even if transmitted through oral tradition.” These words, far stronger than average statutory language, permanently vest the ownership rights over indigenous music within the originating community. There are no exceptions or conditions attached to effectuate an eventual inclusion into the public domain or a relegation to government property.

The indigenous composers are given the sole authority to authorize the use of their works. No governmental office is substituted in their place. The provisions of Articles 37 and 38 declare that indigenous communities and authors have the right to enjoy the use and disposition of their music, as well as the right to authorize its use or enjoyment by third parties. Any direct or indirect reproduction or dissemination of the music is completely dependent on gaining the indigenous owner’s consent. The use of music without obtaining the owner’s direct authorization violates the chapter and subjects the infringer to sanctions and fines.<sup>30</sup>

Most importantly, Chapter III encourages the creation of written agreements between owners and third parties over the use of indigenous music. The Federal Public Ministry is charged with helping the indigenous community reduce negotiations to written agreements and with providing the community with access to a member of the “Western” world during the bargaining process. The contents of the agreements are carefully regulated. The document must stipulate the scope of any reproductions or third party uses, must contain “just and equitable” remuneration to the indigenous authors, and must delineate a finite period of time to use the music.<sup>31</sup> If the parties fail to identify the time period that the agreement is in effect, the entire agreement is nullified.

Once the written agreement is completed and contains the required terms, the third party’s rights are protected as well. It is the only document that prevents the indigenous community from withdrawing their authorization. Thus, both parties are encouraged to anticipate future disputes before executing the final, binding agreement.

Finally, Article 34 of Chapter III creates the Federal Indigenous Agency (“FIA”), a government bureau, to assure the implementation and enforcement of Chapter III’s provisions. The FIA is given the power to protect indigenous communities and offers mechanisms for a national application of the new laws, but remains surprisingly subordinate to the indigenous communities themselves.<sup>32</sup>

Although it is a government department, the FIA functions primarily as an arm of the indigenous communities, not the government. The FIA registers indigenous music and its authors to provide official records of ownership for infringement claims. This registration, although detailed in Chapter III, is not required to invoke the new legislation’s protection; the protection exists whether the community has continual or no contact with the FIA. The registration must be provided by the FIA to all indigenous communities, regardless of the payment of any fees.<sup>33</sup>

The FIA is charged with the duty of collecting royalties for the use of indigenous music, but merely acts as a collection agency. The FIA is required to pass royalties “in whole” to the music’s title holder. At the request of a title holder, the FIA may function as a policing agency, and prevent or forbid infringing performances that lack proper authorization. The FIA is also charged with preventing the destruction or alteration of indigenous works, in order to prevent cultural, moral or material harm. The specific duties and restraints imposed on the FIA exposes a clear intention to aid the indigenous communities’ exercise of authorial rights, rather than to assert authoritarian control over Brazilian indigenous music.

Article 34 of Chapter III also creates a Fund for Indigenous Authorial Rights, administered by the FIA. The fund is supported by the fines from prosecuted infringements, charitable donations and royalties created by indigenous works that lack identified authors. While the actual use of the fund is left unspecified, Chapter III expressly forbids utilizing the fund for either administrative expenses or the FIA’s maintenance costs. These articulated restrictions prevent moneys created through the use, or misuse, of indigenous music from becoming swallowed into the national government budget. The fund reserves such money for expenditures that directly benefit the originating communities.

The proposed Brazilian legislation is an exciting advancement in the protection of non-Western music. Its provisions concentrate on eliminating burdensome, ethnocentric copyright requirements of living authors, originality and tangibility. Control over the dissemination of indigenous music remains firmly with the originating community or individual, yet government offices offer strong allies against the commercial world. Finally, money created by indigenous music directly benefits indigenous communities through the Fund for Indigenous Authorial Rights.

It is important to caution, however, that if Chapter III becomes binding law, its effectiveness will rest largely in its application. Without legitimate governmental support in the implementation and enforcement, the new laws will quickly degenerate into impotent words. Fortunately, the intricate detail found throughout the provisions suggests a genuine commitment to Chapter III’s underlying ideology.

### III. CURRENT AND FUTURE PROTECTION IN INTERNATIONAL LAW.

#### A. *Introduction*

There are several provisions in current International treaties and declarations which directly address the protection of non-Western music. Unfortunately, as with Western copyright systems, the protection remains woefully inadequate for the task. This inadequacy, coupled with the fact that countries must consent to be bound by international law at all, renders current international attempts to protect non-Western music ineffective.

At this time, there are three main international agreements that contemplate the protection of non-Western music: the Universal Declaration of Human Rights, the Berne Convention and the General Agreement on Tariffs and Trade ("GATT").<sup>34</sup> Of the three potential sources of protection, only the Berne convention and GATT are currently considered binding international law. Further, there are serious problems in protecting non-Western music through either of these avenues. Ultimately, the exploitation of non-Western music will have to be specifically addressed in a unique international agreement.

#### B. *The Universal Declaration of Human Rights*

The Universal Declaration of Human Rights, enacted in 1948 by the General Assembly of the United Nations as a response to World War II, has become one of the most recognized advocacy tools for the protection of indigenous peoples. It enjoys a wide scope of application, in that every United Nations member is, at least symbolically, required to support its principles (Newman and Weissbrodt, *Int'l Human Rights* 1990).

The protection of art is expressly addressed in Article 27(2) of the Declaration, which states that,

Everyone has the right to the protection of the oral and material interests resulting from any scientific, literary or artistic production of which he is the author (Newman and Weissbrodt, *Selected Instruments*. 1990:15).

Although the language appears to vindicate the rights of non-Western music, there are fatal flaws which render the Universal Declaration impotent.

Although some sections of the Universal Declaration have attained the status of binding international law, most of the Declaration, including Article 27, remains merely suggested standards of treatment. The Preamble to the Declaration itself sets forth this limitation by declaring the Universal Declaration "a common standard of achievement for all peoples and all nations" (Newman and Weissbrodt *Int'l Human Rights* 1990:11), indicating the role of the Declaration is to establish standard for nations to strive to achieve. If a nation or company violates Article 27 and appropriates a community's music, the Universal Declaration only provides fodder for the application of political pressure. It does not necessarily provide access to legal forums. The practical use of the Universal Declaration, therefore, is sharply limited.

#### C. *The Berne Convention*

The primary international copyright treaty is the Berne Convention on the Protection of Literary and Artistic Work, introduced in 1886 and currently administered by the World Intellectual Property Organization (WIPO). This

treaty was designed to establish minimum standards of protection for all works and authors from the signatories' territories, including the enforcement of national treatment,<sup>35</sup> protection of an author's moral rights<sup>36</sup> and a minimum duration for copyright protection. The treaty focuses primarily on the rights of individual authors, not relations between countries, and contains provisions concerning domestic issues, such as the fair use and derivative works. The Berne's provisions have been absorbed into national laws, so it may now be considered primarily "private international law," which allows authors to vindicate Berne Convention rights in a nation's domestic courts, as opposed to international forums. Currently, the Berne Convention enjoys wide support, with over 90 member states.

Although the Convention focuses heavily on the rights of individual authors, the protection of indigenous music as a whole did not receive the same detailed attention. The problems of protecting non-Western music was first addressed at the 1967 Stockholm Conference concerning the Berne Convention, where the only provision addressing traditional music, Article 15(4)(a), was created (Stewart 1983).

Unfortunately, the provision denies traditional artists the minimum rights of ownership granted to their Westernized counterparts, declaring that for, unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union (Nimmer 1995:App 27-15).

As a result, the traditional communities and artists are not given directly recognized ownership rights over their music, unless their domestic government designates the community as the "competent authority." It is more likely, however, that governments will take an approach similar to the legislation of Senegal, creating a competent governmental authority and nationalizing traditional music.

The Berne Convention remains the only on-point, binding international law which specifically addresses traditional music. Unfortunately, the Berne Convention focuses on retaining domestic sovereignty over the fate of traditional or non-Western music rather than placing the music under the control of the originating communities. Arguably, the main provisions of the Berne, which focus on the minimum rights of individual artists, may be applied to non-Western music. The Berne provisions, however, are nearly identical to the United States copyright scheme. The same problems of involuntary dissemination and *de facto* control found within the United States scheme will resurface if the main Berne provisions are applied to traditional music. Thus, for non-Western music, the Berne Convention remains largely ineffective.

#### D. *The General Agreement on Tariffs and Trade*

The General Agreement on Tariffs and Trade ("GATT"), established in 1948, is an international agreement aimed at lowering tariff and non-tariff barriers to trade in order to produce greater global productivity (GATT 1986). GATT members meet periodically to negotiate amendments to the original

agreement. The most recent negotiations, titled the “Uruguay Round,” were launched in September of 1986 when the contracting parties met in Punta del Este, Uruguay (Patterson & Patterson 1994). The Uruguay Round’s agenda included strengthening GATT’s dispute resolution system and bringing intellectual property under GATT’s umbrella. By the close of the Uruguay Round, the contracting parties decided to incorporate the Berne Convention into GATT, excluding the moral rights of Article 6bis, but keeping Article 15, which addresses traditional music.

GATT has become one of today’s most powerful international agreements. It boasts wide support, with 115 contracting parties representing 95% of all world trade (Holbein & Carpentier 1993:534). GATT’s dispute resolution system was recently revamped through the Uruguay Round. There is now a formal Dispute Settlement Body (“DSB”), overseen by GATT’s World Trade Organization, to adjudicate alleged violations. The DSB adjudicates disputes through hearings in front of a judicial panel comprised of three independent judges selected by the GATT’s general Secretariat. Strict procedural rules and time limits were designed to aid the DSB’s independence and efficiency, and an appellate body was created to review the DSB’s decisions. Private arbitration, separate from the DSB procedures, is also encouraged to settle disputes more quickly (Appelbaum and Schlitt 1995; Holbein & Carpentier 1993). Although GATT offers formal, controlled dispute settlement mechanisms, combined with world-wide support, serious questions remain as to whether GATT is an appropriate forum for the protection of non-Western music.

One of the primary problems with the protection of non-Western music through GATT is its economic orientation. GATT is an agreement to protect countries from the trade barriers of other countries. It is not a treaty created to preserve the rights of individuals. Under GATT, the exclusivity of intellectual property rights is viewed as a potential barrier to economic trade. As set forth in the preamble of GATT’s Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”), which incorporates the Berne convention, the motivation for incorporating the Berne convention was:

[a] desir[e] to reduce distortions and impediments to international trade, . . . taking into account the need to promote effective and adequate protection of intellectual property rights, and *to ensure that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade* (Appelbaum and Schlitt 1995:701, emphasis added).

Panels that adjudicate intellectual property disputes, particularly GATT’s Dispute Settlement Body, will be required to interpret the TRIPS provisions in a manner consistent with the fundamental attitude outlined in the TRIPS preamble. Music will be regarded as a “commodity,” similar to pigs and raw sugar, and copyright schemes will be examined to determine whether they are illegitimate trade barriers. This underlying policy will directly frustrate protection of the non-monetary powers of non-Western music.

Article XX of the main GATT text alleviates some of the danger to non-Western music. Article XX expressly grants countries the ability, regardless of GATT obligations, to impose measures for “the protection of national treasures of artistic . . . value,” as long as the provisions are not “unjustified” (GATT 1986). Article XX may be used by countries to defend legislation

which concerns the protection of indigenous music from review under the TRIPS scheme. Even with potential Article XX legislation in place, however, GATT's limited remedies leave its ability to protect non-Western music unclear.

When a country is injured by a GATT violation, the main remedy is to suspend trade or impose sanctions on the offending party until it complies (Holbein & Carpentier 1993). Currently, the most marketable indigenous music stems from smaller countries in Africa, South and Central America and Oceania. If, for example, Senegalese music becomes the next major trend for world music, the United States' music industry may begin to record Senegalese music in violation of Senegal's intellectual property scheme. Two scenarios are equally likely in this hypothetical situation.

First, Senegal could petition the DSB and allege that the United States is violating Senegal's Article XX protection of its national art by allowing the American music industry to import raw Senegalese music. If the DSB agrees that a violation occurred, Senegal would be allowed to suspend trade with the United States. Clearly, the United States would not be hurt by an embargo from such a small country. Political pressure by the world community and sympathy embargoes would be necessary to give Senegal's favorable judgment any weight.

Second, if the United States fears that Senegal will bring GATT charges it can take an aggressive stance and assert that the "authoritarian" Senegal Copyright Office is a barrier to legitimate trade and the legislation is an "unjustifiable" use of Article XX. Senegal, potentially dependent on United States foreign aid and imports, would take a threat of sanctions seriously and weigh the long term price of resisting a rich country. Ultimately, when faced with such a decision, Senegal would probably turn a blind eye to the United States' infractions.

While GATT may protect countries from tariff wars in agriculture, industry or technology, it was never intended as a champion of indigenous rights. Placing traditional musics into its economic and commodity oriented provisions, therefore, will only provide industrial countries with additional avenues to justify the exploitation of non-Western music. The protection of non-Western music belongs in agreements which lie well outside of the profit-oriented business world's influence.

#### IV. SOLUTIONS

Ultimately, the strongest method to develop effective international protections for non-Western music would be to concentrate on developing domestic legislation, not international treaties or laws. As a general rule, in recognition of the sovereignty of nations, international law only binds countries that consent to be bound. When an international treaty is created, countries often become signatories in response to political pressure instead of an ideological commitment. As a result, signatories frequently ignore obligations or implement only the advantageous provisions. Domestic legislation, however, has a far greater chance of being actively upheld. Political pressure occurs during the drafting and passage of domestic laws, not after their enactment. Unpopular legislation simply does not survive the creation process. Once a majority of countries enact legislation to protect their

domestic music, pressure can be placed on richer industry countries to acknowledge violations by their nationals and enact similar laws.

Because it would be most effective, on a practical level, to concentrate on establishing the protection of non-Western music through domestic laws, it is necessary to determine the direction such laws should follow. In resolving this question, a distinction must be made between “source countries,” defined as countries where marketable non-Western music originates, and “industry countries,” where the majority of the major music companies headquarter.

#### A. *Source Countries*

Source countries face a unique problem in that there are several competing issues in the protection of their domestic music. First, the music may prove to be a highly profitable commodity for countries with few profitable resources. As a result, there is a decided temptation to “nationalize” traditional music and assure that some profits are retained by the country as a whole. On the other hand, the music clearly does not belong to the nation, it belongs to a distinct community. Legislation efforts should focus on assuring a community’s control over the dissemination of its music, rather than allow the fruits of a community’s music to dissipate into governmental machines.

Once the policy of self-determination is embraced, source countries must assure that the originating communities retain the right to decide when and how their music is disseminated. To accomplish this task, source countries should focus on the initial bargaining process between the community and the Western recorders. The bargaining process could be regulated with minimal burdens by requiring specific authorization agreements prior to the recording of any traditional music, and by creating standards for the agreement’s form and content. In addition, an independent governmental organization can be established, as articulated in the Brazilian proposal, to serve as a “buffer” between the communities and the Western recorders.

By enforcing a dialogue and formal agreement between the originating community and Western recorder, both parties must anticipate future disputes. This anticipation, and subsequent bargaining, educates each side about the other’s expectations, and may prevent many disputes from ripening. In addition, a formal agreement protects both sides by establishing specific terms to refer to throughout the use of the music.

It is not always clear which members of a community have the power to bargain for the use of specific music. If the proper owner or leader is not negotiated with, a community may attempt to declare the agreement invalid. If the agreements are regulated, and will be subsequently enforced against both the researcher and the community, it is necessary to assure that the appropriate individuals are at the bargaining table and the agreement remains relatively stable. This can be established through two methods. First, legislation may declare that “comprehensive, good faith research” by the recorder into the issue of ownership will validate an agreement despite the presence of unauthorized bargainers. This provision, if disclosed and explained during the negotiation process, would provide an incentive to the community to seek out and involve the true owners of the music.

Admittedly, requiring a showing of “good faith research,” into the community’s structure may become easily manipulated or circumvented by

unscrupulous individuals. In the alternative, the government could require "indemnity clauses," in which the community's negotiators guarantee their authority to authorize the music's use. With an indemnity provision, the researcher is held harmless from the community's internal conflicts. The community could punish impostors through its own internal procedures.

Agreements must be memorialized in order to preserve the terms for future reference. The frequent cross-cultural nature of these transactions, however, make meaningful memorializations difficult, so the legal requirements must remain flexible. For communities which rely on the written word, agreements may be written in their native tongue, unless the community voluntarily and knowingly chooses another language. Conversely, non-literate communities should have the agreement recorded. The source country could require the recorder to record a verbal recitation of the community's consent to each term. In addition, the government or the recorder could leave an appropriate play-back system with the community so a copy of the recording could be meaningfully left behind for their records.

The regulation of agreements should also extend superficially into the agreement's content. Material terms, such as the length of the agreement, compensation to the owners, conditions or restrictions on the use, and an explanation of the contemplated uses and value of the music should appear in every agreement. Any agreements that do not affirmatively set forth the terms should be void. By requiring basic terms to appear in the memorialization, the government leaves a community free to bargain for its conception of a fair deal. Coercive bargaining or unconscionable terms, however, will be exposed.

Finally, source countries should strive to eliminate ethnocentric copyright requirements that render traditional music uncopyrightable. The Brazilian proposal provides a strong example of how to eliminate burdensome copyright requirements.

The regulation of the bargaining process would educate unassimilated communities on the fair value and potential uses of their music in the Western world. Although it could be argued that requiring detailed disclosure patronizes the communities, many communities do not actively participate in the high profit Western business world. Their conception of music, as well as its role in society, is frequently divorced from material wealth, making it difficult for communities to understand the potential for dissemination. Under the same public policy that requires American physicians to disclose the risks and procedures of surgery, the regulation of negotiations with non-Western communities assures that the community understands the risks and benefits of decisions which involve an unfamiliar and complex process.

### *B. Industry Countries*

With the power discrepancy between traditional communities and the multi-national music industry, the most powerful remedies against the exploitation of non-Western music will occur in the industry countries. Music companies and individuals have vulnerable assets in their home countries and are clearly subject to its laws and jurisdiction. In addition, the production and distribution of offending recordings occurs mainly in the industry countries. The implementation of laws within industry countries will enable

the efficient policing of infractions. Finally, by controlling dissemination through the industry countries' laws, the frictions often found between traditional communities and their national governments are entirely circumvented.

In creating a workable system to protect non-Western music, the first issue to resolve is the proper balance between the community's ownership rights and the rights of researchers. Clearly, as the actual creators, the community has an inherent ownership right in their music which should trump other proprietary claims. Researchers, however, also have important equitable rights to consider. The initial field recordings involve substantial work, through visiting and recording the communities, as well as reducing the raw tapes to pure, organized catalogs. Researchers should have an exercisable right to prevent third parties from profiting from this work. The rights of both the indigenous community and the researcher could be adequately balanced through a system of "secondary registration."

Secondary registration would be roughly equivalent to the current copyright notions, yet mixed with traditional property principles. All parties who desire copyrights over works derived from non-Western music would be required to register both a primary and a secondary owner with the Federal copyright office. The "primary owner" would have absolute ownership over the songs and "primary ownership" in the recordings. Primary ownership would be based on traditional property principles of creation, not copyrights, and would last as long as the community has members to inherit ownership. "Secondary owners" would have title to the recordings, subordinate only to the primary owner's ownership. Secondary owners would gain the full protection of copyright law, and could instigate infringement suits against anyone except the primary owner. If the secondary owner wished to license music to third parties or widely disseminate the recordings, however, secondary owner would have to file evidence of the primary owner's approval. This approval could be obtained either on case-by-case basis, or through a detailed, permanent agreement between the two owners, on file in the appropriate copyright office. With dual registration, the originating community would gain significant control over their music, while allowing researchers recognition by and protection from third parties. At first blush, secondary registration may appear burdensome to both the government and recorders. The burden can be minimized, however, by establishing standardized agreements during the initial field visits.

The most difficult aspect of secondary registration involves the methods for enforcement. The indigenous communities may live in countries removed from commercial music centers, or may not be assimilated into the Western culture. In these situations, they are not in the position to actively monitor their recordings or bring complex infringement actions. It is necessary, therefore, to transfer this responsibility to third parties.

To clarify the accountability of secondary owners to the indigenous community, a fiduciary, or trust, relationship could be established between the secondary and primary owners. As a formal trustee, the secondary owner would be legally liable to the primary owner for any breach of trust that results in a song's misuse or exploitation, and would have to compensate for the injury. The fiduciary duty would also allow secondary owners to

litigate on behalf of the indigenous community and vindicate appropriations by third parties. By placing an affirmative legal duty on the secondary owners, they would be forced to actively monitor recorded songs, or face legal liability.

Once the recorder's legal duty is established, it is still necessary to determine how that duty will be enforced. Obviously, if the originating community learns of unconsented uses, they could bring an action for breach of trust. With remote communities, however, other parties must be found to assert the primary owner's rights and police potentially dishonest secondary owners.

One logical approach would be to allow ethnomusicologists to monitor their own profession. For many remote communities, ethnomusicological field tapes were responsible for the introduction of their sounds to the commercial music industry. As a result, the ethnomusicological profession has a responsibility to protect the music it introduced. Ethnomusicological societies could take responsibility for their profession by establishing a complaint board, similar to anthropology, law or medicine. This board would allow ethnomusicologists to file complaints against their colleagues when breaches of trust occur. The society could then determine appropriate professional sanctions.

Through self-policing by the ethnomusicologist community and the fiduciary duty of secondary owners, traditional music could be protected from exploitation by both corrupt researchers and third party appropriations. While no law will establish perfect protection, the above solutions provide at least a suggested step toward the reconciliation of the diverse and conflicting ownership rights inherent in ethnomusicological recordings. The rights of a secondary owner protect a researcher's interests, while primary ownership would assure indigenous communities the power to decide when and how their music joins world culture.

## V. CONCLUSION

Despite the inability of existing domestic and international law to adequately protect the needs of non-Western music, recognition of the problems facing this music is growing as the "world music" trend continues. Once the momentum toward reforming intellectual property law gains speed, it is essential to create laws which assure that the originating community retains control over their music and enjoys the same protection as their Western counterparts. This control is best effectuated by focusing on legislation which regulates the initial negotiations between researchers, producers and originating communities by requiring full disclosure to and informed consent of the originating communities, they can decide how and when their music is introduced into the world music market.

In the meantime, ethnomusicologists are not powerless. The ethnomusicologist should register the copyrights of all of his or her important field recordings to gain control over their dissemination.<sup>37</sup> Copies of the copyright registration should be left at every archive where recording is deposited. Further, when approached for permission to use the recordings, the ethnomusicologist should not assume that the contemplated use will be appropriate or honorable. The proposed use and user of the music should be carefully researched.

Finally, and most importantly, the ethnomusicologist should engage in specific dialogues with the performers and community at the time of making the first field recordings. The ethnomusicologist should anticipate that third parties may request the use of field recordings years, or even decades, after they were recorded and thus, *must* determine what the originating community considers to be the appropriate uses of its music. The ethnomusicologist should also discuss the potential for compensation by third parties for future uses and should discuss how, and when, compensation should be returned to the community. The potential for little or no compensation should also be mentioned.

Whenever possible, the ethnomusicologist should obtain authority to negotiate on behalf of the community, so that he or she has the power to decide when and how the music embodied in the field recordings is disseminated. This authority may eliminate the angst which occurs when the ethnomusicologist is approached by a third party, but cannot return or communicate with the originating community about the deal. The authority can be drafted as broadly or narrowly as the community desires. The substance of this dialogue should be memorialized, either in writing or on a recording, and should be deposited at archives with the field recordings.

At the moment, copyright loopholes remain unplugged. With a little foresight, however, educated ethnomusicologists can at least construct substantial barriers to frustrate the complete exploitation of the cultures they study. As a field, ethnomusicology must be prepared to meet the business world head to head.

#### NOTES

1. The author would like to thank the following individuals: Dieter Christensen, for extensive support, input, editing beyond the call of duty; Ellen Koskoff, Amy Stillman and Joseph Lam and Bonnie Wade for providing inspiration and during the research's raw beginning; and Peter Cramer, whose translation of the Brazilian legislation from Portuguese to English made its inclusion possible.
2. By the term "Western music," the author is referring to the artistic lineage stemming from the European court music. "Non-Western music," refers to music which primarily evolved from other sources.
3. Artistic works which enjoyed early copyright protection in England were: cloth design, 1787; sculpture, 1798; drama, 1833; lectures, 1835; and foreign books, 1838. (Gasaway and Wiant 1994:27-28).
4. Sony Music (Japan); Time Warner (United States); Phillips, N.V. (Netherlands); Thorn/EMI (United Kingdom); Bertelsman, A.G. (Germany); and, Matsushita Electronics, Inc. (Japan). (Standard & Poors, p. L33).
5. See, the Articles of Incorporation of the Pygmy Fund, 8 June 1977: 1 (on file as a public record with the Secretary of State of California).
6. The samples of African music are credited as being taken off of two albums: (1) track 4, "Marilli", of Africa: Ancient Ceremonies, Dance Music & Songs of Ghana, Elektra records, which was a girls' song from Yeji, Ghana, and (2) tracks 1 and 2 of Polyphony of Deep Rain Forest, Ethnic Sounds Series Vol. 4. The album fails to credit the "Rorogwela" Lullaby, from the album, "Fataleka and Baegu Music from Mailata," Auvidis-Unesco, 1973/1990 D 8027. This lullaby was sampled in track 2 of *Deep Forest*, "Sweet Lullaby," the album's most commercially profitable track. (Letter from Hugo Zemp to Sherylle A. Mills, dated June 12, 1996).
7. Although the drafters of the Constitution distinguished between "useful" and "useless" arts, American courts have made no distinction between the two, rendering this preference irrelevant. (Nimmer 1995:1-44.31).

8. 412 U.S. 546 (1973). Direct legal citations in this article will utilize standard legal citation form. "412" denotes the volume number; "U.S.," the case reporter; "546," the page number in the volume; and, "1973," the year of the court decision. Statutory law follows a similar form, with the statutory title number, followed by the statutory code, and the section of the title, e.g. 17 U.S.C. § 101.
9. *Goldstein*, 412 U.S. at 555.
10. 422 U.S. 151 (1975).
11. *Twentieth Century Music Co. v. Aiken*, 422 U.S. at 156.
12. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884).
13. *Goldstein*, 412 U.S. at 561.
14. *Feist Publications v. Rural Telephone*, 499 U.S. 340 at 346 (1991).
15. *Feist*, 499 U.S. at 347.
16. 17 U.S.C. § 1101 and 18 U.S.C. § 2319A.
17. 17 U.S.C. § 1101 (civil liability); 18 U.S.C. § 2319A (criminal liability).
18. *See*, 18 U.S.C. § 2319A; 17 U.S.C. § 1101; 17 U.S.C. § 502-505.
19. 17 U.S.C. § 101.
20. 17 U.S.C. § 108.
21. 17 U.S.C. § 108(d).
22. 17 U.S.C. § 108(e).
23. 17 U.S.C. § 107.
24. 17 U.S.C. § 115.
25. In 1984, the World Intellectual Property Organization drafted the Draft Treaty for the Protection of Expressions of Folklore Against Illicit Exploitation and Other Prejudicial Actions. In the preamble, the draft treaty asserts that folklore should be protected because it is the "universal heritage of mankind."
26. The "Indian Statute," Legal Bill No. PL2057/91.
27. Background information concerning Brazil's intellectual property amendments including the public law number, was obtained from a letter dated July 26, 1995 by Juliana Santilli, formerly from the Nucleo de Direitos Indigenas, to Sherylle A. Mills.
28. PL 2057/91, arts. 31 and 35.
29. PL 2057/91, art. 31.
30. PL 2057/91, arts. 37 and 38.
31. PL 2057/91, art. 38, § 1 and § 2.
32. PL 2057/91, art. 34.
33. PL 2057/91, art. 34.
34. Although a second copyright convention exists, the Universal Copyright Convention, it does not address indigenous music.
35. "National treatment" assures that foreign citizens will enjoy the same level of legal protection as a nation's own citizens.
36. The "moral right" is recognized in many Western countries, but not the United States. A moral right is an author's inalienable and perpetual right to prevent the destruction or mutilation of his or her work. The right survives the sale of the work or subsequent copyrights. The moral right is inherited by the author's heirs.
37. Recent case law suggests that the registration of a copyright in a "collection" of songs is sufficient to protect each individual song in the collection.

## REFERENCES CITED

- Appelbaum, Harvey M. and Lyn M. Schlitt  
 1995 *The GATT, the WTO, and the Uruguay Round Agreement Act: Understanding the Fundamental Changes*. United States: Practising Law Institute, 912 pp.
- Billboard  
 1994 Music Charts: Top Albums, 11 June 1994.  
 1993 Music Charts: Top Albums, 20 November 1993.  
 1994 Sony: Local Repertoire Responsible for Gains Across Europe, In Brazil, 14 May 1994.  
 Borzillo, Carrie  
 1994 U.S. Ad Use Adds to Commercial Success of Deep Forest. *Billboard*, 11 June 1994.  
 Bowker, Richard Rogers  
 1912 *Copyright: Its History and Its Law*. Littleton: F.B. Rothman, 1986.

- Brown, Jerry D.  
1995 "U.S. Copyright Law After GATT: Why A New Chapter 11 Means Bankruptcy to Bootleggers." *Loyola Entertainment Law Journal* 16:1-65.
- Cooper, Carol  
1994 Bicultural Vocals with an Edge. *Billboard*, 11 June 1994.
- Copyright Act  
1995 *U.S. Code*, vol. 17, secs. 101-115.
- Firth, Simon  
1987 "Copyright and the Music Business." *Popular Music* 7(1):57-75.
- Gasaway, Laura N. and Sarah K. Wiant  
1994 *Libraries and Copyright: A Guide to Copyright Law in the 1990s*. Washington, D.C.: Special Libraries Association, 271 pp.
- General Agreement on Tariffs and Trade  
1986 *Main Text*. Geneva.
- Holbein, James R. and Gary Carpentier  
1993 "Trade Agreements and Dispute Mechanisms in the Western Hemisphere." *Case Western Reserve Journal of International Law*. 25 (Summer): 531-570.
- Holden, Stephen  
1990 The Pop Life. *The New York Times*, 21 November 1990, Section C.
- Indian Statute  
1991 *Brazil Legal Bill No. Pl 2057/91*. (On file with the author).
- Janis, Mark W.  
1993 *An Introduction to International Law*. United States: Little Brown & Company, 390 pp.
- Knoedelseder, Jr., Wm. K.  
1987 Popping Off; Simon and South Africa: Why the Fuss? *Los Angeles Times*, 18 January 1987, Calendar section.
- Moyle, Richard  
1979 *Songs of the Pintupi: musical life in a central Australian society*. Canberra: Australian Institute of Aboriginal Studies, 183 pp., illus.
- Ndoye, Babacar  
1989 "Protection of Expressions of Folklore in Senegal." *Copyright* 25:12.
- Newman, Frank and David Weissbrodt  
1990 *International Human Rights: law, policy, and process*. Cincinnati: Anderson Publishing Co., 812 pp.  
1990 *Selected International Human Rights Instruments*. Cincinnati: Anderson Publishing Co. 113 pp.
- Nimmer, Melville M. and David Nimmer  
1995 *Nimmer On Copyright: A Treatise on the Law of Literary, Musical, and Artistic Property, and the Protection of Ideas*. United States: Matthew Bender, 6 vols.
- Patterson, Gardner and Eliza Patterson  
1994 "From GATT to MTO." *Minnesota Journal of Global Trade* 3:35-59.
- Porter, Vincent  
1991 *Beyond the Berne Convention: copyright, broadcasting, and the single European market*. London: J. Libbey, 128 pp.
- Puri, K.  
1992 *Australian Aboriginal People and their Folklore*. Queensland: University of Queensland, 48 pp.
- Sanchez, Michael and Eric Marquet  
1995 *Boehme*. Sony Music compact disc No. 67115.  
1992 *Deep Forest*. Sony Music compact disc. No. 57840.
- Seeger, Anthony  
1987 *Why Suyas Sing: a musical anthropology of an Amazonian people*. New York: Cambridge University Press, 147 pp.  
1992 "Ethnomusicology and Music Law." *Ethnomusicology* 36(3):345-359.
- Simon, Paul  
1992 *Rhythm of the Saints*. Warner Brothers Cassette No. 4-26098.  
1986 *Graceland*. Warner Brothers compact disc No. 25447-2.
- Sprague, David  
1995 Deep Forest Mines Global for Second Set. *Billboard*, 18 March 1995.
- Standard & Poor  
1994 *Standard & Poor's Industry Surveys, October, 1994*. New York: Standard & Poor's.

Stewart, Stephen

1983 *International Copyright and Neighbouring Rights*. London: Butterworths, 740 pp.

Tai, Linda W.

1995 "Music Piracy in the Pacific Rim: Applying a Regional Approach Towards The Enforcement Problem of International Conventions." *Loyola Entertainment Law Journal* 16:1-65.

UNESCO and WIPO

1992 *Copyright Laws and Treaties of the World*. Paris, 1992.

United States Department of Commerce

1994 *U.S. Industrial Outlook*. Washington D.C.: The Department.

Van Harpen, Robin L.

1995 "Mamas, Don't Let Your Babies Grow Up to be Cowboys: Reconciling Trade and Cultural Independence." *Minnesota Journal of Global Trade* 4:165-194.

Von Sturmer, John

1987 "Aboriginal Singing and Notions of Power." In, *Songs of Aboriginal Australia*, ed. Margaret Clunies Ross, Tamsin Donaldson, and Stephen A. Wild. Sydney: University of Sydney.

Wallis, Roger and Krister Malm

1984 *Big Sounds From Small Peoples: The Music Industry In Small Countries*. New York: Pendragon Press, 419 pp.

Zemp, Hugo

1996 "The/An Ethnomusicologist and the Record Business." *Yearbook for Traditional Music* 28:36-56.