MUSIC, SPIRIT POSSESSION AND THE COPYRIGHT LAW: CROSS-CULTURAL COMPARISONS AND STRATEGIC SPECULATIONS

by Martin Scherzinger

Now should be the time that gods emerge
from things by which we dwell . . .
Rilke

Possession: Occupation by spirit, demon, etc./
Legal ownership . . .
Oxford English Dictionary

Introduction

Musicologists are beginning to be disturbed by cases of Western artists using music from other parts of the world for profit. For example, in the *Yearbook for Traditional Music,* Hugo Zemp (1996) critically elaborates the recent case of sampling by two French musicians of a Solomon Islands lullaby that resulted in millions of dollars in profit through CD sales; Timothy Taylor, in his "When We Think about Music and Politics: The Case of Kevin Volans," accuses South African composer Kevin Volans of "appropriating" various "indigenous" African elements in his music without authority (1995:514). Much of the debate about how such cases should be arbitrated has focused on the culturally specific lineaments of the current copyright law — its origins in European book publishing, the signing of the Berne Convention of 1886, and so on — and is thus taken to be inherently ethnocentric. In his article, "The Problem of Oral Copyright: The Case of Ghana" (Frith 1993:146-158), John Collins raises the problem of global copyright protection in the context of "Eurocentric assumptions that a specific art-work or intellectual idea is created by a single or restricted number of individuals who are therefore easily identifiable" (1993:146). Similarly, Simon Frith, in his introduction to *Music and Copyright,* voices a suspicion about the role that copyright law plays in ostensibly protecting artists and publishers from exploitation and shows instead how the law is implicated in economic exploitation on a global scale: "[F]rom an international perspective, copyright can be seen as a key plank in Western cultural and commercial imperialism" (1993:xiii). Thus, according to Frith, the copyright law "is increasingly seen as a weapon used by the multinationals against small nations" (ibid.).[1]

This paper explores the confrontation of copyright rules with various traditionally non-Western notions of music making and offers strategies for negotiating their antagonistic demands. By outlining an interplay between legal, economic and social questions as well as philosophical and aesthetic ones in various parts of the world, I contest the view that the copyright requirements of the law are necessarily ethnocentric just because they were designed for Western capitalist society. For example, this view holds that because, in many traditions, sacred songs are issued forth by ancient spirits

or gods, copyright protection is not operative: such music lacks the originality requirement of the law. In contrast, I argue that such traditional figurations of making music need not self-evidently pass over copyright protection and may even sustain some of the law's underlying historical principles. In part, this is because the invention of copyright protection for music in the nineteenth century was logically implicated in notions of originality beholden to the quasi-divine nature of inspiration that ravished the composer. In other words, a specific metaphysical stance was entailed by the logic of early copyright law. Now, by problematising the idea that songs that stem from, say, the spirits of ancestors are fundamentally different from songs that stem from the spirit of the poet, Idea or muse, this paper gestures towards strategies for legal resistance. Various European romantic views are briefly compared with the musical practice of spirit possession in other parts of the world, with an emphasis on the Shona people of Zimbabwe. The comparisons are strategically aimed to reconstitute the points of affinity and difference between these distant cultural realities in ways that render them more equal before the law. Three models of legal change are then critically assessed in light of these comparisons.

The Problem with Spirits, Orality and Communities

In a valuable collection of articles appearing in the *Yearbook for Traditional Music* (1996) that examine the relations between music that falls outside of the definitive modes of production and the laws governing copyright in a global context, we still encounter presuppositions that unwittingly perpetuate a kind of *subalternization* of "traditional," "indigenous" music (Mills 1996:57). One case in point will have to suffice here: Sherylle Mills, whose article otherwise exhibits an exemplary vigilance to the "power discrepancy between traditional communities and the multi-national music industry," argues that the copyright requirements under U.S. law — that music "have a specific author . . . be captured on a tangible medium and . . . be original" — are "stubbornly ethnocentric," because they were designed for commercially oriented societies and are indifferent to "non-Western" understandings of music (ibid.:80,63). She carefully substantiates her argument with examples from various quarters: "the Pintupi," for example, "believe that songs are captured, not composed, by a man's spirit when he sleeps," and thus such composition cannot be promoted "through the United States' method of financial incentives" (ibid.:62). She also writes, "the Suyas would not designate th[e] man [that can teach new songs by mimicking his spirit's singing] as the 'creator' of songs" (ibid.:64), and thus the music is compelled into the public domain. More generally, Mills claims that "in many traditions, sacred songs stem from ancient spirits or gods . . . The job of the keepers is to accurately reproduce the ancient song, not necessarily to add 'original' intellectual modifications" (ibid.:65), in effect denying copyright for lack of an originality requirement. In sum, because the author, if there is one at all, is often a community of musicians, because the tangible medium of the music is in many cases orally transmitted, and because the music is frequently a reproduction rather than an invention, non-Western music becomes uncopyrightable.

Let me focus on the African case. Without yet taking up the rich and important field of discursive affinities these apparently foreign views of music have to various *Western* conceptions of music, particularly European romanticism in the age of industrialized capital, this kind of argument remains beholden to a somewhat static and observably different view of non-Western cultural units, to a non-Western music that is "built by . . . distinct, individual communit[ies]" (Mills 1996:71). The communitarian emphasis sees the African landscape as an ensemble of households joined in a nonmarket ethos of kinship relations. In this view, the market is regarded as an external and artificial imposition, and so these communities, necessarily epistemologically Elsewhere, are cast in an aura of noble savagery at various points in the text. Hence, "[t]he problem of protecting the music that originates from primarily oral traditions remains particularly *poignant* because there is no tangible representation of the music 'to own'" (emphasis added, ibid.:61). An ethos of ownership and profit-oriented business threatens to invade a native ethos of profit-indifferent sharing. Now, although I do not immediately find this idealization problematic in itself, inscribed at the very inception of this formulation is a paternal *West* that is unwittingly granted a nuance and differentiation unimaginable in the non-West. Laws passed in industry countries, for instance, are advanced as the best protector of non-Western music, because "laws within industry countries [where offending recordings mainly occur] will enable the efficient policing of infractions . . . [and] by controlling the dissemination through the industry countries' laws, the frictions often found between traditional communities and their national governments are entirely circumvented" (ibid.:80-81). And ethnomusicology, advanced as playing a crucial role in the more benevolent side of the Western practice of policing, is aligned with those forces that "lie outside of the profit oriented business world's influence" — an influence that ethnomusicology must also "be prepared to meet . . . head to head" (ibid.:78,83). The passing of laws informed by sensitive ethnomusicology is presented as the good side of a cultural world that also has its bad, profit-driven side.

But are we protecting Africans from profit-makers or profit-makers from Africans? The possibility that anthropological description might itself be a site of superstructurally significant ideological work is not entertained in this view. Nor the possibility that the communitarian view of the African landscape (to be protected) is potentially laced with neo-colonial thinking. Mahmood Mamdani argues, for instance, that "[m]ore than anywhere else, there was in the African colonial experience a one-sided opposition between the individual and the group, civil society and community" (1996:22). Mamdani argues that pluralizing the landscape into distinctive communities, thus channeling a racial division into ethnic tensions, was one of the most brilliant and effective modes of colonial control. This is because communal custom was state-ordained and enforced through the institution of Native Authorities (in charge of managing the local state apparatus) in many parts of Africa. That is, colonial authorities defined distinctive laws for ethnic groups (or tribes) with distinctive characteristics referred to as custom, and, in effect, fractured the ranks of the ruled along an ethnic divide. With-

out denying that there was a tribe-like dimension before colonial conquest in Africa, the construction of ethnic homelands, the forced removals and the system of pass laws in apartheid South Africa, aimed at curtailing movement across tribal lines, should suffice to illustrate the colonial investment in inventing and maintaining distinct tribal identities.

I am not saying that the resonant relationship between the notion of "distinct individual communities" (Mills 1996:71) and the decentralized despotism of colonial Africa necessarily holds outside of a specific contextual determination today. Nor am I saying that the communitarian view is no more than an orientalist imposition by Westerners on Africans. As Krister Malm points out, there was a strong African lobby to change the stipulations of the Berne Convention to include collective rights along with individual rights at the 1997 *World Intellectual Property Organization* (WIPO) conference on folklore and intellectual property in Thailand.[2] Delegates from African governments largely argued, in step with Mills, that the musical creations of Africa were not protected by the international legal instruments because these creations were community-based and conceived collectively. Hence they called for a reconsideration of the law's emphasis on individual authorship. While the account to follow takes a different view, I do not wish to undermine this effort as much as supplement it with an alternative that may bear the weight of the above historical reminder. What I am saying is that the call for a legal reformulation of copyright protection to include collective effort proceeds with a dichotomy intact and then reckons with it. Such a tactic risks shielding from view a certain kind of historical critique of the legal apparatus and therefore also the strategic option of transformatively inhabiting it. Let me explain.

Reconsidering Spirit Possession: The Originator is/in the Keeper

To begin with, Mills' formulation of the copyright problem does not consider the possibility that the copyright laws are themselves based on some weird premises and miraculous leaps of logic *within* their felicitous cultural enclosure. For example, we do not have to read about the death of Roland Barthes' author to recognize that the legal formulation of the author requirement, "he to whom anything owes its origin," is factually fantastic and theoretically naive (Mills 1996:63). Nor do we have to track the presence of, say, Ludwig von Beethoven in Franz Schubert, Frederic Chopin in Johannes Brahms, nor to hear the quotations in Wolfgang Amadeus Mozart, Gustav Mahler or Charles Ives, to recognize that originality is a highly contested idea in the West. In fact, the peculiarly Western development of postmodernism precisely celebrates eclectic quotation and reference to other music as one of its chief modes of representation. If anything, current Western composition, precisely the kind protected by copyright law, is probably more conscious (than either African composition or than it was before copyright) of an artistic situation that is always already intertextual. And yet, when Luciano Berio takes extracts from Mahler's Second Symphony in *Sinfonia,* or when John Zorn imitates Mozart's B-flat Major Sonata in *Forbidden Fruit,* in the very name of relinquishing authorship, Berio and Zorn continue to fulfill the author requirement for copyright. At the very least, this require-

ment for copyright in the West is not as secure as the legal formulation about origins would have it. Now, by emphasizing Africa's difference via the notion of the communal collective, the disconcerting aspects of the law's own terms are left unmarked.

But there is a deeper mischief afoot if we consider historically less problematic cases. The idea of an autonomous composer of an original work can probably be traced to nineteenth-century romantic assumptions about imagination, genius and inspiration. The writings of Johann Gottfried Herder, August Wilhelm von Schlegel, Christian Friedrich Michaelis, Arthur Schopenhauer, Peter Lichtenthal, Gustav Schilling and even Friedrich Nietzsche are abundant with references to the almost divine intervention that inspires the composer. Take Schilling's story about the origin of beauty and the beautiful *(Schönheit und Schön)* in 1838: "Some higher spiritual power must at the same time give life to the . . . [musical] form; so it is that morality and truth are not excluded from the creation of true beauty" (le Huray and Day 1988:315). Like the harmonically resonant cosmos of old, the romantics reassert a metaphysical priority to the divine powers begetting the creative moment. Herder thought that artists never invented musical sound, but discovered it in and then brought it forth or coaxed it out of an ineffable and living natural sphere that logically preceded the actual composition (le Huray and Day 1988:188). Arthur Schopenhauer believed the inspired composer was released from temporal, spatial and causal determinations, transported out of his normal relation to the *Will,* and entranced by the *Idea,* finally becoming one with it (ibid.:222). Hugo Wolf, in his settings of poetry to music, was believed to be possessed and controlled by the spirit of the poet; Franz Liszt thought instrumental music released us from our customary horizons and put us in touch with the inaccessible and the infinite (ibid.:365).

It is worth noting that this metaphysical aspect is often unevenly handled in recent critical commentaries on the cultural politics of autonomous authorship. In her book *The Author, Art and the Market* (1994), Martha Woodmansee also links the aesthetic autonomy principle with an emergent "theology of art" (1994:32) and shows how various pivotal nineteenth-century theorists of art were deeply influenced by a religious model. For example, in his attempt at a general theory of the arts, Karl Philipp Moritz draws on his German Pietist background, "which posited absolute *self-sufficiency,* or freedom from dependence upon anything external to Himself, as a condition of the pure perfection of the Deity" (1994:18). While Woodmansee recognizes the connection between religious doctrine and the subordination of all "practical considerations to the perfection of [the artist's] work" (1994:20) at one level of the argument, it is ignored at another. Where it is recognized, it argumentatively demonstrates "the interests in disinterestedness" (1994:11-33) in art, newly figured as a "(supreme) virtue" (1994:32) instead of as instrumental. Thus we are alerted to a kind of religious ideology that undergirds apparent disinterest. Elsewhere, however, Woodmansee distinguishes the romantic artist from the craftsman of the Renaissance and neoclassical period on the grounds that he was always a "vehicle or instrument . . . a manipulator of predefined strategies," and, if inspired, "the

subject of independent forces . . . higher, external agency . . . or divine dictation" (1998:36-37). The religious mandate secures the preordained instrumentalism of pre-romantic conceptions of art as if it had been evacuated in the more self-sufficiently inspired romantic conception. This is a quite different argumentative situation.

Perhaps the confusing role of religion in Woodmansee's account can be explained in the following way. Although the source of divine inspiration was internalized by some theorists in the late nineteenth century (notably Johann Gottlieb Fichte in literature and Eduard Hanslick in music), the founding moment for authorship rested on a metaphysical conception of inspiration that involved possession of some higher spiritual power. This view became more, not less, widespread in the romantic age, even if it drew on certain seventeenth- and eighteenth-century precedents. Schlegel's account of the "origin and spirit of *romanticism*" rested on a religious dimension that "aspired to a higher perfection than that which could actually be achieved by the exercise of [one's] own faculties" (1988:196-198). Romantic art required the intervention of a "superior wisdom" if it was to transcend the limited perfection which Schlegel attributed to the art of the ancient Greeks and offer us instead (via "contemplation of the eternal") insight into "our real existence" (1988:198). For Herder too, the defining moment in the emancipation of music from outside constraint (from "spectacle, dance, mime, and even from the accompanying voice") was *"religious awe"* — a condition best approximated by voiceless, gesture-free, wordless and pure *"sounds"* (1988:192). Far from a condition of self-identical autonomy, then, the artwork required this extra "*something* [to] free [it] from all external control" (emphasis added, 1988:192). Paradoxically, the exemplary romantic artwork was thus incomplete in itself, even giving an "appearance of imperfection" in Schlegel's language, and the necessary supplemental dimension (or "mysterious alliance") could not be captured in ordinary terms (Schlegel 1988:198). In short, the aesthetics of autonomy were deeply implicated in a new principle of anagogic transformation on the levels of both composition and reception, and it was music's apparent insufficiency that secured its autonomy. Even in Hanslick's more purely formalist aesthetics, apparently shorn of religious dimensions, we read about the metaphysical and symbolic significance of music in its "reflection of the great laws of the world" (Bond 1997:415). Interestingly, references of this sort were omitted in subsequent editions of *Vom Musikalisch-Schönen,* so that Hanslick's later musical work began to exist in an abstract realm of self-sufficient signification. But the logic of the argument — the effort to strip the work of reduction to ordinary extramusical terms — remained the same.

Timothy Taylor, in his article on Kevin Volans, also identifies the rise of the autonomous author and artwork in such mystical romanticism, even if he completely overlooks the crucial moral dimension of the romantic aesthetics of autonomy, reducing it instead to having "no use or function" (1995:517). Thus Taylor explains that in the "Western cultural system," the artist is the "hyper-individual who is thought to be in a position to offer great insights into the human condition"; composers are "not just individuals, but super-individuals, exceptional special, even divine" (1995:516-17).

While this may be an exaggeration of the case, particularly in terms of twentieth-century meanings of the "Western cultural system," it does alert us to the historical determinants of the idea of original creation as understood in current copyright law. While the spiritual dimension of inspiration was more prominent in elaborations by nineteenth-century commentators on aesthetics than it is today, the historical glance reminds us of the irreducible metaphysical leap of faith required to identify the author — "he to whom [some]thing owes its origin" — in general, and thus brings out the religious perspective lodged within a current legalistic, secular frame (Mills 1996:63). In other words, if creation is to fit the "originality" requirement, it must not derive from some object already in the world, but from out of the blue — whether this metaphysical sky is understood as substantive, like the faith in the Idea, nature or the muse in the nineteenth century, or whether it is empty of substance, like the faith in nothing but origins, which has come to the fore in the twentieth century (the more difficult thing to believe — the greater faith — precisely because it evacuates substance).[3]

Now, it is not the faithful leaping that concerns me here; I do not want to risk scaring off the spirits that possessed Wolf, not can I imagine a place of no leaping, but I do wonder how this divine realm, which we cannot know in the ordinary way, can be understood *better* when it is (so-called) culturally different from the West. Why do the Shona *masvikiro* (rain-making) spirits of Zimbabwe that possess us through the music and song of the *mbira dza madzimu* (*mbira* of the ancestral spirits) necessarily behave differently from those of Europe that possess us through the music and song of the romantic piano? If the physical world is epistemologically easier to access than the metaphysical, and if *our* physical world is easier to access than someone else's, by what miracle did we know other people's spirit behavior well enough to recognize that theirs was *substantially* different from our spirit behavior? Beyond the fact that this question is inherently unanswerable from the limited vantage of the not-possessed, our spirits necessarily recognize current national borders (contingent and worldly as they are) in this imagining. Even if we miraculously know that our and their spirit behaviors *are* different, this is not a knowledge advanced by the founding romantic tale.

Reconsidering the Collective: The Individual is/in the Community

This is because the disinterested attention that was to characterize the emerging aesthetic autonomy of the nineteenth century eliminated the private point of view in the name of humanity at large. Already with Jean-Jacques Rousseau (le Huray and Day 1988:90) and David Hume (1875:154), we find an aesthetic judgment that was distinguished from personal sentiment, and involved a faculty of taste that demanded a particular kind of attention to the aesthetic object — an appropriate serenity of mind, delicacy of imagination, and so on. Indeed, to reach *a standard of taste,* Hume sought "a rule, by which the various sentiments of man may be reconciled . . . a decision afforded, confirming one sentiment, and condemning another" (1875:154). For Immanuel Kant, laying down the conditioning ground for the aesthetic judgment also included such a universalizing principle. His account aimed for objectivity based on an essentially subjective (now transcendental) experience by laying out the logical form of this experience. One thus made an

aesthetic judgment collectively as a member of humanity, not merely as an individual. And the intersubjective component involved more than merely assenting views; it was both logically necessary and universal (Kant 1987:41-95). Herder, too, emphasized not only the universality of the aesthetic experience, but also the power of the aesthetic to unify mankind universally. Contemplation and appreciation of works of art witnessed "[p]eoples and eras vanishing before our eyes," or put us in contact with "that ineffable, living ideal: *the ideal that extends to all peoples and ages,*" more specifically in the case of music, that which "drew forth a response from the entire human race; it is *harmonious movement*" (1988:187-190). Later romantics also took up this communal theme — the universalisability principle — in their aesthetic schemes. For Schiller, the aesthetic experience was a schematic analog of the moral domain, and the political community was microcosmically reflected in aesthetic harmony. Even Wagner's reading of Schiller's "An die Freude" in Beethoven's Ninth Symphony stressed the social dimensions of the work, through its promise "[i]n the transport of Joy . . . of *Universal Brotherhood*" (Wagner in Cook 1993:74). Wagner's music drama *Die Meistersinger* dramatizes the limits of artistic rules when they are stripped of the spirit that guides the musical tradition of a *Volk* (folk). While it is true that both Wagner's *Volk* and his universal brother were deeply implicated in a politics of exclusion, in principle his position involved a moral transfiguration that posited the universal at the expense of the personal.[4]

The reason for this checklist of ideas in the late eighteenth and nineteenth centuries is not only to remind us that the autonomous aesthetic of the nineteenth century was charged with moral dimensions, but that the ineffability of this aesthetic evacuated the purely subjective, invoking instead a universal community that cut across national borders. Thus, if we are claiming a fundamental difference between other people's spirit behavior and our own, it will not do to hinge our rationalizations on the romantic version of things aesthetic, for this version largely posited an *a priori,* and thus universal and sometimes explicitly trans-cultural, *sameness* in the aesthetic encounter. Moreover, the seemingly autonomous romantic artist is no mere individual, but, in his representation of the self as a member of humanity, has a communal responsibility towards mankind. In other words, far from mere autonomy in every respect, there was a communal (and thus a moral) component lodged at the center of romantic aesthetics. The very ascription of the term "beautiful" interfaced the "good" and the "true."

However, this crucial component of authorial autonomy is not marked in the law that requires a specific author for copyright protection. As long as the author is identifiable, s/he is eligible for legal protection. The unmarking of the individual as representative-of-humanity-at-large would not matter much if the seemingly *communal* constitution of the non-Western musical object were left equally unmarked. But when it comes to music from the outside, the communal component is taken as an obstacle to authorship. An interest in community, and even in mankind at large, is shared by both cultures, and yet, because we only notice this interest in other people, we use this partial glance to treat their music differently before the law.

In fact, it is not hard to show that the universal insight afforded by, say, Herder's aesthetic experience closely resembles the possession and transformation of, say, the Shona spirit mediums at a *bira* ceremony in Zimbabwe in the face of the music of the *mbira dza vadzimu.* Both claim to offer moral insight into the human condition; on this very basis, the Shona spirit mediums are capable of moderating social relations ethically, of mediating disputes and curing illness in the real world. It is also not hard to show that long gone are the days when one did not identify the names of the originators of music from elsewhere. Kofi Anyidoho and Fui Tsikata corroborate this point in their book *Copyright and Oral Literature* (1988). For example, an unwritten copyright seems to pertain to Somali as well as to Ewe poetry, while the Eguamala dance drumming of Nigeria involves secret rehearsals of a group along with an identifiable composer for two years before it is publicly performed. Similarly, in Zimbabwe, while there is no literal equivalent for "author"in the Shona language, *mbira* players and listeners often talk about the characteristic styles of various people, their ability to conjure the spirits, and so on. Sometimes composers' names are appended to the titles of various songs: *Nyamaropa yavaNhowe* or *Shumba yaNgwasha,* for example.

Reconsidering Originality: Invention is/in Tradition

Moreover, it is as traditional in most parts of Africa to invent music anew as it is to reproduce known patterns of sound. In *African Rhythm and African Sensibility,* John Miller Chernoff's informant Ibrahim Abdulai describes the concept of *m-pahiya* in the drumming traditions of Ghana in terms of invention: "We can call [an] increase *m-pahiya*. So when you make some music and you add something to it, it means you have increased the whole music: you have added something which was not in the original music in order to keep up the music" (1979:64). The case of Zimbabwe is no different. While the songs of the *mbira* are often said to be passed on in dreams, inherited by the ancestors, and so on, the spirit possession of mediums does not occur through a performance that merely reproduces traditional patterns.[5] Not every *mbira* player is capable of calling the requisite spirits on every occasion, and must, in order to conjure the spirit successfully, play as the spirit directs. In short, s/he must play in a state in inspiration, s/he must take the patterns elsewhere. This is how Keith Goddard, director of the Kunzwana Trust in Harare, and Samuel Mujuru, *mbira* player from the high-density suburb Glen Norah "A" in Harare, explained to me that *mbira* cannot be learned through notation alone. According to S. Mujuru, to invoke the spirits successfully, something spiritual, something that cannot be explained in everyday terms, must happen to the *mbira* player. And yet the role of the inspired Zimbabwean artist, indeed the author (like the romantic, involved in a communal function, to be sure), is arbitrarily absented from our *legal* requirements for copyright.

The role of tradition in the European nineteenth century should also be investigated in this regard, for, while the genius demanded freedom from rules, it was also crucial to intimately acquaint oneself with them precisely in order to then leave them behind. Like the "big tunes" of the *mbira dza vadzimu* repertoire (*Nhemamusasa, Nyamaropa, Nyamamusango,* etc.), *tradition* in Eu-

rope was posited by a series of exemplary works against which the composer set himself up in order to do something different. Thus, in both cases, one learns via the principle of exemplarity rather than rule-boundedness, and creates a singular and unique musical rendition/work that suits a particular social/historical situation. Already in Kant we have a genius theory that was guided by *Geist.* Kant, in fact, made a distinction between *"Nachahmung"* (to imitate) and *"Nachfolgen"* (to follow in the example of) in order to dramatize the role of the genius and his necessary relation to the great works of the past (1987:146-147). The crucial role played by tradition in creation is taken up by hermeneuticists from Friedrich Schleiermacher to Hans-Georg Gadamer. Gadamer located hermeneutics in between the traditionary text's "strangeness and familiarity to us" (1994:294).

The point of orienting an understanding of tradition in this way is less to affirm its affinity with Zimbabwean tradition *per se,* and still less to affirm it as "true," but more to mark how different aspects of this coupling of strangeness and familiarity (from the perspective of historical agents) are emphasized before the law today, according to differences in repertoire. That is, when an African *mbira* player invents music indebted to canonic "big tunes," the purported familiarity of the resulting music with the past is underscored — it is labeled "traditional." But when a Western composer does something similar in principle, the strangeness and novelty of the work is emphasized — it is labeled "original" — even as the very notion of tradition in which the work operates necessarily involves the familiarity of tradition.

Interrogating Notional Cultural Oppositions

The same kind of thinking – in – shorthand separates human beings into non-Western *groups,* on the one hand, and Western *individuals,* on the other. It separates their stylized patterns of behavior into non-Western *ritual* as opposed to Western *culture,* their creative activity into non-Western *craft* as opposed to Western *art,* and their music into non-Western *social activity* as opposed to Western *aesthetic autonomy.* Barring some *ad hoc* reconstruction, our academic disciplines of study today are also divided by this very border: anthropology specializes in societies organized according to tradition, while sociology deals with rational civil society; ethnomusicology examines music as cultural practice, while musicology and music theory respect music's immanent aesthetic protocols. How do we decolonize ourselves from these labels and shorthands and their supporting interpretive paradigms? Not, I want to argue, by benevolently criticizing our ethnocentricity for not sufficiently respecting cultural differences in our laws.

To return the argument to the comparison under discussion and the uneven behavior of copyright law, let me point out other, more specific, affinities between romantic and *dza vadzimu* aesthetic practices. These are easily more memorable than the differences. Like the spirit mediums at the *bira* ceremonies in Mashonaland, for example, Schopenhauer's anagogic transfiguration in aesthetic contemplation happens quite suddenly. In both cases, there is no mistaking the moment that the transition from an ordinary into a different reality takes place; and in both cases, the one caught in the jolt loses her/himself, becoming a painless, timeless *subject of knowledge* (in one

case reporting the words of the ancestors). In both cases, s/he will no longer remember this knowledge having reentered normal time (in one case rendering the aesthetic possession as one that cannot be spoken about); and in both cases, the ineffable possessing agent is not actually a God, but a spirit, like that of a poet in one case, or of an ancestor in another, or even a demon in still another. (Gustav Nottebohm, for example, thought Beethoven's sketchbooks revealed Beethoven wrestling with demons in an effort to channel his inspiration.) How do we know that those who capture songs by a spirit, those who teach new songs by mimicking the spirit's singing, or those whose sacred songs stem from ancient spirits or gods are, *legally speaking*, more like "keepers" and "reproducers" of music (Mills 1996:63-65), while those in the north who are possessed by the poet's spirit or transfigured by the divine (even if the God of their ostensibly felicitous medieval forebears has died) are more like "authors" and "originators" who can claim copyright? Why do the angels that direct Stockhausen's music (according to the composer in a 1992 interview on *West Deutsche Rundfunk*) not render him a medium or a keeper as well? Alternatively, why do the spirits that direct Manjembe's music (according to the composer in a personal communication in Harare in 1996) not render him an originator or an author as well?

Here I cite two accounts of compositional performance. Both are beholden to playing as a spirit directs: "If [I] play in a way . . . which is faithful to its spirit . . . the very sounds will transport you to those high valleys that lie close to the bare, reddish rocks that lie beneath the cold sky and the scorching sun," and, "When I [play], I don't know what is going to happen . . . the music goes by itself, taking me higher and higher until I end up crying because the music is so much greater than a human being can understand." Without telling you about the nations to which these performers belong, the languages they speak, or the color of their skin, I now invite you to tell apart the one whose spirit makes him an originator and the other a keeper, and thus payable or not before the law. I invite you to do this not because I am looking for the (or even an) answer, but because the question has already been settled, the payments and non-payments already made.

Situating the Spirit Producing Difference

It bears repeating that it is the very logical priority of the metaphysical realm — the unrepresentable, unsayable, immaterial — that vouchsafes the not-of-this-worldness, the not-derived, and thus the originality of the legal copyright requirements. The music critic Bayan Northcott puts it this way: "[Once composers] emerged as free professionals in competition with one another, the search for novelty was bound to assume new urgency, and [they] could no longer allow themselves to fall back upon the kind of prefabricated materials that had enabled their Baroque and Classical predecessors to turn out music for the moment with such facility" (Chanan 1994:154). Thus the romantic emphasis on novelty of expression, frequently articulated in terms of a freedom and autonomy from rule-boundedness and a link instead with the metaphysical, was entailed by the logic of copyright law. But Mills' text paradoxically advances the remote metaphysics of other people to illustrate the opposite: "[in] many

non-Western or traditional communities . . . [t]he song controller of each specific generation is not considered the 'author,' or creator, of the song . . . [r]ather, the controller is more akin to the song's 'keeper'" (1996:63). And because "the songs frequently owe their origin to either spirits or ancestors," these songs lack the basic author requirement for copyright protection (ibid.). Hence, the argument goes, the law is ethnocentric and should be changed.

If this is true, it may be less because the law refuses to recognize the validity of cultural differences than because it refuses to recognize cultural affinities. As John Collins points out, "the whole notion of there being a vast gulf between the non-commercial traditional realm and the modern commercial one is another European ideological construct" (1993:153). Indeed, many of the same intellectuals discussed above paradoxically also helped to invent the very stereotypes informing the copyright debate today. For example, in his *Essai sur l'origine des langues* (1764), Rousseau distinguished the "muted, crude, articulated, monotone, clear" primitive (musical) languages of the North from the "lively, resonant, eloquent, and often obscure" ones of the South (1997:280). For Rousseau, these early musico-linguistic moments or passional voicings were the foundation for distinct regional communities. In cold countries, "where it is miserly, the passions are born of the needs, and the languages . . . reflect their harsh origin," while "the passions of warm climates are voluptuous passions related to love and softness" (1997:279-280). Thus language and music were irreducibly tied to the specific geographical and cultural conditions in which they emerged. Analogously, Herder, who published an extensive volume of traditional music with the title *Stimmen und Völker in Liedern* (1778-79), coined the very concept of *Volksmusik* (folk music) and advanced the notion of distinct ancient non-classical cultures and folk-arts, each of which reflected its own peculiar *Volksgeist* (spirit of the people) (le Huray and Day 1998:186). And Wagner's appraisal of German music in his essay "Judaism in Music" (1869) employed the same paradigm of irreducibly distinct cultural instincts, albeit in a more sinister way.[6]

Let me therefore draw attention to what I will call the *default action producing difference*. In our moments of not-knowing, when we are in the dark (or less than sure) about something concerning someone else, we tend to default into difference — to assume that what we do not quite know cannot be the same. Thus, for reasons *that I cannot know* — I cannot tell them apart from the phenomenon itself — our groping in darkness for others is enlightened by a grammar of difference. In all reasonable likelihoods, our picture of other people is going to be skewed by this default action. The remote cultural world is emerging in a deformed framework, favoring one leg only as it makes its way. No easy walk, said a Xhosa (Nelson Mandela). And in this crippled state, we are pretending not only to walk or run, but to be transported by the very spirits (are they *mudzimu* or some others?) we have come to know intimately when we realized that the law is biased because other people's spirits behave differently. My point is that the obscurity of the default action producing difference reveals that it is a peculiar mindset, a deeply ingrained habit or belief that we do not know how to wish away, caught in the

grip of the most effective propaganda — the one we cannot know. Who is this spirit that possesses us, the one whose benevolence will sever one limb as we walk? *Mufambiro chwabaira,* sound the Shona words: to walk inclined to one side like a thin, sickly person or animal. Not that we are really speaking with any Shona, Xhosa, Pintupi or Suya people; we have recently become too sickly for that, taken a turn for the worse. Their access to the debate is denied, if only because this is emphatically about "[t]he implementation of laws within industry countries" (Mills 1996:80). And, given the insistence on inherently different cultural customs elsewhere, these groups will always remain outside of this kind of legal debate — the customized margin. Unless someone inside listens closely enough to the movements of, say, the *mbira dza vadzimu* so as to become possessed by *mudzimu,* healed of his sickness, transported into painlessness and timelessness, transfigured into a pure subject of knowledge, and then reports the words of the ancestral spirits within modernity. *Now you tell me what is happening here.*

A Nationalism Model

Without trying to divert attention from the undeniable value and import of the essays in the *Yearbook,* a Western engagement on behalf of the (post) colonial subject that is not vigilant about its points of cultural comparison risks embodying a kind of vision informing imperialist discourse. Take Mills' discussion of current domestic approaches for the protection of indigenous music, in particular, the case of Senegal. Here, Article 9 of Law 73-52 of the Senegalese law, designed to protect Senegalese literature and art passed on through generations, declares that "all folklore shall belong originally to the national cultural heritage" (emphasis omitted, Mills 1996:71). A similar approach is used in Ghana, where the government owns the copyright on folklore, as well as in the former German Democratic Republic before German reunification. For Mills, this kind of "nationalization of traditional music, relegating it to government property," seems "inherently flawed" because as man-made creations (and not, say, natural resources "like forests and mineral deposits"), these musics do not belong to the government; they "are no more the nation's 'natural resource' than a handmade shoe or tool" (ibid.:70-71). The last assertion is based on what Mills calls the *classical* definition of the nation. Mills argues that, although the *Bureau Senegalese Droit d'Auteur* (BSDA) specifies that royalty payments are made for "cultural and welfare purposes for the benefit of authors" (ibid.:72), the wording is too vague to identify exactly what kind of benefit is envisaged, and exactly who is eligible for the benefit. In fact, the argument goes, rather than benefiting the "specific originating individuals and communities," a lot of the money is used to sponsor artistic competitions in Senegal (ibid.). Mills explains that "[w]hile a competition may provide some composers with career boosts, other composers may find monetary compensation much more important" (ibid.). We are also reminded that the broad discretion afforded the BSDA via the vague language of the law potentially "allow[s] the denial of usable benefits to politically unpopular communities" (ibid.). In short, the "nationalization" of indigenous music is "dangerous." Instead, "[i]t is important to focus on monitoring the transactions between the originating communities and re-

corders to assure fairly negotiated agreements, rather than asserting authoritarian or paternalistic governmental control" (ibid.).

Without telling us which Senegalese communities are politically unpopular, or even whether there are such communities, Mills points out the authoritarianism and paternalism of one kind of monitoring. At the same time, through a passive voice, she encourages us to overlook the authoritarianism and paternalism of another kind of monitoring — the one "it is important to focus on" — even while this is the very one that has been shown in her larger argument to ethnocentrically favor one community's creative protocols over another. This seems to be a case of being judged innocent while proven guilty, on the one hand, and being judged guilty because not proven innocent, on the other. But, more disturbingly, the *basis* for marking the "dangers," "denials," and "manipulations" of "nationalization" in Senegal unevenly doubles the terms of Western copyright law in contexts for which it was not intended. Witness, for example, how the notion of *incentives* has now appeared to justify both kinds of monitoring in this argument. According to the U.S. Copyright Clause, the purpose of American copyright protection is "[t]o promote the Progress of Science and useful Arts." The incentive-driven rationale is echoed in various cases in various forms, such as to "encourage," to "induce," or to "stimulate" artistic activity. Arguably, this betrays an "underlying disbelief in an inherent 'natural' ownership over music," which is, rather, a "carefully crafted 'artificial' ownership" granted by the law" (Mills 1996:62).

Now, firstly, this is precisely the underlying disbelief that supports the verdict that the Senegalese acceptance of folklore as national cultural heritage is inherently flawed.[7] Thus a specifically legalistic Western disbelief takes on universal applicability — the flaw is inherent, not contingent — in an essay that is otherwise at pains to critique the ethnocentric universalism of the law in light of cultural differences. Logically, this also entails a highly specific understanding of nationhood that is posited as a universal model, despite the historical contingencies, even accidents, that construct this phenomenon. I cannot take up this history here, except to point out that, in this model, while the citizen does participate in various public affairs, culture is regarded as private; indeed, it is no more the nation's natural resource than a handmade shoe or tool. The point is not to criticize the classic liberal democratic model in itself, but rather to alert us to the uneven application of the logic of such cultural universals, however fleeting, in the context of an analysis that aims to be local, differential, and culturally sensitive. Far from logically, universals and relatives jostle arbitrarily for argumentative relevance.

Secondly, Mills interrogates Senegalese nationalization on the basis that the state-sponsored competitions may not necessarily satisfy the composers whose music, in effect, created the fund. Again, the point is that the incentives to artistic activity that are the rationale for competitions in Senegal are figured very differently from the incentives to artistic activity that are the rationale for copyright protection in the United States. While the latter rationale is assumed valid, the former is marked for scrutiny. Indeed, according to the argument, Senegal's approach is "authoritarian and paternalistic," if only because "[some] composers [from Senegal] may find monetary

compensation much more important [than these competitions]" (Mills 1996:72). Western composers are not imagined to have analogous suspicions about the structure of incentives in which they operate, even if there is an air of resignation and cynicism in this account of it.

But there is an added irony in this manner of questioning Senegal's approach. Not trusting that the benefit will accrue to the "specific originating *individuals* and communities" or to those "*composers* [who] may find monetary compensation much more important" (emphasis added, ibid.), Mills' critique draws its energy from exactly the group- or individual-centred authorship that the broad argument identifies as a problem. Why is this individual-centred focus taken as an ethnocentric imposition on other people in one place in the argument, and then as a criterion for criticizing differently organized government in another? More pressingly, why is the modern political dispensation in Senegal not regarded with the same context-sensitivity as those originating communities that should be granted ownership rights over their indigenous music? And why, without elaboration of the historical specifics, are these communities held to be non-aligned with the modern nation-state?

The argument shuttles between two understandings of Africa — the first an idealization, the second a demonization. Speaking of modern Senegal, Mills asserts an authoritarian and paternalistic system of exclusionary politics in a no-nonsense reportorial tone, always without specific historical evidence of actual exclusions. Yet while speaking of indigenous composers, already abstracted out of modernity, Mills describes the poignancy of profit-indifferent musical practices, filled with spirits and dreams, in a tone of respect and admiration. Precolonial Africa is rendered as a place where noble communities roamed freely and without restraint, while modern Africa has descended into tyrannical rule, rife with ethnic tension. This kind of opposition, placing Africa in a double bind, affirms the mysterious past over the present. Thus the former is approached with hyperbolic respect, while modern Africa is challenged with untrusting *realpolitik*.

This is not to say that Senegal's solutions are beyond criticism, but to note that the mechanisms that rationalize our approaches above others are not as even-handed, fair, consistent, self-evident or logical as they may seem at first. The specifics of each case need to be carefully negotiated, without recourse to self-evident dismissals of modern African nations because their communities are assumed to be at odds with the state and because their approaches to ownership are assumed to differ from ours. Both assumptions need to be verified and examined in terms of an overdetermined play of modern cultural values. It may be time for history to move out of the methodological necessity of the above currently presupposed oppositions.

A Self-Determination Model

This raises the general question about the importance of the overall focus of the debate concerning indigenous music and the law. Even though I, like Mills, in some ways personally favor the "self-determination" model recently advanced by Brazil, whereby "money created by indigenous music directly benefits indigenous communities through the Fund for Indigenous Autho-

rial Rights" (Mills 1996:74), it is neither always easy nor desirable, in my opinion, to measure exactly how an indigenous community is constituted. This kind of focus on discrete indigenous communities is probably more a reflection of current American identity politics than of pre-colonial African realities. The question is this: How do we fix the border that encloses an indigenous community? Linguistically? Music-stylistically? Politically? Historically? Geographically?

To take the case of the South African composer Kevin Volans, we might ask: Is Volans a member of the originating community that created the variations on the *mbira* tune "Mutamba" in his string quartet *Hunting Gathering*? How can this be answered? What possibilities have to be set aside for this answer to emerge? Alternatively, is Thomas Mapfumo, whose music is more consistently indebted to indigenous "Shona" tunes and has brought him more income (in comparison with Volans), not obliged either to "gain the indigenous owner's consent" or to "benefit the indigenous [Shona] community" (Mills 1996:73, 74) just because he can be construed as a felicitous member thereof? Or, are the accordionists O.E.G.B. Zondie and Sindane required to gain consent from or to benefit the indigenous white "Afrikaans" community, on whose *Boeremusiek* their pieces *Qalaza Angimboni* and *Ntombi Suka S'hambe* are based, just because they are not construed as members thereof? Or, more bizarre still, is Johnny Clegg required to gain consent from or to benefit the indigenous "Zulu" community because some may not construe him as Zulu, while Sipho Mcunu, his partner in the now defunct South African duo Juluka (a band that blended rural Zulu dance and music, *mbaqanga*, and Western folk guitar music) is not so required because some *do* regard him as Zulu? Of course, if this were so, Mcunu (but not Clegg) would also be obliged to gain consent from and benefit the indigenous Western community whose folk music was used by Juluka. What is the purpose of this network of duties? Not only would the enforced obligation to gain consent from and benefit indigenous communities potentially discourage the creativity of these musicians, but the alleged safeguards against exploitation could only be defined in terms of a flagrant identitarianism, as if cultural mixing and hybridized artistic endeavors were the problem. Given the resistance that both Juluka and Volans faced from supporters of apartheid in South Africa in the 1980s, the project of determining indigenous communal enclosures may be a risk not worth taking.[8]

John Collins, a current member of Ghana's National Folklore Board of Trustees, similarly points out the perils of charging fees for the use of folklore. In his article "The Problem of Oral Copyright: The Case of Ghana," he claims that "[a]ny form of fee and/or censorship on Ghanaian artists planning to use anonymous folklore would only stifle creativity, and could eventually result in a situation of cultural impoverishment, such as occurred during the 'socialist realist' period of Stalinist Russia" (1993:156). As a solution, Collins suggests that the fee should be waived for Ghanaians but not for non-Ghanaians. Noting that modern political borders do not reflect cultural borders very well — for example, that rhythmic patterns such as the Tigari bell pattern of Ghana are found throughout Africa — Collins suggests that the fees should be graded according to the borrower's current geopolitical

affiliations with Ghana. Thus non-Ghanaian Africans should be charged a minimum nominal fee while non-African foreigners should pay the Ghanaian state the royalty portion. Whether or not shifting the emphasis from national to continental borders can be justified in the context of the increased marginalization of Africa today, it is not easy to imagine the practicability of this solution.

I have argued that the tenets of the copyright law may be less rigid than they seem at first, and that basing changes on an oppositional logic of discrete cultural units risks a greater ethnocentrism than the law requires in its present form. We need to re-evaluate the self-evident and banal way we routinely overlook the miraculous leaps that underpin these laws. It is as if the superstructural rationale for protecting a specific body of music can afford to be sloppy because of the power of our general overlooking. I want to advance an approach that is resolutely argus-eyed about the workings of our superstructural rationalizations. The aim is *not* to expose their error or their ideology, but to do them justice by revealing their workings, and finally to appropriate them in contexts for which they were not intended. In short, instead of merely pointing out the law's limits, I want to productively use them in service of the prosperity of living musical traditions ostensibly elsewhere. It will not help to cast these traditions in the terms of victimhood, for this overlooks the possibility of productively usurping the tensions and gaps inherent in the discourses of power, as if their scope and authority had already been established. When capital is flexible, resistance cannot afford to be rigid.

A Utopian Model

On the other hand, I cannot go along with the utopian vision of a magical world altogether free of oppositional logic and law. An agenda of differentiations *constitutes,* as much as it excludes, the possibility of doing anything. Take the anarchic utopianism recently advanced by Charles Keil. He offers us "a position to think about as an alternative," in the following terms:

> . . . a fund — and it would only take a couple of hours of American military spending to create it — to record every single one of the world's peoples into one hell of a beautiful bin down at the record store. Every one of the world's peoples could be recorded in high-quality sound. Seventy-five million bucks would probably do it. Not a hell of a lot of money to tally the world's expressiveness in the most beautiful way, with lots of liner notes, followed by books by the people who went to each place for a few months and did the recordings. If we had the bins and a planetary UN program to make sure that the world's musical moments of the 1990s are recorded before the echo-catastrophe becomes total, before homogenization and greyout become totally sinister, I think it would be a great salvage-anthropology thing to do. I'm with Alan Lomax and anyone who thinks along these lines. Some kind of planetary insurance policy for the world's musics, coupled with the abolition of copyright, would make me a pretty happy dude. (Keil and Feld 1994:320)

While I too would be pretty happy to have access to such an impressive collection of copyright-free sound recordings, this top-down alternative is more like a plea for divine intervention from a God-State, whose very military machine (the spending we want to harness) is mostly designed strategically to destabilize what we want to protect. Not only is this more like admitting defeat (again giving in to the power and scope of authority) than imagining alternatives, but it is far from clear what is gained by capturing the world's expressiveness in such a product-oriented project in the first place, or how redistribution happens without copyright constraint of some kind, or how and who benefits from this fantastic vision of bins in any other way. Is it supposed to be self-evident?

I do not want to deny the importance of this kind of global utopian dreaming when I advance a preference for focusing my imagination on the particularity of current international regulating structures and on devising techniques for their potentially transformative re-inscription. We should recognize that copyright exists in the world, and that exposing its ideology does not change anything. On the contrary, exposing the ideology of copyright may consolidate, freeze and limit its significance to that ideological operation. We should recognize that the way big business and a small group of superstars profit from copyright is as much an interpretation of the law as it is necessarily inscribed in it. We may instead want to match the strategic maneuvering of business in this regard, to thus consider a strategically constructive deployment of the legal tenets, to ride on the back of their (il)logical operations, and to challenge power on its own terms.

While it is crucial to point out the ideological workings of copyright law in an international frame, as Frith, Chanan, Hirschkop, Collins, Anyidoho and Tsikata, Mills and others have convincingly done, this paper is an attempt to take the next step — to develop strategic ways of putting the law to productive use in other parts of the world. By merely underscoring the overwhelming power of the multinationals, the symptomatic link copyright has with the commodity form, and its exploitive operations on a global scale in the late twentieth century, one also risks sedimenting that power, and thus stifling creative-critical reconstellations of the law. This is partly because, when it is imagined at all in the terms of the current debate, resistance has been limited to an *aesthetic* response to copyright. Using the example of rap music, Tricia Rose, Dick Hebdige, Steve Jones and Simon Frith argue that the cut-and-paste technique in various rap songs, for instance, has directly challenged the legitimacy of copyright law. In the words of Hebdige:

> At the center of hip hop culture was audio tape and raw vinyl. The radio was only important as a source of sounds to be taped . . . The hip hoppers 'stole' music off air and cut it up. Then they broke it down into its component parts and remixed it on tape. By doing this they were breaking the law of copyright. But the cut 'n' mix attitude was that no one owns a rhythm or a sound . . . By taping bits off the air and recycling it, [they] were setting up a direct line to their culture heroes . . . And anyway, who invented music in the first place? Who ever owned sound and speech? (Hebdige 1987:141)

Tricia Rose extends this line of thought by arguing that sampling by rap musicians invokes the "versioning" practices in Caribbean music as well as the concept of narrative originality in oral cultures, thereby effectively linking current rap music with other African cultural elements and further defying European notions of authorship and originality and the concomitant legal apparatus to support it (Rose 1994:79-88). It may be true that this music represents a challenge to North American corporate control via a new aesthetic, but it is self-defeating to conflate this struggle with the question of copyright as it pertains to the non-Western world. If only because the respective agendas are contradictory — Africanists, for example, seek more protection while the rap aesthetic imagines less — it may be time to disengage these predicaments from one another.

Conclusion: A Strategic Model

In conclusion, it has to be said that even the successful transfer of royalties to well-established originating communities may be less a solution and more an alleviation of a much bigger problem than apparently ethnocentric copyright laws. In an age where capitalism has become universal, where financial operations and commodity exchange have become global, and where the transnationalization of production has witnessed what Arif Dirlik calls a "new international division of labor" (1994:62), we may want to carefully assess whether our discourse, however liberatory in intention, resonates with the ideological demands of global capitalism. It is worth remembering that as long as drastic inequality exists, the cultural exchanges that take place across unequal positions will inevitably bear the mark of this inequality. To consider the ethics of global copyright apart from contemporary problems of oppression and inequality may be self-defeating. I think our agendas of liberation risk such defeat at least as much when they reify local cultures as when they impose binding legal axioms formulated in accordance with Euroamerican presuppositions. In making Eurocentrism the primary object of criticism, attention is diverted from contemporary relations of power and capitalism in its transnational operations, as if these relations could still be defined by the legacy of the past, when centers of global capital were territorialized in Europe and North America. If we are analyzing neo-colonialism today, we should be looking elsewhere.

I do not think the kind of strategy I have been recommending necessarily shatters any structural inequalities in the world, nor does it violate the logic of late capitalism as much as it paradoxically spreads its tentacles. In fact, it invariably involves the penetration of capital into hitherto non-commodified musical moments, thereby eroding alternative economies of gift or exchange. But from the North American academic coign of vantage, it is ethically problematic to ignore this strategy as an option. To my way of thinking, the role of the artist-intellectual, like that of many of the artist-musicians mentioned above, involves imagining radical modes of operation not currently available in the world, in the hope that some of them will contribute to alleviating drastic inequality, poverty and exploitation. When I mark a kinship between cultural practices, I do not seek to absorb the African experience into a broad corpus of Western thought, but rather to note differences without forgetting

similarities. I have no interest in resting comparison between African and European conceptions of music on an aprioristic notion that claims it necessary. Nor do I wish to argue that African and European musical cultures are identical enterprises operating under similar rules of practice; they are not. It is not appropriate, for example, to assume that the therapeutic aspect of spirit possession at a *bira* ceremony in Zimbabwe inherently corresponds with any Western aesthetic labels of transfiguration. But to concede that African and European practices are importantly different does not necessarily imply that they do not share enough similarities to make comparison useful. And usefulness depends on a pragmatic criterion determined by a specific context. Now, by reflecting on the workings of the copyright laws, in their current articulation, I hope to show that, as far as the three requirements are concerned, music written outside the imagined Western enclosure may be as eligible for protection as that written within it. Eligibility, or non-eligibility, far from verifiable in the robust sense, depends upon which points are differentiated between cultural zones.[9]

Finally, I am not saying that the practice of marking affinities is intrinsically more progressive than marking differences. Again, the politics of these markings depend on specific contextual determination; their interplay is dialectical. But as the 1997 African delegates in Thailand attest, one side of the dialectic is beginning to exhaust the imagination of resistance. My description of unusual cultural connections between cultural worlds, and their significance before the law, is an attempt, without mastery, to elaborate a possible legal option for musicians of the non-Western world. A critique should be contingent on and adequate to the phenomena by which we are disturbed, it should match the passions and the pleasures at stake in the products of power, and it should destroy them via engagement. Thus we may issue forth the gods by which we ourselves dwell.

NOTES

1. Speaking more generally, Michael Chanan claims that copyright laws can only be understood in the context of exploitation. In *Musica Practica: The Social Practice of Western Music from Gregorian Chant to Postmodernism,* Chanan argues that "[c]opyright does not attach to physical ownership of the work, it grants the right to receive a share in the income from its exploitation; the form of exploitation depends on the sector of the market where it lodges" (1994:148).
2. I would like to thank Krister Malm for pointing this out to me in a personal communication.
3. In his article, "The Classical and the Popular: Musical Form and Social Context" (Norris 1989:283-304), Ken Hirschkop perceptively analyzes the historical link between copyright law and the autonomous musical work. He states, "a condition for . . . commodification is legal status for the musical work itself, guaranteed by the establishment of copyright for music" (1989:296). The emergence of the concept of the musical work at this historical conjuncture is elaborated further in Lydia Goehr's *The Imaginary Museum of Musical Works: an Essay in the Philoso-*

phy of Music. While it is true that the development of the autonomous work is lodged in the peculiarities of European industrial capital, this fact alone does not render the law intrinsically ethnocentric. By halting our inquiry into different interpretations of the law because of its European origins, we risk passing off a preamble to investigation as a conclusion. In other words, interpretations that resist the routine workings of the law may escape our notice.

4. This philosophical orientation was felt much later as well; Jean Paul Sartre, for instance, universalized the subjective by rendering the self as a representative of humanity at large and thus as an agent burdened with responsibility (good or bad faith). In the face of nihilistic solipsism, for example, every action created an image of humanity itself, and thus called for an ultimate responsibility in freedom.
5. Dreams also play a crucial role in the romantic creative imaginary. In "Music, Art and Humanity," Herder celebrates the celestial music of dreams (Hermand and Gilbert 1994:50); Nietzsche, in his fragment "On Music and Words," elaborates music's privileged relation to the "real dream according to Schopenhauer's theory" (Dahlhaus 1974:111); and in *Die Meistersinger*, Wagner's inspired artist, Walther, absorbed by the spirit of Walther von der Vogelweide, dreams his final song "Morgenlich leuchtend in rosigem Schein" the night before the song competition.
6. These stereotypical oppositions have also been embraced by "folk" musicians in various quarters. In his "All That is Not Given is Lost: Irish Traditional Music, Copyright, and Common Property" (1998), Anthony McCann explores the complex web of social relations that occasion a reluctance of Irish traditional composers to copyright their own tunes and a preference for preserving them in a public domain. Krister Malm has pointed out the related case of Swedish traditional fiddlers who claim that their often original tunes are in fact derived from traditional predecessors. This response is the paradoxical result of a romantic value placed by collectors on old tunes and obviously bars composers from reporting their work to the *Swedish Performing Rights Society*. A similar situation pertains to the composition of traditional drinking songs for the accordion. I would like to thank Malm for drawing my attention to the latter cases.
7. It is worth noting that by the end of the argument, what seemed to be an inherent flaw (Mills 1996:71) becomes a self-evident fact: "[M]usic," says Mills, "clearly does not belong to the nation" (ibid.:79).
8. It should be noted that, strictly speaking, this is not a problem that the "nationalization" model needs to address.
9. The currently available points of differentiation have made a strange pattern: it is as if we are comparing apples with other apples, distinguishing them on the grounds that the former have pips and are bought individually, while the latter are green and grow in clusters. Instead of decrying the ethnocentricity of the laws, and thereby diverting attention away from such an admission, I feel obliged deconstructively to inhabit the legal apparatus and reclaim its operations in post-colonial

space. By making distinctions without obscuring connections, I hope to redistribute the juxtaposition of the logic of affinity and of difference, in order to shift the ethico-political agenda to an international frame. Only a brazenly positivistic reading, disinterested in the changing patterns of exploitation today, would hold that such reappropriation would automatically render Africans as would-be (male) Europeans or as victims. After all, changing the *positions* of our points of comparison involves the problem of thinking in a hasty oppositional shorthand, and thus mandates an insistence on closely attending to the specificity of at least a part of the African experience.

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