

## Ethnomusicology and Music Law

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Looking backward to the seminal thinkers in comparative musicology and forward to the global networks of electronic communications that will further dominate our artistic, scholarly, and communicatory processes, I think we should add a course on entertainment law to our ethnomusicology curricula.<sup>1</sup> The complexities of the relationships of melodic line and rhythm in Indian classical music, the poetic metaphors through which the Kaluli express their musical ideas (Feld 1982), and the reasons Suyá sing (Seeger 1987), have their counterpoint in the cultural elaboration of music-related law in the United States and other industrialized countries. Furthermore, the terms through which we will be able to experience and communicate about South Indian, Kaluli, and Suyá music are probably going to be established by the concepts of music of the industrialized countries, rather than the South Indians, the Kaluli or the Suyá. Thus we must look at entertainment law not because it represents yet one more example of the ingenuity for complexification found in *homo sapiens*, but because the daily exercise of our profession takes place within contexts partly defined by it.

Scholars, you may think, need not concern themselves with entertainment law because they are not in the entertainment business. Leaving aside the tendency of course evaluations to contradict that claim, how many ethnomusicologists collect field recordings? How many hold (or have ceded to a third party) copyrights on their publications? How many ethnomusicologists produce ethnographic recordings on commercial (albeit marginally so) record labels or as supplements to their textbooks? Most of us have done one or more of these things without much thought about the law that surrounds them. But there are possibly other reasons ethnomusicologists have not given much thought to entertainment law in their own countries. Among them are a theoretical predisposition to ignore juridical concepts related to music in our research, an uncritical (and perhaps unconscious) re-elaboration of the concepts of twentieth century copyright

law in our writings, and a lack of intellectual engagement with the globalization of the world's economy and its implications for the objects of our research.

Among the "founding fathers" of comparative musicology and ethnomusicology we find a predominance of psychologists and physicists, cultural anthropologists who tended to emphasize consensus over conflict, and historical and systematic musicologists, but few jurists. This contrasts with the situation in British social anthropology, where jurists abounded and Henry Maine's 1861 study of ancient law in Rome (Maine 1906) had a profound influence on future approaches to social processes (including those of A.R. Radcliffe-Brown and E.E. Evans-Pritchard). The juridical tendency of social anthropology was further emphasized in the work of Max Gluckman and his followers, who argued that the best place to discover the structures of society was in areas of conflict—in arguments, court cases, rituals of rebellion, and so on. Of course, exclusive focus on conflict can lead to its own excesses. Social and musical processes proceed with a complex mix of consensus and conflict. The point, however, is that no major figure in the field of ethnomusicology ever defined the object of our study in terms of rights and obligations, conflict, or adjudication. The issues simply were not raised by our "ancestors" and have rarely been part of our theoretical reflections since.

Law is the codification of rights and obligations, but not all rights and obligations are laws. Some rights and obligations fall under the heading of custom (what people do), others may be called ethics (what people should do). Some of the rights and obligations related to music are very pertinent to an understanding of musical processes in any society, including that of the U.S. today; others are important for the practice of our profession, and yet others are barely generalizable beyond the society in which they are found.

How little we, as a group of professionals, seem to know about this subject was highlighted in responses to a questionnaire sent out by the ICTM in 1989. The International Council for Traditional Music's Copyright Committee sent a letter to ICTM members asking for information about music ownership in the countries in which they lived and in the communities in which they did their research. The form included questions about both formal copyright rules and traditional notions of ownership.<sup>2</sup> A relatively small percentage of those queried responded—although most of us recognize the issue to be an important one—and many of those who did respond appeared to know little about music ownership in either of their communities.

To show how complex the issue of music ownership can be I shall begin with the traditional set of concepts employed by the Suyá Indians of Brazil

(described in Seeger 1981, 1987), and then move through stages of research, publication, and dissemination of their music. This approach is meant to be cautionary as well as illustrative—I did not pay as much attention to these issues then as I would today, and there are no clear answers to some questions. Furthermore, many of these considerations apply to video and print media, as well as our own use of our colleagues' publications.

### Ownership, Control, and Mastery in a Traditional Society

When talking about ownership of Suyá song, the best term to begin with is the concept *kandé*. *Kandé* translates roughly as "owner/controller," though it could also be glossed as "master of." Physical objects such as axes, stools and cooking pots have *kandé*. Other people may use these items, but the *kandé* is the one who gives permission for their use, and the person to whom they are eventually returned. There is another sense in which people may be *kandé* of a physical object: they may be experts in manufacturing it. Thus the best pot-maker in the village might be called the pot-*kandé* because she knows best how to make them ("master potter" would be a reasonable gloss). The person for whom it was made would also be the pot-*kandé*. In this case one individual is a master of production, another is a controller of use. A single word refers to both.

Village leaders are also referred to as "owner/controllers." Historically, most villages have had two leaders. One of these is the village political leader, the *mêro-pa-kandé* (*mê* = Suyá; *pa* = village; *kandé* = owner/controller/master). The other major leader is the village ritual specialist, the *mêro-kin-kandé* (*mê* = Suyá; *kin* = ceremonies; *kandé* = owner/controller/master). The two complement each other in that the political leader is rarely a specialist in rituals, but he is the leader of the strongest political faction. A ritual specialist is supposed to know more than anyone else about music and ceremony; he directs activities in a sphere that is supposed to be above factionalism. If political leadership is somewhat ascribed (a son of a strong faction leader is often also one), the position of ritual leader is achieved through learning and held because of knowledge rather than inheritance. In fact, the ritual specialist is often a relative of a strong faction leader (Seeger 1981:180–205).

But the concept of "owning/controlling" song goes far beyond being the master of ritual knowledge. Since there are two major types of songs—individual (*akia*) and collective (*ngere*)—there are also two kinds of owner/controllers. As European law is based on the individual, I shall start with the individual.

Suyá men learn new individual shout-songs (*akia*) for each ceremony, and a man may learn dozens in a lifetime. He is taught these new songs by

a "person-without-spirit" who in turn has walked in the forest and learned a song from his some natural being (plants, fish, animals). The *originator* of the song is a specific plant, fish, or animal species. The *communicator* of the song (the person who most nearly fits the Western concept of "composer") is the person-without-spirit. The *owner/controller* (*kandé*) of the song is the person who learns it and sings it aloud for the first time. Thus the song I sang in the 1972 Mouse Ceremony was "my" song, although the ritual specialist taught it to me. The Suyá said I had become its "owner/controller" and if someone sang it badly I could complain.<sup>3</sup>

The association of a person with his individual songs continues for a while after his death. After a man dies, he may be commemorated by a younger man (usually a relative) who will sing his shout songs throughout an entire day. The young man's singing may provoke relatives of the deceased to tears, as they listen to the songs associated with their late kinsman's euphoria and participation in community life. The association doesn't often last beyond a single generation (I don't remember any Suyá singing a song of a person they had never seen alive), and I never heard of a spirit criticizing the performance of its songs.

Groups are owner/controllers of collective songs. These may be "very old," original to the ceremony, or historically composed unison songs. The "very old" songs come from a mythical past; the composed songs follow a similar process to that of the individual song. An animal's song is introduced to the group through a person-without-spirit, and then becomes associated with the group that sang it for the first time.

Virtually every Suyá group controls one or more songs. Each ceremonial moiety (literally one of a pair of groups) controls certain songs, and is identified with them. In some cases a moiety controls an entire ceremony. In that case the members of the opposite moiety formally ask the controlling moiety whether they may perform the ceremony. The controlling moiety is supposed to be stern, and ask if the supplicants are going to work hard and sing strongly, or are just wanting to fool around. They are assured that the affair will be serious, give their consent, and the ceremony is begun. Since the other moiety often controls a ceremony paired with the first one, the giving moiety often has to request permission shortly afterward. Ownership in these cases is more a right that one exercises in giving than in restricting. I did hear of one case in which a moiety did not give its permission.

There are other forms of intellectual property among the Suyá that are more individualized and more similar to our own concepts of creativity and control. Curing invocations (*sangere*) are different from songs. They are learned from other Suyá or made up, and are passed on by decision of their "owner/controller" who receives a gift in return. In the case of a very

powerful invocation to remove the pain of scorpion and spider bites, the owner/controller thought it was so valuable that he didn't teach it to anyone, and died its sole possessor. In this case an individual may compose an invocation, perform it on sick people (who will give him a gift if they get better), and decide when and if they will teach it to someone else (also with the obligation for a return gift).<sup>4</sup>

### **Enter the researcher with his tape recorder**

My wife and I arrived among the Suyá as foreigners whose command of the language was that of an infant, and whose Suyá enculturation was less even than Indians they had captured in the past. The Suyá made considerable allowances for us, the extent of which I am still probably unaware. They knew about tape recorders, and had been recorded before I arrived. But since I had come specifically to study music, and since I stayed much longer than any previous visitor, I was a new element in the music control equation. The Suyá made no objection to my recording them, remarked that the tape recorder remembered things much better than I did, and even once asked me to play back a session where a man-without-spirit had taught them a song that subsequently no one could remember. Some of them also wanted to be sure the traditions that most of them valued would be preserved, and supported my systematic collecting. They didn't mind my taking the tapes back with me. What they didn't want was for me to play certain kinds of music for other nearby Indian communities. They didn't want the other Indians to "hear/know" the music. I think the real objection was that the other Indians might begin to sing certain of their songs, because once you hear/know it, you are able to sing it. Other songs, however, they had no objection to my playing to their neighbors on my way in or out of the field.

Suyá control went beyond asking me not to play certain recordings locally. They wouldn't even record certain things. One song, whose performance was so powerful that it could bring down an enemy attack, was interrupted and left incomplete because they realized I would certainly play it sometime, and the location for playback had no effect on the power of the songs. They were always dangerous. With as little experience as they had with recordings, therefore, there were already some things the Suyá wanted to control. Because I stayed long enough to understand the subtlety with which they expressed these preferences, I have honored them. Most visitors would have not even known of their concerns, or cared much about them.

What were the rights and obligations in the recording encounter? Clearly, the Suyá thought they had rights over selecting the performances and controlling the playback. My obligations, I thought, required me to

observe their desires. But how would future users know about our agreements—and would the Suyá in the future remember that they had given me permission to record these songs?

I thought I needed evidence of my right to make the recordings in the first place. I tried to have performers state their permission to record them at the start of every tape or every event (not being literate, it would have been absurd to ask them to sign a release they could not read in a language they did not understand). Who, though, was I asking? I may have been asking the wrong person. Or once asked, it may be difficult to say no, and possible only to say “hmmmm, what?”—easily misunderstood to be agreement in the heat of the event.<sup>5</sup> Who should I have asked? The animal who originated the song?<sup>6</sup> The person who transmitted it? The person who was dead who had sung it? The person who was singing it? These issues were never clarified, partly because I wasn't very concerned with them myself, at the time.

### **Enter the audio archive**

When I left the field, ownership presented new problems. Who controlled the recorded material? Was it “mine” because I recorded it during an individual investigation? This is certainly the feeling most field researchers have toward their recordings. But my research was done on a National Institutes of Health (NIH) research grant. Did the recordings belong to the NIH? Or did they belong to the University of Chicago because the NIH grant was given to the University, which subsequently awarded it to me? Or did they still belong to the Suyá who gave me the permission to record them, or to the specific groups that controlled them, or to the people-without-spirits who taught them, or to the animals that originally sang them? Or did they belong to the Brazilian government that had given me permission to do the research and claimed to be the uniquely qualified agents of the Suyá?

I felt that the recordings were not mine, except in the sense that I had made them in the course of my research. The sounds belonged to the Suyá community and the tapes to some intermediary. Since some Suyá wanted the recordings preserved for their grandchildren, I deposited the tapes in the Indiana University Archives of Traditional Music. There were no suitable audio archives in Brazil at that time that would have preserved them.

The Archives of Traditional Music gave me a form to fill in and three degrees of restriction to choose among. Did I want free access for all purposes, free access for non-commercial purposes, or limited access requiring my authorization?

This raised some new issues. Who should decide about the restrictions? Who would guarantee that no one would make a copy of a ceremony, (inadvertently) take it to precisely the place the Suyá didn't want their music

heard, and play it there? Once in the archives, who should be able to consult the recordings? I found out later that restrictions were such that in some cases members of the community recorded were prevented from listening to recordings of their own music because the depositor had restricted access, without exceptions. He/she had probably done so inadvertently, and then disappeared from the address list, so that the Archives could not request permission for others to use the material. Regardless of the motive, the enduring legacy was one of rights, and the collector claimed them all.<sup>7</sup>

One of the things I subsequently did as Director of the Archives of Traditional Music was to revise the contracts to correct some of the inadequacies that stood out when I was trying to decide how to allocate rights to the sounds between the Suyá, myself, and the Archives. But it is difficult to predict future inadequacies. The point here is that although Western copyright law hasn't even been invoked yet, the networks of rights and obligations on these sounds are already very complex indeed. Each intermediary adds a level of overlapping rights.

### **Enter the recording company**

The Suyá asked me why I hadn't issued a commercial recording of their music, as another community's anthropologist had already done. I took that as permission to negotiate to make one. But the issues of a commercial recording are distinct from field recordings. While I could be pretty sure my tapes wouldn't be played for nearby Indian communities, I could be virtually certain that some of the biggest fans of the future commercial recording would be those same nearby Indian communities. Nor could I or any of the other "owner/controllers" control where or how it would be played. Record companies are famous for making money and artists are famous for complaining they aren't getting much of it. How would the non-literate Suyá and the innocent ethnomusicologist enter this complex domain?

We ended up co-producing the recording, the Suyá carefully selecting what should not be on the recording, I working on a sequence that would make sense to non-Suyá and writing the notes, and the Suyá receiving full royalties from the modest sales. In order to do so I paid them in full in advance out of pocket, then reimbursed myself from the sales over time, paying income tax on those royalties (since the Suyá were considered minors, under the executorship of the Brazilian Government, there was no other way to get the royalties directly into their hands). Our recording was a somewhat costly endeavor for me, but very satisfying to the Suyá, who have just benefitted from a Japanese CD reissue.

The basic issue in commercial recordings is trust. But not everyone carrying a tape recorder has proven to be trustworthy. Nor has every record

company proven to be scrupulous. Nor have ethics about the recording and use of other people's music always been the same. Using the intellectual property of non-Western societies is still unregulated today, but our awareness is changing (see Cultural Survival 1991).

Record companies and commercial recordings are the interface between communities like the Suyá and the multi-national recording industry. That industry operates according to a highly complex set of rules of its own that have nothing to do with the original animal composers, the people-without-spirits, the *kandê* who sang the song for the first time, the moiety that controls its performance, or even the ethnomusicologist who supplies them with a tape. Record companies usually copyright the recording and negotiate for its subleasing. Most record companies also have a publishing company, which may take out the copyright on any recently composed songs.

### **Copyright: Ownership and Control Become Business**

Copyright law is complicated. Different countries have different laws. I will only deal with generalities here.<sup>6</sup> Like all laws, the codification of copyright law in the United States reflects a certain perspective (and certain powerful interest groups) within the music industry, and is the direct result of a particular set of historical processes in the United States.

Copyright is what it says: the right to make copies. Whether it is copies of sheet music or copies of a musical performance, the right to make copies can be claimed, registered, and negotiated. There are two aspects of music that may be separately copyrighted. One is the song, its melody and text. Thus Woody Guthrie can copyright "This Land Is Your Land" and certain uses of the song are controlled by the publishing company, which normally collects payment for commercial use. The second part is the singing itself. If I record the song "This Land Is Your Land" on a record, the company can copyright my singing, but it will have to pay a royalty to the publishing company for the song. But a company can own a song only for the life of the composer plus fifty years (current copyright length). After that, it is public domain. My grandchildren will be able to record "This Land Is Your Land" as often as they like without paying the publisher.

The copyright law in force today is based on a number of cultural presuppositions, four of which are central to issues faced by ethnomusicologists. First, the law is based on the concept of individual creativity—individuals copyright products of their own creation. Second, it is based on the idea that an individual should receive compensation for a limited period of time, after which the idea may be used by anyone without paying a royalty. After the expiration of a copyright, music enters "the public domain" and royalties may not be collected on it. Third, the law leaves

somewhat unclear the status of arrangements of "traditional" songs. Fourth, the musical item copyrighted is item-title based. Let's look at the implications through three examples.

### **Copyright at Work**

A composer once wrote a song to celebrate birthdays, and copyrighted it under the name of "Happy Birthday." Happily for him, the song became an integral part of rites of passage in the United States, and since a publishing company vigilantly administered the copyright, every concert performance, commercial recording, television performance, and film performance of that simple melody and repetitive text brings money to the composer and his publishing company—nearly one million dollars a year in the 1980s (David Sengstack, former administrator of the copyright, conversation). Under existing copyright law a composer writes a song, copyrights it with a publishing company, and they both receive a considerable amount of money from the music industry, which is set up to allocate such royalties.

### **Copyright Unworkable**

Compare "Happy Birthday" with a Suyá song called "Big Turtle Song" published on *A Arte Vocal dos Suyá* (Seeger e Comunidade Suyá 1982). Sung during the dry season, its authorship in the distant past is attributed to a species of honey bee. Sharing its name ("Big Turtle Song") with dozens of other melodies and texts sung at the same time of year, "Big Turtle Song" doesn't fit the U.S. popular music-based model. It was originally composed over seventy-five years ago, and is "owned" by a community, not an individual. To complicate this, the Suyá are not considered fully "adult" in Brazilian law, and have neither corporate nor individual legal identity. Tacape Records and I may indicate our control of the use of the master tape on which that particular version of "Big Turtle Song" is recorded, but if someone else wants to use its musical ideas, there isn't much that I, the record company, or the Suyá can do about it. Even if we stretched some of the intentions of international copyright law and copyrighted the song as an arrangement of traditional material, we would not have the staff or expertise to ensure compliance.<sup>9</sup>

### **Copyright Contested**

Those are the pure cases. U.S. musical practice is filled with conflict and adjudication, as anyone who has spent much time with professional musicians or reads *Billboard* can attest. Whether the conflict is with management, boards of directors, recording companies, copyright infringement, or colleagues, it is clear that music is made in a social matrix as contentious as most of the rest of the society.

Consider "Home on the Range," (Logsdon 1991; Lomax 1945; White 1975). John A. Lomax collected the text in 1908, a school teacher set it to music, and Lomax published the song in his book of cowboy songs in 1910. A sheet music version followed in 1925, and the 1927 recording by Vernon Dalhart became popular.

In 1932, when Franklin D. Roosevelt was first elected president, the story quickly spread that "Home on the Range" was his favorite song. In concert halls, on records, and over the radio, the song spread throughout the world, but suddenly it was pulled from air play, off of record racks, and out of repertoires. A couple in Arizona claimed to have written it and filed a half-million dollar lawsuit for infringement of copyright.

Music publishers [to contest the lawsuit] hired an attorney, Samuel Moanfeldt, to trace the song's heritage. He terminated the search in Kansas where he found the poem had been published as early as 1873 in the newspaper *Smith County Pioneer*. Further research revealed that it was written by Dr. Brewster Higley and set to music by Daniel E. Kelley, both early Kansas settlers. (Logsdon 1991, p. 4)

Some of the most in-depth research on western song seems to have been done under the sting of a lawsuit. It probably pays better than most research grants; the stakes are higher.

Not all of the copyright debate centers on who wrote a song. Some of it swirls around what the minimum definition of a musical idea is. What exactly is it that the copyright covers? This is the controversy about sampling, a widespread practice in contemporary popular music (but not restricted to popular music) in which a very short segment of a recorded performance is taken and used in a variety of ways in someone else's composition. As always, in popular music the stakes are high and the lawyers will be paid. The decision may not tell us much about music—though one could argue that the lawcourts are as good a place as a university classroom to define the minimum definition of a musical theme. As with the search for the author of "Home on the Range" some very interesting research may result from conflict over this issue.

Steve Feld has observed that as American popular music adapts music from other parts of the world into hit-oriented recordings, the potential for exploitation increases. His presentation of the problem is metaphoric and powerful:

Musical appropriation sings a double line with one voice. It is a melody of admiration, even homage and respect; a fundamental source of connectedness, creativity, and innovation. This we locate in a discourse of "roots," of reproducing and expanding "the tradition." Yet this voice is harmonized by a counter-melody of power, even control and domination; a fundamental source of maintaining asymmetries in ownership and commodification of musical

works. This we locate in a discourse of "rip-offs," of reproducing "the hegemonic." Appropriation means that the issue of "whose music" is submerged, supplanted, and subverted by the assertion of "our music." (1988:31)

An important form of exploitation is music copyright. If I take the melody of "Big Turtle Song" and set new words to it, I might copyright it "Words and Music by Anthony Seeger." Does this matter?

It only really matters when the song is a hit or is used in a film. The royalty payment for a copyrighted song on an album is about six cents per recording sold. If a company only sells 4,000 copies (about average for Smithsonian/Folkways releases today), a songwriter stands to gain \$240 per cut (usually for a maximum of \$2,400 if they composed all the songs on the album). If, however, the recording sells 7,000,000 copies (the case with the album *Graceland* by Paul Simon), the stakes are higher: a single song could yield \$420,000 from that recording alone. If the Suyá "Big Turtle Song" could earn that much, or become the next "Happy Birthday" ritual music, the Suyá could manage very well on this interest from earnings from their cultural patrimony—something I think they could enjoy (see *Cultural Survival* 1991). In fact, very little money is made on most research-based "ethnographic" recordings, which have generally sold relatively few copies and usually have to be subsidized to be published at all. Inflated expectations based on news items about the multimillion dollar contracts of Michael and Janet Jackson, however, can make even legitimate royalties seem like a deceit.

United States law favors song publishers over artists. In the United States, song publishers receive money for radio play of their music. Artists do not get paid when their recordings (as opposed to their compositions) get played on the radio. In other words, Woody Guthrie's estate gets paid when my version of "This Land Is Your Land" gets wide radio play, but I don't collect. This is not the case in Europe, where both artists and publishing companies collect payments. Of course, this may simply reduce airplay for new compositions. Some European radio stations are switching to old performances of music by dead composers because it is so much less expensive than paying royalties to performers and music copyright owners (this works better for European classical music than for popular music, of course).

U.S. copyright law has international implications, especially when the U.S. retaliates against publications it considers to be piracy. But in view of the shortcomings of U.S. copyright law, other countries are often suspicious of U.S. motives. Writing in *Music Business International* (1991) Dave Liang maintains that "nobody defends copyright infringements, but are the Americans attacking it in the right way?" He suggests that some countries that do not rush to copyright reforms on the U.S. model are in fact trying to protect their local music industries from the transnational giants that dominate most of the globe.

In fact, the copyright law is far from equitable, and the U.S. is less generous than most to artists. The new GATT talks (the so-called Uruguay round) may result in some changes of international copyright codes, however, and UNESCO has been working on statutes for controlling cultural property (Cultural Survival 1991). But there is a long way to go before "Big Turtle Song" is protected and the Suyá are collecting from public performances.

### **Six Perspectives on Music Ownership**

I am concerned about musical rights from at least six slightly different perspectives—as a musician, as a researcher, as a co-producer with a tribal society of a commercial cultural product (Seeger e Comunidade Suyá 1982), as a record company director who has to match costs to income within the entertainment industry business as it is set up today, as a member of the copyright committee of the International Council for Traditional Music (ICTM), and as an ethnomusicologist.

Each of my perspectives represents entire groups of people, and each views the implications of music ownership differently. Much of the conflict in the area can be explained by the fact that most actors have only a single perspective on the subject in which they have heavily invested, and don't really understand the concerns of other actors.

1. *As a musician*, I think we need to recognize that in many traditions musicians take existing musical ideas and transform them. Almost every performance is a creative event. In this area I am concerned about the effects of existing or intended laws that might inhibit live performances and restrict the exchange of musical ideas. There is a distinct possibility that future laws will further inhibit live, creative performances, although it is precisely the creative and performative nature of music that gives it much of its vitality.

2. *As a researcher*, I am concerned about the effect the perception that "someone is getting rich on our music" has had on music research. This is particularly important for ethnomusicologists today. It is sometimes very difficult to study a community's music because individuals and groups are suspicious of strangers carrying tape recorders. They may have some justification for their concern, since some "arrangements" of traditional music have reaped great financial rewards while the tradition-bearers themselves have never seen any money. Also, not everyone who proclaims him- or herself a researcher is in fact engaged in scholarly research—"research" covers a multitude of activities, some of which appear to be more like musical piracy. Yet some graduate students and many of my colleagues appear to be insufficiently aware of the ethical issues their apparently simple recordings may raise. As a result they are not obtaining the kinds of

information about restrictions and the kinds of permissions while in the field that will enable their recordings to be appropriately used afterward.

3. *As a co-producer of a recording* with the Suyá Indians, I am concerned about the lack of protection provided by law against the improper appropriation of Suyá traditional music for other purposes—uses that would be rigorously policed if the music were performed by the Beatles, but which cannot be policed when it is “only” performed by the best living Suyá musicians.

4. *As the director of a small record company*, I am concerned about all of the ethical issues above, but I also have to produce recordings that can compete in price with other recordings in a given market. Small record companies go out of business all the time, or are absorbed by larger ones; there isn't much room for financial error. This means that I cannot allocate much more money to artists and songwriters than other companies do if I want to sell enough copies to make enough from one recording to pay for the production of the next one. It means I do not have time or staff to individually research the rights to every song on every recording but must rely on the opinions of the artist, compiler, or publishing companies. It means that whatever laws are put into effect must be reasonably simple for me to understand and concrete mechanisms provided to make it easy for me to obey them. Ideal laws will not protect musicians, ensure compliance, or alter ethnomusicological practice. What we need is a new awareness of the issues of musical ownership and the ethics of inter-cultural music use—something akin to the ecological awareness that encourages individuals to change their individual attitudes and provides concrete means through which they can change their daily practices. Recycling, for example, works best where people are not only convinced it is a good idea but are also provided with convenient ways to recycle their waste. The same kind of awareness and convenience needs to be created for cultural property.

5. *As a member of the ICTM committee on musical copyright*, I hope that the U.S. and Europe will not impose their individualized, popular-music fueled concepts of music ownership on the rest of the world through international conventions without some modification. I think we need to examine the shortcomings of existing systems, especially with respect to the rights of communities and vernacular artists to benefit from any commercial exploitation of their arts.

6. *As an ethnomusicologist* I am concerned that this whole area of musical practice has been virtually ignored in ethnomusicological research and publications. There are dozens of fascinating topics to be thought through in this area, but few of us have made even a beginning on them. An ethnomusicology devoted entirely to the effects of the global economy on music would be limited indeed, but it certainly should not escape our

attention altogether. Our discipline will be poorer for neglecting the rights and obligations associated with music, and we will have less and less to contribute to a dialogue about contemporary music, which is increasingly shaped by the very processes we appear to be ignoring.

## Notes

1. I am indebted to Alan Jabbour, Krister Malm, Judith McCulloh, and Steven Feld for sending me their publications (Hickerson 1978; Jabbour 1982) and discussing this subject with me, and to Cultural Survival for giving me an opportunity to write some initial ideas about it. My research on the topic has been supported by the Center for Folklife Programs and Cultural History of the Smithsonian Institution. My research among the Suyá was funded by many different agencies over the years (see Seeger 1987, acknowledgements, for a complete list), to all of which I continue to be grateful.

2. For information on this, or a copy of the form, write to Krister Malm, ICTM Copyright Committee, Musikmuseet, Box 16236, S-103 26 Stockholm, Sweden.

3. Actually, they literally said that if someone sang it and fooled around singing it, I could say "hmmmm, what?" I am not exactly sure what my rights might be beyond calling attention to the fact that I am the owner/controller and therefore the person in a position to say whether a performance is suitable or not.

4. Men-without-spirits who teach songs to their "owner/controllers" are not given any gifts, nor do they willfully withhold a song from people who ask for one.

5. Suyá etiquette demands that when you are asked for something you must give it, or at the most postpone giving it. Refusal to give something is a strong social act, and implies a severing of relationships. Thus it might be very difficult for the Suyá to respond to a direct question "may I record this" with anything stronger than a "hmmmm, what? Later." This raises quite a few questions about the legitimacy of even formal contractual agreements between members of hierarchically ranged and culturally different communities.

6. When I was particularly insistent on knowing the meaning of a song text the ritual specialist couldn't understand, he said "the only one who knows is the jaguar who taught us." The author seemed a bit beyond reach to me, and I dropped the question.

7. There are, of course, reasons that one might restrict members of the originating community from listening to tapes. For example, secret songs of one moiety or social group might need to be kept from another moiety or social group, or interviews about politics could be dangerous if they fell into the hands of the opposition.

8. For more details consult James and Kleiner (1982) for general information and Shemel (1990) for details about U.S. copyright practices in music. For criticism of current practices see Wallis and Malm (1984) and Dannen (1990).

9. This doesn't mean that one is always without recourse. At least one ethnomusicologist, Ellen Leichtman, has set up a publishing company to protect musicians whose music is often unprotected; some record companies copyright arrangements and protect the interest of the artist; and there may be more coordinated ways ethnomusicologists interested in this subject can act in the future. Judith McCulloh tells me that Earl Spielman, A Ph.D. in Musicology, has created a field he calls "Forensic Musicology," he serves as an expert witness in cases of alleged infringement of musical copyrights. There are certainly other interesting possibilities for the applications of ethnomusicological and musicological thought.

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