

# **Copyright vs. the democratic right to know**

Philip Tagg

Article for copyright counter-essay competition at wipout.net, 2001-2002

## ***Peanuts***

I recently cashed a cheque for £74. It was the grand annual total for airplay of a track I had supplied to a library music collection. That track had taken me about nine hours to compose, mix and pre-record into a presentable MIDI demo. It took at least another hour to set up and re-record in a proper studio using better samples and presets than I have at home. £7 an hour is certainly an improvement on what people are paid in most service jobs but that rate does not include the costs of equipment (synthesiser, computer, mixer, amp, headphones, recording media etc.): with those expenses the hourly rate sinks to well below the European minimum. Working for such peanuts is fine for someone like me whose income derives almost exclusively from teaching music in a university, but it is totally unacceptable for those who are first and foremost creative musicians.<sup>1</sup>

It should be obvious from the previous paragraph that the fruits of anyone's labour must be adequately recompensed and that musical work should be no exception to the rule. Until the general phenomenon of copyright is replaced by more satisfactory means of remunerating musical labour are elaborated and implemented it would be absurd to launch a broadside attack on intellectual and artistic property rights. On the other hand, current music copyright legislation is fraught with serious anomalies which need to be addressed and reformed as a first step in replacing copyright in general with more democratic and equitable means of remunerating the labour of musicians. Here I will concentrate on just one such anomaly.

## ***Music is important***

The average citizen of the Western world hears music for just under one quarter of his/her waking life. Neither the written nor spoken word, neither still nor moving images can rival music in such quantifiable temporal terms of human exposure. And yet music is still somewhere at the bottom of the educational heap, marginalised as 'art' or 'entertainment' despite the fact that it is also one of the UK's biggest money earners.

Over the last thirty years, popular music studies have had modest success in challenging this absurdity, but our area of inquiry has been dogged by a

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1. It is perhaps ironic that I was awarded a £75 prize for this article, the hourly rate of pay being considerably higher for this verbal work than for my work as a musician.

tendency to study everything around the music and to avoid 'the music itself'. Of course, the sounds and structures of music have no meaning if not understood in their social, cultural and economic context, but, reciprocally, the social formations around music are impossible to understand if the actual sounds operative at the centre of those formations are ignored. In order to redress the balance it is therefore necessary to examine the actual sounds and structures of all the music we hear in our everyday life in terms of what it communicates to us in particular social, cultural and economic contexts. In short, we have to develop a practical music semiotics enabling us to make sense of these issues. Over the last few decades I have spent most of my time trying to develop that kind of music semiotics but have encountered several serious stumbling blocks. One of those stumbling blocks is copyright.

### ***Copyright: a stumbling block to musical knowledge***

If you want to know why and how a piece of popular music — pop track, title tune, advertising jingle, video game loop or whatever — communicates what to whom and with what effect (the standard \$64,000 question of music semiotics), then you have to play and hear that piece of music yourself. No copyright problems there. But if you want students or fellow scholars to understand your analysis you have to let them hear it too, an obvious necessity in the communication of ideas about music. This is where the problems start because if you want to make your findings publicly available, i.e. you want to exercise your democratic right to publish new knowledge, then the object of your analysis will have to be duplicated and that work will almost certainly be under copyright. Moreover, if the analysis is to own any degree of academic rigour you will have to demonstrate similarities of musical structure between your analysis object and other pieces of copyrighted music from which you will also have to quote and duplicate extracts. After all, it would be absurd to assume that everyone interested in reading or hearing your analysis is familiar with all the music you will need to quote just in order to make any sense of almost any piece of popular music.

Up to now I have, through fear of litigious reprisal, shunned the idea of pursuing the ideal solution of including musical recordings in my published analyses and stuck to quoting music in its notated form. This procedure is unsatisfactory for three reasons: [1] the notation I include is almost always the result of laborious transcription, time and energy that could have been more productively spent on developing analysis method and on discussing more pieces of music; [2] only a very small and decreasing minority of those interested in understanding what music communicates are able to make sense of musical notation — a serious obstacle to the democratisation of knowledge; [3] the legal aspect of duplicating copyrighted music in notated form is still highly problematic.

In order to publish the kind of study I am referring to here, i.e. to include a complete transcription of the piece under analysis and excerpts from hundreds of other copyrighted works, I would, at least under intellectual prop-

erty law as practised in most European nations, have to seek permission, not necessarily with any success, to quote from each copyrighted work I need to cite in full or in part. Clearing such copyright involves: [1] time-consuming investigation into who in fact owns the rights to which works in which parts of the world where the analysis is likely to be sold or distributed; [2] applying for permission to quote all copyrighted works; [3] receiving no reply from publishers (very common); [4] running the risk of not being granted permission to quote certain works; [5] having to pay no mean sums of money for the right to quote from certain works. Experience has taught me that such efforts in are inordinately time-consuming and often fruitless. For example, I had to write scores of letters, spend a minor fortune on phone calls, expedite telegrams, beg friends of friends in Los Angeles to drive round to Hollywood, contact the US embassy on several occasions, consult international lawyers, point to breaches in the Helsinki agreement, etc. before Universal Studios / MCA granted me permission to quote even my own transcription of the *Kojak* theme. Similarly, Alec Wilder, in his *American Popular Song* (1972), never received permission to quote a single note of any Irving Berlin song — a stroke of extraordinarily bad luck or of publishing short-sightedness in a book so clearly devoted to an appreciation of US song composers' craftsmanship.

Another example: in 1991, neither Liverpool University's understaffed Institute of Popular Music, nor I could have cleared all the publishing rights involved in my analysis of Abba's *Fernando*, nor could we afford to employ minions to do that work for us. Neither would any publishing house in its right mind relish the notion of the expenses and time required to do the same thing. Nor has the situation changed radically since 1991, the only legal means of publishing the *Kojak* and *Fernando* analysis being through a not-for-profit corporation, registered in New York, and devoted explicitly to the dissemination of scholarly musicological work on music in the mass media.

As part-time composer as well as writer of analyses that quote other people's music, of course I think that we should be remunerated if others make money from our intellectual and artistic efforts without sharing any of the income thus gained with us. However, there is a patent difference between using someone else's musical work for financial gain from its aesthetic use value and in quoting part or whole of that work in a scholarly study from which neither author nor publisher derive profit. Clearly, no-one in their right mind will buy my published analyses just in order to possess a transcription of, say, Abba's *Fernando* or the *Kojak* theme which they would then use as a basis for re-recording or re-performance of the song from which they could then make money. And it is even less likely that anyone would be fool enough to buy those analyses so as to acquire incomplete citations of the other copyrighted works appearing as music examples. Moreover, (re-)arrangements and (re-)performances of popular music created by others are usually effectuated by ear or by sampling, almost never via the medium of

notation. Neither can sales of sheet music, not even of the analysis objects themselves, be negatively affected by publication in a written analysis because the officially published sheet music of scores of popular music cost less than my published analyses with all their verbiage between music examples. Similarly, if you just wanted to possess the lyrics of one of the songs cited in my analyses, it would be far cheaper and quicker to write down those lyrics by ear from the recording or to copy them from the CD inlay or to buy the official sheet music or the relevant book of lyrics.

For all these reasons, publishing scholarly analyses of popular music *in no way* deprives any of the copyright holders whose works are cited of any income whatsoever. On the contrary, it is much more likely to generate interest in and increased sales of those works. Nevertheless, studies of music requiring citation of copyrighted works still cannot be published without major difficulty and expense to researchers and institutions that are hard-pressed to make ends meet in the first place. From an educational viewpoint the situation is even more untenable: if it is so difficult to quote widely circulated music either as notation or in recorded form, it becomes equally difficult to put that music under the musicological microscope and, consequently, to provide public (published) information and ideas about how music affecting the vast majority of the population communicates attitudes, ideologies, etc. From this perspective, the requirements of copyright clearance for popular music analysis is a restrictive and undemocratic imposition.

It is, for the reasons just presented, essential that we urgently demand an overhaul of copyright law when it comes to academic and educational materials whose whole aim is to spread knowledge about music, not to make money from it. The restrictive practices regarding the citation in notated form of copyrighted popular music in scholarly or educational works can be stopped immediately since it they in no way serve the interests of those whose music is cited in that form for those ends, let alone those who want to know more about how music affects us in our daily lives. More importantly, we need to demand the right to cite excerpts of recorded music, for example as short tracks on a CD appended to a written analysis or hyperlinked within an analysis published on CD-ROM, if access to knowledge about all that music we hear for one quarter of our waking life is regarded as the right of every human being.

Philip Tagg, 11 October 2001 (updated 24 December 2002)