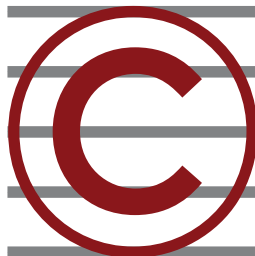


the society for
ethnomusicology
Pre-Conference Symposium

Wednesday, December 2, 2015
University of Texas at Austin
Julius Glickman Conference Center, Room 1.302 D & E

**Music,
Property
& Law**



contracts • intangible heritage • copyright
cultural ownership • “blurred lines”
aesthetics • ethics



SARAH and ERNEST BUTLER
SCHOOL of MUSIC
The University of Texas at Austin

Society for Ethnomusicology Pre-Conference Symposium

Music, Property and Law

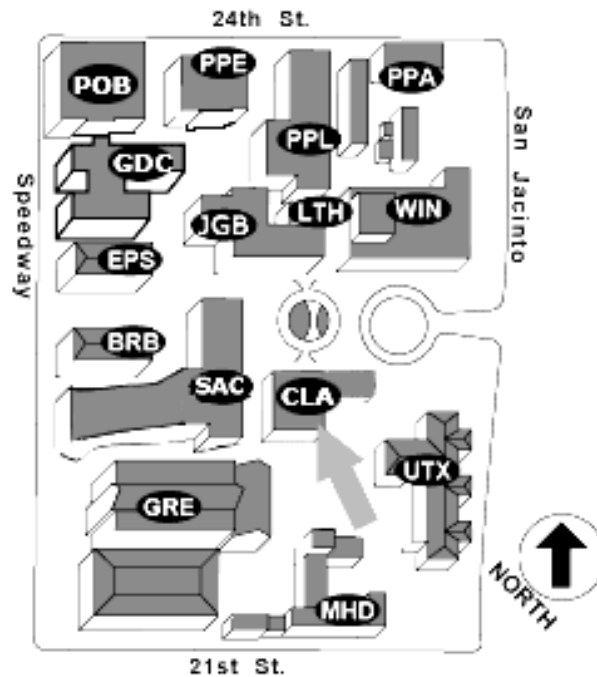
December 2, 2015
University of Texas at Austin
Julius Glickman Conference Center
1.302 D and E

Sponsors:

SEM, Local Arrangements Committee
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University of Texas, School of Law

Convenor:

Veit Erlmann



Morning

1.302 E

8:00
Registration

8:30
Welcome and Opening Remarks

Panel 1: Ownership and Intangible Heritage

(Veit Erlmann, Chair)

8:40

Michelle Bigenho (Colgate University)

Henry Stobart (Royal Holloway, University of London)

Heritage Fevers and Property Matters: Ethnographic Perspectives from Bolivia

9:20

Marc Perlman (Brown University)

Who Owns the Unowned? Protecting Traditional Music Against Appropriation

10:00

David Fossum (Brown University)

Collectors, Copyright, and Kizirođlu: Debating Folklore and Intellectual Property in Turkey

1.302 D

Panel 2: Property, Space and Law

(Leonardo Cardoso, Chair)

8:40

Jeff Klein (University of Pittsburgh)

Gentrifying Sound: The Role of the Law in Regulating Pittsburgh's Urban Nightlife

9:20

Yvonne Liao (King's College London)

Regimes of Regulation: Municipal Licensing, Entertainment Taxation, and Live Music in Shanghai's Eating and Drinking Establishments, 1930-1949

10:00

Daniel Gough (University of Chicago)

Music, Cultural Finance, and Brazilian Law

10:40 Coffee Break

1.302 E

Panel 3: Contracts, Ethics and Civil Rights in African-American Musical Practice
(Olufunmilayo B. Arewa, Chair)

11:00

Toni Lester (Babson College)
'Found' Black Culture and The White Compositional Gaze

11:40

Matt Stahl (University of Western Ontario)
Rhythm & Blues Royalty Reform, 1984-2004: A Contractual Rights Movement

12:20

Michael Morthland (Southern Illinois University)
Too Big to Fail? Why Sampling in House and Techno Have Largely Been Left Alone

1.302 D

Panel 4: Music, Rights, and the Politics of Cultural Ownership in African Art Worlds
(Alex Perullo, Chair)

11:00

Alex Perullo (Bryant University)
The Limits of Copyright Law: Conflict and Collapse in the Management of Artists' Rights in Ghana and Tanzania

11:40

Ryan Skinner (Ohio State University)
Of Expediency and Efficacy in Afro-Swedish Public Culture

12:20

Andrew J. Eisenberg (NYU Abu Dhabi)
The Soundtrack of Civil Society: Cultural Ownership and the National Imaginary in "Afro" Music Production in Nairobi, Kenya

1:00 Lunch

Afternoon

Panel 5: Blurred Lines
(Oren Bracha, Chair)

2:00

Michael S. Mopas and Amelia Curran (Carleton University)
Seeing is Believing: Translating Musical Similarities into Visual Evidence in Music Plagiarism Cases

2:40

Cameron Hutchison (University of Alberta)
Blurred Lines: Substantial Similarity as Copyright Infringement

3:20

Veit Erlmann (University of Texas at Austin)

Copyright, Crime, and the Chain of Evidence – Toward a New Anthropology of Law

1.302 D

Panel 6: Musical and Legal Aesthetics

(Toni Lester, Chair)

2:00

Kathryn Temple (Georgetown University)

Harmonic Justice: Music, Poetry and The Commentaries

2:40

Rebecca Dowd Geoffroy-Schwinden (University of North Texas)

Vive le son: Revolutionary Musicians as Intellectual Proprietors (1749–1799)

4:00 Coffee Break

1.302 E

Panel 7: The Sound of Property

(Chair, TBA)

4:20

Marina Peterson (Ohio University)

Atmospheric Sense: Noise Pollution, Flight, and Law

5:00

Bruce Ziff (University of Alberta)

Imagine No Possessions: Representations of Property in Music

Panel 8: Copyright, Cultural Property and World Music 2.0

(Veit Erlmann, Chair)

4:20

Anna Stirr (University of Hawaii at Manoa) and Dhrubesh Chandra Regmi (Tribhuvan University)

Articulating Local and International Ideas of Intellectual Property in Nepal's Music Industry

5:00

Trey Conner (University of South Florida)

Redistributed Authority: Hacking and Tracking the Rhetorics of Cultural Property

1.302 E

6:00

Keynote Address

Olufunmilayo B. Arewa
School of Law
University of California, Irvine

Slavery, African American Music, and the Boundaries of Property

ABSTRACTS

Michelle Bigenho (Colgate University) and Henry Stobart (Royal Holloway, University of London)
Heritage Fevers and Property Matters: Ethnographic Perspectives from Bolivia

A veritable “fever” of intangible heritage registration has been gripping Bolivia over recent years. Regional dances and musical genres are being registered at municipal departmental, and/or national levels. In 2011 alone, eleven dances were declared as national intangible heritage of Bolivia, each one with its own specific piece of legislation. As of September 2015, not one intangible heritage declaration had been accompanied by its supposedly necessary “regulation,” much to the dismay of heritage “managers” who expect supporting funds to flow from such declarations. Given Bolivia’s pro-indigenous government, indigenous president (Evo Morales), and official rhetoric of decolonization, it might be expected that alternative indigenous heritage initiatives and proposals might make headway. Discussions of heritage often equate these programs with cultural rights issues—as distinct from intellectual property that structures economic and sometimes moral rights. However, on the ground in Bolivia, these various forms of heritage registration, recognition, or inscription are perceived in multiple ways, and sometimes as legal instruments that confer something like ownership rights. Recently, such perceptions have caused bitter disputes between communities and with neighboring nations. This paper draws from an on-going collaboration, begun in 2012 with a National Science Foundation-funded participatory workshop in Coroico, Bolivia: “*Repensando la creatividad, el reconocimiento, y lo indígena.*” Additionally, it refers to recent ethnographic fieldwork in order to illuminate the socio-legal landscape of intangible heritage declarations in Bolivia and to follow the unofficial meanings of this blizzard of legislation that, even without regulations, goes far beyond mere words on paper.

Michelle Bigenho (Colgate University) and *Henry Stobart* (Royal Holloway, University of London) are currently researching a book on heritage issues as part of an ACLS Collaborative Research Fellowship. They also worked together on the Coroico 2012 workshop that led to the Spanish-English bilingual website *Rethinking Creativity, Recognition and Indigenous Heritage*. <http://tinyurl.com/p97lllm>. Both authors have worked independently on Bolivian music over several decades; Bigenho’s books include *Intimate Distance: Andean Music in Japan* (Duke 2012) and *Sounding Indigenous: Authenticity in Bolivian Music Performance* (Palgrave 2002); Stobart’s books include *The New (Ethno)musicologies* (Scarecrow 2008) and *Music and the Poetics of Production in the Bolivian Andes* (Ashgate 2006).

Oren Bracha is a legal historian and an intellectual property law scholar at the Law School of the University of Texas at Austin. His dissertation “Owning Ideas” is a comprehensive intellectual history of Anglo-American intellectual property law. Bracha was a law clerk for Chief Justice Aharon Barak of the Supreme Court of Israel. Prior to coming to UT he worked on several teaching and research projects for the Berkman Center for Internet and Society at Harvard Law School. His fields of interest include intellectual property, cyberlaw, legal history and legal theory.

Leonardo Cardoso is a lecturer at Texas A&M University and the University of Texas at Austin. His current work discusses the institutionalization of noise control and debates on youth street parties in São Paulo, Brazil’s largest city. This study approaches environmental noise as a controversy entangled in a series of scientific, legal, and institutional regulatory practices that mediate modes of hearing by turning sound into sound-politics. Working with the notion of sound-politics, of sounds that mediate and are mediated by the biopolitics of urban living, the book shows how noise traverses a wide range of social assemblages, including public health, religion, crime control, political ideology, urban planning, and economic development. Cardoso’s second research project analyzes acoustic surveillance in Brazil and the U.S. For more information about Dr. Cardoso’s work, please visit www.leonardocardoso.me.

Trey Conner (University of South Florida)

Redistributed Authority: Hacking and Tracking the Rhetorics of Cultural Property

The ongoing intensification of information technology, along with the emergence of new critical discourses intertwining a dizzying array of investments and perspectives (Indigenous rights movements, practitioners of open source software (OSS) culture, cultural environmentalists, and diverse legal lobbies advocating various versions of unrestricted public domains and digitally enabled/regulated creative commons) challenge efforts to globalize IP discourse, and reveal a disconnect between the cultural-property logics of "protection" and "moral rights," on the one hand, and the real complexity of cultural life and heritage on the other. Initiatives designed to "safeguard" cultural practices and forms vulnerable to appropriation have been in development and subject to refinement since the 1954 Hague Convention, but still do not adequately account for the fundamental dynamism and fluidity necessary for in-context cultural creation and performance ecologies to remain vital. I explore IP categories of "moral rights," "cultural property," and "intangible cultural heritage" (ICH), through the lens of one particular scene of new media production, the redistributive and long-form sampling practices of radio collage, "folk" compilation, and field recording enacted by the Sublime Frequencies project, a controversial "world music 2.0" response to both ethnomusicology and cultural imperialism in world music (<http://www.sublimefrequencies.com/default2.asp>). At this site, the concept of moral rights intersects with and underscores the concerns shaping discourses of intangible culture and traditional cultural expressions (TCEs) in ways that suggest that intellectual property is itself a culture ill-equipped for mediating diverse culture clashes and cultural transformations intensified by Indigenous struggle and decolonization efforts in the face of globalization.

Trey Conner is an Associate Professor at the University of South Florida, St. Petersburg. His research, grounded in rhetoric and composition, forges community partnerships that create service learning opportunities, immerses students in the phenomenon of distributed wiki authorship, and recovers various treatments of rhythm found in the classical Greek and Indian rhetorical traditions.

Andrew J. Eisenberg (NYU Abu Dhabi)

The Soundtrack of Civil Society: Cultural Ownership and the National Imaginary in "Afro" Music Production in Nairobi, Kenya

Over the past decade, Kenya's capital Nairobi has seen the emergence of a new popular music scene variously described as "Afro-fusion," "Afro-soul," "Afro-based," or simply "Afro." Fostered by Alliance Française de Nairobi and other transnational cultural organizations as a way to engender a more "African" Kenyan popular music, this scene is to some degree an outgrowth of civil-society efforts to mediate the longstanding tension in Kenya between ethnic and national forms of identity and citizenship. As such, Afro music production provides a window on the changing relationship between civil society and nation building in Kenya. Based on ethnographic data collected in 2011 and 2012, this paper examines how Kenyan Afro music producers engage with Kenya's "post-independence anxieties" (Mbũgwa wa Mũngai, 2007) over ethnicity in their efforts to blend "vernacular" (i.e. ethnic) with the sounds with global pop sounds. I reveal that Afro music producers grapple with ontological and epistemological questions of whether and how vernacular sounds may "belong" to a particular individual, community, or nation. Their various aesthetic and discursive attempts to answer or elide these questions constitute politics of cultural ownership that articulate with, and potentially intervene in, the Kenyan national imaginary.

Andrew J. Eisenberg, Assistant Professor of Music at NYU Abu Dhabi, conducts ethnographic research on sonic expressive culture in urban Kenya. He has two ongoing projects—one on vocal performance, public space, and Muslim cultural citizenship in Mombasa; the other on new and emerging aesthetic and entrepreneurial practices in Nairobi's music recording industry.

Veit Erlmann (University of Texas at Austin)

Copyright, Crime, and the Chain of Evidence – Toward a New Anthropology of Law

For the past five decades the relationship between law, the social sciences and the humanities has been shaped by a pervasive dichotomy. Sociologists, anthropologists, and socio-legal scholars have taken law, society and culture to be pre-existing, separate domains where one domain unidirectionally determines the other. Either the law is an instrument that shapes society or society constitutes law. The same logic underpins current debates about the future of copyright law. Using criminal enforcement of copyright in South Africa as an example, I outline an alternative approach that draws on Actor-Network Theory and ethnographic methods to argue for a model of non-causal interaction between law and society involving more or less unstable affiliations and attachments.

Veit Erlmann is the Endowed Chair of Music History at the University of Texas at Austin. He is currently writing an ethnography of copyright law in the South African music industry (to be published by Duke University Press). Entitled *Lion's Share. The Ethnography of Copyright Law in South Africa*, the book explores such topics as the everyday workings of CMOs; the legislative process leading up to the country's controversial "Indigenous Knowledge Systems" Bill; the famous lawsuit against Disney Enterprises, Inc. about the reversionary interest in the international hit song "The Lion Sleeps Tonight;" the criminal prosecution of piracy; and government's role in drafting a new digital copyright policy.

David Fossum (Brown University)

Collectors, Copyright, and Kiziroğlu: Debating Folklore and Intellectual Property in Turkey

In the run-up to Turkey's 2015 parliamentary elections, the then-ruling Justice and Development Party used a rock version of the folk song "Kiziroğlu" as one of its campaign songs. The choice provoked angry responses from the opposition Republican People's Party and from the family of Aşık Murat Çobanoğlu, who had made the song famous. However, because Çobanoğlu is registered as the song's collector and not its composer, such protests proved ultimately powerless. The incident highlights an unresolved issue among copyright administrators, courts, and musicians in the folk music industry: should collectors of folk songs hold some form of copyright over these works? The law allows for protection of collected works (*derleme*), a provision usually applied to anthologies and encyclopedias. By chance, this is the exact term used in Turkish musical folklore to refer to the process of collecting folk songs for subsequent publication, broadcast, and recorded performances. Should this article of the LIA on collected works apply to folk song collection? Proposals to resolve the issue by revising the LIA have been seriously considered and proponents have been persistent. But opposing discourses paint such efforts as profiteering, and legal obstacles have so far proven insurmountable. Drawing on analysis of the "Kiziroğlu" case and on ethnographic data from fieldwork with a variety of actors in Turkey's folk music industry, this paper traces the ideological faultlines in the debate over folk song collection and copyright, exposing the institutional history, incentives, and competing understandings of folk music production that feed the discussion.

David Fossum is a doctoral candidate in ethnomusicology at Brown University and also holds an MA from Wesleyan University (2010). His dissertation examines cultural policy and ideologies of authorship and ownership in folk music at Turkish institutions of musical folklore and intellectual property law.

Rebecca Dowd Geoffroy-Schwinden (University of North Texas)

***Vive le son*: Revolutionary Musicians as Intellectual Proprietors (1749–1799)**

"*Vive le son*" is the refrain to the French revolutionary anthem "La Carmagnole" (1792). Indeed, the French Revolution (1789–1799) echoes and resonates in legal discourses on music and property in the nineteenth, twentieth, and even twenty-first centuries. Jacques Attali (1977) and Peter Szendy (2008) have both identified the laws of 1791 and 1793 as significant moments in the history of

music as property. Yet neither Attali nor Szendy consider in nuance the position of musicians who fought for these rights during the revolutionary decade.

This paper mobilizes William H. Sewell, Jr.'s recent hypothesis of a rise in "interstitial capitalist abstraction" (2014) during the second half of the eighteenth century to consider the pre-revolutionary socio-economic changes that underpinned musicians' quest for intellectual property rights during the Revolution. In archival documents including petitions and personal letters, I read musicians' revolutionary struggle as that of a professional class who sought to re-appropriate their art from the *philosophes* that had dominated discourses and thus the political economy of music throughout the eighteenth century. As a result, ownership of music became not only an issue of financial and legal, but also of social and political concern.

Tensions between music as performance and as text combined with the French conception of genius as collective heritage rather than individual possession (Jefferson 2015) to result in the codification of laws that would continue to color the capitalist model of musical production and consumption for centuries to come. This paper considers the origins of this model through the perspective of eighteenth-century working musicians.

Rebecca Dowd Geoffroy-Schwinden is Assistant Professor of music history at the University of North Texas. Her research on eighteenth-century France has been published in *Studies in Eighteenth-Century Culture* and presented at conferences across the U.S. and Europe. She holds B.A.s, *phi beta kappa*, from Penn State University. She earned her A.M. and Ph.D. in musicology at Duke University.

Daniel Gough (University of Chicago)

Music, Cultural Finance, and Brazilian Law

This paper examines how a variegated body of cultural finance legislation defines music in contemporary Brazil. Cultural finance is significant both for the performing arts sector and as an economic activity, with annual state-directed financing for cultural practices approaching US\$2 billion in the State of São Paulo alone. In the context of laws and cultural policymaking that variously acknowledge music as a professional activity, intellectual property, part of the urban sensorium, and a cultural right, cultural finance laws intervene in musical practices by defining music and setting guidelines for funding. Given the importance of these funding sources for music production, these definitions in many cases guide the decision-making processes of musical actors. In particular, I will discuss cultural tax incentives, mandatory payroll taxes directed to leisure and cultural activities, and the public-private partnerships involved in culturebased urban redevelopment projects as significant regulatory spheres in which definitions of music are constructed in contemporary Brazil. I argue that these cultural finance mechanisms, largely concerned with the social and economic consequences of music production rather than aesthetic issues, have led to shifts in musical practices, the musical labor market, and music as a leisure activity in the country.

Daniel Gough recently earned a PhD from the University of Chicago, and his research focuses on the intersection of public policy and urban musical cultures, particularly in Latin American and Iberia. His dissertation, "Listening in the Megacity: Music in São Paulo's Cultural Policy Worlds," was supported by a Jacob K. Javits Fellowship and grants from the Andrew W. Mellon and Tinker Foundations.

Cameron Hutchison (University of Alberta)

Blurred Lines: Substantial Similarity as Copyright Infringement

The "Blurred Lines" case, in which the estate of Marvin Gaye successfully sued songwriters Pharrell Williams and Robin Thicke, raises interesting issues about how the law determines whether the copyright in a song has been infringed. At a broad level, the legal question is whether the defendant's song is *substantially similar* to that of the plaintiff's. This is a highly contextualized (and some may say inherently subjective) inquiry. Still there is difference of opinion, both in legal authority and among music experts testifying in such cases, about how the comparison between the

songs is to be made. There are two main questions. First, in which medium of expression are the two works to be compared? In *Blurred Lines*, the court instructed the jury to compare the *recording* of alleged infringing work with the *sheet music* of the Marvin Gaye song. What justifies such an approach and is it a sensible way to make such comparisons? Second, how is the comparison to be made? Should courts dissect and compare melody, harmony, chord progression, beat, and riffs in an effort to objectively assess similarity (in which case these two songs are definitely not substantially similar). Or is it more appropriate to make the assessment on a “total concept and feel” test, i.e. do the two songs sound very similar to an average lay listener (which appears to be the basis on which this case was decided). Competing approaches in both the US and Canada will be explored and critiqued.

Cameron Hutchison is an Associate Professor at the Faculty of Law at the University of Alberta. His main teaching and research interests are in the area of copyright law. Many of his publications can be downloaded at [ssrn](http://ssrn.com). He teaches courses in intellectual property law, and musicians and the law. He is currently preparing a book entitled *Digital Copyright Law*.

Jeff Klein (University of Pittsburgh)

Gentrifying Sound: The Role of the Law in Regulating Pittsburgh’s Urban Nightlife

In Pittsburgh, as many communities are gentrified and new hubs of nightlife are developed, night spots are often intermixed with long-time residents, creating points of conflict between urban soundscapes and the residents of those soundscapes. Sound from those night spots, and the aural by-products of those spots, have become a serious concern for working-class residents living in these new hubs. In the middle of this conflict are the city’s government and law enforcement officials. The City Council is charged with protecting the interests of residents while attempting to build a business environment conducive to economic growth. Meanwhile, law enforcement agents wrestle with the complications of enforcing those regulations. As Pittsburgh’s City Council struggles with the complications of drafting a new noise ordinance to address those concerns, questions arise as to how to implement that ordinance. My background as an attorney and an ethnomusicologist positions me to mediate the tension between nightlife, residents, and the law. In doing so, I adopt a multi-disciplinary approach that includes traditional legal analysis, scientific acoustic analysis, and ethnographic research to explore these competing interests.

Jeff Klein is a PhD student in ethnomusicology at the University of Pittsburgh where he is researching the gentrification of urban soundscapes. He also possesses a Masters from BGSU and a JD from Wayne State University Law School. Prior to studying ethnomusicology, Mr. Klein worked as an attorney.

Toni Lester (Babson College)

‘Found’ Black Culture and The White Compositional Gaze

This paper will explore the legal and ethical issues associated with whites who use “found” black culture (performances, speech, art, words, etc.) in their work. It will touch on such legal topics as “appropriating someone’s name and likeness,” privacy rights, and copy and performance rights infringement, as well as the broader ethical question of cultural appropriation. The paper is relevant to those composers and ethnomusicologists engaging in these kinds of activities who would like to strike a thoughtful balance between their own need to develop new work and the rights/needs of the subjects of that work.

Toni Lester is a Professor of Arts and Entertainment Law at Babson College, where she holds the Kelly Lynch Chair in Research. She has a B.S. from Georgetown University, a Master in Music (with honors, from New England Conservatory), a J.D. from Georgetown University and a Ph.D. from Northeastern University. Lester recently served on an advisory team of scholars who commented on early drafts of the 2014 UN Office of Human Rights Report of the Special Rapporteur in the Field of Cultural Rights on the “Question of Copyright Policy and the Right to Science and Culture.”

Lester's 2014 article, "Blurred Lines – Where Copyright Ends and Cultural Appropriation Begins: The Case of the Robin Thicke v. The Estate of Marvin Gaye" (Hastings Communications and Entertainment Law Journal @ <http://ssrn.com/abstract=2576016>), examined the dispute and made tentative predictions about the outcome of the case a year in advance of the decision. Her 2015 article, "Oprah, Beyonce and the 'Girls That Run the World' - Are Black Female Cultural Producers Gaining Ground in the Intellectual Property Law?" appears in the Wake Forest Journal of Business and Intellectual Property Law @ <http://ssrn.com/abstract=2659478>.

Yvonne Liao (King's College London)

Regimes of Regulation: Municipal Licensing, Entertainment Taxation, and Live Music in Shanghai's Eating and Drinking Establishments, 1930-1949

A fair amount of work revolving around music and law has been situated in contemporary contexts (e.g., Weintraub and Yung's edited volume in 2009). Acknowledging the literature, this paper proposes a somewhat different trajectory. It is a historical discussion, examining the relationship between music, regulation, and jurisdiction in 1930s and 1940s Shanghai. The relationship is striking because it is anything but clear-cut. The city was marked by foreign-and-Chinese administrations and by numerous "centers" of power. Put another way, it did not have a single source of law.

To explore further, the paper considers the municipal licensing and taxation of eating and drinking establishments with live music. Engaging with sources in Chinese, English, and French, the paper consists of three parts. First, it examines musical stipulations, such as the prohibition of brass instruments, imposed by Shanghai's French authorities on eateries in the French Concession. What did the stipulations mean to venue operators and musicians? Second, the paper interrogates the extent to which entertainment taxation and tiered tax rates mattered (and did not matter) to eateries in the aftermath of the Second World War, a brief period of Chinese Nationalist rule before the Communist takeover in 1949. Finally, the paper offers some broader observations on the relationship between music, law, and jurisdiction in the context of 1930s and 1940s Shanghai, noting that the relationship is characterized less by control and contravention than by an interplay between cultural activity and municipal governance, regimes of regulation notwithstanding.

Yvonne Liao is a final-year PhD Candidate in Musicology at King's College London. Drawing on sources in Chinese, English, French, and German, Yvonne's project examines western live music and sound in eateries, public parks, and skating rinks in 1930s and 1940s Shanghai. Future interests include the nexus between music, policy, and historiography. Yvonne read Music at Oxford and worked at Naxos and Universal Music prior to the PhD.

Michael S. Mopas and Amelia Curran (Carleton University)

Seeing is Believing: Translating Musical Similarities into Visual Evidence in Music Plagiarism Cases

Musicians have long looked towards the courts to get compensation from those whom they believe have plagiarized one of their songs. Forensic musicologists are usually called to testify as to whether the works are 'substantially similar'. Because of their ability to turn raw auditory materials into legal evidence, forensic musicologists have become the authoritative listeners in the courtroom who determine how triers of fact witness—both visually and aurally—the songs on trial. However, until the 1950s, it was not the scientific analysis of the pieces, but the impressions they left on the 'untrained ears' of everyday listeners that was used to determine copyright infringement. This paper presents an overview of American music plagiarism cases to document this shift in how the question of substantial similarity has been approached. We argue that the courts' inability to objectify what listeners hear in music created the need for experts who could reduce a song to its melodic essence and translate this information into a visual format. We suggest that this practice of judging plagiarism according to how songs look on paper may account for why the courts have viewed most forms of musical sampling as copyright violations.

Michael Mopas is Associate Professor in the Department of Sociology & Anthropology at Carleton University. He specializes in the area of science, technology, and law. He is currently completing a study, funded by the Social Sciences and Humanities Research Council (SSHRC), that examines the place of sound in the courtroom. The study explores the ways in which judges hear and make sense of auditory evidence presented at trial and documents the work of audio forensic experts in making, interpreting, and rendering them audible.

Michael Morthland (Southern Illinois University)

Too Big to Fail? Why Sampling in House and Techno Have Largely Been Left Alone

The *Newton v. Diamond*, 349 F.3d 591 (9th Cir. 2003) and *Bridgeport Music, Inc. v. Dimension Films*, 410 F.3d 792 (6th Cir. 2005) opinions have passed a decade of citation and the landscape for music sampling has changed dramatically. While much has been written regarding sampling in hip-hop, there has been no analysis regarding the practice of sampling in house and techno music. Although unlicensed sampling has ended in hip-hop, house and techno is built around this practice. The purpose of this article is to extract the detail regarding the art of sampling in house and techno and the future of the practice in light of legal developments and large label influence. Is there something in particular about these genres that have led large labels to not interfere? Does interference by labels make fiscal sense? Does the genre need the resources that labels offer? How does the culture react? This article focuses on the history the genres from its inception to where it stands today. The article also provides insight into musicians' feelings about the law and how they have maneuvered through the system—or more aptly barreled forward. Finally, this article asks why the music and culture has flown under the radar; and concludes by attempting to answer these questions in consideration of the relationship between the law and culture of the music.

Michael Morthland graduated with his Bachelor of Fine Arts in Instrumental Performance from the University of Illinois Urbana-Champaign principally playing bassoon. Michael then went on to receive his J.D. from Southern Illinois University Carbondale School of Law with a focus in Intellectual Property. The focus of his research is on hip hop and electronic dance music and the culture surrounding these genres.

Marc Perlman (Brown University)

Who Owns the Unowned? Protecting Traditional Music Against Appropriation

Most traditional music belongs to the “public domain” and is described as a “commons,” but this is ambiguous: a commons can be either positive or negative. Insofar as it can be privatized, traditional music is a negative commons. One response to private appropriation has been to redefine tradition as a positive commons by giving legal ownership to the State. As this solution is inconsistent with the tenets of liberal government, it has been implemented mostly in the developing world.

There was, however, a moment in U.S. history when musicians proposed something similar. During the Folk Revival, some collectors—most notoriously Alan Lomax—claimed copyright in the songs they published. Outrage at this appropriation fueled a debate that involved Pete Seeger and his father, Charles. They proposed making folk music a positive commons. Pete Seeger later gave this idea international scope, and founded an NGO to bring it before the World Intellectual Property Organization. None of these efforts succeeded.

Meanwhile, one European country found an alternative solution to a similar problem of appropriation involving accordion music, a solution in the spirit of a contemporaneous development in computer programming (“free software”). I analyze both episodes, drawing on archival sources to show how Lomax used his role as cultural broker and his access to the mass media to exploit a peculiarity in the legal definition of ‘originality.’ In contrast, the accordionists changed the law by playing identity politics: accusing the national government of bias against their region’s distinctive culture.

Marc Perlman studied law at American University and the University of California, Berkeley in 2007-2008, supported by a Mellon New Directions Fellowship. His research concerns the ongoing construction of an international legal regime to govern traditional culture, as well as the 21st-century struggle over musical copyright in the digital domain.

Alex Perullo (Bryant University)

The Limits of Copyright Law: Conflict and Collapse in the Management of Artists' Rights in Ghana and Tanzania

The creation of collective management organizations meant to administer the rights of African artists emerged across the African continent in the 1990s and early 2000s. Few countries prior to this period had laws that required radio stations, clubs, bars, hotels, and other social establishments to pay regular fees for the right to publicly play or perform music. Even fewer had organizations that tracked publishing rights, mechanical rights, or other rights connected to copyright law. In the creation of new copyright laws across the African continent, countries needed to establish rules for the creation of collective management organizations. Some countries opted to have the organizations only exist under state control. Others chose to allow these organizations to be run independent of the state. In almost all countries, nonprofit organizations and international institutions emerged to further address the governing of rights among all those who could benefit from the new laws. Although each country approached the governing of copyright law from unique perspectives, commonalities emerged in the inability to use the new laws to benefit working artists. Royalties, when collected by CMOs, rarely ended up in artists' hands. Digital piracy blossomed with little redress by those administering artists' rights. And, a broad articulation of the diversity of rights in copyright law (publishing, mechanical, synchronization) failed to materialize in a majority of countries. The inability to create any effective policy or practice in relation to copyright law brought indignation and conflict among all of the interested groups. Claims of corruption, misuse of power, and self-interest were regularly expressed in print, conversations, and in the media. The result was a contentious landscape of disagreement over ownership, and the promotion of particular ideas about the meaning of music as a form of cultural and economic property. This paper traces the conflict over rights and the formation of particular approaches to ownership in music that has led, in many cases, to the collapse of effective administration of intellectual property rights. Through examining the management of copyright law in two countries, Ghana and Tanzania, this paper provides a means to show the limits to creating new laws that bear little resemblance to cultural notions of music, compositions, and rights.

Alex Perullo is Professor of Anthropology and African Studies at Bryant University and a Visiting Professor at the CUNY Graduate Center. His research interests include intellectual property rights, music economies, urban society, and popular culture. Perullo has two published books, including *Live from Dar es Salaam: Popular Music and Tanzania's Music Economy* (Indiana University Press, 2011), and many articles.

Marina Peterson (Ohio University)

Atmospheric Sense: Noise Pollution, Flight, and Law

In the 1960s, the legal categorization of environmental noise shifted from nuisance to pollution. This was significant for registering a contemporaneous conceptualization of the environment grounded equally in a nascent planetary consciousness and a notion of a permeable body; in, that is, the atmospheric. Law is a crucial arena in which this new configuration of atmosphere, sensation, and urbanism was forged in relation to sound. Enfolding acoustics and metrics of noise measurement, public health and private property, jurisdictional domains and civic politics, law shapes sound both conceptually and as socially meaningful. In the context of environmental legislation, noise is made commensurable with other forms of pollution, provided an objective basis, and regulated as an environmental concern. Not a pollutant of air, noise is nevertheless central to regulating skies, with aircraft noise the basis for the jurisdiction of airspace territory. At the same time, civic mobilizations against noise experienced on the ground structure collectives

around sensation. Across this legal terrain, a non-objectified theory of sound emerges that at once instantiates registers of the atmospheric and is grounded in sensation. There is no “sound of” noise pollution, and those sounds that constitute noise pollution come into being and are made meaningful through sensation. Following, the atmosphere is not “out there,” either physically or conceptually. Rather, as an immateriality made legible through law, it is at once present, pervasive, and perceived.

Marina Peterson is Associate Professor of Performance Studies in the School of Interdisciplinary Arts at Ohio University. An anthropologist, her work explores multi scalar formations of urban space through the study of sensory, sonic, and embodied processes ranging from performance and planning to labor and law. The author of *Sound, Space, and the City: Civic Performance in Downtown Los Angeles* (UPenn Press 2010) and co-editor of *Global Downtowns* (UPenn Press 2013), her work has appeared in *Anthropological Quarterly*, *Journal of Popular Music Studies*, *O-Zone: A Journal of Object-Oriented Studies*, *South Atlantic Quarterly*, *Space and Culture*, and *Urban Anthropology*.

Ryan Skinner (Ohio State University)

Of Expediency and Efficacy in Afro-Swedish Public Culture

This paper reflects on the transnational work of artists and culture brokers who have been instrumental in articulating African music economies with the Swedish public sphere. Such articulations—that lend credence to the idea of an “Afro-Swedish” art world—entail a modulation of cultural biopower, from the selective empowerment of citizens through domestic cultural policy to the mobilization of privileged partnerships with foreign actors and agencies; from governmentality to nongovernmentality. Setting aside the contested politics of national belonging indexed by these arts initiatives in Sweden, this paper will consider two case studies, the artistic residency of Sweden-based Afropop musicians Sousou and Maher Cissoko in Senegal and the institutional expansion of the Swedish culture organization Selam in Ethiopia, to query the relative expediency and efficacy of Afro-Swedish nongovernmentality in Africa today. On the one hand, these projects of musical outreach and exchange appear embedded in what Charles Piot has called “a world of postnational sovereignty,” in which formal and established cultural-political institutions (including state agencies and traditional authorities) must contend with a range of informal and emergent cultural agents (including popular youth associations, new religious movements, NGOs, and foreign arts agencies). On the other, the musical initiatives in Senegal and Ethiopia seem to transpose a distinctly Swedish model of a “public option for the arts,” emphasizing artistic persons over products and thereby presenting a counter-narrative to neoliberal models of arts entrepreneurship. Between cultural expediency and efficacy are important questions of agency, value, and ownership in the Africa’s expansive nongovernmental arts sector. Moving from Dakar to Addis Ababa (and both via Stockholm), this paper will examine the cultural exchanges, expressions, and aspirations of a nascent Afro-Swedish art world, drawing attention to the socially constitutive conceptions and embodiments of musical value and shared (though not uncontested) ownership therein. Given the manifest challenges to (and, arguably, failures of) regimes of artistic “rights” in Africa today—too often bound to antiquated notions of cultural “property”—this paper argues for a more ethnomusicological account of the use value of the musical “work” (in the Arendtian sense of vital and enduring products of human co-creativity) in contemporary African music cultures.

Ryan Skinner studies the local and global music cultures of contemporary Africa and its European and American diasporas. Specializing in the analytic methods of cultural anthropology and ethnomusicology, his research focuses on issues of popular culture, ethics, aesthetics, urbanism, public piety, cultural politics, nationalism, and the idea of Africa in the world today. Skinner’s work has appeared in the journals *Anthropological Quarterly*, *Africa*, *Popular Music*, *IASPM@Journal*, *Research in African Literatures*, *Mande Studies*, *The Journal of American Folklore*, and *African Arts*. He is the author of the book, *Bamako Sounds: The Afropolitan Ethics of Malian Music* (University of Minnesota Press, 2015), and is currently conducting research as an ACLS Charles A. Ryskamp fellow for a second book-length project on race, politics, and performance in Afro-Swedish public culture.

Matt Stahl (University of Western Ontario)

Rhythm & Blues Royalty Reform, 1984-2004: A Contractual Rights Movement?

The postwar explosion of independent U.S. record companies producing and marketing R&B and rock 'n' roll involved the recruitment and exploitation of many young black singers. Their popularity transformed U.S. popular music and provided the economic foundation of an industry boom, yet changing tastes, fraudulent accounting, and indifferent executives left many to grow old in dire economic circumstances.

Drawing on primary sources and archival documents, this paper examines the 1980s efforts by aging performers and their allies to redress record companies' systematic underpayment of royalties. It outlines the 1950s recording industry's 'racialized political economy' and proposes an account of the royalty reform movement's coordinated exertions toward collective solutions: the establishment of the Rhythm and Blues Foundation (a non-profit dedicated to the financial and reputational needs of aging performers), a major class-action settlement, and a change to California accounting regulation.

Royalty reform both intersects with and diverges from the broader Civil Rights movement. Several influential lawmakers and activists participated in both movements; both movements shared certain discourses of racial and economic justice; both unfolded over decades of social, cultural, and political-economic change. Yet royalty reform addressed not civil or human but contractual rights issues, contending not only with structural racism but embedded conceptions of individualistic contractual voluntarism. In addition to outlining a historical story, the paper will employ sociological, political-philosophical and intellectual property approaches to pursue two main conceptual aims: to contextualize and theorize this movement's tactics and confrontations, and to contribute to the development of a multidisciplinary approach to royalties that distinguishes between more familiar copyright-based rights and private, contractual intellectual property rights.

Matt Stahl is Associate Professor of Information and Media Studies at the University of Western Ontario. His 2013 book *Unfree Masters: Recording Artists and the Politics of Work* (Duke University Press) received IASPM's 2014 book prize. His work has appeared in media studies, popular music, labor, and law journals and edited volumes.

Anna Stirr (University of Hawaii at Manoa) and Dhrubesh Chandra Regmi (Tribhuvan University)
Articulating Local and International Ideas of Intellectual Property in Nepal's Music Industry

This paper is a collaborative effort in which we draw on our research and performing experiences in Nepal's music industry, as well as Dr. Regmi's former career as a lawyer. Nepal became a member of the WTO in 2004, and has since become party to various international conventions and treaties, including TRIPS. To fulfill the obligations created by these international instruments, Nepal is in the process of amending existing IPR laws, as well as enacting a separate act of intellectual property rights. Political instability and focus on drafting a new constitution have overshadowed the issue of IPR. There thus remains a great gap in understanding between those who make the laws and those whom the laws are meant to protect. Though professional musicians say they would like greater protections, they and music companies continue to operate in ways that do not quite fit with the laws. This paper looks at the points of convergence and divergence between Nepal's intellectual property regime, music companies' business practices, and artists' assumptions about what the law should do for them. We argue that traditions of patronage, customary assumptions about the availability of "folk" music to all, ideas of intangible cultural heritage, and customs in different genres, all contribute to artists' and companies' ideas of how music as property should be legally defined. We compare these ideas with those at play in existing IPR policies and those that are works in progress. We end with recommendations for dialog meant to close the gaps in understanding, and to shape a workable IPR regime.

Anna Stirr is Assistant Professor of Asian Studies at the University of Hawaii-Manoa. She studies music, language, migration, circulation and the politics of intimacy in Nepal and among migrant

Nepali speakers in Europe, North America, and the Arabian Gulf. Her current projects include a book on the intimate politics of Nepali improvised conversational duet songs, and a study of love in Nepali communist revolutionary music and dance. She received her PhD in ethnomusicology from Columbia University in 2009, and holds a BA in music and religious studies from Lawrence University.

Dhrubesh Chandra Regmi is a sought-after sitarist, member of the ensemble Sukarma, and Associate Professor of Music at Tribhuvan University. He is part of an illustrious family of classical musicians in Nepal, and he received his musical training from his father Prof. Satish Chandra Regmi and later as a disciple of the sitar master Pt. Uma Shankar Mishra from Delhi. He holds a PhD in Musicology from Delhi University, and his current book project is a study of the classical music of Nepal during the Rana period (1846-1951). With Sukarma, he was a Nepal Goodwill Ambassador in 2011, and in 2014 completed a project on music and peace as a Fulbright Visiting Scholar at the CUNY Graduate Center. In addition to his musical career, he is a lawyer and a founding member of South Asia Watch on Trade, Economics, and the Environment (SAWTEE).

Kathryn Temple (Georgetown University)

Harmonic Justice: Music, Poetry and *The Commentaries*

Writing in 1992 in “Coming to our Senses,” Bernard Hibbits briefly noted a 13th century English legal tradition of song and music that led to English legal representatives being described as “conteurs” or “singers of tales.” While one would be hard pressed to describe William Blackstone, author of the famed *Commentaries on the Laws of England* (1765-1769) as a singer, my work on the *Commentaries* has revealed his investment in what is often called “harmonic justice,” in ideals of harmony that echo Aristotle and Plato, but also connect Blackstone to the lost oral tradition of the bards.

I have written at length about Blackstone’s poetics in “Sounds Couth and Uncouth: The Poetics of Harmonic Justice in William Blackstone’s *Commentaries* (forthcoming in *Law and Literature*). There I begin with Blackstone’s early poetry where he associated literature with the lilting “hum” of poetry and law with the raucous “noise” of modernity. In my detailed reading of the *Commentaries*, however, I suggest that Blackstone never really left poetry, music or the oral world behind, but instead drew on his understanding of poetics to create the harmonic feel of the *Commentaries*.

In the paper I wish to present I want to examine more carefully the connections Blackstone’s contemporaries and near contemporaries drew between poetry and music in order to further explore Blackstone’s allegiance to the older oral traditions of English law. James Beattie’s *Essays* and John Brown’s *Dissertation on the Rise, Union and Power of Poetry and Music* are both of interest to me as are other less well known pamphlets on music and poetry that drew these connections. Recent work on music and ethics also seems important to the questions I am trying to raise about the *Commentaries*. Was English law for Blackstone *only* a noisy conflation of clamorous voices from the past (what Michael Meehan refers to as “a series of vocal intrusions”) or does his evocation of the poetic, harmonic tradition in the *Commentaries* attempt a return to a lost oral past, a more musical tradition than Westminster Hall of the 1760s seemed to allow? And what is the relationship between his understanding of harmony in poetry, harmony in music and ethics or “natural” law?

Kathryn Temple, J.D., Ph.D. was Georgetown University English Department chair from 2009 to 2015. She is completing a book on the poetics of eighteenth-century law that focuses on the relationship between affect and institutional structures. As the primary investigator on the Mellon Foundation grant “Connected Academics” she leads a collaborative team exploring new models for the PhD in the humanities.

Bruce Ziff (University of Alberta)

Imagine No Possessions: Representations of Property in Music

This paper will explore linkages between property and music by examining depictions of the law *in* music. The focus will be on the ways in which images of ownership and entitlement are described and valued (or not) in song. Many property law theorists evince a general respect and support for the institution of property. Critique is not uncommon, but it commonly takes place around the margins. When one looks at the treatment of property law in lyrics, it is apparent that songwriters quite literally sing a different tune. Here the message most often dwells on the failings of property, and the harsh consequences that ensue, whether for tenants, the poor, or others. Displaying that stark contrast is the central aim of this paper. In doing so, I will draw on two episodes of historic significance -- the lengthy anti-rent rebellion that occurred in upstate New York in the mid-19th century, and the assassination of the hated Irish landlord, Lord Leitrim, in the later parts of that century. Contemporary events, such as the fight for Aboriginal land rights in Australia, and the Occupy Movement, will also be explored. All of these moments generated a rich body of music.

Bruce Ziff is the associate director of folkwaysAlive! at the University of Alberta (in partnership with Smithsonian Folkways Recordings), and is a professor of law at the University of Alberta. Professor Ziff's research deals mainly with property and legal history. He is the author of *Principles of Property Law*, 6th ed. (2014), and *Unforeseen Legacies: Reuben Wells Leonard and the Leonard Foundation Trust* (2000). In addition, he is a co-editor of *A Property Law Reader*, 3rd ed. (2012), *Borrowed Power: Essays on Cultural Appropriation* (1997) and *Property on Trial: Canadian Cases in Context* (2012).