

Copyright and Cultural Preservation: Ensuring Effective Protection of Traditional African Music

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ABSTRACT

This paper explores the complex relationship between American copyright law and indigenous African music by analyzing the historical roots, conflicts, and widespread consequences of such interplay. It examines how American copyright law has evolved alongside African musical traditions, emphasizing instances in which Western music has inadvertently infringed upon the cultural heritage of indigenous African melodies. The discussion extends beyond simple legal concerns to additionally attempt to pinpoint a subtle form of cultural appropriation that threatens moral rights. By offering an overview of key theoretical debates on this subject, along with a case study reflecting how African communities perceive these issues in comparison to Western academic perspectives, the goal is to provide a deeper understanding of both the cultural and ethical dimensions of legal norms governing musical traditions and folklore. Additionally, this paper seeks to probe the effects and implications of applying Western standards to non-Western cultural works and considers possible approaches for sensitively navigating these challenges.

Introduction

The creation of new works from existing materials sits at an intersection of innovation and potential copyright infringement. Under current copyright laws in many countries, rearranging copyrighted songs may give rise to a newly protected musical work, complete with its own permissions and royalty obligations. Such flexibility within the realm of copyright also raises the question of works with copyrights that have not yet been extended, such as traditional songs. If individuals utilize elements of a traditional song to produce a new work, is this considered innovation or copyright infringement?

The determination of originality in artistic works typically relies on documented provenance or informed speculation. However, music's intangible nature presents distinct challenges to this process, especially when compared to visual artforms like painting, where authorship and originality are more readily apparent. These challenges are particularly pronounced in the case of oral traditions, such as indigenous African music, where a long history, paucity of written records, and communal creation can obscure the origin of a piece. Consequently, the lack of tangible historical documentation impedes the acknowledgment and protection that copyright law might provide to these works in many countries.

While discussions have emerged regarding the impact of African American music on mainstream culture worldwide and copyright law's failure to account for diverse traditions, a tangential topic is grievously overlooked: the uncredited use of traditional African music in the pop culture of the United States in particular. This analysis contends that the framework of U.S. copyright law fundamentally lacks the mechanisms to protect traditional African creators' rights. Advancing a holistic approach, this paper proposes that rectifying these shortcomings requires a multifaceted strategy involving legal experts, artists, industry professionals, and the public, and advocates for building greater awareness among all parties.

This argument unfolds in two distinct stages: The first stage examines legal and anthropological literature to ascertain the appropriateness of American copyright law in preserving indigenous—and particularly indigenous African—cultural expression. This examination is structured into four segments: Part I identifies characteristics unique to traditional African music, asserting the need for distinct copyright consideration; Part II delves into the legal foundations and theoretical assumptions of American copyright law, revealing the complexities of accommodating African traditions within this framework; Part III offers case studies into the Western appropriation of traditional African music, providing concrete instances and examples of the issue at hand; and Part IV illuminates the necessity of addressing this topic, discussing ethical ramifications and the moral duty to ensure equitable treatment for all cultural expressions within the ambit of copyright law.

The second stage presents interviews conducted in Uganda, engaging with traditional African musicians to gain a better understanding of the challenges they face in preserving and protecting forms of cultural expression, and their perspectives on copyright law's efficacy in protecting such expression outside of the national borders of Uganda.

Methods

This research relied primarily on two methods. The initial phase of the study involved a library search and literature review, which included examining characteristics of traditional African music, copyright law in the domain of music, and research papers by experts who have addressed the absence of legal protection for indigenous folklore worldwide. This part of the research aimed to comprehend the regulations of American copyright law regarding traditional African musical works in particular, and to provide a detailed evaluation of anthropological and legal literature.

The second phase of the study involved visiting and interviewing professional and traditional musicians actively engaged in the cultural musical communities of Uganda. The subjects—a diverse group of individuals, including students, cultural center leaders, and members of the Uganda National Musicians Federation—were deliberately chosen for their expertise, relevance, and ability to provide insightful contributions regarding the study's focus. Among the interviewees were 12 male and 4 female musicians, with ages ranging from 34 to 68 years, representing a broad spectrum of Uganda's traditional musical community. A qualitative direct interview approach was employed to obtain first-hand information. Open-ended questions were used to minimize potential researcher bias and elicit rich, detailed responses. While the complete interviews covered various topics, Section B specifically extracted interviews explicitly related to copyright law, which were then used to draw general observations made in connection to copyright. Last names have not been shared in order to maintain the anonymity of all research participants.

A. Doctrinal Research: Analyzing the Compatibility of Copyright Laws with Traditional African Music

This phase of the research explores published literature so as to critically evaluate the compatibility of American copyright law with African indigenous music. This section was developed based on the idea that Western, and particularly American, popular culture has a contentious history of incorporating traditional African music, often without attribution, and that the current Western system is insufficient in safeguarding foreign musical creations, particularly those stemming from indigenous traditions. To bolster this argument, this section compares aspects of traditional African music to Western music, scrutinizes the U.S. copyright law framework for its suitability in accommodating traditional African music, presents evidence of the U.S. copyright system's ineffectiveness in protecting such creations through an examination of relevant case studies, and finally address specific issues that arise due to this fundamental incompatibility.

I. Characteristics of Traditional African Music

Africa's rich musical heritage spans the continent's vast geography and many ethnic and cultural groups, encompassing a diverse array of traditions and genres. While it is impossible for a single genre to fully capture the breadth of Africa's musical expression, scholars have categorized African music into five broad types, as outlined by Green (1985). These categories are delineated as traditional, neotraditional, westernized pop, western pop, and conservatory music, offering a simplified framework for understanding the multifaceted nature of African musical traditions.

This study focuses primarily on the category of traditional African music (often used interchangeably with "indigenous African music"), which is regarded as the continent's oldest and most prevalent form and represents an "aggregation of regionally, customary, culturally, and ethically constituted musical practice" (Mapaya, 2014). However, it is important to clarify that the term "traditional" in this context excludes music now widely known as "African" in the Western world, which often blends local and foreign elements like Highlife, Afrobeat, and Rumba. Instead, traditional African music under this categorization encompasses forms that are generally less well-known due to a lack of written records as well as the ever-evolving nature of music itself, to which frequent and decisive changes over the centuries are inherent.

Understanding the features of such traditional African music is fundamental in delineating its differences from Western music and recognizing the significant obstacles to effectively protecting and copyrighting this category of music in the U.S. The following section therefore delves into the general characteristics shared by pieces of traditional African music in an attempt to provide insights into its cultural significance and unique attributes.

Rhythmic Complexity

Traditional African music distinguishes itself through its polycentric nature, a stark contrast to Western music, which is often centered around a main melody. In this type of music, elements like dance, music, spoken word, and instrumentals are inseparable (Merriam, 1959), a fact that is further emphasized by the absence of explicit terminology in many sub-Saharan languages to distinguish dance and music (Kululuka & Jeannin, 2008).

With its multifaceted layers, traditional African music showcases complexity through "out-of-phase" exchanges, repetitions, and the integration of ternary and binary rhythms with multipart singing and harmony (Kululuka & Jeannin, 2008). This complexity demands a unique perspective from each musician, making traditional African music less amenable to Western notation practices. The fact that its inherent rhythmic intricacies pose challenges in terms of transcription immediately underscores some of the difficulties in affording protection to this category of music within the confines of the U.S. copyright system.

Call-and-Response and Oral Transmission

Another fundamental element of African traditional music is the antiphonal call and response, characterized by a dynamic interplay in which a leader initiates a phrase and is met by a response from the chorus (Merriam, 1959). This pattern, fostering spontaneity and self-expression, often results in improvised leader phrases during which the chorus provides a stable foundation, allowing the music to remain fluid and evolve with each leader and participant (Lebaka, 2019).

This improvisational quality aligns with the oral transmission of traditional African music, which is pivotal to a continent in which over eight hundred languages are spoken rather than written. As a result, African traditions—including lifestyles, history, and culture—have relied heavily on oral transmission from one generation to the next (Green, 1985). Oral tradition also accommodates the changing nature of a music that is inherently marked by improvisation and participation. Its repetitive structure aids memorization and facilitates the transmission of music from generation to generation by ear (Seeger, 1992).

The improvisational and participatory nature of traditional African music, coupled with the absence of a fixed musical structure, further complicates its translation to a written medium. The intricacies of African music and the cultural diversity it represents thus pose difficulties in capturing its essence on paper for cross-cultural understanding and reproduction, or protection from such reproduction.

Collective Creatorship

Communal composition practices are another distinctive feature of traditional African music, embodying not just a final product but a dynamic interaction—a “cooperation and collaboration” that serves a social purpose (Lebaka, 2019). This collaborative creation of music acts as a medium for instilling correct behavior, imparting knowledge, and shaping attitudes in children, allowing it to play a vital role in education (Kgobe, 1997). Among the Northern Sothos, music serves as a conduit between the living and the dead, invoking ancestral spirits and facilitating communication with gods (Kgobe, 1997). This process of learning and adding on to music passed down through generations involves socialization, by which individuals contribute ideas about song texts, polyphonic organization, melody, and overall form (Lebaka, 2019).

In summary, the process of creating traditional African music provides opportunities for community participation and accompanies cultural and religious rituals. Resulting compositions are not attributed to a single individual but instead collectively owned and continually adapted by the community. This offers another contrast to Western music, which is often viewed as individual property crafted for entertainment and emotional resonance. The inherent challenges in applying American musical copyright law to traditional African music are therefore highlighted by each distinctive feature of this music and its communal, purpose-driven nature.

II. American Copyright Law: Origins and Application

Internationally, the music industry follows a range of treaties and agreements, including the Berne Convention for the Protection of Literary and Artistic Works and the General Agreement on Tariffs and Trade (GATT). These agreements offer a framework for protecting intellectual property at the global level. While these laws were intended to serve as an international guideline, they closely resemble the Copyright Act of the United States, a country that is additionally one of the largest music markets worldwide (Mills, 1996). As a result, many musicians around the world adhere to American standards when creating and sourcing their music. In an increasingly interconnected market where music is produced and made available around the world, U.S. copyright law therefore serves as a useful reference point for how international musicians effectively protect their work. Assessing how African music fits into the framework of U.S. copyright law also provides a window into how well it is protected from copyright infringement by the American music industry in particular, again the largest in the world. Ultimately, evaluating the applicability of relevant American laws to African music is invaluable in determining if this form of African cultural heritage is adequately protected not just in the U.S. but around the world. To comprehend the challenges of providing such protection and to further examine historical conflicts between African musical tradition and American copyright laws, the foundational principles and current status of these laws must therefore be evaluated.

Background

The evolution of modern U.S. copyright law during the 18th and early 19th centuries unfolded against a backdrop where American culture was either relatively isolated or positioned as a dominant “colonial power” (Kgobe, 1997). During this period, the considerations of foreign cultures were not imperative to the American viewpoint. Taking such perspective into account, the U.S. Constitution clearly defines the purpose of copyright law as promoting “the progress

of Science and the useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries” (U.S. Const. art. I, § 8, cl. 8). This articulation distinctly underscores the economic incentive driving the U.S. copyright system, as reinforced by the Supreme Court’s endorsement in *Mazer v. Stein*, during which the court asserted that “encouragement of individual effort by personal gain is the best way to advance the public welfare through the talents of authors and inventors in science and the useful arts” (Hines, 2005).

Perhaps unsurprisingly, this background and rationale pose challenges in applying U.S. copyright law to the usage of traditional African music, which is rooted in communication, religion, community, and collective oral tradition. This music is framed not in terms of economic incentives but rather as a cultural medium. Trying to fit it into a legal framework with fundamentally different principles and objectives may help to explain the difficulty in realistically and systematically registering traditional African music for copyright protection.

Requirements for Copyright

Of course, the challenge of applying U.S. copyright requirements to traditional African music goes beyond differing cultural purposes for music. The legal framework, as outlined in Title 17 of the U.S. Code, Chapters 1 through 8 and 10 through 12, asserts that copyright protection is granted to “original works of authorship fixed in any tangible medium of expression” (17 U.S.C. § 102(a)). This entails two pivotal criteria: “originality” and “fixation.”

Originality as a prerequisite for copyright protection has been shaped by legal precedents, exemplified in the case of *Feist Publications, Inc. v. Rural Telephone Service Co.* (1991). The Supreme Court ruled that copyright protection demands “a minimal degree of creativity” on the part of a specific independent creator, creators, or entity (Abrams, 1992). This poses a challenge for traditional cultural expressions like African music, characterized by communal evolution over generations without defined authorship.

In terms of the second criterion of fixation, Title 17 defines a work as “fixed” when its “embodiment allows for stable perception, reproduction, or communication for a period exceeding transitory duration” (17 U.S.C. § 101). Here too, the application of this requirement to traditional African music, often transmitted orally without written or recorded documentation, presents a significant hurdle.

While the U.S. has made efforts to revise the code many times since its inception in 1790 to extend the terms of its protection irrespective of a creator’s nationality (17 U.S.C. § 104(a)), challenges persist. Current law falls short in accommodating music that predates January 1, 1978, and was not published before December 31, 2002 (17 U.S.C. § 303). Together, these temporal restrictions combine with the provisions of originality and tangible fixation to create barriers when seeking to protect longstanding traditional forms of cultural expression, such as African music. Despite ongoing revisions, these inherent discrepancies continue to hinder the full incorporation of diverse cultural expressions into the U.S. copyright framework.

III. Examples of Contemporary Usage of Traditional African Music

Even if traditional African music were more fully aligned with an American legal framework, in addition to the challenges of tracing authorship, technology’s increasing capability to capture and manipulate diverse sounds has made it harder to identify potential legal infringements (Mills, 1996). This complexity is evident when considering that, in 1992, the U.S. music industry incurred substantial losses due to piracy, estimated at \$1.5 to \$1.8 billion—a not-insignificant amount considering that the following year, a total of \$12 billion was generated in prerecorded music sales. Further complicating matters, Western-based music conglomerates and recording companies have capitalized on laws to exploit foreign indigenous music at the level of musical composition, driven by significant financial interests and supported by powerful lobbying efforts (p.58). This section aims to highlight specific cases in which traditional African music remained vulnerable and exploitable within the intellectual property laws of Western nations, thereby illustrating the resulting inequality in existing legal protection.

Paul Simon's Graceland (1986)

Graceland by Paul Simon, released in 1986, marked a revolutionary milestone not only for its massive global success at 14 million copies sold, but also for its significant social, political, and academic impact (Meintjes, 1990). In 1985, during a period of South African cultural boycott imposed by UNESCO due to apartheid, Simon ventured to South Africa and collaborated with local musicians including Ladysmith Black Mambazo, incorporating South African township music with traditional rhythms and vocal styles (Meintjes, 1990) into his new record. Simon's approach was groundbreaking as he not only utilized traditional African sounds through collaboration but also took care to pay the South African musicians three times the standard American scale for their labor (Knoedelseder, 2019).

However, a comprehensive evaluation of this situation requires examining it from both American and African cultural perspectives. While Simon's financial compensation to the musicians was generous, questions arise as to whether they received equitable earnings and royalties proportional to the music's popularity. Moreover, even though Simon engaged in ostensibly legal collaboration, the collective nature of traditional sounds within the township challenges the attribution of authorship solely to Ladysmith Black Mambazo.

Many artists may fail to adhere to ethical practice by choice. But when an artist like Simon is unable to ensure ethicality due to a lack of relevant framework, the inevitability of exploitation grows. Studies suggests that while Simon was able to reward his South African collaborators for their contributions to *Graceland* based on U.S. law, he was unable to ensure protection for their "musically more significant instrumental sounds (Frith, 1988)." Such limitations expose the ease with which music can be appropriated in a legal fashion, and how the exploitation this allows can hinder the potential for African artists, stakeholders, and communities to receive proportionate benefits, ultimately impacting cultural cohesion (Nyathi & Maguraushe, 2023).

Peter Gabriel's 'Rhythm of the Heat' (1982)

Peter Gabriel's album *Security*, released a few short years before Simon's *Graceland*, includes the track "Rhythm of the Heat," which incorporates Central African drumming rhythms (SPIN, 2021). Gabriel traveled to Senegal and collaborated with the Senegalese drummer Doudou N'Diaye Rose, who created the percussion parts of the song and whose performance was recorded for the track. But the rhythms and drumming patterns associated with Doudou N'Diaye Rose are deeply rooted in the collective cultural and musical heritage of the larger Senegalese community. Because traditional African music, including Senegalese rhythms, is often a product of collective knowledge and community practices which are not typically attributed to individual creators but are instead part of a shared cultural reservoir, the rhythms and drumming patterns themselves are part of a broader cultural legacy that extends beyond any single individual (Himes, 2024). Like Simon, Gabriel paid due respect to an African creator, but at the expense of the larger community, and Gabriel's success and the music that he has in turn inspired thus perpetuates a cycle of unintentional yet harmful exploitation.

Deep Forest's Deep Forest (1992)

Deep Forest's self-titled debut album, released in 1992 by French musicians Michel Sanchez and Eric Mouquet, stands as a noteworthy case that intertwines various ethical and legal concerns. The album fuses vocal samples from different ethnic groups and indigenous communities from all around the world. Notably, it includes field recordings of chants, songs, and other vocalizations of the Baegu people of Malaita in the Solomon Islands, as well as a vocal sample of singer Afunakawa, originally recorded by ethnomusicologist Hugo Zemp in 1970 and later released by UNESCO in their Musical Sources collection (Zemp, 1996).

The challenges in this case are multifaceted. Zemp discovered that his recordings had been used without proper permission and inaccurately credited by Deep Forest as their own (Zemp, 1996). Musicians at UNESCO sought

Zemp's approval in a phone call, but had been led to believe that Deep Forest was looking to use the vocal sample to create music supporting an environmental campaign and to "inspire young African musicians to go back to their roots." This starkly contrasted with Deep Forest's widely disseminated, Grammy nominated "house" album and its later use in major commercial advertising campaigns (Zemp, 1996). Neither Zemp nor UNESCO received royalties, and it is unclear whether any of the original musicians and communities sampled were ever compensated despite the album selling over two million copies by May 1995 (though as Zemp asserts, only 100,000 of these sales were domestic to Germany, which serves to reinforce the importance and exploitative power of the American music industry through which *Deep Forest* came to achieve international acclaim) (Mills, 1996).

This case raises questions about permission and authorship within existing legal protections. Zemp's acknowledgement that he was "neither the composer nor the performer of the lullaby" that was sampled prompts questions about the true creator of the sounds—the ethnographer who captured them or the indigenous woman who produced them? (Zemp, 1996, p. 48). U.S. copyright law provides no answers. In fact, this incident exposes the potential misuse of copyright statutes that allow archival exceptions, allowing free distribution of copies for educational purposes. The original creator's intent is not required in such cases, and "so long as the archive does not inadvertently uncover any facts suggesting the potential for misuse, its distribution right remains untouched" (Mills, 1996, p. 69).

These issues take on a greater significance in the broader context of technological advancements enabling the illegal recording of exotic sounds, which are then often registered as original music by major recording companies. Due to the lack of an official paper trail and the wide dissemination of such sounds, a plethora of similar instances may remain undisclosed, hinting at potential unconscious infringement or sampling in many contemporary pop hits.

IV. Dissecting the Problems: Financial and Non-Financial

The three instances above highlight the failure of Western music industries to ethically consider and compensate for cultural differences within the scope of current copyright law. These cases underscore a lack of awareness and an underdeveloped international intellectual property system that fails to cover and protect foreign indigenous creations. Despite clear evidence of infringement, inadequate efforts have been made to legally address these ongoing issues. This deficiency in the legal framework is concerning both for the damage that it has allowed in the past, as well as its potential to perpetuate further exclusion and exploitation of minority cultures. The upcoming section explores these damages in more detail, classifying them broadly into financial and non-financial concerns.

Financial Concerns

The most glaring damage caused by the difficulty of copyrighting indigenous African music is that it leaves the original creators without fair compensation. In the global music industry, song owners are typically compensated through royalties, a percentage of a song's generated revenue. But as previously discussed, traditional African songs often result from collective efforts, making it difficult to trace authorship or allot appropriate profit shares. The determination of the actual owner of such music is even more ambiguous in the context of U.S. copyright law.

With the evolution of recording technology, ethnographers and others have recorded many traditional songs. Such recordings, videotapes, and transcriptions are deemed separate creations from the songs they contain, and are eligible for full copyright protection (Janke, 2005). If brought back to the U.S. for copyright application, these recordings become the copyright of whoever recorded them, establishing the recorder's monopoly over the financial benefits. The recorder can then sell, assign, or lease the copyright over their tapes to any third party and collect all resulting royalties (Mills, 1996).

Even in cases where authorship can be traced and a recorder or musician producing a derivative work intends to pay appropriate royalties, the sheer size and diversity of Africa as a continent poses difficulties. In some African countries like Senegal, the consent of the originating community is not deemed necessary for establishing copyright.

Several conditions must thus be met for this particular system to function, but even in ideal conditions, not all African artists register with their agencies, resulting in incomplete information and unpaid royalties (Kuoppamäki, 2018a). Additionally, even if the national copyright office authorizes the music's use, the collected royalties often fail to reach the actual authors (Mills, 1996).

Non-Financial Concerns: Violation of Moral Rights and Cultural Appropriation

Beyond overt financial challenges, the fundamental motivation behind authoring this paper stems from a more profound ethical concern: the systematic devaluation of the rights of African people, ultimately entailing a form of cultural colonization.

Violation of Moral Rights

Observations by Britz and Lor (2004) underscore that individuals involved with artistic works bear a moral responsibility to ensure proper attribution to the artist, prevent false attribution, and handle these works in a manner that upholds the artist's honor and reputation. In cases of infringement upon these "moral rights," artists are entitled to seek legal recourse. These requirements bring to light the severe deprivation of the moral rights of African authors and communities.

When an artist's voice is utilized in a recording published by an ethnographer, this often results in the relinquishment of the right to be identified as the author when the work is reproduced in a tangible form. This problem is compounded in the case of traditional African music due to a lack of awareness regarding both this process of relinquishment as well as whether and to what extent the work has been reproduced. Not knowing whether their music has been faithfully represented or altered significantly encroaches upon the basic principle of right-to-know and adds another layer to the ethical concerns surrounding the moral rights of African groups.

Cultural Appropriation and Colonization

The inability to protect indigenous African music from incorporation into Western popular music raises another similar yet separate critical issue: cultural appropriation and colonization. While blending African music elements with Western influences can produce innovative sounds, issues arise when these elements are inaccurately integrated or when the synthesized creation is misrepresented as traditionally African.

Jonathan Hart defines cultural colonization, a concept used interchangeably with cultural appropriation in this paper, as "speaking for others or representing them in fictional as well as legal, social, artistic, and political work, especially when individuals or groups with more social, economic, and political power perform this role for others without invitation" (Hart, 1997, p. 137). This definition is relevant in the context of the relationship between America and Africa; the U.S. is in a position of global economic and political power and has historically been associated with the colonization of Africa. Therefore, when musicians or record companies in America utilize traditional African beats without proper acknowledgement or in a way that fundamentally misrepresents this music, the definition of cultural colonization is particularly apt.

Cultural colonization presents challenges for both African originators (musicians) and the broader audience (consumers) of music created by non-African originators. For African originators, it diminishes the cultural significance of the music they create. Indigenous African perspectives often emphasize that music is more than entertainment; it is a powerful expression reflecting the deepest perceptions, relationships, and attitudes of a people. Outsiders seldom reproduce such offerings faithfully (Keeshig-Tobias, 2017). A field study on the Bapedi people of South Africa illustrates that their music, which is communally composed, is integral to socialization and the enculturation process. When each element of such music serves a purpose in preserving cultural heritage and identity, then mistranslation or misinterpretation can impact the essence and cultural context of these songs (Lebaka, 2019).

Cultural appropriation can also reinforce harmful stereotypes about African cultures, perpetuating biased views and contributing to the exoticization of these cultures. The construction of “world music” using binary divisions often draws on racial stereotypes, positioning whiteness as the norm while other cultures are viewed as exotic or deviant (Haynes, 2005).

In terms of consumers, cultural appropriation robs listeners of an authentic experience, distorting their understanding of African culture. The appropriated form may supplant the original, becoming the only version known to those outside the culture. This trend, seen in films, photographs, and records, tends to emphasize the exotic at the expense of substance, leading to a skewed appreciation and understanding of African cultures and music (Kgobe, 1997). Traditional African music, which normally thrives in performance with props, costumes, makeup, body painting, singing, and dancing, is difficult to transcribe; furthermore, as previously investigated above, even a faithful transcription cannot accurately represent this music in isolation (Mapaya, 2014).

These problems underscore the observation that widely applied Western copyright protections fall short of fully safeguarding non-commercial foreign music. While U.S. copyright law in particular does not have to be the standard for protection of African music, the problems posed by cultural colonization become especially egregious in light of the size, reach, and profit margin of the American music industry, as previously mentioned in this paper. It is important to empower African music in its preservation and protection against misrepresentation and exploitation at the global level, and American copyright law, frequently followed by global musicians in order to secure access to the US market, therefore represents a particularly useful set of parameters.

The ultimate purpose of this research is not to attribute malicious intent to Western producers. Indeed, intentionality is not a determining factor in assessing the harm caused by cultural appropriation. As Hart notes, the exploitation of cultural artifacts that misrepresent members of another cultural group can still inflict harm, regardless of intent (p. 139). Instead, the goal is to point out how the application of copyright systems rooted in Western ideologies to African creative processes and intellectual property rights not only fails to properly compensate African artists, but inherently perpetuates derogatory assumptions and undermines creative processes that deviate from Westernized standards.

Despite recognition of many of these problems, a significant component remains overlooked: existing analyses often present and outline the issue from a Western viewpoint as most of the frequently referenced works on the subject are authored by Western scholars. Consequently, the following section endeavors to engage with authentic voices—the contemporary practitioners of traditional African music—to ascertain if their views coincide with those reflected in research and whether they too perceive this as an issue.

B. Direct Interviews in Uganda

The following section presents interviews with key people involved in the performance and preservation of traditional African music in Uganda. In doing so, this research attempts to offer authentic first-hand perspectives of traditional African musicians regarding copyright law and the international consumption of music. While this study is limited to a specific community in Uganda, the findings offer a glimpse into the current capacity for copyright law to protect traditional music in Africa.

I. Challenges in Copyright Awareness and Safeguarding Traditional Knowledge

Interviews with various stakeholders in the Ugandan music industry revealed a notable lack of actionable knowledge of copyright laws among musicians. One interviewee mentioned that:

What has been one of the things that has scattered us is always the copyright. Our copyright law here in Uganda is not so strong. So for us, for me, I used to think that when you put your music on YouTube, that's it. The world watches you. But now, there's no change. And we're like, how come? What's going on? What went wrong? And then another thing, the CMOs [Collective Management Organizations, which assist in the collection of royalties on behalf of copyright holders], they were not- even today, they are not paying. They are playing games, you know. People are using our music. We hear there are Indians who are selling our music to our local telcos [telecommunications companies], you know? Here. And the music is not from us. It is from someone that we don't even know. The money goes to them, the aggregators that we don't even know, they get it from here. They put it in [sic] India. It comes from India [to] here. So you cannot go and knock on a door and ask why or who gives you the permission. They say they get music from somewhere that we don't even know.

(Hanson, Musician, Uganda National Musicians Federation)

This deficiency in legal understanding, prevalent even among those who frequently engage with copyrights, underscores the significant hurdles artists encounter in safeguarding their creative endeavors.

Interviewees also expressed concerns about the inadequacy of existing legal frameworks, especially in addressing the challenges associated with traditional knowledge such as folklore. Musicians cited issues such as the lack of synchronization with neighboring rights and observed that:

There is a law, but they are not proper laws because [...] for a piece of art to be copyrighted, you must have reduced it to a certain form, like recording, writing. Now someone comes and goes to some village and finds people singing and dancing. They [the villagers] have never had the access to the technology, the knowledge, to reduce that art into a form that is copyrightable. So he [the outsider] becomes the first one to record it, and he takes it now as his own. He does not have the humility, A, to acknowledge the source, B, to humble themselves down and ask for the meaning and understand it respectfully.

(Rwangezi, Founder and Leader, Ndere Cultural Group)

These insights shed light on the disjointed nature of existing legal frameworks and the challenges they pose for artists seeking to protect their intellectual property rights. Without clear and robust legal protection, artists express valid concerns about the vulnerability of their creative works, including traditional music, to exploitation and unauthorized use.

II. Collective Ownership and Recognition

The interviews as a whole repeatedly referenced the communal nature of African music, with participants emphasizing that songs and rhythms are regarded as a shared heritage, owned by communities rather than individual creators. This perspective challenges conventional Western notions of intellectual property ownership by prioritizing community-based recognition and compensation over individual acclaim. As one musician stated:

Also, the problem I think comes from Western copyright law. There has to be a single author that the origin of [the] uniqueness of the music can trace itself back to. But the problem is that in Africa, these songs are owned by the community. It's passed down from generation to generation. It's an oral tradition. It is a duty of our communities to look after it together. So nobody owns it, actually.

(Susan, Folklore Musician and Student at the African Institute of Music, Uganda)

Such insights shed light on the broader goal of preserving and honoring collective cultural heritage, where individual recognition is valued but secondary. Furthermore, interviewees provided valuable insights into potential avenues for reciprocating benefits to creators—communities—through equitable distribution of resources and investment in communal development initiatives. One interviewee articulated this notion succinctly, stating:

If there is a share, it can come to the community. We have governments that take care of us.
(Eddy, Chairman, Uganda National Musicians Federation)

This highlights the potential for utilizing shared resources to support various community endeavors, such as infrastructure development, cultural promotion, or educational initiatives.

III. The Essence of Traditional African Music: Lifestyle, Spirituality, and Education

Participants emphasized the broader implications of infringing upon traditional music, highlighting the deeper significance of African music beyond mere entertainment. Firstly, traditional music serves as a method of communication and a means of expression. One interviewee passionately stated:

The Africans did not read or write. So all the history, all the philosophies, all the psychology, all the social rules and norms, all the ways of respecting each other were kept in music and dance. The music that we do is not just art for art's sake, but [...] the great books of Africa [...] whether it is something to do with respect to the king, respect to the social norms, respect to each other, respect to the environment. Everything of how we should be living is kept and expressed in the music and in the dance. So we're not just, um, jumping up and down and entertaining. But we are communicating first to ourselves. We appreciate the meaning in each song, in each dance. And because they come from different cultures, each of these different peoples teach the others the meaning. So you get to respect how [and] why the other people do things the way they do.
(Rwangezi, Founder and Leader, Ndere Cultural Group)

This sentiment underscores the multifaceted role of traditional music as a repository of cultural values, norms, and wisdom. Consequently, the appropriation of traditional music without acknowledgment of its origins represents a form of disrespect and erasure of African cultural identity. By failing to recognize the cultural significance embedded within traditional melodies and rhythms, appropriators not only strip away the essence of the music but also diminish the heritage and identity of African communities. Thus, safeguarding traditional music entails preserving not just melodies, but the very essence of African culture itself.

Due to the cultural significance and spiritual meaning of music, African communities seem to believe “African music” cannot be made properly by non-Africans because they never can imitate the original spirit and cultural undertones infused in the music. This perspective may leave Africans vulnerable to exploitation, as it implies Africans tend to think that would-be copyright infringers would be stymied in their endeavor by their inability to create something approaching “original African music.” At the international level, however, audiences have a lack of familiarity with and knowledge of African culture, and are unlikely to recognize an inauthentic piece of music. This surety can also ultimately undermine the integrity of African music and perpetuate a pattern of exploitation and erasure by causing musicians to dismiss entirely the need for ways to protect and develop (promote) their own cultural properties in the globalized music community.

IV. Vulnerability to Misrepresentation and Exploitation

Moreover, the failure to acknowledge sources of traditional music perpetuates misrepresentation and exploitation. As one interviewee commented:

Just Uganda [alone] has 63 different cultures and almost 56 tribes... [and] all those different tribes, they have different cultures, different sounds. I want to make sure that each one of them comes in and feels proud. I hope by doing so, we are restoring what was destroyed by colonialism. I think that [since] the world was beginning [sic], one of the biggest mistakes that colonialism had made was to create a monoculture. I don't want what we, Africans, enjoy and cherish to be seen [as] primitive and backward.

(Rwangezi, Founder and Leader, Ndere Cultural Group)

This diversity underscores the richness and complexity of African musical traditions, each rooted in its unique cultural context. Consequently, it is imperative to differentiate and accurately represent each sound to avoid misrepresenting the diverse cultural landscape of Africa. Failure to do so perpetuates stereotypes and reinforces a “colonial-era narrative” as one interviewee puts it, hindering Africa's efforts to reclaim and celebrate its cultural heritage:

And in most cases, what I've seen in the world, there are so many times when Africans create things. Somebody comes and grabs it and takes it and owns it. I've seen it even on TikTok. African, black dancers, content creators. Somebody comes, he creates something, a black guy, and then a white guy comes and does it and they're like, “Woaaa, he discovered something!”

(Hanson, Musician, Uganda National Musicians Federation)

V. Possible Ramifications

The interviews presented potential solutions for addressing the complex issue of traditional music copyright in Uganda and across Africa. Participants called for proactive measures from both African governments and foreign creators who incorporate African sounds. At the domestic level, there was an emphasis on increased efforts to document and preserve African musical traditions through ethnomusicology. Interviewees expressed a need for African governments to facilitate securing patents and documenting cultural heritage in writing, simplifying the process of tracing authorship while providing fair recognition and compensation to artists on a global scale according to international standards.

We definitely have to do more in terms of, first and foremost, documenting what is our own, and then patenting it as our own, and then giving it value. It is good that [...] people should come and explore what we have as Africa, but they need to give us value for what is ours. If somebody comes and finds it, I mean, bare and not patented, I cannot blame them for coming to say, “I discovered the source of the Nile,” because I mean, the early colonizers did that to Uganda. [...] We hadn't gazetted certain areas and certain sacred spaces, and they said, “Well, I have discovered it.” Now we cannot own them. We have a water body in our country named after Queen Victoria, Lake Victoria. But the water body was here. We had it here. It was ours. So I think it's our duty as Africans to get out and practice ethnomusicology as much as we can. Document and patent what is ours, then we can sell it to the world and put a price on it.

(Susan, Folklore Musician and Student at the African Institute of Music, Uganda)

At the international level, participants stressed the importance of Western creators and consumers conducting thorough research in order to understand the origins of beats and rhythms from Africa that they incorporate into their music.

You need to do research [into] where it comes from. When you do research, you'll find it. We are in a global world. And this is a digital era. This is a digital generation where you can go and find each and every thing. Where did you get it from first? You get it from somewhere. How did you get it? Through research. Do the same research to know where it came from and how you can give credit.
(Eddy, Chairman, Uganda National Musicians Federation)

These proactive measures are crucial steps toward bridging existing legal frameworks with community-based recognition, fostering a more inclusive approach to cultural preservation, appreciation, and sustainability. In summary, the interviews shed light on the complex landscape of traditional music copyright in Uganda and Africa as a whole. Although there is a legal framework in Africa, it often proves inadequate in safeguarding traditional knowledge due to its inherent mismatch with Western legal paradigms. Moreover, it lacks the scope of protection that U.S. copyright law can provide within the American music industry and market, the largest in the world. The consensus among the interviewed musicians also highlights their discontent with infringement issues and commitment to resolving them, lending weight to these concerns. While traditional African musicians may be unable to track the extent of infringements against them and remain unfamiliar with existing legal mechanisms for recourse, recognition of the problem by those directly impacted provides a strong basis for deeper examination and discussion.

Conclusion

After examining the characteristics of traditional African music and the complexities of securing its protection under Western copyright law and defending it against cultural appropriation, it is clear that the American legal framework established to defend individual rights may not be entirely effective in preserving the wealth of oral traditions and cultural heritage ingrained in African music. As the world's largest producer of music and home to the largest market of consumers, America and its laws provide a standard to which much of the world seeks to adhere, rendering protections that U.S. copyright law fails to extend especially important. Therefore, this discussion, while not all-encompassing, highlights the need for a refined approach to tackling such intricate issues.

The analysis conducted throughout the research suggests that extreme measures such as sweeping bans on all foreign music or dogmatic advocacy for increased reliance on foreign sources, in addition to being impractical, may be counter-productive. Prohibiting access to all foreign sources raises questions concerning the concept of cultural appropriation and the balance between public access to and utilization of indigenous materials, which indigenous communities fear might result in greater harm. Similarly, uncritically embracing foreign sources may lead to misinterpretations and problems related to rights.

Thus, a comprehensive solution suggested by the interviewed subjects involving collaboration among various stakeholders—African communities, international legal systems, Western musicians, producers/executives, and consumers—may be more prudent (Seeger, 1992). *African communities* require access to education about the global copyright system. Given the lengthy process and uncertainty of establishing a global standard that accommodates non-mainstream and non-commercial genres, empowering communities through education seems like a practical step in improving their chances of protection from infringements. This educational effort should stress that although African musicians and communities may perceive their music as distinct and unreproducible due to its inherent social meanings, at the international commercial level, this music can easily be appropriated and sold by outsiders to consumers who are likely to uncritically accept the sounds they hear as authentically African. *The legal system* could explore establishing innovative concepts such as “collective copyright” for songs and create local institutions that prioritize the needs of indigenous communities over global standards set by organizations like the World Intellectual Property Organization (WIPO) to mediate and benefit indigenous communities (Jonathan, 2015). *Western musicians* should actively seek education about the sources they use and accurately represent their music as hybrid if not original. *Producers/executives* must uphold moral and ethical standards, avoiding the exploitation of royalty payments and directing these funds to benefit the indigenous communities that originated the sounds off of which the music industry

profits. *Consumers* need to adopt a proactive stance, recognizing and understanding the music they engage with, and avoiding bias.

Fundamentally, while these may not be perfect or entirely pragmatic solutions, they represent an important step toward an ideal resolution: acknowledging the inherent differences in cultural foundations and championing respectful cultural processes as artistic standards (Bachner, 2005). Such acknowledgement would ease the way for the establishment of copyright law that does not inherently force a Western conceptualization of intellectual property, helping to provide a form of ownership rights that steers clear of erasure in favor of an objective assessment of cultural contributions. By adopting such an approach, we can move closer to safeguarding the integrity of traditional African music while promoting a more equitable and inclusive global music landscape.

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