

# “You Have to Strike That Balance Between Sharing and Charging” Cape Breton Fiddling and Intellectual Property Rights

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Article abstract

This article will discuss the concept of musical ownership and copyright in the Cape Breton fiddling tradition. Intellectual property rights have become an increasingly important issue in recent years and represent an intersection between the commercial music industry and vernacular tradition. As such, the way boundaries are constructed in regard to repertoire and ownership is subject to debate. On one hand, some discourses favor the rights of the individual, arguing that intellectual property should be protected, acknowledged and subject to financial compensation. Other perspectives favor the rights and needs of the community, valuing free exchange.

## **“YOU HAVE TO STRIKE THAT BALANCE BETWEEN SHARING AND CHARGING”:**

*Cape Breton Fiddling and Intellectual Property Rights*

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The Cape Breton fiddling tradition has its origins in the music of Highland Scots who migrated to the island during the Clearances, and an ongoing relationship to Scottish, or more specifically, Gaelic culture has remained to this day. As such, the tradition is closely associated with piping traditions (Shears 2008), and many tradition bearers stress the music’s ties to the Gaelic language (Shaw 1992-1993; Sparling 2003; Graham 2006). Cape Breton fiddling’s connection to dance is also significant and is a topic discussed by a number of scholars (Feintuch 2004; Melin 2012). Over time, the music has grown to be not simply an offshoot of Scottish fiddling, but a tradition in and of itself and has included influences from other musical traditions. No longer are Cape Breton fiddlers exclusively of Scottish ancestry; prominent fiddlers of Irish, Acadian and Mi’kmaq backgrounds have made substantial contributions to the tradition. The fiddling tradition is now a prominent symbol of the regional identity and has become entrenched in tourism (Ivakhiv 2005; Lavengood 2008) and popular culture (Hennesey 2008; Herdman 2008).

While such cultural commodification is certainly not new, it has become more evident in recent years. For instance, commercial recordings of Cape Breton fiddling date back to 1928 and peaked in popularity on an international level during the 1990s. As Ian McKinnon notes, earlier Cape Breton fiddle recordings were made not for financial gain as much as public recognition (1989), but as he and Doherty (1996) explain, there is an increasing sense of professionalism among these musicians. An important part of such recordings is repertoire, and choosing which tunes to feature on an album is something that is not taken lightly. Composition has enjoyed

a long history in Cape Breton, so does the nature of composition and intellectual property rights.

Using the Cape Breton fiddling tradition as a case study,<sup>1</sup> this paper addresses some of copyright law's shortcomings in relation to traditional music and the strategies employed by musicians to modify conventional copyright practices to better suit their needs. Music copyright is generally quite effective for dealing with popular music; however, it is a system that is not necessarily compatible with traditional musical forms. Notions of musical ownership change according to context, and the way in which such ownership is negotiated marks the boundaries between the commercial music industry and vernacular tradition. On one hand, there are discourses that favour the rights of the individual, arguing that intellectual property should be protected and acknowledged, and that the creator should receive compensation for the use of a work. Another perspective favours the rights and needs of the local musical community,<sup>2</sup> valuing sharing and free exchange. In a sense, this is a discussion that not only places the rights of the individual against that of the group, but also creates an opposition between "commodified," global culture, and "uncommodified," community-based, vernacular culture. Within this context, musical compositions enjoy a fluid existence, moving freely between commodity and gift. Just as Jonathan Lethem asserts that "works of art exist simultaneously in two economies, a market economy and a gift economy" (2008: 38), I argue that in the Cape Breton fiddling tradition, music is neither inherently gift nor commodity. The distinction between these two can be nuanced, and even subject to manipulation.

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1. This article is based on my doctoral research on Cape Breton fiddling, which discusses the ways in which Cape Breton traditional musicians negotiate issues of commercialism, identity and globalization. My research consists of participant observation and ethnographic interviews with musicians, audio engineers and industry professionals, although only the most pertinent of my interview materials are quoted in this article.
  2. Although the term "community" can be ambiguous (Shelemay 2011), for the purposes of this article, I use "community" in relation to the local, grassroots Cape Breton traditional music scene. In this local context, the musical tradition consists of performances such as house parties, square dances, church picnics and family gatherings.

## Commodification and Ownership

The contrast between copyright and more vernacular notions of intellectual property has been an issue of increasing importance in recent decades. This has been evident in the legal battles of early P2P file sharing and continues to be relevant today in regard to pirated downloads and streaming websites. While these are very contemporary Western challenges to copyright law, the non-commercial nature of some traditional music reveals the capitalist and Eurocentric biases associated with copyright law. One of the first scholars to address the implications of musical Eurocentrism was lawyer Sherylle Mills. She writes that copyright law “has evolved in tandem with Western music, focusing primarily on the protection of individual property rights and financial profits. Thus, traditional music and Western law clash at the most fundamental level” (1996: 57). In addition, Mills maintains that Western copyright law has its roots in circumstances when “Western culture remained either relatively isolated or the ‘colonial power,’ and it was not necessary to defer to the needs of other cultures” (1996: 57).

In his book *The Music of the Other* (2007), Laurent Aubert acknowledges the difficulties and complications that arise when traditional music becomes part of the music industry and identifies two contrasting notions of musical ownership that arise in contemporary contexts. He asserts that there are “two opposing cosmologies, two incompatible mutually exclusive value systems: the first claims the primacy of individual rights, placing the individual at the centre of the world, whereas the second affirms the pre-eminence of collective conscience” (2007: 17). Although these two notions of value and ownership differ significantly, they are both equally relevant. Traditional music can exist in commercial and non-commercial forms, but this distinction is not always easily made.

Simon Frith addresses this fluid nature of contested musical evaluation systems by combining the work of Howard Becker (1982) and Bourdieu (1984) to create a three-part model of Bourgeois (high art), Folk (folk art), and Commercial (pop art) music worlds (1996). While this may initially seem to be problematic, by relying on rigid binaries such as high and low culture or commodified and non-commodified culture, Frith intends these categories to be flexible. He

explains, “In the end, what is involved here is not the creation and maintenance of these distinct, autonomous music worlds but, rather, the play of three historically evolving discourses across a single field” (1996: 42). Frith’s framework contextualizes Cape Breton fiddling as a folk music, with its own set of musical and cultural values, but also a commercial music, which is evaluated on entirely different criteria.

Culture is often understood as being most “pure” in an uncommodified state, positioning cultural commodification as shallow and insincere. In reality, this is a much more complicated issue; commodification need not be accompanied by a complete loss of integrity and cultural relevance. According to Marx, a commodity has both use value and exchange value. That is, in order for a product to be a commodity, it must be useful, or at least potentially desirable, and there must be the possibility for exchange (Marx 1990 [1867]: 955).

In more current scholarship, the definition of a commodity, while still clearly associated with Marx’s conception, has been broadened and refined to address more nuanced social interactions between individuals. When faced with defining the term “commodity,” Arjun Appadurai offers that, “a commodity is *any thing intended for exchange*. For comparative purposes then, the question becomes *not* ‘What is a commodity?’ but rather ‘What sort of an exchange is a commodity exchange?’” (1986: 9)? In this passage, Appadurai demonstrates how varied a commodity can be, distancing his discussion from the moralistic connotations often attributed to commodification.

Moreover, Appadurai addresses the fact that not all exchanges are commodity-based. Drawing on Marcel Mauss’ analysis of gift exchange as a market based on reciprocity through social obligation (1976 [1923]), Appadurai distinguishes between Marx’s idea of a commodity exchange and Mauss’ concept of gift exchange. He writes:

Gifts, and the spirit of reciprocity, sociability, and spontaneity in which they are typically exchanged, usually are starkly opposed to the profit-oriented, self-centered, and calculated spirit that fires the circulation of commodities. Further, where gifts link things to persons and embed the flow of things in the flow of social relations, commodities are held to represent drive – largely free of moral or cultural constraints – of goods for one another, a drive mediated by money and not sociality. (Appadurai 1986: 11)

In this way, we can see that the distinction between commodity and gift does not lie in production, but in exchange. A gift is defined not by *what* is being exchanged, but by its social context; it is an exchange that is shaped by intention, social convention and personal relationships. In its truest sense, a gift is a product that is given freely, without an agreement of any sort of reciprocity; yet in a gift economy, this reciprocity occurs voluntarily (McCann 2001: 93).

Ethnomusicologist Anthony McCann discusses the distinction between commodity and gift in Irish traditional music. Much of his research revolves around the resistance the Irish Music Rights Organization (IMRO) encountered from the Irish traditional music scene, largely due to policies which failed to adequately distinguish between commercial and non-commercial music (2002). McCann maintains that the IMRO believes “all musical practice is commodity exchange” (2001: 93) and ignores the social and cultural aspects of music making. In opposition to this reductionist view of music, he puts forth that “grass-roots Irish traditional music transmission rests upon an as-of-yet-unarticulated system of gift and sharing” (McCann 2001: 89).

That is to say, playing at a house party for food and drink could be an exchange within a gift economy, wherein the food and drink is an expression of reciprocity and hospitality between friends. On the other hand, this same arrangement can easily take on a commodity-based exchange between acquaintances, where the host may have a degree of control over the performer through his or her “hospitality.” Even a paid performance can be considered to be a gift exchange. For example, it is not uncommon for musicians to play for an event that pays very little due to personal relationships or some other social connection. While this may not be a free performance for a fundraiser or charity, it could be a reciprocal exchange of goodwill or cultural capital, with payment being more of a symbolic gesture than one of pure commodity exchange.

## Mechanical Rights and Cape Breton Fiddling

Like these other examples of traditional music, conventions surrounding intellectual property rights generally serve commercial interests and are not entirely compatible with certain aspects of the Cape Breton fiddling tradition. This speaks to Anthony Seeger's framing of copyright as a hegemonic power. He argues, "Like all laws, the codification of copyright law in the United States reflects a certain perspective (and certain powerful interest groups) within the music industry, and is the direct result of a particular set of historical processes in the United States" (1992: 351). A significant issue is the unusually high cost associated with pressing a Cape Breton fiddle recording due to mechanical royalties. The standard price for mechanical royalties is based on popular music records, where a commercial recording may feature between ten and fifteen compositions. Cape Breton fiddle compositions, on the other hand, are relatively short (often roughly a minute in duration), and played in medleys, making recordings consist of considerably more compositions than a typical pop album. Cape Breton fiddler, composer and publisher, Paul Cranford offers, "The last record I did, I had 113 tunes on it. If you were paying royalties for 113 tunes, you couldn't sell the thing" (2012). In an effort to address this matter, Cranford and fellow musician and engineer, Paul MacDonald, have introduced the "fraction method" of calculating royalties. With this method, the mechanical royalties are divided according to the number of compositions in the medley. There are, of course, drawbacks to this approach. For example, fractioning a medley evenly among composers may be seen as unfair when there are different composition lengths or tempos in the medley.

Although this seems fair to the individual pressing the record, the fraction method involves considerable compromise from the composer. The composer does not receive the total payment which he or she is legally entitled to, and this, by extension, implicitly frames the composition that is part of a medley as less important than a composition played on its own, like a song. In the eyes of some composers, however, this is a reasonable compromise in the name of aiding one's fellow musicians. Cranford recognizes that the system is not perfect: "It's not an officially recognized method. I think it either has to be fractional or it has to be by the second. I think it will go

by the second eventually. You know, with computers and everything else, it just makes sense to make it totally by the second” (2012).

While a large portion of the Cape Breton fiddle repertoire is public domain, individual composition has enjoyed a long history within the tradition as well. In the past, however, composers rarely received direct compensation for the use of their music. In fact, even early commercial recordings offered little monetary gain, though they were important in establishing cultural capital (Bourdieu 1984). As the tradition became more active commercially, the issue of royalties became increasingly important. Early record labels, such as Celtic, Rodeo and Banff became involved with the tradition, but these labels were notorious for dishonest business practices such as withholding royalties from musicians (McKinnon 1989: 93-94). In partial response to these issues, along with a growing shift towards professionalism, individual ownership of compositions became a greater priority. Cranford explains that, during the 1970s, “There were SOCAN<sup>3</sup> royalties for television so people started registering their tunes for television shows and things like that. I think SOCAN sort of drew everyone into the professional arena and then the mechanicals were the next logical step” (2012).

That having been said, it was not until issues associated with copyright began to arise that musicians became fully aware of copyright law. Paul MacDonald explains:

Back in the early ‘90s, nobody around here knew what a mechanical royalty was... I knew there was a thing called a copyright, but I didn’t know anything about it. I didn’t know what mechanical right meant. [...] But I got involved with it at first... I guess one of the first people around here that I was working with got a letter in the mail that said, “You recorded this tune without my permission.” And that person asked me for help. And that’s where I got the interest and started trying to learn what this is all about. I helped that person out and wrote back to the composer and said “Look... Sorry. We didn’t know... This fiddler didn’t know that this was a requirement,” and “please issue us a mechanical licence.” (2011)

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3. The Society of Composers, Authors and Music Publishers of Canada (SOCAN) is a not-for-profit organization that collects and distributes performance royalties.



This lack of understanding played a significant part in the popularity of Cape Breton traditional music in the 1990s when Cape Breton fiddling experienced unprecedented success during the international Celtic music boom. Copyright issues were once again brought to the forefront as major music labels became interested in the tradition. MacDonald continues:

Mechanical royalties are the biggest reason that the major labels got into Cape Breton music and got out. Back in the early '90s, when they first saw Ashley [MacIsaac] and Natalie [MacMaster] play, and the major labels got this, before they came out here, they signed everybody up. They saw dollar signs in their eyes, because all they could see without even doing any research at all was – this is free music. It's traditional. They were fixated on that. [...] And all of a sudden everybody's got a major deal. And Warner and Capitol and Polygram, they're selling records like hell... Well, they're laughing. They're delighted. They're not paying mechanicals. Until a couple years go by and people start going after them for their mechanicals and all of a sudden they start realizing. "Oh... so and so's gotten in touch, and we got to pay for that, and we got to pay for this." (2011)

Today, while the vast majority of Cape Breton fiddle recordings are made independently, CD manufacturing companies require the documentation of all the compositions on the album. This entails not only the permissions and licences for copyrighted tunes, but providing proof that traditional tunes are, in fact, part of the public domain. In this way, one of the most important parts of making a commercial recording is this research of repertoire. Piper and fiddler Kenneth MacKenzie comments on his experience securing mechanicals and permissions for his recording:

I just wasn't used to it and I had no idea that happened really. Just chasing everybody down. Some of the tunes were by Jamie MacInnis, that you never ever see anymore. [...] He's living in Halifax and you can't get a hold of him. There were different guys. There's a tune by Brendan Ring, who lives in the north of France, who's kind of a hermit... There's all these little hiccups, that you're trying to track all these people down and get permissions. And we didn't know how it worked with some of the pipers and Irish players. We just couldn't track them down. It just took a while... (2011)

The amount of work can be substantial even for a musician within the Cape Breton fiddling scene, but this kind of research can be considerably more difficult for outsiders. Paul MacDonald explains the confusion that this caused major music labels in the 1990s:

Not only did they not want to pay the mechanicals, but they threw their hands up in the air trying to figure them out. They couldn't get their head around the fact that Natalie [MacMaster] could be playing a tune by William Marshall alongside of a tune by Paul Cranford. And we'd get a phone call: "This is so and so from the licensing department at Warner Brother's Music and you're Paul - someone told us you could help us get in touch with some of these composers. Could you help us get in touch with William Marshall? We'd like to get in touch with Neil Gow.<sup>4</sup> It was a riot! It was just a riot. You'd be there, "Ah... well... uh... no." "Well, how about Jerry Holland?" "Yes! Sure, no problem." ...Not only did they not want to pay, but they also couldn't deal with it. (2011)

The mixture of contemporary and traditional tunes within the repertoire not only causes confusion for some, but creates unrealistic demands. While it is reasonable to be expected to produce proof of permission to record a composition, it is not always possible to prove the origin of a product of oral tradition. Paul Cranford shares:

Some of these record labels trust me. [...] Ninety percent chance that I'm right, but there's always the possibility that a twelve-year-old composed something, who lived to a hundred years old. If something's in O'Neill's Collection,<sup>5</sup> it's still *possible* that it's in copyright. If someone was very young when they composed it, lived very old and has someone, one of their heirs, who's trying to hold onto copyrights... Actually, I've never experienced that, but when people come to me, I give them my best opinion, and they usually trust me. But I know that it is possible to be wrong on some of these things because there's just no way we can prove it. Forcing these musicians to prove things is not very fair. [...] That discourages the tradition because sometimes people won't record because they're afraid there's a possibility that they're infringing copyright. And rather than take that risk... Which I think is crazy. I've never heard of anyone suing anybody yet, and I've been in this for a long time. (2012)

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4. William Marshall and Neil Gow are composers of Scottish fiddle tunes from the early 19th and 18th centuries, respectively.
  5. O'Neill's Music of Ireland is the largest collection of Irish traditional music. First published in 1903, it features 1850 melodies. The collection was compiled and edited by Chicago police Captain Francis O'Neil (1848-1936).

Being expected to prove the origins of a composition places musicians in the position of a folklorist or ethnomusicologist. While some tunes can be found in books or other similar places, this is not always possible. In such instances, particularly knowledgeable community members are often approached for help. Cranford offers, “A lot of people come to me in the same way. And I don’t charge them like a lawyer would for consulting, you know. I just give that information for free because I have it” (2012).

It is in this contrast between vernacular tradition and commercialism that these discourses cohere. For some individuals, the current costs associated with mechanical royalties have become a significant influence on the repertoire that they record. There is a growing trend to record original compositions and those belonging to the public domain, while omitting tunes by contemporaries that may be popular today. Fiddler and academic Glenn Graham comments on these differing interests:

I’m less apt to record [a tune] if I know [...] that every time there’s going to be printing of it, I have to pay for it. That just makes me say, “Well, as much as I like that tune, I’m going to record something that I did myself, or something that a family member composed, because I know they’re not going to charge me.” There’s this balance you have to strike between paying for music in a tradition, when nobody’s getting rich. And you have to balance with sharing, which is what traditional music is... that’s a big part of it. It’s about community and family and sharing. (2011)

He continues:

If you’re talking about one of the modern influences these days that’s a tangible example of how it has negatively affected the music, at least to me, and maybe a couple of other people, [it] is that we’re less apt to record a really good composition by somebody else that we really respect, and whose music we love, because we know we’re going to be charged for it. (2011)

## Commodity versus Gift

Today, there is some contention about whether a composer should share their work and make it freely available as a contribution to the tradition, or charge for the use of their work. It is a decision that is negotiated according to social context and personal relationships. In one sense, it is a negotiation of rights, weighing those of the individual against those of the local Cape Breton traditional music community. While both are important, this distinction of priorities relates to how one conceptualizes the fiddling tradition. Favouring the rights of the individual frames compositions as commodities and personal property. This is a stance that is sometimes taken by composers who are well-respected for their tunes and rely on royalties to make a living. On the other hand, some composers, much like McCann's informants, consider the repertoire of the tradition to be communal property that is shared freely.

For example, fiddler Colin Grant explained, "I could call up Kinnon [Beaton], and say, 'Hey Kinnon, I recorded your tune.' And there's a guy who's composed probably close to 1000 tunes by now, and he said, 'Great, I really appreciate that. I'd just like a copy if that's okay.' That's all he asked for" (2010). When I asked Kinnon Beaton about his opinion on charging mechanical royalties for the use of his compositions, he responded:

I can see both sides of it. If that's the people's livelihood, then I agree with them, let them charge them. But personally, the way it was in our home, was... it was a compliment if somebody wanted to record my father's tunes.<sup>6</sup> He looked at it as "Gee, he wants to use my tune. That's nice of him." He'd never think of charging for them. And I have the same philosophy. (2012)

Kinnon Beaton is an active musician on the local music scene: he gigs regularly, has appeared on over half a dozen recordings and has published several books of his compositions. Despite such success, clearly financial gain is not his main motivation, and he is as much a tradition bearer and mentor to local fiddlers as he is a professional musician. Ultimately, he chooses to share his compositions, viewing

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6. Kinnon Beaton is the son of Donald Angus Beaton (1912-1981) who was a well-respected fiddler and influential composer from Mabou, Cape Breton.

traditional music as something belonging to the social realm of friends, family and community.

In most cases, however, compositions occupy a grey area between a commodity and a freely given gift. The idea of sharing tunes is common among musicians today, though it largely depends on the relationship between the composer and licensee. Colin Grant explains:

Every composer would go about it a different way. I go about it the way, if it's somebody I know, I have no problem giving my music away. And even if it's somebody I don't know, I have no problem giving my music away, like sheet music wise, so they can learn it. But if they are going to record it, and I don't know them, whether or not I think they're going to make many copies of it... [I would charge them]. (2010)

Glenn Graham articulates a similar, yet somewhat different approach to making such distinctions:

On a local level, there's so little money to be made off charging your tunes to someone, why do it? I'm just happy that they're being played, that they're getting out in public and people are getting to enjoy them... But back in the heyday, where somebody might be lucky enough to have a record contract with a company that has huge distribution, and they have publishing as well, and there's going to be music placements, etcetera, that's where you say, "Well, since this person has this big machine behind them, I'd be stupid not to charge them." Because they could use one tune, and it could be in the middle of a song they did, and the song could be a hit, and you could make a lot of money. And it's not hurting them individually, it's helping them. In that regard, I would say, yeah, ok, you could charge in that sense. But in a local sense, I think it's best in my mind for us all just to share. Share it. (2011)

Paul Cranford, on the other hand, uses an even more flexible approach:

If someone volunteers to pay for it, well, I take it. I mean, none of us are loaded, you know? So if someone wants to do it that way, that's fine. But I'm fair with them. I don't ask for any full track rates. I tell them to split it. Mind you, I've had some that have just assumed the full track rates are the law and cheques come in that way. [...] Basically, I take whatever anyone offers. (2012)

What Glen Graham and Colin Grant seem to imply is that there is a difference between legal rights and ethics. While any composer is indeed legally entitled to mechanical royalties, they feel that it is not ethically valid to enforce these matters at all times. They are happy to renounce their mechanical rights if they feel it would benefit the musical community. Anthony Seeger aptly describes this distinction, “Law is the codification of rights and obligations, but not all rights and obligations are laws. Some rights and obligations fall under the heading of custom (what people do), others may be called ethics (what people should do)” (1992: 346).

Some people feel, however, that the cost of mechanical royalties is part of the tradition, arguing that they should not get in the way of recording whatever compositions an individual wants. As Paul MacDonald explained:

Both Paul [Cranford] and I are worried that the issues that have come up with mechanical rights are going to discourage people from recording each other's tunes. [...] I like it that you want to record a tune because you like the tune. And you want to pay for it because you like that person, or that person doesn't want you to pay for it because they like you. I want that kind of stuff to continue because I think that's part of the tradition. (2011)

Cranford offers that the current system of mechanical royalties

does alienate some people who think there's no place for royalties in music. I don't know what to say to those people. What do you do about people who are trying to make a living at it? I look at someone who has no other form of income. Well, of course, you know, you should be paying for it. (2012)

There is, however, a noted exception to the choice of whether or not to charge someone for the use of a composition. Any compositions registered with the Canadian Musical Reproduction Rights Agency (CMRRA)<sup>7</sup> are standardized in the way their mechanical royalties are calculated. Most Cape Breton musicians are not CMRRA members, but some who have substantial catalogues take advantage of this. In this context, one who is registered with CMRRA aligns himself with

7. The Canadian Musical Reproduction Rights Agency (CMRRA) is a not-for-profit organization that issues licences and distributes royalties for mechanical and synchronization rights.

the music industry, framing himself as an accomplished composer, who makes a living as such.

For instance, Dan R. MacDonald's compositions<sup>8</sup> (of which there are said to be as many as 2000) are registered with CMRRA. The fact that his compositions are among the most strictly regulated in the Cape Breton canon is somewhat ironic and raises issues of ownership and compositional control. While MacDonald is renowned for his compositions, during his life, he rarely collected royalties from them. His focus on sharing with his friends and contributing to the musical community is readily apparent in the 1972 documentary, *The Vanishing Cape Breton Fiddler*. When asked what happened to his tunes after they were composed, he responded without hesitation, "Well I get the manuscript and I give them to my friends, Buddy MacMaster<sup>9</sup> and Donald Angus [Beaton], and anyone who wants them." Unfortunately, through such generosity, many of his tunes have entered oral tradition and have been subsequently misattributed as part of public domain and have been named incorrectly.

One time when he mentioned that he was allowing a tune to be recorded free of cost, his nephew, John Donald Cameron suggested he register his tunes so he could get the money he deserved from them. Cameron remembers, "He took offence to that. He said, 'Anyone who wants to play my music,' he said, 'they can go ahead and play it.'" (John Donald Cameron in Caplan 2006: 18). John Donald Cameron's brother, well-known performer John Allan Cameron explained that in spite of MacDonald's aversion to collecting royalties, it was always a priority for John Donald and John Allan Cameron to ensure that his compositions were appropriately recognized. John Allan recounts:

There was one day that Dan R. got a cheque for \$2500. And he didn't understand. He said, "What's this for?" I said, "We played your music on national television, and made sure it was logged," And he still didn't understand why. I said, "Well, because every

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8. Dan R. MacDonald (1911-1967) was a prolific composer and fiddler. His compositions are among the most celebrated and widely played in the Cape Breton fiddling canon.
  9. Hugh Alan "Buddy" MacMaster (b. 1924) is one of the most highly-respected fiddlers in the tradition. He has received an honorary doctorate from St. Francis Xavier University in 1995 and the Order of Canada in 2000 for his contribution to Canadian culture.

time something is played – and I make sure, Dan R., that your tunes are in here, and we play X amount of Dan R. MacDonald tunes, because they're first quality, they're good – and you'll make a few bucks." And Dan R. certainly needed it. I mean, Dan R. was never rich. He was rich in so many ways, and if I could provide an avenue where he could make a few more dollars, that's fine. And I made sure that the royalties went to Dan R., and I included a lot of his tunes. (John Allan Cameron in Caplan 2006: 19)

It seems that Dan R. was intimately aware of the various social functions that a composition can fulfill and preferred to receive compensation for his musical contributions in a more direct way. As a semi-itinerant musician, he supported himself with his music, and the community benefited greatly from his talents. Folklorist Cliff McGann explains, "It was a symbiotic relationship, with Dan R. receiving room and board in exchange for his musical services. Dan R. would repay his hosts by composing a tune in their honor, giving them music lessons and leaving first-rate musical notations of his and other traditional tunes" (2003: 125). The nature of such an arrangement, of course, can change significantly according to context, ranging from highly calculated to pure gift exchange. Regardless of the specific context, however, he was always known as a very generous man.

This discussion reveals an interesting dynamic regarding gift and reciprocity. Although it is clear that Dan R. did not truly understand the nature of copyright, he did firmly believe in sharing his music. On the other hand, we often assume that money is intrinsically linked to commodity exchange, but in Dan R. MacDonald's case, we can see that payment for his tunes, and the registration of them is out of respect for him and the quality of his work. As such, payment can be understood as a gift by those who use a composition.

### **Copyright Infringement**

Copyright is meant to protect the rights of the composer; so, what then constitutes musical theft? Within the context of traditional fiddling, this can be a complex issue. Compositions typically rely on a series of melodic gestures and sequences that are used and reused extensively. Drawing the line between what is idiomatic and what is original can be difficult. This is evident in Colin Quigley's



discussion of Emile Benoit's compositional practices (1993). In his study, Quigley addressed how and why some of Benoit's compositions were eerily similar to existing tunes. Benoit openly acknowledged such similarities and cited these similar, pre-existing tunes as what Quigley refers to as a "source tune" (1993: 163). Quigley explains:

The seeds of a new composition are to be found among the melodic ideas with which he is familiar from the repertoire he already knows. When the initial musical idea is not spontaneously evoked, Emile consciously searches through known tunes for fertile ideas and he often explains the sources of his compositions in terms of the known tunes from "off of" which he has "taken" the new "note," a somewhat flexible concept that refers most often to borrowing a motif. As a musician who was keenly aware of minute melodic variation, he saw no problem with this; his compositions may be similar, even based off of other tunes, but they were unique (1993: 162).

Thomas Porcello (1991) and Paul Théberge (2004) have explored how the advent of audio sampling has raised questions about the nature of the ownership of a sound. Porcello explains:

On the one hand, rap musicians have come to use the sampler in an oppositional manner which contests capitalist notions of public and private property by employing previously tabooed modes of citation. Conversely, samplers are being used within the industry for purposes of expediency - to save time and money - which reinforce and reproduce the already existing internal hierarchies through marginalizing the wage labour musician in the studio. (1991: 82)

This issue of audio sampling marginalizing studio musicians has been demonstrated in the dispute between Jan Hammer, who wrote and produced the Miami Vice theme, and percussionist David Earl Johnson. Johnson argued that the samples of his conga playing were integral to the theme, and by relying on a sample of his playing as opposed to hiring him for the performance, he was owed compensation for his lost wages (1991: 70). Not only does this case raise issues about the ownership of sound itself, but also supports Jason Toynbee's argument that, while copyright law protects music *creators*, it largely ignores the rights of music *performers* and their creative contributions (2004).

In Cape Breton fiddling, copyright infringement is a concern that is fuelled at least in part by musicians' experiences with the Celtic and Rodeo labels and is representative of the shift from a highly localized tradition to one that is widespread. In the past, playing another musician's compositions was a compliment, but today it could be seen as theft. This may be representative of a shift away from community-based musicking to an industrial one. Even early commercial recordings were sold almost entirely locally, but now they are commonly sold internationally.

In a commercial, industry context, tradition bearers must operate within legal constraints, having less recourse within the community. There are also certain times in which an individual may have a certain degree of ownership not acknowledged legally. A traditional tune, for example may be a signature tune of a particular player, being so closely associated with them that it may "belong" in an unofficial sense. Similarly, a tune that was written for someone else could be thought of "belonging" to the source of inspiration in a sense. When a musician is quite free to play what he or she wishes in a live setting, this freedom is not only limited significantly on a recording, but one may be held financially responsible for such decisions. Jerry Holland's CD jacket for *Fiddler's Choice* makes concerns of copyright infringement explicit:

Please do not deprive the musicians and composers of their royalties by copying this recording for personal or commercial purposes. Such reproductions will limit the artist's future ability to produce music. (If musicians and composers are not compensated for their artistic efforts and talents, they will need to pursue other livelihoods) (1999).

Paul Cranford explains that, even if a composition is used without permission or payment, it can be difficult to collect such royalties: "It's an odd one, because you can end up alienating people because you're chasing them for a hundred dollars, and they didn't even know they owed a hundred dollars, and you know? And it's just sort of this... Again, it's the same thing, it's this... It's sort of an ugly system" (2012).

## Conclusion

As we can see, contemporary copyright law and the current system for calculating royalties have a number of inadequacies. Privileging the interests of the commercial music industry, the current system favours music's existence as a commodity above other more socially derived definitions. While effectively acknowledging composers' contributions and protecting their personal intellectual property rights, without proper context, such priorities can be detrimental to the community as a whole.

With regard to Cape Breton fiddling, various strategies are used to reshape music industry norms to function more effectively within the tradition, often distinguishing between what is legal and what is ethical. When possible, the "fraction method" of distributing mechanical royalties is used as a compromise that makes independent commercial recordings more affordable for the community. Lastly, musicians are faced with the decision of when and how to consider a composition a commodity. This can position an individual as a professional musician, or as a local tradition bearer. Most musicians fall into both categories at one time or another, and there is power and cultural capital associated with each label. The result is a negotiation between personal rights and those of the community. This is a situation that is further complicated by personal relationships; a composer who normally collects royalties may overlook such rights for a friend as a gift, and conversely, some musicians may deem it necessary to pay for a tune out of respect for the composer. While these nuances in music ownership based on community and personal relationships may address certain shortcomings in the industry-based system, in this context, the gift also fulfills another important function - sustainability. When a composition is shared, it helps offset the cost of independent recordings, something that helps maintain the integrity and relevance of both commercial recordings and vernacular repertoire.

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