CULTURE: POLICIES AND POLITICS

What are the relations between cultural policies and cultural politics? Too often, none at all. In the history of cultural studies so far, there has been no shortage of discussion of cultural politics. Only rarely, however, have such discussions taken account of the policy instruments through which cultural activities and institutions are funded and regulated in the mundane politics of bureaucratic and corporate life. *Culture: Policies and Politics* will address this imbalance. The books in this series will interrogate the role of culture in the organization of social relations of power, including those of class, nation, ethnicity and gender. They will also explore the ways in which political agendas in these areas are related to, and shaped by, policy processes and outcomes. In its commitment to the need for a fuller and clearer policy calculus in the cultural sphere, *Culture: Policies and Politics* will help to promote a significant transformation in the political ambit and orientation of cultural studies and related fields.

ROCK AND POPULAR MUSIC

Politics, Policies, Institutions

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6

WHO FOUGHT THE LAW? THE AMERICAN MUSIC INDUSTRY AND THE GLOBAL POPULAR MUSIC MARKET

Steve Jones

INTRODUCTION

Popular music in America in the 1980s and 1990s has been characterized by an increased awareness of non-western music among musicians, music industry executives and music fans. 'World music' is the moniker for recordings employing non-western instruments and/or sounds, and it has become a recognized institutionalized musical category through its use in publications from the industry standard *Billboard* to punk fanzines like *Maximum Rock'n'Roll*. It is difficult to determine just what world music is, and easier to explain what it is not. Groups playing 'world music' such as 3 Mustaphas 3 and Dissidenten have achieved prominence, especially via college radio airplay, as have recordings of eastern European folk music (*Le Mystere des Voix Bulgares* on England's 4AD label is one of the most popular examples), African music (King Sunny Ade, Sonny Okosun), gamelan music, and pop/world music crossovers (Malcolm McLaren's recordings, for instance, or Paul Simon's recent recordings).

Coincident with the birth of 'world music', the American music industry finds itself competing in a global, 'internationalized' popular music marketplace.[1] However, the music business has always been international, in so far as licensing agreements (to exploit sales of their investments) existed between record companies in different countries. Corporate acquisitions which place American record companies under foreign corporate control (e.g., Sony's purchase of Columbia's record and music publishing interests), and stiff competition from foreign record labels whose acts dominate the charts (e.g., Virgin Records' releases by Paula Abdul) are forcing a rethinking of the means by which popular music is exploited as an investment with global dividends. The investment is essentially the same as it ever was, represented by the 'song' or 'album'. But the dividends on these investments now come from a variety of sources, including the exploitation

of copyrights in emerging and new markets and the revision of trade agreements. Threats to these dividends come from legislative revisions that inhibit the ability to exploit copyright, and from new technology. Digital audio tape (DAT) and digital sampling open up new areas for exploitation by way of sales of new media and royalty options for copyright-holders, and increase the difficulty of enforcing copyright by making copying quick, easy and private.

It is against this backdrop that American record and music publishing companies (often owned by the same parent company), whether or not they are ultimately owned by corporations outside the US, are partaking in a flurry of legal activity that amounts to a cultural policy by default. That is, as cases involving the music business, trade, copyright, and immigration law are decided, precedents are set which affect the quantity and quality of popular music entering and leaving the US by legal means. The cases are argued, as should probably be expected, largely in terms of their perceived impact on the profit/loss margins of the parties involved, and rarely (possibly never) in regard to their impact on cultural production and consumption.

Additionally, corporate policies which affect the production, distribution and promotion of popular music may likewise be viewed as fragments of cultural policy. However, as with the legal issues to be discussed in this chapter, they too form a fragmented cultural policy dictated by the economics of the music industry, an industry beset by challenges brought about by its internationalization. And, difficult as it is to unravel the interests represented in such legal issues, it is virtually impossible to penetrate to the levels necessary to determine and unravel corporate policies. As a result, this chapter will focus on legal issues arising in the US related to the production, consumption and exploitation of popular music.

Thus far, court cases and legislation have focused on three discrete, though related, fronts: immigration law, copyright law and trade law. An unrelated fourth legal front with which the music industry is grappling in the US is censorship, which will not be considered in this chapter as it is not an issue arising in response to the globalization of the popular music market-place.[2]

POPULAR MUSIC AND THE US IMMIGRATION LAWS

During the 1980s, changes in US Immigration and Naturalization Service (INS) laws made it more difficult for non-US musicians to enter America and perform their music. Opposition to the changes has been scarce, perhaps due in part to the lack of publicity surrounding their adoption (despite prominent notice in a *Village Voice* article in December 1986).

The issue revolves primarily around H-1 work permits for entertainers. In the past, the INS required applicants for H-1 work permits to make their

way through a forest of paperwork and to include documentation (in the form of press clippings, recordings, etc.) that proved the entertainers' 'distinguished merit'. The wording in the INS law has changed, however, so that the term 'distinguished merit' has been replaced by 'pre-eminence'. If distinguished merit was difficult to document (the INS provided no definition of it), at least it had a vagueness to it that allowed broad interpretation. The implication of pre-eminence is that a performer must be popular – for all intents and purposes, a star. According to Char Eberly, who books groups for Sounds of Brazil, a New York club that features Latin American, African and Carribbean music:

> Currently the regulations for obtaining H-1 status are so difficult and time-consuming that many artists/petitioners who qualify are denied. The artist and petitioner become caught in a Catch-22 by factors such as 1) having to prove a level of 'stardom' to bureaucrats who know nothing of international music and its awards, festivals, history, etc.; 2) having to offer proof of advertising, promotion, and publicity before knowing if the artist will be allowed into the country to perform; and 3) having to offer proof of commercial success in the face of a system which makes commercial success extremely difficult to achieve.
>
> (Titus 1987: 9)

Among groups that have been affected by enactment of the new law are Britain's Blow Monkeys, Membranes and New Model Army, West Germany's Bochumer Ensemble, Poland's Stary Teatr, east European folk-jazz ensembles, the reggae group Third World, and countless African performers (among them guitarist Chief Commander Ebenezer Obey). The difficulty faced by those wishing to book those groups in the US is tremendous, since tours must be booked well before the INS bureaucracy grinds out a visa (or grinds to a halt).

The *Village Voice* article correctly placed the origins of the H-1 work permit in a 'union-conscious legislature bent on protecting American labour' (Berman 1986: 34). First drafted in 1952 to allow those with no intention of abandoning their own country to work temporarily in America, the H-1 permit was initially not difficult to obtain. But as the entertainment industry and its unions grew stronger, pressure on the INS to restrict H-1 permits mounted. The 1980s were characterized by music industry pressure on several legislative fronts (the Recording Industry Association of America (RIAA) has even moved its offices to Washington, DC, to be closer to the source of its lobbying efforts). It is not surprising, in the light of such efforts by the industry, that the INS has been subjected to industry pressure, especially when one considers the increase in record sales and radio play accompanying a concert tour. As Steven C. Bell, senior writer and editor of the *Immigration Law Review*, writes:

> the US labour market is glutted with persons who seek careers in the various fields of the arts, most of whom are unemployed at any one time, and . . . no occupational field in the United States is more heavily unionized than the entertainment industry.
>
> (Bell 1985: 421)

In fact, the INS has bowed so far to industry pressure that a foreign entertainer coming to the US to promote a recording by making unpaid television appearances must still file for a work permit. According to Bell, the unions 'play a crucial, and even decisive, role in the approval of an H-1 case' (ibid.: 430). INS rules include labour union consultation regarding the very definitions of 'distinguished merit' and 'pre-eminence' the INS is reluctant to make. Bell writes:

> The INS regulations . . . state that the INS 'may' consult unions on these issues; INS Central Office policy is clear, however, that 'if there is the slightest doubt that the performer is of H-1 caliber, expert opinion must be requested from the unions involved in the specialty. . . . Consultation is a most important step in the adjudication process . . .'. Only when the foreign national is 'an entertainer of such renown that his name and reputation by itself establishes without any question that he is of distinguished merit and ability' is it unnecessary to seek an advisory opinion from the union . . .
>
> (ibid.: 430–1)

American Federation of Musicians president Lew Mancini, to whom the INS turns in matters of establishing an H-1 applicant's pre-eminence, told an interviewer that he would consider an artist pre-eminent 'If they're showing chart position, and major venues are involved, or I'll recognize the promoter, or the critics' (Berman 1986: 38). One wonders if the Beatles and Rolling Stones would have been allowed into the US had the law been interpreted so strictly in the early 1960s.

Those accompanying an artist (roadies, sound mixers, etc.) are subject to the H-1 rules as well. A work permit category, H-2, allows temporary entry to those who 'perform temporary services of labour, if unemployed persons capable of performing such service of labour cannot be found in this country'.[3] The difficulty arises when one tries to show that there is no one in the US who is capable of performing a specific service.

Since the musicians' union is exclusively consulted by the INS in these matters, ultimately it is the union that really runs the show, collapsing issues of artistic merit into ones of commercial control or, at the very least, equating issues of artistic merit with commercial success. Access to live performance before an American audience is determined by union executives whose experience of music (as performers and audience members) may bear no relation to the music of those seeking work permits.

Moreover, if the final revision of INS law goes into effect, these issues will be further confused by quotas 'limiting to 25,000 the number of annual visa applications from nonsuperstar musicians, athletes and dancers' (Holland 1991a: 1). Making the limit more problematic is a revision requiring individual members of orchestras, dance troupes, ballet companies, and the like, to file for visas. In the past, one visa admitted an entire ensemble. Whither artistic merit for application number 25,001?

The greatest fear among US booking agencies and record companies is that the final revision of the INS law will provoke retaliation from other countries' unions and immigration services. The manager of several non-US rock and reggae acts said the INS

> is going to create a cultural trade war. It could cut domestic rock musicians' income in half by preventing them from traveling outside of America to earn money. The Dutch, the French, and the Canadians are already upset about this.
>
> (Verna 1991: 77)

In an era characterized by the continuation of Reaganite and Thatcherite policy, it is not surprising to find that trade unions in the United Kingdom and US have a reciprocal agreement. Union officials from each country keep track of performers to ensure that equal numbers are 'exchanged' (Deutsch 1987: 213–14).

The final revision of the INS law was not in place as of August 1991. It had been scheduled to take effect on 15 April 1991, but implementation was delayed until late 1991, due to review by the US Office of Management and Budget. Instrumental in that review are the RIAA, American Federation of Musicians (AFM), and American Federation of Labour (AFL). The RIAA is arguing for an easing of visa restrictions, the AFM is arguing for the continuation of current INS law (despite INS assurances that the AFM will be consulted under the new law as it was under the old), and the AFL is arguing for tighter restrictions on visas. The RIAA, recognizing the recording industry's need to compete globally, may thus be in for a direct confrontation with labour unions, an interesting comment on the decentring of the US as the dominant player in the production of popular music. Given such a shift, the visa struggle is less a struggle of music producers, and more a struggle of music 'distributors' striving for access to the American audience.

In many cases recently, the only means for a foreign artist to come to the US has been under the guise of a tourist visa. But it would not be surprising to find that modern recording techniques such as multitracking are being used to bypass the INS – it would be difficult to deny entry to a tape recording or a sample of an African singer, or a French horn section, for instance, sent to the US for additional recording, or for use during a performance. Indeed, such technology creates legal problems of its own.

TECHNOLOGY, MUSIC AND COPYRIGHT

Authorship, uniqueness, reproducibility and a host of other issues preoccupy business and legal transactions in the music industry. Within that framework, copyright has traditionally been regarded as an author's protection against the copying and pirating of music. It has also been a means for record companies and music publishers, who usually own the copyrights to songs, to insure income during periods of low sales, and to control the manufacture and distribution of recordings. Copyrights are bought, sold and exploited via licensing fees and royalties. New technologies that enable a diffusion of authorship and ready reproduction are making traditional copyright protection obsolete.

The United States government has provided a means of copyrighting music since passage of the Copyright Act of 1909. In 1972, an amendment to the Copyright Act provided for copyrighting of 'sound recordings'. Four years later, the 1976 Copyright Act provided copyright protection for both published and unpublished sound recordings. The 1976 Copyright Act defines sound recordings as:

> works that result from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work, regardless of the nature of the material objects, such as disks, tapes, or other phonorecords, in which they are embodied.[4]

The most recent and best-publicized controversy over copyright concerns home taping of records and compact discs. The recording industry claimed that millions of dollars in sales and royalties were lost to home tapers who copied LPs on to cassettes for friends, or for resale (such piracy is commonplace in many parts of the world, especially in Asia, and the recording industry has organized teams of attorneys to aid law enforcement officials in anti-piracy efforts). Though beginning in the late 1970s, when the recording industry's sales slumped, copyright issues have taken on altogether new meanings with the development of digital recording and DAT. The problem was one inherent in digital recording of any sort – how to protect a product that is simultaneously creative and unique yet by definition copyable? Whereas analogue cassettes produced a noticeable loss of quality with each copy, digital recordings are free from such degradation. Currently, there exists a Serial Copying Management System (SCMS) built into consumer (but not professional) DAT recorders, inhibiting digital-to-digital copying. Analogue-to-analogue copying is not prevented, though, and since DAT offers such high-quality reproduction, many analogue-to-analogue copies can be made without significant loss of fidelity. In addition, development of the digital compact cassette (DCC) and optical mini-disk

mean new digital formats that present potential for copying and piracy.

The RIAA is currently funding research to invent a system that will prevent analogue-to-analogue copying using digital recorders. It has dropped its efforts to seek a tax on analogue audiotape and analogue recorders, a move that led to a recent agreement with the Electronics Industry Association's Consumer Electronics Group (EIA/CEG). The EIA/CEG has been at the forefront of groups opposed to RIAA-sponsored legislation in the US Congress seeking a tax on blank tapes and audio recorders to make up for revenue allegedly lost due to home taping. The EIA/CEG has agreed jointly to seek legislation with the RIAA 'requiring the hardware companies to pay [record] labels a royalty on blank audiotape and digital recording equipment to compensate for sales lost to home taping' (Holland and Nunziata 1991: 1). The agreement has led to legislation establishing a tax and royalty structure on digital recording formats. The EIA/CEG is attempting to encourage record companies to provide 'software' for its new digital audio products, and the RIAA is creating a new source of income for its members, estimated to be at least $100 million a year divided and distributed as follows:

> a detailed payment plan . . . channel[s] future royalties into two basic funds: one for performers and owners of the copyright in the sound recording, and the other for owners of the musical compositions. The two funds would be further broken down into the following percentages: 38.41% to record companies, 25.60% to featured artists, 16.66% to songwriters, and 16.66% to music publishers; 1.75% to the American Federation of Musicians for non-featured musicians; and 0.92% to the American Federation of Television and Radio Artists for nonfeatured vocalists.
>
> (ibid.: 80)

Passage of so-called 'tape tax' legislation came about because the most vocal and influential groups on each side have been reconciled. For the consumer this may mean an increase in the price of audiotape and recording equipment. For the industry it will mean a new, and large, source of income based on the exploitation of copyright by way of royalties.

Masked by the publicity surrounding home taping and copyright legislation, little has been made public about the nature of the problem facing copyright protection – the ownership of sound. Electronic instruments have enabled the creation of unique sounds, some by a very labour-intensive process, and the programmers and musicians who create the sounds are keeping close watch on copyright matters. The issues can roughly be divided into two categories, sampling and synthesis.

Samplers such as the Fairlight, Akai S900 and many others permit recording of sound events and subsequent manipulation and playback via a

keyboard. Thus a musician can sample the drum sounds from a recording of Turkish drumming, for instance, assign one drum to one key of the keyboard, another drum to another key, and so on. This of course does not mean that the musician can then play drums like the person on the recording, but he or she can achieve the same sound, and that is of crucial importance.

Andrew Goodwin (1990) and Simon Frith (1988) have accurately placed issues of sampling and copyright within the larger context of what Frith calls the 'industrialization of music'. The process of the technologizing of popular music must be understood within the history of the economics of the music industry, in the context of the evolution of property law and copyright.

Two forms of copyright can be filed for a published (i.e., publicly released) recording: a 'circle C' which denotes a copyright of a musical composition, and a 'circle P' which denotes copyright of a sound recording. As synthesist and programmer Bryan Bell has said, 'The circle P copyright is for the whole record album. The musical copyright is eight bars or whatever it is. The circle P is for anything that's on there for any amount of time. Sounds included' (Bell 1987). One can sense the joy of record company executives who became involved immediately. In general, the 'circle P' copyright is owned by the record company; will record companies claim ownership of sounds and samples? Considering the 'work for hire' clause in US copyright law (which allows an employer to claim copyright for any work done by an employee), it is likely.

It is also likely that the increased appearance of non-western sounds on US pop records (everything from chanting monks to tambouritzas) is due to sampling. Prior to the sampler, only a select group of pop stars (most notably the Beatles on their Indian-influenced recordings) were able to afford hiring session musicians to play exotic instruments. Such instruments are now, for the most part, but a floppy disk away.

Naturally, similar sounds can be achieved by synthesis, and one must ask if there is a difference at this point between a synthesized sound and a sampled sound if they sound the same. Given the difficulty in distinguishing the sound aurally, does it make sense to claim copyright infringement by sampling only? If we are to consider copyright infringement of a sound, should not synthesis be considered a means of infringement?

Again, issues of labour and income come to dominate the discourse concerning copyright. Reggae groups, for instance, use backing tracks dozens of times for different songs. These forms of 'versioning' are widespread. How should copyright be established in these cases? Wallis and Malm (1984) note that in many Third World countries, musicians record backing tracks that are used by producers for overdubbing singers and other instrumentalists. David Toop suggests that part of the reason for the use of backing tracks is economic. 'Versions are obviously a convenient

way of making records, as most of the ideas have already been worked out in the original' (Toop 1984: 111). US record companies argue that since they've paid for the original, which is now being re-used, some licensing set-up is in order. But this problem has not been solved in any routine, consistent fashion. Instead, when a group uses a sample from a previously released recording, it pays a percentage or fee to the copyright-holder. The trend is toward following guidelines established for compulsory licensing. If a recording has been publicly released it can be re-recorded, with a mandatory mechanical royalty to the copyright-holder. Mechanicals can add up to a large sum, as shown in the case of pre- and post-reunification Germany. Since reunification, all of Germany is covered by western copyright conventions. The German authors' rights society, GEMA, reported a $53 million increase in revenue (for a 1990 total of $478 million) in the first year after reunification (Spahr 1991: 2). In cases concerning obtaining permission to use a sample, negotiations are conducted on a case-by-case basis – sometimes after the release of a recording using a sample.

As copyright laws become more alike from country to country, and as new markets are exploited to their fullest, copyright-holders will seek new means of exploiting rights. Copyright has less to do with authors' protection and the establishment of an 'authentic' original and more to do with profit. New media like DAT and DCC not only allow increased income from sales of fifteen existing products in new formats (as the CD did) but also they generate income from mechanicals and will soon produce royalty income derived from hardware taxation.

Record companies have long recognized the importance of copyright as a means of producing income, and the RIAA is very actively engaged in international lobbying to bring copyright legislation to as favourable a position for copyright-holders as possible. In 1991, the RIAA was instrumental in the passage of new legislation in Mexico that revised that country's copyright law and may earn record companies some $75 million a year (Holland 1991b: 8). New legislation in Japan extends copyright protection in that country from thirty years to fifty years, and prohibits rental of recordings for one year from their release. It is estimated that the new law may gain record companies up to $1 billion annually (Clark-Meads and Holland 1991: 1). Copyright is clearly a high-stakes enterprise, and a source of income the importance of which may eventually rival that of record sales.

However, based as it is in property law, issues of authenticity and authorship still form the foundation of western copyright law, and therefore a revision is necessary before it can cope with new technology. A recent decision by the US copyright office to treat 'colourized' versions of black-and-white films as 'derivative works' if they show 'a minimum amount of individual, creative, human authorship'[5] may set a precedent for music copyrighting. It is possible that some minimum alteration may be

set, beyond which a song may be considered at least derivative if not original. The difficulty is in implementing such a limit. Copyright infringement cases are usually decided by jury trial. Could a tribunal of some sort be set up, a kind of audio Supreme Court, at which recordings are judged as copies, derivative or original? This is, of course, highly unlikely. And what of the precedents that have been set, the dozens of rock songs that derive from 'La Bamba', 'Louie Louie', 'Wild Thing', that use the same three chords, that exist as quite separate entities both in the eyes of copyright law and of the audience?

Since development of sound recording has reached a new technological level, record company attention is shifting to questions such as these – ones involving sound playback and related copyright considerations. The use of digital recorders, compact discs, DAT, hard disk drives and the forthcoming recordable CD is based not only on fidelity and mass storage, but also on rapid recovery of sound as well. Recording without playback is, for all intents and purposes, senseless, and it is playback and not recording that is, in the final analysis, of concern to copyright owners.

THE IMPORT BLOCKADE

With the discussion of sound and copyright as a background, it is possible to consider two cases regarding importation of sound recordings with US copyrights that threaten to block the availability of many recordings issued by non-US labels. The cases set a precedent for blocking importation of recordings (legally licensed for manufacture and distribution abroad) whose copyrights are held by American record companies.

In the first case, *Columbia Broadcasting System Inc.* v. *Scorpio Music Distributors Inc.*, decided on 17 August 1983, the court held that 'phonorecords manufactured abroad and imported by a third party intermediary without the consent of the copyright owner constituted unlawful importation of phonorecords under section 602 of the US Copyright Act . . . "importation" infringed the plaintiff's copyright in the phonorecords' (Sloane and Thorne 1986: 69). The second case, *Harms Music* v. *Jem Importers*, decided 26 March 1987, upheld the copyright of a music publisher against the importation of sound recordings containing the publisher's copyrighted songs. Out-of-court settlements between major labels and import distributors followed these cases.

Each case deals with what is commonly referred to as 'parallel imports', and they have had a chilling effect on US importers. Lawyers advised importers that:

> the prudent United States purchaser of phonorecords from abroad would have determined, before entering into a purchase agreement, the nature and extent of any American copyright owner's rights to the

> phonorecords at issue. Since Scorpio Music, however, such a determination would be wise not only with respect to purchases from abroad but also purchases within the United States because of the possibility that the domestic purchaser would be found to be acting within the chain of importation and deemed a contributory infringer.
>
> (ibid.: 73)

Ostensibly, major labels and music publishers perceived a threat to their profit margin created by importation of recordings that had been manufactured more cheaply outside the US. It is more likely, however, that they reasoned that US consumers had a limited budget for their products, and that budget was stretched too thinly when imports were available to consumers. Though unable to halt completely the importation of records into the US, they damaged the importers to a greater or lesser extent. Along the way they damaged the US independent record labels, as US distributors (Caroline, Important, JEM, Rough Trade, Twin Cities) act as importers but also generally stock 50 per cent independent label releases. US independent labels have had a difficult time getting paid by distributors anyway, and any financial difficulties placed on the distributors make their way to the independent labels.

Record importing has never been an easy task to begin with. Import duties on records are relatively high, and unlike printed materials, records are not treated as perishable materials. It also takes some time for a shipment of records to clear customs, all of which, in a market where timing may be all-important, creates problems for the importer. According to Andrew Graham-Stewart at Caroline Imports (one of the importers that settled with a major label):

> The volume of imports is down, probably by 65–70%, and if we now are required to get a license from a US publisher in order to bring in 10, 15 or 20 copies of a particular record, it just isn't worth it. The traditional publishing houses have made it quite clear, so far, that they will absolutely enforce their legal rights. . . . The market is now limited to UK acts who write their own material and who have not signed a publishing deal for the US. . . . The implications, particularly for the UK independent record labels, must be seen as very serious indeed, given that a reasonable proportion of their income is derived from exports, particularly to the US.
>
> (Dunkley 1987: 10)

The implications are great for fans of hard-to-find American music that is released by European labels such as Charly, Ace, Demon, and Pathe-Marconi. In Europe there is a great appreciation for jazz and blues records that have long been deleted from the catalogues of US record companies – but whose copyrights those companies still hold. Presumably the average

person in Europe will be able to buy records by American artists that the American public will not have access to.

Emphasizing the multinational nature of the record industry, Warners, Sony and PolyGram have begun attempts to limit recordings exported from America by US distributors. A weaker dollar means that foreign wholesalers may purchase recordings from US distributors and have them shipped overseas for less than it costs to purchase them from the international arms of major labels. Such a practice weakens the profit and position of the non-US branch of the label. Though there has yet to be any testing of legal waters (and indeed there may not be legal recourse for the labels, as it is not in their power to create and enforce an international trade restriction), it is clearly a policy among the major record labels to monitor and ensure that their business is functional and profitable on a multinational level.

CONCLUSION

The issues presented here combine issues of artistic quality or merit with commercial success and corporate control.

One can perhaps understand the protectionist nature of these legal challenges by viewing the American music industry in the context of the global popular music market. Record sales may have increased overseas, but royalty payments on publishing and licensing become more difficult to obtain, and often they are divided among foreign copyright holders. Since a vast portion of a record company's income is from publishing and licensing, it is not surprising to see industry concern about record importation, foreign acts performing in the US, and so on. Such concern stems from an awareness of the profitability of exploiting markets by efficient, favourable and profitable use of copyright ownership.

The technology of popular music production is partially to blame for the record industry's mobilization of its legal forces, as it has changed the economics of the recording industry. In addition to a shift away from the US as the dominant player in the music business and toward an oligarchical multinational corporate structure, the concept of copyright has been turned on its head by digital sampling, non-US musicians' popularity has turned the heads of union leaders, and the success of imported recordings has prompted US record companies to retaliate.

As with all high-stakes legal wrangling, the likelihood of a win-win outcome is minimal. The lesson learned by the RIAA (and, by extension, the US record industry which it represents) appears to be the understanding that to achieve commercial success in the music business it is necessary to be less in the business of music and more in the business of business.

NOTES

1 I use the term 'internationalized' to mean the inclusion of non-western sounds and music in western popular music, the growing popularity of non-western music among popular music fans, and the growth of the music business into an industry dominated by transnational corporate interests. It is not intended to mean the exportation (exploitation) of western popular music to (in) Third World and other countries. The term 'popular music' is taken to include forms such as pop, rock, rock'n'roll, etc.

2 For information concerning censorship and the US music industry see S. Jones (1990) 'Ban(nc)d in the USA: popular music and censorship', *Journal of Communication Inquiry* 15(1), Summer: 5–20.

3 All references to the US Immigration Reform Act are from Section 101(a)(15)(H)(ii) of the United States Immigration Reform and Control Act of 1986 and subsequent congressional revisions.

4 All references to US copyright law are based on the 1976 Copyright Act of the United States of America 17 U.S.C 101 and subsequent congressional revisions.

5 Associated Press wire service report, 21 June 1987.

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